

**U.S. Department of Housing and Urban Development (HUD)
Indian Housing Block Grant Formula Negotiated Rulemaking Committee
Session 1
August 27, 2013 Minutes and Redlined and Approved Version of Charter**

Introduction

The Committee approved the selection of facilitators by unanimous consent. The agenda was accepted by unanimous consent.

The meeting opened with an overview of negotiated rulemaking procedures by Aaron Santa Anna, Assistant General Counsel Regulations Division. He stated that the goal of the committee is to reach consensus on regulatory changes to NAHASDA IHBG formula. He described the seven-step negotiated rulemaking process, and the timing associated with each step.

Development and Adoption of Committee Charter

The Committee reviewed and revised a document that contained charter provisions from the 2003 IHBG formula negotiated rulemaking committee and 2010 NAHASDA negotiated rulemaking. They agreed to accept formal proposals from Committee members about language, and proceeded using a unanimous consent process.

Section I. Official Determination/Official Name

The Committee modified the 2010 language, adding a reference to the July 29, 2013, *Federal Register* notice that established the Committee, and accepted the revised name by unanimous consent.

Section II. Purpose

Committee members decided to start with 2003 language and made several proposals to revise this language. An alternative proposal was offered that would “remove the IHBG Formula regulations in their entirety and negotiate a new IHBG formula from scratch, utilizing and conforming to the current NAHASDA statutory Formula provisions.”

There was extensive discussion about the alternative proposal. Several Committee members expressed the view that they are open to considering extensive revisions, but that they are not willing to commit to language agreeing to make such extensive changes before actual deliberations of the issues. Many also felt that the language in both the 2003 and 2010 charters already permit the Committee to determine the level of changes needed. The alternative proposal did not pass.

The Committee considered a number of modifications to the 2003 purpose that recognized the concerns expressed in the alternative proposal. The final compromise language accepted the

2003 version with several minor revisions and the statement that, “This Charter establishes a Committee to review all aspects of the formula ...”

Section III. Goals and Objectives

The Committee agreed to work with the 2010 language, but decided to address Section II, which had not been approved, and Section VII (a) before they could approve the language for Section III. When they returned to a discussion of Section III, the Committee approved the 2010 version.

Section IV. Duration

The Committee discussed adding a clause about the availability of funds. However, they decided that this clause would appear in Section VIII, Meetings, instead. The Committee voted to approve the 2010 language as originally written.

Section V. Principal Federal Government Officer

The Committee approved a minimally amended version of the 2010 language.

Section VI. Composition of the Committee

Rather than designating tribal and federal government memberships, the Committee approved a proposal for a single provision referencing the *Federal Register* Notification of Committee Membership.

Section VII. Role of the Committee

Part a: The Committee agreed to accept a modified version of the first provision of the 2010 language. In addition, the Committee approved the second, third, and fourth provisions from 2003.

Part b: The Committee accepted the 2010 version of (b).

Part c: The Committee accepted the 2010 version of (c).

Section VIII. Meetings

The Committee had an extensive discussion about whether to add “subject to availability of funds,” as previously suggested during the discussion of Part IV, Duration. This issue came up while considering both part a) and part b) of Section VIII. An initial vote on part b) that included the phrase, “subject to the availability of funds,” did not pass. The major concern was that, if this phrase were included, HUD might have too much discretion in determining whether to schedule meetings, and the committee might have difficulty completing its task. Others felt it unwise to omit the phrase, given that very real budget limitations might make it impossible to meet a set schedule of meetings at fixed intervals.

It was suggested that the Charter specify a target number of meetings, as it would pressure the Committee to stay focused and finish on time. Several proposals to this effect, with different wording, were suggested. The Committee accepted part a) with the addition of language that the Committee would, “endeavor in good faith to meet at least six times within twelve months subject to the availability of funds.” The Committee accepted part b) as originally stated in 2010. The Committee later discussed that these six meetings would be in addition to those required to establish the charter and protocols.

The Committee did not follow-up on the proposal that VIII a) and b) be moved to Section IV, Duration.

Section IX. Compensation for Services

The Committee accepted the 2003 language.

Section X. Financial and Support Services

The Committee accepted the 2010 language.

Section XI. Statutory Authority

The Committee accepted a revised amendment to the 2010 language, stating that, “This Negotiated Rulemaking Committee is established pursuant to Public Law 104-330, as amended, and Public Law 101-648, as amended.”

Public Comment

An attorney who represented a number of New Mexico tribes wanted to know which Committee member (s) represents New Mexico tribes that do not have members on the Committee. She suggested that this be addressed in the charter section, which addresses committee membership. A Committee member responded that most members represent not only their own tribe but also an organization, and that everyone will make an effort to communicate with tribes not participating in the Committee.

Attachments

1. Redline/Strike-out version of charter provisions
2. Clean approved version of charter provisions

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND TRIBAL REPRESENTATIVES

NATIVE AMERICAN HOUSING & SELF-DETERMINATION **FORMULA** NEGOTIATED RULEMAKING COMMITTEE 2013

CHARTER: Approved by the Committee 8/28/2013

I. Official Name

The official name of the Committee established pursuant to HUD Federal Register Notice, Volume 78, No 146, published Tuesday, July 30, 2013 is the Native American Housing Assistance & Self-Determination Formula Negotiated Rulemaking Committee ("Committee").

II. Purpose

This Charter establishes a Committee to review all aspects of the formula and negotiate with the Department of Housing and Urban Development ("HUD") regulations that establish the allocation formula used under 24 C.F.R. Part 1000, subpart D, and related sections (such as Section 1000.118 as applicable) and other regulatory issues that arise out of or are related to the allocation or reallocation of Indian Housing Block Grant (IHBG) funds, including actions related to data errors, under the IHBG program of the Native American Housing Assistance & Self-Determination Act, Public Law 104-330 ("Act"), as amended. The Committee will advise the Secretary of HUD whether changes should be made to the allocation formula established in 24 C.F.R. Part 1000, subpart D, and will recommend such changes as may be deemed necessary and consistent with: (i) the unique responsibility of HUD and the federal government to protect and support Indian tribes and Indian people; and (ii) other legal obligations. The establishment of this Committee provides a non-exclusive means of tribal participation pursuant to the Act. HUD shall obtain input from tribes and other non-Committee members in establishing the scope for future negotiated rulemaking changes.

III. Goals and Objectives

The goal of the Committee is to negotiate a proposed rule implementing changes as described in Sections II and VII (a) of this Charter.

IV. Duration

Subject to the limitations of Section VIII of this charter, the Committee shall be authorized to convene until such time as all negotiations are determined by the Committee to be final and all regulatory changes negotiated have been published as a Final Rule.

V. Principal Federal Government Officer

Pursuant to the Negotiated Rulemaking Act, the Assistant Secretary for Public and Indian Housing or designee will serve as the Principal Federal Government Officer (PFO) for this Committee. The PFO shall endeavor to ensure that all internal HUD and OMB clearance issues are raised and addressed during the Negotiated Rulemaking process. Should the OMB and Departmental clearance processes identify necessary changes to the proposed rule developed by the Committee, the Tribes and

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HUD will endeavor to submit the changes to the Committee for review and approval. This Committee will report to the Secretary of HUD through the PFO.

VI. Composition of the Committee

The Committee will consist of members as identified in Federal Register Notice, Volume 78, No 146, published Tuesday, July 30, 2013.

VII. Role of the Committee

a. The role of the Committee shall be:

1. to determine whether changes or additions to the NAHASDA regulations are necessary or desirable to implement, conform to or clarify any statutory provisions;
2. to develop proposed revisions or changes to these regulations as appropriate; and
3. to file a report with the Secretary of HUD in accordance with 5 U.S.C. § 566(f); and
4. to conduct its activities in accordance with the Negotiated Rulemaking Act as adopted to the unique relationship between the Government of the United States and the governments of Indian tribes.

b. The Committee shall keep detailed minutes of each meeting and make available for public inspection, all records, reports, transcripts, or other documents made available to or prepared by the Committee. Such materials will be available for copying and inspection at all ONAP offices and on HUD's website, at such time approved by the Committee.

c. In accordance with the Negotiated Rulemaking Act, if the Committee reaches agreement on a proposed rule, the Committee shall transmit to HUD a report specifying any areas in which the Committee has reached agreement. The Committee may include in a report any other information, recommendations or materials that the Committee considers appropriate, and the report shall be in a form suitable for publication in the *Federal Register* as a preamble to the proposed rule. Any Committee member may include as an addendum to the report additional information, recommendations or materials; however, any such addendum shall not be included in any preamble.

VIII. Meetings

a. The Committee shall endeavor in good faith to meet at least 6 times within the next 12 months subject to the availability of funds.

b. The date, time, place, purpose, and the proposed agenda for each Negotiated Rulemaking Committee meeting will be published in the *Federal Register* at least 15 calendar days prior to each meeting. The *Federal Register* notice will also include a statement that the meeting is open to the public.

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IX. Compensation for Services

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- a. HUD has determined that the participation of 24 tribal committee members is necessary to assure adequate representation of tribal interests.
- b. Members of the Committee shall receive no pay, allowance or benefits by reason of their service on the Committee. In accordance with the requirements of the Act and the Negotiated Rulemaking Act, 5 U.S.C. 568(c), while away from their place of residence or business and in performance of services for the Committee, Committee members may be authorized to be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Federal Government service if:
 - 1. Such member certifies a lack of adequate financial resources to participate in the Committee; and
 - 2. HUD determines that such member's participation in the Committees is necessary to assure an adequate representation of the member's interest.

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X. Financial and Support Services

HUD shall provide travel costs, technical supports, copies of public comments, and logistical support services for the activities of the Committee.

XI. Statutory Authority

This Negotiated Rulemaking Committee is established pursuant to Public Law 104-330, as amended, and Public Law 101-648, as amended.

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Sandra B. Henriquez
Assistant Secretary
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August 28, 2013
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