

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

5 Thursday, August 28, 2014

6 8:41 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 MICHAEL THOM
- 7 SHARON VOGEL
- 8 ANEVA YAZZIE
- 9 JAD ATALLAH
- 10 JEMINE BRYON
- 11 TODD RICHARDSON
- 12 AARON SANTANA
- 13 PEGGY CUCITI
- 14 MINDI D'ANGELO
- 15 GLENDA GREEN
- 16 ED GOODMAN
- 17 DAVID HEISTERKAMP
- 18 SUSAN PODZIBA
- 19 CHRISTINE VELEZ
- 20 RODNEY VIGIL
- 21 JIM WAGENLANDER
- 22 FRAMON WEAVER

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PARTICIPANTS (continued)

ROBERT GAUTHIER

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

2 SPEAKER: Can we go ahead and get seated, please,  
3 so we can get started? We're about 10 minutes behind  
4 schedule already.

5 MS. BRYAN: Good morning, everyone. Thank you for  
6 showing up today. And I just wanted to express  
7 gratitude for each and every one of you that's here  
8 that, you know, left your families and your work back  
9 home to come here and do this important work for Indian  
10 country.

11 And today is Thursday, August 28th. We are on day  
12 three of session six, formula negotiated rulemaking.  
13 And we have asked Jason Adams to open up our day up  
14 with a prayer.

15 MR. ADAMS: Thank you, Co-Chairs. It's always an  
16 honor and a privilege to be asked to pray, so I don't  
17 take this responsibility lightly. And I just wanted to  
18 say that as I sit and think about our day and what  
19 we've done here, I always remember and reminded of the  
20 past leaderships that I've seen and have worked with.  
21 My father was a tribal leader for many years, and I  
22 always remember him telling me that through the years

1 it's important to begin our day as our people have  
2 taught us from generations past that we look to our  
3 Creator, we look to God for the wisdom and the things  
4 that we need for each day because each day brings its  
5 own challenges. Each day brings its own rewards. And  
6 so, with that in mind, I ask you to join me in a word  
7 of prayer this morning.

8 Heavenly Father, we thank You once again for this  
9 time that we have here. We thank You for this  
10 beautiful place that we have the opportunity to be here  
11 and to work together in this place. We ask for You to  
12 watch over us as we are here and guide us. We, again,  
13 come to You this morning for the wisdom that we need  
14 for this day.

15 We thank you for our ancestors. We thank You for  
16 those that have come before us, that have shown us and  
17 taught us how to begin our day. And, first and  
18 foremost, we look to You and we thank you. We thank  
19 You for yesterday. We thank You for the past. We  
20 thank You for those people of strength and courage that  
21 have come before us that have made the way to allow us  
22 to be where we are today. So we thank You once again

1 for this opportunity to gather. We thank You for our  
2 families back home. The awesome responsibilities that  
3 we have to our people, we don't take those things  
4 lightly.

5 And so, once again, Father, I ask for a blessing  
6 over each and everyone here. We thank You for the  
7 struggles that we have. We thank You for those back  
8 home that may need us right now, but we aren't there  
9 for them. We just pray for them. I'm thinking of our  
10 families and loved ones, our elders. For all these  
11 things I pray in Jesus' Name. Amen.

12 MS. BRYAN: Thank you. So yesterday we got some  
13 things accomplished, and we have some things with time  
14 left out of FCAS group, and some things from the Needs  
15 Work Group that we will be negotiating today. Our plan  
16 for today is stay into full committee work groups as  
17 determined or caucuses as determined by you all for  
18 calling them if you need them and when you need them.  
19 And so, we're scheduled for going into negotiations if  
20 everybody is ready and not in need of a caucus. And  
21 then our break is at 10:30.

22 So with that, I would like to ask for Jason from

1 FCAS to -- and actually I need to be reminded when we  
2 will pick one of the outstanding topics to start with  
3 and then where we were with the proposal, was it frozen  
4 or was it -- who was making it. You have that, Susan.

5 MR. ADAMS: Thank you. Jason Adams, Salish-  
6 Kootenai. I just guess I was not prepared to go back  
7 right away. I thought we were going to finish the  
8 Needs Work Group proposals. And if there was any  
9 tabling of their proposals, we would, you know, come  
10 back to ours. I guess I'm just asking a process  
11 question. We can sure pick up where we were at if  
12 that's what your wishes are, but I thought Gary was  
13 getting started with his proposals yesterday.

14 MS. BRYAN: Yes, that's acceptable. Are you ready  
15 for that, Gary?

16 MR. COOPER: Sure, Madam Chairwoman.

17 MS. BRYAN: Okay. I just have one announcement  
18 for the good of the order. There is a very, very, very  
19 special person amongst us today. I am reminded we have  
20 been together a year, so happy anniversary, everybody.

21 And happy birthday, Jack.

22 (Applause.)

1 MR. SAWYERS: You all got my present.

2 SPEAKER: (Off audio).

3 MR. SAWYERS: That's what I said. Thank you very  
4 much.

5 MR. COOPER: Madam Chair, I believe that the --  
6 there's two items that will likely generate some  
7 discussion, so I can bring up either one of those. I  
8 believe that the first one we could bring up would be  
9 the minimum funding issue. It is a revision, or, I'm  
10 sorry, it is a change to 1000.328.

11 This would change the amount that is used to  
12 calculate the minimum calculation for small tribes.  
13 And it would take the amount for -- out of what would  
14 be considered to be carryover funds. I would like to  
15 turn it over to my co-chair of the committee, Jack  
16 Sawyers, if I could. His group is the one who took it  
17 up, and they spent a lot of time on this issue. So I  
18 think it would -- I think that he could probably be  
19 able to provide us a lot more details on this issue.

20 MR. SAWYERS: Let me give you just a little  
21 background, and then I'll turn it over to -- back to  
22 you, and we can go from there. But we looked at

1 minimum funding, and we felt there was a need for some  
2 of our folks. Even though some of them are in  
3 umbrellas, and even if most of your people are getting  
4 \$50,000 and there's 10 in an umbrella, that's still not  
5 very much money.

6 So what we tried to do is work out a system where  
7 we could -- we could bump that up without going into  
8 your regular funding. So we wanted to do was take  
9 money from the -- there's two sources. One source is  
10 people who have been allocated money and did not --  
11 didn't do an APR. So they didn't take their funding.  
12 The other portion is people who -- they took money  
13 back.

14 And so, it isn't -- it's not part of your regular  
15 funding. We understand that it's still -- it's still  
16 money that would have been distributed, but it's not  
17 part of your regular funding. And we felt like the  
18 impact would be much less.

19 And so, I guess what we're saying is representing  
20 the small tribes -- the minimum-funded tribes, I should  
21 say. And this is folks who just get \$50,000 now as a  
22 total, not part of their needs or anything. It's their

1 total funding is \$50,000. There's not \$120,000 I think  
2 they said. Probably \$105,000 would get the full bump.

3 But anyway, we felt like we'd like to bring it  
4 before the group and see if we can -- I think we need  
5 to look at all of our programs and all of our folks,  
6 and certainly large tribes have many, many problems,  
7 and small tribes have many problems. This is a way  
8 that we could perhaps look at the small tribes and be  
9 responsible to help them some. And with that, do you  
10 want to read through this? I'll have you do that.

11 MS. PODZIBA: Would you like me to read through  
12 it?

13 MR. SAWYERS: Yes. Yes.

14 MS. PODZIBA: Sure. "1000.328: What is the  
15 minimum amount that an Indian tribe may receive under  
16 the need component of the formula?" "(c)(i) If in any  
17 given year there are carryover funds from the previous  
18 Fiscal Year and/or repayment funds from the current  
19 Fiscal Year available, these funds shall first be used  
20 to fund all tribes with a grant less than 0.011547  
21 percent of appropriation; such amount so that no tribe  
22 receives less than 0.011547 percent of appropriation.

1           (ii) If carryover is not enough to fund all tribes  
2 to a minimum of 0.011547 percent of appropriation, HUD  
3 will establish a new minimum grant of less than  
4 0.011547 percent of appropriation that allocates all  
5 carryover toward tribes below this minimum.

6           (iii) For purposes of paragraph (c) of this  
7 section "carryover funds" means grant funds voluntarily  
8 returned to the formula or not accepted by the tribes  
9 in a Fiscal Year, grants funds distributed to Section  
10 1000.536, and formula repayments."

11           (d) Recipients receiving minimum funding may use  
12 all their annual expenditures of grant funds for  
13 administration, planning, or NAHASDA-related  
14 activities. (e) If there are carryover funds not used  
15 to bring tribes up to the zero or .011457 percent of  
16 minimum, those funds will be allocated to NAIHC  
17 specifically to help tribes with capacity building."

18           Shall we open the floor for discussion? Jack?

19           MR. SAWYERS: Yes. I'll turn it over to the co-  
20 chairs for questions.

21           MR. COOPER: And I would like to mention, too,  
22 that there was a minority position on it. I don't know

1 that we had a clear minority position one way or  
2 another, but there was a TA request, number 37, that  
3 was fulfilled that addressed -- I think that gave some  
4 background on the effect that this would have, if any.

5 So I do want to make everyone aware of that and to  
6 bring that up. And I believe that it would be proper  
7 probably at this point to begin maybe discussion.

8 MS. PODZIBA: All right. Aneva?

9 MS. YAZZIE: Thank you, and good morning. I  
10 wonder if there's a typo in paragraph (e) with respect  
11 to the percentages, and if not, why there's a  
12 difference in the numbers.

13 MS. PODZIBA: Okay. Earl?

14 MR. EVANS: You can take me off.

15 MS. PODZIBA: Okay. Sami Jo?

16 MS. DIFUNTORUM: Good morning. Pardon me. I  
17 think we had asked for an additional definition that  
18 I'm not seeing here, and that's formula repayment. I'm  
19 not clear on the distinction between repayment of funds  
20 or repaid funds and recaptured funds. And I think we  
21 were looking for that or at least I was looking for  
22 clarification on what repaid funds are.

1 MS. PODZIBA: Is there someone who has that  
2 information? Jemine?

3 MS. BRYON: Hi. Good morning, everyone. In  
4 addition to responding to Sami Jo's question, I would  
5 ask that Todd Richardson, who is responsible for  
6 calculating this formula and making it operational,  
7 have a moment to speak regarding the language. And he  
8 will answer your question as well. First Jad, then  
9 Todd.

10 MR. ATALLAH: Thank you for your question. Are we  
11 talking about the definition of carryover specifically?

12 MS. DIFUNTORUM: No, the distinction between  
13 repaid funds, line 13, formula repayments and  
14 recaptured funds because they're different. And I  
15 think I understand the distinction, but I want to make  
16 sure that we're clear for purposes of this section what  
17 the distinction is. And I think we'd ask for a  
18 definition on that, didn't we? We wanted a definition  
19 on carryover and a definition on formula repayments.

20 MR. ATALLAH: Sure. It looks like there's already  
21 a definition built into this draft proposal of  
22 carryover funds. And it says it means "Grant funds

1 voluntarily returned to the formula are not accepted by  
2 tribes. Grant funds distributed under 1000.536 and  
3 formula repayments."

4 So "grant funds distributed" really should be  
5 distributed to the formula pursuant to 1000.536.  
6 1000.536 is the regulation that governs what HUD does  
7 with money that we collect because of enforcement  
8 actions under subpart F. So when there's noncompliance  
9 under the program, we go out and we make findings, and  
10 we take enforcement action. And through a process,  
11 every single year pretty much there are payments or  
12 amounts -- grant funds that are paid back to HUD.  
13 Those funds are rolled over into next year's formula.  
14 So what that's referring to, 1000.536, is enforcement  
15 repayments, repayments pursuant to enforcement actions.

16 The phrase after that, "formula repayments,"  
17 refers to things like overpayments to tribes in  
18 previous years because of incorrect FCAS counts that we  
19 adjust allocations for in subsequent years. That's a  
20 different process, but it's also money that gets rolled  
21 over to the next year. If you got over overpaid for  
22 FCAS counts in one year, we reduce your allocation the

1 next year, and that's a formula repayment that goes  
2 into the pot -- into the carryover pot.

3 MS. PODZIBA: And could I just ask, Jad, was that  
4 a friendly amendment on line 13, "distributed to" and  
5 adding in "the formula pursuant to?"

6 MR. ATALLAH: Sure.

7 MS. PODZIBA: Is that needed there?

8 MR. ATALLAH: Right. I think that's correct.

9 MS. PODZIBA: Okay.

10 MR. COOPER: That is acceptable.

11 MS. PODZIBA: Thank you. Okay. Sami Jo, are you  
12 all set with your question? Okay. Jack, did you have  
13 a comment? I've got you on the list.

14 MR. SAWYERS: No.

15 MS. PODZIBA: Okay. Aneva?

16 MS. YAZZIE: Thank you. I just wanted to ask how  
17 the percentage was derived at, just background  
18 information, I guess for me. How did that percentage  
19 derive?

20 MR. SAWYERS: I can answer that. Todd, would  
21 you --

22 (Laughter.)

1           MR. RICHARDSON: Thank you, Jack. So the .011547  
2 percent is \$75,000 when it's multiplied times \$648. So  
3 that times \$648 million is \$75,000. So it's  
4 establishing essentially at today's minimum of -- at  
5 today's appropriation of \$648 million. That gets you a  
6 \$75,000 minimum. That's how it's established.

7           I do have another comment to make, if that's okay.

8           So I had drafted the text for how to implement this  
9 minimum. After talking it over with the folks who  
10 actually have to run the program, we determined that we  
11 couldn't, in fact, run the program as I drafted this.  
12 We created what I will describe as a circular problem,  
13 such that we need to know something about how much  
14 money is going to be needed to bring everyone up to  
15 this minimum.

16           Unfortunately, in order for us to know that, we  
17 need to know how much we need to set aside for the  
18 minimum. So we created a catch-22 for us that would  
19 cause us not to be able to run the program. So I have  
20 come up with some alternative language that would fix  
21 this problem such that we could still implement this.  
22 That alternative language -- if the committee is

1 interested, we can you provide you that alternative  
2 language. It's still essentially getting to the same  
3 concept that if there's carryover funds that those  
4 carryover funds will be used to raise folks up to a  
5 higher minimum. If those carryover funds are  
6 inadequate to raise it up to that minimum, then that  
7 minimum would be lower.

8 The key thing we had to determine is a fixed  
9 amount of sort of a trigger, if you will, that we could  
10 use to say this is enough carryover to cover this cost.

11 So we have to actually pick a number. And we're  
12 picking -- the number I'm recommending that we use in  
13 this case would be \$3 million. It's more than is  
14 actually needed for the carryover to cover this cost,  
15 but we need a number that we can use to calculate a  
16 proportional amount for reducing the amount.

17 So basically what that means is if carryover is in  
18 excess of \$3 million, then the minimum would be  
19 essentially this .011547, which is approximately  
20 \$75,000. If carryover is less than that, then the  
21 minimum would be lowered proportional down to the  
22 \$50,000, depending on how much carryover. So if

1 there's only \$1 and a half million dollars' worth of  
2 carryover, then that minimum would essentially be  
3 \$62,500. I apologize for the error.

4 MS. PODZIBA: So should we ask Todd for the  
5 amendment that does what he's suggesting?

6 MR. SAWYERS: Do you have an amendment to that?

7 MS. PODZIBA: Do you have it already?

8 MR. RICHARDSON: I'm sorry. Is the amendment on  
9 the left screen? No, that's the original text? Okay,  
10 thanks.

11 MS. PODZIBA: You know you lost the signal.

12 MR. RICHARDSON: And I'm sorry. I didn't actually  
13 figure this out until this morning, so I apologize for  
14 the delay.

15 MS. PODZIBA: Oh, it's up there already. Okay.  
16 Can you show the change? Can you show it as -- oh,  
17 it's a brand new document.

18 MR. RICHARDSON: This is a -- it's a complete  
19 rewrite of this action effectively.

20 MS. PODZIBA: Okay. I think that we can't -- we  
21 can't entertain a whole new proposal. We have  
22 amendments to the proposal on the table, so we'll have

1 to set this aside until we finish with the proposal  
2 that's on the table. Karin?

3 MS. FOSTER: Thank you. Karin Foster, Yakama  
4 Nation Housing Authority. I was just looking back at  
5 the 328 language as it now exists. And I note that  
6 there is a requirement in the language now that to be  
7 eligible for a minimum allocation, an Indian tribe must  
8 certify the presence of any households at or below 80  
9 percent of median income. I wondered if that was  
10 something that was purposely left off or what the  
11 rationale was for not including that in this revised  
12 reg.

13 MR. COOPER: I will defer to Jack, but I don't  
14 think that that was left off. I think that this is  
15 just change the sections. I think that will not make  
16 any change to that particular item.

17 MS. FOSTER: I see now. This is just starting at  
18 (c), so you're just giving us the new language, but the  
19 old language still stands. Okay, thank you.

20 MR. COOPER: Yes. For the record, that would be  
21 correct.

22 MS. PODZIBA: Okay. Carol?

1 MS. GORE: Yes. I have a question about the math.

2 So I'm struggling a bit -- where's Todd? I'm  
3 struggling with the math issue because I think it's in  
4 conflict with the principles that were at least shared  
5 with the needs work group, and that is the current  
6 regulations provide for minimum-funded tribes to ride  
7 with the appropriation amount by a percentage. So  
8 let's say wouldn't that be great if appropriations went  
9 up to \$700 million instead of \$648, in which case  
10 minimum-funded tribes were getting -- would be getting  
11 more than their \$50,000 plus today.

12 So if you put a fixed dollar amount in the  
13 recapture funds, then the idea for our work group was  
14 to make sure they continued to ride with any increases,  
15 including any larger dollar amounts on the recapture  
16 side. So the recapture side has fluctuated anywhere  
17 from -- I'm picking my brain, but from \$11 million to  
18 \$19 million.

19 So I'm just trying to figure out how to reconcile  
20 the principles that were agreed to in that Needs Work  
21 Group and your idea of taking that floating amount on  
22 the appropriations side and adding to that a fixed

1 amount out of the recapture, which may mean that those  
2 minimum-funded tribes never get more than that \$75,000.

3 So can you help me with that math? You're better at  
4 it than I am. Thank you.

5 MR. RICHARDSON: So the \$3 million is a trigger  
6 that you can -- so it is possible for us to float that  
7 \$3 million effectively with appropriations. We have to  
8 tie it to the appropriations amount. So if we wanted  
9 to have something that -- a trigger for when -- for  
10 determining the amount of the higher -- the greater  
11 minimum funding. So we can use it -- we could use  
12 something other than \$3 million. We could use  
13 something that would be another percentage that could  
14 be tied to the appropriation amount.

15 So for example, if an appropriation went up, that  
16 \$3 million could effectively be \$4 or \$5 million. That  
17 would -- or it could go down. But it's still a  
18 percentage -- it would be a percent of appropriations  
19 instead of how much is needed, which we can do. That's  
20 no problem. We could do that.

21 I think in general, what that would do actually if  
22 you tie that, however, to appropriations as it might

1 have the opposite effective of what you're trying to  
2 accomplish here, which would be having the minimum be  
3 greater for when appropriations go up. This actually  
4 just set a higher requirement on when you could get  
5 more money. And so, I think it's probably to stick  
6 with a fixed amount.

7 MS. CUCITI: (Off audio) -- answer to your  
8 question. It just changes the -- it ties the minimum  
9 needs to a percent of the appropriation, and that  
10 percentage fluctuates depending on the availability of  
11 carryover funds. So at the worst, it's the same  
12 percentage as in the formula currently. At the best,  
13 when we have sufficient carryover, it goes to the  
14 percentage given today's appropriation yield of the  
15 \$75,000 grant.

16 So if the appropriation increases, the minimum  
17 needs grant goes up. And what Todd designed in there  
18 was basically something that prevented any kind of  
19 cliff effect that sort of said if a carryover wasn't a  
20 fixed dollar amount, you don't get it. He has a graded  
21 percentage somewhere that under today's appropriation  
22 yields a grant of between \$50,000 and \$75,000. Change

1 the appropriation, that amount could go up or down in  
2 terms of the actual size of the minimum needs grant.

3 MR. RICHARDSON: The upshot is this change doesn't  
4 cause a problem for your concern. Your concern is will  
5 the minimum grant go up with appropriations. The  
6 answer to that is yes. And this change doesn't change  
7 that. And what would \$75,000 today go up to if  
8 appropriations went up? Yes. It would go up to  
9 whatever .011547 percent is of appropriations. So if  
10 it's a billion dollars, then it's \$115,000.

11 MS. PODZIBA: Okay. Jason Adams, you're next.

12 MR. ADAMS: I had to take a second there and try  
13 to remember what I was going to ask. So forgive me.

14 (Laughter.)

15 MR. ADAMS: I had heard when Gary was talking at  
16 the beginning or after Jack had introduced the proposal  
17 that there was a minority opinion, but I haven't heard  
18 what that minority opinion is, or maybe some of these  
19 questions being asked. Is there somebody who's going  
20 to present that minority opinion or say actually what  
21 was from the work group as the minority opinion on this  
22 issue?

1 MR. COOPER: As I mentioned earlier, there wasn't  
2 any language brought forward with the minority opinion.

3 There was just some disagreement to the proposed -- to  
4 this issue is what it was. Since there was a -- since  
5 all of this is new, they really didn't have anything to  
6 change, but I would defer to maybe Annette if she would  
7 like to answer that.

8 MS. BRYAN: Thank you. Okay, it was me. Annette  
9 Bryan, Puyallup Nation Housing Authority. I guess I  
10 wanted to see, so I put up -- had them put up the  
11 numbers that we're talking about here. It's about --  
12 you know, some years it could be \$20 million, and some  
13 years it could be \$10 million. So that's what we're  
14 talking about in terms of carryover and repayment, and  
15 it's going to vary year to year. You see the number of  
16 tribes under 75,000, and then you see the portion that  
17 we're trying to get to, which is 2.7 in 2014, for  
18 example.

19 So in the 124 tribes that are under 75K under this  
20 proposal, I wanted to see what the populations for each  
21 of those tribes are, those small tribes, and they're  
22 very, very small. And I do understand that, you know,

1 this is a -- it looks like it's specific to a couple of  
2 regional areas and maybe some scattered sites --  
3 scattered small tribes around the country, if you will.

4 And so, I just became concerned that we looked at his  
5 carryover and didn't say, well, what are all the needs  
6 in Indian housing, and did those things get considered  
7 for this carryover funds.

8 And so, I wasn't able to agree that this was the  
9 best place to put these funds given the populations of  
10 three, and 25, and two, and zero, et cetera. That was  
11 my concern. And it didn't get written into the dissent  
12 because this got written after the meeting. But that  
13 was brought up, and that's what it's about.

14 MS. PODZIBA: Okay. Jack?

15 MR. SAWYERS: I think it's true that a lot of  
16 these tribes are hopefully umbrella tribes you're  
17 looking at, but umbrella tribes are having the same  
18 kinds of problems. And we just felt like that -- and  
19 there may be a few cases where this -- you know, I see  
20 where a couple say they have no -- they have no tribal  
21 members. I can't understand. If they're doing an APR,  
22 they have to have somebody somewhere that did that.

1 But my problem is I think there are so many small  
2 tribes that don't have the capacity to write grants and  
3 all of those kinds of things. And as part of, I would  
4 say, more of an after, it's not part of the proposal.  
5 But these folks really do need some capacity, and I  
6 think that we're missing some real -- what -- real help  
7 for these folks because there's two things that I would  
8 like to do. I'd like to see us give them more minimum  
9 funding. I'd also like to see HUD give national Indian  
10 organizations money that is allocated for that purpose,  
11 for building capacity.

12 A lot of these little tribes could function much  
13 better if they had capacity. They have -- they can't  
14 compete with the big tribes for any funding. And I  
15 think that that's a real problem. That little area  
16 right there is a real problem for us. I think that  
17 they should be able to compete for the funds they need  
18 to become more productive.

19 And so, there's two things that I really -- and I  
20 wanted to bring this out, and we'll talk about it a  
21 little later. But there are two things they need.  
22 They need a little bit more money on the floor, and

1 they also need money for capacity. And so, that was --  
2 that was our thought, and as we studied this and looked  
3 at it, we think that we've kind of neglected that  
4 portion of our folks. And so, that's why I'm a little  
5 bit passionate about it.

6 MS. PODZIBA: Okay, thank you. Gary?

7 MR. COOPER: Yes. And I did just want to mention,  
8 you know, the work group, just so everyone knows, did  
9 not have this proposed language ready for them  
10 yesterday prior to our meeting. We did agree on -- or  
11 at least advance forward. We wanted to see something  
12 advanced out of the work group. There was a subgroup  
13 that met. This item generated a lot of discussion  
14 there. It also generated a lot of discussion in the  
15 work group, so there was folks who felt very strongly  
16 that it didn't need to go forward.

17 I did not mean to put Annette on the spot, but  
18 there was. You know, some folks did express some  
19 concerns, and I think that was one of the main reasons  
20 why the work group as a whole asked that something be  
21 brought forward. So this did not die in a work group,  
22 and that at least it was able to garner discussion here

1 with the full committee.

2 I would also mention, too, I asked FirstPic to  
3 distribute the answer to TA Request 37. That is what  
4 is in front of you. And just so you know what that is,  
5 the information requested for that request was a list  
6 of small tribes or any tribe receiving less than  
7 \$75,000, and the total population in each of those  
8 tribes. So this is the answer to that TA request. I  
9 just want to give the committee everything that we had.

10 But this was an item that the work group felt  
11 strongly enough that they agreed with the concept that  
12 needed to come forward with some concerns. And that  
13 had been expressed, but they did think that it needed  
14 to at least pass out of the work group for discussion  
15 here. So that is why this was really brought forward,  
16 and I do apologize that the work group did not have  
17 time to fully vet the language prior to being brought  
18 here. But I did also want to let you know what this  
19 was that was passed around.

20 MS. PODZIBA: Okay, thank you. Annette?

21 MS. BRYAN: Thank you. Yes, I'm still, you know,  
22 not convinced that we have enough information to say

1 that throwing more money at these small tribes is the  
2 answer. I don't believe that the information has been  
3 collected or gathered. We don't know how many are  
4 under umbrella tribes. We don't know what kind of  
5 services or unmet needs are in front of us.

6 And so, that was my hesitation in looking at the  
7 data. It just didn't -- it still doesn't -- you know,  
8 I don't know if throwing money at consultants -- no  
9 offense -- to write IHPs for these tribes is  
10 necessarily the answer to this if there is a problem  
11 that hasn't been demonstrated.

12 MS. PODZIBA: Deidre?

13 MS. FLOOD: I'm speaking on behalf of tribes in my  
14 region, which is California and Nevada. At our recent  
15 Housing Authority -- the Nevada-Cal Housing Authority,  
16 we discussed the need for additional funding for our  
17 small tribes. And whether you're a small tribe of, you  
18 know, less than 50 people, you are still a tribe.  
19 They're federally recognized. And I'd like to say that  
20 I appreciate Jack's leadership on this issue because in  
21 his area there's only one small tribe that got funded.  
22 But he's really been helping to move this forward.

1           But getting back to some of Annette's concerns, I  
2 think -- the important thing is that our tribes haven't  
3 had any opportunity with this small grant to do  
4 anything with that money. It barely covers anything.  
5 If you know California's cost of trying to build a  
6 home, it's impossible with \$50,000. It's not enough to  
7 do anything.

8           So we really feel like this small bump would help  
9 these tribes to either leverage or try to make  
10 improvements at their local level so people who don't  
11 live on the reservation can come back and be part of  
12 that tribe. So we really would appreciate support on  
13 this issue. Thank you.

14           MS. PODZIBA: Earl?

15           MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
16 Tribe. I just wanted to try and get us to some  
17 resolution on this. We all -- we all know that we're  
18 supposed to be here to help those who have less, and  
19 send the money to where the need is.

20           And I think Ms. Flood made an excellent point. In  
21 some of the areas that I see on here for the amount of  
22 money that they have, it's not really going to help

1    them do a whole lot of stuff.  So if there's things  
2    that we can do to try to mitigate that, then we should.

3        But at the same time, I can also see some of the  
4    tribes on this list that in terms of their financial  
5    wherewithal, probably this would kind of be a drop in  
6    the bucket compared to what they have from their other  
7    resources as well.

8            But that part is neither here nor there.  I think  
9    that if we do something -- if we don't do this or  
10   something similar to this, then there are a lot of  
11   small tribes out there that really need that extra  
12   funding that aren't going to benefit as much from the  
13   program as them and their tribal citizens rightfully  
14   should.  So if this isn't acceptable in the current  
15   form, I would like to ask folks, if you could, you  
16   know, let's see if we can do something here while we've  
17   got this on the table and this time on the table to  
18   make it something that is worthwhile that you do think  
19   you can get behind in order to get those tribes some  
20   more funding that they desperately deserve.  Thank you.

21           MS. PODZIBA:  Erin?

22           MS. HILLMAN:  I would like to agree with Earl and

1 Deidre on this issue. I am familiar with a lot of the  
2 tribes that are listed from California that are  
3 receiving this minimum funding. And it is true in  
4 California -- I'm sure it's -- I know it's true  
5 throughout the Nation that construction costs are so  
6 high that even if you only have five or six tribal  
7 families that would be eligible for the program,  
8 \$50,000 a year in order to administer the program, and  
9 to do construction, and to meet that need is virtually  
10 impossible in one year. And so, you have a lot of  
11 people waiting for homes that are in substandard  
12 housing. I think we need to remember that.

13 MS. PODZIBA: Aneva?

14 MS. YAZZIE: (Off audio).

15 MS. PODZIBA: Sami Jo?

16 MS. DIFUNTORUM: Thank you. Sami Jo Difuntorum.

17 I, too, support this. I think that we need to help the  
18 small tribes if we can, and this isn't a lot to ask.  
19 It's not taking from us. This is carryover money, and  
20 I think that it's a good concept, and I appreciate  
21 everybody's work on this.

22 Mine is really a question on the spreadsheets that

1 we just got. A tribe of zero gets a grant? I don't  
2 understand that. There's quite a few tribes with zero  
3 tribal members under either multi-race or single race.  
4 So I need to understand what that means. But beyond  
5 that, I support the concept.

6 MS. PODZIBA: Can someone answer -- can someone  
7 answer the zero members question?

8 MS. D'ANGELO: So the population that's listed on  
9 here is based on the census data that we use in the  
10 formula. Jennifer can probably speak better to this.  
11 But those tribes still have to certify on the APR that  
12 they have eligible families to serve. And that is done  
13 through the APR. So they're separate. Oh, I'm sorry.  
14 The IHP, not the APR.

15 MS. PODZIBA: Okay.

16 MS. D'ANGELO: The number that's listed in here is  
17 from the formula, which is from the census data. The  
18 tribes that have minimum needs still have to certify on  
19 their IHP that they have eligible families to serve in  
20 order to get their money.

21 MS. DIFUNTORUM: Okay. So --

22 MS. D'ANGELO: And there -- and there are some

1 tribes on this list that are included in the formula,  
2 but that don't take their money to then be included in  
3 the carryover amount the following year.

4 MS. DIFUNTORUM: Okay. To clarify what I think I  
5 just heard, we're talking about tribes that have tribal  
6 members that are eligible. They certify through the  
7 Indian Housing Plan that that's the case. They're just  
8 not captured in census counts, so they show up as zero  
9 here.

10 MS. D'ANGELO: That's correct.

11 MS. DIFUNTORUM: Thank you.

12 MS. PODZIBA: Rodger?

13 MR. BOYD: Thank you, and good morning. We  
14 certainly do agree with the principle that has been  
15 presented. We do have two concerns on (d), line 14  
16 where it states that they may use all. And, you know,  
17 we think it's really out of the scope of this committee  
18 to deal with this or to even agree to it. And, you  
19 know, we're really talking about the distribution of  
20 funds, not necessarily the use of those funds.

21 To be able to put all the money into -- and I  
22 agree with Jack about building capacity, but what about

1 construction rehab, and that's really, I think, the  
2 meat of the program.

3 Secondly, on line 16(e), we think that the  
4 distribution of funds to NAIHC basically is illegal  
5 because they are not a tribe. And all the  
6 redistribution of these funds do go to federally  
7 recognized tribes and certainly the state tribes.  
8 Thank you.

9 MS. PODZIBA: So, Rodger, are you making a -- are  
10 you proposing an amendment to strike those sections or  
11 to revise them somehow?

12 MR. BOYD: Yes, I think we would propose striking  
13 (d) and (e).

14 MS. PODZIBA: Okay. Gary, are those acceptable to  
15 you?

16 MR. COOPER: Unfortunately, I don't think I can  
17 accept that just because that is not what the work  
18 group asked to send forward. No offense to HUD. I  
19 understand their concerns. But I think as speaking on  
20 behalf of the work group, they ask that this proposal  
21 be brought forward, so that's what I needed to do. So  
22 I can't accept those friendly amendments.

1 MS. PODZIBA: Okay. Karin?

2 MS. FOSTER: Coming back to the question of  
3 whether there are eligible families within those areas  
4 for this NAHASDA money, I believe that in order this  
5 proposal to be acceptable, one would also have to go  
6 back to paragraph (b) in the regulation and make it  
7 clear to be eligible not only for the minimum  
8 allocation in paragraph (a) of Section 328, but also to  
9 be eligible for the carryover allocation in paragraph  
10 (c), an Indian tribe would have to meet certain  
11 criteria, which includes certifying in its IHP the  
12 presence of any households. Or, I guess, I would  
13 offer, eligible families at or below 80 percent of  
14 median income.

15 So I think we need to go back there. Otherwise,  
16 that does not qualify this section, and you wouldn't  
17 need to have anybody who was eligible by virtue of the  
18 language here.

19 MS. PODZIBA: So are you offering that as an  
20 amendment?

21 MS. FOSTER: The amendment would be -- you'd have  
22 to pull (b) back into the draft. Right now, (b) isn't

1 on the page.

2 MS. PODZIBA: Okay.

3 MS. FOSTER: And, yes, it would say right after  
4 paragraph (a) -- in (b) after the words "paragraph  
5 (a)," down in (b) -- right there. Okay. It would say,  
6 "or the carryover described in paragraph (c) of this  
7 section." One word probably.

8 MS. PODZIBA: Gary, is that amendment acceptable?

9 MS. FOSTER: That wouldn't be it. I'm not done.

10 MS. PODZIBA: Oh, I'm sorry.

11 MS. FOSTER: "Of this section" is -- needs to be  
12 -- it's a duplicate there. And then --

13 SPEAKER: We'll accept that.

14 MS. FOSTER: -- the rest of the proposal would be  
15 that in (ii), instead of "Indian households," it would  
16 be "eligible." I'm sorry. Instead of "any  
17 households," "any eligible households." So insert the  
18 word "eligible" before "households," because it sounds  
19 like that's what's required to be documented in the  
20 IHP.

21 MS. PODZIBA: Okay.

22 MS. FOSTER: Those would be amendments that I

1 would like to see in order to be able to support this  
2 proposal.

3 MS. PODZIBA: Okay. Let's just get them.

4 MR. SAWYERS: Could I answer -- this proposal was  
5 brought forth by our group, and I'd like to go back to  
6 HUD's proposal -- HUD's change. I don't think we can  
7 make a decision on how they use up funds in this  
8 proposal. All we're asking is that we look at this.  
9 And I think that that probably we -- that HUD is right.  
10 How they use those funds is not a discussion now.

11 It's for a different time because that is not  
12 appropriation. It's how you use the funds.

13 And so, I don't object to taking maybe all or part  
14 of that out. I would like to look at that again  
15 because while we're trying to do funding here and not  
16 how you use the entire amount or anything, because  
17 that's a different issue. And so, I would hate to lose  
18 the momentum of this because we're looking at something  
19 that's not really something we can look at when we're  
20 looking at funding.

21 So what I'd like to do if we could look at (d) and  
22 (e), and put together something that would -- that

1 would satisfy everyone because you can't -- we just  
2 can't work on that proposal at this time. So if you  
3 folks would like to go back, and HUD, and see if we can  
4 tweak that a little bit so we can still go forward with  
5 the funding itself and not with how to use those funds.

6 MS. PODZIBA: Okay. Thanks, Jack. I'm going to  
7 just take care of a little bit of process. I just want  
8 to confirm with Gary, is Karin's amendment to the  
9 proposal acceptable?

10 MR. COOPER: My first question, and it's probably  
11 just for some clarification purposes, is I think that  
12 this would -- and I could be wrong, but it looks like  
13 that possibly we're expanding the original intent  
14 behind the change because it looks like we may be  
15 increasing the amount of minimum-funded tribes because  
16 we're bringing in now the FCAS component into it rather  
17 than just minimum funding based on need. I don't know  
18 for sure.

19 MR. SAWYERS: You're looking at total -- you're  
20 looking at total funding. It has nothing to do with  
21 need or FCAS. It has to do with total funding, number  
22 one. Number two is it's not expanding. I think

1 there's -- out of 120, I think there's probably five or  
2 six that get \$60,000. And so, we're not really  
3 expanding that pool. In fact, we -- it makes it -- it  
4 makes it less of a burden because there are some folks  
5 between \$50 and \$75. Those folks would only go up to  
6 -- if they're at \$60, they'd go up to \$75 and so on.  
7 So I think that you're not -- you're not expanding the  
8 pool at all.

9 MS. PODZIBA: Karin, did you want to respond to  
10 the comment on your proposal, your proposed amendment?

11 I think that's where we are. No? So, Gary, is  
12 Karin's amendment then not acceptable?

13 MR. COOPER: I'm looking at my co-chair since he's  
14 actually the one who brought this forward.

15 MR. SAWYERS: Karin --

16 MS. PODZIBA: Okay. I'm sorry.

17 MR. SAWYERS: -- I need to ask you on yours before  
18 we accept it, does that mean -- the minimum funding is  
19 \$250,000, and all we're going to talk about is just the  
20 minimum for the very minimum funding. So if they're  
21 getting -- if they're getting \$50,000 for need and  
22 they're getting \$100,000 for FCAS, we don't want to

1 talk about those folks. This group right here are of  
2 folks who are getting the minimum total funding. And I  
3 feel like perhaps your fix for this would open it up to  
4 the people who are getting more than the \$75. And so,  
5 I may be wrong, but I haven't been very often.

6 MS. PODZIBA: Yes?

7 MS. FOSTER: Well, Jack, I certainly wouldn't tell  
8 you you were wrong, especially on your birthday.

9 (Laughter.)

10 MS. FOSTER: But I guess it seemed to me to make  
11 sense that the tribes that are eligible for the  
12 carryover funding would be -- you know, meet the same  
13 criteria as those that were eligible through the  
14 minimum funding. So I guess I don't understand how  
15 that operates, you know, to raise concerns that you've  
16 expressed. Maybe I need to look at it more closely to  
17 understand that.

18 Of course what I was wanting to do was  
19 particularly to capture (b)(ii) because I think that's  
20 very important, but I'm not sure why -- again, why this  
21 would be problematic.

22 MR. SAWYERS: I guess it's (b)(i) that -- maybe

1 I'm wrong, but I want to make sure it doesn't come into  
2 play -- the \$200,000 would not come into play because  
3 we're really just talking about that very minimum  
4 funding -- total funding and not --

5 MS. FOSTER: If a tribe receives only \$50,000 or  
6 \$75,000, they would have to be receiving less than  
7 \$200,000 under FCAS, wouldn't they?

8 MS. PODZIBA: Okay. So that one is okay, Jack?  
9 All right. Rusty?

10 MR. SOSSAMON: Thank you. I agree with the  
11 concept and the intent of this and support it.  
12 However, I have some concern about the use of repayment  
13 funds. If a tribe -- if it's been determined that a  
14 tribe was over funded in a particular year and a  
15 payment agreement has been made, then I believe those  
16 funds that are paid back should be distributed by the  
17 -- just in the formula because they should have been  
18 distributed that way in the first place.

19 So now to say because you receive funding that you  
20 should not have received, and you've got to pay it, and  
21 now the tribes that should've received it, you're not  
22 going to get it, it's going to go over here first,

1 somehow to me doesn't seem equitable.

2 Now, as far as the carryover funds that a tribe  
3 doesn't use and turns back, no problem with that. But  
4 I just still have some concern over the paid back  
5 funds.

6 MS. PODZIBA: Okay. Thank you. Sam? I'm sorry.  
7 Jason?

8 MR. ADAMS: I guess two issues. The first issue,  
9 I wanted to just let Rusty know we did have a TA  
10 request from our work group that talked about those  
11 tribes that don't receive funds that have turned their  
12 money back in. And I think -- so I don't remember  
13 which one that was or how much money that was. But I  
14 believe that was still over this \$2.6 or whatever for  
15 2014. So to answer your question on that, I think  
16 there's TA requests out there for that information.

17 The other issue I wanted to raise is the point  
18 that Karin was talking about in regards to (d)(ii) or  
19 (b)(ii) in the existing regulation when it talks about  
20 the presence. As I understand from the past and the  
21 amendment was made -- I believe this regulatory  
22 amendment was made last time around to certify an

1 Indian housing plan. The idea behind this was to get  
2 back to the original intent in the statute of serving  
3 Indians -- Indian tribes and families as per the  
4 statute. And so, I would hope that -- and maybe the  
5 work group looked at this, maybe they didn't. But I  
6 believe Karin had said that this should say -- certify  
7 an Indian housing plan, the presence of any eligible  
8 house -- eligible families because, again, that's the  
9 statutory provision that this is getting at -- this  
10 whole section is getting at.

11 And that also relates back to the data that were  
12 presented here. That's why we have, and I think  
13 somebody already said it. That's why we have people on  
14 here. AIAN shows zero, but that isn't -- again, the  
15 statute goes after Indians and Indian families, and so  
16 that's why this -- you've got to tie this back to the  
17 statute, and that's what (b)(ii) is trying to do. So  
18 if it is that point of tying back to the statute, it  
19 ought to be correct in its wording in the statute or  
20 eligible Indian families. Thank you.

21 MS. PODZIBA: Sam?

22 MR. OKAKOK: Thank you. Samuel Okakok, Native

1 Village of Barrow. I really appreciate the comments  
2 here, especially Gary and Karin's and some of the  
3 others that have talked about supporting this. This is  
4 a very important issue that really does need to be  
5 addressed right now, especially since we do have it on  
6 the table. And, you know, what it really comes down to  
7 is under NAHASDA.

8       You've got your compliance issues and your  
9 performance issues, and you're not going to have your  
10 performance issues completed if you don't have your  
11 compliance in place. And some of the funding that's  
12 needed for capacity building, I think we need to keep  
13 some of that language in place. And it's very good,  
14 and it really doesn't matter by and large whether you  
15 have \$75,000 or \$75 million. You still need to comply  
16 with NAHASDA laws, statutes, and everything, and build  
17 capacity for your tribe.

18       And also in light of some of the recent comments,  
19 I really appreciate those, and believe that we're on  
20 the right track. I believe this is the right direction  
21 we need to go with this again. And I appreciate it,  
22 and I thank you.

1 MS. PODZIBA: Okay. Thank you. Jack, you're next  
2 on the list. Should I pass you for now?

3 MR. SAWYERS: Well, HUD was hiring folks from our  
4 organization, so I was just talking to them. There are  
5 a couple of things that I think that we're going to  
6 have to look at. One of them, of course, is how we use  
7 the funds. We talked about that. I don't think  
8 that'll ever pass because that's an issue for another  
9 negotiation. And so, I would like to see that we take  
10 out how they use the funds. In other words, I don't  
11 think we can pass any kind of policy that says that  
12 they can use their funds that's already --

13 And then, of course, (e) is the other one that we  
14 may want to talk about, and I feel perhaps need to  
15 eliminate that also. But I would like to make sure  
16 that the intent in the funding is what we have. With  
17 those two taking those out -- I got to ask you folks,  
18 would taking those two items out affect minimum funding  
19 or what we're doing now. And that's why we have  
20 lawyers and stuff. I just want to make sure that if we  
21 take that out, it doesn't affect the rest of the  
22 proposal.

1           And I can't -- are there any questions that -- I  
2 was talking to folks. So are there any other questions  
3 that you have? I think this is important. The other  
4 thing that I would like to say while I'm here is  
5 capacity is so important, and I don't think we can put  
6 this in this reg, but I think that we as a group need  
7 to ask HUD to streamline a process so we can get help  
8 for small tribes who don't have the capacity.

9           And I think that there's that small tribes have.  
10 They don't have enough money to start with, and the  
11 second, they don't have capacity to get more. And so,  
12 I think that the -- I would like to at least suggest  
13 that our national organization can apply, and HUD is  
14 receptive to applying this for a special allocation of  
15 money for capacity building. And I don't think we can  
16 put that as part of this, but I strongly feel that we  
17 need to do that. Thank you.

18           MS. PODZIBA: So could I just ask, do I understand  
19 you correctly that you're accepting HUD's amendment to  
20 the proposal to strike those two sections?

21           MR. SAWYERS: I am, but I want to make sure that  
22 through the discussion about it, we're not giving away

1 for something that -- I mean, I'm not giving away  
2 something that's important.

3 MS. PODZIBA: Okay. So I have a list, but let's  
4 not stop this discussion to go to a new issue. Is  
5 there anyone who has a comment to make on either of  
6 these two items as Jack has asked? Annette?

7 MS. BRYAN: Thank you. Actually I was looking at  
8 the NAHASDA statute in Section 703 under Training and  
9 Technical Assistance that authorizes appropriation for  
10 assistance of a national organization representing the  
11 interest for providing training and technical  
12 assistance to Indian house authorities and TDHEs, such  
13 sums as may be necessary for each Fiscal Year. So I  
14 wanted to just point that out that it is in the  
15 statute. It is a regulatory opportunity to be able to  
16 do that.

17 We also talked in our work group about -- so I'll  
18 speak to this issue and then say my comment. We also  
19 talked in our work group about this -- instead of this  
20 number saying "all of the remaining funds," this number  
21 would be proportionate to that number that was funded  
22 to this small tribe. So, for example, if 2.7 was given

1 to the small tribes, that number that went to NAIHC was  
2 proportionate to the number, so it would be the \$2.7  
3 million. So it wouldn't be the total \$20 million or  
4 \$10 million. It would be proportionate to the number  
5 that was allocated to the small tribes. So that was a  
6 conversation that we had if it helps us get somewhere.

7 And then also, I just wanted to say on the record  
8 to thank those of you who have had a really good  
9 conversation about answering some of the questions that  
10 I had in regards to small tribes and feeling like, you  
11 know, we probably do need more capacity and more  
12 ability to leverage. I don't think all of my questions  
13 were answered, but I do feel like, you know, I'm  
14 hearing from the small tribes themselves or people who  
15 represent those areas and regions that I could support  
16 this proposal. Thank you.

17 MS. PODZIBA: Thank you. Okay. So, again, on  
18 this issue? Jason?

19 MR. ADAMS: Yes, on this issue, I agree that these  
20 two areas probably should be set aside from this  
21 discussion for the mere fact that (d) deals with  
22 administration, planning, and those other related

1 activities, and that's outside of the scope of this  
2 negotiated rulemaking. And we're trying to affect that  
3 area. And I know at least from our work group we were  
4 very careful not to touch other areas because the  
5 specific charge of this committee is just the formula.

6 And so, taking that into effect, the next section  
7 on (e), in my opinion, Annette just pointed it out.  
8 703 is that same -- another area of the regulation or  
9 the -- well, there's no regulation on that, but there's  
10 a statutory section, 703, that that affects. That  
11 being said, I would hope that future negotiated  
12 rulemaking -- you know, the next negotiated rulemaking  
13 that would be held, that we as tribes would remember  
14 these two issues and bring those up at that appropriate  
15 time and find the appropriate place for those because I  
16 do believe, especially on (e), that there has to be  
17 some way to regulatorily make that money go to NAIHC,  
18 not only to help small tribes with capacity building,  
19 but all of our tribes, because 703 was put into the  
20 statute for the tribes. Thank you.

21 MS. PODZIBA: Sami Jo?

22 MS. DIFUNTORUM: Thank you. And thank you,

1 everyone, for your comments on this. I do agree that  
2 (d) and (e) probably need to come out of this section  
3 in order for this section to move. I understand that,  
4 and I agree with that.

5 I'm thinking for having this on the record, maybe  
6 there is a way to include these in the preamble if  
7 that's appropriate. That might be the best place for  
8 these, but I don't want this to get dropped off the  
9 radar entirely. And so, that would be my comment.  
10 Thank you.

11 MS. PODZIBA: Carol?

12 MS. GORE: Thank you. My comment may be a little  
13 redundant of Sami Jo's. But just in principle, in the  
14 work group we talked about our responsibility to  
15 represent small, medium, and large tribes at this  
16 table. And with respect to the small tribes, making  
17 sure that they were represented and they were heard. I  
18 think we recognize that, in particular, Section (d) may  
19 not be relevant. We brought it forward because we want  
20 to be sure it is discussed in the preamble.

21 In previous negotiated rulemakings, we've talked  
22 about a parking lot, and those parking lots were always

1 lost and never found for the next negotiated rulemaking  
2 committee. So I just want to make sure on the record  
3 that we are asking the next negotiated rulemaking  
4 committee to talk about the administrative capacity for  
5 small tribes. Thank you.

6 MS. PODZIBA: Sam?

7 MR. OKAKOK: Yes. I just wanted to say thank you  
8 for the comments, Sami Jo and Carol. Yes, I think the  
9 proposal itself, 328, I think leaves pretty much intact  
10 the intent and the concept that we had talked about,  
11 and possibly (d) and (e) may be discussion down the  
12 road. So I appreciate the comments, and I think it  
13 largely keeps this intact. And I would like to see  
14 this go forward.

15 MS. PODZIBA: Earl?

16 MR. EVANS: Earl Evans, Haliwa-Saponi Indian  
17 Tribe. I would like to try and move this forward.  
18 We've been talking an hour, and I would really like to  
19 see something done with this if possible. And if I'm  
20 not mistaken, I believe Rusty's objection was only to  
21 the inclusion of the formula repayments. So I would  
22 propose striking (d) and (e) from the draft that is up

1 on screen as well as deleting on line 13 everything  
2 from the comma after "536" to the period. And I move  
3 to call for consensus.

4 MS. PODZIBA: Okay. I will turn it back to the  
5 chair. Rusty? I'm just a little confused process  
6 wise. I understood if there's a call for the question,  
7 that all else should stop, and it just goes right to  
8 the question.

9 MS. BRYAN: Right. So in terms of process,  
10 yesterday there were calls for the question, and we had  
11 people in the queue. So when we get a call for the  
12 question, we're going to call the question. We can  
13 always dissent and start the conversation again. But  
14 we did get a call for the question, so throughout this  
15 day when we get that, we're going to go with the  
16 question.

17 So while I want to hear the response to the  
18 question that was asked before you called for the  
19 question, you did call the question, so we're going to  
20 ask everyone now to please look at what's in front of  
21 you with the changes that have been proposed. And do  
22 we have consensus on what's in front of us? Seeking

1 consensus.

2 (Show of approval/disapproval.)

3 MS. BRYAN: So I see about seven dissensions, so I  
4 would like to go for -- Rusty, would you please offer  
5 an alternative to this proposal?

6 MR. SOSSAMON: Yes. And beginning at the end of  
7 line four, starting with the word "and/or," "repayment  
8 funds from the current Fiscal Year." If you'll strike  
9 those, then I can vote in the affirmative.

10 MS. PODZIBA: So is that a new proposal, which  
11 brings forward -- Rusty, is that a new proposal that's  
12 bringing forward what had been on the table? So the  
13 proposal was voted down, so do I understand that you're  
14 offering a new proposal, and the new proposal is all  
15 that came before without that -- those words regarding  
16 repayment.

17 MR. SOSSAMON: Yes. I'd offer that as a proposal.

18 MS. PODZIBA: Okay.

19 MR. SOSSAMON: And call the question.

20 MS. PODZIBA: Okay. There's a request to call the  
21 question.

22 MS. BRYAN: Yes. We just have a procedural

1 discussion going on here that previously in this  
2 conversation HUD had said that those numbers for  
3 calculation purposes may change. And so, what you see  
4 in front of you that you are approving on contingent or  
5 will change with the number that HUD produces for us.

6 So we're voting on a mystery number if everyone is  
7 fine with that. We all know what the concept is and  
8 what we're trying to get to, but we just wanted to  
9 point out that that number is going to change. Rusty?

10 MR. SOSSAMON: Yes. Just for clarification, it  
11 was pointed out to be consistent with what my concern  
12 is, you would also need to eliminate beginning in line  
13 12 with "grant funds distributed pursuant to 1000.536."

14 So I would include that as part of my proposal.

15 MS. BRYAN: So for clarification, we're --  
16 starting with a new proposal, we're going to start the  
17 discussion on this. And I'm going to call on Rodger.

18 MR. BOYD: Thank you. I'd like to turn some time  
19 over to Todd. Well, okay. We'll go to number two.

20 Jad?

21 (Laughter.)

22 MR. ATALLAH: And let me introduce Todd.

1 (Laughter.)

2 MR. BOYD: It's a team.

3 MR. RICHARDSON: All right. So in the -- as I  
4 described earlier, we can't -- the language as written,  
5 which is the language I admit that I drafted a couple  
6 days ago, we determined that we can't implement it as  
7 written because it creates a problem that -- a circular  
8 problem in the formula so that it's not implementable.

9 So what HUD is proposing is alternative language  
10 that we can implement that would accomplish the goal  
11 that this committee wants. This committee is saying if  
12 there's carryover funds, those carryover funds should  
13 go towards tribes that have grants less than our  
14 minimum amount here. It should get increased up to a  
15 higher minimum of .011547 percent.

16 But in order for that to work, we need to change  
17 the language so that we can have language that we can  
18 implement in the formula. This language as written on  
19 the chart here is not implemented.

20 MR. BOYD: Well, you wrote it.

21 MR. RICHARDSON: I can see that.

22 MS. PODZIBA: I wonder procedurally, Todd, I'm

1 over here. I'm wondering if you might offer your new  
2 paragraph (c)(i) and (c)(ii) as an amendment to the  
3 proposal on the table. Is that a plausible way to  
4 proceed?

5 MR. RICHARDSON: Yes.

6 MS. PODZIBA: So your proposed amendment would  
7 take (c)(i) and (c)(ii) and replace (c)(i) and (c)(ii)  
8 that is currently in the proposal on the table.

9 MR. RICHARDSON: Yes, with -- that's correct. I  
10 think we would just replace -- yes, that's correct.

11 MS. PODZIBA: Okay. Yes, if there are copies,  
12 could you hand it out? And then, Rusty, this goes back  
13 to you regarding whether or not to accept this  
14 amendment.

15 MR. SOSSAMON: I will.

16 MS. PODZIBA: Okay.

17 MR. SOSSAMON: As part of my proposal.

18 MS. PODZIBA: Okay. There is some language about  
19 repayment that probably needs to be revisited in this  
20 one just to keep with your proposal. Maybe not. Yes,  
21 grant funds -- okay. Okay. So, Christine, are you  
22 doing that? Are you going to paste that in?

1           MR. RICHARDSON: I do want to clarify one thing  
2 about this proposal that is a little bit different than  
3 what Jack had been saying is the goal here. This  
4 essentially just changes the minimum amount that's  
5 stated in paragraph (a). So that's what this proposal  
6 does as a changer. And it adjusts it -- if there are  
7 carryover funds, that .007826 would get raised to this  
8 higher level for minimum needs.

9           Now, if I hear what Jack has said correctly, the  
10 goal here is actually to be even more limiting than  
11 tribes that have FCAS of less than \$200,000 to  
12 effectively be tribes that have grants -- total grants  
13 less than -- essentially tribes that have no FCAS. So  
14 if that would be the goal here, we would need to make  
15 another modification that would say "only for tribes  
16 with zero FCAS," because as this is written, it's just  
17 limited to the tribes that are with FCAS, less \$200,000  
18 and have the IHP plan.

19           MS. PODZIBA: Jack?

20           MR. SAWYERS: Would there be tribes that have FCAS  
21 that are under the \$75,000?

22           MS. CUCITI: (Off audio). But I don't think we

1 have any tribes that get -- I don't think we have any  
2 tribes with less than \$75,000 -- I mean, we have tribes  
3 -- we could. No, he's not (off audio). Are there any  
4 tribes who otherwise would have qualified under how it  
5 was written before that aren't qualifying now, and, I  
6 guess, could we isolate them quickly? There are some  
7 you think?

8 SPEAKER: (Off audio).

9 MS. D'ANGELO: Under the way it was written  
10 before, as I understand, we weren't tying it to the  
11 minimum needs funding, which qualifies those tribes  
12 that do receive FCAS, but their FCAS is lower than  
13 \$200,000, they also get a bump to the minimum needs  
14 amount. In 2014, there were 11 tribes that would be  
15 eligible for the additional bump in this sort of new  
16 way of proposing it, which is adding those tribes that  
17 are eligible for FCAS that have a grant that's higher  
18 than \$50,321, so that their total grant -- maybe a  
19 combination of FCAS plus the minimum needs grant that  
20 is less than \$250,000.

21 MR. RICHARDSON: So I think the answer, Jack, is,  
22 yes, there are some tribes that are -- there's a small

1 group of tribes.

2 MS. PODZIBA: Rusty, did --

3 MR. SOSSAMON: Yes. No, I believe the intent is  
4 this is for any tribe that receives less than \$75,000.

5 SPEAKER: Total grants.

6 MS. PODZIBA: Total.

7 MR. SOSSAMON: Total grant. And then also then I  
8 see that it has been stricken, the "grant funds return  
9 beginning in '16 and '17," so that would -- my other  
10 comment. Thank you.

11 MS. PODZIBA: So, Todd, does this -- I think what  
12 Rusty just said that the idea of this is that this is  
13 for minimum-funded tribes up to \$75,000. So how do you  
14 need to refine your proposed amendment to cause that to  
15 be its intent?

16 MR. RICHARDSON: So our problem is that we don't  
17 have -- we don't know who the tribes are after you run  
18 the whole formula that would have a grant less than  
19 this minimum amount until we know how much we're  
20 allocating. We don't know how much we're allocating  
21 until we know how many tribes meet this minimum amount.  
22 That's the problem we were trying to solve here with

1 this proposal here.

2 This proposal requires us to say there is  
3 something that we already know that defines who these  
4 tribes are that are eligible. So if want to restrict  
5 eligibility only to tribes that have less than \$75,000  
6 after the formula is run, we can't do that exactly. We  
7 need to find some other variable to limit who might be  
8 eligible.

9 So we could, for example, say if a tribe receives  
10 less than \$50,000 by FCAS, then they'd be eligible for  
11 this bump, or zero FCAS they'd be eligible for this  
12 bump. We can't say that their overall grant amount  
13 because we don't know their overall grant amount until  
14 we actually calculate minimum grant funding. So that's  
15 -- we're in a circular approach.

16 We need to find something that we already know  
17 before we run the formula bout these folks that we want  
18 to make eligible. I'm not sure if that makes full  
19 sense, but we need something that's not their total  
20 grant amount.

21 MS. PODZIBA: So I just have a hunch that you're  
22 probably the best person to figure this out as opposed

1 to the rest of us. So do you need a caucus to take a  
2 little time to do that?

3 MR. RICHARDSON: I need to know what the group  
4 wants to accomplish here. If the group wants to limit  
5 this to a very narrow group of tribes, we need to say  
6 what is that group of tribes we want to limit this to.

7 MS. PODZIBA: Okay. Since it's Rusty's proposal  
8 on the table, I'm going to ask Rusty to make an effort  
9 at articulating that.

10 MR. SOSSAMON: My belief is that's the intent of  
11 this is to focus it on those that receive a total of  
12 less than \$75,000. If we're adding the language that  
13 says that they must receive less than \$50,000 in FCAS  
14 to participate in this funding mechanism, then I'm  
15 acceptable to that amended language.

16 MS. PODZIBA: Jack? Your microphone.

17 MR. SAWYERS: I think we're really close, but I  
18 would like to call for our caucus for 15 minutes to see  
19 if we can iron out all of these areas. And I don't  
20 think we're talking -- just talking about an overall  
21 caucus, not with our -- not with our groups. So if  
22 you'd accept that for a few minutes. We're running out

1 of time, and this is important, and I think we're  
2 almost there. So I would like to ask for a caucus.

3 MS. PODZIBA: And our understanding is that in a  
4 caucus the clock stops for a caucus.

5 MR. SAWYERS: Yes. Yes, stop the clock.

6 MS. PODZIBA: Okay.

7 MR. SAWYERS: Anyone agree?

8 MS. BRYAN: Thank you. We are in caucus.

9 MS. PODZIBA: Earl just is asking for a  
10 clarification. Yes, Earl?

11 MR. EVANS: Thank you. So just to clarify, when  
12 he says an overall caucus, that means we're all going  
13 to stay in here, but we're just going to try and hurry  
14 up and figure this out. A caucus of the whole  
15 basically.

16 MS. BRYAN: Yes. HUD needs a caucus, and they  
17 might need us to caucus with them. So feel free to  
18 caucus with HUD. Yes, Karin?

19 MS. FOSTER: I keep seeing my name up there, but  
20 it keeps getting dropped lower and lower, and it never  
21 comes up. It's kind of frustrating for me here.  
22 Excuse me for raising my hand, but, you know.

1           Doesn't it seem that there is a fairly easy  
2 solution to this? I mean, we already have that type of  
3 a section on the minimum funding. That's what (b) is  
4 -- talks about. "Receive less than \$200,000." And  
5 probably the reason that's in there is because they  
6 needed to have it in order to do the run. So wouldn't  
7 it just be helpful just to put in another section like  
8 that?

9           MR. SAWYERS: Let's call for a caucus --

10          MS. PODZIBA: Okay. Well, are we --

11          MR. SAWYERS: Let's call for a caucus and let's  
12 talk about it in 15 minutes.

13          MS. PODZIBA: Okay. Are we caucusing or --

14          MS. BRYAN: Yes, we are caucusing. And, Karin, I  
15 would --

16                 (Recessed at 10:12 a.m.)

17                 (Reconvened at 10:43 a.m.)

18          SPEAKER: Okay, folks. If we could go ahead and  
19 get seated. If we could get seated, please, so we can  
20 get started, I would appreciate it.

21          MS. BRYAN: Thanks for coming back, everybody.  
22 Let's call our session back to order. (Off audio).

1 It's very detailed, and they really do need more time  
2 to try to accomplish -- they're working on  
3 accomplishing what we're after here. So I would like  
4 to ask for consensus from this group to table this  
5 issue so that we can get onto some more work until this  
6 afternoon. Maybe after lunch they can come back and be  
7 ready to present that, if that's acceptable to HUD.

8 Okay. I'm seeing heads shake. Consensus? Seek  
9 consensus to table this issue until after lunch.

10 (Show of approval/disapproval.)

11 MS. BRYAN: Okay. Thank you. We'll move to the  
12 next item on the needs side then. And, Gary Cooper,  
13 will you introduce your next item?

14 MR. COOPER: Thank you, Madam Chair. The next  
15 item out of the Needs Work Group would be related to  
16 326(a)(iii). And this would be a change to the  
17 original language, and I believe that you will see the  
18 change there. I will go ahead and read the entire  
19 thing for you -- the entire (a)(iii) section here for  
20 you.

21 I would read, "In cases where a state-recognized  
22 tribe's formula area overlaps with the formula area of

1 a federally recognized tribe, the federally recognized  
2 Indian tribe receives the allocation of the formula  
3 area up to its population cap. And the state-  
4 recognized tribe receives the balance of the  
5 overlapping area, if any, up to its population cap."

6 That would be the proposal out of the Needs Work Group.

7 And it is on the board, and I think it was also  
8 distributed out. I would move that forward to the  
9 committee.

10 MR. DOLLARHIDE: And for folks that did not get  
11 that handout, for informational purposes, we asked  
12 FirstPic to put that on the overhead so folks can see  
13 the impact of that particular -- this particular  
14 request.

15 MR. COOPER: Yes, and I do apologize. There was  
16 also a TA request that went along with this. That TA  
17 request is outlined here that would show what the --  
18 what the amount of -- how the change would impact the  
19 formula. There's a simulation run. There's two parts  
20 to that I think. And some can correct me if I'm wrong  
21 because I was confused on this yesterday. But the  
22 first part -- the number one section is the run as it

1 exists now.

2 MS. CUCITI: If we just remove the -- if we just  
3 remove the prohibition on the Federal state overlap.

4 MR. COOPER: Okay. If we remove the prohibition  
5 on the -- on the Federal state overlap is what  
6 simulation one represents. Simulation two represents  
7 the change that would take with this new language, is  
8 that correct?

9 MS. PODZIBA: Yes.

10 MR. DOLLARHIDE: Okay. And that TA request is up  
11 on the screen for anyone who did not receive that  
12 handout or had not seen this previously. And a  
13 question that I asked yesterday on number 2 that you're  
14 seeing up on the board under "simulation," where it  
15 says "326(a) deleted" in parentheses. I believe that  
16 should say "326(a), amended."

17 MS. PODZIBA: Okay. We'll open the floor for  
18 discussion. Leon?

19 MR. JACOBS: Leon Jacobs, Lumbee Tribe. Since I  
20 represent a state-recognized tribe, I have no problem  
21 with this language. I think that the Needs Committee  
22 Work Group has spent a lot of time in trying to come up

1 with fairness in this process. And I recommend  
2 consensus on this proposal.

3 MS. PODZIBA: Gary?

4 MR. COOPER: Thank you for that, Leon. And I just  
5 want to be sure to mention also that representatives  
6 from both of the two tribes that were concerned with  
7 this issue were in both the subgroup and back in the  
8 full work group to discuss this issue. And I believe  
9 that they both agreed with it, and they are both here.

10 MS. PODZIBA: Is there further discussion of this  
11 proposal? Jason?

12 MR. DOLLARHIDE: Jason Dollarhide, Peoria Tribe.  
13 It's also my understanding on this proposal that this  
14 will affect all tribes within the block grant formula.

15 It's also my understanding that even if both tribes  
16 that are affected in this -- with this proposal try to  
17 achieve this offline between the two, that it's also my  
18 understanding that we as block grant recipients would  
19 also be affected by this proposal one way or the other.

20 That is correct. Is that -- was I hearing that?

21 MS. PODZIBA: Earl?

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

1 Tribe. So with what the co-chairman said, that is  
2 correct. But I think that both tribes have recognized  
3 this process as being the forum for this to occur. And  
4 with them having come to an agreement on the way to  
5 amicably resolve issues surrounding their overlapping  
6 area in terms of how to deal with it and have done it  
7 through the forum that's here for tribal consultation,  
8 then I think we should definitely be supportive of  
9 their efforts. And so, I would like to move for the  
10 question.

11 MS. PODZIBA: The protocol now is if there's a  
12 call for the question, that it goes directly to a call  
13 for the question. Karin has had her tent up, but  
14 there's been a call for the question.

15 MS. BRYAN: We have a call for the question, so  
16 we're going to take a vote for consensus, and we'll see  
17 where we're at.

18 MR. EVANS: I apologize. I didn't know she was  
19 listed to speak. I would be willing to remove my call  
20 for question until after anyone who's already up for  
21 comment speaks. I'll remove that so that we can still  
22 if we have questions on the proposal.

1 MS. BRYAN: Thank you, Earl. We have removed the  
2 call for the question. So next on the list to speak is  
3 Karin Foster.

4 MS. FOSTER: Thank you. I guess I'm just trying  
5 to understand, so if somebody could explain it to me a  
6 little bit better because the deletion and removal of,  
7 you know, that section is kind of confusing to me. If  
8 I understand correctly, the base -- well, actually the  
9 "base grant" it says here, which is kind of funny, but  
10 anyway.

11 The base grant, I see those numbers, and then the  
12 first simulation -- the second simulation I understand  
13 is that, you know, we allow the remainder of the funds  
14 after the overlap is considered, you know, and the  
15 federally recognized tribe gets its share, then the  
16 remainder of those funds goes to the state-recognized  
17 tribe. I don't understand the first simulation. Could  
18 somebody explain what that is?

19 MS. PODZIBA: Earl, can you do that?

20 MR. EVANS: I'll try to. In terms of the first  
21 simulation or what is marked as paragraph number one,  
22 that is what the end result will be if 24 C.F.R.

1 1000.326(a)(iii) were to be completed deleted with no  
2 language there to replace it.

3 Paragraph number two is the language that was  
4 passed out to you that the tribes have agreed on to  
5 replace what is currently at 326(a)(iii). So if we  
6 achieve consensus on this language, then paragraph  
7 number two is what we have.

8 MS. FOSTER: And what happens right now if we  
9 don't make any change at all? Do we know?

10 MR. DOLLARHIDE: My understanding is it'll -- it  
11 will stay on the first -- could you scroll down to  
12 number one, please? It's going to stay to the base.  
13 That's my understanding. The Port Creek will still  
14 receive \$1.8, and the Choctaw will receive \$523,000 if  
15 nothing is -- if nothing is changed because that's the  
16 baseline.

17 MS. FOSTER: Yes?

18 MS. FOSTER: Is there an increase then overall in  
19 the amount of funds that goes to this particular area  
20 as a result of the change?

21 MS. PODZIBA: Jason?

22 MR. DOLLARHIDE: That increase with the deletion

1 would be \$895,500. If we put the language that has  
2 been proposed, it would be \$834,721.

3 MS. FOSTER: So that comes just from the formula  
4 generally to that area. I'm not opposing that. I'm  
5 just trying to understand it. Okay. That would come  
6 from the formula in general that there would be  
7 \$800,000 more going to that area as a result of  
8 recognizing this change.

9 MR. EVANS: That is correct, Karin.

10 MS. FOSTER: Okay.

11 MS. PODZIBA: Okay. Earl, do you want to go back  
12 to your call for the question?

13 MR. EVANS: If the question sufficiently answered,  
14 then I would move for the question.

15 MS. PODZIBA: Annette, there's been a call for the  
16 question.

17 MS. BRYAN: My apologies. We just clarified that  
18 MOA would still need to qualify for substantial housing  
19 services in that area. Currently they do not, but  
20 that's something that they would need to fix.

21 So we have a call for the question. Do we have  
22 consensus on the proposal to the amendment for Section

1 1000.326(a)(iii)?

2 (Show of approval.)

3 MS. BRYAN: We have consensus. Thank you.

4 (Applause.)

5 MS. BRYAN: Gary, does the Needs Work Group have  
6 any other proposals to move forward?

7 MR. COOPER: Madam Chair, it looks like that we do  
8 not -- I do have another item to report out. There was  
9 not a proposal to move forward with that. I apologize  
10 for just a moment here. Let me -- there was a  
11 suggestion that did come forward. However, there was a  
12 vote taken, and there was a strong majority that  
13 supported no changes be made. So there is -- there's  
14 nothing to move forward from the majority.

15 MS. BRYAN: Thank you. Karin?

16 MS. FOSTER: Can I just ask what those issues  
17 were? Since they've been raised, it would be nice to  
18 know what they were.

19 MS. BRYAN: Yes. I just have a process question  
20 about that. We talked about a whole bunch of things,  
21 and if they don't come out of the work group, do they  
22 come to the table? It's a process question. Gary?

1 I'm just going back to the protocols, you know. We're  
2 bringing things to the table that we all agreed to come  
3 to the table. So we did talk about an awful lot of  
4 things, so what comes to the table is my question,  
5 being new at the table.

6 MR. COOPER: We did, and just for the record, I  
7 went back and reviewed, you know, our -- I guess our  
8 rules of order. I don't remember the exact terms for  
9 the work group itself that was adopted by the work  
10 group. And from my reading of it it looked like  
11 that we would advance anything out of the work group  
12 and then report any other thing that we did take a vote  
13 or discussion on. I could be wrong, and that was my  
14 only reason for bringing it up is just to make that  
15 comment.

16 That was the only purpose for mentioning it here  
17 is because I felt that since there was a vote taken one  
18 way or another that I did need to report out. However,  
19 there was not anything -- since there was no change,  
20 there was nothing from the majority or from the work  
21 group to advance on the issue.

22 MS. BRYAN: Thank you. Agree. That puts at the

1 -- Karin?

2 MS. FOSTER: We're starting to move. I'm sorry.  
3 My understanding is that had to do with the house/home  
4 family issue. So I understand that clarification now  
5 since -- that one, I guess, didn't get a vote.

6 MS. BRYAN: Thank you. Yes, and reading into your  
7 work group protocols that this committee agreed to,  
8 "The chair shall report any work group recommendation  
9 to the committee, which must take the form of specific  
10 proposed language if language is proposed together with  
11 preamble language." So that's -- we didn't get there.

12 Sharon?

13 MS. VOGEL: I'd like to defer to Jack because he  
14 was the co-chair, and then I will follow up if I need  
15 to.

16 MR. SAWYERS: There was an issue. It's a, I  
17 think, minority and majority issue. And it has to do  
18 with the statute. And we do want to read that in today  
19 for the full group. We want it in the protocols. And  
20 I imagine that's under your -- I told Sami Jo there was  
21 no definitions, but there are some. And, Sharon, do  
22 you want to read through those definitions? I want

1    them on.  I don't think we're ready to vote, but I do  
2    want them on record.  And this has to do with statute  
3    definitions, and we'll go from there.

4           And it was my understanding that they would be  
5    given to our folks, and it would be on the board.  And  
6    I would take time to give it to you and have you put  
7    that together if you would like, but perhaps we don't  
8    need to.  Let's start from there.

9           MS. BRYAN:  Do we need a point of order?  Do we  
10   need a point of order?  I just really -- you called on  
11   me and Jason to be the co-chairs to uphold these  
12   protocols.  And I need to call a point of order here on  
13   -- this conversation is not a proposal that we're  
14   bringing forward for negotiation.  And we do have items  
15   that we need to negotiate, so I think we should  
16   negotiate those items.  And if there's discussion time  
17   later, spend our negotiating time having a discussion.  
18   Can someone help me?  Karin?

19           MS. FOSTER:  Karin Foster, Yakama Nation Housing  
20   Authority.  I would agree that there does need to be a  
21   proposal in order for there to be a discussion.  But I  
22   don't necessarily see in the protocols that all

1 proposals need to come through the work group. I think  
2 committees can make proposals, and if there's an intent  
3 to make a proposal, I think that it has the same  
4 standing. The work group is a method to get input from  
5 everyone and put together proposals in an orderly way,  
6 but I don't think that it precludes us from hearing  
7 proposals directly from committee members.

8 MS. BRYAN: Thank you for that input, and I think  
9 you're right. However, I do want to call us back to  
10 the priorities and the time that we had left on the  
11 table for the issues that we've already begun  
12 negotiation on. And I think we need to finish those,  
13 and then we can introduce those new proposals as we --  
14 when we have time today. Carol?

15 MS. GORE: I just want to voice my agreement. I  
16 think it is appropriate to bring proposals if a  
17 committee member has one. I agree with Karin. But I  
18 also agree in the order of the day, which is to  
19 complete the unfinished items we have in front of us.  
20 I wouldn't feel good leaving today if we didn't finish  
21 those items first. And then I think there will be time  
22 left, and we can respond to those new proposals

1 whatever they may be. Thank you.

2 MS. BRYAN: Thank you. So we do have time in our  
3 day with, according to the math that we've done, to  
4 have that proposal after we're finished with the time  
5 that's left for the three outlying issues. Sharon?

6 MS. VOGEL: I have no problem with that. I was  
7 told -- remember this is my first time being on a  
8 negotiated rulemaking committee. I was told on the  
9 first day of the work group that I had to bring a  
10 proposal, so then I brought a proposal. And so, there  
11 was a proposal that was distributed at the work group,  
12 so I guess I'm kind of confused. You know, I did do  
13 that, and I don't understand. And I left thinking that  
14 it was a minority position and that it would be  
15 presented. So I guess the rules change.

16 MS. BRYAN: Karin?

17 MS. FOSTER: I think it's reasonable that if we've  
18 gone ahead and taken up some other proposals already  
19 that we go ahead and finish those, and then there will  
20 be time whether or not the earlier issue was brought up  
21 as a proposal at the beginning or whether it's a new  
22 proposal that can be dealt with at that time.

1 MR. SAWYERS: We'll accept that.

2 MS. BRYAN: Thank you. And so, I'd like to give  
3 in the order of priority when we're done with our --  
4 because we will have time likely that this is next in  
5 the queue.

6 MS. PODZIBA: The total amount of time on the  
7 three tabled issues is just under two hours.

8 MS. BRYAN: Yes. So the next one -- the next  
9 proposal from Ms. Vogel will come in the afternoon in  
10 that time spot. So we'll turn it back over to Jason  
11 and start on one of the issues and put the time up on  
12 the clock that's left for it. And please give a  
13 background to get caught up, and then we'll start the  
14 clock.

15 MR. ADAMS: I guess -- Jason Adams, Salish-  
16 Kootenai. I guess before I move past what we just  
17 talked about, I'd like to make a comment in regards to  
18 if this was an issue that was brought up in needs, and  
19 there was discussion as a proposal in Needs, and there  
20 was a majority/minority situation, why didn't we handle  
21 that during the Needs time? Why is it getting bumped  
22 and getting treated any differently?

1           It just seems like we're setting a precedent again  
2   that doesn't have to be set. I mean, if there was a  
3   proposal brought up -- Sharon just said I brought a  
4   proposal into Needs, didn't get handled, whatever,  
5   majority/minority opinion. We just handle all the  
6   Needs issues. Why can't we handle this now?

7           MS. BRYAN: Thank you, Jason. I will give the  
8   distinction, and that is as we've been planning our  
9   work, we had Needs and FCAS Work Group issues that came  
10  out of the work group and we prioritized the time for  
11  those issues. This is more of an individual proposal  
12  that came out of the work group. It's not being  
13  brought forth by the work group. That's the difference  
14  that I see. It didn't pass out of work group to come  
15  forward to the committee. Karin?

16          MR. ADAMS: Okay. Sorry.

17          MS. FOSTER: The question appears to be whether  
18  there was really a majority and minority position on  
19  this issue in the work group. If so, then under the  
20  protocols, it should come up to the committee through  
21  the work group. There is -- if anybody could speak to  
22  that. I wasn't there.

1 MS. BRYAN: Gary?

2 MR. COOPER: Yes, Madam Chair. And, again, I'm  
3 looking back at our Needs Work Group rules of order.  
4 It says "The work group will advance majority proposals  
5 to the committee." The majority proposal was there was  
6 no change to be considered, so there is nothing to  
7 advance forward on that issue. And, I mean, I don't  
8 know any other way to look at it.

9 Referring back to the rules of order, that is the  
10 -- I'm going by that. That's what the work group  
11 considered in the very beginning as the rules of order  
12 for that group. If I'm wrong, you know, someone can  
13 correct me, but I refer back to that. The majority  
14 proposal was there is nothing to move forward to the  
15 full committee.

16 MR. SAWYERS: And it's my understanding that there  
17 was a majority and minority that is brought forward.  
18 But I don't want to -- let's go ahead and do this  
19 other, and we'll talk about it later.

20 MS. BRYAN: Thank you. Yes, there will be time  
21 for this. I'm just trying to follow what my  
22 understanding of sitting in that work group was that

1 didn't have anything to advance out of the work group  
2 for the committee. Aneva?

3 MS. YAZZIE: Thank you. I just wanted to remind,  
4 we started out really with the negotiations starting  
5 with FCAS yesterday. And so, I think we are following  
6 the priorities of the committee as of yesterday. We  
7 did get an opportunity for the Needs to be considered  
8 last evening because we were told it would be short.  
9 So we should resume with the FCAS and get those items  
10 finished. And then if there's time to look at the  
11 remainder of whatever is with the Needs Work Group.  
12 Madam Chair.

13 MS. BRYAN: Thank you. Karin? Okay. So at this  
14 time, I'd like to thank you, Jason, for your comments.  
15 And if you would like, we have Section 1000.310, and  
16 we'll get -- just catch us up to where we were when we  
17 stopped the discussion, and then we'll start the clock.

18 MR. ADAMS: Okay. First issue then, we are  
19 bringing back that was tabled yesterday was the mutual  
20 help conveyance discussion. And so, that is the  
21 document that has new revised 1000.318(a). And so, if  
22 you can bring that document up to the screen. And what

1 I don't have notes on is exactly where we were  
2 yesterday. I don't recall exactly all of the  
3 amendments, and changes, and what the disagreements  
4 were on this issue at the time. But I do know that HUD  
5 has a revised proposal in regards to -- the issue that  
6 we kept coming up against yesterday was the 24 months  
7 language that's in this proposal. And so, there is a  
8 proposal from HUD that kind of gives some relief to  
9 that issue in a sense. And so, I don't know if we can  
10 bring that up and start there.

11 MS. PODZIBA: So I think that it was Earl's  
12 proposal on the table when we tabled it.

13 MR. ADAMS: Okay.

14 MS. PODZIBA: So is HUD's proposal an amendment to  
15 the proposal that was on the table, or should we --  
16 it's an amendment? Okay.

17 MR. ADAMS: It could be, I guess.

18 MS. PODZIBA: So let's hear from HUD and entertain  
19 that proposal. Karin, did you have something before  
20 that?

21 MS. FOSTER: Only just that I saw a proposal come  
22 up on the screen that was actually my alternate

1 proposal. So just so you know that I did go back and  
2 take a look at that and come up with an alternate  
3 proposal. Also I don't know how it fits into process,  
4 but we do have that as well.

5 MS. PODZIBA: Okay. So we've got Earl's proposal  
6 on the table. I think Jason invited HUD to submit its  
7 amendment, so let's have that done, and then we can  
8 take up your amendment second if that's okay. All  
9 right. So who from HUD? Jad, is that you?

10 SPEAKER: Yes, it's Jad. Thank you.

11 MS. BRYAN: I'm sorry. Can I call a point of  
12 order? Does Earl need to withdraw his proposal if  
13 we're starting with HUD's proposal, because yesterday  
14 we left that on the table.

15 MS. PODZIBA: I believe HUD is proposing an  
16 amendment to Earl's --

17 MS. BRYAN: To Earl's. Thank you for the  
18 clarification.

19 MR. ATALLAH: Thank you. We discussed this issue  
20 yesterday, and we heard the concerns. And it looks  
21 like we're pretty close to unanimous consensus. So we  
22 tried to address the concerns that were expressed

1 yesterday. You'll see the amended proposal up on the  
2 board. The changes we made are those that are in  
3 redline. I'll just note just a quick technical thing  
4 if you go up to the top.

5 We took out "turnkey three agreement" because if  
6 you look at the definitions of MHOA in the regs, and we  
7 only caught this later, it actually includes the  
8 turnkey three agreements. So that should cover it. We  
9 didn't catch that until later. But that includes  
10 turnkey --

11 MS. BRYAN: Would you start the clock, please?

12 MR. ATALLAH: So as you can see, the changes we  
13 made since yesterday are in redline. I'll go ahead and  
14 start, I guess, from -- do you want me to just read the  
15 whole thing? So it says, "A mutual help or turnkey  
16 three unit not conveyed after the unit becomes eligible  
17 for conveyance by the terms of the MHOA may continue to  
18 be considered FCAS only if a legal impediment prevented  
19 conveyance, the legal impediment continues to exist,  
20 the tribe, TDHE, or IHA has taken all other steps  
21 necessary for conveyance, and all that remains for  
22 conveyance is a resolution of the legal impediment, and

1 the tribe, TDHE, or IHA made the following reasonable  
2 efforts to overcome the impediment." So, again, we're  
3 still in the area of trying to define what "reasonable  
4 efforts" are.

5 So, "No later than three months after the unit  
6 becomes eligible for conveyance, the tribe, TDHE, or  
7 IHA creates a written plan of action which includes a  
8 description of specific legal impediments, as well as  
9 specific ongoing and appropriate actions for each  
10 applicable unit that has -- that have been taken and  
11 will be taken to resolve the legal impediments within a  
12 24-month period, and a tribe, TDHE, or IHA has carried  
13 out or is carrying out the written plan of action, and  
14 the tribe, TDHE, or IHA has documented undertaking the  
15 plan of action."

16 So most of the substantive changes are going to  
17 come in under (iv), and these are mainly the new  
18 changes. One of the concerns we heard yesterday was  
19 that there are concerns about kind of having a two-year  
20 limit on getting FCAS funding for units beyond the DOFA  
21 plus 25 years. We are retaining that time limit, but  
22 we're also creating another kind of tiered approach to

1 determining what reasonable efforts are.

2           So what it says is, "No mutual help or turnkey  
3 three unit will be considered FCAS 24 months after the  
4 date the unit became eligible for conveyance." Now,  
5 the new thing is we're saying that the general rule is  
6 a two-year extension, unless the tribe, TDHE, or IHA  
7 provides evidence from a third party, such as a court,  
8 including a tribal court or state or Federal government  
9 agency, documenting that a legal impediment continues  
10 to prevent conveyance.

11           And then we kept that language that we discussed  
12 yesterday that says, "FCAS units that have not been  
13 conveyed due to legal impediments on the effective date  
14 of this regulation shall be treated as having become  
15 eligible for conveyance on the effective date of this  
16 regulation." The purpose of that is to grandfather in  
17 some units to give them the benefit of this framework.

18           So to sum that up, what we are proposing is a  
19 framework where you can demonstrate reasonable efforts  
20 by meeting all these things and get two additional  
21 years of funding assuming you meet these requirements.

22           After the two-year period, the general rule is you do

1 not get funding. However, under certain circumstances,  
2 if you can show evidence from a third party, such a  
3 court, including a tribal court -- that's typically in  
4 probate situations where the delay is due to probate --  
5 or state or Federal government agency, for instance,  
6 documentation from BIA that you're trying to process a  
7 conveyance or something like that, and it shows that  
8 the legal impediment continues, and it's preventing the  
9 conveyance beyond the two years, then you can continue  
10 to get FCAS funding.

11 We think this is a very reasonable compromise  
12 because it meets both folks' concerns. It gives you  
13 additional time to complete the conveyance with the  
14 general rule that you cut it off at two years.  
15 However, there are circumstances where you can get  
16 funding beyond the additional two years if you can show  
17 this. That's our proposal.

18 MS. PODZIBA: Earl, do you accept this amendment  
19 to your proposal?

20 MR. EVANS: The only problem that I have with it  
21 is that based on what's in the statute, I'm not certain  
22 that there can be a date in which the unit's

1 eligibility to be counted as a housing unit can be  
2 terminated by regulatory guidelines. If I'm reading  
3 this correctly, after the 24 months, then it's  
4 considered eligible for conveyance even if the legal  
5 impediment still exists, and the tribe would no longer  
6 receive the formula allocation for that unit as a part  
7 of its FCAS. Am I understanding that correctly?

8 MR. ATALLAH: No. So if a legal impediment -- the  
9 statute requires you to show both that there's still a  
10 legal impediment and that you're making reasonable  
11 efforts to resolve that legal impediment. So if  
12 there's still a legal impediment and you're making  
13 reasonable efforts, you continue to get funding for  
14 that unit beyond the 25 years.

15 However, it gets -- the standard for showing  
16 reasonable efforts gets a little harder after the  
17 additional two-year period where you have to show  
18 additional documentation. So there isn't a bright line  
19 of a five-year cutoff, four-year cutoff. There's a  
20 general rule that you get cutoff at two years, but you  
21 can get funding past the two years if you show  
22 additional document showing reasonable efforts.

1           MR. EVANS: Then based on that, that removes any  
2 concern I would have with the amendment.

3           MS. PODZIBA: Okay. We've got Karin and then  
4 Jason.

5           MS. FOSTER: Okay. I'm going to have comments to  
6 the amendment, but also going to request an amendment  
7 of my own. So I guess, would it make more sense to  
8 comment just on the amendment first, I guess, right?  
9 The proposed amendment?

10          MS. PODZIBA: I think that's probably right. And  
11 then if your amendment can fit into this language, or  
12 else we might call the question and then start again if  
13 it doesn't achieve consensus.

14          MS. FOSTER: As I mentioned, I have my own  
15 proposal, but it's actually not too far away from this.  
16 But number four does concern me that we are having to  
17 go out to a state or Federal government agency or a  
18 court for evidence. And I guess I'm not sure I see the  
19 justification for that, although I can understand the  
20 argument.

21           But I would be more comfortable with a provision  
22 that's stated provides or just -- unless a tribe, TDHE,

1 or IHA provides documentation that a legal impediment  
2 continues to prevent conveyance. HUD would be making  
3 the decision whether they agree that there was  
4 sufficient documentation, but it wouldn't necessarily,  
5 you know, specify that it had to come from a court.

6 And one of the reasons that I put this forward is  
7 that sometimes it can take quite a while to get through  
8 a court system, certainly our own tribal court system.

9 And I realize that, you know, there is the counter  
10 argument to that that it is our tribal court, and we  
11 should be able to make that, you know, different. But  
12 because of, you know, the challenges in doing that, I  
13 think that we could have an issue that we wouldn't  
14 necessarily be able to get fully through the court and  
15 get an order, but would still have documentation that  
16 should be sufficient. So that was my comment to the  
17 amendment.

18 MS. PODZIBA: Okay. Jason?

19 MR. ADAMS: I guess in reviewing this and reading  
20 this document and the amendment, my only concern is the  
21 calling out -- in parentheses they're specifically  
22 citing "including tribal court." In some case, that

1 can be viewed as that's an exception to some standard  
2 or something. But why can't we just say "as a court,"  
3 and just strike "including tribal court," because  
4 tribal courts are tribal courts. Courts are courts are  
5 courts is what I'm trying to get at. Tribes work very  
6 hard to make their courts know, you know, what they  
7 are, and this makes it look like they're something  
8 less. So I would just ask that that be stricken.

9 MS. BRYON: Definitely was not our intent. We  
10 agree. That's fine to delete "including tribal court."

11 MS. PODZIBA: Earl's is a friendly amendment to  
12 strike the parens, including "tribal court." Is that  
13 acceptable?

14 (Show of approval/disapproval.)

15 MS. PODZIBA: Are there other comments or  
16 discussion to be had on the proposal on the table?  
17 Karin?

18 MS. FOSTER: I'm sorry. I wanted to be able to  
19 see the full proposal again to know whether there were  
20 any other comments because we were down at the bottom  
21 here. But I see I have it in front of me. I'll take a  
22 look.

1 MS. PODZIBA: Rusty?

2 MR. SOSSAMON: I'd just ask for a clarification.  
3 On this third party, the way I read it, it doesn't  
4 limit you to a court, state, or Federal agency. It  
5 just uses them as examples. Is that correct?

6 MR. ATALLAH: Yes, that's correct. Right. So I  
7 think the concept here is that after two years, if the  
8 basis for your delay is recipient providing  
9 documentation showing legal impediments, if that's the  
10 basis for the first two years and you hit the two-year  
11 mark, there's a bit of a heightened standard for  
12 showing reasonable efforts after the two years, the  
13 concept and the thinking being that you've had two  
14 years. After two years, if you're going to get  
15 additional funding for these units, you need to show  
16 something in addition to what you've been showing up to  
17 that two years.

18 And the way we tried to frame it is to bring in a  
19 third party, so it's a heightened level of  
20 documentation. It's the best way we can think about  
21 kind of -- you know, including something that shows  
22 that heightened level of -- the heightened standard.

1 I think this really goes to our discussion  
2 yesterday. We're putting some sort of predictable  
3 timeline on FCAS units. They're going sometimes for  
4 many, many years beyond what was originally  
5 anticipated. We're creating a general rule of two  
6 years to show reasonable efforts, and we're also trying  
7 to address concerns that two years may be too short in  
8 complicate cases that -- where there are legal  
9 impediments that are hard to resolve in two years. You  
10 know, I think this will go a long way in trying to  
11 address both those concerns.

12 MS. PODZIBA: Aneva?

13 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo  
14 Housing Authority. I appreciate the efforts to address  
15 the discussion as of yesterday. I just want to ask if  
16 there is room for a friendly amendment. You know,  
17 Navajo has a large volume of cases -- of situations, I  
18 should say. I wondered. Yesterday there was some  
19 consideration in paragraph (i) that was entertaining  
20 six months instead of three months. I wonder if  
21 there's a -- if I can ask for a friendly amendment.  
22 Then that's something I think we can support. So six

1 months if I can ask Earl.

2 MS. PODZIBA: Earl, there's a proposed friendly  
3 amendment, six months rather than three months at the  
4 top of (i). "No later than six months after the unit  
5 becomes eligible."

6 MR. EVANS: I have -- I have no objection to that  
7 amendment, but a couple of questions. Under (iv), so  
8 what happens -- the question I've been asked is what  
9 happens after you've shown you have those? Does it  
10 remain FCAS forever, or does it not? But I'm still --  
11 I'm still -- I still kind of read that as still saying  
12 that this is a cutoff in some ways for it being  
13 considered FCAS if you don't have the legal impediment.

14 And so, but either way, could you answer the first  
15 question for me?

16 MR. ATALLAH: Sure. So the key is you need to  
17 meet these standards to get funding for these units.  
18 And these are the standard -- the standards you have to  
19 meet to keep getting funding. There is no bright line  
20 cutoff where if you are showing reasonable efforts and  
21 showing a legal impediment here you will get funded.  
22 There is no drop dead, two-year deadline. There is a

1 general rule that two years -- there's a specific  
2 documentation standard, and then after two years, that  
3 standard is a little harder to meet. But there is no  
4 end cutoff here. Two years is the general rule. After  
5 two years, you got to show a little more.

6 The way the process works now and the way this  
7 would work, too, is every single year when we send the  
8 formula response form and there's a process of trying  
9 to determine the correct number of FCAS units that you  
10 have, we'll go through this exercise. So it's an  
11 annual determination through the formula response form  
12 process, as is the case now for determining your  
13 correct mutual help or turnkey three numbers. So it  
14 will be a thing you'd have to show every year if you're  
15 at year three or year four. Every year you provide  
16 documentation that's sufficient to satisfy this -- to  
17 justify getting funding for those units beyond that  
18 period.

19 MS. PODZIBA: Karin?

20 MS. FOSTER: Yes. Moving back up to the top of  
21 the proposal, if we can. I would like to request that  
22 language be brought in from the statute in paragraph

1 (iii). And my request would be that after the MHOA,  
2 that there would be a comma and we would bring in from  
3 the statute, "and which the tribe, TDHE, or IHA has  
4 lost the legal right to own, operate, or maintain,"  
5 because that is the language that we're working from in  
6 this case. And that was one of the features of my  
7 proposed amendment, which if we're working from this  
8 one and we can get to yes on it, I wouldn't need to  
9 make.

10 MS. PODZIBA: Is that the proper language? Did  
11 she get it right?

12 MS. FOSTER: Yes, with a comma after "maintain."

13 MS. PODZIBA: Earl, is that acceptable to you?

14 MR. EVANS: At first glance, I don't really see a  
15 problem with it. The only -- but the only thing I'm  
16 thinking right now is on the turnkey threes. Correct  
17 me if I'm wrong, but you have to -- there's something  
18 somewhere about how those things are conveyed, and you  
19 really can't convey those on trust land. You can't  
20 convey the property for those. So I don't -- I'm  
21 having a little problem reconciling that bit of it. I  
22 don't remember the exact language pertaining to that as

1 it relates to turn threes, but there's something about  
2 that that's kind of sticking out.

3 MS. PODZIBA: Would you like some discussion on  
4 that to see what other people are thinking about that  
5 proposal?

6 MR. EVANS: Yes, ma'am.

7 MS. PODZIBA: Okay. Other people have comments on  
8 this particular item? Rusty? So just process wise,  
9 we're going to start another list just for people who  
10 have comments on this issue.

11 MR. SOSSAMON: Yes, just on this one.

12 MS. PODZIBA: Yes.

13 MR. SOSSAMON: Okay. To me, this is diametrically  
14 opposed to what the statute says because if you've lost  
15 the legal right to own, and operate, and maintain it,  
16 you may continue to consider it formula current  
17 assisted stock? That's the opposite of what the intent  
18 of the statute according to my understanding. If you  
19 don't have the right to own, operate, or maintain a  
20 unit, why are you counting it as -- continuing to count  
21 it as assisted stock? And worded this way, that's what  
22 it says that you may continue to consider it current

1 assisted stock. But you have no right to own, operate,  
2 or maintain it. That doesn't make any sense to me.

3 MS. PODZIBA: Karin?

4 MS. FOSTER: I welcome discussion on this issue,  
5 but isn't that what we're talking about in the statute  
6 is whether if the recipient -- and I'm reading from the  
7 statute -- "unit shall not be considered to be a low  
8 income housing dwelling unit for purposes of this  
9 section if the recipient ceases to possess the legal  
10 right own, operate, or maintain the unit, or the unit  
11 is lost" -- I'm sorry -- "the unit is a home ownership  
12 unit conveyed within 25 years. The recipient shall be  
13 considered to have lost the legal right to own,  
14 operate, or maintain the unit if the unit has not been  
15 conveyed."

16 I guess I'm not sure of the meaning of, you know,  
17 "becomes eligible for conveyance by the terms of the  
18 MHOA" unless you get some sort of determination from a  
19 court on that issue. So I would like to be able to  
20 work with the issue in the statute, and maybe this  
21 isn't the clearest way. But I would like to pull that  
22 in.

1 MS. PODZIBA: Jemine?

2 MR. ATALLAH: I agree with Rusty's analysis. This  
3 conflicts directly with the standard in the statute.  
4 The statute gives you or when describing the formula  
5 factors, it says, you know, FCAS units are units that  
6 are '37 Act units that are owned or operated. And if  
7 you lose the legal right to own or operate or maintain  
8 under the statute, they come off. So we can't have  
9 this say that these units stay on if they -- even  
10 though the tribe has lost the legal right to own,  
11 operate, or maintain. That's in direct conflict with  
12 the statute. So I think we have legal concerns about  
13 putting in that phrase.

14 MS. PODZIBA: Jason?

15 MR. ADAMS: I guess my comment comes back to we  
16 are dealing with Regulation 318, and it's (a), and the  
17 new number (iii) goes down. But (a) has the language  
18 that Sharon added in it if I'm not reading it  
19 incorrectly. It says exactly the same thing as what  
20 you've added here. Do we need to add it here, because  
21 this is a subpart of (a), and (a) says that.

22 MS. FOSTER: I need to think about this issue a

1 little bit. If there's more to discuss, I think I'd  
2 suggest you go onto another one, and I'll think about  
3 his a little bit.

4 MS. PODZIBA: Okay. Earl, you're at the top of  
5 both lists, so if we're going to -- let's see. And  
6 Rusty is after Earl, so I'm going to call on Earl and  
7 then call on Rusty, and we can get rid of -- we're  
8 going to go back to the original list.

9 MR. EVANS: Well, first of all, I do agree with  
10 what Jason has pointed out. But I think that, and,  
11 Karen, please correct me if I'm wrong, but I think what  
12 your intent was, I think your intent was to say "and  
13 which the tribe, TDHE, or IHA has not lost the legal  
14 right," because based on what you read from the  
15 statute, those were the words in the statute. So I  
16 think the only thing we forgot there was the word  
17 "not." But I do agree with Jason in terms of 318(a)  
18 already having that language.

19 MS. PODZIBA: Rusty?

20 MR. SOSSAMON: Yes, that was going to be my  
21 comment that if you just add that word "not," it makes  
22 it consistent if f you want to put the statutory

1 language in this regulation. And I think that's  
2 exactly what this regulation is intended to address are  
3 those units if you add that word "not."

4 MS. PODZIBA: Jason Dollarhide? Should I go back  
5 to Karen? You're on the list from before. Karin?

6 MS. FOSTER: Yes, please come back to me. I think  
7 by phrasing it that way, it does become superfluous  
8 and would suggest going ahead and removing it from the  
9 -- from the amendment. I'll withdraw that.

10 MS. PODZIBA: Okay. Further discussion then.  
11 Jason Dollarhide, you're up next.

12 MR. DOLLARHIDE: Okay. I almost forgot what I was  
13 going to ask. I guess my question goes back to A.J. on  
14 what she proposed on the six months instead of the  
15 three months. My question would be, A.J., why would  
16 somebody need six months to come up with an action plan  
17 when a unit becomes an eligible conveyance? Why isn't  
18 three months sufficient enough time for that to happen?

19 MS. YAZZIE: Thank you for the question, Jason.  
20 And this is just for Navajo. Three months would be  
21 just too short of a timeframe, and when I say that, we  
22 have over 417 developments across the reservation.

1 That's over 27,000 square miles of land mass in which  
2 we have different homes spread throughout. And we have  
3 various cases of home buyer families that may have paid  
4 off, but we're running into problems of probate. And  
5 when you talk about researching each of those  
6 individual families with respect to the legal cases,  
7 and we have five district courts on the reservation,  
8 and which it really does amass a lot of resources and  
9 time to collect that information.

10 And so, if we can look at a minimum of six months.

11 We probably need longer, but I think in terms of just  
12 supporting this and moving it forward, we would be  
13 agreeable to the discussion that was had yesterday.  
14 And so, if we can have that consideration, we would  
15 appreciate that. Thank you.

16 MS. PODZIBA: Jemine?

17 MS. BRYON: We, too, have concerns about moving it  
18 from three to six months. Again, in an effort to  
19 ensure that there is activity -- continual activity in  
20 order to convey these properties, we didn't expect that  
21 the planning started at the 25-year point. So there's  
22 an assumption that, you know, preparing for a

1 conveyance starts well before DOFA plus 25. And,  
2 therefore, to ask for a three-month plan when  
3 conveyance has not succeeded is not unreasonable. And  
4 I think it further sends the message that it has to be  
5 a plan of action that's really aggressive in order to  
6 move it off -- in the 24 months.

7 And again, you know, with total respect to the  
8 discussion yesterday about unusual circumstances  
9 outside of control of the tribe, TDHE, or IHA, we added  
10 in the provision for continuing beyond the 24 months.  
11 So we would respectfully ask that the three months be  
12 retained.

13 MS. PODZIBA: Okay. So are you asking for an  
14 amendment to the amendment?

15 MS. BRYON: (Off audio).

16 MS. PODZIBA: Okay. So there's a request, Earl,  
17 to -- yes. Procedurally, I am not sure. Do we take  
18 this as a new amendment?

19 MR. EVANS: I accepted the amendment for six  
20 months, so if Aneva is willing to withdraw her request  
21 to have that included, then I'm willing to go back to  
22 the three if that's amenable to helping us get close to

1 consensus.

2 MS. PODZIBA: Do you want to say that out loud?

3 MS. YAZZIE: Thank you, Earl. I think if it's up  
4 to me, I would prefer to leave it at six months.

5 Obviously that is another process then if that doesn't  
6 reach consensus.

7 MS. PODZIBA: Karin?

8 MS. FOSTER: I'd like to speak to the three-month,  
9 six-month issue. I think that when you're dealing with  
10 trust land and the types of legal impediments or issues  
11 that can come up with trust lands, I think sometimes it  
12 takes a little longer than that to actually completely  
13 flush out what needs to be done to address the problem.

14 I know that may seem counterintuitive, like you  
15 should know right away what is the legal impediment.  
16 But sometimes you don't know exactly who owns the land.

17 You have to figure that out. You have to figure out  
18 how -- what plan of action is actually going to work  
19 for the family.

20 If you've got a trust allotment you're trying to  
21 continue, you know, with the family continuing to live  
22 in that unit, you know, the expectations of the family

1 that that would be a family home. Who's going to take  
2 it over? Who's eligible, you know? I mean, it's just  
3 -- it can take a little bit longer to work with BIA and  
4 the families to figure that out. So that's why I think  
5 that the six months is helpful for us who have some of  
6 the most intractable problems with trust land issues.

7 MS. PODZIBA: Jason?

8 MR. ADAMS: I appreciate the comments. Jason  
9 Adams, Salish-Kootenai. And I just wanted to maybe  
10 give a little boost here to say we're real close on  
11 this. I think we're real close on this, closer than we  
12 have been. So I hope we don't get too stuck on three  
13 to six months here.

14 I guess my comment would be that through the work  
15 group, we talked about the process and how this plays  
16 out. And it really comes back to the formula response  
17 form and when your tribe receives that. And I know me  
18 as an executive director, I see that every year, and I  
19 see and look through it and make sure, you know, if we  
20 have units that are coming to that -- near that date of  
21 being -- coming off by HUD's determination on the  
22 formula response form, then we get to work and make

1 sure that we're ready -- those units are in line to be  
2 conveyed. Or if they're not, then we're ready to  
3 justify why they're not.

4 And so, this process is an ongoing yearly process.

5 It really doesn't come out of the blue. It happens  
6 every year. You get your formula response form. You  
7 get your document. It shows your units, you know. And  
8 just for us it's project. You know, the project number  
9 is there, so you know that's an old project. These  
10 units are going to come off here pretty dang soon over  
11 time, and so, we make those adjustments.

12 And so, for a three-month time -- I guess I'd  
13 advocate to go back to three months -- for me, that's  
14 sufficient because you have that ongoing look at your  
15 units and process. I would hope three months would be  
16 sufficient. Thank you.

17 MS. PODZIBA: Leon?

18 MR. JACOBS: Leon Jacobs, Lumbee Tribe. I've been  
19 on both sides of this situation from HUD, too, also to  
20 the tribal side. And I can understand and appreciate,  
21 Jason, your comments. But I know that in other areas  
22 of the country, the situation with the BIA and land

1 status and so forth does require a lot of time. And at  
2 the same time the housing, they used to have housing  
3 departments have a major responsibility with ongoing  
4 needs and so forth. So I don't think six months is too  
5 much to ask, and I hope that HUD would be willing to  
6 compromise on this and give the assurance to the tribes  
7 that need that assistance.

8 MS. PODZIBA: Aneva?

9 MS. YAZZIE: Just to respond, thank you, Leon.  
10 And I appreciate, Jason. And, yes, it's true it's a  
11 mechanical process when we go every year, the formula  
12 response, filling a response to the HUD. But beyond  
13 that, and in the body of this language is, "which  
14 includes a description of specific legal impediments."

15 That's the part that takes a lot more research and  
16 more time because we have various scenarios of families  
17 even going to probate on who owns that unit.

18 And so, we have checkerboard allotted land where  
19 there perhaps are situations that arise. And so, I  
20 appreciate, and I wish we could do it sooner. I  
21 actually would need more than six months, but I think  
22 it's a good compromise and good spirit. We're willing

1 to look at six months.

2 And I was reminded at the work group discussion  
3 that the folks from HUD and the work group members did  
4 talk about this before. And six months was what was  
5 being considered even at the work group level. So I'm  
6 hoping that there is some understanding. And we're  
7 almost close. We can do this. And I don't think it's  
8 a make or break, but I think to give opportunity.

9 And we have other tribes in our region that had  
10 the same issue with trust land, and 90 percent of our  
11 land base is trust land. And so, that brings on other  
12 challenges with respect to a profile of about 5,000  
13 mutual help homeowners or home buyers in the program.  
14 So if we can do that, that would be very appreciated.  
15 Thank you.

16 MS. PODZIBA: Carol?

17 MS. GORE: Thank you. I'm sitting here watching  
18 the clock, and we're down to 15 minutes. I just want  
19 to speak to the material nature of this proposal. This  
20 is \$60 million that's currently sitting on the FCAS  
21 side of the formula that could move to the needs side  
22 of the formula. It's material to those of us that

1 receive funding from the needs side. We need to move  
2 this.

3 I'm ambivalent whether it's three or six months,  
4 but if this fails because we can't reach agreement over  
5 something that is not material in the significance of  
6 the issue, I'll be extremely disappointed. So I'm  
7 asking HUD and A.J. to reach an agreement. Can we  
8 strike four and a half months? Let's figure out that  
9 number. If that's the only reason that we can't call  
10 the question for this issue, let's figure out the  
11 number because the materiality of this decision is  
12 huge. Thank you.

13 MS. PODZIBA: Earl?

14 MR. EVANS: Well, and if HUD is not amenable to  
15 splitting the difference as Carol proposed, then I  
16 would suggest no later than -- no later than when the  
17 tribe submits its next Indian housing plan. It will  
18 include within the Indian housing plan its written plan  
19 of action for dealing with the legal impediments,  
20 something that's got to be in every year anyway.

21 I understand the formula response form and it  
22 coming up then, but for whenever that's due. That's

1 why it's a fluid -- it's kind of a -- it makes it kind  
2 of moving targets because it could be due next month or  
3 it could be due next year. But either way, it's  
4 something that already has to go in annually, and then  
5 you're guaranteed to at least know about it.

6 And I'd like to ask HUD, can you give a response  
7 on this so that we can either table it until you've had  
8 some chance to talk about it so we don't use up all our  
9 time, or either let's figure out something to do  
10 differently. Thanks.

11 MS. PODZIBA: Jemine?

12 MS. BRYON: First, let me once again express my  
13 concern about when conveyance issues are being  
14 identified. It still seems as though it's being  
15 identified at the last minute as opposed to in a more  
16 -- at an earlier point so that proactive steps can be  
17 taken to convey the properties as quickly as possible.

18 So I still must say that I am concerned about that.

19 So in the spirit of compromise on the three to six  
20 months, and, again, having the three months really  
21 brings that -- it's an action, a requirement, that  
22 brings attention to the unit so that activities can

1 take place so that the unit comes off of the formula in  
2 24 months. So that's why we felt strongly about the  
3 three months. In the spirit of compromise, we will  
4 modify our three months to four months. Is that a  
5 friendly amendment? Thank you. It's a friendly  
6 amendment -- really friendly.

7 MS. PODZIBA: Is that acceptable? Yes? Okay. So  
8 that's (iv). Karin?

9 MS. FOSTER: Okay. Nobody is going to like me for  
10 this, but it didn't seem to be controversial. So I was  
11 precipitous in terms of my withdrawal of that earlier  
12 language. But I agree with Earl's input. So I really  
13 would like to see -- after MHOA, I would like it to  
14 read, "and which the tribe, TDHE, or IHA has not lost  
15 the legal right to own, operate, and maintain." If it  
16 means that already, then I'm comfortable -- everyone  
17 should be comfortable with that if it doesn't change it  
18 -- "and which the tribe, TDHE, or IHA has not lost  
19 legal right to own, operate, and maintain."

20 MS. PODZIBA: Earl, is that acceptable?

21 MR. EVANS: Yes, ma'am.

22 MS. PODZIBA: Jemine?

1 MS. BRYON: Jad would like to speak on our behalf.

2 MR. ATALLAH: So when you have not lost the legal  
3 right to own, operate, or maintain -- when you meet  
4 that standard, you get funded. What this regulation is  
5 trying to define, okay, is when you actually have lost  
6 the legal right to own, operate, or maintain. If you  
7 put it up there, it's superfluous and it's circular  
8 because what this reg is trying to define is that.  
9 When have you lost the legal right to own, operate, or  
10 maintain? When have you not the legal right to own,  
11 operate, or maintain? If we put that in the language,  
12 it just -- I think it conflicts with the statute. That  
13 phrase is a term of art that is the test for whether  
14 you get FCAS funding or not.

15 MS. PODZIBA: Karin?

16 MS. FOSTER: I think the statute is very confusing  
17 -- "has not otherwise lost the legal right to own,  
18 operate, or maintain." Does that change it for you,  
19 Jad, at all?

20 MR. ATALLAH: I'm sorry, no. I know the statute  
21 is confusing, and we think it's a little confusing,  
22 too. It's a little counterintuitive. What it's saying

1 is for purposes of the formula, if you lose the legal  
2 right to own, operate, or maintain, the unit comes off,  
3 but that's specifically for purposes of the formula.  
4 So when we use this terminology in the reg, we're  
5 saying when you meet a certain condition, then go on to  
6 define that condition. It just -- I think it's legally  
7 insufficient to mention any of this phrase.

8 MS. PODZIBA: Jason?

9 MR. ADAMS: I just want to point out again that  
10 this is a subset of (a), and (a) gets to Jad's point.  
11 And that's the point of the issue is that if you've  
12 lost that legal right, and that's what (a) says, then  
13 you have these conditions that you can do and things  
14 you can do to keep that on your count. I just want to  
15 make sure -- if we have this language in there, then  
16 (a) has to change because (a) is in conflict with this  
17 language.

18 MS. PODZIBA: Karin?

19 MS. FOSTER: All right. Withdraw. I'm done.

20 MS. PODZIBA: Earl?

21 MR. EVANS: Call for question.

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

1 have new revised Section 1000.318(a) with many  
2 amendments in front of you. Can we -- do we have  
3 consensus?

4 (Show of approval.)

5 MS. BRYAN: We have reached consensus. Thank you,  
6 everybody.

7 (Applause.)

8 MS. BRYAN: Seven minutes and a half to spare.  
9 Good job. So at this point in the day, I wanted to  
10 check in. We have lunch scheduled for 12:15, but it is  
11 almost noon. Do you want to start the new issue with  
12 time on the clock? We have almost just enough time to  
13 get us to lunch, or shall we take lunch -- take the  
14 issue up after lunch? We have almost just enough -- I  
15 think -- is it 22 minutes? And does that put us around  
16 12:15, which is our scheduled lunch time? Jason?

17 MR. ADAMS: I was going to say are we going to  
18 have lunch today?

19 MS. BRYAN: We don't need to. We can work right  
20 through lunch. I'm okay with that.

21 MR. ADAMS: My preference would be break for  
22 lunch. Let's take a break and come back.

1 MS. BRYAN: Okay. So --

2 MR. ADAMS: And just adjust the schedule  
3 accordingly.

4 MS. BRYAN: Let's see. What is the time now?  
5 What is an hour and 15 minutes from now? We can meet  
6 back at 1:15 instead of 1:30? Is that acceptable to  
7 folks?

8 (Show of approval.)

9 MS. BRYAN: Okay. Thank you. We'll see you back  
10 at 1:15. Good job, everybody.

11 (Recessed at 11:53 a.m.)

12 (Reconvened at 1:27 p.m.)

13 SPEAKER: If everybody could take their seats,  
14 we're going to go ahead and get back started -- call  
15 this meeting back to order. We've still got a few more  
16 issues that we need to take care of, and we've got a  
17 limited amount of time this afternoon. So if we could  
18 get seats taken, please.

19 MS. BRYAN: Welcome back. Let's call our session  
20 back to order. We are going to go ahead and start  
21 where we left off with the FCAS outlying item, and then  
22 we'll need to come back to the item that we tabled as

1 well, and we have another item on the agenda after  
2 that.

3 MR. ADAMS: Thank you, Co-Chairs. Jason Adams,  
4 Salish-Kootenai Housing Authority once again. Picking  
5 back up where we were yesterday in regards to our last  
6 item for consideration for the committee. This item  
7 has, I believe, 22, 23 minutes left on the clock.

8 The item is specific to unexpended funds, and we  
9 had proposed changes being made to three different  
10 sections -- well, two sections existing and one new  
11 section of the regulations, 1000.310, a technical  
12 correction; 1000.336, some insertion of language there  
13 in regards to the undisbursed funds factor is what we  
14 are calling it; and then 1000.342, which would be the  
15 new sections that are specific to the undisbursed funds  
16 factor.

17 And so, we are at a point now I think where we had  
18 some discussion yesterday, and we ended the day on this  
19 issue. And as I understand, HUD has some edits to be  
20 made, some amendments -- friendly amendments to be made  
21 this afternoon to hopefully get us a little closer to a  
22 consensus vote on this issue.

1           So I believe we ended yesterday with Earl having  
2     the floor for this issue, so I suppose we can pick it  
3     up right there. Thank you.

4           MS. PODZIBA: Okay, yes.

5           MR. EVANS: Earl Evans, Haliwa-Saponi. Basically  
6     what's on screen was where we left off, but HUD has  
7     made some additions to the language that are pretty  
8     much consistent with the direction we were going in, I  
9     think, yesterday where we left off. We had talked  
10    about using the sum of the prior three years in terms  
11    of the allocation, and so HUD added -- suggested adding  
12    in some additional language in another place that would  
13    -- in two other places that would conform to that  
14    change that we had all talked about. Have those been  
15    passed out?

16          MS. PODZIBA: Does everyone have a new version?

17          MR. EVANS: It should be language in purple.

18          MS. PODZIBA: Okay. So that should be -- so it's  
19    up on the screen. Jad, maybe you can introduce that.

20          MR. EVANS: But basically unless someone has an  
21    objection to it. I think yesterday we had agreed to  
22    the amendment with using the sum of the prior three

1 years' allocations instead of calculating for the  
2 current Fiscal Year, and so these changes are  
3 consistent with that. So I wouldn't have a problem  
4 with amending the original proposal to include those  
5 changes. I don't know what the rest of the committee's  
6 feelings are on it, but they seem pretty consistent  
7 with where we left off. Thank you.

8 MS. PODZIBA: Should Jad walk through them, or  
9 does everyone see them?

10 SPEAKER: Yes.

11 MS. PODZIBA: Okay.

12 MR. ATALLAH: Sure. Good afternoon. So we -- as  
13 Earl mentioned, we -- at the end of yesterday we  
14 decided to -- in order to address the concerns that  
15 Rusty raised about appropriations possibly dropping and  
16 possibly impacting other tribes, we changed the  
17 framework from looking at three times the initial  
18 allocation calculation of this current year to simply  
19 looking back the last three years' initial allocation  
20 calculations of a tribe, and then comparing that sum to  
21 the undisbursed amounts that you have.

22 And if the undisbursed grant funds that you have

1 -- the unexpended amount is greater than the sum of the  
2 past three years' allocations -- initial allocations,  
3 then you take the difference and you reduce your  
4 current year's allocation by that difference. So we  
5 went ahead and did that to try to clean it up. But I  
6 think those were the only real changes. The rest of it  
7 is the same as we discussed yesterday.

8 MS. PODZIBA: Jason, I think it's your proposal.  
9 So were those acceptable to you?

10 MR. ADAMS: I was just trying to just figure that  
11 out as far as whether it was my proposal now or whether  
12 we -- I just, again, couldn't remember from my notes  
13 where we were at exactly, but if that's where we were,  
14 then, yes, I'm acceptable to the changes proposed.

15 MS. PODZIBA: Okay. And then, Earl, did you want  
16 to restate your request, which is where we left off?

17 MR. EVANS: My request is to go where we left off  
18 plus this.

19 (Laughter.)

20 MR. EVANS: The call for question.

21 MS. BRYAN: We have a call for the question on  
22 Section 1000.310 and the following, 1000.336, 342, and

1 Appendix A where all the changes were made that you see  
2 in front of you. And I'm seeking consensus on the  
3 proposal in front of you. Do we have consensus?

4 (Show of approval.)

5 MS. BRYAN: Seeing no dissension, we have reached  
6 consensus. Thank you.

7 (Applause.)

8 MS. BRYAN: Next on our agenda, we have an issue  
9 that was tabled before lunch if we can bring that issue  
10 back up.

11 MR. COOPER: Okay, Madam Chair. I believe that  
12 was the change to 328 that had to deal with minimum  
13 funding. Is that the issue that we're on, I believe?

14 MS. BRYAN: I was just double checking that we  
15 finished the FCAS list.

16 SPEAKER: Yes.

17 MS. BRYAN: Okay. That's what I was thinking. I  
18 just wanted to keep up with this process. Mr. Cooper,  
19 could you restate your question?

20 MR. COOPER: Yes. I believe that the issue we  
21 left off on this morning was the change that the Needs  
22 Work Group was proposing to Section 1000.328 with some

1 additional language. If I'm not mistaken -- is Todd  
2 here? I think that where we left off at is HUD was  
3 working through a couple of -- a couple of issues on  
4 that. So I would like to, if we could, if Todd is  
5 available, if he's going to take it up, maybe he could  
6 pick up where we left off.

7 MS. BRYAN: Thank you, Gary. Has HUD had time to  
8 prepare some proposed language for us to consider?

9 MR. RICHARDSON: Can I have the floor? So we're  
10 still working on crafting the exact language. Let me  
11 tell the group what we are working on, and then I'll  
12 bring it back to you. But the issue here is that,  
13 first off, we have -- the goal here is to establish  
14 minimum funding -- minimum total grant funding, not  
15 minimum need funding. So this is currently in Section  
16 1000.328, which is about minimum need funding.

17 So the first thing we're going to recommend to  
18 achieve total minimum grant funding would be to create  
19 a new section. We can call it 1000.329. And then also  
20 with that new section, we would have language that  
21 states that a certain amount of -- we would hold out of  
22 the allocation pool \$3 million of the carryover funds

1 -- up to \$3 million if they're available. And those  
2 funds would then be available after we've run all the  
3 formula to be allocated to tribes that have less than  
4 .011457 -- less than \$75,000 of their total grant. And  
5 then that's what would be allocated to those tribes if  
6 that money is available, but it would be withheld.

7 If that's not enough money to bring tribes up to  
8 that amount, then they would get a somewhat lower  
9 minimum grant. If it's too much to bring them up to  
10 that amount, that money would be carried over for the  
11 next year. So that's the concept that we're working  
12 on. I want to make sure that the group is okay with  
13 that concept while we try -- while we write the draft  
14 language.

15 MS. PODZIBA: Sami Jo?

16 MS. DIFUNTORUM: Thank you. So to clarify, 328  
17 would remain for tribes that received \$200,000 or more  
18 in FCAS, and we'd create a new section for those who do  
19 not, is that what I'm understanding?

20 MR. RICHARDSON: We would create a new section  
21 that would be independent of that.

22 MS. DIFUNTORUM: Right. Okay, thank you.

1 MS. PODZIBA: Carol, did you have the same  
2 question? Do you have a comment?

3 MS. GORE: I'm going to try not to let my  
4 impatience show. I think the committee was counting on  
5 HUD to bring language back after lunch that we could  
6 consider. We're now burning up the clock to repeat the  
7 same things and just talking about format. So my  
8 question for HUD, we have 42 minutes on the clock.  
9 When would you have the language so we could take  
10 action on this subject? Thank you.

11 MR. RICHARDSON: I have some language that I'm  
12 working on right now. It's not quite finished yet. We  
13 could table this conversation and go to another topic  
14 and come back to this one.

15 MS. GORE: How long?

16 MR. RICHARDSON: Twenty minutes.

17 MS. GORE: I propose we just take a break for 20  
18 minutes and come back.

19 MS. PODZIBA: Karin?

20 MS. FOSTER: Yes. Karin Foster, Yakama Nation  
21 Housing Authority. Whether we take a break for 20  
22 minutes or do that now, whenever that's drafted I would

1 like for it to -- for us to give consideration to it  
2 also including the language about eligible families,  
3 that there needs to be an eligible family residing in  
4 that area in order for the individual or for the tribe  
5 to be qualified for carryover funds. That is -- was  
6 one of the specifications in part (b), and if we're  
7 going to have a new section, I think it should also be  
8 applicable here.

9 MS. PODZIBA: Gary?

10 MR. COOPER: After hearing that, and then Karin's  
11 request is -- rather than call for a break, I would  
12 like to call for caucuses for 30 minutes to give HUD  
13 time to draft the language and bring that back to the  
14 table.

15 MS. GORE: We agree.

16 MS. BRYAN: Northwest agrees. So we have a caucus  
17 called for. We need to stop the clock. And a 30-  
18 minute caucus has been requested. Thank you.

19 (Recessed at 1:39 p.m.)

20 (Reconvened at 2:11 p.m.)

21 SPEAKER: If we could go ahead and get seated,  
22 please. We will go ahead and call our meeting back to

1 order.

2 MS. PODZIBA: Okay. So do we have a new proposal  
3 offered by HUD? Do we have that? Okay. So I think  
4 probably copies are being made. Yes. And so, Todd,  
5 would you like to explain it to the committee?

6 MR. RICHARDSON: So rather than modify Section  
7 1000.328, we would create a new section, 1000.329. The  
8 question would be what is the minimum total grant  
9 allocated to a tribe if there is carryover funds  
10 available? And then the first -- the first section is  
11 -- basically speaks to if there are carryover funds.  
12 "Then HUD will hold the lesser amount of \$3 million or  
13 the available carryover funds for additional  
14 allocations to tribes with grant allocations of less  
15 than .011547 percent of that year's appropriation."

16 As we've discussed, that's equivalent to \$75,000  
17 with this year's appropriation amount. "All tribes  
18 eligible under this section shall receive a grant  
19 allocation equal to .011547 percent of that year's  
20 appropriation."

21 Section (d). "If the set aside carryover funds  
22 are insufficient to fund all eligible tribes at .011547

1 percent of this year's appropriation, the minimum total  
2 grant shall be reduced to an amount which can be fully  
3 funded with available set aside carryover funds." The  
4 next provision is, "If less than \$3 million is  
5 necessary to fully fund tribes under paragraph (a) of  
6 this section, any remaining carryover amount shall be  
7 carried forward to the next year's formula."

8 Finally, "To be eligible for the minimum grant  
9 amounts described in this section, an Indian tribe must  
10 certify in its Indian housing plan the presence of any  
11 eligible households at or below 80 percent of median  
12 income." And the last provision is, "For purposes of  
13 this section, 'carryover funds' means grant funds  
14 voluntarily returned to the formula or not accepted by  
15 tribes in a Fiscal Year, and grant funds returned to  
16 the formula pursuant to Section 1000.536."

17 MS. PODZIBA: Okay. And so, do I understand that  
18 this is a proposed amendment to the proposal on the  
19 table, and it replaces the language that had been  
20 proposed for Section 328, and instead creates a new  
21 Section 329?

22 MR. RICHARDSON: That's correct.

1 MS. PODZIBA: Okay. So, Jack, you were the  
2 proposer, so I'm going to turn it to you.

3 MR. SAWYERS: I would accept that, and we'll open  
4 for questions.

5 MS. BRYAN: Okay. Earl, it looks like you're  
6 first up on the questions.

7 MR. EVANS: Earl Evans, Haliwa-Saponi. Yes, the  
8 -- in the last sentence -- sorry. Thank you. Line  
9 17. I think you should delete line 17 completely  
10 because I believe that was an issue that Rusty had  
11 earlier was -- in the prior draft was he requested  
12 deletion of that -- of including 536. Am I correct,  
13 Rusty?

14 MR. RICHARDSON: If I may, the prior version that  
15 Rusty had, also had "and repayment." Had another line  
16 that he had asked that we remove, and I removed it in  
17 this version already. We can go back go back and see  
18 what that was. But it was on repayment funds, I think.  
19 Is that right? I'm sorry. It was repayments from  
20 over funding.

21 MR. EVANS: Right, repayments, yes.

22 MR. RICHARDSON: And so, we have taken that out

1 because Randy asked that to be taken out.

2 MS. PODZIBA: Jack?

3 MR. SAWYERS: Todd, the carryover funds would  
4 carry over to the next year and be distributed, or  
5 would it be held forever?

6 MR. RICHARDSON: It would get distributed --

7 MR. SAWYERS: Through the following -- through the  
8 overall. And do we need to -- do we need to clarify  
9 that they would be distributed next year, or is that  
10 just a -- to everyone else.

11 MR. RICHARDSON: All carryover would -- it would  
12 be treated like all other carryovers.

13 MR. SAWYERS: Okay. But it wouldn't be held in  
14 that \$3 million. It would be distributed.

15 MR. RICHARDSON: It won't be -- it won't be lost  
16 to the tribes.

17 MR. SAWYERS: Okay. And that's what I thought,  
18 but I wanted to make sure that everybody understood  
19 that.

20 MS. PODZIBA: Earl?

21 MR. EVANS: No. I'm sorry.

22 MS. PODZIBA: Okay. So I'm sorry. I don't know

1 what we did with your proposed amendment. Was that to  
2 remove that sentence?

3 MR. EVANS: Yes, it was to remove line 17.

4 MS. PODZIBA: Line 17. Not 15 through 17, just  
5 17.

6 MR. EVANS: Right, just 17.

7 MS. PODZIBA: Okay. So is it -- is it the grant  
8 funds referring to the formula pursuant to, or is it  
9 just those --

10 MR. SAWYERS: Call for -- are you ready? You're  
11 not.

12 MS. PODZIBA: Rusty?

13 MR. SOSSAMON: Clarify that part about where it  
14 says "remaining carryover amount shall be carried  
15 forward to the next formula year."

16 MR. RICHARDSON: I can offer that clarification.  
17 So currently, we estimate that to fund at today's sort  
18 of expected amount to be able to meet this requirement,  
19 it would cost around \$3 million. But there will be  
20 some years where it might be more, which would be -- we  
21 would just give people lower minimum grants. But there  
22 might be years when it actually needs to be less. And

1 then some amount, say \$100,000 or \$200,000 would then  
2 -- instead of -- we wouldn't be able to reallocate to  
3 all the other tribes. We would carry it over to the  
4 next year, and then it would be allocated to all the  
5 tribes in the next year's allocation.

6 MR. SOSSAMON: Yes, I'm not sure that captured  
7 what the intent was in the other language because I  
8 believe the intent in the other language was anything  
9 over this \$3 million then gets distributed back out to  
10 the other tribes during that year.

11 MR. RICHARDSON: So the way this is designed is  
12 all carryover that is not this \$3 million is being  
13 distributed to all the tribes. The allocation of all  
14 the money that's available, appropriation plus  
15 carryover, minus \$3 million is being allocated all the  
16 tribes right off the bat. Then we hold this \$3 million  
17 of the carryover after we're done running the formula  
18 for everybody, and we see who doesn't have \$75,000. If  
19 you don't have \$75,000, we will increase your grant  
20 amount to get up to \$75,000 out of that \$3 million pot.

21 And our estimate today is it would cost about \$3  
22 million to do that, and that's why we have this \$3

1 million.

2           As appropriations rise, the minimum grant amount  
3 would rise as would people's sort of like initial grant  
4 amount would also rise. So everything is rising, and  
5 so the amount it needs to bring everybody to that  
6 minimum ramp up should stay around \$3 million, which is  
7 why we've fixed it at \$3 million.

8           MR. SOSSAMON: Okay. So of this section, "any  
9 remaining carryover amounts." So that's any remaining  
10 amount of that \$3 million?

11           MR. RICHARDSON: Yes, of that \$3 million after  
12 we've done the allocation, anything that's left. Say  
13 it's \$100,000 or \$200,000. That would then carry over  
14 to the next year if there's any left.

15           MS. PODZIBA: Okay. Jack?

16           MR. SAWYERS: Would it clarify it if we said that  
17 on line 11 that it says "the next." Instead of saying  
18 "the next year's formula," you'll say "the next formula  
19 allocation?" In other words, so that it -- would that  
20 clarify what we're talking about?

21           MR. RICHARDSON: So you're saying change it to  
22 "set aside carryover funds" on line 11, "remaining set

1 aside carryover funds?"

2 MR. SOSSAMON: Yes, or something like "any  
3 remaining carryover amounts of this \$3 million" --

4 MR. RICHARDSON: Yes.

5 MR. SOSSAMON: -- to specify that it's \$3 million.

6 MR. RICHARDSON: Can we say "of the set aside?"

7 That would be -- because it might not always be \$3  
8 million is carryover is less than \$3 million.

9 SPEAKER: That's right.

10 MR. SOSSAMON: Yes, I think that would work there.

11 MS. PODZIBA: Would that work for you, Rusty?

12 MR. SOSSAMON: I believe it would work for me.

13 MS. PODZIBA: Okay. Jack, is it acceptable to  
14 you?

15 MR. SAWYERS: Yes.

16 MS. PODZIBA: Okay. And just to keep things  
17 going, I just want to be sure you're okay with Earl's  
18 proposed amendment on 17 and 18. Okay, thank you.  
19 Sam?

20 MR. OKAKOK: Thank you. Sam Okakok, Native  
21 Village of Barrow. On line 13 where it says "eligible  
22 households," I would like to see in order for the

1 smaller tribes to really get counted in there is to see  
2 the families get counted. And maybe either replacing  
3 that with families or including families within  
4 households -- eligible households.

5 MR. RICHARDSON: Can I make a comment on that?  
6 That is the same language that's already in (b) of the  
7 minimum needs funding on this section here. So we  
8 would be consistent on this certification that it would  
9 be the same for minimum needs funding as it is for the  
10 minimum grant funding. I'm sorry.

11 MS. PODZIBA: Sam, was that an amendment that you  
12 were proposing, or did Todd clarify something for you?

13 MR. OKAKOK: I'd like to hear that again. I'd  
14 like to hear it clarified where it was.

15 MR. RICHARDSON: Yes, I'm sorry. I was jumping  
16 the gun there. So in the minimum needs section,  
17 there's a provision that is the same as the provision  
18 we've put in here in terms of certification in the  
19 Indian housing plan. So I don't have a particular  
20 opinion on this except that they should be the same in  
21 Section 1000.328 as they are in Section 1000.329.

22 MR. OKAKOK: So if families were included in

1 there, or families within the households was included,  
2 then we would have to go back and amend 328. Is that  
3 what you're saying?

4 MR. RICHARDSON: IF we change 329 on this part, we  
5 should change 328, too, so that we're doing the same  
6 certification so when we do this, we're using the same  
7 certification.

8 MR. OKAKOK: Oh, okay. Yes, I think in order to  
9 really, truly count the families within those, I would  
10 like to see that if that would be acceptable.

11 MS. PODZIBA: So that would be in (b)(ii) on --  
12 okay. I just want to make sure I -- can you -- can you  
13 help me out? So is it where it says eligible  
14 households?

15 MR. OKAKOK: Yes.

16 MS. PODZIBA: What's your proposed amendment?

17 MR. OKAKOK: To include eligible -- to reword it  
18 to include "families within households." So it would  
19 read "eligible families within households."

20 MS. PODZIBA: Okay. And then if it's in there, it  
21 would be in the new 329 as well.

22 MR. OKAKOK: In both 328 and 329, yes. And if

1 that would be acceptable to Jack.

2 MS. PODZIBA: Okay.

3 MR. OKAKOK: Thank you.

4 MS. PODZIBA: Jason?

5 MR. ADAMS: Yes. I just wanted to thank you, Sam,  
6 for bringing this issue back up. I addressed this  
7 earlier in regards to earlier conversations when this  
8 section was under 328 for that very reason, that under  
9 (b)(ii), that section is getting back to the reason of  
10 certifying to the statutory language. And so, the  
11 statutory language doesn't talk about households. It  
12 talks about -- and I would ask for an amendment to your  
13 amendment. And it's -- I believe the language is  
14 specific to eligible Indian families in the statute.

15 MR. OKAKOK: Yes, that would be good. Thank you.

16 MS. PODZIBA: Carol?

17 MS. GORE: So I have a question because I'm not  
18 sure how this works. When you look at the statute --

19 MS. PODZIBA: I'm sorry.

20 MS. GORE: Oh, sorry.

21 MS. PODZIBA: I'm sorry. Did Christine get that  
22 in there? Could you repeat that, please? I apologize.

1 MR. ADAMS: As I stated earlier, (b)(ii) should be  
2 amended. I asked if the work group had considered it.

3 They haven't. So I would hope as an outgrowth of this  
4 change, if it passes we can get the change made to 328  
5 so that they are the same. But it should read  
6 "eligible Indian families," and that's what I asked the  
7 amender, and he approved it, and so Jack needs to  
8 approve it, and I believe Jack said yes.

9 MS. PODZIBA: And it's the same in 328. Carol?

10 MS. GORE: Thank you. So I just have a question.

11 Since this section is asking for a certification of  
12 eligible Indian families, and the statute under the  
13 income section, it talks about household income as the  
14 eligibility criteria. So I guess this is just a  
15 question. I want to make sure that we're not  
16 developing regulations that are in conflict with the  
17 statute, and that's a definition that currently sits in  
18 the statute. So hopefully there's someone at least on  
19 the HUD side that could answer that.

20 MR. ATALLAH: Jad Atallah. Sorry, Carol. Are you  
21 looking at a specific place in the statute that you're  
22 referencing?

1 MS. GORE: Yes, definition number nine under  
2 "income."

3 MR. ATALLAH: I think this is -- I think this is  
4 ultimately a policy call in terms of what this  
5 committee wants to do under the framework of funding  
6 tribes for minimum funding. You can provide assistance  
7 to households. You can provide assistance to families  
8 under the statute. It's not really tied to the  
9 definition of "income." This ultimately is talking  
10 about do you have people who are eligible to receive  
11 assistance under the program, and, therefore, you  
12 should get a minimum grant.

13 So the committee can define this any way it wants.

14 As it's currently written, it's written -- it's  
15 phrased in a certain way under 1000.328. We're  
16 developing a new 1000.329, and we use the same  
17 certification in the IHP. So Todd's suggestion is a  
18 good one, is instead of having to make folks do two  
19 different certifications, we can accept one  
20 certification that covers both 1000.328 and 1000.329.

21 But I don't think there's necessarily a statutory  
22 requirement that references the criteria for getting

1 minimum funding. You can certify that you have  
2 families, or you can certify that you have households.

3 As written it says "households," but there's no  
4 statutory constraints in changing that.

5 MS. GORE: Thank you. I just wanted to make sure  
6 we weren't creating an unintentional conflict. Thank  
7 you.

8 MS. PODZIBA: Jason? Okay. Are there any other  
9 questions or comments? Sami Jo?

10 MS. DIFUNTORUM: Hi. So one question, and this  
11 actually came up during the last formula rulemaking,  
12 and I'm guessing maybe FirstPic can answer this. We  
13 had talked about the families or the households that it  
14 looks like maybe there's no household, or there's a  
15 household of three.

16 And my recollection of the conversation during the  
17 last formula rulemaking was if you have, for instance,  
18 a household of three people, one household, and they  
19 receive \$50,000 a year for, I don't know, 10 years, at  
20 what point do they no longer have the housing need, and  
21 do they drop out of the formula?

22 I think the intent, at least from what I recall,

1 was at some point their housing need would've been  
2 made, and they would drop out of the formula instead of  
3 continually funding with no outcome or result. Does  
4 anybody else remember that conversation?

5 I guess that is a question for maybe the formula  
6 people. Do people eventually -- is their housing need  
7 considered to have been met, and do they drop out of  
8 the formula, or do they just stay in there as long as  
9 they say that they have a housing need, because if you  
10 think about it, \$50,000 over 10 years is, what, a half  
11 million for one household? It would stand to reason at  
12 some point that that need would've been met if it  
13 continues to be one household.

14 MS. PODZIBA: Karin?

15 MS. FOSTER: All right. I think it's important to  
16 be fair to all tribes, and I think we are here to  
17 represent tribes of all sizes and all of their  
18 concerns. I do also think it's important to keep in  
19 mind that the larger tribes per capita don't receive as  
20 much as a tribe that only has three people in it would  
21 be receiving per capita for each of its members. And  
22 we were talking about that in our work group. I think,

1 you know, it was somewhere between \$500 and \$600 a  
2 person.

3 So that's not, you know -- there are a lot of  
4 things to say about that, but I think it's also  
5 important to be mindful of the fairness to tribal  
6 members who are members of larger tribes who also don't  
7 have enough funding to actually serve all their members  
8 as well.

9 MS. PODZIBA: Sam?

10 MR. OKAKOK: Thank you. Yes, I appreciate those  
11 comments. And one thing I would like to add, though,  
12 the much larger tribes do already receive the funding  
13 that is more representative of the accounts that they  
14 have, and the smaller tribes do not. And I think when  
15 you look at this, we're looking at a much smaller pot.

16 It actually brings up the smaller tribes to a more  
17 true count within the household.

18 And to count the families within those I think  
19 would be fair to the smaller tribes to at least have  
20 the families counted within there. And not bring large  
21 tribes down, but actually bring the smaller tribes up.

22 So thank you.

1 MS. PODZIBA: Jack? Call for a vote? Back to the  
2 chairs. There's been a call for the question.

3 MS. BRYAN: We have a call for the question on  
4 proposal Section 1000.329. Do we have consensus?

5 (Show of approval/disapproval.)

6 MS. BRYAN: This proposal does not pass. Would  
7 someone like to offer an alternative proposal? Rusty?

8 MR. SOSSAMON: Yes. Delete the language referring  
9 to a certification because I agree you've already  
10 certified once under the other section and the language  
11 about the Indian families. And I can support it.

12 MS. PODZIBA: So is there -- is it to take out all  
13 of (c)?

14 MR. SOSSAMON: I'm sorry?

15 MS. PODZIBA: Is the -- is the proposal without  
16 (c) -- without paragraph (c) in 329, and then there are  
17 two places.

18 MR. SOSSAMON: Either remove all of it, or  
19 reference back to the minimum funding section that  
20 requires you to certify.

21 MS. PODZIBA: Okay. Jad, did you have some  
22 clarification there?

1           MR. ATALLAH: Sure. I just -- I just want to  
2 clarify one thing. If you certify that you have a low  
3 income person to get minimum funding, you may not fall  
4 in the category of grantees who are eligible to receive  
5 minimum grant funding under this. The reason why we  
6 set up two different certifications is some people who  
7 are subject to this may be getting more than minimum  
8 needs funding, so they wouldn't be subject to the  
9 certification requirement, but still a total grant of  
10 less than \$75,000. So just to let you know. I mean,  
11 whether you put a certification or not. Not everybody  
12 who's under this would have already filled out a  
13 certification.

14           MS. PODZIBA: Rusty?

15           MR. SOSSAMON: Can we see that other language that  
16 the other group certifies under?

17           MR. ATALLAH: So this is an amended version of  
18 existing 1000.328, but this says if you receive less  
19 than \$200,000 and do you certify that you have eligible  
20 households under 80 percent, then you're entitled to  
21 get minimum needs funding.

22           The other regulation that we're working on deals

1 with minimum grant funding, total grant funding. You  
2 could possibly be getting a total grant of \$65,000  
3 without getting minimum needs funding and without  
4 having to have done the certification. So I guess  
5 that's why we're discussing two different -- they're  
6 the same certification, but they're in two different  
7 sections.

8 MR. SOSSAMON: Okay. But in that case, if you are  
9 receiving funds, then it's already been established  
10 without certification that you have a need, correct?

11 MR. ATALLAH: Well, there's no certification. You  
12 can possibly be receiving funds without having to have  
13 submitted a certification if you receive between the  
14 minimum amount of \$50,000 and \$75,000. So you might  
15 have \$60,000 in needs funding, and maybe no FCAS. You  
16 don't -- you haven't submitted a certification because  
17 you're not getting minimum needs funding.

18 You're getting more than minimum needs funding,  
19 but you're also still below the minimum grant amount  
20 that we're specifying in the new reg. So there are two  
21 different certifications. They should be identical.  
22 It's really the same certification, but there are some

1 who execute one and some who may have to execute --

2 MR. SOSSAMON: Okay.

3 MR. ATALLAH: I mean --

4 MR. SOSSAMON: Then I have no problem if you want  
5 to add the same language as number two over in this  
6 other section, the original language, because when we  
7 start talking about households versus Indian families  
8 on what you're counting, now we're talking about a new  
9 variable. And I think that needs to be discussed in  
10 and of itself first. And I don't want that to hold  
11 this measure hostage because I believe we all agree we  
12 want to help these minimally-funded tribes, and we can  
13 have this other conversation separately.

14 So minus that language I can support this. But if  
15 it's in there, then we can have -- basically we'll have  
16 to deal with this other variable first.

17 MS. PODZIBA: Okay. So, Christine --

18 MR. SOSSAMON: And if there's enough time, come  
19 back to this one.

20 MS. PODZIBA: In Rusty's version, keep "eligible"  
21 in, but take out -- right.

22 MR. SOSSAMON: That language is in number (ii).

1 MS. PODZIBA: Right.

2 MR. SOSSAMON: The original language.

3 MS. PODZIBA: Yes, that's the original language,  
4 and that would be in both places, in 328 and 329. Got  
5 that? Okay. Okay. Is that -- that's the proposal  
6 you're putting on the table, Rusty?

7 MR. SOSSAMON: Yes.

8 MS. PODZIBA: Okay. Thank you. So I've got  
9 Rodger. Rodger, do you have a comment? Okay. I think  
10 Jad wants to make a comment.

11 MR. ATALLAH: I just want to clarify something so  
12 that we're all clear on the intent of the very last  
13 paragraph. The strikeout, that last sentence, deals  
14 with funds that are, let's say, recaptured through  
15 enforcement. That is not captured in that first  
16 sentence that says "grant funds voluntarily returned to  
17 the formula." Those are situations where tribes have  
18 either accepted and then returned. And then the  
19 following sentence says, "not accepted by tribes."  
20 Those are situations where tribes simply don't execute  
21 grant agreements.

22 So the source of this carryover funding is going

1 to be simply tribes that didn't accept their money or  
2 accepted their money and turned it back, not  
3 enforcement, not FCAS over funding, nothing like that.  
4 Just be clear on that because I don't want any  
5 ambiguity.

6 MS. PODZIBA: Okay. Thank you. Karin?

7 MS. FOSTER: Karin Foster, Yakama Nation Housing  
8 Authority. It was my suggested amendment, of course,  
9 that we include the word "eligible." "Eligible  
10 families" is actually what seemed to be appropriate  
11 because that is the language used in the statute.  
12 "Eligible families" are defined in the statute.

13 And I guess I'm not sure why we -- why anyone  
14 would want it only just to say "households," unless  
15 they wanted to be able to serve ineligible households.

16 It doesn't even say they have to be Indian. I mean,  
17 if you have anybody -- and it doesn't even say where  
18 they have to be present. If you look at the language,  
19 "must certify the presence of any households at or  
20 below 80 percent of median income."

21 I mean, we can all certify that. There is an  
22 existence of those households throughout the country

1 everywhere. What does that mean? It doesn't really --  
2 it doesn't tie the existence of an eligible family  
3 somewhere in here justifying the, you know,  
4 distribution of funds.

5 So that's why I have -- I have trouble with  
6 "household." I guess I understand why the presence  
7 doesn't refer to formula area because now I understand  
8 we don't all have formula areas. But I don't  
9 understand why we would not want to say they were  
10 eligible families, or at least eligible households.  
11 Why are we just measuring any household anywhere that,  
12 you know -- it doesn't make sense to me. And if you  
13 could clarify that, it might help.

14 MS. PODZIBA: Carol?

15 MS. GORE: Before I repeat the question I had  
16 before, it's exactly why I raised the question about  
17 the definition of income in the statute. That's why I  
18 raised that. And I think that's why it says  
19 "household" today and not "family." But I can't answer  
20 that because I wasn't an original -- I wasn't in the  
21 committee that did that.

22 But I'd like to ask the committee to agree by

1 consensus to add 10 minutes to the clock because I  
2 think we're very close to getting to consensus on this  
3 issue. And I don't want to risk us just running the  
4 clock out. So that's my request if we could turn it  
5 back to the chairs to add 10 minutes to the clock.

6 Thank you.

7 MS. BRYAN: Thank you, Carol. We have a request  
8 to add 10 minutes to the clock on this issue. Can I  
9 have consensus?

10 (Show of approval.)

11 MS. BRYAN: Okay. We have consensus to add 10  
12 minutes to the clock on this issue, please. Thank you.

13 MS. PODZIBA: Okay. Karin had a question. Karin,  
14 yes?

15 MS. FOSTER: Part of my question, of course, had  
16 to do with the use of households and families. And I  
17 understand there probably will be some discussion on  
18 that later. But how about eligible? I mean, they  
19 don't even have to -- it doesn't even have to be an  
20 eligible household. Wouldn't we -- as I understand it,  
21 that's the way HUD administers the minimum funding at  
22 least is that they look for an eligible household, at

1 least one. Shouldn't the word "eligible" be there?

2 MS. PODZIBA: Rusty?

3 MR. SOSSAMON: I would accept amending my proposal  
4 to include "eligible" before "household."

5 MS. PODZIBA: In both places, or just in this one  
6 place?

7 MR. SOSSAMON: Yes.

8 (Laughter.)

9 MR. SOSSAMON: Well, here in this section we're  
10 dealing with.

11 MS. PODZIBA: 328 and 329. I think that was Jad  
12 who said they should be consistent?

13 MR. SOSSAMON: No, that isn't what he said.

14 MS. PODZIBA: No? Okay. All right. I apologize.

15 MR. SOSSAMON: He said they're two separate  
16 certifications.

17 MS. PODZIBA: Okay. I apologize. So it's -- to  
18 add the word "eligible" in 329(d) -- (c). Sami Jo?

19 MS. DIFUNTORUM: Okay. So just for my  
20 clarification, I would like an answer to the question.

21 Do people or do households, families, whatever you  
22 want to call it, at some point drop out of the formula

1 once their housing needs have been met? I mean, I do  
2 want an answer. The answer is no? As long as they  
3 certify there is an eligible low income need, they  
4 continue to receive funding? I mean --

5 And I support small tribes. I'm not arguing that.  
6 That's not the issue. I just need to know if we fund  
7 somebody at \$50,000 or \$75,000 for 10 years -- that's  
8 \$750,000 -- have we met a housing need for one  
9 household at some point? I mean, that's really the  
10 only question for me.

11 MS. PODZIBA: Jemine?

12 MS. BRYON: We'll have Mindi respond.

13 MS. D'ANGELO: The answer is no. They don't drop  
14 out of the formula. They don't drop out of the formula  
15 allocation. That's the simple answer to the question.

16 But we do -- there are two things that are done. The  
17 first is the Formula Center does from time to time  
18 challenge whether or not there's eligible households,  
19 and we do reduce at times census data for households.  
20 And then the secondary part is in the Indian housing  
21 plan with the certification, that is monitored by the  
22 area offices. But in essence of the formula, the

1 formula is based on the census data.

2 MS. PODZIBA: Carol?

3 MS. GORE: Yes, I did have my card up that time.

4 Two things. My simple answer to Sami is that family  
5 could have children that grow up and that need a house.

6 And, you know, it's sort of an ever-evolving situation  
7 with families. But with that, I'd like to call for the  
8 question.

9 MS. BRYAN: We have a call for the question.  
10 We're seeking consensus on the language that has been  
11 proposed and amended, Section 1000.329. Do we have  
12 consensus?

13 (Show of approval.)

14 MS. BRYAN: Okay. By lack of dissent, we have  
15 consensus.

16 (Applause.)

17 MS. BRYAN: Thank you. Next on our agenda, we had  
18 put the additional issue from the Needs Work Group.  
19 Gary, if you would like to introduce this for us. It  
20 was discussed at the work group, and we'd like to bring  
21 it to the table.

22 MR. COOPER: I apologize. Did we have one other

1 issue that was tabled yesterday, or did we already take  
2 care of that? Okay. The only other proposal that was  
3 discussed and voted on out of the Needs Work Group, was  
4 that the one that you were -- that you had mentioned?

5 MS. BRYAN: The proposal that our committee  
6 member, Sharon Vogel, wanted to introduce.

7 MR. COOPER: Yes.

8 MS. BRYAN: If you can give us background on that  
9 as the work group chair, and then however you want to  
10 introduce it, you or her.

11 MR. COOPER: Thank you. Thank you. And I was  
12 just making sure that I was on the right page. Yes,  
13 the only -- the only other item that the Needs Work  
14 Group had that had been voted on was a proposed  
15 revision. And I believe that someone was passing that  
16 out. Jack, did you have that?

17 I think a proposed revision to 324 and 330, it was  
18 discussed in the work group. There was a vote taken.  
19 There was a strong majority opinion that that there was  
20 no change, so, therefore, there was no majority  
21 proposal to advance forward to the committee. There  
22 was a minority position, and it was the proposal as

1 presented.

2 And with that, it didn't necessarily come through  
3 a vote of the work group. I would probably turn it  
4 over to one of the committee members who presented it  
5 for discussion, with the option of -- well, I would  
6 like to reserve just a moment after they get done  
7 introducing it. So I'll defer to whichever one of them  
8 would like to take it up.

9 MR. SAWYERS: What I would like to do if we can,  
10 rather than present it to the full group right now, I  
11 would -- this is a definition. And the question is,  
12 does -- do we follow the statute for definitions? We  
13 do have a subcommittee, do we not, on definitions? Can  
14 we rather than take time right now refer this to our  
15 subcommittee? And I think you -- Sami Jo, you said you  
16 would do that. And can we -- I think that group has  
17 been established, has it not?

18 When we talked about it the other day, we said we  
19 -- there was some definitions they want to talk about.

20 And, of course, what we're saying is perhaps that the  
21 formula doesn't have the same meaning or the same  
22 definition as the statute. And so, that's what we're

1 trying to do is just establish that. We don't -- I  
2 don't want to take more time with that. I'd like to  
3 give that to the definition group, and have them go  
4 over it next time we meet. Did we not establish a  
5 definition committee -- subcommittee?

6 MR. COOPER: We asked for -- if there was a need  
7 for a subgroup on definitions. I don't recall that  
8 happening. Regardless, the work group finished,  
9 wrapped up yesterday unless this committee sends us  
10 back with a task in order to come back to full  
11 committee to continue on through negotiations as far as  
12 what I know. So I don't know for sure that any of our  
13 -- that we have any subgroups left other than the one  
14 that was specifically asked to stay active for up to  
15 the next 12 months, which would be the Study Group.

16 MS. PODZIBA: Sami Jo?

17 MS. DIFUNTORUM: Wow. This is interesting, Jack.  
18 My recollection yesterday was that I had asked for a  
19 subgroup to look at definitions. And not to be  
20 obnoxious about it, but you said if it ain't broke,  
21 we're not going to fix it. And there wasn't a work  
22 group established.

1           However, if it's the wish of the committee to  
2   develop definitions, I don't have a problem doing that  
3   with a work group. There isn't technically one  
4   established right now, and I would think that there  
5   would need to be some very clearly defined parameters  
6   for the work group, meaning are we talking about  
7   definitions that are a result of changes made through  
8   the committee's work, all the definitions? I mean, I  
9   think there are some question that need to be answered,  
10   but I'm not opposed to the idea. I just -- that wasn't  
11   my recollection that there was a group established to  
12   do that. I did offer.

13           MR. SAWYERS: I thought you beat up on me pretty  
14   bad when I said that. You said there are definitions,  
15   and we do need a subgroup, and that's kind of my  
16   impression. If we don't need one, that's fine. I just  
17   felt like that's where we're leading. It doesn't  
18   matter. I would just like this on the record, and I  
19   think we've done that. And so, consequently -- did you  
20   have more on that?

21           MS. PODZIBA: Sharon?

22           MS. VOGEL: Thank you. I just would call for the

1 consensus on the proposed revisions.

2 MS. PODZIBA: Earl? Well, hang on. There's a  
3 call for the question, which means we have to go to the  
4 question.

5 MR. COOPER: And just a point of -- I mean, I had  
6 thought I had reserved some time after they presented  
7 their -- presented their discussion items just to come  
8 back to me, but we can go ahead and call for the  
9 question. That's fine.

10 MS. BRYAN: We do have a call for the question,  
11 proposal 1000.302. Do we have consensus? My  
12 apologies. Jason asked me a question, and I was all  
13 prepared to introduce his issue, and so --

14 We have a call for the question. Although there  
15 was no discussion or introduction of this issue in  
16 front of this work group, the call for the question is  
17 here, so I'm calling for the question on proposed  
18 revisions to 1000.324 and 1000.330. Do we have  
19 consensus?

20 (Show of approval/disapproval.)

21 MS. BRYAN: Okay. We have yeas and the rest --  
22 three yeas, four yeas, and the rest noes. We do not

1 have -- this does not pass.

2 MR. SAWYERS: Thank you.

3 MS. PODZIBA: I think that ends -- I suppose that  
4 ends the discussion.

5 MS. BRYAN: Are there alternative proposals or  
6 discussion on this? That was awkward. Okay. You  
7 reserved some time, Gary?

8 MR. SAWYERS: No, it wasn't awkward. We don't  
9 have any.

10 MS. BRYAN: Oh, okay. So then, I'm going to go  
11 off the list of cards up here. Earl, did you still  
12 have a comment?

13 MR. EVANS: I apologize. I don't. I put my card  
14 up before the question was called because I wanted to  
15 kind of go into caucus and discuss it. But it  
16 apparently is a moot point, so.

17 MS. BRYAN: Yes, that was awkward. Thank you,  
18 Earl. Karin?

19 MS. FOSTER: I also think it would've been great  
20 to have an opportunity to have a discussion dealing  
21 with this in the proper framework. I guess I think  
22 that the Study Group is going to be looking at, you

1 know, measuring variables, looking at definitions,  
2 looking at how we're going to capture what we need to  
3 bring before the committee next year. I mean, we're  
4 going to be having to deal with these issues, these  
5 things here.

6 I would encourage everyone at least on the  
7 committee level to participate in those meetings so  
8 that we can have discussion of these kinds of things.  
9 We just had a vote up and down on this change right  
10 now, but I don't interpret that to mean that we would  
11 not be looking at things that do measure Indian  
12 families, or we would not be looking at instruments  
13 that measure these things. And I don't want it to be  
14 understood that we've had a down vote on this, and so  
15 that means we're not going to look at instruments that  
16 measure Indian families. I don't think -- that's not  
17 the way I understand it as a member of the committee.

18 I'm hoping, and I'm sure Gary will have things to  
19 say about this in terms of the Study Group. But I'm  
20 hoping that HUD will help us to at least be able to  
21 make these Study Group meetings accessible to all  
22 members of the committee by, you know, listing them on

1 -- allowing the website to continue and at least be  
2 maintained, listing those meetings there, you know,  
3 having the list serve operate so that whenever there is  
4 a conference call scheduled that the other committee  
5 members know that it's being scheduled, a place to put  
6 up documentation, because I know that we'll be running  
7 with not so much, you know, support obviously as we  
8 have here now.

9 But I just wanted to say that for the record that  
10 I don't understand this down vote meaning that we're  
11 not going to be looking at those kinds of issues --  
12 those kinds of things.

13 MR. SAWYERS: Thank you, Karin.

14 MS. BRYAN: Thank you. Yes, and I, too, see the  
15 down vote. We didn't even have discussion over it, so  
16 it wasn't even an opportunity to really know what we're  
17 voting on. And I hope we do look at these things as we  
18 continue our work. Sam?

19 MR. OKAKOK: Sam Okakok, Native Village of Barrow.

20 I think it's really interesting that, you know, as we  
21 evolve in the talks here, you know, many of the smaller  
22 tribes are the ones we really want to protect and try

1 and get them elevated so that they are counted,  
2 especially those that are missed under the census. And  
3 when we do talk about the families, then it really does  
4 true it up to where they are counted within the  
5 households.

6 And I really would like to see some of this --  
7 some of these proposals, such as 1000.330 to include  
8 those families in there because that's what we're  
9 talking about. That' who we want to be able to protect  
10 and count within NAHASDA. And the only way they will  
11 continue to be not counted is to keep the word  
12 "household" and only "household" in there. And that's  
13 my concern because in the smaller tribes, smaller  
14 communities, there are multiple families within one  
15 household, and we want to be able to count them.

16 And my concern is that we're not going to be able  
17 to count them if "household" remains in the definition  
18 there. And I really would like to see this changed to  
19 show families, because that's exactly what we're  
20 talking about and that's who we really do want to  
21 protect. And I wanted to bring that up. It is a very  
22 huge concern in my area because we really do have

1 multiple families within a household, and we are not  
2 counted to where we should be.

3 Urban areas, yes. One family, one household, that  
4 -- we wish we could have that, but we don't. And  
5 they're hidden, and they're within the household. And  
6 so, if we were to get that over to the -- get that  
7 definition changed to "families," I think we can get  
8 there. And that would be the step to go. So I really  
9 would like to see this, as long as we have it in front  
10 of us right now that we would go forward with at least  
11 this portion of it. So I would like to see that  
12 continue and that we get to it. Thank you.

13 MS. BRYAN: Thank you. Earl?

14 MR. EVANS: I just wanted to go on record saying I  
15 think -- I think just basically what happened is that  
16 it was just called to question too fast. I really  
17 think because -- I think that had we had the chance to  
18 discuss it -- I could be wrong, but I did not  
19 understand that we had a recommendation coming from the  
20 work group on it. I thought that it was discussed, and  
21 I thought the group had basically decided not to send  
22 it forward.

1           So in terms of any issue that I have, it was  
2 primarily not having the opportunity to discuss it  
3 because with having the impression that it did not move  
4 forward as a recommendation from the work group. I  
5 didn't discuss it in caucus, and I don't think any of  
6 the rest of our folks around the table that are a part  
7 of our region brought it up. I don't remember them  
8 bringing it up in caucus either probably due to the  
9 same -- the same reason. We don't remember it coming  
10 forward as work group recommendation.

11           So I just wanted to put that on record. It's not  
12 an unwillingness to discuss. I just think it came to  
13 vote too fast.

14           MS. BRYAN: Thank you, Earl. Yes, our protocols  
15 do not prohibit someone from introducing something for  
16 our consideration. So, Sami Jo?

17           MS. DIFUNTORUM: Thank you. So mine is more of a  
18 process question. The process we've used in the past  
19 is when you vote down a proposal that's presented,  
20 somebody that's voting in the negative puts an  
21 alternative on the table. Isn't that the process we've  
22 used?

1           SPEAKER: Unless it's a super majority, yes.

2           MS. DIFUNTORUM: Unless it's a super majority?

3 Well, it just -- not that I have something to offer in  
4 lieu of. I just thought that's how we've done this  
5 with other proposals, so I wanted to raise that as a  
6 procedural issue. And I have another process question,  
7 but I'll wait until the conversation wraps up on this.

8 Thank you.

9           MS. BRYAN: Thank you. Sharon?

10          MS. VOGEL: Sorry about that. Thank you. I want  
11 to respond to what Earl had said. It wasn't going to  
12 come out of the work group until just recently. I'm  
13 just -- I thought I had to introduce it from the floor.  
14 I'm new to this, so I tried to follow the rules, and  
15 the rules were that I had to introduce it at the work  
16 group level, which I did with language.

17          Then it was voted down, again, which any proposal  
18 can be. So there was a majority and a minority  
19 position, but when the report was made, then it didn't  
20 come out. And so then I was prepared to introduce it  
21 from the floor. Well then, it came out again. And the  
22 reason that I wanted to just call the question on it,

1 it was pretty obvious that it was being snowballed  
2 around, so I thought just put it out here, vote on it.

3 And then, yes, those opposing would then have to what  
4 you put me through when I would object to something, I  
5 had to come up with something different. So if it  
6 applies to me, I think it applies to everybody. Thank  
7 you.

8 MS. BRYAN: Thank you. Gary?

9 MR. COOPER: Yes. And back to what Earl said,  
10 there was a lot discussion that took place in the work  
11 group yesterday, you know. Again, one way or another,  
12 I don't know. We were asked to bring it forward, you  
13 know. Again, back to the rules of order for the work  
14 group that the whole work group adopted whenever we  
15 first began discussion. It says very clearly that the  
16 work group will advance majority proposals to the  
17 committee. There was not a proposal by the majority.  
18 I don't know how else to say that. But anyway, the  
19 item is out here.

20 And to what Earl was saying is, yes, there was a  
21 bunch of discussion, and there was strong -- you know,  
22 there was -- I think it was probably similar to yeas

1 and nays that you've seen here. The whole reason why I  
2 asked to reserve some time back after the committee  
3 members who proposed it brought it up was because a lot  
4 of the discussion that took place yesterday happened  
5 with folks who are not at the table here today, but are  
6 in the audience. And I felt that if it was going to  
7 come up, that they should have the same opportunity to  
8 speak today as they did yesterday. And I was going to  
9 reserve -- I was going to give them up to, you know,  
10 five minutes in accordance with our protocols to  
11 discuss those issues.

12 So if we do go back to that, I want to make the  
13 committee aware that I do plan on doing that because  
14 they should have an opportunity to bring up their  
15 concerns because they did have strong concerns in the  
16 work group. Right or wrong, yes or no, I don't know.  
17 Don't know if the concerns that they expressed was part  
18 of the reason why it did not reach a majority out of  
19 the workgroup or not. I didn't, but I do believe that  
20 they should have an opportunity to speak. And I stand  
21 ready to give them some of my time to allow them the  
22 opportunity to do that. Thank you.

1 MS. BRYAN: Thank you, Gary. Jack?

2 MR. SAWYERS: I think Karin pretty well solved it  
3 for me. I don't think that we have time to go through  
4 this whole process now. I was satisfied with your  
5 vote. I think Karin summarized it pretty well. It's  
6 something that you're going to have to look at because  
7 there are some difference in the statute. And so, I  
8 think your willingness to look at that as a group is  
9 all I'd ask for. And so, thank you for your time.

10 MS. BRYAN: Earl?

11 MR. EVANS: I just wanted to say if we are going  
12 to consider alternative proposals, then I would move  
13 for a caucus to look at those if we were to do that.  
14 So I don't know if that's the direction the co-chairs  
15 want to proceed in, but if it is, I would -- I would  
16 move to caucus so that we could have a chance to  
17 discuss it within the region since it wasn't something  
18 that we figured was going to come to the floor.

19 MS. BRYAN: Right. So I'm hearing different  
20 things from the co-proposers, and was brought to our  
21 group yesterday by Sharon Vogel, Jason Adams, Jack  
22 Sawyers, and Lafe Haugen. And so, I'm hearing one

1 person say they want to go through the proposal --  
2 alternate proposal -- alternate proposal system that  
3 we've been going through. And I'm hearing another co-  
4 proposer saying, well, just these are for your  
5 consideration; let's make sure that we keep working on  
6 it as we work.

7 So we do need to establish what process we're  
8 going through here. Jason, you had your card up. Oh,  
9 are you guys keeping track of the cards? Karin, are  
10 you next?

11 MS. FOSTER: I'd like to request a 10-minute  
12 caucus.

13 MS. BRYAN: Okay. So we have a request for a 10-  
14 minute caucus. At this point, we are -- I want to say  
15 five minutes away from break time -- two minutes away.

16 It's break time actually, so let's go on our break.  
17 And I do want to announce that there is cake for Jack's  
18 birthday outside. Happy birthday, Jack.

19 (Applause.)

20 MR. SAWYERS: Thank you very much.

21 MS. BRYAN: Whoo hoo. And I think we should sing  
22 "Happy Birthday."

1 ("Happy Birthday.")

2 (Applause.)

3 MR. SAWYERS: Thanks, guys. Thank you very much.

4 That was very nice.

5 (Recessed at 3:13 p.m.)

6 (Reconvened at 3:48 p.m.)

7 MR. SAWYERS: Thank you again, everybody. And I

8 want you to know I'm not just another pretty face.

9 (Laughter.)

10 MS. BRYAN: Thank you all for coming back from

11 your break/caucus/birthday party. I have a bunch of

12 tent cards up in the queue, so I'm going to go through

13 and see if you still had comments. And I'll start with

14 Karin.

15 MS. FOSTER: I don't have a comment.

16 MS. BRYAN: Oh. Thank you, Karin. Heather?

17 MS. CLOUD: Okay. I have a question for Jack. If

18 you're not just another pretty face, are you the pretty

19 face?

20 (Laughter.)

21 MS. CLOUD: And then I'm kind of lost here. I'm

22 not really sure what's going on. Maybe I'm the only

1 one that's confused. But we've got the proposed  
2 revisions to 1000.324 and 1000.330. Is this something  
3 that we're negotiating? There was never a clock that  
4 was started, and we spent a lot time talking about it.

5 We took a vote. And so, I'm just kind of wondering  
6 what are we doing.

7 MS. BRYAN: Thank you, Heather, for the  
8 clarification. So over the break, I have talked to the  
9 folks who put this forward, and we really feel like --  
10 they really feel like we had -- the dissenting vote was  
11 majority. And so, it is entered into the record that  
12 they want these things considered when the study group  
13 does their work, and that they wanted this introduced,  
14 and do not wish to spend our time on this proposal. Am  
15 I summarizing that accurately?

16 So thank you very much for that input. And so,  
17 you know, if committee members wish to discuss it,  
18 that's one thing. But the proposers are satisfied with  
19 the way things went, and that issue is no longer  
20 something that they would need to discuss at this  
21 point. Yes?

22 MS. CLOUD: So if this staying on the table and

1 there was an end to a vote, was that time already of  
2 two hours if they're going to be bringing this back?  
3 It's not coming back?

4 MS. BRYAN: It's voted down. It's done.

5 MS. CLOUD: Okay. All right. I'm just checking.

6 MS. BRYAN: Yes, thank you. Jack? You're on my  
7 list, the "A" list.

8 MR. SAWYERS: I think, Heather, we're satisfied  
9 with the work group looking at this issue as far as I'm  
10 concerned. I think Lafe probably has some stuff to  
11 talk about.

12 MS. BRYAN: Thank you. Lafe?

13 MR. HAUGEN: Yes. I guess I didn't feel like  
14 Heather's question was answered. Was it, in fact,  
15 something that we were negotiating? Well then, why did  
16 we take it to a vote?

17 MS. BRYAN: We took it to a vote, and it was voted  
18 down. There was no --

19 MR. HAUGEN: You're still not answering the  
20 question. If it was something that we're going to vote  
21 on, the clock should've started.

22 MS. PODZIBA: The clock did start.

1 MS. BRYAN: It was -- yes.

2 MR. HAUGEN: Okay. And I guess my next question,  
3 and this is for the record. I know that the item got  
4 voted down. But I guess this is something that affects  
5 my region, and I guess this question is directed to HUD  
6 because they were two of the dissenting votes. I guess  
7 I want to know how HUD can support a regulation, in my  
8 opinion, that is in violation of the statute.

9 MS. BRYAN: We had a question for HUD.

10 MR. ATALLAH: Jad Atallah with HUD. Just  
11 addressing the issue involving the statute and whether  
12 the current regulations look at households is  
13 consistent with the statute or not. I mean, I think  
14 our position is that whether you look at households or  
15 whether you look at families, both are consistent with  
16 the statute. There's no requirement in the statute  
17 from our perspective that the formula has to only  
18 reflect families.

19 The provision in the statute that governs the  
20 formula is Section 302 of the statute. And Section 302  
21 is intentionally written very broadly to allow HUD and  
22 Indian tribes to negotiate a rulemaking process to

1 establish the formula. And there are many factors that  
2 we're supposed to be considering and looking at, and  
3 those factors are supposed to reflect the need of  
4 Indian tribes in Indian areas.

5 So of those factors, those are -- some of those  
6 factors include FCAS. Some of those factors include  
7 things like the number of Indian families within the  
8 Indian area of the tribe without necessarily specifying  
9 income levels, which is why we count AIAN of any income  
10 in certain formula areas. And then also other  
11 objectively measurable conditions as the Secretary and  
12 Indian tribes may specify through this process.

13 So strictly speaking from a legal standpoint, our  
14 position is the regulations now are consistent with the  
15 statute, and there's a lot of flexibility to change  
16 them to also keep them consistent with the statute. We  
17 don't think either approach is a violation of the  
18 statute. It's just how this committee decides to  
19 measure need.

20 MS. BRYAN: Thank you. So we have some  
21 housekeeping things on the agenda, and a follow-up for  
22 the Needs Work Group that needs to be voted on. Are

1 the people with their cards up bringing forward new  
2 issues or proposals? This proposal discussion was, I  
3 thought, closed. So I will call on you, but please  
4 state your purpose because we're getting off track,  
5 unless you guys want to open up an open discussion area  
6 of the agenda. We do have time for that, and we can  
7 sit here for a while. Heather?

8 MS. CLOUD: I was just trying to call a point of  
9 order and state that we've been talking about this  
10 issue. And if there's a time limit on certain issues,  
11 although a vote was taken, that clock is still stopped,  
12 and we're still talking about the same issue. And so,  
13 this is time we're spending on this issue, so if we're  
14 done with this issue, can we move on then?

15 MS. BRYAN: Yes, that's what we're trying to do I  
16 thought. Rodger?

17 MR. BOYD: Thank you. I sort of find it -- well,  
18 I'm curious, but I also find it interesting that we  
19 were asked to define why HUD did not support this  
20 proposal. So I think it's only fair that -- I think 23  
21 people voted against it. So I would request that the  
22 other 22 also state for the record why they voted

1 against it.

2 MS. BRYAN: I mean, so for procedure, we have  
3 these clock questions going on, and how long has this  
4 conversation been going on, and is this issue still  
5 open. But thank you, Rodger, for pointing that out.  
6 Aneva?

7 MS. YAZZIE: Thank you. For the record, when I  
8 looked at this, and part of it -- I abstained. I  
9 actually didn't vote because I was confused as to what  
10 we were actually going to vote on, because the format  
11 of this was really more in a narrative format as  
12 opposed to the normal way of strikeouts, redline, and  
13 so forth. So that's why I didn't vote, and it was  
14 suddenly called to vote. So I abstained as a matter of  
15 fact.

16 But with respect to the issue, and I know it's  
17 closed, I would agree with Karen that there needs to be  
18 more in depth discussion, and hopefully that can ensue  
19 in the Study Group as it moves forward. Thank you.

20 MS. BRYAN: Thank you. Karin?

21 MS. FOSTER: Yes. I think that's kind of where we  
22 are with this, and I agree. I don't -- I think this is

1 an important enough issue, though, to have discussion  
2 on it. That doesn't concern me. And even if people  
3 are asked to say why they disagree with it, I don't  
4 have a problem with saying why I did. I just think it  
5 was a little early. I thought I didn't -- I knew that  
6 this had been discussed to an extent in the work group,  
7 but I wasn't there at the time.

8 And I didn't want somebody to be -- I didn't want  
9 us to be voting that we thought membership in a  
10 federally-recognized tribe or, you know, eligibility as  
11 far as income was completely somehow irrelevant to the  
12 formula. I didn't want us to be taking a vote deciding  
13 that we were not going to consider that, you know, as  
14 relevant to the formula. So that's why I voted no.

15 But it is kind of interesting. I am interested in  
16 what HUD's response is to why they voted no and why --  
17 you know, why this isn't something that would be  
18 supported. I don't want to belabor it, but I'm  
19 interested in the answer.

20 MS. BRYAN: Thank you. Sam?

21 MR. OKAKOK: Thank you. In regards to these two  
22 subsections, they are two different subsections. The

1 330 is something that we could accept, especially in  
2 North Slope. But the second one, the 1000.324, I  
3 believe, is the one -- or, excuse me, 330 -- 1000.330  
4 to replace AIAN with Indian. That's the one we have  
5 issue with, and that does kind of hit our identity  
6 where we're at.

7 MR. DOLLARHIDE: [Off audio]. Can I have a point  
8 of order? I think this issue is dead. I don't  
9 understand what -- I don't know as to what we're  
10 striking. I apologize, Sam, for cutting you off, but I  
11 just -- I think we ought to have a point of order. I  
12 kept trying to push it, Jason. I look like the guy on  
13 Jeopardy.

14 (Laughter.)

15 MR. DOLLARHIDE: I call a point of order for this  
16 particular issue because it was -- it was voted down.  
17 My understanding was the parties that wanted this  
18 introduced, wanted to get it introduced, wanted to get  
19 an up and down vote on it. And, you know, they're  
20 satisfied with the way everything transpired. That's  
21 the way that I understand it from those parties. So,  
22 you know, in my -- in my opinion, it's done.

1 MS. BRYAN: So are the cards of people in the  
2 queue for something other than this? All right.

3 MR. OKAKOK: Madam Chair, if I may complete my  
4 thought there. I just wanted to make a recommendation  
5 that once it's brought up that maybe they'll be  
6 separated out. That was what I was going to initially  
7 bring up. Thank you.

8 MS. BRYAN: Thank you, Sam. We had FCAS Section  
9 1000.302 that needed some information from a USDA or a  
10 data run from another agency that hadn't come back yet  
11 for the Section 515 or 515 Program. I'm not sure if  
12 I'm saying this right. But what we need is the FCAS  
13 group requested that we can give this time when -- for  
14 the next meeting to finish this issue, provided we have  
15 the data so that they can present it to us and we can  
16 negotiate it. Do you want to say more, Jason?

17 MR. ADAMS: Yes. You've covered the topic pretty  
18 well. We did present the language yesterday that would  
19 be proposed if we are able to vote on this at the next  
20 meeting. And hoping -- again, I, you know, made it  
21 very clear that the wishes of the work group was that  
22 we would have the data runs that are being -- the

1 documents and the data has to be accumulated and  
2 compiled from USDA to do a data run. And that's a very  
3 lengthy project that HUD is going to undertake, and  
4 probably have done sometime this fall.

5 And so, in light of that, we were hoping that, you  
6 know, this recommendation from the study that was paid  
7 for and done years ago, hoping that that just wouldn't  
8 be dismissed and not be considered by this committee.  
9 I apologize that we didn't, you know, take action on  
10 this possibly last year to get the data run done that  
11 was needed. But my hope is that we can take action  
12 today to agree to consider this at the last meeting  
13 next August. That's my hope for a vote from the  
14 committee today.

15 MS. BRYAN: Thank you, Jason. So we have a  
16 request to agree to put this on the agenda for  
17 negotiation at our meeting.

18 MR. ADAMS: Yes.

19 MS. BRYAN: And can I get consensus for that?

20 (Show of approval/disapproval.)

21 MS. BRYAN: Okay. Seeing no dissension, we have  
22 consensus. Thank you.

1 MR. ADAMS: Thank you. See, that wasn't so hard.

2 No.

3 MS. BRYAN: We did it. Next on my logistics list,  
4 I wanted to call on Gary Cooper, who asked for time.

5 MR. COOPER: Okay. Madam Chair, I just wanted to  
6 make the announcement that there is now a section on  
7 the website under the work group's portion labeled --  
8 down at the bottom labeled "Study Group," where  
9 documents will be posted and so on and so forth from  
10 the Study Group. The agenda is posted up there.

11 Originally we were set to meet, I believe, from  
12 about 7:00 to 8:15 this evening. However, depending on  
13 how time goes here, we might propose changing that just  
14 a little bit. And actually if we can meet earlier,  
15 meet earlier, like maybe immediately following after  
16 the full committee separates. And I believe that the  
17 room set aside for the Study Group this afternoon when  
18 we do meet is Rio Verde, which, I believe, is the room  
19 that FCAS used as their work group meeting room.

20 And I believe it's just right here -- right here  
21 behind us, and that would be the room that's available  
22 for us. I just wanted to make that announcement so

1 everyone is aware of it.

2 MS. BRYAN: Thank you. Any other issues that  
3 people would like to introduce, or bring up, or a  
4 discussion, or comments before I go into public  
5 comment? Earl?

6 MR. EVANS: Madam Chair, thank you for recognizing  
7 me. I just have a question concerning the next meeting  
8 because I know people have been saying one more  
9 meeting, one more meeting. But usually we have a  
10 meeting after the public notice has gone out in the  
11 Federal Register for the final regulation or for the  
12 draft regulations.

13 And so, I just didn't know if -- we keep saying  
14 one more meeting, but are we actually having more than  
15 one more meeting?

16 SPEAKER: Yes.

17 MR. EVANS: Okay. So the meeting next year in  
18 Hawaii is not going to be the only one we have then.

19 (Laughter.)

20 SPEAKER: No.

21 MR. EVANS: Okay.

22 MS. BRYAN: No, we'll have two in Hawaii. So

1 there's a question about the future meetings. If HUD  
2 could just briefly describe the -- well, we'll cover  
3 that in next steps after public comment. Let's do  
4 that. So at this time, I wanted to open up this  
5 session -- day three of session six for public  
6 comments. There is a microphone at either side of the  
7 back of the room. Please state your name and who  
8 you're representing for the record.

9 MR. GAUTHIER: Good afternoon. My name is Robert  
10 Gauthier. I'm an enrolled member of the Confederated  
11 Salish-Kootenai Tribes of the Flathead Indian  
12 Reservation. I presently wear many hats, all of them  
13 related to housing, including my role as administrator  
14 for the United Native American Housing Association.

15 I want to thank and recognize all of you that work  
16 every day for the improvement of housing and economic  
17 conditions for America's first citizens. Most of them  
18 do not have a voice. I have impressed this week with  
19 the dedication, passion, and commitment all of you have  
20 made to fulfill this historic opportunity to negotiate  
21 the regulations for a law that affects virtually every  
22 Indian citizen of our country.

1 I rise today to share a concern many have related  
2 to remind HUD and the members of this committee that by  
3 not making the distinction between self-proclaimed  
4 Indians and statutorily defined Indians, I believe you  
5 are blurring the lines between race-based preferences  
6 and political preferences. This is a sacred issue to  
7 tribes. We all must follow Federal law so that the  
8 distinction continues to be recognized by decision  
9 makers and the public.

10 The NAHASDA statute is quite clear that benefits  
11 under this Act are limited to low income Indian  
12 families. The Act also defines "low income, "Indian,"  
13 and "families." Nowhere does it allow self-  
14 identification to determine eligibility for services.  
15 Yet HUD and the rule makers continue to allow tribes to  
16 claim self-professed Indians and their formulas.

17 I believe HUD and OMB have a legal responsibility  
18 to work with the U.S. Department of Census and tribes  
19 to develop a process to accurately identify NAHASDA  
20 eligible Indian families, and only use the data related  
21 to those families in the formula allocation. My  
22 concern is broader than the current formula that as a

1 matter of tribal rights must not be allowed to continue  
2 as it has the inception of the Act. The Act is  
3 specific as to who has a political right to benefits.  
4 To continue to ignore this component of the Act is to  
5 add to the confusion of racial preferences versus  
6 political preferences. Thank you.

7 (Applause.)

8 MS. BRYAN: Thank you. Okay. At this time I'm  
9 seeing no one else waiting for public comment, so we'll  
10 close the public comment period for this session. And  
11 we do have public comment available at each of our  
12 sessions, which leads us to the next item on our  
13 agenda, which is next steps. Next on the agenda is  
14 selection of the co-chairs. And then HUD can describe  
15 the next two meetings that we have coming up.

16 MR. COOPER: Madam Chair?

17 MS. BRYAN: Yes?

18 MR. COOPER: I would move that we leave the co-  
19 chairs the same as they are.

20 SPEAKER: Second.

21 (Show of approval.)

22 MS. BRYAN: Okay. We have consensus. Thank you

1 very much. Okay. Now if HUD could please just briefly  
2 describe contingent upon availability of funding what  
3 our next two meetings will entail. Thank you.

4 MR. SANTANA: Aaron Santana, HUD. As was stated,  
5 we have currently scheduled two more meetings. I think  
6 it's important to think about this to start backwards.

7 The last meeting that we're going to have is, Earl had  
8 indicated, a meeting simply to deal with the public  
9 comments that have come in on the proposed rule. So  
10 that's going to be the last meeting.

11 The meeting preceding that, which is going to be  
12 in August of next year, what that means is that meeting  
13 -- we have to be able to have a proposed rule to be  
14 able to put into the departmental clearance in HUD,  
15 able to share it with OMB so that they can begin to  
16 review it, and then go through the process to get it  
17 published so that we can then have a document that we  
18 can have available for the public to comment, and whose  
19 comments we will then consider at the last meeting.

20 So the bottom line is that at our next meeting,  
21 which, I guess, scheduled for a year from now, we need  
22 to at the end of that meeting have the proposed rule

1 ready to be able to cut out -- to ship out into the  
2 departmental clearance and to share with OMB. Is that  
3 -- does anybody have any questions about that or what  
4 might be involved in that? I'd be happy to answer  
5 those questions.

6 (No response.)

7 MS. BRYAN: Thank you. Yes, Carol?

8 MS. GORE: One very brief question. After the  
9 final meeting, how long does it take before the  
10 regulations are enacted and in use? How long is that  
11 process? Thank you.

12 MR. SANTANA: After the last meeting, at which  
13 time all the public comments will be gone through, the  
14 rule will once go through a similar process as what it  
15 did for the proposed rule, which means that it will go  
16 into departmental clearance, and it will be shared with  
17 OMB. OMB has 90 days to be able to review the rule.  
18 They have indicated an intent to be able to, you know,  
19 not do a lot of changes and that sort of thing. And  
20 they have been pretty good about cutting their review  
21 time, but we have to be able to expect at least 90  
22 days' worth of OMB review.

1           At that point, there's probably another 30 days to  
2 be able to get final sign-off within the Department.  
3 Then we publish. All of our rules have a 30-day delay  
4 effective date, so once published, we have to be able  
5 to wait another 30 days before the rule becomes  
6 effective. I don't know if that answers your question.

7           MS. GORE: I'm trying to figure out which funding  
8 year we might expect for these regulations to occur.  
9 That's all I'm trying to do in terms of messaging this  
10 when we get home. Thank you.

11           MR. SANTANA: I would have to say, and this is my  
12 own personal view, is that, you know, given the lengthy  
13 time that it takes to be able to go through the  
14 rulemaking process that we'd be looking at Fiscal Year  
15 '18.

16           MS. BRYAN: Thank you. Sami Jo?

17           MS. DIFUNTORUM: Thank you. Sami Jo Difuntorum.  
18 So in developing the preamble to the proposed rule that  
19 we'll all look at in August, I'm not sure of the  
20 process, and there were two things that have been  
21 stated for the record that I want to make sure are  
22 included in the preamble for whoever is doing the

1 drafting.

2 One of them was the cap on planning and admin for  
3 small tribes that had been proposed, and it was removed  
4 out of the rule that we voted on. And so, I want to  
5 make sure that that's included. Some discussion on  
6 that in the preamble, and also the need for funding for  
7 capacity building for small tribes or minimally-funded  
8 tribes. I don't know that we came up with a  
9 definition. So I just want to make sure that those two  
10 issues are clearly stated for the record and included  
11 in the preamble. Thank you.

12 MS. BRYAN: Thank you. Earl?

13 MR. EVANS: Thank you, Madam Co-Chair. I would  
14 like HUD to explain its disagreement with holding a  
15 meeting in Hawaii.

16 (Laughter.)

17 MR. EVANS: But what I wanted to know is since  
18 we're not meeting until a year from now. I know that  
19 we've got the Study Group that is continuing to meet.  
20 And with those folks continuing to meet, will the  
21 support be provided to them in the same sense that it  
22 was provided to the work groups and the committees to

1 some kind of degree?

2 And if so, one of the things I wanted to ask,  
3 would it be possible for those meetings to be set up in  
4 a way that it allows everyone to get the notice in  
5 advance so that they can participate or listen into  
6 those conference calls, or maybe perhaps have it be  
7 done by webcast. Is something like that possible to be  
8 done through the technical support that's being  
9 provided to the committee?

10 MS. BRYAN: Go ahead and answer, Gary.

11 MR. COOPER: Okay. And HUD can correct me on any  
12 part they would like. They have agreed to assist us to  
13 the limits they can, and in a lot of parts, that may  
14 be, you know, HUD's staff, HUD employees, assisting us  
15 with note taking, with that type of information. That  
16 is also why the section on the website was asked for to  
17 set up so that there would be a section on there for  
18 not only meeting notices, but also any documents that  
19 went through the Study Group, everything there.

20 And so, you know, I do want to make note of that  
21 is, you know, I think that everyone on the Study Group  
22 recognized the fact that, you know, HUD cannot commit

1 to anything beyond the end of the Fiscal Year other  
2 than support from, you know, the resources they have in  
3 their own offices. So, I mean, you know, they have,  
4 you know, agreed to help us to the extent that they  
5 can.

6 I would also like to mention, too, that I believe  
7 all of the work group -- Study Group members had made  
8 the, you know, commitment before as that was part of  
9 the Study Group, you know, that we understood that we  
10 would be participating on that. We would be doing the  
11 work on our own time, and anyone else who wants to  
12 participate is more than welcome to participate.  
13 Again, they would be doing it on their own time. So I  
14 can tell you right now that don't expect any Study  
15 Group meetings to occur in Hawaii.

16 (Laughter.)

17 MR. COOPER: But, you know, we -- I think every  
18 Study Group member is committed to the process, and I  
19 believe HUD is committed to the process because they  
20 are a member of that Study Group. And I know that I  
21 appreciate that, and I appreciate the support that  
22 they've given us so far. And I have no doubt that that

1 will continue on, and they will, you know, the greatest  
2 extent possible make sure that they are able to  
3 facilitate and provide whatever technical support they  
4 can.

5 MS. BRYAN: Thank you, Gary. Karin?

6 MS. FOSTER: Well, moving back a minute to the  
7 preamble and the draft preamble, we're going to have a  
8 long period of time between this meeting and the next  
9 meeting. And I don't know exactly who's on the  
10 Preamble Committee, although I bet a lot of them are  
11 back there. I can see them. But I think it would be  
12 really helpful to be -- you know, having a draft  
13 preamble put together sooner rather than later so that  
14 we have an opportunity to see it and make sure that the  
15 concerns that we raised are actually reflected there  
16 because it will be hard to remember what those are next  
17 year.

18 So I don't know -- again, do we have a chairman of  
19 the Preamble Committee or do we just have a -- do we  
20 have a group of attorneys who are serving in that  
21 capacity? What do we have and who do we have on that  
22 effort?

1 MS. BRYAN: So we have the Preamble Committee  
2 group up here, and I think those are really good  
3 questions, Karin. I'm not sure if you guys want to  
4 take this time after this meeting to just get together  
5 with each other and come up with a strategic plan for  
6 the work that we have in front of us.

7 MS. FOSTER: As a member of the Preamble  
8 Committee, I would like to --

9 (Laughter.)

10 MS. FOSTER: -- I would like to suggest that the  
11 Preamble Committee do get together and have that  
12 conversation so that we can help the committee to be  
13 able to have their concerns heard in the draft  
14 preamble.

15 MS. BRYAN: Thank you.

16 MR. SANTANA: If I could just add something? One  
17 of the things that we're going to intend to do is try  
18 to start on developing the preamble as soon as the  
19 meeting is over, particularly with regard to those  
20 provisions that we've -- that have received consensus.

21 You know, as we've done in the past in terms of our  
22 proposed rules, we've also described proposals that

1 haven't received consensus. And that will also go into  
2 the preamble.

3 So I think there's a lot of work that can be done  
4 coming out of this meeting to be able to start putting  
5 the preamble together. It's my hope that, you know,  
6 once we do that, we can share it with members of the  
7 committee so that we can make sure that we get  
8 everybody's input into it. But the primary effort will  
9 be, and we've already started this, is trying to draft  
10 it, you know, putting it together, and then providing  
11 it to people to be able to have something to be able to  
12 comment on.

13 MS. BRYAN: Carol?

14 MS. GORE: Karin asked my question. I had the  
15 same concern because in the beginning when we first  
16 started these meetings, we expressed an interest in  
17 starting the preamble early so that we wouldn't have to  
18 try to remember. And so, thank you, Karin, for  
19 bringing up that question. Appreciate it.

20 MR. DOLLARHIDE: Annette?

21 MS. BRYAN: Thank you. So in the -- I'm not sure  
22 how this process works, but in the beginning we

1 identified several issues that were important to us and  
2 the tribes that we come here representing that did not  
3 even get discussed, such as NAHASDA assisted units and  
4 what the definition is and those kinds of things. Will  
5 those be discussed in the preamble for the record, the  
6 issues that were important, but that we didn't get to  
7 for whatever reason? How does that work? Jason?

8 MR. ADAMS: In regards to your example, I don't  
9 know if you used that intentionally in regards to  
10 NAHASDA funded or NAHASDA assisted units. But that was  
11 an item on the FCAS Work Group list. And we had  
12 extensive discussion on it, and we didn't have any  
13 proposals to bring to the committee. So we did have a  
14 discussion, a lot of discussion, but nothing came up to  
15 bring here.

16 MS. BRYAN: Right. Well, it just happened to be  
17 one of my specific issues that didn't get discussed.  
18 So I wanted to know how that would be reflected in this  
19 whole process.

20 MR. ADAMS: You're welcome to come join us.

21 MR. SANTANA: In answer to your question, the  
22 preamble has the flexibility to be able to add

1 information, and particularly information such as what  
2 you've been indicating. I know there are subjects that  
3 weren't -- that we weren't able because of time to be  
4 able to get to. This is not something that would be a  
5 new thing. As I look back at some of the preambles for  
6 prior rules coming out negotiated rulemaking, they've  
7 done that before, it would be no different.

8 MS. BRYAN: Thank you. Any other questions on the  
9 Drafting Committee and next steps?

10 (No response.)

11 MS. BRYAN: Announcements for the good of the  
12 order? Is your Study Group going to meet right after  
13 the prayer?

14 MR. COOPER: Yes, ma'am. I would -- Madam  
15 Chairman, I would propose immediately following the  
16 prayer that we have a 15-minute, 30-minute break, and  
17 then the Study Group will convene next door at Rio  
18 Verde.

19 MS. BRYAN: Thank you. All right. We have asked  
20 Edward Begay to bless us with another prayer. Do we  
21 have closing remarks from HUD before we close with our  
22 prayer?

1 MS. BRYON: Yes, if I may just have one minute,  
2 again, to express my thanks to all of you committee  
3 members, audience, work groups, everyone. I continue  
4 to have great admiration for the work that you've done  
5 to date. I think incredible progress has been made  
6 over these -- it's just absolutely incredible progress.

7 So, again, thank you to all of you, and especially  
8 thank you to the HUD team as well.

9 Look forward to all of the work that the Study  
10 Group will be undertaking over the next 12 months.  
11 Would love it to be completed quicker than 12 months,  
12 but, again, with appreciation for the amount of work  
13 that this may take, I totally understand that the full  
14 12 months may be utilized through this process.

15 But when we return in a year from now, it is  
16 really our goal to be very productive in that last  
17 session, to discuss the results of the Study Group, a  
18 selection of a data source, and also the incorporation  
19 of the 515 data as appropriate into the language that  
20 was presented today.

21 So, again, this process has really exposed me to  
22 really some fantastic people. I really came -- learned

1 a lot over this course of two sessions that I've  
2 participated in. And I just look forward to not only  
3 learning about your communities through this process,  
4 but I look forward to visiting your communities over  
5 this year. So I'll take invitations or I'll just show  
6 up. Either one will do. But I really am excited about  
7 coming out and visiting your communities.

8 So, again, personally thank you very much.  
9 Professionally, on behalf of HUD and the Secretary of  
10 HUD, thank you very much.

11 MS. BRYAN: Thank you, Jemine. All right. Mr.  
12 Begay, would you close us in a prayer, please?

13 MR. BEGAY: Good evening -- early evening. And  
14 I'd like to just say all the work that you all have  
15 done is very commendable, especially in light of  
16 working out the most difficult issues, concerns, and  
17 also at the same time, be fair to the tools that will  
18 be implemented in this coming Fiscal Year and beyond.  
19 So I'd just like to thank you for participating in this  
20 endeavor.

21 I believe throughout Indian country and the rest,  
22 because all the eyes were on this member and then

1 meeting and assembling. I'm sure with the work that  
2 you did and heard, they would not be disappointed in  
3 terms of what has been agreed upon to be advanced. So  
4 I'd just like to thank you for that.

5 Now, shall we bow in prayer? [NATIVE LANGUAGE  
6 SPOKEN.] Merciful and kind Heavenly Father, we  
7 approach Your throne of grace in prayer this afternoon.  
8 Throughout this week, the committee, and alternates,  
9 and the advisors were assembled here to work on the  
10 tasks that were assigned to them. With that, all eyes  
11 were upon the group, even though some issues are  
12 difficult, and also it seems like it's not solvable.  
13 But, Lord, through Your wisdom and Your patience, these  
14 things were worked out so that it was fair and also re-  
15 workable for the operation of United States government,  
16 and the tribal government, and the entities that run  
17 and oversee the program.

18 Thank You for being so kind and merciful to us.  
19 Bless us now, Lord, as we depart from this meeting. As  
20 we travel home, we pray, Lord, that You provide us  
21 safety and protection. We remember our fighting  
22 soldiers across the sea, that they are defending our

1 country while we enjoy freedom. May we ever be  
2 thankful for freedom that is in this country.  
3 Oftentimes we wonder, but, Lord, through Your grace,  
4 You guide us.

5 Forgive us, Lord, for our shortcomings, and we ask  
6 for Your guidance in the days ahead. In Christ's Name,  
7 Amen. And good evening.

8 MS. BRYAN: Thank you.

9 (Whereupon, at 5:47 p.m., the meeting was  
10 adjourned.)

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