

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

4
5 Tuesday, September 20, 2016
6 8:40 a.m.

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19 Sheraton Midwest City Hotel
20 Reed Conference Center
21 5750 Will Rogers Road

1 Midwest City, Oklahoma 73110

2 PARTICIPANTS

3 ANNETTE BRYAN, Co-Chair

4 JASON DOLLARHIDE, Co-Chair

5 JASON ADAMS

6 JAD ATALLAH

7 LOURDES CASTRO RAMÍREZ

8 GARY COOPER

9 SAMI JO DIFUNTORUM

10 EARL EVANS

11 SARA FIALA

12 DEIRDRE FLOOD

13 HEIDI FRECHETTE

14 ED GOODMAN

15 CAROL GORE

16 DAVID GREENDEER

17 LAFE HAUGEN

18 LEON JACOBS

19 GABE LAYMAN

20 LAUREN LIM

21 SAMUEL OKAKOK

1 DIANA PHAIR

2 TODD RICHARDSON

3 PARTICIPANTS (CONTINUED)

4 RAYMOND ROBLES

5 AARON SANTA ANNA

6 S. JACK SAWYERS

7 MARTY SHURAVLOFF

8 MICHAEL THOM

9 KATHERINE LYALL VASQUEZ

10 SHARON VOGEL

11 BOBBY YANDELL

12 ANEVA YAZZIE

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P R O C E E D I N G S

(Traditional opening.)

MS. BRYAN: Thank you, Tuji. And I think that was so beautiful. Let's give them all a big round of applause.

(Applause.)

MS. BRYAN: What a beautiful blessing gift to start our morning with.

So at this time, we will get ready for our morning roll call. Let's start with Lafe.

MR. HAUGEN: Here.

MS. BRYAN: Oh, do you guys want to read off the roll call? Who's doing the roll call? Shall we just do it here? I'll do the roll call. Been a while.

Jason Adams?

MR. ADAMS: Here.

MS. BRYAN: I'm Annette Bryan. I'm present.

Lourdes Castro Ramirez?

1 MS. CASTRO RAMÍREZ: Here.

2 MS. BRYAN: Gary Cooper?

3 MR. COOPER: Present.

4 MS. BRYAN: Pete Delgado?

5 (No response.)

6 MS. BRYAN: Sami Jo Difuntorum?

7 MS. DIFUNTORUM: Here.

8 MS. BRYAN: Jason Dollarhide?

9 MR. DOLLARHIDE: Here.

10 MS. BRYAN: Earl Evans?

11 MR. EVANS: Here.

12 MS. BRYAN: Deirdre Flood?

13 MS. FLOOD: Here.

14 MS. BRYAN: Karin Lee Foster?

15 (No response.)

16 MS. BRYAN: Heidi Frechette?

17 MS. FRECHETTE: Here.

18 MS. BRYAN: Carol Gore?

19 MS. GORE: Here.

20 MS. BRYAN: David Greendeer?

21 MR. GREENDEER: (Speaking Native language.)

1 MS. BRYAN: Lafe Allen Haugen?
2 MR. HAUGEN: Here.
3 MS. BRYAN: Richard Hill?
4 (No response.)
5 MS. BRYAN: Leon Jacobs?
6 MR. JACOBS: Here.
7 MS. BRYAN: Gabe Layman?
8 MR. LAYMAN: Here.
9 MS. BRYAN: Sam Okakok?
10 MR. OKAKOK: Here.
11 MS. BRYAN: Diane Phair?
12 MS. PHAIR: Here.
13 MS. BRYAN: Diana Phair. Correction.
14 Raymond Robles?
15 MR. ROBLES: Here.
16 MS. BRYAN: Jack Sawyers?
17 MR. SAWYERS: Here.
18 MS. BRYAN: Marty Shuravloff?
19 MR. SHURAVLOFF: Here.
20 MS. BRYAN: And Michael Thom?
21 MR. THOM: Here.

1 MS. BRYAN: Sharon Vogel?

2 MS. VOGEL: Here.

3 MS. BRYAN: Bobby Yandell?

4 MR. YANDELL: Here.

5 MS. BRYAN: Aneva Yazzie?

6 MS. YAZZIE: Here.

7 Good morning. We do have a quorum.

8 At this time, I would like to turn it over to
9 Principal Deputy Assistant Secretary Lourdes Castro
10 Ramirez.

11 MS. CASTRO RAMÍREZ: Thank you so much, Annette.

12 Good morning, everyone, and welcome to what we
13 hope will be our last session of negotiated rulemaking.
14 As Annette mentioned, I'm Lourdes Castro Ramirez, and I
15 have the great honor of serving this administration
16 leading the Office of Public and Indian Housing. And
17 it's an honor to be with you not just for the next 2
18 days, but also to serve on this committee.

19 I also would like to take an opportunity to again
20 commend and thank our committee chairs, both Annette
21 Bryan and Jason Dollarhide. They have provided very

1 steady leadership throughout the last almost 3 years.

2 Thank you very much for your service.

3 (Applause.)

4 MS. CASTRO RAMÍREZ: And we have a team of folks

5 from HUD that has also joined us for the next 2 days.

6 I would like for them to be acknowledged. So if you're

7 a member of the HUD team, can you please stand to be

8 recognized?

9 (Applause.)

10 MS. CASTRO RAMÍREZ: Specifically, I'd like to

11 again thank Jemine Bryon, who is our General Deputy

12 Assistant Secretary, who has been very engaged and

13 involved throughout the process; Aaron Santa Anna from

14 OGC; Todd Richardson from PD&R. Many of them, of

15 course, will be not just present, but also will be

16 presenting information throughout the session.

17 So, again, thank you all for being here. As you

18 know, Oklahoma City is significant for this country.

19 It's significant for HUD. To the HUD family, this

20 place has touched many of us, and it continues to be

21 touched by the memory of those that were lost in the

1 bombing almost 21 years ago of the Federal Building on
2 April 19, 1995.

3 HUD lost 35 of its own that terrible day,
4 including 5 members of our Office of Native American
5 Programs. Five employees that were working in ONAP.
6 They were amazing and vital lives cut short by the act
7 of terrorism.

8 Fifty HUD employees survived, along with employees
9 from other Federal agencies. Their commitment to work
10 together to improve their community is as strong as
11 ever, and the strength that they demonstrate stands as
12 a testament to our nation's resilient character.

13 I just, you know, want to take a moment to, again,
14 sort of acknowledge the HUD members and really the
15 members of the Federal family that lost their lives
16 during that tragic event. We commemorate their lives
17 every year, and it really fuels our commitment to the
18 work that we bring. And so in honor of them, I want to
19 just take a moment of silence to remember them.

20 (Moment of silence.)

21 MS. CASTRO RAMÍREZ: Thank you.

1 In that spirit of devotion and perseverance, I
2 commend your dedication to the negotiated rulemaking
3 process and to improving the lives and housing
4 conditions of Native people across Indian Country. The
5 work that we do together supports the essential
6 provision in Indian Country of critical affordable
7 housing and economic development opportunities.

8 The last 9 months for us have been very busy, and
9 together, we have made significant progress on our
10 shared goals of providing further housing
11 opportunities. During that time, Secretary Castro and
12 I had the distinct pleasure of attending and meeting
13 actually several of you at the Northern Plains Housing
14 Summit, where we heard from leaders and practitioners
15 who are doing amazing work creating public and private
16 partnerships to further affordable housing
17 opportunities and to further opportunities for Native
18 American and members of tribes that receive funding
19 from the Federal Government.

20 It was really an incredible conversation. I was
21 very pleased to see that we had a number of tribal

1 leaders present and engaged and really discussing
2 housing, economic development, and the -- really the
3 commitment to think and formulate creative
4 opportunities to leverage Federal dollars and to bring
5 in other private funding.

6 During our time in North Dakota, we also had a
7 very warm welcome from the Standing Rock Sioux Tribe.
8 We are sincerely grateful to them for their leadership.
9 I think you all have been following the events that
10 have been occurring in North Dakota, and we have, too.
11 So we -- you know, we're thankful and grateful for
12 hosting us. We're thankful and grateful for the work
13 that they're doing to serve their members. We're also
14 thankful for the tour that they provided of the Cannon
15 Ball and Kenel Districts.

16 Also in the last 9 months, we continued to make
17 significant progress on a number of the key initiatives
18 that I shared with you at the last negotiated
19 rulemaking session. And I just want to take an
20 opportunity to provide a brief update on some of the
21 things that have been occurring.

1 First, tribes are housing homeless veterans as we
2 speak using the \$6 million Tribal HUD-VASH funding that
3 was awarded in January of this year. We provided
4 funding to about 26 tribes, and we're very pleased to
5 see the progress that is happening across the country
6 to provide veterans with housing and supportive
7 services.

8 Also I'm grateful and thankful to those of you
9 that participated and provided public comments to HUD's
10 Tribal Intergovernmental Advisory Committee. As you
11 know, this is a first for HUD. This is a commitment
12 that our Secretary has made to ensure that we continue
13 the government-to-government relationship and also a
14 commitment to ensure that we ensuring that the policies
15 and priorities that are being put forth as it relates
16 to Indian Country are informed by tribal leaders
17 through this advisory committee process.

18 And I invite you all -- we are planning to release
19 the final notice. We're working towards incorporating
20 some of the comments, and we are working towards
21 issuing the final notice that outlines the scope of the

1 Tribal Advisory Committee and the process for how to
2 apply or to be on the committee. Our goal is to
3 publish that by the end of October, and so I invite you
4 all to look out for that and, if you're interested, to
5 submit an application to be part of that process.

6 We also received and are very grateful for the
7 participation, the comments, and the feedback to the
8 Housing Needs Study. Many of you know that this will
9 be the first comprehensive housing needs study of
10 Indian Country in the last 20 years.

11 We are on track to get this finalized by the end
12 of the year, and so I thank you all for the feedback,
13 for the ideas. It is a very detailed study that I
14 believe will inform and shape not just housing policy
15 in Indian Country, but also the priorities that you all
16 have as it relates to where we need to invest.

17 And finally, next week, I'm very excited to share
18 with all of you that HUD, for the first time, will be
19 hosting a Native Youth Leadership Summit in D.C. We've
20 invited about 120 youth from across the country. They
21 will be in D.C. for a 4-day session that will include

1 opportunities to meet with Federal leaders,
2 opportunities to meet with members on the Hill, and
3 also opportunities to learn more about the importance
4 of housing, community development.

5 And as an outcome of the summit, each of the youth
6 will have an opportunity to develop an empowerment
7 project that we hope will help as they go back to their
8 communities and continue to be engaged. I'm very
9 excited. The Secretary is very excited and looking
10 forward to that. We will be receiving the youth and
11 their chaperones next Monday at the HUD Headquarters
12 building.

13 And with that, I just want to again thank each of
14 you for your partnership, for your dedication, and for
15 the work that you do every single day to improve the
16 lives of the individuals and families and communities
17 that you serve.

18 Today, as I mentioned, I'm honored to serve on
19 this committee. But I'm also equally honored and proud
20 to be joined by Heidi Frechette, who is our new -- I
21 don't know if you're that new anymore. But we'll

1 continue calling her our new Deputy Assistant
2 Secretary. She's not new to many of you. She has been
3 doing this work for many years. We're very proud of
4 her, and she's been really doing a terrific job.

5 She has very extensive experience working for
6 Indian Country. She has extensive experience working
7 on the Hill, and she's a dedicated individual. And I'm
8 pleased to see that the Office of Native American
9 Programs is in good hands.

10 And as you all know, she will be serving on this
11 committee. So it gives me great honor at this point to
12 introduce Heidi Frechette to share a few remarks.

13 Thank you.

14 (Applause.)

15 MS. FRECHETTE: (Speaking Native language.) Thank
16 you. Thank you. Hello.

17 I'm honored to be here today. I'm very honored to
18 be part of this committee. I know that you all have
19 been working very hard over the last several years,
20 including work behind the scenes that we haven't all
21 seen in subcommittees and conference calls, and really

1 with the goal of serving the people in your communities
2 because that's why we do what we do every day.

3 I'm also honored that you bring your insight and
4 expertise. You work on the front lines. You see the
5 families. You know how important it is in your
6 communities, and so it's an honor to be here.

7 As Lourdes said, this is a culmination of years of
8 work, but also kind of seen as the sprint at the end of
9 the marathon, and so I'm very honored to be here as we
10 look at these important issues. And I look forward to
11 working -- rolling up our sleeves, working hard, as I
12 know you all have been doing, and continuing the good
13 work of the committee.

14 So (speaking Native language).

15 MS. BRYAN: Thank you. And I also want to echo
16 the sentiments of thanking HUD for all of your work and
17 dedication through this process and starting the
18 process and seeing the process through in a time where
19 funding challenges are ever present.

20 Welcome, Heidi. We are excited to have you here.
21 And thank you, everybody on the committee for showing

1 up. And I see some new faces. So if you're new, just
2 go along with us.

3 It's a culmination of almost 3 years of work, as
4 already had been stated, and this meeting that we're
5 having and these next 2 days is really to look at the
6 comments. The negotiations are -- have happened in
7 previous meetings. So during these next 2 days, we're
8 really going to look at the comments and, as Heidi
9 stated, roll up our sleeves and get to work so that we
10 can get a rule promulgated with the work that we've
11 done.

12 So, with that, any more words, Jason?

13 (No response.)

14 MS. BRYAN: Okay. Jason and I are ready to get
15 started. We have next on our agenda is logistics.
16 Lauren?

17 MS. LIM: Good morning, everyone. Welcome to
18 Oklahoma City. I hope everyone had a safe trip coming
19 in.

20 My name is Lauren Lim with FirstPic, and I'm going
21 to go over a couple things about the hotel and some

1 logistics this morning.

2 So we have shown on the screen here the map of the
3 second floor, and we are currently in Room Reed C and
4 D, which is a general session room. And in addition,
5 we have six breakout rooms, which are all located on
6 this floor.

7 And the bathrooms are straight across the hallway
8 if you exit the doors. Next slide.

9 And next we have the caucus room assignments. So
10 if the committee decides to break out into a caucus, we
11 do have rooms assigned for each of the regions,
12 including HUD. And so if the committee does decide to
13 break out into caucus, we will post this information up
14 again so that everyone knows where to go.

15 And next we have the Wi-Fi log-in information. So
16 the wireless network to connect to is the Sheraton_MWC,
17 and the password is Sheraton_MWC. And the Wi-Fi
18 information should be the same throughout the hotel and
19 also in this meeting room as well.

20 And lastly, just a reminder for the committee
21 members to turn off your microphones after you're done

1 speaking because I believe we can only have one on at a
2 time. And lastly, we have staff floating around. So
3 if you do have any questions or any issues, please do
4 let us know, and we'll try to help you out.

5 Thank you.

6 MS. BRYAN: Thank you, Lauren.

7 Next I want to have the -- Sara from FirstPic is
8 going to do our facilitation, and we had a meeting, the
9 co-chairs and HUD, and asked if Sara would be willing
10 to facilitate, as she did at the last meeting at HUD,
11 and I think she did a superb job and really happy to
12 have her as our help for this meeting. Did -- Sara,
13 did you want to say a few words?

14 (Laughter.)

15 MS. BRYAN: So this is Sara Fiala, for those of
16 you who don't know her, and she's going to help Jason
17 and I keep the meeting on track. And if there's no
18 logistical announcements, we'll just move on to our
19 review and approval of the agenda.

20 (Pause.)

21 MS. BRYAN: Any questions or comments on the

1 agenda in front of us?

2 (No response.)

3 MS. BRYAN: I have a logistical question to back
4 up off the agenda. Is there a consensus from the
5 committee to have Sara facilitate today's meeting?
6 Let's start our morning with consensus.

7 (Voting.)

8 (Laughter.)

9 MS. BRYAN: Seeing no opposition, we have
10 consensus. Good way to start the day.

11 Do we have consensus on the agenda?

12 (Voting.)

13 MS. BRYAN: Oh, we're off to a good start. Gary,
14 do you have a question? Okay. Awesome. Thank you.

15 I am seeing next on the agenda review and approval
16 of the minutes from January 2016, and are we going to
17 pass those out? So we'll just take some time to pass
18 them out and review them at this time.

19 (Pause.)

20 MR. JACOBS: Madam chair, I make a motion that we
21 approve the minutes.

1 (Pause.)

2 MS. BRYAN: We have a movement to approve the
3 minutes. Jack?

4 MR. SAWYERS: Second.

5 MS. BRYAN: Second. Do we have consensus to
6 approve the minutes from Session 8, January 26, 2016 -
7 January 27, 2016?

8 (Voting.)

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

10 At this time on our agenda, I would like to
11 welcome Aaron Santa Anna for a procedural overview.

12 MR. SANTA ANNA: Good morning, everyone. It's
13 really an honor to be here with you again today.

14 I have to admit that as I was preparing for the
15 presentation that we're going to go through today, I
16 looked back to see when we began this process to
17 develop this rule and saw that we had begun in July of
18 2013. And it caused me to start thinking about the
19 fact that over the course of the 3 years, we've really,
20 you know, moved from being, you know, really strangers
21 to becoming friends.

1 We know a lot now more about each other's lives.
2 I'm sure that in the course of our own lives, you know,
3 things, significant things have happened -- marriages,
4 new births, that sort of thing. There is a -- an
5 addition to the HUD family, I should say, and I did
6 want to make everybody aware of it.

7 Our own Jad Atallah --

8 (Applause.)

9 MR. SANTA ANNA: -- was married last year to Nikki
10 and has Cameron. And the proud dad is going to be able
11 to show everyone the pictures that he has on his
12 iPhone. So --

13 (Laughter.)

14 MR. SANTA ANNA: So, please let Jad know. He'd be
15 happy to share with you all of his pictures.

16 But we have really, you know, worked on this for
17 quite a long time, and we are very much near the end.
18 I did want to really emphasize the fact that, you know,
19 there is a lot of support within the administration,
20 within the building to try to get this to final rule
21 within the timeframe that we've been talking about.

1 We had, as you probably know, a very good
2 discussion with OMB during the proposed rule stage, and
3 they have renewed their commitment to work with us to
4 try to get this done and finalized. That is published
5 in the Federal Register within the timeframes that
6 we've been talking.

7 The key is wanting to be able to make sure that we
8 have time so that the rule goes into effect before the
9 end of the calendar year. And I think that's a
10 realistic timeframe. Of course, you know, to be able
11 to get to that point, we need to, today, go through the
12 public comments that came in.

13 Just as everybody knows or should know or I will
14 provide a little bit of a reminder that in terms of
15 rulemaking, an important part is to be able to make our
16 proposals available to the public for their input. And
17 the agency has a legal responsibility to go through
18 those comments and give them consideration as to
19 whether or not they provide ideas that might be
20 worthwhile adding to the rule or changing the rule or
21 just leaving it as it is. And -- and that is our task

1 today and tomorrow.

2 I have provided you a copy of all -- a summary of
3 the comments that came in. What I would like to be
4 able to do after we, I think, come back from break is
5 to start looking at these comments issue by issue and
6 go through them so that we can try to get through the
7 entire comments.

8 I don't think there's, you know, a lot of comments
9 that require a lot of discussion, but I'm going to
10 obviously defer to the committee. One of the things
11 that we do want to do is, you know, allow ourselves
12 time to be able to get through the whole thing. So
13 we're going to try to set the clock as we begin to
14 present the issue so that we can try to move through
15 them in a timely manner.

16 But I think that's all that I wanted to say at
17 this point, and I think that next on the agenda is a
18 break. I don't know if the committee co-chairs want to
19 do that, or should I just launch into this?

20 MS. BRYAN: Thank you, Aaron.

21 I wondered if you needed a few minutes to get

1 ready for the next section to the review of public
2 comments and approval of final language? As we are
3 early on our agenda, and break is at 10:00 a.m., if we
4 could just launch right into that portion and start our
5 work?

6 MR. SANTA ANNA: Sure.

7 MS. BRYAN: Okay.

8 MR. SANTA ANNA: I think that we had posted on the
9 Web site and talked in our last communication about a
10 summary of comments that we prepared. I am going to
11 propose that we not follow that, that order so that we
12 can try to get through some of the easier issues first
13 and then leave ourselves time to be able to deal with
14 some of the issues that we think might be a little bit
15 more substantive toward the end.

16 So the first comment is there is a need for
17 federally conducted national tribal survey. This was
18 on page 6 of the comments that we provided you. And
19 what I sent out to you, I kind of combined both
20 comments. But there were a couple of commenters that
21 talked about this.

1 And just as a bit of information, these first few
2 comments are not the type of comments that necessarily
3 will change any of the regulatory text in the rule.
4 But nevertheless, we need to be able to develop a
5 response to these comments.

6 MS. BRYAN: I'm not finding page 6. Are you --
7 can you tell us where you're at in this -- this book?

8 MR. SANTA ANNA: I'm sorry.

9 MS. BRYAN: Page 22 in your orange book in the
10 summary of public comments?

11 MR. SANTA ANNA: Yes, thank you.

12 MS. BRYAN: Okay. Thank you.

13 MR. SANTA ANNA: And I apologize. I was -- okay.

14 I wasn't sure whether or not the committee wanted
15 to discuss this. Again, as I mentioned before, this is
16 a comment that really will have absolutely no impact on
17 our regulatory text, but we need to be able to respond
18 to it. And as we publish the final rule, there will be
19 a section in the rule that lays out each of the
20 comments that you see in the summary that you're
21 looking at, and there will be a committee response.

1 To try to keep things moving, I was -- I tried to
2 anticipate what the committee might think with regard
3 to this issue and drafted a response to the comments.
4 And it would read, "The committee supports the
5 recommendation that tribes find common ground by
6 developing a tribally driven data source. In doing so,
7 however, the committee emphasizes that the Indian
8 Housing Block Grant Negotiated Rulemaking Data Study
9 Group examined the development of the national tribal
10 survey that would rely on tribally driven data sources
11 and identify significant concerns that resulted in the
12 group being unable to achieve consensus on a proposal.

13 "Concerns identified included the substantial time
14 and cost of developing a survey and the likelihood that
15 such a survey would be challenged based on survey
16 design, sampling strategy, and sample size.

17 Additionally, the Data Study Group stated that the
18 national survey might be seen as duplicative of other
19 Federal data collection activities.

20 "Finally, HUD does not have the resources to
21 either design or -- and administer a national tribal

1 survey or to audit data collection efforts to ensure
2 that data from tribal sources is being collected in a
3 fair and equitable manner and, thus, is unable to --
4 and thus unable in this" -- something is missing there.
5 "And is, thus, unusable." It should be "unusable," I
6 think, "in the Indian Housing Block Grant formula.

7 "However, HUD will continue to work with" -- and I
8 guess was looking to Todd for the name of the committee
9 that we're working with.

10 MR. RICHARDSON: It's the American Indian and
11 Alaska Native Data Improvement Workgroup.

12 MR. SANTA ANNA: Okay. Did you get that? "To
13 improve collection in tribal communities."

14 Todd?

15 (Pause.)

16 MR. SANTA ANNA: I think it's -- no, I read it.
17 And I think that language makes sense. "-- and, thus,
18 usable in the Indian Housing Block Grant formula."

19 I'm sorry. I think that sentence before makes
20 sense now, as I reread it. So that was kind of the
21 idea of what we were thinking about. I don't know if

1 people have any comments or if the committee would like
2 to be able to comment on this?

3 MS. BRYAN: Sharon?

4 MS. VOGEL: Good morning. I was curious why you
5 only mentioned the negatives and not the positive about
6 a national study?

7 MR. SANTA ANNA: Well, I was trying to put
8 together -- I guess the only answer is that as I was
9 trying to develop a sense of what the committee was, I
10 didn't really understand all the positives. And I
11 wanted to be able to provide something that could get
12 us started in terms of a response.

13 I certainly, you know, think that we are open, of
14 course, to having language that identifies the
15 positives and would welcome any sort of suggestion.

16 MS. BRYAN: Aneva?

17 MS. YAZZIE: Thank you, Madam Chair.

18 Question. Is the Data Study Group the same as
19 that Data Improvement Workgroup, or is that a workgroup
20 to be created?

21 MR. SANTA ANNA: It was supposed to reference to

1 the Data Study Group.

2 MS. YAZZIE: Okay. It's one and the same? Okay,
3 thank you.

4 MR. RICHARDSON: (Inaudible.)

5 MS. BRYAN: Any other questions, concerns, or
6 proposals to this proposed language?

7 (No response.)

8 MS. BRYAN: As I understand this, and please
9 correct me if I'm not right because this is our first
10 time at this juncture of a negotiated rulemaking, we
11 are going to attempt to accept these responses by
12 consensus. Is that what you need from us today?

13 MR. SANTA ANNA: Yes, ma'am.

14 MS. BRYAN: Okay. Yes, Carol?

15 MS. GORE: Thank you. I have one question and
16 then a request.

17 I serve on the National Advisory Committee for
18 Census, and I have no knowledge of an American
19 Indian/Alaska Native Data Improvement Workgroup. I
20 wonder if that's a Census staff workgroup or if it's
21 really an engagement of tribes? That's my question

1 because I'm not familiar with this group.

2 And then I'm just -- it's been 3 years, but I'm a
3 bit uncomfortable with the first sentence because I
4 don't know that the committee ever took action that
5 would support the first sentence. What I could support
6 is striking the first sentence up to, to begin with,
7 "The committee emphasizes that the IHBG Negotiated
8 Rulemaking Data Study Group," and start with that.

9 Thank you.

10 MR. RICHARDSON: So our response to the first
11 question about this workgroup here. So, obviously, the
12 tribes are meeting with the Census Bureau to improve
13 the survey as well. This is a separate group that's
14 among sort of the staff at the agencies that use the
15 data to communicate to the Census Bureau "Here are the
16 challenges." So taking the information to "Here are
17 the challenges we're having with these data. Here are
18 things we'd like to see as improvement."

19 So our hope is that information also makes its way
20 back to your conversations that you're having with the
21 Census Bureau. So this is within the Federal

1 bureaucracy the way to communicate how all of us are
2 using the data because each of us uses the data in a
3 different way.

4 MS. GORE: Thank you, Todd.

5 I'm in my second term, and I've never heard of
6 this workgroup.

7 MR. RICHARDSON: Fair enough. I'll --

8 MS. GORE: So I would just suggest that we maybe
9 also add the National Advisory Committee because there
10 is a lot of work going on at that committee and seeking
11 this information, consultation is ongoing. And in that
12 whole process, this workgroup has not come up to that
13 committee. So I just want to make sure that this
14 accomplishes what HUD is anticipating and that would
15 bubble up to the right tribal place.

16 MR. RICHARDSON: I think that's great, and can we
17 add "National Advisory Committee" here?

18 MS. GORE: That would be awesome. And then I --

19 MR. RICHARDSON: And the other -- other item would
20 be "and other consultations with tribes."

21 MS. GORE: Yes.

1 MR. RICHARDSON: Because there's a lot of
2 consultations with tribes going on for the 2020 census.

3 MS. GORE: Yes, I think that gets --

4 MR. RICHARDSON: So there's a lot of different
5 efforts going on simultaneously.

6 MS. GORE: Absolutely. Thank you, Todd.

7 MS. BRYAN: Thank you. And we also want to
8 capture the first amendment, which is striking out the
9 first sentence and the beginning of the second sentence
10 up to the word "the" and having the word "The
11 committee" start the paragraph. And that's what we'll
12 be working with now that that amendment has been made.
13 Jason?

14 MR. ADAMS: Good morning. Jason Adams, Salish
15 Kootenai Housing Authority.

16 Just wanted to make a comment in regards to trying
17 to find some language that could be inserted in here in
18 regards to some of the positives. In regards to the
19 work of the study group that met for a year, one of the
20 tasks that we went through in that work was to review
21 this very issue, and a lot of time and effort was put

1 into it by a lot of folks. And a lot of those folks
2 are a lot smarter than I am.

3 But the one thing that came out of that was there
4 is documentation in the information that we have that
5 goes into depth as far as some of the issues that were
6 raised and as far as how that could be administered and
7 could be fashioned, and there are a lot of positives.
8 And so I'd like to see maybe some of this language --
9 I'm not ready to vote on this language.

10 If we could come back and go back through some of
11 this documentation that we have on the tribal survey
12 administered by Federal agencies and the other document
13 and just put some of this language in here that talks a
14 little more, or maybe reference this to a greater
15 degree. Because there's a full discussion here that I
16 think that the record should show that we've done and
17 took the time to do on this issue.

18 And you know, of course, some of these negatives
19 that were brought up that are stated here are in this,
20 but there is a lot of possibilities here, too.

21 Thank you.

1 MR. SANTA ANNA: We would certainly be open to the
2 suggestion made by Jason regarding giving a little bit
3 of time to -- to develop that language. I think the
4 response that we really want to be able to have is one
5 that represents the committee first of all, and which
6 is, you know, a balanced and full discussion of the
7 comment. And so I don't have any problems, with the
8 approval of the committee, we can put this, you know,
9 on hold and move to the next issue.

10 MS. BRYAN: Does the committee agree that we can
11 table this issue and move on to the next issue to give
12 HUD more time to address the comments made by the
13 committee?

14 MALE SPEAKER: Yes.

15 MS. BRYAN: Thank you. Sharon, did you want to
16 make a comment before we close it, or will you wait?

17 MS. VOGEL: Oh, no. I do want to make a comment.
18 I'm fine with giving us more time.

19 Sharon Vogel, Cheyenne River.

20 If you have prepared answers already, are we going
21 to get copies of that? I mean, I see where you've got

1 a presentation.

2 MR. SANTA ANNA: I -- you know, HUD, as we
3 discussed trying to prepare for this, one of the things
4 that we were very sensitive to was not wanting to take
5 away the committee's prerogative to be able to discuss
6 issues and to develop responses. You know, this work
7 that we've done is simply to try to get a sense of, you
8 know, based on an imperfect sense of what the committee
9 may want, my guess of what the committee may want, and
10 as a way to try to get the discussion moving so that we
11 can move through these comments in an efficient and
12 quick way.

13 I have no problems sharing all of the proposed
14 comments with you, if that would make it easier. There
15 is one comment -- one, you know, comment that we have
16 not yet drafted. It hasn't been put pen/pencil on. And
17 we can certainly after the break provide that to you,
18 if that's the wish of the committee.

19 But again, it was a concern that we not take away
20 from your authority and responsibility to come up with
21 a sort of response, but more trying to set up a tool

1 that might help us get through the discussion.

2 MS. BRYAN: Thank you. So we had consensus to
3 move on to table that item, save the time on it, and
4 move on to the next item. Aaron?

5 MR. SANTA ANNA: Okay. It's on page 22.

6 This is another one that is not going to affect
7 the regulatory text of the rule. This was a comment
8 that we were asked to put into the rule, and it's,
9 basically, we had asked people to comment on their use
10 of the Indian Housing Block Grant data and whether or
11 not we should be cognizant of that.

12 And so the commenter, this is the commenter
13 responded to it, to that request for comment. And they
14 said that -- that they understand that -- "The
15 commenter responded to HUD's request for public comment
16 regarding how the proposed change to the Indian Housing
17 Block Grant formula would potentially impact
18 nonprofits, State and local governments, and other
19 organizations that are not IHBG recipients.

20 "The commenter stated that the effect of the IHBG
21 formula on outside stakeholders should not -- should

1 have no bearing on the implementation of changes to the
2 IHBG formula. The commenter also stated that the
3 purpose of the IHBG formula is to allocate Federal
4 Indian housing resources to eligible recipients, to
5 address the housing needs of Alaska Native and American
6 Indian families, and that impact on other entities --
7 and that impact on other entities is not within the
8 scope of factors that HUD may consider in the course of
9 negotiating the Indian Housing Block Grant formula."

10 So that was the comment. We can go, move into our
11 proposed response, which is pretty straightforward. It
12 was just the recognition that, "The committee is aware
13 that some organizations, such as the U.S. Department of
14 Transportation, use the Indian Housing Block Grant
15 formula for various reasons. Nevertheless, the
16 committee agrees with the commenter that the effect of
17 the Indian Housing Block Grant formula on these outside
18 stakeholders should have no bearing on whether such
19 changes are implemented.

20 "As stated by the commenter, Section 302 of
21 NAHASDA delineates the factors that the committee must

1 consider in determining the formula. HUD is not
2 authorized to consider in the course of negotiating the
3 Indian Housing Block Grant formula how elements of the
4 formula might impact entities that are not Indian
5 Housing Block Grant recipients."

6 So it was a pretty straightforward, you know,
7 thank you for the comment, and we agree.

8 MS. BRYAN: Any discussion or questions on the
9 proposed response?

10 MS. GORE: I move for consensus.

11 MS. BRYAN: We have a move for consensus. Is
12 there consensus?

13 (Voting.)

14 MS. BRYAN: Seeing no opposition, we have
15 consensus.

16 MR. SANTA ANNA: Thank you.

17 The next comment was one that does have an impact
18 on the regulatory text. What I tried to do as I
19 developed this sequence was to go sequentially through
20 the rule, and the first up was the comment on the
21 carryover funds. And as you can see there, the comment

1 was that -- "One commenter expressed opposition to the
2 minimum total grant allocation of carryover funds,
3 stating that it is an arbitrary allocation, rather than
4 a needs-based allocation as required by NAHASDA.

5 "The commenter also stated that adjusting the
6 formula simply because carryover funds are added is a
7 departure from the needs-based model and will mean
8 funding is withheld from tribes with more demonstrated
9 need. The commenter suggested that if carryover funds
10 cannot be added to the total allocation, then funds
11 should be used for drug clean-up grants."

12 HUD did develop a proposed response for this, if
13 you want to roll up to that? "The committee considered
14 this comment and disagrees that Section 1000.329 is
15 arbitrary and not based on need. In considering the
16 provision, the committee sought to augment the minimum
17 allocation already provided under the need component in
18 Section 1000.328 in the event there are funds
19 voluntarily returned or not accepted by other tribes in
20 the prior year (carryover).

21 "Just as Section 1000.328 recognized that

1 allocations in minimum amounts are needed if there
2 exists eligible housing below 80 percent of the median
3 income in a tribe's formula area, proposed Section
4 1000.329 simply recalibrates the minimum if there are
5 carryover funds.

6 "The committee also notes that HUD does not have
7 the statutory authority to award funds specifically to
8 fund drug control/elimination grants. However,
9 grantees may choose to spend their Indian Housing Block
10 Grant to fund remediate units, as doing so is an
11 eligible activity in the IHBG program."

12 So after our discussion on the carryover, I
13 thought the committee would be supportive of leaving it
14 as, you know, making the statement that we do have
15 authority to make that allocation.

16 MS. BRYAN: Any discussion on HUD's response?

17 (No response.)

18 MS. BRYAN: I would like to call for a consensus.

19 (Voting.)

20 MS. BRYAN: Oh, we have an opposer. Would you
21 please suggest alternative language?

1 MS. VOGEL: Sharon Vogel, Cheyenne River.

2 I'm not opposed to it. I just feel we're rushing
3 through this, and I'm trying to reference back and
4 forth. I just don't want to be rushed into something.
5 And I apologize if I'm a slower thinker than the rest
6 of you, but I just can't seem to track what you're
7 proposing and then trying to make sure that it's all
8 covered.

9 MS. FIALA: We're on page 19 right now under
10 Section B, for those of you that have the handouts or
11 the booklets. It's on page 19, Minimum Total Grant
12 Allocation of Carryover Funds.

13 MR. SANTA ANNA: And please, you know, I
14 appreciate the concern about time. I know that we
15 have, you know, 2 days to get this done. But I don't,
16 at the same time, want to rush through this so that
17 people don't have the opportunity to see what the
18 language is.

19 I think it's fair to say that, you know, I try to,
20 again, put the easier issues up front, feeling that we
21 could probably get through them in a more quick -- more

1 quickly and allow a little bit more time for discussion
2 on other issues that might -- that are, I think,
3 bigger. But if it -- if it -- go ahead. I'm sorry.

4 MS. VOGEL: The only other question I have is when
5 you say "comment," was there like commenters? Was
6 there more than one that addressed this issue, and you
7 just rolled it up into just saying that the comment
8 was?

9 MR. SANTA ANNA: Correct. There were just one
10 comment on this issue that we received.

11 MS. VOGEL: So do we identify where there is more
12 commenters on an issue?

13 MR. SANTA ANNA: We try to, when there's more than
14 one commenter on an issue, refer to that term in
15 plural. On this issue, there was only one comment.

16 MS. FIALA: So I think maybe it would be helpful
17 if we just did a quick run-through of what's up on the
18 screens and then what you have in front of you as well.
19 So on this screen here, this is what was passed out to
20 the group and then also what is included in your
21 packets. I think it's called Summary of Comments.

1 And you can see that the numbers, for example,
2 this has a 0009, if you go to the back page of the
3 summary, you will see what is called Appendix A, and it
4 gives a list of the commenters and then assigns them a
5 number. So you can see that this comment was submitted
6 by commenter number 9, who was Mr. Marcus Loop II.

7 And then in Appendix A, for the committee members,
8 you will see the comments, the actual -- the actual
9 comment that was submitted through the Web sites to
10 match up the comment with the commenter with the
11 summary comments. So that will always be on the right-
12 hand side of the screen, the summary, and then what's
13 going to be on this side would be the proposed
14 response.

15 So this screen will always match up with what's
16 passed out, which identifies the comments. You can
17 reference the number and track it back to the commenter
18 in that actual Summary of Comments. So I hope that
19 helps.

20 (Pause.)

21 MS. BRYAN: Sharon, did you want more explanation

1 from HUD on the way they currently distribute per the
2 regulation the carryover funds, or did you have a
3 concern about this specific comment or just the speed?

4 MS. VOGEL: I was just more concerned that I was
5 understanding what the proposed response was, and I was
6 just wanting to make sure I was clear in my mind with
7 that.

8 (Pause.)

9 MS. FIALA: And we can make copies of the
10 comments. It will take a little bit. So I don't know
11 if you would like to wait for those, or co-chairs, if
12 you'd -- no, no, different ones. If you'd like to have
13 a break while we copy those, it will take about 10
14 minutes to get those copied.

15 MS. BRYAN: Jason?

16 MR. ADAMS: Just for clarification, not the
17 comments, are you talking the responses that I think
18 that's what Sharon --

19 MR. SANTA ANNA: Yes, we're talking about the
20 responses. And I want to emphasize, you know, the
21 proposed nature of the response because, again, you

1 know, I want to be -- I want to be sensitive to your
2 ability to make the final decisions and --

3 MS. BRYAN: Okay. Does the committee want to take
4 a break early for copies for the responses so they're
5 in front of us? And then we will reconvene at 9:55
6 a.m.

7 Yes, Lourdes?

8 MS. CASTRO RAMÍREZ: Yes, Madam Chair, I just
9 wanted to go back to this item, given the comment that
10 was made by Ms. Vogel on sort of clarification. Are
11 you comfortable with the proposed language so we can
12 maybe vote on this item and then go into a recess?

13 MS. VOGEL: I just got distracted. No, I would
14 like to just have --

15 MS. CASTRO RAMÍREZ: Okay.

16 MS. BRYAN: Okay. We're going to take a break.
17 We will be back, reconvene at 9:55 a.m., and that will
18 give us a chance to get the responses in front of us so
19 we're all looking at the paper copies.

20 Thank you.

21 (Recessed at 9:44 a.m.)

1 (Reconvened at 10:20 a.m.)

2 MS. FIALA: In an effort to allow time to sort of
3 digest what you were just given, we would like to have
4 Aaron present each comment, and then we can take a look
5 at it as a group and address any questions. And then
6 he will go through the proposed response, and then we
7 can go through the same process -- make any revisions,
8 address any comments. And then, hopefully, we will
9 have a call for consensus, in which case we'll turn it
10 back over to the chairs and go from there.

11 So I believe we left off at the minimum grant
12 total allocation, which in your packets is page 19. So
13 I'll go ahead and turn it over to Aaron.

14 MR. SANTA ANNA: Thank you, Sara.

15 Again, this is simply a comment about the minimum
16 total grant allocations of carryover funds being
17 arbitrary and that -- not based on need and that we
18 would be better off distributing the money via drug
19 clean-up grants.

20 MS. FIALA: Thank you, Aaron.

21 So were there any questions about the comment?

1 Did anyone need any clarification? Again, some of
2 these are a little bit shorter than others. So I don't
3 want to put in time when we don't need any, but I
4 definitely want to take any time now to address any
5 questions or concerns about the actual comment before
6 we get to the proposed response.

7 (No response.)

8 MS. FIALA: All right. Then I'm going to go ahead
9 and let Aaron discuss the proposed response, which,
10 again, is going to be put up on the screen behind me.

11 MR. SANTA ANNA: In drafting the response, we
12 wanted to be able to say that, no, it's not arbitrary,
13 that we do have the legal authority to be able to set
14 aside via this carryover that it is part of the need
15 component.

16 As you can see there, we tied it to the minimum
17 grant funding under 328 and also emphasize the fact
18 that we don't have the legal authority to use this
19 money for in a notice of funding availability. But we
20 just note that it could be used to remediate units
21 since that's an eligible activity.

1 I'd be happy to take any questions.

2 (Pause.)

3 MS. FIALA: Did anyone have any questions, any
4 items that they'd like clarification on on this draft
5 response?

6 (No response.)

7 MS. FIALA: I'm going to go ahead and turn it over
8 to the co-chairs.

9 MS. BRYAN: Thank you.

10 So at this time, I would like to move for
11 consensus, having no discussion or comments on the
12 information -- on the comment and response presented.
13 Do we have consensus?

14 (Voting.)

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

16 Turn it back over to Sara and Aaron to present the
17 next issue. I also want to make an announcement that
18 we are making additional copies of these responses. So
19 they'll be here very shortly.

20 MS. FIALA: Thanks. And so I'm going to turn it
21 back over to Aaron, and the next comment is also on

1 page 19 of your packets.

2 MR. SANTA ANNA: Thank you.

3 This commenter recommended that proposed 1000.329,
4 paragraph (c) be clarified to read, "To be eligible, a
5 tribe must certify in its Indian Housing Plan the
6 presence of any eligible households at or below 80
7 percent of median income."

8 To help the committee understand what they were
9 saying, if we could move to the next slide, I could
10 kind of help explain it.

11 The -- if you skip the response, this is what the
12 proposed rule says. That's the language of the text.
13 And what the commenter is suggesting is that we copy
14 the language out of 328(b)(2) and make them identical.
15 And this is, of course, the language that they're
16 wanting to have inserted.

17 MS. FIALA: So I'll open up for questions.

18 (Pause.)

19 MR. SANTA ANNA: And I apologize because, as they
20 were making copies, I suggested that we add the
21 proposed rule and the current language, in addition to

1 the proposed response, to give you a better sense of
2 what was being requested and what the differences
3 between the -- that was being proposed and what is
4 recommended can be better seen.

5 And of course, the difference is in talking about
6 the presence of any households, as opposed to the
7 presence of any eligible households, I'm not sure that
8 the issue is -- is that significant, but it is what was
9 being recommended.

10 MS. FIALA: Heidi Frechette?

11 MS. FRECHETTE: Aaron, can you clarify, is this a
12 conforming change to the regulations? Would this be a
13 conforming change?

14 MR. SANTA ANNA: It would, yeah. Yes, I would
15 consider it a conforming change.

16 MS. FRECHETTE: Thank you.

17 MS. FIALA: Seeing no other questions, I'm going
18 to turn things back over to the co-chairs.

19 MS. BRYAN: Did we want to present the response
20 and then see if there's any comments or questions about
21 that?

1 MS. FIALA: The proposed response is actually that
2 first line, Christine, if you could highlight? "The
3 committee considered this comment and agrees that
4 1000.329(c) should be clarified to parallel 1000.328."

5 That would be the actual proposed response.

6 MS. BRYAN: Oh, that's it? Okay.

7 MS. FIALA: And then the remaining information is
8 just so you could see the changes between the two
9 sections.

10 MS. BRYAN: Thank you. So at this point, there
11 has been opportunity for discussions and comments.

12 Sharon?

13 MS. VOGEL: Sharon Vogel, Cheyenne River.

14 Aaron, is there a reason why you didn't bring the
15 word "eligible" into the language?

16 (Pause.)

17 MR. SANTA ANNA: I'm sorry. Your question?

18 MS. VOGEL: My question was why you didn't bring
19 "eligible" into the language, as proposed? "Eligible
20 households."

21 MR. SANTA ANNA: That is what is currently in our

1 proposed rule. Does that make sense? The suggestion
2 is that the final rule read, and it's not altogether
3 clear here, "to be eligible, certify in its housing
4 plan the presence of any eligible households at or
5 below 80 percent of the median income."

6 MS. BRYAN: That is a very good clarification
7 question. Do we have a consensus?

8 (Voting.)

9 MS. BRYAN: So Annette Bryan, Puyallup Tribe of
10 Indians.

11 I guess I'm concerned about not putting the word
12 "eligible" in the regulation. We had a lot of talk
13 around this table during the course of negotiated
14 rulemaking about what eligibility means for tribal
15 housing authorities and housing programs. And I'm
16 concerned that if we leave out the word "eligible," I'm
17 not sure what the new language does for us that's
18 different from the proposed rule.

19 MR. SANTA ANNA: If I could recommend, could you
20 type in, in here, in the proposed rule the language
21 that they want us to put in? If you would add "to be

1 eligible" in redline? Yes. Comma. And then (c) would
2 be lowercase, of course.

3 And so what they are suggesting that we do is, is
4 make what we have currently for eligibility in the
5 certification criteria that we have in the carryover
6 section of 329 parallel to what we have in our current
7 regulation in 328. Because of the setup of the
8 section, it's a little different because, of course, in
9 328, we have -- we have paragraph (b), and then we list
10 the two subparagraphs.

11 But, and we'd have to bring this text "to be
12 eligible." Just saying that as it currently is, the
13 section is not clear because it lists a number of
14 sections, and then it starts with "certify." So
15 they're just suggesting that we add "to be eligible" as
16 opposed to putting it here. That way, we could make
17 what's in 329 identical to what's in 328.

18 Does that provide any clarification?

19 MS. BRYAN: Yes. So I would like to propose that
20 amendment that's on the screen and ask that we move for
21 a consensus on that language.

1 (Voting.)

2 MS. BRYAN: Seeing no opposition, we have reached
3 consensus.

4 Thank you.

5 (Pause.)

6 MR. SANTA ANNA: I was recommending that as
7 opposed -- well, this is probably good, too. But a
8 Word file would have been -- but go ahead. I was
9 suggesting that now that you have the printout, as
10 opposed to going through the same comments on the
11 screen, that we have what's in the proposed rule so
12 that we can better -- better compare the language.

13 (Pause.)

14 MS. FIALA: The next comment we're going to talk
15 about is, "The term 'Indian lands' is ambiguous. It
16 needs to be clarified under account adjustment to the
17 U.S. decennial census." In your packet, that is on
18 page 20. So I'm going to turn it over to Aaron.

19 MR. SANTA ANNA: Thank you. Thank you. And
20 apologies to the committee for getting that organized.

21 I think it's a little bit easier now that you have

1 the comments in front of you in writing to have them in
2 one place. And that way, as we start looking at the
3 comment relative to the recommendation, we can see how
4 it might affect the current proposed rule.

5 We had probably two or three commenters that
6 indicated that the term "Indian lands" in 330(b)(1),
7 which is this -- I should use my pointer. Sorry about
8 that. "Indian lands in remote Alaska" was unclear and
9 needed to be clarified.

10 The commenters indicated that the term was not
11 meant to mean Indian Country but was meant to refer to
12 the lands within the formula area of the villages, the
13 Alaska Native village statistical areas. This
14 commenter suggested that we don't need to change the
15 language if it is understood regarding how the term
16 would be interpreted.

17 The second commenter stated that they also felt
18 that it should be clarified. That some of the
19 ambiguity was that there's a lack of definition of the
20 term "Indian lands" in NAHASDA or its regulations and
21 that other Federal agencies and their use -- their

1 statute doesn't apply either or define it either. And
2 the commenter said that there are no reservation or
3 trust lands in remote Alaska other than Metlakatla
4 Reservation. So this is -- this is the comment.

5 MS. FIALA: So I see we have one question. Sam?

6 MR. OKAKOK: Yes. Good morning. This issue came
7 up last time in D.C., and I think we had some issues
8 with language at that time. And I'd like to yield my
9 time to Mr. Ed Goodman to make some comments on this.

10 MR. GOODMAN: So the comment, one of the comments
11 up there is from Native village of Barrow, the first
12 one. The second one I think is from Tlingit Haida, and
13 we've been in kind of discussion since the -- we've
14 submitted those comments, talked to folks at the HUD
15 office, the general counsel and other folks, and have
16 some proposed language to clarify and define the term
17 "Indian lands" for the purposes of this specific
18 provision, and it simply ties it to the definition of
19 formula areas in Alaska.

20 And so how it would define it -- and I'll give the
21 language to folks to type it in -- is simply to say,

1 "For the purposes of this provision, where there is
2 Indian lands in remote Alaska, 'Indian lands' will mean
3 the same thing as the formula areas in Alaska." And
4 cites to the paragraph (4) of the definition section.

5 And I think that will resolve the ambiguity. So
6 I'll hand the language over so we can type it up.

7 MS. FIALA: Yes, please. While we're getting that
8 typed up, did anyone have any other questions about the
9 comment? And then we'll address the new proposed
10 language.

11 Annette?

12 MS. BRYAN: I had a question about the statistical
13 areas or the -- are they service areas? Is all of
14 Alaska in the statistical area? Some of the tribes,
15 lower tribes in the lower 48 have service areas that
16 are bigger than their Indian land areas. So would we
17 then be counting the four county area, or what will
18 this do to the needs variable in the formula for the
19 rest of the lower 48? If someone could answer that?

20 Gabe?

21 MR. LAYMAN: Gabe Layman. I'm serving as

1 alternate for Teri Nutter with Copper River Basin
2 Regional Housing Authority.

3 I don't know if, Aaron, is HUD going to take a
4 crack at answering that? Because if not, I'd be happy
5 to take a stab at it.

6 MR. SANTA ANNA: Please go ahead.

7 (Laughter.)

8 MR. LAYMAN: So, Annette, to your question, in
9 Alaska, there are two geographies within the IHBG
10 regulations, right? You have Indian areas, and you
11 have formula areas. And for both Indian areas and
12 formula areas, the geography at present can be the
13 Alaska Native Claims Settlement Act regional
14 corporation geography.

15 What this would do is simply ensure that for the
16 purpose of this new term "Indian lands" that would come
17 into the regs, it would be consistent with those
18 geographies in Alaska that are used today.

19 MS. FIALA: Annette, did that answer your
20 question?

21 MS. BRYAN: Yes. Carol?

1 MS. GORE: I was just going to add a
2 clarification. This is not intended to change the
3 outcome of the consensus item the committee already
4 discussed. It's specific to remote Alaska and those
5 formula areas for those remote Alaska villages.

6 So I just wanted to offer a clarifying comment.
7 Thank you.

8 MS. FIALA: So I think we have the language up on
9 the screen. So that reads, "For the purposes of this
10 paragraph, the term 'Indian lands' mean Alaska formula
11 areas described in paragraph (4) of the definition of
12 'formula area' set out in Subsection 1000.302."

13 So if you wouldn't mind taking that and moving it
14 in, in redline, so that you can see how it would be
15 inserted? At the very -- yep.

16 All right. So while she's putting that in so you
17 can see the entire section, I wanted to open up for
18 questions about the proposed language.

19 (Pause.)

20 MS. FIALA: I'm going to go, turn it back to the
21 co-chairs.

1 MS. BRYAN: Thank you, Sara.

2 At this time, we've had discussion and looked at
3 the possible -- the recommended language. Do we have
4 consensus on this item? Yes, Jason?

5 MR. ADAMS: Just a question here. I'm looking at
6 302. Maybe I have an old copy, but Section 4, the
7 proposed language says paragraph (4) of the definition?
8 My paragraph (4) is formula annual income. Is it
9 supposed to be (5), formula area, where formula area
10 defines Indian lands?

11 MR. SANTA ANNA: If I can -- if I can respond? I
12 don't know if it's working.

13 If I could respond to that? The Federal Register
14 has some very detailed rules about how to write
15 regulations. One of the things that happens is that in
16 a section like 302, which is a -- sets out definitions
17 for the section, that you don't get the nice
18 subparagraphs all the way down.

19 So in Section -- Section 302, if we just drop it
20 in Section 302, that would cover the definition of
21 formula areas, which is the fourth -- the fifth

1 definition down in the section. If that makes it
2 clearer? I'm not sure whether, Ed, that's what you
3 were intending to do.

4 (Background conversation.)

5 MR. SANTA ANNA: And Sharon just suggested, you
6 know, that there are formula area, because the way it's
7 laid out, is broken down a little bit, and there is a
8 paragraph (4) for that definition. So perhaps what we
9 can do is say -- I have to get used to this. "Means
10 Alaska formula areas, as described in the definition of
11 formula areas, paragraph (4), as set out in Section" --
12 let's make that a section.

13 This should be the definition of formula area "in
14 paragraph (4) of the definition of formula area as set
15 out in Section 3 -- 1000.302."

16 MS. FIALA: Heidi?

17 MS. FRECHETTE: It would be helpful for me if we
18 could put up the proposed response that's in the
19 document, too, and get an understanding of it
20 accomplishes the same thing or what the differences
21 would be between this language and what the other

1 proposal is.

2 MS. FIALA: So, Christine, if you could take the
3 proposed and then just maybe stick it below?

4 MR. SANTA ANNA: Delete the hard return there.
5 There should be a hard return.

6 Okay. Yeah, here we have been talking about this
7 issue as well, and I know that some of our program
8 council team had been working with individuals in
9 Alaska to try to come up with some language. And this
10 is -- this is a recommended change.

11 If I could ask either Jad or Alyce to describe
12 what it is and to also be able to indicate where we
13 would be putting this language in the section?

14 MS. FIALA: I would like to say that we still do
15 have a proposal that is on the table, and that is the
16 yellow highlight. So --

17 MR. ATALLAH: Good morning. Jad Atallah with OGC.
18 Jad the Dad, aka "Jad the Dad."

19 (Laughter.)

20 MR. ATALLAH: So I guess it sounds like the
21 ambiguity that has been created here has been the use

1 of the term "Indian lands," which has its own
2 implications and complications. So our proposal is
3 just to sort of step away from using the term "Indian
4 lands" because it's really not necessary.

5 What happened here is when the Census did their
6 coverage study, they have specifically defined
7 geographies in Alaska that they identified as remote
8 Alaska that were not covered by the study. And
9 therefore, the Census couldn't determine whether there
10 was an undercount. And what the committee decided to
11 do was to apply the 4.88 upward adjustment to those
12 geographies.

13 We know what those geographies are because the
14 Census, in their study, identified them. They have
15 actually on their Web site a map. It shows you
16 specifically what areas were not included, and those
17 are the areas that we would be applying the upward
18 adjustment to.

19 So our proposal, just to sort of simplify this
20 issue that's gotten very complicated, is just to not
21 use the term "Indian lands" and just say for purposes

1 of this paragraph, the term -- I'm sorry, our proposal
2 is up there? Okay.

3 So if you look on the right screen, the second
4 paragraph, and we would change the term "Indian lands
5 in remote Alaska" to "Alaska formula areas in remote
6 areas, as defined by the U.S. Census Bureau, shall be
7 treated like trust and reservation lands," which gives
8 them the upward adjustment.

9 So this was just sort of our effort to -- our
10 attempt to simplify this issue without using the term
11 "Indian lands" that complicates and brings all those
12 legal implications into this discussion and just say
13 "Alaska formula areas in remote areas." Again, those
14 geographies were identified by the Census. So we know
15 what they are, and those are the ones that will be
16 getting the upward adjustment.

17 In the future, if the Census includes these areas
18 in a future study, then they would not, under the terms
19 of the regulation that the committee agreed to in
20 January, would not get the upward adjustment if they're
21 included and Census says there was no undercount.

1 MS. FIALA: So I think where we had left off was
2 the original proposal presented by Sam had got voted
3 down. So Jason dissented? No. He just had a
4 question. Okay.

5 So is HUD now proposing this new revised language
6 as a brand-new proposal?

7 (Pause.)

8 MS. FIALA: Yes? Okay. So the new proposal that
9 we have on the table then would be -- can you
10 highlight, Christine? This language that would be up
11 for discussion.

12 (Pause.)

13 MS. FIALA: Sami Jo, I'm sorry. Did you have your
14 --

15 MS. DIFUNTORUM: Yeah. So a member of the
16 audience has asked if we would not use highlighting on
17 the screen. It's hard to read. Instead, if you could
18 use underlining and strike through as you're editing?

19 Thank you.

20 MS. FIALA: Okay. So the new proposal is the
21 underlined section. Heidi?

1 MS. FRECHETTE: And I think there is a typo in the
2 HUD proposal. It should read "Alaska formula areas in
3 remote Alaska," not "remote areas."

4 MS. FIALA: Jason?

5 MR. ADAMS: Jason Adams, Salish Kootenai.

6 I'm looking at the language that we proposed new
7 in 330 that we're talking about here, and I'm not quite
8 sure how the proposed language that HUD is proposing
9 fits in. Because you kind of end your thought without
10 finishing the full paragraph and how that would read
11 because it mentions "remote Alaska" in the next
12 sentence.

13 Does that get removed, or I think the whole
14 section should be finished with your proposed language
15 and not just the three dots.

16 MS. FIALA: So I think if we could move then --
17 the suggestion would be to move the proposed language
18 actually into the rule to see how it would flow
19 altogether.

20 So, Jee Sol, you can take out the underlined piece
21 because that was voted down.

1 (Pause.)

2 MS. FIALA: Okay. So the underline is the newly
3 inserted language. Questions, comments? Gabe?

4 MR. LAYMAN: So this language looks good in
5 principle. I think the one aspect of this that is a
6 little bit ambiguous is this reads, "Alaska formula
7 areas in remote Alaska, as defined by the U.S. Census
8 Bureau." And it should just be clear for the record
9 that the Census Bureau defines the term "remote
10 Alaska," but not the term "Alaska formula areas in
11 remote Alaska." Obviously, that's covered under the
12 IHBG regulations.

13 MS. FIALA: So would you like to amend the
14 language, Gabe?

15 MR. LAYMAN: I don't think it needs to be amended
16 so long as it's clear on the record that only the term
17 "remote Alaska" is defined by the Census Bureau.

18 MS. FIALA: Earl?

19 MR. EVANS: I agree with Gabe's sentiment, but --
20 and I really didn't think about it until he made that
21 clarifying point. So now I am wondering should there

1 be something that clarifies that the remote Alaska is
2 the term defined by the Census Bureau?

3 MS. FIALA: Aneva?

4 MS. YAZZIE: Aneva Yazzie, Navajo Housing.

5 Perhaps a suggestion just to clarify. Maybe you
6 state, "For remote Alaska, as defined by the U.S.
7 Census Bureau, Alaska formula area shall be treated as
8 the reservation and trust lands."

9 MS. FIALA: They'll break that up somewhat.

10 MS. YAZZIE: Can I -- want me to reread that?

11 MS. FIALA: Could you repeat that again?

12 MS. YAZZIE: The issue was separating "Alaska
13 formula areas," the ambiguity between that and "remote
14 Alaska." I'm suggesting maybe start the sentence "For
15 remote Alaska, as defined by the U.S. Census Bureau,
16 Alaska formula areas shall be treated as reservation,"
17 and so forth. Would that help in clarifying?

18 MS. FIALA: So that would be a friendly amendment
19 to HUD's language? HUD, is that acceptable? Gabe?

20 MR. LAYMAN: Yeah, I think that looks pretty good,
21 and AJ, if you're looking for any legal work, you can

1 come see me at some point.

2 (Laughter.)

3 MS. FIALA: All right. So are there any other
4 questions or comments about the revised language?

5 (No response.)

6 MS. FIALA: I'll turn it back over to the co-
7 chairs.

8 MS. BRYAN: Thank you. Very smart group.

9 I'm going to say can we move for consensus? Do we
10 have consensus on this?

11 (Voting.)

12 MS. BRYAN: Good job, everyone. We have
13 consensus. Thank you.

14 Where would you like to go next, Aaron?

15 MS. FIALA: I believe the next comment, which is
16 page 19 in the booklet, is "Require HUD to issue a
17 report on the data source and update the data source,
18 if necessary."

19 So I'll turn it back over to Aaron to introduce
20 the comment, and we'll have it pulled up in just a
21 second.

1 MR. SANTA ANNA: One commenter recommended that we
2 add this language to Section 330(d) that would
3 basically require that HUD prepare a report on the data
4 sources, including whether or not the data sources
5 provide reliable information on the funding variables.

6 This is one that -- so this was a comment. But
7 they indicated that if -- if we keep the voluntary
8 provisions and proceed, and I guess that should be the
9 American Community Survey is adjusted. Then they would
10 recommend this language.

11 And we really want to be able to address this part
12 here because some of the other part -- some of the
13 other part of this comment we'll be talking about a
14 little bit later, I think.

15 MS. FIALA: Thank you.

16 So the comment is up on the screen. Are there any
17 questions about the actual comment before we move on to
18 the proposed response?

19 (No response.)

20 MS. FIALA: All right. Aaron, do you want to go
21 over the response?

1 MR. SANTA ANNA: Sure. Our response was to
2 indicate that, "The committee considered the comment
3 and agreed not to add the language. In reaching this
4 decision, the committee noticed that the language
5 recommended was somewhat -- is ambiguous because it
6 does, as an aside, it does talk about, you know,
7 reliable information.

8 "Additionally, the Indian Housing Negotiated
9 Rulemaking Data Study Group extensively evaluated all
10 data sources used in the formula during negotiated
11 rulemaking. The resulting report outlining the
12 committee's Data Study Group process and final
13 recommendations to the committee was published with the
14 proposed rule."

15 So we're basically saying that the committee has
16 decided not to add that proposed language.

17 MS. FIALA: So we're going to open up for comments
18 and questions on the proposed response.

19 (Pause.)

20 MS. FIALA: Seeing no questions or commenters, I'm
21 going to turn things back over to the co-chairs.

1 MS. BRYAN: All right. We have a proposed
2 response in front of us. No questions or discussions.

3 Do we have consensus on the recommended response,
4 proposed response?

5 (Voting.)

6 MS. BRYAN: Seeing no dissension, we have a
7 consensus.

8 Thank you. Move to the next item.

9 MS. FIALA: The next comment is on page 20 of your
10 packet. The comment is about counting and averaging of
11 the U.S. decennial census date. Aaron?

12 MR. SANTA ANNA: We received one comment that
13 recommended that the AIAN determination be adjusted for
14 both over and undercounts for accuracy. The commenter
15 also asked who determines what is significant since
16 it's not defined in the regulations, and then a third
17 commenter suggested that we, HUD, determine what the
18 actual undercounts on a reservation-by-reservation
19 basis.

20 MS. FIALA: Questions or -- Sharon?

21 MS. VOGEL: Aaron, just for the record, could you

1 make sure that when you refer to commenter number 11,
2 that that represents a group of tribes and that
3 commenter number 16 also represents 8 tribes from my
4 region. So it's not one commenter, but we agreed on
5 these comments.

6 MR. SANTA ANNA: Absolutely.

7 MS. FIALA: Gabe?

8 MR. LAYMAN: I'll hold off for a moment until HUD
9 provides its response.

10 MR. SANTA ANNA: Could you scroll it up just a
11 little bit to B? Right there. This is where the
12 language they're recommending be added.

13 So if you would scroll up to our -- not to here,
14 but over on that side, our proposed response. Our
15 proposed response is that, "The committee considered
16 the comment and agrees that the regulation should make
17 adjustments for any statistically significant over or
18 undercount, as determined by the U.S. Census.

19 "In the case of an overcount, however, the
20 adjustment would not be presumed to apply to formula
21 areas not explicitly incorporated in the Census Bureau

1 determination. That is areas in remote Alaska.

2 "Statistical significance is a level of confidence
3 that a relationship between two or more variables is
4 caused by something other than random chance. The U.S.
5 Census Bureau determines whether overcounts or
6 undercounts are statistically significant.

7 "Finally, HUD does not have the administrative
8 capability to determine actual undercounts on a
9 reservation-by-reservation basis."

10 And along with that, we would be proposing to add,
11 where is that? Right here. "A statistically
12 significant under or overcount."

13 MS. FIALA: Gabe?

14 MR. LAYMAN: I'll defer to Jason.

15 MS. FIALA: Jason?

16 MR. DOLLARHIDE: If my memory serves me correctly,
17 I know we discussed a lot pertaining to the undercount,
18 but I don't recall this committee discussing much on
19 the overcount. If somebody could correct me if I'm
20 wrong?

21 MR. SANTA ANNA: If I might respond? I'm sorry.

1 Go ahead.

2 We had a footnote in the proposed rule that
3 indicated that the U.S. Census Bureau also found a not
4 statistically significant overcount of 3.8 percent in
5 tribal areas off reservations. HUD is not proposing
6 that these tribal areas be adjusted down.

7 So there was some discussion, as I recall, about -
8 - about overcount. But the two things to really
9 emphasize, the overcount that we're dealing with here
10 is not significant, and so for the forbearable future -
11 - foreseeable future, it's not really going to have any
12 impact, as I understand it. And we're also only
13 talking about overcounts that would be statistically
14 significant.

15 MS. FIALA: I think we have Jason Adams and then
16 Gabe.

17 MR. ADAMS: Jason Adams, Salish Kootenai.

18 Just two comments on the proposed language. I
19 guess, first of all, it says the committee considered
20 this comment, and it should be "these comments" because
21 there was several tribes that signed on to these

1 comments. So it's "these comments." Just to, again,
2 make it sound like -- I mean, there was more than one
3 comment made in regards to this, signed on by several
4 tribes.

5 And then the second comment is the last sentence
6 says, "Finally, HUD does not have the administrative
7 capacity." Well, it's my understanding that HUD does
8 not have to come up with these undercounts or
9 overcounts. This is something that comes from the U.S.
10 Census Bureau.

11 So my question is, does the U.S. Census Bureau
12 have the capacity to determine undercounts based on a
13 reservation-by-reservation basis? If they do, then
14 can't we get the information from them? I mean, this
15 isn't HUD's job. You're getting this from the Census
16 Bureau anyway.

17 MR. SANTA ANNA: And just as a point of
18 clarification, what they were asking for were actual
19 undercounts. I'll let Todd talk to anything else about
20 that.

21 MR. RICHARDSON: The CCM study that the estimates

1 come from is a sample-based study that didn't have a
2 large enough sample to be able to do estimates specific
3 to any individual tribe. So we can't get the
4 undercounts or overcounts for any specific tribe, just
5 the Native Americans in reservation and trust land,
6 Native Americans in other tribal areas, and the rest of
7 the country. Excluding -- Alaska is not part of the
8 study.

9 MS. FIALA: Gabe?

10 MR. LAYMAN: Gabe Layman, alternate for Teri
11 Nutter with Copper River Basin Regional Housing
12 Authority.

13 So I just want to quickly voice a bit of a process
14 concern, which is that if you go back to the last
15 session, I think Jason is correct that the committee
16 did not take up the issue of whether to adjust for
17 overcounts, whether or not they were statistically
18 significant. My recollection is, like Jason said, this
19 body decided to deal with those undercounts.

20 My concern is that the language being presented by
21 HUD would have the impact of potentially adjusting

1 based upon reported overcounts, and that may or may not
2 be the right thing to do, but it's not what the
3 committee considered at its last session, if I recall
4 correctly. That the committee, at its last session,
5 specifically focused on what to do with respect to
6 undercounts.

7 MS. FIALA: Do you have a change that you would
8 like to present to the language proposed, Gabe?

9 MR. LAYMAN: If you give me a quick moment, I
10 will.

11 MS. FIALA: Carol?

12 MS. GORE: Thank you.

13 I recall the committee had a pretty robust
14 discussion about what is significant. And I took that
15 as a request to take back to the Census in my role
16 there, and I asked the Director and a number of staff
17 is there a definition for "significant"? Where is it
18 not significant?

19 And their response to me was it's really up to the
20 author of the report, and they leave that in the hands
21 of the author of the report. They do not have a clear

1 line between what is significant and what is not
2 significant. I found that troubling. And I am not
3 disagreeing with any decisions that this committee has
4 already made, but I'm a tad uncomfortable with two
5 sentences in the response.

6 The first begins with "statistical significance"
7 and attempts to define that as a relationship. The
8 second is "The U.S. Census Bureau determines whether
9 overcounts or undercounts are statistically
10 significant."

11 I personally think this is up to the tribes to
12 figure out if it's statistically significant, whether
13 or not it's defined as so by the Census. The reason I
14 am concerned about the second sentence that begins "The
15 U.S. Census Bureau" is I do not wish to unintentionally
16 approve some automatic adjustment that might apply that
17 doesn't come before the tribes and ask for their input.

18 So I'm asking HUD for clarification on those two
19 sentences and whether or not they are relevant to the
20 response.

21 Thank you.

1 MS. FIALA: I think Todd is going to -- or Aaron?

2 MR. SANTA ANNA: Yes, Todd.

3 MR. RICHARDSON: So before -- generally speaking,
4 before you start a study, you say to yourself, what is
5 the level of significance that -- what is the level of
6 error we're willing to accept here for thinking that
7 something actually is happening or not?

8 So you can do so, you can say I have -- I want to
9 know with 90 percent confidence or 95 percent
10 confidence that this has -- the probability that this
11 happened for real rather than by chance. And so before
12 you start a study, you typically say this is the
13 variable that we want to do, and we want to know what
14 that level of confidence.

15 And I think for this study, the authors used 90
16 percent as their threshold. They have 90 percent
17 confidence that this happened, that this particular
18 result was not a matter of chance. So you can set
19 higher levels of thresholds for that significance.

20 For this case, in this case, I think that they set
21 it at 90 percent, which is a -- which is a level that

1 is commonly used by social scientists for this kind of
2 sample survey research.

3 Were there two questions? I'm only good with one
4 at a time.

5 MS. GORE: That's all right. My second question
6 was whether or not this language would motivate an
7 automatic change to the formula without communication
8 to the tribes?

9 I just want to make sure that this language does
10 not trigger some automatic change to the formula. If
11 there is a report delivered by Census that describes an
12 undercount or overcount as significant, does that
13 result in any action from HUD on the formula without it
14 coming back to the tribes in this table?

15 MR. RICHARDSON: So for the 2020 -- for the 2010
16 census, the review that's been done is the review.
17 That is this is the study that we're going to use for
18 2010 census. For 2020 census, there will be a new CCM
19 estimate, and that new CCM estimate may find an
20 undercount, may not, may find an overcount, may not.
21 But it will be a new study.

1 So I think, this is in regulation that this
2 regulation for the current 2010 census, what we've
3 described, the current study just the undercount would
4 be factored in. But if there's a new -- with the new
5 study in 2020, which we don't know the results of, if
6 the regulations state that we would make an adjustment
7 for undercount and overcount, we would use the
8 statistically significant undercount or overcount from
9 that study, but only after the 2020 census is completed
10 and that study is complete.

11 MS. GORE: Sorry. May I ask one more clarifying
12 question? This is 2016, and 2010 has been out for some
13 time. Does that mean if we don't hold negotiated
14 rulemaking before the 2020 census is available for use
15 by HUD that it would be automatically implemented?

16 Thank you.

17 MR. RICHARDSON: So my understanding is that that
18 is, in fact, what would happen here is that we would
19 move forward with implementing the 2020 census when
20 it's available.

21 MS. BRYAN: Thank you. Jack?

1 MR. SAWYERS: Stay there, Todd. Why can't -- why
2 can't we do census on the tribe-to-tribe basis? Why
3 can't we do overcount and undercount by -- well, it'd
4 be mostly undercount from tribe to tribe?

5 MR. RICHARDSON: Well, this actually gets to the
6 question about your level of confidence in the data,
7 the statistically significant issue. But what's your
8 level of confidence in the sample size?

9 So the sample sizes are such for any individual
10 tribe not large enough -- so what happens is, is that
11 there's like a shadow -- there's when the current
12 census is going on, there's another group of folks that
13 are coming behind and checking and saying, okay, we
14 sent surveys to all these folks. Let's sample some of
15 the folks that got the 2010 survey, and let's find out
16 if -- let's do, look at the same group and see how many
17 people actually responded to the survey that we sent
18 out, right? So this is how they're doing that at the
19 same time.

20 Well, they're not sampling, they're not repeating
21 the actual 2010 census. They're doing a much smaller

1 sample, and that smaller sample is designed to give
2 national numbers broken down by these categories we've
3 already discussed.

4 But they're not -- it's not designed to say this
5 much for this tribe and this much for that tribe. The
6 sample size isn't large enough to do so with 90 percent
7 confidence, which is what they're going for here is
8 with 90 percent confidence that the results show it's
9 there's an undercount or an overcount.

10 So you have to have a lot. If you think about
11 these big -- it's an election season. You think about
12 this polling. So the polling sort of says that you
13 need about 1,000 folks to have 90 percent confidence at
14 plus or minus 3 percent, right? So that's kind of
15 where we are with the polling. Well, you have to have
16 that big of a sample in each of these places, which
17 they don't have.

18 MS. BRYAN: Thank you. Sami Jo?

19 MS. DIFUNTORUM: Yeah, Todd? So, hopefully, this
20 isn't too terribly confusing. I want to make sure that
21 I understand exactly what we're talking about with

1 reference to the second to the last sentence. The
2 definition of "overcount" and the definition of
3 "undercount," who those apply to. We discussed that.
4 I do think we did at the last session.

5 And so the overcount, correct me if I'm wrong, is
6 specific to the definition in remote Alaska, and the
7 undercount, the 4.88 percent, there was a definition
8 with that as well, reservation and trust lands?

9 MR. RICHARDSON: So the undercount -- actually,
10 the overcount, we have only -- the current regulation
11 only speaks to undercounts, and that undercount applies
12 for reservations and trust lands. We agreed to expand
13 that to remote Alaska because the study that we're
14 using did not actually have remote Alaska included as
15 part of the sample. But I think under the
16 understanding that remote Alaska is quite similar to a
17 lot of the reservation and trust lands that are remote,
18 and if there's an undercount in the remote reservations
19 and trust lands, it's probably undermet -- undercounted
20 in remote Alaska.

21 So that was for the undercount. Others can

1 correct me if they like.

2 For the overcount, the overcount was in the study
3 that I provided, there is an estimate for undercount.
4 There's also an estimate for overcount. And the
5 undercount estimate was statistically significant.
6 There was -- there was a number that said this would be
7 an overcount, but it was not statistically significant.

8 That is, the Census Bureau, the author of that
9 report did not, with the data they had did not have 90
10 percent confidence that that was different than zero.
11 So they said it's not statistically significant.

12 MS. FIALA: Sami Jo and then Gabe?

13 MR. LAYMAN: We have -- she has a follow-up.

14 MS. DIFUNTORUM: Can I do a follow-up?

15 MS. FIALA: Sami Jo, then Gabe.

16 MS. DIFUNTORUM: Just to clarify. Thank you.

17 Sorry, Gabe -- Teri.

18 So the 4.88 percent applies to everybody that
19 falls within that definition, whether or not there is
20 an undercount, which I think is to the point that Jack
21 was making on a tribe-by-tribe basis.

1 MR. RICHARDSON: Yes, that's correct. It's going
2 to -- it's applied across the board on the American
3 Indian/Alaska Native variable alone. It's applied
4 across the board for all geographic areas that are
5 defined by the Census Bureau as reservation trust land,
6 plus there's the Alaska Native villages that are in
7 remote Alaska, and we're going to have another
8 discussion -- we haven't had that discussion yet, I
9 stepped out, on Alaska?

10 MALE SPEAKER: Yes, we had it.

11 MR. RICHARDSON: You did? Okay. You've got that
12 covered then. Sorry.

13 MS. FIALA: Gabe?

14 MR. LAYMAN: Thank you. Gabe Layman, alternate
15 for Teri Nutter, Copper River Basin Regional Housing
16 Authority.

17 So to your question, Sami, I think it's really
18 important here to clarify that the action that the
19 committee took at its last session was specific to
20 undercounts. The committee didn't take action and
21 create any language, if I'm correct, that dealt with

1 overcounts. And if I'm not correct in that statement,
2 please set me straight, Aaron.

3 MR. SANTA ANNA: That is correct.

4 MS. FIALA: So we have a proposal from HUD that's
5 presented. Does anybody -- we've had discussion. Does
6 anybody have any revisions or additional questions?
7 Gabe?

8 MR. LAYMAN: Thank you.

9 So based upon that comment, I'd like to offer some
10 revisions that reflect the fact that the committee
11 didn't take action on anything that was related to
12 overcounts at its last session, and this is -- whether
13 it's right, wrong, or indifferent, it's really about
14 process, what the committee did and did not address in
15 the course of its deliberations.

16 So that language would simply read, "The
17 committee" -- and I'm sorry. We would start fresh here
18 with a new paragraph.

19 So it would read, "The committee, during its
20 eighth session, considered how to address undercounts
21 and overcounts reported by the U.S. Census Bureau. The

1 committee, by consensus, determined that adjustments to
2 data should be made for statistically significant
3 undercounts. The committee did not reach consensus on
4 any adjustments to data based upon overcounts."

5 And again, the intent of this language is just to
6 reflect the actual deliberations of the committee at
7 its last session.

8 Thank you.

9 MS. FIALA: So that's an amendment to HUD's
10 language. HUD, is that acceptable to you?

11 MR. SANTA ANNA: Just a point of clarification for
12 me. If we are going to not adopt the language, if
13 that's the committee's intent, then, of course, we'd
14 want to rewrite all of the first part, and we would
15 want to say that we are not doing this for this reason,
16 if that's what the intent of the language is.

17 MR. LAYMAN: So my understanding, Aaron, is that
18 the comment that was submitted was essentially
19 suggesting that there be adjustments made on the basis
20 of overcounts as well as undercounts and that the
21 response of the committee would address that particular

1 comment. That's what this language is intended to do.

2 MR. SANTA ANNA: Okay.

3 MS. FIALA: HUD, is that an acceptable change?

4 MS. CASTRO RAMÍREZ: It's acceptable to us.

5 MS. FIALA: Aneva?

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

7 Housing Authority.

8 So the language of the statistical significance is
9 still relative in terms of even the definition, and
10 that's really dependent on the author or whomever is
11 conducting the study. I wonder, and this is just a
12 suggestion, to define that even more narrower by
13 stating that we can set it at 95 -- no, 90 percent
14 level of confidence if we want to say what is
15 statistically significant. That's hard for me to
16 pronounce.

17 Rather than -- if that's, Todd, if I can, I refer
18 to Todd, too, because the norm is trying to attain 90
19 percent as statistical is what I heard. Why don't we
20 define it to be at a 90 percent confidence interval if
21 that's the case?

1 MR. SANTA ANNA: I think there are some -- Todd
2 can talk to the economic implications of that. I
3 believe there's also some legal implications to that,
4 and that is that we may be going beyond the scope of
5 the proposed rule by setting out a specific level for
6 determining significance.

7 What I mean by that is integral to rulemaking is
8 the idea that we give the public the opportunity to
9 comment on our proposals, and anything that we change
10 has to be kind of a logical outgrowth of the proposed
11 rule. We have to be able to allow the public the idea
12 to have the -- to understand that we may be changing
13 things in a particular way to -- at this point in time,
14 to have a definition of what is statistically
15 significant may not have been actually out for the
16 public to understand that we would be making that
17 change at this point.

18 I would have some concerns about moving in that
19 direction. I think it creates a risk for the rule.

20 MR. RICHARDSON: So, you know, we talked about the
21 author in this case, but you know, there is -- it's the

1 Census Bureau has many, many, many meetings -- you've
2 been to a few meetings -- where this is what they talk
3 about. They talk about why would we want this? What
4 is going to be the level of statistical significance we
5 want for this study? What would we do that?

6 So they have a lot of conversations that reflect
7 their professional judgment and skill, and they're
8 trying to set standards that reflect the study they're
9 designing. And so I wouldn't want to -- I would want
10 to rely on their judgment about whether it's
11 statistically significant rather than locking us into a
12 particular level here.

13 I think that we want to use the professional
14 judgment of those statisticians who are far better
15 statisticians than I will ever be. So I'd like to use
16 their judgment there.

17 MS. FIALA: Sami Jo?

18 MS. DIFUNTORUM: I must have forgot to put my card
19 down. You can go on to Earl.

20 Thank you.

21 MS. FIALA: Earl?

1 MR. EVANS: Earl Evans, Haliwa-Saponi Indian
2 Tribe.

3 I'm a little leery of putting that "or overcount"
4 in there, and the reason being, as it was already
5 stated, we didn't come to any type of consensus on
6 anything concerning overcount. If I recall correctly,
7 maybe someone can let me know whether or not I'm wrong
8 on this, but I thought that it was stated earlier that
9 the report that Todd was referring to that had the
10 information from the Census Bureau in terms of what
11 were the statistically significant overcounts and
12 undercounts, that that specific report did not indicate
13 that any of the overcounts were statistically
14 significant. Even though it had some overcounts, that
15 that specific report did not indicate they were -- that
16 they were statistically significant.

17 So if that's the case, I think our response, our
18 proposed response should also include a statement that
19 based on the reports the committee reviewed, the census
20 did not indicate any statistically significant
21 overcounts.

1 MS. FIALA: So are you proposing that as a change
2 to the language on the screen?

3 MR. EVANS: Yes, ma'am. I will say after the
4 language that Gabe proposed earlier that we have a
5 sentence that indicates, "The census reports reviewed
6 during the convenings of the committee did not indicate
7 any statistically significant overcounts."

8 MS. FIALA: The census reports reviewed during the
9 convenings of the committee did not --

10 MR. EVANS: -- did not indicate any statistically
11 significant overcounts.

12 And then also, in order to answer the question,
13 some of the questions that the commenter or the
14 commenters proposed, then I think it's okay to then use
15 HUD's statements about stating that the Census Bureau
16 determines the overcounts and undercounts, that last
17 sentence. I'm sorry, the last two sentences of HUD's
18 prior proposed language there. Right, those two be
19 added to the end, and I think that should be the
20 response.

21 Thank you.

1 MS. FIALA: HUD? I believe they made a change to
2 the language, a friendly amendment to the language. So
3 I want to see if that's -- yes?

4 MR. ADAMS: Just a clarifying question. Jason
5 Adams.

6 I guess I was working off the presumption that
7 these two paragraphs were both going to appear in the
8 response.

9 MS. FIALA: I believe that was the --

10 MR. ADAMS: Is that not --

11 MS. FIALA: Was not the intent.

12 MR. ADAMS: Is that not what we were working at?
13 No? Because I didn't see a strikeout of the first
14 paragraph to let me know that.

15 MS. FIALA: Sorry. The first paragraph should be
16 stricken. Correct? Gabe, your intent was only to
17 present "The committee, during its eighth session --"

18 So Earl's suggestion would be to move down that
19 language, and so the whole proposed language would be,
20 "The committee, during its eighth session," essentially
21 striking out the majority of the language that HUD had

1 presented initially.

2 Jason?

3 MR. ADAMS: Well, I guess I would vote no to that
4 proposal because the first paragraph talks
5 significantly about the undercount, and that's the
6 major issue that that I thought Gabe was adding the
7 second paragraph to cover more about the overcount
8 issue. Because the first paragraph does a good job of
9 talking about the undercount. That's why I was working
10 off the presumption that it was both.

11 If we're not going to do that, I -- because I see
12 what Earl is trying to do and add in that sentence.
13 But if you just leave both paragraphs, it covers the
14 issue, for me at least. And by the way, my comment was
15 going to be great minds think alike. I was going to
16 add the same sentence on the end about the overcount
17 issue in that sentence you added. So thank you.

18 MS. FIALA: So, Heidi, if you want to respond to
19 the changes to the language?

20 MS. FRECHETTE: First, I just wanted to make a
21 comment that our response was just in response to a

1 public comment that raised the thought of looking at
2 overcounts. And so if the committee does not want to
3 pursue any language on the overcounts, HUD is
4 supportive of that. We were just putting up a response
5 in response to a comment.

6 MS. FIALA: So is that change acceptable to strike
7 that initial language out and to keep Gabe's language?

8 MS. FRECHETTE: Yes. One other comment. We'd
9 like to strike the last sentence that reads, "Finally,
10 HUD does not have the administrative capability,"
11 because essentially what we're doing is we're using the
12 U.S. census analysis of what is statistically
13 significant.

14 (Pause.)

15 MS. FIALA: So we had Jason Dollarhide.

16 MR. DOLLARHIDE: Thank you. Jason Dollarhide,
17 Peoria Tribe.

18 Pertaining to the response, my concern also is the
19 "or overcount" that was submitted over here onto your -
20 - onto your right or into the regulation. You know,
21 I'm uncomfortable with putting that in there because,

1 once again, you know, it wasn't discussed by this
2 committee, and I believe that that would be something
3 that has to be discussed within a negotiated
4 rulemaking.

5 And my understanding is that, you know, this will
6 go into effect before the negotiated rulemaking -- a
7 new negotiated rulemaking committee on the formula will
8 be put together. Is that -- that's the way that I
9 understand that. So I believe that should be struck.

10 MS. FIALA: So the suggestion was to strike the
11 "or overcount" from the reg language.

12 Are there any other questions or comments about
13 the language that's up on the screen? "The committee,
14 during its eighth session" and then also I guess now we
15 don't have any changes to the regulatory language. So
16 it would just be the language in response to the public
17 comments.

18 I'm sorry. Sharon?

19 MS. VOGEL: Sharon Vogel, Cheyenne River Housing
20 Authority.

21 So by taking and striking that first part, then we

1 aren't answering the commenters' questions or comments.

2 MS. FIALA: So the question is that with the new
3 language, that the original comment was not being
4 addressed. Christine, if you could scroll back up so
5 we could see what the summary of the comments --
6 comments were?

7 And I believe that's why HUD said they had
8 included the overcount language and was to address the
9 comment, but the new language does -- Gabe?

10 MR. LAYMAN: Gabe Layman, alternate for Teri
11 Nutter, Copper River Basin Regional Housing Authority.

12 So I think some of the confusion here is that the
13 committee is really trying to grapple with two
14 separate, but related issues, right? The first issue
15 is this issue of do you adjust for undercounts and
16 overcounts, and then the second issue is based on the
17 comments about what is statistically significant.

18 The bulk of the comments that I offered were
19 intended to resolve the former issue rather than the
20 latter. And I can certainly appreciate Jason's
21 perspective that based upon the comments that I have

1 offered to deal with that first issue, it perhaps
2 doesn't clearly enough deal with the second issue. And
3 I'm certainly open to suggestions about how to address
4 that issue of statistical significance as well.

5 MS. FIALA: So, Sharon, did you have any language
6 that you would like to present to address the submitted
7 public comments?

8 MS. VOGEL: Well, I think we need to take the
9 original -- build off of the original response and then
10 add the clarifier that Gabe had put in to address the
11 overcount. So I think we need to start with what was
12 originally proposed and then just clarify that where
13 HUD wanted it stricken that they don't have the
14 administrative capacity, I think just put a clarifier
15 in there that currently there's no determination being
16 made to determine over or undercount on a reservation-
17 by-reservation basis.

18 I think that was -- that was the -- that would
19 respond to the comments from our region. Now
20 currently, nothing is being done to determine that.
21 There isn't a way to determine reservation by

1 reservation.

2 MS. FIALA: So your recommendation, Sharon, would
3 be then to keep the HUD language --

4 MS. VOGEL: Mm-hmm.

5 MS. FIALA: -- add in the revision submitted by
6 Gabe --

7 MS. VOGEL: Well --

8 MS. FIALA: -- with an additional sentence?

9 MS. VOGEL: -- his -- yes. But I agree that if
10 HUD wants to strike their -- that last part that says
11 HUD doesn't have the administrative capacity to
12 determine, I think an honest response is currently
13 there is no way to determine that, and I think that
14 would be an honest response.

15 MR. SANTA ANNA: At the point of -- at the risk of
16 creating a little bit more confusion, but not wanting
17 to, would it be helpful if we just took the first line
18 of the proposal and put in the word "not" and had that
19 sentence lead in to what Gabe provided?

20 "The committee considered these comments and
21 agreed that the regulation should not make adjustment

1 for statistically undercount or overcount." And then
2 everything else would lead in. It would address the
3 commenters' recommendation and then just -- they wanted
4 the overcount, yes. "Or overcount," just delete that
5 and delete the rest of the -- I guess we could. Just
6 keep the word "count" and delete everything else in
7 that sentence.

8 That would advise the reader as to the fact that
9 we're not making a change. The language that Gabe
10 provides is the reason why we're not making the change.

11 MS. FIALA: So then we would re-strike out the
12 entire first paragraph?

13 MR. SANTA ANNA: Yeah.

14 MS. FIALA: Sharon, would that address your
15 concern?

16 MS. VOGEL: I don't have a problem with that as
17 long as we end with responding to the commenter that
18 currently there is not a method of determining an
19 undercount or an overcount reservation by reservation.
20 I think need to state that for the record because
21 that's the truth.

1 MS. FIALA: Could you repeat that slowly so that
2 we can get it up on the screen?

3 MR. SANTA ANNA: "Currently -- comma."

4 MS. FIALA: And then I guess it would be Gabe. Is
5 that okay language for -- I think you were the original
6 proposer.

7 MR. LAYMAN: Generally speaking, yeah, I think
8 that will be fine. There are going to be a couple
9 little typos to correct, obviously.

10 MS. FIALA: Okay.

11 MR. LAYMAN: So let's wait until it is
12 memorialized, and we'll work on that.

13 MR. SANTA ANNA: Reservation-by-reservation basis.

14 MS. FIALA: And I'm going to keep going through
15 while we're working on getting it up. Heidi? No.
16 Earl?

17 MR. EVANS: Earl Evans, Haliwa-Saponi Indian
18 Tribe.

19 Just a clarifying question or -- I guess. When we
20 say currently there is no way to determine actual
21 undercounts or overcounts on a reservation-by-

1 reservation basis, is there a need to say that
2 currently HUD does not have a way to clarify because
3 that's basically what Census is doing by issuing those
4 reports is they're looking at the undercounts and
5 overcounts on the basis of the data that they collected
6 on a reservation-by-reservation basis.

7 So should we clarify that HUD doesn't have a way
8 to do that, as if we included that statement?

9 MR. SANTA ANNA: They want us to add overcounts.

10 MS. FIALA: Was that a question for Gabe or a
11 general question, Earl? I'm sorry.

12 MR. EVANS: It was a question for whoever feels
13 they can answer it.

14 (Laughter.)

15 MS. FIALA: Gabe?

16 MR. LAYMAN: You know, Carol has a better
17 knowledge of this than I do. So I'll defer to her if
18 necessary. But my understanding is that the Census
19 Bureau itself doesn't have any way to parse this out,
20 that because of their sampling, it's only available on
21 a broader basis and not reservation by reservation.

1 And if anyone has a better response than that, I'm
2 happy to yield. Otherwise, I would like to offer just
3 a couple of quick minor technical changes to the
4 language that's being offered. Not to change the
5 intent, but first, I think we need to correct -- I
6 guess maybe it's just one.

7 This first sentence says, "The committee
8 considered these comments and agreed the regulation
9 should not make adjustments to add for any
10 statistically" -- I'm sorry. "significant overcount."
11 That was corrected. It had said "undercount." So my
12 concern has been alleviated already. That was simple.

13 MS. FIALA: Sharon, did you have another? Okay.
14 Lourdes?

15 So are there any other questions or comments about
16 the language up on the screen?

17 (No response.)

18 MS. FIALA: No. Okay, then I'm going to turn it
19 back to the co-chairs.

20 MS. BRYAN: Thank you, Sara.

21 So we have a proposed response in front of us.

1 We'll take another minute to just read it and make sure
2 that it's -- all the typos are corrected and it says --
3 that it answers the questions to the commenters.

4 And then based on what we see here, is there a
5 consensus on the language in front of us?

6 Call for the question. Do we have consensus?

7 (Voting.)

8 MS. BRYAN: I see no dissension. We have reached
9 consensus. Good job. That was a tough one.

10 So I want to just check the pulse of the committee
11 here. It's close to noon, and shall we try to tackle
12 one more before lunch? We have lunch scheduled for
13 12:15 p.m. I want to get a sense on how people's
14 stomachs are doing. Is there another low-hanging fruit
15 that we can look at? Have we -- yes, I said that.

16 (Laughter.)

17 MS. BRYAN: For the next, we're getting into
18 substantive discussions, Aaron? Okay, then I might
19 make -- see if it's okay with the committee if we break
20 for lunch right now and come back at 1:00 p.m.? Okay.

21 MALE SPEAKER: 1:15 p.m., or whatever.

1 MS. BRYAN: Oh, 1:15 p.m. Come back from lunch at
2 1:15 p.m. Thank you.

3 FEMALE SPEAKER: Will this room be locked? We can
4 leave our laptops in here?

5 MS. FIALA: The room will not be locked. The room
6 will not be locked. So you may leave your laptops, but
7 the room will not be locked.

8 MS. BRYAN: Take your laptops.

9 (Recessed at 11:54 a.m.)

10 (Reconvened at 1:28 p.m.)

11 MS. BRYAN: -- to the table, her designated
12 alternate. We have gotten the letter. I emailed it to
13 Jason and Sara. I need to email it to you guys.
14 Katherine Lyall Vasquez will be sitting in for Karin
15 Foster. Welcome.

16 At this time, we're going to dig right in to
17 demolition, pun intended, and I'll turn it over to
18 Sara.

19 MS. FIALA: So we are going to be jumping to
20 demotion and rebuilding of FCAS units. That would be
21 1000.318(d), which is on page 17 in your packets. So

1 let's start with the first comment about recommending
2 language for demolition/rebuilding, and I'll let Aaron
3 go ahead and walk through the comments.

4 MR. SANTA ANNA: Good afternoon, everyone. I
5 think the way we can best move forward on this one is
6 to present all of the three comments that we got on
7 demolition. Each of the commenters gave us some
8 language that was -- that they suggested that we
9 consider as we decide how to move forward with a new
10 regulatory provision dealing with demolition.

11 The first commenter really looked at the language
12 of the 1-year, and you can see this is, you know, one
13 of the things that they -- this is what they've
14 suggested. One of the issues that they suggest is that
15 we consider is a 24-month timeframe from the
16 commencement of construction for the time of completion
17 -- and the time of completion. So that was the first
18 comment that we got.

19 If we could roll to the -- and all of these
20 comments are in your package that you should have.

21 The second commenter took a kind of a different

1 approach, suggesting that we define demolition and
2 rebuilding using standard dictionary definitions, and
3 you can see what they've suggested here.

4 Now if you roll to the third? And this was more
5 of suggesting a little bit different approach to
6 demolition. They did want to talk about that we
7 consider, you know, ensuring that we draft it in a way
8 to provide maximum flexibility for tribes. Talked
9 about some of the problems that tribes face in terms of
10 rebuilding. And also talking about, you know, the
11 shortened timeframe that construction can take place.

12 The reason why I suggested we handle all of these
13 together is because HUD has a proposal that we would
14 like to be able to -- to discuss with you as a way to
15 move forward with the provision dealing with
16 demolition. And to be able to explain that, I'll give
17 this, pass it over to Jad.

18 MR. ATALLAH: So we're putting language up, but
19 I'll go ahead and sort of set this up while we're doing
20 that.

21 As you folks may remember, this was an issue that

1 the committee came up with proposed language on, and we
2 approved the language when we were negotiating this.
3 Unfortunately, during departmental clearance, this was
4 the one issue that we could not get through the
5 department when we went through the departmental
6 clearance process.

7 The HUD Office of Inspector General, who have
8 independent authority to review all of our regulations,
9 raised legal concerns about the language that this
10 committee previously approved, primarily because of the
11 period of time that we initially, as proposed, allowed
12 recipients to rebuild units and keep the units on as
13 FCAS.

14 In the original proposal, we allowed a 1-year
15 period to start the rebuilding process and then an
16 additional 3 years in order to complete the process of
17 rebuilding. If you look at the NAHASDA statute, there
18 is a provision that governs this area, and what it says
19 is, "A unit that is demolished has to be rebuilt in 1
20 year." And they raised legal concerns about that.

21 In order to get this proposed rule published in

1 time and get us here where we are today, we had to pull
2 that back, but we put language in the preamble and said
3 we are soliciting public comments because we need to
4 sort of go back to the drawing board on this particular
5 regulation.

6 We have received a few comments that are very,
7 very good. We drew from those comments, and we came up
8 with language that we made sure we vetted with the
9 Office of Inspector General before we came here today
10 because we don't want to repeat what happened last
11 time, which is essentially have the committee agree to
12 a regulation, put it in departmental clearance, and
13 then run up with legal issues with the Office of
14 Inspector General.

15 So we have come up with a regulation that I think
16 does a lot of what everybody has tried to do, which is
17 give tribes some flexibility when it comes to
18 rebuilding units and also, at the same time, ensuring
19 that there is an incentive to complete units that are
20 demolished in order to ensure that we can house low-
21 income families.

1 So I'll go ahead and read the proposed language,
2 give you a second to think about it, and I'll explain
3 some of the reasoning behind this. So the proposed
4 language that HUD is proposing that we think we can get
5 through the department says, "A unit that is demolished
6 pursuant to a planned demolition," what that means is a
7 voluntary demolition. The public comments were
8 received all suggested that demolition be defined as a
9 voluntary act and not an involuntary act.

10 So "A unit that is demolished pursuant to a
11 planned demotion may be considered eligible as an FCAS
12 unit if after demolition is completed, the unit is
13 rebuilt within 1 year." That reflects the statute so
14 it's okay.

15 "Demolition is completed when the site of the
16 demolished unit is ready for rebuilding." So we are
17 defining demolition to be you've got the site cleared,
18 and you can now rebuild. The benefit of that is that
19 it gives you some leeway and flexibility on the front
20 end. So if you start the demolition process, but you
21 haven't demolished the unit completely, the clock --

1 the 1-year clock has not started ticking. It buys you
2 additional time to build the unit.

3 However, once you've completed the demolition such
4 that the site of the demolished unit is ready for
5 rebuilding, your 1-year clock starts ticking. "If the
6 unit cannot be rebuilt within 1 year" -- oh, I'm sorry.
7 Yes, "If the unit cannot be rebuilt within 1 year
8 because of geographic location, the Indian tribe TDHE
9 or IHA may request approval for a one-time 1-year
10 extension. Requests must be submitted in writing,
11 include a justification for the request."

12 Okay. Under NAHASDA, like I said, you only get 1
13 year from the time of demolition. If you look at
14 Section 302 of NAHASDA, there are other factors under
15 the statute that we can consider when we create this
16 formula.

17 One of those factors -- is in Section 302. If you
18 look at Section 302(c), one of the statute, what it
19 says is "other factors for consideration." "In
20 establishing the formula, the Secretary shall consider
21 the relative administrative capacities and other

1 challenges faced by the recipient, including, but not
2 limited to, geographic distribution within the Indian
3 area and technical capacity."

4 Because we are tying this 1-year extension that
5 you can ask for to geographic location, we have the
6 legal basis to give you more than 1 year. So this is a
7 creative legal way to get you more than 1 year to
8 rebuild a unit. However, we do have to tie it to
9 another factor in the statute, and one of those is
10 geographic location.

11 The idea here is some of you, many of you have
12 short construction seasons, and to demolish a unit and
13 rebuild the unit within 1 year of that demolition may
14 be very difficult. So if you can document and tell
15 HUD, send something in writing that says we need more
16 than 1 year from the time of demolition to rebuild this
17 unit because of our construction season, because we
18 can't get supplies, because of any sort of geographic
19 limitation or challenge, we will give you an additional
20 year to rebuild that unit and keep it on as FCAS. So
21 you will not lose that unit.

1 This is a -- this is the best we can do and get it
2 through the department. It may not be absolutely
3 perfect and may not reflect exactly what we did before,
4 but we couldn't get the other proposal through the
5 department, and we think we can get this one. We've
6 pre-vetted it.

7 So this is our proposal. We think that it strikes
8 a good balance, and we feel better about it from a
9 legal standpoint.

10 MS. FIALA: So we'll open up for questions,
11 comments. Earl?

12 MR. EVANS: Thank you. Earl Evans, Haliwa-Saponi
13 Indian Tribe.

14 If I recall correctly, one of the things we also
15 discussed with regards to demolition is what if there
16 are some other type of legal impediments that are
17 unforeseen or that because of circumstances beyond a
18 tribe's control can't get clarified or completed within
19 that timeframe?

20 Would it be able to pass like this if there were
21 also, in addition to geographic location, legal

1 impediments that the tribe could not cure within that
2 timeframe? Would that also be allowed?

3 MR. ATALLAH: Honestly, I think we would have a
4 challenging time getting it through the department,
5 just because this was a really big fight internally
6 with the Office of Inspector General. Tying it to
7 geographic location and limiting it to geographic
8 location, we managed to get them onboard. But if we
9 expand it to legal impediments, I worry that it will
10 delay this final rule being done by the end of the year
11 because we'll have another problem with them that will
12 have to get resolved.

13 Our goal is to try to get language that we will be
14 able to include in the final rule and not have to
15 change it in departmental clearance like we did before.
16 So I've got to be honest with you, this is language
17 we're comfortable with. I think we would be running a
18 risk if we put legal impediments in there.

19 MS. FIALA: And I do want to say that what we have
20 on this screen here is 302 from the statute for
21 reference.

1 (Pause.)

2 MS. BRYAN: Just to clarify, Sara, is what's up
3 there on the right, my right -- my left, my left, is
4 that what we are proposing that we're wanting to
5 change?

6 MS. FIALA: No. This is the -- this is the
7 statute.

8 MS. BRYAN: That is the statute as it sits now?

9 MS. FIALA: And this would be the new proposed
10 regulatory language.

11 MS. BRYAN: Because it does say "any other legal
12 impediment." Sami Jo?

13 MS. DIFUNTORUM: So, Jad, what is the significance
14 to "pursuant to a planned demolition"?

15 MR. ATALLAH: Our intent there is just to say this
16 is dealing with voluntary demolition situations where
17 you demolish -- you intentionally demolish a unit
18 because you make the decision that a unit should be
19 demolished and rebuilt, not natural disasters and fires
20 and so forth.

21 So the clock, this regulation will address

1 voluntary demolition on your part. If you decide to
2 demolish, this is the clock that will govern how a unit
3 stays on as FCAS.

4 MS. FIALA: Earl?

5 MR. EVANS: Thank you. Earl Evans, Haliwa-Saponi
6 Indian Tribe.

7 So, Jad, let me ask you another question. If
8 that's the language that's currently in the statute, to
9 my left and to your left as well, where you're
10 standing, I guess. But would the tribes still get an
11 extension based on that subsection (d)?

12 MR. ATALLAH: So this is actually not the language
13 that governs. You've got to scroll down. Well, the
14 demolition language does govern, which is (c). But
15 what we're relying on is this other -- oh, go back up,
16 please. Yeah, right there, (c), other factors for
17 consideration.

18 You can see that relative administrative
19 capacities and other challenges faced by the recipient,
20 including, but not limited to, geographic distribution.
21 That's the factor we are relying on for the additional

1 1 year that we can give you.

2 We had to sort of get creative to get around the -
3 - to add additional time to the 1 year that's under --
4 if you go up, please, just go up for a second. Right
5 there at the very top. "If the unit is demolished and
6 the recipient rebuilds the unit within 1 year of
7 demolition of the unit, the unit may continue to be
8 considered an FCAS unit for purposes of this
9 paragraph."

10 So the additional 1 year we are giving you is
11 pursuant to our authority under (c) below, which says
12 you can think about other factors. We ran into legal
13 trouble internally because the language that we
14 approved previously seemed to violate the 1-year
15 provision, the provision up there in (c) that says "If
16 the unit is demolished and the recipient rebuilds the
17 unit within 1 year," it stays on.

18 We sort of proposed something that may have
19 exceeded that 1-year period, which is why we had
20 problems. But if you tie it to geographic
21 distribution, geographic location, problems with a

1 short construction season, we can add an additional
2 year and give you additional leeway. This is the best
3 we can do and get it through the department.

4 MS. FIALA: Jason?

5 MR. ADAMS: Jason Adams, Salish Kootenai.

6 I guess, I understand the separation from (d)
7 above and how that, you know, relates back to (b) in
8 that same section. When we get down to other factors
9 for consideration in number 1, it starts off by talking
10 about "relative administrative capacities" and then
11 uses geographic distribution as an example of that.

12 I'm wondering could we not put up here because of
13 administrative capacities or something to tie it to the
14 bigger issue?

15 MR. ATALLAH: My concern, again, would be that we
16 can't guarantee that the Inspector General will not
17 hold up a provision like that, not necessarily on legal
18 grounds, but potentially on policy grounds if we expand
19 it that far. I mean, I think, honestly, this was a big
20 fight internally.

21 We were happy to find a way to get that additional

1 year extension. But I can tell you, we cannot
2 guarantee we'll be able to get this through the
3 department with those additional factors, with adding
4 things like administrative capacity. We can get it
5 through the department if we limit it to geographic
6 location.

7 MS. FIALA: Heidi?

8 MS. FRECHETTE: So, Jad, can you clarify, I'm
9 trying to kind of build on what Jason was saying. We
10 have the statutory language that has other reasons why,
11 right? They can look at other reasons -- we could look
12 at other reasons, but it's my understanding that's a
13 hard stop of a year -- sorry, Jack -- versus the
14 regulatory language that we're looking at, that gives
15 us a little more flexibility than the hard stop of 1
16 year for that specific reason. Is that fair?

17 MR. ATALLAH: Correct. Correct. So if you tie it
18 to geographic distribution, geographic location, we can
19 tap into the other factors for consideration under the
20 statute and give you 1 year.

21 You know, my concern is if we go too broad there,

1 we will have the same situation we were in at the
2 proposed rule stage, which the Inspector General will
3 fight us on it, and we won't be able to get this
4 provision through. But this is a way we figured out
5 and worked out with them in order to get you that
6 additional 1 year without legal concerns.

7 MS. FIALA: Thank you. Other questions, comments?

8 (Pause.)

9 MS. FIALA: Jason Dollarhide?

10 MR. DOLLARHIDE: I guess I just kind of -- I got a
11 question. You're trying to do a work-around,
12 obviously. But when we're talking specifically on
13 demolition and you have a legal impediment, do you --
14 can you use that as a reasoning and possibly get -- get
15 approved for that extension based off that legal
16 impediment with this regulation?

17 MR. ATALLAH: So this regulation, this proposed
18 language as written is limited to geographic location.
19 You would -- you would -- you would add that as another
20 reason for the 1-year extension. All I'm saying is we
21 can't guarantee we'll get it through the department.

1 This I think we can get through the department.
2 But it's a valid point, and maybe there is some leeway
3 there, but --

4 MS. FIALA: Jack? Jack? Jack, you're up.

5 MR. SAWYERS: Well, what about an involuntary,
6 let's say, a disaster, something like that? Does that
7 same rule apply? And another one is the environmental
8 consideration. I mean, I don't think that we're going
9 to be able to, in many cases, stick to that year with
10 all of those other factors.

11 Involuntary, would that apply as involuntary?

12 MR. ATALLAH: So it sort of depends on the
13 circumstances, but we worked on this particular issue
14 during the FCAS Workgroup and addressed involuntary
15 demolition as a result of natural disasters and also
16 voluntary demolition that sort of what Sami Jo was
17 asking about, which is a planned demolition, which is a
18 voluntary demolition.

19 So as written right now, this regulation would
20 really govern what happens when you decide to demolish
21 a unit voluntarily. The public comments that we got

1 pretty consistently said that the definition of
2 demolition is -- what demolition means is a voluntary
3 demolition. So in the statute, when it provides the 1-
4 year period, it's talking about situations where you
5 choose to go and demolish a unit.

6 There are different reasons for demolishing a
7 unit. If you have a natural disaster that requires the
8 voluntary demolition of the unit, and you move quickly
9 -- you go ahead, you voluntarily demolish the unit --
10 you're going to be subject to this. But that's a
11 planned demolition.

12 When it comes to units that are vacant or damaged,
13 we have a -- this particular provision will not
14 directly apply. We have sort of different policies and
15 standards for how long you can keep an FCAS unit on
16 that's being rehabbed that's not online or that's not
17 being made available to potential tenants.

18 But this regulation is really limited to voluntary
19 demolition, mainly because the public comments we got
20 consistently said demolition means voluntary
21 demolition. At this late in the game, we're trying to

1 limit the scope of this thing to get it through the
2 department somehow.

3 MS. FIALA: Sami Jo?

4 MS. DIFUNTORUM: So just to clarify what I think I
5 heard. Planned demolition can include, for instance,
6 if you had a '37 Act community and you had a wildfire
7 incident, and it wiped out, I don't know, 20, 30 units,
8 whatever, and you decided to demolish and rebuild them.
9 Then this provision would apply because it would be
10 planned?

11 MR. ATALLAH: I think once you actually plan the
12 demolition, then, yes, right? So this governs planned
13 demolition. You've got a damaged unit that needs to be
14 demolished, this provision will kick in.

15 One area you need to be careful about is
16 situations where units are damaged in a natural
17 disaster, and there is no planned demolition. We,
18 under the statute, are required to fund or when we
19 think about FCAS, we can only fund low-income housing
20 dwelling units. And if a unit is damaged and sitting
21 out there, and there's no planned demolition, at some

1 point it stops being a low-income housing dwelling
2 unit, and we can't, under the law, fund you for it.

3 So under a natural disaster, I think if a disaster
4 happens, you plan the demolition because you need to
5 demolish the unit, will be subject to this. If a
6 disaster happens and nothing happens with the unit, at
7 some point, HUD has to pull those units off because
8 there's no planned demolition.

9 We have to be very careful here. We cannot allow
10 this to also be a license to just have units get funded
11 in perpetuity that aren't planned to be demolished. At
12 some point, HUD is required to pull those units off
13 because they aren't low-income housing dwelling units
14 under the statute.

15 This isn't a perfect solution. This is the best
16 we can do. We've worked so much on this, and we
17 couldn't even get it to the department under its
18 previous version. This is a good compromise. I think
19 will give people some flexibility in this area while
20 also ensuring that HUD makes sure the units are built
21 quickly and people are housed quickly.

1 MS. FIALA: Jason Adams?

2 MR. ADAMS: I probably know the answer. Jason
3 Adams, Salish Kootenai.

4 Jad, but I was just thinking maybe another way to
5 look at this since what you utilized with the OIG
6 attorneys on getting this sold was that section, could
7 this not make reference to that section instead of the
8 specific geographic location? Could it not say Section
9 302 of NAHASDA, Section (c)(1)?

10 MR. ATALLAH: You certainly can suggest a friendly
11 amendment. Again, I think we will -- if that's what
12 the committee decides to go with, we will try to fight
13 it. There are no guarantees, but you certainly can
14 offer a friendly amendment to just reference that
15 section.

16 My concern would be that referencing the section
17 is a little open-ended because it sort of says other --
18 other factors or other challenges, which is pretty
19 broad. So you might want to limit it a bit or just
20 specify what HUD is looking at or what you guys would
21 be using to justify the delay and the 1-year delay.

1 MS. FIALA: Aneva?

2 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo
3 Housing Authority.

4 I agree with my colleague Jason Adams. It seems
5 as though this 1 year is limited to just a certain
6 occurrence, and that would be under the provisions of
7 geographic distribution. Whereas, the law states other
8 factors. The relative administrative capacities or
9 other challenges faced by the recipient, including, but
10 not limited to. Then it describes some triggers.

11 So I would agree that, you know, we don't know
12 what any TDHE will experience, but they should be given
13 the benefit of these other circumstances that could
14 possibly get triggered, pursuant to the law, and that
15 we identify, as I would say, I would agree that we
16 reference paragraph (c) (1).

17 And you can use this as an example, but that would
18 be other factors that we don't know is there, that the
19 law offers tribes currently.

20 Thank you.

21 MS. FIALA: Aneva, are you offering that as a

1 friendly amendment to the proposed language?

2 MS. YAZZIE: Yes.

3 MS. FIALA: So then, HUD, is this acceptable
4 amendment to your proposed language?

5 MS. CASTRO RAMÍREZ: So I just want to make sure
6 that I reemphasize the concern as expressed by Jad that
7 we had a very difficult time with the Office of the
8 Inspector General the first go-around. And so this has
9 been vetted. However, I do -- I do hear the suggestion
10 and the concern, and I think we're okay with amending
11 the language to include administrative capacity or
12 language that is already included in the provision that
13 was cited earlier.

14 But I don't know that we're going to be able to
15 get this through the IG. And so I would just ask the
16 committee that if we are not able to make a case and
17 get their support, that the committee would be --
18 essentially would understand that we did our best, made
19 our -- put our case forward. I don't want this
20 provision, though, to slow down the process, and as Jad
21 mentioned, we're very focused on trying to get this

1 final rule by the end of the year.

2 So we would be open to the amendment. I would,
3 you know, suggest that maybe we be much more specific
4 and say something like "if the unit cannot be rebuilt
5 within 1 year because of administrative capacity and/or
6 geographic location," and then we would continue.

7 MS. FIALA: Earl?

8 MR. EVANS: Earl Evans, Haliwa-Saponi Indian
9 Tribe.

10 One more time. I have -- my question is, if
11 instead of -- okay, I understand what you're saying.
12 The clock doesn't start ticking until the demolition is
13 complete. So if I have a planned demolition, I haven't
14 gotten to it yet, the clock hasn't started ticking
15 until the demolition has been completed, whatever the
16 impediment.

17 But are we doing ourselves more harm to limit it
18 to, say, administrative capacity or geographic
19 location? Would we be better to say if the unit cannot
20 be rebuilt within 1 year because of reasons cited in
21 the statute, then the Indian tribes, TDHEs, et cetera,

1 may request approval, yada yada.

2 Could we do something particular to that or maybe
3 even cite the section that contains the subsections
4 (c), (d), and (e).

5 MR. ATALLAH: I think you're -- if you're going to
6 go that route, I think you're okay sort of going along
7 the lines with what Lourdes has recommended. You can
8 say if the unit cannot be rebuilt within 1 year because
9 of administrative capacities and other challenges faced
10 by the recipient, including, but not limited to,
11 geographic distribution.

12 Just copy the language from the statute is
13 probably -- if you're going to go that way, just pull
14 the language from the statute. We'll fight it
15 internally. If we lose, we lose. If we win, we win.

16 MS. FIALA: So, Christine, that would be copying
17 the language from -- that would be (c)(1), which is the
18 relative administrative capacities and other challenges
19 faced by the recipient.

20 So are there any other comments on -- while we're
21 putting it up on the screen, on this language?

1 MS. BRYAN: Gary, is your card still up?

2 MS. FIALA: Oh, sorry. Gary Cooper?

3 MR. COOPER: Gary Cooper. It was, but I think my
4 question might have just been answered. I'm trying to
5 determine whether or not it was. Because my original
6 recommendation would be would it make sense to do what
7 Jad had suggested and just break down the two deals
8 under (c), like (c)(i) and (c), you know, (ii).

9 And that said, because of geographic distribution
10 as one of the reasons, and then the other one is
11 because of administrative capacity or whatever. But
12 considering what we're doing here, I think that might
13 also satisfy what folks' concern is, I think.

14 I think I'm good with this.

15 MS. FIALA: Any other questions?

16 MS. BRYAN: I see a call for the question. I just
17 want to double-check HUD is okay with this friendly
18 amendment that's been made on the -- here? Okay.

19 Do we have a consensus?

20 MS. DIFUNTORUM: I need a clarifying answer first.

21 MS. BRYAN: We need a clarifying answer for Sami

1 Jo.

2 MS. DIFUNTORUM: Sorry. Thank you.

3 So calling for consensus on this language with the
4 understanding if it doesn't make it through clearance,
5 we're reverting back to the original language. Is that
6 what we're voting on? The original proposal.

7 Okay, thanks.

8 MS. BRYAN: Okay. We're calling for a consensus
9 for what's on the screen with the understanding that if
10 it doesn't get through OMB clearance on the language
11 here that we're going to revert back to the original
12 language that does not include the underlined portion
13 of what's on the screen.

14 Do we have consensus?

15 (Voting.)

16 MS. BRYAN: We have consensus. Thank you. Easy
17 over there, Jack.

18 MS. FIALA: I'm going to turn things back over to
19 Aaron. I think we're now going to walk through the
20 individual responses to the comments.

21 So I think we're going to start with the first

1 comment, which was recommended language for
2 demolition/rebuilding. It starts, "One commenter
3 stated that Section 302(b)(1)(C)." Is that correct,
4 Aaron?

5 MR. SANTA ANNA: That's right. Trying to find the
6 response. We took them out.

7 MS. BRYAN: What page are you working off of?

8 MS. FIALA: This is page 17.

9 MR. SANTA ANNA: Do we have the proposed response
10 available for the first comment? Yes, please.

11 As I mentioned, one of the reasons why we wanted
12 to be able to deal with the regulatory text first was
13 because I thought that as we were developing responses
14 to the comments, we wanted to be able to do a couple
15 things. You know, one is to express appreciation for
16 the comment, to show that we've considered it, and to
17 try to talk about some of the good things that we were
18 able to pull out or not, and also to note the fact that
19 we have reached consensus on language that would
20 provide for the 1-year clock.

21 So in response to the first comment, this is the

1 proposed response that we would be suggesting. "The
2 committee appreciates the recommendation submitted by
3 the commenter on the demolition provision, pursuant to
4 118(d). The committee considered the proposed
5 language, but ultimately concluded that the statute
6 requires rebuilding to be completed within 1 year of
7 demolition. The committee agreed by consensus,
8 however, to revise 318(d) that provides that the 1-year
9 clock does not begin until the demolition is complete."

10 MS. FIALA: So opening up for discussion and
11 comments, questions about the proposed response to the
12 first comment about demolition.

13 (No response.)

14 MS. FIALA: Now I'm going to turn things back over
15 to the co-chairs.

16 MS. BRYAN: All right. Do we have a call for the
17 question on this one?

18 (Response.)

19 MS. BRYAN: All right. Call for question. Do we
20 have a consensus on the proposed response to
21 recommended language for demolition and rebuilding?

1 (Voting.)

2 MS. BRYAN: We have a consensus. Thank you.

3 Turn it back over to Sara or Aaron.

4 MS. FIALA: The next comment would be on page 18

5 of the packet. Aaron?

6 MR. SANTA ANNA: This is the comment that

7 recommended that we use dictionary terms to define

8 "demolition" and "rebuilding." And if we could add the

9 proposed response up there, please?

10 And the response would just simply again indicate

11 appreciation for their comments that were sought for

12 responses on demolition issue posed by the proposed

13 rule. Specifically, "The comments regarding the past

14 and present tense of the terms 'demolish' and

15 'rebuild,' respectively, as used in the statute offer

16 the committee a useful starting point for developing a

17 revised section addressing demolition.

18 "The committee also agrees that the purpose of the

19 statute is to create an incentive for tribes to

20 expeditiously rebuild housing units and to give all

21 tribes a reasonable period of time to rebuild and,

1 after considering the comments, believes that a 1-year
2 period for rebuilding is a reasonable period of time to
3 rebuild for all tribal communities, including tribes
4 who live in remote communities. The revised demolition
5 regulation agreed to by consensus as Section
6 1000.318(d) incorporates and builds upon the comments
7 provided."

8 MS. FIALA: Comments or questions?

9 (No response.)

10 MS. FIALA: So I'll turn things back over to Jason
11 and Annette.

12 MS. BRYAN: This is -- yes? Earl?

13 MR. EVANS: Earl Evans, Haliwa-Saponi Indian
14 Tribe.

15 The part that's giving me a little bit of
16 indigestion is that part that says "believes that a 1-
17 year period for rebuilding is a reasonable period of
18 time to rebuild for all tribal communities, including
19 tribes who live in remote communities." That's the
20 part that's giving me a little bit of pause.

21 I understand what was said before about the last

1 one that we talked about, the demolition and rebuild,
2 and that the demolition is not considered -- that the
3 time doesn't start ticking until the demolition is
4 complete and the site is ready for rebuilding.
5 However, not knowing what other factors may affect
6 tribes in certain geographies from still completing
7 that rebuilding project within a year is -- so that's
8 why I kind of have that concern about "believes the 1-
9 year period for rebuilding is a reasonable period of
10 time."

11 So I think that -- that with the exception of that
12 part, I think if you would take out that -- well, you'd
13 probably have to start at the whole sentence, take out
14 the whole sentence that starts at "committee." I think
15 if you take that out, then that's fine.

16 MS. FIALA: You want to strike that whole
17 sentence, Earl?

18 MR. EVANS: Yeah. I think if you strike that
19 whole sentence and leave the rest, then that's fine.

20 Thank you.

21 MS. FIALA: And so, HUD, this was your language.

1 (Pause.)

2 MR. SANTA ANNA: HUD would like to revise the
3 friendly amendment to end at "rebuilds," and everything
4 else could -- or "rebuild" and that everything else can
5 come out.

6 MS. FIALA: So you would like to keep "The
7 committee also agrees that the purpose of the statute"
8 all the way through "rebuild" and then strike the
9 remainder of the sentence?

10 MR. SANTA ANNA: Take out the -- what was struck,
11 the last sentence, yes. Wait, wait, wait. That's the
12 wrong "rebuild."

13 MS. FIALA: The second "rebuild," Christine,
14 sorry.

15 MS. CASTRO RAMÍREZ: Actually, Aaron?

16 MR. SANTA ANNA: Yes?

17 MS. CASTRO RAMÍREZ: We'd like to end at after
18 "housing units."

19 MR. SANTA ANNA: After "housing units."

20 MS. CASTRO RAMÍREZ: So "The committee also agrees
21 that the purpose of the statute is to create an

1 incentive for tribes to expeditiously rebuild housing
2 units."

3 MS. FIALA: Sharon? Gabe? Jason? Okay.

4 MS. BRYAN: Very nice. I want to call for the
5 question. Do we have a proposed response on
6 recommended language for demolition and rebuilding in
7 front of you? Consensus?

8 (Voting.)

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

10 MS. FIALA: The next comment is found on page 18.
11 Aaron?

12 MR. SANTA ANNA: This was the third commenter.
13 This is the comment that had talked about wanting to
14 ensure flexibility, wanting to talk about the potential
15 time limits for rebuilding. And we have a proposed
16 response that we can add.

17 (Pause.)

18 MR. SANTA ANNA: The proposed response would read,
19 "The committee appreciated --" and I'll make that, no,
20 this is good. "The committee appreciates the
21 commenter's recommendations to define 'demolition' in a

1 way that maximizes flexibility for tribes. As stated,
2 the intent of Section 1000.318(d) is to incentivize
3 tribes to rebuild expeditiously within a reasonable
4 period of time.

5 "The committee understands the unique construction
6 constraints faced by some IHBG recipients due to short
7 building seasons, remote locations, and high
8 construction costs and has considered these factors in
9 the structuring of the demolition provision.
10 Nevertheless, the committee believes that a 1-year
11 rebuilding period is reasonable and allows for
12 flexibility for all tribes to rebuild within 1 year."

13 And we should also add here "with the option of
14 providing the additional year." How does that language
15 work? Because they could get a 1-year extension.

16 (Pause.)

17 MR. SANTA ANNA: And just change "providing" to
18 "requesting."

19 MS. FIALA: Jason? Whoops, I'm sorry. Earl?

20 MR. EVANS: Thank you. Earl Evans, Haliwa-Saponi
21 Indian Tribe.

1 Really good job, Mr. Santa Anna. Unfortunately, I
2 will have to respectfully disagree on one small thing.
3 The last sentence. Personally, I'm good with
4 everything else except the last sentence. I don't know
5 how others feel about it, but I think if you just
6 delete that last sentence, it takes care of my
7 concerns.

8 And I think we've got to be consistent with what
9 we changed a couple of proposals ago. So, and I think
10 taking that out helps us do that.

11 Thank you.

12 MS. FIALA: HUD, is that -- yes, okay. Jason
13 Adams?

14 MR. ADAMS: Yeah, Jason Adams, Salish Kootenai.

15 I guess the problem, the concern I have in the
16 response is that the commenter in their first bullet
17 makes mention specifically to an issue that -- get on
18 the right page here -- that many of our tribes in our
19 region are dealing with, and myself in particular, is
20 contamination by meth production.

21 And so I would like in that comments where it

1 talks about "due to rebuilding seasons, remote
2 locations," insert in there somehow, I'm not a
3 wordsmith, but some reference to contamination or some,
4 some reference to what the commenter made reference to.

5 MS. FIALA: Do you have language that you would
6 like to --

7 MR. ADAMS: No.

8 (Laughter.)

9 MR. ADAMS: Irreparably contaminated meth
10 production, due to? I mean, that's just using their
11 words. I don't know how else to --

12 (Pause.)

13 MR. ADAMS: Well, I guess maybe I want to amend my
14 own amendment here. Maybe just "methamphetamine
15 production and use" or something because not all
16 situations that I'm dealing with are specific to meth
17 production. It's meth use that's contaminating units,
18 too. "Contaminated," yes. That'd work, too.

19 Thank you.

20 MS. FIALA: And HUD, would that be an acceptable
21 friendly amendment?

1 Yes, Gabe Layman?

2 MR. LAYMAN: Gabe Layman, alternate for Teri
3 Nutter, Copper River Basin Regional Housing Authority.

4 I wonder if that could maybe even be broader,
5 Jason, and simply read "contamination," and that would
6 extend in the event that you have contamination from
7 production of other drugs somehow or even contamination
8 that's not related to drugs.

9 MR. ADAMS: I guess I would agree to that as long
10 as it says "units contaminated by methamphetamine or
11 other drugs" and just strike "production." I think
12 it's important to mention methamphetamine that the
13 commenter mentions in this.

14 MS. FIALA: And HUD, is that acceptable change?

15 MS. FRECHETTE: We're just talking about possibly
16 broadening "contaminated by methamphetamine or other
17 contamination" because it could be other things apart -
18 - besides drugs, right? It could be other things.

19 MS. FIALA: So you'd want that to read
20 "contaminated by methamphetamine or other
21 contamination"?

1 MS. FRECHETTE: Contaminants.

2 MS. FIALA: Contaminants. Katherine? If you
3 could turn your microphone on, please.

4 MS. VASQUEZ: So my recommendation is
5 "methamphetamine contamination or other irreparable
6 contamination."

7 (Pause.)

8 MS. VASQUEZ: So you would take out the
9 "contamination" before the -- yeah. Yeah.

10 Right after "units," take out "contaminated." Or
11 I'm sorry, right after "methamphetamine." So "units
12 contaminated by methamphetamines or other irreparable
13 contaminants."

14 MS. FIALA: All right. HUD, is that an acceptable
15 change?

16 MS. FRECHETTE: The only question that I have is
17 the word "irreparable contaminants" because, for
18 instance, mold, I'm not sure that we would necessarily
19 categorize that as irreparable, and maybe we're getting
20 too specific. So I would just delete the word
21 "irreparable" and just use the broader word

1 "contaminants."

2 MS. FIALA: Okay. So we're going to strike

3 "irreparable." Earl? All right. Carol?

4 MS. GORE: I am good.

5 MS. FIALA: All right. Are there any other
6 questions or comments about the language that's up, the
7 proposed language?

8 (No response.)

9 MS. BRYAN: I have a call for the question. Do we
10 have a consensus on the response in front of us on
11 recommended language for demolition and rebuilding? Is
12 there a consensus?

13 (Voting.)

14 MS. BRYAN: We have a consensus. Thank you.

15 Oh, we have a dissension. My apologies. Leon, do
16 you have alternative language?

17 MR. JACOBS: Leon Jacobs. I have a problem with
18 identifying a drug that we're expecting our residents
19 are going to contaminate the house with. I think
20 putting that in there creates a concern for me because
21 it's like we're expecting some of our residents from

1 doing, even though we know it happens.

2 But I think you could take out the word
3 "contaminated by," "contaminants," and so forth and not
4 identify the drug. I just have a problem with that.

5 MS. FIALA: So do you have a change that you would
6 like to see to the language, Leon?

7 MR. JACOBS: (Inaudible.)

8 MS. FIALA: So you'd like to say "damage by
9 contaminants"?

10 MR. JACOBS: Contaminated by -- contaminants.

11 MS. FIALA: So are there any other questions or
12 comments about the new proposed language? Jason?

13 MR. ADAMS: Yeah, Leon, thank you for your
14 comments. I guess what I was trying to accomplish,
15 Leon, with putting methamphetamine in there is, again,
16 to shed some light on the issue because a lot of us are
17 dealing with that issue. And to also acknowledge the
18 commenter and their efforts to acknowledge that issue
19 to us.

20 I don't believe this is regulatory language that
21 we're fashioning here. It's just a response to the

1 comment, and so, therefore, I think it's okay to
2 mention the drug specifically in this comment.

3 MS. FIALA: Sharon? Could you turn your
4 microphone on? I'm sorry, Sharon.

5 MS. VOGEL: Pardon me. Sharon Vogel, Cheyenne
6 River Housing Authority.

7 I think it's important that we have to raise this
8 awareness. I mean, we're facing a huge problem in our
9 area, and it would be something that my region would
10 like to see.

11 Thank you.

12 MR. JACOBS: Yeah, I appreciate the comments. And
13 I know that there is a growing problem. It has been
14 around for a while, but unfortunately, it's not the
15 only problem that is confronting us and so forth. But
16 there is a number of ways that we can highlight, you
17 know, and bring awareness to the problem and so forth,
18 and I hope that we can.

19 But in this light, it sort of says to me we're
20 expecting residents to do this sort of thing and
21 contaminate the houses and so forth.

1 (Pause.)

2 MR. SANTA ANNA: Would it help if we put
3 "contaminated by illegal use of" so that it suggests
4 that we're only looking at those -- those individuals
5 who go beyond, you know, what is just that smaller
6 subset of people who are violating the statute?

7 MS. FIALA: Jason?

8 MR. ADAMS: I guess I have a point of order. So
9 the original language that was put up there was --
10 there was a dissension. So this amendment is still
11 have to seek the makers of the proposal, which was HUD,
12 the full proposal, wouldn't have to seek their proposal
13 to amend the original language and not just strike this
14 because he made a comment?

15 MS. FIALA: I believe that the proposal submitted
16 by HUD was rejected, and then Leon is presenting a
17 brand-new proposal. So Leon would be the originator of
18 this new proposal. Is that -- is that correct? Maybe
19 I need some caffeine.

20 I think we have Earl and then Aneva. Aneva?

21 MS. YAZZIE: The way I understood it is a proposal

1 was made, and there was a dissension, dissenter who
2 offered an amendment. But there's been no vote on that
3 amendment at this point.

4 MS. FIALA: Correct. So this is the brand-new
5 proposal presented by Leon. But it seems that there is
6 still some debate about the inclusion, the reference to
7 methamphetamine.

8 So I don't know if we want to call the question on
9 this proposal and then start back over again?

10 MS. BRYAN: Call the question on the proposal
11 before us to recommend language for demolition and
12 rebuilding. Do we have a consensus?

13 (Voting.)

14 MS. BRYAN: We don't have a consensus. There are
15 a lot of dissenters. So I will leave it open for folks
16 to comment.

17 MS. FIALA: Katherine, Jack, Aneva, Leon, Deirdre.
18 So we're going to start with Deirdre Flood. I'm sorry,
19 Leon, you need to -- there you go.

20 MS. VASQUEZ: Katherine Lyall Vasquez, Cowlitz
21 Indian Tribe.

1 So I believe I agree with Jason that we need to
2 respond to the commenter. So stating the meth
3 contamination doesn't necessarily agree or state that
4 residents will be doing it, but it affirms that we
5 heard the commenter, and this is how we're responding
6 to what the commenter said.

7 So I am recommending that we change that language,
8 would all be the same up until "due to the short
9 building sessions, meth contamination, or other
10 irreparable contamination."

11 MS. FIALA: Deirdre?

12 MS. FLOOD: Deirdre Flood, Washoe Housing
13 Authority.

14 I just wanted to go back to the original comments
15 made earlier that I think we need to honor the -- as
16 much as I love and respect Leon, I feel we have to
17 honor the commenter's comments regarding their concern
18 like we talked about. I think that's very important as
19 part of our role as a committee.

20 MS. FIALA: Thank you. Leon?

21 MR. JACOBS: I think I've made my point, but I'll

1 go back to the original language if that's going to
2 bring a consensus, and just pray for people that you're
3 having a problem with it. I know it's not only one
4 reservation. It's a lot of reservations, and it's a
5 difficult situation.

6 MS. FIALA: So there was a recommendation to go
7 back to the original language that did not pass most
8 recently. But I did want to go through, and Aneva, you
9 had a comment?

10 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo
11 Housing Authority.

12 If we're going back, I think "irreparable" was
13 taken out.

14 MS. FIALA: Correct.

15 MS. YAZZIE: Yeah.

16 MS. FIALA: Christine, can you go back to -- and
17 then Jack?

18 MR. SAWYERS: First of all, I wanted to comment
19 that finally they put the "w" in my name. I did
20 something really heroic when I was young, and so I won
21 that "w." And so I appreciate you putting it back in.

1 Leon, I truly believe you're very concerned about
2 telling folks they might be using drugs. But the fact
3 is, is I know housing authorities, very good -- very
4 well-run housing authorities have boarded-up houses.
5 And I expect to have more.

6 We spent -- just in our initial survey, we spent
7 about \$500,000, and we're still spending money. So I
8 don't think -- and I want to do something to get this
9 passed because it's important. I think we all agree
10 it's just that wording that we want to put together.

11 But I do expect to have more meth, and everybody
12 else, if you're realistic, you'll expect to have some
13 meth. And so I don't feel that's a problem. I think
14 that Jason just wanted to highlight that.

15 I mean, I'm willing to do most anything to pass
16 this because it's important. So I think it's just a
17 matter of how we do that, and I think we all -- all
18 want to do it. I expect and I live in communities
19 where they're really close, and I expect we're going to
20 have more meth. In fact, I know damned well we are.
21 And I spent a lot of money in the past.

1 And so I think Jason is kind of right that we do
2 need to highlight that problem because it is a problem.
3 And so whatever we can do to put that together, you
4 know, I've been around a little while, and let's see
5 what we can do to pass this because we're so dang
6 close.

7 MS. FIALA: Thank you. Leon?

8 MR. JACOBS: Thank you, Jack. And I think we've
9 highlighted it here this afternoon. So I'm willing to
10 go back to the original language.

11 MS. BRYAN: We have a call for the question. Is
12 there consensus on the language in front of you on
13 recommendation language for demolition and rebuilding?
14 Do we have a consensus?

15 (Voting.)

16 MS. BRYAN: We have a consensus. Thank you.

17 (Pause.)

18 MS. FIALA: So we have -- we're going to go back
19 next to the response that was tabled surrounding the
20 national tribal survey, but I don't know if we want to
21 go ahead. We're supposed to be scheduled for a break

1 in 10 minutes. So I didn't know if you wanted to
2 present this first or whether we wanted to go to break?

3 MS. BRYAN: I think this may take longer than 10
4 minutes. So I'll propose that we take a 15-minute
5 break and then reconvene.

6 Thank you.

7 (Recessed at 2:36 p.m.)

8 (Reconvened at 3:12 p.m.)

9 MS. BRYAN: Looking up on the screen, "A need for
10 a federally" -- is that where we're at -- "federally
11 conducted national tribal survey."

12 MS. FIALA: So this is the response that we had
13 started working on that got tabled. We had asked HUD
14 to come up with a revision to the language. I believe
15 they have done that. So I'll let Aaron briefly review
16 that language first. So we're going to be looking for
17 now on this screen here.

18 MR. SANTA ANNA: Thank you very much.

19 I wanted to just talk to the language that we've
20 made, the changes that we've made. I wanted to
21 personally apologize to the committee. When I was

1 drafting this, I should have taken a little bit more
2 time to draft it in a way that was a little bit more
3 balanced.

4 I did go back, as was recommended, into the --
5 into the report that the study group did and found the
6 language that we've added here, trying to talk to the
7 fact that if adequately funded, could have sample size
8 in excess of the ACS, that sample survey questions
9 would be sensitive tribal areas, and that a sampling
10 frame for -- reflective of the eligible population for
11 NAHASDA funding and a sampling frame for -- it has to
12 be more reflective of the eligible population for
13 NAHASDA funding.

14 And then it's dropping the word "however" for
15 "nevertheless." But we did want to try to emphasize
16 that we were always trying to be balanced in our
17 comments and perhaps didn't hit that mark on this one,
18 and I apologize.

19 MS. FIALA: Thanks, Aaron.

20 So I understand that there is -- are some
21 revisions to our new language that had -- Sharon Vogel?

1 MS. VOGEL: Yes, I'd like to -- I have our tribal
2 comments pulled up, please, for discussion, and I
3 propose that for discussion.

4 MS. FIALA: So just for clarification. So this is
5 an amendment to the --

6 (Pause.)

7 MS. FIALA: And then, Sharon, was your amendment
8 including or not including the language that Aaron had
9 added that's underlined at the bottom?

10 MS. VOGEL: Not included.

11 FEMALE SPEAKER: What did she say?

12 MS. FIALA: So not include the language that Aaron
13 -- as a starting point. So this is a revision to the
14 language presented by Aaron. So I'll let --

15 MS. VOGEL: Also this just wasn't from one region.
16 There was group that worked on this language. So it
17 was a result of several -- several people getting
18 together.

19 MS. FIALA: So, Christine, I think they wanted to
20 strike out what Aaron had added.

21 And then I think if we could just for the sake of

1 trying to make it a little cleaner, Christine, can we
2 just copy that paragraph and then take out the
3 strikeouts? And then if we need to come back to this,
4 but I think it's a little hard to read the way it is.

5 (Pause.)

6 MS. FIALA: Does that read correctly to those that
7 submitted this? Yes, okay.

8 So just for the record, "The committee emphasizes
9 that IHBG Negotiated Rulemaking Data Study Group
10 examined the development of a national tribal survey
11 that would rely on tribally driven data sources. The
12 pros and cons of the committee's analysts are presented
13 in the final Data Study Group report and, more
14 particularly, the individual data source evaluations in
15 the appendices.

16 "No consensus could be reached on using any
17 alternative to ACS data, including a national tribal
18 survey. HUD has stated that they do not believe they
19 have the resources to either design and administer a
20 national tribal survey or to audit data collection
21 efforts to ensure that the data from tribal sources is

1 being collected in a fair and equitable manner and,
2 thus, unusable in the IHBG formula.

3 "However, HUD will continue to work with the
4 American Indian and Alaska Native Data Improvement
5 Workgroup, National Advisory Committee, and other
6 consultation efforts, working to design 2020's
7 decennial census to" -- I think that "to" should --
8 "improve collection in tribal communities."

9 So comments, questions? Heidi?

10 MS. FRECHETTE: A few comments. I think what we
11 want to say in the second sentence is the committee's
12 "analysis," not "analysts."

13 And then what number is it? The sentence starting
14 with "HUD had stated that they do not believe they have
15 the resources." That's very passive. HUD can state
16 assertively that we do not have the resources to design
17 and administer the survey. No, I mean, just "HUD does
18 not have the resources."

19 (Laughter.)

20 MS. FRECHETTE: I wasn't clear on that. I
21 apologize. HUD does not -- "HUD does not have the

1 resources to either design or administer."

2 MS. FIALA: Leon?

3 MR. JACOBS: Leon Jacobs. Can you identify the
4 American Indian and Alaska Native Data Improvement
5 Group? Who are they, and --

6 MS. FIALA: Is this a question, or you want the
7 language inserted?

8 MR. JACOBS: We'd like to know who this group is.

9 MS. FIALA: I'm going to defer to Todd. This,
10 I'll let -- well, go ahead, Todd.

11 MR. RICHARDSON: Well, the answer is it's a group
12 of career, mostly career Federal employees, who are --
13 do work with Native Americans in the different Federal
14 agencies and work with data that the Census Bureau and
15 other agencies produce to try to talk about what data
16 exists and how is it being used and how could it be
17 improved.

18 So it's a Federal workgroup. OMB convened it.

19 MS. FIALA: David?

20 MR. JACOBS: So you're saying that's a group of
21 HUD staff or --

1 MR. RICHARDSON: No. It's actually -- I'm the
2 only HUD staff person that attends the meetings.
3 There's other folks from Department of Interior, from
4 the Census Bureau, from BIA because it's part of the
5 Department of Interior. That's mostly who attends.

6 And mainly, it's an information sharing and then
7 talk through the -- like, for example, talking about,
8 okay, what's being done to try to reduce the
9 possibility of an undercount with the Census 2020.
10 That's the kind of question we talk about. We can talk
11 about why it causes problems for us in our programs.
12 So that's the genesis of that.

13 MR. JACOBS: I have a concern, and I don't know
14 how I can come up with a consensus on a group that we
15 don't know who they are and what their role is and so
16 forth.

17 MR. RICHARDSON: Well, if you -- I mean, I have no
18 objection if we want to just delete that. "However,
19 HUD will continue to work with --" If you'd like, we
20 can just delete that whole line.

21 However, it was mainly to communicate that we want

1 to continue to improve the data, and we're making an
2 effort to do so. That was the purpose of the line in
3 any case.

4 MS. FIALA: David Greendeer?

5 MR. GREENDEER: Good afternoon. David Greendeer,
6 the Ho-Chunk Nation.

7 I just have a few issues. One is actually just a
8 clarification on the line on the bottom for where it
9 says "However, HUD." There's a National Advisory
10 Committee portion, and I was just curious if that needs
11 to actually state National Advisory Committee of like
12 the Census Bureau or something like that, or if it's
13 just called National Advisory Committee because that
14 seems too broad.

15 But at the same time, just I'm actually in
16 disagreement with that whole line. And the only reason
17 is, basically, we're making an assumption that every
18 one of these agencies is going to have we'll call them
19 quality measures that tribes should all use to evaluate
20 the best linkage strategy that they would do with the
21 census or however they're deriving their information,

1 right?

2 Which means that there are some conditional
3 assumptions that are actually -- that actually creates
4 like an ambiguity over any type of independent
5 variables that are going to be used on any type of
6 survey data. So because it does that, you cannot
7 compare apples to oranges, which was the original issue
8 that we talked about.

9 And when we start looking at ways to create all
10 apples, let's say, we are now taking vital dollars away
11 from smaller tribal communities who are not represented
12 on any one of these boards and who do not have the
13 voice or the infrastructure in place to go through and
14 actually say this is what -- this is what the issues
15 are. We're actually looking at groups and tribes that
16 only have the resources or limited resources, let's
17 say. But they have resources to still get their voices
18 heard.

19 I am just -- our nation is worried for other
20 tribal nations that will be underrepresented and that
21 also then our purpose is to try to get funding

1 distributed to everyone in an equitable manner. But at
2 the same time, that actually goes against that portion
3 of it then with the underrepresentation.

4 There is one more critical issue, and that's our
5 nation actually just went through and conducted their
6 own tribal census. We've developed our own
7 measurables, let's say. You have 567 nations,
8 sovereign nations. I'm worried that from a whole other
9 perspective, without tribal governments creating their
10 own census that's approved through resolution of their
11 own tribal law, being recognized by every one of these
12 agencies that it would be going through, that you would
13 actually have a much larger issue at hand.

14 Because my argument has been that our nation the
15 whole time, the U.S. census should not tell us what our
16 tribal information should look like. That's not
17 inclusive, and that's what the argument has been early
18 on, too, that it's not inclusive of all the data that
19 we like to see.

20 We have to go through, we have to approve the
21 different mapping locations. We're the ones that are

1 responsible for doing that. So I'm not sure what this
2 is actually going to do other than harm tribal nations
3 in the future. It might help some, but I actually
4 think it would have a much larger effect on harming
5 people because it's just now you're pulling just key
6 areas out, and it's only going to help pockets.

7 Right now, I'm not saying that the formula is
8 right. I'm not saying that the ACS was the right way
9 or using the old data from the 2000 census. But this,
10 to me, is not going to build on something that we're
11 going to have an answer to. I think the resources
12 could be used much wiser.

13 MS. FIALA: So were you okay with the strikeout
14 then? Will that --

15 MR. GREENDEER: That's what I would suggest.

16 MS. FIALA: Okay, all right. Jason Adams?

17 MR. ADAMS: Jason Adams, Salish Kootenai.

18 I guess the concern I have is, excuse me, in
19 regards to the amendments Heidi proposed here a few
20 minutes ago. The last one was to strike out, as
21 stated, that they do not believe that they have. I

1 believe that was a HUD statement.

2 So I would hope we could keep "HUD has stated that
3 they do not have" and just strike "believe they have"
4 and strike that portion. But HUD has stated that they
5 don't have the resources to conduct this because the
6 committee didn't state that. HUD did.

7 MS. FIALA: Okay. Great. Sharon Vogel? Could
8 you turn your mike on? I'm sorry, Sharon.

9 MS. VOGEL: I do that every time. I apologize.
10 Sharon Vogel, Cheyenne River.

11 With the last sentence, the thing that I wanted to
12 capture, but since we're going to strike it, that's
13 fine, was that we use the word "tribal government
14 consultation" in there. Because other consultation,
15 you know, I would just like to see something specific
16 with tribal government and consultation.

17 MS. FIALA: Thank you. Gary Cooper?

18 MR. COOPER: Gary Cooper. I do have a little bit
19 of heartburn with the proposed wording, and part of the
20 reason why is -- and I think Aaron did a good job with
21 incorporating a lot of the concerns that the Data Study

1 Group identified related to time and resources and
2 costs and other things.

3 And I don't know that this proposal accurately
4 captures all of those concerns that the Data Study
5 Group identified as being a hindrance or a concern. I
6 don't necessarily know if it's a hindrance, but a
7 concern with being able to create a national tribal
8 survey.

9 And I really think that if we're going to use
10 wording similar to this that we need to be sure to
11 capture that, too, and not just say -- I don't see how
12 we can do it without being sure to capture that. And I
13 think part of Aaron's comments did do a good job with
14 that, and I would defer to maybe some other group,
15 workgroup members, if they have any suggestions on
16 maybe how we do that.

17 But that's my concern with the proposed language
18 here.

19 MS. FIALA: Thank you. So I think we have Jason
20 and -- Jason Adams?

21 MR. ADAMS: Jason Adams, Salish Kootenai.

1 Gary, I guess how I'd respond, I just wanted to
2 respond to your comment, is as I understand how this
3 was fashioned is instead of going through because the
4 one document that was produced by the Data Study Group
5 that I was a part of, the one document that's out there
6 that we make reference to in regards to a national
7 tribal survey administered by a Federal agency is 24
8 pages. And it goes into in-depth of the pros and cons
9 of the discussion.

10 And so I think instead of trying to pick the
11 pieces out of that and put it into this, that's why the
12 recommendation makes reference to that document.

13 MR. SANTA ANNA: I just wanted to add, you know,
14 one thing to our discussion, and that was to
15 reemphasize the fact that what we're trying to do here
16 is fashion a response to a comment that we received.
17 This is not going to affect any of the regulatory text
18 that the committee has already approved by consensus.

19 And this is the type of thing where it shows the
20 agency's respect for the public commenter, just to be
21 able to say that we have your comments, and we have

1 considered it. And just doing a response.

2 I think it's clear that everybody should
3 understand that the preamble language that we're
4 working on here will eventually fall away. That is
5 that the only thing that's codified in the Code of
6 Federal Regulations is the regulatory text. And if
7 issues come up regarding what we meant in the
8 regulatory text, that's when people come back to this
9 kind of stuff.

10 But largely, this is going to fall away after we -
11 - after we codify the rule. I just wanted to be able
12 to emphasize that so that we can, you know, focus
13 discussion.

14 MS. FIALA: Thank you, Aaron. Are there other
15 comments, questions? Gabe?

16 MR. LAYMAN: Gabe Layman, alternate for Teri
17 Nutter, Copper River Basin Regional Housing Authority.

18 So there are really two different approaches that
19 the committee is looking at to dealing with this
20 particular provision, and one is to try to articulate
21 the primary pros and cons of this particular data

1 source.

2 And the other is to say, look, there's been a lot
3 of work that's already been done to articulate those
4 pros and cons in the final report of the Data Study
5 Group and specific data evaluations. The question is
6 whether we want to spend our time here today trying to
7 figure out which of those pros we list, which of the
8 cons we list, which don't rise to the level of being
9 listed, or whether we simply, as a committee, want to
10 make reference to all of that work that's previously
11 been done and incorporate those references into this
12 language.

13 Personally, I think I would speak to the latter
14 approach because, if nothing else, it will save us a
15 great deal of time and energy today.

16 MS. FIALA: Thank you. Other comments or
17 questions?

18 (No response.)

19 MS. FIALA: All right. Then I'll turn things back
20 over to the co-chairs.

21 MS. BRYAN: Thank you, Sara.

1 So we have language in front of us today to
2 respond, a recommended response to the need for a
3 federally conducted national tribal survey. I'm going
4 to call for the question. Do we have consensus on the
5 language presented in front of us?

6 (Voting.)

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

8 (Pause.)

9 MS. FIALA: So we are going to be now looking at
10 the nonconsensus item, which in the packet is page 21,
11 and I'll go ahead and turn things over to Aaron.

12 MR. SANTA ANNA: Thank you.

13 I think we're at a point in the discussion where
14 we are now ready to earn our keep. My own sense is
15 that this is really the most difficult issues that the
16 committee has to face, and we did -- we do have
17 comments on Sections 330 with regard to the ACS and its
18 use, with regard to the adjustment to the ACS, and then
19 we have comments regarding the ACS itself.

20 In addition to that, there are comments on
21 volatility in Section 331, and my recommendation is

1 that we try to proceed sequentially with the sections,
2 leaving volatility to the end, where we can have a
3 broader discussion. Of course, you know, in some
4 sense, some of this might bleed over. So we'll just
5 continue -- we'll just move forward and try to deal
6 with them as we can.

7 The first comment that I would like us to address,
8 though, is -- and I'm not sure what page it is.

9 MS. FIALA: Page 21. It's page 21, comment number
10 6.

11 MR. SANTA ANNA: I'll give us a little time to put
12 this up. I'm sorry. Because I'm switching it up on
13 everybody.

14 (Pause.)

15 MR. SANTA ANNA: This is a comment that we got
16 regarding the validity of the -- of using ACS for the
17 other variables with the adjustment, I think. Yes.
18 Several commenters expressed concern with the
19 adjustment and said that it's not reasonable to assume
20 that an undercount of one variable, AIAN persons,
21 should be applicable to the other variables.

1 The reason why I suggest that we start here is
2 because, as we had indicated in our discussion the
3 other day or last week in preparation for the committee
4 meeting here today, that HUD is going to for several
5 reasons, including the fact that we were more concerned
6 about moving forward with the nonconsensus item and
7 also giving another view at the way the adjustment
8 worked with regard to how it would control volatility,
9 to -- to not push that one forward.

10 Consequently, if there's a response there that we
11 can look at? The response would basically state that,
12 that we appreciate the comment, that HUD's proposed
13 adjustment to reduce some of the likely error in the
14 ACS areas caused by county-based sampling and to
15 address the undercount in the database in the base
16 decennial census is used as a core component in -- oh,
17 that's what HUD proposed.

18 "After careful consideration, HUD has decided not
19 to move forward with the adjustment. HUD has
20 determined that it does not have -- that it does not do
21 enough to address volatility associated with small

1 areas to warrant its introduction as a nonconsensus
2 adjustment."

3 So, essentially, in addition to -- so this would
4 be our response to the comment. We would, of course,
5 make the appropriate revision to the regulatory text as
6 well.

7 (Pause.)

8 MS. BRYAN: Any questions on this language in
9 front of us or comments?

10 MS. FIALA: I think we're going to put up on the
11 screen what the corresponding changes to the regulatory
12 language would be.

13 MS. BRYAN: Okay.

14 (Pause.)

15 MR. SANTA ANNA: The associated revision to the
16 regulatory text would be to delete the word
17 "adjustment" after "estimates." I saw somebody had the
18 little pointer. Oh.

19 (Laughter.)

20 MR. SANTA ANNA: All the way to the end.

21 MS. FIALA: So this is looking at now the proposed

1 response and the corresponding adjustment to the
2 regulatory language. So questions or comments?

3 Heidi?

4 MS. FRECHETTE: Aaron, just to clarify, in the
5 public comments on this proposed change, did we receive
6 any comments in support of that -- of that language?

7 MR. SANTA ANNA: Yes, we did. I believe we
8 received one comment that was supportive of the
9 adjustment.

10 MS. FRECHETTE: And then we received comments that
11 weren't supportive?

12 MR. SANTA ANNA: Yes. The majority of the
13 comments were not supportive of the adjustment.

14 MS. FRECHETTE: Okay. Thank you.

15 MS. FIALA: Additional discussion, questions? The
16 response, yes, would be -- this is the proposed
17 response.

18 (Pause.)

19 MR. SANTA ANNA: I switched it up a little bit so
20 that we could deal with this issue first. It's the
21 third comment in. I think it's on page 21.

1 The comment is, "The control weights within the
2 ACS is not a valid measure of the other variables."
3 And as we've indicated up there that the comment is,
4 "Several commenters expressed concern with the
5 adjustment of Section 330(b)(2) and said it is not
6 reasonable to assume that an undercount in one
7 variable, AIAN persons, should be applied to the other
8 variables."

9 So this is our proposed response, which confirms,
10 as we talked about last week, that we would not be
11 moving forward with this, and this would be the change
12 to the regulatory text.

13 MS. FIALA: Co-chairs?

14 MS. BRYAN: Jason?

15 MR. ADAMS: Jason Adams. Salish Kootenai.

16 I guess the comment that I would make on this
17 issue is, is all of the response and the action that's
18 been taken has all been HUD. It's not been this
19 committee, and so I'm having a hard time, you know,
20 inserting some language here or disagreeing because HUD
21 did this as a nonconsensus issue. You took this

1 action, implemented this new regulatory language, and
2 now you're changing it.

3 This really seems to be out of the committee's
4 hand other than to say, yeah, what you did here is a
5 good encapsulation of what you did, and I'll agree to
6 it. I mean, I don't know what else we can do as a
7 committee because this is all HUD's work.

8 MS. FIALA: Are there other questions or comments,
9 responses to Jason's comment?

10 MS. BRYAN: Thank you, Jason.

11 MS. FIALA: Sharon?

12 MS. VOGEL: Just for the record, I do want it
13 known that, to me, HUD has a responsibility and
14 obligation to make the adjustments where there is
15 unfairness. And so how HUD chooses to do that, you
16 know, it's their prerogative or their responsibility.

17 So I guess since it was a nonconsensus item and
18 HUD made a decision, you know, that was their decision
19 to make. Of course, the adjustment worked well for
20 some of the tribes, you know, that were undercounted.
21 And by changing their action, it just means that the

1 undercounts are unfair and that you have to live with
2 it, I guess.

3 So I just wanted to make that comment. Thank you.

4 MS. BRYAN: Thank you, Sharon. Any more
5 discussion on this response, this response to the
6 public comment?

7 (No response.)

8 MS. BRYAN: I'm going to call for the question.
9 Do we have consensus on the response in front of us,
10 "Control weights within the ACS not a valid measure of
11 other variables?"

12 (Voting.)

13 MS. BRYAN: Okay. Seeing no dissension -- oh, Mr.
14 Jack?

15 MR. SAWYERS: With a "w." I guess I'm not voting
16 on it because it's HUD's decision. I'm not against it
17 or for it. I just don't think it's my vote counts.
18 So, I mean, if you want me to say yes, that's okay.
19 But it really is out of our hands. Why are we voting
20 on it?

21 Let's just paggle on. HUD has already made the

1 decision, and so I'm just saying let's go to the next
2 step. It's not up to the -- it's already been taken
3 care of.

4 Thank you very much.

5 MS. BRYAN: Thank you, Mr. "w" Jack.

6 So I'll -- you have the option to abstain. I'll
7 call for consensus again. Or if you want to vote it
8 down, do you have an alternative to propose for the
9 committee?

10 MS. YAZZIE: Is this the committee's --

11 MR. SAWYERS: I gave you one. Don't vote on it.

12 MS. FIALA: Another comment from Sharon.

13 MS. BRYAN: Aneva?

14 MS. YAZZIE: Thank you. Thank you, Madam Chair.

15 Aneva Yazzie, Navajo Housing Authority.

16 Perhaps I'm just listening to the discussion, and
17 maybe to clarify even the dissension of the committee,
18 this is what I'm hearing in written format and in the
19 response that a unilateral action was taken by HUD, and
20 it's with dissension that we have -- there was
21 dissension by the committee. However, HUD appreciates

1 the comment.

2 Something to qualify, I think, the sentiment I
3 think I'm seeing being expressed by this committee or
4 certain committee members that, you know, and the
5 action that was taken that was not consensus based. So
6 maybe something just to that effect to capture, I
7 think, the essence I think of the sentiments and
8 expressions that I'm hearing from the committee members
9 and just to outline the factual basis as to what
10 occurred here perhaps, Madam Chair.

11 MS. BRYAN: Thank you, Aneva.

12 So this proposal got voted down. Can you make a
13 new proposal or offer what you said, and we'll capture
14 that, please?

15 MS. FIALA: While you're crafting that, I don't
16 know if we could go to Sharon, Aneva, and give you a
17 couple moments?

18 MS. VOGEL: I guess I had a clarifying question
19 for Aaron. It doesn't make any difference, Aaron, what
20 the committee votes. You're still going to take your
21 action. So you really don't even need a vote from the

1 committee. Correct?

2 MR. SANTA ANNA: I think we're trying to come up
3 with some language that might try to address the issue,
4 and if -- you have it?

5 MS. CASTRO RAMÍREZ: Yes. So we would like to
6 propose that maybe we'd preface this paragraph with
7 "The committee believes that this is a HUD decision."
8 And then we go into "HUD appreciates the comment" and
9 continue to the point that -- that was made earlier
10 because there was nonconsensus, HUD proceeded with
11 making a decision.

12 So if that's what the committee would like to
13 capture, we're perfectly amenable to adding the
14 statement that captures that.

15 MS. FIALA: Thank you. So, Aneva, did you have
16 language you would like to propose?

17 MS. CASTRO RAMÍREZ: We can tweak the language a
18 bit, but something to that end.

19 MS. YAZZIE: Let me offer. "The committee
20 acknowledges this was a unilateral action taken by HUD
21 and decision," something to that effect. Let's see,

1 "given the nonconsensus position." Well, I'm adding
2 more to it. Let me think. By HUD. Given the
3 nonconsensus, consensus position of the committee -- of
4 the committee. Of -- sorry. I'm open for further
5 edits.

6 Oh, it's one sentence, actually. HUD, delete the
7 period, a small "g".

8 MR. SANTA ANNA: The only -- the only -- the
9 thing I would change is I would delete the words
10 "unilateral action." And if you would want to
11 substitute "nonconsensus decision."

12 MS. FIALA: Okay, great. So we're going to take
13 out "unilateral action" and put in "nonconsensus
14 decision." And then I think we could put a period and
15 then strike out.

16 So we have a new proposal. Any comments or
17 questions?

18 MS. BRYAN: Was there a call for the question?
19 Okay. Do we have consensus on the new language in
20 front of us?

21 (Voting.)

1 MS. BRYAN: Seeing no dissension, we have
2 consensus. Thank you.

3 MS. FIALA: We're going to move on to the next
4 item. Aaron?

5 MR. SANTA ANNA: The comment that I'd like us to
6 next address is the one before this in your document
7 that says, "The ACS data is unreliable."

8 MS. FIALA: And that's on page 20 of the packet.

9 MR. SANTA ANNA: You can see here that we got
10 several comments on this. As I've written, one
11 commenter stated that he did not support 330(b)(2)
12 because the ACS is neither reflective nor
13 representative of the commenter's tribal community.
14 The commenter also stated that the flaws in the ACS
15 data cannot be fixed by weighing that uses the ACS
16 count of American Indian and Native persons.

17 The second is another commenter questioned the
18 accuracy of the ACS data, giving a sampling response
19 and inclusion rates as well as the strategy to capture
20 tribal enrollment information. The commenter concluded
21 that reliance on this data would harm poor tribes with

1 worse housing and thus disproportionately affect funding
2 accessible to them via the need component of the IHBG
3 funding formula.

4 And HUD has proposed and --

5 SPEAKER: (Inaudible.)

6 MR. SANTA ANNA: I'm sorry? Yes, yes. The edits
7 are HUD's. So --

8 MS. FIALA: There are some additions in the
9 underline that's not in the packet that was added after
10 these were distributed.

11 MR. SANTA ANNA: And in the package that you
12 received, that last paragraph was not -- not complete,
13 and so I needed to -- we needed to add to finish that
14 thought. But essentially, what the response to the
15 commenter, to these comments would be is that the
16 committee and its Data Study Group did a thorough
17 review of the data sources and talks about the ACS as
18 the -- as you can see there.

19 "Although consensus was not achieved on using ACS
20 as a data source, HUD has determined that the ACS is
21 the most current and accurate data available for

1 measuring the need for funding under IHBG. The ACS
2 data is more current than the data currently being used
3 in the formula and are available for all eligible
4 tribes, with the planned data for the FY 2018
5 allocation to be based on ACS data collected between
6 2010 and 2014.

7 "This compares to the current data in the formula
8 that for most tribes are Census 2000 long form data
9 aged with IHS population change. Only one tribe has
10 submitted a challenge that are more current than other
11 ACS.

12 "Furthermore, as a mandatory survey with full-time
13 survey staff, the response rates exceed 90 percent for
14 most tribal areas, and quality control is high. For
15 the larger tribes that represent the majority of
16 housing -- housing need in tribal areas, the sample
17 sizes are large enough to have accurate estimates.

18 "The department recognizes that the ACS data do
19 have some limitations. Similar to the 2000 census,
20 tribes with fewer people in their service areas have
21 larger sampling error. The underlying data, the

1 underlying weights are county-based, causing additional
2 error for smaller areas.

3 "In addition, the 4.4 percent undercount of the
4 2010 decennial census for reservation and trust lands
5 is potentially present in the ACS because the ACS uses
6 decennial census adjusted for post census population
7 growth as its base data for weighting ACS.

8 "The smallest tribal service areas, the minimum
9 grant provisions, and overlapping service areas
10 alleviate the majority of the concerns about small
11 sample sizes, and small sample and small area weights.
12 In regards to the decennial undercount, HUD is
13 committed to work with the Census Bureau to improve the
14 accuracy of the counts."

15 MS. FIALA: So I'll give everybody a minute -- I
16 know that was a lot -- to review the changes in the
17 packet.

18 (Pause.)

19 MS. FIALA: Go ahead and open up for questions or
20 comments.

21 (Pause.)

1 MS. FIALA: All right. I'm going to go ahead and
2 turn things back over to the co-chairs.

3 MS. BRYAN: Okay. Looking at the comment and the
4 proposed response, are there any questions or changes
5 proposed to the language on the screen? Aneva?

6 MS. YAZZIE: Thank you, Madam Chair. Aneva
7 Yazzie, Navajo Housing Authority.

8 I recall looking at some of the data from ACS, and
9 we had some questions on some variables that alluded to
10 changes due to tribal members exiting the reservation,
11 which wasn't happening on our reservation. So there's
12 a statement there that just jumps out to me, which says
13 for the larger tribes that represent the majority of
14 housing need, excuse me, in tribal areas, the sample
15 sizes are large enough to have accurate estimates.

16 I don't know. I don't believe that's true for
17 Navajo, just given our reading of the data when the ACS
18 runs were made. So I'd rather -- and I don't know,
19 furthermore, "as a mandatory survey," from there, to be
20 stricken all the way to "the larger sampling error" two
21 lines down perhaps.

1 Because that doesn't -- I mean, now you're reading
2 some of the statistics and some of the, I think,
3 assumptions being made in the reading of those
4 statistics perhaps. So we can just delete that
5 sentence, and so I would strike that.

6 Thank you.

7 MS. FIALA: So that looks like it was a friendly
8 amendment to the proposed language that HUD presented.

9 So, HUD, is this an acceptable change?

10 (Pause.)

11 MS. FIALA: All right. While HUD is conferring,
12 I'm going to go ahead and -- are you ready? So we're
13 going to have HUD respond, and then Jack.

14 (Pause.)

15 MS. FIALA: Jack, do you want to go ahead?

16 MR. SAWYERS: Just a quickie. It says
17 "commenters." It should say "commenters" on both
18 because there's more than one comment.

19 MS. FIALA: Okay, thank you. We'll make that
20 change.

21 Jack, I don't know if that's actually in the

1 response, the word "commenters." I think that was just
2 in the summary, which is not -- will not be included.

3 So, yes, now we're going back to the HUD response.
4 This was the HUD response to Aneva's friendly
5 amendment.

6 MS. FRECHETTE: I'm going to ask Todd to explain
7 our response.

8 MR. RICHARDSON: The information that is presented
9 here is in the study group report, that the study group
10 report -- the study group report that this group had,
11 we worked on for a year, states the pros and cons to
12 the ACS. And what I put here was from that -- findings
13 from that report.

14 So I think we could say, as we did with the other
15 issue about the tribal survey, indicate "as indicated,"
16 you know, the information. I guess, "The ACS data are
17 the most current and are the most" -- at the very top
18 here. "HUD has determined the ACS is the most current
19 and accurate data available for measuring the needs for
20 funding under IHBG."

21 And I think we can say something like the

1 information on the -- how the ACS data are in the
2 committee report. Actually, I'm being given text from
3 someone who knows how to write.

4 (Pause.)

5 MR. RICHARDSON: Wow, this is long.

6 (Laughter.)

7 MR. RICHARDSON: How about could we just say, "See
8 -- see the committee's final Data Study Group report?"
9 Could we just say that? No.

10 (Laughter.)

11 MR. RICHARDSON: "As discussed in the final Data
12 Study Group report."

13 MS. FIALA: So then are you, with the addition of
14 this language, were you okay with the strikeout
15 proposed by Aneva?

16 MS. VASQUEZ: Okay. Here's an idea. So just move
17 the "as discussed in the final Data Study Group report"
18 to after the phrase "The ACS data are more current --
19 are more current than the data currently being used in
20 the formula and are available for all eligible tribes,
21 as discussed in the" blah-blah-blah, blah-blah-blah.

1 And then we would -- we don't need the whatever
2 follows. Yeah, end it there. So also you can delete
3 the next sentence and the ones that Aneva had deleted.
4 Right.

5 MR. RICHARDSON: You can remove only one tribe --

6 MS. VASQUEZ: Yeah. Yeah.

7 MR. RICHARDSON: The other information that's at
8 the very -- I'm sorry. The information at the very end
9 about the undercount, that's actually not in the Data
10 Study Group report because that came out after the Data
11 Study Group report. So we may want to -- that could be
12 left in or removed, either way.

13 MS. FIALA: Talking about the last paragraph,
14 Todd? No?

15 MR. RICHARDSON: No, go ahead. I'm -- there is
16 one other thing we might want to add there, though,
17 just so folks understand. Tribes may still challenge
18 the ACS data, per the existing rule.

19 MS. FIALA: All right. So --

20 MS. VASQUEZ: The phrase underlying weights
21 doesn't make sense now. So we end "as discussed in"

1 blah-blah-blah and then --

2 MR. RICHARDSON: Yeah. So the issue about for the
3 smallest tribal area, et cetera. Hmm, that doesn't
4 make sense, given that we just deleted. No, we
5 actually still have that in here, don't we? I defer to
6 you guys.

7 MS. VASQUEZ: Okay. So in order to make it
8 comprehensible that we say the underlying weights are
9 county-based, we would bring back the phrase, "The
10 department recognizes that the ACS data do have some
11 limitations. Similar to the 2000 census, tribes with
12 fewer people in their service area have larger sampling
13 error. The underlying weights are county-based,
14 causing additional error for smaller areas."

15 Then it makes sense.

16 MS. FIALA: So we have a partial acceptance of
17 Aneva's friendly amendment, and then with the addition
18 and removal of some other language.

19 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo
20 Housing Authority.

21 I appreciate the friendly amendment, and I was

1 just going to make that next amendment to unstrike
2 where it starts "the department recognizes." And I
3 think to be consistent, maybe we put "HUD" instead of
4 "the department" so it's specific to the agency.

5 "HUD recognizes that the ACS data do have -- does
6 have limitations," maybe. Maybe we can strike some --
7 "does have," maybe "does have some limitations."
8 Similar, county-based, and then I'm fine with that.

9 Thank you.

10 MS. FIALA: Great. Heidi? And you were also up
11 next in that queue. No. Okay. So then Earl?

12 MR. EVANS: Earl Evans, Haliwa-Saponi Indian
13 Tribe.

14 I think you can delete everything after
15 "limitations."

16 MS. FIALA: All the way down through the last
17 paragraph?

18 MR. EVANS: All the way. And I think it still
19 responds to the comments sufficiently.

20 MS. FIALA: That's another friendly amendment.

21 (Pause.)

1 MS. CASTRO RAMÍREZ: Yes. We accept the
2 amendment.

3 MS. FIALA: Thank you. Katherine?

4 MS. VASQUEZ: So that takes care of mine, too.

5 MS. FIALA: All right. And Aneva?

6 MS. YAZZIE: Yes, thank you. Aneva Yazzie, Navajo
7 Housing Authority.

8 I love where this is going. One more friendly
9 amendment to the other friendly amendments is to leave
10 the last two sentences. "HUD is committed to work with
11 the Census Bureau to improve the accuracy of the
12 counts, and tribes may still challenge the ACS data."
13 I'd like to leave that in.

14 Thank you.

15 MS. FIALA: Okay. And HUD, are you okay with that
16 being added back -- okay, great.

17 Are there any other questions or comments about
18 the reworked language? Sharon?

19 MS. VOGEL: The only point that I want to make is
20 I think we're losing -- losing for the record that at
21 one time, HUD had acknowledged that the 4.88 percent

1 undercount was important enough for them to address,
2 and then now we're going to eliminate it off the
3 record. And I don't think that's a good idea.

4 MS. FIALA: Sharon, would you like to add that
5 back in as another change to language or --

6 MS. VOGEL: Yes.

7 MR. SANTA ANNA: Could you also keep the "in
8 addition" that starts that sentence?

9 MS. FIALA: Yeah, so you're just going to -- right
10 before the 4.88, Christine, and --

11 And so that is a friendly amendment back to HUD.

12 (Pause.)

13 MS. FIALA: I'm still waiting. Aneva?

14 MS. YAZZIE: Thank you. Aneva Yazzie, Navajo
15 Housing Authority.

16 As a grammar language issue on that. "In
17 addition, the 4.88 percent undercount of the 2010
18 decennial census saying its reservation and trust lands
19 likely are -- likely is -- is likely or is potentially
20 present in the ACS." To strike "likely are" also.

21 Thank you.

1 MS. FIALA: Great. It looks like HUD accepts
2 that. Other questions or comments?

3 (No response.)

4 MS. FIALA: All right. Then I will go ahead and
5 turn things back to the co-chairs.

6 MS. BRYAN: All right. Thank you, Sara.

7 We are looking at a proposal in front of us that's
8 gone back and forth with friendly amendments and
9 changes. Any other discussion or questions about this
10 one?

11 I'm going to call for the question. Do we have
12 consensus on the language in front of us responding to
13 the comment the ACS data is unreliable?

14 (Voting.)

15 MS. BRYAN: I see consensus. Thank you. Very
16 good work.

17 MS. FIALA: All right, Aaron, I think we're going
18 to move on to --

19 MS. BRYAN: Just a reminder that we have the
20 public comment scheduled for 4:30 p.m. But I do think
21 we have time for at least one more. If it were up to

1 me, we would finish them all tonight.

2 MS. FIALA: I believe HUD has asked for --

3 MS. BRYAN: So a good thing it's not up to me.

4 MS. FIALA: HUD has asked for a brief 10-minute
5 break to revise some proposed language. Or maybe not.
6 I take that back. We're going to keep going.

7 MR. ADAMS: I'm just saying why don't we just do
8 public comment and come back to this at the beginning
9 of the morning, let them have their time redrafting
10 what they already drafted.

11 MS. BRYAN: My only concern is we've spent the
12 entire day and got some very good work done, and we
13 have a pretty good bulk of issues. We have one more
14 full day, and the issues are -- potentially could take
15 longer as we get through the more issues that have --
16 the nonconsensus items.

17 MR. SANTA ANNA: We can -- we can move on. We
18 have one last comment in this batch of comments, and
19 this is entitled "Opposition to Implementing a
20 Nonconsensus Adjustment to the ACS Data," and this
21 deals with Section 1000.330(b)(2).

1 MS. FIALA: And that is the first item -- I'm
2 sorry, Aaron. The first item in this packet under
3 nonconsensus, and in the other booklet, it is page 21.

4 MR. SANTA ANNA: There were several commenters in
5 this -- in this cache of comments. One commenter
6 expressed disappointment with HUD in proposing to
7 implement the rewording proposal that is part of
8 Section 330(b)(2) despite broad opposition from tribal
9 members.

10 The commenters urge HUD to respect the perspective
11 of the majority of the tribal committee members and not
12 implement the reweighting proposal. Another commenter
13 said HUD should not unilaterally move forward with its
14 own proposals if no consensus is found, but rather
15 should rely on existing language of the regulation
16 since that approach was the result of prior consensus
17 between HUD and the tribes.

18 The second general sense of comments, several
19 commenters said they do not support the implementation
20 of any nonconsensus item and referred to the adoption
21 of the ACS. Several of these commenters also concluded

1 that implementing nonconsensus items, excuse me,
2 severely dilutes the significance of the process. It's
3 not a sign of negotiating in good faith and is
4 inconsistent with what constitutes government-to-
5 government consultation.

6 One of the commenters also stated that the summary
7 section of the proposed rule was inaccurately stating
8 that the proposed regulatory changes reflect the
9 consensus decisions of the committee since the adoption
10 of the data source itself was not made by consensus and
11 recommended that HUD revise the sentence to reflect
12 that the proposal included regulatory changes that did
13 not receive consensus.

14 We wanted to take a little time, but I think we
15 have the -- we wanted to revise the HUD response that
16 we would be proposing to the committee and wanted to be
17 able to try to cut down a little bit some of the text
18 to make it as straightforward as possible and to try to
19 address the issues that were raised.

20 And again, this would be reading, "HUD appreciates
21 the concern of the commenters but disagrees with the

1 suggestion that moving forward unilaterally with this
2 nonconsensus item reflects a lack of good faith or
3 detracts from the government-to-government relationship
4 that HUD has with the tribes. HUD has agreed to remove
5 the ACS data control weights within the ACS period."

6 And leaving everything else -- removing everything
7 else. So that would be the proposal that we would
8 offer to -- or the recommendation that we would offer
9 to the committee.

10 MS. FIALA: Thank you, Aaron.

11 So the revised language is up, opening up for
12 discussion, questions, comments?

13 MS. BRYAN: I have a call for the question. Do we
14 have consensus on the language in front of us in
15 response to the comment, "Opposition to implementing a
16 nonconsensus adjustment to the ACS data Section
17 1000.330(b)(2)"? Do we have consensus?

18 (Voting.)

19 MS. BRYAN: I see consensus. Thank you.

20 I told you guys we could do one more. All right.

21 We still have 4 minutes. Can we do one more?

1 (Laughter.)

2 MS. BRYAN: Okay. At this time, you guys have
3 accomplished some really good work. So I'm going to
4 look around the table to my fellow committee members
5 and ask if you would like to stay on the agenda and
6 move with the public comment section of our day? And
7 we can begin again in the morning.

8 Okay. It's been a long day. We've done a lot of
9 really good work.

10 So at this time, I'd like to thank you all for
11 your work. I believe we've got a lot accomplished
12 today, and we have another full day of work in front of
13 us tomorrow.

14 At this time on our agenda, we would like to open
15 up the floor for public comments. We will have
16 microphones in the back of the room. Please state your
17 full name and who you represent for the record so that
18 your name can be read into the record.

19 (No response.)

20 MS. BRYAN: Going for the mic, Dave.

21 (Laughter.)

1 MS. BRYAN: Okay. Just so you all know, there
2 will be time at the end of tomorrow for public comment
3 as well, and so tomorrow afternoon, if you weren't able
4 to make public comments or are saving them until the
5 end, we will have public comments tomorrow as well.

6 So at this time, I'd like to take this extra
7 opportunity to do some logistical things. I'm going to
8 have Aaron just run down what we're going to do
9 tomorrow so we can all prepare for it. Just go over
10 the additional sections that we need to be thinking
11 about, maybe working on tonight.

12 And if we could, committee members stay after just
13 for a few minutes for a group photo. That would be
14 appreciated. And then, after Aaron, we'll have a
15 closing prayer from Asa Begay, Commissioner with the
16 Navajo Housing Authority.

17 MR. SANTA ANNA: Thank you.

18 I want to echo the comments that we've made a huge
19 amount of work and really have accomplished a lot. And
20 it's very gratifying to see all the hard work that
21 everybody is putting into it.

1 I think at this point, there are just a few things
2 that are left for us to consider tomorrow. We have the
3 issue of volatility control with regard to 1000.331,
4 several comments that are requesting clarification on
5 how that would work. And ultimately, we do want to be
6 able to address the last comment, which is, "The
7 negotiated rulemaking was successful." Because I think
8 that that's a goal that is something that we can
9 certainly accomplish and have already accomplished.

10 I also want to be able to take some time tomorrow
11 to talk about the process with regard to, you know, the
12 final rule -- how it would be drafted, when it was
13 going to be drafted, once it's drafted, what steps that
14 it needs to go through -- so that everybody can be
15 aware of what to expect as we leave tomorrow.

16 And I think that is it for tomorrow. Certainly,
17 an agenda that I think is certainly doable for
18 tomorrow.

19 Thank you.

20 MS. BRYAN: Thank you. Now I'll call on Aaron
21 Begay -- Asa Begay. My apologies.

1 MR. BEGAY: First of all, with all due respect, I
2 want to introduce myself and my relatives from this
3 area. This is your land. You have a way of life here.

4 (Speaking Native language.)

5 Thank you.

6 MS. BRYAN: Thank you, Asa.

7 Okay. We'll meet here at 8:30 in the morning.

8 And if committee members could just stay for a couple
9 of moments, Sara will give us instructions on where
10 we're gathering for photos.

11 (Whereupon, at 4:35 p.m., the meeting was
12 adjourned.)

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