

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

**Session 1
August 28, 2013**

Review of the Charter

The Committee reviewed the combined text for all the sections of the Charter agreed to the prior day. The document was adopted by a unanimous vote with two amendments, one making the *Federal Register* citations consistent in Sections I and VI and a second, changing the approval date to 8/28/13.

Development and Adoption of Committee Protocols

The Committee reviewed all section of the Protocols previously adopted in the 2003 IHBG Formula Negotiated Rulemaking and 2010 NAHASDA Negotiated Rulemaking. Members could propose that one or the other text be adopted, subject to amendment, or propose entirely new language.

Title

A proposal to make the title of the Protocols consistent with the title of the 2013 Charter was unanimously accepted.

Preamble

Use of the 2003 preamble was proposed. It was amended to make it consistent with the title and with the 2013 Charter and approved.

Section I. Participation

a) Attendance at Meetings

A proposal to adopt the 2010 language was approved.

b) Designated Alternates

A Committee member clarified that “original signature” should include email and other electronic options. There was a discussion about who has the authority to approve a designated alternate. It was determined that the authorization to the Committee member to act on behalf of a tribe or organization generally is broad enough for the Committee member to authorize the alternate. A proposal to adopt the 2010 language was approved.

c) Constituents' Interests

A question was raised about how constituents are defined. There was a lengthy discussion about this and about who Committee members represent. The *Federal Register* notice establishing the Committee referenced the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561-570), which requires representation of affected interests. In constituting the Committee, HUD sought representation from small, medium, and large tribes in each region. Some Committee members believe that they represent the interests of all Indian families, not just tribes in their region or similar-sized tribes. Others said that their legal responsibility is to their tribe or organization only, and that they didn't want to be held accountable for doing something they cannot do, namely "representing" other tribes.

A vote on a proposal to use the 2003 language in its original version did not pass. Several amendments also were considered but not adopted. Some of these amendments were designed to clarify who Committee members represent (in terms of region, or region and size), whether the obligation to represent was individual or collective, and whether to change the heading from "Constituent Interests" to "Tribal Interests" or "Committee Interests."

After extensive discussion, Section c, Constituents' Interests, was NOT APPROVED.

d) Public Participation

A proposal that the Committee accept the 2010 language was accepted. A Committee member suggested, however, that it might be desirable to address when people with special expertise should participate in Committee discussions. This was tabled for further consideration under "open meetings."

e) Effect of a Failure to be Present for Vote

A proposal to adopt the 2010 language was approved.

Section II. Meetings

a) Quorum

A proposal was made to accept the 2010 language. The Committee discussed whether it was sufficient to establish a quorum at the opening of the meeting, or whether a quorum was required prior to any action. After some failed efforts to reach consensus, the original 2010 language was adopted unanimously.

b) Structure

A proposal was made to accept the 2010 language. After amendments were added to broaden the embedded references to include the Protocols as well as the Charter, and to reference amendments to the Negotiated Rulemaking Act of 1990, the proposal was approved.

c) Open Meetings

A proposal to adopt the 2010 language was approved.

d) Minutes

A proposal to adopt the 2010 language was approved.

e) Agenda

A proposal to adopt the 2010 language (with a typographical error corrected) was approved.

f) Caucus

It was proposed that the 2003 language, which allowed unlimited caucuses, be accepted. The Committee discussed whether limits on the amount of time spent in caucus would be desirable, since caucusing could be used as a delaying tactic. An amendment was offered placing a time limit of 60 minutes on caucus meetings, "unless otherwise deemed appropriate by the Committee." With this amendment, the 2003 language was approved.

g) Time Limitations for Interruptions

A proposal was made to accept the 2010 language. An amendment to expand the reference to "Chair" to also include Co-Chairs was accepted, and the Committee approved the 2010 language as amended.

h) Time Limitations on Debates

This section did not exist in the 2003 protocols. In the 2010 language, the reference to Article 7 (Facilitator) was corrected to "Article 8."

The Committee discussed the time limitation and what it applied to. Several members voiced concern regarding time limitations on debate, particularly if "matters" were broad in nature. Others suggested that time limitations were important for the Committee to complete its work, and that they shouldn't be a concern because most debates would occur at length in caucus or working sessions. Also, by the time matters reached the full committee for debate, there would be discrete proposals. Further, it was noted that a later section allowed for "Reconsideration."

The Committee agreed to accept the 2010 language with the revision, "Debate on any matter is limited to two hours, but may be set at a different time limit by the Committee."

i) Time Limitation for Non-Committee Members

This section did not exist in the 2003 protocols. The Committee accepted the 2010 version with a revision that changed the time limitation from four to five minutes.

Section III. Decisionmaking

a) Consensus

A proposal was made to accept the 2010 language, which defines consensus as unanimous agreement, subject to Article 6 (a), which defines “Good Faith.” Alternative language was proposed saying that, if the group could not reach unanimous Consensus, “then any two or more members of the Committee that vote in favor of a proposal may ask for and elect for a vote to determine the decision, and the plurality required for passage must be a favorable vote of at least two-thirds of the total Committee Members present at the Committee meeting.” The proposal, with an amendment clarifying the role of the two Federal Committee members, did not pass. The group had a lengthy discussion about how to define consensus. One perspective is that, if a unanimous consent vote is required, one or a few people can prevent the group from moving forward. Another perspective is that requiring Consensus forces the group to hear each other out and respect each others’ perspectives. Some Committee members indicated that anything other than unanimous agreement is not acceptable, while one member advocated vigorously to institute something less than unanimous consensus.

The committee sought clarification about the consequences of failing to reach consensus on this item. A HUD attorney indicated that Section 562 (2) of The Negotiated Rulemaking Act establishes unanimous consent as a starting point, but allows a Committee to adopt an alternative rule if they so choose. However, it would require unanimous consent to adopt an alternative rule. Absent any agreement by the Committee, the statutory language would govern Committee decisionmaking. There was some discussion of other negotiated rulemaking committees and their experiences working with different decision rules.

A vote to adopt the original 2010 language did not pass. Other alternatives also failed, including iterations of the original proposal, proposals seeking to prevent “consensus blocking,” and proposals relying on language from the Negotiated Rulemaking Act.

The Committee did NOT approve a proposal on consensus. Recognizing the stalemate, the Committee agreed to defer any further discussion of decisionmaking and all of its subsections, including: a) Consensus; b) Voting; and c) Reconsideration.

Nomination and Selection of Committee Chair(s)

A suggestion was made that the Committee might function more effectively if Chairs were selected. The Committee decided, however, that it was better to agree on structure before choosing leadership.

Section IV. Work Groups and Standing Committees

a) Work Groups

A proposal to adopt the 2010 language was approved.

b) Drafting Committee

This section did not exist in the 2003 protocols, but was added in 2010. A Committee member proposed striking out the language in the 2010 version because “it didn’t happen that way” in the past. He proposed substituting simpler language allowing for a more informal process of convening drafting groups as needed.

The Committee discussed various issues, including whether those who worked on drafting language should be called a committee or a group, whether it would consist of appointees or volunteers, if participants could change over time, whether HUD had to be represented, the specific work products which the group would work on, and whether a decisionmaking rule had to be included.

Numerous language changes were proposed and a vote was taken, with some confusion arising as to its outcome. No objections were noted, but it was observed that many members had not voted at all. This led to a re-opening of discussion and a decision to start again, with the 2010 language as the basis for discussion. Small amendments were made, changing “committee to group,” replacing language regarding consensus within the Drafting Group to agreement, and clarifying that all work from the Drafting Group had to go back to the full Committee. With these amendments, Committee members reached agreement.

Remaining Protocol Sections

Due to the late hour and the difficulty of retaining the meeting facility past the scheduled meeting time, the Committee decided to defer remaining protocol items until the next negotiated rulemaking meeting.

Logistics for Future Meetings

FirstPic staff discussed logistics for future meetings, and provided directions on how to use the website (ihbgrulemaking.firstpic.org), which is being set up to facilitate communication. It will store all documents related to this negotiated rulemaking process and include information about future meetings. There will be portals for both public and member access.

The next negotiated rulemaking session will be held at the Grand Hyatt in Denver, on September 17-19, 2013. Members were encouraged to book their hotel rooms for this session as soon as possible.

Public Comment

Edward G. Begay, a member of the Navajo Housing Authority, commented about the 50th Anniversary of the March on Washington, the Navajo Housing Authority’s 50-year anniversary, and the Negotiated Rulemaking Committee’s mission.

Closing Remarks

Ms. Henriquez thanked her fellow Committee Members, tribal staff, and HUD staff, and made some brief closing remarks encouraging members to think about ways to come to agreement on the issues that the Committee was unable to resolve at the first meeting. Several other Committee Members addressed the group. The session ended with a closing prayer and the retiring of the colors.