

FORMULA NEGOTIATED RULEMAKING COMMITTEE
MEETING MINUTES
May 28 - 30, 2003
Denver, Colorado

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 second meeting of the Formula Negotiated Rulemaking Committee was held on May 28 - 30, 2003, at the Adams Mark Hotel in Denver, Colorado.

Committee Members in Attendance

Governor Bill Anoaatubby	Dr. Blake Kazama
Mr. Robert Carlile	Mr. Bruce LaPointe
Mr. Larry Coyle	Mr. Michael Liu (Mr. Michael Gerber, alt.)
Vice Chief Beasley Denson	Ms. Judith Marasco
Mr. Wayne Ducheneaux	Mr. Johnny Naize
Mr. Joel Frank	Mr. Michael Reed
Mr. Robert Gauthier (Jason Adams, alt.)	Mr. Jack Sawyers
Ms. Carol Gore	Mr. Marty Shuravloff
Mr. Ray Gorynski	Mr. Russell Sossamon
Mr. Ron Hoffman	Ms. Darlene Tooley
Mr. Terry Hudson	Chairman Eddie Tullis (Susan Wicker, alt.)
Mr. Marvin Jones	Chairman Brian Wallace (Phil Bush, alt.)

Over the course of the three-day meeting, approximately 50 observers attended the public sessions. An attendee list is included (Attachment 1).

**WEDNESDAY MORNING, MAY 28, 2003
FULL COMMITTEE**

Mr. Sossamon called the meeting to order. Mr. Jason Adams (alternate for Mr. Gauthier) gave the invocation. Attendance was taken by roll call (Attachment 2) and the Chairman reported there was a quorum. Mr. Sossamon directed attention to the draft agenda (Attachment 3), which had been developed by the Regional Representatives.

Mr. Sawyers made a motion to discuss, which was seconded. Mr. Sossamon called for consensus to discuss the agenda and then opened the floor for discussion. Mr. Sawyers commented that the timelines indicated seemed short. Mr. Sossamon said that the times indicated in the agenda were meant to serve as guidelines and were set by the regional reps, realizing that time may go over. There was agreement that if discussion went over, they would be free to continue on and not be held strictly to the time indicated.

Mr. Sossamon went to the next agenda item: status of work accomplished. He recapped that during the first full committee meeting the following was accomplished:

- Selection of regional reps and co-chairs:
 - Rusty Sossamon, Southern Plains, Designated Co-Chair
 - Joel Frank, Eastern/Woodlands, Designated Co-Chair
 - Blake Kazama, Alaska
 - Jack Sawyers, Northern Plains
 - Larry Coyle, Northwest
 - Johnny Naize, Southwest

- Charter and protocols were completed during the first meeting. Relative to the protocols, it was mentioned that Mr. Sawyers submitted a letter naming Barb Parker as his permanent alternate any time he is absent.

The next agenda item was approval of the minutes from the April 29 – May 1, 2003 meeting. Mr. Sossamon gave the group a few minutes to review and then opened the floor for discussion of the minutes.

Mr. Gorynski noted a correction on page 10, last paragraph [typo ‘able’]. Mr. Frank asked if the attachments are part of the minutes. Mr. Sossamon replied in the affirmative. Mr. Frank then corrected Attachment 2 to read “*Seminole Tribe of Florida, Housing Department.*”

Mr. Ducheneaux asked if these minutes were considered the official minutes. He added that he would like the minutes to reflect the verbatim comments from all committee members, both the tribal committee members as well as HUD committee members. Mr. Jones then asked how large the minutes would be if they contained verbatim comments. Mr. Sossamon stated that he believed they would be quite long. There was further discussion, during which Mr. Ducheneaux stated that if the HUD comments are verbatim, then all committee members should be verbatim. [During the discussion, Mr. Sossamon requested that complete meeting minute packets be made available for alternates.] In the discussion that ensued, Mr. Naize stated that although all concerns should be noted in the record, that summary minutes were sufficient for him. Mr. Sossamon asked the recorder (Ms. Gardstein) if summary minutes could be used for the record, could verbatim minutes be distributed by request. Ms. Gardstein said that generally, that could be done. There was a comment from a non-committee that the tone of the committee discussion had not been captured. There was a suggestion that the minutes should reflect the name of each committee member when commenting, and second, to try to reflect the concern raised in the comment and why it arose.

Mr. Sossamon commented that he didn’t necessarily want verbatim minutes, but would like more in depth note taking on the part of the committee members. He added that committee members have the opportunity to review minutes prior to the next meeting. During that review, if members don’t feel that the minutes represent the conversation, they can respond. Mr. Sossamon also added that all the full committee meetings are being taped.

Ms. Tooley agreed with Mr. Ducheneaux that verbatim minutes be recorded. Ms. Gardstein commented that the cassettes could be copied and distributed relatively easily, but that it would be more difficult to transcribe the tapes.

Mr. Sossamon asked if the committee could agree that the minutes will be as thorough and in-depth as possible in future (although not verbatim) and that transcripts will be available upon request. Ms. Marasco commented that this was one of the problems during the last Negotiated Rulemaking and that an in depth record should be kept to detail the work product, and that everyone's thoughts needed to be reflected. Ms. Gardstein then requested that in light of the desire for more detailed minutes, that all speakers state their names and speak as clearly as possible.

Mr. Sossamon asked for the wishes of the committee with regard to the minutes. Mr. Ducheneaux stated that he would like to see these minutes fleshed out and re-sent. Mr. Sossamon then suggested that the minutes for the April meeting could be tabled and after being revised could be presented again for approval at the next meeting. He reiterated that committee members should submit comments regarding accurate communication of ideas so that the minutes would be complete. There was agreement from the committee.

Mr. Sossamon then moved to the next agenda item and opened the floor to public comments.

Chris Kinney (IHS). Mr. Kinney introduced himself by stating that he was attending the Committee meetings because IHS is very much affected. He wanted to encourage the committee members to include infrastructure and infrastructure deficiencies in the formula. He would like to see IHS hardwired into NAHASDA, or at the very least, to recognize the integrated need for infrastructure. He added that IHS recognizes that there is not sufficient funding for infrastructure. Moreover, under the current regulations, IHS cannot serve NAHADAS funded homes. He closed by stating that he IHS is working with DAS Boyd on an interagency agreement.

Tom Yellow Wolf (Director, Washoe HA). Mr. Yellow Wolf commented on the minutes and the importance of being able to provide a complete record that how the committee came to conclusions and made decisions. He pointed out that the work of the committee will be the foundation for any future Negotiated Rulemaking on formula and other issues and it will be important to know what was said because two or three years down the road, someone is going to want to know the details.

Mr. Sossamon asked if there were any additional comments. Mr. Sossamon pointed out that the committee to remain flexible and take as much time as needed to look at issues. He added that in the Charter it is stated that we would have at least 6 meetings. However, he added that if it takes more than 6, he would like the record to reflect that we are not limited to 6 meetings nor are any discussion limited to the time set in the agenda. It's important to be expeditious, but we also understand the impact this is going to have far

into the future. He would like to make certain the enough time is available to explore each issue and option.

Ms. Tooley asked if the next meeting was set. Mr. Sossamon stated that the next meeting would be in Seattle on June 17-19, 2003. He asked if this information had been published in the Federal Register. Mr. Gerber stated that it has not yet been published but would be within the specified timeframe. Mr. Sossamon reiterated that he hoped to set all the following meetings before we leave Denver.

Ervin Chavez (Navajo HA). Mr. Chavez commented that he thought that the approval of the minutes is a relatively minor issue. But, he thinks that the message that needs to be sent is that the level of trust between the tribes and HUD is far apart. He mentioned that during the last Negotiated Rulemaking, the committee negotiated, submitted a product, and when HUD got through it was different. He thinks that this is what the tribes are nervous about, and what was reflected in the discussion about the minutes. He closed by saying that he felt there was quite a ways to go to bring back the trust.

Mr. Bush asked when in the agenda the next meeting dates would be discussed. Mr. Sossamon stated that the discussion will be during the public comment session on Friday afternoon, during which time we can establish the times, dates, and locations. Mr. Bush requested that the discussion on upcoming meetings be scheduled on Thursday instead of Friday. Mr. Sossamon asked for any objections. Hearing none, Mr. Sossamon set the discussion on upcoming meetings on Thursday at the end of the public comment period.

There were no further comments and Mr. Sossamon moved to the next agenda item, the discussion of workgroups, including committee recommendations for possible workgroups. Before opening the floor to discussion, he suggested that the committee take a break at 10:30 am. There were no objections raised and the floor was opened to the discussion of workgroups.

Governor Anokatubby pointed to the items listed on agenda; current assisted stock (CAS) and Need, as a starting point and suggested that we begin with those. Mr. Sossamon clarified that there could be two workgroups; one for CAS, and one for the Need side of the formula. Ms. Marasco expressed concern that the workgroups would need to mesh together on what they're doing since the issues tie together. She is going to want to be aware of what both groups are doing. To that end, she asked how the record would be shared between workgroups? Ms. Marasco stated that she didn't see the two issues being worked on separately.

During further discussion, Mr. Sossamon offered that if we break into two workgroups, there would need to be a chair for each and he assume that the chairs would be selected from the regional representatives. Further, if there were more than one regional representative in a workgroup, he would leave it to them to decide. It would then be the responsibility of the workgroup chair to make certain that minutes are taken. Ms. Tooley suggested that the full committee get together frequently, perhaps at the end of each day,

to discuss what had gone on, so that both workgroups aware of the other's work progress. She then asked whether the two workgroups would break into smaller sub-groups. Mr. Sossamon believed it would be likely that the workgroups would break into smaller sub-groups to address specific issues. He added that there is not a place on the agenda specifically for the workgroups to report back to the full committee except on the last day. He then recommended that the chair of each workgroup present to the full committee for review.

Mr. Adams asked if the workgroups would be self-selected. Mr. Sossamon stated that he assumed so, but this would just be a recommendation. He pointed out that it would be appropriate to decide how to break into workgroups during this discussion. Mr. Gorynski suggested dividing the attendees into 1s and 2s and then assigning all the 1s to CAS, and all the 2s to Need. This would result in an even split of the committee. He added that there could be flexibility if a member felt strongly one way or another. Mr. Shuravloff suggested a self-selected approach, see if each workgroup can come up with a long list of issues, and then come back together to review. Mr. Jones stated that he would like to retain flexibility so that participants can attend another session even if we divide into two groups. He added that they could potentially meet as a whole committee to talk about main issues, get consensus on the main issues, and then perhaps break into smaller groups for other issues. He also asked for HUD's input on approach and asked how HUD would be represented in the workgroups.

Mr. Boyd responded that as committee members HUD would participate in workgroups. He added that he hoped that HUD could add value when issues are laid out. Also, he mentioned that HUD staff is available to make presentations as needed as had been done previously. Presentations could be for the full committee or for individual workgroups. He reiterated that HUD staff is available as a technical resource.

Mr. LaPointe suggested that the committee could break into regions and then decide regionally how to handle issues. Mr. Naize stated that he has brought a delegation with him and would be able to represent Need if he is in CAS workgroup (or vice versa) and that he believes that the majority of committee members have done the same.

Mr. Sawyers suggested spending some time as a group to decide what the issues are and list as many as we can. Then the group can decide by assignment or choice what groups to have, how to divide up, for example, each region can take a portion. Mr. Sossamon then clarified that under Section 3 Decisionmaking, ¶b Workgroups, "Smaller Work Groups may be formed by the Committee from Committee Members or their designees to address specific issues and to make recommendations to the Committee. Work Groups are open to any Committee Member or the Member's designee. Interested persons and members of the public are permitted and encouraged to participate in Work Group proceedings,"

Ms. Marasco suggested that instead of running concurrently, the workgroups could run consecutively so that anyone could participate in both groups. Mr. Hoffman proposed

breaking into two groups now, and then coming back together later, suggesting 4:00 pm, and at that time, the workgroup chairs could give reports.

Mr. Sossamon asked if the committee agreed that:

- It should break out into two separate workgroups
- There is concern that all members have access to go to both
- Chairs will need to come back to report to the full committee
- Before breaking into workgroups, the full committee discuss the issues as a whole
- The workgroups could be reconfigured at any time
- An issue could be elevated and addressed by the full committee if necessary.

Mr. Sossamon then suggested that the full committee try to identify the issues to be addressed and which work group they would fall into. The floor was opened to discussion on issues.

Ms. Marasco mentioned the formula allocation and the 2000 Census that included Native American alone and Native American plus another race. She pointed out that because HUD has chosen not to use mixed race, her tribe loses. She stated that she would like to see how HUD is going to utilize mixed race information from the 2000 Census. Mr. Boyd asked if HUD could respond and turned the floor over to Ms. Kruszek (HUD ONAP), who stated that for the 2003 allocation, only the AIAN person count was taken from the 2000 Census data and the rest came from 1990 Census data. She clarified that HUD used AIAN alone and in combination for the count. However, information for the other six variables was not available and therefore, 1990 data was used. She added that this would certainly be an issue to explore. Mr. Sossamon asked when the other variables would be available from 2000 Census. Ms. Kruszek stated that the standard files are released in June, and that the special tabulations, which are used in the formula, will be available in September.

Mr. Sossamon mentioned the issues included in the agenda under CAS: counting NAHASDA units, averaging modernization funds, Section 8, continuation and/or removing units from the formula; and under Need: formula area, overlapping area, need variables and weights, minimum funding, and issues such as alternative data sources. He reiterated that this list of issues formed the basis for dividing into two groups. He added that if we can agree on this as a starting point, then we can move forward to some other items. Mr. Jones, regarding alternative data, asked whether we want to continue using census data at all and that this should be discussed even before we discuss the details of 2000 census data.

Mr. Sossamon suggested that subjects to be discussed in full committee might include NAHASDA statutes and regulatory factors, as well as new regulatory factors. He then suggested that comments had been prepared and submitted by Wagenlander and Heisterkamp on minimum statutory and regulatory requirements that must be in the formula, as the discussion will help what goes into CAS and Need. Mr. Boyd added that his staff that can also address this issue. Mr. Ducheneaux and Mr. Bush both added

comments on minimum funding, statute requirements, and extending regulatory requirements. Mr. Sossamon also added a comment on exploring small program funding. Mr. Jones referred to the briefing book and the various public laws and regulations. He commented that the 2000 amendments had not been included. Ms. McFadden stated that the 2000 amendments had inadvertently been left out, but that copies are being run now. In addition, she stated that she has a presentation on the 2000 amendments. Mr. LaPointe suggested talking about statutory requirements first, and allowing Mr. Boyd's staff to make the presentation.

There was a 15-minute break.

Mr. Sossamon recalled the meeting to order. Dr. Kazama requested clarification on where the committee was going. He asked whether there was a roadmap; and, is the impression that the formula is broken. He voiced concern about the framework around the issues: some of the things may need to be fixed, but, if you adjust one aspect, other aspects are affected. Lastly, he asked what HUD wants out of this group. Mr. Boyd stated that HUD has no absolute decisive direction that it is looking at. HUD's approach is to work in collaboration with the committee, to look at each of the items, and then get into the details on each of the elements. Dr. Kazama reiterated that it would be helpful if there were a roadmap, that we understand our mission and follow it. Then, the committee will be able to gauge progress and accomplishments. Mr. Jones asked for clarification on HUD's position, that is, will HUD go along with whatever the committee comes up with as long as it's within the law, that it's up to the tribes to come up with a formula. Is that a good summary? Mr. Boyd stated that as committee members, HUD would like to participate in the process. Mr. Sossamon recapped that the end result is a formula that is fair and equitable and serves the interests of all. He added that an adequate roadmap is somewhat outlined in the agenda, that statutory and regulatory requirements may or may not be subject to change, and that some new factors may be included that will affect the existing formula.

Governor Anotubby then stated that he felt it was important that the committee improve upon the product, not necessarily do away with it. He added that the current formula was the result of a lot of hard work and time and that through implementation, there are some issues. He stated that the roadmap for the final product is contained in the objectives in the Charter. How we get there is part of the process, for example, going through a discussion on statutory requirements will give us some idea. He drew an analogy of needing a vehicle before needing a roadmap. He suggested moving forward presentations in order to be better educated on some of these factors. Mr. Sawyers referred to the summary of statutory requirements he had prepared (Attachment 4).

The floor was turned over to Ms. McFadden (HUD IGC) who stated that her role is to make certain that statutes are met, adding that, in her opinion, the complexity is in regulations. She pointed out that she wanted to make certain that there isn't a misunderstanding about minimum funding. She then went through the changes to Section 302 (Attachment 5). Ms. Marasco commented that the Section 8 language is not

included in Sec. 302 B1. Ms. McFadden pointed out that language regarding Section 8 is included in Section 502, which is part of the Act, a statutory amendment. Ms. Tooley asked when the amendment was passed. Ms. McFadden clarified that these were part of the 2000 amendments. Ms. Marasco asked how the Section 8 language got addressed prior to this committee, and Ms. McFadden replied that this has not been addressed until now and that funding may be applied retroactively to 2001. Mr. Heisterkamp noted that based on original Negotiated rulemaking, and prior to the statute being amended, Section 8 units were part of the formula, so there won't be need for retroactive funding. However, he felt that there might be some need to determine how Section 8 should be included in future.

Mr. Sossamon asked if HUD's presentation on statutory requirements was finished. He then asked Mr. Sawyers if he would like to discuss the summary prepared by Wagenlander & Heisterkamp.

Mr. Heisterkamp (Wagenlander & Heisterkamp) clarified that his office had prepared the summary, per Mr. Sawyers request (Attachment 4).

Ms. Tooley asked for a clarification on Section 302(d)(1)(A) Full Funding. Is it now HUD's position that A addresses 37 Act housing programs with 250 units or more, and B addresses only those with 250 or less, and that both paragraphs apply? Mr. Heisterkamp stated that for programs with 250 units or lower, the 1997 funding level applies and that the new "split" level funding, which has not yet been incorporated into the formula, would apply only if funding levels dropped below 1996 levels. HUD staff concurred that the technical amendment regarding modernization has not been incorporated because HUD felt that it was a big enough change that they wanted to put it into the Negotiated rulemaking. Mr. Frank stated that Section 8 funding was not made available even though the program may have been included and that's why it needs to be addressed now. Ms. Marasco commented that these technical amendments were not brought to consultation and she questioned how that happened. Mr. Fagan stated that Congress passed the amendments and that the opportunity now presented itself for discussion. Ms. Marasco asked if the committee has the ability to affect the Act at this time. Mr. Fagan suggested that they have the ability to use discretion through the regulations to interpret the Act and thereby get to point where the technical amendments are workable.

There was further discussion on the committee's ability to fix this, particularly in light of the fact that it appeared that HUD didn't have the right to respond. Ms. Marasco commented that if these types of amendments can get into the act and HUD has agreed to something with the tribes and is then left out of the process, that surely doesn't add to the level of trust. Mr. Jones commented that he didn't think that Congress is subjected Negotiated rulemaking. Ms. Marasco stated that there has to be some kind of system in place so that we know what's happening; we have a right to that information, whether we're members of an association or not. Mr. Sawyers pointed out that the amendments were sponsored by NAIHC and were not slipped through and that the committee's job is to do something about the amendments and regulations. Ms. Marasco stated that there

are many tribes that are not members of NAIHC. Mr. Sawyers commented that NAIHC was the only organization, and Congress responded. He noted that's how those things happen and the committee needs to react to it now. HUD staff clarified that brief written comments were provided, and that HUD felt that most of the amendments were not necessary, but did not object.

Ms. Tooley referred to the section on state recognized tribes, and queried how that issue plays out in the formula currently. She asked if state recognized tribes under 37 Act are funded thru NAHASDA. Mr. Boyd turned the floor over to staff to clarify that under the statute there is a requirement to continue funding state recognized tribes that were previously under agreement (HA and Secretary) and that there are currently five such tribes (in Eastern/Woodlands). There is one special provision in which a federally recognized tribe 'trumps' the state recognized tribe where there is overlapping area. Ms. Marasco asked for the number of HAs or TDHEs prior to NAHASDA as compared to post-NAHASDA and staff stated that there are approximately 350 recipients under NAHASDA (approximately 500 tribes) and there were roughly 192 pre-NAHASDA. Ms. Tooley asked for a clarification regarding state recognized tribes' eligibility for funding under NAHASDA. Staff stated that they would have to have had units developed for them under a signed ACC.

Mr. Sossamon asked if there were any more comments. Hearing none, he opened the floor to a discussion of the Regulatory requirements, and asked Mr. Boyd if HUD has a presentation.

Ms. Kruszek presented a PowerPoint on the formula (Attachment 6), which provided an overview of the formula, including baseline data, inflation values, FCAS, Needs variables. She also spoke about weighting factors, definition of household, and census data, formula area, overlapping areas, population cap, and minimum funding. Ms. Kruszek passed out a cd to committee members that contains allocation and formula data for 1998 – 2003 (in Excel® format).

Mr. Sossamon opened the floor to questions. Mr. Hudson asked if, in theory, the entire FCAS portion is open to discussion, and, if all the funding can be thrown into the Need portion so long as minimum funding is met. Staff commented that there is a still a question as to whether the Section 8 units are in the formula forever that needs to be addressed by the committee as well as HUD OGC.

Jim Vollintine asked why 1990 Census data is used for some items and 2000 data for others. Staff reiterated that 2000 Census data was not used for FY 2003 allocation because the level of information (AIAN households with specific characteristics) was not available. And, although it is available now, it is in standard format, which is different from the special tab data that is used in the formula. There will be a presentation later that provides a more detailed discussion on 1990 v. 2000 Census data.

Mr. Jones mentioned that at the last session, he requested that Todd Richardson provide normalized FCAS data. Ms. Kruszek stated that they didn't have it right now, but will get it as soon as possible. Mr. Jones also asked about overlapping areas. Ms. Kruszek said that there would be a presentation on overlapping areas later on also and that such areas do affect regional allocations. She clarified that overlapping areas refer to geographies that overlap and that the common geography must be split. Currently, BIA Near Resident Service Area data was used, but that service area must be used, not just the isolated area. It all gets thrown into a pot and then split. She concluded by stating that in some regions, there is a sharing of data, but that there is also a national affect. In addition, since the allocation is zero sum, everyone is always affected, not necessarily just one tribe, or even one region.

Mr. Humphrey asked if it was valid to recapture funds prior to determining regulations on the amendments. Staff replied that HUD is implementing current policy, but will continue to look at the issue.

Mr. Sossamon recessed the meeting for lunch.

WEDNESDAY AFTERNOON, MAY 28, 2003
FULL COMMITTEE

The group reconvened at 1:40 pm.

Mr. Hudson requested that HUD provide a list of the tribes and the amount of their 1996 operations and maintenance subsidy. Staff indicated that it would be made available. Mr. Wagenlander confirmed, both from HUD and tribal perspective, that baseline minimum funding and the CAS factor used in the formula to determine funding do not have to be spent on the respective 37 Act housing and Section 8 recipients and that neither the statute nor regulations require this. Staff reiterated that the statute requires that the tribes operate and maintain their 37 Act housing and that HUD will enforce that requirement. However, there is no direct dollar for dollar linkage between the allocation and CAS or the baseline minimum funding. Staff pointed out that in order to continue counting Section 8, you have to continue to operate units in a similar manner.

Mr. Wagenlander then asked if it is also correct that if you received Section 8 funding in 1996 and no longer operate a Section 8 rental assistance, under the factor aspect, you would still receive funding in the same amount as that prior to 1997. Staff replied that this was not true and that you can only receive Section 8 funding so long as you operate a program in a similar magnitude as the Section 8 and that this is in the regulations, not the statute. Mr. Wagenlander asked if the 2000 amendment would mandate this and staff stated that it is unclear what the statute mandates. There was additional discussion on the use of terminology, for example, operating subsidy.

Mr. Sossamon commented that if you look at the Need portion of the formula, funding is allocated based on need variables, but there is no requirement that the dollars be spent on

the need indicators. He pointed out that in the same way, the CAS is simply a mechanism for funding distribution. Governor Anotubby spoke about the concept of NAHASDA and that what we hoped to achieve is self-determination and self-governance and, while the formula is necessary for allocating funds, it is the plans that determine how you spend the allocation. As long as there is equity in the allocation, you have obligations but you also have flexibility. He added that the purpose of the committee is to determine fair and equitable determination of allocation of funds. He stated that he didn't come here to change anything unless it needs to be changed to ensure that the formula is fair and equitable.

Mr. Sossamon felt that it was safe to say that Section 8 and CAS will be addressed in a workgroup.

The discussion on CAS continued. Jim Vollintine stated that under Section 203b, "reserve and use for operating assistance under section 202(1) such amounts as may be necessary to provide for the continued maintenance and efficient operation of such housing" and that it appears to require maintaining 37 Act housing in Mutual Help (MH) agreements even though under the MHOA the homeowner is responsible for maintenance. Mr. Wagenlander reiterated that if the monies are not needed, you don't have to spend NAHASDA funds for that purpose; you can have funds from other sources, or generate funds from other programs. Under NAHASDA, you decide where you are going to spend your money. He added that there have been statements by HUD field staff that the funding must be spent on those units although the statute only says that you have to maintain the CAS. He clarified that there is a formula requirement and then the spending of funds. Staff agreed that the statute only requires you to use NAHASDA funds if necessary, and that you can use other funds.

Mr. Jones suggested that it would be useful to determine those legislative changes and what regulations need to be enacted or changed in the existing regulations and that it may be useful for us to determine what we have consensus on regarding what we want to discuss, such as minimum funding. Can we figure out what those kinds of issues are – including issues raised by HUD, such as things that would enable easier administration of NAHASDA, for example. He pointed out that he didn't want to see the workgroups addressing issues and then come back and have the committee say that they don't want to change that particular item.

Mr. Sossamon asked if there were any further comments or questions on regulatory requirements. The amendment that deals with incorporating a 7-year modernization average was mentioned. Jim Vollintine referred to Sec. 1000.16 regarding Davis Bacon and that this should be clarified and cleaned up. Mr. Kenison stated that this doesn't bear on the formula. Mr. Fagan stated that this has been implemented administratively through guidance. But, it's the perfect thing to address in the next Neg-Reg within the next year.

Mr. Sawyers asked for clarification on the 7-year average. Ms. Kruszek stated that the amendment pertains to calculating operating and modernization and requires that a different calculation be performed, which would likely result in less funding for smaller tribes. She added that Section 8 also needs to be addressed, along with developing regulations to address statutes.

Mr. Sossamon pointed out that the intent of the current discussion is to try to focus and gain agreement on what needs to be looked at. Ms. Tooley suggested that the committee look at the regulation that calls for the 5-year review. She also wants to put baseline funding / minimum funding on the table.

Mr. Sossamon stated that we are simply trying to identify some areas to make certain that they are discussed. If there are areas that we all agree on, we can move forward.

Mr. Wagenlander commented that since it has been acknowledged that minimum funding is an issue to be considered, there are numerous tribes that would propose a different method that establishes a set aside that is available for small tribes to apply for as a grant. He mentioned that many people are familiar with the approach and that it was discussed at the NAIHC meeting as one of the options proposed by the Small Tribes Task Force. He pointed out that minimum funding, as we understand it applies to every tribe under a certain allocation amount, whether or not they have the need or capacity to expend the funds. Small medium and large tribes have proposed set aside and money is available to tribes that can demonstrate capacity and need. This proposal, also addresses umbrella associations where small tribes get together to gain capacity. He stated that the committee should make certain that as the workgroup looks at the minimum funding approach, these other approaches are looked at as well. Mr. Bush stated that he would like to see the other proposals. In addition, he said that he would like to get into workgroups and start to get the work done. He added that the entire formula is open to discussion; whether it's workgroup or full committee. We do have to review some things; some work; some don't. The only way to do it is to get to work.

Mr. Sawyers asked if there is anything new that we want to discuss as a full committee or as workgroups, for example, there is new legislation, there are issues, and we are trying to expand our discussion, not limit it. Mr. LaPointe commented that one of his concerns is in Section 302 b3 and that this broad statement leaves it up to HUD rather than the tribes. Ms. Tooley would like to clarify the overcrowding factor, the housing shortage factor, and 50% of income factor established by last committee.

Mr. Jones asked a procedural question regarding discussion of particular issues and if there are a number of issues we agree to discuss. Mr. Sossamon stated that we're here to negotiate in good faith and that all members are allowed to discuss issues and that opposing views can be brought forward. The committee cannot say we're not going to discuss something.

Mr. Sossamon stated that it appeared as though the committee was coming to consensus on breaking into workgroups. He suggested that first the committee needs to define the role and responsibilities of the workgroups, how they work, and report back. He put forward the idea that a regional representative should chair workgroups. He added that the chairperson must keep attention focused and that there needs to be someone who Volunteers to take notes. Mr. Hudson asked for clarification as to whether it is the function of the workgroup to come up with specific proposals.

Ms. Marasco asked if the facilitators could help in the workgroups. Mr. Swanson commented that we have two recorders for taking of notes and can be made available. He added that if the job of the chair is to facilitate and lead the group, then the he and Ms. Falkner would do whatever the tribes would like. Mr. Sossamon suggested that if recorders are available, then Mr. Swanson and Ms. Falkner could each be in a group. Mr. Sossamon suggested that at the end of the day, the chair of each workgroup should report back to the full committee. He reiterated that his understanding is that the workgroups will get into the specific issues and come up with recommendations for negotiation to be reported back to the full committee.

Mr. Boyd suggested two workgroups: one for CAS and one for Need and that each workgroup will address those issues on the agenda. Mr. Sossamon added that the workgroups would not only address issues listed on the agenda, but also identify other items as appropriate for the workgroup. There was some further discussion on the proposed workgroups or how they will function. It was determined that there was not formal consensus that we break into two groups. Ms. Tooley suggested that they hold regional caucuses to meet with regional representative and talk amongst themselves regarding workgroups. Mr. Sossamon pointed out that the protocol allows for any member to call for caucus. Ms. Tooley called for caucus. Dr. Kazama asked about HUD's role and the workgroups. Mr. Boyd responded as committee members, they expected to participate and in addition, the HUD technical staff are here to work with the respective committees on issues being discussed.

Mr. Sossamon allowed 20 minutes for regional caucuses.

After the caucuses, there was a discussion on the procedure for voting if both the committee member and alternate are present. It was clarified that within the workgroups, every participated, committee members and non-committee members. Mr. Sawyers pointed out that during the previous Negotiated rulemaking, anyone who was in the workgroup was part of the discussion and voted. At the end of the session, you might just have committee members to vote on actual proposals, but to start with, the purpose of the workgroup is to bring ideas back to the committee. He suggested that the workgroups are opened up to everyone so long as it is orderly so that everyone feels as though they are part of the negotiation. Mr. Sossamon commented that anyone participating has the ability to support or reject an idea and it doesn't necessarily have to be a consensus that comes out of the workgroup. The consensus comes out of the full committee.

There was discussion on how to divide into workgroups. Mr. Naize stated that the SW region agreed that everyone could participate in the workgroups but would rather have one session in the morning and the other in the afternoon so you could participate in both. Mr. Sossamon pointed out that there had been general agreement on two workgroups, but we didn't call for consensus. Therefore, Mr. Naize has a proposal on the floor to have two workgroups, but that they meet consecutively, not concurrently.

During discussion on the proposal, Mr. Hoffman pointed out that the workgroup reports to the committee and the committee makes the final determination. Everyone has the opportunity to express concerns about CAS and Need at that time. Mr. Sawyers suggested that workgroups are useful for getting more work done, more than one area can be looked at and brought back to the full committee for consensus. First part of the workgroup would be to talk about the issues and come back to report. He suggested that the workgroups run concurrently.

Mr. Carlile called for consensus on breaking into workgroups and reporting back to the full committee at the end of the day. Mr. Sawyers second.

There was further discussion, at the end of which, Mr. Naize asked for a regional caucus.

Mr. Sossamon allowed 10 minutes for caucuses.

When the group reconvened, Mr. Sossamon call for consensus on breaking into two workgroups to meet concurrently. There were no objections.

Before breaking, Mr. Boyd pointed out that A/S Liu is due to arrive at approximately 5:00 pm. Mr. Sossamon directed the CAS workgroups to meet in the Columbine room and the Needs workgroup to meet in the Terrace room. He suggested that the workgroups meet until 5 pm and then come back together here for a brief report and summarize for A/S Liu what has been accomplished today and give him the opportunity to make comments. It was also agreed that the workgroups would continue on Thursday at 8 am. Mr. Bush recommended that if the workgroup have that opportunity to work in the evening as well. Mr. Sossamon agreed but left it to the discretion of the workgroups. He added that there is no limit on the time, but since A/S Liu has made effort to be here, that the committee come back together at 5 pm. Mr. Boyd pointed out that A/S Liu's schedule would enable him to meet at 8 am before he returns to DC. Mr. Jones asked if HUD could spell out some of the issues it wants covered while A/S Liu was here. Mr. Boyd indicated that A/S Liu is interested in participating in the discussions. He added that there might be a couple of issues A/S Liu would like to bring up and that the general session at 5:00 pm would be an appropriate time.

Ms. Marasco asked for verification that HUD's technical staff would be available to the workgroups. Mr. Boyd answered in the affirmative. Ms. Marasco then asked if computer runs could be performed. It was confirmed that there would be legal and computer support in both groups.

Mr. Sossamon then instructed the committee to break into groups and to try to establish an agenda, which identifies the different issues; to develop a list of the issues you hope to explore in the workgroup; and then address individual issues.

Mr. Sossamon called for a recess of the full committee.

WEDNESDAY 5:00 PM, MAY 28, 2003
FULL COMMITTEE

Mr. Sossamon reconvened the full committee. He welcomed A/S Liu and reported that the committee had a good discussion earlier in the day and then broke into two workgroups that met for approximately 35 minutes. Mr. Sossamon then turned the floor over to Dr. Kazama and Mr. Sawyers, the two chairs of the workgroups, for a brief report.

Dr. Kazama identified himself as the chair of the CAS workgroup. He reported that the workgroup started out with basic protocol issues and then began brainstorming issues. He stated that tomorrow morning, the workgroup would begin to look at how to structure discussion about the preliminary CAS agenda issues identified:

- Formula Current Assisted Stock (FCAS)
- Counting NAHASDA units
- Averaging modernization funds, Section 8
- Removing units from the formula
- Unilateral extension of acc agreements
- How conveyed units are removed and how funding is being recaptured
- Adding new units to stock.
- Amending Section 1000.317 that provides funding for units created by state for Alaska tribes to enable the funding to go to regional housing authorities.
- Section 1000.306c regarding Section 8
- Phasing out previous CAS units and section 8 funding
- Minimum baseline funding for prior 37 act units and section 8 monies
- Infrastructure
- Allowing units being modernized stay in stock even though should be conveyed
- Continuing to receive funding for rental units sold to tribal members without conveyance Review adjustment factors (e.g., AEL, inflation, fair market rent, etc.
- Counting NAHASDA rental units, down payment, and repair as CAS.
- Definition changes

Dr. Kazama stated that the workgroup would begin on Thursday at 8:00 am and invited A/S Liu to participate. He also stated that the workgroup was open to ideas from A/S Liu. Governor Anotubby reiterated that the workgroup was taking the existing formula as starting point, not necessarily accepting it, but using it as a point of departure.

Mr. Sawyers identified himself as the co-chair of the Need workgroup and identified Mr. Coyle as the other co-chair. Mr. Sawyers reported that the workgroup looked at some of the protocol and identified Needs goals:

- Measurable
- Equality
- Legal – within NAHASDA
- Every Tribes' Need
- Relevant
- Data justifiable
- Unbiased data
- Verifiable

Mr. Sawyers stated that the workgroup would likely be adding to some of things that may not have been addressed five years ago based upon the 5 years of experience using the currently formula, for example, areas such as safety. He stated that the workgroup decided to meet tomorrow at 8 am and will continue to list items that may have been missed during the previous negotiated rulemaking.

Mr. Sossamon recapped that both work groups will convene on Thursday at 8 am and extended an invitation to A/S Liu to participate in both workgroups as his time allowed. He stated that the workgroups at their discretion could continue their work in the evening. He added that on Thursday, the full committee would reconvene as a full committee between 4:00 – 5:00 pm for public comment and to schedule the next meetings. Mr. Sawyers commented that there had been several suggestions to extend the upcoming meetings to 4 or 5 days instead of 3 and that the committee may want to consider this.

Mr. Sossamon stated that the committee would take that into consideration and then turned the floor over to the HUD delegation.

A/S Liu commented that everything he has heard is very positive and that there is a sense to balance to what we have and a willingness to look at new ideas for discussion. He added that this is just the way this discussion should be going. He commented that this administration is willing to entertain different approaches, learn from what we have, sometimes using what we have and moving forward, sometimes new, and that the administration is not predisposed to any outcome. If what comes out meets most of conditions, we'll be in good stead, that's the challenge. He added that other parts of the administration, the Hill, GAO, and the public would ask if the negotiation result in something that is fair. He recognized that CAS is a complex issue with a lot of history and may be difficult for those not familiar with Indian country to understand. He indicated that attention must be spent on how are we going to communicate to those outside this room since there are other entities that come into the process. He added that it would be his responsibility, with help from the committee, to determine how to present the package. A/S Liu closed his comments by stating that he hoped to take part tomorrow morning to whatever extent possible.

Mr. Sossamon thanked A/S Liu for taking time out of his busy schedule to be here and that the committee appreciated his efforts. Mr. Sossamon then opened the floor to comments, questions, and concerns.

Ms. Marasco commented that the breakout rooms were inadequately equipped based on the number of people attending the sessions and hoped that will be remedied. She also requested that the full committee would be able to share all hard copy documents that HUD prepares for the workgroups and suggested that the chairs present information to full committee, and that any back up documentation be shared with the committee.

Chairman Wallace asked HUD when the ICDBG NOFA would be released. Mr. Boyd's staff indicated that since the ICDBG was out of the super NOFA, the process is longer, but it would be this year. A/S Liu commented that the recognized this was a better way to go. Chairman Wallace thanked A/S Liu for his support and that due to development cycles, separating the ICDBG made things easier.

Chairman Wallace asked if there was any discussion in the Department about onsite development, an issue that came up in the CAS workgroup. Mr. Boyd reiterated that HUD was reinstituting the interagency task force with IHS and possibly Interior to specifically address the infrastructure issue and that they are also trying to look beyond government funding to access additional capital, for example, bonds, and that such strategies may help on a case-by-case basis. Chairman Wallace suggested that an allocation of a minimum set-aside for infrastructure might be proposed

Mr. Jones, as a follow-up to the morning discussion asked if there is any legislation that HUD wants to comment on that would impact the formula. Ms. Tooley mentioned the issue of pipeline funds as a hot issue and asked if progress was being made on determining what's really out there. A/S Liu commented that progress was being made and it would be another month or two before they had a more solid grasp of the numbers. He added that this is a concern from HUD's standpoint as well and that it was important to resolve. He mentioned that the tribes have been very responsive in supplying information.

Mr. Kinney asked about data on how many houses are being built, being planned, etc. A/S Liu stated that there has been progress on HUD's part on defining those areas and the data that the field offices are receiving. The challenge has been to collect the information in a central point, either manually or electronically, and assessing the information. He added that information on specific tribes is generally available, but that they are looking to centralize and to coordinate with IHS and other agencies.

Mr. Ducheneaux referred to the pipeline funds and commented that one of the things we should look at is when funds are obligated and redefine how they are obligated. He stated that the tribes developed the five-year plans and then developed the one-year plan based on them, and that HUD should obligate the funds when the five-year plan is developed. Mr. Ducheneaux said that the second five-year plans have been submitted and that the tribes needed a clear definition on obligation of funds at this time.

Mr. Jones asked about the current status on HUD's recapture of 37 Act funds still in pipeline. Mr. Boyd stated that he is working with staff on this and that they would be able to provide information to the committee before this session is over.

Mr. Chavez commented on the issue of infrastructure and that building houses without utilities, water lines and sewer lines is a big problem. He urged A/S Liu and Mr. Boyd to look at IHS health care facility funding in this regard, to pursue a roundtable approach, similar to IHS, to bring together key government agencies and tribal leaders to discuss these issues.

Mr. Sossamon asked for further comments. Hearing none, he thanked everyone for their hard work and recessed the meeting.

THURSDAY AFTERNOON, MAY 29, 2003
FULL COMMITTEE

Mr. Sossamon reconvened the full committee. The first agenda item will be reports from the chairs of the workgroups.

Dr. Kazama reported that the CAS workgroup began by talking about process and took some language from the Needs groups for ideals and concepts, such as fair, equitable, etc. and that the workgroup agreed that participants must recognize that we all can't win. The workgroups then looked at the types of instruments that we can use to work through the issues, and will rely upon HUD for statistical information, data, and input to look at figures, etc. He reported that A/S Liu and his staff shared a bit about the history and that HUD staff gave a quick overview of the formula and CAS. After lunch, the workgroup addressed the issues listed yesterday (Attachment 7), reviewed them, and added a few issues. He stated that beginning on Friday morning at 8:00 am, the workgroup would be starting on prioritizing and setting a roadmap for the next few sessions in the months ahead.

Mr. Sawyers reported on the Need workgroup. He mentioned that there were two handouts available to the full committee (Attachment 8). He reported that the workgroup spent quite a lot of time to get everyone's ideas and wanted to make certain that every issue was on the table. He continued that everyone had an opportunity after 5 years of implementation to identify what into categories and that these are the factors in determining need. The workgroup talked about the present Need formula and about measurement, and then spent time to nail down where we are now. He reiterated that every factor will have to meet the identified goals and that they use uniform data sources and meet the goals of NAHASDA. He reported that the workgroup was conscious of Governor Anokatubby's statement that we're not here to destroy the formula, but rather to improve it.

Mr. Sossamon thanked A/S Liu for dedicating his time to this matter. A/S Liu commented that he was extremely impressed with the committee and that by sitting in on

both groups, he could see that both discussion leaders did a wonderful job in creating an environment in which sensitive and controversial issues were discussed with respect. He added that lots of good new information exchanged and that the process is well on its way to identifying the base issues. He closed by thanking the committee members for their efforts and reiterated that HUD and ONAP are resources.

Mr. Sossamon opened the floor to public comments. Hearing none, he moved to the next agenda item, scheduling meetings.

Mr. Sossamon opened the discussion by stating that the next meeting is in Seattle on June 17-19, 2003. He asked for a show of hands of who would be attending. In looking at July, he recapped that last time we had a recommended the week of July 14 in Denver. Ms. Tooley commented that she thought someone had mentioned that there was a problem with Denver at that time. Mr. Boyd stated that there were hotel problems, but that staff was able to identify two possibilities. There was discussion on having three meetings in Washington, DC (July, August, and September), and Mr. Boyd mentioned that the Hyatt (DC) was available on July 15 – 17.

Ms. Tooley brought up the recommendation to meet for more than three days at a time. She added that she was not advocating that position, but merely asking if it is open for discussion. Mr. Sawyers stated that he brought it up and that based on the high cost of getting together, he thinks that 4 days of meetings makes sense. Mr. Sawyers proposed 4-days for consideration for the July meeting. Mr. Boyd mentioned that there might be budget considerations, but that they would look at it.

There was further discussion including traveling on weekends, hotel availability, family responsibilities, etc. Ms. Tooley suggested that they could stay with three days, but extend the workday. Ms. Gore suggested that the workgroups could add an extra day meeting independently.

Mr. Sossamon called for consensus on 4 days. There were no objections and therefore, starting in July, there will be a 4-day work schedule.

Ms. Marasco suggested that they split the fifth day for travel, that is, start at noon on the first day, and end at noon on the last day. There was discussion and Mr. Sossamon noted the suggestion and that it would be taken into consideration when the regional representatives get together to discuss the next agenda.

Mr. Gorynski asked if Seattle could be considered for July. Mr. Boyd said it had been looked into regarding hotel accommodations and would get back to the committee. Mr. Sossamon asked about the availability of HUD staff in Seattle. Mr. Boyd stated that support staff would be available, but that it is unlikely that A/S Liu could be there. There was further discussion, and although it was agreed that Seattle is easier for members from Alaska insofar as travel is concerned, Mr. Gerber pointed out that due to the realities of A/S Liu's schedule, DC would be preferable. He then proposed that the final two

sessions be held in DC since there is a lot of tech support there, and additional agency staff would be available for the final discussions. Mr. Gerber suggested June in Seattle, July and August in DC for 4 days. Mr. Sawyers asked if that meant there would be 5 sessions instead of 6. Mr. Coyle recommended June and July in Seattle, and August and September in DC. Mr. Gerber reiterated that A/S Liu would like to participate, as well as the availability of OMB in the process.

Mr. Sossamon mentioned his concern of having access to support staff in Seattle, particularly since the workgroups will want to have numbers run to ascertain the outcomes of recommendations. Mr. Boyd stated that we have capability and resources, but that the farther away from DC, the thinner our resources become.

Mr. Sossamon called for consensus on Seattle in July, and August and September in DC.

Dr. Kazama suggested that in light of what Mr. Gerber has said, he recommends meeting in DC in July, and perhaps Seattle in August. He added that he would rather have resources in DC than none in Seattle. Mr. Gerber reiterated that Seattle is difficult to get to from DC. And, although he realizes that the opposite is true for Alaskans, that DC or Denver is best, and therefore proposes Denver in July and August and September (if necessary) in DC.

Mr. Sossamon noted that there had been an objection to Mr. Coyle's call for consensus. The alternate is Denver in July and August and September (if necessary) in DC. Objection. Dr. Kazama proposed July and August in DC as an alternate. Objection. Ms. Tooley proposed Denver in July and DC after that.

Mr. Sossamon called for consensus on Denver in July, and August and September in DC. There was consensus.

The discussion then turned to identifying dates. Mr. Sossamon reiterated that the week of July 14 had been recommended. There was discussion on hotel availability. Mr. Sossamon asked for tentative agreement July 14 – 17 in Denver. Agreed.

Mr. Sossamon asked for dates in August. Mr. Sawyers stated that UNAHA has a meeting the week of August 11 and that he would request a different week. There was further discussion and conflicts were identified for the week of August 18 (Governor Anotubby) and 25 (HUD). There was further discussion.

Mr. Sossamon called for consensus on week of August 18 in DC. It was agreed (Governor Anotubby will send an alternate, if necessary). It was further agreed to meet on August 18-21.

Mr. Sossamon next proposed September in DC. Hearing no objections, he asked for recommendations for dates. The week of September 22 was recommended and agreed. The meeting will be held in DC on September 22-25 as necessary.

Mr. Sossamon thanked the committee and called for a recess until 1:30 pm Friday.

FRIDAY AFTERNOON, MAY 30, 2003
FULL COMMITTEE

Mr. Sossamon called the full committee to order at 1:40 pm. He continued with the next agenda item, workgroup progress reports.

Dr. Kazama recapped that the CAS workgroup began to create a framework by listing issues again to day and then determining in which group individuals wanted to participate. Four major study groups were identified, chairs were selected, tasks were identified, and homework assigned regarding scope and definition of issue. Before turning the floor over to the four study group chairs, Dr. Kazama brought up the issue of investment the recommendation from the CAS workgroup that the issue be placed on the table of the full committee.

Ed Philips (standing in for Ron Hoffman) on FCAS issues, reported that the group was looking at ACC, adjustment factors, etc. He reported that although the existing formula is good, they are trying to determine a variable to replace geographic variables. They are also looking as RS Means, and looking closely at the FCAS calculation. He stated that the FCAS study group developed a mission statement that the FCAS based in reality, be fair and equitable, and objective. He added that the group will look the Harvard study, and what is it we can do to make a formula that accounts for geographic differences related to cost.

Jim Vollintine on defining NAHASDA units, reported that the study group was in the brainstorming stage. The issue is whether NAHASDA stock should be counted, and whether the IHBG formula should be revisited to see if a subsidy is needed for operation and maintenance of NAHASDA units. He stated that there would need to be a clear definition, for example, units owned by the tribe, mortgage interest, Title VI interest, tenant rental assistance, percentage of funds, etc. He added that the group needed information on what has been developed thus far under NAHASDA by tribes. Other issues were the alternative to leave the formula as is, and how do tribes keep up NAHASDA units.

Terry Hudson on examining minimum funding requirements and amendments, reported that the study group discussed the 1996 jumping off point, funding at higher levels, and Section 8 (Sec. 502) amendment. Mr. Hudson added that the study group thought that Sec. 340 may need to be reworded to reflect amendments (250 unit threshold); and that they would need an interpretation from HUD on what years are going to be included, and would it change every year. He said that the study group would be looking at the numbers for tribes close to the 250-level to see the impacts and hoped to come to the next meeting with some numbers.

Mr. Jones on removing CAS units, reported that the subgroup developed a mission statement and assigned research and information gathering tasks. He added that there were 6 assignments, ranging from basic information to new ideas on capital grant programs, and gathering information from HUD. The study group set June 9 for reports and will come to meeting in Seattle to work and debate the issues.

Dr. Kazama thanked the study group chairs and commented that the purpose of having the chairs report is to enable everyone to know what's happening and provide input.

Mr. Tooley asked if it is possible to get a regional sample to try to find out what types of NAHASDA units have been built, and how they have been financed for the NAHASDA definition group. Mr. Boyd stated that over the past couple of months, one of our efforts has been to work with the ONAP offices to compile that information and that his staff would provide information.

Mr. Sossamon brought up the need for a procedure for requesting and submitting information. He pointed out that resources are limited, and that the best approach would be for all requests to be made through the committee, rather than individuals. He clarified that requests could go through regional representative, full committee, or workgroup. He also requested that when information is submitted, it is submitted through the committee or workgroup as an attempt to control logistics of the information process.

Dr. Kazama brought up the subject of investment policy and asked if there were any comments / reactions. Ms. Marasco asked Dr. Kazama to provide input as to why the CAS workgroup thinks it's a viable subject. Dr. Kazama commented that the issue affects operation based on the ability to draw down and invest money and have access to program funds. Therefore, investment could be seen as part of CAS. The workgroup wanted to know if it should be presented to the full committee to get input. Mr. Boyd indicated he didn't think it was part of the formula, even if not directly related to formula, allocation issues are important and could be addressed.

Rebecca Kidder (Cheyenne River): commented that the Cheyenne River HA felt strongly that investment be included in the scope. She pointed out that investment policy has a significant impact, and at the same time, is an area that isn't regulated at this time. Ms. Kidder stated that investment has an effect on how money is translated into program funds.

Mr. Boyd responded by stating that the investment aspect is a tribal right and an important aspect of the process. However, the formula process creates the allocation of funds, and investment doesn't have a bearing on the formula. It is a post-effect and is therefore not germane to formula issues. At the same time, he agreed that investment policy is a discussion he would like to have and thinks we should have, but not within this Negotiated rulemaking session. HUD staff stated that investment policy had not been included in the Federal Register, and was therefore not part of this session.

Ms. Tooley asked if requests for information needed to be in writing. Mr. Sossamon indicated that verbal requests would be fine, but if written, it would be easier to keep track of.

Mr. Sossamon turned the floor over to Mr. Sawyers for his report on the Need workgroup.

Mr. Sawyers reported that the workgroup has its goals and also spent time on reviewing the Needs factors. They began with the Need factors in the existing formula and as other concerns were raised, they were included, and then categorized. Through this process, they identified additional factors, such as population migration, birth rate, structural and foundation issues, infrastructure, affordability, etc. He reported that the workgroup also talked about NAHASDA units, and housing availability on isolated tribal lands. Other factors that came up in discussion included: formula area, overlapping area, lack of land base, state recognized tribes, formula area definitions. There was also discussion on topics that may not have to do with factors and weighting, but make a lot of difference to the formula, such as Sec. 328. Mr. Sawyers stated that the workgroup has asked HUD for some support, for example, runs on weighting, what kind of impact changes have on the allocation, etc. Mr. Sawyers stated that his group is a bit less formal, but appreciates the work that has been done and willingness to work late. He commented that the workgroup is confident that it has begun to explore every issue, and that he appreciated Governor Anotubby's comments about not throwing out the whole formula, just fixing the parts that don't work.

James Sceeles (TNHA) stated that the workgroup agreed on how to proceed, and specifically wanted to determine if the criteria are measurable and verifiable. After determining that, then apply weights, and then revisit the regulations to make certain they are applicable.

Ms. Kidder asked for a clarification on requests. Mr. Sawyers responded that in future, requests should be made through him, Dr. Kazama, or Mr. Sossamon. But any requests already submitted during the past two days are ok for next time. Mr. Sawyers also stated that the workgroup is open to reasonable suggestions in want to look at every possible issue.

Mr. Sossamon stated that the workgroup reports were concluded. He opened the floor for the next agenda item, public comment.

Mr. Sceeles raised the issue of re-establishing a quorum after workgroups. Mr. Sossamon referred back to the protocols:

“All decisions of the Committee shall be made by Consensus. Consensus means unanimous agreement as shown by an absence of expressed objection by any Committee Member present at the Committee or Work Group meeting with regard to a particular issue.”

He added that he established a quorum at start of the session and called a recess for workgroups. Those who are not here during full committee meetings give up may appoint an alternate or give up their right to participate.

Dr. Kazama, referring to informational sharing, commented that the two workgroups were functioning somewhat independently, and it was important that information be shared consistently so that each knows what other is doing. He stated that the dynamics require that we should try to combine information throughout the process and he suggested utilizing staff for that purpose. Mr. Sossamon agreed and recommended that some thought be given on mechanisms be put in place to ensure that information is being shared.

Ms. Marasco commented that as committee members, each had a right to request and see data. She stated that she is not in agreement with having the chairs determine what can be requested. Mr. Sossamon responded that this suggestion was an attempt to control the process of requesting, not the information, itself. Ms. Marasco commented that she doesn't mind that, but does mind someone controlling what he or she thinks she needs and censoring information. Mr. Sossamon indicated that there would be a listing of all information requested and that individual members could specifically request seeing it. He added that he wanted to avoid copying material that everyone was not interested in seeing. Ms. Marasco agreed, so long as all information requests are made available. Mr. Sossamon agreed that if you see something on the list, you could request, to see that information.

There was further discussion. Mr. Humphrey commented that the issue was accessibility to information that is provided to committee members, and that sometimes you need to see something to know if you need it.

Mr. Sossamon agreed that the committee chairs would work to determine the most efficient method.

Mr. Sceeles suggested some kind of document control, in which you assign a number to each document and have a centralized location for documents. Mr. Sawyers suggested that the HUD resource room might be used for this purpose.

Mr. Sossamon asked if there were any further comments. Hearing none, he closed the public comment. Mr. Sossamon asked if everyone had received a copy of the schedule of upcoming meetings. He then asked Governor Anotubby to give the closing prayer.

The meeting was adjourned at 2:40 pm.

Submitted by C. J. Gardstein
Steven Winter Associates, Inc.
May 6, 2003