

Formula Negotiated Rulemaking Committee
Meeting Minutes
August 18 - 21, 2003
Washington, DC

**FORMULA NEGOTIATED RULEMAKING COMMITTEE
MEETING
August 18 -21, 2003
Washington, DC**

These minutes are a record of discussions held during meetings of the full committee only, and do not reflect discussions held during caucuses or working group sessions.

The fifth meeting of the Formula Negotiated Rulemaking Committee was held on August 18 - 21, 2003, at the JW Marriott Hotel in Washington, DC.

Committee Members in Attendance

Governor Bill Anoatubby (Wayne Scribner, alt.)
Mr. Rodger Boyd
Mr. Robert Carlile
Mr. Larry Coyle
Vice Chief Beasley Denson
Mr. Wayne Ducheneaux
Mr. Joel Frank
Mr. Robert Gauthier (Jason Adams, alt.)
Ms. Carol Gore
Mr. Ray Gorynski
Mr. Ron Hoffman
Mr. Terry Hudson
Mr. Marvin Jones

Dr. Blake Kazama
Mr. Bruce LaPointe
Mr. Michael Liu (Edward Fagan, alt.)
Ms. Judith Marasco
Mr. Johnny Naize
Mr. Michael Reed
Mr. Jack Sawyers
Mr. Marty Shuravloff
Mr. Russell Sossamon
Ms. Darlene Tooley
Chairman Eddie Tullis (Susan Wicker, alt.)
Chairman Brian Wallace (Phil Bush, alt.)

[Ms. Barbara Baker, designated alternate for Mr. Sawyers also attended, although due to Mr. Sawyer’s presence, was not required to perform any Committee duties.]

Over the course of the four-day meeting, more than 70 observers attended the public sessions. An attendee list is included (Attachment 1).

**MONDAY MORNING, AUGUST 18, 2003
FULL COMMITTEE**

Mr. Sossamon called the meeting to order at 9:15 am. There was an invocation by Jason Adams, after which Mr. Sossamon welcomed everyone to Washington, DC. He then called the roll (Attachment 2) and determined that there was a quorum. He noted that the first agenda item was review, discussion, and approval of the minutes of the July meeting. He then opened the floor for comments. Stating that there were no comments or corrections, he called for consensus to approve the minutes. There was consensus.

Before moving on to public comments, Mr. Sossamon mentioned some housekeeping items, which included the list of meeting rooms and their availability through the week. He also mentioned that Keith Giarrusso (HUD ONAP) had requested that all travel reimbursement be submitted as soon as possible after committee members return home.

He added that this is particularly important as HUD is nearing the end of its fiscal year. Mr. Sossamon then returned to the agenda and public comments.

Mr. Bush stated that he has 3 resolutions that he would like to introduce pertaining to formula issues. Mr. Sossamon asked that they be copied and distributed, and then asked Mr. Bush if he wanted to put forward the resolutions for consideration now. Mr. Bush answered in the affirmative.

Mr. Sawyers added that he also had resolutions that need to be copied and distributed.

Mr. Ducheneaux made a comment about the travel agent being difficult to work with.

Mr. Sossamon asked if there were any further comments. Mr. LaPointe mentioned the recent death in the Eastern Woodlands ONAP (Mohammed Rahmah) and remembered Mohammed as a friend and as a professional.

Mr. Kazama requested a tribal caucus. Mr. Sossamon pointed out that caucuses could use any available meeting room. Mr. Kazama requested the caucus at the conclusion of the full committee meeting this morning. Staff (Ms. Gardstein) requested that all documents that are handed out for distribution be dated. There was a clarification that the documents handed out were from the Northern Plains region.

Mr. Sossamon asked if there were any further comments. He then stated that the resolutions from Mr. Bush, would be distributed in workgroups. Mr. Bush clarified that they would go to both workgroups. Staff clarified that the copies were being made now and would be distributed as soon as possible. Mr. Southerland requested clarification on the proposals. Mr. Sossamon listed the proposals submitted by Mr. Sawyers on behalf of the United Native American Housing Association (UNAHA):

1. Eliminate inconsistent income;
2. Weighting
3. Formula AEL;
- 4 amending FCAS.

Mr. Scribner called for a caucus of Southern Plains; Mr. Sayers requested a Northern Plains caucus. Mr. Sawyers also requested that there be a time limit on caucuses. 30 minutes was suggested and agreed upon. *Mr. Sceeles* stated that he would encourage committee to stay at the table as much as possible since we don't have the mechanism to kill proposals at the workgroup level. He added that the committee is running out of time, and that we need to sit and hash out recommendations and proposals at the full committee level. Mr. Sossamon agreed and stated that he encourages the chairs of the workgroups to move through the issues.

Mr. Sawyers stated that he would like to see breakouts into two groups today, but that sub- groups meet after scheduled meetings. He added that his workgroup (Need) would

like to be prepared to come to full committee tomorrow and that side issues should be handled at night, or in the morning, or during off time. He commented that otherwise we'll just be waiting to react, and so he would really like to see us be prepared to meet tomorrow as full committee. Dr. Kazama agreed and added that the workgroups should clean up what we have and then bring items back to this table.

Mr. Sossamon asked if the 2000 census data was ready for this session. Staff (Jim Anderson) replied 'yes and no.' He stated that Mr. Richardson had prepared some analysis of the data itself and added that he thought that the data is now in a format for the formula program. Mr. Anderson also said that he was hoping that the debugging would be finished this morning. He summarized by adding that the raw data is available, but runs from that data are still not available. Mr. Sossamon asked for a timeframe. Mr. Anderson said that he hoped that the data runs would be available on Tuesday morning.

Ms Marasco asked if it is possible to amend the agenda to include more committee time, since the agenda seems to be primarily workgroup time at this point (Attachment 3). Mr. Sossamon responded by stating that the committee has not taken any action to approve this agenda. It's only a guideline. Ms. Marasco reiterated that she was prompting him to do so at this time. Mr. Sossamon said that since the agenda is not approved, it doesn't have to be modified formally and that the committee can just do what needs to be done. Ms. Marasco countered that it was important for committee members to know when we will be in full session. She added that since the decisions are made at this table, she would like to see an accurate agenda so that everyone who is participating knows where to be at what time. Mr. Sawyers commented that the workgroups would have to bring items that have consensus at group level to the full committee and that the agenda needs to be flexible to allow for the workgroups to function. On the other hand, he added that items could be brought to the full committee without workgroup consensus. He commented that either way is ok with him, but that you can't very well put a schedule on consensus. Ms. Marasco reiterated that at this point, she is assuming that general sessions are at 5 pm everyday, and you can't just throw another in.

Mr. Sossamon mentioned that his understanding is that items will be ready for full committee this afternoon. Ms. Marasco agreed but requested that if there are changes that everyone be notified. Mr. Sossamon stated that any changes would be made by the committee as a whole. He then asked if there were any further comments. Hearing none, he recessed the full committee for tribal caucuses. He noted that it was 9:45 am and that 30 minutes were being allowed for caucus. He suggested adding a 15-minute break after that.

Mr. Hoffman requested that the committee allow time for A/S Liu to report to the group.

A/S Liu welcomed all to DC and mentioned that he used the Mr. Sawyers' pig story at a meeting recently (and not so many people laughed). A/S Liu stated that we are at a crucial time in the Neg-Reg and the next few days are very important. He added that HUD stands ready to provide whatever information is needed to get the job done, and he

hoped that everyone will work together to get as far along in the process as possible. He also noted that there is no time limit on consensus and so we must rely on committee members in the negotiating process. A/S Liu commented that HUD continues to respect the sovereign -to-sovereign relationship, reiterating HUD's willingness to participate in the process. He closed by thanking everyone and stating that he looked forward to a fruitful few days.

Mr. Naize stated that the Southwest caucus would be in Salon G. It was also noted that the Need workgroup would be meeting in Salon D, and CAS in Salon G.

There were no further comments. The full committee meeting recessed. Mr. Sossamon stated that the workgroups would meet beginning at 10:30 am.

MONDAY AFTERNOON, AUGUST 18, 2003
FULL COMMITTEE

Mr. Sossamon reconvened the full committee at 5:20 pm. He began the meeting with workgroup reports. He then turned the floor over to Dr. Kazama.

Dr. Kazama reported that the CAS workgroup worked hard to tie up loose ends and would like to take one more hour tomorrow morning from 8 to 9 to address the AEL challenge issue. He then presented the issues that the workgroup was ready to turnover to the full committee. There are three handouts: one deals with all the issues that came in front of the CAS workgroup and whether we reached consensus, what actions are needed, etc. He pointed out that there is an additional 3B that updates the one in the packet (Attachment 4). He said that he would talk more on the issues now, or later, depending on the wishes of the committee. Dr. Kazama stated that he wanted to address the proposed language for Sec. 1000.340, which reflects the 2000 amendments. That was also distributed (Attachment 5). He thanked Ms. McFadden for putting the language together. Lastly, Dr. Kazama raised the hearing process issue. He added that this is being worked on jointly with the Needs workgroup, noting that it was a complex issue and there will be further discussion in the subgroup. Dr. Kazama stated that with the information provided, the CAS group will be pretty much done (except for 8 – 9 am) and would then like to meet in full committee

Mr. Sossamon turned the floor over to Mr. Sawyers for his report. Mr. Sawyers commented that the Needs workgroup is a day behind due to the fact that they have not been able to get data runs performed. He mentioned that the workgroup has some minor reports, but is not at the point to present a final report to the full committee. He then turned the floor over to Mr. Bush for a report on minimum funding.

Mr. Bush stated that there were 6 or 7 different proposals that didn't get updated resulting in some confusion, but the subgroup went back to the beginning of the July meeting to recreate the proposals. He said that the minimum funding subgroup would need to meet first thing in the morning.

Mr. Sawyers stated that the Needs group will need some time tomorrow, and perhaps it would be a good idea to hear the CAS proposals tomorrow and start process and then spend some time tomorrow afternoon in Need workgroup. Mr. Sossamon commented that CAS also wants to meet in the morning. He suggested meeting in full committee at 9:00 am to allow CAS to present to full committee, and stay in full committee until noon, break for lunch, and then go to workgroups in the afternoon.

Ms. Tooley requested clarification on whether the presentation from CAS would be informational or a call for consensus. Mr. Sossamon responded that the CAS workgroup hoped to be finished with the work they have been charged with and will be presenting to the full committee, either for consideration or consensus. Ms. Tooley brought up the previously expressed concern about seeing the effect of everything combined before deciding on consensus on any part. Mr. Sossamon responded that he recalled that discussion, and would be surprised if we could reach consensus on anything that affects the mechanism of the formula, but there are some other regulatory items. He added that if consensus is called for, committee members always have the ability to withhold until the whole picture is available.

Mr. Sawyers asked if any subgroups were meeting this evening. The response was that none is meeting.

Mr. Sossamon asked if there were any other comments or questions. He also asked if everyone understands the schedule. Mr. LaPointe commented that he would like to see a deadline of some kind for getting back to full committee wrap up the workgroups and subgroup process sometime this week. Mr. Sossamon asked if anyone could recommend a time or schedule. Mr. Sawyers indicated that the Needs workgroup could wrap up as early as tomorrow if the data runs become available, and certainly by noon on Wednesday. He then suggested setting no later than noon on Wednesday as the deadline for workgroups.

Mr. Sossamon responded by suggesting that noon Wednesday is a goal and not a deadline. He added that we are anticipating that we'll have the data runs tomorrow, but there are some things that the workgroups can't control. He acknowledged that it is generally agreed that everyone wants to move forward, so if you can't reach consensus in workgroups, just move the issues to the full committee. He then reiterated setting the end of the day tomorrow or certainly noon on Wednesday as a goal.

Dr. Kazama requested a 10-minutes caucus for Alaska after this meeting.

Mr. Sossamon clarified that the anticipation is to have the requested data runs finalized by tomorrow afternoon. He then asked if the data runs were performed with updated census data. The response was affirmative. Mr. Sossamon that asked if there were any further comments. Hearing none, he thanked everyone for their hard work today, and recessed the meeting at 5:45 pm.

TUESDAY MORNING, AUGUST 19, 2003
FULL COMMITTEE

Mr. Sossamon recalled the meeting at 9:30 am. He shared Barb Baker's invitation to the Iwo Jima memorial to see the Marine Corps present the Marine Sunset Review Parade featuring the Drum and Bugle Corp and the Silent Drill Team on Tuesdays from 7:00 p.m. to 8:30 p.m. He noted that ms. Baker's son was among the members of the team. Mr. Sossamon then recognized Mr. Sawyers who recognized staff (Todd Richardson).

Mr. Richardson referred to the handout, which is a chart requested by the Needs group (Attachment 6). He noted that the FY 2004 estimate is not quite ready and that some geographies are quite complicated. However, he pointed out that the numbers provide a general idea of what to expect when you get the estimate. He then walked through the chart. The first two blocks refer to the number of households (HH) by region using 1990 and 2000 census data. The third column shows percentage change. He noted that in every region the numbers went up due to several factors. The first factor is that census probably did a better job of data collection; the second factor is general growth, and the third factor is the change in race categories. He summarized that in 1990 you could only pick one race, but in 2000 you could pick as many races as you wanted. He added that many more AIAN persons identify themselves as multiple race identify than any other category. The result is a substantial population increase. However, Mr. Richardson pointed out that the amount of money allocated did not increase. He then described the next chart, which shows the share of population in each region in 1990 and in 2000. So, for example, although HH increased in Alaska, but the share decreased. Mr. Richardson went to the last chart, which is the percentage change. He clarified that some regions will have substantial declines, and some will have gains, but that this doesn't represent tribe-by-tribe changes, only regional.

Mr. Richardson commented that by using census data, tribal enrollment does not have to be proven. He added that a problem with census data is that it is self-identified.

Mr. Hoffman asked when the complete run would be available. Mr. Richardson responded that he hopes it will be pretty soon. He noted that they are close, but that he doesn't want to send out something that is not correct. Mr. Hoffman asked if it's possible to get an idea of what the changes will be based on what is currently available. Mr. Richardson reiterated that that they are trying for today, but that he doesn't want to make any guarantees.

Ms. Kruszek asked Mr. Richardson to address the population cap. Mr. Richardson responded by stating that these data don't reflect that there is a population cap on some tribes, and that it should be noted that many of the tribes in Northwest and Eastern/Woodlands areas are subject to the population caps. Therefore, he stated that you could probably expect that the regional increases won't be quite as big and decreases in other areas as large.

Ms. Lambert asked if it would be expected that numbers would be closer to 1990 census numbers if mixed race was left out. *Mr. Richardson* replied that there would be changes, but not as substantial changes. He added that the reservation-based tribes get the biggest hit as a result of the multi race option. There was a question regarding the margin of error, to which *Mr. Richardson* replied that the margin of error is plus or minus 5. With that, *Mr. Richardson* concluded his presentation.

Dr. Kazama took the floor and first mentioned his appreciation for staff (*Mr. Swanson* and *ms. Gardstein*). He requested clarification on two items. He brought up the idea of providing an alternative if you object to consensus, which was followed in the workgroup. *Mr. Ducheneaux* commented that he had tried to get that approach into the protocols but was not able to do so. According to the protocols, there is no alternative required. Secondly, *Dr. Kazama* asked if the committee would prefer that he simply go through the recommendations of the CAS workgroup in presentation, and then come back to deal with consensus. There was no definitive direction and *Dr. Kazama* simply began to go through the handout. He read from the tracking sheets:

#1. Keep CAS formula as is.

#1A. AEL baseline average: There was no consensus and a decision to bring the issue to the full committee. *Dr. Kazama* commented that the workgroup recognized that there were inconsistencies. In addition, *Dr. Kazama* referred to the concerns raised by *A/S Liu* earlier in the Neg-Reg.

#1B. AEL challenge process. The workgroup agreed that there should be a method to challenge AEL, but could not agree on the process. *Dr. Kazama* stated that there were two proposals offered, but no agreement and so the issue has been moved into the full committee

#1C. The 2000 amendments. *Dr. Kazama* pointed out that this is a language change and that *Ms. McFadden* had worked on it. He added that there is also one additional change to be presented and he turned the floor over to *Ms. McFadden*, who presented the language (see Attachment 5). *Ms. McFadden* noted that the title is changed; first paragraph remains the same except that under ¶a, the first sentence is new; new ¶b, which is taken almost directly from the statutory amendment except that the date specified is December 27, 2000, and there is also a reference to Sec. 14 (CIAP).

There was a question regarding tribes that had more than 250 units in 1996, but now have less than 250 units. *Ms. McFadden* replied that the only amount that counts is the CIAP funding, and that the purpose of setting the date at Dec. 27, 2000 is because it made sense to tie the regulation to the enactment of the statute. She added that Sec. 302d2 states 'owns or operates' which referred to present time (2000). *Mr. Kenison* commented that he didn't know of any tribes that fit into a scenario have having converted to CIAP funding. *Ms. Tooley* stated that in her tribe, by 2000 the number of units had decreased to less than 250 units.

Mr. Reed asked how units in development would impact those tribes that are close to 250 units. Ms. McFadden responded that the date is locked at December 2000, so you would have to have owned or operated the units at that time. Ms. Lalancette commented that the language might have to be changed. She referred to the scenario of a tribe having less than 250 units in 2000, but more than 250 units in 1996. The unit count could take modernization into consideration. She noted that Sec. 14 takes into account CIAP and Comp grants. Mr. Kenison commented this might provide clarification for those tribes that fluctuate around 250 units.

Mr. Tillinghast stated that the 250 units differentiates between CIAP and Comp grants in 1997, and so the date should be set to 1997. *Mr. Carl* suggested redrafting the language to add “in accordance with IHBG formula FCAS” to correct the windfall issue. He added that the amendment tried to address and fix the windfall problem, so this language should also address the issue. Ms. McFadden stated that she was not sure how adding the phase would help. She added that this proposed language is taken from the statute, and that this regulation only affects tribes with fewer than 250 units. Mr. Fagan suggested that since tribes moved in and out of CIAP and Comp grant funding, it might make sense to average the actual number of years the tribe used CIAP, and remove the Comp years. He noted that when CIAP was competitive, it was possible that some years a tribe received nothing. He queried if it wouldn’t be more accurate if you average only the years the tribe received funding. Ms. Kruszek responded that the statute refers to all six years. Ms. McFadden stated that if Comp grants are under Sec. 14, then you would also add those monies. Mr. Kenison reiterated that the amendment doesn’t distinguish between CIAP and Comp, and that only Sec. 14 is mentioned.

Dr. Kazama suggested removing the reference to CIAP in the new language. Mr. Reed asked if the amendment specifically mentions 1992 to 1997. Ms. McFadden replied that it did. Mr. Reed then commented that if you divide the funding by the number of years that funding was received instead of the six years mentioned in the statute, the outcome would be higher. Dr. Kazama stated that on hearing the discussion, perhaps this is an issue that needs to be revisited by the workgroup.

Mr. Carl commented that the statute is self-implementing and the intent is clear. Ms. McFadden responded that the OGC feels that there are some issues, for example, what is the date? It could be 2000, or 1996. Mr. Reed noted that during the last meeting, we discussed this and it was stated that the statute was self-implementing. Ms. McFadden replied that if that was said, it was incorrect.

Mr. Hudson asked about tribes that are in umbrellas. Ms. Kruszek responded that since the allocation is calculated by tribe, the umbrellas would be handled tribe-by-tribe basis, and that each tribe would have a 250-unit limit.

Mr. Wagenlander asked how the MOD is calculated. Ms. Kruszek responded that there was a methodology to figure out how the MOD was divided up. There was a comment that the language doesn't distinguish between IHA and tribally-owned units. Ms. Kruszek replied that wasn't considered, and the workgroup should take this back. Staff (Mr. Swanson) asked for a clarification on what points should be revisited. Ms. Lalancette provided clarification was needed on umbrella IHAs and their unit counts. Mr. Tillinghast added that the date also needs to be revisited, either 1997 or 2000.

Dr. Kazama returned to his report.

#1D. Looks at inflation terminology. Consensus was reached on Sec. 316. He noted that the recommended language is in the packet.

NAS. The issue was referred to the Needs workgroup and representatives from both CAS and Needs formed a subgroup.

#3A. Over / Under-reporting. Consensus could not be reached. This item has been referred to the full committee.

#3B. Hearing process. A joint CAS and Needs subgroup has been formed to look at this issue. Dr. Kazama announced that the subgroup would be meeting at 1:30 pm today in the Russell room. He added that the issue would be moved directly to the full committee.

Dr. Kazama recapped that these are the basic issues. Mr. Sossamon noted that there are a few items that have been identified to go back to workgroup, but that he would now like to go back through each item and deal with them one at a time, noting if more work is needed or not. Dr. Kazama went back and reiterated that the workgroup reached consensus on keeping the CAS formula as is and that the action needed refers to the four sub-issues (#1A-D). Mr. Sossamon asked if it would be necessary to reach consensus on the four sub-issues before attempting to reach consensus on #1. Mr. Swanson clarified that there was a lot of discussion in the group as to what we were agreeing to, but there was general agreement that no one wanted to go to consensus without looking at the whole. With respect to the CAS formula, conceptually there was consensus, so item #1 does not really depend upon the 4 sub-issues.

Ms. Sossamon stated that what he is hearing is that they need to address the sub-issues. Mr. Swanson reiterated that there are proposals that some of the participants would like to bring to the full committee. He suggested coming back to #1 after looking at the others items. Mr. Sossamon asked if there were any objections to looking at #1A. Hearing none, he asked if anyone had any proposals to bring forward on the issue.

Mr. Gorynski recommended leaving AEL as it is now. He also recommended that before we go further in addressing this, everyone should have the data run.

Mr. Sossamon clarified that Mr. Gorynski's proposal is to leave AEL as is.

Mr. Sawyers stated that he also had a proposal, but that since he didn't have the requested data runs, he was not ready to submit his proposal. He suggested going on the next issue.

Mr. Sossamon clarified the action that needs to be taken. He noted that there are two proposals: one is to leave AEL as is; the other is Mr. sawyers' proposal, but before a decision can be made, data runs are needed for both. Mr. Sawyers added that the data run requested will provide information on 'no change' and changing AEL based on his proposal.

Mr. Wagenlander requested a procedural clarification and asked if the data runs would be based on the new census data. He also asked when the data runs would be completed and presented to the full committee. Mr. Sossamon responded that the data runs would be using the 2000 census data. He also suggested that a written request be submitted. Regarding how long it will take, he noted that is dependent upon how many requests are made. Mr. Wagenlander commented that the previously requested revised data run was never performed, but it was initially based on 1990 census data. He then asked if committee members are going to request that all data runs are now rerun with 2000 data, and if so, what is the time frame. Mr. Sossamon stated that if there was a technical proposal with the run, the request would still be honored. But, if the information has changed, he would assume that the new data would be used. Regarding old runs re-run with new data, a new request should be submitted.

Mr. Swanson summarized that there are two proposals: one is to leave AEL as is; and the other is to set a national average AEL as a baseline. The action needed is to perform a data run with 2000 census data.

Mr. LaPointe suggested using regional averages instead of a national average. Mr. Sossamon noted that Mr. LaPointe's proposal to use regional averages instead of a national average should be added to the #1A issue, and he assumed that there would be a data run on that. He directed Mr. LaPointe to fill out a request form. Mr. Sawyers clarified that the national average is a baseline, and would not affect any tribe with a higher AEL. He reiterated that the proposal is looking only at those tribes in depressed areas, and that no other tribes would be affected; it would not change AELs used in Alaska, for example.

Mr. LaPointe withdrew his proposal. Dr. Kazama noted that although the proposal doesn't affect AEL directly, it does affect the overall grant. Mr. Sawyers noted that the data run was needed in order to show the impact.

Mr. Sossamon raised the AEL challenge process issue. He noted that there was consensus in the workgroup that there should be a process developed. Mr. Swanson responded that once we have the data run, it was the intention of the workgroup that this

is forwarded to the full committee. Mr. Sossamon stated that at this point, it has been forwarded to the full committee and so the impact will be analyzed by full committee. Regarding recommendation #1D, Mr. Swanson stated that there was not agreement reached on the specific proposals, but there was consensus of the group to develop an AEL challenge process. Mr. Sossamon summarized that this proposal is on the to-do list, and he asked who has been assigned responsibility. Mr. Swanson clarified that it has been put to the full committee to determine the challenge process, and so proposals should be brought to the full committee.

Mr. Sossamon asked if it is likely that this item can be reconciled. Mr. Hoffman stated that there had been extensive discussions in the workgroup. But they couldn't come to closure and so it was decided to bring it to the full committee. Mr. Sossamon suggested that the full committee address the issue at this time. He asked who would present the two proposals. Mr. Swanson noted that Mr. Tillinghast and Mr. Wagenlander would present the two proposals.

Mr. Tillinghast began by stating that there was general consensus that there should be a challenge process. He went on to say that generally speaking, AEL was one of the two best means available to tribes, but that some individual tribes feel that AEL is out of whack. He noted that a sub-group tried to write the criteria and standards and while doing so, found there was an existing regulation that could be used, which is §1000.336(b) dealing with challenges to census data. Mr. Tillinghast stated that the proposed language is patterned after the existing regulation, and is as follows:

“...an Indian tribe that had data that it contends more accurately estimates the costs intended to be included in the AEL than that assigned by HUD, it may submit....”

Mr. Tillinghast noted that the downside is that it leaves open what kind of data will be sufficient, and that would be left to HUD to sort out later. He further noted that one criticism of any challenge proposal is that HUD will be overwhelmed by challenges. He added that there are various methods to deal with that. One is to determine a ceiling; another is if you lose a challenge, you will be responsible for the administrative costs to HUD, which would be subtracted from the tribe's total grant. He asked if there were any questions.

Mr. Sossamon requested that the language be written and that a rationale with pros and cons be included. He then called for a short break.

Mr. Sossamon recalled the meeting at 11:30 am. He recognized that Vice Chief Denson and Mr. Marvin Jones had arrived. He also mentioned that there is no protocol restricting non-committee members from sitting at the table, and so if a committee member has requested someone to sit at the table it's not prohibited. He also reminded folks to speak into mics and that side conversations be kept to a minimum. Mr. Sossamon then brought

up a process issue, regarding documents. He noted that there is a record of every document that has been submitted and each is numbered. He added that every proposal that has been submitted to the full committee is being tracked. Mr. Sossamon further noted that what we are doing is moving work from the workgroups into the full committee, and the format we are following was developed by the regional representatives and the chairs of the workgroups. We will address and keep track of the topic, consensus, action needed, rationale, etc. This (tracking sheet) format will help up keep track of the process. He recapped that the committee is now considering the ideas that have been submitted by the CAS workgroup.

Mr. Ducheneaux asked for clarification on whether the items being brought up for consensus today could be revisited. Mr. Sossamon responded that although there may be something that comes up, he doesn't anticipate that consensus will be asked today. He clarified that we are trying to move the process into the full committee by evaluating and negotiating, but are still a way from reaching consensus. However, he added that once consensus has been reached, there has to be consensus to revisit.

The committee then returned to the proposal on AEL presented by Mr. Tillinghast. The proposed language was presented on the screen (Attachment 7).

Referring to the language, Mr. Tillinghast noted that the AEL is supposed to estimate costs. The proposed language would require HUD to review any challenge submitted by a tribe. He added that Sec. 118 sets out deadlines for submittal and review. He mentioned that the language is meant to be general, and that it doesn't solve every problem that may arise. In addition, it doesn't address the procedural issues. Mr. Tillinghast stated that he isn't sure of what the procedural issues are. Also, this doesn't resolve whether the tribe has to use its own cost data, or can it use comparable data (for example, from another tribe). He noted that these issues would have to be sorted out later. Mr. Tillinghast also noted that the language doesn't resolve what happens if a tribe starts inflating its own costs to raise its AEL for the next FY, that is intentionally raising costs. HUD would also have to deal with that occurrence.

Mr. Sossamon asked if there were any questions. Hearing none, he turned the floor over to Mr. Wagenlander to present the other proposal (Attachment 8).

Mr. Wagenlander began by stating that the proposal is similar to that presented by Mr. Tillinghast. He noted that there is currently a challenge process for FMR, which is set out in the regulations, but is not proscribed in NAHSADA, it's in FMR. He stated that the tribes that support the second proposal are supporting it because of the inadequacies in AEL at the lower end of the scale. He clarified that they are not saying that there shouldn't be a challenge process. However, there are gross differences between compatible regions and shows part of the flaw in the AEL process. He reiterated that the intent is that AEL be used, and there should be a challenge for those at the bottom end. The procedure is the problem.

Mr. Wagenlander went on to say that Proposal 1 (submitted by Mr. Tillinghast) leaves it up to HUD to decide on the process and not this committee. Proposal 2 would be to accept Proposal 1 with one exception. The exception would be to establish a cap or ceiling on the level at which a tribe can challenge its AEL. Further, the ceiling should be the national average AEL. He concluded by stating that without a cap, the AELs will be driven up to a level that will destroy the concept.

Mr. Sossamon asked if there were any questions. Mr. Wagenlander commented that the proposal would not change anything else, and then added that the proposal is not workable without the ceiling. [See files on other laptop]

Mr. Hudson queried if the proposal for a national average baseline is accepted, there would not be any reason for this current proposal. Mr. Wagenlander responded that is correct and if the other is accepted, this would not be required. He added that this is a more costly and difficult process. Mr. Hudson asked why this would be more costly. Mr. Wagenlander clarified that it would be more costly administratively, but that both a challenge process and the baseline proposal will have a cost. If you allowing tribes to raise AELs, the funds will have to come out of the total pool of funds.

Mr. Sossamon recapped that if there is a baseline AEL, there's no need for proposal #2. But is there still a need to have a challenge process? He suggested that the committee would need to deal with the baseline proposal before dealing with Proposal 2. Dr. Kazama stated that he would like to see the effect of what is being proposed, and perhaps reviewing the national average v. the regional average. He then suggested removing proposal #1 and just putting prop 2 on the table. Mr. Sawyers suggested that proposal 2 would be less costly (than baseline AEL) because only those tribes that had a problem with their AEL would challenge. However, he noted that he would like to see the data runs on baseline AEL. He also clarified that when referring to Proposal 2 he was referring to the proposal presented by Mr. Wagenlander today.

Mr. Sossamon summarized that the committee would wait until it could see the effect of the baseline AEL proposal before coming back to consider the two challenge proposals. Therefore, the AEL challenge proposals have been tabled.

Moving to the next item, Mr. Sossamon reiterated that #1C has to do with the amendments to Sec.340 and creates regulatory language to track with the 2000 amendments. He noted that the action that is still needed is to go back to the workgroup to take into account umbrella IHA unit counts and date. Dr. Kazama confirmed that it would be taken back.

Mr. Sossamon stated that the next issue is #1D, which deals with inflation terminology. He reiterated that there had been consensus on this out of the CAS workgroup (see Attachment 5). Ms. McFadden stated that this is a cosmetic change and does not affect the formula in any way. She went on to say that the change is to Sec. 316 (a) and the

action would be to delete the reference to FY 96 and “adjusted to full....” In addition, a definition would be added to Sec.302 under ‘National per unit subsidy.’ The addition would be the language that was stricken from Sec. 316 and simply moved into definitions (Sec. 302).

Mr. Sossamon asked if there were any questions. There were none. He then asked what action is recommended? Dr. Kazama responded that the committee should vote for consensus. Mr. Sossamon noted that this could be our first consensus item. He then stated that there has been a call for consensus from Dr. Kazama. He asked if there were any objections. Hearing none, Mr. Sossamon stated that there was full committee consensus on this item. He recessed the full committee for lunch, and noted that the Needs workgroup will meet back at 1:00 pm and that the CAS workgroup will also meet at 1:00 pm in this room. Mr. Wagenlander stated that there is a subgroup meeting on appeals at 1:30 pm in the Russell room. Ms. Gore suggested that if HUD had data runs available at 1:00, we may ask to postpone the 1:30 meeting. Dr. Kazama stated that he didn’t think that it would take too long to work out the language on the 2000 amendments. Mr. Sawyers stated that his workgroup would meet until 5:00 pm.

TUESDAY AFTERNOON, AUGUST 19, 2003
FULL COMMITTEE

Mr. Sossamon recalled the meeting at 5:15 pm. He asked Dr. Kazama if the workgroup had completed the tasks before it. Dr. Kazama responded that HUD is still working on some related issues and so he would like to wait until they had finished before presenting. Mr. Sawyers stated that he was prepared to provide an overview of the Needs workgroup recommendations at this time, but would rather start first thing tomorrow.

Mr. Sossamon stated that staff (Mr. Anderson) had the FY04 run with 2000 census data, and that this would be a good time to review the numbers. Mr. Sossamon first reviewed the agenda for Wednesday. He noted that what has been suggested is that we begin at 9:00 am and work through 6:00 pm in the full committee. During this time, the two workgroups will be presenting their reports to the full committee for action. He added that the workgroups or subgroups would work after hours, unless there are specific questions directed to them. Mr. Sossamon stated that on Wednesday morning, the committee will begin with CAS and then move to Needs, and will go through each of the items individually. He asked if there were any objections or questions. Hearing none, Mr. Sossamon turned the floor over to Mr. Anderson.

Mr. Anderson began by stating that he was aware that everyone has been anxious to see the results. Referring to the handout, which is a comparison of multiple races for all variables (Attachment 9), he explained that there is a little more review that still needs to be done, but on the whole, the large numbers (area offices) will probably remain constant. He provided an explanation for each column heading, first noting that all variables that end in the number 6 are the census variables, and that estimates are adjusted for inflation, population caps, etc. for FY03.

- PER6 = AIAN count adjusted for birth and death (IHS), population cap and overlapping
- HHLT306 = 30%
- HHLT30506 = 30 to 50 %
- HHLT50806 = 50 to 80%
- OCRPR6 = Overcrowding with kitchen and bath HH
- SCBTOT6 = Severe cost burden HH
- [Mr. Anderson noted that housing shortage was included but isn't on the sheet.]
- PER = AIAN persons from the 2000 census for the formula area by tribe.
[Mr. Anderson noted that this number would not change again until 2010.]
- PERDIFF = rate of change applied to census data to bring it up to FY03 data
- CAS2 = FCAS
- NEED2 = need portion
- GRANT2 = total grant based on 2000 census data
- FY03ORIG = FY03 allocation (from April)
[Mr. Anderson noted that this should be close to the FY03 allocation amount.]
- DOLDIF = dollar difference
- PCTDIF = percent difference [Mr. Anderson noted that the decimal is converted to a percentage, e.g., .33 = 33% change.]

Mr. Anderson provided some additional notes on the spreadsheet. For example, if there is a blank in the PER column, it is due to an overlap and the particular line of data did not have anything in it and PER6 is the portion that the tribe gets in those cases. Mr. Anderson also noted that PCTDIFF is relatively meaningless.

Mr. Anderson stated that part of the difficulty has been that there are many of things to examine, for example, the 2000 census changed county codes, and each of these changes adds confusion and is time-consuming. He stated that he would appreciate any comments or questions, which might help him identify other manipulations of the data. However, he did state that he was pretty confident in general. Mr. Anderson stated that there were no 1990 census numbers on this table. He commented that the sheet Mr. Richardson handed out this morning showed the shifts resulting from the 2000 data relative to 1990 data. Mr. Anderson concluded by stating that he was now going to start some of the comparison runs that had been requested, so that hopefully all the what-ifs will be based in a comparison.

Mr. Reed asked if the numbers would change from FY03. Mr. Anderson replied it was likely. He added that he would look at Mr. Reed's tribe to explain the changes. Everyone then thanked Mr. Anderson with a round of applause.

Mr. Boyd stated that A/S Liu has requested a HUD caucus on Wednesday morning at 10:30 am. Mr. Sossamon responded that the agenda for the morning is to meet at 9:00 and work until 6:00 pm, but a caucus can be called at any time. Mr. Sawyers asked if the committee would continue presentations during that time or not. Mr. Sossamon suggested that it might depend on where we are in the process. Mr. Boyd offered that the caucus would be 45 minutes and that HUD would prefer to be available for all presentations. Mr. Sossamon then stated that when HUD goes into caucus, the time could be utilized for tribal caucus or the committee would recess until HUD returned.

Mr. Sossamon asked if there were there any further questions or comments. Hearing none, he recessed the meeting until 9:00 am Wednesday.

WEDNESDAY MORNING, AUGUST 20, 2003
FULL COMMITTEE

Mr. Sossamon recalled the meeting at 9:15 am. He recognized Susan Wicker as alternate for Chairman Tullis. He then stated that the first order of business is for Dr. Kazama to finish his presentation of the CAS workgroup recommendations. He turned the floor over to Dr. Kazama.

Dr. Kazama stated that at this time, he would move to issue #2, and that the committee would have to come back to #1 later, as there are still some unresolved issues. Mr. Sossamon asked that Mr. Kazama continue. Dr. Kazama stated that the workgroup did agree on the date for the 2000 amendment language. Mr. Sossamon asked if there is something that has not been presented at this time. If so, he requested that Dr. Kazama present, otherwise, he would turn the floor over to Mr. Sawyers.

Mr. Sawyers proceeded with the Needs workgroup presentations. He first thanked the workgroup for their efforts and asked everyone to give himself or herself a hand. He then turned the floor over to Mr. Heisterkamp.

Mr. Heisterkamp referred to the handout (Attachment 10). He began by stating that the cover page summarizes all the topics. He noted that the 8 variables are listed and that there was consensus from the workgroup on all 8 variables. He stated that there are separate reports on each variable. Mr. Heisterkamp added that the workgroup and sub-groups had requested additional data runs, which will be forthcoming. Referring to the 'Still To Do' list, he stated that there is something on every issue: census data, weight variables, housing shortage, overcrowded and lack of funding, alternate data, revised definitions, eligibility of state recognized tribes, use of TDC as a geographic multiplier, birth and death rate.

Mr. Heisterkamp then walked through the packet:

1. The set of bar graphs represents regional trends on the 8 variables, and was provided as general information.
2. Inclusion of housing shortage variable. The action items are all related to the determination on whether this variable should be included in the formula. Mr. Heisterkamp noted that this is the variable where NAS units are being addressed. He also noted that the current definition does not include Section 8 units. Furthermore, if NAS units are included, a definition of NAS is needed. Mr. Heisterkamp stated that formula median income is also included in this variable. He noted that rationales have been included on some of the issues and that one of the primary reasons that this variable was included initially was for the small tribes with no or few housing units. The question is whether it accomplishes the intended goal. Lastly, he stated that there doesn't appear

to be alternate data available for this variable, but it may be that other categories count the same people and the same HH.

3. Total Development Cost. There is a definition and changes to language in appendix A & B. He noted that TDC is a geographic multiplier, and that the workgroup wanted to stay with the concept, but questioned whether the figures should be adjusted. Mr. Heisterkamp stated that there are also some 'housekeeping' issues regarding errors in the current regulations, for example, an erroneous reference to Sec. 338 (there is no Sec. 338). Also, it may be necessary to develop a TDC challenge process.
4. Separate and/or delete overcrowding and lack of plumbing variable. Mr. Heisterkamp explained that this carries the greatest weight (25%) of all the variables and was originally the best data from census, which groups them together. He noted that a graph was attached, which provides a regional snapshot. Referring to the graph, Mr. Heisterkamp noted that separation may create a region-to-region shift and possibly tribe-to-tribe. He added that they would perform an analysis with 2000 census data. Further, he noted that if separated, it will be necessary to determine how to weight each component, and that another route may be to eliminate the 'without plumbing' variable altogether.
5. Overlapping area definition. Mr. Heisterkamp stated that this is one of the issues that addresses drafting regulation to capture implementation-type issues. He noted that there are two definitions (08/08/03 and 08/19/03) as well as some other redline versions, and that they hoped to be able to present the language to the full committee. [Ms. Marasco requested the redline strikeout version during the presentation.]
6. Formula area definitions. Mr. Heisterkamp stated that the current regulation is tied to 1990 census terms, and that the workgroup tried to establish broader terms. In addition, there are certain areas of the country where the census definitions don't fit, for example Oklahoma and Alaska. He noted that the language that has been presented is still being worked on by the Alaska delegation, and he hoped to be able to present the language this afternoon as a redline version.
7. Definition of substantial housing services. Mr. Heisterkamp stated that 'substantial housing services' appears in the current regulation, but is not adequately defined. He noted that there are two drafts, both dated August 8, 2003. One draft includes proposed percentages, and the other does not.
8. Eligibility of state tribes. Mr. Heisterkamp stated that the report includes HUD's position, and also reflects some widespread misconceptions regarding state tribes. He noted that there were some state tribes that were grandfathered into the program and there are several related questions regarding statutory and programmatic requirements.
9. Definition of formula median income. Mr. Heisterkamp stated that although the statute refers to national median income, but it has not been used to calculate the formula. He added that they have requested a special tab for this and that staff (Mr. Richardson and Ms. Stoloff) would be looking at the

regional effect. He added that there could be an overall effect on the way that all Needs variables are calculated.

10. Alternative data sources. Mr. Heisterkamp pointed out that this is a recurring discussion, and could be addressed on a variable-by-variable basis. The questions being raised include: are there consistent data sources? And, is the use of census data legal for some of the variables?
11. Inclusion of birth and death rate. Mr. Heisterkamp stated that this issue was widely discussed at the first few meetings and that there is consensus from the workgroup to include this as an adjustment, continuing to use the current method.

Mr. Sawyers asked if the full committee would like to look at this last item at this time. Mr. Sossamon commented that the approach was to allow you to submit the report and then pick up where we left off yesterday, but he allowed Mr. Sawyers to submit this item for consensus at this time.

Mr. Hudson asked if the proposal would that be contingent on alternative data sources. Mr. Sawyers responded that tribes probably wouldn't need this in that case, but this is the best method that is available right now. Mr. Heisterkamp added that the proposal assumes that the AIAN count is adjusted by census. Dr. Kazama asked where this exists in the current regulations. Mr. Heisterkamp responded that it only exists as a modifier of census data. Ms. Stoloff added that she didn't think it is in the current regulations but that it is good practice to adjust the AIAN count. She noted that information is available as an adjustment. Mr. Heisterkamp reiterated that including this proposal would basically leave the current practice. *Mr. Humphrey* queried if this would require a regulatory provision. Mr. Sawyers replied that it would be up to the committee to decide. Staff (Mr. Pereira) commented that it wouldn't need a regulation change since it really continues what has been done in practice.

Mr. Sossamon clarified that there is a practice in place, and what this proposal does is provide clarification. He suggested that for consistency, we would want to include regulatory language that acknowledges the practice. Ms. Marasco commented that she would like to see the language first.

The committee did not reach consensus on including birth and death rate in determination of the total number of AIAN persons for formula allocation.

Mr. Sawyers stated that there was one more report on minimum funding and he turned the floor over to Mr. Bush.

Mr. Bush began by stating that the subgroup had started with 10 proposals, and that they identified a few areas that were in common for all, ultimately moving from 10 to 1 proposal. He added that the full Needs workgroup has not yet seen this report (Attachment 11). He stated that the subgroup reached consensus on the concept of the draft, but that no dollar amounts or percentages have been set forth. Mr. Bush pointed

out that the proposal refers to Sec. 328, but the main thing is that you have to have demonstrated need. He added that the proposal includes a one-time funding for a tribe of \$50K for a study to demonstrate need. Then, the minimum would be calculated as a % of the Need allocation. In addition, he noted that they had previously performed a couple of data runs to see if tribes with high CAS would be excluded from minimum funding, but which would receive the normal Need allocation. He asked staff (Ms. Kruszek) to present an explanation.

Ms. Kruszek referred to the chart attached to the report, which illustrates how much the minimum funding, tied to CAS as proposed, might cost. She explained that the first column provides the Need dollar amount. The next column lists the number of tribes that would have to be boosted up to a minimum funding level without taking into consideration FCAS. Paired with this is a column that provides the cost to fund the tribes. Ms. Kruszek explained that the next three paired columns provide the same information but at different FCAS levels. She noted that the number of tribes in the column labeled 'FCAS limit' in the last paired set, indicates the number of tribes that would be taken out due to the limitation. Ms. Kruszek stated that the information in the chart was prepared for and shared with the subgroup to determine a reasonable dollar amount to be transferred. She added that the subgroup did not come up with a specific percentage yet, but the decision was made to bring the to the full committee and to begin thinking about how much money to spend on funding a minimum funding proposal.

Mr. Bush then pointed out that determining percentages and dollar amounts is still on the 'to-do' list. He commented that the chart is not based on 2000 census data.

Mr. Ducheneaux asked if HUD would have to hold back money every to fund the one-time \$50K for first time tribes based on some estimate or projection of how many tribes might need the funding. Ms. Kruszek responded that this is what is currently done, and that there is still a provision for \$50K for a tribe's first year participation. However, she added that this specifically limits the activity for census data, and if not claimed, the amount goes into the carry over. Mr. Sossamon asked for a clarification that this proposed language would be the same thing, and that it's only available to those tribes that have not previously participated [yes]. Mr. Sossamon also asked if data runs have been requested with specific percentages plugged in. Mr. Bush responded that the data runs have not yet been requested, as they wanted to come up with some specific scenarios first. He added that they came pretty close yesterday and that he would like to get the subgroup back together to finish identifying the scenarios. Mr. Sossamon suggested that when HUD goes into caucus, the subgroup get together and identify the scenarios and request the data runs.

Ms. Marasco stated that there are two sets of numbers, some are using 1990 census and some are using 2000 census data. She added that when you convert to 2000 census data it's confusing. She requested that one set of numbers be used. Mr. Bush stated that it was his understanding that from this point forward, all data runs would be performed using 2000 census data. Mr. Anderson confirmed that this was true.

Mr. Sossamon asked for a clarification on whether data runs are being performed in comparison to FY 03 allocation, so that everyone can see a constant. Mr. Anderson affirmed that FY03 was the constant.

Mr. Sawyers stated that the Needs workgroup report was finished. Dr. Kazama brought up two additional issues: one is NAS subgroup; and the other is the appeals subgroup. Mr. Sawyers responded that those groups are still meeting. Mr. Heisterkamp reiterated that the NAS is being addressed in the housing shortage variable. He added that if the housing shortage variable is eliminated, there would be 25% of the Needs allocation available. Mr. Sossamon asked if the rationale in the group is if we want to keep housing shortage, we have to define NAS. And, if housing shortage is eliminated, the necessity to define NAS is also eliminated. At that time, CAS may want to revisit the NAS issue.

Ms. Gore, referring to the appeals subgroup, pointed out that they are planning to meet during lunch to they will try to come up with some language, and that Mr. Kenison and Ms. McFadden would be helping. She added that the goal was to standardize a process and at the same time, and minimize both the complexity and administrative burden on HUD.

Ms. Tooley commented that the question of providing for an operating subsidy for NAS units is still out there and has apparently not been addressed at this point. Mr. Sossamon reiterated that it comes under the housing shortage variable, and you are going to reduce funding if you have produced units. He stated that he believes that this will be come forward. He also raised the issue of the CAS parking lot issues that haven't been put forward yet. He reminded both groups to do that at some point, for example, when should the regulations be reviewed again? He suggested that the NAS subsidy issue should be recorded as a to-do item. Mr. Heisterkamp commented that there was a subgroup that put forth recommendations, and so revisiting this would be going backwards. He then asked Mr. Shuravloff to provide an update. Mr. Wagenlander mentioned that the CAS workgroup had been given the responsibility to look at NAS units, and then the Needs group started looking at it. Further, because it was an interrelated issue, members from both groups formed a subgroup. Mr. Wagenlander stated that what they concluded was that NAS units that would be assisted. He added that this acknowledges the need to place importance on funding the low-income groups that most needs ongoing assistance. He reiterated that the emphasis should be on low-income HH populations and providing additional funding to the tribes to address this area. He noted that the intention is to address NAS under housing shortage, and there is also a proposal from UNAHA addressing this as well. Mr. Humphrey added that there were a number of people who agreed in general, but who were reserving the right to bring it up again if the need is not addressed in the HH shortage.

Mr. Sossamon asked Ms. Tooley if her concerns were addressed. Ms. Tooley responded that it does give background, but decisions haven't been made yet.

Formula Negotiated Rulemaking Committee
Meeting Minutes
August 18 - 21, 2003
Washington, DC

Mr. Sossamon announced that it was 10:30 am and the meeting would recess for caucuses for one hour.

At 11:45, Mr. Sossamon announced that they would break for lunch and come back together at 1:00 pm.

WEDNESDAY AFTERNOON, AUGUST 20, 2003
FULL COMMITTEE

Mr. Sossamon recalled the meeting at 1:15 pm and recapped that the group was in the midst of going through the CAS recommendations and that the committee had reached consensus on the inflation terminology.

Dr. Kazama reported that there was some additional work done on the AEL issues, but that the workgroup was still working with HUD and would need another hour or so to finalize. He stated that he would like to revisit the topic later this afternoon or tomorrow. Mr. Sossamon clarified that the committee would not go back to #1A at this time. He directed attention to #1B and recapped that the current proposal was to combine the two proposals. Ms. Gore commented that Mr. Wagenlander was working on the AEL challenge specifically, and that they are still negotiating and drafting.

Mr. Sossamon, moving on to #1C, asked if there was draft language. He noted that it was his understanding that there would be a product to look at, and now he's being told that the workgroup needs more time on #1A. Mr. Swanson pointed out that there is no need to look at #1B if #1A is accepted. Regarding #1C, he reiterated that roughly one more hour is needed before presenting to the full committee. He also noted that the committee had agreement on #1D.

The committee then took up the baseline AEL proposal (#1B UNAHA). Mr. Heisterkamp commented that the Alaska tribes had agreed to use the AEL national average as a challenge ceiling and that if that proposal is accepted; the UNAHA proposal will not be necessary. He stated for the record that if a challenge is allowed, but with a cap equal to the national average AEL, then Northern Plains would withdraw its proposal on baseline AEL.

Mr. Bush asked for a clarification on the proposal. Mr. Sossamon stated it was #1B (AEL challenge). Dr. Kazama stated that was partially correct, but that there is a problem with the denominator of the AEL factor. He summarized that if the denominator is not kept stable, then the numerator will change as well. He added that there had been some discussion on a language change to address the issue. Mr. Sossamon asked for clarification regarding #1A having been rolled into #1B, and that another hour was needed in workgroup. Dr. Kazama responded that #1C is separate, and refers to a date change in the regulation relating to the 2000 amendments. It was determined that Ms. McFadden would present the language to the group (Attachment 12).

Ms. McFadden stated that the first important change was that the date was set at October 1, 1997 (the effective date of NAHASDA), instead of December 27, 2000. Ms. Tooley brought up the case of the umbrella IHAs and asked if the 250-unit count referred to the number of units that the IHA had or the individual tribe had. Ms. McFadden responded that it was the IHAs that applied for the grants, and so the 250-unit count would apply to the IHA. Mr. Hudson asked if this approach would put the smaller tribes at a disadvantage. He added that his tribe was in that situation where the IHA had 500 units, but none of the tribes had 250 units. Ms. McFadden stated that the intent was to reach those who had participated with fewer than 250 units during those years. Mr. Humphrey commented that the way it's written, it would be the tribes whose IHA had fewer than 250 units, and if it includes Comp grants, then the smaller tribes working under umbrella IHAs will be disadvantaged. Ms. McFadden asked for a clarification on how those tribes participated. Mr. Humphrey responded that they participated as an umbrella, but a large percentage of those tribes are no longer part of the umbrella IHA. Mr. LaPointe commented that if at the time 7 tribes were under the umbrella IHA, then technically, they should have had 7 CIAPs not one Comp. Ms. Tooley stated that the amount of money was for a specific tribe's specific program; but that the umbrella IHA received the entire grant.

Mr. Naize yielded the floor to Mr. Carl, who suggested that if you add in the annual contributions contract, that would be specific to each tribe's program and would comply with what they are trying to accomplish. Ms. McFadden stated that the existing regulations implement the statute as originally promulgated, and that the minimum amount is tied to operation and subsidy funding received in 1996. She noted that is not changed. Mr. Carl then commented that those tribes who received a windfall would still have that windfall.

Mr. Humphrey commented that he still did not understand (under ¶B) does the tribe 1996 equivalent or average if tribe had fewer than 250 units, but the umbrella IHA was over. He noted that in that scenario, his tribe would receive zero. Ms. McFadden clarified that the tribe's floor is this amount; this is not the total grant amount. She pointed out that the second part states that you get the amount of the Comp grant, and, you still get your CAS allocation.

Ms. Marasco requested that Mr. Carl clarify what he said. Mr. Carl restated, and asked how HUD is dealing with tribes locked into 1996 with 250 units or more that benefited from a windfall. Ms. Marasco stated that the discussion is about the statute pulling the windfall from small tribes, not large tribes. Mr. Sossamon reiterated that if the tribe had more than 250 units, 1996 establishes the floor. He then asked for clarification on ¶B. Ms. McFadden stated that it guarantees that the average amount received for modernization funding over the 6 years (1992 – 1997) is the amount you will get. If you received funds in only one year, you would still divide by 6. She added that the six-year average is not a baseline, noting that the two paragraphs are different. If the tribe had 250 units or more, the minimum the tribe would receive will be the equal to the amount received in 1996. In the second part, if the tribe had fewer than 250 units, then the tribe

would receive an amount equal to the average modernization received for the six-year period. Ms. Tooley remarked that would not be true if you were a member of an umbrella IHA.

Ms. McFadden stated that was how the statute is written. If the tribe was receiving CIAP, then the tribe will get the average. She added that this is intended to benefit those tribes that received CIAP grants. She recognized that some tribes did well in 1996, and that the average might be lower. Mr. LaPointe noted that in the Chicago region there is only one tribe that would be affected. Mr. Naize stated that we still need clarification and additional language to address these issues. Mr. Carl offered a recommendation to clarify that after 1997 the only subsidy you get is FCAS, and after 1997 the formula funding applies. He was suggesting adding an amendment to be ¶C. Ms. McFadden requested what the language would say. Mr. Carl stated that he didn't have language at this time. Ms. McFadden asked if he was suggesting that we address this regulatorily. Mr. Carl responded that the place to clarify is in the regulation. He added that the explanation is that from 1997 on you will only be eligible for FCAS.

Mr. Sceeles stated that the purpose of the regulations is to add or supplement the statute, so you must make certain that the regulation language meets the statute. He added that the committee can't change the statute.

Ms. McFadden noted that they had distributed the redline strikeout version of the statute amendments previously. Mr. Bush stated that he was confused and recommended that if we send something back to the workgroup, we could use the redline / strikeout format. He added that he didn't understand the date change to 1997. Ms. McFadden stated that the change would be applied to 2000 and after, but the date is what pegs the number of units. Mr. Sawyers asked for a clarification that the minimum only be used in the case where the tribe's allocation goes below the 1996 amount. Ms. McFadden restated that the actual amount the tribe receives is this average of the amount received during the 6-year period says that. If the tribe had no modernization funding during that period, the tribe would receive zero. *Mr. Vollintine* commented that the language says that if the IHA owned or operated 250 units in October 1997, but the statute states December 2000. So, the regulations should read 250 units in FY2001. Ms. McFadden stated that there is more than one plausible interpretation. She agreed that the amendment was written in December 2000. She understands it to mean that the amendment applies to FY2001 and after, but doesn't have to mean that the IHA owned or operated 250 units in FY2001. She added that the OIG believed that this amendment needed to be brought to negotiated rulemaking because of the possible interpretations. Mr. Bush asked if we could use August 2003 as the date. Ms. McFadden responded that no, it has to be implemented in FY2001 and thereafter. She added that it might be a plausible interpretation to determine the 250-unit count every year.

Mr. Tillinghast commented that when we met yesterday, we recognized that Congress did not specify when you owned and operated the 250 units, but that implementation in FY2001 and thereafter is clear. He added that the group tried to understand whom

Congress was focusing on, and that was the small tribes who received an extraordinary CIAP grant in the late 1990s. Therefore, we had to define the date to capture these tribes. For example, a tribe received a windfall with 249 units in 1996, but in 1999 the tribe acquired 2 more units. If the date is set at December 27, 2000, the tribe wouldn't be covered by the amendment. He reiterated that Congress was trying to reach the windfall tribes, and that ended in 1997, not 2000. Ms. Tooley stated that if you are a tribe or IHA that had 200 units in 1997 and had never received any CIAP funding, you wouldn't any money for modernization. Ms. McFadden commented that hasn't changed. Mr. Bush commented that the statute says equal or greater. Ms. Tooley then asked if the tribe would still receive the modernization allocation. Mr. Reed commented that if a tribe under 250 units is currently getting modernization funding, will it now not get anything for modernization under this new law if they didn't have CIAP in the past.

Mr. Sossamon recognized Ms Kruszek.

Ms. Kruszek commented that the group was talking about two different things. When a tribe calculates its allocation, the modernization component and operations component, etc. tells you how much the tribe will receive under the formula. This is not affected by the amendment, and the tribe will still get funded. This amendment only affects baseline funding, below which your grant can never fall, currently pegged at the 1996 amount .She added that it is not advantageous to fall into the fewer than 250 units. She added that the amendment would not affect that many tribes. She reiterated that if the tribe is out of the 250-unit range, the tribe would continue to receive modernization funding.

Mr. Sossamon asked about the fewer than 250 unit tribes. Mr. Reed stated that his tribe is currently receiving modernization funds, but has never had more than 250 homes. However, he added that they received CIAP funds every year from 1992 to 1995. Under the new amendment, if we take that amount and get an average, it may or not be more than we receive now. Ms. Kruszek noted that this would not be a concern unless the amount you get today is less. Ms. McFadden disagreed and stated that the amount you get for modernization is the average amount you received in the years 1992 – 1997.

Mr. Sossamon asked Ms. McFadden to restate the interpretation. Ms. McFadden stated that the statute was amended so that §302d now has ¶A and ¶B. ¶B states that the amount for modernization **shall be** the average amount. For FY2001 and every year thereafter; for any tribe or IHA that has fewer than 250 units, the amount provided, as modernization assistance shall be equal to the average amount received under Sec.14 for the years 1992 – 1997. Mr. Humphrey noted that he doesn't think that was the intent. The way it's drafted, if you didn't have funding you get zero, and it appears that the statute does say that. He added that he thinks there is a problem with intent and it will have to be taken up before regulatory language is developed. He reiterated that he didn't think the intent was to hurt the tribes. Mr. Bush commented that the committee is not limited from developing regulations that would provide an adjustment. Ms. McFadden indicated that was possible. Mr. Bush asked for a clarification on whether the committee can make an

adjustment or regulation that is contrary to the statute. Ms. McFadden responded that you could create a new category to address whatever is lost and can be given back.

A/S Liu requested a HUD staff conference on the issue. He stated that he didn't want to give incorrect opinions and that we should wait to get further clarification on this before going forward.

Mr. Sossamon noted that the discussions had raised some other issues that need to be answered with clear interpretations. He reiterated that they had identified the problem, which is an apparent conflict between the intent and the statute, and it will go back to HUD for clarification and to perhaps draft a remedy. In regard to the language that Mr. Carl wished to submit, Mr. Sossamon asked that Mr. Carl meet with the CAS workgroup and HUD staff and submit his recommended language to them.

Ms. Marasco requested that we go back to redline / strikeout versions of these documents. She pointed out that we had agreed that we would use those versions. Mr. Sossamon agreed, but pointed out that this isn't a change. He reiterated that it's a draft that may undergo several more changes. He stated that if it's not a final product, all you'll end up with is more redline and strikeout than anything else.

A/S Liu agreed and commented that as we saw in our first session where we interacted on the Charter, we didn't put anything up on the screen until there was a final version. He noted that once we get closer to the final form, using the redline / strikeout on the screen will be a useful approach. A/S Liu raised the issue of using a drafting committee, which would include tribal representation, drawing up that product together, then moving to redline / strikeout. He reiterated that he concurs with Mr. Sossamon and thinks it may be premature at this point.

Mr. Sossamon then summarized that at a point in the future we will use redline / strikeout, but there isn't consensus to do that now. He asked if there were any additional comments. There were none. Mr. Ducheneaux asked what action would be taken. Mr. Sossamon recapped that the issue has been referred back to HUD legal staff and the subgroup.

Mr. Naize commented that he agreed with Ms. Marasco and there needs to be a way to communicate from this committee and what it is drafting and redrafting, and the comments in regards to those changes. Mr. Sossamon stated that it is his understanding that the whole piece has been referred back to the subgroup and will be reworked at that level, and that Mr. Carl will work with them to include his language. Then, once it comes back to this committee, at that point we can implement the redline / strikeout review. He reiterated that the subgroup doesn't agree on the language at this time and that it needs to be reexamined. When it is resubmitted, if it is the wish of the full committee, it can be put into redline / strikeout. Mr. Sossamon asked if that was acceptable to the group. He asked if there were any further questions. He summarized that from this point forward if you'd like to use redline, we will use it.

Mr. Sossamon then moved on to the next item, which is item #2 NAS. He reiterated that this had been moved conditionally to the Needs workgroup. He asked whether based on the explanation provided earlier today, for tracking purposes, could we eliminate this topic from the CAS report. Dr. Kazama responded that was acceptable.

Mr. Sossamon noted that #2 was eliminated and that there were two other tracking sheets presented. Mr. Swanson stated that AEL challenge was one.

Mr. Tillinghast stated that in the previous presentation, they had neglected to deal with a technical issue on both #1A and #1B and that he would like to revisit the issue at this time. He began by stressing that what is being proposed, is an AEL change and that each tribe's AEL is a fraction derived by dividing the tribe's local AEL (the numerator) by the national average AEL (the denominator). Because it's a fraction, if the numerator is increased, it will have the effect of raising the national average (the denominator), which will then cause a reduction in every tribe's AEL. Mr. Tillinghast walked through his example (Attachment 13). He summarized that it was not the intent of the CAS workgroup to lower any AEL. He pointed out it was the intended that if someone got their AEL increased, the money would come from the Need side, not from the CAS side. Mr. Tillinghast also stated that in all of the data runs performed on this issue are based upon the AEL increases coming out of Needs, not CAS. [There was a side question as to whether the data runs were performed using 2000 census data.] Mr. Tillinghast stated that in order to make certain that the funding to support increased AELs comes out of the Needs side, a change is required. He pointed out that the policy choice is that the money has to come from somewhere. If you want to have it come out CAS, don't adopt the newly proposed change; if you want it to come out of Needs, do adopt the change. Mr. Sossamon asked if there were any questions.

Mr. Coyle stated that if the money comes out of the Needs side, he will not be able to support the proposal. Mr. Tillinghast pointed out that if you adopt either #1A or #1B it will cost money and the money has to come from somewhere. If you do not adopt the additional language, the money will come from the CAS allocation. If you do adopt this new language, the money will come out of Needs allocation. He noted that there was one run performed on July 14 that was based on using the CAS allocation to fund the AEL change.

Mr. Sossamon summarized that the money to fund changing an AEL comes out of the Needs allocation because if you change your AEL, it will increase the portion that is taken out for CAS. That is, for every dollar you increase, someone will lose money in CAS. If you change the numerator, it will also change the denominator. Mr. Tillinghast indicated that was correct. Mr. Hudson asked how it works currently when a tribe challenges FMR. A/S Liu responded that it comes out of CAS funding.

Mr. LaPointe raised a question about the use of \$239 as the average AEL and where it came from. Mr. Tillinghast clarified that he believes this number is a national Indian housing average (HUD staff was verifying this). But that whatever that number is, it

should not change. Mr. Anderson stated that the formula uses a number that is not identified. Mr. Sossamon stated that Mr. Coyle has made it clear that he will oppose the proposal unless the funding comes out of CAS. Based on that, what does the committee want to do. Dr. Kazama then stated that he could not accept any proposal that took the funding from the CAS side. Mr. Sossamon then asked if there was a need to develop a challenge process for #1A and #1B.

Mr. Sawyers reiterated that the discussion was that we would take #1A off if #1B is approved, so #1A is still on. Mr. Sossamon noted that #1B has been removed from the table, and recapped that the committee holds off on that discussion pending the completion of additional data runs. Dr. Kazama commented that the same discussion would occur, because the money has to come from somewhere. Mr. Ducheneaux suggested that committee members look for what they are willing to trade. Mr. Coyle stated that he is satisfied with the allocation for CAS as is. He pointed out that we have to supply enough money for 37 Act housing, but that the Needs allocation must be available. He added that as long as we can stay within the requirements of Sec. 302, he's satisfied.

Mr. Sossamon asked if the national average AEL is a dead issue. Mr. Sawyers replied, no. He added that it was apparent that #1B is a dead issue. He also commented that it bothered him when a blunt statement is made in a negotiation. It is always possible that you may change your position. Nonetheless, he stated that he would like to hold off on #1B for the time being. He just doesn't want to address it at this time since he is waiting for another data run.

Mr. Chavez asked for a clarification on Mr. Coyle's statement that Sec. 302 stays the same as it is now. Mr. Coyle stated that his concern is that CAS is a dead issue, and that the only money his tribe can work with is the Needs funding.

Mr. Sossamon noted that we were waiting for a data run on #1A. He queried if #1B has been resolved. It was confirmed that #1B is dead.

A/S Liu stated that it is important to understand that in prior meetings we have had thorough discussions on AEL, what it is, and what it isn't, and that it is less and less effective as a representation of true operating costs. He added that these things have been taken into consideration. He also stated that he is very appreciative of the understanding of the committee members and others. Further, he pointed out that for the time being, because there is a lack of information in Indian country, we would remain with AEL as a tool to help divide the CAS allocation. A/S Liu wanted to make it very clear that during its deliberations, the committee understood the limitations of AEL and that it is not a representation of true operating costs.

Mr. Sossamon asked if #1C is finished. Mr. Swanson pointed out that #1C is tabled; #1D has the consensus of the committee; and #2 is no longer in CAS tracking. Mr. Sossamon asked if there are other issues. Mr. Swanson stated that there are two more items, #3A

and #3B. Mr. Sossamon stated that #3A is over- and under-reporting units. Mr. Swanson pointed out that it has been reintroduced as a proposal from UNAHA, which had been handed out earlier.

Mr. Sossamon announced a 15-minute break.

Mr. Sossamon recalled the meeting at 3:20 pm, and recognized staff (Ms. Gardstein) who requested that any language that is a change to the existing regulations should be submitted in redline / strikeout format.

Mr. Sossamon then recognized Mr. Swanson who commented on the negotiation process and the possibility of creating a deadlock or impasse. He encouraged the committee to ask why the issue being discussed is important, and in particular, if you can't live with something, to explain why. He pointed out that approach adds to the richness of the negotiation. Then when a call is made for consensus on any issue, the committee will have a better idea of why decisions are being made.

Mr. Sossamon raised another item, apologizing for declaring an issue dead. He noted that the group must declare an item dead. So, for the record, he requested to go back to #1B. Mr. Sossamon called for consensus to accept the proposal. He clarified that this was the one where there was a stalemate. He asked if there were any objections. Mr. Coyle requested that the proposal be restated. Mr. Sossamon asked Mr. Tillinghast to restate the options.

Mr. Tillinghast recapped that the proposal, which was submitted, would create a challenge process based on the census data challenge for individual tribes to challenge their AEL. There were two options, one (#1B1) is to adopt language that would freeze the AEL factor denominator with the effect of paying for AEL challenges from the Needs allocation; the other (#1B2) is not to freeze denominator with the effect of paying for AEL challenges from the CAS allocation.

Mr. Sossamon called for consensus on #1B1. There were two objections. Mr. Sossamon declared that consensus had not been reached.

Mr. Sossamon then called for consensus on #1B2. There were three objections. Mr. Sossamon declared that consensus was not reached.

Mr. Bush requested that in future, copies of items called for consensus be available at the time consensus is called. Mr. Naize asked if that meant that the call for consensus is not valid at this time. Mr. Sossamon responded that the request was made after consensus was taken, and that Mr. Bush had an opportunity to withhold consensus based on not having the documentation and he did not do that. Mr. Sossamon asked if there were any further questions. He then stated that he would do the same thing for topic #2 (NAS). He called for consensus to eliminate #2 as a topic to review under the CAS workgroup report for the reason that it has been shifted over to the Needs workgroup and will be addressed

as was explained earlier. He summarized that this is simply to remove it as a consideration from the CAS workgroup's report. Mr. Bush commented that he thought that the CAS workgroup reserved the right to revisit this if they wanted to. Mr. Sossamon commented that the subject will come up again, and is simply trying to point out that due to the fact that it will be addressed later, we don't have to address it here. Ms. Marasco clarified that the CAS workgroup forwarded the issue to the Needs workgroup and reserved the right to be able to review their recommendation before we deleted it from our task list. She added that to date, CAS has not had the opportunity to do that. She would not want to remove this at this time. Mr. Sossamon declared that there is not consensus on removal of #2 from the CAS report. He summarized that it stands as is and the committee will wait to see if it is resolved later.

Mr. Sossamon then addressed item #3A, which we began to address before the break. Mr. Sawyers stated that he would like to table this until the next session, awaiting input from HUD input. Mr. Bush asked what HUD was looking at, and commented that he would prefer to discuss the issue now. Mr. Adams stated that HUD was considering a process and requested time to do so. Mr. Sossamon stated for the record that this issue is going back to the workgroup for further input, and that there was consensus to do that.

Dr. Kazama pointed out that there is one more issue, #3B, which is the joint effort that is still being worked on. Mr. Sossamon asked if anything had been submitted. Dr. Kazama responded that they are waiting for data runs. He also noted that #1 was still outstanding. Mr. Sossamon asked for a timeframe on issue #1, for example, did Dr. Kazama think it would be presented on Thursday or at the next session.

Regarding #3B, Mr. Wagenlander stated that the subgroup has met three times with active participation with HUD staff. He pointed out that the members of the subgroup have committed to working actively between the meetings, and will submit a proposal (or proposals) prior to or at beginning of the next session.

Mr. Sossamon recapped that covered what has been presented to the group from CAS at this time, and everything has been forwarded to the full committee. He stated that he would not go back to the items submitted by the Needs workgroup, and would begin with the proposal on birth/death rate inclusion. Mr. Sossamon recapped that the committee had been charged with setting regulatory language to codify the inclusion of birth and death rates as an adjustment factor. He asked if the Needs workgroup had drafted any language.

Mr. Sawyers summarized that in the current formula, birth and death rates are used to adjust AIAN numbers between the decennial census. He reiterated that it was the opinion of the group to continue doing the same thing as it is currently done. The discussion is do we continue with the current practice or is there a better method. Mr. Sawyers reported that the workgroup did not reach consensus, and that he did not want to call for consensus until he heard other opinions. Ms. Marasco asked for a clarification on where it is stated in the current regulation and is it part of the statute. Mr. Sawyers responded that it isn't

in the statute or regulations, but HUD has included the birth and death rates as part of the implementation process for 5 years. Ms. Marasco commented that some of the problem areas result from just this type of approach, and that the tribes are not always aware of the general practices. She supported the idea of putting the practices into the regulations so that everyone is aware of what the procedures are. She added that her request was to see draft language before calling for consensus, and that she could agree to the concept. Mr. Sawyers pointed out that we have agreed that we need to put it in the regulations. He queried if the committee wants to call for consensus on the concept. Ms. Marasco stated that the CAS workgroup submitted concepts, and they get killed or accepted. The process is that you have to bring language to the table. Mr. Sayers asked if Ms. Marasco was suggesting that the issue be tabled until there is language. He also asked who is on the drafting committee.

Mr. Sossamon suggested directing the issue to the drafting committee and coming back to it. Mr. Sawyers commented that they have to draft every one of the topics, and will have to come back to each at another time. He didn't think that any of the work has been drafted.

Mr. Sossamon recommended that the group go through the topics methodically and assign what needs to be done. He summarized that for this issue, that the proposal is to continue using birth and death rates as is currently being done. The to-do item is that language needs to be drafted. Mr. Sayers commented that he thought we would draft as a group. A/S Liu pointed out that this proposal is really attempting to codify what is current practice. He added that the HUD staff doesn't think it will be difficult to get something drafted pretty quickly, and he recommended that rather than starting off from scratch, we can take a 20-minute break and get something on paper. Then we can redline.

Mr. Sayers suggested that the group move on to the next topic and allow the staff to go out. A/S Liu agreed. Mr. Carl reiterated his concern that time is best spent consenting to drafted recommendations.

Mr. Heisterkamp stated that the Needs workgroup has presented work in two formats. Some are in redline regulations. But, there are some bigger issues that are not to the point of drafting language, and the workgroup felt that these big issues would only be discussed in the full committee. He suggested that there are two things we can do. We can look at the regulatory language we do have. For the others, the full committee will have to put in time for consideration. So at this time, we can go straight to the draft language or we can consider the other topics.

Mr. Sossamon suggested looking at the conceptual questions. Then those who are drafting language can begin to do their job. He then recommended that the first item to be looked at is inclusion of the housing shortage variable.

Mr. Heisterkamp directed the group to the first page of the Needs workgroup handout and the general discussion on whether to keep the seven variables. He added that the

workgroup opinion was to stay with the current variables, but that is subject to the consideration of the bigger group. Mr. Sossamon clarified that the recommendation is to keep the existing variables as factors. He then opened the floor for discussion. Ms. Tooley commented that as noted on page 1 of the handout, it was agreed to leaving the factors in without weights, but that we wanted to discuss the housing shortage issue. Mr. Sawyers commented that the variables could be discussed one at a time, or as a group. Ms. Tooley suggested starting with housing shortage.

Mr. Sossamon asked if there were any objections to leaving the housing shortage variable in the formula. Mr. Naize objected. Ms. Tooley provided background on housing shortage. She stated that the Needs workgroup group spent a lot of time on this variable. In addition, she pointed out that there was background information from the first negotiated rulemaking. She explained that the variable was seen as a way to give tribes who didn't have the benefit of the 37 Act program to receive funding. She added that it was based on the total number of people in the three income categories, and that Section 8 units were not taken into consideration, which is an issue. Ms. Tooley stated that the workgroup also put in the provision that NAS units should be subtracted from the number of low-income persons. This was so that those people who have homes wouldn't be counted. She noted that neither the Needs nor CAS workgroups have been able to come up with a definition for a NAS unit. But, she reported that the workgroup did agree that if the variable remained in the formula, that Section 8 should be included as well as the 37 Act units. Ms. Tooley pointed out that they had also looked at other census data that might address housing shortage, and determined that housing shortage was not adequately address in Indian country in any other census data, although the overcrowding and no plumbing variable also addressed housing shortage.

Mr. Sayers stated that if you eliminate the housing shortage variable with a weight of 15%, that money could be used somewhere else. He added that a data run had been requested to determine the effect. Ms. Tooley explained that the data run is being set up, and the approach that was taken was to eliminate the housing shortage variable and divide up the 15%. She added that they decided to add 5% to each of the income categories. She pointed out that once the effect was ascertained, they could make a real determination where the 15% would go. Mr. Sossamon asked if there was a timeframe for completing the data run. Mr. Sayers responded that he did not have a timeframe.

Mr. Sawyers then raised the issue that the present formula includes a variable for houses that are overcrowded and without kitchens or plumbing. He noted that there is a chart on the page following the topic in the handout. He then asked staff (Ms Stoloff) to explain the overcrowding chart. Mr. Sossamon asked for clarification that the discussion on housing shortage has been suspended until the issue on overcrowded and without kitchens and plumbing is addressed. Is this because it is necessary to see the data run that removes the housing shortage variable in order to determine how much difference it will make. Mr. Sawyers responded affirmatively. Mr. Sossamon summarized that the group will come back to the housing shortage variable discussion as soon as the data run is available.

Mr. Sawyers then turned the floor over to Ms. Stoloff for an explanation of the overcrowding and HH without kitchens and plumbing variable.

Ms. Stoloff began by stating that most of the discussion on the variable had to do with whether or not you have inadequate plumbing or overcrowding. She noted that if you have either, you receive a share. The question is how many HH overlap on those categories and should they be separated out. Ms. Stoloff commented that there are large regional differences (as shown in the chart). Every region has some degree of overcrowding; some have more or less plumbing. Phoenix and Alaska have the biggest problem with plumbing and overcrowding and both. Mr. Sawyers asked what would happen in Alaska if the variables were split. Ms. Stoloff responded that one approach would be to have one category for overcrowding only and another category for both. She suggested that way you account for the people who have both. *Ms. Lambert* commented that it appeared as though that has already been taken into consideration. Ms. Stoloff stated the yes; we did that because that's how it's done in the formula now. She added that it is also a typical way to show the data. If you separate them as she is suggesting, the result will be that you move relatively more money to places with no plumbing, that is if each received an even split (12.5%). Mr. LaPointe asked what would happen if you created three categories. Ms. Stoloff stated the result would be about the same as an even split.

A/S Liu commented that the determination of weights should be left to the committee. He added that there are costs that may be different from region to region. Mr. Sayers stated that many workgroup members felt they should stay as they are. Ms. Stoloff commented that the data can be run anyway you like, and that this is just to give a sense of the effect.

Mr. Hudson asked for the rationale for keeping the variable as is. Mr. Sayers responded that if left as is, no one is left out. Mr. Hudson commented that it looked as though plumbing is left out. Ms. Stoloff clarified that those people are being counted. Mr. Hudson stated that most are being counted for overcrowding; but that particularly in Alaska and Phoenix, there is a bigger plumbing problem that is combined with overcrowding. Ms. Stoloff stated that if you split them, people who had both conditions would get two shares; whereas as it is now, they are getting one share. Mr. Sawyers added that for the rest of the country, he's not sure you would gain anything if you split the variables. He pointed out that during the last negotiated rulemaking, the committee felt this was fair and equitable because everyone benefits. Mr. Hudson commented that according to the graph, the housing situation across the country is not equal. Mr. Sawyers stated that if you split the weighting, there won't be a windfall, but you may be more accurate. Mr. Humphrey commented that he was trying to make a determination if this variable measures what is intended, that is, does inadequate plumbing address infrastructure or overcrowding. He noted that in the Northern Plains region, there are 15 people in a home, not 1.1 persons per room (per census). He added that the proposal is to separate or eliminate one or the other or both, not just to leave as is. But it should also address how and what is being measured.

Ms. Gore stated that the philosophical discussion is good, but without numbers we won't be able to come to any decision. She requested that this item be sent back to workgroup to prepare a data run. Mr. Sossamon suggested that rather than have the workgroup determine the split, if someone would like to see a data run with the variables split and with specific weights, the data run could be requested.

Mr. Naize stated that he had a recommendation, which is to separate the two and to perform data runs on the following:

- 1. AIAN 13%
- 2. 30% income 7%
- 3. 30 – 50% 7%
- 4. 50 – 80% 7%
- 5. Overcrowding 25%
- 6. No plumbing 20%
- 7. Pay more 10%
- 8. Housing shortage 0%

[Note that the run requested was #48 and the following percentages were specified: AIAN=14%, HH<30=15%; HH30-50=8%; HH50-80=8%; Overcrowding=25%; w/o kitchen=20%; Cost burden=10%; and, Housing shortage=0%.]

Mr. Sossamon stated that the request must be submitted on the blue form, and that it can be submitted to Mr. Sossamon, Mr. Franks, or Mr. Boyd. Mr. Sossamon clarified that the data run is for all eight of the variables, but with plumbing and overcrowding separated. Mr. Sawyers asked if we are assuming that the committee has consensus on these variables, and if not, are we attempting to assign weights before determining if there is consensus. Mr. Sossamon stated that in principle the factors are acceptable for consideration, but it doesn't mean they will be included. Mr. Naize clarified that this is not consensus, but is a request for a data run. Ms. Marasco requested that the percentages be read again. Mr. Bush suggested that if everyone makes a request, staff would be overwhelmed. Mr. Sossamon requested that the group be judicious in submitting data run requests. Mr. Bush clarified that he was not suggesting that the data runs not be requested, he simply wanted to note that data runs have already been requested are available for review.

Ms. Stoloff commented that in terms of being able to interpret the results, the fewer factors or variables that are changed in any run, the easier it is to interpret the effect. If there is anything that the committee would agree on, for example the weight for AIAN, then for every run that would be kept the same. If we first split overcrowding and kitchen, and not change anything else, we would have a better sense of the effect. She suggested making incremental changes. Mr. Sossamon suggested that the group try to reach agreement in general. As far as the best measurement, this is the only consistently measured form tribe-to-tribe. He commented that he didn't know if it was the best measurement, but it is the only one that is consistently. Mr. Sossamon added that with the exception of housing shortage, all the variables are measured by census.

Mr. Ducheneaux asked for clarification that if he wants to request a data run, all he needs to do is fill out a request, and give to Mr. Sossamon, Mr. Frank, or Mr. Boyd. Mr. Sossamon responded, yes.

Mr. Gorynski stated that for reference, all documents must be numbered so that we can keep track and be certain that we are all looking at the same document. Mr. Sossamon reiterated that all the documents need to be numbered and dated before they are copied. Staff (Ms. Gardstein) agreed and will determine a procedure to ensure that this is accomplished. [Note that the Needs tracking documents have been numbered 4 – 4K.]

Mr. Sossamon guided the discussion back to whether to separate overcrowding from plumbing. He noted that there has been a request for a data run with the variables separated. He then asked if there were any other comments or further discussion.

Mr. Sawyers commented that during the discussion on the issue it was noted that, in Alaska in particular, it doesn't matter how much money is provided. The infrastructure problem is can't be fixed. He added that he wanted to raise the infrastructure issue, although he recognizes that it doesn't have as much bearing on Need currently. However, he stated that even if you put a lot of money from the formula for infrastructure, it still might not solve the problem. He added that if you take a quarter of the Needs budget, it might be significant. Mr. Sossamon asked Mr. Sawyers if he was a proponent of splitting the variables in question. Mr. Sawyers responded that he thinks they should be kept as one variable, with one weight because they equalize the need throughout Indian country.

Mr. Hoffman asked if there was a request for a data run. Mr. Sossamon responded that a request has been submitted. He added that they were discussing the rationale of keeping the two variables together or separating them. Mr. Sawyers commented that it is difficult to assign weights if you're going to eliminate or separate. The bigger issue is that we will have to decide what the factors are before we weigh them. Mr. Hoffman asked for a clarification on whether the data run request submitted had weights assigned. Mr. Sossamon confirmed that was accurate. He also noted that the current discussion was focused on why would you separate the variables. Mr. Hudson stated that if you are taking out the plumbing, it wouldn't change a whole lot, because there is overcrowding everywhere. But, there are only two regions that have substantial issues regarding plumbing, and the regions that have serious plumbing problems are not getting adequately addressed.

Mr. Doty stated that he would like separation because it is his understanding that houses that lack plumbing are substandard and that indicates a need. They are unsuitable for living. Mr. Naize recognized Mr. Carl, who reiterated that we have to address the needs that are out there. He stated that most of the Need that exists is in areas that are not near metropolitan areas, in Alaska and the southwest. So money needs to be directed where there is greatest Need. Regarding the infrastructure, he commented that everyone knows that the need is huge. The question is how are you going to address it. Mr. Gorynski

commented that in his tribe, IHS brought infrastructure up to the building, and that the remaining 5 feet to the house is affordable. He added that if you're talking about bringing services from the house to a processing system, NAHASDA couldn't afford that. Mr. Carl stated that there is a dilemma with IHS, and that is if any NAHASDA dollars go to a house, IHA will not provide additional funds. Ms. Tooley stated that at this time, tribes can't spend IHS funds to get services to the house, and so tribes must look to NAHASDA. Mr. Ducheneaux noted that Congress put this into law and that the Indian Health Board is lobbying for change.

Mr. Sossamon stated that the negotiation is going to take place in the weighting if we agree to separate the variables. Mr. Ducheneaux stated that the statute says that we are supposed to take the extent of poverty and economic distress into consideration. He added that the Naize data run shortchanges the extent of poverty and economic distress. Mr. Carl responded that he thinks that the intent of the requested data run addresses economic distress so long as you don't have ready capital to address housing need and infrastructure. He added that you'll see it in Pine Ridge, Navaho, and throughout Alaska. Mr. Ducheneaux stated that he also requested a data run.

Mr. Sossamon summarized that the group had framed the question fairly well. He added that based on the data run requests, the group was not yet ready to make a decision. He suggested returning to the birth and death inclusion proposal and noted that there was now language to review.

Staff (Ms. Kruszek, Mr. Pereira, and Mr. Anderson) presented the language, which was displayed on the screen (Attachment 14). The presentation began with a summary that the language refers to the current practice of using IHS birth and death records. It was noted that the first part currently exists in §1000.330

Sec. 1000.330 What are data sources for the need variable?

The sources of data for the need variable shall be data available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Initially, the data used are U.S. Decennial Census data. This data shall be updated annually beginning the year after the census data is collected using Indian Health Service population projections based upon birth and death rates by county or by Alaska Native Regional Corporation as provided by the National Center on Health Statistics. Data that is accepted by HUD as a result of a successful Census challenge will begin to be updated in the year subsequent to the data collection.

The new language (in italics) specifies that the data be updated annually using IHS population projections. It was noted that language was also added to reflect a data challenge process. Ms. Kruszek noted that this is the practice that HUD currently uses. She added that the Alaska Native Regional Corp records population differently and that's why it is singled out. Ms. Gore asked what happens to the tribes within ANRC. Mr. Anderson responded that each receives the increment assigned to the county. He stated that although the geographies are described as boroughs, census refers to them as counties. He added that in fact there are some that are not boroughs, but for simplicity,

census calls them all counties. Ms. Kruszek stated that it is only for the Regional Corporations that the data becomes effective. Ms. Marasco commented that if a tribe was not on a reservation, and didn't have IHS statistics, the numbers won't be as accurate. In California for example, most tribal members use regular doctors because there are no IHS doctors, and the tribal members don't have access to medical facilities. She suggested that due to this, perhaps the California data isn't as accurate as some of the other tribes. She queried what the process would be for California tribes? Ms. Stoloff responded that the IHS data is not collected through IHS hospitals, but is collected from the National Center for Health Statistics, and IHS just compiles the data. She added that if the tribal members are filing birth and death certificates, they will be in the data.

Mr. Sossamon called for consensus on the proposed language. Mr. Gorynski commented that individuals become members of the tribe with different paperwork, not a birth certificate. He suggested that perhaps the tribes have forms that include birth and death rates, and it wouldn't be necessary to go through the counties. Furthermore, he noted that Native Americans are not always identified as AIAN on the birth certificates. Ms. Marasco agreed that these documents don't necessarily track by race, and so it isn't known if the individual is AIAN or not. Ms. Stoloff commented that she didn't recall the procedure, but that IHS has a methodology for tracking AIAN, and it does involve some projections. She added that she could share the procedure with the group, but that it did seem reasonable. She also stated that the census does something similar.

Dr. Kazama stated that the Alaska region would like time to discuss this, and that he doesn't want to agree to consensus with out full knowledge. Therefore, he requested a caucus at 5:30 pm. Mr. Sawyers reiterated that this only reflects what HUD is doing now, and that the purpose is to formalize the current practice. He stated that the whole idea is to make certain that your population is not stagnant for 10 years (between census) although he agreed that the committee should be thorough.

Mr. Gorynski asked for the document number of this proposal. Staff responded that the number was recorded as 4J1.

Mr. Sossamon declared that the committee had not reached consensus at this time.

Regarding the split variable issue (overcrowding and plumbing), Mr. Sawyers stated that the data run requested by Mr. Naize eliminates one variable altogether. Mr. Sossamon responded that it is just a data request to see the effect. He then suggested moving on to another item, noting that there have been data runs on variables. Ms. Tooley stated that she had a request for a data run with variables. Mr. Sossamon suggested recessed the meeting for a 15-minute break until 5:30 pm. He noted that they had agreed to recess at 6:00 pm, and that after the break, they would talk about where we are going from here. He also announced that there would be a group photo immediately following the meeting today. Dr. Kazama reiterated that he had called for a caucus at 5:30 pm. Mr. Sossamon suggested that he call his caucus now and Dr. Kazama agreed.

Mr. Sossamon recalled the meeting at 5:49 pm. He announced that the Alaska delegation had a slight change to the birth and death proposal language and would be willing to consider a call for consensus (Attachment 15).

Sec. 1000.330 What are data sources for the need variable?

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[Note that the Alaska language is highlighted in bold.]

Mr. Sossamon asked if there was any further discussion. Ms. Marasco commented that she would not have a problem if the challenge information were broken down in two components. Mr. Sossamon asked HUD if the challenge information could be provided. A/S Liu responded that he believes HUD can do that. Mr. Frank asked for a clarification on whether data is collected differently in Alaska than any other place. Ms. Kruszek responded that the reason is that the 2000 census data for the villages is by county, but for the regional corporations, the data is by regional corporation area. Mr. Frank commented that for the rest of the country the data is from the National Center. Ms. Kruszek noted that all the data go through the same route; it's just applied to a different geography in Alaska. She reiterated that all the data go through the National Center and IHS. Mr. Hoffman noted that his tribe didn't have a county or borough. Mr. Frank queried why Alaska is singled out differently from the rest of the country. Ms. Gore, responding to Mr. Hoffman's statement, noted that Mr. Hoffman is referring to is an unorganized borough, and that the language only identifies geography in formula area. She stated that it has no relationship to the data collection other than to define the area. She reiterated that Alaska's geography is different, the data collection is not. Mr. Frank stated that since his area is broader than his service area, he would like to use the entire State of Florida. Ms. Kruszek stated that the formula area for the regional corporations in Alaska was not expanding. She reiterated that the language refers only to the level of geography from which the data are taken. She added that the IHS birth and death rates are collected in the same way in Alaska as the rest of the country; that formula area is established in the same way as the rest of the country. This is only to identify the geography. Mr. Frank commented that it shouldn't matter how big the area is.

Mr. Humphrey asked what happens if a child is born in a different county, outside the formula area, is the birth counted in the county of record. Ms. Stoloff responded that if you're in the same county, it not a problem. If it's a different county, it may be that the mother can decide. Mr. Humphrey then asked whether the statistics are accounted for by contract health providers.

Ms. Marasco suggested simply using the 10-year adjustment instead of the annual adjustment. Mr. Sawyers stated that would result is a big jump every ten years. He reiterated that this procedure has been followed for 6 years, and this is merely an attempt to turn the procedure into a rule, instead of a rule of thumb. He commented that the committee could decide to visit population change every ten years or as an annual phase-in. That is the question; either you do it every 10 years or you provide for a gradual annual adjustment. He added that if you defeat this, you are saying to stop doing what is being done as current practice. Mr. Sossamon stated that the population number could be challenged annually to account for births. He noted that this current method is not perfect, but it's the best thing we have to avoid the big swings every ten years.

Mr. Sossamon then called for consensus on the revised language. Mr. Sossamon declared that the committee had not reached consensus.

Mr. Sawyers asked if there was an alternative offered. Mr. Sossamon suggested that the group revisit the issue on Thursday morning. He then reported that some committee members had expressed an interest in working this evening. Mr. Sossamon asked if there were any objections to working later. There was an objection. Hearing the objection, Mr. Sossamon recessed the committee until 9:00 am Thursday. He then requested that the committee assemble for a photo, and afterwards, announced that there would be one big group photo.

The meeting was recessed.

THURSDAY MORNING, AUGUST 21, 2003
FULL COMMITTEE

Mr. Sossamon recalled the meeting at 9:30 am. He recognized that Mr. Tim Humphrey was serving as alternate for Mr. Ducheneaux and that Mr. Mark Charlie was serving as alternate for Mr. Hoffman. He then recognized Mr. Vollintine.

Mr. Vollintine presented several items to be carried forward to the next Negotiated rulemaking:

- Clean up Davis Bacon regulations in §1000.316 in light of Sec. 104(b)(3) of NAHASDA as amended in 2000 (tribe may determine prevailing wage rates).
- Adopt a regulation to authorize recipient to provide maintenance and utilities to NAHASDA units as affordable housing activity under Sec. 202 of NAHASDA independent of model activities in 202(6).

Mr. Sossamon asked if there were any comments. Mr. Sceeles asked if there was a timeframe on obtaining the requested data runs. Mr. Sossamon stated it was his understanding that the data run requested for the housing shortage variable and for 2000 census data are completed. Ms. Kruszek reported that the data run on 2000 census data with one race only had also been completed and is being copied.

Mr. Sossamon asked if there were any other comments. Mr. Frank called for a 30-minute regional caucus. : He has been asked to call a caucus for 30 minutes. Mr. Sossamon asked if any other regions wanted to caucus. Mr. Sawyers announced that UNAHA would also caucus. Mr. Sossamon announced that the meeting would resume at 10:04 am.

Mr. Sossamon recalled the meeting at 10:15 am. He stated that the committee would pick up where it left off on the housing shortage variable issue. He added that the requested data run (request #42) had been provided (Attachment 16). Mr. Sceeles commented that yesterday he had requested that data runs include percentages. He also noted that the data run removes the housing shortage variable and redistributes the weight amongst the three income categories. Ms. Tooley clarified that the data run adds 5% to each of the low income categories, so that for the purposes of the run:

< 30 income:	18%
30-50 income:	12%
50 80 income:	12%
Rental burden:	22%
Overcrowding:	25%
Plumbing:	25%

Mr. Sceeles asked for clarification that the last column is HH paying more than 50%. Ms. Tooley stated that was correct.

Mr. Sawyers called for consensus on removing the housing shortage variable. Mr. Sossamon asked if there were comments. He then asked if there were any objections. There were 12 objections. Mr. Sossamon stated that he would encourage those who are opposed to offer an explanation so that we can determine if there is any room for negotiation. He noted that if you oppose without explanation, there is no room for negotiation. Ms. Tooley commented that the call for consensus was premature, and since she didn't know what the other variables are going to be, she could not agree to consensus at this time. For example, if the 15% had been put in another category, there would be a different effect. Mr. Naize commented on procedure, noting that yesterday although there were some objections made, the request for an explanation had not made. He suggested that in order to get to solutions, that the committee goes back and asks why committee members objected. He added that his objections would be based on his not having the data requests he asked for.

Mr. Sossamon stated that the rules don't require an explanation, but that it was noted by the facilitators that not having an explanation inhibits the negotiation. He reiterated that the committee is at the table to negotiate, so it was an observation and request that those who object provide an explanation. Mr. Sossamon then asked if Mr. Naize was suggesting making this a rule, and reiterated that he didn't offer it as a requirement; he simply requested it. Secondly, as a point of clarification, Mr. Sossamon asked Mr. Naize to clarify whether he will not support any call for consensus until the data runs he

requested are available. Mr. Naize clarified that he was only referring to variables and weights. Regarding the issue of requiring an explanation, he commented that if the committee feels that it is a rule that should be followed, and then it should be formalized.

Mr. Sossamon asked the committee if it could proceed under the good faith protocol or will it be necessary to add another protocol. Mr. Adams suggested making a formal requirement that if you object, you need to provide a reason. Mr. Sossamon asked if Mr. Adams was offering that as a proposal for consensus. Mr. Adams replied yes, although he was unsure what the process would be. Mr. Sossamon stated that there is a proposal that committee members are required to provide an explanation of any objection to a call for consensus. Ms. Marasco recommends proceeding in good faith, and stated that the committee went through by-laws and protocols early on, she will hold by them, and is not willing to change. Mr. Shuravloff commented that he didn't have a problem providing an explanation, but that for an item that is overwhelmingly not supported, it's just a burden to have everyone provide an explanation. Mr. Adams reiterated that in order to successfully negotiate, the committee needs to understand objections. He also stated that when the protocols were developed, we didn't have the foresight to know what may transpire.

Mr. Naize yielded the floor to Mr. Carl who stated that the committee established a good faith commitment. He stated that each committee member is representing its tribal organization as well as providing geographic regional representation. He added that in order to get to that level on good faith negotiation, you have to provide an explanation. If you say no, due to tribal pressure, for example, you're not negotiating in good faith. By allowing people to have open discussion, it allows for open dialog leading to a solution. He stated that if it's not part of the protocol, it should be part of the practice.

Mr. Bush stated that he thinks a reason for objection should be provided and/or an alternate should be offered. At the same time, he noted that if there's a call for consensus, as in this case, that a variable be removed, the reason for removal should be stated in order to enhance the discussion. He stated that a call for consensus on the basis of one data run is premature. Mr. Frank agreed with Mr. Bush. He added that the issue on housing shortage was raised in the workgroup, but never resolved. Mr. Bush commented that he would like an explanation on why housing shortage variable should be removed. He stated that he would object until reasons are stated and the impacts are discussed. Mr. Humphrey pointed out that in the Needs workgroup sheet 4A, the rationale is stated, and the reasons were raised and discussed:

1. Whether this variable is still effective as a formula component to assist Tribes with little or no previous housing development.
2. Whether the variable as stated addresses housing shortage.
3. Examined a number of alternate data sources (i.e. vacancy rates), which do not adequately address housing shortage.
4. Housing shortage may be adequately addressed by other variables

Mr. Humphrey also noted that if the housing shortage variable is included, we have to look at NAS and Section 8 units. He commented that the tracking sheet presents a fairly good rationale. Mr. Sossamon recapped that consensus was not reached on removing the housing shortage available. He also stated that there was a call for consensus on requiring an explanation with a 'no' vote on consensus. Mr. Sossamon declared that consensus was not reached on that item. However, he commented that he believes that it will be valuable to provide an explanation. He also added that if you make a proposal for an action, stating the reason why will also facilitate negotiation. He stated that as Chairman, he would exercise his discretion and ask that a rationale be provided, in the spirit of good faith. Ms. Marasco stated that she would commit to keeping the protocols and charter, and to negotiate in good faith. She added that she doesn't mind giving her opinion, but doesn't want it to be a requirement.

Mr. Sossamon clarified that providing an explanation is not a requirement. He then stated that the committee was now back to the issue of the housing shortage variable. He asked if the committee would like to address this issue. Mr. LaPointe stated that he was not opposed to removing it, but not at this time, as he would like to see different types of data runs performed. Mr. Sossamon asked if the committee was able to decide if this is an effective variable, regardless of the weight. He stated that he didn't want to waste time on data runs, if the committee wants the variable eliminated. Mr. Bush noted that one of the comments is that there are some tribes that don't receive enough money to fund any units. Currently it is a way to free up some money for those who don't receive funds to develop units. If there's another way, he would consider removing the variable, but based on the way it is now, it's a critical component for him. Mr. Sawyers queried if there is any reason to talk about the factors in the formula before we have the data runs, or should we move to other items and come back to this one. We have presented the criteria, and until everyone is satisfied that these are going to be the factors, let's not waste time on it. You already know the factors and the weights. Let's talk about other items that we may be able to look at for consensus.

Ms. Tooley agreed with Mr. Sawyers. She suggested moving to # 4B (TDC). Mr. Sawyers stated that the workgroup does not have a regulation drafted on TDC, but does have language for #4C, D, and E. Mr. Sossamon suggested starting with #4D (overlapping areas).

A redline version that HUD prepared (Attachment 17). Mr. Heisterkamp referred to §1000.326, which was displayed on the screen. [Note that it was marked as Doc. #4-2] Mr. Pereira began by explaining that the proposed language is in italics and bold, and that the strikeout is from current regulatory text.

Mr. Heisterkamp stated that the workgroup also has a draft for definitions of formula area and substantial housing activities. He added that the language is attached to the report as #4E and #4F. Lastly, he noted that there is also a redline version of Sec. 302 (definition of formula area). Mr. Sawyers asked if the group wanted to review them all at once or separately, noting that there is a logical progression. Mr. Sossamon requested that the

committee begin with the formula area definitions, which is #4E. Handout Doc. #4-3 was distributed (Attachment 18). Mr. Pereira stated that these are discussion pieces and do not necessarily represent HUD's consensus on the issue. Ms. Gore noted on behalf of Alaska, that they had not reached consensus on these issues, however, she added that are committed to providing language to the committee. Mr. Sossamon clarified that this is suggested language. He added that if the committee agrees, we'll call for consensus, if not, he requested that committee members provide an explanation on that with which you do not agree.

Mr. Heisterkamp walked through the language. He noted that the Oklahoma language referenced is not complete. He also noted changes to the proposed language on Alaska. Ms. Tooley asked if all the entities are covered under ¶i (reservations). Mr. Heisterkamp stated that this appears to be an oversight, and that 'as defined by the census' should be added, which would then include pueblos, rancherias, etc. [Note that this phrase was added.] Mr. Carlile pointed out that there is still discussion on ¶iv. Mr. Heisterkamp clarified that both Oklahoma and Alaska are still working on language for discussion. Mr. Sossamon stated that this has now been moved out of the workgroup to the full committee and so if there's work to be done, let's do it.

Ms. Silliman stated that if there is a willingness to negotiate, she would be happy to do so. She added that Doc. # 4-4 (Attachment 19) is a proposal to amend that language for the Oklahoma definition of formula area. She explained that the definition was previously tied to census definition, but has been changed to OTSAs, which is primarily the entire state excluding the panhandle and Oklahoma City. She further explained that the language is an effort to include the areas that may not fall into an OTSA. She added that some people have interpreted 'former reservation areas' to exclude IHAs that currently have a formula area. She emphasized that this proposed language is not to exclude. It is meant to include the IHAs that may not fall within a former Indian reservation.

Mr. Vollintine asked for a clarification on 'as defined by census' and asked if that could that change. Ms. Silliman responded that language was taken from the current regulation. She clarified that the definition by census has changed, but changing the identification. Mr. Vollintine stated that if Oklahoma likes it, it's ok with him; he just wanted to point it out. Mr. Carlile asked for a clarification on HUD's position. Mr. Boyd requested that Ms. Silliman elaborate on 'any area recognized by HUD....' Ms. Silliman provided that example of a judicial ruling in which the tribe doesn't have a formula area, but it does have an operating IHA. She pointed out that the language is an effort to have a regulatory determination that there may be a formula area where there wasn't previously a reservation. Ms. Kruszek stated that under the old 1990 census definitions, there were TJSAs. Now there is an OTSA. In both cases, they have a TJSA and an OTSA. Are you suggesting that we go back to the old definition of TJSA and have census go back and fix that in time. Ms. Silliman responded that the OTSA definition refers to former Indian reservations only, and includes those tribes that used to have reservations, but no longer have reservations. She is saying that it is possible for a tribe that has a formula area recognized by HUD but that is not tied to a former Indian reservation.

A/S Liu stated that it would seem that the judicial ruling negated the former reservation. He added that HUD's concern is having census tab for a different kind of data. Ms. Silliman noted that the case stated that the government had not proven that the Absentee Shawnee ever had a reservation. Mr. Humphrey queried if what is being attempted recognizes that the census definitions are not statutory or regulatory, but for this tribe, if the census definition is applied, there is a hole. The tribe didn't have a former reservation. If this hole is not filled, there is an argument that they won't get a formula area. Ms. Silliman reiterated that the language refers to former Indian reservation areas, not current Indian reservations, and that the language must be fixed. A/S Liu stated that HUD is not prepared to concur at this time, but is willing to do the research. He added that he would need to have more discussion with the proponents. Ms. Silliman agreed.

Mr. Sossamon stated for the record, in regard to the formula area definition for the state of Oklahoma, that we need further research on the definition of OTSA and whether it addresses the issue brought forward on behalf of Absentee Shawnee. He expressed his hope that the research will be completed between now and the next session. Mr. Jones commented that this issue involves other tribes in addition to Absentee Shawnee and Citizen Band of Potawatomi.

Mr. Sossamon suggested that the committee go back to the larger Oklahoma definition, and asked if there any other objections to the definition. Mr. Vollintine requested that '2000 census' be specified. Mr. Naize commented that the issue should be addressed by Oklahoma representatives. Mr. Sossamon stated that if it has to do with a change in the regulations, it is now the work of the full committee. He reiterated that the workgroup did not reach consensus, and so the full committee now needs to deal with it. Ms. Marasco commented that without the Oklahoma definition, it would be difficult to reach consensus. She added that as a committee member she would like to see the document finished. It needs to come back when the issue is resolved. Mr. Sossamon stated that the particular part regarding OTSA will be researched and a recommendation will be presented during the next committee meeting. He noted that there is a broader question of whether there is anyone else who has a question about the language that may also have to be referred out. Mr. Jones stated that he has an issue with the removal of jurisdictional areas in ¶(1)(iv). Mr. Humphrey stated that substantial housing assistance (under new ¶4 'housing assistance') should be substantial housing services; and in ¶5, it should read: 'Indian tribe is providing substantial housing services.' Mr. Sossamon requested that Mr. Humphrey restate his concern. Mr. Sawyers stated that the workgroup has a definition of substantial housing services, and did the committee want to review it at this time. Mr. Sossamon recommended seeing if the committee could agree to the context of this section. Mr. Humphrey noted that the reference to substantial housing services was included here because previously it was defined as 'housing services.' This will limit people coming into an area and providing services. Ms. Tooley clarifies that 'substantial' only refers to areas in which a tribe is attempting to get credit for AIAN persons more than two times the tribe's population. Mr. Humphrey clarified that it is intended that the term 'substantial housing services' be used in all places that previously referred

‘services.’ He reiterated that the workgroup wanted to clarify the definition. He added that it now provides a standard as a basis of challenges in formula areas.

Mr. Naize asked if the question was on the definition of ‘substantial’ and are you saying that any level of services would mean that if two tribes are claiming an area, that the substantial would refer to over half of area? Or would you put it in terms of percentage? He suggested that perhaps instead of referring to ‘substantial’ it is put into a percentage.

Mr. Sossamon noted that the discussion was moving toward the definition of ‘substantial.’ Mr. Heisterkamp indicated that the workgroup also had a redline version of the definition of substantial housing services, which includes a discussion of percentages. He asked if there were any other questions on basic formula area definition. Mr. Sossamon suggested continuing going through the formula area definition to see if there are other areas of it that need clarification. Ms. Tooley stated in the interest being clear and fair, that ‘substantial housing services’ is referenced in three places in the formula area definition. Mr. Sossamon queried if the substantial housing services issue comes up in the issues of overlapping area and balance of county. Mr. Heisterkamp responded that you couldn’t discuss overlapping areas without a standard for defining substantial housing services. Mr. Sossamon asked for clarification as to whether the definition of substantial housing services would impact overlapping area, expansion of service area, and increase population cap. Mr. Heisterkamp confirmed that substantial housing services apply to everything except the first 8 definitions included in formula area definition. For any areas outside the first 8, there has to be a measuring standard that can be applied across the board. Mr. Sossamon stated that in that case, the committee probably ought to go first to the substantial housing services definition.

Mr. Bush, referring to expansion of formula area, commented that there have been challenges, and that ultimately, HUD makes the determination. He expressed concern over a tribe that is trying to checkerboard. He would like to make a recommendation that whatever the formula areas are, if you want to expand, there must be something that states the area is contiguous to current formula area. Also, regarding the definition of a reservation, Mr. Bush pointed out that there are quite a few definitions in census definition, which include, for example, state tribes. He asked for clarification as to whether census define reservations or American Indian reservations. Mr. Sossamon clarified that the regulation states ‘as defined by census.’ Mr. Bush reiterated that this is not clear, and he doesn’t want to leave it open for interpretation. He stated that currently, the way that reservations are defined in the census allows state defined tribes formula area. Mr. Heisterkamp queried if this allows a state tribe to trump a federally recognized. However, he noted that this still ties back to the tribe having to show substantial housing services if you want to claim formula area. He reiterated that substantial housing services is a key to expanding what exists today. Mr. Bush again stated that this definition allows the area to be broadened or expanded if it meets the census definition. Mr. Heisterkamp stated that reservation, as defined by census, refers to federally-designated tribes. Mr. Sossamon raised the question of the state recognized tribes that are funded by NAHASDA. Mr. Humphrey clarified that they are covered in ¶iv. Mr. Bush raised his

other concern regarding checkerboarding. He reiterated that he would like to see language included requiring expanded formula area to be contiguous with a tribe's current formula area. Mr. Humphrey stated that he would have to object to contiguous language. However, he noted that the substantial housing services definition is tied into membership in the area you are expanding into. For example, Blackfeet has a substantial population in Seattle that is not served. Mr. Bush stated that he would like 'attempted to establish such an MOA' removed from ¶2A.

Mr. Heisterkamp summarized that there are two issues. One is population in urban areas that is not being served. He clarified that this regulation does not allow you to move into another tribe's territory free and clear, whether you have an MOA or not. A tribe would need to have an MOA, or have attempted to obtain an MOA. He added that a tribe would have to get an MOA from non-tribal entities as well, so you don't want an unfriendly community to block services. Then the tribe would have to show court jurisdiction; or would have to prove that it was providing substantial housing services.

Mr. Sossamon announced that the group would break for lunch and reconvene at 1:00 pm.

**THURSDAY AFTERNOON, AUGUST 21, 2003
FULL COMMITTEE**

Mr. Sossamon recalled the meeting at 1:30 pm. He announced that we would pick up with Ms. Gore's comments.

Ms. Gore yielded the floor to Mr. Gorynski. Mr. Gorynski stated that he would like to call for a consensus on revisiting the birth and death rate inclusion issue. He mentioned that there was a revision (Attachment 20), which referenced:

Sec. 1000.330 What are data sources for the need variable?

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[Note that new language is underlined, and language to be deleted is indicated by strikethrough.]

Mr. Sossamon asked if there were any comments. Hearing none, Mr. Gorynski called for consensus. Mr. Sossamon asked if there were any objections. A/S Liu stated that HUD requested clarification as to whether it is the intent that, for the purposes of developing this portion of the formula, that HUD use one or the other. He noted that this may cause confusion, for example, is IHS data or tribal population information used. Secondly, he

stated that HUD was not certain that all tribes track enrolled members as they move from state to state, if there are accurate methods for tracking deaths. He summarized by stating that currently one method was used, that is IHS projections based on information accumulated by the National Center for Health Statistics, and that the new language raises some questions. Mr. Coyle suggested using 'and/or.' A/S Liu stated that it is still consistently that is the issue. Ms. Marasco commented that the additions speak to tribal sovereignty. He added that you could say 'unless provided by tribe' and, an acceptable method could be described.

Mr. Heisterkamp restated that the intent is to capture what already happens with tribal challenges, and is attempting to codify a rule of thumb that currently exists. He specified that the language provides the baseline, but the tribe has an opportunity to refine the data if it has an acceptable method. Mr. Gorynski agreed with Mr. Heisterkamp, and noted that if the tribe has a problem with the count, it can go through the challenge procedure.

Mr. Sossamon queried if this was covered in the last sentence. Mr. Humphrey clarified that the last sentence states that if you have a successful census challenge, the variable will be applied to the new count, not the other method, and just means that the tribe would not have to submit a new challenge every year. Mr. Gorynski requested a clarification. Mr. Humphrey reported that this was an issue was raised yesterday, and addresses the issue of not having to continually challenge. The last sentence states that the factor is applied to the new number, not the census data.

A/S Liu stated that if the intent is to be able to provide a clear source of data that can be used to challenge, wouldn't it be better to more clearly state that within the challenge process. He added that in this regulation we are trying to establish the baseline and a single standard to start off with. He reiterated that if the intent is to allow the tribes to use tribal enrollment data, it would be better to state that in the challenge procedure. He stated that HUD doesn't want a choice in establishing the baseline. However, he added that if tribal enrollment is the standard, that brings up other issues. Ms. Gore reported that the appeal / challenge subgroup is working on exactly this issue and the intent is to address it under that process.

Ms. Marasco proposed that the language include: 'unless provided by the tribe.' Mr. Sossamon stated that from a tribal standpoint, he would have a concern with an individual tribe collecting data, because it may not be consistent. He also stated that he did not have a problem with using a nationwide, single standard applied to every tribe, but with a procedure for a challenge. Mr. Humphrey restated the example where statistics don't include births outside the county. Mr. Wagenlander commented that the alternate tribal projection has to be accepted by HUD before the alternate projection is allowed. Mr. Sossamon suggested that as part of the additional step, HUD has the responsibility to review what is being presented and to verify. That's HUD's responsibility to any tribe. Mr. Gorynski asked Mr. Sossamon if his tribe's population is based on tribal enrollment. Mr. Sossamon responded that it doesn't matter unless he challenges the population number. He reiterated that it is HUD's responsibility to all

tribes to verify the accuracy of data. If you don't track deaths, then you can't verify, even if you track births. Mr. Gorynski stated that goes back to the census data. Mr. Sossamon provided an example: if I say that my tribal projection is X, I have to verify by some valid method, or it shouldn't be accepted.

Ms. Marasco commented that language is acceptable. Mr. Sossamon suggested that they could work out that type of language. Further, he noted that if it were worded in such a way that there was an ability to challenge the baseline IHS data, and not just substitute tribal data; he thinks that HUD will agree. A/S Liu commented that everyone's grant is linked to everyone else, so that if one is using a base that increases, that could result in lowering the amount for other tribes. It's valid through the challenge process, but not for the baseline. We have to start off with a consistent database. It makes the challenge process clearer and identifies the type of data that can be submitted. Mr. Heisterkamp queried if the committee could look at the language to see the intent is captured. He suggested referencing the tribal population projections, but acknowledging that the tribe has the ability to challenge with data acceptable to HUD. He added that the challenge process could also be referenced, which would allow tribes with better data to challenge. A/S Liu responded that was closer, but needs to be integrated with the challenge process. Mr. Heisterkamp agreed that the reference to the challenge process would be cited. Mr. Sossamon suggested: 'or other method acceptable to HUD through the challenge process.' He added that under the challenge process, there would be a specifically worded process for challenging the National Health Center Statistics, not the census challenge, and it will lay out the acceptable method.

Ms. Sossamon asked if the reference to tribal population projections could be dropped in light of the new language. Mr. Gorynski agreed. Mr. Heisterkamp recapped that the process would be referenced and then described.

Mr. Sossamon asked if there was agreement on the intent, and then to turn this issue over to the drafting committee, and revisit when the language is finalized. Mr. Gorynski withdrew his call for consensus at this time. Mr. Sossamon summarized that the issue will be brought up again after the drafting committee has a chance to work on it.

Ms. Gore suggested that it would be helpful to restate where we were before lunch. She thinks its ¶2, which specifically deals with expansion of a geographic area. She recapped that there had been significant discussions on the intent, which was that A, B, and C would relate to ¶2, which specifically deals with expansion or redefinition of geographic area. The intent was that it was necessary to prove provision of substantial housing services within the expanded geographic area. Mr. Sossamon stated that under ¶3, it states 'notwithstanding....'

Mr. Heisterkamp pointed out that this is moving into another piece of the puzzle and into the Alaska concern area. He added that Alaska had not finished working on this section. However, for all other areas, the intent is that to expand you need A & B or C. Mr. Bush commented that a tribe wouldn't have to have A; it would have to have made an attempt.

So this won't work. Mr. Heisterkamp stated that there was extensive discussion on this too. He asked if the concern is that the end of the tribe's input is that they refuse to provide an MOA. If so, later in the paragraph, HUD is required to contact all involved tribes. The committee felt that the more valid test was that substantial housing services were being provided. Ms. Tooley raised the question if this covers situations where you don't have a NAHASHA recognized tribe. In that case, HUD wouldn't have anyone to notify, but there would be widespread impact. Mr. Heisterkamp stated that the easiest way to notify is to simply to put out a notice that there are formula challenges annually. Simply append to your formula response form information on which tribes are attempting to move elsewhere. This would take the responsibility away from HUD to determine who is affected. Ms. Tooley asked if that meant that there would be a change to ¶2ii. Mr. Heisterkamp indicated yes, that was the discussion. The tribes were not intending to put that burden on HUD, but for various reasons that may be the best way for HUD. The concerns were that a tribe couldn't simply come into an area without much notice and by the next estimate; another tribe has lost formula area. Again, this is an attempt to codify and put rules down, so that tribes have a way to respond to situations.

Ms. Tooley asked for a clarification on ¶2iA meaning that it may or may not be applicable. Mr. Heisterkamp confirmed that and pointed out that there were extensive discussions. He added that the MOA is not the same thing as having a cooperation agreement. It was felt that it was important that the tribe have the right to go and make their own deal where applicable. It was thought that there might be times where it is not possible to negotiate an MOA. Mr. Humphrey stated that the language is directly lifted from the current regulations. He added that the workgroup determined that there was a valid reason to include an MOA process. Ms. Gore commented that as she recalls, the 'if applicable' language was added to enable consensus to be reached within the Needs workgroup. She stated that she has a friendly amendment for ¶2i: 'including proof as to that area sought to be included.' Mr. Bush stated that it looked OK but needs to see the definition of substantial housing services. Mr. Sossamon noted that it is already included. Mr. Heisterkamp stated that if the subgroup can live with it, he wouldn't stand in the way, but that it was extensively discussed and wordsmithed. Ms. Gore stated that it was her assumption that this will go to the drafting committee, so long as the intent is correct. Mr. Sossamon requested that staff (Ms. Gardstein) explain the new document control procedure before we go on to the definition of substantial housing services. Ms. Gardstein explained that in future, all documents that are to be distributed to the committee would be logged in prior to their being copied. There will be a list in the office and staff will be tasked with all copying ensuring that a sequential number (with date and time) is noted on each document. Mr. Sceeles asked if a document that isn't submitted needs to be listed. Mr. Sossamon responded that this procedure is for documents that will be submitted for distribution.

Mr. Sossamon then announced that the next meeting would be held in Washington, DC on September 22 – 25, beginning at 9:00 am on the Monday, September 22nd and adjourning at 3 pm on the last day. He requested that travel arrangements be made as soon as possible. Mr. Bush asked what would happen after the next meeting if the

committee is not finished. Mr. Sossamon responded that hadn't been determined yet. Ms. Tooley suggested going through the 26th if necessary. She added that the committee has spoken about taking as much time as necessary to review the formula to determine if we can reach consensus on the necessity to change it. Mr. Sossamon stated, with regard to the requests for data runs, that there are very many combinations of variables in analyzing the effects of changing the 8 needs factors and that there is no way we can realistically run every possible combination. At some point we will have to determine when we will stop, and simply declare that we can't come to consensus and leave it the way it is. Everybody wants to take as much time as we need, but no more. He strongly recommended trying to meet the deadline to complete by the end of the next session. He added that the committee should have in mind some contingency plan, but at the same time, it's not going to go on for ever simply because it can. He reiterated that the committee must negotiate in good faith. He then asked if there any other housekeeping or logistics issues.

Mr. Sceeles asked if consensus had been reached on anything at this point. Mr. Sossamon recapped that the committee had reached consensus to separate one sentence into two (re: inflation). Mr. Sceeles asked if there was consensus on the using multiple race and did that reflect a policy change by HUD. Mr. Sossamon stated that there had not been a call for consensus on that. Mr. Humphrey clarified that a data run has been released, but there has not been a determination as to whether mixed race will be included or not. He added that HUD had made a decision to use multiple race, but there hasn't been a decision by the committee. A/S Liu stated that the statement is essentially correct. He reiterated that there has been no determination on what will be run for the FY04 estimate and that the data run had been requested for comparison purposes and for discussion. Mr. Naize asked if the data run that he requested available. A/S Liu stated that it was not ready yet. Mr. Naize asked if it would be available. Mr. Sossamon responded that it was not likely at this point.

Ms. Tooley asked for a clarification on whether the FY04 allocation numbers include multiple race. A/S Liu reiterated that a final determination has not been made, although the data runs performed here do include multiple race. Ms. Tooley asked if it is the committee's job to determine whether or not to use multiple race. She also questioned the timing, noting that the meeting was more or less over and the estimate will be mailed out in a week. A/S Liu responded stating that lacking any change in the rules and regulations, and for a timely allocation estimate, HUD intends to make that determination, and it will likely be made between now and the next meeting. Mr. Sawyers voiced concern about having to inform tribes that there may be a significant reduction in allocation based on the use of multiple race data. He also asked if there is any chance the determination will be changed at some point. A/S Liu stated that we have to assume that we will proceed, lacking a change in regulations, and that won't happen. He reiterated that HUD would proceed as it has in previous years. Further, he noted that changes in the rules can occur at this negotiation and through other means, and that changes could be made in the rule. He added that adjustments can be made and would have to be discussed with GC. A/S Liu restated that HUD will make the determination in

a timely fashion and will take into account concerns and issues raised, but will move forward.

Mr. Sossamon asked for clarification on whether the effect of using mixed race would be on the FY03 or FY04 allocation. A/S Liu responded that it would be for FY04. Mr. Sossamon further clarification that the changes made during this negotiated rulemaking would be made effective for FY05 or FY06. Mr. Sawyers then asked if the committee decided as a group today to use AIAN persons only, would that effect FY04 allocation. A/S Liu responded that the data run that has been provided here is not an official document, it is reflective of what the allocations would be. Mr. Sawyers restated his question if the committee could as a group determine if multi or one race only would be used through consensus today. A/S Liu responded that could happen in principle, but that he would rather not be placed in that position since some members have already left. Mr. Sossamon stated that while the have the opportunity, we could express opinions to HUD staff.

Mr. Sawyers stated that he would like to call for consensus on eliminating the mixed race data. Mr. Sossamon noted that he would be unwilling to do so until he had more information on the data runs. Mr. Naize asked, referring to his previous requests for a data run, if he would be available to get the information as soon as the run is finished. Mr. Sossamon reiterated that all data runs would be numbered and distributed. He recapped that there had been a call for consensus.

Mr. Sayers restated that he called for consensus on using AIAN only and not mixed race data for the FY04 allocation. Mr. Bush asked for clarification on whether this referred to the FY04 estimate. Mr. Sawyers confirmed that his call was for the FY04 estimate and that the reason is that NAHASDA is an Indian program, not a mixed race program. He commented that the grants should benefit the folks we work with and for. We represent Indians and Alaska Natives, and these people should be the only consideration when we look at funding. Mr. Doty commented that he had asked for a data run because when the census is taken, there is no request for proof, that is, anyone can check any box they want. He stated that he wants this to go back to AIAN only and not multiple race for the reason that there is no verification required by the census worker. Mr. Jones noted that the committee is referring to FY04, but that HUD previously indicated that mixed race was used for the AIAN persons variable for the FY03 final allocation. A/S Liu confirmed that was true. He then asked staff (Mr. Anderson) to present the numbers.

Mr. Anderson referred to the handout (Attachment 21) and noted that the spreadsheet contained some new information. He noted that Base Grant (column 4) is the base grant (FY03) data with 1990 census data for income and 2000 census data for persons (multiple race). Multiple Grant (Column 5) is the multiple race data for all variables; Single Grant (column 6) is a single race analysis using 2000 census data (single race values); column 7 is the difference between the Base Grant and Multiple Grant; and, column 8 is the Base Grant minus Single Grant calculations. He noted that there were new calculations for Multiple minus Single, and Percent Change (for both multiple compared to Base, and

Single compared to Base). He also stated that he had checked a number of values, but not all. Lastly, he noted that he had included subtotals for each area office.

Mr. Sossamon asked if multiple race was calculated in 1990 census. Mr. Anderson responded that the 1990 census did not ask for multiple race. That census asked respondents to select one race only. However, in the 2000 census, people could check as many races as they wanted. He clarified that the single race data is from 1990 census and that multiple race refers to and includes any of the possible combinations of AIAN persons. Mr. Wagenlander queried if HUD's rationale for considering changing the formula was based on census having changed its system, or if this is an issue for HUD to further consider. He asked for the legal basis for changing the formula based on the fact that the formula does not acknowledge mixed race. Mr. Sossamon noted that the formula acknowledges those who the census includes as AIAN and that the formula is designed to count the number as reported to the decennial census, either AIAN only or mixed race. Mr. Wagenlander commented that his question was addressed to HUD and how HUD changed the formula without negotiated rulemaking. Mr. Sossamon reiterated that it was his interpretation that HUD has been consistent and has not changed the formula. The outcome of the distribution has changed, not the formula. A/S Liu recognized Mr. Kenison who stated that the formula is not changed per se, and that the results of the formula change every time a variable changes. He further stated that the term 'Indian' is not defined in the formula as single or mixed. And so, he would not characterize the change as a change in the formula. Mr. Wagenlander asked if the formula classifies 'Indian' as Indian alone or mixed with Indian. Ms. Kruszek responded by stating that the census allowed individuals to mark as many categories as desired and that none takes precedence over any other. She added that there is nowhere on the census that refers to 'Mixed' and that the count goes by how many race boxes are checked by each individual. Mr. Humphrey asked if there is a guarantee that the data includes at least AIAN or AIAN plus other. He also noted that he recognized that although the statute deals with enrolled members, the census does not. He commented that in his opinion, the data set doesn't really work. Mr. Wagenlander commented that this issue was not going to be resolved today.

Mr. Sossamon recapped that there has been a call for consensus. Mr. Sawyers restated that he called for consensus to use AIAN only data for the FY04 allocation estimate. Mr. Sossamon asked if there were any objections. There were 12 objections. Mr. Sossamon announced that consensus was not reached.

Mr. Sossamon explained that although he is a card-carrying member of his tribe, he also has an option to choose to identify with other parts of his heritage. Mr. Bush requested that committee members who were absent during the call for consensus be so noted. He also revisited an earlier discussion that any changes to regulations agreed upon during the negotiated rulemaking would not take effect until FY05. A/S Liu responded that was correct and was due to the time involved in the entire process. Mr. Bush then specifically asked about minimum funding for FY04, as the waiver will expire. A/S Liu responded

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that there had not been a determination thus far, but that HUD will move forward cautiously when looking at this issue.

Mr. Sossamon then adjourned the meeting, requesting that committee members prepare for the next session during the hiatus. The meeting adjourned at 3:00 pm.

Submitted by
C. J. Gardstein
Steven Winter Associates, Inc.
September 11, 2003