

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT AND TRIBAL REPRESENTATIVES**

**NATIVE AMERICAN HOUSING ASSISTANCE & SELF-DETERMINATION
NEGOTIATED RULEMAKING COMMITTEE ON FORMULA ALLOCATION**

**COMMITTEE-ENDORSED
ORGANIZATIONAL PROTOCOLS**

This document is designed to serve as the starting point for the 2013 IHBG Negotiated Rulemaking Session Protocol. It combines the protocol from the IHBG Negotiated Rulemaking Session in 2003 (red) and the Negotiated Rulemaking Session in 2010 (blue).

Preamble

The Native American Housing Assistance & Self-Determination Negotiated Rulemaking committee on Formula Allocation has been established pursuant to Public Law 104-330, Public Law 101-648 and Public Law 107-292, and is further detailed in a Committee Charter approved allocation formula established in 24 C.F.R. Part 1000, subpart D and related sections and other regulatory issues that arise out of the allocation or reallocation of IHBG funds, including actions related to data errors, under the IHBG Program.

The Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee has been established pursuant to Public Law 104-330, Public Law 101-648, Public Law 107-292 and Public Law 110-411, and is further detailed in a Committee Charter approved by HUD.

PARTICIPATION

- a. **Attendance at Meetings.** Committee Members for each party must make a good faith effort to attend all full negotiating sessions. In the event a Committee Member or his/her designated alternate fails to attend three consecutive full negotiating sessions HUD may remove the member from the committee and designate a replacement member. A Committee Member may be accompanied by such other individuals as the member believes appropriate.
- a. **Attendance at Meetings.** Committee Members must make a good faith effort to attend all full negotiating sessions. In the event a Committee Member or his/her designated alternate fails to attend three consecutive full negotiating sessions, the Committee may ask HUD to remove the member from the Committee and ask HUD to designate a replacement member.
- b. **Designated Alternatives.** In the absence of a Committee Member, the Alternate shall have the same rights, responsibilities, duties and functions as a Committee Member during Committee and Work Group participation. Each committee member has the discretion to decide who will best represent them in their absence. A committee member unable to attend any session shall inform the Committee Co-chairs in writing with an original signature as to whom they have selected to represent them and will specify the term.
- b. **Designated Alternates.** In the absence of a Committee Member, the Alternate shall have the same rights, responsibilities, duties and functions as a Committee Member during Committee and Work Group participation. Each committee member has the discretion to decide who will best represent them in their absence. A committee member unable to attend any session shall inform the Committee Co-chairs in writing with original signature as to whom they have selected to represent them and will specify the term.
- c. **Constituents' Interests.** Committee Members or their Alternates are expected to represent the concerns and interests of their constituents.
- c. **Constituents' Interests.** Committee Members are expected to represent the concerns and interests of their constituents.
- d. **Public Participation.** Comments from the public will be taken during the designated opportunity for public comment provided in Article 2(c) of these Protocols.
- d. **Public Participation.** Comments from the public will be taken as provided in these Protocols.

MEETINGS

- a. **Quorum.** A quorum of the full Committee shall consists of two-thirds of the members (or properly designated Alternatives) of the Committee consisting of tribal and Departmental representative who are present during a call of the roll taken at the start of a negotiated rulemaking committee meeting.
- a. **Quorum.** A quorum of the full Committee shall consists of two-thirds of the members of the Committee who are present during a call of the roll taken on opening day at the start of a negotiated rulemaking committee meeting. Once a quorum is initially established, the Committee may take action during the remainder of that meeting, including action on succeeding days, as long as the Committee is lawfully in session pursuant to these Protocols, and whether or not a quorum is present.
- b. **Structure.** The negotiations will be conducted consistent with the Committee Charter and the Negotiated Rulemaking Act of 1990 (“NRA”) as adapted to the unique relationship between the Government of the United States and the governments of Indian tribes.
- b. **Structure.** The negotiations will be conducted consistent with the Committee Charter and the Negotiated Rulemaking Act of 1990 (“NRA”) as adapted to the unique relationship between the Government of the United States and the governments of Indian tribes.
- c. **Open Meetings.** Committee meetings will be announced in the Federal Register prior to the meeting and will be open to the public. Members of the public and persons other than Committee members will be given opportunities at times designated in the agenda for each meeting to make comments, raise questions or submit materials for the record. Such comment must be concise and, in the absence of agreement by the Committee co-chairs, limited to not more than five (5) minutes per speaker per comment period. Comments from members of the public will be permitted when yielded to by recognized Committee member or recognized by the Chair.
- c. **Open Meetings.** Committee meetings will be announced in the Federal Register prior to the meeting and will be open to the public. Members of the public and persons other than Committee members will be given opportunities to make comments, raise questions or submit materials for the record. The Committee reserves the right to establish timelines as appropriate and necessary during the meetings.
- d. **Minutes.** The Committee shall observe the requirement of the Charter regarding minutes, records and documents. In addition, draft minutes will be prepared and distributed to Committee Members by the representative of Housing and Urban development (“HUD”) ten (10) calendar days prior to the next meeting. HUD will maintain a record of all minutes and will distribute approved minutes to Committee Members and Tribes.
- d. **Minutes.** The Committee shall observe the requirement of the Charter regarding minutes, records and documents. In addition, draft minutes will be prepared and distributed to Committee Members by the representative of the Department of Housing and Urban Development (“HUD”) ten (10) calendar days prior to the next meeting. HUD will maintain a record of all minutes and will distribute approved minutes to Committee Members and Tribes.

- e. **Agenda**. Draft meeting agendas will be developed by Principal Federal Government Officer (“PFO”) and Regional Representatives for approval by the Committee. A draft agenda for each meeting shall be distributed to all members such that receipt by the Member will be had not later than 10 calendar days in advance of such meeting.
- e. **Agenda**. Draft meeting agendas will be developed by Principal Federal Government Officer (“PFO”) and Tribal Co-Chairs for approval by the Committee. A draft Agenda for each meeting shall be distributed to all Members such that receipt by the member will be had not later than 10 calendar days in advance of such meeting.
- f. **Caucus**. Any Committee member can call a Caucus at any time, which may be a non-public meeting. Parties will be asked for an estimate of the time needed for the caucus. Internal procedures will be determining by each respective caucus.
- f. **Caucus**. Caucuses may be called by a Region, by HUD, or by the Tribes as a whole. Regional caucuses may be called only by a consensus of that region. A tribal caucus may be called by consensus of the tribal Committee members. A region or HUD may call a caucus only once each day, and any region or HUD caucus may not exceed 15 minutes in length. Each region may establish its own caucus procedures.
- g. **Time Limitations for Interruptions**. Whenever the Committee process is interrupted, whether for a caucus, recess, lunch break, or any other reason, the Chair shall announce the exact length of the interruption, and the time when Committee business will resume. The Chair shall, without exception, reconvene the Committee at the exact time stated. Any Committee member who is not physically present at the designated time of reconvening is subject to Article 1(e) of these Protocols with respect to any action taken in his or her absence.
- h. **Time Limitations on Debate**. Debate on any matter is limited to 2 hours. The facilitator appointed under Article 7 shall be authorized and directed to enforce the time limitations established by this Article.
- i. **Time Limitation for Non-Committee members**. It is the intent of these Protocols that Committee Members themselves, and not their agents or representatives, debate the matters that come before the Committee. Nonetheless, a Committee member may yield up to four minutes one time per matter to a non-Committee Member.

DECISIONMAKING

- a. **Consensus.** All decisions of the Committee shall be made by Consensus. Consensus means unanimous agreement as shown by an absence of expressed objection by any Committee Member present at the Committee or Work Group meeting with regard to a particular issue.
- a. **Consensus.** All decisions of the Committee shall be made by Consensus. Subject to Article 6(b) of these protocols, Consensus means unanimous agreement as shown by an absence of expressed objection by any Committee member present at the Committee meeting with regard to a particular issue.

[Note: Please see page 7, Section 5 for the Article 6 citation]

- b. **Voting.** No Committee member may abstain on a vote. Unless a Committee Member expressly signals his or her opposition to a proposal, that Committee Member shall be conclusively presumed to have consented to the matter being voted upon, and that Member shall not be allowed to request reconsideration or reopening of the matter. Every Committee vote is subject to the good faith requirements of Article (6) of these Protocols.
- c. **Reconsideration.** A matter on which consensus has been achieved may not be reconsidered by the Committee, except by a consensus vote of the Committee. A proposal with respect to which consensus was not achieved within the two hour time limit may only be reconsidered with a consensus vote and time limit set by the Committee. Once reopened, a matter still requires consensus to be adopted.

WORK GROUPS/STANDING COMMITTEES

- a. **Work Groups.** Smaller Work Groups may be formed by the Committee from Committee Member or their designees to address specific issues and to make recommendations to the Committee. Work Groups are open to any Committee Member or the Member's designee. Interested persons and members of the public are permitted and encouraged to participate in Work Group proceedings. Work groups are not authorized to make decisions of the Committee as a whole. All Committee Members will be notified of all Work Group meetings by the PFO.

- a. **Work Groups.** Smaller Work Groups may be formed by the Committee from Committee Member or their designees to address specific issues and to make recommendations to the Committee. No more than six Work Groups may be formed at any one time, and each Work Group shall be chaired by a Committee Member within the Work Group who shall establish procedures for conduct of the Work Group in order to expedite the Work group's work. The Work Group shall appoint a designated secretary to accurately record the Work Group's efforts. Interested persons and member so the public permitted and encouraged to participate in Work Group proceedings. Each Work Group must include a HUD representative. Work groups are not authorized to make decisions for the Committee as a whole. The agenda for watch Work Group shall be distributed with the Agenda for the Committee meeting under Article 2(e) of these Protocols. The Work Group Chair shall report any Work Group recommendation to the committee, which recommendation must take the form of specific proposed language (if any regulation or regulation change is proposed), together with proposed draft preamble language to accompany that language. A the end of each Work Group session day, the work Group Chair and HUD's representative shall meet to review progress made at each Work Group session and the Work Group's agenda. Work Groups may report to the Committee both: (1) recommendations reached by consensus; and (2) recommendation reached by majority vote, as long as a summary of any significant dissenting position, as determined by the Work Group Chair, is included the report.

- b. **Drafting Committee.** The full Committee shall establish a Drafting Committee of which at least one member will be a HUD representative. Members need not by members of the full Committee, and should possess demonstrated drafting ability. As Work Groups or the full Committee for preparation of precise recommended regulatory language and the required preamble language. The Drafting Committee shall also be responsible for preparing a proposed final, comprehensive preamble for presentation to the full Committee. The Drafting Committee shall elect its own Committee spokesperson. Matters on which The Drafting Committee cannot reach consensus may be referred back to the Work Group or the full Committee for resolution, with all competing drafting proposals presented to the Work Group or the full Committee.

AGREEMENT

- a. **Product of Negotiations.** The intended product of the negotiations is a preliminary report stating whether a need exists for changes as set forth in Section II of the charter and, if so, stating recommendations for such change as is required. The report shall be in the form of a written statement developed by the Committee Members on behalf of the Secretary of HUD and Tribal Committee representatives. The Secretary agrees to use the Committee's preliminary report and any proposed regulations as the basis for an proposed rule concerning the regulations as set forth in Section II of the Charter. Prior to the publication of any proposed rule, the PFO will provide the Committee with notice and an opportunity to negotiate any changes in the proposed regulations.
- a. **Product of Negotiations.** The intended product of the negotiations is a preliminary report setting forth any proposed regulations, or changes to regulations that the Committee finds necessary, desirable or convenient. The report shall be in the form of a written statement developed by the Committee Members on behalf of the Secretary of HUD and Tribal Committee representatives, and shall include both proposed rule language and an accompanying proposed preamble. As the Committee makes decisions on individual rulemaking proposal, each such individual decision shall consist of both exact rulemaking language and a proposed accompanying insert into the preamble. The Secretary agrees to use the Committee's preliminary report and any proposed regulations and preamble as the basis for any proposed rule. Subject to OMB approval, prior to the publication of any proposed rule, the PFO will provide the Committee with notice and an opportunity to negotiate any changes in the proposed regulations.
- b. **Final Report.** The Committee will review all comments and any clearance issues, including those of HUD and the OMB, received in response to any proposed rule and will submit a final report with recommendations to the Secretary of HUD concerning any proposal for change to the proposed rule.
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SAFEGUARDS FOR THE COMMITTEE MEMBERS

- a. **Good Faith**. All members agree to act in a good faith effort to reach consensus in all aspects of these negotiations by encouraging the free and open exchange of ideas, views and information. Personal attacks and prejudiced statements will not be tolerated.
- a. **Good Faith**. All members agree to act in a good faith effort to reach consensus in all aspects of these negotiations by encouraging the free and open exchange of ideas, views and information. Personal attacks and prejudiced statements will not be tolerated. If a Committee member opposes a proposal, he or she shall: (i) state the reason for that opposition; and (ii) propose an alternative to the proposal that meets that Committee member's concerns, for further consideration of the Committee.
- b. **Committee Member Diligence**. It is the responsibility of each Committee Member to remain constantly abreast of developing Committee and Working Group proposals.
- c. **Cooperative Communication**. Committee member, Working Groups Members and other advisory staff are strongly encouraged to discuss and exchange ideas and information prior to the first and all subsequent meetings of the Committee with intent of exploring common positions on any issues that may be considered by the Working Groups and/or voted on by the Committee in formal session. In this way, formal Committee activities and Working groups will be made more productive and less controversial in nature.
- d. **Information**
 1. The Members of the Committee agree to exchange information in good faith.
 2. Members of the Committee will provide information called for by subparagraphs (1) above in advance of the meeting where such information is necessary.
 3. All members of the Committee agree not to divulge information shared by others in confidence.
 4. The media release spokespersons, comprised of the two Co-chairs, will provide Committee communications with the media. The media is welcome to attend Committee meetings, but must identify and display their media credentials.
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2. All members of the Committee agree not to divulge information shared by others in confidence.
3. The media release spokespersons, comprised of the two Co-chairs, will provide Committee communications with the media. The media is welcome to attend Committee meetings, but must identify and display their media credentials.

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- e. **HUD Assistance to Committee Members.** HUD will provide requested information and technical assistance for the work of the Committee.
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SCHEDULE

The number of Committee meetings shall be at least six (6), unless the Committee completes its work in fewer sessions. Meetings shall be scheduled no less frequently than monthly, if feasible. Each meeting shall last for three (3) consecutive days or as determined by the Committee.

FACILITATORS

The Committee may utilize a facilitator. The role of the facilitator includes impartially facilitating Committee and certain Work Group discussions, assisting in the development of draft agendas, working to resolve any impasses that may arise, resolve in points of order and issues of relevance, preparing meeting records, assisting in the location and circulation of background materials and materials the Committee develops, and other functions the Committee requests. The facilitator will take no position on the issues before the Committee and serves at the will of the Committee.

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CO- CHAIRS AND REGIONAL AND HUD REPRESENTATIVES

- a. **Regional Representative and Co-Chairs.** Six (6) regional representatives, one each from the Eastern/Woodlands, Northern Plains, Southern Plains, Southwest, Northwest and Alaska Regions shall be selected, respectively, by Committee Members from each such region. The role of the regional representatives includes developing draft agendas with the PFO and facilitator, chairing Work Group discussion, working to resolve any impasses that may arise, reviewing meeting summaries, assisting in the location and circulation of the background materials and materials the Committee develops, and other functions the Committee requests. The regional representative will represent positions of the full Committee and serve at the will of the Committee members from the region that the regional representatives represent. The regional representatives and/or other representative of the Committee may be authorized by the committee to negotiate Tribal positions with the PFO and shall report the results of any negotiations to the full Committee for further action and/or ratification. Meetings of the regional representatives shall be open to the Committee.
- a. **Co-Chairs.** Two tribal Co-Chairs shall be selected by Committee Members at the end of each session to co-chair the next session. The role of the Tribal Co-Chairs includes developing draft agendas with the PFO and facilitator, chairing Committee discussions, working to resolve any impasses that may arise, reviewing meeting summaries, assisting in the location and circulation of the background materials and materials the Committee develops, and other functions the Committee request. The Tribal Co-Chairs will serve at the will of the Committee Members. Meetings of the Tribal Co-Chairs shall be open to the Committee.
- b. **PFO and HUD Representatives.** The PFO is the Assistant Secretary for Public and Indian Housing or his/her designee. The role of the PFO and the HUD Representative includes developing draft agendas, chairing Work Group discussions, working to resolve any impasses that may arise, reviewing meeting summaries, and other functions the Committee requests.
- b. **PFO and HUD Representatives.** The PFO is the Assistant Secretary for Public and Indian Housing or her designee. The role of the PFO and the HUD Representative includes developing draft agendas, working to resolve any impasses that may arise, reviewing meeting summaries, and other functions the Committee requests.
- c. **Chair.** The tribal Co-Chairs (“Chair”) are entitled to vote on any matter, other than motion to overrule the Chair’s own parliamentary ruling. The Chair may debate any matter by temporarily assigning the chair to the other Tribal Co-Chair, and then resuming the Chair when his or her comments are completed.
- d. **Appeal of Parliamentary Rulings.** A parliamentary ruling of the Chair may be overruled by an alternative vote of 80% of the Committee.