

1 U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
2 INDIAN HOUSING BLOCK GRANT FORMULA
3 NEGOTIATED RULEMAKING COMMITTEE
4

5 Wednesday, August 27, 2014

6 8:40 a.m.

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19 DoubleTree Scottsdale

20 Coronado Room

21 5401 North Scottsdale Road

22 Scottsdale, Arizona 85250

- 1 PARTICIPANTS
- 2 ANNETTE BRYAN, Co-Chair
- 3 JASON DOLLARHIDE, Co-Chair
- 4 JASON ADAMS
- 5 EDWARD BEGAY
- 6 RODGER BOYD
- 7 HEATHER CLOUD
- 8 GARY COOPER
- 9 PETE DELGADO
- 10 SAMI JO DIFUNTORUM
- 11 EARL EVANS
- 12 DEIDRE FLOOD
- 13 KARIN LEE FOSTER
- 14 CAROL GORE
- 15 LAFE ALLEN HAUGEN
- 16 RICHARD HILL
- 17 ERIN HILLMAN
- 18 ROBBIE HOBGOOD
- 19 LEON JACOBS
- 20 TERI NUTTER
- 21 SAM OKAKOK
- 22 DIANA PHAIR

- 1 PARTICIPANTS (continued)
- 2 MICHAEL REED
- 3 S. JACK SAWYERS
- 4 MARTY SHURAVLOFF
- 5 RUSSELL SOSSAMON
- 6 SHARON VOGEL
- 7 ANEVA YAZZIE
- 8 JAD ATALLAH
- 9 JEMINE BRYON
- 10 MINDI D'ANGELO
- 11 GLENDA GREEN
- 12 ED GOODMAN
- 13 DAVID HEISTERKAMP
- 14 SUSAN PODZIBA
- 15 CHRISTINE VELEZ
- 16 RODNEY VIGIL
- 17 JIM WAGENLANDER
- 18 FRAMON WEAVER
- 19
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1 P R O C E E D I N G S

2 MS. BRYAN: Good morning, everyone. If we can
3 please take our seats, we'll try to get started here in
4 a minute.

5 Good morning. Thank you all for coming, and
6 looking forward to another productive day for session
7 six of formula negotiated rulemaking. We would like to
8 start our day with an opening prayer from someone from
9 this region, Ron Bonney.

10 MR. BONNEY: Father, this day that You've given
11 us, we ask that You keep your blessing upon us. We ask
12 that the schedule that we have here today, everything
13 said and done be for Your Honor, for Your glory. Keep
14 Your hand upon our families back home. We know that
15 many have traveled many, many miles to come here.
16 Father, we ask that when we return, You keep Your hand
17 upon them as well, Lord.

18 We ask for Your guidance today. We ask for Your
19 knowledge. We ask for Your wisdom that only comes from
20 You. We ask everything said and done today be for Your
21 Honor, for Your glory. We know that it's for our
22 people. We ask that all needs be met, God, that

1 everything that we do here will be to the benefit of our
2 people at home.

3 And, Father, we just ask that you be with us
4 throughout this day. Protection upon us. Ask all in
5 Christ's Name. Amen.

6 MS. BRYAN: Thank you, Mr. Bonney. So last night
7 we discussed breaking into caucuses, and I just wanted
8 to check in with folks and see if 30 minutes is
9 sufficient time. Is that --

10 (No response.)

11 MS. BRYAN: Okay. So we'll go ahead and schedule.
12 Our morning will be caucus, then for the summary of
13 the work groups. We had a really good work group
14 summary last night. I'm not sure that anything changed
15 through the night if anybody had any working groups or
16 anything to add?

17 MR. COOPER: No, I did if -- I didn't have the
18 agenda pulled up on the four items we was going to
19 discuss as to the Work Study Group whenever we got
20 there. So I have that this morning, so I thought I
21 might just mention those four items.

22 One would be compiling a list of data sets. We

1 all know that there's data sets out there that already
2 exist. Each of the Study Group members are going to
3 come prepared to maybe have a list of any of those data
4 sets that they would like to bring to the table; work
5 to develop a questionnaire evaluation criteria for
6 review of data sets; developing a scoring matrix for
7 data sets; and then also review and do any final
8 drafting and editing on the Federal Register notice
9 that I mentioned requesting additional data sets just
10 in case there might be some out there that we don't
11 know about.

12 So those are the four items. Whenever we're able
13 to get to that point sometime this week and have that
14 meeting, we'll be sure to announce it to everyone.
15 Those are the four items we'll begin looking at.

16 MS. BRYAN: Thank you, Gary. So I would propose,
17 doing the math and sort of working backwards, there are
18 some things that are ready to be negotiated. So I
19 would like to propose that we check in with the work
20 groups right around noon to see if we're ready to come
21 back after lunch. And if we're not ready to come back
22 after lunch, propose we agree to come back around 2:30.

1 Does that sound like a doable plan at this point in
2 the morning?

3 (No response.)

4 MS. BRYAN: Okay. And, of course, we'll always
5 keep this flexible based on the work that we're doing
6 and the conversations that we're involved with. Any
7 other announcements before we break? Yes, Rodger?

8 MR. BOYD: Good morning. This morning, I'd like
9 to let you all know that we did select a new
10 administrator for the Eastern Woodlands Office. It's
11 been long in coming, and we're proud to announce that
12 Mark Butterfield from the Ho-Chunk Nation and former
13 director or CEO -- I'm not quite sure what his position
14 was, but with the Housing Authority for the Ho-Chunk
15 Nation.

16 (Applause.)

17 MS. BRYAN: Thank you, Rodger. Well, we
18 definitely have an ally over there now. We expect
19 great things from you. Don't turn head on us, okay?

20 (Laughter.)

21 MS. BRYAN: No offense. Yes, Jack?

22 MR. SAWYERS: I just have one request. I was

1 wondering if HUD could give us one more meeting in
2 November here. I sat out on the patio last night, and
3 this came to me.

4 (Laughter.)

5 MR. SAWYERS: I just thought I'd ask.

6 MS. BRYAN: Thank you. My calendar is open for
7 November, so I don't want to travel anywhere. Let's
8 see. So any other announcements or -- for the good of
9 the order?

10 (No response.)

11 MS. BRYAN: All right. Your room assignments are
12 up there in front of you, so we'll break into caucus
13 for 30 minutes and then get our work group started, and
14 we'll check in with you before lunch. If we're not
15 ready to come back at 1:30, we'll see you here at 2:30.
16 Thank you.

17 (Recessed at 8:46 a.m.)

18 (Reconvened at 1:46 p.m.)

19 MS. BRYAN: All right. Welcome back, committee
20 members and spectators, HUD staff, legal counsel, and
21 public. We are at 1:45, August 27th, session six,
22 formula negotiated rulemaking. Okay. So we wanted to

1 enter into the record that we have Erin Hillman in for
2 Michael Thom and Robbie Hobgood in for Rusty Sossamon.

3 At this time we would like to start with the -- we
4 had an issue at the last -- end of last session that we
5 were prepared to -- we had begun negotiations on. We
6 had 28 minutes left on that issue. I had Jason Adams
7 from FCAS if he's willing to start with that issue, and
8 we are prepared to do that. So at this time, I would
9 like to start the clock and have Jason just briefly
10 reintroduce the issue. Thank you for your willingness
11 to lead us in this charge, Jason. And I'm going to
12 turn it over to Susan for the negotiation piece. Thank
13 you.

14 MR. ADAMS: I guess since I'm backing up
15 essentially to introduce the issue, can we have the
16 clock not start until we actually start negotiating? I
17 mean, those are precious second ticking away.

18 (Laughter.)

19 MS. BRYAN: I think that's appropriate that you
20 make an introduction, and then we start at the 28
21 minutes.

22 MR. ADAMS: Yes. Thank you.

1 MS. BRYAN: So it's been a while since we've seen
2 each other and talked about this. Okay.

3 MR. ADAMS: Or we've seen each other too much.
4 No.

5 (Laughter.)

6 MR. ADAMS: Okay. In regards to this language we
7 were talking about at the end of last session, it's at
8 1000.318. It's on the screen. It's in regards to our
9 issue, number one, on our work group list. And the
10 work group item was actually review of the subpart D of
11 the regulations and statutory changes. And in
12 particular, we found the issue at demolition and
13 rebuilding of units, which was a statutory amendment,
14 and trying to come up with regulatory language for
15 that.

16 And so, what we've done and where we were at last
17 meeting is we introduced new language under Regulation
18 1000.318(d)(i), and the (d)(i) and (ii). And so, that
19 language is what we introduced. We started the
20 negotiation on that process. We had some back and
21 forth. In particular, one of the issues was on the
22 repayment issue, and we got that, I believe, resolved.

1 And so, at the end of the last meeting, we asked
2 for consensus. There was non-consensus for a few
3 items. One of the requests by a committee members was
4 specifically to bring it back to the work group, and so
5 we brought the issue back to the work group. And I
6 believe we've addressed the issues that were raised by
7 those committee members for that past dissent. And so,
8 I guess I'm ready now to formally, I guess, re-read
9 this in its current form, if that's how we want to
10 introduce it, and then begin the negotiation process.

11 And, again, just as a matter of practice, I just
12 want to say that there's a lot of detail work that goes
13 on behind the scenes that is being done. And in our
14 case for our work group, it was Giselle and Laura, and
15 I tell you, they've done a lot of good work. And so,
16 if you guys could please give them a round of applause
17 because --

18 (Applause.)

19 MR. ADAMS: My greatest fear was that we would
20 have all this work done and all this encapsulated on
21 the screen as changes were being made, and we wouldn't
22 translate that completely to you here at the work

1 group. And so, I've tried to make sure that everything
2 we negotiated and worked on in the work groups is
3 completely and in its entirety being presented to you
4 today. With that being said, there still might be
5 errors, so work with us.

6 So in its current form, (d) (i) reads, and it falls
7 under 1000.318. The heading of that is "When Do Units
8 Under Current Formula Assisted Stock Cease to be
9 Counted or Expire from the Inventory Used for the
10 Formula?" (a) (i) (ii) (B) and (C) are existing, and so
11 we add (d) and (i). And it says, "If a unit is damaged
12 or has deteriorated so that demolition or replacement
13 becomes necessary, the unit may continue to be
14 considered formula current assisted stock if (i) the
15 recipient certifies in writing to HUD within one year
16 that it has taken action to commence the demolition and
17 rebuilding of the unit, and (ii) the reconstruction of
18 the unit is completed within four years."

19 Number two, "At the end of the four-year period,
20 the unit shall not be considered current formula
21 assisted stock unless the recipient notifies HUD that
22 the unit has been completed as provided in paragraph

1 (d) (i) (ii). If the recipient fails to complete
2 construction on the unit within four years, HUD shall
3 not require the recipient to repay amounts allocated to
4 the recipient for such unit during that period."

5 And so, that is our proposal with some revisions
6 from our last meeting based on our work group work.
7 That's what we're presenting to you today. So I think
8 now it would be appropriate to start the clock.

9 MS. PODZIBA: Thank you, Jason. All right. I'm
10 going to open the floor for the discussion, and, Earl,
11 it looks like you are first.

12 MR. EVANS: Thank you. Earl Evans, Haliwa-Saponi
13 Indian Tribe. I've got no problem with supporting any
14 of the language with the exception of the last
15 sentence, because in terms of repaying the amounts,
16 even if the unit has not been repaid, that's the
17 tribe's allocation, and it was paid legally based on it
18 being formulated current assisted stock.

19 So I would think that rather than discussion about
20 repayment of debt allocation, then it would just simply
21 stop being formula current assisted stock at the end of
22 that four-year period if it's not rebuilt and just

1 leave it there, and just no future allocations --
2 include that as a part of the FCAS allocation. So if I
3 -- if I may, I would suggest revising that to that
4 effect, unless the committee has a reason or the work
5 group has a reason why it chose not to go that route.

6 MR. ADAMS: If I understand your question, exactly
7 what you've said is how it reads, that if the recipient
8 doesn't let HUD know that it wasn't completed within
9 that four-year period, it just drops away, and HUD
10 doesn't ask for repayment. That's how that should
11 read. If it's not clear enough, we can sure -- that
12 was the intent. That's what came out of the work
13 group.

14 MS. PODZIBA: Yes, Earl?

15 MR. EVANS: But the way it reads, it's as though
16 -- it's inferred that if you -- it says, "If the
17 recipient fails to complete construction, HUD shall not
18 require the recipient to repay." So it infers that if
19 you -- if you -- okay. All right. I gotcha. Okay.
20 My apologies.

21 MS. PODZIBA: Are there other questions or
22 comments on the proposal? Lafe?

1 MR. HAUGEN: Earl, are you admitting you were
2 wrong?

3 MR. EVANS: No, I'm admitting that you were wrong.
4 (Laughter.)

5 MR. EVANS: Yes. But I still don't see the need
6 for the sentence really.

7 MS. PODZIBA: Jason?

8 MR. ADAMS: So with no further comments or
9 questions on this, I would ask for a consensus.

10 MS. PODZIBA: Move it to the chairs? Rodger, did
11 you have a comment before it goes to the chairs for the
12 question?

13 MR. BOYD: Yes, I do. I'd like Jad, to just for a
14 clarifying point. One of the things that we wanted to
15 do is let everybody know, again, when does it start?
16 It's built in here, but I think for the record, we'd
17 like Jad to just clarify that.

18 MR. ATALLAH: Good afternoon. Jad Atallah with
19 HUD. I just want to clarify because we kind of
20 streamlined this language because it got really wordy.

21 But the way these timelines work is they are tied back
22 to the time that the unit is damaged or has

1 deteriorated.

2 So the one-year period is one year form the time
3 the unit is damaged or deteriorated, and the four-year
4 period is four years after the time the unit is damaged
5 or deteriorated. It's a total four-year period and not
6 a total five-year period. I just want to make that
7 clear.

8 MS. BRYAN: Thank you for that clarification.
9 We're hearing a call for the question. Are we ready to
10 call for the question? Okay. For the proposal in
11 front of us, for the addition of language to 1000.318,
12 do we have a consensus?

13 (No response.)

14 MS. BRYAN: Is there dissension? I can't see your
15 thumb, Karen. We need to see your thumb up or down,
16 please. Okay. Please state your reason for
17 dissension, and offer an alternative proposal.

18 MS. FOSTER: Karin Foster, Yakama Nation Housing
19 Authority. I agree with the proposal, and this is my
20 work group, but I support the change. But it seems as
21 though we just -- I suppose this can be in the preamble
22 to explain when the four years starts to run. But is

1 this ambiguous at all for those of who aren't sitting
2 around the table, I mean? The reconstruction of the
3 unit is completed within four years. Might some people
4 read that to mean within four years after the first
5 year? That's my only hesitation.

6 Chad brought it up and it sounded like HUD found
7 it ambiguous enough to need to make a note of it.
8 Should we make it more clear in the regulation? That's
9 why I hesitated.

10 MS. BRYAN: Thank you. Could you offer language
11 that would clarify that for this proposal?

12 MS. FOSTER: Well, if we say "within the next
13 three years" -- "within four years from when demolition
14 or replacement becomes necessary," I guess would be the
15 suggestion. I know it's additional words. I just want
16 to avoid any ambiguity for folks who are sitting around
17 the table, because, to me, if you look at that, it
18 could be read as five years. And people could be in
19 trouble if we aren't careful.

20 So "The reconstruction of the unit is completed
21 within four years of when the demolition or replacement
22 becomes necessary" -- "of when demolition or

1 replacement becomes necessary." Just tracking the same
2 language in (d)(i).

3 MS. PODZIBA: Okay. Are there comments or
4 questions on the proposal?

5 (No response.)

6 MS. PODZIBA: So I understand it's a re-proposing
7 of the whole language with that change.

8 MS. BRYAN: So we have a friendly amendment. Does
9 the proposer accept the amendment?

10 MR. ADAMS: Yes, I suppose, if it makes it clearer
11 for that purpose.

12 MS. BRYAN: So we have a new proposal on the table
13 with a friendly amendment. Do we consensus?

14 (Show of approval.)

15 MS. BRYAN: Okay. Looking around the table, I see
16 we have consensus, unless I'm missing thumbs. Okay.
17 Thank you. Good job, everyone.

18 (Applause.)

19 MR. ADAMS: Can I book that 20 minutes for some
20 other issue? No.

21 (Laughter.)

22 MS. BRYAN: Pool time. No, kidding. All right.

1 Thank you. We now have the next issue out of -- or
2 item out of the FCAS Work Group.

3 MR. ADAMS: The next item we have is item number
4 two from our master list, and it deals with the 515 --
5 well, it's actually -- the issue was local area cost
6 adjustment factors. And as many of you know, as a way
7 of introduction, I've brought this up in the past. The
8 last neg reg had asked for and commissioned a study to
9 be done, and it was an Indian housing operating cost
10 study done in 2008. And this document is really what
11 we centered our attention on in regards to any changes
12 under this proposal. And there's three different
13 sections of the regulations that will be amended.

14 But before we -- I'm not quite sure how to do
15 this. The issue at hand on this language that we would
16 proposal is that we could introduce it today. We could
17 start the clock discussing it. But the work group
18 doesn't final vote on this today because we did a TA
19 request for a data run. Once this USDA 515 information
20 is provided, then HUD has to reconstruct the formula
21 run to use this data as one of the local area cost
22 adjustment factors. And that work is very intensive,

1 very -- it's going to take some time. And what we were
2 told is, you know, sometime this fall that will be
3 done.

4 The work group took the position that we've made
5 the changes. There's -- in this document there was
6 five recommendations that the study had made to HUD
7 essentially because they commissioned the study. And
8 out of those five recommendations, the number one
9 recommendation was to add 515, the USDA 515 Program as
10 the cost adjustment factors that they collect as a
11 supplement to the AEL and the FMR. And so, that's what
12 we change in the regulations and the mechanics of the
13 formulas by adding that 515 factor in.

14 But again, we're not willing to do this today for
15 a final vote until we see how that -- this study says
16 that there's really not a lot of change in funding for
17 a lot of people, but, again, there is a change. And
18 so, people don't want to put -- you know, give thumbs
19 up or thumbs down on this until we see that data. And
20 so, that's the recommendation from the work group.

21 And I don't know how to -- how to do this. I
22 mean, it's kind of an odd recommendation, but we're

1 asking the committee to reserve vote on this issue
2 until next year.

3 MS. BRYAN: And to clarify, is that reserve vote
4 and discussion?

5 MR. ADAMS: Well, I don't know because we can talk
6 about the language. We can start the clock, discuss
7 the language. But, again, I believe everybody's
8 questions are going to be how this affects them.

9 MS. BRYAN: Right. So might I suggest that we are
10 aware of this, and when we see the data we save our two
11 hours for that, and spend two hours on an issue that's
12 ready? And if we have time at the end to start a
13 discussion on it, we can. Does that sound good?

14 MR. ADAMS: If that's -- yes. Thank you.

15 MS. BRYAN: Karin?

16 MS. FOSTER: I think if we're going to be voting
17 on it at the next meeting, and I think that is
18 advisable since we don't have the data, it probably
19 makes sense to be talking about it then. But I also
20 think that the Indian housing operating cost study was
21 very valuable to our working group in deciding that
22 this was a relevant source to select. So if, you know,

1 between now and our next meeting when we're actually
2 able to see what the data looks like, folks can take a
3 look at that and probably understand the reasons why we
4 think it's important for it to be here.

5 If I were arguing in favor of it, it would be just
6 to reiterate the kinds of things that I'm finding in
7 the study, including the weaknesses of the AEL factor
8 and the need to include something else.

9 MR. ADAMS: Thank you. Carol?

10 MS. GORE: Yes. I'd just like to make a comment,
11 not about this particular proposal because I think
12 Jason asked two questions. He asked do we want to have
13 a conversation about the proposal, and also do we want
14 to consider an actual vote at a meeting held a year
15 from now.

16 So I just have one concern, and it's not related
17 to how I feel about this particular proposal. But the
18 meeting in August of 2015 is for a specific purpose. I
19 have no idea how long it will take this committee to
20 get through a year's worth of work from a six-member
21 study group. I am concerned -- I'm not concerned about
22 setting aside two hours. I'm concerned about setting

1 aside two hours for anything and everything that might
2 not be considered at this meeting, and we began to
3 whittle down valuable time that's really been dedicated
4 to the study group.

5 I'm not making a proposal. I just want to go on
6 the record as having a concern for pre-planning that
7 time. And it's certainly not in opposition for this
8 particular proposal or the idea that Jason proposes.
9 But I would hate to see us gobble up that time in two-
10 hour increments when it's a year from now and we have
11 no idea how complex the information will be that comes
12 out of the Study Group a year from now. Thank you.

13 MS. BRYAN: Thank you, Carol. You know, there was
14 discussion and concern about the time that we might
15 need, you know, an additional meeting, but we'll see
16 how it plays out in the next two days. But that was
17 brought up at our regional caucus. And in fairness to
18 this group and all the work that we've done thus far,
19 it would be a shame to run out of time and not be able
20 to get to some of these issues that are well thought
21 out and almost ready. Jason?

22 MR. ADAMS: Just, again, for the record, from the

1 FCAS Work Group, this is the only item that we would do
2 this and propose this with. All of the rest of the
3 items that we were charged with completing or doing our
4 due diligence on we've completed, and we are not
5 bringing language forward, or we've completed and we
6 have language prepared for negotiations today. This is
7 the only item we would ask for this on.

8 MS. BRYAN: All right. So I would propose that we
9 -- if we have time for discussion on this issue that we
10 do it at this meeting if possible. And if not, we'll
11 see what the next agenda schedule is going to look like
12 based on everything that we have coming forward. And
13 moving onto the next item, which is ready to be
14 discussed, and introduce that, and start to negotiate
15 on the next item.

16 MR. ADAMS: The next item then we have coming out
17 of the FCAS Work Group is the item number three from
18 our list, master list. And this item specifically was
19 given to us to deal with the issue of mutual help
20 conveyance, and that's units that have reached DOFA,
21 plus 25 years, but haven't conveyed.

22 And so, what we proposed to the committee today is

1 a new revised Section 1000.318(a), and you see the
2 proposal is on the board. And it's important to note
3 right off the beginning here that the documents that
4 were handed and what's going to be on the screen, there
5 is a majority and minority opinion on this -- on this
6 item coming out of our work group. And so, with that
7 being said, I guess I can go ahead and introduce the
8 language here, and I'll read it if that's what's
9 preferred.

10 The new revised section 318 would add number
11 three, and it would say, "A mutual help or turnkey
12 three unit not conveyed after the unit becomes eligible
13 for conveyance by the terms of the MAHOA, may continue
14 to be considered formula current assisted stock only if
15 a legal impediment prevented conveyance, the legal
16 impediment continues to exist, the tribe, TDHE, or IHA
17 has taken all other steps necessary for conveyance, and
18 all that remains for conveyance is a resolution of the
19 legal impediment. And the tribe TDHE or IHA made the
20 following reasonable efforts to overcome the
21 impediments:

22 (i) no later than three months after the unit

1 becomes eligible for conveyance, the tribe, TDHE, or
2 IHA creates a written plan of action, which includes a
3 description of specific legal impediments as well as
4 specific ongoing and appropriate actions for each
5 applicable unit that will be taken to resolve the legal
6 impediments within a 24-month period; and (ii) the
7 tribe, TDHE, or IHA has carried out or is carrying out
8 the written plan of action; (iii) the tribe, TDHE, or
9 IHA has maintained documentation of undertaking a plan
10 of action; and (iv) in any case no mutual help or
11 turnkey three unit will be considered FCAS 24 months
12 after the date the unit become eligible for conveyance
13 by the terms of the MHOA.

14 FCAS units that have been -- have not been
15 conveyed due to legal impediments on the effective date
16 of this regulation shall be treated as having become
17 eligible for conveyance on the effective date of this
18 regulation."

19 And what we have below that is the minority
20 position. And the minority position states, and there
21 is a typo in here, and I'll point it out when I get to
22 it. It says, "The statute at 302(b)(i)(B) allows

1 tribes, TDHEs to continue counting a unit that remains
2 not conveyed due to legal impediments. The proposed
3 regulation imposes time limits not found in the statute
4 or in the current regulations.

5 The minority agreement -- the minority agrees with
6 the requirement of additional criteria to provide a
7 more objective standard of defining" -- there's the
8 word "of" missing there -- "reasonable efforts.
9 However, removing units after a specific time, 24
10 months, ignores the fact that there are legitimate
11 legal reasons why units cannot be conveyed.

12 Dispute their reasonable efforts -- despite" --
13 excuse me -- another typo. "Despite the reasonable
14 efforts being made by TDHE -- tribes, TDHEs, if the
15 time limitations were removed, the minority view would
16 accept the proposed regulation."

17 So that's it. That's what we propose to the
18 committee, and so I would open this up for discussion.

19 MS. BRYAN: Okay. Thank you, Jason. We'll turn
20 this over to the facilitator.

21 MS. PODZIBA: Okay. The floor is open for
22 discussion, questions. Are there any clarifying

1 questions with regard to the proposal? Carol?

2 MS. GORE: Just a clarifying question. How many
3 units are we talking about, Jason? And do you have any
4 idea how many today and how much money that would be in
5 the FCAS component of the formula? Thank you.

6 MR. ADAMS: Somebody from the work group can
7 correct me if I'm wrong, but I believe the figure that
8 was thrown out this morning was 12,000. Approximately
9 12,000 units. And I think it's important to note that,
10 you know, we do have the minority position down here.
11 I just wanted to make note that the majority position
12 was that there should be an end. There should be a
13 time that these units stopped being counted. And so
14 that's why the 24 months from the majority position was
15 put in here and agreed to on that basis.

16 MS. PODZIBA: Okay. Thank you. Yes, Karin?

17 MS. FOSTER: I'd like to ask that -- Karin Foster,
18 Yakama Nation Housing Authority. I'd like to ask that
19 we look back at Section 302(b)(i)(B). Part of the
20 minority position, of course, is that this would be
21 more restrictive than 302(b)(i)(B). But I would argue
22 it may actually be inconsistent. 302(i)(B) states that

1 "A recipient shall not be mandatory, shall not be
2 considered to have lost the legal right to own,
3 operate, or maintain the unit if the unit has not been
4 conveyed to the home buyer for reasons beyond the
5 control of the recipient."

6 And then later in the statute, reasons beyond the
7 control of the recipient are defined to mean
8 essentially legal impediments. Lists three types of
9 legal impediments, and then finishes with "any other
10 legal impediment." So what that appears to mean to me
11 is that the recipient shall not be considered to have
12 lost the legal right to own the unit if there is a
13 legal impediment. And what this regulation does is it
14 says even if there is a legal impediment, after two
15 years it shall not -- no longer be counted.

16 So I think you have a statute that says that if
17 there is a legal impediment, it shall continue to be
18 counted. And what we're looking at is a regulation
19 that says, no, we're not going to follow that "shall
20 that" mandatory language. We're going to say after two
21 years it shall not be counted, and I think that's
22 inconsistent, and that's why -- the primary reason I

1 would oppose the regulation.

2 MS. PODZIBA: Carol?

3 MS. GORE: Thank you. So the reason I asked my
4 clarifying questions is because I wanted to understand
5 how significant this might be. And if our math is
6 anywhere close to correct, if it's 5,000 a unit per
7 year, we're talking about \$60 million. It seems like
8 it's material to this committee.

9 And I guess my follow-on question would be, how do
10 we define a "significant legal impediment," because
11 that's a lot of money on the FCAS side, and two years
12 is a significant amount of time even for a court
13 action. So I'm just wondering what -- I don't know how
14 to define that because we don't have that issue, and so
15 I don't know what the work group talked about. It
16 would help to understand that so that I had an
17 understanding of supporting the minority position, it
18 would really be suggesting that that \$60 million just
19 keeps coming out of FCAS.

20 So I'd appreciate a better understanding of what
21 is a legal impediment, and why do we have \$60 million
22 currently obligated under that -- under these

1 conditions. That would be helpful. Thank you.

2 MS. PODZIBA: Karin?

3 MR. ADAMS: Can I answer?

4 MS. PODZIBA: I thought Karin was going to answer.

5 MS. FOSTER: I only am just going to ask that we
6 have 302(b) brought up. Oh, there it is. Okay. The
7 next page, please, of the statute identifies or, you
8 know, defines what a legal impediment is and gives
9 examples of legal impediments. It would be recognized
10 as such. It's statutory.

11 MR. ADAMS: I guess from the work group
12 perspective, I just wanted to add that the -- as Karin
13 has mentioned, under (d) there are three distinct legal
14 impediments, but we are proposing this language to be
15 in concert with (iv) under there, which says "other
16 legal impediments." That's the purpose and intent of
17 this language is to encapsulate those other legal
18 impediments.

19 MS. PODZIBA: Karin?

20 (No response.)

21 MS. PODZIBA: Yes?

22 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo

1 Housing Authority. I am one in the position with the
2 minority. And while I do recognize -- we do recognize
3 that there is -- we want to move these units to
4 conveyance eventually, there are some realities.

5 The realities of it on the Navajo is that there
6 are various scenarios of legal impediments, some things
7 going to probate, and that's part of Navajo Nation's
8 laws with respect to ownership of the home, lease site
9 ownership, home site leases. And that's then
10 exacerbated when it's at the Bureau of Indian Affairs.

11 So limiting it to just 24 months would just not be
12 equitable for an automatic -- for automatic reduction
13 of the FCAS funding that we still are held responsible
14 until the full conveyance occurs.

15 So those are some reasonings that we had with
16 respect to the minority position that we are
17 maintaining at Navajo. And I believe we had a regional
18 caucus to other tribes in the Southwest that had those
19 same concerns with respect to a restriction of just the
20 24 months. Thank you.

21 MS. PODZIBA: Annette?

22 MS. BRYAN: Annette Bryan, Puyallup Nation Housing

1 Authority. Did you have a -- is there a proposal -- an
2 idea for a possibility of a 36-month time limit or
3 something that's more acceptable that would help us
4 move this along?

5 MS. YAZZIE: I'll respond. You know, without
6 analyzing, I couldn't even provide a response to that.

7 Though what we did say is the plan of action that's
8 identified in the proposal as it stands now with the
9 majority, we didn't have a problem with because that
10 specific plan of action is specific to that tribe. And
11 in that plan of action, you would have described
12 timelines to try to expedite because --

13 And we understand the need to try to expedite the
14 conveyance because, after all, it's costing us more
15 money to maintain that, and we know that. It's just
16 we're just held -- we're just legally binded or
17 withheld from a legal perspective to not move towards
18 conveyance, and that's really beyond our control. And
19 we're doing every attempt. And when you look at the
20 volume on the Navajo, it's just that.

21 So with respect to the plan of action that's
22 identified here, we're fine as -- with what's being

1 proposed without the 24-month as the very restrictive
2 timeline. Is it 36 months? Is it 42 months? I don't
3 know without some analysis with what we have in the
4 pipeline, but I don't know what other tribes have, too,
5 on their plate with respect to a timeline.

6 MS. PODZIBA: Jemine?

7 MS. BRYON: Thank you. Can I just ask Jad to
8 clarify the statute, 302(b), to address some of the
9 issues that Karin raised about its interpretation?

10 MR. ATALLAH: Thank you. Well, I guess our
11 position is that we think there's a legal basis if this
12 committee was to set any sort of time limit on funding
13 these units past their date of full availability. We
14 think there is a legal basis for a few reasons, but
15 understand this is, you know -- this may be an issue in
16 dispute.

17 But what we're doing here is we're defining the
18 term "reasonable efforts." And we're not saying that
19 there's no more legal impediment, but what we're doing
20 is defining the term "reasonable efforts." So the
21 standard in the statute is you have to make reasonable
22 efforts. So the standard in the statute is you have to

1 make reasonable efforts, and there has to be a legal
2 impediment. You need both those things.

3 So what the work group did was try to define what
4 the term "reasonable impediment" is and then put a time
5 period on that. So we think that if this committee was
6 to define "reasonable efforts" as capped at two years,
7 then there's a legal basis to do that.

8 Additionally, the statute also, if you look at
9 number three up there, it says one of the factors that
10 this committee is supposed to look at or can look at is
11 other objectively measurable conditions as the
12 Secretary and the Indian tribes may specify. We can
13 look at other factors that reflect need under the
14 statute in a two-year period on how much funding you
15 get for a homeownership unit that passes DOFA date,
16 plus 25 years. This could be one of those objectively
17 measurable conditions.

18 So we think there is a legal basis to do it. We
19 wouldn't have legal concerns if this committee was to
20 put any sort of time limit on it.

21 MS. PODZIBA: Thank you. Were there any other
22 questions or comments?

1 (No response.)

2 MS. PODZIBA: Shall I go through section by
3 section, Jason?

4 MR. ADAMS: If there's no more comments, I guess
5 to move us along, I would ask for consensus on this.

6 MS. BRYAN: We have a call for the question. Is
7 this committee ready to move for a consensus?

8 (Show of approval.)

9 MS. BRYAN: Okay. Based on what's in front of
10 you, the new revised Section 1000.318(a)(iii) and the
11 following (i), (ii), (iii), and (iv). Do we have
12 consensus on the proposed language?

13 (No response.)

14 MS. BRYAN: Do we have consensus on the proposed
15 language? Need to see everybody's thumb up or down,
16 please.

17 (Show of approval/disapproval.)

18 MS. BRYAN: Okay. We have a lot of dissension,
19 so, Karin, I saw your thumb first. Would you like to
20 offer an alternative?

21 MS. FOSTER: I could offer the alternative of
22 removing all of the references to time. Let's see. In

1 addition to the 24 months, I think that the three
2 months is a little short as well, and I guess I would
3 as an alternative suggest taking off the first part of
4 the clause of (i), "no later than three months after
5 the unit becomes eligible for conveyance," and just
6 simply saying the tribe, TDHE, or IHA, starting the
7 sentence there, and ending it with (iii), and dropping
8 off little (iv).

9 MS. PODZIBA: Okay. There's an alternative
10 proposal on the table, which it also deletes (iv).
11 Delete all of (iv), Karin? Was that your proposal?

12 MS. FOSTER: (Off audio).

13 MS. PODZIBA: Okay. Are there any questions or
14 discussion to be had on the alternative proposal?
15 Karin?

16 MS. FOSTER: I'm sorry. Also after "legal
17 impediments" in (i), the "within the 24-month period"
18 would come off. "Legal impediments." The sentence
19 would end with the word "impediments," or actually if
20 there's -- the clause would end with "impediments."
21 All the way through "period." Thank you.

22 MS. PODZIBA: Okay. Aneva?

1 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo
2 Housing Authority. I would agree with the proposals
3 that Karin has mentioned with respect to timeframe. I
4 was also -- it was brought to my attention, turnkey
5 three -- Navajo doesn't have turnkey three, but I know
6 that other tribes and TDHEs have turnkey three.

7 And with respect to the first sentence, if you can
8 scroll it up just a little bit. Where it says "a
9 mutual help or turnkey three unit not conveyed after
10 the unit becomes eligible for conveyance by the terms
11 of the MHOA." I was informed that the turnkey three
12 does not reside under the terms of an MHOA, and it's a
13 separate agreement perhaps that might need some change
14 with respect to the type of agreement a turnkey three
15 is subject to, to be inclusive of the terms of that
16 respective agreement.

17 MS. PODZIBA: Does -- is there a suggestion for
18 how to make that change?

19 MS. YAZZIE: Maybe just to be explicit to say
20 "conveyance by the terms of the MHOA and/or the turnkey
21 three agreements," something that relates to that. We
22 do -- there are very few turnkey three, as I

1 understand, held by tribes, but there are some that are
2 affected by that language.

3 MS. PODZIBA: Okay. Karin, that's a proposed
4 amendment to your proposal. Is that acceptable to you?

5 MS. FOSTER: That would be acceptable. I'm not
6 sure I think the word "and" with a slash is necessary.

7 Probably just the "or" would do it. If that was
8 acceptable to Ms. Yazzie, then I would accept that
9 friendly amendment.

10 MS. PODZIBA: Okay.

11 MS. YAZZIE: That's fine.

12 MS. PODZIBA: Is there any other discussion of the
13 proposal on the table as amended? Karin?

14 MS. FOSTER: Not to be a stickler, but it should
15 be "turnkey three agreement," I think, singular.

16 MS. PODZIBA: Carol?

17 MS. GORE: I was just going to ask a clarifying
18 question. Maybe this is for HUD. This is new
19 language. This gives more incentive or more
20 clarification to those who are challenged with their
21 conveyances. I'm seeing this as an improvement to what
22 we have today. Am I reading that correctly? Is this

1 helpful? Yes. Yeah. Okay, thank you. Thank you.

2 MS. PODZIBA: Okay. I believe Jack asked for a
3 call for the question, so I'm going to turn it back to
4 the chairs.

5 MR. SAWYERS: I don't see that it's any better
6 than we already have. I don't think there's any, so I
7 guess I couldn't agree with it because I think we
8 already have that much right now. So I was asking more
9 than do you think it's better than what we have now is
10 what I'm really asking from HUD's standpoint.

11 MS. PODZIBA: Yes?

12 MR. ATALLAH: I think with the three-month
13 timeframe in there that was struck out, from our
14 perspective that's better than what we have now.
15 Without the three months, it's not much better. So we
16 need a clear start date in order --

17 Our goal here was to try to give HUD clearer
18 guidance in terms of what "reasonable efforts" means
19 when we implement this. And without any sort of start
20 date on what a tribe TDHE or IHA has to create a
21 written plan of action and then start that clock, it's
22 really no better than what we currently have now.

1 MS. BRYAN: I hear a call for the question. I was
2 going to make an offer that is six months a reasonable
3 timeframe to give HUD the -- what they need in terms of
4 starting a clock, so to speak. So just a question.

5 MS. PODZIBA: I'm not sure if you know.

6 MS. BRYAN: Friendly amendment to the friendly
7 amendment.

8 MS. PODZIBA: Do you want me to take that as an
9 amendment or do you want to call the question, and then
10 it can be --

11 MS. BRYAN: I'll just call the question is what it
12 is. I have a call for the question. So based on the
13 proposal in front of us with the amendments, do we have
14 consensus?

15 (Show of approval/disapproval.)

16 MS. BRYAN: We do not have consensus. And just
17 for clarification, did we need the original proposer to
18 accept the amendments before we call the question, or
19 have we already passed onto that new proposal?

20 MR. ADAMS: Are you asking me? The original
21 proposal was voted down.

22 MS. BRYAN: Thank you. I just wanted to clarify

1 for my following. So I would like to offer a new
2 proposal to (i), "No later than six months after the
3 unit becomes eligible for conveyance, the," and leave
4 it at that.

5 MS. PODZIBA: Okay. There's an alternative
6 proposal on the table. Earl, did you have some
7 comments on that?

8 MR. EVANS: Earl Evans, Haliwa-Saponi. Would
9 there be -- I guess when I look at that, the thing --
10 the thing that I think about is I don't see what's
11 wrong with just simply reporting that annually in your
12 Indian housing plan instead of within six months or
13 whatever. Is that something that could just simply be
14 reported in the next Indian housing plan after it's
15 become eligible for conveyance that you have these
16 units that have these legal impediments, describe what
17 they are and what you plan to do about it as a part of
18 your annual Indian housing plan, and in your annual
19 performance report you just simply report on that every
20 year. Is there any reason why that couldn't occur as
21 opposed to having some other special reporting process?

22 MS. PODZIBA: Annette?

1 MS. BRYAN: Oh, thank you. I'm just hearing the
2 conversation that the funding is continuing to be
3 allocated even after the time period in the original
4 regulation of the DOFA or the useful life when the
5 conveyance is supposed to happen. So I'll go back to
6 Jason to see the intention of this language to answer
7 your question, Earl.

8 MR. ADAMS: From the work group, when we had
9 discussions on this issue -- I'm going to try to make
10 sure I convey this correctly. But the issue that I
11 recall happening in that discussion was the issue of
12 your conveyance, that it happens -- the process happen
13 when you get your formulary response form, and you
14 estimate. And that's when HUD says here's all of your
15 mutual help units, and by our records, these ones are
16 going off your formulary response form.

17 And that's when it triggers you to respond to them
18 and say these shouldn't go off for these reasons. As a
19 matter of practice, that's what we talked through in
20 the work group is that what's happens during that
21 formulary response form period.

22 MS. PODZIBA: Is there further discussion of the

1 proposal on the table which restores a time period
2 currently six months after the unit becomes eligible
3 for conveyance? Is there any further discussion or
4 comment on that proposal?

5 (No response.)

6 MS. PODZIBA: Okay. I'm going to turn it back to
7 the tribal chairs.

8 MS. BRYAN: I see that we may be ready to call for
9 the question on this. We have consensus on the
10 proposal in front of us. Up or down. I need to see
11 your thumbs.

12 (Show of approval/disapproval.)

13 MS. BRYAN: Okay. So we do have dissension, and
14 so this proposal has died.

15 MS. PODZIBA: There's an additional hour and 35
16 minutes on the clock for this matter, and I'm wondering
17 if anybody has intentions of offering an additional
18 proposal. Yes, Rodger?

19 MR. BOYD: We'd like to propose that it be -- that
20 it be stated that "no more than three years" under (i).

21 Oh, I'm sorry, (iv).

22 MS. PODZIBA: Thirty-six months?

1 MR. BOYD: So it would be 24 months. It would be
2 more than three years?

3 MS. PODZIBA: So is it where -- at (iv) where it
4 says "24 months," it would change to "no more than
5 three years after?"

6 MR. BOYD: Correct. Correct.

7 MS. PODZIBA: Okay. Are you working from the
8 original proposal or the last proposal that was on the
9 table?

10 MR. BOYD: From the original.

11 MS. PODZIBA: From the original, okay. So from
12 the original, please, "no more than three years"
13 replaces "24 months" in number (iv). Is that the same
14 in (i), one, or is that still 24 months?

15 MR. BOYD: It would change, correct.

16 MS. PODZIBA: So in both places, "24 months"
17 changes to "no more than three years."

18 MR. BOYD: Correct.

19 MS. PODZIBA: Okay. I'd like to open the floor to
20 the new proposal that's just been put in for
21 negotiations. Are there any comments or discussion to
22 be had on this proposal?

1 (No response.)

2 MS. PODZIBA: If there's none, then I'll turn it
3 back to the chairs.

4 MS. BRYAN: I hear the call for the question. So
5 based on the proposal that's in front of you, do we
6 have consensus?

7 (Show of approval/disapproval.)

8 MS. BRYAN: Any dissensions?

9 MS. PODZIBA: Karen?

10 MS. FOSTER: Am I the sole dissension?

11 MS. BRYAN: Yes, ma'am.

12 MS. FOSTER: I'm just not certain that a 36-months
13 period would be sufficient. I'd be willing to consider
14 it if we wanted to table it and somebody wanted to talk
15 to me. But I really think that for the kinds of
16 problems that we have with the BIA -- we have
17 conveyance approvals that, I mean, have been very
18 difficult to get done. We've tried different
19 approaches. We've tried, you know, separating out the
20 land issues from the house sometimes to try and get
21 leases canceled separate from bills of sale processed,
22 and it is taking a very long time.

1 So I think that even 36 months may not be enough
2 to resolve any legal impediments that would be met, so
3 I guess that's why I would not be able to support the
4 change.

5 MS. PODZIBA: Earl and then Jason?

6 MR. EVANS: Can you scroll back down to the top of
7 that for me, please? Okay. I voted in favor of it,
8 but after we voted, one of the things that I noticed is
9 that Karin had made an amendment earlier that was
10 necessary that we did not capture when we started back
11 over with the original language. And that is the fact
12 about the turnkey having a different type of agreement.

13 So in that original language, if that's going to
14 be what we're working off of, we should probably go
15 ahead and include that turnkey agreement portion that
16 was done earlier to that original language. Thank you.

17 MS. PODZIBA: Okay. That's an amendment. Rodger,
18 is that an acceptable amendment to the proposal?

19 MR. BOYD: Yes.

20 MS. PODZIBA: Okay. Thank you, Earl. Jason, you
21 were up next.

22 MS. BRYAN: Was the proposal voted down before we

1 continue our conversation about it?

2 MS. PODZIBA: Oh, I'm sorry. You're right.

3 You're right.

4 MS. BRYAN: I was just -- okay.

5 MS. PODZIBA: Sorry.

6 MR. ADAMS: Well, I guess my comment is a point of

7 order, and I understand where you're coming from,

8 Karin. But going back to the committee-approved

9 protocols, I believe you have to offer an alternative.

10 MS. FOSTER: My alternative would be that we stay

11 with the regulation as is.

12 MR. ADAMS: Just to comment, there is no

13 regulation as is. This is the new regulation that

14 would govern.

15 MS. FOSTER: There is currently a 318, and my

16 alternative would be to not revise -- you know, not

17 amend the regulation in this way.

18 MS. PODZIBA: Jemine?

19 MS. BRYON: I just have a question, Karin. When

20 you describe the different type of potential

21 circumstances that these units go through that makes it

22 difficult to meet a timeframe for conveyance, how early

1 on in the process do you start addressing those issues?

2 I mean, is there an opportunity to start addressing

3 them earlier than the 25-year point, 24-year point?

4 And how many units do you think out of the total number

5 of units fall into this problematic mode?

6 MS. FOSTER: Are you asking me how many units at

7 Yakama have legal impediments and when they were -- I'm

8 not sure I understand the question.

9 MS. BRYON: That you think may not -- that you

10 think may not be able to be resolved in three years.

11 MS. FOSTER: I don't have a number for that. I

12 mean, I --

13 MS. BRYON: Is it a lot? Is it enough to --

14 MS. FOSTER: Is it enough to make a difference in

15 terms of being able to continue receiving a subsidy

16 while you're trying to get the unit conveyed while you

17 still have to ensure it and maintain it? Yes, it is

18 worth it, I think, to Yakama.

19 MS. BRYON: Okay, thank you. And just one other

20 -- we just need to clarify a double negative issue in

21 number four and return it to "three years after the

22 date." Take out the "no more than." Just "three

1 years," yeah. It's just a grammatical.

2 MS. PODZIBA: So there is no proposal on the table
3 as I understand it. There's discussion about the
4 dissension. Does anyone want to offer an alternative
5 proposal? I suppose Karin offered a proposal which is
6 to not change the regulation at all. Should we discuss
7 that proposal? Jason?

8 MR. ADAMS: Again, I guess I would just go back to
9 the work group discussion that happened on this issue.
10 And I've been hesitant to say this, but, you know,
11 there was a pretty good amount of folks in the room
12 that was concerned about, and I think the term used was
13 -- over and over again was "fair and equitable." That
14 there are a lot of folks that do their due diligence to
15 make sure these conveyances happen on time as they're
16 supposed to, and that these units come off the count.

17 And so, that -- I just want to make that statement
18 that that did come up time and again in the work group
19 that, you know, to be fair and equitable to the rest of
20 those that are doing these conveyances on time as they
21 should be, that by some that aren't doing their due
22 diligence, or if there's legal impediments, whatever

1 the circumstances may be. The idea was that at some
2 point in time, these units cease to be counted.

3 MS. PODZIBA: Earl?

4 MR. EVANS: Earl Evans, Haliwa-Saponi. I would
5 like to offer an alternative proposal. And my proposal
6 is what we have here in terms of the language, the only
7 change that I would make as a part of my proposal is I
8 would keep what we have here and delete item four. And
9 if we do that, I'm of the opinion that we accomplish
10 the goal of defining what constitutes reasonable
11 efforts, and at the same time are consistent with the
12 statute which requires that the units still be counted
13 as a dwelling unit.

14 MS. PODZIBA: Okay. I'd like to open the floor
15 for discussion of the proposal offered by Earl. Aneva?

16 MS. YAZZIE: Maybe as a point of order, I think we
17 had a proposal that was offered by Karin with existing
18 language, but no action was taken with respect to that
19 proposal before another proposal could be considered.

20 But to add further, you know, on the Navajo -- now
21 I'm kind of going to flip flop I think with respect to
22 our issue primarily with a lot of the conveyance are

1 the master leases. With the BIA concerting to TAMS, it
2 is requiring other business rules with respect to going
3 back and re-surveying. And on the Navajo we have an
4 area called checkerboard area which are allotment --
5 allotted land where some huts are built, which is a
6 huge legal impediment.

7 And yet, to just wipe it off of FCAS and not get
8 the funding, and yet being held responsible for the
9 insurance of that unit and any administrative
10 requirements to carry out, we have an issue there. So
11 I think with respect to the process that we're
12 undergoing now, Karin did make a proposal to look at
13 the default of the existing regulations as is, should
14 be considered before other proposals are offered.

15 MS. PODZIBA: All right. I apologize for that
16 error. So let's put Karin's proposal on the table,
17 which is essentially to end discussion on this matter,
18 and to just have no change to the regulations. Is
19 there further discussion of that proposal?

20 (No response.)

21 MS. PODZIBA: Am I not correct? If there's -- the
22 proposal is essentially --

1 SPEAKER: (Off audio.)

2 MS. PODZIBA: So that was not a proposal, Karin?

3 MS. FOSTER: Point of clarification. Do our
4 protocols require that we provide an alternate
5 proposal? If so, then I guess it's a proposal. I
6 mean, all I'm saying is that I don't see an alternative
7 to what we have now that I feel we would support. So
8 if that means we -- it seems counterintuitive to vote
9 on a regulation that's already a regulation. But if --

10 MS. PODZIBA: So someone help me with process. Is
11 this a -- essentially if it passes, then it seems to me
12 the matter would be closed. Yes?

13 MR. ADAMS: I guess my concern is the alternative
14 to that is if the proposal is the current regulation
15 and we vote against it, does that mean the current
16 regulation doesn't exist?

17 (Laughter.)

18 MS. PODZIBA: So is the proposal no change to the
19 current regulations? I suppose that would be it. Just
20 help me here. I've never seen this situation before.

21 MR. ADAMS: I guess, again, I would that the idea
22 was that we have these proposals and that accepting the

1 regulation is not a proposal.

2 MS. PODZIBA: Karin, is yours a formal proposal,
3 or was it just a comment that if you had to -- if you
4 had to -- if the ground rules require you to offer a
5 proposal, that's what it would be?

6 MS. FOSTER: The latter.

7 MS. PODZIBA: Okay. All right. Thank you. So I
8 think if it's okay with everyone, then we'll move to
9 Earl's proposal, having accommodated Karin's comment.
10 So I would like to reopen discussion on Earl's proposal
11 that's before you. It removes paragraph four and has
12 the "no more than three years." Is there discussion or
13 questions? Aneva, is your -- okay.

14 Are there any further comments on the proposal on
15 the table?

16 SPEAKER: (Off audio.)

17 MS. PODZIBA: Clarify what the proposal is? Okay.
18 So it's the original proposal with the change that at
19 the end of (i) "changes within a 24-month period to no
20 more than three years," and removes (iv). Earl?

21 MR. EVANS: Thank you. Earl Evans, Haliwa-Saponi.
22 I just wanted to clarify something with it that I

1 think will address Karin's concerns that she expressed
2 earlier about how it may take you longer than three
3 years to resolve the legal impediments.

4 If you read the first paragraph, it just talks
5 about appropriate actions for each applicable unit that
6 will be taken to resolve the legal impediments. You
7 just have to report the actions you're going to take.
8 It doesn't mean the legal impediments will be removed
9 because of those actions.

10 MS. PODZIBA: Karin?

11 MS. FOSTER: Thank you, Earl. I think that
12 deleting paragraph four goes a way towards that, yes,
13 but still we have a requirement that the plan state
14 steps that will be taken to resolve the legal
15 impediments within no more than three years. I don't
16 think that's unreasonable. I did support a proposal
17 that there be, you know, a plan developed, but I think
18 that by implication that suggests that if it's not
19 resolved within three years, it won't be considered a
20 reasonable effort. So even leaving the three years in
21 (iii) creates a problem for me.

22 MS. PODZIBA: Yes?

1 MS. BRYAN: I just wanted to answer a question
2 that was asked earlier in our protocols under good
3 faith. It says, "If a committee member opposes a
4 proposal, he or she shall state the reason for that
5 opposition and propose an alternative to the proposal
6 that meets that committee member's concerns for further
7 consideration by the committee." So that's where that
8 comes from.

9 MS. PODZIBA: Yes?

10 MS. FOSTER: Well, I did make a proposal actually
11 earlier on, so if that would satisfy that by saying I
12 would go back to my original counter-proposal, then
13 I'll do that, you know. But that proposal did not
14 pass, and that was to remove the references to time.

15 MS. PODZIBA: I wonder if Annette's question to
16 you is, is there a way to include some timeframe that
17 could make this proposal satisfactory to you? It seems
18 to me the dissension is around a timeframe versus no
19 timeframe. And I'm wondering if you have any thoughts
20 about how possibly to make that work.

21 MS. FOSTER: No, not at this time.

22 MS. PODZIBA: Okay.

1 MR. EVANS: Would it -- would it address your
2 concerns, Karin, if between -- if you take the last
3 sentence at -- part of the sentence at (i) and say that
4 "and appropriate actions for each applicable unit that
5 will be taken to attempt to resolve the legal
6 impediments within no more than three years?"

7 MS. PODZIBA: Carol?

8 MS. GORE: Thank you. I have no comment about the
9 specific proposal, but I really wanted to go back to
10 what I believed was the catalyst for this coming to the
11 committee in the first place, which is there is
12 language in the President's budget that really already
13 speaks to conveyance units, a timeframe. And if I
14 understood the catalyst correctly, the reason that we
15 at this table wanted to consider it here was so that
16 the tribes had some input into that decision rather
17 than having Congress and the President in their
18 language take care of it.

19 So that mattered to me a lot that the decision
20 lies with us and not with somebody else. So I just
21 wanted to make that statement on the record. Sometimes
22 it's helpful to know why we're actually talking about

1 this. It's really not about the money so much as it is
2 we want the decisions to be in the right place. And I
3 think this is the right place. So thank you for
4 allowing me to make a comment.

5 MS. PODZIBA: Karin, I'm wondering if you're going
6 to respond to Earl's effort to try and make it
7 something that's agreeable to you, and/or earlier you
8 suggested perhaps tabling this for now so that you have
9 an opportunity to speak with some people offline. And
10 I was wondering if that would be a way to go forward
11 and just maintain the time that we have.

12 MS. FOSTER: That would be acceptable to me, and
13 particularly if Carol would like to speak further about
14 the President's proposal and kind of go back to that, I
15 wouldn't mind spending some time on that issue. So,
16 yes, if the rest of the committee would like to table
17 it for that purpose, I'm happy to consider that.

18 MS. PODZIBA: Okay. So I'm going to turn it back
19 to the chairs to determine if it's the will of the
20 committee to table this issue for now.

21 MS. BRYAN: It's proposed to table this issue so
22 that it doesn't die and we can give more information to

1 it, and bring it back up with the hour and 15 minutes
2 that's left for discussion. So can we show a thumbs up
3 for tabling?

4 (Show of approval/disapproval.)

5 MS. PODZIBA: We would start with this --

6 MS. BRYAN: Going to come back to you.

7 MR. EVANS: I have a question on a point of order.

8 Since the proposal is on the table, would it have been
9 appropriate for us to vote on the proposal prior to
10 voting on the proposal to table?

11 MS. BRYAN: Well, I'm going to ask the facilitator
12 because I was having a sidebar and I lost track of the
13 proposal? Was there a proposal on the table, and do we
14 need to finish that action before we table it? Thank
15 you, Earl?

16 MS. PODZIBA: Okay. My understanding is there's a
17 proposal on the table, so if you would like to ask for
18 the question to be called on it, we can do that. Or we
19 can open the discussion with this as the proposal on
20 the floor.

21 MR. EVANS: I was just questioning whether it was
22 appropriate to take the action on a proposal prior to

1 -- prior to having a vote to table. So if I'm out of
2 order for asking that, I apologize. But that was my
3 reason for voting no to table was I didn't know if it
4 was appropriate for us to take action on the proposal
5 first since the proposal was already on the floor. So
6 what is the determination? Is it --

7 MS. PODZIBA: My -- I mean, again, I'm newer to
8 this than you. I would interpret it to say we freeze
9 the negotiations here if we're going to table it, and
10 then when we come back -- when we bring the issue back,
11 we start here, which is with this proposal. However,
12 if you want to have the question called and you make
13 that request, I think then we have to call the question
14 on the proposal. And when we come back, we have it on
15 the table --

16 SPEAKER: Then let's call it.

17 MS. PODZIBA: -- and we wait for someone to offer
18 one.

19 MR. DOLLARHIDE: I call for the question, the
20 consensus. I motion we table this. That's my
21 proposal.

22 MS. PODZIBA: Since you're the chair, that's what

1 happens.

2 MR. SAWYERS: A nicer thing to ask Earl to hold
3 off until we have time. That's nicer than voting --

4 MS. BRYAN: All in favor for tabling this issue.
5 (Show of approval/disapproval.)

6 MS. BRYAN: Thank you. We will table this issue,
7 and I will propose we will take a 10-minute break, and
8 then we'll move onto the next issue for FCAS. That's
9 acceptable with the group?

10 (Show of approval.)

11 MS. BRYAN: Okay.

12 (Recessed at 2:59 p.m.)

13 (Reconvened at 3:25 p.m.)

14 MS. BRYAN: So where we are today right now is we
15 are going to look at a new additional issue from the
16 FCAS Work Group. And I will let Jason Adams introduce
17 that.

18 MR. ADAMS: Okay. So the next item we have is a
19 pretty controversial issue. No.

20 (Laughter.)

21 MR. ADAMS: I'm joking. The next item we have,
22 and it's actually the last item that we have from our

1 work group coming forward, is a -- it was originally
2 item number six on our list. And that item was titled
3 "Time Limitation on Grantee Expenditures." And what
4 it's commonly known as is the unexpended funds issue,
5 and we have -- I believe there's changes to two
6 sections of the existing regulation, and then a
7 proposed new section to the regulation.

8 And so this is quite lengthy in its context here,
9 so I'll try to move through this. What I would propose
10 to the group here is I will point out just those areas
11 where we are adding new language so that we can -- I'll
12 skim over the rest.

13 So the first regulation that we have -- and this
14 is termed a technical correction -- during our
15 discussions of this issue, this issue came up at
16 1000.310. And the technical correction -- the title of
17 the section is "What Are the Components of the IHGB
18 Formula?" And (a) under there said "Formula current
19 assisted housing," I believe is what it said
20 previously. And so we are proposing a change to that,
21 a technical correction to strike "housing" and make
22 that "stock FCAS," because that's what FCAS is. So

1 that's a technical correction to that section. That's
2 the only area in 310 we've affected.

3 And then the next section is 1000.336. That
4 section reads, "How may an Indian tribe, TDHE, or HUD
5 challenge data, or appeal HUD formula determinations?"

6 And what we have under there is a new number (8), "the
7 undisbursed funds factor." And so that's the new --
8 yes?

9 SPEAKER: That's an addition.

10 MR. ADAMS: Oh, is it?

11 SPEAKER: Yes.

12 MR. ADAMS: Oh, we didn't highlight that. I
13 apologize. We do have under 310 -- we didn't highlight
14 this, and I apologize. It was just pointed out.
15 Remember I said about making mistakes? This is our
16 mistake.

17 Under 310 we added (d), "undisbursed IHBG funds."

18 And so that's a new part of 310. So 1000.336, (a) (i)
19 through (7) are existing, and number (8) is new, "the
20 undisbursed funds factor." And then under (d) -- so
21 under (d), you see there the second -- I think it's the
22 second sentence we added, "An Indian tribe or TDHE may

1 appeal the undisbursed funds factor." So that's in
2 addition to that paragraph.

3 The next item is (e). (i), (ii), and (iii), (iv)
4 are all new, and I will read that in its entirety. (e)
5 reads, "HUD shall respond to all challenges or appeals
6 no later than 45 days after receipt and either approval
7 or deny the appeal in writing setting forth the reasons
8 for its decision. (i) If HUD challenges the validity
9 of the submitted data by an Indian tribe or TDHE in
10 support of a challenge to U.S. census data, HUD and
11 Indian tribe or TDHE shall attempt in good faith to
12 resolve any discrepancies so that such data may be
13 included in the formula allocation."

14 (ii) If HUD denies a challenge or appeal, the
15 Indian tribe or TDHE may request reconsideration of
16 HUD's denial within 30 days of receipt of HUD's denial.

17 The request shall be in writing and set forth
18 justification for reconsideration.

19 (iii) HUD shall in writing affirm or deny the
20 Indian tribes or TDHE's request for reconsideration
21 setting forth HUD's reason for the decision within 20
22 calendar days of receiving the request. HUD's denial

1 of a request for reconsideration shall constitute final
2 agency action.

3 (iv) If HUD approves the Indian tribe or TDHE's
4 appeal, HUD will adjust to the Indian tribe or TDHE's
5 subsequent Fiscal Year allocation to include only the
6 disputed Fiscal Years." (f) is new. (f) reads: "In
7 the event HUD questions whether the data contained in
8 the formula accurately represents the Indian tribe's
9 need, HUD shall request the Indian tribe to submit
10 supporting documentation to justify the need, and, if
11 applicable, to provide a commitment to serve the
12 population indicated in the geographic area."

13 So that's the new parts to 336. And then the last
14 section, 1000.342 is all new. 1000.342 reads, "Our
15 Undisbursed IHBG Funds: A Factor in the Grant
16 Formula." The new section reads, "Yes, beginning
17 Fiscal Year 2018, after calculating the initial
18 allocation calculation by calculating FCAS, need, the
19 1996 minimum, and repayments or additions for the past
20 over or under funding for each Indian tribe, the
21 undisbursed funds factor shall be applied as follows:
22 (a) the undisbursed funds factor applies if an Indian

1 tribe's initial allocation calculation is \$5 million or
2 more and the Indian tribe has undisbursed IHBG funds in
3 an amount that is greater than three times its initial
4 allocation calculation; (b) if subject to paragraph (a)
5 of this section, the Indian tribes allocation shall be
6 the greater of the initial allocation calculation minus
7 the amount of undisbursed IHBG funds that exceed three
8 times the initial allocation calculation, or its 1996
9 minimum;

10 (c) for purpose of this section, "undisbursed IHBG
11 funds" means the amount of IHBG funds allocated to an
12 Indian tribe in HUD's line of credit control system or
13 successor system on October 1 of the Fiscal Year for
14 which the allocation is made. For Indian tribes under
15 an umbrella TDHE, a recipient that has been designated
16 to receive grant amounts for more than one Indian
17 tribe, if the Indian tribe's initial allocation
18 calculation is \$5 million or more, its undisbursed IHBG
19 funds is the amount calculated by multiplying the
20 umbrella TDHE's total balance in HUD's line of credit
21 control system or successor system on October 1 of the
22 Fiscal Year for which the allocation is made by a

1 percentage based on the Indian tribe's proportional
2 share of the initial allocation calculation of all
3 tribes under the umbrella; (d) amounts subtracted from
4 an initial allocation calculation under this section
5 shall be redistributed under the need component among
6 all Indian tribes not subject to paragraph (a) of this
7 section, while also retaining the 1995 minimum."

8 And we also included here that in the regulation
9 there's an appendix -- Appendices A and B. And there's
10 an addition to Appendix A, and that addition would be
11 section or number 10. And that would read, "When
12 applying the undisbursed funds factor under 1000.342,
13 HUD will do an initial run of the formula to determine
14 the tribes subject to the undisbursed funds factor in a
15 Fiscal Year, and determine their final grant
16 allocation. HUD will then re-run the needs component
17 formula a second time while applying the 1996 minimum
18 without tribes impacted by the undisbursed factor."

19 So that is the proposal for unexpended funds and
20 the three sections of the regulations that are -- that
21 are affected or made new. So with that, I propose that
22 to be presented to the committee as a proposal.

1 MS. PODZIBA: Okay. I'm going to open the floor
2 for discussion. Gary?

3 MR. COOPER: Just as a point of information or
4 clarification, it actually looks like 310, that the
5 word "for" is new because there was originally two
6 components there. And then in (a), "housing" was
7 struck. It already had "stock" in there. It just had
8 "formula current assisted housing stock," so the word
9 "housing" was struck from that line item.

10 And it also looks like those citations were added.

11 And then it looks like also (c) there is an addition.

12 Is that correct, Jason, that (c) is an addition to the
13 original one and not just (d), so it added (c) and (d)?

14 MR. ADAMS: Yes, Gary, you are correct. Thank
15 you.

16 MR. COOPER: I just wanted to make sure that I was
17 reading it right.

18 MS. PODZIBA: Sami Jo?

19 MS. DIFUNTORUM: Hi. Sami Jo Difuntorum. I have
20 two clarifying questions, and I'm actually looking at
21 342. Am I jumping ahead?

22 MS. PODZIBA: Yes?

1 MR. ADAMS: I guess I failed to mention also as a
2 part of this proposal coming out of the work group, we
3 did have -- as far as our call for unanimous consent,
4 we had one dissent, and that dissent was specific to
5 the first line at 342. The first line said, "Yes,
6 beginning Fiscal Year 2018, there was one dissent
7 coming from our work group to that language." So I
8 wanted to make sure the record showed that also from
9 the work group. Thank you.

10 MS. PODZIBA: Sami Jo?

11 MS. DIFUNTORUM: Okay. So on 342, I have two
12 questions. Looking at subparagraph (c) where it talks
13 about undisbursed IHBG funds, and it speaks
14 specifically to umbrella TDHEs. So the \$5 million
15 threshold, is that the cumulative amount for all of
16 them under the umbrella or each individual tribe that
17 receives a grant as part of an umbrella?

18 MR. ADAMS: I would ask for Jad to explain this to
19 you because this -- again, the mechanics of how this
20 plays out were very complex. And this is one of those
21 areas that was complex as to how to treat the umbrella
22 tribes. So, Jad?

1 MR. ATALLAH: Thank you. It is incredibly
2 complex, but the answer to your question, Sami Jo, is
3 you look at each individual tribe's allocation and
4 apply that test to the \$5 million threshold. Even if
5 you're under an umbrella TDHE, you just look at each
6 individual tribe's allocation.

7 MS. DIFUNTORUM: Question number two. In the --
8 when it talks about -- let's see, how do I want to
9 phrase this? That the amount will be reduced -- amount
10 subtracted from the initial allocation. What about
11 FCAS funding? Are we talking about total grant
12 reduction, or is there -- because I don't see a
13 provision where the FCAS would still be retained and
14 only the needs would be reduced.

15 MR. ADAMS: What specific area are you talking or
16 what line?

17 MS. DIFUNTORUM: Subsection (d) on 342.

18 MR. ATALLAH: I'm going to charge you money for
19 this later. So this is -- this is strictly a policy
20 issue. There are different ways to frame how money is
21 to be reallocated to all tribes not impacted by this
22 factor. And we've spent a lot of time in the work

1 group kind of thinking about how reallocations would
2 happen under this.

3 If you say that money reallocated is just run
4 through the formula, what happens -- the way the
5 formula is set up is that all that money that's
6 reallocated goes to FCAS. And this is strictly a
7 policy call. If you distribute the money under the
8 need component, we think you're going to get a much
9 broader redistribution of the allocations, and that's
10 why we are proposing to have it distributed under the
11 need component. Whether you say "FCAS or the formula"
12 or "FCAS and need," what's going to happen functionally
13 is it's going to all go to FCAS unless you have it
14 distributed expressly through the need component. So
15 that's a -- that's a policy call for the committee to
16 make.

17 MS. DIFUNTORUM: Okay. If I may, so I wasn't
18 talking about the redistribution and how it would
19 filter out. I was talking about the part that isn't
20 distributed to the tribe who has undisbursed funds.
21 Would they be able to receive their FCAS allocation,
22 and would the redistribution of their funds or funds

1 that would normally be theirs be only the need
2 component? Is that clear?

3 MR. ATALLAH: I see. I see. So the way the
4 calculation is going to work is we are going to look at
5 how much a tribe is impacted based on their -- how much
6 their final grant is impacted. If that amount is below
7 their 96 minimum, we're going to bump them up to their
8 96 minimum. If that amount is above their 96 minimum,
9 they're going to get that amount.

10 So it's going to depend on how much funds they
11 have spent or how much unexpended funds they have in
12 lots. But it's going to impact their final allocation.
13 That includes FCAS.

14 MS. PODZIBA: Jason?

15 MR. ADAMS: Thank you, Jad. And I just wanted to
16 say that when I get paid, you get paid.

17 (Laughter.)

18 MS. PODZIBA: All right. Are there other
19 questions? Oh, Gary -- Christine has asked that when
20 you refer to a particular section, it would be easiest
21 for her if you give the page and line number, and
22 she'll get there speedily. Thanks. Gary?

1 MR. COOPER: Page 1, line seven, or actually --
2 I'm sorry. Actually it's line 19 and 20, but it's
3 under Section 336. And just to clarify, was (b) and
4 (c) meant to be eliminated there, or was that just a
5 typographical error? It goes from (a) to (d). You
6 added number either there under (a), but then it skips
7 off on (b) and (c). I didn't know if that was meant to
8 be taken out, or if it was --

9 MR. ADAMS: Yes, that was purposely left off. We
10 only included the sections that we were changing, and I
11 should've said that at the beginning. Thank you for
12 that.

13 MS. PODZIBA: Okay. Annette?

14 MS. BRYAN: I'm not sure if it's possible, but
15 there's a lot of changes in this verbiage. Do you have
16 a redline version from the original so we can see where
17 the exact changes were made?

18 MR. ADAMS: We have -- in regards to what section
19 I need to ask.

20 MS. BRYAN: I'm on (e), "HUD shall respond to all
21 challenges and appeals" under --

22 MR. ADAMS: On which page?

1 MS. BRYAN: Page 2. And I'm going all throughout
2 the document.

3 MR. ADAMS: All of (e), (i), (ii), (iii), and
4 (iv), and (f) are new. That's all new language.

5 MS. BRYAN: But it modifies existing language in
6 the regulation. And so, I wanted to just see how it
7 changes it because I'm -- it's a lot.

8 MS. PODZIBA: Jad?

9 MR. ADAMS: What did you have?

10 MR. ATALLAH: Sure. This is just strictly -- what
11 we did was just make stylistic changes to (e), and we
12 had the work group go through it and confirm this.
13 There are no substantive changes to (e) from the
14 current regulations. It's just stylistic and drafting.
15 We basically just cleaned up the language as it was
16 written many years ago.

17 This is, I think -- this, I think, is an original
18 reg or maybe from the last negotiated rulemaking. But
19 we just cleaned up the style of it. There are no
20 substantive changes here.

21 I apologize we didn't do a redline because it got
22 really messy. This whole thing was red, and blue, and

1 purple. But, you know, it would take a little while to
2 do a side-by-side, but there are no substantive changes
3 in (e).

4 MS. PODZIBA: Okay. For those of you who can see,
5 the original is up on the far screen. Jason?

6 MR. ADAMS: And can I answer? And I apologize for
7 that because when I was dealing with the staff and
8 trying to figure out how to present this, we were
9 trying to look at the language as we butchered it. And
10 as Jad said, we had a lot of strikeouts and changes and
11 a lot of work. And so I made the decision just to
12 include it as a highlighted version of what was new.

13 MS. PODZIBA: Jack?

14 MR. SAWYERS: There was one dissenter on the --
15 this would be under 342. And it says that the formula
16 would be in 2018. And I think it's only fair that the
17 person who dissented have a minute to talk about why --
18 what the problem was. And so if -- Jim, can you take a
19 minute? I'll defer my time to Jim Wagenlander. A
20 minute.

21 MR. WAGENLANDER: Thank you, Jack. Committee, as
22 many of you are aware, this proposal actually is an

1 outgrowth of a proposal that was made a number of years
2 ago by the Uniha Region and a group of tribes. This
3 was in response to concerns that had been expressed in
4 the President's budget messages, and also in Congress
5 both at the -- with budget bills and with the
6 reauthorization bill. And as most in the room are
7 aware, a similar provision is contained in the Pearce
8 reauthorization bill that is before the House.

9 During the course of the subcommittee's meeting,
10 the Navajo Housing Authority came forth with an offer
11 to try to reach settlement on this issue. And through
12 their initiative, most recently there was the
13 consideration of this provision and its adoption. The
14 objection that I voiced was on behalf of some of the
15 tribes that we represent at Wagenlander & Heisterkamp,
16 who were concerned about the addition of a start date
17 of 2018. The proposal that is both in the House
18 legislation and in the Uniha proposal was not to put
19 this off for three or four or five years, depending
20 upon where you start counting, but rather to initiate
21 it, impose it now.

22 If -- some of our clients believe that if we are

1 to preserve the NAHASDA funds, that we need to satisfy
2 both the Administration and the different groups on the
3 Hill, and to show that tribes are able to step in and
4 address this issue and address it effectively. So in
5 surveying our clients, we had some clients who were
6 agreeable to the now establishment of this much longer
7 period of time of 2018, and there are other tribes who
8 wish to have it shorter. Some of our clients wished it
9 to be -- to set out that it would be enacted
10 immediately. It was discussed -- not just enacted, but
11 take effect immediately.

12 It was discussed in the committee that you as a
13 negotiated rulemaking committee, you could establish it
14 immediately, but it might not take effective until the
15 Secretary formally promulgates and approves this item,
16 and it could take several years. And so, some of the
17 work group felt that 2018 was the reasonable period of
18 time that it would take for a regulation to take effect
19 as a result of the process that you're currently going
20 through.

21 There were others who believed that that actually
22 is longer than what could happen, and that it could

1 take effect as soon as 2017; but that if we're to try
2 to satisfy the people on the Hill, something is quick
3 as possible would be best. The Navajo Housing
4 Authority understandably stated that they would not
5 further compromise on the issue, and that they would
6 stick with their 2018 effective date.

7 The reason for the objection and the minority
8 position is that an earlier date is perceived by a
9 number of tribes to be better than the 2018 date in
10 order to satisfy Congress. Though there are tribes who
11 are advocating that it take effect immediately, most of
12 the tribes that we're aware of that we've talked to
13 that have concern about the Navajo proposal of 2018
14 were willing to compromise and settle at 2017.

15 That one year may not seem to be significant, but
16 those tribes believe that setting out 2017 is a
17 reasonable date and would clearly indicate to Congress
18 that tribes and these recipients who have not spent
19 these funds are realistically and quickly addressing
20 this issue and not projecting out too far. As it is
21 now, we are in -- we're far short of 2018, and to
22 establish a rule that's three or four years away

1 probably will not satisfy Congress.

2 If this committee does not produce something that
3 meets with strong across-the-board tribal approval,
4 whether it's just the people on the committee, but also
5 the individual tribes around the country, then it's
6 going to have a hard time satisfying Congress. And
7 what will happen is the Pearce bill go ahead, and that
8 -- it is speculated that that will be passed in the
9 House, and then the decision will have to be decided
10 between the Senate and the House. And even if the
11 Senate would agree to the 2018 bill, there would have
12 to be a conference between the two.

13 So the 2017 is a realistic and appropriate
14 deadline, and that is the reason why there is a
15 minority opinion, and that is why there's a request
16 that this committee agree to the 2017 date. Thank you.

17 MS. PODZIBA: Thank you, sir. Okay. Jason? Oh,
18 Carol?

19 MS. GORE: I'm so confused.

20 (Laughter.)

21 MS. GORE: So I have a couple of technical
22 questions, not about the substance of the proposal, but

1 technical questions, two. My first question is the
2 idea of an undisbursed IHBG funds factor is a new
3 definition, and I'm asking if on page 3, lines five,
4 six, and seven are the intended definition.

5 MR. ADAMS: Yes. Yes. That is the undisbursed
6 funds factor. That's what it is in definition.
7 Without having a definition in another place, that is
8 what it is.

9 MS. GORE: I would just request as maybe a
10 technical next step that if -- assuming this passes in
11 some form that we make sure this definition gets added
12 to the definition list so that others might find it
13 more easily who are not already at the table.

14 My second question is really maybe because I'm
15 just not good at simple math or maybe it's too complex
16 for me. On the same page, lines 15 through 19, it
17 discusses, first of all, a tribe within an umbrella
18 organization that receives \$5 million or more. Lines
19 15 through 19 go on to try to create some math that I
20 just simply don't understand as a pro rata share of the
21 umbrella TDHEs. And I'm just asking for someone to
22 walk me through that so I can understand it. Thank

1 you.

2 MR. ADAMS: Again, that's above my pay grade, so
3 I'll turn it over to Jad.

4 MS. GORE: Mine, too, Jason.

5 MR. ADAMS: He can walk you through this. Again,
6 I just want to, again, to reiterate how complex this
7 issue really is, especially in the umbrella TDHE
8 situation. And we're trying to make it as clean and as
9 easy to understand, but in that case maybe it is
10 relevant for Jad to just give an example.

11 MR. ATALLAH: So this is incredibly complex, and
12 we spent a lot of time on this trying to figure out how
13 to address this particular undisbursed funds factor as
14 it applies to tribes under umbrella TDHEs. And one of
15 the challenges with umbrella TDHEs is that we make
16 allocations based on Indian tribes, and then depending
17 on -- then if they're under an umbrella TDHE, the
18 umbrella TDHE has a grant agreement executed and a
19 grant amount.

20 And it's not so easy for us to know exactly what a
21 specific tribe's -- under the current framework what a
22 specific tribe's undisbursed funds balance is if

1 they're under an umbrella TDHE because that balance
2 includes other tribes under that umbrella TDHE.

3 So what we've come up with is a formula that says
4 if you have a tribe that receives an initial allocation
5 calculation over \$5 million, and that tribe happens to
6 be under an umbrella TDHE, in order for you to figure
7 out what that specific tribe's undisbursed funds are
8 and whether this factor applies to it, you look at that
9 tribe's percentage -- proportional share percentage of
10 that year's Fiscal Year allocations for all tribes
11 under that umbrella TDHE.

12 Say it's 20 percent or 30 percent. You apply that
13 30 percent to the undisbursed funds of the umbrella
14 TDHE, and that's the amount that you assign to that
15 specific tribe, and then determine whether the
16 undisbursed funds factor impacts it at all. Incredibly
17 complicated, but we've spent so much time on this. And
18 this was the way to sort of address the anomaly of
19 umbrella TDHEs. Yes.

20 MR. COOPER: Thank you. I understand it a little
21 better. Not sure I could explain it to anybody else,
22 but thanks for trying.

1 MR. ATALLAH: I'm not sure if I can either.

2 MR. COOPER: Thank you.

3 MS. PODZIBA: Jason?

4 MR. ADAMS: I guess I just wanted to -- in regards
5 to the comment made -- the one dissent, there was one.

6 The rest of the group in regards to the Fiscal Year
7 2018, there was -- everybody else in the room was in
8 agreement with that language. And one of the issues
9 that came up at our last negotiated rulemaking
10 committee meeting and in the work group was we went
11 through a process whereby we looked at the timeline in
12 regards to implementation of any rules, not just this,
13 but any work that is produced by this committee and the
14 practicality of when they will be implemented.

15 And it was determined that it would probably be at
16 the earliest and the most optimistic date Fiscal Year
17 2018, which is October 1, 2017. That's why we all
18 agreed to that date, except for one.

19 MS. PODZIBA: Okay. Aneva?

20 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo
21 Housing Authority. Along with that, and really when
22 you look at -- and now I'm going to introduce the white

1 elephant I think. This really does impact Navajo with
2 respect to the largest volume of dollars to be
3 impacted. And so, you know, having to battle, I think
4 -- the language first starting with the President's
5 budget request, having this language, and then to hear
6 it then moved into the House Financial Services
7 Committee language really was not the proper venue.
8 This is the proper venue within this committee for
9 negotiated rulemaking.

10 I believe that was what we had all agreed to at
11 the beginning of the creation of this committee and my
12 first participation on the committee. And with that,
13 it really -- and then this is the venue where we are
14 exercising that arm of tribal sovereignty to have this
15 discussion, a government-to-government where you have
16 Federal agency oversight at the table to discuss this.

17 And so, I appreciate that to be now within this realm.

18 And with regard to NHA's particular situation, the
19 added emphasis on the Fiscal Year, it may be -- maybe
20 it's just the fact that it says "Fiscal Year 2018,"
21 whereas, in fact, I had conveyed to the committee that
22 we are looking at October 1, 2017. So maybe just

1 psychologically that may be a problem in terms of
2 saying '18. It really is October 1, 2017 in which we
3 have a five-year plan, and so that would expire on
4 9/30/2017.

5 So it really coincides, I think, with the reality
6 and the practicality of the timelines for regulations
7 to be promulgated and implemented anyway as my
8 colleague, Jason Adams, has described based on previous
9 experiences of negotiated rulemaking. So it just falls
10 on that date, and it makes it very applicable.

11 Furthermore, with respect to this language, we --
12 how much stronger of a statement as a unified committee
13 it would be to say that we are solving this within the
14 proper realm of negotiated rulemaking to Congress? And
15 so, I would hope that there's consensus with respect to
16 what we're attempting to do as a group, and the move
17 that -- move that position forward before Congress so
18 we are solving this before Congress even takes any
19 attempt to try to make a solution for tribes and our
20 people. So with that, I wanted to provide that
21 clarifying comment. Thank you.

22 MS. PODZIBA: Thank you. Earl?

1 MR. EVANS: Earl Evans, Haliwa-Saponi Indian
2 Tribe. I have a question for HUD. And my question is,
3 what happens if a public housing authority does not
4 spend down its allocation for a Fiscal Year? How is
5 that handled?

6 MS. BRYON: They actually have obligation and
7 expenditure deadlines. I mean, it's set. So if it
8 goes unexpended, it gets pulled back. Now, there are
9 some extraordinary exceptions that they can apply for.

10 I hate to say this, but legal impediments they can
11 apply for that will allow certain conditions to, you
12 know, permit them to hang onto some of their funds --
13 certain categories of funds. But in general, all of
14 their funds have obligation and expenditure deadlines
15 set.

16 MR. EVANS: So it's basically the same it was. It
17 hasn't changed since tribes were previously a part of
18 the '37 Housing Act. So that process is still pretty
19 much the same as it was in terms of the spend-down
20 period and having it obligated before it's taken back.

21 MS. BRYON: I would say generally, yes, the actual
22 timeframes may have changed, and I would have to check

1 that. But generally yes is the answer to your
2 question.

3 MS. PODZIBA: Karin?

4 MS. FOSTER: Yes, thank you. Karin Foster, Yakama
5 Nation Housing Authority. I have a question about --
6 let's see, it's on page 2 up at the top of the page, E-
7 1. And I know that we've heard that the changes made
8 were kind of to fix up the language, but not
9 substantive. But I do have a question here.

10 I'm looking at the original regulation. The
11 original regulation on E-1 says "In the event HUD
12 challenges the validity of the submitted data, the
13 Indian tribe or TDHE and HUD shall attempt in good
14 faith to resolve any discrepancies." The new
15 regulation states or the proposed states, "If HUD
16 challenges the validity of the submitted data by an
17 Indian tribe or TDHE in support of a challenge to U.S.
18 census data, HUD and the Indian tribe shall attempt in
19 good faith to resolve any discrepancies."

20 There are other types of data that are also
21 subject to challenge under 336, and I'm wondering why
22 the language, "in support of a challenge to U.S. census

1 data," was inserted into (i) because it seems to then
2 narrow that application or that process only to census
3 data challenges. And so, I wonder if that was
4 purposeful or just -- why that was done.

5 MS. PODZIBA: Jad?

6 MR. ATALLAH: No, I don't think that was the
7 intent. That's an oversight. So that provision is
8 supposed to apply to all the different formula items
9 that you can challenge and not just challenges to U.S.
10 census data. So, I mean, a simple fix is to delete the
11 "in support of a challenge," just delete the phrase. I
12 mean, I'm not a committee member here, but my
13 suggestion would be to delete the phrase "to U.S.
14 census data."

15 MS. PODZIBA: Karin, do you want --

16 MS. FOSTER: Thank you.

17 MS. PODZIBA: Do you want to propose that as an
18 amendment?

19 MS. FOSTER: I think that would be an appropriate
20 amendment if now is the time to propose that as a
21 friendly amendment to the original, yes, I would
22 propose to strike "to U.S. census data" as it's marked

1 there.

2 MS. PODZIBA: Okay. It's acceptable. All right.

3 Sharon?

4 MS. VOGEL: Thank you. I'm trying to come to
5 terms with, you know, trying to support this. And the
6 thing that keeps coming to my mind is that this is an
7 issue that impacts current legislation. And there are
8 tribal governments in my region that may have responded
9 to this current legislation, and I have to be
10 respectful of that. Therefore, you know, I don't know
11 that I can take a position without consulting the TDHEs
12 in my region and giving them the opportunity to go back
13 to their tribal government and ask if they have
14 submitted a position on the Pearce legislation.

15 The thing that I think I have to keep in mind is
16 tribal government consultation and where we don't cross
17 that line to say that HUD is consulting with tribal
18 governments because they have the vote of this
19 committee. And I just have to be mindful of that.

20 Thank you.

21 MS. PODZIBA: Earl?

22 MR. EVANS: Earl Evans, Haliwa-Saponi. Under 1000

1 -- the proposed 1000.342, I think the work group has,
2 first of all, done an excellent job in attempting to
3 address an issue that, as has been stated so many times
4 before, that we need to make sure we handle ourselves
5 instead of someone trying to impose something on us
6 that we really don't want and would not be able to
7 comply with.

8 But my question to the work group chairman is, in
9 terms of what's proposed with 342, was there any
10 discussion as far as language that -- concerning
11 undisbursed funds that are obligated, because some
12 small tribes or maybe even some larger tribes may be
13 saving that money or setting it aside for a large
14 project. And that's the reason that it may be sitting
15 there all of those years.

16 So was there any discussion on putting something
17 in here that ensures that even though it may be -- it
18 may be defined based on this language as undisbursed,
19 it's only undisbursed because it is obligated and is
20 being held to use on a larger project. Maybe a minimum
21 funding tribe has to save up for eight years in order
22 to do a large housing development, for example.

1 MS. PODZIBA: Jason?

2 MR. ADAMS: Thank you, Earl. I understand the
3 concern. And we had a very lengthy discussion, and I
4 would draw your attention to line five on page 3 where
5 it talks about the undisbursed funds factor applies if
6 an Indian tribe's initial allocation calculation is \$5
7 million or more. And so if there are small tribes or
8 minimum-funded tribes, they don't ever bump up against
9 that \$5 million.

10 MR. EVANS: But if -- but if they -- even if they
11 receive \$5 million or more a year, they may still be
12 setting that money aside for a larger project that
13 requires them to have that money sitting in the lot
14 system.

15 MR. ADAMS: Well, again, as part of our diligence
16 -- the work group's diligence to come up with that
17 figure, we haggled over that number for quite some
18 time. We did a TA request, and we actually looked at
19 the tribes that are out there that have undisbursed
20 funds or unexpended funds, I guess, is the correct term
21 for the folks that were in that TA request. And as of
22 the current data that we received, this figure only

1 affects two tribes. There was one tribe on the list
2 that was funded at a million dollar and hadn't expended
3 its money in nine years. So it had a backlog of nine
4 years' worth of money.

5 MS. PODZIBA: Okay. Yes, Heather?

6 MS. CLOUD: Heather Cloud, Ho-Chunk Nation. I
7 have a question on how we're going to adjust
8 negotiating or adopting it because I think there's been
9 a lot of things I've been writing down that everybody
10 is having questions for the whole thing. Are we going
11 to go by each number, like 1000.310, then 1000.336, and
12 then vote on each of those separately, I guess, is one
13 of my questions.

14 And then I just wanted to make a comment in
15 response to Ms. Vogel's concern about taking it back to
16 the tribes. I feel that it's our duty to represent our
17 region as we've been selected and speak on their
18 behalf. So I think it would be our obligation and good
19 faith to negotiate the proposed language. Thank you.

20 MS. PODZIBA: Okay. Jason?

21 MR. ADAMS: Your first question in regards to the
22 way that it's being presented. That was a discussion

1 and a decision that I had made from our work group. We
2 addressed these issues as individual items from our
3 master list of items, and this item was one item by
4 itself with all these affected areas with either
5 current existing regulation or new regulation. And so
6 I presented it all as a package, and that's how I'm
7 presenting it today as one proposal. And it does
8 affect several areas of the regulation and adds a new
9 section to the regulation.

10 So my hope is that we vote it up or down based on
11 it as a package, and if there's individual lines or
12 sections that people don't agree with, then when they
13 vote no, then we can find that section or area and
14 address that specific issue.

15 MS. PODZIBA: Would it be helpful to just walk
16 through each section, not to vote on, but just to see
17 if there are any concerns or questions by section?
18 Okay. Yes, Heather?

19 MS. CLOUD: Okay, that's fine, because somebody
20 raised a question on page 2, line six through nine, in
21 regards to the U.S. census data. And then that wasn't
22 -- I don't think that there was more words added or

1 something because they said was it just to challenge
2 the U.S. census data or all data sets. So are you just
3 striking that and you're -- or are you rewording it? I
4 didn't understand what was going on with that.

5 MR. ADAMS: I believe the strikeout here went too
6 far. I believe it should state "support of challenge
7 data," isn't that correct? Isn't that what the current
8 existing regulation or the regulation language says?
9 Jad, can you help? Does "data" need to stay in that
10 strikeout? And then that was an amendment by Karin,
11 and I accepted it.

12 MR. ATALLAH: I think "data" needs to stay if
13 you're going to base this on existing -- the existing
14 line.

15 MS. PODZIBA: Yes?

16 MS. FOSTER: Jad, could you repeat that? I didn't
17 hear what you said.

18 MR. ATALLAH: Oh, I'm sorry. I think the word --
19 so the current -- the current language says "in the
20 event HUD challenges the validity of the submitted
21 data." So --

22 MS. PODZIBA: Can you read the whole sentence?

1 MR. ATALLAH: Sure. The current reg says, "In the
2 event HUD challenges the validity of the submitted
3 data, the Indian tribe or TDHE and HUD shall attempt in
4 good faith to resolve any discrepancies so that such
5 data may be included in the formula allocation."

6 So we are talking about a challenge here, so I
7 think without the word "data," it should -- it should
8 work okay. If you put the word "data," you just need
9 to make sure it makes grammatical sense so it doesn't
10 say "support of a challenge data."

11 MS. PODZIBA: "Challenge to data." So, Karin,
12 could you just help us out there on what your friendly
13 amendment was or if it needs to be modified? So "in
14 support of a challenge to data," or "just in support of
15 a challenge?"

16 MS. FOSTER: Well, looking at this again and
17 comparing it to the language in the original now, the
18 language in the original as it is now says "In the
19 event HUD challenges the validity of the submitted
20 data, the Indian tribe or TDHE shall attempt in good
21 faith." So it would take out "by an Indian tribe or
22 TDHE in support of a challenge to U.S. census data."

1 And I guess I would suggest that maybe all of that is
2 superfluous. I mean, I'm not sure why any of that
3 clause is needed.

4 MS. PODZIBA: So are you suggesting going back to
5 the original language?

6 MS. FOSTER: Well, I guess I am because otherwise
7 -- I mean, I'm -- otherwise if we just take out "to
8 U.S. census," then it says, "If HUD challenges the
9 validity of the submitted data by an Indian tribe or
10 TDHE in support of a challenge data." It doesn't make
11 as much sense to me as it does -- as it originally
12 written. If there need to be more words in order to
13 bring it different meaning, I'd appreciate that
14 clarification from HUD.

15 MR. ATALLAH: I think it has the same meaning by
16 striking that term -- that phrase.

17 MR. ADAMS: Do you mean by what's highlighted now?

18 MR. ATALLAH: Right. I think it says the same
19 thing. So if the committee wants to strike that --
20 what's highlighted, it says the same thing. That
21 should be fine.

22 MS. PODZIBA: So it would read, "If HUD challenges

1 the validity of the submitted data, HUD and the Indian
2 tribe or TDHE shall attempt in good faith to resolve
3 any discrepancies so that such data may be included in
4 the formula allocation." Is that the proposed friendly
5 amendment?

6 MS. FOSTER: Yes, that would be the proposed
7 friendly amendment.

8 MR. ADAMS: And we'd accept that. I accept that.

9 MS. PODZIBA: Okay. Annette?

10 MS. BRYAN: Thank you. I do have a question on
11 one of the lines, but if we're going line by line, I'll
12 wait. I also have a concern about is this -- are these
13 changes big enough that we might need more time to talk
14 about it. So I just wanted to share my concern with
15 the group. We could talk for two hours and then run
16 out of time, so I'm just checking in with folks about
17 looking at -- seeing this for the first time, and do we
18 need more time to read it, talk about it off the clock
19 before we discuss it.

20 So I'm just checking in with the group. This is
21 my first time through this process. Maybe the two
22 hours is enough time, and so -- and we're making good

1 progress on dialogue. So I just -- but if we are going
2 to go line by line, I'll hold my question until we get
3 to that line.

4 MS. PODZIBA: Is that the preference of the group
5 to go section by section, or should we take the
6 comments as people have them? Jason, do you have a
7 preference?

8 MR. ADAMS: Well, I guess that's why I read it in
9 its entirety and presented it in its entirety. So if
10 there's comments, they should be referred to specific
11 sections or lines that they have questions on such as
12 we're doing now. We had a friendly amendment, and it
13 was accepted on a line that we needed change.

14 MS. PODZIBA: Okay. So we'll keep going. So,
15 Annette, yes?

16 MS. BRYAN: Thank you. So on page 3, line seven,
17 "greater than three times its initial allocation
18 calculation." What is meant by "initial," and can we
19 define it?

20 MR. ADAMS: Again, I would ask Jad to respond and
21 explain the mechanics of how this would work.

22 MR. ATALLAH: So thank you for your question. If

1 you look at 1000.342, the very first paragraph in it,
2 there is a definition there. It says, "Are undisbursed
3 IHBG funds are a factor in the grant formula?" "Yes,
4 beginning in Fiscal Year 2018." And then it says,
5 "After calculating the initial allocation calculation,"
6 which is a term of art that we're using in this reg.
7 "By calculating FCAS need, the 96 minimum, and
8 repayments or additions for pastor over funding for
9 each Indian tribe."

10 That's the definition of "initial allocation
11 calculation." It's the calculation by calculating FCAS
12 need, the 96 minimum, and repayments, and additions.

13 MS. BRYAN: For the Fiscal Year that we're talking
14 about or calculating from?

15 MR. ATALLAH: Correct.

16 MS. BRYAN: So can we say that? Does it say that
17 already?

18 MR. ATALLAH: Yeah. I think --

19 MS. BRYAN: I didn't read that into that.

20 MR. ATALLAH: That's definitely the intent because
21 you're going to be calculating it. But we can -- we
22 can certainly add that. I don't think it changes the

1 -- it doesn't move anything around or mess anything up.

2 It would be maybe more clear.

3 MS. BRYAN: Okay, thank you. So I would propose a
4 friendly amendment to the sentence that you were just
5 reading on page 3 at the top. This is just written --
6 initial. So behind number seven, maybe "initial
7 allocation calculation for the current Fiscal Year?"

8 Does that -- or if there's a different place to put it,
9 that's just clear? Is that clear enough? Okay.

10 MS. PODZIBA: So the friendly amendment is to add
11 "for the current Fiscal Year" at the end of line seven.

12 MS. BRYAN: Yes.

13 MS. PODZIBA: Jason?

14 MR. ADAMS: I don't believe it takes anything away
15 from -- it just further clarifies if that's what we
16 need. I don't have any problem with it.

17 MS. PODZIBA: Okay. Aneva? You're all set.
18 Heather? Heather, I'm wondering if you -- did you have
19 a comment? Okay. I had you on the list. Sorry.
20 Okay. Jad, did you have one more comment?

21 MR. ATALLAH: Right. I don't know if this was the
22 intent, but I think the "for the current Fiscal Year"

1 may fit better on line number 2. So "after calculating
2 the initial allocation calculation for the current
3 Fiscal Year by calculating FCAS needs and so forth,"
4 because that bottom line number seven defines
5 undisbursed funds factor.

6 MS. BRYAN: That's what I'm getting at. That's
7 acceptable to me.

8 MS. PODZIBA: Jason? Okay. Rusty?

9 MR. SOSSAMON: Okay. So based on prior years'
10 allocation amounts, I've projected out. I'm going to
11 be under this threshold. What happens if the overall
12 appropriation goes down, which will shrink my initial
13 calculation, and now all of a sudden I'm exceeding it?

14 MR. ADAMS: Can you say that again? I'm sorry. I
15 wasn't following you.

16 MR. SOSSAMON: Okay. If I'm going along as I am
17 now and I've projected out our expenditure rate, to
18 ensure that I'm below this threshold based on what my
19 previous allocations have been, and then unexpectedly
20 the overall allocation is reduced, which means my
21 initial -- now my initial allocation amount will be
22 reduced, and all of a sudden I find myself below this

1 threshold.

2 MS. PODZIBA: That's a good question.

3 MR. SOSSAMON: And it's not because I'm not --
4 haven't planned to expend my funds at a reasonable
5 rate. It's just due to the size of the allocation,
6 okay? But I'm going to be penalized additionally. So
7 I think something like that needs to be taken into
8 consideration.

9 I mean, this will work fine if we just had a set
10 amount annually that we receive, but -- and we know
11 there's going to be some fluctuation in it, but if we
12 see a huge reduction in the overall appropriation, I
13 think it has the potential to catch a lot of folks by
14 surprise.

15 MR. ADAMS: I'm trying to follow what you're
16 saying. At least in my mind, the \$5 million is the
17 first trigger. That only -- that only becomes an issue
18 for more people if the initial appropriation increases,
19 correct? If your initial appropriation doubles today,
20 \$650 million -- if it goes to a billion dollars, you
21 could have more people that meet that initial threshold
22 of \$5 million. That's the only way that there would be

1 more people that would meet that first \$5 million.

2 MR. SOSSAMON: Yeah, I know. Okay.

3 MR. ADAMS: If it shrinks --

4 MR. SOSSAMON: If I see --

5 MR. ADAMS: -- there's less people.

6 MR. SOSSAMON: -- the \$5 million, right? Say I
7 get \$10 million a year, okay? And I've got my
8 expenditures planned out so that I'm just under the
9 three times threshold, right, but the overall
10 appropriation goes down. Now, my initial calculation
11 is going to be smaller, sort of throw me over the three
12 times threshold.

13 SPEAKER: There's a 50 percent sequestration.

14 MR. SOSSAMON: Because it's three times the
15 initial allocation.

16 MR. ADAMS: I understand what you're saying now.
17 If you're originally over that \$5 million and then you
18 have a decrease, then three times that could become a
19 factor, yeah.

20 MR. SOSSAMON: Right. And I could have --

21 MR. ADAMS: I don't recall --

22 MR. SOSSAMON: -- to where I am, I'll meet that

1 threshold. But if the overall allocation or
2 appropriation shrinks, my initial allocation is going
3 to be less than what I anticipated, and it'll throw me
4 over that threshold.

5 MR. ADAMS: If your first test still holds true.
6 That would be the key. If you're at 10 and the
7 appropriation drops by half, you might fall under the
8 initial \$5 million, so that wouldn't apply. There's
9 still that \$5 million test at first.

10 MR. SOSSAMON: Right, but if it doesn't drop by
11 half, it just drops by 40 percent.

12 SPEAKER: So it's a double whammy.

13 MR. ADAMS: Yeah. I understand the concern, and I
14 don't think we addressed that in here. I mean, I guess
15 -- I understand what you're saying, though.

16 MR. SOSSAMON: Okay.

17 MR. ADAMS: And I don't know how -- I mean, are
18 you proposing a way to account for that?

19 SPEAKER: (Off audio.)

20 MR. ADAMS: I don't know.

21 MS. PODZIBA: So there's -- we need to find a way
22 of fixing that? Is that the --

1 MR. ADAMS: That's why I asked. Is there a way to
2 fix this from him?

3 MS. PODZIBA: Are there any suggestions about how
4 to refine the proposal to address this issue?

5 (No response.)

6 MS. PODZIBA: Okay. Does it make sense to put
7 that aside because I think they're thinking that out
8 and take some other comments and be sure to come back
9 to that as soon as there is some idea about it. Is
10 that okay? Okay.

11 Earl, you're next then. Oh, really? Okay, sorry.
12 I'm going to go to Karin. I didn't see the list.
13 Karin?

14 MS. FOSTER: Yes, thank you. Karin Foster, Yakama
15 Nation Housing Authority. My comment is much simpler.
16 I'm looking at line eight up on the wall there,
17 Subsection (b). And would like to suggest that after
18 the Indian tribes -- in between "tribes and
19 allocation," that we insert "final" or "final grant
20 allocation." I guess we refer to the final grant
21 allocation in the appendix section. I just think it
22 would be clearer to refer to the final grant allocation

1 and the initial allocation as separate things. That's
2 just an amendment -- a friendly amendment just for
3 clarification.

4 MS. PODZIBA: Jason?

5 MR. ADAMS: Now, on what line? I'm sorry. Can
6 you site page and line, Karin? I'm trying to follow
7 you.

8 MS. FOSTER: She's typed it in right up there.
9 But it's on --

10 MR. ADAMS: Oh, eight.

11 MS. FOSTER: In 342, line eight, and that's
12 Subsection (b). And it talks about the Indian tribes
13 allocation being the greater of the initial allocation
14 minus the amount of undisbursed IHBG funds. And my
15 recommendation would be that we, instead of just saying
16 "the Indian tribe's allocation," that we insert there
17 "the Indian tribe's final grant allocation," which is
18 the language that's used later on on the last page
19 talking about the final number just to help distinct
20 between the initial and the final."

21 MR. ADAMS: Yeah. I accept that. I believe
22 that'll clarify that.

1 MS. PODZIBA: Okay. Heather?

2 MS. CLOUD: I'm not sure if this is relevant or
3 not. Okay. So if you have -- it says "If it applies
4 to tribes, you get \$5 million or more." So what if
5 you're right on the threshold of \$5 million and you do
6 a data challenge, and then you're over \$5 million, but
7 that's not your initial allocation because you
8 challenged it. So then it would be greater, right?

9 So then that's not your initial, so then you'd
10 have a second number, or is that still considered your
11 initial allocation? So how do you deal with challenges
12 because that's going to affect the formula?

13 MR. ADAMS: I believe from our discussion on
14 challenges that those challenges are taken up in the
15 Fiscal Year for which they're applicable. And so that
16 would be done prior to the initial allocation
17 calculation would include your challenge for the Fiscal
18 Year that you've submitted it for because there's
19 deadlines for those challenges starting in, I think,
20 March of a Fiscal Year. And somebody can correct me if
21 I'm wrong, but I think that's how that would be viewed.
22 You have some deadlines to meet for a Fiscal Year for

1 that to affect your allocation for that year.

2 MS. PODZIBA: That okay, Heather?

3 MS. CLOUD: Yes.

4 MS. PODZIBA: All right. Earl?

5 MR. EVANS: Well, my question -- I have a -- I
6 have something that -- I guess I'll pose this to Rusty
7 and to Heather to see if this would address those
8 anomalies. Would it help if something were added to
9 the effect of if there's some type of anomaly that just
10 so happens to put a tribe over this threshold where its
11 planning was thrown out of whack? They submit some
12 type of -- have some type of time parameter for having
13 submitted a spend-down plan to address the anomaly,
14 which then keeps them from losing those funds solely
15 because of that anomaly as opposed to it just being a
16 matter of not spending the -- expending the resources.

17 Is that something that would address those types of
18 concerns?

19 MS. PODZIBA: Do you have any language or just the
20 concept that you're putting out?

21 MR. EVANS: Just putting out the -- putting out
22 the concept. I've been thinking about where to put the

1 language, and I don't have a spot for it yet.

2 MS. PODZIBA: Okay. Jason, do you have a response
3 to that?

4 MR. ADAMS: I just wanted to say that I think it's
5 important, and I understand what you're saying, Earl.
6 But in the discussions on this issue, there are a lot
7 of tribes, more than just the two that are affected by
8 this, that do receive more than \$5 million. But there
9 was just two with the two factors that affected them --
10 over \$5 million and had more than three times the
11 initial allocation. So a lot of tribes have a grant
12 over \$5 million, but they are drawing that out of locks
13 to be spent or invested or whatever. They're not
14 affected by this.

15 MS. PODZIBA: Sam?

16 MR. OKAKOK: Thank you. Sam Okakok, Native
17 Village of Barrow. I just wanted to make a friendly
18 comment on some of Rusty's comments also and Heather's
19 that -- in regards to 342.

20 MS. PODZIBA: Excuse me, Sam. Could you bring the
21 mic a little closer to you? I can see that they're not
22 hearing you.

1 MR. OKAKOK: Yes.

2 MS. PODZIBA: Thank you.

3 MR. OKAKOK: In regards to 342, line two, I think
4 one of the things that I have seen over the years in
5 regards to some of the native villages and
6 corporations, regional corporations that they have
7 averaged a lot of their monies over, like, five years
8 to reduce any kind of impact that may negatively impact
9 them. And I think that maybe taking that into
10 consideration along with Earl, having that plan in
11 place to spend down some of your funds if, in fact,
12 over the course of time that it did go above those
13 thresholds there. I just wanted to make a friendly
14 comment on that.

15 MS. PODZIBA: Thank you. Are there other comments
16 or are there any proposals to address the substantive
17 issue that has been raised? Karin?

18 MS. FOSTER: Karin Foster, Yakama Nation Housing
19 Authority. I don't have a proposal, but I think taking
20 the last three comments into consideration, I can
21 understand how if you were calculating things right up
22 to the three-year, you know, maximum period and using

1 that as your planning criteria, you could run into
2 problems where you had something unanticipated. But as
3 has been mentioned, most tribes are able to spend down
4 their grants.

5 And so, if you're on the line, maybe you should be
6 looking at a point lower than the three-year point to
7 be planning, say, two and a half years or something,
8 and that way you can avoid these kinds of unexpected
9 changes. I mean, I think that the three-year point is
10 a way to recognize the challenges that some folks have,
11 but it's an outside number. I don't think we expect
12 that everybody is going to hold onto their funds for
13 three years. You're supposed to be kind, you know,
14 aiming a little lower than that anyway.

15 MS. PODZIBA: Carol?

16 MR. COOPER: Thank you. I don't know if this
17 responds to Rusty's question. It's really a very good
18 one. But even though the allocation or the
19 appropriation amount is flat, except for minimum-funded
20 tribes, very few of us get exactly the same dollar
21 amount on an annual basis. So if you consider that
22 instead of using this initial allocation criteria as

1 your anchor for calculating the three times, would
2 there be any consideration -- was there any discussion
3 for just calculating the prior three years'
4 allocations?

5 So you're just adding the three prior years, then
6 that doesn't get you into this whole complication of
7 what happens the next year when the appropriation
8 amount is cut by 50 percent. So I'm just suggesting
9 that maybe that's one way to respond to Rusty's issue,
10 but today is not my good math day, so I'm not sure that
11 I've said that correctly. But I offer that as maybe a
12 discussion item for the group. Thank you.

13 MS. PODZIBA: Unless -- if you have an idea about
14 how to do that. I think Carol's putting a concept out.
15 If you want to respond to it, you can. If there are
16 other people who would like to respond to Carol's
17 comment. Karin?

18 MS. FOSTER: Carol, if I understand the proposal,
19 which I think it's great to try and figure out another
20 way around it. But then if the appropriation goes up
21 and you receive more the next year, you would still be
22 calculating your three-year maximum based on the

1 earlier numbers, which were lower. So you would
2 actually have a ceiling that way if we end up getting
3 more money appropriated for NAHASDA. So I guess -- I'm
4 not sure I understand the sign language. I'm sorry.

5 (Laughter.)

6 MR. COOPER: Sorry. Could I interpret my sign
7 language? So the three years would be -- you know, you
8 would the next -- the next cycle you would drop off the
9 old year and add the new year. So if appropriations
10 are going up, then the dollar amount would go up. If
11 they go down, the dollar amount would go down. That
12 was all I was suggesting is something a lot more simple
13 than what I'm reading in the document. And I think it
14 responds to Rusty's -- there may be other solutions, so
15 that's one just idea. Sorry for the sign language
16 across the table. That's my family trait, you know.

17 MS. FOSTER: I kind of enjoyed it. Thank you.

18 MR. COOPER: Thank you.

19 MS. PODZIBA: Aneva?

20 MS. YAZZIE: Thank you. I just wanted to note the
21 time of 56 minutes. And I thought this was just a fix
22 for Navajo, but I'm hearing other folks having some

1 concerns as to how this might potentially apply to
2 them. And I appreciate the discussion.

3 But I wonder because, you know, we need to come to
4 some consensus, and I think there's -- I think there's
5 some questions that warrant perhaps maybe tabling this
6 so that we can save the time for action maybe even
7 tomorrow. But I'd just offer that as a comment. It
8 seems that there's more questions coming out from the
9 committee with respect to clarifications and maybe some
10 more analysis as to how potentially it could impact,
11 and then coming up with some friendly amendments. So,
12 but I was just concerned with the timeframe of 56
13 minutes left with respect to this specific proposal.
14 Thank you.

15 MS. PODZIBA: So I'd like to turn to the chairs to
16 see if it's -- if Annette's proposal to table this is
17 the will of the committee at this point.

18 MS. BRYAN: Jemine?

19 MS. BRYON: No, I would agree to table it because,
20 Carol, we were sitting here thinking the same -- the
21 same kind of formula about the three years or whether
22 there's something else we could offer. But we have to

1 -- we have to study it a little bit. We have to run
2 some numbers against it. But I think it's a good --
3 that's a good starting point, the suggestion that Carol
4 made. But we need time to talk it through and see if
5 the numbers work.

6 MS. BRYAN: Sharon?

7 MS. VOGEL: I was just curious if you've accounted
8 for on page 3, line 20. In the event, let's say it was
9 Cheyenne River that was going to have their grant
10 subtracted. Knowing our tribe, we would file a legal
11 action. So under -- as it currently reads, amounts
12 subtracted from the initial allocation shall be
13 redistributed. Where are you going to protect if I win
14 my case? Where are you going to protect my dollars, or
15 has that been discussed?

16 MS. BRYAN: Thank you. Karin?

17 MR. ADAMS: I'll attempt to answer.

18 MS. BRYAN: Oh, go ahead, Jason. Sorry.

19 MR. ADAMS: And I'll turn it over to Jad to
20 correct my mistakes when I answer. But I believe the
21 answer to your question, Sharon, is addressed in 336,
22 the changes to 336 under (d). And it says that "An

1 Indian tribe or TDHE may appeal the undisbursed funds
2 factor no later than 30 days after the receipt of the
3 formula determination." And that has to be done in an
4 expedited manner because it's within that Fiscal Year's
5 allocation of funds because you're not going to hold up
6 everybody else's distribution.

7 MS. VOGEL: Okay. But if I file -- if I file in
8 court to stop HUD from taking my money, then where is
9 that protected?

10 MR. ADAMS: I'll turn it over to Jad.

11 MR. ATALLAH: So I think you're right, Jason.
12 There's an administrative appeal process built in that
13 you would have to follow. If you object to this factor
14 applying to you, follow that appeal process. You know,
15 I can't really comment on what would protect you if you
16 decided to file a lawsuit. Obviously the obvious
17 question is, you know, you would seek a court order,
18 you know, issuing injunctive relief preventing HUD from
19 doing this. But talk to your lawyers.

20 (Laughter.)

21 MS. BRYAN: Okay. I'm wondering if the people in
22 the queue have questions that can be answered during

1 the tabling period or if we want to move to table or
2 continue our discussion with our 52 remaining minutes.

3 Karin?

4 MS. FOSTER: I think I'm up on the board because
5 my card was not down, so you can remove me from the
6 queue.

7 MS. BRYAN: Thank you. Any debate on that?

8 (Laughter.)

9 MS. BRYAN: Heather?

10 MS. CLOUD: I guess one of my concerns, I can
11 respect that you're suggesting to make shorter plans
12 for two years, and some of the housing entities do.
13 However, I live in a state where they fight you tooth
14 and nail for any kind of project that you're trying to
15 do. And so something that you think is only going to
16 take a year may end up taking five years. It's
17 difficult to work with the local municipalities when
18 you're dealing with various counties in the state and
19 your land base is all over and you don't have
20 reservation.

21 MS. BRYAN: Thank you. Is there a feeling from
22 the group that we want to preserve the 15 minutes that

1 are remaining on this and have some side conversations
2 and maybe language clarifications? Jason?

3 MR. ADAMS: I guess, you know, the comment that
4 was made and has been made by several folks is that
5 there's this concern, but it's only a concept. I guess
6 I would -- I for myself -- we have this language
7 proposed. It's out there. It's on the table. It's
8 the proposal.

9 If there is a concern on something that -- in this
10 proposal, then I need to see the language to see how it
11 affects this. Otherwise, this is what we have on the
12 floor. And if there isn't anything that changes this,
13 and if there's no other comments, then I would ask for
14 a vote so that we can -- I don't want to sit here for
15 50 minutes and talk this through. If we're ready to
16 vote, let's vote, and I would call for the question.

17 MS. BRYAN: Thank you, Jason. Sami Jo?

18 MS. DIFUNTORUM: Thank you. Jason, you might know
19 this. I'm curious how many tribes receive more than \$5
20 million per year.

21 MR. ADAMS: Correct me if I'm wrong, Jennifer, but
22 I thought the list was somewhere around 17? I think

1 that was the number that was in my head, 17 or 21.
2 Twenty-one? Okay. And then, again, there's only two
3 that this affects currently. We did a TA request and
4 found out that the criteria here, over \$5 million,
5 three times their allocation, there's only two tribes
6 that this affects.

7 MS. BRYAN: Thank you. Carol?

8 MS. GORE: I just have a question for Jason on
9 your last comment. I think there is one maybe
10 technical amendment that would get people on board in
11 one area where there's lack of clarification. That's
12 at three years. And I really wonder since we don't
13 have language to propose if you would entertain just
14 taking a break while we could maybe talk about that
15 language on a break and then come back rather than call
16 for a vote. And I'm okay either way. I just -- you
17 worked really hard on this language, and I'd like to
18 see you get to the conclusion that you wish. Thank
19 you.

20 MR. ADAMS: Again, if that's what it takes to see
21 language, that's what I would -- because that's what
22 you need. Let's do it. But does a break stop the

1 clock?

2 MS. BRYAN: Well, that was my question, and then
3 who's doing the language, and how much time do they
4 need. I believe it would be within the time of the
5 clock based on the last time that we took a break and
6 we stayed on the clock. Who is going to help us, and
7 how much time do we need?

8 So I only offered tabling it, Jason, as a way to
9 stop the clock. But if you'd rather take a break, we
10 can keep the clock rolling. Karin?

11 MS. FOSTER: Yeah. Just a -- just a point of
12 order on that. I mean, there is a recognition that
13 there's a time limitation for interruptions, talks
14 about the committee process being interrupted, and that
15 the chair and co-chairs announced the exact length of
16 the interruption. Couldn't that be applied? Couldn't
17 you announce that there would be a break and stop the
18 clock? I'm not sure I understand why it would continue
19 -- have to continue to run based on the protocols.

20 MS. PODZIBA: So in the last round, we interpreted
21 the protocols that the clock continued during the
22 break.

1 MS. FOSTER: Oh.

2 MS. PODZIBA: But what we could do is we can table
3 it, take a break, and then bring it back right after
4 the break.

5 MR. ADAMS: Again, I'd just comment.

6 MS. BRYAN: Jason?

7 MR. ADAMS: My comment would be that we have a
8 process. We agreed in protocols that this is going to
9 be the process, that we have a proposal on the table,
10 and that we vote on it. And if there's dissension to
11 that, then the dissension to that, then the dissension
12 is brought forward, and there's an attempt to fix it
13 from that dissent.

14 And I don't want to start another process by
15 saying, well, let's just take a break and insert
16 language. I mean, that seems to deviate from the
17 agreed upon process. So I guess I'm just trying to
18 move this ahead by saying if there's dissension, okay,
19 I can live with that. But let's vote on this to find
20 out what the dissension is and find out a way to fix it
21 if there truly is.

22 MS. BRYAN: So the proposer would like a call for

1 the question. We've had an hour and 15 minutes almost
2 of discussion on this matter, so I would like to seek
3 consensus on this proposal at this time. We're going
4 to call for the question on the proposal in front of
5 us. There were a couple of amendments that were made
6 and accepted, so that's what we have in front of us.
7 And I'm going to ask now is there consensus on the
8 proposal that's being presented?

9 (Show of approval/disapproval.)

10 MS. BRYAN: I see one dissension. Can I please
11 have your reason and an offer of proposal?

12 MS. VOGEL: Sharon Vogel, Cheyenne River. I
13 object to this because of my comments earlier, is I
14 have to go back and consult the tribal governments that
15 may have weighed in on the proposed legislation. And I
16 realize that it's the principle of coming from a treaty
17 tribe that does not accept anything except tribal
18 consultation. So I cannot cast a vote saying that all
19 the tribes in my region agree to this. I cannot do
20 that.

21 MS. BRYAN: Thank you. Jemine? Oh, wait, wait.
22 So we had a dissent. We had a reason. You have to --

1 would you please offer an alternative?

2 MS. VOGEL: I do have an alternative, and that is
3 to postpone the vote until next August like we did on
4 an earlier issue.

5 MS. BRYAN: Okay. Can we take a vote on the
6 proposal alternative that was provided to take a vote
7 at the next meeting?

8 (Show of approval/disapproval.)

9 MS. BRYAN: That proposal fails. Jemine?

10 MS. BRYON: In order to address the concern that
11 Rusty raised regarding the three-year -- oh, what
12 happened to it? Can we offer some language?

13 MS. PODZIBA: Well, you need to --

14 MS. BRYON: Am I out of order?

15 MS. PODZIBA: -- you need to re-propose the entire
16 thing and then with the change. The proposal has been
17 voted down.

18 MS. BRYAN: So were you wanting to answer a
19 question or start with the proposal that was initially
20 in front of us and make a suggestion -- a slight
21 amendment to it?

22 MS. BRYON: To offer a slight amendment to it.

1 And I apologize. I don't know the exact protocols.

2 I'm working my way through it. Trying to be helpful.

3 MS. BRYAN: So I'd say start with the proposal in
4 front of you, and add or delete, and then offer it to
5 us where you are going to insert language maybe?

6 MS. BRYON: Yes. So on line seven, after "greater
7 than" -- so let me read the whole -- "The undisbursed
8 funds factor applies if an Indian tribe's initial
9 allocation calculation is \$5 million or more and the
10 Indian tribe has undisbursed IHBG funds in an amount
11 that is greater than" -- insert -- "the sum of the
12 prior three years' initial allocation calculation." So
13 we're taking out "three times its" and substituting
14 "three times it" with "the sum of the prior three
15 years'."

16 MS. BRYAN: Does that read how you like it? So we
17 have a proposal that's offered. I would like to open
18 up for discussion on this, and I would like to start.
19 No. I'll put my card up. I'm going to turn it over to
20 Susan.

21 MS. PODZIBA: Okay. Then I'm going to call -- is
22 it Earl? Yes.

1 MR. EVANS: I would -- I would like to suggest
2 that maybe we table the matter if based on what Ms.
3 Vogel said. Even if we discussed this, and we could
4 discuss this proposal for another two hours. If her
5 final thing is that she's not going to vote on this
6 issue at all, we may need to table it until tomorrow
7 because maybe by then she will have changed her mind.
8 I don't know.

9 MS. PODZIBA: Karin?

10 MS. FOSTER: I think there's a lot here for people
11 to digest, and I would also be in favor of tabling it.

12 But I was going to ask was if we make that change and
13 refer to the prior three years' initial allocation
14 calculation, is that different than their final
15 allocation calculation? I just wonder, you know, what
16 does the initial allocation calculation become in that
17 context because when we referred to it, of course,
18 before, we were talking about what happens before you
19 take out the undisbursed funds.

20 MS. BRYON: Good point. Final. It would be the
21 final.

22 MS. PODZIBA: Annette?

1 MS. BRYAN: I've been in favor of tabling it. I
2 have no problem with that. I don't want to waste too
3 much time, but I do want to say into the record that we
4 are called to come and sit at this table and keep
5 abreast of what the work groups are doing throughout
6 these last five sessions before now. So I'm really
7 disappointed that we wouldn't be able to move on
8 something for tribal consultation when we're here at
9 this table to make these decisions and we're in
10 negotiations. And so, that's what we're sitting here
11 to do. So I wanted to say that for the record.

12 MS. PODZIBA: Sharon?

13 MS. VOGEL: For the record, I don't think that
14 this negotiated rulemaking process has ever been asked
15 to comment on current legislation. I think that the
16 Pearce legislation is going through a process along
17 with the Senate side. And irregardless of the outcome,
18 tribal governments have that opportunity to respond to
19 any legislation. It is not our position to oppose
20 tribal governments.

21 MS. PODZIBA: Heather?

22 MS. CLOUD: I just wanted to let you know that I

1 had my concerns answered, so I'm fine with the
2 proposal.

3 MS. PODZIBA: Okay. There is no one else on the
4 list, so it sounds like it's tabled with the 38 minutes
5 remaining. Is that -- okay. I'll turn it back to the
6 chairs for a vote on tabling the matter.

7 MS. BRYAN: Thank you. We have lots of discussion
8 that's happened here on this issue, and lots of
9 requests to table this. So can we get a consensus on
10 tabling this issue? The people that want to move
11 forward on the issue or dissent on tabling.

12 (Show of approval/disapproval.)

13 MS. BRYAN: Rusty?

14 MR. SOSSAMON: With the new language that was put
15 in there? I couldn't -- I mean, that addressed my
16 issue, so I'm good with it if you want to vote. And
17 I'd recommend we call the question and see what the
18 problem is, and then move on and see where we're at.

19 MS. BRYAN: Thank you, Rusty. Jason?

20 MR. ADAMS: I'm trying to understand, Sharon, your
21 objection to moving forward on this issue. And for the
22 record, I was sent here as a representative of my tribe

1 with full authority to negotiate these issues on behalf
2 of the Confederated Salish-Kootenai Tribes. That's
3 what they did in a resolution giving me that authority
4 to do that.

5 And so, I'm just concerned that your raise this
6 issue at this point and juncture in our negotiations.
7 At what next point of our negotiations will this be
8 raised and bring our negotiations to a screeching halt?

9 MS. VOGEL: I appreciate that question. This
10 issue, and I can't emphasize it enough. It involves
11 current legislation. Other issues don't involve
12 current legislation. At least I'm not aware of it.
13 The other is I have 16 TDHEs and 15 tribal governments
14 in my region. I've tried to reach out to them to ask
15 has your tribe issued any position, had a tribal
16 resolution on the Pearce legislation or on the Senate
17 side. I've heard back from three of the TDHEs that are
18 not in support of this. I am trying to contact our
19 executive director of the Great Plains Tribal
20 Chairman's Association to ask if they have acted. I
21 may not be able to reach her until tonight.

22 So I am trying in my position to do due diligence

1 that a tribal government in my region has not acted on
2 this. I do not want to be disrespectful to that tribal
3 government, so I am trying to find out.

4 MS. PODZIBA: Yes, you can respond.

5 MR. ADAMS: I thank you for that, and I understand
6 where you're coming from. But I'm just concerned that
7 we've had meetings on this issue and we've been working
8 on this for several -- for over a year now, I guess,
9 since we started the process. And for those tribal
10 governments, if they have concerns about these specific
11 issues, they've had the opportunity. Our meetings are
12 open. They're public. Nobody is barred from attending
13 and participating at an equal standing with anybody
14 else in the work groups to express their concerns and
15 their issues with these -- what we're negotiating here.
16 And I understand your concern in regard to current
17 legislation, but that can happen on anything, and that
18 can happen at any time led by a tribe and anybody else
19 that wants to take an issue to the Hill. I think what
20 we're trying to do here is show Congress that we're
21 negotiating an issue that is before them and show them
22 that we as tribes can negotiate and come to some

1 agreement in a forum that will affect that issue that
2 they're pushing through legislatively, and so that we
3 can have this language and bring it to them and say,
4 you don't have pursue a legislative fix because we are
5 working on this. I just wanted to offer that. Thank
6 you.

7 MS. VOGEL: And I know that it's principle-based,
8 that it's based on my principles of coming from a
9 treaty tribe and knowing how my tribal government would
10 expect to be consulted on major issues. Current
11 legislation that impacts their funding for housing is
12 being determined by legislation -- proposed
13 legislation. I have to be respectful of that.

14 MS. PODZIBA: Karin?

15 MS. FOSTER: How much more time do we have on this
16 issue?

17 MS. PODZIBA: There are 32 minutes. However, I
18 did just want to make the comment that it is time for
19 public comment, so I don't know what you want to do
20 about that.

21 MS. BRYAN: I think we're flexible on the agenda
22 and we're on the clock, so we just need to keep having

1 those discussions.

2 MS. PODZIBA: Karin?

3 MS. FOSTER: The reason I put my card up is
4 because I wonder if it would be possible for Sharon to
5 explain what issues there are in the legislation that
6 are in conflict with the proposal so that we can be
7 talking about actual issues rather than just the fact
8 that it's been taken up to the Hill, because I do think
9 that just the fact that it's been taken up to the Hill
10 rather than brought here isn't really a valid, you
11 know, response.

12 But if there are specific things, like, for
13 example, if you're concerned about the 2018 date
14 instead of 2017 or something like that, we can talk
15 about it. I think that would be helpful.

16 MS. VOGEL: I would have no problem with that.
17 That's why I'm trying to reach out and ask if a tribe
18 has objected to it or if they're in support of it. As
19 it is, I don't know how tribal governments in my region
20 are responding to that. I am attempting to reach out.

21 The other is, this was the first time I had seen
22 this language, so how quickly can I get this out to the

1 TDHEs in my region or to the tribes and say is this in
2 opposition to what you have submitted? If you have
3 submitted any letters to your Congress people, does it
4 differ from this, or can you live with this? I just
5 now got this. I don't know how many of you have seen
6 it before me, but I have just now seen this.

7 MS. PODZIBA: Jack?

8 MR. SAWYERS: I guess I don't know quite how to
9 approach this, but I don't think that -- I think
10 Congress will do what they do, and we have to do what
11 we do. And, Sharon, I respect you a lot, but I really
12 truly believe that we are here to make decisions for
13 the tribes. And the reason we -- you know, everybody
14 can't be here, so consequently they trust us to do the
15 things that they think are best for the tribes.

16 What decisions we make here today are probably not
17 going to affect Congress if they decide to do
18 something. I felt very strongly that by doing what
19 we're doing today, we may not have Congress impose
20 something that we're probably not going to like. I've
21 never seen a -- I've never seen Congress do what's best
22 for us exactly. And I just -- I don't think it's going

1 to affect Congress. I think Congress will have to do
2 what they do.

3 And like I say, I don't want to be rude, and I
4 wouldn't hurt -- I wouldn't say anything to hurt
5 anybody's feeling. Well, yes, I would. I really
6 would.

7 (Laughter.)

8 MR. SAWYERS: I actually -- I'm lying about that.
9 But truly, Sharon, I have a great regard for you, but
10 I just feel like we need to do what we do. Congress
11 needs to do what they do. And perhaps in our effort we
12 can -- we can help both situations. And that's all I
13 have to say.

14 MS. PODZIBA: Earl?

15 MR. EVANS: Earl Evans, Haliwa-Saponi Indian
16 Tribe. I'd like to move for the question on the
17 proposal.

18 MS. BRYAN: Thank you, Earl. We do have cards up,
19 so can we hear from the next two people before we move
20 the question?

21 MS. PODZIBA: Jason? Aneva?

22 MS. YAZZIE: Thank you. Real quickly, and I do

1 appreciate, too, you know, and respecting everyone's
2 comments. And then with respect to Sharon, you know, I
3 have in my hand the leadership of the coalition, the
4 large land-based tribes. And I believe we have tribes
5 in your area that identify to a resolution that was
6 passed in February 28th of 2013 that speak to the
7 covenant that they support, the authorization of
8 NAHASDA, and then the formula negotiated rulemaking;
9 and that that process be honored through this process
10 that we have before us.

11 This is the leadership. And so, and I don't know
12 how much more authority that you're seeking even to
13 consult with them. And this actually was sent out to
14 all the members, I believe, about a month ago for
15 review. And I don't know how -- we have reviewed some
16 of the initial drafts and certainly some of the later
17 provisions as of today.

18 But I would hope that we -- as Madam Chair
19 expressed, we have to do our homework coming here
20 beforehand, and having that knowledge, and having that
21 consultation beforehand was really our responsibility
22 to do. And so, with that, I just wanted to make those

1 comments to say -- to talk about the leadership
2 supporting the venue of this negotiated rulemaking to
3 address those concerns, and maybe preempt any kind of
4 Federal legislation that might be moving in process.

5 The other consideration to note is this is a --
6 the language that was issued by the House Financial
7 Services Committee. It's not gone to the full House.
8 The Senate has a different version that does not have
9 -- the Senate committee of jurisdiction has a different
10 version that does not contain "three times" language.
11 So there's a possibility that it doesn't even go -- get
12 passed in conference. And if so, that also then would
13 affect NAHASDA reauthorization in total.

14 So those are some other risks, I think, that we
15 need to consider in terms of our charge here as a -- as
16 a committee. Thank you.

17 MS. BRYAN: Thank you. We do have a call for the
18 question. First, I'm going to Sharon an opportunity to
19 respond.

20 MS. VOGEL: I am well aware of the resolution by
21 the organization. Our tribe is a member of that. In
22 the Great Plains Region, there's the Great Plains

1 Tribal Chairman's Association. The TDHEs have
2 established a relationship with them, and when that
3 particular resolution was passed by them, we questioned
4 them and brought to their attention that the ACS data
5 was being part of the negotiated rulemaking. When they
6 learned that, they then said, well, just a minute.
7 Maybe we need to rethink how we're going to support
8 negotiated rulemaking.

9 So I have done my homework on this. I am in
10 communication with our Tribal Chairman's Association.
11 And so, they did have concerns in the Great Plains
12 about the negotiated rulemaking process. Thank you.

13 MS. PODZIBA: Jason?

14 MR. DOLLARHIDE: Thank you. Jason Dollarhide,
15 Peoria Tribe. I guess my concern with it, Sharon, is
16 that from listening to you, you know, as far as
17 legislation goes, I mean, all of NASHASDA is in
18 legislative -- in a legislative process right now. So
19 in my opinion, you know, we can't pick and choose what
20 part we want to talk about and what part we want to
21 vote on or not vote on.

22 You know, from that, you know, from my

1 understanding and from my thoughts, that, you know, if
2 that's -- if that's your stance, then, you know, you
3 really shouldn't be voting on anything without
4 consultation from the tribal leaders in your area
5 because this is all under legislative comments
6 currently, not only just this particular item. So, you
7 know, to hold up the negotiated rulemaking by saying
8 that you need to consult, you know, is just really --
9 you know, in my opinion, is unacceptable.

10 MS. BRYAN: Thank you. We do have a call for the
11 question. We have 23 minutes left.

12 MR. SAWYERS: Let me make a suggestion. Let's
13 hold this until tomorrow. And at that time, we'll have
14 a better chance of passage. It's not going to pass
15 today. We understand that, and we appreciate
16 everyone's thoughts. Let's wait until tomorrow, and I
17 think that if we give everybody a chance to look at
18 this overnight, I think it has a much better chance.
19 So my proposal is that we do keep that 23 minutes or
20 less until tomorrow and make a run at it then.

21 MS. BRYAN: I would motion to hold our time until
22 tomorrow. Call for the question then. Can I get

1 agreement for that?

2 SPEAKER: (Off audio.)

3 MS. BRYAN: We're going to call for the question
4 tomorrow. Is that okay, Earl? See all these thumbs?
5 Thank you. Hold our time, please. Good job,
6 everybody.

7 So if there's a procedural question, let's handle
8 it now. We may need for procedure to call for the
9 question, vote it down, and re-propose it tomorrow? I
10 just want to be clear about protocol so no one comes
11 back after this -- we break and -- are we good?

12 I think that the co-chairs have some flexibility
13 to make decision, and we've made the decision to vote
14 on this tomorrow. So that's in for the record.

15 (Applause.)

16 MS. BRYAN: Yes, Leon?

17 MR. JACOBS: Leon Jacobs. Can you give us a time
18 when this issue will be on the agenda tomorrow?

19 MS. BRYAN: I would like to -- let's see. For
20 today's agenda, we'll finish up today. I would like to
21 know if the committee is done negotiating for the day,
22 and we'll start negotiations in the morning. I would

1 propose that we start with this issue at the time
2 that's left. That was the way it was offered, so it
3 would be in the morning, Leon.

4 MR. JACOBS: Okay.

5 MS. BRYAN: Okay. So getting back to today's
6 agenda. Gary?

7 MR. COOPER: Okay. Madam Chair, just -- I just
8 wanted to point out that our work group, I think that
9 they have dispersed out most of -- there were two items
10 dispersed out yesterday. I believe that there was a
11 couple of other items dispersed out today, and I think
12 that there might be one that we might be working on
13 some final language on, or we may already have that out
14 to you. But I just wanted to be clear.

15 And also just for the record, too, I think the
16 Work Study Group, we wasn't sure if we was going to
17 meet tonight or not. It kind of sounds like as today
18 went that it might be best that we do not because it
19 sounds like there might need to be some discussions had
20 maybe in the evening on a couple of items that might've
21 been tabled. So I would propose that maybe we look at
22 tomorrow for the Study Group to meet instead of this

1 evening.

2 MS. BRYAN: Okay. Thank you. Just to clarify,
3 Gary, I heard two issues for tomorrow?

4 MR. COOPER: No, ma'am, I'm sorry. There was two
5 issues presented last night. There is actually four
6 issues all together. Three of them all have to do with
7 formula overlap area, so they all have to do with
8 1000.326, and then one has to do with minimum funding.

9 And those are the items that we're bringing forward,
10 and then a report out on an initial item that was taken
11 up in the work group. So four items, I believe, to
12 take action on.

13 MS. BRYAN: Thank you. And please have those
14 prioritized for tomorrow morning. And I'm going to
15 check in with Jason Adams. We have the 20-so minutes
16 left on this one issue, and then what else we have to
17 present for our discussion tomorrow after that.

18 MR. ADAMS: We have two issues that were
19 essentially bumped to tomorrow from today as I
20 understand, and they both have time remaining. So, and
21 I guess as a point of process, maybe not of order, but
22 of process, we packaged everything that was germane to

1 one item and presented it as one item. And I'm hearing
2 Gary say that he's got three items that are -- one
3 item, and they're going to be presented as separate
4 items because, you know, that kind of deviates from the
5 process that we utilized. If they're all in formula
6 areas, shouldn't that be one item with the two-hour
7 time limit? I'm just asking.

8 MR. COOPER: And, again, I just brought that up to
9 the committee as a point of reference because they were
10 passed out of the -- out of the work group as three
11 separate items and not -- and not a fourth one. So I
12 just -- you know, again, I'll leave that up to the
13 committee, but that is how they were passed out of the
14 work group as three separate items. So that's how -- I
15 mean, that's how they're being brought forward. But
16 again, I just -- I just wanted to make everyone aware
17 of what we had coming up.

18 MR. ADAMS: I guess, again, just as a matter of
19 process, we had the last two issues we presented
20 affected various parts of the regulation, but we,
21 again, presented those as one proposal because the
22 issue was in common. I'm just asking this question as

1 a matter of process on how we do this.

2 We could've packaged these each individually and
3 took them two hours each on all of them and taken more
4 time. But I'm just trying to get us through.

5 MS. BRYAN: Thank you, Jason. Sami Jo is going to
6 defer her time to Dave Heisterkamp.

7 MS. DIFUNTORUM: Two minutes.

8 MS. BRYAN: Two minutes.

9 MR. HEISTERKAMP: I think it's a matter of -- very
10 similar technical correction. I think the two items
11 can be dealt with as one item. And the third item is
12 very similar to your presenting us with two different
13 pieces of regulation 318 to look at, so it could be
14 handled the same way. Very little language compared to
15 what we've gone through today, so I'd be very surprised
16 if we need more than two hours total on all three
17 things.

18 MS. BRYAN: Would you -- would you be willing to
19 put those all into one then so that we can lump into it
20 -- because what I --

21 MR. HEISTERKAMP: I can't speak for that because
22 the people that are proposing, there's one or two

1 issues that affects to two tribes, and could be subject
2 to a lot of negotiation. It happens to affect the same
3 regulation we're making technical corrections to. And
4 I really don't think based on how the work group went
5 I'd feel comfortable saying that those could be worked
6 on together. One is a technical correction set. One
7 is a very substantive issue.

8 MS. BRYAN: I was there. Carol?

9 MS. GORE: I would just suggest that the technical
10 issues, though they're in the same regulation, they're
11 not going to need two hours. I would be surprised if
12 it's 10 minutes with the committee because they're just
13 technical in nature. The other two were very
14 different, unrelated. It's not like it's one issue
15 that impacts multiple regulations. I think they
16 warrant some separate consideration. But the first two
17 will be very, very fast, Jason.

18 MR. ADAMS: You're on the record making that
19 statement, just to let you know.

20 (Laughter.)

21 MS. GORE: I'm going to call the question as soon
22 as they hit.

1 MR. COOPER: And I'm good either way except I just
2 felt that it was -- I would like some input from the
3 work group before I made that decision. But I would be
4 comfortable with presenting it like that. The two
5 issues from yesterday, the technical corrections as one
6 single item, and then the other issue, I don't think it
7 can be because it was brought up separately. But I
8 think that -- I think that we can get there. I'm even
9 good with bringing up the technical amendment today if
10 we want to discuss it, and Carol can call for the
11 question.

12 MS. BRYAN: I'm ready. Do it.

13 MR. COOPER: Thank you, Madam Chair. And I am
14 prepared to do it. These are the technical corrections
15 that were handed out yesterday. They affect 1000.326.
16 The first part of the technical correction adds a new
17 paragraph (c) and re-letters all subsequent paragraphs.
18 The new paragraph (c) would read, "Upon receiving
19 a request for expansion or redefinition of a tribe's
20 formula area, HUD shall follow the notice and comment
21 procedures set forth in 1000.302, formula area
22 paragraph, to paragraph (ii)." And then it re-labels

1 paragraph (d) of that.

2 The next part of this technical correction adds a
3 new paragraph (e), and re-letters all subsequent
4 paragraphs. The new letter (e) would read, "Upon
5 receiving a request" -- and, I'm sorry. This makes the
6 same technical correction to 1000.336. It has to do
7 with the same thing, just in two separate parts. And
8 it adds paragraph (e): "Upon receiving a request for
9 expansion or redefinition of a tribe's formula area,
10 HUD shall follow the notice and comment procedure set
11 forth in 1000.302, formula area, paragraph (ii)."

12 Those are -- it's the same verbiage in correcting
13 or making the technical correction or amendment to both
14 sections. That would be Section 326, adding paragraph
15 (c), and 336, adding paragraph (e). And that would be
16 -- that came out of the Needs Work Group, and I would
17 move that forward to the committee for consideration.

18 MS. BRYAN: Thank you, Gary.

19 MS. FOSTER: Madam Chair?

20 MS. BRYAN: Yes, Karin?

21 MS. FOSTER: I call for the question.

22 MS. BRYAN: We have a call for the question.

1 (Applause.)

2 MS. BRYAN: All in favor of the proposals
3 presented, please may I see -- I'm seeking consensus.

4 (Show of approval/disapproval.)

5 MS. BRYAN: Lack of consensus is consensus it says
6 in the protocols. I see consensus. Going once. Going
7 -- all right. If we have a dissension, we need to
8 identify your concern and offer an alternative, please.
9 Remember, we were all sitting in this work group
10 together when we made this language.

11 MS. GREEN: Right. Glenda Green. We had had -- I
12 had had a discussion with Sami Jo prior to this, but it
13 just never got to the table. And the proposal is we
14 think a better fix is going to be 302 (ii) (b) (ii). Are
15 we there? And what we -- are we there?

16 What we're proposing is that first line, it says,
17 "Upon receipt for recognition of a geographic area not
18 identified in paragraph (i) of this definition," and
19 removing "not identified in paragraph (i) of this
20 definition." We believe that that will cure the issue
21 that the -- that the subgroup was trying to address.

22 In addition to that, 1000.302, number two, then

1 (ii), the same paragraph that's referenced in the
2 proposed amendment. So instead of making the change to
3 these two separate regulations, we go directly to 302
4 and make the change there.

5 MS. BRYAN: Sami Jo?

6 MS. DIFUNTORUM: Thank you. So this was mentioned
7 to me when we were in the Needs Work Group right before
8 we came down here. And I guess -- well, first off, my
9 comment was I don't know that I can agree to that
10 without the work group weighing in on it. But, more
11 importantly, I don't understand the reason for not
12 leaving it where we had placed it. We put it in the
13 other part of the regulations for a specific reason.
14 We wanted it to be very clear that this was applicable
15 to formula over -- for expansions of the formula area.
16 We wanted the opportunity for -- to be notified in
17 advance if somebody was expanding their formula area
18 and it would impact our grant. And we wanted the
19 opportunity to comment.

20 And the way that it's worded right now, I don't
21 believe that's the process that is applied. In fact, I
22 know it isn't the process that's used when a tribe

1 expands their formula area into an overlap. So that
2 was the reason we had it placed in these sections that
3 we had it placed in, and I'm not sure that this does
4 the same thing. So I want to -- I want to consider
5 this before I'm open to agreeing to it.

6 MS. BRYAN: Can HUD explain their problem with
7 what we've proposed?

8 MR. ATALLAH: Sure. I think is just really a
9 drafting issue. The process for expansion of formula
10 area, maybe oddly enough, as it exists now in the
11 regulations is codified in 1000.302 in the definition
12 of formula area. And as you can see here, there's
13 already a process for what happens when you seek to
14 expand under the existing regs -- seek to expand your
15 formula area under a category not listed in paragraph
16 (i).

17 And what Glenda is suggesting is just eliminating
18 the words "not included in paragraph (i)," which would
19 mean that -- I think it would mean that any expansion
20 of your formula area would be subjected to these
21 procedures. So I think this does exactly what you're
22 trying to do, Sami Jo. It just places it in maybe a

1 more appropriate part of the regs.

2 The expansion of formula area is not in 1000.336,
3 although you can challenge your formula area under that
4 section. It's more specifically laid out in the actual
5 definition of "formula area," which is in 1000.302.

6 It's kind of a weird place to put it, but that's where
7 the regs are now, so maybe it's just easier just to put
8 it -- to put it there. This seems like a drafting
9 issue, though.

10 MS. BRYAN: Karin?

11 MS. FOSTER: It seems like a little more than a
12 drafting issue because what you're saying is that the
13 types of geographic area identified in paragraph (i)
14 now would be subject to a different and additional
15 process than they are under the current regulations,
16 aren't you?

17 MR. ATALLAH: Right. I guess what I'm saying is
18 the difference between the proposal and this change, I
19 don't think there's a difference. It's the same thing
20 as applying a notification process for all formula area
21 expansions. I think that's what's being proposed here.

22 MS. FOSTER: So you could agree to our proposal if

1 we're saying the same thing?

2 MR. ATALLAH: Yes.

3 MS. FOSTER: Shall we call the question again on
4 our original proposal?

5 MR. ATALLAH: I think Glenda's concern is a
6 drafting -- is more of a drafting issue, but I think
7 we're fine with the concept and the policy here.

8 MS. BRYAN: Jason?

9 MR. ADAMS: Just as a question, was there -- was
10 this same language in two parts, and what was the
11 second part because is this in 336? I thought it was
12 in another section also. I don't have the paper in
13 front of me. So 326 has a new (c) because there's an
14 existing 3(c) in 326. So is this changing 326(c)?

15 MS. BRYAN: Gary?

16 MR. COOPER: In 326(c)? I don't have the current
17 (c) in front of me. I'm sorry.

18 SPEAKER: This is the current (c).

19 MR. COOPER: Yes. It moves the current (c), I
20 believe, down to (d). It inserts the new language in
21 paragraph (c), and then moves what is currently (c)
22 down to (d) just for clarification.

1 MS. BRYAN: Carol?

2 MS. GORE: Thank you. I just want to be clear.
3 Section 302 already has a notice provision. We simply
4 wanted that same notice provision applied when an
5 overlap situation occurs, and that's why we've asked
6 for it to be under 326. So I don't know that it's a
7 simple drafting issue, and that it was --

8 It's already addressed under formula area, which
9 is 302. Our intent was that that same notice
10 requirement be placed when there's an overlap
11 situation, so the tribes would have the opportunity to
12 negotiate amongst themselves, and without that notice,
13 it simply occurs. That's what we heard in our work
14 group. So that's not my issue, but that's why we
15 thought this was a simple technical correction, a
16 simple notice provision that HUD already does under
17 circumstances related to formula area. Thank you.

18 MS. BRYAN: Thank you. Karin, is your card up?
19 Okay. Karin?

20 MS. FOSTER: So, Carol, was it the intention then
21 that in any -- even absent an overlap situation, but
22 just, you know, a situation where someone wants to

1 recognize the formula areas in paragraph (i), was it
2 your intention then that the notice and -- what was it
3 -- notice and comment provisions. Would it also apply
4 then, or that that whole process would also apply to
5 those situations, because that's the change I see,
6 those situations were set aside, treated differently in
7 302 before this change.

8 MS. GORE: I'm not sure I should answer that
9 question since I wasn't in that sub-work group. But
10 maybe if I could defer that to Sami Jo.

11 MS. DIFUNTORUM: Who didn't hear the question?
12 I'm sorry.

13 MS. FOSTER: Well, HUD's suggested, you know,
14 repositioning of this regulation does bring up the
15 issue that if you look at 302 and formula area and
16 302(ii) for a geographic area not identified in
17 paragraph (i) of this definition, you know, there's a
18 whole process that you need to go through. But for the
19 formula -- for the areas identified in section -- or in
20 paragraph (i) of the definition, you don't need to go
21 through that.

22 So is the suggestion to treat those areas in

1 paragraph (i) the same as the others, I mean, to
2 eliminate that distinction and to require the notice
3 and opportunity comment whenever someone seeks, for
4 example, to add their reservation service area or
5 something else like that?

6 MS. DIFUNTORUM: Do you want to answer that one?

7 SPEAKER: Yes.

8 MS. DIFUNTORUM: Okay. So Ed is going to answer
9 that.

10 MR. GOODMAN: Ed Goodman. The short answer is
11 yes. The intention is in the limited circumstance when
12 an expansion of a formula area is going to create an
13 overlap of formula or expansion of someone's formula
14 will create an overlap, then the tribes who are
15 impacted by that overlap would have the opportunity to
16 have notice and comment for -- on that. Not any
17 substance -- necessarily any substantive right to
18 change that, but at least the opportunity to receive
19 notice and provide comment.

20 MS. BRYAN: Thank you. So where we're at is we
21 had a proposal. HUD dissented, and wondering -- give
22 them a few moments. Oh, Jason, is your card up?

1 MR. ADAMS: Oh, my bad.

2 MS. BRYAN: Earl?

3 MR. EVANS: So a procedural question. So the
4 original proposal did not receive consensus, so we have
5 HUD's alternative. So I would like -- if I'm correct
6 that that's where we are, then I'd like to move for
7 question so we can make a decision on that and decide
8 if we want to go and do something else, or stick with
9 it, or what have you. That's my suggestion.

10 MS. BRYAN: Thank you, Earl. So we have HUD's
11 proposal. Anymore discussion on the proposal in front
12 of us from HUD? Sami to Ed?

13 MR. GOODMAN: Ed Goodman. The difference between
14 the language that's proposed by HUD and changing 302 is
15 that that notice and comment provision would apply to
16 any time a formula area is changed, whether it creates
17 an overlap or not. The intention of the work group in
18 the language in 326 and 336 is only to have that notice
19 and comment provision apply when there's the creation
20 -- potential creation of an overlap by the expansion of
21 a formula area. So the HUD proposal probably goes
22 further in imposing that requirement. That's at least

1 how we read it. And the intent was not have it that
2 broad.

3 MS. BRYAN: Thank you. All those in favor --
4 seeking consensus on the proposal from HUD. Oh, I'm
5 sorry. Karin, did you want to -- before the vote?

6 MS. FOSTER: I'll wait and vote, but then I'd have
7 a counter proposal.

8 MS. BRYAN: Thank you, Karin. Consensus on the
9 HUD proposal?

10 (Show of approval/disapproval.)

11 MS. BRYAN: We have dissension from everyone but
12 HUD. Okay.

13 (Laughter.)

14 MS. BRYAN: I don't understand why if we're saying
15 the same thing, HUD didn't vote on our original
16 proposal, but I might be missing something really big
17 here. I'll recognize Mindy.

18 MS. D'ANGELO: Can I just make a clarification
19 where I think maybe we're getting -- we're not seeing
20 eye to eye is that under the provision now, and the
21 reason why we're suggesting the change here is we
22 interpret this to mean overlap tribes currently. So by

1 eliminating -- with the exception of the list of nine
2 because it's at the -- I can't see from here. Yeah,
3 because it says not identified in the section where the
4 list of nine is.

5 So we already interpret this as overlap tribes
6 notification process. And so by striking out the list
7 of nine exclusion, we'd be doing the same thing we do
8 for substantial housing services. Does that make more
9 sense?

10 SPEAKER: The current process. It's the current
11 process.

12 MS. BRYAN: Thank you. Karin Foster?

13 MS. FOSTER: Hello? I'd like to propose a --
14 well, it would be an amendment to what was already
15 proposed, but, I mean, it would be its own initial
16 proposal, right? So we could go down to that language.

17 It's been explained that this is really only intended
18 to apply when there is an overlap created. I would
19 suggest after the first clause, "Upon receiving a
20 request for explanation or redefinition of a tribe's
21 formula area," after that comma, insert "If approving
22 the request will create an overlap" or "would create an

1 overlap," I suppose, one way or the other, comma. That
2 would be my proposal, (c) with that change.

3 SPEAKER: In both sections?

4 MS. FOSTER: In both sections. In both
5 regulations 326 and 336 for which the proposals were
6 identical.

7 MS. BRYAN: Thank you. We have a proposal on the
8 table. Earl?

9 MR. EVANS: Call for question on Karin's proposal.

10 MS. BRYAN: We have a call for the question on
11 Karin's proposal. I'm seeking consensus.

12 (Show of approval.)

13 MS. BRYAN: We have consensus. Thank you,
14 everyone.

15 (Applause.)

16 MS. BRYAN: Okay.

17 MS. GORE: Not 10, all right. Sorry, Jason.

18 MS. BRYAN: Right. So the next short one is going
19 to wait until tomorrow.

20 (Laughter.)

21 MS. BRYAN: I do have -- we do have order of
22 business this evening. We would like to -- we need to

1 open up this session for public comment. There is a
2 microphone on either side in the back of the room. So
3 at this time, I would like to open it up for anyone
4 from the public who would like to comment. Please
5 state your name and who you're representing.

6 MR. WEAVER: I'm Framon Weaver. I'm tribal chief
7 of the Moab Choctaw Indians in Mount Vernon, Alabama.
8 And this issue that's coming up is involving an overlap
9 that only involves Alabama. And it wouldn't change --
10 it wouldn't change their formula very much, but it
11 would -- it would help us. We've got -- we've got
12 tribal members living in trailers, and this is an area
13 where the temperature reaches 100 degrees. Some of
14 them don't have air conditioning in those trailers.

15 So this could help us to meet those needs. And it
16 doesn't take anything away from the folks in the tribe.

17 It takes very little away from them, if any. And that
18 can probably be handled with negotiations between us
19 later if we have to. But this would enable us -- it's
20 a fairness issue. This is -- it's very unfair for us
21 to have people that's suffering in heat. Some of them
22 have to sit out under a shade tree all day before they

1 can go back inside because they don't have air
2 conditioning. They have sufficient heating or cooling.
3 In the winter time they don't have heating.

4 So if we could get this fixed, and I think it's
5 real easy to fix today with this proposed language
6 that's going to be put in front of you.

7 MS. BRYAN: Thank you. Standing room only at the
8 microphones. All right. Any other announcements or
9 comments? Any groups or caucuses need to make
10 announcements for meeting tonight? Anything for the
11 good of the order?

12 (No response.)

13 MS. BRYAN: All right. Well, I personally want to
14 thank each and every one of you for all of your hard
15 work. I feel like we made some huge accomplishments
16 today resulting from the last five meetings before this
17 one. And at this time, I just wanted to announce that
18 we're going to be meeting tomorrow morning at 8:30, and
19 we'll have Leon Jacobs close with a prayer.

20 MR. JACOBS: (Off audio). Our Heavenly Father, as
21 we close another day (inaudible) the interest of all
22 tribes in this great Nation. We thank You for the

1 guidance that You've provided to us through this day.
2 And as we go our separate ways tonight, we ask that You
3 bring us back together tomorrow in the same way to
4 continue this work for all tribes. All this we ask in
5 (inaudible). Amen.

6 (Whereupon, at 5:47 p.m., the meeting was
7 adjourned.)

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