

1 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
2 INDIAN HOUSING BLOCK GRANT  
3 FORMULA NEGOTIATED RULEMAKING COMMITTEE

4

5 Tuesday, September 17, 2013

6 8:36 a.m.

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

2           MS. PODZIBA: We're just about ready to get  
3 started.

4           (Pause.)

5           MS. PODZIBA: Welcome back to everybody. We'll  
6 begin with the traditional opening. And Mr. Sawyers?  
7 I'll ask Mr. Sawyers if he will lead us in an opening  
8 prayer.

9           MR. SAWYERS: Thank you.

10           Our righteous and gentle Father in heaven, we meet  
11 today as a group united to work out problems, to help  
12 those folks who are needy back home. Help us, Father,  
13 that we may have the spirit of fellowship, cooperation.

14           Help us that we may do our best to represent the  
15 people that sent us here. Help us, Father, to remember  
16 the need above all else. Help us that we may strive to  
17 do thy will.

18           And Father, we're so grateful for all that we  
19 have, for this beautiful nation, for the freedoms we  
20 enjoy, for all those things that we receive each day at  
21 thy hand.

22           And again, we ask for thy blessing on this group

1 that we may fulfill the obligations that we have, that  
2 we fill the obligations are expected of us from the  
3 people who sent us. And we do it in the name of thy  
4 son, Jesus Christ. Amen.

5 MS. PODZIBA: Ms. Henriquez?

6 MS. HENRIQUEZ: Good morning, and welcome to  
7 Session 2. We're here for the next 3 days, and I want  
8 to welcome all of my fellow committee members. We  
9 trust you had safe travel. I want to recognize all of  
10 both your support staff and HUD support staff who are  
11 here, and I want to, of course, welcome all of you in  
12 the public who will be watching our proceedings for the  
13 next 3 days.

14 As you heard in the opening prayer, we're here  
15 about doing the people's work. It is serious business  
16 to all of us who come collectively in good faith to do  
17 this work. We are a group of reasonable people, and at  
18 times we may have reasonable disagreements, but it's  
19 always in furtherance of the goal, which is to work on  
20 this Formula Negotiated Rulemaking Committee and to do  
21 our best work for the people whom you all represent.

22 Thanks for your patience with us, for our patience

1 with each other, and I think that these next 3 days  
2 will be extremely productive. And as you know, the  
3 Federal budget issues still loom, and I want to make  
4 sure that we are as productive and get as much done in  
5 the next few days because it's not clear when we will  
6 be able to reconvene given the Congress has yet to pass  
7 the 2014 budget.

8 So, with that, to all of my colleagues in the room  
9 and all of the people who are here keeping our feet to  
10 the fire, thank you very much, and let's get started.

11 MS. PODZIBA: Mr. Boyd? I think that the next  
12 order of business is approval of the facilitators.

13 MR. BOYD: So I think at the beginning of each  
14 meeting in the last negotiated rulemaking session we  
15 had a number of years ago, we did ask for the  
16 committee's approval of the facilitators. So I would  
17 call the question.

18 Is there any -- I guess we don't really have to  
19 vote, but I think if anybody does have a problem,  
20 please let us know.

21 (No response.)

22 MR. BOYD: So I will take your silence as

1 approval. Thank you.

2 MS. PODZIBA: Thank you. And once again, Steve  
3 and I feel privileged to try to assist you in these  
4 efforts.

5 The next order of business is the review and  
6 approval of the minutes from the first session. The  
7 draft of those was posted to the IHBG Web site under  
8 the member section. So I hope that you had a chance to  
9 see them. I believe they've already been handed out.

10 Those minutes are a summary of the meeting. They  
11 essentially show reasons for each key discussion point,  
12 as well as items that were not agreed to. In some  
13 ways, you can think of them as the Cliff Notes to the  
14 couple hundred page transcript of the meeting.

15 I ask is there -- is there any objection to  
16 approving the minutes from the last meeting?

17 (No response.)

18 MS. PODZIBA: Okay. There being none, those will  
19 be marked as final and will be posted to the public  
20 section of the Web site.

21 Thank you.

22 Okay. I'm not, even as we get started -- could

1 everyone please identify themselves before they make a  
2 comment so that the transcript will be clear about who  
3 is speaking at the time.

4 The next order of business is the review of the  
5 proposed agenda. As you can see, the agenda, as  
6 drafted, puts forward a set of presentations this  
7 morning on the historical overview of the IHBG funding  
8 program, as well as the funding formula with time aside  
9 for questions, and then a continuation of the  
10 development of the protocols.

11 At the end of the day, we've got the co-chair  
12 selections, the summary of the day and the plans for  
13 the second day, and public comment at 4:30 p.m., as  
14 we'll do on each day of the meeting.

15 The second day has us moving to identification of  
16 issues for discussion and then actual discussion of the  
17 issues, and that leads into day three. At the end of  
18 the meeting, there'd be logistics for future meetings,  
19 next steps, public comments, closing remarks, and  
20 closing prayer.

21 Is there any discussion of the proposed agenda?

22 Ms. Gore?

1 MS. GORE: Carol Gore, Cook Inlet. I really look  
2 forward to the presentations that HUD has prepared and  
3 think they are going to be very helpful for the  
4 committee. As a committee member, I feel some urgency  
5 to get on with our work before we proceed to what feels  
6 like a next step.

7 And so, I'm just posing the question to other  
8 committee members as to whether or not we might  
9 consider just jumping into the work of the day, getting  
10 that behind us, before we jump into presentations that  
11 will get us launched to the next step. So I'm making a  
12 proposal that we do the protocols first, and we  
13 schedule the presentations immediately following that.

14 It's just a change of order. It's not a change of  
15 business for the committee to consider.

16 Thank you.

17 MS. PODZIBA: And would you like me to call the  
18 question, or would you like to hear some discussion of  
19 the proposals?

20 MS. GORE: I think I'd like to hear some  
21 discussion, and if there's opposition to that, I'm just  
22 making a suggestion, not calling for a vote. But I'd

1 like to know what the sense of the committee is and  
2 whether or not there are others that would really like  
3 to get on with the work that we are sent here to do.

4 Thank you.

5 MS. PODZIBA: Yes?

6 MS. YAZZIE: Aneva Yazzie, Navajo. I would agree  
7 with my colleague Carol Gore.

8 You know, at the last session that we had, there  
9 was even some thought of working through midnight to  
10 get our work done. So I would agree that if we can  
11 focus on the matter at hand, and then as time is  
12 available towards the end of the session --  
13 presentations, I think, are good and they're  
14 informative, but I would agree that we should get into  
15 the business and get into protocols.

16 Thank you.

17 MS. PODZIBA: Are there other comments?

18 (No response.)

19 MS. PODZIBA: Okay. I will then call the  
20 question. The proposal is to move the presentations  
21 until after the protocols. And can I just show -- can  
22 I just have hands if there's objections to the

1 proposal? Are there any objections? Is that an  
2 objection?

3 MS. VOGEL: I wouldn't say it's an objection. I -  
4 - I guess I was looking forward to hearing the  
5 presentations since it's my first time here, and it  
6 would be helpful to help frame our work. So, and there  
7 must be a reason why HUD felt it was important to put  
8 it on the agenda. So I guess I was looking forward to  
9 hearing the presentations and giving me guidance as we  
10 move through.

11 Thank you.

12 MS. PODZIBA: Ms. Gore?

13 MS. GORE: I agree with Ms. Vogel, and I think it  
14 will be very helpful to all the committee members,  
15 including me. I'm just simply suggesting that we  
16 complete our work first and then get on to the next  
17 stage of work. I don't know that the presentations  
18 will help us get through the protocols, that it will  
19 inform that work.

20 So I would ask Ms. Vogel if that's acceptable to  
21 certainly continue the presentations -- I think they're  
22 really critical to our work -- but to change just the

1 order of our business.

2 Thank you.

3 MS. PODZIBA: Yes?

4 MS. VOGEL: Sharon Vogel. I guess I would like to  
5 hear from HUD as to why they felt it was important that  
6 we do this work first and respect their -- their  
7 decision to put it on the agenda.

8 Thank you.

9 MS. HENRIQUEZ: I'm Sandra Henriquez from HUD.

10 Given how we ended last session, we thought that  
11 this might be an opportunity to spend some time in  
12 presentations doing historical overview, how we got  
13 from there to here, as a way for people who are new to  
14 the formula negotiated rulemaking to understand the  
15 history and what it took, what happened, what's on the  
16 record, et cetera.

17 From HUD's perspective, it is really simply that,  
18 a presentation for background so that we're all used to  
19 the same terms, the same understandings of how we got  
20 to where we are. But it is our position, if you will,  
21 that the committee should decide how it wants to  
22 proceed. Our role in the presentations is simply for

1 information only, and we will do whatever the committee  
2 -- whatever the committee's pleasure is in terms of the  
3 agenda.

4 MS. PODZIBA: Is there further discussion?

5 (No response.)

6 MS. PODZIBA: Okay. I will call the question. Is  
7 there any objections to moving the presentations to  
8 after the protocols?

9 (No response.)

10 MS. PODZIBA: Seeing no objections, then we will  
11 accept the proposal of Ms. Gore, which I think means  
12 that we go right into the protocols.

13 MALE SPEAKER: Right.

14 MS. PODZIBA: Okay. So we will pick up where we  
15 left off. At the last meeting, we had just completed  
16 working groups. So we'll move to Number 5, Agreement,  
17 which is on page 5 -- oh, sorry, page 7 of your  
18 document.

19 Okay. As we look at the first item (a) Product of  
20 Negotiations, you may want to have your copy of the  
21 charter handy because at least one of the proposals  
22 references the Section II, Purpose, of the charter.

1           So Agreement, this is a section that we have not  
2 spoken about at all. We'll go through the remaining  
3 issues, and then we'll double back to the outstanding  
4 issues.

5           So we were advised -- Steve and I were advised to  
6 take fewer amendments to each proposal. So that's the  
7 way we'll proceed. We'll call the question earlier  
8 than we did last time. We'll take a proposal, one or  
9 possibly two amendments, and then we'll call the  
10 question.

11          I would also suggest or propose to you rather than  
12 asking for a vote that we just ask if there are any  
13 objections to the proposal and then have people either  
14 raise their hand or thumbs down, but somehow clearly  
15 indicate that there is an objection. And that way, it  
16 will be clear to us up here how much objection there  
17 is, and we'll be able to -- instead of having to look  
18 around to see where everyone's thumb may or may not be.

19           Yes?

20          MR. REED: I'm -- I'm lost. Which document are we  
21 in?

22          MS. PODZIBA: All right. So we're in the document

1 that's red and blue. It's the committee's  
2 organizational protocols that has the 2003 in red and  
3 2010 in blue. Do you have that document? We're on  
4 page 7 of that.

5 And then I would also suggest having attached to  
6 the minutes was the approved agenda. So we have that  
7 nearby so that you may want to look at the purpose,  
8 which is Section II in the charter, as we discuss the  
9 product of negotiations.

10 Okay. Are we all have -- are we all on the same  
11 page? It's like right (inaudible). Yes?

12 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
13 It's my understanding that we do have an issue out  
14 there that is unresolved with the consensus issue. In  
15 my opinion, I believe that we probably need to address  
16 that before we go any further with our document.

17 MS. PODZIBA: I would just say that we had that  
18 discussion at the last meeting and decided to keep  
19 going forward through the document and set that aside  
20 so that we did do additional items. But I will open  
21 that question for discussion by the committee.

22 Mr. Adams?

1 MR. ADAMS: Well, I understood that was the --  
2 Jason Adams, Salish Kootenai. Sorry. Over here today,  
3 I'm the other Jason.

4 So as far as the work from last meeting, I thought  
5 that was just for that meeting that we were putting it  
6 off. I would hope that we would address that at the  
7 beginning of this meeting so we can get past that and  
8 then finish the document. That's my hope.

9 MS. PODZIBA: I see a lot of us nodding. Is it  
10 the sense of the committee -- is it the will of the  
11 committee that we begin with consensus? There is a  
12 question on the table. Yes?

13 MS. VOGEL: Sharon Vogel, Cheyenne River. I think  
14 if we're going to go back, then we need to go back to  
15 constituents' interests because that was one that was  
16 unresolved, too. Correct?

17 So do we start with that and move forward, or is  
18 that not as important?

19 MS. PODZIBA: The amendment to the proposal is to  
20 begin with the outstanding issues, and the first one  
21 would be constituents' interests.

22 Mr. Dollarhide, would you accept that amendment to

1 your proposal?

2 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.

3 I don't have any issue with that now.

4 MS. PODZIBA: Okay. So the proposal then is to  
5 begin with the outstanding issues, the first of which  
6 is constituents' interests. Is there any objection to  
7 doing so?

8 (No response.)

9 MS. PODZIBA: Okay. Seeing none, we'll then turn  
10 ourselves back to page 2, and that is 1 -- in Section  
11 1, Participation, letter (c) Constituents' Interests.

12 Christine, could you back up to that? Oh, you  
13 have it. Okay.

14 And so, what you have on this screen is exactly  
15 what's on your paper. And on this screen, you see some  
16 of the proposals that were discussed at the last  
17 meeting.

18 Ms. Henriquez, did you want to open up this  
19 discussion? I believe there was a question to HUD  
20 about what representations -- about who the committee  
21 members were representing.

22 MS. HENRIQUEZ: Yes, but I'd like to turn to Aaron

1 Santa Anna to do the explanation. Thank you.

2 MS. PODZIBA: Okay.

3 MR. SANTA ANNA: Thank you. Aaron Santa Anna,  
4 HUD.

5 We have had the opportunity to look at the issue  
6 of representation in some detail and believe that each  
7 member represents their tribe and the interests of the  
8 tribal nations generally. We reached this conclusion  
9 based on a number of factors, one of which is the fact  
10 that, you know, when HUD selected members, we did it  
11 based on a lot of characteristics that we were required  
12 to do statutorily. But it was not based on anything  
13 other than looking at individuals' characteristics.

14 Additionally, we considered the fact that it's  
15 government-to-government negotiation. Each individual  
16 here represents their unique tribe, and we have equal  
17 footing, relationship with them.

18 And so, that's really what we kind of look at in  
19 terms of relationship, in terms of what who's -- what  
20 the representation is.

21 MS. PODZIBA: Okay. I'll open the floor for  
22 discussion and comment on the issue of constituents'

1 interests? Ms. Vogel?

2 MS. VOGEL: Sharon Vogel, Cheyenne River. I  
3 propose that we accept the language in the 2010.

4 MS. PODZIBA: The 2010 version. "Constituents'  
5 interest. Committee members are expected to represent  
6 the concerns and interests of their constituents."

7 Is there any discussion of that proposal?

8 (No response.)

9 MS. PODZIBA: Is there any objection to adopting  
10 of Number 1(c), as written in 2010?

11 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
12 And just to make sure I'm on the correct place here, I  
13 am under constituents' interests, and you're proposing  
14 the one in the blue over the one in the red? I guess  
15 my question would have to be what is wrong with "or  
16 their alternates" being included in that -- in that  
17 sentence?

18 MS. VOGEL: Sharon Vogel. It makes no difference.  
19 If you want to go with the red, then I change to go  
20 with the red, if that's more acceptable.

21 MS. PODZIBA: The proposal reads in regards to --  
22 Ms. Bryan, do you have a comment?

1 MS. BRYAN: Annette Bryan, Puyallup Tribe. I was  
2 just wondering if you can explain the difference  
3 between 2003 and 2010 before we move forward with one  
4 or the other and why it was removed from maybe one year  
5 from the next?

6 MS. PODZIBA: Mr. Adams?

7 MR. ADAMS: My recollection -- Jason Adams, Salish  
8 Kootenai -- is that right above this, on (b), we define  
9 designated alternates. And basically, when you're an  
10 alternate at the table, you are a committee member. So  
11 we just eliminated that language from the (c) in the  
12 2010.

13 MS. PODZIBA: So where are we now? The revised  
14 proposal is to go with 2003, which includes alternates.  
15 Mr. Dollarhide?

16 MR. DOLLARHIDE: Jason Dollarhide. If the  
17 committee doesn't have an issue, I can withdraw that.

18 MS. PODZIBA: All right. Ms. Vogel, are you okay  
19 with your original proposal?

20 MS. VOGEL: Sharon Vogel. That's fine.

21 MS. PODZIBA: Okay. So the proposal on the table  
22 is the 2010 version, which is blue on your paper.

1 "Committee members are expected to represent the  
2 concerns and interests of their constituents."

3 Is there any objection?

4 (No response.)

5 MS. PODZIBA: Okay. Then we've got agreement on  
6 1(c), the first of our outstanding issues. May that be  
7 our -- the beginning of a good day.

8 (Laughter.)

9 MS. PODZIBA: As I ask you move to our second  
10 outstanding issue, which is Number 3, Decisionmaking.  
11 It is on page 5. Just a second, Christine will scroll  
12 up to that for us, and we will start with letter (a)  
13 Consensus.

14 I will open the floor for discussion. Yes?

15 MS. DIFUNTORUM: Hi. Sami Jo Difuntorum,  
16 Confederated Tribes of Siletz. I have a question, and  
17 it's actually for the Federal officials at the table.

18 So regardless of the decisionmaking process, if we  
19 have a proposal on the table, for instance, and it  
20 doesn't reach consensus, what does that mean about the  
21 existing rule? Because one school of thinking would be  
22 that you no longer have consensus for the rule that's

1 in place.

2 So if there isn't consensus on a proposal, what  
3 happens to the existing rule if the amendment would  
4 have changed? Does that make sense?

5 (Pause.)

6 MS. HENRIQUEZ: I'm getting better at this. I  
7 just got confirmation. As we understand, it stays the  
8 same because the default position always is if you  
9 can't reach consensus then to change something, that by  
10 consensus -- I'm sorry, that you default to a consensus  
11 of what was there before.

12 MS. PODZIBA: Did that clarify -- do you have a  
13 follow-up question?

14 MS. DIFUNTORUM: It clarifies it, thank you. I'm  
15 not sure that I'm 100 percent in agreement with that,  
16 but I need to ponder it a little bit further.

17 MS. PODZIBA: So if the consensus is to change  
18 something and if there is no consensus to change it, it  
19 doesn't get changed. That's how I understand it.

20 Okay. Going forward for a discussion of (a)  
21 Consensus. Yes, Mr. Sawyers?

22 MR. SAWYERS: This is a new negotiation. I'm not

1 comfortable either with saying that it doesn't pass,  
2 that we -- if it doesn't change that we fall back on  
3 last year's, the last time's negotiation. I think that  
4 we need to think about that a little bit.

5 MS. PODZIBA: Okay. Could you clarify is your  
6 question about -- I think the previous question was  
7 about the current regulations that HUD has. Yes. Is  
8 that your --

9 MR. SAWYERS: When you get old, you don't do a  
10 really good job. So what I'm saying is I'm not sure  
11 that I agree that if we fail to get consensus this  
12 time, it falls back to what we already have negotiated  
13 before. This is a new negotiation.

14 So I think we ought to discuss that just a little  
15 bit more.

16 MS. PODZIBA: Yes, Ms. Foster?

17 MS. FOSTER: Good morning. Karin Foster, Yakama  
18 Nation Housing Authority. I think it would be great if  
19 we could fall back to what we had before, but I don't  
20 even think we would end up doing that if we didn't  
21 reach consensus on something today.

22 I think what we would fall back to is the statute,

1 the Negotiated Rulemaking Act, you know, which is just  
2 strictly unanimous unless we agree otherwise. I  
3 believe that the act allows us to do otherwise if we  
4 choose. But if we don't choose to, then we've got the  
5 statute really by default, and there's no way around  
6 that, I don't think.

7 MS. PODZIBA: Okay. I'm sorry. I'm confused. So  
8 I just need a clarifying question.

9 I think you're referring to the definition of  
10 consensus. I understood the original question was the  
11 existing regulations that entailed NAHASDA. Was that  
12 the original question? Then I think Mr. Sawyers'  
13 comment related to the current regulatory system.

14 MS. DIFUNTORUM: Sami Jo Difuntorum, Confederated  
15 Tribes of Siletz. That is correct because I think that  
16 probably affects how people feel about a consensus to  
17 some extent.

18 During the last formula rulemaking, the Federal  
19 officials' position was if there wasn't consensus on a  
20 proposal -- pardon me, on a proposal, then nothing  
21 changed, and the current rule stood. And I'm not 100  
22 percent sure that I agree with that, but I don't know

1 that I have to agree with that. It's the Federal  
2 officials' decision, I believe.

3 So I was just asking for clarification if that was  
4 the position that you had this time as well?

5 MS. HENRIQUEZ: It is the position. Understand  
6 that these are -- while we are looking at regulatory  
7 issues, it's embedded in the statute. And so, unless  
8 the statute changes or we do something here by  
9 consensus to change the statute -- or to change the  
10 regulation, the statute then overrides. I think that's  
11 how it is. I'm not an attorney.

12 I'm like Jack. I'm old. So I don't always get it  
13 straight.

14 MS. PODZIBA: Okay. Further discussion? Yes, Ms.  
15 Yazzie?

16 MS. YAZZIE: Aneva Yazzie, Navajo. You know, I'm  
17 new on the committee, and I'm really looking at the  
18 veterans of the committee, members that have  
19 participated even in the 2003 and the 2010  
20 negotiations. And I would imagine that this same issue  
21 came up with respect to consensus.

22 And I want to rely on the judgment of the

1 committee members back then with those decisions that  
2 was now brought forward, and so in the interests of our  
3 people that we represent and getting the work done, I  
4 want to propose to the committee the 2010 version of  
5 the definition of consensus -- not definition, but the  
6 narrative on consensus in the charter.

7 MS. PODZIBA: Okay. Is there discussion of the  
8 proposal? (Inaudible.)

9 MS. YAZZIE: Look at the other one.

10 MS. PODZIBA: Okay. Let's all look at this one.

11 "Consensus. All decisions of the committee shall be  
12 made by consensus. Subject to Article 6(b) of these  
13 protocols, consensus means unanimous agreement as shown  
14 by an absence of expressed objection by any committee  
15 member present at the committee meeting with regard to  
16 a particular issue."

17 Yes, Ms. Vogel?

18 MS. VOGEL: Sharon Vogel, Cheyenne River. I just  
19 want a clarification. If that was disapproved at the  
20 previous meeting, does that mean that we can bring back  
21 up all the discussion that we had last time.

22 MS. PODZIBA: Ms. Yazzie?

1 MS. YAZZIE: Aneva Yazzie, Navajo. I think at the  
2 last meeting, it really -- we never reached a decision.

3 So I don't know that it was -- it's true that we  
4 disagreed with anything. We tabled it and then moved  
5 on with other discussions, as I recall.

6 MS. PODZIBA: Further discussion?

7 (No response.)

8 MS. PODZIBA: Okay. I will call the question. If  
9 there is not -- if there's not further discussion, I'll  
10 call the question. Is there any objection to accepting  
11 the proposal, which is the 2010 version of consensus  
12 for the protocols? Is there any objection?

13 (Show of hands.)

14 MS. PODZIBA: I see one. If you object to that, I  
15 just want to see your hand. So there is one objection.

16 Ms. Vogel, can you explain your objection to the  
17 committee?

18 MS. VOGEL: I do have some -- two proposals. If  
19 one fails, I'd like to offer the other.

20 MS. PODZIBA: Okay.

21 MS. VOGEL: So the correction is it's a major  
22 proposal that clarifies the consensus. It offers

1 another option -- yes?

2 MS. PODZIBA: Okay. So the proposal was not  
3 approved by the committee. We'll now entertain the  
4 second proposal, a new proposal. Is that correct?

5 MS. VOGEL: Correct. And it's not -- it's  
6 modified from what was approved from the previous  
7 meeting because it was my understanding that I have to  
8 come forward with a new proposal, that what I proposed  
9 previously, because it was voted down, could not be  
10 brought forward again.

11 MS. PODZIBA: Yes, Ms. Gore?

12 MS. GORE: Carol Gore, Cook Inlet. I'd just like  
13 to ask a procedural question then and look to maybe the  
14 other older member of the committee, Jason, to help me  
15 out here. But in prior negotiated rulemaking  
16 committees -- and I recognize those practices do not  
17 have to transfer to this committee. So I'm  
18 acknowledging that.

19 But when there was an objection, the committee  
20 asked the objector to explain their opposition. And in  
21 this case, the objector is providing a new proposal.  
22 I'd really like to better understand. And so, I don't

1 know, Jason, if maybe my recollection is fuzzy. I'm a  
2 little bit older than you. But I would really  
3 appreciate having a better understanding of the  
4 objection.

5 Thank you.

6 MS. PODZIBA: Okay. Ms. Vogel, could you provide  
7 that explanation?

8 MS. VOGEL: Sharon Vogel, Cheyenne River. I have  
9 no problem with that as long as if it applies to me, it  
10 applies to all throughout the entire session. Correct?

11 As many of you know, Mr. Wayne Ducheneaux was  
12 recognized at the first meeting as not being here, and  
13 many of you may not know that Mr. Ducheneaux was my  
14 mentor. And I recall his frustrations of unanimous  
15 consensus, and one of the last conversations I had with  
16 Mr. Ducheneaux was for me to get -- hopefully that I  
17 would get appointed to the committee, and thankfully, I  
18 was. But for me to be very active in trying to  
19 convince people that unanimous consensus did not work.

20 And he also appealed to the veterans. He said  
21 they will remember how this did not work. So maybe the  
22 veterans here have a different opinion from Mr.

1 Ducheneaux. But there was not always unanimous  
2 consensus at times that a good proposal was put  
3 forward, and I think the term was I was reminded of  
4 "trading horses." Well, as you know, Mr. Ducheneaux  
5 was an excellent horse trader, and he brought good  
6 horses to the table, and they were never received in  
7 the manner in which they were brought.

8 So I, too, am carrying forward that for Region 3,  
9 but I think it's important that we do this work and not  
10 rely back on tradition, that sometimes it's good to  
11 look at a new way of doing business. And I'm so glad  
12 that there was the word the "people's business," and  
13 this is just my proposal to do the people's business.

14 Thank you.

15 MS. PODZIBA: Thank you.

16 MS. GORE: That's very helpful, and I appreciate  
17 that. I don't happen to share that recollection and  
18 remember Mr. Ducheneaux very, very well with lots of  
19 respect.

20 I know he brought horses. We all brought horses.

21 And that as I recall, there was 90 percent consensus  
22 at our last negotiated rulemaking, and I think that's a

1 pretty good record. So I -- I am pleased to hear from  
2 you, what -- what your position is. It's very helpful  
3 to me to better understand it. I thank you.

4 MS. PODZIBA: Is there further discussion while we  
5 wait for the proposal? Would any of the other veterans  
6 like to talk to the question of the use of consensus,  
7 its appeal and its limitations?

8 Yes, Mr. Reed?

9 MR. REED: Mike Reed, Cocopah. I remember a lot  
10 of frustration because every time we came up with a new  
11 idea, somebody did a run, and that run affected the  
12 dollar amounts for the tribes. So a lot of times I  
13 felt a lot of frustration from especially for the small  
14 tribes. Although they ended up doubling their money, I  
15 don't think they're even close to having sufficient  
16 funds to operate their operations.

17 I don't know how consensus is going to work this  
18 time, but it's very, very difficult to find consensus  
19 between the large, the medium, and small tribes when it  
20 comes to dollars, and we all can understand that. I  
21 think there may be a way of changing the formula that  
22 includes future dollars so that that doesn't impact the

1 current plans and dollars each tribe has now. And when  
2 we get to that point, maybe we can talk about it. But  
3 I, too, found a lot of frustration.

4 MS. PODZIBA: Yes, Mr. Sawyers?

5 MR. SAWYERS: My frustration is that if we don't  
6 do something different than we have previous negotiated  
7 rulemaking processes, we're not going to effect any  
8 change because we've had several years with the budgets  
9 we have and so on, and I think that we really need to  
10 look at a different way. I really think that if --  
11 you'll all agree that if we don't change consensus  
12 some, we're not going to effect very much change.

13 MS. PODZIBA: Are you ready? Ms. Vogel, I would  
14 ask you to present the proposal that's now up on the  
15 screen in red.

16 MS. VOGEL: Sharon Vogel, Cheyenne River. For the  
17 committee's consideration, I am presenting an  
18 alternative.

19 After the last committee meeting, I went back to  
20 our region, and we gathered in Bismarck. And I asked  
21 them to help me develop a proposal that I could bring  
22 forward that would demonstrate good faith. And that

1 was our goal is to present this to you with nothing  
2 more than good faith negotiating, and please take it in  
3 that spirit.

4 The proposal that I'm putting forward to you  
5 reads, "A consensus decision or agreement does not  
6 require (inaudible) unanimity, an outcome toward which  
7 all group members hold identical opinions and views  
8 concerning issues and questions, their and other  
9 interests in proposed solution, or the final agreement.

10 Participants of consensus do not have to feel equally  
11 strong about or have the same degree of enthusiasm for  
12 a specific outcome or its component parts.

13 "Reaching a consensus decision requires each  
14 member to accept a proposal, decision, or agreement as  
15 a whole. They do not have to equally support all of  
16 its component parts. They must concur that it is the  
17 best solution possible for the issues in question.

18 "General consensus. All decisions of the  
19 committee shall be made by general consensus, subject  
20 to Article 6(b) of these protocols. General consensus  
21 means first attempting to reach unanimous consensus.  
22 But if that is unsuccessful, then any two or more

1 members of the committee may ask for a vote to  
2 determine the decision.

3 "Approval of the question or issue will be  
4 considered to have been achieved when it is supported  
5 and ratified by recorded roll call vote by at least 17  
6 committee members."

7 For your consideration, thank you.

8 MS. PODZIBA: Any discussion?

9 (No response.)

10 MS. PODZIBA: Okay. I will then call the  
11 question. Is there any objection to accepting this  
12 proposal for the committee? Ms. Henriquez?

13 MS. HENRIQUEZ: I would like to offer an amendment  
14 to that proposal. Since HUD is promulgating the rule,  
15 et cetera, would ask that the acceptance of an  
16 amendments with the last sentence reads -- well, "been  
17 achieved when it is supported and ratified by recorded  
18 roll call vote by HUD and at least 17 committee  
19 members."

20 And then --

21 (Pause.)

22 MS. PODZIBA: Any questions?

1 MS. HENRIQUEZ: I wonder if that's acceptable as  
2 an amendment?

3 MS. PODZIBA: Is that acceptable, Ms. Vogel?

4 MS. VOGEL: Sharon Vogel, Cheyenne River. Yes,  
5 that's acceptable.

6 MS. HENRIQUEZ: Thank you.

7 MS. PODZIBA: Is there any further discussion of  
8 this proposal?

9 (No response.)

10 MS. PODZIBA: Okay. I will then call the  
11 question. Is there any objection to adopting this  
12 proposal for the committee protocols?

13 (Show of hands.)

14 MS. PODZIBA: Okay. I'm counting about 10, at  
15 least 10. Okay. The proposal does not pass.

16 I will entertain new -- additional proposals, any  
17 proposals. Yes, Mr. Adams?

18 MR. ADAMS: I guess I -- this is Jason Adams,  
19 Salish Kootenai. In the last discussion we had, the  
20 question was asked if somebody disagrees that they  
21 would say why. We just had a call for a question on  
22 this. There was disagreement. I want to know why.

1 MS. PODZIBA: Thank you. Okay. I think there are  
2 about 10. I didn't do a complete count. Would someone  
3 who objected to this proposal -- could someone who  
4 objected to this proposal please share their reasons  
5 for doing so?

6 MS. VOGEL: Can I have a clarification? This is  
7 Sharon Vogel, Cheyenne River.

8 Each person -- remember I said we started that it  
9 applied to everyone. I was the only objector, and if  
10 you're going to apply it to me, then I think you apply  
11 it to every objection vote.

12 MS. PODZIBA: There's a process question. Does  
13 everybody need to explain their "why" to every  
14 objection? I think it will get cumbersome. But why  
15 don't we at least get started and hear some of the  
16 reasons for the objection. Mr. Adams?

17 MS. GORE: Madam Chairman?

18 MS. PODZIBA: Yes, Ms. Gore?

19 MS. GORE: Carol Gore, Cook Inlet. I'm happy to  
20 start. This proposal is not significantly different  
21 from one of the proposals that we considered last time,  
22 which was two-thirds. This is simply a number instead

1 of two-thirds.

2 This proposal also references what was proposed as  
3 a precedent to tribal negotiated rulemaking. I've read  
4 that entire rulemaking, and this proposal is selective  
5 in its presentation of some of that language.

6 There are I would say several things about that  
7 precedent that are substantially different, one of  
8 which is the membership of that committee was really  
9 three general areas of interest: the Federal  
10 Government, tribes, and oil interests. That is  
11 significantly different from the makeup of this  
12 committee, which represents -- well, we just went over  
13 constituents' interests. There are 25 of us, and if we  
14 exclude HUD, then that is 23, at least, interests at  
15 this table.

16 I would also say that in reading the precedent  
17 document, it refers specifically to the idea that the  
18 government-to-government relationship of that  
19 negotiation is separate and independent of that  
20 negotiation. This is a government-to-government  
21 negotiation, and in that sense, it is also different.

22 I think that expresses at least some of my reasons

1 for opposing the proposal. Thank you.

2 MS. PODZIBA: Would any of the others who  
3 dissented care to share their reason?

4 Yes, Ms. Yazzie?

5 MS. YAZZIE: Aneva Yazzie, Navajo. I would agree  
6 with my colleague in large part -- Ms. Gore. But  
7 additionally, being new as well and not knowing how  
8 negotiations are going to fare, it is a significant, I  
9 guess, change to how previous negotiated rulemakings  
10 occurred.

11 Now I understand this is a totally new negotiation  
12 for the formula, and I think with respect to how prior  
13 negotiations have occurred that the previous proposal  
14 that I made to the committee would still suffice in  
15 terms of those types of understandings and trying to  
16 reach consensus for if there is a change to the  
17 formula, that there's still that opportunity using the  
18 process.

19 I'm just leery to try to change something  
20 significantly when this has worked in prior years and  
21 with respect to consensus. Now we will get to the  
22 aspects of the formula as we get past this part of the

1 protocols, and there is where we can certainly talk  
2 about potential changes that is the concurrence of the  
3 members. But I think we're just complicating this  
4 process of definition at this point, at least for me.

5 I don't know that I totally understand the general  
6 consensus, and I would agree to say, for example, if  
7 there was an issue with HUD not looking at -- or they  
8 were over-voted each and every time. It really does  
9 then -- it does not end in a true government-to-  
10 government consultation if they're going to be outvoted  
11 each and every time.

12 And I'd just -- you know, and then for other  
13 members, I guess, at this point with a majority vote  
14 type system.

15 Thank you.

16 MS. PODZIBA: Thank you. Others? Ms. Cloud?

17 MS. CLOUD: I would like to agree with Mrs. Gore.  
18 Heather Cloud, Ho-Chunk Nation.

19 The number 17 out of how many committee members,  
20 that kind of just getting around a fraction, and I  
21 guess I would like to know how did you come to that  
22 magic number, 17? And also ratified and recorded roll

1 call voted by HUD and at least 17 committee members.

2 I sincerely don't mean any disrespect, but with  
3 NAHASDA, I thought it was a self-determination act, so  
4 I guess I would like to see the committee members and  
5 the tribes being represented on their proposals to HUD,  
6 if that makes sense. I'm not old, but I don't put it  
7 out there correctly all the time.

8 MS. PODZIBA: Thank you. Any other explanation of  
9 objection? Mr. Evans?

10 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
11 Tribe. First of all, I do want to commend Ms. Vogel  
12 for making an earnest effort to come up with what she  
13 believes to be a viable alternative for consensus  
14 negotiation. But there are a couple of things or  
15 several things that, in addition to what's already been  
16 said, I noticed when taking a look at the model that  
17 was proposed as an example.

18 And one of the things that I noticed about that  
19 Indian oil evaluation negotiation document was that it  
20 was more protective of consensus or the attempt to  
21 achieve consensus than what the proposal appears to be.

22 Based on the way I read the proposal, it appeared to

1 say that something to the effect of that two committee  
2 members alone could force a move for unanimous consent  
3 on any issue by demanding a vote or a majority vote.

4 So that then says to me that you're leaving it up  
5 to two committee members, if I'm reading that  
6 correctly. It appears to me to say that two committee  
7 members alone can hold the rest of the committee at  
8 bay, if you will, to require some other vote other than  
9 consensus. Whereas, in the oil evaluation document, I  
10 believe there was a substantially larger number  
11 required to do that.

12 And then the other thing that I noticed on the  
13 document was that there was mentioned about the tribes  
14 in Region 3 all being in favor of that adopted  
15 proposal. And when I looked at the suggestion to adopt  
16 a majority vote or a two-third majority vote, the first  
17 thing I saw based on the objections expressed is that  
18 we already seemed to have a greater than two-third  
19 majority that disagreed with going with the different  
20 method other than consensus.

21 So if the tribes in that region are in agreement  
22 that the majority should determine something in any

1 instance, then I'm curious as to whether it makes a  
2 difference to the tribes who adopted or who expressed  
3 agreement to that alternative proposal that it appears  
4 that it's the majority of the committee that seems to  
5 be in favor of consensus. And does that make a  
6 difference, considering the fact that those tribes are  
7 in favor of the majority ruling as opposed to  
8 consensus?

9 And then, finally, when I look at the Federal  
10 Register notice, it appears that we all agree that  
11 based on the way HUD defined our constituents'  
12 interests that we represent our tribes. And other than  
13 that, we're here to represent small, medium, and large  
14 geographically diverse tribes in general.

15 And I think that that being said, for us to go to  
16 some other alternative wherein we're forced to preclude  
17 the opinions or the expressed participation of a  
18 certain number of members who have an expressed  
19 objection, I think it then cuts those people off from  
20 participation for their constituency.

21 Thank you.

22 MS. PODZIBA: Ms. Vogel, would you like to respond

1 to the reasons for the objection?

2 MS. VOGEL: The -- I'm trying to take my notes  
3 here. Sharon Vogel, Cheyenne River.

4 In reference to the number 17, it represents two-  
5 thirds. And there was a change. I thought about  
6 accountability, and that's why I had added the recorded  
7 roll call vote. I just felt that, you know, if there's  
8 going to be objections, then we should have that roll  
9 call vote so that it's a matter of record. And so,  
10 that wasn't in the last proposal.

11 The number 17 really represents two-thirds vote.  
12 I thought that rather than two-thirds, if I clarified  
13 that, and we could say two-thirds after 17, but it was  
14 really to represent a supermajority vote.

15 And then as far as Region 3, did they have a  
16 consensus on this? Those in attendance, there was a  
17 consensus, 100 percent consensus of those that were in  
18 attendance. But they were -- they're my constituents,  
19 I guess. So I really wanted to do the true -- abide by  
20 and hold myself accountable to the government-to-  
21 government consultation because they represent  
22 governments, too.

1           And we were fortunate that when we had our meeting  
2           that the Great Plains Tribal Chairman's Association was  
3           meeting at the same time, and we wanted to keep our  
4           tribal leadership engaged and involved and let them  
5           know that, you know, this process is ongoing. So I  
6           hope I answered your question about that.

7           The other was I think we need to clarify that  
8           unanimous consensus, there can only be one person to  
9           object and you don't have consensus. It doesn't have  
10          to be two. One person can obstruct the vote.

11          So, again, I just put it forward, you know, that  
12          this is an alternative. I'm respectful of the process  
13          and appreciate the discussion.

14          Thank you.

15          MS. PODZIBA: Okay. Open the floor for additional  
16          proposals. Jason?

17          MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
18          I really feel like, you know, taking everything into  
19          account that we are at an impasse on this particular  
20          topic. I don't really think -- you know, it's either  
21          going to be a consensus type deal or it's going to be  
22          what Ms. Vogel has presented to the committee.

1 I think there's various opinions determining that.

2 So I really feel like that we're just kind of spinning

3 our wheels here, that, you know, we need to make a

4 decision on this. It is at an impasse. There's --

5 there's the Federal folks that sitting at the table.

6 Do they need to intervene here and say that we will go

7 with -- with what the regulations say if there is an

8 impasse?

9 That's kind of where I'm at right now.

10 MS. PODZIBA: Okay. I just want to say just

11 process wise, if there's no agreement on discussion,

12 it's just the way it works with the regulatory

13 language. If it's not accepted, it is not in the

14 protocols. So there would just not be this paragraph

15 in the protocols.

16 And then I'll turn to the HUD officials to answer

17 Mr. Dollarhide's question.

18 MS. HENRIQUEZ: I guess there are just two things.

19 One, that if there's no agreement, then this section,

20 as you said, is not in our protocols. It is accepted,

21 however, or inferred and actually the actual that what

22 happens is then it is by consensus because it defaults

1 to what's in the negotiated rulemaking statute. Just I  
2 want people to be clear.

3 As to impasse, let me just put one thing out on  
4 the table in an effort to try to see if this would help  
5 move it at all. Let's be perfectly clear. Nobody  
6 wants to go home to -- go back home and say they gave  
7 up some money, that you're going home with less money.

8 So this is all about the dollars. And some folks are  
9 going to be able to go home and say we got more money.

10 Does it help on the issue of the definition of  
11 consensus if, indeed, HUD says that the formula runs  
12 that will get done throughout the course of this  
13 formula negotiated rulemaking are done blind so that  
14 there's no tribal identification as those runs -- or  
15 when those runs are shared publicly? Does that help  
16 the issue at all?

17 Just a suggestion. If not, that's fine. But we  
18 thought we should at least put it out there.

19 MS. PODZIBA: Yes, Ms. Gore?

20 MS. GORE: Carol Gore, Cook Inlet. Okay. So I'm  
21 confused. What good is it, one, if we can't identify  
22 anyone, ourselves or others or regions? I can't

1    imagine making a decision without understanding the  
2    impact.  My tribe didn't send me here to make decisions  
3    that are blind.

4           And so, I just -- maybe I'm misunderstanding the  
5    proposal, but that would be unacceptable to me.

6           Thank you.

7           MS. HENRIQUEZ:  If I might just respond?  The  
8    suggestion really came from the fact that I think many  
9    of you do know close enough about how much you get,  
10   what it's based on, what those factors are related  
11   measures, and probably could identify pretty closely  
12   how the trend would run up and down for your particular  
13   tribe.  It was merely a suggestion.

14          MS. PODZIBA:  Mr. Adams?

15          MR. ADAMS:  Jason Adams, Salish Kootenai.  I guess  
16   I'm just sitting here listening.  My thoughts are kind  
17   of scattered at this point, but I just wanted to make a  
18   statement as far as what I've seen in the past as far  
19   as this issue and the attempts that are being made here  
20   to -- to make some changes.  I appreciate the efforts  
21   that are being put forth because I, too, like Mr. Reed  
22   said previously, have sat through these meetings and

1 shared in frustration when we've negotiated and we've  
2 worked long and hard in the committee work and an issue  
3 comes to the table, and one or maybe two people at this  
4 table can stop all of that work.

5 And so, I appreciate the attempt to get past that  
6 issue with an attempt to define consensus other than  
7 majority, everybody agrees. But as far as how we get  
8 past this, that's where I'm at right now. Do we --  
9 it's clear that there's folks in the room that want to  
10 leave as is. There's folks in the room that want  
11 something different than consensus as we have it  
12 previously defined.

13 And so, what happens now, you know? In memory and  
14 in respect to my good friend Wayne Ducheneaux, you  
15 know, we had our ups and downs over the years. But you  
16 know, the last time I spoke with the man, we left with  
17 mutual respect for one another.

18 One of the things that he always made sure and we  
19 got in the last protocols in this meeting was that if  
20 we disagreed with something, we offered a solution. We  
21 offered a way to work towards a common agreement. I'm  
22 seeing that happen because Sharon has made a proposal,

1 and then she's made the other proposals to try and move  
2 towards -- toward something else.

3 I'm not seeing that from anybody else, and I'm a  
4 little concerned about that because what is acceptable?

5 Is it not 17 out of 26? Is it 20? Is it 22? Is  
6 there movement, or are we just stuck?

7 MS. PODZIBA: Mr. Evans?

8 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
9 Tribe. I agree with Mr. Adams that it does appear that  
10 we're at an impasse. So I would like to make another  
11 proposal that consensus be defined as stated at 5  
12 U.S.C. 562(2), which is the negotiated rulemaking  
13 statute.

14 MS. PODZIBA: Okay. Yes, Ms. Yazzie?

15 MS. YAZZIE: Thank you. I would agree. I think  
16 it's very obvious when you look at the responses, I  
17 guess, from the committee members (inaudible), and I  
18 would agree with my colleague Mr. Evans to define  
19 consensus and default to the statute for consensus.

20 MS. PODZIBA: Yes, Mr. Reed?

21 MR. REED: Mike Reed, Cocopah. I represent a  
22 small tribe, and there was a lot of frustration as a

1 result of consensus. But I believe if we go along with  
2 the consensus, there are ways for us to change the way  
3 that this formula works without adversely impacting  
4 anyone. And I think I have more confidence in the  
5 group that we can do that this time.

6 MS. PODZIBA: Is there any further discussion  
7 before -- yes, Mr. Adams?

8 MR. ADAMS: Maybe I finished my comments a little  
9 soon. Jason Adams, Salish Kootenai.

10 I would also like to just expound on that idea of  
11 working towards the common that we can all agree to. I  
12 think in the past we've showed that that, you know,  
13 we're not willing to really accept disagreement and end  
14 there, that we continue to work and grind away at this.

15 And I've seen that through this committee in the past.

16 I've seen a lot of disagreement, and yet we were  
17 able to work through some of these big issues and get  
18 to agreement. Not on everything, you know? But I  
19 think it was mentioned earlier today at about a 90  
20 percent pace at the last negotiated rulemaking.

21 So we are going to have some issues, but I would  
22 hope that, you know, if there are issues that come up

1 in regards to the formula that we would all -- the  
2 mechanics of it. For me, that was one of the  
3 frustrations in the past is that everybody would sit  
4 and wait for the formula run and then make their  
5 decision based on that. My hope is that we would be  
6 here at this table to take a look at the statute and  
7 see how the formula is working in regards to the  
8 statute language and if that is the -- if we are  
9 meeting that intent.

10 If we are, I'm fine. I'm good with it. If we're  
11 not, then we need to be able to find a way to make some  
12 changes because in my opinion -- and again, from where  
13 I'm coming from, in my tribe, you know, things seem to  
14 work okay. But is it the best that it can be? I don't  
15 know that. And I don't know if any of us know that  
16 unless we step out and really analyze what the statute  
17 is trying to achieve and see if what we have today is  
18 meeting that or not and be willing to make a change.

19 If we don't have that courage, then we're all just  
20 here to protect what we have, and we might as well go  
21 home. And I hope that isn't why we're here.

22 MS. PODZIBA: Ms. Vogel?

1 MS. VOGEL: Sharon Vogel, Cheyenne River. I truly  
2 appreciate all the discussion, and I'm encouraged by  
3 it. And one of the things that I don't want Region 3  
4 known as is an obstructionist because they are very  
5 much dependent on good decisions, wise decisions by  
6 this committee when it comes to the formula.

7 I think we've put our best effort forward -- for  
8 the record, I think it will be noted -- and that we  
9 believe the past has shown how difficult the process  
10 will be, especially with the topic of money. And so, I  
11 think that, you know, that, unfortunately, clouds the  
12 issue of consensus and good faith and collective  
13 wisdom.

14 And I think that those of you that have been here  
15 before have identified that unanimous consensus has  
16 been and will continue to be a major procedural  
17 barrier. Unanimous consensus gave us the status quo,  
18 you know? It kept whatever, whether that's good for  
19 people or not. And it also obstructs much-needed  
20 changes that we need to have to move the spirit of  
21 NAHASDA, which was to allow tribal governments to build  
22 housing for their families.

1           And so, as we move forward, I think that this  
2 unanimous consensus, as we go into our workgroups, I  
3 think we will be challenged to arrive at that. And it  
4 will continue to come back to be an issue in the  
5 future, and we had an opportunity to change that before  
6 we started, and we chose not to, for whatever reasons.

7           But I, for one, do want to be very respectful of  
8 this process. I'm new to this, and I now acknowledge  
9 that getting a change to anything other than unanimous  
10 is not going to happen. And so, I will move forward  
11 with the process, and I want to thank you for your good  
12 thoughts of trying to do something different.

13           Thank you.

14           MS. PODZIBA: Ms. Vogel, does that suggest you  
15 withdraw your objection to the original proposal that  
16 was made, or do we have a proposal on the table -- yes?

17           MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
18 Tribe. I'm willing to withdraw that proposal if Ms.  
19 Vogel responds in the affirmative to the question.

20           MS. PODZIBA: To the original proposal.

21           MS. VOGEL: Sharon Vogel, Cheyenne River. I was  
22 not the only person that objected. If you recall, I

1 was not the person that objected to that first  
2 proposal. I thought you were going to get the vote on  
3 Mr. Evans' proposal.

4 Nonetheless, I know where the process is right  
5 now. Thank you.

6 MS. PODZIBA: Okay. So I think that means we're  
7 on your proposal to -- okay? All right. The proposal  
8 on the table is -- do you have that? Consensus is  
9 defined as stated in 5 U.S.C. 562, Section (2), which  
10 is a reference to the Negotiated Rulemaking Act. Yes?

11 MS. HENRIQUEZ: I would like to make an amendment  
12 because that reference takes us into all the  
13 definitions and then becomes circular and puts us back  
14 to where we are. So I would propose that the amended  
15 language be defined as stated in Section 562, Part (2),  
16 which is "Consensus means unanimous concurrence among  
17 the interests represented on a negotiated rulemaking  
18 committee established under this subchapter."

19 MS. PODZIBA: Okay. So we would put all of that  
20 language in, rather than just a reference?

21 MS. HENRIQUEZ: Yes, the reference has Parts (1)  
22 through (11), which put us back into the conversation

1 about changing consensus to something, something

2 different, but to do so, you must do so by a consensus.

3 MS. PODZIBA: Do you (inaudible)? Okay. Mr. Comment [V1]: I think she might  
be

4 Adams, do you accept the amendment to your proposal? "whispering" to someone next  
to

5 FEMALE SPEAKER: Mr. Evans, you mean? hear. I would begin at "Okay."

6 MS. PODZIBA: Mr. Evans. I'm sorry.

7 MR. EVANS: Earl Evans, Haliwa-Saponi Indian

8 Tribe. Yes.

9 MS. PODZIBA: All right. So let's just take a  
10 minute to get that language on the screen, and then  
11 we'll call the question. Is there further discussion?

12 Ms. Foster?

13 MS. FOSTER: Karin Foster, Yakama Nation Housing  
14 Authority. I realize that we've already gone through  
15 the 2010 proposal, but to the extent that this proposal  
16 does not include what we had back then, meaning  
17 unanimous agreement shown by the absence of expressed  
18 objections, I think it's not going to be as effective  
19 if you have to have everybody vote in favor of a  
20 proposal in order for it to go through.

21 And I think that it, yeah, putting that together  
22 with the later provisions we'll get to, that you have

1 to have some kind of a response, some sort of alternate  
2 proposal or something along with your objection. I  
3 would rather see a consensus that was shown by the  
4 absence of an expressed objection rather than what  
5 looks like a vote.

6 MS. PODZIBA: Yes?

7 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
8 Tribe. Would it be amenable in addressing the concerns  
9 that Ms. Foster just stated if we included something to  
10 the effect of unanimous concurrence shall be expressed  
11 by the lack of specific objection?

12 Is that -- if so, then I'm amenable to -- to that  
13 amendment if Ms. Foster is amenable to it.

14 MS. FOSTER: Yes.

15 MS. PODZIBA: Okay. Christine? Okay. If there  
16 is no other amendment to that, Mr. Evans, can you  
17 repeat that? It was unanimous concurrence is the  
18 absence of objection, something like that?

19 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
20 Tribe. Unanimous concurrence is expressed by the lack  
21 of expressed objection by any committee member with  
22 regards to a proposal being considered by the

1 committee.

2 MS. PODZIBA: Mr. Adams?

3 MR. ADAMS: I just -- I don't have this language  
4 in front of me from the what's quoted there section.  
5 But isn't that what you made reference to, Sharon, is  
6 what's being quoted, a reference in the section? And  
7 now you're changing what's being referenced. So should  
8 the reference be included in this or -- because the  
9 reference -- I'm talking to Karin, sorry.

10 Isn't that what you made reference to is the  
11 Section 562(2)? Now you're changing what's being  
12 referenced or what's being proposed as a change to  
13 that?

14 MS. FOSTER: Well, it wasn't -- it wasn't my  
15 proposal. It would go back to the statutory reference.

16 But I mean, I'm fine with that. I think that what  
17 we're talking about is we're agreeing to go, if we  
18 accept this proposal, we're agreeing to go with what  
19 the statute provides.

20 But what we're talking about is how do we show  
21 unanimous concurrence? It's unanimous concurrence, but  
22 do we have to show it by everybody saying or by nobody

1 saying, you know, "I object," and I think that it's  
2 better, more productive if we show it by the lack of an  
3 objection. Because I think a lot of times it's hard  
4 for -- you know, people are kind of on the fence, and  
5 they're just kind of -- you know?

6 And then, if you need to have -- later on, if you  
7 need to have a reason for your objection, I think  
8 that's even, you know, more helpful. I mean, to me,  
9 the idea of, you know, really getting down and doing  
10 this process, which is very difficult, I think, also  
11 with unanimous concurrence, a very difficult process,  
12 is that we do have to listen to everyone, you know?

13 You can't just -- I mean, this has to be a  
14 participatory process. We have to get the ideas out on  
15 the table. Even though sometimes it's very hard to  
16 express some, we have to keep really trying to do that.

17 Anyway, I guess I might suggest, since we have  
18 "expressed" in two places, maybe "is shown by the lack  
19 of expressed objection" rather than "is expressed."

20 But would be my only comment.

21 MS. PODZIBA: Okay. I know there are a couple  
22 more comments. I don't want to get bogged down in lots

1 of amendments. But if it's the will of the group to  
2 keep going in discussing this before I call the  
3 question, I will do so. Is that the -- Mr. Evans,  
4 would you like for me to call the question on your  
5 proposal, or would you like to entertain further  
6 discussion of it?

7 Ms. Henriquez and then Ms. Bryan.

8 MR. EVANS: Earl Evans. Oh, I'm sorry.

9 MS. HENRIQUEZ: It's your proposal, so go first.

10 MR. EVANS: Earl Evans, Haliwa-Saponi. I was just  
11 going to yield to the discussion because I'm hoping it  
12 will resolve in getting us past this impasse we've had.

13 MS. PODZIBA: Thank you. Ms. Henriquez?

14 MS. HENRIQUEZ: This is not where I was hoping you  
15 were going to go.

16 (Laughter.)

17 MS. HENRIQUEZ: I don't want to -- I don't want to  
18 stymie the discussion, but we are sort of getting back  
19 into adding to an already finite definition. And so, I  
20 would propose to withdraw the amendment I made and  
21 suggest if Mr. Evans would reconsider in going with the  
22 2010 definition, picking up and supporting Ms. Foster's

1 explanation.

2 That really to have the discussion, it's what  
3 people can live with, that they may not wholeheartedly  
4 agree but can live with it. And then those who have  
5 strong expressed objections that would call out those  
6 nuances in our conversations and our negotiations of  
7 the important parts of what we're trying to do.

8 MS. PODZIBA: Ms. Bryan?

9 MS. BRYAN: Thank you. Annette Bryan, Puyallup  
10 Tribal Housing Authority. I have had my hand up for  
11 quite a while.

12 MS. PODZIBA: I apologize.

13 MS. BRYAN: Yes, and actually, I was going to ask  
14 Mr. Evans if he was willing to withdraw his proposal  
15 because we were sort of an impasse, and I think, Sharon  
16 Vogel, I would just like to state for the record that I  
17 appreciate your efforts in trying to give us other  
18 opportunities to do things in a different way.

19 I also heard you say that you see that that isn't  
20 going to happen. So we're willing to move forward. So  
21 I was simply going to ask Mr. Evans to withdraw his  
22 proposal before we start writing up all this stuff

1 that's going around and around and around and go with  
2 just what Ms. Henriquez said, which is to adopt the  
3 2010 version.

4 Thank you.

5 MS. PODZIBA: Mr. Evans?

6 MR. EVANS: Earl Evans, Haliwa-Saponi. In all  
7 honesty, I have no idea what to do.

8 (Laughter.)

9 MS. PODZIBA: Can I make a (inaudible) if I may?  
10 Perhaps you can withdraw the proposal, subject to the  
11 new proposal of adopting the 2010 with the option to  
12 resubmit that proposal if it doesn't pass.

13 MR. EVANS: What she said.

14 (Laughter.)

15 MS. PODZIBA: Is that all right with everyone?

16 Okay. The proposal on the table then is the 2010, the  
17 blue language. "Consensus. All decisions of the  
18 committee shall be made by consensus. Subject to  
19 Article 6(b) of these protocols, consensus means  
20 unanimous agreement as shown by an absence of expressed  
21 objection by any committee member present at the  
22 committee meeting with regard to a particular issue."

1           Is there any objection to adopting this language  
2           for the protocols of the committee?

3           (Show of hands.)

4           MS. PODZIBA: Yes, Ms. Cloud, you object? Okay.  
5           Can you explain to us your objection?

6           MS. CLOUD: I guess I would have the same  
7           objection that has been discussed here already is that  
8           it's going to take us a really long time to get to a  
9           unanimous consensus on our work going forward. I  
10          appreciate the work of Mrs. Vogel.

11          So with that being an objection, does that mean  
12          that that vote dies? Because if it does, then --

13          MS. PODZIBA: That means that vote --

14          MS. CLOUD: -- I would like to make another  
15          proposal.

16          MS. PODZIBA: That proposal is withdrawn. If we  
17          may, the next step would be to go back to Mr. Evans'  
18          proposal, which was withdrawn, subject to this  
19          proposal. So let me call the question on that -- on  
20          that proposal, and let's see what happens with that  
21          one.

22          Okay. So the proposal as amended is consensus is

1 defined as stated in 5 U.S.C. Section -- yes, Mr.  
2 Evans?

3 MR. EVANS: Earl Evans, Haliwa-Saponi. Actually,  
4 I don't believe that reads correctly. It should say,  
5 "Consensus means unanimous concurrence among interests  
6 represented on a negotiated rulemaking committee  
7 established under this chapter." Then you should add  
8 the other language about if there's not -- that the  
9 lack of objection is what signifies unanimous  
10 concurrence. That was the way it was presented.

11 MS. PODZIBA: Mr. Evans?

12 MR. EVANS: Period, then "Unanimous consent is  
13 expressed" or "Unanimous consent is" -- yeah.

14 MS. PODZIBA: Okay. Let's get the proposal up,  
15 and then I would like to call the question unless, Mr.  
16 Adams, you have a comment that must be made before  
17 that? Let's just -- let's get it up.

18 MR. ADAMS: I guess point of order on this issue  
19 because he withdrew his proposal. The proposal was the  
20 2010. She objected. Now the process we've been  
21 following is if she objects, she offers an alternative.  
22 So I think we need to stick with one process.

1 MS. PODZIBA: Okay.

2 MR. ADAMS: I would ask that we do because --

3 MS. PODZIBA: As I understand, Mr. Evans withdrew  
4 his proposal subject to the vote. If the vote passed  
5 for the 2010, that would be the end of it. But then he  
6 was going to -- his proposal would be restored if it  
7 wasn't. That was what I understood.

8 MR. ADAMS: I guess I disagree because the process  
9 we've been following is if somebody disagrees, they  
10 offer a proposal. If she's willing to offer a  
11 proposal, I'd like to hear her proposal.

12 MS. PODZIBA: Okay. I think we disagree on  
13 process. So I think what I'd like to do is call the  
14 question on Mr. Evans' proposal. And if it doesn't  
15 pass, then we will go to Ms. Cloud.

16 MR. ADAMS: I guess I would like to leave it to  
17 the committee and not you.

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

19 MS. FOSTER: Karin Foster, Yakama Nation Housing  
20 Authority. I don't know that the rule has always been  
21 you have to offer an alternative proposal. You just  
22 have to offer a reason for why you object. And I think

1 that this is unusual, you know, to pull back a proposal  
2 as Earl did and then have the ability to resubmit it,  
3 but that's the way that -- those were the, you know,  
4 grounds upon which he withdrew it.

5 So if there's an objection, I don't mind hearing  
6 an objection. But I do think that his proposal should  
7 go forward before anyone else's, even the person who  
8 objected.

9 MS. PODZIBA: Further discussion about whether we  
10 entertain Mr. Evans' proposal? Ms. Cloud?

11 MS. CLOUD: I would again object because it's  
12 unanimous concurrence, and that was the grounds for  
13 objection on the last one. And so, that vote is going  
14 to die if it's not unanimous concurrence.

15 I would like to submit a proposal, if you'd be so  
16 kind.

17 MS. PODZIBA: Thank you for finding a way to move  
18 us on. So we know that if we call the vote, there  
19 would have been an objection. So we now move on to a  
20 new proposal.

21 Yes?

22 MS. CLOUD: Okay. I was kind of listening to the

1 discussion over here, and to me, it sounds like this  
2 kind of half onboard and half off board with unanimous  
3 decision.

4 There's 24 tribal reps and 2 HUD representatives,  
5 approximately 4 representatives from each region. If  
6 we went with the language -- this is my proposal to go  
7 with the language that Ms. Vogel presented, but  
8 changing at least 17 committee members to 22 tribal or  
9 committee members. Because then no region is getting  
10 outvoted and neither is HUD. And then it's not just  
11 one or two people stopping the whole process.

12 That's my proposal. It's over 90 percent of the  
13 tribal committee members with 22 out of the 24.

14 MS. PODZIBA: Okay. Thank you.

15 So that's the current proposal on the table, which  
16 revises Ms. Vogel's previous proposal for 22 committee  
17 members rather than 17 to have a proposal. Is there  
18 further discussion of this proposal?

19 (No response.)

20 MS. PODZIBA: If there is none, then I will call  
21 the question. Is there any objection for approving  
22 this proposal for the protocols of the committee?

1 (Show of hands.)

2 MS. PODZIBA: I see 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,  
3 11.

4 Okay. Can one of -- can a couple of the objectors  
5 please explain their reasons for their objection? Mr.  
6 Jacobs?

7 MR. JACOBS: Leon Jacobs. I was sent here by my  
8 tribe to work in the good of the tribe and all tribes  
9 nationwide. In 2010, we had an issue come up, but we  
10 were able to get the protocol with the unanimous  
11 consent.

12 It was not easy. I was one of the co-chairs of  
13 the session. We broke into sessions, and there was a  
14 lot of negotiations. And when we came back in and  
15 assembled in the full committee, we were able to move  
16 forward and get the work done that is so necessary.

17 I'm very concerned right now because we've spent a  
18 lot of time in these first two meetings on this one  
19 issue, and we're not getting to the heart of why we're  
20 here. And I think it's time that we move forward and  
21 get into the area where we really need to negotiate and  
22 look at what is happening and what will happen in the

1 future. HUD has found a few dollars to bring us  
2 together, and we don't know that in this next budget  
3 whether or not they're going to have funds to move  
4 forward with the other meetings and so forth.

5 But I want to say one of the things that's very  
6 strong to me is that this NAHASDA is a government-to-  
7 government relationship that I think is much stronger  
8 than 638, and it gives us a lot of power to do  
9 something. And if we don't fulfill our commitment here  
10 and get this done, I think it's going to fall in the  
11 hands of somebody else. And I think we need to come to  
12 a compromise and move forward and get into the  
13 negotiations that is so important because they did work  
14 in 2010, and I would think they would work here.

15 And I do appreciate Region 3 for the concern and  
16 so forth. But I think it's time now that we move  
17 forward, and my reason for being here is to negotiate  
18 and move forward in a positive way. And I would like  
19 to recommend that we go back to 2010, adopt this, move  
20 forward, get into the meat of everything that needs to  
21 be done over the next 3 days.

22 Thank you.

1 MS. PODZIBA: Any other people with objections who  
2 would like to share their reasons for doing so?

3 Yes, Mr. Evans?

4 MR. EVANS: Earl Evans. My objections are the  
5 same as prior. It allows only two committee members to  
6 hold the entire rest of the committee at bay. In terms  
7 of requiring a different vote and just based on the  
8 example that was presented, which was the oil  
9 negotiations, in that document, it requires 13, for  
10 example.

11 And also with this language, by including HUD as a  
12 part of that majority, I think there then is another  
13 issue, no offense to the Federal agency and that. But  
14 it's basically saying that if they are -- if they are  
15 not a part of that majority, then it doesn't pass, even  
16 though you may have the 22 or the 17 or whatever number  
17 of committee members.

18 So since it says "HUD and," then if HUD is then in  
19 disagreement, then that still controls the vote more so  
20 than being an equal votes among all the table. That's  
21 why I suggested going with the statute because if we  
22 simply incorporated statutory language, I thought it

1 would be a reasonable compromise between both  
2 perspectives. Because this actually does allow if the  
3 committee wants to have a different kind of  
4 decisionmaking process on a particular issue, the  
5 statute does allow the committee by consensus to adopt  
6 a different way of making a decision on that particular  
7 issue. So I thought that was a reasonable compromise.

8 But that's the reason for my objection. Thank  
9 you.

10 MS. PODZIBA: And Ms. Cloud?

11 MS. CLOUD: I would agree that if we would be able  
12 to strike "by HUD" that it would be more self-  
13 determination. And with the 22 out of the 24, I just  
14 believe that all tribes would be equally represented,  
15 that there's no region that would be outvoted. Because  
16 there's at least 4 representatives from each region,  
17 which gives us 24. So it's at least a 50 percent vote,  
18 and it would stop the committee members from just one  
19 or two people holding up like so then we can move on.

20 But if there's an objection to this, I'm fine. I  
21 will withdraw my proposal.

22 MS. PODZIBA: Mr. Dollarhide?

1 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
2 Region 4, we only have 3 representatives here. So we  
3 would be outvoted by every region.

4 MS. PODZIBA: Mr. Evans, could I just clarify  
5 something you said so I understand this correctly?  
6 That if the statute, if the negotiated rulemaking is  
7 cited in the way that you did, that would sustain the  
8 opportunity for the committee to make a change in its  
9 decision process at any point by consensus, which in  
10 some ways is aligned with the oil evaluation protocols?  
11 Am I understanding you correctly?

12 MR. EVANS: Earl Evans, Haliwa-Saponi. No, ma'am.  
13 The way I read the statute, it says that since this is  
14 unanimous concurrence unless the committee agrees by  
15 consensus to adopt a different decisionmaking process.

16 So I'm no lawyer, but the way I read that, to me,  
17 that going with the statute then leaves it open to  
18 where it impacts on a particular issue and the  
19 committee agrees by consensus that on that particular  
20 issue we need to consider a different way of making the  
21 decision on that matter.

22 It allows us at that point in time to do so, and I

1 thought -- and so reading that, to me, kind of led me  
2 to believe that that was sort of a way of getting --  
3 getting us at -- at a way to where we're addressing the  
4 opposition concerns to consensus-based decisionmaking,  
5 as well as those who desire to preserve consensus-based  
6 decisionmaking.

7 MS. PODZIBA: Thank you. Yes?

8 MS. CLOUD: I apologize. I was under the  
9 assumption that there was at least four representatives  
10 from each region. Would you be amicable to it being  
11 their language added to it so that way no region is  
12 outvoted? And I am posing this question to Mr.  
13 Dollarhide.

14 Oh, and I apologize. Heather Cloud, Ho-Chunk  
15 Nation.

16 MS. PODZIBA: Mr. Dollarhide, I think that was a  
17 question straight to you.

18 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
19 I'm speaking for just the Peoria Tribe. I can't speak  
20 for the other representatives that are here. I think  
21 that's why we -- that's why I strive for consensus over  
22 anything because we are the limited one here. We just

1 have three. So we can be outvoted by all the regions  
2 that are represented here.

3 So that there is my concern. So, you know, I will  
4 -- though I don't want to be complicated -- be  
5 complicating, you know, I will have to stick -- stick  
6 with my decision.

7 MS. PODZIBA: Ms. Foster?

8 MS. FOSTER: Karin Foster, Yakama Nation Housing  
9 Authority. A clarification first required, and then a  
10 proposal. First of all, are we on a particular  
11 proposal now?

12 MS. PODZIBA: No, we are not.

13 MS. FOSTER: All right. So we're not discussing  
14 anything in particular. We're just kind of talking,  
15 okay?

16 My proposal is that we limit this discussion to a  
17 certain amount of time. I don't know what exactly is a  
18 reasonable amount of time, but we've got to get past  
19 this. And then we've got to hold ourselves to, you  
20 know, either reaching a decision within a certain  
21 number of minutes or not, or else we're going to be at  
22 this all day.

1           So I would propose that we provide, I don't know,  
2    is 10 minutes too much? Is it enough? Ten minutes  
3    more, and I'm certainly open to suggested amendments to  
4    that timeframe for this particular item.

5           MS. PODZIBA: Okay. The proposal is to limit the  
6    discussion on the issue of consensus until 10:25 a.m.  
7    Any discussion? Mr. Adams?

8           MR. ADAMS: I guess then what happens if we don't  
9    reach consensus on an issue -- on this issue by then?

10          MS. PODZIBA: Then --

11          MR. ADAMS: I'm not in favor of the fallback  
12    position of the statute is what governs this process.  
13    And so, I would hope that we would have more time to  
14    get to a consensus definition here in the protocols.  
15    So if there's no proposals on the table, I would then  
16    offer -- since your objections previously were  
17    withdrawn, to offer up 2010 consensus making as our  
18    decisionmaking process in the protocols. 2010, the  
19    blue.

20          Again, thank you.

21          MS. PODZIBA: One minute. Ms. Foster, it sounds  
22    like Mr. Adams does not -- you put a proposal on. I

1 can call the question on that.

2 Mr. Adams has said he's uncomfortable with the  
3 fallback so he would prefer not to limit the  
4 conversation to 10 minutes.

5 MR. SAWYERS: I object to the 10 minutes.

6 MS. PODZIBA: You object? Okay. So we'll call  
7 the question. Is there objections to limiting the  
8 discussion until 10:25 a.m.? There is objections.

9 Mr. Adams has explained (inaudible) already. Mr.  
10 Sawyers, do you want to explain your objection to the  
11 10 minutes?

12 MR. SAWYERS: Yes, I agree with Jason that that  
13 fallback situation is the worst, the worst scenario. I  
14 also agree with your proposal. So I'd like to go  
15 forward with Jason's proposal.

16 MS. PODZIBA: Okay. Mr. Adams, your proposal is  
17 the 2010. Mr. Jacobs?

18 MR. JACOBS: Hi, I'm Leon Jacobs. I support  
19 Jason's proposal we go to the 2010, right?

20 MS. PODZIBA: Okay. Further discussion? Yes, Ms.  
21 Cloud?

22 MS. CLOUD: Heather Cloud, Ho-Chunk Nation. I

1 apologize. I'm not trying to delay anything. I was  
2 offering up a suggestion so that we can move forward in  
3 the days to come and our meetings to come, and I just  
4 want to call the question on the proposal.

5 MS. PODZIBA: Okay. If there is no further  
6 discussion, the proposal on the table is the 2010  
7 language. Is there any objection?

8 (No response.)

9 MS. PODZIBA: Seeing none, I think that we have  
10 reached a consensus on consensus.

11 (Applause.)

12 MS. PODZIBA: Congratulations. We have --

13 MALE SPEAKER: Can we take a break?

14 MS. PODZIBA: We have a break in 15 minutes so  
15 maybe we can finish the decisionmaking section. There  
16 are two more parts to it. So if I can just move you  
17 quickly, in the 2010 version, there were (b) and (c),  
18 Voting and Reconsideration, and I'd like to entertain  
19 proposals regarding (b) and (c) to 3.

20 MR. REED: I just want to point out that Karin had  
21 her hand up.

22 MS. PODZIBA: Excuse me?

1 MR. REED: Karin had her hand up.

2 MS. PODZIBA: I'm sorry. Thank you. Karin?

3 MS. FOSTER: Well, thank you. I wasn't going to  
4 push it. I was actually just going to suggest that we  
5 just take a break after our rousing discussion and get  
6 back to it in 10 minutes. So that was what I was going  
7 to suggest.

8 MS. PODZIBA: Okay. Is the will of the group to  
9 take a break now, or should we finish this section?  
10 Break? Okay. A 15-minute break. We'll come back at  
11 10:30 a.m.

12 Okay. All right.

13 (Break.)

14 MR. NICHOLS: Okay. Good morning, everyone. In  
15 case you didn't notice, we just traded facilitators  
16 right before your eyes.

17 So to continue the discussion with the protocols,  
18 we are currently still in the section on  
19 decisionmaking, and we have the topics on voting and  
20 reconsideration in Section 3, Decisionmaking, on your  
21 prior draft that we were -- so we're just going to  
22 continue where we left off and start with the topic of

1 voting. Is there -- could I invite discussion on  
2 voting or proposals? Mr. Adams?

3 MR. ADAMS: Again, as we -- 2010, when we took a  
4 look at these through a committee that was put  
5 together, a lot of this was generated from that  
6 committee and brought to this committee, or the  
7 committee of 2010. So I would offer that we approve  
8 this Section (b) Voting in regards to how it relates to  
9 how decisions are made.

10 So I would I hope that -- I would offer that as a  
11 proposal, that 2010 language, since that's all we have  
12 in front of us.

13 Thank you.

14 MR. NICHOLS: Thank you.

15 Okay. The proposal is to adopt the 2010 language  
16 as it stands. Any amendment or discussion?

17 (No response.)

18 MR. NICHOLS: Then I will call the question. Is  
19 there any significant objection to that proposal?

20 (No response.)

21 MR. NICHOLS: I don't see any objection. So,  
22 therefore, the committee has accepted the language from

1 2010 as it stands.

2 Let's move to the item number (c) Reconsideration.

3 Once again, I would invite any discussion or proposal  
4 on the language as it is shown on the screen for  
5 reconsideration.

6 Mr. Sawyers?

7 MR. SAWYERS: I still favor the same provision to  
8 bring these matters, the non-consensus items back  
9 without a full consensus. I propose that we do a  
10 three-quarters vote to bring those -- to bring those  
11 matters back for reconsideration.

12 MR. NICHOLS: Okay. So we would change the  
13 wording in item number (c) to say "may be reconsidered  
14 -- may not be reconsidered by the committee except by  
15 the three-quarters vote of the committee."

16 Would you please correct that, Christine, to the  
17 proposal that Mr. Sawyers made? Mr. Adams?

18 MR. ADAMS: I guess there would just need to be a  
19 clarification here because this section on  
20 reconsideration is specific to items that have reached  
21 consensus. Your discussion, Jack, was on issues that  
22 haven't.

1           So I think maybe if we want to address that, then  
2           it would be a separate section.

3           MR. SAWYERS:   Never mind.

4           (Laughter.)

5           MR. NICHOLS:   Are you withdrawing?   Mr. Sawyers  
6           withdraws --

7           MR. SAWYERS:   Yes.

8           MR. NICHOLS:   Okay.   Mr. Delgado?

9           MR. DELGADO:   Just to clarify, I think that the  
10          second sentence in that section is what Mr. Sawyers was  
11          referring to.

12          MR. NICHOLS:   Mr. Sawyers, is that -- is this the  
13          part of the language right there where it says "was not  
14          achieved within the 2-hour time limit may only be  
15          reconsidered with a consensus vote and timeline set by  
16          the committee."

17          MR. SAWYERS:   Yes.   I'm sorry.   I'd like the  
18          proposal to go forward.

19          MR. NICHOLS:   Pardon me?   You want what to go  
20          forward?

21          MR. SAWYERS:   My proposal to go forward.

22          MR. NICHOLS:   Okay.   So we would put -- so it

1 would be considered only with a three-quarters vote and  
2 time limits set by the committee. Okay. Thank you.

3 Any discussion or -- yes, Ms. Yazzie?

4 MS. YAZZIE: Aneva Yazzie, Navajo. Just a  
5 grammatical. The word "expect" should be "except" in  
6 the first sentence.

7 MR. NICHOLS: Oh, good catch. Yes, "except."  
8 "Except" rather than "expect" in the first sentence.

9 Is there any discussion or amendment to Mr.  
10 Sawyers' proposal as it reads now on the screen --  
11 three-quarters, with a three-quarters vote. Ms. Gore?

12 MS. GORE: Yeah, Carol Gore, Cook Inlet. Many  
13 questions.

14 So under voting, which we have approved, that  
15 prevents a member who has not expressed support to  
16 reconsider issues. So there we have a little bit of a  
17 challenge in that language. Secondarily, how many  
18 times can we bring an issue up?

19 So if let's say we have the same issue that we've  
20 been discussing now for the second week, and we went  
21 past the 2-hour timeframe. I just want to make sure I  
22 understand this. So we went past the 2-hour timeframe.

1           Three quarters can ask for reconsideration. It  
2 gets defeated. Those same three quarters can, under  
3 this scenario, bring it up again for another 2 hours or  
4 whatever timeframe that's set. And I'm a little  
5 uncomfortable with that.

6           I'm also, candidly, uncomfortable switching to  
7 something that's not consensus when we just spent a  
8 week and a half on consensus. So I'm expressing some  
9 concern for the amendment that's being proposed.

10          Thank you.

11          MR. NICHOLS: Any other discussion on the  
12 amendment?

13          (No response.)

14          MR. NICHOLS: Then I would call the question. Is  
15 there -- yes, Mr. Adams?

16          MR. ADAMS: I just want to make one comment on  
17 this. I guess the issue that this addresses, though,  
18 to me at least is when you have just one person  
19 objecting, they could hold up this process on  
20 reconsideration. So that's why I -- I agree with  
21 Jack's because it's just being brought to the table.  
22 It's not being taken any further.

1           The language still says that to pass, it would  
2     have to be by consensus. It's just not allowing one  
3     person to hold up something to be reconsidered. That's  
4     why I like it.

5           MR. NICHOLS: Thank you. Ms. Gore?

6           MS. GORE: I would oppose this as presented more  
7     because it doesn't consider the previous language under  
8     which those who have not expressed support cannot  
9     reconsider an issue. And so, I don't know what three-  
10    quarters really means. So I think in terms of  
11    procedural, we might get hung up on that.

12          I do agree with Jason that we may want to bring  
13    something up. But how many times, that, to me, is  
14    something we ought to maybe discuss as a committee. So  
15    I would oppose this one. I don't know who else might,  
16    but I would oppose this as presented.

17          MR. NICHOLS: Okay. Thank you. Ms. Foster?

18          MS. FOSTER: Karin Foster, Yakama Nation Housing  
19    Authority. I'd like to respond to what I understand to  
20    be Carol's comment about tracking back to the section  
21    on voting and because I think what that says is that a  
22    member that does not speak out is not allowed to

1 request reconsideration of the matter. But it doesn't  
2 say that a person who doesn't speak out couldn't vote  
3 on reconsideration of a matter.

4 I think that somebody else would have to be  
5 requesting it. But then if they were part of the  
6 three-quarters vote, I don't think that would be  
7 inconsistent with the previous position.

8 In terms of the proposal, you know, I do generally  
9 favor consensus. But I also think that it could be  
10 useful if three-quarters of the committee actually  
11 think that a failed proposal could somehow be saved,  
12 you know? I think that that might be a good thing to  
13 include. So right now I'm feeling in favor of Jack's  
14 proposal.

15 MR. NICHOLS: Any further discussion or comments  
16 in support or opposed to the proposal?

17 (No response.)

18 MR. NICHOLS: Okay. I'll call the vote. Clearly,  
19 it is not -- there is an objection on the floor, but  
20 I'll call the vote on the proposal as Mr. Sawyers  
21 proposed it. Could I please see the hands of those who  
22 object?

1 (Show of hands.)

2 MR. NICHOLS: Okay. There is three people that  
3 object. We've heard Carol's reasoning, four people  
4 that object. We've heard Ms. Gore's reason for  
5 objecting. Would anyone else like to share their  
6 reason for objecting? Volunteer? Ms. Yazzie?

7 MS. YAZZIE: Aneva Yazzie, Navajo. I would agree.  
8 I think it just seems as though the wording right now  
9 as proposed and the reason for my objection is that  
10 it's not congruent with the previous language under  
11 voting as well. And then, of course, I wanted to add  
12 that I agree with Carol Gore's opposition and argument  
13 with respect to that as well.

14 Perhaps, too, is the question of how many times  
15 could a proposal be reconsidered? I think there should  
16 be some limitation again with respect to that. So  
17 those are just some of my arguments that as we get into  
18 we could offer proposals when we're ready for that.

19 Thank you.

20 MR. NICHOLS: Thank you. Mr. Sawyers?

21 MR. SAWYERS: If it would make you feel more  
22 comfortable, let's say that three-quarters would bring

1 up one time. I mean, just one reconsideration. If  
2 that becomes a problem.

3 MR. NICHOLS: Maybe you would reconsider it one  
4 time with the three-quarters. So one time, you know,  
5 after are reconsidered?

6 Ms. Gore?

7 MS. GORE: Thank you, Jack. That responds to my  
8 concerns.

9 MR. NICHOLS: Is there any other discussion or  
10 amendments? Mr. Jacobs?

11 MR. JACOBS: Leon Jacobs. Should we put a time  
12 limit? If you're going to reconsider, should you put a  
13 time limit of 15 minutes or 30 minutes?

14 MR. NICHOLS: Mr. Sawyers?

15 MR. SAWYERS: You have a time limit. I think it's  
16 the time you would discuss -- I mean, set the time  
17 limit. I tried to make it as easy as possible without  
18 as much discussion as possible.

19 I think that we're going to be setting time limits  
20 all the way along. So I feel comfortable with what we  
21 have involving the time limits. So at that time we  
22 bring it up, we'll set a time limit at that time.

1 MR. NICHOLS: Okay. Thank you. Does that answer  
2 your question, your concern?

3 MS. PODZIBA: I'm sorry. Is it three-quarters of  
4 the members present or three-quarters of the whole  
5 committee?

6 MR. NICHOLS: Three-quarters of the members  
7 present or three-quarters of the whole -- of the entire  
8 committee? Mr. Dollarhide?

9 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
10 It was my understanding in the last -- the previous  
11 meeting that we had made the determination that it  
12 wouldn't have to be all members. It would be the ones  
13 that was present at the table at the time.

14 MR. NICHOLS: So does that need to be said here,  
15 or is it satisfactory the way it is? Do you think it's  
16 understood?

17 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
18 Yeah, I think that's understood from the previous  
19 meeting whenever we were discussing quorum and stuff  
20 that, you know, with the members present at the table.  
21 If they feel like it's important enough to vote on,  
22 they need to be here.

1 MR. SAWYERS: I agree.

2 MR. NICHOLS: Mr. Sawyers agrees. If there's no  
3 further discussion on that topic, I think we can move  
4 on. If there is further discussion, that's fine.

5 Any other discussion on the language as it is on  
6 the screen currently?

7 (No response.)

8 MR. NICHOLS: Then I'll -- yes, sir. Mr. Okakok?

9 MR. OKAKOK: Thank you. Sam Okakok, Native  
10 Village of Barrow.

11 This to me seems a little inconsistent with the  
12 consensus. This looks like a big back door to me for  
13 changing some things. And being from a small tribe,  
14 that's one of my big concerns is that, you know, some  
15 funds can be taken away with some decisions, and I'm  
16 concerned about maybe the back door being larger than  
17 the front door.

18 So kind of looking at the three-quarters right  
19 there, and I'm still trying to understand exactly what  
20 that may mean.

21 MR. NICHOLS: Mr. Sawyers?

22 MR. SAWYERS: I think the answer to Sam's question

1 is all the three-quarters vote is to bring it back up.  
2 There's no consensus. There isn't -- it's not passed  
3 by three-quarters. It's not opening any door.

4 It's been our experience that one person has been  
5 able to stop the process and it's a dead issue. My  
6 concern is that we -- if there's enough folks who have  
7 interest, that we can bring that up without having that  
8 same person stop -- stop reconsidering. Bad language,  
9 but the idea is good.

10 MR. NICHOLS: Okay. So you're referring to the  
11 language that says "may only be reconsidered one time  
12 with a three-quarters vote and a time limit set by the  
13 committee." Once it's reopened, a matter still  
14 requires consensus to be adopted. Correct?

15 Mr. Okakok?

16 MR. OKAKOK: Yes. Thank you for the  
17 clarification. I think that's what I needed to hear.

18 MR. NICHOLS: Okay. Thank you.

19 Any further discussion or amendments?

20 (No response.)

21 MR. NICHOLS: Then I will call the question. Is  
22 there any objection to the language as it is stated now

1 on the screen?

2 (No response.)

3 MR. NICHOLS: Seeing no objection, we'll say that  
4 was approved by the committee. Thank you for that.

5 And we will move on to page 7 on your -- yes, Ms.  
6 Henriquez?

7 MS. HENRIQUEZ: I'd like to propose a new Section  
8 (d) under decisionmaking.

9 MR. NICHOLS: Okay. Section (d) under  
10 decisionmaking in blue.

11 MS. HENRIQUEZ: And I have language I'd like to  
12 propose. It is titled "Formula Runs," and I've got the  
13 language here.

14 MR. NICHOLS: Do you have an extra copy of it?

15 MS. HENRIQUEZ: Yes. I'll read it, and then if  
16 they want to put it up, that's fine.

17 MR. NICHOLS: Do you want to read it first?

18 MS. HENRIQUEZ: I've got it.

19 MR. NICHOLS: You've got it?

20 MS. HENRIQUEZ: I've got it.

21 MR. NICHOLS: All right. Go ahead and read it,  
22 and then we'll give it to Christine to type in.

1 MS. HENRIQUEZ: A new Section (d) Formula Runs.  
2 "Formula runs may be conducted upon request of  
3 consensus of the committee and shall be limited to  
4 general runs that exclude tribal or recipient specific  
5 data in order to test changes in variables and other  
6 elements of the formula."

7 And as she's typing that, as that's being typed  
8 in, we're proposing this language because it's a policy  
9 issue, which is what we're really talking about, and  
10 changing the policies of the formula, we want to focus  
11 on that policy. What do changes mean if we change the  
12 policy in terms of weighted measures toward need or  
13 toward other things that are determined by this  
14 committee, as opposed to solely looking after the  
15 bottom line?

16 So that's the reason for doing -- for proposing  
17 this language.

18 MR. NICHOLS: Okay. Thank you for that.

19 Does anyone have any comment or discussion on that  
20 proposal? Ms. Foster?

21 MS. FOSTER: Karin Foster, Yakama Nation Housing  
22 Authority. So I guess I have a lot of questions about

1 how that would work. I'm remembering Carol's earlier  
2 comments about needing to know how a specific proposal  
3 is going to affect the folks who sent her here, and I  
4 would feel the same way.

5 So I guess I'm curious then what data would come  
6 from one of those runs if it was not how it would  
7 affect each individual recipient's grant?

8 MR. NICHOLS: Okay. Thank you. I think that's a  
9 question, Ms. Henriquez, if you could help us with  
10 that?

11 MS. HENRIQUEZ: I'm going to ask two of our people  
12 who are the most expert in this to come talk about how  
13 it would be done and its importance. Just a moment.

14 MR. NICHOLS: Thank you.

15 MR. ADAMS: Just a grammatical. That doesn't read  
16 all as it's written.

17 MS. HENRIQUEZ: Oh, I see.

18 MR. ADAMS: Formula may be conducted?

19 MS. HENRIQUEZ: May be conducted upon request of  
20 the committee and shall be limited to general --

21 MR. NICHOLS: Is it formula runs?

22 MS. HENRIQUEZ: Mm-hmm, yes. It should be formula

1 runs, yes.

2 MR. NICHOLS: Formula runs.

3 MS. HENRIQUEZ: Okay. Thank you.

4 MR. NICHOLS: Ms. Vogel?

5 MS. VOGEL: I'm not familiar with formula runs.

6 So I think it's unfair to those of us that are new to  
7 not have an explanation. And I don't want to get into  
8 the same thing when I asked the question what's the  
9 definition of constituents, but I do need to know what  
10 formula runs are before I can make a vote.

11 MR. NICHOLS: Okay. That's good. Thank you.

12 Maybe while Ms. Henriquez is preparing a response  
13 to the question, someone could explain for the benefit  
14 of the new people what the formula runs are? Were you  
15 going to do that, or do you have a different question?

16 MS. CLOUD: Comment.

17 MR. NICHOLS: Comment? Okay. Go ahead with your  
18 comment. Maybe you can explain when you get through  
19 it? Okay.

20 MS. CLOUD: Okay. I have a comment -- excuse me,  
21 Heather Cloud with the Ho-Chunk Nation -- on  
22 participation under (c) Constituents' Interests.

1 Committee members are expected to represent the  
2 concerns and interests of their constituents. If we're  
3 not able to appear limiting and excluding what we can  
4 or can't do for our constituents, then you're limiting  
5 our representation.

6 MR. NICHOLS: Okay. Thank you.

7 And you're going to respond to the question that's  
8 been asked?

9 MS. D'ANGELO: Hi. I'm Mindi D'Angelo from the  
10 IHBG Formula Customer Service Center.

11 I think the first question was how would one run  
12 actually be performed? And essentially, what we could  
13 do, if we could provide a percentage change across the  
14 585 different recipients without identifying them by  
15 name and show the differences, the change in percentage  
16 change in dollar amounts.

17 Does that answer the question?

18 MR. NICHOLS: Karin? Ms. Foster, was that your  
19 question?

20 MS. FOSTER: Why?

21 MS. HENRIQUEZ: There's a history of, as I  
22 understand it, in the first negotiated rulemaking on

1 formula which really because there was no money on the  
2 table, we looked at the policy -- what was going to  
3 drive that formula, weighted measures, et cetera.

4 The second negotiated rulemaking was -- it's been  
5 characterized as maybe not quite as successful because  
6 everyone was focused on the dollars because money had  
7 been flowing through the formula. This is our attempt  
8 from HUD's perspective to really get back at hearing  
9 the conversations, particularly on the first session we  
10 had a couple of weeks ago, really trying to engage in a  
11 policy discussion again about the formula itself, first  
12 and foremost, dollars secondary.

13 And so, having it as data that's not tribal  
14 specific gets folks to engage, I think, more fully in  
15 the policy questions, as opposed to what the bottom  
16 line ultimately means for every tribe and recipient.

17 MR. NICHOLS: So for the benefit of the new  
18 people, Ms. Henriquez, could you give an overview of  
19 what the formula runs are, define them?

20 MS. HENRIQUEZ: No, I can't. Which is why we  
21 wanted the presentations earlier today, because we will  
22 get into that very clearly. But we can do a little

1 brief elevator speech.

2 MR. NICHOLS: That would be very helpful. Yes.

3 MS. HENRIQUEZ: And I'm not the right one to give  
4 the speech.

5 MR. NICHOLS: The question has been asked. So  
6 it's helpful to respond.

7 MS. D'ANGELO: Mindi D'Angelo, IHBG, Formula  
8 Customer Service Center. Essentially what the data  
9 runs are is that the committee would come up with a  
10 scenario as to a change or changes that they would make  
11 to the formula, and we would run those changes in our  
12 programs and come up with a new dollar amount for each  
13 tribe.

14 The blind runs that was proposed earlier is  
15 instead of giving dollar amounts, we would just give  
16 percentage changes up or down.

17 MR. NICHOLS: Okay. Then was your question  
18 answered, Ms. Cloud? Maybe not, maybe it was?

19 MS. CLOUD: It wasn't a question. It was a  
20 comment.

21 MR. NICHOLS: Okay. Thank you. Ms. Foster?

22 MS. FOSTER: Karin Foster, Yakama Nation Housing

1 Authority. You know, I realize that and understand  
2 actually that this probably would have been part of the  
3 presentation that HUD was going to make. But I think  
4 for the benefit of those who really do not know what  
5 data runs are, maybe we should just throw one up there.

6 And if you search -- if you search "formula run  
7 IHBG," there's one right on the Internet. I don't know  
8 if we're capable of doing that. But I mean you could  
9 just throw one up and people could see what they look  
10 like. That might be better than a presentation. Would  
11 anybody be amenable to that?

12 MR. NICHOLS: So actually going through, showing  
13 the formula runs.

14 MS. FOSTER: Just seeing what it looks like, you  
15 know, seeing what it is.

16 MR. NICHOLS: Okay. While they're thinking about  
17 that, Ms. Bryan?

18 MS. BRYAN: Thank you. Annette Bryan, Puyallup  
19 Nation Housing Authority.

20 I thought that this committee was formed to do the  
21 work for all the tribes in Indian Country. If I'm  
22 sitting here to look at my dollars and my individual

1 bottom line, I don't feel like I'm representing what I  
2 was chosen to represent.

3 If that's the case, I think we should republish  
4 what this group is, the formulation of this group, and  
5 state that right in the Federal Register. If that's  
6 the case, I also think that all of the tribal council  
7 chairmen should be here and have representation in this  
8 government-to-government process.

9 So I am in favor of Ms. Henriquez's option of  
10 running blind data.

11 MR. NICHOLS: Thank you. Are we going to have the  
12 data on the screen that was requested? Okay.

13 Any other discussion while we're waiting for that?  
14 Ms. Gore?

15 MS. GORE: Yes, I have lots of questions. So I'm  
16 not understanding whether if this were to pass as it's  
17 currently worded, would this be the only kind of run a  
18 committee member could request? If that's the case,  
19 then that limits the committee's ability to do its work  
20 because we don't -- there are -- there is an unequal  
21 education at the table and that there are not just  
22 small, medium, and large tribes, but some who, like me,

1 have been in the business for a while and others who  
2 are new to the table.

3 And so, to limit our ability to really request  
4 good information upon which we can make thoughtful  
5 decisions, we made decisions at the last NegReg that  
6 gave up money. I personally voted in favor of giving  
7 up money, but I did so in an informed way, not because  
8 I was voting blindly.

9 This also suggests that no runs would be made  
10 unless there is a consensus of the committee. I object  
11 to that as well. So I am voicing my strong objection  
12 to this and if it proceeds would suggest that Jack call  
13 an Alaska caucus so we could talk about it.

14 Thank you.

15 MR. NICHOLS: Ms. Nutter?

16 MS. NUTTER: Teri Nutter of the Copper River  
17 Housing Authority. If -- if I may provide additional  
18 language that because most of the work is done in the  
19 work sessions, that the chair of those workgroups may  
20 also request data runs?

21 MR. NICHOLS: So you would amend this to say that  
22 the chair of the workgroup -- request "the consensus of

1 the committee or the chair of the workgroup." Is that  
2 correct, Ms. Nutter? Would you add after "consensus of  
3 the committee" "or the chair of the workgroup?"

4 MS. NUTTER: Yes.

5 MR. NICHOLS: Okay. Do we have objection? I  
6 don't know if there is a response to that that anyone  
7 would like to make. The objection has been voiced.  
8 Ms. Yazzie?

9 MS. YAZZIE: Not an objection. Aneva Yazzie,  
10 Navajo. You know, being new to the committee and  
11 seeing this as a new insert pursuant to previous  
12 negotiation rulemaking protocols, just a question to  
13 some of the veterans, I think, on the committee.

14 You know, obviously, perhaps -- maybe I'm being  
15 presumptuous -- but you ran formula runs in prior  
16 negotiations. And if so, why was not this language  
17 considered even back then?

18 I know hindsight is 20/20, and maybe there's a  
19 reason for this. But I wonder because as part of the  
20 discussions, this will come out. And in terms of this  
21 being proposed under decisionmaking, I just wonder why  
22 that emphasis is being made and, therefore, the

1 proposal.

2 So I want to hear from veterans as to how they  
3 covered this discussion or process in prior negotiated  
4 rulemaking for formula.

5 MR. NICHOLS: Okay. Thank you.

6 Ms. Henriquez? I just want to ask if you have any  
7 objection or agreement with the amendment that was  
8 made, and then maybe we could address Ms. Yazzie's  
9 question after that?

10 MS. HENRIQUEZ: I accept the amendment. So I was  
11 just trying to get a little background because I was  
12 not part of formula negotiated rulemaking before. And  
13 indeed, I don't why there wasn't language offered  
14 before. I don't know, if someone who's been a vet can  
15 tell me why? But I don't know.

16 The question is why there is no formula runs  
17 language in decisionmaking or in the protocols, the  
18 last protocols. It sounds like we just -- we just  
19 called for this, and so there was not any language at  
20 all. Again, I want to go back and say the reason we  
21 proposed this language was really to focus on policy  
22 more than just the bottom line.

1           And I hear what Carol Gore has said and others  
2 around the table. So I guess I would just ask that you  
3 call the question.

4           MR. NICHOLS: Okay. We had a couple of hands up.  
5 Mr. Reed and Ms. Difuntorum, Mr. Dollarhide, and then  
6 we could call the question.

7           MR. REED: I'm Mike Reed, Cocopah. My heart  
8 starts beating real hard when we start talking about  
9 runs because there was no -- I recall nobody saying all  
10 of a sudden that we've got -- you know, we have to do  
11 these runs. I think we had a gentleman there from one  
12 of the universities conduct these runs, and every time,  
13 every time that we did a run, it had an impact on one  
14 group or another. And that had a lot to do with the  
15 decisionmaking.

16           We had good policy. We just had bad runs. And  
17 the idea of going to percentages versus actual dollars  
18 is just -- that's a math game. I really think that we  
19 probably should do it the way we did it then. We're  
20 just going to have to bite the bullet or come up with  
21 another way of using future dollars, not necessarily  
22 the current dollars.

1           Because you start changing the formula right now,  
2           there's tribes that have plans that go 4, 5, 6 years,  
3           you know, into the future. And in my mind, the only  
4           way to address the issue is through future dollars so  
5           those plans aren't affected. That may mean that the  
6           Congress approve more dollars, a certain percentage of  
7           those dollars go to a specific area. That might be one  
8           solution.

9           But we've got to change the approach altogether.  
10          And you know, Sharon and some others have tried, but  
11          the old way really didn't work that well. We managed  
12          to get more money for the small tribes, and Carol is  
13          absolutely right. We doubled the amount that went to  
14          the small tribes, but you know, they need a lot more  
15          than that to even do what they need to do. So, and I  
16          don't think it's fair to take it from the big tribes  
17          either. That's not right.

18          So that's my two cents.

19          MR. NICHOLS: Ms. Difuntorum?

20          MS. DIFUNTORUM: Thank you. I'm Sami Jo  
21          Difuntorum, Confederated Tribes of Siletz.

22          I agree in part with everything that's been

1 expressed here. I will say I'm not here solely for the  
2 purpose of protecting what Siletz has. I think that my  
3 responsibility here is bigger than that, and that's to  
4 try and come up with a formula that works as much as we  
5 can for everybody.

6 If we're talking about just protecting what we  
7 have at home, there's a lot of recipients who don't  
8 have a member at the table. There's only 25 of us that  
9 are from tribes. So I don't think that from my  
10 perspective, I can approach our discussions from that  
11 mindset.

12 I think there is some value in blind runs simply  
13 because it creates a more principled discussion, and  
14 it's not so much about what one tribe gains or loses.  
15 So I agree with what Annette says wholeheartedly.

16 Thank you.

17 MR. NICHOLS: Mr. Dollarhide?

18 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
19 Being new here, I don't really know what the -- the  
20 exact protocol is. I discussed with Mr. Adams briefly.  
21 But Region 4 would like to call a caucus.

22 MR. NICHOLS: Call a caucus? Is that -- is the

1 protocol -- Yes, Ms. Henriquez?

2 MS. HENRIQUEZ: If I could just work on what's on  
3 the floor here on the left-hand screen? As I  
4 understand it, because there was no language in the  
5 first negotiated rulemaking on formula, and so there is  
6 no need -- it was not foreseen to put language into the  
7 second one, but this is what evolved. A request could  
8 be made to the workgroup -- can you just hold up? Can  
9 you go back? No, go back up. Go back up a minute.

10 A request could be made to a workgroup chairperson  
11 or one of the committee chairpersons and then submitted  
12 to a member of the HUD team. Those runs were then done  
13 and posted. So you can see both the request -- as you  
14 scroll down. The request, what request was made by  
15 whom, what the topic was, what it meant, and when that  
16 run was done.

17 I don't know. I think if you click on request 56,  
18 my guess is you'll see the -- oh, actually, you see the  
19 request and what that was and the response. If you  
20 click going on response, you'll see the actual run that  
21 was generated by HUD's request.

22 And so, that's why we were hoping again to have at

1 least some formula language because, as I understand,  
2 lots of requests for information, lots of runs were  
3 done. We wanted to really focus on all of these  
4 conversations.

5 MR. NICHOLS: Ms. Vogel?

6 MS. VOGEL: Thank you. So what that shows me is  
7 that it's all about dollars. Can that run be changed  
8 to show how many Indian families would be helped that  
9 are eligible for services? Should not we focus on  
10 that, or are we focused on dollars?

11 MR. DOLLARHIDE: I think we're focused on both.

12 MS. VOGEL: Then let's amend the runs to show the  
13 number of families that are impacted that lose or that  
14 gain.

15 MR. NICHOLS: I see -- I see a number of hands up.

16 However, one of the committee members has called for a  
17 caucus. So we need to address that. How much time do  
18 you request for a caucus?

19 (Laughter.)

20 MR. NICHOLS: I believe the past custom was 15  
21 minutes. Is that correct?

22 MS. DOLLARHIDE: Yes, it was in the past. I mean,

1 I'll go with that.

2 MR. NICHOLS: Okay. Then I don't think we need a  
3 -- if I understand the protocols correctly, anyone can  
4 call for a caucus at any time. Is that correct?

5 MS. PODZIBA: Correct.

6 MR. NICHOLS: Do we need to have consensus on that  
7 or is that --

8 MS. PODZIBA: No.

9 MR. NICHOLS: -- at the discretion of the  
10 committee present?

11 MS. HENRIQUEZ: Could I just say before you all go  
12 into caucus in answer to Sharon's question, each tribe  
13 reports its own series of activities and numbers of  
14 families impacted. But some would be looking at social  
15 activities or economic development. Others are looking  
16 at entrepreneurship or rental assistance. And so, the  
17 numbers impacted will really vary based on the  
18 activities a particular tribe has undertaken.

19 So we're not always able to tell you apples-to-  
20 apples so that it would make -- so that you can draw  
21 the parallels about dollars that's divided by the  
22 number of families or households served.

1 MR. NICHOLS: Okay. Let's take a 15-minute  
2 caucus. And the time is up on the board, please be  
3 observant.

4 MS. D'ANGELO: We need to find rooms for the  
5 caucus.

6 MR. NICHOLS: The caucus rooms are on the agenda.  
7 Maroon Peak is right across the hall. The other two  
8 are on the third floor.

9 (Break.)

10 MR. NICHOLS: We're ready to begin. If everyone  
11 would please be seated?

12 (Pause.)

13 MR. NICHOLS: Okay. We're only missing two or  
14 three people, so we can start. We're going to start.

15 All right. So let me just recap where we were  
16 when we left off. One of the committee members had  
17 requested that we call the question on the language as  
18 it's worded up there. We had three pending comments  
19 lined up. So we took those three comments, and then we  
20 took the caucus.

21 So what I would like to do is cycle back to  
22 calling the question and take a vote on this question.

1 So let's call the question now, and I would ask is  
2 there anyone that has objection to the language as the  
3 way it is worded currently on the screen?

4 Anyone with an objection? Objection or -- do you  
5 have objection? Could I see the hands of those who  
6 object to the language?

7 (Show of hands.)

8 MR. NICHOLS: Okay. Several people, 1, 2, 3, 4,  
9 5, 6, 7, 8, 9, 10, 11, 12, 13, 14. Several objections.  
10 So, Ms. Foster?

11 MS. FOSTER: Karin Foster, Yakama Nation Housing  
12 Authority. I think in order for me to be able to  
13 really consider this, I think it needs to be unpacked.

14 I think that there are a lot of different decision,  
15 you know, areas in this. I mean, it's nicely worded,  
16 but for example, the question of assuming we're running  
17 formula runs, how are they -- how are they going to be  
18 requested? That's one thing.

19 Like, is there going to be a limit on how many or  
20 whether it has to be by consensus of committee or chair  
21 of the workgroup, or is it going to be like it was in  
22 the past rulemaking, which was anyone can ask for one.

1 And what would be the reasons for HUD wanting to limit  
2 it just to consensus of the committee or the workgroup?

3 I see that as one issue, and I'd like to be able  
4 to deal with that issue separate from will these be  
5 general runs that don't name the tribes and how it's  
6 going to affect them. So I don't -- I don't feel like  
7 I can, you know, productively work with the whole thing  
8 all at once without -- without separating them out.

9 MR. NICHOLS: Okay. Good. Thanks for explaining  
10 that.

11 And any other volunteers who would like to  
12 explain? Ms. Difuntorum?

13 MS. DIFUNTORUM: Thank you. Sami Jo Difuntorum,  
14 Confederated Tribes of Siletz.

15 After talking through it with a few people, what  
16 occurred to us is that blind runs might actually harm  
17 some of the smaller tribes who are undersophisticated  
18 to maybe be able to pick out in the hierarchy where  
19 they are. I could probably pick out where we are just  
20 based on demographics, the small amount of tribes in  
21 our region.

22 But the small tribes that maybe aren't as familiar

1 with the formula or don't have resources to appoint  
2 people to understand the formula might be at a  
3 disadvantage using this. So I actually have changed my  
4 opinion on doing blind runs for that reason.

5 MR. NICHOLS: Okay. Thank you. Mr. Reed?

6 MR. REED: Well, our group met -- excuse me. And  
7 we're willing to utilize the regular run, I'll call it,  
8 as a tool. But I believe that there are going to be  
9 other issues that are offered in conjunction with that,  
10 and that maybe if we go to percentage, that's just  
11 adding another step because people are going to change  
12 the percentage to dollars, and you know that's how it  
13 goes.

14 But I really believe this time, I'm getting a  
15 different feel from this group than the previous group.

16 I really am. That was a very close group, although  
17 some of us were there. And I really feel confident  
18 that this group is going to come up with a way that's  
19 fair and straightforward for everybody. So I'd like to  
20 use the one we used last time.

21 Although we had to fill out a form, and I don't  
22 recall -- maybe somebody else does -- whether or not

1 that had to be approved by the committee. You know,  
2 that's more -- that's more detail than I, you know,  
3 want to get in right now.

4 MR. NICHOLS: Ms. Hobgood? Is that correct?

5 MS. HOBGOOD: Robbie Hobgood, Choctaw Nation  
6 Housing Authority. Our group got together and  
7 discussed this, and I was at the last formula NegReg  
8 and actually requested one of the runs. And what he  
9 said, we had a form. I think that was the first time  
10 it was used. I don't believe it was used at the first  
11 negotiated rulemaking committee.

12 It did help us in the region, and as you stated  
13 earlier, we represent more than just ourselves. And we  
14 actually looked it and saw from dollars how it affected  
15 the small tribes, the large tribes. And it did make a  
16 difference in how we voted.

17 So, and I don't believe it had to go through the  
18 committee or actually even from the working group. But  
19 we found it very useful. And also I believe that if  
20 HUD does do the runs, they're run consistently across  
21 with the same factors. That was some of the things we  
22 came up with.

1 MR. NICHOLS: Okay. Good. Thank you.

2 Ms. Vogel?

3 MS. VOGEL: I was one of the objectors, but I'd  
4 just say I have to ask another clarification question.

5 I've been told that the protocols determine how we act  
6 as -- it makes up how we conduct business. So if one  
7 of the runs are not part of the protocols and  
8 guidelines governing the runs aren't spelled out, then  
9 runs don't happen because they aren't part of the  
10 protocol.

11 And if that's the case, then with the protocol as  
12 we are reviewing, without it in there, then it won't  
13 happen because we're operating by consensus. So that's  
14 my understanding.

15 The other is what if Cheyenne River or Region 3  
16 says don't quote us in the run? You don't have my  
17 consensus to do a run. Then what happens?

18 MR. NICHOLS: Mr. Adams and Ms. Gore.

19 MR. ADAMS: I totally agree with what Sharon as  
20 well -- this is Jason Adams, Salish Kootenai. As  
21 history -- as my history recollection on this issue  
22 comes through, in 2003 when we had negotiated

1 rulemaking on the formula, we did not anticipate this  
2 issue in the creation of the protocols because we  
3 didn't know this was going to happen. Previous  
4 negotiated rulemaking established the formula. This  
5 committee was the first one that was going to take a  
6 look at the formula, and we didn't have any idea that  
7 that was going to happen.

8 What history, what I recollect on the issue is  
9 that we had some tribes at the table that were able and  
10 had staffing capabilities to do a data run. And so, in  
11 absence of just allowing the haves to have more, we  
12 thought that it was appropriate that everybody have HUD  
13 do the data runs.

14 But none of this was addressed in the protocol,  
15 and so there's no -- there's no -- there's no process  
16 that governs how we do this. And I am in agreement  
17 with Sharon. If we don't have something that's  
18 protocol on how we do data runs, then we don't do data  
19 runs.

20 MR. NICHOLS: Ms. Gore?

21 MS. GORE: I have several comments. I'm in  
22 agreement in principle on many levels with members of

1 the committee, especially about equity. Where I don't  
2 have agreement is I didn't come here to make decisions  
3 based on assumptions instead of knowledge.

4 The way the runs were used at the previous formula  
5 negotiated rulemakings, they were a very strong tool  
6 for the working groups. They allowed the working group  
7 to work from -- away from an assumption basis into a  
8 knowledge basis by which they could come up and  
9 formulate some proposals. It was a strong and  
10 important tool.

11 In the absence of that, we are -- we are -- what  
12 are we working with? Let me just say that I'm here to  
13 represent constituent interests. I must know what they  
14 are, and the only way I know them is by seeing a run.

15 We also used those runs to identify allies and  
16 opponents so that we could negotiate. That way, we  
17 could seek each other out. We often had joint caucuses  
18 because we have difference of opinion, and we were able  
19 to identify those only because we have those data runs.

20 We just spent a week and a half on consensus. In  
21 the absence of knowledge, how will some vote at the  
22 table? Will they be stuck opposing proposals because

1 they don't have knowledge on which to base their vote?

2 So I just want to say that it is a tool. I don't  
3 see it as a necessity for the protocols. If others see  
4 that it does, I'm prepared to have that conversation.  
5 But I'm not prepared to sit at this table for as many  
6 meetings as we need to have and vote without having  
7 information that makes us all equal. Some of us have  
8 more knowledge than others.

9 Thank you.

10 MR. NICHOLS: Okay. Thank you. That was a good  
11 collection of explanations. The proposal, as it was  
12 submitted, was not approved by committee. Is there any  
13 additional discussion or proposal on this topic?

14 Yes, Ms. Henriquez?

15 MS. HENRIQUEZ: Having heard the discussion --  
16 thank you very much, everyone -- a couple of things.  
17 One, the negotiated rulemaking statute requires that,  
18 "The agency shall provide appropriate administrative  
19 support to the negotiated rulemaking committee,  
20 including technical assistance."

21 So we would see that to mean, the data runs are  
22 part of that process formulas. So I'd like to propose

1 the following language. Can we work off the existing  
2 form there? So (d), Section (d) Formula Runs.

3 "Formula runs may be conducted upon request of  
4 consensus of the committee." I'm sorry. My bad.

5 "Or of the chair of the working group." Okay? I  
6 would strike, propose to strike the rest. And then  
7 I'll put this here instead.

8 New sentence. "The committee shall establish  
9 procedures for requesting technical assistance and/or  
10 formula runs."

11 I think from my perspective that picks up the way  
12 in which workgroups -- or requests were made the last  
13 time the formula was negotiated and strikes out the  
14 prickly part about the blind data or not tribal  
15 specific data.

16 MR. NICHOLS: Okay. So that's complete, the way  
17 you're proposing it up on the board now?

18 MS. HENRIQUEZ: Yes.

19 MR. NICHOLS: Okay. Mr. Sawyers?

20 MR. SAWYERS: In all due respect, why don't we  
21 just put a period at the end of "formula runs can be  
22 conducted upon consensus." Does that not do what we

1 want to do?

2 MR. NICHOLS: Where would that period be?

3 MR. SAWYERS: On consensus of the committee,  
4 period.

5 MS. HENRIQUEZ: But can I just ask a process  
6 question? Would you then -- so that as work is done  
7 in workgroups, does the workgroup has to come back to  
8 the committee to request a data run or a series of data  
9 runs before it can go back and finish its work?

10 MR. SAWYERS: We're going to meet every day. So  
11 it's not a big deal. In other words, I just -- excuse  
12 me. I'm Jack Sawyers.

13 I'm just stating that I don't think that we want  
14 to have a whole bunch of runs. The last time that we  
15 had 25 runs was by one person, and I didn't think  
16 that's -- that's not good utility. I just think that  
17 we just should say that formula runs will be conducted  
18 by the consensus of the full committee, period.

19 MR. NICHOLS: Okay. Conducted by --

20 MR. SAWYERS: By the committee is fine.

21 MR. NICHOLS: The full committee is what he's  
22 proposing as an amendment. That would be an amendment

1 or --

2 MR. SAWYERS: Well, I'm more asking the question  
3 than a proposal. I'm just asking a response, and if  
4 that would solve --

5 MR. NICHOLS: Okay.

6 MS. HENRIQUEZ: So, Jack, are you suggesting put  
7 in a period there, and then the last sentence is out as  
8 well? Is that what you're suggesting?

9 MR. SAWYERS: Well, my full suggestion was just  
10 that we said on the request of the committee, you know,  
11 upon consensus of the committee, period.

12 MR. NICHOLS: Of the full committee.

13 MR. SAWYERS: Yes. But do you feel that that  
14 would do it, or do you feel that we need to do  
15 something else?

16 MS. HENRIQUEZ: I feel we need to have the last  
17 sentence because there needs to be a series of -- at  
18 least a procedure about what the request is so we make  
19 sure a couple of things. One, it's the way of the  
20 workgroup and/or the committee. It's the information  
21 they want or the requester is asking for.

22 Technical assistance may not be necessarily just a

1 formula run. And so, I would leave the second, the  
2 last sentence in.

3 MR. NICHOLS: So you're okay with the first part,  
4 but not the last part? You want the last part -- you  
5 want it to say basically what it says right now, is  
6 that right?

7 MS. HENRIQUEZ: Other people should weigh in. I'm  
8 really torn about the leaving the part of chair of the  
9 workgroup. I -- only because I don't want it to feel  
10 like we've got to -- the workgroup makes it --  
11 something the workgroup wants, like a run done, the  
12 workgroup agrees. The chair takes that up to the  
13 committee or however the process is going to work, as  
14 opposed to having just the chair by consensus of that  
15 workgroup do it.

16 I'm --

17 MR. NICHOLS: So I understand that sentence --

18 MS. HENRIQUEZ: I'll go to the will of the  
19 committee on that point.

20 MR. NICHOLS: Since you were -- since you were the  
21 one that made the original proposal, it sounds like  
22 you're saying rather than leave it the way it was prior

1 to that last change?

2 MS. HENRIQUEZ: I would.

3 MR. NICHOLS: Okay. Then let's just put it back  
4 the way it was prior to the last change for now, and  
5 then Ms. Cloud had her hand up and then Mr. Reed? Did  
6 you have your hand up, Ms. Cloud?

7 MS. CLOUD: She was first.

8 MR. NICHOLS: Oh, she was first? Okay. Ms.  
9 Foster, then Ms. Cloud.

10 MS. FOSTER: Thank you. Hello. Karin Foster,  
11 Yakama Nation Housing Authority.

12 I think the discussion about who is going to  
13 request a formula run, whether it's a consensus of the  
14 committee or the workgroup, kind of begs the question  
15 of why we're limiting it to any -- to consensus or the  
16 workgroup. Why can't it be any committee member? I  
17 think that's what we did last time.

18 And if that, for some reason, is not a workable  
19 way to operate, then I guess I'd like to understand why  
20 this should be a reason for being more restrictive in  
21 our process than we've been before.

22 I have more comments than that, but I really would

1 like an explanation there because if there's not a  
2 reason to be more restrictive, then I'm never in favor  
3 of restricting information.

4 MS. HENRIQUEZ: I was simply reacting to the  
5 procedures that were set up that appeared on this  
6 screen. It said that a committee member through the  
7 workgroup or a member of this committee. So that's why  
8 I put down that language.

9 MR. NICHOLS: Ms. Foster?

10 MS. FOSTER: Then if there's not a reason, if it's  
11 not a funding issue or, you know, overwhelming our  
12 contractor, whatever it is, then I think that any  
13 member of the committee should be able to request a  
14 data run. And I don't think it should be restricted to  
15 consensus of the committee or even the chair of a  
16 particular workgroup. We're not always there to  
17 participate in each other's workgroups when they want  
18 to know how something in that workgroup affects us.

19 MR. NICHOLS: Okay. Ms. Cloud, then Mr. Reed.

20 MS. CLOUD: I agree with Ms. Foster, and if I were  
21 to make any suggestions, it would be formula runs may  
22 be conducted upon request, period. Striking "of

1 consensus of the committee or the chair of the  
2 workgroup," and leave "A committee shall establish  
3 procedures for requesting technical assistance and/or  
4 formula runs."

5 MR. NICHOLS: So your amendment would be to strike  
6 this portion, just like that? So that would be your  
7 amendment, Ms. Henriquez, to your amendment that  
8 proposed that's on the screen.

9 MS. HENRIQUEZ: Can I just ask a clarification?  
10 Is the sticking point the word "consensus?" So if it  
11 read, "Formula runs may be conducted upon request of  
12 the committee or the chair of the workgroup," is that -  
13 - I'm just trying to get a better sense.

14 MR. NICHOLS: Ms. Foster?

15 MS. FOSTER: Can I suggest that we say, "Formula  
16 runs may be conducted upon request of one of our  
17 committee members," period?

18 MR. NICHOLS: Your suggestion is the -- it's kind  
19 of the same thing? Okay. "The request of one of our  
20 committee members," period.

21 I'm going to get to Mr. Reed and then Ms. --

22 MS. FLOOD: Flood.

1 MR. NICHOLS: -- Flood. Thank you.

2 Before I do that, before I get to the two of you,  
3 I just want to get her reaction to the proposed  
4 amendment. Ms. Henriquez, a reaction?

5 MS. HENRIQUEZ: I'm fine with that amendment.

6 MR. NICHOLS: Okay. Mr. Reed and then Ms. Flood.

7 MR. REED: Mike Reed, Cocopah. The last time I  
8 was reminded, you know, this wasn't part of the  
9 protocol. I would not want it to stymie anybody coming  
10 up with a good reason to run, you know, any particular  
11 subject, and I'm afraid that if we start defining it  
12 too much, we're going to leave some people out.

13 So I really agree with Karin and also Heather that  
14 it'd be a good idea if anybody on the committee at any  
15 time could ask for a run because we've got people in  
16 the audience that also have very good ideas. And last  
17 time, I sat back there, and I thought it was kind of  
18 confined the way that we did it.

19 So I would like an opportunity for any committee  
20 member to ask for a run and anybody in the audience, so  
21 if they get a great idea, to come to any committee  
22 member and ask.

1 MR. NICHOLS: Okay. Ms. Flood and then Mr. Adams.

2 MS. FLOOD: Deirdre Flood, Washoe Housing  
3 Authority. I just want to make a comment, basically,  
4 and ask Ms. Henriquez. The formula runs are a tool  
5 that we're going to use as a committee. It's one of  
6 our main tools. So why does it have to be defined  
7 under the protocol?

8 Because it's part of many tools that we'll ask for  
9 from technical assistance for them to provide to us.  
10 So why do we have to define it? I don't understand.  
11 It's one of many tools, many, many things we may ask  
12 for.

13 MR. NICHOLS: Ms. Henriquez?

14 MS. HENRIQUEZ: So what we're trying to do is  
15 simply put it in here so that there is a recognition  
16 that, one, you can ask for it and get it. It may take  
17 lots of different -- different forms. It may not be a  
18 run. It could be something else.

19 But since it had not been addressed before, we  
20 thought it was important to address it, and initially,  
21 we were really trying to focus on that as policy, as a  
22 way to promote policy discussions, not just the bottom-

1 line dollar numbers. So I think that I'm hoping that  
2 this is broad enough and gets at the issue.

3 I would like to say -- I think I'd be remiss if I  
4 didn't say that I think that our commitment is to run  
5 as many as we possibly can. There should -- there may  
6 come a time when we have to say to you I can't do 150  
7 different runs in whatever that is. But I'm expecting  
8 that the committee will be just as judicious and, as  
9 always, continue to thoughtful about the kind of  
10 information, the kind of runs that they're asking for.

11 MR. NICHOLS: Mr. Adams?

12 MR. ADAMS: Again, Jason Adams, Salish Kootenai.  
13 When we started this discussion, I appreciated the  
14 effort that's being put forth to put some parameters on  
15 this issue because in 2003, we didn't have any  
16 parameters on this. And so, I would guess that, you  
17 know, at this time, I would hope, I guess, that we  
18 would be able to bring the request to the full  
19 committee and ask for that because of the reason that  
20 was expressed earlier by Sharon Vogel.

21 What if she doesn't want her information included  
22 in the data run? Then you've got bad data. So I would

1 hope that the workgroup -- and being from the previous  
2 formula negotiated rulemaking, I oversaw one of the  
3 subcommittees that did work in this area, and we spent  
4 a lot of time waiting for formula runs. And pretty  
5 soon, that became the gist of a lot of our work was  
6 waiting for that information and then making some up or  
7 down decisions based on what that data run said.

8 I would hope that, again, as I stated earlier that  
9 we would be at this table to meet the requirement of  
10 why we were asked to come to this table is to take a  
11 look at the formula, not necessarily how it affects  
12 each one of us individually, but the parameters and the  
13 parts of it or new parts, new formula. Let's think  
14 that way.

15 But I still don't see how this, what's being  
16 proposed here addresses Sharon's concern or anybody  
17 else's concern at this table that if a committee member  
18 or two, as it's proposed now, wants a data run, I can  
19 say I don't want to be included in that. Then you've  
20 got bad data.

21 We need to address this issue. I don't -- I'm not  
22 giving up on this issue. I'm not saying that I want to

1 hold this issue hostage. I just want to make sure we  
2 address it at this level because we didn't before.

3 MR. NICHOLS: Mr. Shuravloff?

4 MR. SHURAVLOFF: I'm Mary Shuravloff, Kodiak  
5 Island Housing. I have to disagree, Jason. I don't  
6 think it gives it bad data runs. I think that if  
7 somebody doesn't want to see their allocation in that  
8 run, it can be blacked out, but the data run is still  
9 going to be accurate. They're just not going to see  
10 their numbers.

11 MR. ADAMS: If I could respond? I guess what I'm  
12 saying is that you don't use my data at all in your  
13 data run. You don't include me. It's not that you  
14 block out what my result with the data run would be.  
15 It's that you don't put Salish Kootenai Housing  
16 Authority in the data run, or anybody else or a region,  
17 then you have bad data.

18 MR. NICHOLS: Ms. Cloud and then Ms. Foster.

19 MS. CLOUD: I would tend to not think that that  
20 would defeat the whole purpose -- Heather Cloud, Ho-  
21 Chunk Nation -- of having formula runs. I would agree  
22 that if they were going to have formula runs, somebody

1 had wanted information knowing that that could be  
2 redacted.

3 And another question that I have is where it says,  
4 "The committee shall establish procedures for  
5 requesting technical assistance and/or formula runs,"  
6 how are we going to know what technical assistance we  
7 may encounter? And so, how are we to establish those  
8 procedures if, at this point, we don't know what those  
9 are, and where are those procedures going to be  
10 identified?

11 I have all those questions.

12 MR. NICHOLS: Ms. Henriquez and Ms. Foster.

13 MS. HENRIQUEZ: Good questions. So if I might,  
14 maybe, again, let me go back. Part of why we thought  
15 maybe having the presentations in the morning would  
16 solve or resolve some of this kind of -- these kinds of  
17 questions. Is it helpful, this is a suggestion, that  
18 we maybe table this until we finish the rest of the  
19 protocols, reserve the right to come back to this after  
20 the presentations?

21 Then the questions about the kind of formula runs,  
22 what's a dataset, all of that might help inform the

1 language the committee might want in this section.

2 Just a thought.

3 MR. NICHOLS: Ms. Cloud -- or actually, Ms. Foster  
4 is next, then Ms. Cloud. Sorry.

5 MS. FOSTER: Thank you. Karin Foster, Yakama  
6 Nation Housing Authority. I think it is important that  
7 this be in the protocol because it sounds to me like  
8 HUD is thinking about doing something different than  
9 they've done in the past. I want to make sure I  
10 understand what it is they want to do.

11 I guess I'm not so in favor of having my  
12 information restricted. I think we'll hear in a  
13 presentation a little bit about getting regional data  
14 or getting data for small tribes, large tribes, you  
15 know, how will it affect all the large tribes? How  
16 will it affect all the small ones?

17 If they want to give us that additional data, I  
18 think that's great. Give us more. Give us more  
19 information, you know, and maybe that will help some of  
20 us move off the dime of just being focused on our own  
21 numbers. But restricting information, no.

22 So I agree with Heather that the last sentence,

1 I'm not sure it really takes us anywhere, and I do  
2 think that it would be helpful to have something that's  
3 more -- you know, that's clearer. Because if we don't,  
4 then we pretty much get what, you know, what HUD wants  
5 to give us. And I think talking about what we're going  
6 to get from HUD is a good thing.

7 I also would not disagree with tabling it, if  
8 that's the best way to get to the answers to those  
9 questions.

10 MS. HENRIQUEZ: I'm sorry. I know -- Heather, I'm  
11 sorry. I have to just react to what Karin said. There  
12 is no intention on HUD's part to restrict any  
13 information. We're simply trying to figure out what  
14 the protocol process the committee wants to use to get  
15 the information the committee wants.

16 This is not -- forgive me if I'm overreacting, but  
17 I find the issue or the notion of suggesting, even  
18 suggesting that we've got some other agenda to be off-  
19 putting.

20 MR. NICHOLS: Ms. Cloud?

21 MS. CLOUD: Again, I would refer to the technical  
22 assistance. If we're identifying, then I kind of feel

1 like that may be limiting us. And if we're identifying  
2 it in this protocol and we're approving it, then what  
3 if something else comes up, and then how are we  
4 supposed to add it or how are we supposed to address it  
5 if we're not fully identifying it, all of it right now?

6 And then this is under section that says "Formula  
7 Runs." So how -- what is the technical assistance  
8 regarding something else other than formula runs?  
9 You're not addressing the whole -- I think the intent  
10 of what the last portion is put up there for.

11 MR. NICHOLS: Ms. Henriquez, if you'd like to  
12 respond, and then Ms. Yazzie and Ms. Nutter.

13 MS. HENRIQUEZ: So let me try and reapproach. A  
14 new Section (d) Technical Assistance and not Formula  
15 Runs. Move the last sentence to become the first. So  
16 it reads, "The committee shall establish procedures for  
17 requesting technical assistance and/or formula runs,"  
18 period. Delete the rest.

19 And so, the thought I have, though, doing that is  
20 I don't -- I'm not suggesting in any way that every  
21 type of technical assistance that may be sought by a  
22 committee member is called out here because I think

1 that's impossible for us to do. We're all wise, but  
2 I'm not sure we're all that wise.

3 The issue is simply if you want the information or  
4 the formula run, how do you go about getting it? Pure  
5 and simple, that's what that sentence and that section  
6 is intended to call out. That's it.

7 MR. NICHOLS: Okay. I have a queue of people. I  
8 have Ms. Yazzie, Ms. Nutter, and Mr. Evans, and then  
9 Ms. Cloud and Mr. Adams. Five people in the queue. So  
10 the first one is Ms. Yazzie.

11 MS. YAZZIE: Thank you, Steve. Aneva Yazzie,  
12 Navajo. I was just going to suggest the tabling, but  
13 since Ms. Henriquez made the amendment, I'm fine with  
14 that.

15 Thank you.

16 MR. NICHOLS: Okay. Thank you. Ms. Nutter?

17 MS. NUTTER: Thank you. Teri Nutter, Copper  
18 River. Maybe my comments are more for the procedural  
19 process, but I do believe that all formula runs should  
20 be all-inclusive.

21 MR. NICHOLS: Okay. Mr. Evans?

22 MR. EVANS: Earl Evans, Haliwa-Saponi Indian

1 Tribe. I just wanted to ask if we could go ahead and  
2 vote on the proposal?

3 MR. NICHOLS: The way it is right now?

4 MR. EVANS: Yes, sir.

5 MR. NICHOLS: Okay. I have one more or a couple  
6 people still in the queue. So Ms. Cloud and Mr. Adams.  
7 Okay, Ms. Cloud, you're first. Then we have Mr. Adams  
8 and Ms. Hobgood. Go ahead.

9 MS. CLOUD: Okay. One question that was in the  
10 original thing is how and where are these procedures  
11 going to be established? And so, then that still isn't  
12 addressed.

13 But I appreciate crossing out the formula runs,  
14 and it is identifying as requested by some of the other  
15 committee members, but it still doesn't say they shall  
16 establish procedures for requesting. Where is that --  
17 where are those procedures going to be identified?

18 Is it part of technical assistance? Because then  
19 you're limiting yourself, and so how and where is my  
20 question.

21 MR. NICHOLS: How and where will they be done?

22 And because we've had the request to take the vote on

1 this, let's hear from Mr. Adams and Ms. Hobgood. You  
2 are the two in the queue, I believe, correct? And then  
3 let's take a vote and try to answer Ms. Cloud --

4 MR. ADAMS: Jason Adams, Salish Kootenai. My  
5 comments follow along with Ms. Cloud's. I guess I  
6 would hope that we would -- this issue was a big issue  
7 the last time we had formula negotiated rulemaking.  
8 And so, I would hope that it would appear here in the  
9 protocol to not be called to a procedure that is  
10 outside of the protocols.

11 I don't know if that's the intent here, but I  
12 would hope that we would address it in the protocols.  
13 Whether it's further down after this section and we  
14 establish the procedure in the protocols as to how this  
15 can be done, but I think this issue is a big enough  
16 issue that it has to be addressed in the protocols.

17 MR. NICHOLS: Thank you. Ms. Hobgood?

18 MS. HOBGOOD: Robbie Hobgood, Choctaw Nation  
19 Housing Authority. Mine was just a rewording where it  
20 said, "The committee shall establish procedures for  
21 requesting technical assistance, which may include  
22 formula runs and other assistance as needed."

1 MR. NICHOLS: "Which may include formula runs and  
2 other assistance as needed?"

3 MS. HOBGOOD: Uh-huh.

4 MS. HENRIQUEZ: I accept the amendment.

5 MR. NICHOLS: So before we take the vote, since  
6 the question has been asked how are these procedures  
7 going to be established? Is that a topic for a  
8 separate discussion, or do we want to discuss that  
9 before we take the vote?

10 Mr. Reed?

11 MR. REED: Yeah, I think that's another paragraph.  
12 But I'd like to see this voted on now.

13 MR. NICHOLS: Okay. Is that the feeling of the  
14 group? Mr. Adams?

15 MR. ADAMS: Then if I could just offer an  
16 amendment, then that would say so establish procedures  
17 in this protocol for requesting. So that it's in the  
18 protocol. It's not a separate procedure.

19 Or refer to it as Section (e), I guess, if we're  
20 going to address it there.

21 MS. HENRIQUEZ: I accept the amendment.

22 MR. NICHOLS: Was there another hand up during

1 this?

2 (No response.)

3 MR. NICHOLS: Okay. Well, then I'll call the  
4 question. Do we have the wording caught up, Christine?  
5 Instead of saying that those procedures will be in the  
6 protocols, is that not the amendment?

7 MALE SPEAKER: Yes, that's what it says.

8 MR. NICHOLS: Procedures in this protocol. Okay,  
9 thank you. You have a blind facilitator up here today.

10 All right. Let's call the question. Is there any  
11 objection -- Ms. Cloud?

12 MS. CLOUD: I just have one question. So if you  
13 have like the technical assistance that's in there, so  
14 then what if you don't like identify something. Is  
15 there a way, would it be in this sentence or would it  
16 be in the protocols to be able to address an issue  
17 regarding the technical assistance if it comes up that  
18 is unforeseen?

19 MS. HENRIQUEZ: Let me try this again. This is  
20 simply meant to establish a way in which technical  
21 assistance, wherever it comes up, in whatever --  
22 whatever time it comes up, that there's a way in which

1 it gets raised up and dealt with. That's all that  
2 we're attempting to do here.

3 So much like today we may be talking about X, and  
4 we get down the road, we thought we've covered all this  
5 stuff. But then at some point, there is some different  
6 issue that we -- it's just that -- it's just a  
7 protocol. It's just how do we raise up the issue?  
8 Identify the issue, raise it up, and get the technical  
9 assistance that's being requested so that it comes  
10 through in a more orderly fashion.

11 So we are all aware of what the request of the  
12 committee is, how it gets handled, and that also  
13 requires, makes sure that HUD, if you're asking us for  
14 technical assistance, that we have complied to fill  
15 that request. So it puts us all on notice. Holds all  
16 of our feet to the fire. Makes us all accountable to  
17 each other about how we're going to move these  
18 questions forward together.

19 That's all it's meant to do. We don't have to  
20 know every single thing at this moment. If we did, we  
21 probably shouldn't be just doing negotiated rulemaking.

22 We should -- so it just gets as broad as possible so

1 that whatever you need, we can get into a system to  
2 identify it, call it out, and get the information you  
3 need.

4 MR. NICHOLS: Okay. Let's call the question. Is  
5 there any objection to the wording on the screen as  
6 it's now stated?

7 (Show of hands.)

8 MR. NICHOLS: Ms. Foster. Do we have any other  
9 objections?

10 (Show of hands.)

11 MR. NICHOLS: Okay, we have two people that are  
12 objecting. Would -- could I ask for a volunteer to  
13 explain your rationale for that?

14 MS. FOSTER: Karin Foster, Yakama Nation Housing  
15 Authority. I just think we should get to establishing  
16 the procedures, and maybe we're going to have to go a  
17 break and come back and do it.

18 But I guess, you know, I would be more comfortable  
19 with something that said "HUD shall provide technical  
20 assistance," you know, "which may include formula runs  
21 and other technical assistance as needed." And then  
22 state, you know, what the parameters are going to be

1 around some of the technical assistance we can  
2 anticipate. Like formula runs, we might have key  
3 parameters around that.

4 But you know, I think I'm more comfortable with  
5 just jumping into the procedures in this paragraph, and  
6 without going into too much wordsmithing, I'm not  
7 comfortable with that sentence.

8 MR. NICHOLS: Okay. Mr. Jacobs and then Ms.  
9 Cloud.

10 MR. JACOBS: Leon Jacobs, Lumbee Tribe. My  
11 recommendation is that the wording would be, "The  
12 committee shall in this protocol request technical  
13 assistance, which may include formula runs and other  
14 technical assistance as needed."

15 If we leave procedures in there, then we have to  
16 write the procedures and add more in there and so  
17 forth. And so, and that's my recommendation.

18 MR. NICHOLS: So that would be an amendment, Ms.  
19 Henriquez, for you -- for your consideration.

20 (Pause.)

21 MS. HENRIQUEZ: Leon, would you read that again?  
22 I'm sorry.

1           MR. JACOBS: Yeah, the wording would be, "The  
2           committee shall in this protocol request technical  
3           assistance, which may include formula runs and other  
4           technical assistance as needed."

5           MR. NICHOLS: And your intent for that is that  
6           there is nothing, no other procedures would be required  
7           in the protocols?

8           MR. JACOBS: Right.

9           MR. NICHOLS: We've got Ms. Foster, Ms. Cloud, and  
10          Mr. Sawyers.

11          MS. FOSTER: Karin Foster, Yakama Nation Housing  
12          Authority. I really think that we should probably  
13          break for lunch and come back to this with some  
14          language because we're kind of reworking the language.

15          But I will make the comment that I don't think the  
16          focus should be on "the committee shall." I think the  
17          focus should be on "HUD shall." HUD shall provide  
18          appropriate technical assistance, you know, which may  
19          include formula runs and other technical assistance.

20          But I also do think that we need -- I disagree, I  
21          guess, with Leon. I think we do need to kind of spell  
22          out a little bit of what that's going to be. But I

1 would suggest tabling it and working on some language  
2 we can bring back after lunch.

3 MR. NICHOLS: Ms. Cloud?

4 MS. CLOUD: I'm going to concur with Ms. Foster,  
5 and it should be that HUD shall provide support, which  
6 may include formula runs and/or technical assistance as  
7 needed.

8 MR. NICHOLS: Okay.

9 MS. CLOUD: And that's basically what the  
10 regulations already say.

11 MR. NICHOLS: Mr. Sawyers?

12 MR. SAWYERS: Point of order. This proposal  
13 failed. So what we need to do is restructure it.  
14 We're not trying to work on this, this one. It failed.

15 So, or you would have to run it through whatever.

16 We need to restructure, and we need to get another  
17 proposal. So this proposal is -- is no longer there.

18 MR. NICHOLS: Let me ask there was also -- there  
19 was a suggestion made at one point that we defer this  
20 discussion until after the presentations were made on  
21 the formula, and they were going to be made this  
22 morning. Now there's a suggestion that we delay, we

1 break for lunch, come back, and pick up where we are  
2 now.

3 Is there any preference as to which one of those  
4 is the way the committee would like to proceed? Mr.  
5 Jacobs?

6 MR. JACOBS: Leon Jacobs, Lumbee Tribe. I would  
7 like to try to get this resolved and then go to lunch.

8 I think that what I heard from Karin could be  
9 incorporated in here very easily if by just saying if  
10 the committee shall in this protocol request from HUD  
11 the technical assistance, which may include formula  
12 runs and other technical assistance as needed. So if  
13 you want to say this technical assistance would come  
14 from HUD, put the word in there.

15 MR. NICHOLS: So it would say request from HUD.  
16 Ms. Henriquez, you have the right to respond to that  
17 suggestion.

18 MS. HENRIQUEZ: So if we were to step forward to  
19 page -- page 11. It's, I'm sorry -- do people have the  
20 what's been approved so far on the protocols? If you  
21 turn to page 9, it is -- hold on. We haven't gotten  
22 there yet, but it's under 6, Safeguards for the

1 Committee Members. I think that's where this is, here.

2 If you look at Section (e), bingo. So the  
3 language in Section (e) that we have yet to get to  
4 says, "HUD will provide requested information and  
5 technical assistance needed for the work of the  
6 committee."

7 So you're going to get to the language people are  
8 now talking about working on over lunch, but I think  
9 that that addresses the issue that Karin Foster raised.

10 So I don't know if you want to incorporate that  
11 language into this earlier language under technical  
12 assistance and delete this, but it's all in there. And  
13 you were just going to get to it but hadn't gotten  
14 there yet.

15 MR. NICHOLS: Technically, we don't have a  
16 proposal on the table right now, unless Mr. Jacobs  
17 wants to make this a proposal. But Ms. Cloud?

18 MS. CLOUD: So can I propose to break for lunch?  
19 Because if it's already in there and she don't have a  
20 proposal on the table, then we're just sitting here  
21 talking.

22 MR. NICHOLS: Mr. Jacobs, is that acceptable to

1 you? You raised the question.

2 MR. JACOBS: I'm sorry. I was not listening.

3 What are you proposing?

4 MS. CLOUD: To go to lunch.

5 (Laughter.)

6 MR. JACOBS: I agree 100 percent.

7 MR. NICHOLS: Let me tell you there was only the  
8 last -- we have no proposal on the table currently on  
9 this topic, and it is -- it is described in a future  
10 section of the protocols, and we address it when we get  
11 to that section of the protocols. Am I correct in that  
12 summary?

13 MS. CLOUD: Right.

14 MR. NICHOLS: Okay. Let's break for lunch. Lunch  
15 is an hour and a half, 90 minutes. So please come back  
16 at, what would that be? Ninety minutes from now would  
17 be -- come back at 1:53 p.m., and we can start. 1:53  
18 p.m., remember that number.

19 (Break.)

20 MS. PODZIBA: All right. I think we've got a  
21 quorum, and we can get started. Just a kind of process  
22 point before we do get started, I understand that Steve

1 and I have been missing some people who've been asking  
2 to be recognized. And I apologize for that.

3 I make a proposal that if we don't see your hand,  
4 some groups put their name tents standing up. And then  
5 when we scan the room, it's easy to see who wants to be  
6 recognized. So these are a little flimsy, so pull them  
7 in so they don't fall over. We'll try to get some  
8 different ones next time.

9 But if you put your name tent up, I'll be able to  
10 see that, and then I will miss fewer of you. And  
11 again, I apologize for missing people in the back.

12 My understanding of where we stopped at lunch was  
13 that we were going to come back to the question of  
14 technical assistance and data runs when we get to 6(e),  
15 which is on page 9, and refers to HUD Assistance to  
16 Committee Members.

17 So if that's correct, we'll move then to  
18 Agreement, which is on page 7 of your document. And  
19 letter (a) there is Product of Negotiations, and I will  
20 open the floor to discussion and proposals.

21 (Pause.)

22 MS. PODZIBA: Yes, Mr. Adams?

1 MR. ADAMS: The copy that I have has  
2 Workgroups/Standing Committees.

3 MS. PODZIBA: I think we did that already, didn't  
4 we? Oh, we didn't? Yeah, because we went back -- we  
5 did workgroups and drafting groups. We completed that.

6 The reason why we were on 3, Decisionmaking, was  
7 because that was an outstanding issue.

8 MR. ADAMS: Okay.

9 MS. PODZIBA: Okay?

10 MR. ADAMS: Right.

11 MS. PODZIBA: So -- so Agreement on page 7, and  
12 we'll start with letter (a), Product of Negotiations  
13 and Product -- yes, for 2003 and 2010, there are some  
14 differences.

15 (Pause.)

16 MR. ADAMS: Jason Adams, Salish Kootenai. I would  
17 make a proposal then that we adopt product of  
18 negotiations from 2010 in blue.

19 MS. PODZIBA: Okay. Proposal to adopt the blue  
20 text, which is 2010. Are there comments or questions  
21 about that? Yes?

22 MS. FOSTER: Karin Foster. I support that

1 proposal because it brings in the development -- the  
2 preamble as we're developing rules, and I think it's  
3 just a practical thing. It shouldn't be controversial.

4 MS. PODZIBA: Any other comments or questions?

5 (No response.)

6 MS. PODZIBA: Okay. Then I'll call the question.

7 Is there any objection to adopting the blue text, the  
8 2010 version of product of negotiations for the  
9 committee's protocols?

10 (No response.)

11 MS. PODZIBA: Okay. There being none, that will  
12 stand in the protocols.

13 Let's move then to letter (b), which is Final  
14 Report, and by my reading, the 2003 and 2010 appear to  
15 be identical. I'll open the floor to comments and  
16 proposals and questions.

17 Yes, Ms. Yazzie?

18 MS. YAZZIE: Aneva Yazzie, Navajo. Since this  
19 seems to have been vetted in past negotiations and  
20 they're identical, I just want to propose to the  
21 committee the blue part, or 2010 version, for adoption.

22 MS. PODZIBA: Thank you. The proposal is the 2010

1 version. Are there any questions or discussion points  
2 on final report?

3 (No response.)

4 MS. PODZIBA: Is there any objection to adopting  
5 the blue text as the protocol for the committee?

6 (No response.)

7 MS. PODZIBA: Okay. There being none, there is  
8 that consensus.

9 Then let me move forward to Section 6, which is  
10 Safeguards for the Committee Members. The first item  
11 is good faith. Let's look at that. We know that this  
12 item has been part of some of the past discussions, but  
13 I open the floor to proposals and discussions of (a)  
14 Good Faith.

15 Mr. Evans?

16 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
17 Tribe. If I'm in order to do so, I propose that we  
18 adopt the 2010 version of (a) Good Faith in blue.

19 MS. PODZIBA: A proposal is to accept the blue  
20 text, the 2010 version. Are there comments, questions,  
21 any discussion?

22 Okay. Yes, Ms. Vogel?

1 MS. VOGEL: I do have a comment and maybe a  
2 question. On the part that it says if you object, you  
3 have to propose an alternative. What if there are  
4 multiple objections? And you said you were worried  
5 about the time process. So if there's multiple  
6 objections, who gets to propose the alternate?

7 MS. PODZIBA: It's a good question. Can someone  
8 who operated under this ground rule advise the  
9 committee on that? Yes, Ms. Foster?

10 MS. FOSTER: Well, it can get complicated, but I  
11 think that if somebody has an objection to three or  
12 four points in a proposal, then their alternate could  
13 encompass all three or four points they object to.  
14 That would be one way.

15 I mean, I don't think we ever really ran into a  
16 problem with that. Generally, the objection someone  
17 had was maybe one issue was larger than another, you  
18 know? And then, as their proposal was worked through,  
19 I mean, you can come up with something -- through  
20 consensus process, work through the other issues as  
21 well. I don't remember it being a problem doing it  
22 that way.

1 MS. VOGEL: So you can object, but you don't have  
2 to put forward a reason.

3 MS. PODZIBA: So I guess -- yes?

4 MS. DIFUNTORUM: Sami Jo Difuntorum, Confederated  
5 Tribes of Siletz. I think the question, and correct me  
6 if I'm wrong, if five people object, do all five of  
7 them have to submit an alternate proposal?

8 MR. PODZIBA: Yes, Mr. Sawyers?

9 MR. SAWYERS: I've found that most objections were  
10 the same. So unless you have a different take on that  
11 same reason not to vote, you should be able to do that.

12 If it's five of you and there's five different  
13 reasons, everybody should probably tell their reason.

14 But if one person gives you a reason and you agree  
15 with it, why would you go on and tell them the same  
16 thing. It usually works out pretty well.

17 MS. PODZIBA: So, as facilitators, we should ask  
18 people -- I guess the question for us is how do we  
19 operationalize this? So as a facilitator, it sounds  
20 like what you're instructing me is to ask people who  
21 dissented to give reasons. After a few good reasons,  
22 if other dissenters don't give reasons, shall we assume

1 that their reasons were similar to the others?

2 And then what about proposals? That's the second  
3 piece.

4 MR. SAWYERS: Same scenario. If the first people  
5 give the proposal and you have a different one, then  
6 you make your proposal so that everybody has a chance  
7 to make their proposal or to explain why you voted  
8 against something.

9 However, it doesn't usually work out that way  
10 because most of the dissention is in common, you know?

11 MS. PODZIBA: Ms. Vogel, does that help?

12 MS. VOGEL: I think it does. So if I continue to  
13 object, then I don't have to give a reason if I --

14 MR. SAWYERS: No.

15 MS. VOGEL: -- give one reason.

16 MS. PODZIBA: Mr. Sawyers?

17 MR. SAWYERS: Not true. If you object, you give  
18 your reason. You try to -- you try to give a better  
19 solution, and I guess if you object, I guess you can  
20 say ditto. But you are required to have a reasonable,  
21 number one, objection and another reasonable, if you  
22 can, make a suggestion that would help.

1           So you shouldn't -- shouldn't on that one issue,  
2           you shouldn't have to object more than once because  
3           it's a dead issue, and the next issue has the same  
4           scenario.

5           MS. PODZIBA: Yes?

6           MS. VOGEL: Okay. I just wanted to make sure that  
7           this is what we're going to do, then we're going to do  
8           it.

9           MS. PODZIBA: Yes, Mr. Reed?

10          MR. REED: Mike Reed, Cocopah. I'm not -- seems  
11          like the last meeting we had there was an issue of  
12          multiple presentations. And I don't know, are we  
13          saying if someone has an idea that they put forth and  
14          it's true the other people could also have ideas, do we  
15          have to go to the first come, first served or, you  
16          know, how do we handle that? I'm not sure I  
17          understand.

18          MS. PODZIBA: So, again, if I were to  
19          operationalize that, what I think would happen is there  
20          would be an objector or objectors. We would hear some  
21          of the reasons, and then I'd ask someone to offer a  
22          proposal.

1           So one of the people who objected might offer a  
2     proposal. There might one or two amendments to that  
3     proposal, and then we call the question. If it passes,  
4     we're done. If it doesn't, we might ask for another  
5     proposal which could come from another objector.

6           I mean, you could instruct me then to go to  
7     another objector and ask if they have another proposal  
8     that might bring us closer. But that's a question I  
9     have for the group. Would you want Steve and I to only  
10    go to objectors for new proposals or ask for one or two  
11    from objectors? Should we open the floor to proposals  
12    from any committee member who thought they might  
13    develop something that would work?

14           Mr. Sawyers?

15           MR. SAWYERS: It's a dead issue. So you start all  
16    over again. It doesn't matter who you ask for a  
17    reason. You ask maybe how they could fix it, but it's  
18    a dead issue so it's open to the floor.

19           MS. PODZIBA: So if there's one proposal that  
20    there is objections, then we start again with -- open  
21    the floor for any proposals. Is that correct?

22           MR. SAWYERS: Yes.

1 MS. PODZIBA: Yes, Ms. Cloud?

2 MS. CLOUD: So I have a question. If there is an  
3 objection and somebody makes a proposal, and somebody  
4 objects to that proposal and they want to change a  
5 word, they can't because it's a dead issue. And so,  
6 they have to re-propose it. Isn't that just the same  
7 thing? Why would have to start over?

8 I mean, if you're objecting, can't you just go  
9 with what's there and then change a word, and then that  
10 be a new proposal rather than it being a dead issue?

11 MS. PODZIBA: I think what happened is the  
12 preference of the committee seems to be that once  
13 there's a call of the question, if it doesn't pass,  
14 it's done. But then someone could propose the same --  
15 the same proposal with a word change, and say could --  
16 that's how you get a new proposal.

17 So it's sort of similar. It's just a way of  
18 housekeeping on proposals.

19 MS. CLOUD: That's what I was asking about  
20 earlier, and then when we were working on those  
21 proposals and they were changing the words, then it was  
22 said that it was a dead issue. But there were still

1 proposals, and we never voted.

2 And I know it's true that you have a proposal and  
3 people keep making comments and they'll keep changing  
4 the thing, whatever is up there, but then we don't vote  
5 on it, and then it gets all changed from when it was  
6 first proposed.

7 MS. PODZIBA: So if you have a proposal on the  
8 table, and what I understood to be doing right now is  
9 clarifying what that means because there is a question  
10 about that. So we've been trying to gain an  
11 understanding of what the proposal means, but I don't  
12 believe there have been any amendments to it yet.

13 MS. CLOUD: Not this one in particular, but it has  
14 been happening today.

15 MS. PODZIBA: Right. Okay. We'll try to be more  
16 careful about that. Yes, Ms. Vogel?

17 MS. VOGEL: Okay. So, as to the discussion, good  
18 faith is that if you object and you don't get your  
19 consensus, then you just move on. There's no  
20 consensus, right?

21 MS. PODZIBA: There's no -- there's no agreement,  
22 and then if my understanding is correct, then if you

1 objected, good faith is offering the reasons for the  
2 objection and developing a proposal that may -- may  
3 incorporate your concerns that everyone around the  
4 table has to agree.

5 MS. VOGEL: Okay. So if you don't offer anything  
6 and you still object, then where do you fit in this?  
7 You just are firm in your objection.

8 MS. PODZIBA: I'm going to let someone -- other  
9 people explain it better. Yes?

10 MS. HENRIQUEZ: First you have to help me  
11 understand. What I thought happened in our last  
12 negotiated rulemaking session was in those instances,  
13 the preamble was the place where objections got called  
14 out, were not consensus items. Who's going to help me  
15 here? So that the record was completed by knowing and  
16 discussing each of the places where there was objection  
17 or where you know consensus was reached.

18 So that the record is full of it, but we did move  
19 on to the next issue. Is that right? Help me, if my  
20 recollection is incorrect.

21 MS. PODZIBA: Mr. Adams, I appreciate your --  
22 could you -- is that correct? Could you say a little

1 more about that?

2 MR. ADAMS: No, I can't add anymore. I think  
3 you're right as far as your reference.

4 MS. PODZIBA: So, yes, Ms. Foster?

5 MS. FOSTER: Karin Foster. Well, but in the  
6 process, though, before we ever get to the preamble,  
7 which is definitely a place where we can all voice the  
8 objections to proposals that haven't passed, still  
9 internally in the process, there was an opportunity to  
10 state the reason.

11 And I guess, you know, as I look at this, I mean,  
12 I'm wondering, say, you do have a situation where you  
13 have one person who is in favor of the proposal and the  
14 rest of the table is in opposition. It may be a bit  
15 unwieldy for everybody to be expected to put out a  
16 full-blown proposal on that issue.

17 It does say propose an alternative to the  
18 proposal. I mean, I think the idea is that you're  
19 supposed to try to come up with a solution that will  
20 move it forward if you can. Sometimes the alternative  
21 is "I don't want anything like that in the regulations"  
22 or "I want it to stay the same." I don't know.

1 I just wonder if maybe -- and I'm not making a  
2 word proposal here. I just wonder if maybe that's part  
3 of the problem. I think everybody should state their  
4 reasons, and it might just be, well, I agree with so  
5 and so, you know?

6 But I think things do get a little confusing if  
7 we're going to wait for 12 people to put out different  
8 proposals and go in order. I don't think that is  
9 workable.

10 MS. PODZIBA: Yes, Mr. Evans and Mr. Jacobs.

11 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
12 Tribe. I was just going to say, if I recall correctly,  
13 I think all of that got worked out by the chairpersons  
14 of the committee.

15 MALE SPEAKER: Can you speak up?

16 MR. EVANS: I'm sorry. I think previously that  
17 all got worked out by the chairpersons of the  
18 committee. If I recall correctly, they would either  
19 ask the dissenting parties to caucus together to come  
20 up with a reasonable proposal, or they would take them  
21 in the order that they were offered and then veto the  
22 proposal at the top.

1           So I think that's going to all fall out in the  
2 wash and would recommend that we vote up or down on the  
3 proposal. Because I think the order of the operation  
4 and function here of committee activities once we  
5 select the chair, the chair people will facilitate how  
6 all of that occurs.

7           MS. PODZIBA: Okay. I'm going to go to Mr.  
8 Jacobs, and then I'll call the question.

9           MR. JACOBS: He said it very well. So I don't  
10 need to add anything else.

11          MS. PODZIBA: All right. Is there any objection  
12 to adopting the 2010 version of good faith for the  
13 protocols of the committee?

14          (No response.)

15          MS. PODZIBA: There being none, that will be in  
16 the protocols.

17          I'm moving then to (b) and (c). The 2010 version  
18 added (b) Committee Member Diligence and (c)  
19 Cooperative Communication. And I'd like to open the  
20 floor to those at this time.

21          (Pause.)

22          MS. BRYAN: Annette Bryan, Puyallup Nation Housing

1 Authority. I make a proposal to accept (b) Committee  
2 Member Diligence as it stands.

3 MS. PODZIBA: Okay. Proposal to include (b). Is  
4 there any discussion or comment? Ms. Yazzie?

5 MS. YAZZIE: Aneva Yazzie, Navajo. I just had a  
6 question. What's the purpose of that (b)? I mean,  
7 that's a given. I would think that of each committee  
8 member that why was there emphasis to make that  
9 specific statement?

10 MS. PODZIBA: Mr. Adams?

11 MR. ADAMS: I'm chuckling. I'm sorry. Jason  
12 Adams, Salish Kootenai.

13 Again, this was built on experience. The last  
14 committee, we had some folks that were it seemed like  
15 when we would come together as a committee from  
16 workgroups, they were totally unaware of what was going  
17 on. And so, I thought it -- we thought it was  
18 appropriate in 2010 to put a statement in there that  
19 you've got to do your homework and you've got to stay  
20 abreast what's going on.

21 We've had people in the past that have missed a  
22 meeting or they had an alternate, and it was clear that

1 maybe they didn't communicate with their alternate on  
2 what happened. So there was a lot of re-education  
3 going on. So I think this statement is very critical  
4 to add, just so we could come to them and say you've  
5 got a responsibility.

6 MS. PODZIBA: Any other questions or comments  
7 about this proposal?

8 (No response.)

9 MS. PODZIBA: Okay. Is there any objection to  
10 including this in the committee's protocols?

11 (No response.)

12 MS. PODZIBA: There being none, there is consensus  
13 on (b). Let's move then to (c), Cooperative  
14 Communication.

15 Mr. Jacobs?

16 MR. JACOBS: Leon Jacobs, Lumbee Tribe. I support  
17 keeping this as part of the protocols.

18 MS. PODZIBA: Okay. The proposal is to include  
19 (c) in the protocols. Mr. Adams?

20 MR. ADAMS: Just one correction. Jason Adams,  
21 Salish Kootenai. It says "committee member." I think  
22 it should be "committee members."

1 MS. PODZIBA: Mr. Jacobs, I presume -- is that  
2 acceptable?

3 MR. JACOBS: I would support that. Thank you.

4 MS. PODZIBA: Any further discussion?

5 (No response.)

6 MS. PODZIBA: Okay. Is there any objection to  
7 including (c) in the committee's protocols?

8 (No response.)

9 MS. PODZIBA: Okay. Then we can mark that as in  
10 agreement as well.

11 We'll move then to (d) Information. And you can  
12 see in (d) that in 2003, there were four elements, and  
13 in 2010, there were three. And the difference is that  
14 Number 2 was removed in 2010.

15 Can we open the floor to questions, comments, and  
16 proposals on letter (d) Information? Ms. Yazzie?

17 MS. YAZZIE: Aneva Yazzie, Navajo. Moving the  
18 process along, I would recommend to the committee the  
19 blue or 2010 version for (d) Information.

20 MS. PODZIBA: Okay. Are there questions,  
21 comments, or discussion on the proposal to include the  
22 blue text under Information, Numbers 1, 2, and 3? Ms.

1 Gore?

2 MS. GORE: Carol Gore, Cook Inlet. Just a  
3 question maybe for the committee. After doing our  
4 homework in advance of our in-person meeting, I found  
5 it helpful to know what I should study in advance so  
6 that I could be prepared. So the difference between  
7 2003 and 2010 is just the idea of sharing that advance  
8 information.

9 So I wanted to just highlight that for the  
10 committee because I found that to be helpful. I will  
11 go with the will of the committee, but I think if we're  
12 really acting in good faith, sharing that information  
13 in advance really makes good use of our time here at  
14 the table. So I offer that to my colleagues in  
15 general.

16 MS. PODZIBA: Ms. Yazzie?

17 MS. YAZZIE: Having information from a veteran, I  
18 would agree to go ahead and add that. That would be a  
19 good counsel at this point as a newbie to the  
20 committee.

21 MS. PODZIBA: So that was to include Number 2. Is  
22 that the proposal? So, essentially -- okay.

1 MS. YAZZIE: So Number 2 gets that exactly.

2 MS PODZIBA: Are there additional comments or  
3 questions? Yes, Ms. Foster?

4 MS. FOSTER: I'm not -- I understand in principle  
5 and appreciate the utility of providing information in  
6 advance of meetings, but I don't know that that should  
7 be a requirement. I mean, it says where such  
8 information is necessary. And I guess I understand  
9 that to mean where such information is necessary to  
10 make a decision.

11 I wouldn't want to be held to a standard that if I  
12 didn't provide something in advance, somehow, you know,  
13 I wasn't complying with that -- that provision. So I  
14 guess -- I guess I wouldn't be in favor of putting  
15 Number 2 back.

16 MS. PODZIBA: Okay. So I think we have it  
17 correct. I'm thinking procedurally. Yes, Ms. Gore?

18 MS. GORE: Carol Gore, Cook Inlet. I don't see  
19 the harm. I just wanted to make sure that the  
20 committee share their differences and will discuss that  
21 opportunity. So I'm okay with that and withdraw  
22 additional my comment subject to the changed proposal.

1 MS. PODZIBA: Okay. So then we're back to the  
2 blue text, 1, 2, and 3. Okay. I will call the  
3 question. Is there any objection for adopting the blue  
4 text under information as the protocol of the  
5 committee?

6 (No response.)

7 MS. PODZIBA: I didn't see any. So we're now at  
8 (e), which I think is the point at which we bring back  
9 the question we were discussing prior to lunch. (e) is  
10 the same in both. And I will open the floor for  
11 further discussion, particularly given that there was  
12 discussion about the technical data runs.

13 Yes, Ms. Foster?

14 MS. FOSTER: I had a proposal, when we're ready to  
15 entertain alternate proposals that I've already given  
16 about sub-payment, so if that's where we are in the  
17 process. I don't know that there was a proposal on the  
18 floor?

19 MS. PODZIBA: There were. There was some. Mr.  
20 Evans? Okay. So, again, your proposal for (e), and so  
21 does it use the text here at all, or is it a brand-new  
22 (e)?

1 MS. FOSTER: Well, maybe we can take a look.

2 MS. PODZIBA: Okay. Christine, do you have that?

3 Okay. So is your proposal still red? That's the  
4 proposal?

5 MS. FOSTER: Yeah.

6 MS. PODZIBA: All right. I'll leave that out.

7 "HUD shall provide technical assistance to the  
8 committee, which shall include data runs with tribal  
9 specific data. Any committee member may request a data  
10 run using a form provided by HUD for that purpose. All  
11 requests for data runs and all results of data runs  
12 shall be made available to the full committee."

13 Open the floor for questions or comments about  
14 that.

15 MS. HENRIQUEZ: Point of clarification?

16 MS. PODZIBA: Yes.

17 MS. HENRIQUEZ: So is what this language proposed  
18 to be the new -- potential new (e) under --

19 MS. PODZIBA: Information.

20 MS. HENRIQUEZ: -- under Information and not (d)  
21 under Decisionmaking. Correct? Is that right?

22 MS. PODZIBA: I believe so. Ms. Foster, we

1 decided to move the question that began as (d) under  
2 Decisionmaking here.

3 MS. FOSTER: Karin Foster. Well, my understanding  
4 was that in the last session, we said that this general  
5 subject area was treated in this part of the protocol  
6 and that that's -- we were just going to revisit it  
7 when we got around to it.

8 So I don't have any -- any great preference  
9 whether it's here or whether it's in the other area.  
10 But I just thought that's where we were.

11 MS. PODZIBA: So, Ms. Henriquez, the answer is  
12 yes, I believe.

13 MS. HENRIQUEZ: Okay.

14 MS. PODZIBA: Yes, Ms. Hobgood?

15 MS. HOBGOOD: Robbie Hobgood, Choctaw Nation. I  
16 just have a question where it says any committee member  
17 may request.

18 MS. PODZIBA: Could you talk like directly into  
19 the mike, please? Sorry.

20 MS. HOBGOOD: It says any committee member may  
21 request a data run. Did we decide not to let working  
22 groups or region groups ask for suggestions or ask for

1 runs?

2 MS. PODZIBA: Ms. Foster?

3 MS. FOSTER: I think that if we say any committee  
4 member, then we would include a committee member who is  
5 on a working group or a committee member who is part of  
6 a region. I think it's a larger, more inclusive group  
7 of people. So it would cover those things. It just  
8 wouldn't be restricted to those.

9 MS. HOBGOOD: So we would have to bring it back to  
10 the committee. So if a working group was working at  
11 the time, they couldn't ask for some data? I just need  
12 a clarification.

13 MS. PODZIBA: Could you turn your mike off? Thank  
14 you.

15 MS. FOSTER: Well, the statement, "Any committee  
16 member may request a data run," the clause is not  
17 bounded by time. It doesn't say before or after or  
18 during a workgroup meeting or maybe even, you know,  
19 outside of a session, or it would cover, I think, any  
20 form that you're contemplating.

21 You would just need to use a form that is  
22 standardized, and that could then be shared with others

1 so that they knew what runs had been requested, which  
2 might actually cut down on some of the duplication, as  
3 well as keeping everybody informed.

4 MS. HOBGOOD: So we wouldn't have to bring it back  
5 to the committee. A committee member could just bring  
6 it straight to HUD. Okay.

7 Can we put those -- I think there were rules  
8 earlier on the form, that we showed the form on how to  
9 request them. Can we put those back up?

10 MS. PODZIBA: Oh. Oh, that.

11 (Pause.)

12 MS. HOBGOOD: Okay. So, in this, we're not saying  
13 they have to go through the committee, but they have to  
14 go through the chairperson, a committee chairperson.  
15 Okay.

16 MS. PODZIBA: Okay. Mr. Reed?

17 MR. REED: Yes, Mike Reed, Cocopah. I think what  
18 we did is we filled out by hand, and it was given to  
19 HUD. And they made it all pretty, if I remember  
20 correctly? Yes. Thank you.

21 MS. PODZIBA: Yes, Ms. Foster?

22 MS. FOSTER: Karin Foster. So I guess I wasn't

1 seeing the request actually being submitted through  
2 anyone, but being submitted directly to HUD. The way  
3 the form reads, the earlier document there, it said it  
4 will be submitted to the committee chair or the  
5 workgroup chair -- there we are -- and then submitted  
6 to any member of the HUD team.

7 I guess I would prefer not to -- I mean, my  
8 proposal would be not to give it to the chairperson and  
9 then rely on -- not that I don't rely on all of us, but  
10 I mean, you know, have it go through somebody. But  
11 certainly, giving a copy to the, you know, committee  
12 chairperson or workgroup chairperson might be a good  
13 idea.

14 MS. PODZIBA: Other questions or comments on the  
15 proposal? Yes, Ms. Cloud?

16 MS. CLOUD: I would call the question on this  
17 proposal.

18 MS. PODZIBA: You're ready to call the question?  
19 Okay. Is there any objection to adopting (e) as the --  
20 as part of the committee's protocols?

21 (Show of hands.)

22 MS. VOGEL: I object.

1 MS. PODZIBA: You object? Okay. Anyone else  
2 object? Ms. Cloud, do you also object? Okay. Would  
3 you share your reasoning for your objection, please?

4 MS. VOGEL: Sharon Vogel, Cheyenne River. Just  
5 because we -- I'm still trying to understand the role  
6 of the data run in our deliberations. And if it has a  
7 role, then we need to state what its role is. So what  
8 is the role of it?

9 And then the other is how do we -- if it is -- if  
10 it has a purpose and it has a role that no decision can  
11 be made until a data run that's been requested has been  
12 reviewed or presented to the full committee, then that  
13 halts the consensus-building process. So how do we  
14 control the disruption, or do we just accept the fact  
15 that when a data run is requested, that things come to  
16 a halt and we wait for that data run?

17 Because we're putting emphasis on its role at this  
18 point. So I think we need to clarify that the role of  
19 the data run is what?

20 MS. PODZIBA: Okay. Mr. Adams?

21 MR. ADAMS: Well, I guess I objected for the main  
22 purpose of if we have somebody that doesn't -- as

1 Sharon stated earlier, if somebody want to be included  
2 in the data run, if they don't agree with the call for  
3 the data run, do they have that right? Do they have  
4 that ability to say "I don't want my data" or there's  
5 two or three housing authorities or tribes that don't  
6 want to be included.

7 Then you don't have good data. So how do you get  
8 past this whole consensus thing if somebody doesn't  
9 want to be included in the data run?

10 MS. PODZIBA: Ms. Henriquez?

11 MS. HENRIQUEZ: I would suggest that doing a data  
12 run, that it's done and everyone is in it. If someone  
13 -- if a tribe did not want to be included, then that  
14 information is redacted. But by taking all that  
15 information out, that corrupts the data for everybody  
16 else.

17 It's based on what we're testing for, what we're  
18 looking for, what information goes into that formula,  
19 and what you might see as the changes. So you'd run  
20 the whole thing. If someone didn't want their data  
21 shown, we would redact that. But then everybody else  
22 would see in the form we've got it, the fullest run

1 with the fullest amount of information available.

2 MS. PODZIBA: Okay. I've got Ms. Cloud, then Mr.  
3 Evans, then Ms. Difuntorum. Ms. Cloud?

4 MS. CLOUD: Heather Cloud, with the Ho-Chunk  
5 Nation. The data run serves a purpose, and when -- the  
6 reason why we're here is to work on the formula. The  
7 formula is going to be determined by the NegReg, the  
8 regulations that we're working on.

9 In order to make decisions on how we're going to  
10 vote, we need to know what the impact of those  
11 decisions are, and the end result is the data run.  
12 That's basically what we're getting down to.

13 And if we don't know what we're voting on and how  
14 the policy changes or proposed changes are going to  
15 impact any of the final results, how can we make an  
16 informed decision? You can't because then you're like  
17 just basically taking a wild guess on trying to achieve  
18 what it is that you're trying to achieve.

19 MS. PODZIBA: Mr. Evans?

20 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
21 Tribe. I guess I just have a question as a part of  
22 trying to understand what was presented by Ms. Vogel

1 and addressed by Ms. Henriquez. If we were to do a  
2 data run and to specifically exclude tribal data, then  
3 how do I, as a committee member, adhere to my  
4 commitment to not only negotiate in good faith, but to  
5 represent a cross-section of small, medium, and large  
6 Indian tribes if that information is not available to  
7 me on being able to know what the impact of any changes  
8 I potentially may or may not agree to are not made  
9 available to me in my having the information there  
10 about how those changes impact each of those tribes?

11 Because even though we're nominated or selected by  
12 specific tribes, we also in general represent the total  
13 populace of Indian Country. So how can I, if that is  
14 done, if any information is redacted or excluded, then  
15 how am I adhering to that expectation is my question?

16 MS. PODZIBA: Ms. Difuntorum?

17 MS. DIFUNTORUM: Thank you. Sami Jo Difuntorum,  
18 Confederated Tribes of Siletz.

19 So, basically, a tribe's information is already  
20 public information. It's on the Internet. I can go to  
21 the HUD Web site for the formula, and I can see what  
22 anybody's poverty statistics, basically your

1 demographics are and tribal population, whether the  
2 formula is used with single race, multi-race, all of  
3 that.

4 So what would be a reason that a tribe wouldn't  
5 want to include their information? Because knowing  
6 that it's going to skew the data runs and that that  
7 information is already out there publicly, what would  
8 be the reason, if somebody could answer that, for not  
9 including it in the data run here?

10 MS. PODZIBA: Mr. Adams?

11 MR. ADAMS: Well, I guess, you know, as I've been  
12 thinking through this process as far as the data run is  
13 actually the end result of an agreement. And so, maybe  
14 I'm putting the cart before the horse here in that we  
15 have to have a proposal that has some proposed changes  
16 that include that then gives that direction to do a  
17 data run.

18 So before we even get to the data run, there has  
19 to be some agreement. So maybe I'm -- maybe I'm  
20 confusing this issue by saying, you know, we could  
21 withhold data. Your withholding or my withholding  
22 opportunity is in the proposal. And so, if I didn't

1 agree to it then, then there shouldn't be a data run to  
2 disagree with.

3 So as I put this together in my mind, maybe that's  
4 what we need to consider or I need to focus in on is  
5 that my opportunity to disagree is at the proposal  
6 stage. I would hope that we wouldn't allow somebody --  
7 maybe this is the question. Maybe somebody then, if  
8 they disagreed with the proposal and then asked for a  
9 data run on it still, are we going to allow that?

10 Because right now we're just saying anybody can  
11 ask for a data run, but as a result of a proposal that  
12 I don't agree with, they're still pushing a position  
13 that I didn't agree with. Do you see what I'm saying?

14 Am I making my point here? I'm trying to get this  
15 clear as I can.

16 MS. PODZIBA: Hang on. I've got Ms. Gore and then  
17 Ms. Bryan.

18 MS. GORE: I'm not sure I'm following, Jason. But  
19 I'd like to make a different comment and really think  
20 back on what Mr. Reed has said several times this  
21 morning that I thought was very thoughtful, and I was  
22 listening when he said this is also our opportunity to

1 look at new ideas. And we can't look at new ideas if  
2 we can't understand the impacts.

3 And so, the idea that we can ask HUD for technical  
4 assistance and/or formula runs to help us test new  
5 ideas has extreme value, I think, to the working groups  
6 and to this committee. I'm personally not opposed to a  
7 run that started anywhere so long as it might help  
8 someone advance this group toward some decisionmaking.

9 So that's all I had to offer. I still support  
10 Karin's original proposal, even though it's been voted  
11 down. Thank you.

12 MS. PODZIBA: Okay. I've got Ms. Bryan, Ms.  
13 Cloud, and then back to Mr. Adams.

14 MS. BRYAN: Thank you. Annette Bryan, Puyallup  
15 Nation Housing Authority.

16 I hate to go back again, but we -- you know, maybe  
17 next time we have discussion for new members, give you  
18 a half a day before we start, and then those of us who  
19 are new around the table can get our training so we  
20 don't have to spend the time here at the table.

21 But I would like to ask HUD to weigh in on this  
22 conversation with respect to the data runs, the

1 information is public, if there's members around this  
2 table that can exclude themselves, should all tribes in  
3 the country exclude themselves? Or is this group, you  
4 know, has it been -- is it the right of this group and  
5 the right of HUD to research these ideas?

6 And so, not to mean any disrespect, but the idea  
7 of saying I don't want to be included in a dataset is  
8 confusing to me. And maybe it's my lack of  
9 understanding for past practices.

10 Thank you.

11 MS. PODZIBA: Okay. I'm going to go to Ms. Cloud,  
12 Mr. Adams, and then Ms. Henriquez for you to respond,  
13 if that's okay? Ms. Cloud?

14 MS. CLOUD: That proposal died. So I'm just going  
15 to make a proposal to the committee that we adopt the  
16 2010 because it's all-inclusive anyway. We're not  
17 putting any limitations on anything.

18 "HUD Assistance to Committee Members. HUD will  
19 provide requested information and technical assistance  
20 needed for the work of the committee," period.

21 MS. PODZIBA: Okay. Proposal on the table. Let's  
22 go to Mr. Adams.

1 MR. ADAMS: Well, again, I'm just trying to put  
2 this thing together because I'm offering -- there are  
3 two positions here as far as answering the question if  
4 somebody doesn't want to be included, you know? If  
5 that's a legitimate position or not?

6 But the other issue is from experience because in  
7 2003, we spent a lot of time, and I was the chair of a  
8 committee, that we spent a lot of time waiting for data  
9 runs. We spent a lot of time trying to figure out what  
10 data runs would do to everybody at the table. And so,  
11 in light of that, I mean, I don't disagree that that's  
12 an important piece that we have to have some  
13 information to make a decision.

14 But even before we get there, we have a discussion  
15 on a proposal that's being kicked around, or a change.

16 I would hope that we would give all the consideration  
17 to that and get agreement on that proposal, and then  
18 the result of the proposal is the data run.

19 And I understand the situation if you don't agree  
20 with the proposal, but you want to see the data run to  
21 see how it affects you, that's my rub. That's the real  
22 rub here is what should come first? Whether to have

1 the data run that affirms your position or whether  
2 you're saying let's consider this change.

3 MS. PODZIBA: Ms. Henriquez?

4 MS. HENRIQUEZ: First, I want to say that HUD will  
5 do its best to do as many data runs based on the  
6 committee's request as possible. We may have to come  
7 back to you at some point and say there's a timing  
8 issue. We're overwhelmed. We -- subject to the  
9 availability of funding, or we will try and process as  
10 many as you all deem necessary.

11 Can a tribe opt out, exempt itself from a data  
12 run? I think the answer is no. The data is the data.

13 In order for any tribe to understand whatever the run  
14 may be trying to prove or disprove, everybody's got to  
15 have -- everyone's data has got to be in that  
16 particular run.

17 A housing -- a tribe, I assume, could say "I don't  
18 want my specifics reported out." But it is public  
19 information. But people who have then said, "I don't  
20 want Ms. Henriquez's data shown," what we would more  
21 than likely do is redact Ms. Henriquez's name, but the  
22 data is there because it affects everybody else's

1 numbers as well.

2 But you can't opt to have your data not in a run  
3 because then everybody else's numbers are no good and  
4 don't present a true picture of the effects of whatever  
5 policy or weighted measure we're trying to look at.

6 MS. PODZIBA: Mr. Reed?

7 MR. REED: The information is public record. I'm  
8 not too sure you have more information than you have  
9 that's not public, and I have a staff that has been  
10 through this information. You know, it's on the site,  
11 and we've run it every which way already.

12 So, you know, the idea of saying you don't want  
13 your information seems very moot to me. Besides, I  
14 must tell you informed information, how could we  
15 decline informed information? I mean, I don't  
16 understand that.

17 MS. HENRIQUEZ: We agree.

18 MS. PODZIBA: Ms. Foster?

19 MS. FOSTER: Karin Foster, Yakama Nation Housing  
20 Authority. There were so many things said that I  
21 wanted to make a comment on that, just recapture them  
22 all.

1 I do think that in order to make an informed  
2 decision, you need information. I agree. And in order  
3 for the information to inform your decision, it has to  
4 be received and reviewed before you make that decision.

5 So I wouldn't be really comfortable with saying that  
6 data runs be made after the decision is made. I just  
7 think that defeats the purpose.

8 I don't agree with not setting forth more in terms  
9 of, you know, who may request a data run and the fact  
10 that results need to be shared with the full committee.

11 I'm not really comfortable with not covering that  
12 ground. So I guess I'm not really comfortable to going  
13 back to the original (d), and I wouldn't be in favor of  
14 that.

15 The last thing I guess I'd like to say is that I  
16 understand that there are some tribes who have the  
17 wherewithal to be able to do their own data runs and to  
18 be able to get this information themselves with their  
19 own staff, and I think that's great. But there are  
20 lots who aren't. There are a lot of our smaller tribes  
21 who will not have the information to make the  
22 decisions.

1           So really what HUD is doing is providing  
2 information to all of us that otherwise only just a few  
3 of us would have. Is that -- would that be fair? No,  
4 that wouldn't be fair. So we need to have data runs so  
5 that everybody has the information they need to make  
6 the decisions.

7           MS. PODZIBA: Ms. Gore? I'm sorry. Ms. Vogel?

8           MS. VOGEL: Thank you. Sharon Vogel, Cheyenne  
9 River. Can we say that we are incorporating some  
10 language that would -- for the data runs that prior to  
11 those requests, that it receives unanimous consensus?  
12 Would that help clarify the order in which data runs  
13 are actually implemented?

14          MS. PODZIBA: Okay. Are you proposing that as an  
15 amendment to the proposal? She already called the  
16 question for the proposal first.

17          MS. VOGEL: Oh, I put that out there for  
18 discussion.

19          MS. PODZIBA: Okay.

20          MS. VOGEL: And so, if you want to call the vote,  
21 you can do that. But I just wanted to know if that  
22 would help.

1 MS. PODZIBA: Okay. I think we'll be able to just  
2 call the question. Is there objection to adopting the  
3 highlighted text for the protocols?

4 (Show of hands.)

5 MS. PODZIBA: There's an objection, two, three.  
6 Okay. Ms. Henriquez?

7 MS. HENRIQUEZ: I just want to have people  
8 understand as much as possible. Priorities are good.  
9 There are data runs that will be very easy to run.  
10 Some will be much more complicated and complex and will  
11 take longer. Sometimes setting a priority for certain  
12 data runs may not produce runs more quickly. There are  
13 others, and so we just need to figure out what the flow  
14 is.

15 Because our contractor definitely has to spend  
16 time getting it right, and sometimes it means just  
17 pulling what we've already got. Sometimes it means  
18 some change as to what you're asking for, and it may  
19 take us longer to write that program and write that  
20 detail to get the run and the data that you want.

21 So I just want people to be mindful that all data  
22 runs are not created equally.

1 MS. PODZIBA: Okay. And Mr. Evans?

2 MR. EVANS: Since that proposal was rejected, I  
3 have a new proposal. And it is basically adopting the  
4 language from the 2010 version of (e) and adding to it  
5 after the period, instead of the period, put a comma  
6 and "as requested by the committee members."

7 MS. PODZIBA: Okay. Mr. Adams, while it's going  
8 up.

9 MR. ADAMS: I guess as far as my objection to the  
10 proposal before -- this proposal on the floor now, I  
11 was ready to remove my disagreement with it. So, but I  
12 wanted to have the discussion. I wanted to share my  
13 experiences based on the data run issues in the past  
14 committee.

15 Maybe I'm beating up an issue here that doesn't  
16 need to be beat up on because the experiences I had  
17 last time, maybe technology is such today that the  
18 folks at the table and HUD staff will be able to turn  
19 this information around in a quick manner.

20 I think the issue of the withholding, whether a  
21 tribe wants to be included, has been answered. So,  
22 again, I was ready to withdraw my rejection of the "HUD

1 shall provide technical assistance" proposal.

2 MS. PODZIBA: Ms. Cloud?

3 MS. CLOUD: I want to see if you would be open to  
4 a change, "as requested by any committee member and  
5 shall remain available to the full committee?"

6 (Pause.)

7 MS. PODZIBA: Mr. Evans? There is a proposed  
8 amendment to your proposal.

9 MR. EVANS: Earl Evans. I'm amenable to that  
10 amendment. It's close to consensus.

11 MS. PODZIBA: Okay. Yes, Ms. Cloud?

12 MS. CLOUD: Heather Cloud, Ho-Chunk Nation. "As  
13 requested by any committee member."

14 MS. PODZIBA: Okay. Further discussion? Ms.  
15 Foster?

16 MS. FOSTER: Yeah, there we go. I guess I'm  
17 understanding that to mean that the requests and the  
18 results will be made available? Is that what that  
19 means? What is made available?

20 MS. CLOUD: The results.

21 MS. FOSTER: The results? I think that the  
22 requests and the results should be available to

1 everybody so that we know what's been requested. And  
2 so, I guess the clarification and also a request for a  
3 friendly amendment, maybe between "and" and "shall" and  
4 "all requests and results shall be made available to  
5 the full committee."

6 So that the actual request, that everybody knows  
7 what's being requested.

8 MS. PODZIBA: Mr. Evans?

9 MR. EVANS: Yes.

10 MS. PODZIBA: Okay. I'm going to call the  
11 question. We now have two amendments to an original  
12 proposal. Is there any objection to adopting this  
13 proposal as highlighted?

14 (Show of hands.)

15 MS. PODZIBA: Ms. Cloud, do you have an objection?

16 MS. CLOUD: Yes, can you put a period after  
17 committee member? I'd just like to say "any committee  
18 member," period, capital A. "All requests and results  
19 shall be made available to the full committee."

20 MS. PODZIBA: Mr. Evans?

21 MR. EVANS: Okay.

22 (Laughter.)

1 MS. CLOUD: Thank you.

2 MS. PODZIBA: Is there any objection to adopting  
3 this proposal for the committee's protocols?

4 (Show of hands.)

5 MS. PODZIBA: Ms. Vogel, is that an objection?

6 MS. VOGEL: Yes.

7 MS. PODZIBA: And Mr. Evans?

8 MR. NICHOLS: I'm sorry. Mr. Adams.

9 MS. PODZIBA: Mr. Adams objected? Okay.

10 MR. ADAMS: The only thing I'm having a problem  
11 with is the whole term of data runs, formula runs,  
12 however you want to call it, being called out in there  
13 and being specific on that issue. Because in the past,  
14 again, that was -- that was the issue that caused me  
15 heartburn.

16 Just at every turn, we were waiting. We were  
17 asking for data runs. We are making decisions based on  
18 facts, but not necessarily the proposal. So this is  
19 just asking, you know, talking about technical  
20 assistance from HUD. I know that includes a data run,  
21 but I would like to just have it inserted in there as  
22 part of it.

1 MS. PODZIBA: Okay. Could you, like, make another  
2 proposal because that one is gone? So if you'd like to  
3 make another proposal, we would invite you to do so.

4 MR. ADAMS: Maybe I'll wait, Madam Chair.

5 MS. PODZIBA: Okay. Ms. Vogel?

6 MS. VOGEL: Thank you. Sharon Vogel, Cheyenne  
7 River. I still think that we are not addressing -- and  
8 I'm just basically regurgitating what Jason has said,  
9 we are not getting close to trying to define the role  
10 of the data runs. But more importantly, the delays.  
11 The delays making our decisions.

12 So I think if you can put in there some parameters  
13 around that about how are you going to proceed while  
14 you're waiting for a data run, or are we going to  
15 accept the fact -- and I've never participated in this,  
16 but I have heard about this, that many delays and  
17 you're actually sitting there waiting before you can  
18 move on. Because you can't move on until a decision is  
19 made on a proposal, right?

20 So how are we going to deal with that? We aren't  
21 here to waste of time, and we're going to say right  
22 here that by not putting controls on it that we are

1 accepting the fact that we know based on past  
2 experience that you are going to have downtime while  
3 you're waiting for data runs. And if everyone's in  
4 agreement that we are going to accept that downtime is  
5 downtime, then I think we need to clarify so that there  
6 isn't going to be anybody complaining about it, that we  
7 know that this is what happens.

8 Thank you.

9 MS. PODZIBA: Ms. Gore?

10 MS. GORE: I think Ms. Vogel asks a very good  
11 question. I can only speak to what the committee has  
12 done in the past, and that is we had the opportunity to  
13 table that issue and move on to the next one and begin  
14 the next debate and come back to that. We've actually  
15 done that a couple of times in these proceedings.

16 We, to my knowledge, in two negotiated rulemakings  
17 made very good use of downtime, if you want to call it  
18 that. Often it's a great time to call a caucus. And  
19 so, we've made good uses of those times when we needed  
20 to be patient, and we just didn't stand by.

21 So I would suggest that this committee is  
22 certainly demonstrating their desire to make good use

1 of their time, and I have full confidence that they  
2 will do just that.

3 Thank you.

4 MS. PODZIBA: Ms. Yazzie?

5 MS. YAZZIE: Aneva Yazzie, Navajo. You know, as a  
6 newbie to the committee, how much downtime are we  
7 talking about? I mean, I'm just curious. I thought,  
8 you know, we do have to acknowledge what HUD has  
9 incorporated. But I'd like to get a sense of how much  
10 time does it take to run data? I mean, what has been  
11 typical?

12 In my mind, I've got -- you know, you have a  
13 proposal. Maybe you want to change the weight of one  
14 factor and run that in the formula, and you have that  
15 within 15 minutes. So then I guess, are we looking at  
16 3 hours, 5 hours? So what's been typical, I guess, in  
17 past negotiations? I'm curious.

18 MS. PODZIBA: Ms. Henriquez?

19 MS. HENRIQUEZ: The best I can answer it, having  
20 never gone through it, but hearing from people who  
21 have. I have to say, unfortunately -- it's not a good  
22 answer -- it is it depends. Sometimes some things can

1 be run quickly in a couple of hours during a caucus or  
2 overnight. Some things, and this is part of what we'll  
3 hear in the presentation, is some of the information we  
4 may or may not have, have to go on a different source  
5 to get it, and it impacts a lot of what you're asking  
6 us to do, and that may take longer than a day or two.

7       Hopefully, we can figure out ways in which --  
8 things that you're going to want. We compile a list,  
9 do some other work, go back out or adjourn the session,  
10 a working session for a particular period of time, and  
11 then when that data is ready, send it to everyone, then  
12 reconvene another week of work or something.

13       It's just there is not a good answer. There's not  
14 a "It's going to happen like this. Here is the steps."

15       It all depends on what the ask is and the number of  
16 asks and, again, the complexity of the ask.

17       I'm sorry I don't have a better answer for you.  
18 And that is talking for the contractors who live and  
19 breathe this every single day.

20       MS. PODZIBA: Okay. Ms. Cloud?

21       MS. CLOUD: Okay. Since that last proposal got  
22 defeated, I would like to propose the same language,

1 putting a comma after "information." Putting a comma,  
2 "HUD will provide requested information, technical  
3 assistance, and/or data runs needed for the work of the  
4 committee as requested by any committee member,"  
5 period. "All requests and results shall be made  
6 available to the full committee."

7 MS. PODZIBA: Okay. Is that accurate of what you  
8 said? Okay. Ms. Gore, do you have a comment? That's  
9 just a -- all right. Comments on this proposal?

10 Yes, Mr. Adams?

11 MR. ADAMS: Can I just offer one clarification or  
12 addition? Instead of "data runs," that it be "formula  
13 data runs" so that it's specific to the formula and the  
14 data applied to the formula.

15 MS. PODZIBA: Any other comments or questions?  
16 Yes, Ms. Vogel?

17 MS. VOGEL: This is just a comment. I guess I  
18 understand or it's my understanding that the role of  
19 the data run is that the committee may determine how  
20 it's going to influence your vote. And so, I think  
21 that as long as we establish it for a matter of record  
22 that that's what the role of -- that formula runs are,

1 and so that those that read the public records will  
2 understand that it's not to represent them, but to help  
3 them understand that NegReg isn't -- or it is a process  
4 that we can depend on, I guess, to ensure that  
5 decisions are made about regional funding.

6 Thank you.

7 MS. PODZIBA: Any further discussion?

8 (No response.)

9 MS. PODZIBA: Okay. I'll call the question. Is  
10 there any objection to adopting the red language in the  
11 protocols? Ms. Foster?

12 MS. FOSTER: Actually, I'm not objecting, but I  
13 have to respond to that, at least in some feeble way.  
14 I mean, I appreciate the sentiment, and I remember when  
15 I first came to a formula rulemaking back in 2004 or  
16 something, and I came in and I thought, wow, we need to  
17 -- we're really going -- you know, everybody is going  
18 to be getting together and we're going to be figuring  
19 out what's going to really get the biggest bang for the  
20 buck in Indian Country, really serve the people who  
21 really need it. Get the money where it's supposed to  
22 be, you know?

1           And I know that it was a disillusioning process.

2           I mean, I was there. I felt that, too. But I don't  
3           think that by wanting to know the effect of a change in  
4           the regulations, by wanting to know what the effect is  
5           to the amount of money that comes out to every tribe, I  
6           mean, that's what we're here about, the formula and how  
7           things -- how the pie is going to be divided.

8           I don't think that just because I want that  
9           information it means that I am only here to look for  
10          the highest number for Yakama that I could find. I  
11          don't think it necessarily means that just because I  
12          want that information, and I don't think that that's  
13          the way I'm approaching this, and I hope it's not the  
14          way everyone is approaching it. So I just wanted to  
15          say that.

16          MS. PODZIBA: Okay. I just want to be sure that  
17          is there any objection to adopting this item of text  
18          for the protocols?

19          (No response.)

20          MS. PODZIBA: Okay. I see none. So that will be  
21          included to the protocols.

22          Okay. Let's move to Section 7 Schedule, and I

1 would just note that it's only in red, that this  
2 section was not included in 2010. And we may want to  
3 look at the charter, Section VIII, page 2, which also  
4 refers to meetings, and we spent I think quite a bit of  
5 time getting that one right.

6 (Pause.)

7 MS. PODZIBA: And with that, I will open the floor  
8 to proposals.

9 (Pause.)

10 MS. PODZIBA: Mr. Sawyers?

11 MR. SAWYERS: The last time we were limited to  
12 certain areas, and this time by consensus we have  
13 decided to move through the whole formula. So I'm not  
14 sure that six is the number. I think that had more to  
15 do with what HUD can afford and so on.

16 But I don't see us getting through this process in  
17 six meetings if you're going to take the formula, tear  
18 it apart, and kind of rebuild it. And that's kind of  
19 what we decided to do earlier. So I don't object to  
20 the six, but I think it's going to take longer.

21 MS. PODZIBA: Is that a proposal to include this  
22 section? I mean --

1 MR. SAWYERS: I guess I'd have to defer to HUD on  
2 this.

3 MS. PODZIBA: That's why I referred us to the  
4 charter because what we have in our charter says, "The  
5 committee shall endeavor in good faith to meet at least  
6 6 times within the next 12 months, subject to the  
7 availability of funds. The date, time, place, purpose,  
8 and proposed agenda for each negotiated rulemaking  
9 committee meeting will be published in the Federal  
10 Register at least 15 days prior to each meeting."

11 So I guess in some way I'm just asking a question  
12 of should we reflect a similar set of language, or  
13 given that 2010 didn't include it, does it need to be  
14 in the protocols? And with that, I open the floor for  
15 a proposal.

16 Ms. Henriquez?

17 MS. HENRIQUEZ: So you would propose that we  
18 incorporate the language from the charter, that "The  
19 committee shall endeavor in good faith to meet at least  
20 6 times within the next 12 months, subject to the  
21 availability of funds." And then, comma, "unless the  
22 committee completes its work in fewer sessions." It

1 won't have to meet.

2 And I think that would be it. Yeah, because (b)  
3 is picked up in the charter.

4 MS. PODZIBA: Okay. "The committee shall endeavor  
5 in good faith to meet at least 6 times within the next  
6 12 months, subject to the availability of funds, unless  
7 the committee completes its work in fewer sessions."  
8 That's the proposal on the table.

9 Questions, comments, or discussion of that  
10 proposal? Ms. Bryan?

11 MS. BRYAN: Annette Bryan, Puyallup Nation Housing  
12 Authority. I'm a little concerned with the 12 months.  
13 It's October 1st in a couple of weeks, and I -- my  
14 finger is on the pulse of we're probably not going to  
15 see a Federal budget for a couple of months. We're  
16 going to, hopefully, see a continuing resolution.

17 I'm concerned about putting that timeline in there  
18 that says 12 months. So if it's a goal of 12 months,  
19 comma, or longer if needed, perhaps? Just I'm  
20 concerned about the timeline, given the budget crisis.

21 MS. HENRIQUEZ: I would accept that. Thank you.

22 MS. PODZIBA: So that's the addition of "or

1 longer." Okay? Other discussion, comments on the  
2 proposal? Ms. Foster?

3 MS. FOSTER: I don't know that I really object to  
4 that, except that it is inconsistent with the charter.

5 I mean, the language is from the charter. So I guess  
6 it kind of fuzzies up the language from the charter,  
7 the "or longer as needed" clause.

8 MS. PODZIBA: I don't know if you're -- does that  
9 mean you're proposing to remove it or if you're just  
10 making a comment on it?

11 MS. FOSTER: Well, if it's an amendment that's  
12 already been put on, I guess I'm making a comment on  
13 it.

14 MS. PODZIBA: All right. Any further discussion?  
15 Yes, Ms. Vogel?

16 MS. VOGEL: I think I raised the same issue, and I  
17 don't think anyone answered it. We had a consensus on  
18 the previous language, correct? And then now do we  
19 have to go back and change the other or --

20 MS. PODZIBA: They're two different documents and  
21 the charter is already approved.

22 MS. VOGEL: Okay. But which --

1 (Pause.)

2 MS. PODZIBA: All right. Is there any objection  
3 to adopting the proposal on the table?

4 (Show of hands.)

5 MS. PODZIBA: Okay. Ms. Foster, can you explain  
6 your objection?

7 MS. FOSTER: I think that it's inconsistent with  
8 the charter, and I don't -- I'm not in favor of adding  
9 the "or longer if needed" language. I think that  
10 "endeavor to meet in good faith" is good enough.

11 MS. PODZIBA: Would you care to offer a proposal?

12 MS. FOSTER: My proposal would be to propose the  
13 same language except without the clause "or longer if  
14 needed."

15 MS. PODZIBA: Okay. A proposal -- can you remove  
16 that, Christine? So it goes back to the text of the  
17 charter. Is there any objection to the current  
18 proposal, which reflects the charter language?

19 MS. BRYAN: Annette Bryan, Puyallup Nation. So  
20 just to clarify, if we get our budget in 6 months,  
21 we'll have 6 meetings in 6 months or meet as often as  
22 possible between now and the next 12 months is the way

1 it's going to work?

2 And has it gone beyond the 12 months in the past,  
3 and is that possible, given we said within the next 12  
4 months?

5 MS. PODZIBA: Can someone answer Ms. Bryan's  
6 question?

7 MS. VOGEL: I have a question.

8 MS. PODZIBA: Ms. Vogel?

9 MS. VOGEL: But this is our second meeting. So do  
10 we have four meetings remaining, or are we talking  
11 about a new six. Just a clarification.

12 MS. PODZIBA: Mr. Evans?

13 MR. EVANS: Earl Evans. Also does the six  
14 meetings include the Hawaii meeting?

15 (Laughter.)

16 MS. PODZIBA: All right.

17 (Crosstalk.)

18 MS. PODZIBA: I think perhaps, Ms. Henriquez, can  
19 you -- there are three questions on the table for you.

20 One is the first question was if the finance -- if the  
21 budget passes in 6 months, is it likely that there  
22 would then be meetings every month? Do you count --

1 does last meeting and this meeting count against the  
2 six meetings, or is it six meetings in addition to  
3 these? And finally, the Hawaii question.

4 MS. HENRIQUEZ: I'll take the most difficult  
5 question last. It is contemplated that if we got a  
6 budget in 6 months -- and we know six months is our  
7 fiscal year, that we would do at least six meetings,  
8 one every month.

9 And that's what we did in the last rulemaking  
10 session, every single month for 3 days, 3 full working  
11 days each time. And at times people were willing to go  
12 longer than the normal -- beyond 5:00 p.m.

13 So we would propose that we have the ability to  
14 have at least six meetings. We could do more, but this  
15 is, again, at least 6 times in the next 12 months  
16 subject to the availability of funds.

17 So if we need to go a little bit longer, but the  
18 issue, just roughly put, is cost over fiscal years.  
19 That's what happens. We've got to use whatever money  
20 we've got by September 30 of 2014, and that's why we  
21 have to have what we need necessarily to get all the  
22 funding spent. Otherwise, it reverts back to Treasury,

1 which none of us want that to happen.

2 The second question is whether or not these two  
3 sessions, 2 1/2 weeks ago and then this session, counts  
4 toward the six. Let me say probably not at this point.

5 We're going to a new fiscal year, and I think if we  
6 can come out of this session with all of our charter  
7 and protocols, the information and begin, that we  
8 started this fiscal year, we move forward. And I would  
9 say we've probably got 6 in the next 12 months unless  
10 we need fewer.

11 The toughest question on Hawaii, everybody has to  
12 get there on their own. And you'd be welcome.

13 MS. PODZIBA: Thank you.

14 MS. HENRIQUEZ: As long as you don't fly through  
15 Chicago and Denver in the wintertime.

16 MS. PODZIBA: Thank you. Okay. So, once again,  
17 with that information, is there any objection to the  
18 adoption of this proposal?

19 (No response.)

20 MS. PODZIBA: Seeing none, and since we're over,  
21 we'll take a break now. It's 3:15 p.m. We'll come  
22 back in 15 minutes, and we've got two sections left of

1 the protocols, Section 8, Facilitators, and 9, Co-  
2 Chairs.

3 (Break.)

4 MR. NICHOLS: All right. Let's begin, please.

5 And we're going to continue with the protocols. The  
6 agenda for the rest of the afternoon is to continue  
7 with the protocols.

8 If we finish the protocols, then we will select  
9 the tribal co-chairs, committee co-chairs. And we will  
10 have public comment at 4:30 p.m., and then we will  
11 adjourn today around 5:00 p.m.

12 We'll have the presentations in the morning that  
13 were originally scheduled for this morning. That's the  
14 agenda that we'll attempt to complete the rest of this  
15 afternoon.

16 So, with that, we're ready to begin the item on  
17 the protocols Number 7, Facilitators, Number 8,  
18 Facilitators. So if you would take a look at that,  
19 there is -- there are a couple of minor differences in  
20 the language from 2003 and 2010 that the red one has a  
21 section in it that says solving points of order to  
22 relevance, which the other one does not have, and the

1 2010 one has this last sentence, which 2003 does not.

2 Those are the differences in them I'm aware of.

3 Do we have discussion or proposals for this  
4 section on facilitators? Yes, sir?

5 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
6 Tribe. I propose that we adopt the 2010 language in  
7 blue.

8 MR. NICHOLS: Okay. A proposal is made to adopt  
9 the 2010 language. Any comments or discussion on that?

10 (No response.)

11 MR. NICHOLS: Then I will call the question. Is  
12 there any objection to adopting the 2010 language for  
13 facilitators?

14 (No response.)

15 MR. NICHOLS: In the absence of any objection, the  
16 committee has approved that. The 2010 language is  
17 adopted for facilitators.

18 Then we'll move to the next section, which is co-  
19 chairs and regional and HUD representatives. The 2003  
20 language, starting with (a), which is co-chairs,  
21 regional representatives and co-chairs. In 2010, the  
22 language is quite a bit different in those two. So I

1 would ask that you take a look at those, and then we  
2 could have a discussion when you are ready.

3 Mr. Adams?

4 MR. ADAMS: Yes, Jason Adams, Salish Kootenai. I  
5 would propose that we adopt the co-chairs language from  
6 2010. The 2003 language was very convoluted, and so  
7 when we developed the 2010, we cleaned that up and  
8 basically just had two tribal co-chairs.

9 Thank you.

10 MR. NICHOLS: So that was a little bit of  
11 background. The proposal was made to accept the 2010  
12 language. Is there any discussion on that proposal?

13 (No response.)

14 MR. NICHOLS: Then I would call the question. Is  
15 there any objection to adopting the 2010 language for  
16 co-chairs?

17 (No response.)

18 MR. NICHOLS: In the absence of any objection, the  
19 committee has accepted the 2010 language for item (a)  
20 Co-Chairs.

21 And let's move on to item (b) PFO and HUD  
22 Representatives. The difference I'm aware of is the

1 language about chairing workgroup discussions, which is  
2 behind the window up there. So chairing workgroup  
3 discussions over here is the only thing I'm aware of  
4 that's different and his/her (Inaudible.)

5 MS. BRYAN: Annette Bryan, Puyallup Nation Housing  
6 Authority. Just I think we caught this in the charter  
7 as well. Both Sandra and I agree it's okay, but we  
8 might want for (b) to consider "his or her," "his or  
9 her." It says "her designee."

10 MR. NICHOLS: Correct. His or her --

11 MR. BRYAN: (b.)

12 MS. HENRIQUEZ: So just to sort of (inaudible)  
13 that a little bit, I'd like it to be "her/his."

14 (Laughter.)

15 MR. NICHOLS: Okay. So is there a proposal to  
16 accept -- to make this her/his in the blue language and  
17 accept that for the committee? Is that your proposal,  
18 Ms. Bryan?

19 MS. BRYAN: I will move it for another proposal.

20 MR. NICHOLS: Thank you. So her/his on the blue  
21 language, and then that proposal is made to accept  
22 that. Is there any discussion about that proposal?

1 (No response.)

2 MR. NICHOLS: Is there any objection to the  
3 proposal that's made to accept the 2010 language as  
4 changed?

5 (No response.)

6 MR. NICHOLS: Okay. The committee has accepted  
7 that language for PFO and HUD Representatives, item  
8 (b).

9 So moving to item (c), which is the committee  
10 chair, the Chair. And this language was from 2010  
11 only. Is there discussion about the item on chair  
12 that's up there from 2010?

13 (No response.)

14 MR. NICHOLS: Would anyone care to make a proposal  
15 on this one? Yes, Ms. Yazzie?

16 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo. I  
17 propose to the committee the adoption of the 2010  
18 version, the blue, for chair.

19 MR. NICHOLS: Okay. Thank you. Okay. Then a  
20 proposal is made. Is there any further discussion or  
21 amendment on that?

22 (No response.)

1 MR. NICHOLS: Then I'll call the question. Is  
2 there any objection to accepting the language on chair?

3 (No response.)

4 MR. NICHOLS: And the committee has approved that,  
5 and we'll move on to the last item, the appeal of  
6 parliamentary rulings from 2010. Do we have discussion  
7 or proposal for this item?

8 Ms. Bryan? I'm sorry? Who did I miss?

9 MS. BRYAN: Annette Bryan, Puyallup Nation  
10 Housing. Could we have discussion just on what this  
11 has meant in the past, when -- an example of when it  
12 has come up?

13 MR. NICHOLS: Okay. Discussion and examples when  
14 this was done in the past?

15 MS. BRYAN: Why is it in there?

16 MR. NICHOLS: Does anyone have an example of when  
17 it came up in the past, or is it just that it ever has  
18 come up in the past? Yes, Ms. Gore?

19 MS. GORE: Carol Gore. I guess I could say for  
20 the record I have no recollection of us ever having to  
21 use this appeal process. Maybe Jason or others do, but  
22 I have no recollection of that.

1 MR. NICHOLS: Mr. Sawyers?

2 MR. SAWYERS: I have no recollection.

3 (Laughter.)

4 MR. NICHOLS: So any further discussion or  
5 proposal on this item?

6 MS. BRYAN: Hearing none, I would propose that we  
7 accept the (d), just in case we need it.

8 MR. NICHOLS: Okay. So the proposal is to let (d)  
9 stand as worded. Discussion or amendment? Yes, Ms.  
10 Yazzie?

11 MS. YAZZIE: Hi, Aneva Yazzie, Navajo. Hi,  
12 everyone.

13 (Laughter.)

14 MS. YAZZIE: I have "alternative," and that says  
15 "affirmative." Was that part of the amendment for --  
16 it's "affirmative" up there, and it says "alternative"  
17 in my book, on that page. Just point of clarification.

18 Affirmative? Affirmative is correct.

19 MR. NICHOLS: So the "affirmative" is correct.

20 The green language is correct. So the proposal would  
21 be to accept it as it appears up on the screen with the  
22 green word "affirmative." Correct, Ms. Bryan?

1 MS. BRYAN: Yes.

2 MR. NICHOLS: Any other discussion?

3 (No response.)

4 MR. NICHOLS: Okay. Then I'll call the question.

5 Is there any objection to accepting this the way it's  
6 worded?

7 (No response.)

8 MR. NICHOLS: Okay. The committee has approved  
9 this item. And my understanding is that that concludes  
10 the review of the protocols and charters.

11 (Applause.)

12 MR. NICHOLS: I assume that your applause  
13 indicates that you agree that we're finished with that.  
14 Correct? So thank you for that.

15 And the next -- the next item on the agenda is the  
16 selection of the committee chairs, co-chairs. And we  
17 just approved the clause in the protocol that addresses  
18 this that you have in front of you.

19 I'd like to open for discussion the procedure for  
20 selecting the committee chairs. I've solicited some  
21 feedback on what's happened in the past with -- what I  
22 was given to understand is that in the past, people

1 nominated co-chairs. The co-chairs were asked if they  
2 agree that they were willing to serve in that position.

3 And then the committee -- if they -- assuming that  
4 they did agree and the committee reached a consensus,  
5 and they were -- that they would be the co-chairs.  
6 However, that may be what happened in the past, but  
7 before we go down that path, I just want to make sure  
8 that that's the way the committee would like to do it  
9 in the future or today. Or if there is some  
10 alternative way or some alternative proposal for how  
11 you'd like to select the co-chairs?

12 Any discussion on that topic? Yes, Ms. Yazzie?

13 MS. YAZZIE: Being new to the committee, I would  
14 propose that we use the same process that was done  
15 since that seems to have been successful in the  
16 conclusion of those negotiated rulemakings. I propose  
17 that to the committee to use the nomination.

18 MR. NICHOLS: Okay. Does anyone have a  
19 significant disagreement with that proposal? Ms. Gore?

20 Sorry.

21 MS. GORE: I don't have any disagreement.

22 MR. NICHOLS: You don't have any? Okay. Thank

1 you. No disagreements?

2 (No response.)

3 MR. NICHOLS: Okay. Well, then in the absence of  
4 any objection, let's move forward and open the floor to  
5 nominations for committee co-chairs. Yes, Ms. Flood?

6 MS. FLOOD: With great pleasure, I'd like to  
7 nominate Annette Bryan from the Puyallup Housing  
8 Authority for co-chair.

9 MR. NICHOLS: Okay. Ms. Bryan, are you willing to  
10 take on that responsibility?

11 MS. BRYAN: Yes.

12 MR. NICHOLS: Okay. Thank you. Ms. Nutter?

13 MS. NUTTER: Thank you. Teri Nutter, Copper  
14 River. I'd like to nominate Mr. Dollarhide.

15 MR. NICHOLS: Mr. Dollarhide, are you willing to  
16 take that responsibility?

17 (Response.)

18 MR. NICHOLS: Okay. Affirmative on that. So we  
19 have two nominations, two nominees for committee co-  
20 chair. Is there any further discussion or additional  
21 nominees? Mr. Jacobs?

22 MR. JACOBS: I make a motion that we cease the

1 nominations.

2 MR. NICHOLS: Any objection to -- yes, Ms. Yazzie?

3 MS. YAZZIE: Second that motion.

4 MR. NICHOLS: You second the motion. Any  
5 objection to stopping the nominations at that point?

6 (No response.)

7 MR. NICHOLS: Okay. Do we have -- is there any  
8 objection to having Ms. Bryan and Mr. Dollarhide become  
9 the co-chairs of the committee? Does the committee  
10 unanimously agree with that selection?

11 (No response.)

12 MR. NICHOLS: In the absence of any objection,  
13 then we have selected the committee co-chairs.

14 (Applause.)

15 MALE SPEAKER: Speech? Speech?

16 (Laughter.)

17 MR. NICHOLS: Okay. So, with that, we actually  
18 proceeded quite a bit faster than we thought we might  
19 at this stage of the game. So one thing I do want to  
20 mention is that the committee co-chairs, we'd like to -  
21 - appreciate the opportunity for the facilitators, for  
22 Susan and I to meet with you later tonight or early in

1 the morning. So let's touch base before we leave. So  
2 we're looking forward to working with you over the  
3 course of the meeting.

4 And the next item on the agenda -- yes?

5 MS. FOSTER: I just have a housekeeping question.

6 I was looking at the agenda for tomorrow, and you  
7 didn't mention it. But will we be seeing the protocols  
8 at the beginning of the next session so that we can see  
9 the final product, and if there's any changes --

10 MR. NICHOLS: Yes, thank you for reminding me of  
11 that. The process is we'll have the protocols drawn up  
12 overnight. We'll have them prepared for you in the  
13 morning, and everyone signs them. So I'll have a copy  
14 for everyone that is going to sign.

15 So unlike the charter, which is not signed by  
16 everyone, the protocol is signed by -- the protocols  
17 are signed by every committee member, and we'll have  
18 that for you in the morning. Yes?

19 MS. FOSTER: So we should read through those  
20 protocols that we had approved on kind of an interim  
21 basis, right, because we have approved them. But if we  
22 see anything that needs to be changed, we'd be able to

1 bring that up at the beginning of the meeting?

2 MR. NICHOLS: Yes.

3 MS. FOSTER: Tribal spellings, things like that.

4 Thank you.

5 MR. NICHOLS: Most definitely.

6 MS. FOSTER: Thank you.

7 MR. NICHOLS: Mr. Adams?

8 MR. ADAMS: Just for a point of order because we  
9 do have some protocols that address the co-chairs. The  
10 protocols talk about they will be selected at the end  
11 of each session to co-chair the next session. I hope  
12 for the record that is clear that the two that were  
13 selected are going to assume that duty immediately?  
14 They're not going to wait until the next meeting before  
15 they'll become co-chairs?

16 MR. NICHOLS: Correct.

17 MR. ADAMS: It's effective now. So we ought to  
18 make that clear.

19 MR. NICHOLS: Okay. I think that's -- I think  
20 that's certainly my understanding. Is there any  
21 difference of opinion on that on the committee?

22 And then, at the next meeting, there will be a

1 selection of new co-chairs as well. It's done at each  
2 meeting is my understanding per the protocols. Is that  
3 correct? Ms. Nutter?

4 MS. NUTTER: Is it too late to include language  
5 that the tribal co-chairs that were selected, to extend  
6 their term for the duration of the formula negotiated  
7 rulemaking?

8 MR. NICHOLS: Well, I'll throw that open to the  
9 committee. That would be an item for reconsideration.  
10 Correct? Did someone have their hand up?

11 MALE SPEAKER: Karin has her name up.

12 MR. NICHOLS: Sorry?

13 MALE SPEAKER: Karin got her name up.

14 MR. NICHOLS: Oh, Karin?

15 MS. FOSTER: Oh, sorry. That was from before,  
16 although I will comment that I think we've already  
17 completed our work on the charter. So to go back into  
18 another item on the charter, I wouldn't really be in  
19 favor of, you know, today.

20 MR. NICHOLS: So you would not be in favor of  
21 that. The committee certainly has the option of  
22 redoing them each time, right? There's nothing to

1 preclude that.

2 Ms. Henriquez, then Ms. Nutter.

3 MS. HENRIQUEZ: I was just going to say at the  
4 last sessions, as I recall, we did renew a couple at  
5 each working session. And then, finally, after a  
6 couple just said -- we took the vote and made it  
7 permanent for the rest of that particular rulemaking  
8 opportunity.

9 MR. NICHOLS: Okay. Ms. Nutter?

10 MS. NUTTER: Thank you. My comment is that the  
11 co-chair is defined in the protocols, not the charter.

12 So the protocols have not yet been approved. Our work  
13 has been completed on it, but it has not yet been  
14 approved.

15 MR. NICHOLS: Okay. So I think what I would  
16 suggest that we look at the provision on reopening a  
17 topic because while the protocols have not been  
18 approved, we did reach a consensus on that item of the  
19 co-chairs, and we reached consensus on the provision  
20 for reconsideration.

21 Mr. Sawyers, then Mr. Adams. Mr. Adams?

22 MR. ADAMS: Well, my comments aren't -- this is

1 Jason Adams, Salish Kootenai. My comments are not in  
2 regards to the co-chairs that were just recently  
3 appointed to the position. I wanted to get some  
4 history on the language that is included here for 2010.

5 We set this up in 2010 to say at the end of each  
6 session so that without having that kind of language,  
7 we would -- there's no way to remove these folks if  
8 they weren't doing the job.

9 So just to reaffirm that, we made that process  
10 viable so if they weren't reaffirmed, then we could  
11 find somebody else. So if we change that, I just want  
12 to give that history.

13 And again, no reflection on our current folks, but  
14 there was that door, that opportunity if we didn't  
15 reaffirm them, somebody else then would be appointed to  
16 the position.

17 MR. NICHOLS: Mr. Sawyers?

18 MR. SAWYERS: I'm just saying that the end result  
19 is the same. Whether you appoint them every time or  
20 not, unless you guys really screw up.

21 (Laughter.)

22 MR. SAWYERS: This thing will have the same

1 result. It's not a big deal.

2 MR. NICHOLS: Okay. Ms. Nutter, do you --

3 MS. NUTTER: I'll withdraw the comment.

4 MR. NICHOLS: Okay. It's withdrawn. So if we're  
5 concluded on that, then are we able to expedite the  
6 portion of the agenda that calls for public comment and  
7 do that now?

8 All right. We're prepared to take public comment  
9 at this point. So we invite the public to raise your  
10 hand if you would like to make a comment to the  
11 committee, and we will have microphones available for  
12 you, people helping you with that.

13 (Pause.)

14 MR. NICHOLS: No public comment? Okay. So we  
15 have no public comment? Last call for public comment.

16 Okay. Now it's 4:00 p.m. So we're about an hour  
17 ahead of schedule here from where we intended to be.  
18 So Mr. Evans, Mr. Jacobs, and Mr. Adams?

19 MR. EVANS: I would yield to Mr. Adams and Mr.  
20 Jacobs.

21 MR. NICHOLS: Mr. Jacobs?

22 MR. JACOBS: Leon Jacobs, Lumbee Tribe. I'd like

1 to acknowledge if there's any tribal elected officials  
2 in the audience, we'd like to recognize them.

3 MR. NICHOLS: We have one gentleman that raised  
4 his hand.

5 MR. JACOBS: Would you stand and tell us your name  
6 and which tribe, please?

7 MR. RAY: I represent the (inaudible) Chapter. We  
8 have 110 chapters across Navajo Nation, and we -- it's  
9 the local government that I represent. My name is  
10 Wilson Ray. I'm the chapter -- chapter president from  
11 there. Thank you.

12 MS. BRYAN: Annette Bryan, Puyallup Nation Housing  
13 Authority. I have a question on the agenda. Earlier,  
14 we did move some of the presentations to the end of our  
15 work for today, which we just completed. Is it the  
16 will of the group to see some of those presentations?  
17 Are we going to not see them at all or what -- how will  
18 we go from here since we have the time today?

19 Thank you.

20 MR. WILLIAMS: I just wanted to -- my comment  
21 would be in regards --

22 MR. NICHOLS: I'm sorry. I think we have one more

1 person for public comment.

2 MR. WILLIAMS: My name is Joe Williams. I'm  
3 chairman of the board for Tlingit-Haida Regional  
4 Housing Authority. And I just want to say personally  
5 thank you very much for all the dedicated work that you  
6 folks are doing. It's good to see that good consensus  
7 work is being done, and I, for one, as an audience  
8 member, truly appreciate the work, and I want to say  
9 thank you very much.

10 MR. NICHOLS: Thank you. Mr. Adams?

11 MR. ADAMS: The comment I wanted to make here at  
12 the end here is just as I made last meeting when we  
13 were ending, and I'm wondering why we're set on this  
14 agenda that's finished at 5:00 p.m. I'm here. I'm  
15 taking time away from my home, my family to be here for  
16 3 days, and I have all evening essentially to work.  
17 We've got all evening.

18 In previous negotiated rulemakings that was the  
19 way things were done. The time crunch, money crunch  
20 that we have, I don't understand. If the room is not  
21 available, I guess that's a good reason. But I asked  
22 that last meeting just so that we could get some work

1 done. I'd love to hear this presentation and get  
2 started on what we are here to do.

3 MR. NICHOLS: Ms. Henriquez?

4 MS. HENRIQUEZ: So, Jason, we heard you loud and  
5 clear last time, and we made arrangements to have staff  
6 people stay --that includes the stenographer, taking  
7 notes for the meeting -- until later this evening. The  
8 only timeframe we have as to the hard stop is on  
9 Thursday when we have to be out. We have to be out by  
10 about 5:30 p.m., a quarter to 6:00 p.m. But other than  
11 that, we are prepared to go longer if that is the  
12 committee's pleasure.

13 So you all need to decide how long you might want  
14 to go tonight, and I believe we've asked people to be  
15 available until 8:00 p.m. We thought we would have  
16 conversation that actually on the protocols would go  
17 longer, and so, again, we're at the committee's  
18 pleasure as to what time. And staff is ready to have  
19 the presentations if that's what you want.

20 MR. NICHOLS: Mr. Sawyers?

21 MR. SAWYERS: With that in mind, I'd like to --  
22 I'd like to hear from my little kid Todd. He -- I

1 raised that boy.

2 (Laughter.)

3 MS. HENRIQUEZ: You did a hell of a job.

4 MR. SAWYERS: I did. I did a nice job. I would  
5 like to go ahead and hear the presentation, at least  
6 part of it, an hour, an hour and a half, whatever it  
7 takes. We're here.

8 MR. NICHOLS: Any other viewpoints on that,  
9 perspectives that you'd like to share? Mr. Jacobs?

10 MR. JACOBS: Jack, do you want to make that a  
11 motion?

12 MR. SAWYERS: Absolutely.

13 MR. JACOBS: I second it.

14 MR. NICHOLS: Okay. Is there any objection to  
15 beginning the presentation now? Ms. Cloud?

16 MS. CLOUD: Would we be able to have a 10- or 15-  
17 minute break prior to presentations?

18 MR. NICHOLS: So the proposal would be to take a  
19 15-minute break now and then start the presentation and  
20 go until --

21 MALE SPEAKER: 6:00 p.m.

22 MR. NICHOLS: -- 6:00 p.m.

1 MALE SPEAKER: Or whenever they finish it.

2 (Crosstalk.)

3 MR. NICHOLS: Can we get through all of the  
4 presentations? There are three, two or three. Okay.  
5 Well, let's -- so we take a 15-minute break now, start  
6 the presentations with the goal of finishing the  
7 presentations tonight.

8 Is there any disagreement with that on the  
9 committee?

10 (No response.)

11 MR. NICHOLS: Okay. Well, then let's run the 15-  
12 minute break clock. Please be back in 15 minutes.

13 (Break.)

14 MR. NICHOLS: We decided to get started on the  
15 presentations, and it is my pleasure to introduce Mindi  
16 D'Angelo, the vice president of FirstPic, Incorporated.

17 She's the director of the IHBG Formula Customer  
18 Service Center, and she will start the process and has  
19 more than one presentation for you. She will begin  
20 that and then introduce the other presenters.

21 So, with that, Mindi D'Angelo. Thank you.

22 MS. D'ANGELO: Thanks, Steve.

1           Good afternoon.  First, before we begin the  
2   presentation, I wanted to give you an understanding of  
3   what we're actually presenting today.  We are -- given  
4   the time, we're going to just provide a brief history  
5   of the formula current assisted stock.  Todd Richardson  
6   is going to be doing a history of the formula current  
7   assisted stock, how did we get to where we are.

8           And then I'm going to go into the actual  
9   operational mechanics of the formula current assisted  
10  stock, but from a very bird's eye view.  We are  
11  prepared at any time, and as you find in the protocols,  
12  to provide pertinent technical assistance.  This is  
13  really an opportunity to just give you a big overview  
14  of the formula and not -- we just wanted to give you  
15  information on the mechanics because we could talk for  
16  hours on it.  We could talk for an entire day on the  
17  actual operations of the formula.

18          So, with that said, I want to turn it over to  
19  Todd, who is the Acting Assistant Secretary for PD&R.  
20  Todd?

21          MR. RICHARDSON:  So one of the interesting things  
22  in Washington, so I have the power -- I have the shared

1 power that the Assistant Secretaries do now. Like only  
2 in Washington could you have somebody who has a weird  
3 title like that. So my official title is the Acting  
4 Deputy Assistant Secretary for Policy Development, but  
5 we don't have a Secretary. I fill in in that role.

6 Anyway, going back, backwards here, in my role in  
7 1997, 16 years ago, you know, we put together this  
8 formula 16 years ago in negotiated rulemaking. And for  
9 my career since then, it has been probably the most  
10 important and remarkable thing that I had an  
11 opportunity to work on because it defines how you can  
12 go through a process where everyone gets to a common  
13 understanding and an agreement on how you can achieve a  
14 common goal.

15 And when I work on things today and other projects  
16 that don't have formulas over the years, I always  
17 reflect back on the goals that were established by that  
18 negotiated rulemaking committee, try to keep those in  
19 mind as we move forward on other formulas that I've  
20 worked on.

21 So thinking back to 1997, that was 16 years ago,  
22 and for me, I didn't have children then. I have now

1 have two 13-year-old daughters and an 11-year-old son.

2 So my son the other day was doing an assignment on  
3 family trees. And as I was putting together this  
4 presentation, it occurred to me that this formula is a  
5 little bit like a family tree.

6 So let me sort of talk about how that was so. I  
7 forget. I always fall off of my slides here. For  
8 those of you who remember the presentation in 1990 --  
9 whenever it was we did it before, '97, I always had a  
10 big projector, and I would write on the projector, get  
11 it on the screen here. So I'm better at just writing  
12 things. So I don't stay on message here, you should  
13 let me know.

14 But the -- in any case, on this family tree  
15 concept, we're going to skip ahead here. Formulas are  
16 hard. You guys know that. Move on to the next slide  
17 here is this. So I'm going to talk about the family  
18 tree structure and the way, you know, we have the  
19 statute. We've got the mission. We've got goals,  
20 current assisted stock, need.

21 So in the family tree structure, we're going to  
22 break this up. So the formula, the final allocation is

1 who the kid is, and then we split this up as the  
2 parents is formula current assisted stock and need.  
3 All right? Mom and Dad are formula current assisted  
4 stock and need.

5 So I'm going to talk about -- we're going to just  
6 talk about Mom today, formula current assisted stock.  
7 So on the next slide here.

8 In that area, we're talking about we start off  
9 with the statute. So the statute for this was very --  
10 gave a lot of room for this committee to work. There  
11 was not a lot of requirements in the statute.

12 Congress sometimes passes laws that have a lot of  
13 requirements, and some they tend to have a law that  
14 says you go figure it out. This was passed in the "you  
15 go figure it out" category for the law.

16 So what we have in terms of main factors is we had  
17 to take into account the number of current assisted  
18 stock units. We had to take into account, and we'll  
19 talk about need tomorrow, but extent of poverty,  
20 economic distress, and the number of Indian families  
21 within Indian areas, and other objectively measureable  
22 conditions.

1           That was basically it. Now there was one very  
2 important component that said you couldn't get a grant  
3 less than what you got in '96 for your operating fund  
4 and your modernization fund. So we did -- had to take  
5 that into account. But that was it. That was what we  
6 had to start with. And so, we started with that. Next  
7 slide.

8           So, in terms of sort of my learning, the tribal  
9 leadership said we need a mission statement for how  
10 we're going to take this process on. And this is the  
11 mission statement that I have from my notes that  
12 basically says, "Determine the criteria for need that  
13 is fair and equitable to all tribes pursuant to the  
14 law."

15           And I underlined "fair and equitable" in this  
16 presentation because fair and equitable has been in my  
17 mind ever since in terms of how we do other allocation  
18 formulas. So I am working right now on how we do  
19 allocations of \$16 billion we received for disaster  
20 recovery fund.

21           And as I talk to members of Congress about how  
22 we're allocating that, fair and equitable is what we

1 use as much as possible to try to say that's how we're  
2 allocating these funds. Next slide.

3 So the -- out of the mission statement came a set  
4 of goals, and these goals were critical in our process.

5 We always went back to these goals. So in setting up  
6 this, we said does this meet our goals when we talked  
7 about a particular element that we were discussing?

8 Fair and equitable for all tribes. Serve low- and  
9 moderate-income Native Americans. Data available and  
10 consistent for all tribes. Integrity of data,  
11 objectively measurable, defensible. And then tribes  
12 have a right to appeal established data. And then we  
13 had a deadline of when we had to get it done. So I  
14 kept going back to that.

15 The Current Assisted Stock Working Group was  
16 formed to sort of work through the specific issues of  
17 current assisted stock. So of the few subgroups, Mom  
18 and Dad, there was a Mom, and that was working current  
19 assisted stock. And in the formula, current assisted  
20 stock comes first, right?

21 So, first, we figure out how much money are you  
22 going to give to your current assisted stock. And then

1 what's left over is allocated for need. So out of the  
2 larger appropriation, depending on what the  
3 appropriation amount is, current assisted stock gets  
4 taken care of first, and then the remainder of money  
5 available gets pushed out for needs allocation.

6 So in the current assisted stock statutory  
7 language, it didn't say exactly how we should allocate  
8 funds for current assisted stock. What we did have is  
9 that we knew we had to make sure that nobody got less  
10 for both their needs and their current assisted stock  
11 than what they got in '96.

12 But specifically for how to allocate funds on  
13 their current assisted stock, there was not -- there  
14 was minimal direction in the statute. So what we did  
15 is we went back and said how is it currently allocated?

16 And so, we looked at the current methods for  
17 allocating funds.

18 So there was at that time, there was funding that  
19 was provided for operating fund subsidy for the public  
20 housing units under the performing funding system.  
21 Modernization funds was another area that was funded,  
22 and under the Section 8 voucher program for units that

1 came -- were no longer being subsidized in Section 8,  
2 that would be subsidized under NAHASDA.

3 So we started there, and we said let's look at  
4 those elements for developing this allocation formula.

5 The formulas that were in place that we were  
6 allocating funds in the past were very complex. And  
7 they were built for public housing in an urban setting.

8 And we looked at it and said in Indian Country,  
9 the vast majority of units are single family rental or  
10 home ownership units in a largely rural context. So  
11 this is how we got to the conclusion that we might be  
12 able to simplify this a great deal, and we looked to  
13 say let's do allocations on a flat per-unit basis for  
14 each of these different categories. And so, that's  
15 where we went on the allocations for operating subsidy  
16 and for modernization.

17 So I'm going to talk now about the -- so talking  
18 about that family tree. So now we're splitting again,  
19 right? So we're splitting, we had, for instance, this  
20 stock, now that is split for operating subsidy and  
21 modernization.

22 So how did we come to the per-unit amount for

1 operating subsidy? Have I -- have I --

2 (Pause.)

3 MR. RICHARDSON: We'll talk about local cost  
4 adjustments in a second, but we also have local area  
5 cost adjustments that are factored into it on both  
6 sides of the formula. Next slide.

7 All right. The per-unit amount we calculated was  
8 not -- there was no -- there was no magic to how we  
9 came up with the per-unit amount for the subsidy. We  
10 said how much are we getting across the board for  
11 public housing units? How much are we getting across  
12 the board for Section 8 units? How much are we getting  
13 across the board for Mutual Help units? And let's  
14 divide that by the total number of units.

15 Now we were looking at it and say if it was fully  
16 funded, what would be the per-unit amount? And that's  
17 how we came up with the per-unit amount that serves as  
18 the based per-unit allocation amount.

19 For -- and this amount is increased each year by  
20 inflation. So we take into account inflation each  
21 year, increase those per-unit amounts. And we'll talk  
22 more about the specific reason in Mindi's presentation.

1           The modernization component is a little more --  
2           was a little more difficult because we had two ways  
3           that modernization funding were being funded at that  
4           time. For the larger tribes of over 250 units, we were  
5           providing funding through something called the Comp  
6           Grant formula. And for the smaller tribes, they were  
7           competing for funds under the CIAP program.

8           So we calculated a per-unit amount using the Comp  
9           Grants for the larger size, and that's the base amount  
10          that we used for the allocation. But for the CIAP  
11          tribes, if they got an average greater than that, we  
12          then used the greater average for the CIAP tribes. So  
13          that was how we tried to manage that.

14          Now, clearly, we also recognized that costs are  
15          very different in different regions of the country.  
16          The costs to operate are different in different regions  
17          of the country. So for local area costs, for the  
18          operating subsidy component of the formula, we adjust  
19          based on a "greater of" concept.

20          The greater amount you get -- so, basically, the  
21          impact is that if costs are higher in this part of the  
22          country, you're going to have your grants adjusted

1 upwards. If costs are less in this part of the  
2 country, you're going to have your grants adjusted  
3 downward.

4 And what are those factors we're going to use?

5 Well, we wanted to use -- we wanted to use factors that  
6 people were comfortable with from their 1996 formula,  
7 and that was the annual adjustment level factor. We  
8 also needed something that was more widely available.  
9 So we also used the fair market rent that's calculated  
10 by the Office of Policy Development and Research.

11 And so, we used both of those factors for  
12 adjusting low rent. Whichever your tribe did more  
13 favorably under is what you get the allocation of using  
14 those factors.

15 On the -- on the modernization side, it's sort of  
16 a different equation about what your costs are so we  
17 wanted to use something that was construction cost  
18 built, and the total development cost has long been  
19 around by -- and developed by HUD. They factor in,  
20 unlike other construction indexes, they do take into  
21 account costs in rural Alaska. So we use total  
22 development cost as our adjustment factor on the

1 modernization side of the formula.

2       So I'm going to now turn it over to Mindi, whose  
3 memory will be much fresher on how the formula works  
4 because she's been running it for these last several  
5 years. And she's got some great slides, I think, on  
6 how the formula should get divided up.

7       MS. D'ANGELO: Thanks, Todd.

8       So a lot of what I'm going to tell you is a little  
9 bit of repetition of what Todd already said, but that's  
10 because in practicality, we've used all of the  
11 decisions that happened in the first and second  
12 negotiated rulemakings to come up with what we're using  
13 today, which is what you would expect to see.

14       So before I proceed, I just wanted to make sure  
15 that this slide just gives a list of the resources for  
16 the entire formula component as a whole. As the  
17 committee members, you have the 24 CFR 1000 in your  
18 IINS book.

19       I will refer to the FRS, the formula response  
20 form, and the appendices probably in a sub-presentation  
21 when we talk about FCAS in more specific fashion, but  
22 we will not really be speaking about the formula

1 response form other than what it is today. And the  
2 other documents there are for your reference as well.  
3 Next slide.

4 As Todd mentioned, there are really two main  
5 components of the formula itself, and that's the  
6 formula current assisted stock side and then,  
7 subsequently, the need. We also have this thing at the  
8 very end called 1996 baseline funding, which in  
9 tomorrow's presentation on need you will hear a lot  
10 more about. So next slide.

11 I first wanted to talk about really what does the  
12 pie look like? Todd mentioned earlier that FCAS gets  
13 funded first, and before we even talk about the pie  
14 that's on the screen right now, I want to talk a little  
15 bit about who gets allocated to because that is  
16 actually a source of confusion.

17 We have 585 tribes that actually get an allocation  
18 through the formula. However, not all of those tribes  
19 take their money and not all of those tribes submit an  
20 IHP. Some tribes fall under an umbrella, PDHE. And  
21 so, we don't have as many grants as we actually have  
22 the number of allocated tribes in the formula.

1           So you know any funds that are not taken in a  
2 particular year are put back into the formula as  
3 carryover in the subsequent year. Does that make sense  
4 to everybody?

5           So let's talk about this pie chart. So this pie  
6 shows that 44 percent of -- and this is based on fiscal  
7 year 2012 -- 44 percent of the pie goes to FCAS, and 56  
8 percent in 2012 went to needs. This number actually  
9 changed relatively substantially in fiscal year 2013  
10 because the pie shrunk.

11           So the allocation, because of the sequester or the  
12 potential sequester, shrunk by -- let me tell you the  
13 exact amount -- by about \$40 million. And so, this pie  
14 actually is 48 percent FCAS in fiscal year 2013, which  
15 just shows the effect of the actual allocation amount  
16 on what those who need at the end of the day.

17           The next slide here shows the proportion of need,  
18 which is the red, to FCAS over time from the beginning  
19 of the program through 2012. As you can see, the FCAS  
20 grew slightly in the very beginning of the program and  
21 pretty much leveled out, even though we've lost a lot  
22 of units along the way, qualified eligible units in

1 FCAS. And that's because of the inflation factor,  
2 which I will talk about later in the presentation.

3 So the very basic question is what is FCAS? And  
4 Todd spoke a little about this in his presentation,  
5 which is that FCAS is the subset of a tribe's current  
6 low-income housing inventory previously assisted under  
7 the 1937 act. It was derived from those units that  
8 were pursuant to an ACC at the time of 9/30/1997, which  
9 is when the negotiations began.

10 Those units, as many of you are well aware, are  
11 eligible under a certain sort of -- under certain sets  
12 of conditions.

13 What doesn't count as FCAS are NAHASDA units and  
14 the list of these other topic areas -- home, ICDBG,  
15 units that are converted to non-dwelling units, Section  
16 8 units that are no longer managed -- under management,  
17 conveyance eligible units that have not yet been  
18 conveyed outside of the tribe's control, and IHA  
19 financed units.

20 This is a picture of the fiscal year 2012 units by  
21 type. This is going to be a little -- this is going to  
22 be important in reviewing the data as well. Mutual

1 Help and Turnkey in 2012 was 17,352 units. We lost  
2 about 2,000 of those units in 2013. Low rent units  
3 maintained relatively equal. We lost about 100 units  
4 in 2013, and Section 8 we didn't lose any.

5 And this chart shows you the change of units over  
6 time from the beginning of the program through 2012.  
7 As you can see, we've lost about half of our home  
8 ownership units.

9 Now if you look back on the chart where FCAS and  
10 need have basically stayed the same, sort of 45 percent  
11 FCAS level, even though we've lost about half of our  
12 units, home ownership units, the FCAS has maintained  
13 the same mostly because of the inflation factor that's  
14 built into the formula.

15 What this shows is the DOFA dates of home  
16 ownership projects. What DOFA means is the date of  
17 full availability. That's when the units became  
18 eligible for funding.

19 With home ownership units, we expect to see at  
20 about 25 years those units becoming ineligible for  
21 funding as FCAS. So this gives you an idea that the  
22 home ownership units are likely to continue to decrease

1 over time, and I think 19 -- if you look at your bar  
2 chart, 1988, those units we would expect to start to  
3 see become ineligible as of 2013, which means they  
4 would be removed in the 2014 formula. And that's a  
5 bulk of the DOFA dates.

6 So if you can just imagine that those units are  
7 going to be -- we expect to see coming off over the  
8 next several years.

9 So now that I've done sort of the broad overview  
10 of what the picture looks like in terms of the pie and  
11 how the units are distributed, I want to talk a little  
12 bit about how the actual mechanics of the formula work.

13 As Todd mentioned, we have what's called the operating  
14 subsidy and the modernization subsidy, and they both  
15 contribute to the FCAS allocations on your formula  
16 response form.

17 What was not really talked about was that Section  
18 8 units do not receive a modernization subsidy, and  
19 that's because those units are run by the private  
20 market, and the modernization is done by the unit  
21 owner. So only home ownership units and low rent units  
22 get that modernization subsidy.

1           This is the actual calculation that Todd was  
2 speaking to. So if you look on the FCAS operating  
3 subsidy, we talked about there is that baseline number,  
4 the 1996, what you got for operating subsidy in 1996.  
5 We multiply it by the inflation factor, and then  
6 finally, we multiply it by a local area cost  
7 adjustment.

8           And on this -- on this slide, you'll see that  
9 there is different amounts for that 1996 subsidy  
10 depending on the kind of unit that we're funding. So  
11 for low rent, that amount was \$2,440 in 1996. For home  
12 ownership units, which are, for those of you that don't  
13 know, Mutual Help and Turnkey III are the two types of  
14 home ownership units that we have. That amount was  
15 \$528. And for Section 8 units, the amount was \$3,625.

16           The inflation factor is on here. In fiscal year  
17 2012, that number was 1.44. In fiscal year 2013, 1.47.

18           The next phase is to multiply by the local cost  
19 adjustments. What we have is the allowable expense  
20 level and the FMR. The allowable expense level is a  
21 historical value. The FMR is a published -- annually  
22 published value actually that comes out of PD&R.

1           The tribes, what's important to know about this  
2 factor is that tribes get whatever suits them better,  
3 whatever puts them in a better position. So for this  
4 local cost adjustment, we look at your AELs, we look at  
5 your FMR, and whatever you do better as, we use.

6           So once we're done calculating the operating  
7 subsidy, then we move on to modernization subsidy. As  
8 I mentioned, Section 8 does not get modernization. So  
9 it's only low rent and Mutual Help units.

10          That modernization amount is the same amount,  
11 \$1,974, from the 1996 baseline amount. We multiple  
12 that by inflation and also do a local cost adjustment.

13          However, the local cost adjustment for modernization  
14 is a little bit different. Next slide.

15          The local cost adjustment for modernization is  
16 something called the TDC, which is the total  
17 development cost. I should mention that the TDC is  
18 used on both the FCAS side and on the need side. The  
19 TDC is actually a weighted factor, and the weight on  
20 the FCAS side is different -- the TDC on the FCAS is  
21 much different than the need side because on the FCAS  
22 side, there's only 260 tribes that receive FCAS, and on

1 the need side, 585 tribes receive need.

2 So the weighting is different, and so you might  
3 have a TDC -- your weighted average on the TDC on the  
4 FCAS side is going to be different from the need. And  
5 Peggy will explain that in more detail tomorrow.

6 So then after we've finished operating subsidy, we  
7 go to the -- oh, I'm sorry. So back to modernization  
8 subsidy, last, there was sort of this acknowledgment  
9 that small tribes really had a different -- they were  
10 coming to the table with a different baseline, and in  
11 the last negotiated rulemaking and actually in the  
12 statute itself, in the last negotiated -- in the last  
13 passage of the NAHASDA statute, this recognition was  
14 given to the smaller tribes that perhaps a different  
15 way of modernization might work better for smaller  
16 tribes.

17 And so, essentially, what we've done is we have  
18 another component where you get the better of. So for  
19 the alternative modernization, let's see, for tribes  
20 that had 250 units or less, they get either the first  
21 method of modernization calculation or an average of  
22 fiscal year 1992 to 1997, not including emergency

1 assistance.

2       What I want to do for this slide is explain to you  
3 that there are 145 tribes that actually qualify for  
4 this provision. In 2012, 59 tribes received the  
5 alternative way of calculating modernization. The  
6 remaining 86 were better off using the initial way of  
7 modernization calculation.

8       So this chart just shows you how the pie is  
9 divided up between modernization and operating, pretty  
10 even. And then we further dice it down to how much  
11 goes to low rent, how much goes to operating, and how  
12 much goes to Section 8. So, obviously, Section 8, with  
13 6 percent of the pie is very small amount, you know,  
14 partially because they don't get modernization subsidy,  
15 but partially because there's only 3,000 or so units.

16       So the bulk of the funding is going to low rent,  
17 which -- yeah, and if you remember the chart of how the  
18 units looked, the home ownership units went from 40,000  
19 to about 20,000, and the low rent units have stayed  
20 relatively stable over time, and we expect that to  
21 pretty much remain the same.

22       So this slide is here. It's not really part of

1 the formula current assisted stock, but I just wanted  
2 to remind people that there is sort of this protection  
3 for those tribes that had funding in 1996, that there  
4 is a baseline funding provision. It actually happens  
5 at the end of the formula and will be talked about in  
6 way more detail tomorrow.

7 But I just wanted to remind you that if you lose  
8 all of your formula current assisted stock because you  
9 only have home ownership units and they're all becoming  
10 conveyance eligible, there is this 1996 baseline  
11 funding provision at the very end of the formula.

12 So the next couple slides are actually just about  
13 sort of procedural issues. We can either choose to  
14 talk about them now or you can look at them for  
15 reference. I think I will defer to the committee on  
16 that.

17 MALE SPEAKER: Finish it.

18 MS. D'ANGELO: Finish it? Okay.

19 So can you go back one slide? So, procedurally,  
20 there are -- there are in the regulations time periods  
21 for us to tell you what the data is in your formula and  
22 time periods for you to respond to make corrections.

1           So 1000.332, we recently changed the deadline for  
2   us to get you what's called the formula response form,  
3   and we also refer to it as the FRF. It used to be  
4   August 1st. It has since been changed, I think in the  
5   January 8th rule, to be June 1st so that tribes were  
6   able to submit IHPs in a timely fashion.

7           So we will produce the formula response form, mail  
8   it out to you on June 1st or before if we can. And the  
9   tribe has 60 days to respond to any corrections, and  
10   that's in 315. 315 codifies the fact that the tribe's  
11   responsibility is to report all changes on the formula  
12   response form.

13           As I understand it in the last negotiated  
14   rulemaking, this was done because tribes were reporting  
15   partially on the IHPs and it wasn't getting to the  
16   formula center. And so, that was codified in, I  
17   believe, the last negotiated rulemaking that that was  
18   the mechanism for reporting.

19           319 further states that it's your responsibility  
20   for verifying what we've given to you as accurate. So  
21   this is sort of the general what you do need to report,  
22   and this is in terms of FCAS and not in terms of need

1 at this point. You have to report any differences that  
2 you see on your formula response form and what you have  
3 in your records.

4 Any DOFAs of units that were in the pipeline. I  
5 know when I say this to people are like "Are you  
6 kidding me?" There are still units in the pipeline  
7 that are being brought on, and yes, we've had units  
8 come on as recently as last year that were units that  
9 were subject to ACC. Sometimes tribes just forgot to  
10 report them. Sometimes they really just finished being  
11 built.

12 So conversions. Subsequent home buyers. Non-  
13 dwelling units. Demolished units. Units that are  
14 conveyance eligible. Units that have been conveyed.

15 The one thing that tribes cannot -- there is  
16 actually only two things that tribes cannot challenge  
17 at all, and that's the AEL -- because it's an  
18 historical figure that's not updatable -- and the  
19 inflation factor.

20 So one of the things that we find at the formula  
21 center all the time is if a tribe delays in reporting  
22 FCAS changes, it often ends up in incorrect

1 allocations. And if it's a unit that should have come  
2 off, in order to be fair and equitable, as Todd said,  
3 you've actually gotten overpaid in that year because  
4 you've gotten operating subsidy and modernization  
5 subsidy for a unit that was not eligible at the time.  
6 So what happens is we seek a repayment.

7 What I like to tell tribes when we seek that  
8 repayment is that it's not punitive -- I think a lot of  
9 times tribes view that repayment as a punitive measure  
10 by HUD. It's not a punitive measure. It is a measure  
11 to reclaim the amount that was overpaid to you in a  
12 given year.

13 In the last negotiated rulemaking, this was added.

14 If we do seek repayment, the repayment is limited to -  
15 - in addition to being able to pay back in a variety of  
16 different ways, a tribe is limited to repay that amount  
17 over 5 years, and you cannot take more than 5 years to  
18 repay an overpayment for one particular repayment.

19 And finally, on the repayment issue, this was also  
20 added in the last negotiated rulemaking that we only  
21 have 3 years from the date that the formula response  
22 form was sent out to take action on repayment. So if

1 we have not taken action on a particular unit, we can't  
2 go back to the beginning of time and reclaim that  
3 repayment.

4 This provision, the back-funding provision, was  
5 added also in the last negotiated rulemaking that  
6 recipients will not be provided back-funding for any  
7 units that the recipients failed to report on the  
8 formula response form in a timely manner. There was a  
9 preamble that allowed for a very specific time period  
10 of back-funding that was agreed to, but that is  
11 finished now. It was a big project.

12 Finally, tribes have the right to appeal this  
13 decision, and that's with in accordance with 24 CFR  
14 1000.336.

15 So the simple recap on FCAS, just to rehash it  
16 once again, is it's the number of eligible FCAS units,  
17 the per-unit amounts for IHBG assistance -- what's  
18 missing on here is inflation -- inflation and cost,  
19 local cost adjustment factors.

20 With that, what I'm going to do is I'm going to  
21 open up the floor to questions from the committee.  
22 Please know that what we'd like to do is take

1 clarifying questions only, and I'll open it up to the  
2 committee.

3 MR. JACOBS: Leon Jacobs, Lumbee Tribe. On the  
4 Section 8, why is that so high -- why is that so higher  
5 than everything else?

6 MS. D'ANGELO: On the operating subsidy? Can you  
7 --

8 MR. RICHARDSON: So one thing that Mindi's slide  
9 showed is that for the Section 8 program, we're  
10 calculating just one amount for Section 8, whereas for  
11 low rent and Mutual Help, there is both an operating  
12 subsidy and a modernization subsidy. So there's a  
13 chart here that has some X's next to it.

14 So one thing is for the Section 8, you're not  
15 receiving a per-unit amount for the modernization cost.

16 So that one operating subsidy amount that's going to -  
17 - in the Section 8 program, the assistance is going to  
18 a private owner of a property that's offering that  
19 rental housing, which leads to a somewhat higher cost  
20 in some markets.

21 But in 1996, we looked at what the cost of Section  
22 8 units were in total and as a subsidy we're providing,

1 and we looked at the number of units that there were.  
2 And we divided that, and we came to the \$3,625. That  
3 is the fundamental source of that dollar amount, but do  
4 keep in mind that that is both operating subsidy and  
5 modernization all built into one.

6 MR. JACOBS: I have a follow-up question. Are  
7 most of these rentals off reservation? Are they under  
8 the control of the tribe?

9 MR. RICHARDSON: This -- the Section 8 units,  
10 actually, I don't know what the distribution is.  
11 Usually they're off reservation. Usually they're being  
12 manned by private owners, but I don't know if anyone  
13 who is running a Section 8 program could speak to that?

14 MS. DIFUNTORUM: Hi. Sami Jo Difuntorum,  
15 Confederated Tribes of Siletz.

16 The way that Section 8 works is the privately  
17 owned units. There is a contract between the  
18 participant and the owner of the units, and then  
19 another contract between the participants and the  
20 housing authority of the tribe. We subsidize the rent  
21 to the units. We don't actually maintain it, which is  
22 why we don't receive maintenance money for those.

1 MS. PODZIBA: Other questions?

2 MR. ADAMS: Can I just add something to that  
3 comment that's in regards to Section 8? For those of  
4 us that do have those programs, we call that tenant-  
5 based assistance program, and it varies tribe to tribe.

6 And I know another tribe in Montana that has a  
7 program. They make their vouchers portable, and so  
8 those vouchers can go throughout the United States, as  
9 I understand.

10 Our tribe has decided to keep those at home, and  
11 so they have 50 of those that are made available for  
12 rentals on our reservation.

13 MS. D'ANGELO: I think just to clarify because  
14 those units, those contracts, those Section 8 contracts  
15 were actually officially expired. I should have been a  
16 little bit more explicit in my presentation that the  
17 requirement on Section 8 is that those units that were  
18 under management at the time of NAHASDA and are still  
19 functioning like a Section 8-like program. So that I  
20 should clarify that in my presentation.

21 FEMALE SPEAKER: But all of the contracts have  
22 expired?

1 MS. D'ANGELO: Right. All of the contracts have  
2 expired. They're expired contracts. But they were in  
3 management at the time of NAHASDA.

4 MS. PODZIBA: Is there another question? Yes, Ms.  
5 Difuntorum?

6 MS. YAZZIE: Aneva Yazzie -- I'm sorry.

7 MS. DIFUNTORUM: No, go ahead.

8 MS. YAZZIE: You should go first.

9 MR. DIFUNTORUM: Thank you. I'm Sami Jo  
10 Difuntorum, Confederated Tribes of Siletz.

11 For the benefit of people in the room that maybe  
12 aren't as familiar with some of the terminology and the  
13 distinctions, maybe you could kind of just clarify what  
14 an ACC and a contribution contract is under the 1937  
15 act and how that's different from units developed  
16 during NAHASDA?

17 MR. RICHARDSON: So under the 1937 Housing Act,  
18 the way we financed the construction of low rent rental  
19 housing was we entered into an annual contribution --  
20 HUD entered into an annual contribution contract with  
21 housing authorities, and the housing authorities -- we  
22 would provide a subsidy, and the housing authorities

1 would build the units and manage them.

2 As those, with NAHASDA, it replaced those  
3 contracts and said we'll provide the subsidy in a  
4 formula. We make a formula allocation to tribes to  
5 manage those units as they see fit. So there's no  
6 longer that annual contribution contract in place.

7 Does that seem reasonable?

8 MS. PODZIBA: Ms. Yazzie?

9 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo.  
10 The 1996 national per-unit subsidy, that's just with  
11 IHA, right, and not a combination of THAs and IHAs in  
12 terms of per-unit subsidy calculation?

13 MR. RICHARDSON: That was just the funding for  
14 Indian Housing Authority.

15 MS. PODZIBA: Is there a question?

16 (No response.)

17 MS. PODZIBA: Okay. Thank you very much for those  
18 presentations. Now are there two more presentations?

19 MR. RICHARDSON: So I think that's a question for  
20 the group. We have a second presentation for Dad, for  
21 the need section of the allocation. We can do that  
22 presentation if the group wants to do that, or we could

1 break for tomorrow. I think that's up to you. We're  
2 ready to give these presentations if you'd like that.

3 (Pause.)

4 MR. RICHARDSON: It's sounds -- if you folks would  
5 like it, I'll continue on. Continue on?

6 MS. PODZIBA: Yes.

7 MR. RICHARDSON: Okay.

8 (Pause.)

9 MR. RICHARDSON: All right. So this time, the tag  
10 team presentation is going to be me and Peggy Cuciti,  
11 who's been doing the need side of the allocation  
12 formula for a few years. And so, I'm going to again  
13 sort of try to summarize how we got to the formula that  
14 we're using on the need side of the formula, and then  
15 Peggy is going to give you the details like Mindi did.

16 So as I noted before in the last presentation, we  
17 start with the statute. Now on the need side of the  
18 presentation, the key factors that we're looking at was  
19 the statutory language about extent of poverty,  
20 economic distress, and the number of Indian families  
21 within Indian areas, and then other objectively  
22 measurable conditions.

1           Again, we offered up the same mission and goals  
2           that we were using on the current assisted stock. Next  
3           slide.

4           Now when I -- when we started the presentation in  
5           1997, we had just completed a study on needs in Indian  
6           Country. The study had been conducted by the Urban  
7           Institute for HUD, and we had data, special tabulation  
8           data from the 1990 census on needs in different types  
9           of tribal areas.

10          So when we started out the process in 1997, I got  
11          up -- no one knew me -- I gave a presentation on what  
12          we knew from the 1990 census in terms of what those  
13          data said about needs. That was sort of the starting  
14          point to talk about, well, what other datasets might be  
15          available? Tribes were not terribly happy with the  
16          1990 census, and it had an undercount, a lot of other  
17          issues there.

18          So we went through a process of saying what are  
19          other sources of data? But how do we evaluate those  
20          sources of data? And so, we evaluated those sources of  
21          data against the goals that we had set out. Is this  
22          fair and equitable to all tribes, tribes to serve low-

1 and moderate-income Native Americans? Is the data  
2 available and consistent for all tribes? Is there some  
3 integrity to the data? Is it objectively measurable?  
4 Is it defensible?

5 So we would look at all the different variables --  
6 and so, actually, go back to the other slide again.  
7 And so, we actually looked at several different  
8 variables. In addition to the 1990 census data as the  
9 dataset, we thought we'd talk about waiting lists as a  
10 potential source of data on needs.

11 We're talking about the data that the Bureau of  
12 Indian Affairs collected. We looked at data from  
13 Indian Health Service. Talked about a number of data  
14 sources. Next slide.

15 In the end, considering what data was available at  
16 that time, the 1990s, the group settled on using U.S.  
17 census data because it was available for all tribes,  
18 and it was objectively measured from an independent  
19 source. But the tribes wanted a way to say, "Wait, if  
20 it's not right for my tribe, I want a way to be able to  
21 challenge it."

22 So we included a component in the allocation

1 formula to allow you to challenge the data to say, "I  
2 have better data." And we have a system in place for  
3 tribes to submit data. Their own survey, if it meets a  
4 certain standard that would be consistent and  
5 comparable for all of the other tribes, then that could  
6 be used.

7 The next piece to this was figuring out what  
8 variables we should use for determining the need in  
9 Indian Country. So the statutory language specifically  
10 referred to number of Indian families. So there are  
11 three -- basically, we came up was three different  
12 categories of variables.

13 One around number of Indian families, which  
14 includes total Native American persons, and then three  
15 different categories of -- by income. Households less  
16 30 percent of median income, households between 30 and  
17 50 percent of median income, and households between 50  
18 and 80 percent of median income.

19 Now I should take one -- I should make a couple of  
20 notes. We did something special with our 1990 special  
21 tabulation data to count Native Americans, which is  
22 different than how the regular census did it. We said

1 a Native American household was a household where  
2 either the head or the spouse is Native American. So  
3 we used the data in that way.

4 But in 1990, and I know this came up in the last  
5 NegReg and is an issue in the formula now. In 1990,  
6 you could only identify one race. So we only had folks  
7 identified as Native American, and you couldn't  
8 identify multiple races. The multi-race issue came up  
9 with the 2000 census.

10 The second set of variables we -- we identified as  
11 measures of basically housing needs, severe distress  
12 for housing needs, and there were two areas that we are  
13 looking at. One is housing cost burden, paying more  
14 than 50 percent of your income for housing. And the  
15 other was households that were overcrowded or had  
16 incomplete kitchen or plumbing.

17 These are variables that the census collects, and  
18 they are significant. They measure -- there's a lot of  
19 need in a lot of Indian Country in those two  
20 characteristics.

21 And finally, after some -- there was a lot of  
22 discussion about this. Saying you know, sometimes it's

1 been poorly served in the past. How could we make that  
2 up to those tribes that maybe didn't have very many  
3 housing units compared to their population?

4 So after a lot of discussion, what we came up with  
5 was something we called the housing shortage variable,  
6 which basically says how many low-income families do  
7 you have, how many housing units do you have from  
8 current assisted stock? And then we said to also add  
9 in NAHASDA units as they came online, so a combination  
10 of NAHASDA and current assisted stock units.

11 Peggy, you can tell me how that worked.

12 MS. CUCITI: It never happened.

13 MR. RICHARDSON: But anyways, that's what the  
14 housing shortage variable is defined as.

15 So the next part of the process, which was --  
16 actually, I have to say this is probably my favorite  
17 part of the whole process is coming up with what the  
18 weights would be for these different variables. And I  
19 can remember, I can vividly remember sitting in a room  
20 just like this one, and we went around and we asked  
21 each person that was -- each committee member, and we  
22 said tell us how important you think each of these

1 variables are to you.

2 And each person had an opportunity to say each of  
3 those variables we had in there how important each one  
4 is to them. And then we just averaged. We averaged  
5 everybody's views across, and that gets to the  
6 variables and which Peggy will talk about later about  
7 the weighting for each of the variables in the formula  
8 themselves.

9 The next -- so, you know, like I said, this is  
10 like a family tree, right? So now we know how we  
11 figure out what's the data source, what are the  
12 variables, and now we have to figure out how do we --  
13 how do we allocate these? Where do the data come from?

14 Because census asks questions of people in areas.

15 How do you define a formula area, or in this case, we  
16 came up with the concept of formula area. But how do  
17 you define the area that a tribe serves for its housing  
18 area? Indian Country is very diverse, lots and lots of  
19 different land bases, lots of different ways that folks  
20 are serving folks.

21 So it took us a long time to come up with a  
22 definition for what a formula area would be. We were

1 trying to come up with something that everyone would  
2 feel was fair and equitable and was also encompassing  
3 of the diversity in Indian Country. The next slide.

4 So we came up with this definition, and I can  
5 remember standing at a board like this, and we would  
6 write up different definitions here, and we went  
7 through this whole process of defining all of the  
8 different areas that are well defined and then what  
9 other areas might be defined as tribal areas. So this  
10 is the formula area definition that we work from today.

11 This is the original. Did we change it? Oh, I'm  
12 sorry. This is the one we came up with at NegReg in  
13 '97.

14 Finally, after coming up with a definition for  
15 formula area, we applied that and said how does that  
16 work? And we came up with a number of challenging  
17 issues that we needed to address. One of them is  
18 overlapping formula areas. So there are -- since we  
19 had imprecise geographies that we were working with  
20 that our data source had, the 1990 census data. We had  
21 two common situations.

22 We could have two or more tribes serving the same

1 geographic area that we had data, or we could have two  
2 more tribes of separately defined service areas within  
3 the same county, but we didn't actually have data for  
4 those two separately defined areas. So we had to come  
5 up with a way of figuring out how to divide the  
6 allocation for that area among those different tribes.

7 So the solution we came up with was we'll ask the  
8 tribes first. If they can agree how to split it up,  
9 we'll do that way. If the tribes can't agree, we'll  
10 have to use another data source, and we've been using  
11 the BIA.

12 MS. D'ANGELO: BIA. The BIA's labor workforce  
13 reports, total resident service area, Indian  
14 population.

15 MR. RICHARDSON: All right. So, thank you.

16 The other issue that comes up with formula area is  
17 that an area might be defined for a tribe. It's  
18 serving that area, but there might be a lot more Native  
19 Americans living in that area that they're serving than  
20 that tribe might actually serve. And so, the concept  
21 here was we need to have a cap on how much population -  
22 - what's a reasonable cap on how much of that need will

1 be attributed to that tribe?

2 And so, in the discussions that occurred, we came  
3 up with this concept of a population gap. And this  
4 population gap says that a tribe can't receive more  
5 funding than twice its tribal enrollment and -- but  
6 that is challengeable to the extent that you can  
7 demonstrate that you're actually serving substantially  
8 more nontribal members than that cap is set at.

9 Okay. So if the formula wasn't complex enough,  
10 one more thing that came along. After the -- after we  
11 had put out -- put this out as the proposed rules, we  
12 got a lot of comments, and the comments had to do with  
13 the fact that a lot of small tribes got very small  
14 grant amounts under the formula we had come up with.

15 And so, a number of -- so there was a lot of  
16 discussion about establishing a minimum grant for  
17 smaller tribes. And at that initial rulemaking  
18 session, we came up with an agreement that had \$50,000  
19 in the first year and then \$25,000 each year  
20 thereafter. In addition, obviously, we combined the  
21 two, current assisted stocks and the needs allocation  
22 together, and if you got less than what you got in '96,

1 we raised the grant up to '96.

2 Now as the second NegReg comes in to change, some  
3 discussion about the formula area. There were some  
4 changes to formula area. I'm just going to read this  
5 to you. I wasn't actually there for these.

6 Changed to minimum need allocation. The  
7 clarification of data sources that could be used and  
8 what could be challenged. And there was consideration  
9 given to redefinition or reweighting of needs  
10 variables, but I guess there was no agreement reached  
11 on that.

12 So those -- that was the conversation in the  
13 second NegReg. Now per the last, so I just sort of  
14 laid out the broad strokes of how we did the initial  
15 formula, and now Peggy is going to report on exactly  
16 how it works today.

17 MS. CUCITI: Okay. In terms of -- you want to go  
18 back. My job is to go delve a little bit more into the  
19 details, but not get into the weeds of the process if I  
20 can help myself. And I'm breaking it into three parts.

21 What I'm calling the core calculation of the need  
22 component, then a set of special circumstances

1 provisions, and then finally the provisions for  
2 challenging data that enters into the need calculation.

3 So the next slide is we covered this, but perhaps  
4 I have a slightly different take on this. The amount  
5 of money that's available to the need component, it's a  
6 second-order amount, in effect.

7 We start with the total amount that's available  
8 for the IHBG program, and of course, every year, that's  
9 the appropriation act which is set aside. But to that  
10 amount, we will add in any repayments, the net amounts  
11 of any repayments and grant adjustments that we receive  
12 in the year and any carryover that was there.

13 So in fiscal year '13, let me see if I can get  
14 that, we had \$620 million roughly available for  
15 allocation. And then you heard how the FCAS allocation  
16 is a bottoms-up. We come up with the amount and the  
17 need to meet our obligations to support those units,  
18 and we subtract it from the total. And that is the  
19 amount that then is available to give out to needs.

20 But the process of giving it out to needs is very  
21 different. It's like we have a top-down kind of thing.

22 We have a total amount, and now our job is to come up

1 with shares of the total for each tribe.

2 Now you heard the rough distribution. You even  
3 saw this slide before, but the point I want to make  
4 here is that the sequence of calculations matter.  
5 Because that FCAS amount is sort of predetermined by  
6 building it up from the eligible units, the amount  
7 that's available to need is very sensitive to the  
8 changes from year to year in the appropriations bundle.

9 In effect, it's the tribes that are more dependent on  
10 the need part of the formula, that they're the brunt of  
11 any variations that occurs in the level of available  
12 funding.

13 So there were some basic concepts that have  
14 already been introduced, but let me repeat. First, all  
15 tribes qualify for needs funding. Unlike FCAS, where  
16 it's limited to the tribes that previously had been  
17 participating in the 1937 act program.

18 The total amount of money that we've determined is  
19 available for needs is going to be allocated among  
20 tribes based on their share of countable needs. So not  
21 all Indians' needs for housing get taken into account  
22 in this program.

1 Needs are measured using specific variables from  
2 the census, and needs are only counted if they are in a  
3 tribe's formula area. So if needs fall outside of  
4 defined formula areas, they are not taken into account.

5 Now let's go to the next slide.

6 But why is that? In effect, NAHASDA, and as it  
7 was implemented through negotiated rulemaking, is what  
8 academics call a place-based program. The focus was  
9 intended to be on traditional Indian areas, and as Todd  
10 mentioned, you know, that's not the easiest thing in  
11 the world to define what those traditional Indian areas  
12 were, given the very different history that tribes had  
13 in dealings with the United States.

14 So what we started off with was a database that  
15 was derived from the census and that separately  
16 identified Indian areas, which were the reservation and  
17 trust lands. It also identified some areas that were  
18 historically Indian lands but were labeled as tribal  
19 statistical areas, and those included the former  
20 reservations in Oklahoma. It included the Native lands  
21 in Alaska. Those are identified as Indian lands.

22 But then we moved toward this notion of adjacent

1 lands where the tribes were most likely to be providing  
2 services to their members. So it turns out as we moved  
3 toward this definition formula area, we came out with  
4 about one-fifth of all the counties in the United  
5 States having all or some of their territory being  
6 covered where the needs would be counted, in effect.

7 All of Alaska is included as Native or Indian.  
8 Somewhat surprisingly to me, all of South Carolina is  
9 covered, and about 75 percent of counties in Nevada,  
10 Oklahoma, Arizona, Oregon, and Washington State.

11 Looking at the 2000 census, about half of AIAN  
12 persons live in territory that is included as formula  
13 area, and about 39 percent of the broader definition of  
14 AIAN being those people who identified as AIAN alone or  
15 in combination with some other race live in things that  
16 are now defined as formula areas.

17 Something that you haven't seen at all is this  
18 trend, this funny-looking United States. I did not  
19 manage to figure out how to fit Alaska in, but it would  
20 be less interesting from the point of view of this map  
21 since it would all be shaded. But the -- if a county  
22 is shaded, it means that all or part of its land is a

1 formula area.

2 And if it's green, it means that there is  
3 something that the census defined as an Indian area is  
4 in that county. If it's brown, it means it's all fee  
5 simple land, non- and not a traditional Indian area but  
6 has been incorporated in the -- in the formula.

7 So we can move on. How are needs measured? We  
8 have seven different needs variables, which Todd  
9 introduced, that all relate to the scale and severity  
10 of needs. They're all derived from the census, but we  
11 have had to adjust them to current year -- to what the  
12 numbers might be in the current year, and we do so  
13 based on a change factor that we calculate at the  
14 county level based on Indian Health Service population  
15 projections.

16 Now those Indian Health Service population  
17 projections are based on birth and death data. So it  
18 takes into account changes that might be occurring  
19 based on that kind of demographic change but misses any  
20 changes that might be due to economic adjustments that  
21 are occurring in an area. Okay?

22 Variables, each of the variables are weighted in

1 the formula. So some count more than others. So let's  
2 go to the next slide, and I don't want to go into  
3 detail, but each of those variables and their weights,  
4 the weights that were agreed to, are shown. The two  
5 basic points here is that we're using census data. So  
6 it's based on people who self-identify as AIAN.

7 We're using special tabulations so that we have a  
8 slightly broader definition of an Indian household than  
9 will appear in published data, and that was what Todd  
10 mentioned in terms of we will consider a household AIAN  
11 if either the spouse -- the head of the household or  
12 the spouse is the head of the household self-identifies  
13 as AIAN. So it's more inclusive.

14 Beyond that, we have terms of art in here that  
15 define things, and but I think that probably should be  
16 part of a more detailed presentation. But I can  
17 address it in questions if you want afterwards.

18 So what does it mean? Yeah. So a variable, for  
19 each of these needs variables, we have data. Those are  
20 counts of households or counts of people. But in  
21 reality, what we're trying to get at are shares for  
22 each tribe.

1           So what we do is we're taking the data for each  
2    tribe and we're comparing it to the sum of the data for  
3    all the tribes to produce a share. And that's done for  
4    each of the variables, but the variables don't count  
5    equally. So we can think of it, we can conceptualize  
6    this either of two ways.

7           We're computing a weighted average share, and for  
8    those of you who are mathematically inclined, that's  
9    easy to get. Or we can think about it as dividing the  
10   total allocation available for needs into different  
11   pots of money where the different pots or the size of  
12   the different pots is determined by the weight that we  
13   have in the first instance.

14          So the next two slides are intended to give you  
15   some way of thinking about it in each of those two  
16   ways. So I have this hypothetical world where I was  
17   allocating \$289 million. It's not really important  
18   what the amount was. And for each variable, I'm giving  
19   you two tribes and their share of the needs for each of  
20   the variables.

21          Now had all of the variables been evenly weighted,  
22   equally important, then the simple average share given

1 their share of the individual variables is in that line  
2 where it says simple average share. But because it's a  
3 weighted average share, some variables counted more  
4 than others, and you can see it has some impact on the  
5 combined share that a tribe would receive of the needs  
6 allocation.

7 Go to the next slide. Did one not end up in  
8 there? Uh-oh. Yes, the slide is not there. Sorry  
9 about that.

10 The alternative is to say take the total  
11 allocation, and if the person count is going to be --  
12 has a weight of 11 percent, take 11 percent of the  
13 total amount, which in my hypothetical world was \$289  
14 million, and we would be allocating \$31.8 million based  
15 on your share of AIAN persons. And then,  
16 alternatively, I would take 13 percent of the total  
17 available for needs and come up with a number, and it  
18 would be allocated to tribes based on their share of  
19 very low-income population.

20 And you come out with the same number in terms of  
21 the dollar amounts for a tribe either way you do it.  
22 So it's just a matter of how you want to think about

1 it.

2 The next step in the needs calculation is to make  
3 an adjustment for local area cost. So far, we're  
4 counting households or people. But the cost of meeting  
5 their housing needs simply varies by geographic area,  
6 and so the decision was made that the cost adjustment  
7 factor, for purposes of the needs side of the formula,  
8 would be total development cost.

9 And what -- in effect, each of our cost adjustment  
10 factors is a ratio of a tribe's -- of a tribe's data to  
11 a weighted national average, and you end up with some  
12 kind of ratio that's going to be bigger than 1 or  
13 smaller than 1. If you're a high-cost area, you have a  
14 factor that's bigger than 1. If you're a low-cost  
15 area, you have a factor that's smaller than 1.

16 I tried to give an example in that chart about how  
17 you apply a cost adjustment factor and what it will  
18 lose in the needs allocation. I think, you know, we  
19 have ratios in the range of 1.7 at the high end kind of  
20 and 0.7 -- these are regional averages -- and 0.76 at  
21 the low end. So it is a significant change to a  
22 tribe's allocations based on a cost area adjustment.

1           Okay. So that's the simple, straightforward part.  
2           Now we start getting a little bit more complicated.  
3           As of 2006, we were directed by the Congress in the  
4           appropriations bill to start running the formula twice,  
5           once using what we tend to call single race data and  
6           once using multi-race data. We, in effect, run the  
7           formula twice and try and figure out which is better,  
8           if anything, for the tribe.

9           While this started in 2006, the underlying issue  
10          arose in 2000 when the first -- when the decennial  
11          census came out. When the first negotiated rulemaking  
12          committee met, we had the 1990 census, and there was  
13          only way of measuring AIAN. People were given a single  
14          choice when it came to identifying as to race. So  
15          people could select AIAN or something else.

16          The reality is the world had begun to change, and  
17          a lot of people found being forced to make that choice  
18          offensive. And so, the census started giving people  
19          the opportunity to select multiple racial  
20          identifications. I think you can choose up to five.

21          You know, our new AIAN and white, AIAN and black,  
22          AIAN and Pacific Island, whatever, but a lot of

1 different combinations. So that made it easier for  
2 people, but it didn't necessarily make it easier for  
3 purposes of doing a formula allocation.

4 The service population for the program are people  
5 who are enrolled members of federally recognized  
6 tribes. So the question then became which measure was  
7 a better measure of this potential service population?

8 Those people who identified themselves as AIAN alone  
9 or a more inclusive measure, AIAN alone or in  
10 combination with other races?

11 When the new census data was introduced to the  
12 formula, the decision was made to use the multi-race,  
13 the more inclusive concept. It probably counts too  
14 many people. The single race measure probably counted  
15 too few people. And, but so the decision was made to  
16 use the multi-race data.

17 It had the effect of shifting the allocation  
18 towards areas of the country where AIAN people were  
19 more integrated with non-AIAN people. This led to some  
20 consternation, and Congress directed that we run the  
21 formula both ways.

22 Now remember, the multi-race number is always a

1 bigger number. Well, it's always equal to or bigger  
2 than the single race number. But remember, it's not  
3 the actual counts that matter. It's a tribe's share of  
4 the national total that matters. And so, a tribe can  
5 be better off using single race data to determine its  
6 share of need.

7 And in fact, if we -- when we run the formula  
8 twice, more tribes end up benefiting -- 410 out of the  
9 585 came out ahead using the single race data. When we  
10 allocate the money both ways, you know, either/or, we  
11 actually end up allocating more money than is  
12 available, than Congress has given us to spend. So we  
13 have a problem.

14 So in order to cope with this either/or situation,  
15 everybody is scaled back a little bit to bring it in  
16 line. So people get the better share, but then  
17 everybody is scaled back. Basically, the size of the  
18 scaling back is about 7 percent. We're moving about  
19 \$26 million in what you see here as a result of this  
20 dual approach to looking at single and multi-race data.

21 All right. So that's the core calculation that  
22 applies to all tribes. The next step, pieces of

1 information, are what I'm going to call special  
2 circumstances where the actual provisions affect small  
3 numbers of tribes. But keep in mind that in this  
4 formula it is zero sum. So a provision that affects  
5 only a small number of tribes has at least a small  
6 impact on every other tribe.

7 So the things we want to cover here are the pop  
8 cap, the minimum needs provision, the 1996 baseline  
9 funding, and the provision regarding overlapping  
10 formula areas.

11 All right. So the most basic statement I can make  
12 here is that I said we're counting needs in formula  
13 areas, not in the whole country. But even in formula  
14 areas, not 100 percent of AIAN people's needs will be  
15 counted. Because of this mismatch in some ways between  
16 our data availability and tribes' -- the size of tribes  
17 and their capacity and willingness to serve, the  
18 original NegReg produced -- placed this provision that  
19 said we will not count AIAN persons in excess of twice  
20 a tribe's enrollment.

21 All right, remember, that's not enrollment. It  
22 may not even be the enrollment living in their area,

1 but you can't have more than twice your tribal  
2 enrollment count in the person count. So then that led  
3 to the question, well, what happened to other needs  
4 variables? If we scale back a tribe's need on the  
5 purchase count, we use the same scaling factor to move  
6 back their needs on all of the other variables as well.

7 When this provision was put in place, there were  
8 not that many tribes that lived in pop caps. When we  
9 introduced the multi-race data into the formula, there  
10 was somewhat of an increase in that number. In fiscal  
11 year '12, about 12 percent of all tribes were subject  
12 to the new pop cap provision, meaning that not all of  
13 the needs in their areas were counted.

14 It is a more common issue in some parts of the  
15 country than others, more often when tribes are in a  
16 larger metropolitan area. The pop cap can be raised,  
17 and I'll talk about that a bit. So far, we only have  
18 one tribe that has come in and justified a population  
19 cap, and we'll explain that later.

20 The second special circumstance is minimum needs  
21 funding. After the second NegReg, a change was made so  
22 that the minimum of guarantee of a needs allocation is

1 available for all tribes. It's independent of whether  
2 it's their first year or 13th year participating in the  
3 program.

4 The exact amount of the guarantee varies from year  
5 to year, depending on the appropriation. It's set at  
6 this very tiny percentage of the national  
7 appropriation, but it was designed to produce \$50,000  
8 at the time that that second negotiated rulemaking  
9 group was meeting. And as of last year, the fiscal  
10 year 2012 allocation, it turned out that the minimum  
11 needs guarantee was \$50,399.

12 Tribes that receive more than \$200,000 in their  
13 FCAS funding do not qualify to have their needs  
14 allocation bumped up to the minimum guarantee. So it  
15 was really meant to protect small tribes with small  
16 grants. In order -- since this happens at the end of  
17 the whole thing, again in order to make the money  
18 available to make the minimum needs grants, everybody  
19 else's grant gets scaled back a little bit. Finally,  
20 about 100 tribes get this minimum needs provision.

21 At the very end of the formula, so this isn't  
22 strictly a needs piece, you know, we now have an FCAS

1 pieces and the needs piece -- we're getting to this  
2 1996 baseline funding. All right. We have an FCAS  
3 piece and we have a needs piece. We add them together.  
4 We have a preliminary grant amount.

5 We compare that preliminary grant amount to what  
6 tribes received in 1996 for operating and modernization  
7 subsidies, and if the grant is less than that, then we  
8 will bump them up to the level that they have received.

9 And again, in order to make the math work on all of  
10 this, everybody else's grant will be knocked down just  
11 a teeny bit in order to do this.

12 In fiscal year '13, we have 22 tribes that  
13 benefited from this provision, and it moved about \$3.2  
14 million around.

15 MS. D'ANGELO: I just want to clarify that  
16 statement. The minimum needs tribes that qualify --

17 I just wanted to clarify that the minimum needs  
18 tribes do not get bumped down. So the minimum needs  
19 tribes stay at that 0.007826. But all the other tribes  
20 get bumped down.

21 MS. CUCITI: Also on the minimum needs, we're  
22 shifting about \$3 million to \$4 million. So they're

1 not too different in terms of how much money you move.

2 MALE SPEAKER: It's all in the specifications?

3 MS. CUCITI: Can we just do the questions at the  
4 end? But write it down.

5 The last special needs thing I want to deal with  
6 is the issue of formula area overlap. This is a  
7 confusing thing. Every tribe has its own formula area.

8 Sometimes we will see the same geographic area that is  
9 included in two different tribes' formula areas, and  
10 that's what creates an overlap.

11 And some of them are very simple. Say, in this  
12 example, we have a two tribe overlap. A and B have an  
13 overlapping area. Usually it would be the strictly  
14 yellow part might have been in Tribe A's reservation  
15 and the kind of fully pink part was Tribe B's  
16 reservation, and the orange part is a balance of  
17 counties that they both provide services in. And as a  
18 result, we now have an overlap in formula area.

19 But formula areas can get more complicated and  
20 more extensive. You can have A overlapping with B  
21 overlapping -- and B overlaps with C. In principle, it  
22 can go on and on and on so that, in some cases, we have

1 fairly large areas that are being shared by quite a few  
2 tribes.

3 So, as Todd mentioned, the basic principle is when  
4 we have overlapping formula areas, that we combine the  
5 needs in all of those geographies and we then split  
6 them up and give them back to the component tribes. So  
7 -- go to the next one -- the question is how do you do  
8 that?

9 And the first choice, again, is that if the tribes  
10 themselves who are involved in this, in a particular  
11 overlap, can get together and reach an agreement on how  
12 to share. That's, generally speaking, how it will  
13 happen. For a long time, that never did happen, and  
14 the fallback in the regulation was that HUD decides how  
15 to do it, and it's not area by area. It's a standard  
16 procedure.

17 And if HUD, if we're doing it through the formula,  
18 we take the whole area, not just the little parts where  
19 they overlap, it's the whole area is taken together.  
20 We add all the needs that are in our census database  
21 together as one big unit. And then we use Bureau of  
22 Indian Affairs total resident service area in the

1 Indian population data, which is part of their labor  
2 force reporting data.

3 We take -- we add each tribe's tribe state  
4 together. So we now have a sum of tribe states. We  
5 compute a share by looking at each tribe's tribe state  
6 relative to that total tribe state and that each tribe  
7 gets that share of the combined needs in a formula  
8 area. There are some special provisions that I'd just  
9 as soon not talk about. They haven't come into play.

10 Currently, we have 29 of these overlaps, and we  
11 have 134 tribes who are involved in those overlaps.  
12 Currently, we have three overlapping -- or three  
13 overlaps where the tribes involved have come to some  
14 kind of agreement about how to share. And they are all  
15 using some variant of tribal enrollment to do their  
16 sharing. Okay?

17 The last thing I want to address is the various  
18 data elements that drive the need component and to know  
19 all needs data are subject to review and challenge, all  
20 right? The data that's relevant to use the calculation  
21 goes out on the formula response form, as Mindi talked  
22 about in the FCAS presentation, and so these are the

1 data elements you have to look for. The next slide.

2 All changes have to come through the IHBG Formula  
3 Customer Service Center, but for some of the changes,  
4 you actually have to go first to the entity that is  
5 responsible for that data. And then get them to make  
6 the change and you, in turn, report it to us.

7 And so, for the three that you have to go  
8 elsewhere first is the Indian Health Service, if you're  
9 unhappy about the growth factor that we've used to  
10 adjust your 2000 census data.

11 You go to ONAP for adjustments to a total  
12 development cost variable. So often it's a little  
13 confusing. I mean, you're not just going to the  
14 Formula Customer Service Center for final approval  
15 through ONAP, but rather you're going to that portion  
16 of ONAP that's responsible for the TDC.

17 And you have to deal with the Bureau of Indian  
18 Affairs for the total resident service area Indian  
19 population and then bring it to us.

20 However, for the other elements, you can deal  
21 directly with us, and so for tribal enrollment, we need  
22 information from your tribal enrollment roster, a

1 certified letter stating any change in your enrollment.

2 It is only critical for tribes who are subject to a  
3 pop cap because, otherwise, it really doesn't affect  
4 your allocation. We're happy to make the change in the  
5 database, but really it won't make any difference.

6 That next thing is the whether you want to change  
7 your population cap. And the principle here was if you  
8 served a lot more nontribal members than tribal  
9 members, you could justify an increase in that pop cap  
10 which has the affect of 2 for all tribes.

11 So you look at the ratio of who you served that  
12 are members of other tribes relevant to who you serve  
13 that are your own tribal members and if it's greater  
14 than 2, you put together your supporting data. You  
15 send it into the Customer Service Center, and you do it  
16 every year because your change is only good for one  
17 year. And we do make that adjustment.

18 The next thing that we may change is the formula  
19 here. If you have land that is not currently on the  
20 list as part of your formula area but is one of these  
21 things that is on this list, then you can come in and  
22 the change is easily accomplished, okay? Very

1 straightforward.

2       If it is not on that list of nine, there are still  
3 provisions for a formula area expansion. There are  
4 several things, though, that have to be in place. You  
5 have to have a memorandum of agreement with other  
6 entities that serve that area, tribal and local  
7 government entities that provide services in those  
8 areas. So you either need that MOA or evidence of an  
9 attempt to put in place such an MOA.

10       You must show proof that you are providing  
11 substantial housing solutions in that area. We are  
12 directed to consider the smallest possible geography in  
13 considering those applications. So, traditionally, we  
14 had bounds of county as the only area for which we can  
15 evaluate a request, which was big.

16       So we were told that in the second negotiated  
17 rulemaking to come up with something smaller. It  
18 needed to align with county boundaries. We will  
19 consider looking at requests for formula area  
20 expansions that are either census tracked, typically in  
21 more urban areas, or county subdivisions in more rural  
22 areas, whichever is smaller.

1 Any expansion is subject to notification and  
2 comment provisions. So other tribes who could be  
3 affected by another tribe expanding its formula area  
4 would have an opportunity to weigh in. And perhaps  
5 most importantly, any tribe that gets a formula area  
6 expansion has to be prepared to justify that formula  
7 area expansion every year by showing continued  
8 investment through their IHP. That means you have to  
9 keep track of where you're spending your money at a  
10 fine level of geographic detail.

11 Now after the first negotiated rulemaking, there  
12 was a -- it was a fairly -- I don't want to say loose,  
13 but there wasn't a lot of directive to HUD about how to  
14 evaluate substantial housing services. In the second  
15 negotiated rulemaking, basically, the group came up  
16 with very specific criteria that we have to use to  
17 evaluate to determine if the investment that exists is  
18 substantial.

19 We have two tests, one of which might be  
20 characterized as being investment driven, and it  
21 basically says that we will look at spending that you  
22 make on affordable housing activity that is funded from

1 any source. So it could be IHBG. It could be other  
2 federally funded grant programs. It could be State  
3 programs that you might have running through your  
4 entity. It could be the tribe's own money. But any  
5 source of money.

6 You have to show that the housing services that  
7 you are reporting are directed toward low- and  
8 moderate-income people, that is those with less than --  
9 incomes less than 80 percent of the area median. And  
10 we will look at that spending on an annual basis, and  
11 we will do a simulation that says what would your grant  
12 be if we gave you that particular geography that you're  
13 requesting?

14 And we figure out the change in the grant amount,  
15 and you have to have spent more than your grant would  
16 have increased as a result of adding that formula area,  
17 okay? So that's the first option for expanding.

18 The second one is enrollment driven, and this  
19 means you apply -- and the only time I've seen anyone  
20 come on this is a newly recognized tribe. And it says  
21 we will look at housing services that are funded  
22 through the Indian Housing Block Grant only. Again,

1 it's for affordable housing activities to families with  
2 these low and moderate incomes. And that amount that  
3 you spend must be equal to half of your allocation,  
4 essentially. So you're spending half of your grants in  
5 that area that you're requesting.

6 And either 51 percent of your enrollment in the  
7 tribe is there or -- these are all 51. I always  
8 thought it was 50, but whatever -- more than half of  
9 the AIAN that live in that area is a tribal member. So  
10 it's a bunch of either/or's in here. Okay? So either  
11 of those could lead to a formula expansion -- formula  
12 area expansion. Sorry.

13 The last set of data that can be challenged are  
14 all of those needs variables that we are currently  
15 deriving from census information. Basically, for the  
16 most part, census challenges involve a tribe engaging  
17 in direct data collection, going out in their formula  
18 area and actually collecting data on households to give  
19 us counts that are consistent in with the measures that  
20 we, by definition, are using.

21 So we can only count the AIAN persons living in a  
22 formula area. We use definitions of median income that

1 are consistent with the census and so on.

2 Occasionally, we will look at other data sources  
3 for challenging the person count, but not the economics  
4 -- more economics-oriented variables.

5 So, and we have a different deadline for  
6 submitting census challenges. It's earlier than the  
7 deadline for submitting challenges to any other data,  
8 and that's in part because they take longer to evaluate  
9 than most of the other data changes.

10 FEMALE SPEAKER): And plus the regulations?

11 MS. CUCITI: Yes, but I assume that is the reason  
12 for it being in the regulation within States. Yes,  
13 it's not ours.

14 All right. So the final thing is the thing that  
15 if you disagreed with any decision that's been made  
16 with respect to any of these needs elements, tribes  
17 have the right to appeal.

18 The last slide is just a repeat of the resources  
19 where all of this is laid out. And I would just point  
20 in particular to the HUD portal, where it says  
21 electronic documents and data, particularly the single  
22 and multi-racial piece. There is a detail every year

1 that shows the data elements and what we go through to  
2 do that. And a lot of people, I think, are not  
3 familiar with that portion.

4 And I guess I could form an appeal at the very  
5 end, as one of the two people who will be responding to  
6 not all of your technical assistance requests -- there  
7 will probably be a lot of people involved in that --  
8 but in doing data runs. And they can be complicated to  
9 do the data runs, particularly if we're bringing in new  
10 data sources.

11 We don't want to be the source of delays. We also  
12 don't want to provide anything that's inaccurate. So,  
13 please, as much lead time as you can come up with for  
14 asking for stuff before you're actually needing, we  
15 would greatly appreciate that.

16 MS. PODZIBA: Thank you very much for those  
17 presentations. I'd like to open the floor for  
18 clarifying questions.

19 I know Ms. Difuntorum, you had your hand up first,  
20 and then we'll go to Mr. Evans, and then to the others.

21 MS. DIFUNTORUM: All right, thank you. I was just  
22 curious what the impact to minimally funded tribes was

1 resulting from the sequestration.

2 MS. CUCITI: Could you repeat the question?

3 MS. DIFUNTORUM: Sure. Sequestration, how did  
4 that impact minimally funded tribes?

5 MS. CUCITI: So it was a real good use for minimum  
6 needs guarantee because it's a direct protectage of the  
7 appropriations. And also because of the sequence of  
8 calculations, remember that FCAS piece is still  
9 determined based on units and those fixed amounts per  
10 unit, and they should naturally be calculated the same  
11 way regardless of what happens to the total allocation.

12 So it's the needs piece overall that will take the  
13 impact of sequestration.

14 MS. D'ANGELO: Well, but the -- for the minimum  
15 needs tribes, they are actually needs because they're  
16 based on an exact percentage of the appropriation,  
17 they're the only tribes that actually got what the  
18 sequestration cut was. Whereas, those other needs,  
19 those tribes that receive a large portion of need but  
20 may or may not have FCAS might have bore the brunt of a  
21 larger percentage cut.

22 Next?

1 MS. PODZIBA: Mr. Evans?

2 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
3 Tribe. My question is in terms of you mentioned the  
4 1990 census and you mentioned the 2000 census. What,  
5 if anything, has changed or has impacted how you  
6 calculate anything with regards to the formula that's  
7 in the 2010 census?

8 MS. D'ANGELO: So, at this point, we're not using  
9 the 2010 census, decennial census at all. The 2010  
10 decennial census does not include six of the seven  
11 variables. We do have a presentation prepared on that  
12 from Todd. So I'll pass that off.

13 MR. RICHARDSON: So the replacement to the long  
14 form of the census, which reflects most of the  
15 variables that are used in the formula, is now  
16 collected by something called the American Community  
17 Survey. And those data are available, and Ben Winter  
18 in the back, he has a presentation on the American  
19 Community Survey.

20 So I don't think we're planning to do that  
21 tonight. Most people aren't really up for another  
22 presentation. But it would be something we'd like to

1 present tomorrow morning, if we could do that?

2 MS. PODZIBA: Ms. Yazzie?

3 MS. YAZZIE: Yes. Thank you for the  
4 presentations. There was one slide in our handout,  
5 page 17, that wasn't on there, and it's entitled Alaska  
6 Provisions for Formula Area. That would have been  
7 right after the data breakout. You can easily add  
8 other formula areas. I was wondering why that slide  
9 was omitted from your presentation?

10 MS. CUCITI: Accident.

11 MS. YAZZIE: Again, can it cover that? Is there a  
12 special provision?

13 MS. CUCITI: Yeah, there are special provisions  
14 for Alaska. All of Alaska is part of somebody's  
15 formula area, and it's a matter of defining a hierarchy  
16 as to whether the needs get assigned to a Native  
17 village or a regional tribe or the regional  
18 corporation.

19 But no need is double counted, but all needs are  
20 counted somewhere but subject to the same population  
21 cap provisions as anywhere else.

22 MS. PODZIBA: Other questions? Ms. Vogel?

1 MS. VOGEL: Thank you. Did I understand that  
2 you're going to do a presentation on American Community  
3 Service data tomorrow? Okay. Have you taken into  
4 consideration or have you tracked the refusal rates by  
5 reservation?

6 For our reservation, the person that we hired to  
7 do that is (inaudible), I believe, in person counts,  
8 which isn't part of our reservation. And so, are you  
9 tracking refusal rates, and I don't know if the rest of  
10 you track your refusal rates from how many of your  
11 Native households do not participate. And if that is a  
12 significant factor, then is that fair to those  
13 households that don't participate?

14 MR. RICHARDSON: So we haven't adopted the  
15 American Community Survey for this formula allocation,  
16 and I think that the reason for that is so we could  
17 have a discussion about the American Community Survey  
18 in Indian Country.

19 And so, that's what the presentation is, and then  
20 from there, you could say this is what the new dataset  
21 is that replaces the kind of data we currently use in  
22 the Indian Housing Block Grant formula. For folks to

1 understand it and for discussion of that data source  
2 and any other data sources that folks may know about or  
3 want to discuss in respect to needs, and so that's why  
4 we want to make that presentation.

5 MS. PODZIBA: Other questions? Mr. Evans?

6 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
7 Tribe. What I'm about to ask, if you don't have it,  
8 will you consider this the first request for  
9 information for the next negotiated rulemaking meeting.

10 But if you have it, I would love to have a copy of  
11 that, and perhaps you may want to provide -- you may  
12 already have provided this information.

13 But considering the fact that you all do the --  
14 for lack of a better way of putting it, the numbers  
15 crunching, do you all have any specific recommendations  
16 for the committee to consider about some adjustments to  
17 the formula that you all think, because you do this day  
18 in and day out, would make it either easier to  
19 calculate or simplify it and still get to the same kind  
20 of results.

21 And if you do have that, I would be interested in  
22 receiving that.

1 MR. RICHARDSON: So I think the answer to that  
2 question -- the answer to that question is really no in  
3 the sense that we want to hear from the tribes what  
4 your views are and what your goals are for the formula.

5 Ours, I think, is to provide fact statements, which  
6 you're asking us to do in terms of doing this. We need  
7 to keep sort of, if you will, an independent or  
8 nonbiased role in this process.

9 So I think if we start saying, "Oh, we think you  
10 should make changes to this formula," we're no longer  
11 in an unbiased role. So I think -- so the answer to  
12 that question is, I think, no.

13 MS. PODZIBA: Do you have a follow-up?

14 MR. EVANS: Let me clarify. I think what I'm  
15 getting at is there are some things that obviously pose  
16 some significant difficulty to calculating the formula.

17 And there could possibly be potential tweaks. For  
18 example, there are some variables that you mentioned  
19 that we don't have because of the 2010 census, and  
20 you're going to do a presentation on the American  
21 Community Survey and so on and so forth.

22 But surely for those things that are addressed,

1 you probably have something that -- that you think gets  
2 to the meat of the exact same -- the exact same types  
3 of variables, for example.

4 So I guess what I'm saying is I'm not asking you  
5 to tell us how to change the formula. I'm asking you,  
6 based on the work that you do, what things have made  
7 the calculations more challenging, but if the math were  
8 simplified in this way, gets you the same result?

9 MR. RICHARDSON: So can we actually table that  
10 question until after we do the needs conversation  
11 tomorrow with the American Community Survey and what  
12 the American Community Survey data are. And maybe have  
13 an opportunity for other folks in the group to sort of  
14 flesh out what their sort of issues and concerns are.

15 And so, just can we hold off on it maybe? I'm  
16 going to try to avoid answering that question.

17 (Laughter.)

18 MR. RICHARDSON: But hopefully, we can have that  
19 -- all of those issues will come out by the members of  
20 the committee.

21 MS. PODZIBA: Sandra?

22 MS. HENRIQUEZ: I'm going to attempt to answer

1 just a little bit (inaudible) to some people  
2 (inaudible). Our role with regard to the formula is to  
3 just assure that whatever is decided by the committee,  
4 we can actually run. We can create a computer-  
5 generated model that will do what it is that you all  
6 have decided needs to be done. That's our interest.  
7 Can we implement and execute once the money is  
8 appropriated according to what you decide at this  
9 table? That's our interest, pure and simple.

10 So, as a discussion role, we may say to you, we'll  
11 have to think about how to operationalize what you  
12 want, but we're never going to be prepared, I don't  
13 think, to say, oh, you know what? Just take it and  
14 divide it by four. We have a formula, you know?

15 What you're going to tell us we need to do, and  
16 our only response back is can we execute under the act?

17 MS. PODZIBA: Thank you. Ms. Nutter, you were  
18 next.

19 MS. NUTTER: Thank you. Teri Nutter, Copper River  
20 Housing Authority.

21 My question is could you share examples of other  
22 sources of data used to challenge the census, and

1 what's that method objective?

2 MS. CUCITI: The two other sources that have been  
3 used to challenge census data, I mean, there are three.

4 People have their own surveys, or sometimes the total  
5 population if they're a very small area, where they go  
6 out and actually ask the same types of questions that  
7 the census would have asked in their area. And either  
8 because they were very small and they could do a total  
9 enumeration, whereas the census, even the decennial  
10 census through the long form is still like a survey  
11 sample.

12 And so, if you are a very small area, it may not  
13 have been accurate for you. So they go out and they go  
14 to the same households and ask the same questions and  
15 receive all this data. That's one.

16 The second one is that people have gone to the  
17 Indian Health Service if there is a situation where  
18 they believe that their -- the Indian people in their  
19 area primarily rely on the Indian Health Service to get  
20 healthcare.

21 And if the Indian Health Service can basically  
22 give us an unduplicated count of people who are using

1 their services over a period of time -- so we can't  
2 visits; it has to be unique individuals where they can  
3 also provide the residence address of the persons who  
4 we track it to the formula area boundaries. We have  
5 allowed that for challenging the person count only.  
6 But it doesn't tell us anything about income or their  
7 housing position. It just tells us the AIAN persons  
8 living in an area.

9 The other data that we have compared is tribal  
10 enrollment data, but only if the tribe is significant  
11 per capita payment because it is the only time that  
12 there seems -- there seems to be confidence that the  
13 tribe regularly updated the list or accurate addresses  
14 because they didn't want the checks to go awry.

15 And for making certain that members of the tribe  
16 had been removed from the rolls and were never  
17 appropriately enrolled. And so, in those instances  
18 where the tribal enrollment shows more people than the  
19 AIAN person count from the census, it would be  
20 included.

21 MS. PODZIBA: Mr. Okakok?

22 MR. OKAKOK: Thank you. Sam Okakok, Native

1 Village of Barrow. I'm one of the tribes that had got  
2 probably the worst hit on theirs in regards to the  
3 sequestration because we do not have any FCAS, and what  
4 should have been a 5 percent hit became a 9.4 percent  
5 hit. And so, over F-12 to F-13, that was a very big  
6 hit. Is there any data run or anything like that run  
7 that may have minimized a sequestration hit?

8 MS. D'ANGELO: I think your question is did we do  
9 any other runs to see if we could do sequestration in a  
10 different way? Is that --

11 MR. OKAKOK: To see if there is any other -- I'll  
12 reword this a little bit. But if there were any other  
13 minimizing efforts to see if there was other ways of  
14 looking at the data?

15 MS. D'ANGELO: Well, I think I understand. To  
16 minimize the impact of sequestration on the needs based  
17 tribe?

18 MR. OKAKOK: Yes.

19 MS. D'ANGELO: The answer to the question really  
20 is no because we're limited by the regulations to  
21 implement the formula in the way that it is written.  
22 And so, I think that there was certainly some

1 misunderstandings by tribes that they would, in fact,  
2 see a 5 percent decrease with a 5 percent reduction in  
3 allocation.

4 But the fact of the matter is the 5 percent  
5 deduction came off of the top of the allocation and not  
6 on the individual grant amount because that's how  
7 sequestration works. So we were limited with the  
8 regulations.

9 I would say, if I remember correctly, a 9 percent  
10 increase is -- I mean decrease is pretty close to the  
11 average. I think it was around 8 something for needs  
12 based. No, I think it was around -- needs-based,  
13 right. Yeah. So did I answer your question?

14 MR. OKAKOK: A little bit.

15 MS. PODZIBA: Are there any other questions? Yes,  
16 Mr. Jacobs?

17 MR. JACOBS: Leon Jacobs, Lumbee Tribe. This was  
18 a great presentation. A lot of information. So all of  
19 us that missed happy hour, I think we can make it up  
20 tomorrow night.

21 (Laughter.)

22 MR. JACOBS: But since this is a government-to-

1 government relationship, I just have a suggestion talk  
2 or in your historical presentation, you didn't talk  
3 about consultation with the tribes. And I know that  
4 you spend a lot of time working and negotiating with  
5 the National American Indian Housing Council, which was  
6 a body representing the tribes. So you need to include  
7 that in your upcoming presentations, I think.

8 MR. RICHARDSON: The first strong allocation that  
9 we did was done through negotiated rulemaking exactly  
10 like this trial map. They were not done through  
11 negotiations with National American Indian Housing  
12 Council. So it was done here with a body like this  
13 group here.

14 So I'm sorry I wasn't clear about that. In the  
15 first time, it was done exactly this way with protocols  
16 and with like methods in this negotiated rulemaking.

17 MS. PODZIBA: Yes, Mr. Sawyers?

18 MR. SAWYERS: I might add that all of the things  
19 you brought out today were all negotiated. I mean, you  
20 say we're doing this and that. The reason you're doing  
21 this is because the previous negotiated rule folks  
22 negotiated how the formula happens, and you just do the

1 calculation.

2 So maybe there's confusion that you're doing  
3 something that we haven't negotiated before, which is,  
4 I think, important to point out.

5 MR. RICHARDSON: Yeah, I think it's what I was  
6 trying to say that before the first session, HUD spent  
7 a lot of time talking with the National American Indian  
8 Housing Council and so forth, coming up with the plan  
9 of setting up the negotiations and so forth. So there  
10 was a lot of communications with the tribes directly  
11 and indirectly, so that I don't want anybody to feel  
12 that you had not negotiated with the tribes.

13 MS. PODZIBA: Any additional questions or  
14 comments? Ms. Foster?

15 MS. FOSTER: I just think this has been a great  
16 presentation, very worthwhile, from all of you. I  
17 would hope that you -- I think you will still be around  
18 for the rest of what we have to do, our business. But  
19 I'm looking forward to getting back to some of these  
20 specific areas and going over some of this even more in  
21 depth.

22 It's very helpful since I'm familiar with, you

1 know, pretty much all of this. But to be able to  
2 really take apart the little decisions that have been  
3 made, the accountability we've gotten is just really  
4 great.

5 The other thing that struck me, and I don't know  
6 what possibility there is of this, but we've talked a  
7 lot about these data runs and how everybody just kind  
8 of tries to kind of focus on their own number. And I  
9 kind of wonder if maybe there might be additional ways  
10 for you to present the information?

11 I mean, you had this fascinating map up there. I  
12 wanted to keep looking at it, you know, because it  
13 actually looked at the areas. You know, if we can --  
14 if we can think about ways to present the information  
15 visually that shows, you know, how is the money moving  
16 around as a result of this, whether it's different  
17 populations, different regions or whatever, I think  
18 visually it would help us to have a more overall view  
19 and not just be going down the list to see, you know,  
20 where our particular tribe is.

21 Thank you.

22 MS. PODZIBA: Mr. Evans?

1 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
2 Tribe. I completely concur with all of the comments,  
3 and in fact, the addition that I have for your  
4 consideration is what you all just did, I would  
5 recommend putting that on a DVD and videoing it.

6 Because I think, most particularly, when we  
7 discuss these things, whether it be in caucus or  
8 whether it be when we go home and we're trying to  
9 figure out other ways of doing things to get the same  
10 results, a DVD like that would be particularly  
11 beneficial because it will save us time trying to  
12 figure out exactly what was it that they said about  
13 this calculation that I can't remember or that I  
14 neglected to take a note on?

15 I think that would be very beneficial as well.  
16 Thank you.

17 MS. D'ANGELO: I think actually HUD, not us, but  
18 HUD is actually -- is in the process of trying to get a  
19 video completed, and with many of these in tribes.

20 MS. PODZIBA: Any final comments? Yes, Mr.  
21 Jacobs?

22 MR. JACOBS: I recommend that Sandra be the star

1 in that film.

2 (Laughter.)

3 MS. HENRIQUEZ: Only if you want me to sound like  
4 a complete and utter fool. These are the folks who  
5 really do this and obviously bleed it and work it every  
6 day.

7 MS. PODZIBA: Mr. Sawyers?

8 MR. SAWYERS: I just want to thank you for your  
9 presentation. And I've done a fairly decent job with  
10 Todd, don't you think?

11 (Laughter.)

12 (Applause.)

13 MS. PODZIBA: Okay. Is it the will of the group  
14 to leave the last presentation for tomorrow? Yes?  
15 Okay.

16 All right. We are now going to pass around the  
17 protocols. So, as with the charter, you'll get a clean  
18 version and a track changes version, and our first  
19 order of business tomorrow will be to review them. So  
20 please look at them when you have some brain function  
21 available to do so, either tonight or tomorrow morning.

22 And just check really the references, make sure

1 everything is lined up right. And so, if there are any  
2 typos or wrong citations, we'll fix that, and then  
3 we'll ask -- call the question on final consensus on  
4 those protocols.

5 After that, we will -- I guess we'll decide if the  
6 presentations -- I suppose that's what happens is the  
7 next presentation will come, and then the group will  
8 move to get identification of issues for discussion.  
9 So that is the plan for tomorrow.

10 I would ask Mr. Sawyers to close the meeting with  
11 a prayer for us.

12 MR. SAWYERS: Thank you very much for asking. I  
13 feel it a pleasure and an honor to close this meeting  
14 with prayer. I feel that when we open a meeting and  
15 close a meeting in prayer that we become closer  
16 together, we remember our roots, we remember folks back  
17 home, and thank you very much.

18 Our righteous and eternal Father, at the close of  
19 this meeting, we thank thee for the spirit of  
20 willingness and giving that we've had this day. We ask  
21 thee to help us that we may continue this spirit in our  
22 negotiations, that though many problems will arise and

1 we realize that there's going to be heavy discussion,  
2 we ask thee to help us that we remember that we  
3 represent all Native people, all Indian people and  
4 Alaska Natives wherever they are, and that we're only  
5 here to represent them.

6 Again, we are so grateful for this opportunity.  
7 We're grateful for the many blessings that we receive.

8 Help us that we may make things better for our  
9 constituents.

10 We do this in the name of Jesus Christ, amen.

11 (Whereupon, at 6:24 p.m., the meeting was  
12 adjourned.)

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