

**U.S. Department of Housing and Urban Development (HUD)  
Indian Housing Block Grant (IHBG) Formula Negotiated Rulemaking Committee**

**Session 7  
August 11, 2015**

The meeting started with an opening prayer.

**Welcome**

The co-chairs introduced Lourdes Castro Ramírez, Principal Deputy Assistant Secretary for the Office of Public and Indian Housing at HUD, who welcomed the group. Ms. Ramírez commended everyone for their dedication to the Negotiated Rulemaking process and to improving housing conditions and the quality of life in Indian country. She congratulated the Committee on making “incredible progress” in reaching consensus on a solution to the undisbursed funds issue and on proposed changes to the formula current assisted stock (FCAS) and Need components of the formula “to promote consistency and fairness as we allocate resources to all tribes.” In addition, the Committee convened a Data Study Group to look at alternative data sources to be sure that HUD is using the best data for formula distributions. Ms. Ramírez said that in this, the final Negotiated Rulemaking session, the Committee will discuss the proposed rule and preamble and the recommendations of the Data Study Group, and review the United States Department of Agriculture (USDA) 515 cost data to determine if they want to use it as a source for the local area cost adjustment.

Ms. Ramírez stated that she asked Jemine Bryon, General Deputy Assistant Secretary for Public and Indian Housing at HUD, and Rodger Boyd, Deputy Assistant Secretary for Native American Programs at HUD, to continue to serve as the HUD representatives at the Negotiated Rulemaking table. Ms. Ramírez said that she will be present for the next three days.

FirstPic reviewed logistics, and provided the group with the Internet username and password. The co-chairs did a role call and determined that they have a quorum. The co-chairs proposed that, before they discuss the USDA 515 factor data simulation results, they break into work groups. The Committee approved the revised agenda by consensus.

**Committee Review and Approval of the Minutes from August 2014**

The minutes from August 2014 were approved by consensus.

It was proposed that Annette Bryan and Jason Dollarhide continue as Committee co-chairs. The motion passed by consensus.

## Discussion of Local Area Cost Adjustment

The FCAS work group presented the following language to the full Committee. They asked the full Committee to vote on each separate section of the revised language for local area cost adjustment.

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

*U.S. Department of Agriculture 515 (USDA515) factor. USDA515 is housing operating, maintenance, and property and liability insurance cost data derived from the USDA's Section 515 Rural Rental Housing Program. The USDA515 factor is the relative difference between a local area USDA515 and the national weighted average for USDA515. This data will be updated by HUD in the formula every 5 years provided that the data is available from USDA; if not, HUD shall use most current available USDA515 cost data.*

The Committee discussed the proposed regulation. HUD said that they didn't anticipate problems getting the 515 data every five years, but since they rely on another agency for the data, they can't be sure.

After a brief discussion of section 302 (above), the Committee decided to look at section 320 first.

### § 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

*(a) Operating Subsidy as adjusted by the greatest of the AEL factor, the FMR factor, or the United States Department of Agriculture (USDA) 515 factor (AELFMR515); and*

Committee members asked Todd Richardson, Associate Deputy Assistant Secretary for Policy Development in HUD's office of Policy Development and Research (PD&R), to explain how 515 data are collected. Mr. Richardson explained that 515 properties are primarily located in rural areas. He said that the USDA provides guidance to auditors on how to fill out the form. While he doesn't know the level of oversight on data collection, he assumes that the USDA does do oversight on the data they collect. Mr. Richardson said that he doesn't have information on how many tribes have county-specific data, how many have data aggregated across counties, and how many tribes would have to use statewide data. There is data in the operating cost study on the coverage of 515; this study is available on the Negotiated Rulemaking website. However, the study was done in 2008, so the information in the study is dated and may not be applicable today. Mr. Richardson explained how the current process for calculating local area cost adjustment works and the criteria for determining whether to use county data, aggregate data from a group of nearby counties, or the state 515 average.

The Committee voted on section 320 and there were a number of dissenters. The reasons for dissent included that there is no 515 data for whole regions, and that the Southwest region would lose funding if 515 is used. **The Committee did not approve including USDA 515 data as a local area cost adjustment factor.**

### **Alternate Proposal on Operating Cost Data**

The FCAS work group also proposed the following language for consideration by the full Committee:

*Tribal representatives of the Negotiated Rulemaking Committee recommend to HUD the establishment of a HUD task force that includes Tribal representatives to develop a methodology to collect operating cost data from IHBG recipients in a consistent and accurate manner that could be used to adjust for local operating costs in the adjustment to the operating subsidy under the current assisted stock portion of the formula (i.e. replace the current factors under section 1000.320(a)).*

A Committee member wanted to clarify that HUD would conduct the study, and that the study would not be funded by the tribes. This member asked that HUD fund the technical experts and other resources needed to complete the study. After some discussion, the Committee revised the proposal to include: *“Resources other than IHBG funds should be made available to fund technical experts and task force members and other costs that may be identified.”*

Jim Anderson, technical expert for the Data Study Group, raised concerns about this proposal. He said that different tribes provide different services to their members. Some tribes provide only housing, while others provide programmatic services and want to include these services as part of their housing operating costs. Further, tribes use different methods of accounting. Any methodology for collecting operating cost data needs to recognize differences among tribes.

A Committee member stated that the proposed study would need to minimize disruption of housing, the cost to the tribes, etc. He wants to include the following language, which he took from the Proposed Concept developed by the Needs work group, in the proposal: minimization of disruption of tribal housing programs, recognition of tribal sovereignty and practicality including cost

Another Committee member supports a study that does a full analysis of the real operating costs for each tribe. This involves identifying a method for getting accurate, current data that reflects tribal needs and that will help ensure that funding is fair and equitable to everyone. Some Committee members expressed concern about how the study would be funded. A Committee member said that the formula is using outdated data, and that it is incumbent on the federal government to come up with better data to drive IHBG funding. The Committee member wants it to go on record that the Committee asked for better, more accurate and more current data, and that they need to find a way to allocate funds to execute this study.

Committee members continued to discuss this proposal. Several members suggested additional revisions to the original proposal. There was a call for a vote on the revised proposal (adding the following sentence: “Resources other than IHBG funds should be made available to fund technical experts and task force members and other costs that may be identified.”) and HUD opposed it. Roger Boyd offered an alternative proposal, which dropped the above sentence. There was a call for a vote on the alternative proposal. HUD supported the alternative proposal, but all of the other Committee members opposed it. HUD stated that they see the value of collecting cost data because the current data does not truly reflect tribes’ current operating costs. However, HUD stated that they need to omit the last sentence in the proposal supported by the tribal Committee members because, while HUD supports the recommendation, they cannot be constrained regarding funding.

HUD put forward a new proposal, but Committee members continued to express concern about how the study would be funded. A Committee member suggested the following revised proposal:

*Non-HUD members of the Negotiated Rulemaking Committee recommend HUD establish a joint task force that includes Tribal and HUD representatives to develop a methodology to collect operating cost data from IHBG recipients in a consistent and accurate manner that could be used to adjust for local operating costs in the adjustment to the operating subsidy under the current assisted stock portion of the formula (i.e. replace the current factors under section 1000.320(a)). Non-HUD members recommend that resources other than IHBGF funds be made available to fund technical experts and task force members and other costs that may be identified.*

HUD accepted the revised proposal with the friendly amendments. **The full Committee reached consensus on the above proposal.**

## **IHBG Data Study Group Presentation**

The “IHBG Negotiated Rulemaking Data Study Group Final Report, Volume I and Volume II,” dated July 31, 2015, was distributed to Committee members and other Negotiated Rulemaking attendees, and is available on the IHBG website, <http://ihbgrulemaking.firstpic.org>. The report contains detailed information about the Data Study Group process and outcomes.

Mr. Richardson stated that the Data Study Group made two consensus recommendations. He then presented an overview of the Data Study Group process. Based on the evaluation criteria, the Data Study Group identified four core data sources: 2010 Decennial Census, American Community Survey (ACS), Tribal Survey – Federally Administered and Tribal Survey – Tribally Administered. Mr. Richardson discussed the strengths and weaknesses of each of these data sources. Also based on the evaluation criteria, the Data Study Group identified five support data sources: tribal enrollment, Indian Health Service (IHS) population estimate, U.S. Census Bureau

population estimate, Total Development Cost (TDC) and Formula Response Form (FRF). Support data is used to cap or adjust the core data. Mr. Richardson discussed the strengths and weaknesses of each of the support data sources.

Finally, Mr. Richardson discussed the Data Study Group recommendations.

Recommendation 1 is: *“The AIAN population will be the greater of the most recently available ACS, Decennial Census or Challenge data.”* If this is adopted, data would no longer be “aged.” The Challenge life cycle is 10 years. The issue is that the count of AIAN persons differs in the three data sources. Since HUD doesn’t know which data source is correct, it would give the tribe the benefit of the doubt by assigning it the highest number from any of the three sources. The current policy regarding Challenge data is that the tribe gets the greater of Census data or Challenge data. The problem is that there is old Challenge data, that is, Challenge data from 1998 or 1999. In cases of Formula Area overlap, the higher of the Census or ACS person count would be used for each geographic component of the combined formula areas, and then the total would be apportioned among tribes in the overlap using a method agreed to by the tribes, or the default method determined by HUD (currently, shares of Total Resident Service Area Indian Population).

Recommendation 1a is as follows: *“Recommendation for Committee to discuss whether or not to exclude from the count of AIAN those respondents who self-identify as having origins in any of the original peoples of South America, Central America and North America outside of the U.S.”* This exclusion affects about three percent of AIAN for whom tribal affiliation is known. There are regional differences – the largest numbers would be excluded in Florida, California and Oregon.

The second recommendation is to use TDC, tribal enrollment and FRF as they are presently used in the formula.

In addition, Mr. Richardson presented the non-consensus items: (1) Develop both federally administered and tribally administered National Tribal Surveys; (2) Do a feasibility study for a National Tribal Survey; and (3) Recommend one of three options about how to address the six household Needs variables for full Committee consideration, and present the options for the full Committee to discuss.

## **Public Comments**

The following are very brief extracts from the public comments:

- Patricia Ironcloud, Vice Chairman of the Fort Peck Assiniboine and Sioux Tribe, supported moving to a National Tribal Survey, “One of the things that we have here is we have to have a new way to collect this data. And I believe today you proposed a good one.”
- A Board member of the Navajo Housing Board expressed a number of concerns about the formula -- it isn’t representative of Indian country, it pits tribes against each other, and the rules and regulations and methodology “are not based on

Indian communities” but on county, state and other geographies. He stated that, “as much as we can, we want to provide input. We want to generate our own data.” He further said that: “So we, as a Board, have taken the position that we're not going to go with what was provided. I think the resolution, I'm not sure where it's formally submitted, but we want to formally submit that to this group.”

- Robert Super, Vice Chairman of the Karuk Tribe, the second biggest tribe in California out of 118 tribes, stated that “it feels like sometimes we get treated like chickens, they throw the money out there just like chicken feed, and we're all going after all the money that we can get for our own people.”
- Ella Bennett, from Juneau, Alaska, a member of the Tlingit clan, said that she represents Alaska Native people. She thanked everyone for all the time they put into this process, and said that people will benefit from all of the Committee’s hard work. She said she knows that the Committee is doing their best for Alaska.
- Pine Ridge President John Yellow Bird Steele, said that he had worked in housing for several years, and that there was “so much need in Indian country.” He said that he was here “for one thing, that’s the American Community Survey. To look at the loss that's going to be out there for the Plains tribes, the tribes that have a large land base, you look at just us alone, at Pine Ridge, we're going to lose almost \$800,000.” He believes that “We need to do a complete new survey, a tribal community survey that we're going to be able to do on our own. We always have somebody come in and do our surveys, and they'll never find out how many people are living in a house, because people don't want to give their identification.” He concluded that they have to do something if they “want to survive as tribes. This is a chance of our lifetime to get a good survey of how many people we actually have that are in need.”
- Roberta Roberts, a Navajo Tribe member originally from Naschitti, New Mexico, has close to 25 years of housing experience. She stressed the importance of housing, and said “what I wanted to instill in each of you members, 24 at the table, is that you inspire hope.” She stated: “You are the role models, the experts in the room, so have one voice, listen to one another, respect one another.”
- The next speaker served in the tribal legislature, and now serves on the Board. She stated that “We, at the table, we need to work together. Let's not grab much more than we really need.” She said that they want to bring their children back home, but that there are no homes. They are a large tribe, but “our count is not even close to what it's supposed to be, because you know, as us Indians, we don't want to tell -- we're very secret.” They need more money and more houses.
- Christina Lewis, with Navajo Nation, a member of the Board of Commissioners for Navajo Housing Authority, stressed that they need new homes, new schools and economic development in the former Bennett Freeze area. Their Tribe is growing but they are getting less money, not more. They need money to build new homes. Veterans need homes. She concluded: “So many of our people need homes. And so HUD, we really need to work together. You need to hear us and listen to us. And that's what I ask of you today.”

The co-chair thanked everyone “with the courage to come up to the microphone and give public comment.”

The session ended with a closing prayer.

**U.S. Department of Housing and Urban Development (HUD)  
Indian Housing Block Grant Formula Negotiated Rulemaking Committee**

**Session 7  
August 12, 2015**

The meeting started with an opening prayer.

The co-chair “acknowledged that there are tribal leaders in the room” and that their time is valuable. She said that “we really appreciate you coming here to stand behind us and with us and for us.”

Jack Sawyer introduced John Steele, the President of Oglala Sioux. Mr. Steele addressed the Committee. Mr. Steele explained that they have 3 million acres of land and that the tribe is solely responsible for meeting the needs of tribal members. Navajo is one of the eight most destitute areas in the United States. Mr. Steele doesn’t think the IHBG allocation is fair to large, land based tribes. He implored the Committee not to cut their funding. He stated: “I am not asking for any kind of favoritism. I am asking for fairness.” He stressed that they do not want HUD to use American Community Survey (ACS data): “And right now, before your Negotiated Rulemaking Committee, we disagree with that entity that you have selected to do the gathering of the population figures. And we would like to propose that [you] give us a little time, and let us try and come up with it.”

**IHBG Data Study Group Presentation**

Todd Richardson, Associate Deputy Assistant Secretary for Policy Development in HUD’s office of Policy Development and Research (PD&R), resumed his presentation of the Data Study Group Report from yesterday. He explained the data simulation runs, which HUD did based on several options that the Data Study Group discussed.

HUD distributed two sets of runs – one with and one without volatility control. Volatility control guarantees that each tribe gets at least 90 percent of what they would have gotten if no new data were introduced. Volatility control is a step down process; it transitions data down to the original loss percentage over a period of time.

They first will discuss the Data Study Group’s recommended option 1, which gives each tribe the greatest of Census 2010, American Community Survey (ACS) and Challenge data (which is good for 10 years). The other options they will discuss today are the options that were the non-consensus items under number 3 from Mr. Richardson’s presentation yesterday and from the Data Study Group report. These options address the other six Needs variables, which represent 89 percent of the Needs allocation.



## ***Simulation***

Mr. Richardson explained that the simulation uses Census 2008 data for the base amount. The simulation shows results by region and by tribe. The first simulation does not include volatility control.

**Recommended Option 1:** The only variable that changes for option 1 is the AIAN count. The Data Study Group recommendation is to use the greatest of Census 2000, ACS or Challenge person count. The AIAN count has an 11 percent weight, so there will be very little change in the allocation based on this variable because it contributes only 11 percent of the Needs allocation.

**Option 2a:** If the Census 2010 count is greater than ACS, the ACS is increased proportionally.

**Option 2b:** Adds Challenge data to option 2a. The Challenge data for AIAN population is aged, so Challenge data may be higher than Census 2010 or ACS.

**Option 4:** AIAN count is the highest of Census 2010, ACS and Challenge. For the other six Needs variables, use ACS with no adjustment.

HUD used the same procedures in the simulation with volatility control. The only difference in the latter scenarios is that, with volatility control, a tribe can't lose more than 10 percent of their Needs allocation.

The simulation is based on current Needs variables. The data could change if weighting and/or the Needs variables change.

## ***Discussion of Simulation Results***

A Committee member asked how the "greater of" scenario works in a Formula Area overlap. Mr. Richardson explained that, for the person count, every tribe in the overlap gets the better of Census 2010, ACS and Challenge before HUD aggregates the data for the tribes in the overlap. All of the tribes in the overlap get the benefit of ratcheting up the household Needs variables based on a higher Census person count. However, a tribe does not necessarily get the benefit of a tribal challenge to a person count if it isn't their tribe's person count challenge.

Committee members discussed the simulation results and the use of ACS data. Some Committee members strongly oppose using ACS because of its negative effects on poor large land-based and rural tribes. Others accept that HUD probably will use ACS data, but regret that they didn't work with ACS to make the data as representative of tribal populations as possible, and that they didn't explore adding new variables that do a better job of measuring need. Several Committee members said that rather than fighting over how to distribute limited IHBG funds, tribes should unite to work for more funding for the IHBG program.

Rodger Boyd, Deputy Assistant Secretary for Native American Programs at HUD, addressed whether they should start to look at the variables this late in the process. He stated that: “HUD's position early on, as we were looking at the different data sets, was that the variables do count.” However, there was a lot of opposition at that time to looking at the variables. “So our point is that we're really running late in this process now, even though we really strongly recommended that we take a look at the variables.” He asked if they wanted to use their little remaining time to look at variables, or if they should use the existing variables now and look at variables at the next Negotiated Rulemaking.

## **Data Study Group Recommendations**

### ***Proposal 1: AIAN Population Count***

The Data Study Group reached consensus on:

**Recommendation 1:** AIAN persons variable. *The AIAN population will be the greater of the most recently available ACS, Decennial Census, or Challenge data. If this is adopted, the data would no longer be “aged.” The challenge data life cycle is 10 years.*

This proposal addresses only one variable, which is the singular impact of this proposal if nothing else is changed. It is silent on the other six Needs variables (the household variables). The simulation shows that this single change has only a small effect on funding. This is because the AIAN population is weighted at 11 percent in the Needs calculation.

The Committee discussed this proposal at length. Some Committee members said they would oppose any proposal that used ACS data, while others supported giving tribes the highest person count from the available data sources. One Committee member said that she wanted to make a recommendation that they “did no harm,” and that this recommendation gives every tribe its highest person count.

There was a call for the question on proposal 1. There was no consensus. A dissenter who voted against proposal 1 “because in good conscience I cannot support any proposal that hurts the poorest tribes in the United States” said that the only alternative the Committee proposed was to keep the status quo – to make no change.

Jason Adams, Chairman of the United Native American Housing Association (UNAHA), spoke both as a Committee member and as the leader of UNAHA. He said that it is a fact that the poorest people live on the plains, and that using ACS takes money from the poorest tribes. While there is no perfect data set, with a National Tribal Survey, tribes would exercise their sovereignty and get to determine what a tribal-specific data set includes.

**The Committee did not reach consensus on proposal 1.** There were no alternative proposals on the table.

***Proposal 1a: Exclusions from AIAN Count***

*Proposal 1a – Recommendation for Committee to discuss whether or not to exclude South, Central and Canadian AIAN from the Decennial Census and the ACS. They account for approximately 3 percent of listed tribes.*

In effect, this proposal would exclude individuals who do not identify with a U.S.-based tribe. These individuals are not eligible for any of the IHBG programs.

Several Committee members agreed that it doesn't make sense to include in the AIAN count individuals who are not eligible for IHBG programs. Others agreed but want language that specifically designates who would be excluded. A Committee member thinks that there should be some exceptions for citizens who are enrolled in U.S. tribes who come across international borders. In particular, there was concern about how to define tribal members who identify as Mexican Americans. Mr. Richardson stated that the tribe an individual writes down is designated as a U.S. tribe, etc. If someone identifies as a member of a U.S. Indian tribe, they are included in the AIAN count. If they identify with a Mexican, etc., tribe, then they wouldn't be counted as AIAN.

For Formula Area counties, there are differences in the number of persons omitted depending on the state, with 16 percent in Florida and 10 percent in California who don't identify with a U.S. tribe. This percentage is nearly zero for South and North Dakota, Oklahoma and Alaska. There is no data for on-reservation versus off-reservation. There is a very significant percentage – 20 percent – who don't identify with any tribe. These people are classified as non-specified AIAN.

There was a call for the question on this proposal. HUD had concerns and didn't approve the concept. HUD withdrew their dissent because the Committee was agreeing to discuss the proposal, not to take action. **So the question was called again, and there was consensus on agreeing to discuss the proposal.**

A Committee member then offered a concrete proposal for consideration:

*To exclude from the AIAN population count Canadian and French American Indian, Center American Indian, Mexican American Indian from the Decennial Census and the ACS.*

A Committee member said that he can't support this resolution as written. His tribe has enrolled tribal members who are Mexican citizens who are served by the tribe. Another Committee member expressed the same concern. An alternative proposal that defined AIAN as persons with a tribe of origin that is not located external to the U.S. did not get consensus. The Committee then voted on the following:

*Any AIAN person whose self-identified principal or enrolled tribe is not located within the external boundaries of the United States, their data will not be used for the AIAN population count from the Decennial Census and the ACS.*

**There was a call for the question that this concept should be moved to the drafting committee to come up with language that the Committee will vote on. The proposal received consensus support.**

A Committee member introduced an Ambassador from Navajo Nation, the Honorable Peterson Zah, who is bringing a message on behalf of President Begaye of the Navajo Nation. Mr. Zah stressed the importance of respecting each other's views and differences and of being persistent. He thanked everyone for eliminating the option using ACS "because ACS really isn't the answer." He stated: "Mr. Begaye gave me instructions and says, 'Tell them to find something that is credible....' And so I just wanted to encourage you to keep on searching, weigh those options, and which one of those options best fits what we want as Indian people." He thinks that "In the meantime, status quo should prevail, using the present system that you now have."

### ***Support Data Sources***

The last recommendation that the Data Study Group reached consensus on concerns support data sources. They recommended using Total Development Cost (TDC), Tribal enrollment and Formula Response Form (FRF) as they presently are used in the formula.

HUD was asked to clarify the meaning of "status quo" – the regulations currently incorporate multiple support data sources. These different support data sources are used in different ways in the formula. The response was that status quo means that they don't change how these data sources are used. It was agreed that the Committee doesn't have to take any action. The person who presented the proposal said he was happy to withdraw it. **The proposal was withdrawn.**

### **Other Issues**

A Committee member asked that the issues they should be addressing but aren't be put in a parking lot, including the 20 percent of the AIAN population that doesn't give their tribal affiliation. He wants to see more data about this including a regional breakdown.

### **Public Comments**

Chavez John, Navajo Nation, the Division Director for the Division of Community Development, thanked all the Committee members for their hard work. He told them that what they are doing will impact the lives of a lot of Indian people because it will determine how many homes they're going to get per year. He concluded that:

“...whatever amount you're allocated, that will determine the number of homes, it will impact the number of families within each nation.”

The next speaker, Shirlee McAllister, a Karuk tribal member, said there is not enough housing. They need to help tribal members get the housing that they need.

Katherine Iyall-Vasquez, Councilwoman and Housing Board Chairman of Cowlitz Indian Tribe, said that Cowlitz is a newly recognized tribe. Until March 2015, they did not have a reservation. They have no 1937 Act housing and no FCAS inventory; all they have is Needs. She wants the Committee to consider that (1) the fairest way to distribute funds is to have a minimum and maximum, and (2) Tribal enrollment has to be certified – it should represent how many members a tribe has.

Patricia Ironcloud, Vice chairwoman, Fort Peck, said that they put two warring tribes on the same piece of land – the Assiniboine and the Sioux. They started with 40 million acres and now have only 5 million acres of land.

Mark Charlie, with AVCP Regional Housing Authority in Bethel, Alaska, stated that AVCP is a Tribally Designated Housing Entity (TDHE) for 51 tribes out of 56 tribes in their region. They pay \$380,000 - \$420,000 to build basic homes. “So 51 of the tribes have joined TDHC to work together, and that's the message I want to send to this group and to the committee, that it's going to take working together. The tribes in our region understand that they have to help each other.” Mr. Charlie concluded: “We need to talk about solutions, how can we make sure that every tribe, every family that needs a house gets a house.”

The session ended with closing prayer.

**U.S. Department of Housing and Urban Development (HUD)  
Indian Housing Block Grant Formula Negotiated Rulemaking Committee**

**Session 7  
August 13, 2015**

The meeting started with an opening prayer.

**Discussion of Proposal 1a: Definition of American Indian and Alaska Native (AIAN)**

The drafting committee presented language on proposal 1a:

*After determining the FCAS allocation, remaining funds are allocated by need component. The need component consists of seven criteria. They are:*

- (g) AIAN persons weighted at 11 percent.*
- (1) For purposes of paragraph (g) of this section;*
- (i) AIAN persons shall include persons that self-identify as AIAN.*
- (ii) AIAN persons shall not include persons that self-identify their enrolled or principal tribe as one that is not within the boundaries of the United States; and*
- (iii) AIAN persons shall include American Indian Alaska Native persons that do not self-identify with any specific enrolled or principal tribe;*
- (2) The term “enrolled or principal tribe” shall have the same meaning as provided for by the United States Census Bureau.*

The Committee discussed the language. Todd Richardson, Associate Deputy Assistant Secretary for Policy Development in HUD’s office of Policy Development and Research (PD&R), stated that when people fill out the Census form, about 20 percent who say they are AIAN do not write anything in the “write-in box” about their enrolled or principal tribe, so it is unknown what tribe they may be associated with, and whether or not it is a U.S. tribe.

A Committee member asked if excluded persons would be excluded from every Needs variable. Mr. Richardson responded that they only would be excluded for the person count variable as stated in (g)(1) above.

**The Committee did not take any action on this proposal. A Committee member asked that they put this issue in the parking lot for future discussion.**

**Discussion of the Preamble**

Every rule needs to have a preamble – a short, concise explanation of what the regulatory text means. The preamble is for the benefit of the public who will be reviewing it, to give them a sense of what the Committee has done and why.

Aaron Santa Anna, Assistant General Counsel, HUD's Office of Legislation and Regulations, walked the Committee through the preamble. He stated that the drafting committee didn't make any changes to the regulatory text that had not been approved by the Committee.

Mr. Santa Anna began his presentation with an overview of the language. After the overview, he reminded the Committee that the drafting committee needs to add a recommendation for a work group to look at the factors for Needs, and they also need to add the preamble text for § 1000.330. They will share their draft with the Committee after it is completed. Mr. Santa Anna stated that HUD is committed to giving everyone an opportunity to review language and to comment on it.

In addition, the drafting committee hasn't drafted the language for the appendices that currently are codified, and they won't publish any appendices as part of the proposed rule. Appendices are an identical reflection of the final rule and therefore of what the formula will be. The appendices explain to the public in both mathematical and text form how the formula will work. HUD wants to be as transparent as possible and provide broad opportunities for public comment.

### **Process for Producing a Final Document**

Mr. Santa Anna described the process for producing a final document. Once the preamble is finished, they will get HUD departmental clearance on the final document, and then send it on to the Office of Management and Budget (OMB), which confirms that the document is consistent with administration policy and with the policies of other agencies that deal with Indian issues. An executive order gives OMB 90 days to review the proposed rule. After OMB review, HUD is required by statute to share the proposed rule with the authorizing committee for 15 calendar days. It then takes five days for the Federal Register to publish it.

HUD will share the full preamble with the Committee. If there are provisions that any of the Committee members want to address differently, the drafting committee will try to incorporate that language so that the document reflects the Committee's views.

Mr. Santa Anna emphasized that the preamble is simply a proposal that will be made to the public that reflects the work of this Committee. It is a draft, not a final document. Nothing in the preamble commits HUD or the Committee to make the listed changes. They need to consider public comment before anything is finalized. They can make changes to the preamble as they move forward, and before the final rule stage.

Mr. Santa Anna described the timeline. The preamble will be posted as soon as possible, hopefully by early September. There will be sixty days for public comment. At the close of the public comment period, HUD will summarize all of the public comments. HUD will share the summary of public comments at the final Negotiated Rulemaking meeting, and the Committee will decide how to respond to public comments and make

any necessary changes. The Committee will vote on the changes. Anything agreed upon at that stage will be included in the final rule that is published. Jemine Bryon, General Deputy Assistant Secretary for Public and Indian Housing at HUD, said that they will propose a schedule, post it and send it to the Committee.

### **Committee Approval of Preamble**

**The Committee approved all of the following sections of III. This Proposed Rule, by consensus:**

- A. Revision of definition of formula area (§ 1000.302). Change to the definition of formula area based on the Tenth District decisions.
- B. Continued funding of Section 8 Units (§ 1000.306)
- C. Components of IHBG Formula (§ 1000.310). This section is a laundry list of various components of the formula.
- D. Conversions of units from Low-Rent FCAS to Mutual Help or from Mutual Help to Low-Rent FCAS (§ 1000.316).
- E. Mutual Help unit conveyance (§ 1000.318(a)).
- F. Demolition and rebuilding of FCAS units (§ 1000.318(d)).
- G. Overlapping formula areas. HUD stated that they need to add a little language to this section.
- H. Minimum total grant allocation of carryover funds (§ 1000.329)
- J. Volatility control of changes in Need component of formula caused by introduction of new data source) (§ 1000.331
- K. Data challenges and appeals of HUD formula determination (§ 1000.336). Changes to address the addition of the undisbursed funds factor and to clarify the language.
- L. Undisbursed IHBG funds factor (§ 1000.342). This is a new section.

### **Committee Discussion of Description of “Committee Membership”**

A Committee member proposed new language for page 5, line 2, “Committee membership” in II. The IHBG Formula Negotiated Rulemaking Committee.

The original language is as follows:

*The Committee membership consists of 24 elected officers of tribal governments (or authorized designees of those tribal governments). The Committee membership reflected a balanced representation of Indian tribes, both geographically and based on size. In addition to the tribal members, there were two HUD representatives on the Committee.*

Committee members proposed new language. There was a call for the question and there was dissent. A Committee member said that he hesitated to support this revision because the change leaves out HUD membership, and the total Committee membership includes federal government representatives. Committee members



continued to discuss alternative language. A Committee member proposed another version of sentence 1:

*The Committee membership consists of 24 designated representatives of tribal governments (or authorized designees of those tribal governments).*

**There was a call for the question and the revised version passed by consensus.**

The Committee asked for an opportunity to discuss the non-consensus items and include them in the preamble. They will have the opportunity to do this on a conference call.

Jack Sawyers and Leon Jacobs made a presentation on behalf of the entire Committee. They called Mr. Dollarhide up to the podium and told him that he has the support of the whole Committee in his healing, and they gave him a present in memory of his daughter. Mr. Dollarhide thanked everyone for their support.

### **Public Comments**

Tom Springer, Outside Counsel for Ho Chunk Nation, submitted a statement on behalf of Vice President Darren Brinegar, of the Ho Chunk Nation. The statement presents the Ho Chunk Nation's position on several of the issues that were discussed over the last few days. Then Carrie Iness, a Council member and Board member from a small, non-gaming tribe, said that they need to think about the young people and the housing shortage. She said it was confusing when they talked about the allocations. But she praised them for "coming together and doing what you need to do."

Patricia Ironcloud, Vice Chairwoman from Fort Peck Assiniboine and Sioux, stated that: "One of the things that I find very disturbing today was how you basically took out the elected officials of the tribes. It's like taking out the President of the United States and sending a maintenance man here." She insisted that they add the language about elected officials back into the preamble.

Ms. Vasquez wanted to go on record "as making a request that the data source question not just be gone away, that it be put in the parking lot and discussed at a further time or a future time. If no decision can be made on a new data source, I would request that it remain status quo."

### **Closing Remarks**

Annette Bryan, co-chair, personally thanked each and every Committee member for their efforts, and thanked HUD and all of the HUD staff as well as the support staff from FirstPic for their work. She stated that: "It has been my honor and my privilege to serve as your co-chair." She concluded: "On behalf of Jason and I, we really, really thank you for allowing us the opportunity to sit in front of this table."

Ms. Bryon made closing remarks for HUD. She started by thanking everyone. She stated that the Committee has spent considerable time and energy deciding which data source should be used under the Need component of the formula. HUD initially considered introducing data from the American Community Survey (ACS) in FY 2015. The ACS was available and, in the Department's opinion, it was a good alternative to current data. However, in recognition of the important work of the Committee, The Committee agreed by consensus to do several things:

- Delay the Committee's work by one year so that a Data Study Group could research all available data sources.
- Delay the introduction of a new data source into the formula until Fiscal Year (FY) 2018 to allow all tribes time to prepare for potential impacts on their IHBG grants.
- Put in place a regulation that provides for significant volatility control.
- If the Committee could not reach consensus on a data source, HUD would determine the appropriate data source to use starting in FY 2018.

Since neither the Data Study Group nor the Committee could reach consensus on a data source, HUD is charged with making this decision, and will do so in the near future. They will include a discussion in the preamble to the proposed rule describing their decision. As they have stated previously, HUD recommends using the ACS for the Need component of the formula. They also will assess whether they should use data from the 2010 Decennial Census for the total AIAN population variable.

They have heard the concerns of tribes that will be negatively affected by ACS, and they will consider ways to address them. In addition, HUD fully appreciates the concerns expressed during public comments, especially about the level of funding for Indian housing. HUD is working in a variety of ways to improve conditions in Indian country.

Ms. Bryon said that she looks forward to continuing her relationship with the Committee, and personally thanked them for "letting me play a role in this process and for introducing me to your rich heritage. It has been my honor." On behalf of HUD and the Secretary of HUD, she thanked everyone very much.

The session ended with a closing prayer.