

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
NEGOTIATED RULEMAKING COMMITTEE

NEGOTIATED RULEMAKING, SESSION I, AUGUST 27, 2013

The above-entitled negotiated rulemaking was taken at the Grand Hyatt, Imperial Ballroom, 1750 Welton Street, Denver, Colorado, before Denise A. Freeman, Registered Professional Reporter and Notary Public within Colorado.

1 APPEARANCES:

2 Facilitators:

3 Steve Nichols
Susan Podziba

4 Committee Members:

5 Jason Adams
Rodger Boyd
Annette Bryan

6 Mark Butterfield
Heather Cloud

7 Gary Cooper
Pete Delgado

8 Jason Dollarhide
Earl Evans

9 Deidre Flood
Karin Lee Foster

10 Carol Gore
Lafe Allen Haugen

11 Sandra Henriquez
Richard Hill

12 Leon Jacobs
Teri Nutter

13 Sam Okakok
Diana Phair

14 Michael Reed
S. Jack Sawyers

15 Marty Shuravloff
Russell Sossamon

16 Michael Thom
Cathern Tufts

17 Sharon Vogel
Aneva Yazzie

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1 P R O C E E D I N G S

2 MR. BOYD: This morning to start business, I
3 would like to have the facilitators stand and introduce
4 themselves, please. We have Susan Podziba and Steve
5 Nichols.

6 MS. PODZIBA: Hello. I am Susan Podziba. I
7 am a policy mediator. I have a private practice. It's
8 called Podziba Policy Mediation. I have been doing this
9 kind of work for about 25 years now, and I would like to
10 say, I am very happy to be here.

11 If you do accept Steve and I as
12 facilitators, we will be very privileged to work with
13 you and hope to help assist in keeping minds open and
14 developing innovative ideas and solutions to deliver
15 policy to your Committee. Thank you.

16 MR. NICHOLS: Hello. My name is Steve
17 Nichols. I would like to welcome you to my hometown of
18 Denver. I first became aware of meeting facilitators
19 back in 1981 when I worked for a company called AT&T.
20 Just to put that in perspective for you, that was 1981.
21 All of the telephones had cords attached to them, which
22 is hard to find today.

23 But AT&T was a large company who had a lot
24 of meetings. And suddenly one of my supervisors started
25 to bring in a person called a facilitator to run

1 meetings. This was kind of different for us because we
2 were a very hierarchal organization and we were trying
3 to become more collaborative.

4 So I began to notice with the facilitator
5 that suddenly the people who participated in these
6 meetings were much more free and open with ideas and
7 there was a great deal more participation and joining in
8 the conversation and dialogue. And the decisions that
9 were made were much more collaborative and supported by
10 everyone. So this was viewed as a step forward.

11 The other thing I began to learn, as I
12 watched the facilitator work, is that every meeting
13 really has two parts to it. One of the parts of the
14 meeting is the content, which all of you are the experts
15 on. The other part of the meeting is the process,
16 staying on the agenda, moving through in a coordinated
17 manner so you can accomplish your objectives on the
18 Committee.

19 And both of those things are very important.
20 The facilitators focus more on the process part of the
21 meeting. The people in the meeting focus more on the
22 content. And it seemed like we really accomplished a
23 lot more by operating that way.

24 So one time we had one of these meetings,
25 and a facilitator came in. And my supervisor asked me

1 at a break, So what did you think of the facilitator we
2 are using today?

3 And I said, Well, to tell you the truth, I
4 thought he was a little pretentious and self-important.
5 And she said, Well, you can do that.

6 And from that point on, I started
7 facilitating more and more meetings over time and
8 actually became -- doing so much of it that I began to
9 train other facilitators. I started a company as a
10 facilitator. So in the last 30-some-odd years, I have
11 facilitated meetings throughout North America and
12 several other continents.

13 And I do share the privilege, the feeling of
14 privilege, to be a part of this meeting and the
15 commitment to work with you.

16 Please, if you have any feedback for Susan
17 and I throughout the meeting, please be sure and let us
18 know. We want to hear from you to help make this a
19 success. Thank you.

20 MR. BOYD: I have a couple of other matters
21 that I want to talk about.

22 First of all, one is certainly recognition
23 of FirstPic, who are -- the members are standing over
24 there. They keep you all -- they do the work for all of
25 us with regard to the formula, the distribution of the

1 formula.

2 We had conversations over the past years
3 with FirstPic. They have helped us with logistics, and
4 certainly they will be support over the next couple days
5 and the next several meetings to come with regard to the
6 discussion of the formula.

7 Secondly, I was reminded by counsel -- I
8 can't remember how we did it in the last negotiated
9 rulemaking -- but there is a housekeeping requirement
10 that is spelled out in the Negotiated Rulemaking Act,
11 and that is for the standing Committee to approve of the
12 selection of the facilitators.

13 So I will put this on the table. And
14 without a chairperson or persons, I can only ask you to
15 take this time to, if you want, to discuss. Certainly
16 we do need approval of the facilitators.

17 MR. SAWYERS: I would like to move that we
18 accept the facilitators for this meeting.

19 MS. GORE: I second.

20 MR. BOYD: Those in favor, would you raise
21 your right hand. Thank you. So now I will turn the
22 meeting over to the facilitators to proceed.

23 MR. NICHOLS: Thank you, Rodger.

24 Good morning, everybody. I'm Steve Nichols.
25 The first thing that we are going to discuss is the

1 agenda for the meeting. The agenda you all received was
2 prepared ahead of time for your review before and during
3 the meeting to approve it because the agenda really
4 belongs to the Committee.

5 And what we would like to do is discuss any
6 suggestions you have for changing the agenda or
7 improving it and then reach an agreement on the agenda
8 that will be the final agenda for the meeting. So that
9 we will then use that for our road map and schedule to
10 progress through the meeting.

11 So let me invite any comments or
12 suggestions. Actually, first, I will go through the
13 agenda real quickly with you.

14 We are currently at -- the next item, after
15 we review the agenda, will be an overview of the
16 Negotiated Rulemaking Procedures by Aaron Santa Anna.
17 Then we will start working on the charter and protocols
18 for the Committee.

19 Breaks are in here at 15 minutes at a time.
20 We will continue with the charter and protocols through
21 the rest of the day today until 4:30, and then there
22 will be time for public comment.

23 Tomorrow we will continue with the charter
24 and protocols. As you can see, our focus is to get
25 through the charter and protocol discussion, which

1 really lays out the framework for the operating ground
2 rules of the Committee. We'll complete that tomorrow.

3 And then nominating and selecting Committee
4 chairs, which we have at the end of the meeting
5 tomorrow, because the role of the Committee chairs is
6 defined in the charter and protocols. So it was thought
7 that that would be a logical place to put it, but that's
8 subject to your approval.

9 And then logistics for future meetings, the
10 next step, followed by public comments and closing.

11 So do you have any -- I would like to ask
12 for any comments or suggestions for the agenda for us or
13 do you feel that the agenda is adequate and we can
14 proceed with this agenda?

15 MR. SAWYERS: I would like to make a motion
16 that we accept the agenda.

17 MR. NICHOLS: Okay. A motion has been made
18 to accept the agenda.

19 MS. GORE: I'll second the motion.

20 MR. NICHOLS: A second to the motion has
21 been made. A show of hands works pretty well, if you
22 raise your hand if you agree.

23 So if anyone has any significant issue or
24 concern, this would be a good time to express it.
25 Everyone's hand is up. Is there any -- anyone who did

1 not have their hand up, just to be sure?

2 Okay. Thank you. Then we will adopt the
3 agenda as the agenda for this meeting and we will make
4 that final.

5 So the first item on the agenda is the
6 Overview of Negotiated Rulemaking Procedures. And for
7 that we have with us today Aaron Santa Anna, who is the
8 assistant general counsel for the regulations division.

9 This is the office that writes the rules
10 published in the Federal Register and then codified in
11 the CFR that you are all familiar with. Aaron has been
12 in this position for 12 years, and he participated in
13 the Neg Reg that's published in the current CFR. So
14 he's very experienced in this type of work, and he is
15 going to describe for us and discuss rulemaking.

16 Aaron?

17 MR. SANTA ANNA: Thank you. Good morning,
18 everyone.

19 Once again, I would like to welcome you all
20 to this session and would like to tell you how much I
21 look forward to working with each and every one of you
22 as we progress through today's session and looking
23 forward to the next one.

24 What I intend to do today is talk about some
25 of the -- some of the rulemaking issues that we can

1 expect as a group so that there's a clear understanding
2 of what is entailed in the session today.

3 Basically, this is the goal of the
4 Committee, to reach a consensus on the regulatory
5 meeting for NAHASDA.

6 The Neg Reg really is clear about the roles
7 and duties of the Committee, and it provides that each
8 Negotiated Rulemaking Committee establish a subchapter.
9 This is a matter proposed by the Committee for
10 consideration. You shall attempt to reach a consensus
11 concerning a proposed rule with respect to such matter
12 and any other matter that the Committee determines
13 relevant to the rule.

14 So essentially, by the end of the day, what
15 we would really like to be able to do, in terms of
16 having a successful Rulemaking Committee, is to develop
17 the framework for the proposed rule that we are
18 undertaking here today.

19 One thing that needs to be clear about what
20 we are doing is that negotiated rulemaking is not -- it
21 doesn't cause us to skip any of the regular steps that
22 are entailed in any regular informal rulemaking.

23 Informal rulemaking, as you know or might
24 know, can be very time-consuming. It can be very
25 frustrating. There's a significant number of procedural

1 steps that we have to go through in order to make sure
2 that the proposed rule that we develop and publish, the
3 final rule that we ultimately publish and codify, is
4 legally sufficient and withstands any sort of legal
5 challenge.

6 And so one of the rules of my job is to be
7 able to make sure that we dot those i's and cross those
8 t's with regard to a procedure. And I do want to be
9 able to make sure that everybody on the Committee
10 understands what is entailed in this. Like I said, it
11 can be frustrating and it can be time-consuming, but it
12 is a process that we have gone through before, and I
13 certainly see nothing to stop us from being able to
14 reach the goals that we have.

15 As I indicated, we have slides that I will
16 be talking about in a little bit more detail. It does
17 involve a review of what we do, and it involves
18 Congressional review of what we do.

19 At each of those stages, there will be an
20 opportunity for other third-party entities to be
21 involved in providing guidance and recommendations with
22 regard to what we do.

23 These are essentially the key steps that I
24 can see that we need to consider as we start off here
25 today. I think a lot of what we have indicated here is

1 reflected by the agenda that we have just adopted, and
2 that is to establish the ground rules and protocols of
3 how the Committee is going to operate. Define consensus
4 of the group. Establish working groups or
5 subcommittees, as necessary, and to negotiate all the
6 recommendations for the outline of the proposed rule.
7 So this is really kind of the first step.

8 It's important to note that the first
9 step -- the slide indicates that what ultimately results
10 at the end of the day is the report to the HUD
11 Secretary.

12 What the Neg Reg provides is that the
13 Committee shall transmit to the agency, the established
14 Committee, a report containing the proposed rule. And
15 essentially what that means is that report should
16 include any of the items that the Committee reaches
17 consensus on.

18 It may include a draft regulation that can
19 be the proposed rule, along with the preamble to the
20 rule, although that's not required, and any additional
21 information that the Committee feels is relevant for the
22 Secretary's consideration.

23 Just as a bit of information -- I think most
24 people understand this -- is that the preamble to the
25 rule is really a description of what is described in the

1 regulatory text. The regulatory text is really what
2 will be codified.

3 It will set the parameters for how we are
4 going to be doing the formula in the future. The
5 preamble to the rule will be kind of a description as to
6 what it means, and it should be written in a way that a
7 member of the public could read the rule and start
8 reading the preamble and have a general understanding of
9 what is going to be codified and what the impact of what
10 will be codified will have.

11 As I indicated at the onset, there are a
12 number of procedural steps that we have to go through.
13 And once the Committee develops that proposed rule,
14 develops a report to the Secretary, then the first step
15 that we have to be able to go through is internal
16 review.

17 What this entails is that we -- my office --
18 will distribute a copy of the rule to a number of
19 officers in the Department of Housing and Urban
20 Development for review. Those officers will be asked to
21 review and comment on the rule.

22 For example, the office for Housing and
23 Equal Opportunity, their portion is to be able to ensure
24 that we have equal access. The Office of Development
25 and Research will also play a key role in the clearance.

1 CFO -- and that is the chief financial officer -- will
2 play a key role in looking at the rule.

3 And so all of these offices have the
4 opportunity to be able to take a look and give
5 recommendations as to what changes should be made to the
6 rule that we develop.

7 Now one of the things that I do want to
8 emphasize is that, in internal clearance, one of the
9 things that my office will be doing -- and certainly one
10 of the things that ONAP will be doing as well -- is
11 trying to really emphasize to the office of the
12 reviewing rule that what they have in front of them is
13 something that's been developed by consensus. And that
14 is that various interests that will be affected by the
15 rule have all come together and agreed to a set of
16 standards.

17 And, therefore, any comments, any changes,
18 need to be very well-considered, very circumspect. We
19 will continue to try to push that word out so that we
20 can try to keep the rule as intact and unchanged as what
21 comes out of the Committee.

22 There are situations, of course, where --
23 another office that will be looking at it will be ODC.
24 If ODC has a legal issue, then we are certainly going to
25 have to be able to take those comments into

1 consideration and make sure we have accommodated this.

2 Typically, internal clearance takes three
3 weeks. A lot of it depends on the comments that we get,
4 so it may be a little longer.

5 After internal clearance, the next step is
6 OMB review. HUD is subject to an executive order,
7 Executive Order 12866, that requires that we submit a
8 copy of the rule to OMB for review.

9 Now OMB has a special office. It's called
10 the Office of Information and Regulatory Affairs. The
11 acronym is OIRA. And they have reviewers that look at
12 the rule and the policy implications that are being
13 impacted. And they will take a look at the rule, and
14 they may have comments.

15 As the slide indicates, OMB looks at
16 significant regulatory actions. And there's no question
17 in my mind that this is -- the rule that we develop is
18 going to be a significant regulatory action and,
19 therefore, subject to review.

20 This is the definition of "significant."
21 And, certainly, if you look at the last two bullets
22 there on the slide, this is really the reason why this
23 rule is significant.

24 As was indicated in the slide before this,
25 OMB has up to 90 days to review the rule. That's set

1 out by the executive board. My experience has been,
2 over the course of the last 12 or 18 months, that OMB
3 has been taking a little bit more than the 90 days, and
4 they have the ability to extend the review.

5 It would be my hope that, once we have a
6 rule that we can develop that is cleared through the
7 department and sent to OMB, that OMB can review the rule
8 and approve it within the 90-day period.

9 And, again, as I indicated before, even
10 though that timeline is set out by the executive order,
11 OMB has taken more time than 90 days to review the rule.

12 And this is the reason why OMB is interested
13 in the review. What they will be doing, as part of
14 their review, is sharing our draft with other agencies,
15 other federal agencies, to be able to determine whether
16 or not anything in the rule raises conflict with what
17 other agencies are doing, with what other agencies'
18 policy is.

19 What they really want to do is ensure that
20 we have a consistent policy throughout the federal
21 government on particular issues that cross -- that have
22 effects that cross agency lines.

23 After OMB, we then need to send the rule to
24 the Hill, to our House and Senate Committees. They
25 review it in 15 days. That's a statutory requirement.

1 There's no other way to get out of it. It takes more
2 than a few days to try to get out of it.

3 But they must send our rule to the Hill for
4 a 15-day prepublication review. And what happens is,
5 these 15 days are calendar days. So if we send it over
6 on Friday, counting Saturday and Sunday, it's a 15-day
7 time clock.

8 I can tell you that my experience in this
9 role -- and I have been serving as general counsel for
10 the regulations division now for almost 13 years -- I
11 can think of about maybe one or two rules that Congress
12 had to comment on.

13 And over that same period of time, we've
14 sent hundreds of rules over. So it's very, very
15 unlikely that Congress will have any sort of comment on
16 the rule, but it's another step we have to be able to go
17 through in order to get the rule published.

18 Finally, we send the rule to the Federal
19 Register for publication. I think everybody is familiar
20 with the Federal Register and how to access that. Now
21 it is online at the Government Printing Office website.

22 Typically, it takes up to a
23 three-to-five-day period to get the rule published.
24 What happens, in fact, is that they have -- the GPO has
25 a queue that the rule is placed in. And depending on

1 the length of the queue, it impacts when the rule will
2 be published.

3 The GPO, without exception, will give us
4 notice of when the rule is to be published. Typically
5 it's two or three days in advance, so that we have that
6 information available to be able to know when to look
7 for the Federal Register.

8 The public -- the proposed rule then, as you
9 should be familiar, calls for public comment. And
10 typically we have a 60-day public comment period in any
11 rule that's published by -- is required by regulation.

12 So the rule is published in the Federal
13 Register, and it will ask for the public to provide
14 input into any part of the rule.

15 Members of the public will be informed that
16 they can provide comments in hard copy by sending it to
17 an address provided in the proposed rule. They will
18 also be advised that they can submit comments
19 electronically to a regs site called regulations.gov.

20 We have been finding, over the course of the
21 last five years, since regulations.gov has been up and
22 running, that the majority of comments that we now get
23 are electronic.

24 And it makes it very easy for us because
25 members of the public can see what other members are

1 providing, what the comments are, so that there can be
2 an exchange in terms of commenting and comments to be
3 able to provide more information with regard to
4 something raised in the comments.

5 And it certainly makes it a lot easier for
6 us rulemakers to go through the comments and try to
7 identify the issues that the comments are raising. But
8 as I indicated, one of the requirements of rulemaking is
9 that every comment is considered.

10 HUD will, of course, provide the Committee a
11 set of comments that come in with regard to the rule
12 that's published. Certainly members of the Committee
13 will be also able to review online any comments.

14 If you have any questions with regard to how
15 to do that, I would be more than happy to walk you
16 through that. As we get close to the time period where
17 we publish the rule, I just want to make sure that you
18 have the information with regard to how to access those
19 comments.

20 The Committee will then decide how to
21 respond to the comments, whether or not comments are
22 such that they require that we make changes to the rule.

23 This is a proposed rule. Now we start the
24 final rule -- the final rule step. And this is really,
25 I think, applicable that we start over. And this is not

1 to say that we have done anything wrong in the proposed
2 rule. But it's really to talk about the fact that, once
3 we start the final rule stage, we have to go through
4 these steps that I just outlined once again.

5 And those steps include the internal HUD
6 clearance and OMB review. You don't have to send the
7 final rule to the Hill for their review. That only
8 applies to the proposed rule stage.

9 But once it's sent to the Federal Register,
10 again, there's that period of time to get the Federal
11 Register published. And, after that, there will be a
12 30-day delay.

13 That's basically the rulemaking. I will be
14 happy to entertain any questions you might have. I
15 would be more than happy to talk to anybody online.

16 Thank you so much for your time.

17 MS. BRYAN: One question. Does this
18 Committee have a timeline to submit to the Federal
19 Register? What's the timeline for that? How long do we
20 have to do that?

21 MR. SANTA ANNA: The timeline for the
22 Committee is going to be set by the agenda that is
23 developed by the Committee itself as it develops its
24 protocols and charter, understanding that the guidance
25 the Secretary provided is really meant for joint

1 decision-making that is set for a timeline or a rule.

2 As I mentioned before, once the rule is
3 finally through all of the various hurdles -- clearance,
4 review, and the Hill review -- then we send it to the
5 Federal Register. And it takes about three to five days
6 to get published.

7 MS. BRYAN: For 30 days, 45 days, 60 days?

8 MR. SANTA ANNA: Sixty days for public
9 comment.

10 MS. GORE: I have one question.

11 One step in the process would be the House
12 and Senate Committees. Could you be more specific which
13 Committees have jurisdiction over that?

14 MR. SANTA ANNA: I don't have that
15 information right offhand, the names of the Committees.
16 They change on a regular basis. But I can get that for
17 you. It's authorized Committees for both the House and
18 the Senate side.

19 MS. GORE: I guess I'm sitting here saying,
20 the Committees that have jurisdiction over
21 reauthorization of NAHASDA, correct? The same
22 Committees that have jurisdiction over reauthorization
23 of NAHASDA?

24 MR. SANTA ANNA: That would be my
25 understanding, yes.

1 MS. GORE: Thank you.

2 MR. REED: Could we request, just as one of
3 the things for our group, maybe what you described as
4 sort of a summary sheet that has those timelines and
5 those steps that go into that?

6 MR. SANTA ANNA: Absolutely. There's
7 something online that I think will be very appropriate
8 for laying out something to talk about. We'll get that
9 downloaded and copied.

10 MR. REED: It might be a bit early, but
11 would you kindly explain or give us the history of this
12 Section 562 definition when it comes to item 288(b).
13 That's the one that talks about the consensus.

14 MR. SANTA ANNA: Well, I think it may be a
15 little bit early to do that.

16 One of the things that I -- my time on the
17 agenda was really intended to do is kind of walk through
18 with regard to the rulemaking process in general as
19 opposed to really focusing on any particular part of the
20 negotiated rulemaking.

21 But I think with regard to going into detail
22 with regard to any particular provision of the Neg Reg
23 Act, my preference would be to save that for a later
24 discussion.

25 MS. BRYAN: Can we get copies of the

1 PowerPoint?

2 MR. SANTA ANNA: Yes. We will make sure you
3 get a copy.

4 Again, I do want to emphasize how much I
5 really look forward to working with each and every one
6 of you and the Committee as a whole. If you have any
7 questions whatsoever, please ask.

8 Thank you so much for your attention and for
9 your time. I hope I was able to do that in less than an
10 hour.

11 MR. NICHOLS: Thank you very much, Aaron.
12 That was very good.

13 I have a couple of brief housekeeping items
14 to cover with you all, if I could have your patience
15 before we take a break for a minute.

16 First of all, I would like to introduce you
17 to our court reporter, Denise Freeman, who is up here in
18 the corner. And Denise is taking notes as we go through
19 the meeting.

20 So in order to help her do that, it would be
21 great, if you could, as you are making a comment, if you
22 could state your name, just in case she can't see who
23 you are or tell who you are. So if you could identify
24 yourself, if you comment, that would help her out
25 tremendously.

1 I see -- I think most of you have mastered
2 the art of a microphone pretty well so far. All you do
3 is push the button, the red light comes on, and then the
4 microphone is live. So if you can get it closer to you,
5 it would help us to hear everything better when you are
6 speaking. Just a small item, but you are all doing
7 really great on the microphones.

8 I would like to introduce two people who
9 were not introduced earlier who are here to provide
10 outstanding support for us. And most of these folks are
11 from FirstPic, which is coordinating the event.

12 If you are in the room, please raise your
13 hand and identify yourself.

14 First is Sara Fiala. Sara? Lauren Lim.
15 Adriana Martinez. Sarah Bayliff. Laura Applebaum.
16 Laura is keeping notes of the meeting. The rest of the
17 folks are all providing support. So anything that you
18 need that will make the experience better for you, feel
19 free to call upon them.

20 And then Christine Velez, who is operating
21 the AD for us. Mindi D'Angelo is from the IHBG Formula
22 Customer Service Center. And Peggy Cuciti. Peggy,
23 thank you. These are all the great support people we
24 have with us.

25 Now the other thing we would like to do is

1 start to establish a norm regarding taking breaks. One
2 of the things that we have heard from a lot of folks
3 before in meetings is that we want to make sure we make
4 the best use of our time, we move through the agenda,
5 stay on track.

6 And one of the ways that will help us do
7 that is that everyone comes back from breaks on time.
8 So we are asking your cooperation with that. And in
9 order to help with this, what we'll do is, when we take
10 a break, we'll take a 15-minute break. And I assume
11 that 15 minutes is good for everybody. It's what we
12 agreed to when we approved the agenda.

13 So I will make the assumption that the
14 Committee is good with 15-minute breaks. If that's not
15 correct, please let me know. We will be happy to
16 discuss that.

17 But when we take a 15-minute break, we'll
18 put a timer up on the screen, and it will count down the
19 time. So this will -- this is just intended to help you
20 know how much time is left in the break. Any questions
21 about that? Then let's take our first 15-minute break.

22 (Break was taken from 10:10 to 10:27.)

23 MS. PODZIBA: Thank you for getting back
24 after the break so quickly. As most of you know, we are
25 going to spend the better part of the next two days

1 looking at the charter and the protocols to develop 2013
2 versions of those.

3 Most of you have worked with these in the
4 past, so you are very familiar with them. But for those
5 of you who are new to negotiated rulemaking, the charter
6 is the document that establishes the Committee, formally
7 establishes the Committee. And the organizational
8 protocols are essentially a set of agreements among the
9 Committee members that determine how the Committee
10 governs itself.

11 The organizational protocols are sometimes
12 referred to as ground rules. There's no real
13 enforcement mechanism to them, so they are really,
14 essentially, your agreements to each other.

15 As has been done in the past with negotiated
16 rulemaking, it seems that we always begin with the
17 charter. So I propose that we, again, begin with the
18 charter, the broader document, as opposed to the
19 organizational protocols.

20 At tab 5 in your binder is a document that
21 you should have received by e-mail prior to today. And
22 it is a document that combines the charter language from
23 the 2003 Negotiated Rulemaking and the 2010 Negotiated
24 Rulemaking, and it's color-coded in red and blue.

25 For just your reference, at tab 3 you have

1 the 2003 charter straight, and at tab 4 is the 2010
2 charter just as it was used by that Committee.

3 As Steve and I discussed with you on the
4 phone as a process suggestion, we propose to begin with
5 this combined document, the version that has -- the red
6 is 2003 and the blue is 2010. And the thought behind
7 that suggestion is that there will be people, many of
8 you, who have participated in the 2003 and perhaps also
9 the 2010.

10 And the idea is, for those of you with that
11 experience, to share the wisdom that you generated from
12 those experiences and to explain to people who did not
13 participate in the past why the changes were made
14 between 2003 and 2010 and whether they worked or not,
15 whether they need some tweaking at the same time.

16 As well as for the people who have not seen
17 these documents before or worked with these documents
18 before, to bring their fresh eyes and, hopefully, new
19 questions that we might otherwise not think of. So if
20 that sounds like a good process to you, I will propose
21 that we proceed.

22 Does that sound like a good way of moving
23 forward? Yes?

24 Okay. So I am going to start with the
25 No. I, Section I. In 2003 it was called "Official

1 Determination." In 2010 it was called "Official Name."
2 And the one sentence is, "Native American Housing
3 Assistance and Self-Determination Negotiated Rulemaking
4 Committee, (Committee)."

5 The next sentence, "The official name of the
6 Committee established herein is the Native American
7 Housing Assistance and Self-Determination Negotiated
8 Rulemaking Committee," known as "Committee." You have
9 got it up here.

10 What we are going to do in terms of the
11 screen, the far screen on the far left, that's the
12 screen that this document is, and it won't change. This
13 screen behind me, as well as the screens in front of
14 you, are the screens where we will do real-time changes.

15 So as people make proposals and as proposals
16 become adopted, you will see that the draft changes. So
17 that will all be happening, and we will all know where
18 we are at the same time.

19 So I open to the Committee for discussion.
20 Do you want to go with Official Determination or
21 Official Name? And which one or any refined version of
22 those?

23 MR. ADAMS: Jason Adams. I was just
24 wondering if, in this process, are we going to take
25 proposals or am I making a proposal for an action of the

1 Committee and thereby the Committee will act in
2 consensus for the proposal? How are we doing it with
3 the options presented in 2003 and 2010?

4 MS. PODZIBA: I know that there's a way that
5 you worked in the past, but I am not as familiar with
6 it.

7 If making proposals is a comfortable way of
8 operating, we can go that way. Or we can have a little
9 of a less formal discussion where someone might say, I
10 like "Official Name" versus "Official Determination,"
11 and we will get a sense. I am used to people kind of
12 nodding, and so I would like to get a sense of the group
13 kind of nodding, and then we will move on.

14 My proposal, from the process point of view,
15 is that we move through the document, and I will
16 continue to ask if there are objections or concerns, and
17 we will continue revising it.

18 And then at the end, when we get to the end,
19 it will get printed out and everybody will have a chance
20 to read it again. And then we will look at it again one
21 more time and ask if there are any additional concerns.
22 And if there are not, then we will call the vote.

23 That would be my proposal, if that's okay
24 with people.

25 MS. YAZZIE: Aneva Yazzie. I think you

1 mentioned earlier that we can look at the wisdom and
2 guidance of those that participated in the previous
3 negotiated rulemaking, what was the process there and if
4 that worked. In response to Jason's question, were
5 proposals taken, and, if not, were suggestions just made
6 directly? That would be my question.

7 But I think for this, and if suggestions are
8 just taken outright, I would suggest it would be called
9 the "Official Committee" name. It would be explicit to
10 do that.

11 MS. PODZIBA: Mr. Adams?

12 MR. ADAMS: I guess, just for limitation
13 reasons, in 2003 -- and correct me if I am wrong -- but
14 I believe we did go through this and take suggestions
15 and put this together from the start of the meeting.

16 In 2010 draft protocols were a product that
17 was presented to a work group and presented to the
18 Committee prior to the meeting. And it took out a lot
19 of the back and forth in the negotiations, but we had a
20 pretty good product coming into 2010.

21 That was based on the experience of the
22 folks that had participated previously and those that
23 participated in legislative committee.

24 Based on that, I think we have the --
25 another comment I want to make is, the 2010 document

1 seemed to me to be more geared towards the negotiation
2 at that time, which was on amendments to NAHASDA. 2003
3 was really specific to the formula issue at hand.

4 And, again, I want -- to move this along and
5 not spend a lot of time -- just see what folks want. I
6 like the "Official Name," 2010.

7 MS. PODZIBA: The suggestion is for the use
8 of "Official Name" as opposed to "Official
9 Determination." Anyone feel differently? Yes,
10 Mr. Sawyers?

11 MR. SAWYERS: No. I second. I think we
12 ought to bring that to a vote, bring the name to a vote.

13 MS. PODZIBA: I'm sorry. Bring to a vote?

14 MR. SAWYERS: The name. In fact, what we
15 really did in 2010 is refine '03. So I think that it
16 would be smart for us to look at 2010 and not go over
17 both. If there are questions, we can talk about it, but
18 I think we ought to rely on the 2010 charter and I think
19 that will save a lot of time.

20 So my suggestion would be to go over 2010,
21 and then if there is someone who would like to talk
22 about the '03 charter or have something to do with it,
23 we can go from there. But it will be a lot faster to
24 tweak '10 rather than going through the whole process.

25 MS. PODZIBA: Yes, Ms. Gore?

1 MS. GORE: I think that the negotiated
2 rulemaking in 2003 was very different from the purpose
3 of the Negotiated Rulemaking Committee in 2010.

4 Really, in 2010, the Committee was really
5 all on the same page in embracing regulations that would
6 make our work easier. So we were here to really refine
7 regulatory language and agree on that language and make
8 sure it was clear between both HUD and the tribes.

9 In the case of formula negotiated
10 rulemaking, that is a different purpose, and I think
11 that requires that we look at both protocols. And since
12 this is also formula, 2003 may be more relevant to the
13 work we have here. That's just some history.

14 This is my third negotiated rulemaking, so I
15 have had some experience in both. And as I read them,
16 they are very different in key places. So I would
17 suggest that we look at both as we move along.

18 MS. PODZIBA: Mr. Sawyers, does that seem
19 like that makes sense to you?

20 MR. SAWYERS: No. I think it is what it is.
21 If we are going to do both, that's fine. I still feel
22 that we are going to spend a lot more time and we'll
23 come back to the same conclusions, but whatever Carol
24 wants is fine with me.

25 MS. PODZIBA: Yes, Mr. Reed?

1 MR. REED: Well, as I read through this,
2 there's a number of areas that are the same. So I would
3 think that that process -- maybe we can come up with a
4 third document that's even better.

5 MS. PODZIBA: I think everybody is correct.
6 There's a lot that's similar. There's some things that
7 have been tweaked for 2010 that crystallized things, and
8 then there's some sections that relate to the formula,
9 for example.

10 Perhaps, as we go through it, we can quickly
11 scan the red and blue and someone make a proposal about
12 which paragraph to begin with for that section. Yes?

13 MR. EVANS: Thank you. Earl Evans. If I
14 may, I have a proposal for Section I, the "Official
15 Name," for consideration.

16 MS. PODZIBA: I am going to read it out.

17 "Section I. Official Name. The official
18 name of the Committee established pursuant to HUD
19 Federal Register, known as FR Document 2013-18176, filed
20 on 7/29/13, is the Native American Housing Assistance &
21 Self-Determination Formula Negotiated Rulemaking
22 Committee."

23 Are there any concerns about that proposal?

24 Yes, Mr. Adams?

25 MR. ADAMS: Jason Adams. This is why I

1 asked my question to begin with --

2 MS. PODZIBA: Yes.

3 MR. ADAMS: -- as far as the process, how we
4 are going to make the decision. In 2010, my buddy Jack
5 agreed that we are taking the proposal. I am just
6 wondering how we are going to make a decision on this.
7 Thumbs up, thumbs down?

8 MS. PODZIBA: You're right. You're right.
9 I want to first get one more comment in because I know
10 you had a comment. Yes?

11 MS. FOSTER: This is Karin Foster, Yakama
12 Nation Housing Authority. Thank you.

13 I think that we can look at both the 2003
14 and 2010 at the same time without too much difficulty.
15 They are nicely put on the same page, and I suggest we
16 do that. I would suggest that we do proceed through
17 both proposals, just because I am used to it, and I
18 think we will all be on the same page.

19 And I, frankly, like consensus and we are
20 here on consensus. The normal sense, I think, is
21 consensus, at least until we get to the section where we
22 talk about whether we want to make more refinements.

23 So it's a proposal for something new. I
24 think that's -- I think that's helpful. Not necessarily
25 that I would agree with that proposal, but I like the

1 idea of people coming up with something new because
2 that's -- we are not only here to rehash the old.

3 And, finally, I like the "Official Name"
4 title. Thank you.

5 MS. PODZIBA: So if I understand you
6 correctly, we will go with proposals -- we will go with
7 more formal proposals? Does that work for everybody?
8 Yes?

9 MR. SAWYERS: I agree with you, except we
10 already have a proposal on the table. We have to
11 eliminate that before we go on to something else. And I
12 think that was Jason's point. As things come up, then
13 that's -- we have a proposal and a second. Let's
14 dispose of that before we go on to something else.

15 MS. PODZIBA: Let's do that. I apologize
16 for bringing confusion to the table in that regard. So
17 I am going to ask Mr. Adams to please put his proposal
18 forward since it was the first proposal.

19 MR. ADAMS: Again, my proposal is the 2010,
20 "The official name of the Committee established herein
21 is the Native American Housing Assistance and
22 Self-Determination Negotiated Rulemaking Committee."

23 MS. PODZIBA: Is there a discussion of that
24 proposal? Is there any objection to that proposal?

25 MR. ADAMS: Just one question for

1 clarification. This is just for this Section I, right?

2 MS. PODZIBA: Yes. Mr. Evans?

3 MR. EVANS: Earl Evans. So if I'm
4 understanding Mr. Adams correctly, he's proposing to
5 recommend adopting the language in blue; is that
6 correct?

7 MS. PODZIBA: That's correct.

8 MR. EVANS: If I may just state one
9 clarification in consideration as a part of that is, the
10 reason that I suggested taking out "the Committee
11 established herein," thus and so, is because there was a
12 point made by the chairman at the 2010 Negotiated
13 Rulemaking Committee that the charter doesn't establish
14 the Committee. The actual Federal Register does.

15 So, therefore, the proposal that is
16 submitted only made that change, but other than that,
17 adopted the language in blue, which would have taken out
18 the part about "the Committee established herein" and
19 inserted that "the Committee was established pursuant to
20 the Federal Register notice."

21 So I want to see if the membership would
22 agree with that friendly piece of information.

23 Mr. Adams, is that okay?

24 MR. ADAMS: I don't have any problem with
25 it, but I would like to see it.

1 MS. PODZIBA: Yes, please. Let me put it up
2 because you added "formula" into the title.

3 MR. EVANS: I'm sorry.

4 MS. PODZIBA: We will just take a minute and
5 get that typed in so everyone can see it.

6 Shall I read it out? Is that helpful?

7 "The official name of the Committee
8 established pursuant to HUD Federal Register, known as
9 FR.2013-18176, as filed on 7/29/2013, is the Native
10 American Housing Assistance and Self-Determination
11 Formula Negotiated Rulemaking Committee, to be known as
12 Committee."

13 Further discussion?

14 MS. BRYAN: This is Annette Bryan. The
15 Federal Register reads, "Indian Housing Block Grant
16 Formula Negotiated Rulemaking Committee." So what are
17 we trying to get at, the name in the Federal Register or
18 just add the word "Formula"?

19 MR. EVANS: Earl Evans. No. I simply added
20 the word "Formula" since that was simply the purpose for
21 all these references noticed by the docket number.

22 MR. ADAMS: I accept it.

23 MS. PODZIBA: I am getting confused in that
24 we don't have tribal leadership elected yet. So do you
25 want me to call the question now as a formal consensus

1 on the title?

2 Is there a comment? Okay. Is there any
3 objection? Is there any dissent from reaching consensus
4 on that? But I think you call it slightly differently.
5 What's the usual question that gets asked for consensus?

6 MR. ADAMS: Traditionally, it's thumbs up or
7 thumbs down.

8 MS. PODZIBA: So can we have thumbs up or
9 thumbs down on the official name of the Committee.
10 Looks good. Okay. Thank you.

11 Let's move on to Purpose then. And this is
12 where I think, Ms. Gore, you were referring to
13 differences. Would you like to start on this section
14 since you have that experience with both?

15 MS. GORE: Sure. Only in that we have all
16 had advanced review of both the 2003 and 2010, and it's
17 pretty clear that 2003 is very specific to formula
18 negotiated rulemaking, and I would propose acceptance of
19 that. Thank you.

20 MS. PODZIBA: So the proposal is to accept
21 the red Purpose. Yes, Mr. Sawyers?

22 MR. SAWYERS: I have a question regarding
23 the pending lawsuits.

24 MR. HEISTERCAMP: Just to clarify, there are
25 several pending lawsuits that affect some of the formula

1 regulations that may be up for negotiation here. And I
2 guess it would behoove you to be clear upfront from the
3 Committee's standpoint.

4 HUD feels, if there's anything under subpart
5 (d), that they are restricted from talking about it or
6 negotiating, so the Committee understands.

7 MR. SAWYERS: That's what I was going to
8 say.

9 MS. PODZIBA: I kind of guessed that.

10 MR. ATALLAH: Jad Atallah. We will not set
11 the parameters for what we are willing to talk about in
12 terms of litigation upfront in the charter. It's going
13 to be an issue-by-issue determination. And for purposes
14 of the charter, it's hard for us to know what we can
15 negotiate and what we can't negotiate because of
16 litigation.

17 So I would say, HUD will consider all
18 proposals on all issues, but there are specific issues
19 that are in litigation that we need to have in front of
20 us for us to know what we can talk about.

21 So for purposes of the charter, I would say,
22 any reference to subpart (d), revisions to subpart (d),
23 will be necessary that the Committee propose. And then
24 when we get to specific issues, we can talk about
25 whether there are litigation-related restraints on HUD's

1 ability to negotiate.

2 MS. PODZIBA: Yes?

3 MR. HEISTERCAMP: I appreciate that answer.

4 So just to be clear, you do anticipate there probably
5 will be some issues, but it's going to be on a
6 case-by-case basis?

7 MR. ATALLAH: That's correct, yes.

8 MS. PODZIBA: Yes?

9 MS. BRYAN: Annette Bryan, Puyallup. Carol,
10 the question I have about the difference between red and
11 blue, there's different public laws that were added to
12 the blue. And is it okay to exclude them by copying the
13 red?

14 MS. GORE: I don't believe so, but we have
15 attorneys here, so they can advise. Thank you.

16 MS. HENRIQUEZ: I would like to make a
17 proposal. We can go either way and say, if, however,
18 the red language, which applies to formula negotiation,
19 is to be accepted, then we would propose to strike the
20 second-to-the-last sentence, which says, "HUD is
21 required to work with the Committee to establish items
22 to be included in the scope for the next Negotiated
23 Rulemaking to be held within one year."

24 The Act itself is sufficient. That would
25 really update all the amendments to the Act going

1 forward.

2 MS. PODZIBA: So if I understand correctly,
3 the answer to Ms. Gore's question was, there is no need
4 to add additional laws because the 104-330 refers to the
5 Act and any future amendments?

6 MS. HENRIQUEZ: As I understand from my
7 counsel, yes. And striking that second-to-the-last
8 sentence.

9 MS. PODZIBA: So then this is a proposal to
10 strike that sentence. Is there a second for that
11 proposal? Yes, Ms. Yazzie?

12 MS. YAZZIE: Sometimes when we reference the
13 basic law and to capture all current -- all the
14 amendments, we would add the words "as amended" right
15 after the base law. So I would propose that you add --
16 what is that; the second -- the first sentence, right --
17 and at the end of that sentence, parens, comma, "as
18 amended" as an insert.

19 MS. PODZIBA: So we have two proposals.
20 Let's dispense with one before we get to another. Yes,
21 Mr. Adams?

22 MR. ADAMS: Again, I thought that Carol made
23 the proposal that we accept the section in red, so these
24 would be amendments to her proposal?

25 MS. GORE: I would accept both amendments so

1 long as you correct the spelling.

2 MS. PODZIBA: And also strike that sentence.

3 MR. REED: I would like to have added
4 somewhere up in that paragraph, "1000.301 of the
5 regulations." It can be quoted or whatever.

6 MS. PODZIBA: So that would be another
7 amendment to Carol's proposal?

8 MR. REED: Yes.

9 MS. PODZIBA: Maybe I can get that from you
10 and we can get that amended. Yes?

11 MS. HENRIQUEZ: I have a question. And that
12 is, if subpart (d) already includes that language --
13 that's only a portion of what you are asking to put in,
14 is a portion of the language of subpart (d)? Why just
15 not call that out the whole thing? It talks about the
16 language you call out.

17 MR. REED: That's fine. Just so it's in
18 there somewhere.

19 MS. PODZIBA: Any other proposed amendment
20 to the paragraph as it stands? Thumbs up or thumbs down
21 on Purpose. All set?

22 MS. HENRIQUEZ: The suggestion is, this
23 language under Purpose, adding in the phrase that
24 discusses the ability for there to be informative or
25 technical amendments. If we ended up doing something

1 later on that's not in conflict, then we would have an
2 obligation only to look at subpart (d).

3 So the suggestion is for all of us to
4 consider adding just the phrase "the ability for the
5 Committee to make informative or technical amendments,"
6 so that all the language is consistent in the formula
7 negotiations.

8 MS. PODZIBA: Can you tell me where that
9 would go in here?

10 MS. HENRIQUEZ: So the sixth line down that
11 starts, "Determination Act, Public Law 104-330, parens,
12 Act, as amended."

13 MS. PODZIBA: That's a proposed amendment to
14 Ms. Gore's proposal. Ms. Gore?

15 MS. GORE: I have no objection to the
16 concept, and I believe the language -- the reason I'm a
17 little confused is because, another sentence down, that
18 talks about "subpart (d) and related sections." It
19 seems to already embrace that, but I have no issue with
20 the concept of the initial language.

21 MS. PODZIBA: I see. That's where you are.
22 Okay. So the question is, is it necessary? Yes?

23 MS. FOSTER: I don't think it's redundant.
24 I think it catches related sections.

25 MS. GORE: Speaking from experience, this

1 does happen. So there are unintended consequences when
2 we are looking beyond just subpart (d) when there's no
3 intent, really, to change anything other than -- or
4 reviewing anything other than subpart (d). Thank you
5 for your comments.

6 MS. PODZIBA: You are ready to go thumbs up.
7 Okay. Can we have thumbs up or thumbs down on
8 Section II, Purpose.

9 MS. GORE: May I ask a process question?

10 MS. PODZIBA: Yes.

11 MS. GORE: And I am the only one speaking
12 and accepting the amendment. Should there be a second?
13 Procedurally, should we accept that as well before we
14 call thumbs up? I just want to make sure we have the
15 process correct.

16 MS. YAZZIE: I second those.

17 MS. PODZIBA: Thanks. I am learning. All
18 right. Can we have thumbs up or thumbs down on
19 Section II, Purpose.

20 I have a thumbs down. Yes, can you explain
21 your objection?

22 MS. VOGEL: My name is Sharon Vogel, and I
23 have an alternative option. Do you want me to read
24 that?

25 MS. PODZIBA: Sure. We have an objection,

1 so now we have an alternative proposal? Okay.

2 MS. VOGEL: "The Committee agrees that, in
3 its deliberative process, it will remove the existing
4 IHBG formula regulations in their entirety and negotiate
5 a new IHBG formula from scratch, utilizing and
6 conforming to the current NAHASDA statutory formula
7 provisions."

8 MS. PODZIBA: Discussion? Is there a second
9 for that proposal?

10 MS. FOSTER: May I just comment on the
11 procedure? Do we necessarily need "seconds" in this
12 process?

13 MS. PODZIBA: The process proposal is that
14 we not use seconds. That people are only allowed to
15 make proposals and they be entertained without a second.

16 Is there any discussion of that proposal?
17 Can we have thumbs up or thumbs down on that proposal.
18 That proposal is we don't need seconds. We will just go
19 forward with all proposals.

20 Thumbs up or thumbs down. We have a thumbs
21 down on that proposal. Can you share your objection?

22 MS. GORE: I believe that the Committee can
23 appear not to disrespect the original negotiated
24 rulemaking that took two years to adopt. But, in fact,
25 we are here to review their proposed formula and to seek

1 any potential unintended changes or other complications
2 that we may have experienced in our work with NAHASDA.
3 So my preference is to stick with our amended red
4 language.

5 MS. PODZIBA: Just a process point. I was
6 asking for a thumbs up on the process proposal to not
7 require seconds.

8 MS. GORE: Sorry.

9 MS. PODZIBA: I saw your thumbs down, so I
10 stopped. Were there any other thumbs down on the
11 procedural proposal for not needing seconds?

12 So for proposals I will not ask for a
13 second. I will ask for a proposal or an amendment to
14 the proposal. Okay.

15 Now we will entertain the proposal of --
16 there was a request for where that would fit into this?

17 MS. FOSTER: Can we get the proposal up on
18 the board so we can see where it would fit in the
19 proposal itself, as I understood it?

20 I'm not sure of the language of someone
21 suggesting that the whole allocation formula be redone.
22 It is, I think, within the -- whether changes should be
23 made to the allocation formula. And that could be a
24 change, a radical change, but it would be a change.

25 So I am not sure that the language I heard

1 would be necessary, but if it's to be considered, it
2 would be helpful to see it.

3 MS. PODZIBA: May I have the page and I will
4 ask that that be put up.

5 MS. HENRIQUEZ: What you are proposing --
6 what your language proposes is to scrap all and start
7 with a new formula allocation, correct?

8 MS. VOGEL: That's correct. That's one of
9 the options that we are proposing. There is another
10 proposal under Protocols. We just know that the
11 unanimous consensus is not going to work for us.

12 MS. PODZIBA: If this is a proposal under
13 the purpose of the Committee, and if I understand you
14 correctly, it's not an amendment to what was Ms. Gore's
15 proposal. It's a completely alternative proposal; is
16 that correct?

17 MS. VOGEL: That is correct. It's a new
18 proposal.

19 MS. PODZIBA: Yes?

20 MR. SOSSAMON: A point of order. What
21 happens to the original proposal? It just disappears?

22 MS. PODZIBA: Ms. Gore's proposal?

23 MR. SOSSAMON: Yeah.

24 MS. PODZIBA: So I am going to leave it up
25 there. So if someone wants to repropose it, it will

1 already be typed up. So I understand that it was voted
2 that we are operating by consensus. There was an
3 objection, and so did it pass.

4 And so we will entertain a new proposal and
5 see what happens with that one. And then if that
6 passes, we are good to go. If not, we will entertain
7 another proposal, which could be a reproposing of the
8 amended proposal that was put forward. Is that clear?

9 I am going to read it out. "The Committee
10 agrees, quote, in its deliberative process, it will
11 remove the existing IHBG formula regulations in their
12 entirety and negotiate a new IHBG formula from scratch,
13 utilizing and conforming to the current NAHASDA
14 statutory formula provisions."

15 Discussion? Concerns? Other comments?

16 MS. YAZZIE: Aneva Yazzie, Navajo. I
17 believe it's already described in the red section, if
18 you look at the second sentence, "The Committee will
19 advise the Secretary of HUD whether changes should be
20 made to the allocation formula established in Part 1000,
21 and will recommend such changes as may be deemed
22 necessary and consistent with" -- I believe that's part
23 of the purpose description.

24 The way I read the proposed right now is as
25 assuming the Committee agrees. That's going to be the

1 outcome of the deliberations or the negotiations and
2 discussions that will ensue once we establish the
3 purpose.

4 MS. PODZIBA: So if I hear you correctly,
5 the possibility of that seems to already exist in the
6 first proposal?

7 MS. YAZEE: I would not agree with the
8 recent proposal.

9 MS. PODZIBA: Other comments?

10 MR. JACOBS: I think it's important that we
11 go back and look at the work that has been done in two
12 sessions and not just scratch that because there was a
13 lot of time and effort working to try to come up with a
14 consensus.

15 And we were able to get consensus on most of
16 these issues and so forth, and I don't think that we
17 should be entertaining language that would tell us that
18 we are to scratch what we have done in the past.

19 MS. PODZIBA: If I understand correctly, as
20 far as the purpose of the Committee, correct?

21 MR. JACOBS: Correct.

22 MS. PODZIBA: Ms. Vogel?

23 MS. VOGEL: I think it's important that we
24 review the formula. Things have changed. Times have
25 changed. And I think that we need to ensure that we are

1 staying true to the statutory formula provisions and a
2 review of the formula is an option that we need to look
3 at.

4 MS. PODZIBA: Mr. Reed?

5 MR. REED: Are there certain parts of it
6 that are worse than others as far as you're concerned?
7 Because that's quite a bit of work. There's a lot of
8 parts to that. There's parts of that that I don't know
9 if we can change that much.

10 MS. VOGEL: The portion that we are most
11 concerned about is the needs section, the entire needs
12 section.

13 MS. BRYAN: Annette Bryan, Puyallup. It is
14 a really good question. This is my first time. Why are
15 we here? Are we here to develop the formula or are we
16 here to go through what's already been developed? And
17 as was pointed out, the regulations have changed and the
18 laws and the need to change and the dynamics have
19 changed.

20 So I don't want any -- no disrespect to the
21 people around the table that have done this before, but
22 it might be good to take a look at it.

23 MS. PODZIBA: Yes, Ms. Foster?

24 MS. FOSTER: It sounds ambitious. I don't
25 think it disrespects earlier Committees to take another

1 look at issues in a different time, a different context.
2 I think that I have the utmost respect for the first
3 Committee who drafted the first regulations, but we
4 certainly made changes to some of them because we had
5 changes occur.

6 So I like the idea of being able to hear a
7 novel approach. I think this table should be willing to
8 hear it. I am not afraid to hear it. I am not afraid
9 it's going to create more work for us. And I am
10 predisposed to think that probably we would do things
11 just about the same way with the formula, maybe make
12 some smaller changes.

13 But I would like to hear what you have got
14 to say, and so I still think that the language in this
15 paragraph permits that even without the amendment.

16 My thumb is not necessarily up for the
17 language but for the concept. I would like to hear what
18 your proposal is. And would understand the language
19 that's already there as allowing that to happen.

20 MS. PODZIBA: Mr. Adams?

21 MR. ADAMS: Jason Adams. My comment on this
22 is, I appreciate the vision and the effort in taking a
23 look at this. We are looking at a product that was
24 developed 17 years ago.

25 As we heard somebody say earlier, a baby has

1 grown and gone off to college during this time period.
2 So I think at least for my opinion, it's worth our time
3 and effort, if we are serious about the formula and what
4 it means to all of us, to take a serious look at it and
5 it would require us to start from scratch.

6 And so I am in favor of this proposal. Not
7 necessarily, again, the language. I'm not quite
8 understanding why we have to have language in
9 parentheses up there. I don't know what that means.

10 But the effort here of scrapping and looking
11 outside the box, starting new, I like the idea. Thank
12 you.

13 MS. PODZIBA: Mr. Sawyers?

14 MR. SAWYERS: I am one of those that have
15 been here every time and I was a young man when we
16 started.

17 I am like Jason. I am not sure we need that
18 last part, but I truly believe we need to break apart
19 the policies and rebuild and see where we improve. So
20 it's a concept that I like.

21 I know that, if we don't do something like
22 that, we are going to come out with the same product we
23 have now. And that may be good for folks and may not
24 be. Thank you.

25 MR. SHURAVLOFF: I think maybe we are

1 getting ahead of ourselves. We are trying to come up
2 with a purpose on this charter. And with this amendment
3 that's up there now, it seems to me we are starting to
4 negotiate the formula by saying we are going to scrap it
5 right from the beginning.

6 And I think that goes beyond the point of
7 trying to set up this charter.

8 MS. PODZIBA: Ms. Cloud?

9 MS. CLOUD: I would agree. The language in
10 there does not say that we cannot renegotiate whatever
11 is in the current formula because it says that, "will
12 recommend changes." So I think that it's fine, and I
13 don't think we are limiting ourselves from doing that if
14 we go with the current language.

15 MS. PODZIBA: Ms. Yazzie, then I have got
16 Mr. Evans, and we'll go back to Ms. Vogel.

17 MS. YAZZIE: I would agree with Alaska. And
18 this, again, there's a presumption in how you read that
19 proposal, agreeing to remove. That's, I think, again,
20 part of the outcome of it, not the negotiations as we
21 move forward.

22 And I believe the purpose, as it's written
23 right now, already captures that in the second sentence.
24 If there are to be changes to the formula, that's going
25 to be an outcome of the discussions as we get into the

1 negotiations.

2 But I really have a problem with the way
3 it's written -- I agree to remove -- there's already a
4 presumption in here that we are to consider changing.

5 And I don't disagree that that's what we are
6 here for is to look at the formula. And I believe it's
7 already captured in what was previously approved in a
8 recent proposal.

9 MR. EVANS: Earl Evans. I simply have a
10 question for that proposal, and that is, if I am reading
11 it correctly -- and I could be reading it wrong because
12 I am not a lawyer; I only play one on TV -- but it
13 states that -- upfront that the formula as it exists
14 will be removed in its entirety.

15 And so that reads to me -- it would then
16 leave me with a caution, and that is, if we agree in
17 advance to remove the formula in its entirety as it
18 currently stands and then we later do not agree on any
19 proposal for a new formula, then we leave without a
20 formula. That's the way I read that.

21 And so my question is, where, in what's
22 proposed here, is there something that solves that?
23 Because I see a problem created by that. And so my
24 question is, am I understanding that correctly? And if
25 I am, then that creates a serious concern for me because

1 I would not want to leave here without having any kind
2 of formula whatsoever.

3 MS. PODZIBA: Ms. Vogel?

4 MS. VOGEL: Thank you. The purpose of this
5 proposal is to get a commitment from us to not rely
6 on -- maybe if we are going to change the formula -- but
7 it really gives us a commitment that yes, the formula
8 should change. I don't know what that looks like now
9 because that's later on, but the thing that we have to
10 be committed to is creating a formula that meets the
11 needs of the families that we represent.

12 And I am concerned that, if we go back to
13 that old language that was there when they couldn't have
14 success with it, maybe it was because there wasn't the
15 commitment. And this proposal is a commitment that yes,
16 we will create a new formula.

17 And it could be, for those of you that are
18 concerned that parts of it will be missing, parts of it
19 may stay the same. What we are committing to saying is,
20 we are going to look at every aspect of that formula.

21 MS. PODZIBA: Mr. Dollarhide?

22 MR. DOLLARHIDE: Jason Dollarhide. I agree
23 with the gentleman down here that, if we do not agree
24 upon a formula, then we go without one. And where that
25 takes us really makes me hesitant to do that because

1 then there will be legislation -- legislating in the
2 halls of Congress, and I don't believe that's where we
3 need to go.

4 I believe that we do have a commitment here.
5 We all are committed to look at this formula. So there
6 is -- in my opinion, there is already a commitment to
7 look at this formula. I know that the needs issue is
8 out there, and that's been out there for a very long
9 time on what some folks consider needs for their
10 communities compared to the needs for other communities
11 out there.

12 I am real hesitant with leaving that
13 paragraph as it stands. Thank you.

14 MS. PODZIBA: Mr. Evans, Ms. Foster, then
15 we'll go back to you, Ms. Vogel.

16 MR. EVANS: Earl Evans. I think it still
17 leaves me with my original question, if I understand
18 this correctly -- to Ms. Vogel -- then we start out with
19 a blank piece of paper, but we don't agree on the
20 elements in any of the negotiated rulemaking.

21 We still simply have a blank piece of paper
22 because, if we agree with this language, that's saying
23 everything is out the window, so nothing can stay the
24 same if we don't come to an agreement. Because we have
25 agreed to throw everything out the window when we began.

1 Am I understanding that correctly?

2 MS. PODZIBA: Ms. Foster?

3 MS. FOSTER: Like everyone, I'm just kind of
4 tossing things up there for consideration. I wonder
5 that, where it reads subpart (d), if we were to insert
6 before the comma, "including whether to develop a new
7 formula"?

8 MS. PODZIBA: So if I understand you
9 correctly, your proposal is to bring back this first
10 paragraph with an amendment, because this is not on the
11 table right now.

12 MS. FOSTER: As a way to permit the issues
13 that have been raised being -- to permit those issues to
14 be discussed by this body to give some assurance to
15 those who have new ideas that those new ideas can be
16 raised at the same time and not commit the Committee to
17 doing away, as we sit here, with the existing formula
18 and perhaps responding to a concern that, if we do that,
19 we don't have any formula at all.

20 My suggestion would be that, after
21 subpart (d), we say, "including whether to develop a new
22 formula."

23 MS. PODZIBA: So now we have got two
24 proposals on the table, and I am going to go to
25 Ms. Vogel and then Ms. Henriquez, and then I am going to

1 ask for -- we've got a lot of hands. Okay. We will
2 take all the comments.

3 So just to be clear, we have two proposals
4 on the table. We will continue the discussion, and then
5 I will ask for a vote. I can't do that procedurally?
6 Yes?

7 MR. ADAMS: I don't understand how you can
8 have two proposals. We have one proposal on the table.
9 Deal with that before we move on to another proposal.

10 MS. PODZIBA: If that's your way. There is
11 a possibility of having two. We'll do the first one,
12 and if it passes, then we would not need to go to the
13 second. But if the usual way is to deal with one
14 proposal at a time, we can do that. But we have a lot
15 of comments. Yes?

16 MS. FOSTER: I am comfortable with -- and I
17 appreciate Jason's position. I think that's actually
18 wise. If we want to vote on the language that's been
19 proposed, that's fine.

20 I guess then the language there, I would not
21 agree with the language that's been proposed. That
22 would end up being a counterproposal, based upon my
23 objection, but we can do that after we call for a
24 consensus.

25 MS. PODZIBA: I am going to make a process

1 proposal, and let me know if this works. I will give
2 Ms. Vogel one more opportunity to speak. She's next in
3 the queue. Then we'll take a vote on her proposal. If
4 it doesn't pass, then we will ask you to make the next
5 proposal. And then we will have a discussion of that.
6 Is that comfortable with everybody? Okay.

7 MS. VOGEL: Thank you. In response to the
8 question as to, if we fail, that we would be left with a
9 blank sheet of paper, if we leave without consensus,
10 then does that not default back to the formula in place?

11 MS. PODZIBA: Is your comment on this
12 proposal? Mr. Reed?

13 MR. REED: I would hate for us to not have
14 people add suggestions that may make the original
15 suggestion better. And so I would propose that we allow
16 individuals to make more than one proposal. I think as
17 a group we can handle that because, if this person over
18 here makes a proposal and then we have to be stuck on
19 that -- I think that should be fine.

20 MS. PODZIBA: Is that okay, if we can have
21 multiple proposals, but we dispose of them in order of
22 their being proposed? Procedurally is that okay?

23 So in other words, I will call a question on
24 the second proposal because, if the first one is okay,
25 then we won't need the second proposal. Yes?

1 MS. VOGEL: A question. If my proposal
2 failed the first time, do I get to reintroduce it with
3 different wording? Am I allowed to come back with
4 another proposal?

5 MS. PODZIBA: I think what happens is, we
6 open the floor for new proposals. We will probably go
7 first to Ms. Foster's proposal. If that doesn't pass,
8 we will have some discussion and then there will be
9 another opportunity to introduce another proposal.

10 So I would like to call the question on this
11 proposal. We will call Ms. Vogel's proposal. And can I
12 have your thumbs up or thumbs down on that proposal.

13 That does not pass. I would like to go to
14 Ms. Foster. Ms. Foster's made a proposal. We have a
15 second proposal already. I open the floor to discussion
16 of it. Is there any discussion? Yes, Ms. Gore?

17 MS. GORE: We are here to negotiate the
18 charter. We are not here to negotiate formula. At
19 least that's what's on the floor today is the charter.

20 And so I'm a little uncomfortable that we
21 appear to be actually pushing negotiation items that are
22 related to the formula. And because Karin already
23 suggested that the original language without her
24 proposed amendment was permitted, I would prefer to
25 delete her amendment and go back to where we were. And

1 I would propose the amendment based on that. Thank you.

2 MS. PODZIBA: Other comments? So the
3 proposal is to remove that -- could you just do me a
4 favor and put it in a second color? Because what we
5 will do is, we will vote on it with the amendment, and
6 if that doesn't pass, we will vote on it without the
7 amendment. So we will have both on the table.

8 Is there further discussion?

9 MS. FOSTER: Yes. I would like to respond
10 to the comment. I think that we are here today to
11 decide why we're going to be talking about the
12 amendments, and I think that this paragraph is designed
13 to define that.

14 So even though we won't be talking about
15 today whether to develop a new formula, I think that, if
16 there's some confusion on whether that's going to be
17 something that's foreclosed by the language, then I
18 personally think the original language probably allows
19 for that, but there seems to be potential disagreement
20 about that.

21 And so I think it should be a broad charter,
22 and that's why I included the language. I think that we
23 should leave that option open so that we can hear
24 Ms. Vogel's ideas at this time.

25 MS. PODZIBA: Yes?

1 MR. SOSSAMON: The original proposal that we
2 had in the red language where it says, "This Committee
3 will recommend such changes that may be necessary," if
4 this Committee -- again, throughout the negotiations --
5 makes the recommendation that the current formula is to
6 be scrapped and a brand-new formula replaced, I believe
7 this language allows us to do that, any changes that are
8 necessary.

9 MS. PODZIBA: Yes, Mr. Sawyers?

10 MR. SAWYERS: I would just like the
11 commitment before we really look at some of the changes,
12 what Ms. Foster's put together. Because I feel like we
13 really need to look at the formula a little different
14 than we have at the last two meetings. I really do
15 believe that we need some kind of a commitment to
16 ourselves saying we love what we have, but let's look at
17 it and go over it again. So I like that amendment.

18 MS. PODZIBA: I am not going to be able to
19 pronounce your name correctly, so if you could just say
20 it for next time.

21 MR. OKAKOK: Sam Okakok. Looking at the
22 purpose as a whole, I can understand exactly what we are
23 looking at when I read this, and adding some language to
24 this last one does radically change that.

25 And the way I see it is, the first

1 Negotiated Rulemaking Committee participating in -- I
2 see that everything will be changed pretty much. But
3 the language that's highlighted in yellow, that does
4 permit for how we look at everything that's allocated on
5 here.

6 So when we are doing that, I think -- when
7 we start to look at some of the changes, proposed
8 changes, this highlighted-in-yellow portion will afford
9 that, in addition to any other changes we have within
10 subpart (d) and any others that we change as a result of
11 some of our proposed changes, including whether to
12 develop or allow for us to look at either adding or
13 deleting some of the components within that.

14 The way I see it, the purpose is changing.
15 So I think that's what we need to take a look at and see
16 that all the wording that we are looking at here may
17 change the entire purpose of it.

18 MS. PODZIBA: Ms. Bryan and Ms. Henriquez.

19 MS. BRYAN: In light of adding language that
20 might satisfy the bottom sentence where we're having
21 trouble, I am wondering -- "will recommend such changes
22 as may be deemed necessary and consistent with" -- is
23 one of the things we need to look at is the last
24 sentence, the last part of the last sentence, "utilizing
25 and conforming to the current NAHASDA statutory formula

1 provisions."

2 Do we really want to make sure that we are
3 committed to the current NAHASDA statutory formula
4 provisions? Does that help?

5 MS. PODZIBA: So you are suggesting -- can
6 you repeat the language that you are proposing? It's a
7 third little (i)?

8 MS. BRYAN: Perhaps a third little (i). So
9 what it says is, "consistent with" -- it could just be
10 "the current NAHASDA statutory formula provision."

11 And my question is probably to Sharon. Does
12 that capture what you are getting at without having to
13 state that we will scratch the original formula?
14 Because that's a concern to many Committee members.
15 It's just an idea.

16 MS. PODZIBA: I've got Ms. Henriquez in the
17 queue next.

18 MS. HENRIQUEZ: Thank you. A couple of
19 questions. If you read the sentence, the yellow
20 highlighted section -- which was deconstructed -- it
21 says, "The Committee will advise the Secretary (i)
22 whether changes should be made to the allocation or not,
23 or "The Committee will advise the Secretary whether to
24 develop a new formula."

25 And I don't think that's what they are

1 doing. I think they are going to say, You are going to
2 develop a new formula, hence the change is made to the
3 allocation formula. Because you are just going to tell
4 him that there should be a new formula developed.
5 That's not what you are getting at. You are getting at
6 actually wanting to develop a new formula.

7 So I would say that the yellow highlighted
8 section does not take you where you may want to get.

9 No. 2, the reason I suggest talking about a
10 commitment from this Committee to really revisit in its
11 entirety the IHBG formula, I think that there -- it
12 sounds like there are not enough people at this table in
13 this Committee who want that to happen and are willing
14 to have that discussion happen. And so I am not sure
15 why -- and there's people who continue to raise it until
16 it's discussed in this Committee.

17 MS. PODZIBA: Because there are so many
18 proposals, I want to see if we can dispose of some of
19 the language so we don't get confused.

20 So I would like to ask for a thumbs up or a
21 thumbs down on this paragraph, including the yellow
22 highlighting. I will get to you in just a second,
23 Ms. Cloud, if that's okay.

24 Thumbs up, thumbs down on the red paragraph,
25 including the yellow highlighting addition. Thumbs up

1 or thumbs down. I've got a bunch of thumbs down. So
2 we'll remove that then.

3 Now, Ms. Gore, I think you proposed this
4 paragraph without that. So let's do a thumbs up, thumbs
5 down on this paragraph as is. It's been raised again.
6 It's been reposed. Is that correct, Ms. Gore? Did
7 you repropose this proposal?

8 No. Sorry. Take that away. So yes,
9 Ms. Cloud?

10 MS. CLOUD: Okay. It says that we can make
11 changes. And there's a couple possible ways that you
12 can do this. So then "The Committee will advise the
13 Secretary of HUD any recommended change that should be
14 made to the allocation formula established," and then
15 it's kind of restating it again by "consistent with
16 that." And then you could also examine whether you can
17 have a formula.

18 The only thing that I am concerned about is
19 that, if we are committing ourselves to making a formula
20 and if we don't come to an agreement with the formula,
21 we are looking at, like we said, federal legislation.

22 And also the formula that we negotiate here
23 does directly affect the BIA role. So I think we need
24 to be mindful of that, that we're not just talking about
25 housing, that this is far reaching.

1 And so I don't want to put anything in there
2 that's going to -- what if we don't come to an
3 agreement? Then it's going to be directed by the
4 federal government on all of the housing that we
5 receive.

6 So I just want to be -- that we do have the
7 ability to make changes. I just don't want this purpose
8 stating that we are going to make changes. Even if we
9 don't come to a consensus, then what would be the
10 alternative?

11 MS. PODZIBA: Mr. Hill, did you have a
12 comment from way back?

13 MR. HILL: I just want to go back up there a
14 little bit. "The Committee will advise the Secretary of
15 HUD whether changes be made," do we look at to where we
16 "advise the Secretary of HUD of the changes that need to
17 be made," which then we can include the changes might
18 include HUD revising the formula.

19 MS. PODZIBA: Okay. That's a proposal, to
20 use this paragraph with that revision. Mr. Hill, is
21 that your proposal?

22 MR. HILL: Yes.

23 MS. PODZIBA: So where you have got --
24 instead of "whether changes should be made," it should
25 be "of changes that should be made."

1 I am going to take additional comments.

2 Yes, Ms. Gore?

3 MS. GORE: I am going to try to take a
4 different approach. Instead of speaking about certain
5 words flowing into the purpose, I really want to talk
6 about what feels like a presumption that members of the
7 Committee may not be willing to receive proposals as the
8 negotiation begins.

9 I am seeing no evidence of that in this
10 Committee. As a Committee member, I made a commitment,
11 when I applied to serve on this Committee, to serve in
12 good faith, to be a good listener. I have assumed that
13 every Committee member here is here to do just that.

14 And so my challenge with the language that's
15 being proposed really presumes that a Committee member
16 might not be receptive to proposals that would be
17 presented. I want to make sure that, as a Committee
18 member, I make it very clear that I am here as a
19 Committee member. I am not here to accept in advance
20 any negotiation that I haven't seen.

21 I have a duty of due diligence to the tribes
22 that I represent and also to my region. So I want to go
23 back to why -- what we are trying to really decide here,
24 which is the purpose of the charter, and not whether or
25 not we would have a new formula or review the existing

1 formula. I have listened very closely to Ms. Vogel, and
2 I appreciate very much her comments.

3 I heard her say very clearly that some
4 portions of the formula might even be acceptable to her.
5 So it sounded to me like this language would respond to
6 any ideas she might have and would be presented as we
7 progress through the negotiations rather than having
8 that conversation around the purpose, which is in the
9 charter.

10 So I am going to propose to the Committee
11 that we try to regroup ourselves. And the purpose of
12 this discussion, which is to adopt language under the
13 purpose and charter that will guide this Committee, not
14 actually negotiate what things we may or may not wish to
15 discuss.

16 I think there are a lot of ideas that will
17 come out of this Committee, and I fully expect them to
18 be robust and I expect us to engage thoroughly in those
19 discussions. We may or may not agree on those
20 proposals.

21 But success is that we are here and we are
22 negotiating on behalf of everyone and we are listening
23 in good faith. To me, that's what success is all about.
24 So I hope that may help redirect the Committee's
25 discussion. Thank you.

1 MS. PODZIBA: Ms. Yazzie and then Ms. Cloud
2 and then Ms. Vogel.

3 MS. YAZZIE: Aneva Yazzie. I agree that
4 that word "whether" is significant. If you strike it,
5 it's making, again, a presumption that -- we are
6 presuming that -- maybe the formula is stated in a
7 different form. I don't know.

8 But we won't know that until we actually get
9 engaged in those discussions with the formula. And I'm
10 open to that, and that really is the purpose here, to
11 discuss the formula.

12 I don't know that changes should be made or
13 they could be made, but I think we need to leave the
14 "whether" in there. There needs to be -- that's going
15 to be the outcome of, I think, the basic discussion of
16 the formula.

17 And I will respect and hear and listen to
18 everyone. If there are changes to the formula, I would
19 like to listen to the pros and cons of all the elements
20 that go into that formula. That's why I am here, to
21 participate on the Committee.

22 But I really believe that, if this comes to
23 a vote, I would like to keep the word "whether" back in
24 there, and that does matter.

25 MS. PODZIBA: So is it appropriate for me to

1 take what you are saying as an alternative proposal? We
2 will get a vote on this proposal that takes "whether"
3 out, and then it sounds like you are offering a second
4 proposal would which restore the language that's there.
5 So two proposals on the table. Ms. Cloud?

6 MS. CLOUD: I would just point out that,
7 including it as changes, I was going to actually call
8 the question for this proposal, but that doesn't say
9 that there can't be any changes.

10 MS. PODZIBA: Ms. Vogel?

11 MS. VOGEL: Thank you. I am new, obviously,
12 and so I am probably going to have the terminology -- a
13 new way of expressing myself because I am not aware of
14 old language that was used, so it's not meant to do
15 anything other than to express myself.

16 The proposal that we put forward and, of
17 course, failed really was intended to provide clarity
18 that would be -- that whole thing of a new formula, is
19 there going to be a new formula or is there not going to
20 be a new formula?

21 The thing that I want to make sure is that,
22 by not changing any language to clearly provide clarity,
23 that we may be locked out in the future. Any one of us
24 may be locked out in the future because we are tied to
25 the old language that is tied to the old formula.

1 So, again, I'd just really encourage us
2 to -- let's provide that clarity that opens up that
3 door, that we know that there are other changes that
4 will come about, proposed changes. Let me say that
5 rather than having -- saying that it's going to happen.
6 I want to make sure that no proposed changes are locked
7 out with the old language.

8 We are in Committee. Each one of us bring
9 values to the table that look at problem-solving
10 differently. And so I am really concerned that, without
11 having clarity, that we will create ourselves problems
12 in the future.

13 MS. PODZIBA: Could I just ask you a
14 question. It sounded like a lot of your fellow
15 Committee members read this -- some version of this
16 language as keeping that door open to any and all
17 changes.

18 And is it your sense that that doesn't --
19 that some doors are closed with the language that's up
20 there with the "whether or not"?

21 MS. VOGEL: Yes. That's the language right
22 now. I feel that not having this clarity, this
23 commitment, up front of changing the language, that
24 opens up the possibility of definite changes to the
25 formula.

1 And like I said, our concern is on the needs
2 formula. So if we want to just limit it to say that we
3 are going to specifically look at the needs section of
4 the formula, I would be comfortable with that. But I am
5 sure each of us has a vested interest in all of that to
6 make sure that we come up with a formula that serves the
7 needs portion of our families.

8 MS. PODZIBA: It's a couple minutes before
9 lunch. So what I would like to do is get votes on the
10 two proposals that are on the table.

11 The first one is with the change that says,
12 "advise Secretary of HUD of changes that should be
13 made." Can I get a thumbs up, thumbs down on that
14 proposal, the whole paragraph with that revision.

15 Thumbs down. Okay. Could you please
16 restore it without that change.

17 Can I get a thumbs up, thumbs down on this
18 proposal. So we still have one objection from
19 Ms. Vogel. And I would suggest that we break for lunch
20 now as per our agenda. And when we come back, we will
21 see if there's been any new thinking on this issue or
22 perhaps we will move past Purpose.

23 That would be my suggestion. Shall we move
24 to Goals and Objectives, and then we'll come back to
25 Purpose so that we can make progress on the rest of the

1 document. Okay?

2 (Break was taken from 12:00 to 1:33.)

3 MR. NICHOLS: Welcome back from lunch,
4 everyone. As you know, we have two facilitators in the
5 meeting, so Susan and I will be trading off during the
6 course of the meeting.

7 And it's my turn to continue at this point.
8 So the first thing I would like to do is congratulate
9 the Committee on the high degree of participation you
10 have all exhibited so far. I think it's really
11 impressive how many people have participated and
12 exchanged ideas. So congratulations for that. Keep it
13 up. The more of that, the better for the outcome of the
14 Committee.

15 And I would also like to introduce a new
16 person at the table. One of the Committee members had
17 to leave due to an emergency, so we have an alternate
18 sitting in, Mark Butterfield.

19 Mark, will you please introduce yourself.

20 MR. BUTTERFIELD: Certainly. My name is
21 Mark Butterfield. I am the executive director of the
22 Ho-Chunk Nation agency in west central Wisconsin, and I
23 represent the Great Lakes region. And I would also like
24 to say hello to all my colleagues.

25 MR. NICHOLS: Welcome.

1 And then just one little housekeeping item.
2 The court reporter has asked me to repeat the request to
3 speak directly into the microphones and state your name,
4 when you are speaking, so she can make sure she gets the
5 information about who's speaking. And then the closer
6 you can place that microphone to where you are speaking,
7 the louder it will be and everyone can hear you better.
8 So if you would help us with that, we would sure
9 appreciate it.

10 We want to continue with the discussion that
11 we started on the charter. And because we left the
12 discussion on Part II unfinished at this point without
13 agreement, we thought what we would like to suggest is
14 that we move ahead. We leave Part II for now. We will
15 come back to it at the end of the charter discussion and
16 attempt to resolve outstanding issues and reach an
17 agreement on Part II.

18 So we will get back to it at the end, but we
19 would suggest that we continue on with Part III, Goals
20 and Objectives. With your permission to do that as a
21 Committee, does anybody have a significant disagreement
22 with that or would you like to discuss that or are we
23 okay to move forward with Part III, recognizing that
24 we'll come back to Part II?

25 Any discussion or should we continue? Okay.

1 Then we will continue on with Part III. So Part III is
2 Goals and Objectives of the Committee. In keeping with
3 our process, we have the red and the blue up here. Blue
4 being 2010, red being 2003.

5 There is a slight difference in these two
6 items. One is that the blue one has an additional point
7 referring to Section VII(a), which has to do with the
8 role of the Committee.

9 Other than that, they are the same. And you
10 will also see that the goals -- the language around the
11 goals and objectives refers to Section II, which we left
12 unfinished. So think of that as a pointer back to
13 whatever ends up being in Section II. We will use it in
14 that manner.

15 So with that, I will open this up to the
16 discussion of the group. Any comments, suggestions,
17 recommendations on Part III, Goals and Objectives?

18 Yes, Mr. Sawyers?

19 MR. SAWYERS: Call for a vote on the blue
20 2010 language.

21 MR. NICHOLS: Call for a vote on the blue
22 2010 language?

23 MR. SAWYERS: Yes.

24 MR. NICHOLS: Any discussion about that
25 before we take the vote? Yes, Ms. Gore?

1 MS. GORE: May I ask how you propose to deal
2 with the referenced sections under Section II and
3 Section VII(a) that are referenced, the language?

4 MR. NICHOLS: Is that a question for the
5 Committee as a whole?

6 MS. GORE: Mr. Sawyers.

7 MR. NICHOLS: Mr. Sawyers?

8 MR. SAWYERS: This refers back to
9 Section II, does it not, so whatever we do to
10 Section II, we'll come back to it. I don't see that
11 there's a comment. Maybe I missed something.

12 MR. NICHOLS: So those would be essentially
13 placeholders at this point, pointers referring to those
14 two sections until we have the specific language in
15 them; is that correct? Does that summarize? Okay.

16 Any other comments or discussion, questions?
17 Okay. Then the request is to vote on the blue version,
18 this version, on Goals and Objectives. Could I please
19 see a show of thumbs up for all in favor of accepting
20 that. Thumbs down for those that don't accept it. We
21 have some thumbs down. Okay. Then we will continue
22 with this discussion.

23 Yes, sir?

24 MR. DOLLARHIDE: It's hard for me to hope to
25 continue with the specific direction as it says, "as

1 described in Section II," when we haven't finished
2 Section II. It's my opinion that we are going to have
3 to address Section II. We might as well do it right now
4 instead of coming back to it later before we move on.
5 That's my opinion.

6 MR. NICHOLS: A viewpoint expressed
7 respecting that we address Section II. So additional
8 discussion on that? Who else would like to comment on
9 that? Yes, ma'am? Ms. Yazzie?

10 MS. YAZZIE: After further thought, I would
11 agree with Jason. I would agree it's substantive, when
12 we are going to agree to verbiage described in that one
13 sentence, I would agree logically we should have that
14 section aforementioned already determined.

15 MR. NICHOLS: Yes, sir?

16 MR. DOLLARHIDE: When and if we ever decide
17 on Section II today or tomorrow or the day after or
18 whenever that may be, then we should move on to
19 Section VII(a) to cover that also.

20 MR. NICHOLS: Just a suggestion to consider
21 that one. So what other discussion or suggestions,
22 thoughts about continuing with Section II? Proposals on
23 the table that we continue with Section II and resolve
24 that before we move to Section III? Are there any other
25 thoughts or perspective on that? Does anyone disagree

1 that we should continue with Section II?

2 Then I would offer that we go back to
3 Section II and attempt to resolve the outstanding issues
4 with Section II. Yes, Ms. Foster?

5 MS. FOSTER: Karin Foster, Yakama Nation
6 Housing Authority. I suggest that, in terms of process,
7 one of the methods that we use is that the person who
8 objected needs to offer up an alternative. And so I
9 guess I am trying to help us move off the dime here.
10 Maybe that would be helpful.

11 It sounds like her proposal was voted down,
12 so I would think that would be appropriate.

13 MR. NICHOLS: Christine, will you please put
14 Section II up on the screen, the last version that we
15 had that was unresolved. Thank you.

16 The proposal then is that we ask the person
17 who disagreed with the language as it stands on here to
18 provide an alternative proposal. And I would offer that
19 to you, Ms. Vogel. Are you able to do that at this
20 point?

21 MS. VOGEL: I am sure it's going to take
22 several attempts, but I will propose some language where
23 it says the Committee will advise the Secretary of
24 HUD -- will advise what factors should be in the
25 formula. Not changes, but what weighted factors.

1 MR. NICHOLS: So this language right here
2 would change to "Committee will advise the Secretary of
3 HUD what weighted factors"?

4 MS. VOGEL: "Should be in" -- I am not quite
5 sure.

6 MR. NICHOLS: Take your time.

7 MS. VOGEL: "What weighted factors should be
8 used for the formula."

9 MR. NICHOLS: So "advise the Secretary of
10 HUD what weighted factors should be in the formula"?

11 MS. VOGEL: Yes. "And conforming to the
12 current NAHASDA statutory formula provisions."

13 MR. NICHOLS: "And conforming to the current
14 NAHASDA statutory provisions."

15 MS. VOGEL: "That conform."

16 MR. NICHOLS: "That conform to the current
17 NAHASDA statutory provisions"?

18 MS. VOGEL: Yes.

19 MR. NICHOLS: Christine, were you able to
20 get that? Can you repeat that one more time, Ms. Vogel.
21 I'm sorry.

22 MS. VOGEL: "The Committee will advise the
23 Secretary of HUD what weighted factors should be used in
24 the formula conforming to the current NAHASDA statutory
25 formula provision."

1 MR. NICHOLS: "Conforming to the current
2 NAHASDA statutory provision."

3 MS. VOGEL: "Statutory formula provision."

4 MR. NICHOLS: "Statutory formula provision."
5 Was there an "and" or was that the end?

6 MS. VOGEL: The end.

7 MR. NICHOLS: Period.

8 MS. VOGEL: Oh, yes. And keeping the rest.
9 "And whether changes should be -- and said changes."

10 MR. NICHOLS: "Said changes" -- said,
11 S-A-I-D -- did you say? Is that correct?

12 MS. VOGEL: "And said changes," yeah.
13 "Whether said changes."

14 MR. NICHOLS: "Should be made to" -- is that
15 the end?

16 MS. VOGEL: Yes, that's it.

17 MR. NICHOLS: That's the end. Okay. It
18 might be helpful, Christine, to put that in a different
19 color, if you could change the color of that, please, so
20 we can distinguish between them. Thank you.

21 Now is there anything else that you would
22 add?

23 MS. VOGEL: Not at this time.

24 MR. NICHOLS: So from your perspective, if
25 this language stood the way it was -- the way it is

1 right now, you would be in concurrence with this, the
2 way it's worded now; is that correct?

3 MS. VOGEL: Yes.

4 MR. NICHOLS: So what discussion do we have
5 on the proposed language that Ms. Vogel has offered as a
6 solution? Yes, Ms. Foster?

7 MS. FOSTER: Karin Foster, Yakama Nation
8 Housing Authority. I think that it narrows down the
9 scope the Committee would be looking to. I think that
10 it was broader before.

11 I think it focuses in on weighted factors
12 and only on changes related to weighted factors. So I
13 think that it would put us in more of a danger zone than
14 we had before. So I would not favor the change.

15 MR. NICHOLS: Thank you. Ms. Vogel?

16 MS. VOGEL: I am open to keeping the spirit
17 of our original proposal. And if someone has a better
18 way of adding language, then I am definitely open to
19 amending what I have up there now. But I didn't want to
20 want to talk about the words "new formula." And so
21 short of using "new formula."

22 The spirit of this is for us to take a look
23 at a formula, and it doesn't have to be limited to the
24 current formula. We need to allow ourselves to be open
25 to a new formula.

1 MR. NICHOLS: Okay. So in order to capture
2 that spirit, what language changes would permit that?
3 And still a concern has been expressed that the scope,
4 the way it's worded now, is too narrow, correct,
5 Ms. Foster?

6 MS. FOSTER: That's my concern with the
7 scope of the proposal. I think the original is broader
8 and would encompass what Ms. Vogel wants to do.

9 I'm struck, actually, by the discussion. I
10 don't think that we had anybody at the table say that
11 they do not believe that the proposal, even the new
12 formula, was something that couldn't be raised. So how
13 do we get to being able to express that in some way that
14 Ms. Vogel feels comfortable that she is going to be able
15 to raise it?

16 MR. NICHOLS: Thank you. Ms. Vogel?

17 MS. VOGEL: We can change where it says,
18 "whether said changes" and take that and replace that
19 with "other changes."

20 MR. NICHOLS: If I understood Ms. Foster
21 correctly, she was concerned about the language around
22 "weighted factors" as well; is that correct, Ms. Foster?
23 That that was too limiting?

24 MS. FOSTER: Karin Foster. I don't mind if
25 we consider what weighted factors should be used, so I

1 don't really have any objection to that. But I'm not
2 sure if everybody else will agree.

3 MR. NICHOLS: So does this change or address
4 the concern that you expressed, Ms. Foster?

5 MS. FOSTER: Sitting here right now, I don't
6 have any objection to it. I would be interested in
7 hearing from the rest of the Committee.

8 MR. NICHOLS: Ms. Vogel?

9 MS. VOGEL: Another suggestion is "whether
10 any other." So add the words "any other."

11 MR. NICHOLS: Add "any" right here?

12 MS. VOGEL: Yes.

13 MR. NICHOLS: Christine, if you would,
14 please, and then highlight that.

15 MS. VOGEL: Yes.

16 MR. NICHOLS: Highlight that, please,
17 Christine.

18 Let's hear from the rest of the Committee
19 then on this new proposed language. What are your
20 perspectives on this? Mr. Dollarhide?

21 MR. DOLLARHIDE: Jason Dollarhide. In my
22 opinion, the original proposal addressed that issue
23 minus the new language.

24 I would just like to say that I believe that
25 most of us here are here on good faith. I believe that

1 number II lets us dig into the formula, wherever we may
2 decide to take that formula and however we may decide to
3 look at it.

4 I'm really hesitant about adding "weighted
5 factors" and throwing the formula out the door. That
6 doesn't mean that I am not willing to look at something.
7 It just means I don't agree with that.

8 And like I said, I still believe that the
9 way that it is written -- "minus weighted factors,"
10 et cetera, et cetera -- does that. I mean, I don't know
11 what else we can do. We all had our thumbs up
12 supporting that. So we are at a standstill.

13 MR. NICHOLS: Mr. Sawyers?

14 MR. SAWYERS: In our last negotiation we had
15 the exact same thing, which we chose not to do anything
16 about it. What I think is attempted here is to make us
17 aware that there needs to be changes looked at.

18 I wouldn't say a commitment, but certainly
19 it emphasizes that the factors may or may not be right.
20 And I don't see anything wrong with putting those
21 factors in. In fact, I think it gives us more guidance.

22 We certainly didn't -- using that same
23 language, we didn't change the factors at all last time,
24 and maybe we will this time. But I still think that we
25 are obligated as a group to look at those factors that

1 we -- they're 17 years old.

2 And while there's lots of changes in
3 17 years, I just certainly think that it's worth looking
4 at it. And I feel very comfortable with the changes.
5 Thanks.

6 MR. NICHOLS: Okay. Ms. Vogel is next.

7 MS. VOGEL: I think what I am hearing is
8 that everyone is in agreement that it is the
9 responsibility of this Committee to look at formula.
10 And so this just really reminds us and sets us off on
11 that course to agree to look at the formula and not lock
12 anyone out down the road.

13 And it will ensure that we are going to do
14 it, not maybe do it, but that we are going to do it.
15 And so I think we need to decide -- or we will decide
16 whether or not we are going to do that. And if we
17 aren't going to do that, then what are we going to do?

18 MR. NICHOLS: Ms. Gore?

19 MS. GORE: If I may, at the last formula
20 negotiated rulemaking, the Committee set an agenda of
21 what parts of subpart (b), which is what we are here to
22 negotiate, were important to that Committee. That
23 includes more than the weighted factors.

24 That Committee negotiated hard on some very
25 difficult issues, including minimum funding for small

1 tribes, formula area, very difficult things. And we
2 reached consensus on those things, but we made a
3 decision as a Committee what our priorities were. By
4 agreeing to this language in the Purpose, it already
5 determines the scope of this Committee's work.

6 And I guess I would ask Ms. Vogel, as a
7 Committee member, we respect that this is your priority.
8 And I sure expect you will advocate very hard for this
9 as a priority, but what is it in this Purpose statement
10 that prohibits you from having this discussion with the
11 Committee?

12 I don't sense any barrier to that discussion
13 or receptiveness on this Committee's part. So I am just
14 asking if there's another way we can approach this issue
15 because we have not yet determined, as a Committee, what
16 our priorities might be. Thank you.

17 MR. NICHOLS: Susan, my colleague, wants to
18 make a statement.

19 MS. PODZIBA: It's very much in line with
20 what Ms. Gore's pointing to, which is might it be
21 possible, Ms. Vogel, to start a list of issues to be
22 discussed that will be discussed -- the list will be
23 discussed by the Committee when it determines its
24 priorities.

25 Can we put the weighted factors on the

1 beginning of that list to give you some security that
2 the Committee will have a discussion about whether
3 that's a priority? It's a placeholder. So I hear your
4 concern that it may not be.

5 But if we can start that list of possible
6 issues and take it out of the Purpose, perhaps we could
7 move on and reach agreement on the purpose but still
8 make sure that you feel secure that the issue will be
9 discussed by this Committee when it gets to the
10 discussion of priorities.

11 MS. VOGEL: Thank you for that suggestion.
12 I need to have clarity that it is going to be. And
13 putting it off on a list doesn't guarantee me that
14 there's going to be an agreement that that is the
15 purpose of this.

16 I think it's appropriate where I am
17 proposing it and it needs to be clearly stated. And I
18 don't see that it's clearly stated that we will address
19 all -- if it isn't the weighted factors -- and I agree
20 with Ms. Gore that was shortsighted on my part, but I
21 need to remove the words "weighted factors" and change
22 it to say that the formula in its entirety needs to be
23 reviewed by this Committee.

24 And I think we need to have the
25 responsibility to look at the formula in its entirety.

1 MR. NICHOLS: So are you suggesting we would
2 change the wording here?

3 MS. VOGEL: Yes.

4 MR. NICHOLS: To say, "advise the Secretary
5 of HUD" --

6 MS. VOGEL: "By reviewing the formula in its
7 entirety" --

8 MR. NICHOLS: "By reviewing the formula in
9 its entirety" --

10 MS. VOGEL: "to determine what should be
11 used in the formula conforming to the current formula
12 NAHASDA statutory provision."

13 MR. NICHOLS: "To determine" -- take out
14 "weighted factors." Add "what should be used in the
15 formula conforming to the current formula NAHASDA
16 statutory provision." Is that right?

17 MS. VOGEL: Yes.

18 MR. NICHOLS: Okay. Thank you. And then
19 highlight the rest over here, please. And there was a
20 hand up. Ms. Foster, was that you? Someone had a hand
21 up.

22 MS. FOSTER: I had my hand up. Karin
23 Foster. One of the things you need to do is delete
24 "other" down below so that you are not proposing any --
25 you are not providing any changes in "whether any

1 changes should be made" or "the changes should be made."
2 The word "other," it doesn't relate back to anything,
3 right?

4 MR. NICHOLS: Does that work for you,
5 Ms. Vogel? Okay. So just delete "other"?

6 MS. VOGEL: Yes.

7 MR. NICHOLS: Okay. I think we have the
8 language correct the way it's been proposed. We still
9 have more discussion, more work to do on this topic. So
10 any other thoughts or suggestions?

11 I think we have some people who do not agree
12 with the language the way it's stated. Am I correct
13 from what I have heard? Yes?

14 MS. BRYAN: Annette Bryan. Isn't that why
15 we are here? So I think I have heard that at the last
16 Committee things that were put on the sheet we're
17 allowed to discuss because, by the language of the
18 charter, it wasn't our purpose. So isn't it our purpose
19 to talk about the formula? Isn't that why we are here?

20 MR. NICHOLS: How do the rest of you feel
21 about that?

22 MR. NICHOLS: Mark Butterfield?

23 MR. BUTTERFIELD: I do think that's why we
24 are here. The language in yellow is necessary. The
25 purpose is to look at the formula. And everyone is

1 here, and Ms. Vogel is here, to raise any and every
2 point. It will all be included. So I don't see that
3 this needs to be in the purpose statement myself. Thank
4 you.

5 MR. NICHOLS: Thank you. Mr. Dollarhide?
6 Just echoing what he said?

7 MR. DOLLARHIDE: Yes.

8 MR. EVANS: Earl Evans. Since there's been
9 an alternative proposal, I would like to ask for a vote
10 on the proposal so that we can know whether we need to
11 move on or do something different or what have you.
12 Does that make sense?

13 MR. SAWYERS: Before you do that -- you are
14 probably right. It may not need that. Is there an
15 objection to it? We are here. Why not state it? I
16 just don't see that, if you agree that we are going to
17 do that, the language should stay in there, in the
18 proposal.

19 MR. NICHOLS: We'll take one more comment,
20 and a proposal for a vote has been made. So we will
21 take a vote. Mr. Dollarhide?

22 MR. DOLLARHIDE: I have no problem with
23 that, Jack.

24 MR. NICHOLS: So we take all this out?

25 MR. DOLLARHIDE: Yes.

1 MR. NICHOLS: Let me ask, Ms. Vogel, if
2 that's acceptable to you. You are shaking your head.
3 Okay. The proposal has been made to take a vote on the
4 way that it's worded right now, including the yellow
5 highlighted portion.

6 So could I please see a show of thumbs up,
7 people in favor, and thumbs down, those opposing. We
8 have a significant number of thumbs down around the
9 table, so that proposal doesn't carry.

10 So if we would like to continue the
11 discussion on this topic and resolve Section No. II, the
12 purpose of the Committee for forming the charter, then I
13 would like to ask the Committee if there is another
14 alternative proposal that you can put forth.

15 And, Ms. Vogel, I will give you the first
16 opportunity to do that since you suggested this one.

17 MS. VOGEL: Where it says, "The Committee
18 will advise the Secretary of HUD by developing a new
19 formula conforming to the current NAHASDA statutory
20 formula provisions."

21 MR. NICHOLS: Would you please put that on,
22 Christine. "Will advise the secretary of HUD," I think
23 it was, "to develop a new formula." Is that correct?

24 MS. VOGEL: "By developing a new formula
25 conforming to the current NAHASDA statutory formula

1 provisions."

2 MR. NICHOLS: Do you want an "and" there or
3 a stop there?

4 MS. VOGEL: "Formula provisions."

5 MR. NICHOLS: And then what happens to this
6 portion?

7 MS. VOGEL: You can cross that out, too, and
8 say, "as established in 24 CFR, Part 1000, subpart (d)."

9 MR. NICHOLS: So we will just say, "as
10 established"?

11 MS. VOGEL: "As established."

12 MR. NICHOLS: Is that complete now?

13 MS. VOGEL: For right now, yes.

14 MR. NICHOLS: I think, Mr. Evans, did you
15 wish to offer something?

16 MR. EVANS: Earl Evans. Well, this reads to
17 me almost exactly the same as the prior amendment to
18 '03. And while I am most certainly committed, as I
19 stated in my opening statement during introductions, to
20 have an open mind and have a constructive dialogue, one
21 of the things that I will respectfully also offer is
22 that I don't want to box myself in as well to only being
23 able to do it one way.

24 And I think that to limit the Committee or
25 to specifically require the Committee to only discuss a

1 new formula really boxes us in and limits us to not
2 considering all available opinions and options.

3 So I would suggest trying to change that in
4 a way that -- if something about a new formula has to be
5 in there, I am just -- is there some way we can make
6 sure that it contains -- it doesn't limit us to just
7 developing a new formula?

8 MR. NICHOLS: Thank you. Mr. Reed?

9 MR. REED: Michael Reed, Cocopah. It's
10 placing emphasis, I think, where emphasis needs to be
11 placed. If I go back to the original Committee, we had
12 a lot of difficulty in our specific areas for a number
13 of reasons.

14 And I think there are specific issues that
15 involve small tribes that have to be looked at. And if
16 this is one way for us to get down into the meat of it,
17 then I am all for it.

18 MR. NICHOLS: So this language as stated now
19 is acceptable to you?

20 MR. REED: Yes.

21 MR. NICHOLS: Thank you. We have a
22 difference of opinion. One viewpoint is, it feels too
23 restrictive. Yes, sir?

24 MR. SHURAVLOFF: Marty Shuravloff, Kodiak
25 Island Housing. To me, again, we are creating

1 priorities under Purpose. If we're going to go this
2 route, we are going to all have to start putting our
3 priorities up there, and this is not the place, as far
4 as I am concerned.

5 MR. NICHOLS: Viewpoints on that?

6 Ms. Vogel, the suggestion was made that
7 perhaps to make the language slightly less restrictive
8 or limiting. Do you see a way to do that that would
9 work for you?

10 MS. VOGEL: Let's go up to the first line.
11 "This Charter establishes a Committee to review the
12 formula and negotiate."

13 MR. NICHOLS: "To review the formula and
14 negotiate." This would be --

15 MS. VOGEL: That would disappear.

16 MR. NICHOLS: This portion would be removed.
17 Put the yellow highlight on that, please, and remove
18 this. Return it to its original -- that would go back
19 and that would go back, right? This would go back to
20 what it was; is that right? Is that going to complete
21 the suggestion?

22 MS. VOGEL: Yes.

23 MR. NICHOLS: Yes, ma'am?

24 MS. TUFTS: Cathern Tufts, Siletz Tribe. I
25 would add to that, I was actually going to make a

1 similar suggestion to move it further down, but it
2 didn't work right there. I would add "to fully review
3 all aspects of the formula."

4 MR. NICHOLS: "To fully review all aspects
5 of the formula and negotiate"? That's a slight change
6 from the way you said it, Ms. Vogel. Is that acceptable
7 to you?

8 MS. VOGEL: That is acceptable.

9 MR. NICHOLS: Thank you. Comments and
10 discussion on this? Mr. Butterfield?

11 MR. BUTTERFIELD: Mark Butterfield, Ho-Chunk
12 Nation. I have no problem with the "fully review all
13 aspects" because then it puts the -- who decides what's
14 fully reviewed? There already is "to review." I think
15 that that's unnecessary to put that in there. I was
16 fine with the first change, but not the second.

17 MR. NICHOLS: Mr. Butterfield was fine with
18 the first change, but not the second. How do you feel?
19 I'm sorry. I can't see your name. Ms. Tufts?

20 MS. TUFTS: I am perfectly happy to remove
21 "fully review." But, again, the reason I brought that
22 up is, what I am not hearing here is that people are
23 concerned that they will not be able to bring up some
24 aspect of the formula and that they want to see
25 something in Purpose that says, "will look at all the

1 aspects of it."

2 So if you want to get rid of "fully," I
3 think that's fine.

4 MR. NICHOLS: Was that your original
5 language, Ms. Vogel, "to review all aspects of the
6 formula"?

7 MS. VOGEL: I accept removing "fully."

8 MR. NICHOLS: Mr. Butterfield, does that
9 meet your objection?

10 MR. BUTTERFIELD: Yes.

11 MR. NICHOLS: Other discussion on this or
12 viewpoints one way or the other? Any support or
13 disagreement? Should we call for a vote on this? Let's
14 take a vote. Thumbs up if you are in favor of
15 Section II as amended as shown on the screen right now,
16 the language on the screen.

17 If I could see the thumbs, please. We have
18 some hesitant thumbs here, but I don't see any thumb
19 that is down. Are we in concurrence on this then?

20 I did not hear or see any disagreement. In
21 case I missed it, please let me know, or we are good.
22 Section II is agreed to as shown on the screen at this
23 point. Thank you.

24 All right. I really appreciate everyone's
25 listening and effort to understand the different

1 viewpoints. That's hard work but good work.

2 So the next item on the agenda then would be
3 the number III, Goals and Objectives. So we did look at
4 this briefly. We had a suggestion to accept the
5 language from 2010 in blue. We took a vote on that, and
6 as I recall, the vote was negative because of the fact
7 that it referred back to Section II, which we have now
8 resolved.

9 So let's open it for discussion. Mr. Jacobs
10 and then Mr. Sawyers.

11 MR. JACOBS: There was also a recommendation
12 that we go to VII before we address II.

13 MR. NICHOLS: You are correct. Thank you
14 for bringing that up. So the recommendation is that we
15 discuss Section VII before we discuss Section II. That
16 was what you were going to say? Good. Thank you.

17 So with that in mind, does anyone have an
18 objection with moving to Section VII since it's referred
19 to in Section II? No objection? Yes, sir?

20 MR. ADAMS: Do we deal with all of VII or
21 just VII(a)?

22 MR. NICHOLS: The question is, do we discuss
23 all of VII or VII(a)? I would ask for your guidance on
24 that, which you feel is most appropriate. Do you have a
25 suggestion on that?

1 MR. ADAMS: I would suggest just VII(a).

2 MR. NICHOLS: Just VII(a)? Is that
3 agreeable to those that want to discuss Section VII?
4 Mr. Jacobs, are you fine with that? Okay. We will
5 review Section VII(a) since that is what is referred to
6 in Section II.

7 Now Section VII(a) has a couple of items in
8 it that I would point out to you. Under item No. 3 in
9 red, it refers to 5 USC Section 566. That's the
10 Negotiates Rulemaking Act. If any of you need a copy of
11 the Negotiated Rulemaking Act or want to read that, we
12 have copies. Please let me know.

13 And then Section 4 refers -- or is the same
14 as Section 6 in the blue. In the 2010 section, blue 6
15 is the same as 4 red. The others are different, I
16 believe. They have different language in the 2003 and
17 2010. So if you would take a moment to look at that.

18 Anybody need more time to read that?
19 Anyone?

20 Okay. We will, once again, open the
21 discussion on Section VII(a). What suggestions or
22 topics would you like to discuss here? Or can you
23 recommend any of these provisions in particular that we
24 -- let's start with No. 1, (a)(1). Yes, Ms. Foster?

25 MS. FOSTER: I would like to propose that we

1 accept the 2010 version of this section.

2 MR. NICHOLS: You propose we accept the 2010
3 version of the entire section? Any discussion about
4 that? Comments? Yes, sir?

5 MR. ADAMS: Jason Adams. I guess I was
6 going to propose the opposite, the 2003 version. 2010
7 makes changes like in 3 that talk about self-executing.
8 Those are issues that we addressed in 2010 that were
9 specific to amendments that haven't been acted on. 2003
10 in the red is specific to just the formula.

11 MR. NICHOLS: So we have a proposal for
12 accepting blue and accepting red. Any other discussion
13 on that. Yes, Ms. Gore?

14 MS. GORE: I just want to concur with Jason.
15 I think 2003 is more relevant. Thank you.

16 MR. NICHOLS: Ms. Yazzie and Ms. Foster.

17 MS. YAZZIE: I would agree with Jason Adams.

18 MR. NICHOLS: Ms. Foster?

19 MS. FOSTER: I will go with Jason.

20 MR. NICHOLS: So the proposal -- one
21 proposal we have on the table right now is to accept the
22 2003. Is there any further discussion or would you like
23 to take a vote? Yes, ma'am? Ms. Vogel?

24 MS. VOGEL: 2010, was that adopted by our
25 previous Committee?

1 MR. NICHOLS: My understanding is that yes,
2 it was. It was a Committee with a slightly different
3 goal than this Committee has. So that explains the
4 difference in the two.

5 If anybody would like to comment on that,
6 please -- anyone that was on that Committee, please feel
7 free. Does that answer your question, Ms. Vogel, or
8 would you like to hear more discussion on it?

9 MS. VOGEL: I would appreciate hearing more
10 as to why it was, other than just the formula wasn't in
11 there. But don't some of these apply to our
12 discussions? I am just trying to understand.

13 MR. NICHOLS: Sure. And could I ask those
14 of you who were on the Committee in 2010, if you were
15 present, could you explain that?

16 MR. ADAMS: Jason Adams again. The whole
17 idea behind the 2010 negotiated ruling was, we expanded
18 the effort of that Committee to take a look at
19 amendments to NAHASDA that had been negotiated all the
20 way back to 1998. So some of these things that you see
21 in here make reference to that.

22 The 2003 section, which is specific to the
23 formula, addresses those sections of the formula we will
24 be addressing as a goal of this Committee.

25 MR. NICHOLS: Ms. Vogel, is that helpful?

1 statutory language around which there was no regulatory
2 language. So they could not be implemented without
3 negotiation of that specific regulatory language.

4 That is not the case for this Committee.
5 This Committee is tasked with reviewing the formula, and
6 it's really part of the requirement of the Act. I don't
7 know if that is helpful.

8 But there is a stark reason -- there's a
9 good reason for the difference between the two. While
10 the words might seem to have a heavy weight, it's more
11 around the different purpose of those two Committees
12 rather than having a real weight in this discussion.

13 MR. NICHOLS: Yes. Mr. Dollarhide and then
14 Mr. Adams.

15 MR. DOLLARHIDE: I agree with Mr. Adams. I
16 think we should bring this to a vote to adopt the 2003.

17 MR. NICHOLS: Mr. Adams?

18 MR. ADAMS: I was talking at the beginning
19 of your comments, Carol, but I was just going to say, if
20 you are talking in regards to the 2010 No. 1, I think
21 the 2010 No. 1 has a little broader perspective on the
22 review because it talks about clarifying or performing
23 to statutory provisions.

24 There are no changes, per se, but this would
25 allow us to have a little more leeway as a statutory

1 provision than what the interpretation of those are. So
2 I would hope that, if that's what the friendly amendment
3 was -- to take No. 1, the 2010 amendment, and 2, 3 and
4 4, the 2003 -- I would accept that if that's what
5 Sharon was amending to.

6 MR. NICHOLS: So the proposal -- we did have
7 a proposal for a vote from Mr. Dollarhide, and Mr. Adams
8 suggested we modify that to take the 2010 No. 1; is that
9 correct?

10 MR. ADAMS: I apologize. I thought that's
11 what Sharon was asking. That's what I was responding
12 to.

13 MR. NICHOLS: Okay. No problem. Yes?

14 MS. VOGEL: That is my friendly amendment,
15 to take 2010 No. 1 and put it with 2003 -- replace that
16 with 2003 No. 1, and then that would be the only change,
17 and adopt the 2003.

18 MR. NICHOLS: So we would take this No. 1
19 with 2, 3 and 4 in red, correct?

20 And I believe Mr. Dollarhide said something
21 different, so I just want to clarify that. Mr. Reed?

22 MR. REED: Michael Reed, Cocopah. I have
23 trouble with "convenient."

24 MR. NICHOLS: "Convenient" here?

25 MR. REED: Yeah.

1 MR. NICHOLS: I am not sure the derivation
2 of that word. Does anyone care to venture a guess why
3 it says, "convenient"? Yes?

4 MR. ADAMS: In the past we have offered an
5 alternative, so if Mr. Reed has an alternative to
6 "convenient."

7 MR. REED: I don't think it's necessary.

8 MR. NICHOLS: Take "convenient" out? So the
9 proposal would be that we would take "convenient" out.
10 Does that cause anyone difficulty to do that? If I
11 could ask for any dissenting view on that? We could
12 strike that out.

13 MR. NICHOLS: Mr. Dollarhide, since we had
14 begun the discussion with you proposing to take the 2003
15 version, and it's now been suggested that we take No. 1
16 from 2010 and 2, 3 and 4 from 2003. Do you have a
17 comment on that that you could share with the group?

18 MR. ADAMS: I made the initial proposal.

19 MR. NICHOLS: I thought you proposed that we
20 vote on the 2003?

21 MR. DOLLARHIDE: I did propose that we vote
22 on 2003, to adopt 2003.

23 MR. NICHOLS: That's what I wanted to
24 clarify. I just wanted to see if you had any reaction
25 to the modification that's been proposed,

1 Mr. Dollarhide, or should we just take a vote and move
2 on? Ms. Gore?

3 MS. GORE: If we are going to take a vote,
4 and if I understand the vote correctly, we are voting on
5 2003 unamended or 2003 amended? Because if it's amended
6 to replace the blue one with the red one, I would offer
7 a comment. But I was a little lost.

8 MR. NICHOLS: The proposal currently on the
9 table is to take the 2010 No. 1 with 2, 3 and 4 from
10 2003. Mr. Dollarhide also suggested and proposed that
11 we just take 2010 -- or '03, as it already is, 2003 as
12 it is. So we really have those two proposals on the
13 floor right now.

14 And my question of the group was to see
15 where we were on the proposal that said to take No. 1
16 from 2010 and combine it with 2, 3 and 4 in 2003 and
17 gauge the reaction of where the group is on that. So
18 that would be the vote that I would call for at this
19 point, if that's understandable.

20 MS. GORE: Then my comment as a Committee
21 member is, I can support 2003 as stated. Alternatively,
22 I could support replacing No. 1 below, provided the last
23 phrase of "conform to or clarify any statutory
24 provisions" was struck because it's not relevant to this
25 Committee's work. It was only relevant to the 2010

1 Committee. Thank you.

2 MR. NICHOLS: To strike this portion.

3 MS. BRYAN: This is Annette Bryan. After
4 the word "necessary," we are missing the word "or."
5 It's not substantive, but it's just a word that was
6 missed.

7 MR. NICHOLS: Thank you.

8 So let's first call for a vote on No. 1,
9 2 -- in blue -- 2, 3 and 4 with the changes that are
10 made here, in the absence of any further discussion.
11 Yes, sir?

12 MR. ADAMS: Excuse me. As a point of order,
13 don't I have to accept that amendment or do I not get
14 that opportunity?

15 MR. NICHOLS: Sure, yes. I'm sorry.
16 Please.

17 MR. ADAMS: My comment earlier was based on
18 the idea that the 2010 version of No. 1 was a little
19 broader in the sense that we didn't have amendments to
20 NAHASDA. This time around the 2010 would allow us to
21 take a look at the regulations from that perspective.

22 Now if you are removing that piece, then
23 that becomes irrelevant and we are just back to No. 1 of
24 2003. We don't have any changes to the NAHASDA statute
25 to take a look at. So the 2010, No. 1, I thought it was

1 broad enough to conform and clarify that the provisions
2 existed. That was my point earlier.

3 Maybe I didn't make it well enough, Carol.
4 Again, what I am saying is, when I asked for and
5 accepted the amendment made to include 2010, No. 1, is
6 my take on 2010, No. 1, is it's broad enough because
7 there's no changes, as you pointed out earlier, that we
8 should go with that statement. I thought that's what
9 you were saying earlier. But that's broad enough to
10 take a look at existing language.

11 Am I missing something here? Because now
12 you are proposing to strike that which strikes -- makes
13 that less broad.

14 MR. NICHOLS: Ms. Gore?

15 MS. GORE: I am not the attorney in the
16 room, but my understanding is 2010 was for a very
17 specific purpose. And this clause or this phrase was
18 intended to deal with specifically the work of that
19 Committee because we had amendments that had been
20 approved and passed by Congress, but they had no
21 regulatory language. So this was specific to that work.

22 I am suggesting that No. 1 in red really
23 responds to the work of the Committee today, at least
24 what we are charged to do, which is very different. And
25 maybe I'm reading this too narrowly.

1 But I think the further language that's blue
2 in No. 1 is not necessary. It has that phrase. That's
3 not the work that we are doing.

4 MR. NICHOLS: Go ahead, sir.

5 MR. ADAMS: If I can just get some
6 clarification. I guess, in my mind, to conform and to
7 clarify statutory provisions is exactly what we can do
8 because we don't have changes to those statutory
9 provisions. That's all we can do is conform and clarify
10 because nothing has changed. Do you see what I am
11 saying? That's why I am asking for that to stay.

12 MR. NICHOLS: Yes?

13 MS. HENRIQUEZ: In 2008 there were
14 amendments, statutory amendments, to NAHASDA that we did
15 not take up in 2010. They have to do with Section 302,
16 the allocation formula, which we do write regulations in
17 anticipation of this formula in negotiations.

18 And so we would ask that that language
19 "conform to or clarify any statutory provisions" remain
20 in. That we are taking the 2010 No. 1 with the
21 remainder 2, 3 and 4 of the 2003.

22 MR. NICHOLS: You would request that this
23 remain in the language?

24 MS. HENRIQUEZ: Yes. Because there are
25 things in the statute that we have not yet dealt with by

1 regulation, and we will talk about we need to talk about
2 in this negotiated ruling.

3 MR. NICHOLS: Thank you. So is there --
4 what about No. 1 up here? Would that meet the same
5 needs for you, Ms. Henriquez? Would that present a
6 problem?

7 MS. HENRIQUEZ: Yes. All of 2003 or a
8 blending of the two based on 2010, 1 as amended and
9 proposed, with the other 2, 3 and 4. But it looks like
10 the No. 1 we read would do it on its own.

11 MR. NICHOLS: Okay. Ms. Gore?

12 MS. GORE: With that explanation, I will
13 withdraw my revision. Thank you.

14 MR. NICHOLS: So your revision was this
15 section right here? So the two proposals. Is there
16 further discussion? Here's what I would suggest at this
17 point: Let's take a vote. Vote No. 1 is that we accept
18 the 2003 red the way it's worded. Vote No. 2 is that we
19 accept the 2010 item No. 1, with 2, 3 and 4 from 2003.
20 We can do either one first. Yes?

21 MS. BRYAN: Annette Bryan, Puyallup. I hate
22 to be picky, but do we need to say, "as described in
23 Section II of this Charter"? Add that to the sentence
24 or is that too much?

25 MR. NICHOLS: This language right here?

1 MS. BRYAN: Yeah. The one we are striking,
2 "as described in Section II of this Charter." It
3 doesn't change the meaning. It just clarifies where
4 it's coming from.

5 MR. NICHOLS: Any other thoughts about that,
6 leaving this language in or taking it out? The question
7 is, does it need to be in there?

8 MS. BRYAN: I rescind my question.

9 MR. NICHOLS: You rescind your question. So
10 that will stay the way it is. Any other discussion
11 before we take the vote?

12 MR. ADAMS: Can I just ask a point of
13 clarification? I, again, made the proposal. And before
14 it was asked for a vote on the proposal, I accepted an
15 amendment, which was 1, 2010. You keep going back to
16 his proposal to vote on, the original proposal. That
17 isn't what I proposed.

18 MR. NICHOLS: I apologize. I may have done
19 this out of sequence. I apologize. Thank you for
20 pointing that out.

21 So the way it's worded right now is the
22 correct way for the proposal with the amendment and the
23 changes that we made? Then the vote that we would be
24 taking first would be 2003, 2, 3, 4, and No. 1 from
25 2010. Is that clear to everyone?

1 Okay. Can we see a show of thumbs up for 2,
2 3, 4 from 2003 and No. 1 from 2010. Do I see any thumbs
3 down? Okay, good. I think we have completed that task.
4 Thank you very much for that.

5 So we will leave the rest of Section VII and
6 continue on with Section III, the Goals and Objectives.
7 Mr. Sawyers?

8 MR. SAWYERS: I propose taking the 2010
9 portion.

10 MR. NICHOLS: What portion?

11 MR. SAWYERS: Taking 2010.

12 MR. NICHOLS: That would be this phrase,
13 this sentence here?

14 MR. SAWYERS: Yes.

15 MR. NICHOLS: Any discussion, comment on
16 that? We will call for a vote then. The proposal is to
17 take this section. We just need a thumbs up or down,
18 please. Any thumbs down anywhere?

19 Okay, good. Then that is accepted. Thank
20 you for that. Let's continue to move on to Section IV,
21 Duration. And there are a couple of differences in
22 these two statements from 2003 and 2010. The 2010
23 version refers to limitations of Section VIII of the
24 charter. 2003 does not. And Section VIII refers to the
25 number of meetings.

1 Okay. May I open this to discussion? Yes,
2 sir?

3 MR. OKAKOK: I am looking at Section VIII
4 there. It talks about six meetings. And after
5 listening to comments earlier, we are not sure exactly
6 how many meetings we will have.

7 MR. NICHOLS: Would the Committee prefer
8 that we address Section VIII first and then Section IV
9 or would you prefer we address Section IV?
10 Ms. Henriquez?

11 MS. HENRIQUEZ: Might I suggest the language
12 we would propose is "and subject to the availability of
13 funds." Because that will dictate how many and when and
14 where and that kind of thing.

15 So the Committee could, in Section VIII,
16 decide 12 meetings, but it will be subject to the
17 availability of funds, and that will affect timing. Or
18 it could say that the goal is to negotiate proposed --
19 change the formula, subject to the availability of
20 funds.

21 And so it's that phrase that we would have
22 to get in either place.

23 MR. NICHOLS: So that would go in IV as
24 well?

25 MS. HENRIQUEZ: I would say yes, but at

1 least in IV.

2 MR. NICHOLS: So would that be the end of
3 the sentence, Ms. Henriquez, where it says, "a Final
4 Rule, subject to the availability of funds"? Would that
5 be the place for it right here?

6 MS. HENRIQUEZ: Depending on the red
7 language -- the 2003 or 2010 language, yes, after "Final
8 Rule, subject to the availability of funds."

9 MR. NICHOLS: Does that address your
10 question, sir, sufficiently?

11 MR. OKAKOK: Yeah.

12 MR. NICHOLS: Thank you.

13 MS. HENRIQUEZ: Thank you for raising it.

14 MR. NICHOLS: So other than this caveat that
15 Ms. Henriquez proposed to add to the end of each one of
16 these lines, what other discussion would you have on
17 this item? What other perspectives? Yes, Ms. Foster?

18 MS. FOSTER: When we talk about something
19 being subject to the availability of funds, that sounds
20 to me like, if we put it at the end, it's the
21 publication of the final rule subject to the
22 availability of funds. So I guess I would probably
23 switch it around and put "subject to the availability of
24 funds" at the beginning of the sentence in the red.

25 MR. NICHOLS: Here instead?

1 MS. FOSTER: Yes. So that it's the
2 authority of the Committee which is subject to the
3 availability of funds.

4 MR. NICHOLS: Ms. Henriquez, is that
5 acceptable to you?

6 MS. HENRIQUEZ: Thank you, Karin. Yes.
7 Thank you very much.

8 MS. FOSTER: And the other point is, to try
9 and keep the "Section VIII," you'd probably say,
10 "Subject to the limitations of Section VIII of this
11 Charter and subject to availability of funds." You
12 could probably put it right there.

13 MR. NICHOLS: Thanks. Good point. Does
14 anyone have a suggestion for which of these you prefer?
15 Blue or red? Yes, Ms. Yazzie?

16 MS. YAZZIE: Thank you, Steve. I propose
17 the blue version -- it's more complete; it includes the
18 number of meetings as referenced in Section VIII -- for
19 adoption.

20 MR. NICHOLS: Discussion on that? The
21 proposal is to accept the blue version. Is there any
22 discussion or viewpoint? Mr. Evans?

23 MR. EVANS: Earl Evans. Correct me if I am
24 wrong, but I believe, in the Negotiated Rulemaking Act,
25 doesn't it already give some leeway to development of

1 funds? Because I wouldn't want to limit us in addition
2 to that, when we only have two meetings, and then, Okay,
3 we don't have any funds to continue.

4 MR. NICHOLS: I think we are consulting.
5 They are consulting on the Negotiated Rulemaking Act?

6 MS. HENRIQUEZ: Do you have a section?

7 MR. NICHOLS: Yes, Mr. Evans?

8 MR. EVANS: Earl Evans. 563-86.

9 MS. HENRIQUEZ: That's the one we had
10 thought. So as I understand it, we have already agreed
11 the section helps the agency determine whether it should
12 undertake negotiated rulemaking in the first place. We
13 have already made that determination. We are in this
14 process. And so our commitment, looking at all the
15 factors, was to do negotiated rulemaking.

16 As we move forward, the subject of the
17 availability of funding is really tied to the frequency
18 and location of meetings. Not that we will curtail or
19 terminate the negotiated rulemaking, but it may just
20 take us longer in the journey to get it all completed
21 based on availability of funds.

22 So we are not going to -- we would have used
23 the section to determine whether we should have started
24 down this path. We decided we should. Here we are.
25 But we need then to figure out how to pace the meetings,

1 moving forward, based on the funding and the resources
2 available.

3 MR. NICHOLS: Thank you for that
4 clarification. Ms. Foster?

5 MS. FOSTER: Karin Foster, Yakama Nation
6 Housing Authority. Then should the
7 availability-of-funds clause be something that's in
8 Section VIII instead of in the authority of the
9 Committee? Such that it would perhaps appear -- in
10 Section VIII(a) it talks about the number of Committee
11 meetings. Perhaps that maybe say something like
12 "subject to the availability of funds." So maybe that
13 clause come out.

14 MR. NICHOLS: Ms. Henriquez, would that be
15 acceptable to you?

16 MS. HENRIQUEZ: That's acceptable.
17 Mr. Evans, does that help, from your perspective, by
18 moving the clause here to Section VIII?

19 MR. NICHOLS: Just to appear in
20 Section VIII? Is that the proposal, as I understand it?

21 MR. EVANS: That's acceptable.

22 MR. NICHOLS: So, Christine, take that off
23 of there. So the original proposal, as I recall, if I
24 recall correctly -- correct me if I'm wrong -- was to
25 approve the new language from 2010? Any further

1 discussion on that or are we ready for a vote?

2 Okay. Let's take a vote, thumbs up on that
3 blue language 2010, or thumbs down, please. I don't see
4 any thumbs down, so okay, we will accept that as it is,
5 the blue.

6 And thank you for your hard work on that.
7 It's now time for our 15-minute break. So I appreciate
8 all of your diligence in working through those items.
9 We will return at 3:15.

10 (Break was taken from 2:58 to 3:16.)

11 MS. PODZIBA: We are going to keep moving
12 forward. We are up to Section V on the charter, which
13 is page 2. And it is the Principal Federal Government
14 Officer. We have two versions. There's only a slight
15 difference between the two, which is that the 2010 --
16 let's see -- everything is the same, until you get to
17 the red. It says, "HUD will submit the changes to the
18 Committee for review and approval."

19 And the 2010 says, "the Tribes and HUD will
20 endeavor to submit the changes to the Committee for
21 review."

22 That's my read. So I will open the floor to
23 proposals or discussion.

24 MS. NUTTER: This is Teri Nutter. My
25 proposal is for the blue, the 2010 version.

1 MS. PODZIBA: The proposal is for the blue,
2 the 2010 version. Any comments or discussion?

3 MS. BRYAN: We're missing a word in the
4 blue. It says, "Indian housing or her," which is fine
5 with me, but I think it's supposed to say, "his/her,"
6 second line of the blue.

7 MS. PODZIBA: Okay. Yes, Ms. Foster?

8 MS. FOSTER: Karin Foster. I would like to
9 hear an explanation for why "will endeavor," the words
10 in there need to be in the blue. I am assuming that may
11 come from the HUD side, but I would like to see all the
12 changes submitted to the Committee for review and
13 approval and wondered why that needed to be qualified by
14 "will try."

15 MS. PODZIBA: Anybody who was in 2010 who
16 can explain that? Yes, Ms. Henriquez?

17 MS. HENRIQUEZ: I guess I would say two
18 things about the words "shall endeavor." One, it's just
19 language from 2003, but also it really becomes, we will
20 try very hard to make sure, in the first instance, that
21 we get all the issues out -- and OMB issues -- try and
22 get them in front of this Committee to talk about in
23 this process.

24 The second, "the Tribes and HUD shall
25 endeavor," I guess really is to say -- it's to say the

1 following. And we had this conversation, I think, the
2 last time.

3 The process, as we talked about this
4 morning, is, once you go through this negotiated
5 rulemaking and all the issues are written, we look
6 forward to submission through departmental clearance and
7 then through -- it goes to OMB.

8 The process that all of the federal
9 government uses is that OMB is the place where they look
10 at how this negotiated rulemaking process work has come
11 out of it. It's important to show that it's not in
12 conflict with anything else that's going on in the
13 federal government.

14 The protocol then says that OMB can make
15 changes. They can suggest other language. But as you
16 will see from the last time we had this conversation and
17 with the change in amendments, we worked really hard.

18 OMB understands this is negotiated
19 rulemaking. That this is the process that we at HUD
20 hold very dear, so that they couldn't just walk through
21 and change things. And, three, the most important issue
22 really is the sovereign-to-sovereign government
23 relationship that we wanted the nature of it to be
24 upheld, all of which they did.

25 MS. FOSTER: Thank you.

1 MS. PODZIBA: Ms. Nutter, do you accept the
2 his/her amendment?

3 MS. NUTTER: Yes.

4 MS. PODZIBA: Ms. Henriquez?

5 MS. HENRIQUEZ: I recommend just the word
6 "designee."

7 MS. PODZIBA: Is that okay with everyone?
8 Any other comments on this section, this proposal?

9 All right. I am going to go for the vote.
10 Can I see thumbs up and thumbs down on the proposal to
11 adopt the blue language as amended. Thumbs up, thumbs
12 down.

13 Okay. We are good. Thank you.

14 All right. Moving to Section VI, which is
15 Composition of the Committee. Mr. Evans?

16 MR. EVANS: Earl Evans. I think we should
17 adopt something to the effect of, "the Committee
18 membership shall be as provided in Federal Register
19 notice, Document No. X, Y, Z," because that's already
20 been determined.

21 MS. PODZIBA: So the proposal is for (a),
22 "The Secretary of HUD shall appoint 24 members
23 representing geographically diverse small, medium, and
24 large tribes as appointed"?

25 MR. EVANS: Earl Evans. I guess my

1 recommendation was, "the Committee shall be comprised of
2 those persons as identified at Section IV of the Federal
3 Register notice, Document 2013-18176, filed 7/29/2013."

4 MS. PODZIBA: Do you have that written down?

5 MS. EVANS: Earl Evans. "As identified at
6 Section IV of the Federal Register notice."

7 MS. PODZIBA: So the proposal is to dispense
8 with (a) and (b) and cite the Federal Register notice,
9 and we will have that language up for you in just a
10 minute. Is there any discussion that can happen before
11 you see the text? Yes? No?

12 MR. HILL: Richard Hill from Mille Lacs.
13 "The Secretary of HUD will appoint two representatives."
14 Are they the same two throughout the whole session?

15 MS. PODZIBA: Ms. Henriquez?

16 MS. HENRIQUEZ: Yes, they are.

17 MS. PODZIBA: Okay. All right. Mr. Evans,
18 is that what you suggested? "The Committee will consist
19 of members as identified in Federal Register notice,
20 Volume 78, No. 146, published Tuesday, July 30, 2013."
21 Any comments on that? Any discussion?

22 Can we have thumbs up? Yes, Ms. Foster?

23 MS. FOSTER: Maybe capitalize Committee so
24 it's consistent with the rest of the document. That is
25 my only comment.

1 MS. PODZIBA: Is that okay with you,
2 Mr. Evans?

3 MR. EVANS: Yes.

4 MS. PODZIBA: Thumbs up, thumbs down. Okay.

5 So then we are moving to page 5, which is
6 Section VII, Role of the Committee, Section (b). We did
7 (a) previously, as you probably remember.

8 Don't pay attention to the (a)s and (b)s.
9 The first -- the red (b) is from 2003 and the paragraph
10 beneath it is (b) from 2010.

11 MR. BUTTERFIELD: I would propose (b), blue,
12 as the more inclusive.

13 MS. PODZIBA: The proposal is to go with the
14 2010 version. Any comments, questions? Ready to vote?

15 Can I see thumbs up or thumbs down on the
16 blue version, the first blue paragraph. Okay. So it's
17 (b). It's the blue (b).

18 Moving then to Section (c). And, again,
19 don't pay attention to the little (b) and the little
20 (a). It's just a format issue. We will take care of
21 it. The two proposals both begin with the phrase, "In
22 accordance."

23 Any comments or questions, suggestions or
24 proposals? Mr. Cooper, do you like one better than the
25 other or do you like them both the same? Anyone care to

1 propose one or the other?

2 MS. BRYAN: This is Annette Bryan. I will
3 propose the blue one.

4 MS. PODZIBA: All right. Thumbs up, thumbs
5 down on the blue version. Okay. We've completed
6 Section VII.

7 Moving now to Section VIII, Meetings,
8 page 6. Letter (a) refers to the number of meetings,
9 and in the case of 2003, the location.

10 Ms. Henriquez, do you want to get us started
11 on this section? Do you want to propose something?

12 MS. HENRIQUEZ: I would leave that up to the
13 Committee as a whole as long as the proposed language
14 includes the "subject to availability of funds"
15 language.

16 MS. PODZIBA: Type that in, "subject to the
17 availability of funds." Yes?

18 MR. ADAMS: Jason Adams. I would propose
19 that, because Section IV, Duration, is referenced, it
20 talks about, "The Committee shall be authorized to
21 convene until such time as all negotiations are
22 determined by the Committee to be final."

23 I don't want them to have (a) -- either one
24 of these (a)s that say how many times we meet. So I
25 would propose that we don't have an (a) or either one of

1 these (a)s.

2 I propose that 2010 (b) be (a) and that be
3 the only statement of this section, with the addition of
4 Ms. Henriquez's comment on the availability of funds be
5 included in it at the end, I suppose.

6 In other words, you can add that in, but I
7 just think having either one of those (a)s there really
8 limits us on duration.

9 MS. PODZIBA: I think I missed the first
10 part. We look at the blue and take out the first
11 sentence and just say, "Meetings shall be scheduled no
12 less frequently than monthly, if feasible," and "subject
13 to availability of funds"?

14 MR. ADAMS: What I am saying is, we don't
15 have either one of those. We just have blue (b).

16 MS. PODZIBA: Okay. I'm sorry. Where would
17 you put the "subject to availability of funds"?

18 MR. ADAMS: Maybe at the end, I guess.
19 "Subject to availability."

20 MS. PODZIBA: Something like, "The Committee
21 shall meet subject to availability of funds"?

22 MR. ADAMS: Sure.

23 MS. PODZIBA: Christine, that would be the
24 first phrase. We will move that up. Yes?

25 MR. EVANS: Earl Evans. I'd like to offer a

1 suggestion. "Subject to the availability of funds,
2 shall meet as often as is determined by the Committee,"
3 period. And the rest would be date and time and place,
4 et cetera, et cetera. Will that work, Mr. Adams?

5 MR. ADAMS: Yeah. I think we made that
6 statement already in Duration. "Subject to availability
7 of funds" makes sense.

8 MS. PODZIBA: Could you repeat that?

9 MR. EVANS: "Subject to the availability of
10 funds, the Committee shall meet as often as determined
11 by the Committee," period. And then proceed with the
12 rest of the language that is in the blue (b), the date,
13 time and place, et cetera.

14 MS. PODZIBA: And is that acceptable,
15 Mr. Adams? Okay. So the proposal is to delete (a), and
16 then we wouldn't need the letter (b), but the whole
17 sentence under Meetings would be this last paragraph as
18 amended. Is there any further discussion of it? Yes?

19 MR. OKAKOK: It would be limited to the
20 availability of funds. We're talking about being able
21 to fulfill the responsibility to the tribes. It's going
22 to be completed based on availability of funds. It
23 should be that all responsibilities are fulfilled
24 according to statute.

25 MS. BRYAN: Annette Bryan. I have another

1 question. By taking the number out, are we limiting
2 ourselves to it not happening with or without the
3 availability of funds, so that the government is not
4 making a commitment.

5 So what's the background, the reason the
6 language is in there? Was it a concern before or why
7 that's in there, and then also, "Meetings shall be
8 scheduled no less frequently than monthly, if feasible."
9 How will that impact our meetings?

10 MR. ADAMS: I guess what I have heard today
11 and what was discussed earlier was -- the HUD position
12 was that they don't know when funding -- how much
13 funding will be available and when.

14 So if we say in here that we are going to
15 meet monthly and HUD doesn't have money come available
16 until next September, we have violated our own charter.
17 That's why I was saying, based on the funding issues
18 that they have, we don't want to say we are going to
19 meet monthly. After September 30 things are kind of up
20 in the air.

21 MS. PODZIBA: Yes?

22 MS. HENRIQUEZ: I understand your comment.
23 I would say, since the language as proposed is "The
24 Committee shall meet as often as determined by the
25 Committee," while HUD could -- we could say, We are not

1 going to meet anymore, what does that get us? There's
2 no support for that position. There's no past practice
3 or history of our taking those kinds of positions.

4 And my guess is that you, as Committee
5 members, would never allow that to happen. I'm sorry.
6 Some of you are new to the Committee, but some of you I
7 know pretty well, and I don't think you would ever let
8 us just simply say, We're shut down.

9 The flexibility -- because the funding
10 situation is so tenuous at this point, I can't in good
11 conscience say, We are going to have at least 6 meetings
12 or at least 12 meetings, and we are going to meet
13 monthly, because I would be making a promise to you that
14 I simply do not know I can keep.

15 With your understanding and acknowledgment
16 of how we have worked with you guys in the past on the
17 Steering Committee on these sorts of issues, I'm just
18 short of saying, Trust us. But if you will hold our
19 feet to the fire, I am sure that we will never be able
20 to walk away without a finished piece of business.

21 MS. PODZIBA: So is the first sentence
22 acceptable to you or are we saying not?

23 MS. HENRIQUEZ: We are good.

24 MS. PODZIBA: You are just answering the
25 question that was posed. Yes?

1 MR. DOLLARHIDE: I would agree with Jason
2 saying that we strike all of the top three and leave the
3 blue (b) at the end, the same proposal on the table.

4 MS. PODZIBA: Yes, Mr. Jacobs?

5 MR. JACOBS: I think I would recommend that
6 we add -- "how often it's determined by the Committee"
7 -- "However, we recommend that there be not less than
8 six meetings and that they be held monthly."

9 I think we need to put some language in
10 there that we feel that it's important that we meet
11 frequently. I remember the last meeting when we met.
12 It was difficult, even though we met monthly, to keep
13 everything moving forward and so forth because, when we
14 get back to our offices, you get bogged down with
15 everything else.

16 And if you go two months at a time and so
17 forth, it's going to be difficult to come back to where
18 we were and so forth.

19 MS. PODZIBA: Yes?

20 MR. ADAMS: Again, I guess my concern is, in
21 light of the funding situation, if the fund doesn't have
22 any moneys until next July and we meet a couple months
23 next year -- I mean, we're not done until we are done.
24 Then we'll have to wait for another allocation of moneys
25 and meet in the spring or summer of the following year

1 until we are done. I don't want to have us set this up
2 and then it can't happen. That's my point here.

3 MS. HENRIQUEZ: I can honestly tell you
4 that probably, even with our best intentions, we will
5 not meet in October. Because the funding and allocation
6 issue will not be decided by Congress and our portion
7 won't happen until about 30 days after the President
8 signs whatever budget gets signed.

9 MS. PODZIBA: Yes?

10 MR. HAUGEN: So does this mean that we'll
11 set up our next meeting in Hawaii around Christmas?

12 MR. JACOBS: I think it's important that we
13 put some terminology in here that we feel that we need
14 to meet as often as we can to get the task completed
15 even though we know what you are up against with
16 Congress.

17 MR. ADAMS: I appreciate your concern, and I
18 think the issue about "as often as determined by the
19 Committee" will take that into account. As Committee
20 members, we can police ourselves and make sure, as often
21 as we have funds available, we can meet.

22 MS. PODZIBA: Yes?

23 MR. OKAKOK: In addition to the comments, we
24 need to bring up the statutory requirements that we do
25 need to get this done and have some wording that says,

1 "The Committee shall meet as often as determined by the
2 Committee."

3 MS. PODZIBA: Yes?

4 MS. BRYAN: Can we strike the first phrase?

5 MS. PODZIBA: Okay. Yes, Ms. Foster?

6 MS. FOSTER: Not to make things more
7 difficult, but I think Leon is right. "Subject to the
8 availability of funds" -- they are members of the
9 Committee. This really leaves them open to deciding
10 they're just going to make do and just decide not to
11 meet, if you really look at it.

12 I think "subject to the availability of
13 funds" leaves the out that's necessary, and I guess I am
14 wondering if it would be possible to have at least a
15 number, just so we have an idea. I don't know if we
16 have an idea how many meetings this will take.

17 Maybe we don't. Maybe that's not a very
18 clear proposal, but I hear what you are saying, Leon.
19 It's all subject to the availability of funds.

20 MS. PODZIBA: Ms. Foster, are you making a
21 proposal?

22 MS. FOSTER: I don't have a counterproposal.
23 It bothers me a little bit, I guess.

24 MS. PODZIBA: Yes?

25 MR. OKAKOK: I was kind of thinking that the

1 wording of "by the Committee so it fulfills its purpose,
2 Section II," and strike out "subject to availability of
3 funds."

4 MS. PODZIBA: Do you propose to strike
5 "subject to the availability of funds" because I think
6 Ms. Henriquez wanted that in and it's not in the
7 Duration section.

8 MR. OKAKOK: Correct. Striking "subject to
9 availability of funds" and adding some language, The
10 Committee shall meet as often as is determined by the
11 Committee until it fulfills its purpose in Section II."

12 MS. PODZIBA: Yes, Mr. Adams?

13 MR. ADAMS: I appreciate the comment, but I
14 would, respectfully, decline the amendment. Again,
15 because the Duration section makes reference to this
16 section, and it specifically says in there, "The
17 Committee shall be authorized to convene until such time
18 as all negotiations are determined by the Committee to
19 be final."

20 And it points to this section, and then I
21 included the "subject to availability" on behalf of the
22 discussion about duration. So that's why I included it.
23 I don't know if they are going to propose that, but
24 that's why I included it.

25 MR. OKAKOK: I will rescind the language in

1 addition to that, striking "subject to availability of
2 funds."

3 MS. PODZIBA: Mr. Adams, do you have any
4 thoughts about the concern that Ms. Foster or Mr. Jacobs
5 raised in the way of modifying your proposal to account
6 for that?

7 MR. ADAMS: Again, we included that language
8 because it was brought forward from the discussion on
9 duration at the request of HUD. And so to appease their
10 concern on that issue, we included that language. Now
11 if they are not opposed to striking it, then I will be
12 okay with it. It was their request to have that
13 included.

14 MS. HENRIQUEZ: Could someone just read back
15 what we agreed to on the Duration language?

16 MS. PODZIBA: Please scroll down, Christine.

17 MS. HENRIQUEZ: Section IV.

18 MS. PODZIBA: "Subject to the limitations of
19 Section VIII of this charter, the Committee shall be
20 authorized to convene until such time as all
21 negotiations are determined by the Committee to be final
22 and all regulatory changes negotiated have been
23 published as a Final Rule."

24 MS. HENRIQUEZ: This says that whatever
25 limitations in (a) govern how the negotiations -- the

1 timeline duration of those negotiations. But it relies
2 on Section VIII, the section we are talking about now,
3 and I would propose that the language "subject to the
4 availability of funds" remain. Because one relies on
5 the other. It's not in the Duration section. It's
6 here.

7 MS. PODZIBA: Yes?

8 MR. OKAKOK: In looking at some of the funds
9 available, I would be good to add, "Subject to
10 appropriation of funds for FY14." That way funds will
11 be available.

12 MS. HENRIQUEZ: Can you repeat what you
13 proposed, please?

14 MR. OKAKOK: To add "Subject to
15 appropriation of funds for FY14."

16 MS. HENRIQUEZ: I, respectfully, cannot
17 agree to that because, if you say, "Subject to the
18 appropriation of funds" -- HUD attempts to appropriate
19 funds in TBG and Section VIII housing vouchers, or
20 public housing for the Native American program -- just a
21 variety of things for which we cannot use available
22 funding.

23 Our funding comes in buckets, and only funds
24 that are appropriated for ONAP can be used for this
25 purpose. So your language is too broad, and I can't

1 legally honor that language.

2 MR. OKAKOK: How about we add "HUD/ONAP"?

3 MS. HENRIQUEZ: I'll go back to, what's
4 wrong with subject to availability of funds?

5 MS. PODZIBA: We have a couple other people.
6 Yes.

7 MR. DOLLARHIDE: It is my understanding that
8 this Committee agreed to No. IV with the contingency
9 that "Subject to availability of funds" would be
10 included in Section (a) of Meetings. That's what I
11 remember.

12 We all realize the Fed doesn't have the
13 money. We can put anything we want to right there. If
14 they don't have the money, they just don't have it. And
15 we are not going to be doing anything. So I say we vote
16 the way that it is right now.

17 MS. PODZIBA: Mr. Evans?

18 MR. EVANS: Earl Evans. I agree with the
19 statements that were mentioned earlier about having some
20 type of aspirational statement in there just to have
21 some kind of a target. Because, if you recall, we did
22 include IV in '03 and didn't have any further
23 negotiations until 2010, even though funding was
24 available.

25 So could we include or reconsider (a),

1 subject to what Mr. Jacobs mentioned earlier about being
2 able to aspire to meet at least six times over the next
3 12 months in an effort to complete work. Something that
4 doesn't necessarily pin it down, but as a target or a
5 goal to have some idea of what the expectations are.

6 MS. PODZIBA: Mr. Adams?

7 MR. ADAMS: Again, I would just offer this:
8 In absence of this language that was added, are we
9 agreed with that? The language says, "as often as
10 determined by the Committee." That doesn't say as
11 determined by HUD or anybody else.

12 That leaves it up to us to determine
13 meetings. As soon as we know what's available, we can
14 set a schedule. We can honor it. So I hope that will
15 accomplish that.

16 MS. PODZIBA: Ms. Gore?

17 MS. GORE: I think good faith might be a
18 statement we need to talk about. Good faith is
19 addressed in the protocols and not the charter, but some
20 of our conversations really sort of tiptoe around that
21 concept. And I think there's a good faith expectation
22 of HUD and their actions as members of the Committee.

23 So when the language refers to "the
24 Committee," we expect them to act in good faith, just
25 like the rest of us. So I support Jason Dollarhide,

1 your recommendation. Thank you.

2 MS. PODZIBA: Let's go to a vote. Can we
3 have thumbs up or thumbs down on this paragraph, which
4 would be the -- sorry. Ms. Henriquez?

5 MS. HENRIQUEZ: As I have listened to
6 everybody's comments about duration, one thing we talked
7 about with the Committee last time was to actually set a
8 number for how many meetings we were going to have. I
9 don't know if that's helpful in this discussion or not.

10 I think the last time we said no more than
11 six. We went to seven by Committee decision to expand
12 it. I don't know if that's helpful to this
13 conversation.

14 Regardless of whether the HUD funds are
15 there, we could be talking about some of these issues
16 until 2016. So I guess I am going to throw that out for
17 people to talk about before this vote.

18 MS. PODZIBA: Is that a suggestion to put a
19 number of meetings?

20 MS. HENRIQUEZ: Yes. Depending on progress,
21 et cetera, we could as a Committee decide that that is
22 not enough as we progress through our negotiations, but
23 it keeps the pressure on for us to really stay as tight
24 as possible in our discussions and our deliberations.

25 MS. PODZIBA: Could you propose the

1 language, the number of meetings, that we would propose
2 to put in there?

3 MS. HENRIQUEZ: So I guess I would say -- I
4 would amend, if I might, "Subject to the availability of
5 funds, the Committee shall meet no more than" -- I am
6 going to say -- six times," period. And then the date,
7 time, place, purpose stays the same.

8 MS. PODZIBA: So we are moving "as often as
9 determined by"?

10 MS. HENRIQUEZ: Yes.

11 MS. PODZIBA: Do you accept that amendment,
12 Mr. Adams?

13 MR. ADAMS: Well, again, we were
14 operating -- in my opinion, we were operating in 2010
15 and previous when we came up with the rules. This
16 charter, we were operating on the premise that we had a
17 finite amount of work before us. We knew that there
18 were all these amendments that hadn't been acted on. We
19 had a diagram and we had the list of issues that we had
20 to get through.

21 In my opinion, this time around it's a
22 different scenario because we don't have that. We just
23 have the whole subpart (b) before us to review. We can
24 do that all in three weeks and be done or we could take
25 six or eight more months to do that.

1 So I guess my opinion on it is, going into
2 2010, we kind of knew the parameters. This time we
3 don't. I don't have a clue how much time it's going to
4 take. And so in the absence of that, Duration says we
5 are going to go until we are done. I hate to hem us in.

6 MS. PODZIBA: Okay. Let's take a vote on
7 this proposal as is and see where we are with that. So
8 it would be, "Subject to the availability of funds, the
9 Committee shall meet as often as is determined by the
10 Committee." Then the second sentence remains.

11 Could I have thumbs up or thumbs down on
12 that. I see some thumbs down in any case. Ms. Foster,
13 can you tell us your objection to it?

14 MS. FOSTER: I had an alternate proposal,
15 but I appreciate the comments. There was a comment by
16 Sam, and that proposal kind of got lost there and I
17 really didn't have an opportunity to respond to it. It
18 was a good one. I liked it.

19 It was tying it to the proposed
20 appropriation in 2014 and not just the availability of
21 funds. We want it to be subject to them getting the
22 money, not just dividing up the funds that are available
23 for that purpose. So I liked that idea. And I also
24 liked the word -- since we are talking about endeavoring
25 in this situation -- I think "endeavor" is good, too.

1 So my proposal is this. This is the
2 language I propose. "The Committee shall endeavor to
3 meet at least six times over the next 12 months, subject
4 to the appropriations for HUD/ONAP in FY2014."

5 MS. PODZIBA: Do you have all that? Can you
6 repeat that?

7 MS. FOSTER: "The Committee shall endeavor
8 to meet at least six times within the next 12 months,
9 subject to the appropriations for HUD/ONAP in FY2014."

10 MS. PODZIBA: Let's get comments on this.
11 Mr. Adams?

12 MR. ADAMS: This is the new proposal?

13 MS. PODZIBA: Yes.

14 MR. ADAMS: I'm going to offer a friendly
15 amendment then that, since this paragraph is getting
16 lengthy, that we go back to making that -- everything
17 that's new (a) and keep (b).

18 MS. FOSTER: Yes, absolutely. That would
19 make good sense.

20 MS. PODZIBA: So, Christine, take out what
21 you have and that goes out. "Subject to the
22 availability of funds" goes out. The first sentence
23 becomes (a) and the second sentence becomes (b). Is
24 that right?

25 Okay. That's the proposal. Comments and

1 suggestions on this proposal? Yes?

2 MS. HENRIQUEZ: I wanted to share with you
3 what the budget realities are and not in terms of
4 dollars. When there's a continuing resolution -- and we
5 expect that we will get at least one for 60 days through
6 the end of November.

7 And I don't know what happens after that,
8 but under a continuing resolution, no agency is able to
9 spend more -- we cannot spend any more money in
10 October 2013 than we spent in October 2012, which means
11 we have a year-long continuing resolution.

12 If Congress does not pass an actual
13 appropriated budget, it means that we will not be able
14 to spend more month by month, unless there's certain
15 emergency circumstances, than we spent the 12 months
16 before. So for us to negotiate rulemaking under FCR, we
17 would be spending money in next August because that's
18 when we are doing this one -- or next September. So one
19 budget as opposed to a continuous resolution.

20 And if we come to that circumstance, we
21 could put in language to ask for a bump-up in spending
22 so we could spend more than the year before in a given
23 month to accommodate negotiated rulemaking. And that's
24 a process that goes through OPOD and then OMB.

25 So I just want you to know what the

1 realities are for us on this issue. So the "shall
2 endeavor," we can live with that language, but the
3 reality is, we may not be able to deliver under a
4 resolution. So, again, the appropriation language is a
5 difficult word for us.

6 MS. PODZIBA: On this proposal then, would
7 you propose an amendment that says, "Subject to the
8 availability of funds"?

9 MS. HENRIQUEZ: Yes, I would. That's not
10 much flexibility in funding tied to the vagaries of
11 federal funding appropriations laws.

12 MS. PODZIBA: I feel your pain.

13 MS. HENRIQUEZ: Unless we turn over rocks
14 and find more stuff underneath, we'll be trying to deal
15 with budget stuff and what's potentially going to
16 happen.

17 MS. PODZIBA: Ms. Foster, will you accept
18 the amendment to, "The Committee shall endeavor to meet
19 at least six times within the next 12 months, subject to
20 the availability of funds"?

21 MS. FOSTER: I will defer to Sam.

22 MR. OKAKOK: When I look at this, I look at
23 the statutory requirements that HUD has, and this comes
24 dangerously close to HUD not being able to fulfill their
25 statutory requirements.

1 They have a trust responsibility to the
2 tribes, and that's the reason why I brought it up.
3 Hopefully, there is some flexibility in some of the
4 appropriations to make it happen.

5 Who knows if it will become four meetings,
6 five? The '03 meeting says at least six, and 2010 says
7 no more than six. What if we are unable to fulfill
8 this? Would HUD be breaking the law? I would rather
9 not go there.

10 MS. HENRIQUEZ: I feel obligated to respond.
11 I take very seriously all of my statutory and my
12 regulatory requirements. So I have to just tell you, I
13 am not appropriately articulate in responding to your
14 suggestion that we are coming close to breaking our
15 statutory requirements or obligations.

16 I would say to you instead, it's not HUD
17 breaking them. It is a Congressional appropriations
18 issue. And I don't control how money is appropriated.
19 I don't control that it's appropriated in buckets, and I
20 can't move money from one bucket to another, no matter
21 how much I would like to do that.

22 And, in fact, I will tell you that, if I
23 were to move money from one bucket to another somehow, I
24 would be slapped with what's called an ADA, which is a
25 deficiency of -- I would be acting contrary to the

1 Anti-Deficiency Act, which means I am spending money in
2 ways that I am legally not allowed to do. And for me
3 that means I get fired from my position.

4 So as much as I would like to move money
5 around in different buckets, it ain't ever going to
6 happen on my watch, pure and simple. And so I am just
7 trying to be real with you and tell you what the
8 constraints are, the real constraints, in this
9 environment and what it means in this language.

10 MS. PODZIBA: Yes, Ms. Foster?

11 MS. FOSTER: I appreciate the Assistant
12 Secretary's candor and explanation, and I would like to
13 amend my proposal such that, "Subject to the
14 appropriation for HUD," will now become, "Subject to
15 Congressional appropriations," period. Take out the,
16 "Subject to Congressional appropriations," period.

17 MS. PODZIBA: Yes?

18 MR. DOLLARHIDE: Jason Dollarhide. My
19 concern, Ms. Foster, with that statement is, what if
20 it's a continuing resolution and we don't meet?

21 MS. FOSTER: Do you have an alternative?

22 MR. DOLLARHIDE: My solution would probably
23 be to put it back the way it was originally that Jason
24 Adams introduced it.

25 MS. PODZIBA: So "Subject to the

1 availability of funds"?

2 MS. FOSTER: I will retract the amendment.

3 MS. PODZIBA: Any additional comments? Yes?

4 MS. TUFTS: Section IV and Section VIII, is
5 that what we are talking about? They seem to be
6 addressing the same thing. Section IV is concerned with
7 the statutory requirements, and it does specify that we
8 will meet until we conclude the purpose of the
9 negotiated rulemaking.

10 I wonder if we could combine the two so it's
11 very clear that the Committee will fulfill its
12 obligations as participating in that Committee until the
13 negotiations are final.

14 And then, consequently, the meetings are
15 going to take place subject to availability of funds,
16 and that speaks to the appropriations. It speaks to
17 also the pending resolutions, depending on what happens,
18 which is really unknown.

19 And I think that that ground has not been
20 worked out entirely. That makes it difficult for us to
21 maybe get a grasp for what we are intending to do. I
22 like the recommendation.

23 And I really have faith in HUD, that they
24 always participate, at least in rulemaking. So I
25 think -- is there opportunity to look at that? Because

1 it does talk about meetings in Section IV. I offer that
2 suggestion for Committee members.

3 MS. PODZIBA: So the proposal is to move (a)
4 and (b) to Duration, to the section on Duration. So
5 that what we have -- we had one paragraph on Duration,
6 which would become (a), and then these would become (b)
7 and (c) under Duration?

8 MS. TUFTS: Right. We'd call it Duration
9 and Meetings, a combination of the two. Because IV does
10 reference VIII, and VIII does speak to fulfilling the
11 obligations of HUD and the Committee membership.

12 MR. OKAKOK: I appreciate the comments on
13 appropriations. I certainly wouldn't want her fired
14 over this. But as I look at it, I really would try and
15 like for us to really go through this. It all comes
16 down to in good faith, working in good faith with each
17 other.

18 I think, if we added the words "in good
19 faith." "The Committee shall endeavor in good faith to
20 meet six times."

21 MS. PODZIBA: Ms. Foster, that's your
22 proposal. Do you accept that amendment?

23 MS. FOSTER: I will accept the amendment of
24 "good faith" language. And on the other issue, I think
25 moving it up to Section IV is a separate issue. I mean,

1 are we dealing with that now, too? I would have an
2 objection to that. It sounds like we have two proposals
3 going.

4 MS. PODZIBA: I will ask them to vote
5 separately. Can I have a show of thumbs up and thumbs
6 down for these two paragraphs. Thumbs up and thumbs
7 down for these two paragraphs as amended. Okay.

8 There's a proposal to move these two
9 paragraphs to the section on Duration.

10 MR. SHURAVLOFF: Just a point of
11 clarification. Is that six more times or is that six
12 times including these two meetings?

13 MS. HENRIQUEZ: The reason I laugh is that a
14 conversation we had.

15 MS. PODZIBA: Unknown at this time, I think.

16 MS. HENRIQUEZ: However you want to do it.
17 When we did this in 2010, I think the six meetings were
18 after the charter, was it not? Could someone help me?
19 I thought we had six after because we did charter,
20 protocols, and -- does someone remember?

21 MR. SAWYERS: We had seven meetings, but we
22 agreed to six meetings. And that was the meeting that
23 was the protocols, and that was one of the problems we
24 had in the last part of it.

25 We had to hurry along because we spent so

1 much time on the protocols and the charter that we only
2 had four more meetings to finish up. So I suggest we
3 have six after the protocols.

4 MS. HENRIQUEZ: And the reason, we did have
5 three full working days each time we met to fulfill the
6 number. Thank you.

7 MS. PODZIBA: So I'd like some discussion
8 about the question of moving these two paragraphs to the
9 Duration section, which would then become Duration and
10 Meetings. And there would be three paragraphs under
11 that. So to pull those two concepts together. Any
12 discussion on that? Yes?

13 MR. ADAMS: We have already acted on
14 Section IV. We just acted on this section. Let's move
15 on.

16 MS. PODZIBA: I will take that as no need to
17 go forward on that.

18 We are on Section IX, which is "Compensation
19 for Services." In this instance, my read is that the
20 red and blue are the same except for the number of
21 tribal Committee members. Yes?

22 MR. SAWYERS: That's already been
23 determined. Let's look at what we have and recommend a
24 vote on it.

25 MS. PODZIBA: So 24 is the number. Is that

1 the proposal then, to go with 2003 (a) and (b)? Any
2 comments or questions about that?

3 Can I have a vote thumbs up, thumbs down on
4 the use of the red text for Compensation for Services.
5 Thumbs up, thumbs down. Everyone okay with that? All
6 right. Yes?

7 MR. SAWYERS: Just a comment. If there's no
8 thumbs down -- in other words, if there's no objection,
9 verbal or otherwise -- then it's passed. It doesn't
10 really matter the thumbs up or whatever. It's the
11 thumbs down that concerns me.

12 So if you have consensus -- which is one way
13 of saying we have consensus, we do promise that those
14 who don't agree, we will let you know.

15 MS. PODZIBA: Section 10, Financial and
16 Support Services. Again, the red and blue are the same.
17 Any discussion on either of those? Can I have a
18 proposal?

19 MR EVANS: Earl Evans. I propose that we
20 adopt the 2010, the blue.

21 MS. PODZIBA: Okay. Any discussion? All
22 right. Is there consensus on No. 10, the blue
23 paragraph? Can I see thumbs up, thumbs down. Okay.

24 And then our last section of the charter,
25 Statutory Authority. The blue adds "and Public Law

1 110-411, which is the 2008 -- it has the reorganization
2 in 2008.

3 Questions or comments? Do we have a
4 proposal from the floor? Yes?

5 MS. VOGEL: I would suggest that, because
6 not knowing whether -- well, we've alluded to 2014; we
7 know that reauthorization is going on -- we change this
8 to read, "This Negotiated Rulemaking Committee is
9 established pursuant to Public Law 104-330, as amended."

10 MS. PODZIBA: 101-648 is the Negotiated
11 Rulemaking Act. So your proposal removes that.

12 MS. VOGEL: I am striking -- at the end of
13 "Public Law 104-330, as amended," period.

14 MS. PODZIBA: Knowing that 101-648 is the
15 Negotiated Rulemaking Act, and 107-292 is the 2002 and
16 2008. Comments?

17 MS. VOGEL: Leave that in then.

18 MS. PODZIBA: Comments, questions, or
19 suggestions on that? Yes, Ms. Vogel?

20 MS. VOGEL: I'm new to this. What are the
21 numbered rules?

22 MS. PODZIBA: 107-292 is the NAHASDA
23 Reorganization Act of 2002. And 110-411 is the NAHASDA
24 Reorganization Act of 2008. And I think the idea is,
25 the change, "as amended," includes those in any future

1 NAHASDA reorganization act.

2 Shall we take a vote? Can I see thumbs up,
3 thumbs down on Section XI as amended.

4 Okay. I have got an objection. Ms. Foster?

5 MS. FOSTER: I would like to suggest, at the
6 end of 648, we also add "as amended," since that Act was
7 amended as adopted.

8 MS. PODZIBA: You accept that, "as amended"?
9 It looks like people are ready to take another vote.
10 Can I have a vote thumbs up, thumbs down on Section XI.

11 Okay. Congratulations. We have gotten
12 through the whole charter. Yes?

13 MS. HENRIQUEZ: One housekeeping thing.
14 When we looked at and voted on Compensation for Services
15 and Financial and Support Services -- so that's Section
16 IX and Section X -- I just want to put on the record
17 that we don't need to amend the language, but it's just
18 for travel expenses and per diem and expenses may not be
19 available for alternates if we can't get sufficient
20 notice, 10 days notice, prior to a HUD meeting. We just
21 need the administrative wherewithal to do this and to
22 make sure that the payments are going directly to the
23 right folks.

24 So just remember, if you designate an
25 alternate, to make sure that you speak with us about it

1 in sufficient time for travel reimbursement and all
2 those things.

3 MS. PODZIBA: Thank you. So what we will do
4 with the charter next is, we will get the copies out.
5 Did you have a comment?

6 MS. VOGEL: I just want to be really clear
7 with legal counsel in the room, because I am new to
8 this. Public Law 104-330 incorporates 101-648 and
9 107-292?

10 MS. HENRIQUEZ: Yes. There's a reference in
11 the original NAHASDA statute to the Negotiated
12 Rulemaking Act.

13 MS. PODZIBA: Okay. Thank you.

14 What we will do is, copies will be made of
15 the 2013 charter. You will have an opportunity to
16 review it, and then we'll come back and see if there's
17 anything else -- don't go yet. We still have time
18 today.

19 So the first question I have is, would you
20 like a clean version or would you like a clean version
21 and the track changes version so that you can compare
22 them? Yes, people do.

23 So I am told that the track changes version
24 and the clean version will be available at 7:00 p.m.
25 And where? On the table out front. So if you can, pick

1 one up this evening. Then our first order of business
2 tomorrow morning will be to just confirm that we got
3 everything right and make sure there's nothing else that
4 we have to go over, and we will again start right on the
5 protocols.

6 It's 4:30. We need to go to public comment.
7 Let me just finish then the summary of day one and the
8 plan for day two, and then we will go to public comment.

9 As I said, we finished the charter. We will
10 distribute those for you. And our first order of
11 business will be to review them and go over it and see
12 if there's anything new. And then we will begin our
13 discussion of the organizational protocols. And at the
14 end of the day, there will be the caucuses as well as
15 the election of tribal leadership.

16 MR. ADAMS: Is there a website with all
17 this? Is there also an opportunity for the facilitators
18 or whoever to e-mail the new charter that we all agreed
19 to, e-mail it to us electronically?

20 MS. PODZIBA: Sara, could you answer that
21 question? Can you e-mail?

22 MS. FIALA: I will e-mail all the Committee
23 members and I'll also post it on the website, and we
24 will do a quick run-through of that tomorrow.

25 MS. PODZIBA: Any comments from the

1 Committee members before we go to public comment? Okay.
2 Do we have a sign-up page? Do we have people signed up
3 for public comments?

4 MR. NICHOLS: C'mon up. State your name and
5 who you are. Raise your hand. We'll come to you.

6 MS. ZUNI: Good afternoon. Denise Zuni,
7 attorney for and representing the tribes of Acoma,
8 Isleta, Nambe, Ohkay, Owingeh, and Zuni.

9 I really appreciate the work that everyone
10 has done today. But what I was waiting for throughout
11 the meeting today is who of the Committee members are
12 the representatives of the tribes that are not in
13 attendance.

14 I was fortunate enough to speak with
15 Ms. Yazzie, and I asked her if she is the representative
16 for the New Mexico tribes. She told me she was. It's
17 not anywhere in the Federal Register, nor was it
18 discussed today.

19 And I am sure that many other tribes and
20 attorneys have that same question, and I think that it
21 should be clarified. It wasn't in the Federal Register.
22 I think it should be clarified in the protocols
23 somewhere. Thank you.

24 MR. NICHOLS: What is our protocol for
25 addressing public comments? Does anyone respond to that

1 or do we record that for a response?

2 MS. ZUNI: Can we make recommendations? My
3 question was, can we make recommendations? And if we
4 can, my recommendation is that we include it in the
5 section where we discussed Committee memberships.

6 MS. PODZIBA: Thank you for your comment.

7 MR. JACOBS: I would like to respond to the
8 question. Most of us are appointed not only by a tribe
9 but also an organization. And when we go back to the
10 tribe and to the organization, we share with the
11 organization of those tribes not represented here.

12 So there is an effort made in this process
13 to try to get information to all the tribes that do not
14 have a representative around the table.

15 MS. PODZIBA: Are there any other public
16 comments? I think, if not, then we can conclude for
17 today. Remember that you have 20 minutes today, so we
18 will bank them, perhaps for another meeting when we need
19 a little extra time.

20 But thank you very much for all of your hard
21 work today. We will reconvene tomorrow morning at 8:30.
22 See you then. Have a nice evening.

23 (WHEREUPON, the meeting adjourned at 4:40 p.m.)

24

25

