

[Issue # 7]
**PROPOSED REGULATION FOR FORMULA AREA
DEFINITION**
Committee Work Product with Additional Change
By Jack Sawyers

§ 1000.302 What are the definitions applicable to the IHBG formula?

[amend the following definition]

Formula area. (1) Formula areas are:

- (i) Reservations for Federally recognized Tribes, as defined by the Census;
- (ii) Trust lands;
- (iii) Department of the Interior Near-Reservation Service Area;
- (iv) Former Indian Reservation Areas in Oklahoma Indian Areas, as defined by the Census as Oklahoma Tribal Statistical Areas (OTSAs) ~~[*not approved by the workgroup yet*];~~
- (v) Congressionally Mandated Service Areas;
- (vi) State Tribal Areas as defined by the Census as State Designated American Indian Statistical Areas (SDAISAs) ~~as of 1996;~~
- (vii) tribal Designated Statistical Areas (TDSAs); and
- (viii) California Tribal Jurisdictional Areas established or reestablished by Federal court judgment.

(ix) ~~Subject to a challenge by a tribe described under paragraph (iv), For any federally recognized~~ tribe assigned Formula Area geography in Fiscal Year 2003 not identified in paragraphs (1) and (2) of this definition, the Indian tribe shall continue to be assigned such Formula Area in subsequent Fiscal Years, provided that the tribe continues to provide an appropriate level of housing services within the Formula Area as monitored by HUD using the definition of substantial housing services as a guideline but not a requirement.

(2)(i) For geographic area definitions not identified in paragraph (1) of this definition, and for expansion or re-definition of a geographic area from the prior year, the Indian tribe must submit, on a form agreed to by HUD for this purpose, the geographic area it wishes to include in its Formula area, including proof that the Indian tribe:

(A) Where applicable, has agreed to provide housing services pursuant to a Memorandum of Agreement (MOA) with the tribal and public governing entity or entities of the area, or have attempted to establish such an MOA; and

(B) Could exercise court jurisdiction; or

(C) ~~Is planning to provide, or is~~ providing; substantial housing services and will continue to expend or obligate funds for substantial housing services as reflected in the form agreed to by HUD for this purpose.

(ii) Upon receipt of a request for recognition of a geographic area not identified in paragraph (1) of this definition, HUD shall make a preliminary determination. HUD shall notify all potentially affected tribes of the basis for its preliminary determination by certified mail and provide the tribes with the opportunity to comment for a period of not less than 90 days. After consideration of the comments, HUD shall announce its final determination through *Federal Register* notice. ~~The geographic area into which a tribe may expand under 2(i)(C) shall be the smallest Census unit or units that encompasses the physical location of the substantial housing services that have been provided by the tribe.~~

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(3) Alaska needs data shall be credited as set forth in § 1000.327 to the Alaska Native Village (ANV), the regional Indian tribe, or to the regional corporation established pursuant to the Alaska Native Claims Settlement Act. For purposes of § 1000.327 and this definition:

(i) The formula area of the ANV shall be geographic area of the village or that area delineated by the Tribal Designated Statistical Area established for the ANV for purposes of the 1990 census or the Alaska Native Village Statistical Area (ANVSA) established for the ANV. To the extent the area encompassed by such designation may substantially exceed the actual geographic area of the village, such designation is subject to challenge pursuant to section 1000.336. If the NAVSA or the TDSA is determined pursuant to such challenge to substantially exceed the actual area of the village, then the geographic formula area of the ANV for purposes of § 1000.327 shall be such census designation as most closely approximates the actual geographic area of the village.

(ii) The geographic formula area of the regional corporation shall be the area established for the corporation by the Alaska Native Claims Settlement Act.

(iii) **A tribe may seek to expand its Alaska formula area within its ANCSA region pursuant to the procedures set out in paragraph 2 of this section. Formula area added in this way shall be treated as overlapping pursuant to section 1000.326 unless the proportion of the tribe's members in the expanded area is less than 50% of the AIAN population. In cases where the tribe is not treated as overlapping, the tribe shall be credited with population and housing data only for its own tribal members resident within the new or added area. All other housing and population data for the area shall remain with the tribe or tribes previously credited with such data.**

(4) In some cases the population data for an Indian tribe within its formula area is greater than its tribal enrollment. In general, for those cases to maintain fairness for all Federally recognized Indian tribes, the population data will not be allowed to exceed twice a Federally recognized Indian tribe's enrolled population. However, a Federally recognized Indian tribe subject to this cap may receive an allocation based on more than twice its total enrollment if it can show that it is providing substantial housing services to substantially more non-member Indians and Alaska Natives who are members of another Federally recognized Indian tribe than it is to members. **For state-recognized tribes, the population data and formula allocation shall be limited to their tribal enrollment figures as determined under enrollment criteria in effect in 1996.**

(5) In cases where an Indian tribe is seeking to receive an allocation more than twice its total enrollment, the tribal enrollment multiplier will be determined by the total number of Indians and Alaska Natives the Indian tribe is providing substantial housing services (on July 30 of the year before funding is sought) divided by the number of members the Indian tribe is providing housing assistance. For example, an Indian tribe which provides housing to 300 Indians and Alaska Natives, of which 100 are members, would then be able to receive an allocation for up to three times its tribal enrollment if the Indian and Alaska Native population in the area is three or more times the tribal enrollment.

Consensus reached 10:05am 1/14/04

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[Also to be included TBD]

No tribe may expand or redefine its Formula Area without complying with the requirements of this subpart notwithstanding any changes recognized by the Census Bureau.