shall be considered to be in compliance with the requirements of section 102 of NAHASDA and the IHP is approved.

(c) If the submitted IHP does not comply with the provisions of paragraphs (a)(1), and (a)(3) of this section, HUD will notify the recipient of the determination of non-compliance. HUD will provide this notice no later than 60 days after receiving the IHP. This notice will set forth:

(1) The reasons for noncompliance;

(2) The modifications necessary for the IHP to meet the submission requirements; and

(3) The date by which the revised IHP must be submitted.

(d) If the recipient does not submit a revised IHP by the date indicated in the notice provided under paragraph (c) of this section, the IHP will be determined by HUD to be in non-compliance unless a waiver is requested and approved under section 101(b)(2) of NAHASDA. If the IHP is determined by HUD to be in non-compliance and no waiver is granted, the recipient may appeal this determination following the appeal process in § 1000.234.

(e)(1) If the IHP does not contain the certifications identified in paragraph (a)(4) of this section, the recipient will be notified within 60 days of submission of the IHP that the plan is incomplete. The notification will include a date by which the certification must be submitted.

(2) If the recipient has not complied or cannot comply with the certification requirements due to circumstances beyond the control of the Indian tribe(s), within the timeframe established, the recipient can request a waiver in accordance with section 101(b)(2) of NAHASDA. If the waiver is approved, the recipient is eligible to receive its grant in accordance with any conditions of the waiver.

§ 1000.232 Can an Indian tribe or TDHE amend its IHP?

Yes. Section 103(c) of NAHASDA specifically provides that a recipient may submit modifications or revisions of its IHP to HUD. Unless the initial IHP certification provided by an Indian tribe allowed for the submission of IHP amendments without further tribal certifications, a tribal certification must accompany submission of IHP amendments by a TDHE to HUD. HUD's review of an amendment and determination of compliance will be limited to modifications of an IHP which adds new activities or involve a decrease in the amount of funds provided to protect and maintain the viability of housing assisted under the 1937 Act. HUD will consider these modifications to the IHP in accordance with § 1000.230. HUD will act on amended IHPs within 30 days.

§ 1000.234 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?

(a) Yes. Within 30 days of receiving HUD's disapproval of an IHP or of a modification to an IHP, the recipient may submit a written request for reconsideration of the determination. The request shall include the justification for the reconsideration.

(b) Within 21 days of receiving the request, HUD shall reconsider its initial determination and provide the recipient with written notice of its decision to affirm, modify, or reverse its initial determination. This notice will also contain the reasons for HUD's decision.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within 21 days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and include justification for the reconsideration.

(d) Within 21 days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal. The Assistant Secretary will provide written notice to the recipient setting forth the reasons for the decision. The Assistant Secretary's decision constitutes final agency action.

§ 1000.236 What are eligible administrative and planning expenses?

(a) Eligible administrative and planning expenses of the IHBG program include, but are not limited to:

(1) Costs of overall program and/or administrative management;

(2) Coordination monitoring and evaluation;

(3) Preparation of the IHP including data collection and transition costs;

(4) Preparation of the annual performance report; and

(5) Challenge to and collection of data for purposes of challenging the formula.

(b) Staff and overhead costs directly related to carrying out affordable housing activities can be determined to be eligible costs of the affordable housing activity or considered administration or planning at the discretion of the recipient.

§ 1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?

The recipient can use up to 20 percent of its annual grant amount for administration and planning. The recipient shall identify the percentage of grant funds which will be used in the IHP. HUD approval is required if a higher percentage is requested by the recipient. When HUD approval is required, HUD must take into consideration any cost of preparing the IHP, challenges to and collection of data, the recipient's grant amount, approved cost allocation plans, and any other relevant information with special consideration given to the circumstances of recipients receiving minimal funding.

§ 1000.240 When is a local cooperation agreement required for affordable housing activities?

The requirement for a local cooperation agreement applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

§ 1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

The requirement for exemption from taxation applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

Subpart D—Allocation Formula

§ 1000.301 What is the purpose of the IHBG formula?

The IHBG formula is used to allocate equitably and fairly funds made available through NAHASDA among eligible Indian tribes. A TDHE may be a recipient on behalf of an Indian tribe.

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

Allowable Expense Level (AEL) factor. In rental projects, AEL is the per-unit per-month dollar amount of expenses which was used to compute the amount of operating subsidy used prior to October 1, 1997 for the Low Rent units developed under the 1937 Act. The "AEL factor" is the relative difference between a local area AEL and the national weighted average for AEL.

Date of Full Availability (DOFA) means the last day of the month in which substantially all the units in a housing development are available for occupancy.

Fair Market Rent (FMR) factors are gross rent estimates; they include shelter rent plus the cost of all utilities, except telephones. HUD estimates FMRs on an annual basis for 354 metropolitan FMR areas and 2,355 non-metropolitan county FMR areas. The "FMR factor" is the relative difference between a local area FMR and the national weighted average for FMR.

Formula Annual Income. For purposes of the IHBG formula, annual income is a household's total income as currently defined by the U.S. Census Bureau.

Formula area. (1) Formula area is the geographic area over which an Indian tribe could exercise court jurisdiction or is providing substantial housing services and, where applicable, the Indian tribe or TDHE has agreed to provide housing services pursuant to a Memorandum of Agreement with the governing entity or entities (including Indian tribes) of the area, including but not limited to:

(i) A reservation;

(ii) Trust land;

(iii) Alaska Native Village Statistical Area;

(iv) Alaska Native Claims Settlement Act Corporation Service Area;