

FORMULA NEGOTIATED RULEMAKING COMMITTEE  
MEETING  
September 22 - 25, 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 sixth meeting of the Formula Negotiated Rulemaking Committee was held on September 22 - 25, 2003, at the Washington Hilton Hotel in Washington, DC.

Committee Members in Attendance

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| Governor Bill Anoatubby                             | Mr. Marvin Jones                           |
| Mr. Rodger Boyd                                     | Dr. Blake Kazama                           |
| Ms. Virginia Brings Yellow (Eugenia Hobucket, alt.) | Mr. Bruce LaPointe                         |
| Mr. Robert Carlile                                  | Mr. Michael Liu                            |
| Mr. Larry Coyle                                     | Ms. Judith Marasco                         |
| Vice Chief Beasley Denson                           | Mr. Johnny Naize                           |
| Mr. Wayne Ducheneaux                                | Mr. Michael Reed                           |
| Mr. Joel Frank (Jennie Greene, alt.)                | Mr. Jack Sawyers                           |
| Mr. Robert Gauthier (Jason Adams, alt.)             | Mr. Marty Shuravloff                       |
| Ms. Carol Gore                                      | Mr. Russell Sossamon                       |
| Mr. Ray Gorynski                                    | Ms. Darlene Tooley                         |
| Mr. Ron Hoffman                                     | Chairman Eddie Tullis (Susan Wicker, alt.) |
| Mr. Terry Hudson                                    | 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 75 observers attended the public sessions. An attendee list is included (Attachment 1).

**MONDAY MORNING, SEPTEMBER 22, 2003  
FULL COMMITTEE**

Mr. Sossamon called the meeting to order at 9:30 am. Governor Anoatubby gave the invocation. Mr. Sossamon called the roll (see Attachment 2) and determined that there was a quorum. The first order of business was the review and discussion of the minutes of August meeting. Prior to that discussion, Mr. Jones recognized Chief Perry Beaver from the Muscogee Nation, the third largest recipient of IHBG funds.

Mr. Sossamon asked if there were any questions on the minutes from the previous meeting, and asked if everyone had had opportunity to review. Hearing no questions, Mr. Sossamon called for consensus to accept the minutes. There were no comments and there fore the august meeting minutes were accepted.

Mr. Sossamon then opened the floor for public comments. Ms. Tooley, commenting that there was a rather large group of observers, requested that everyone introduce himself or herself, which was agreed upon and carried out. Mr. Sossamon asked if there were any further comments. Hearing none, he stated that he wanted to go on to the next item. Dr. Kazama requested a caucus at 10:30 am. Mr. Sawyers and Mr. Bush also requested caucuses. It was agreed that the committee would break at 10:30 and reconvene after lunch. It was further agreed that the time until 10:30 (approximately one hour) could be used by the committee.

Mr. Sossamon suggested starting out with an update from HUD and the drafting committee. Mr. Pereira stated that the drafts from the last meeting have not been revised. He also noted that the procedure was that as there was agreement on issues in workgroups, language then goes to the drafting committee. He added that there are drafts of regulatory sections that can be discussed. Mr. Sossamon brought up the issue concerning the tribes that have fewer than 250 units, and asked if HUD was ready with language. Ms. McFadden stated that there was no new language. Mr. Sawyers commented that he thought that the drafting committee was going to draft something and bring it back to this committee, adding that the committee members don't know how to change the language, since the parameters of the statute are not known. Mr. Pereira stated that the drafting committee was not meeting as a committee. He reiterated that as the workgroups agree, then the drafting committee could finalize. Regarding the 'under 250 unit tribes,' Ms. McFadden noted that there wasn't a substantive proposal for the drafting committee on the issue, and she suggested that if the committee or workgroup or certain members could come forward, they could work on it.

Ms. Tooley requested that the committee take some time to recap where it left off last time. Mr. Sossamon noted that the issue at hand was the one dealing with the CIAP averaging as provided in the 2000 Amendments. He stated that the issue had been tabled; the date was changed, but that the language doesn't seem to align with the intent of the statute. He added that HUD was supposed to come back with an opinion. He then asked if there were any additional comments from HUD at this time. Ms. McFadden recalled that Mr. Carl was going to look into this. Mr. Sawyers volunteered to work with the drafting committee on this issue, as did Ms. Tooley. Mr. Sossamon noted that Mr. Sawyers and Ms. Tooley would work with Ms. McFadden and Mr. Pereira. Mr. Hoffman asked if Attachment 5 (of the August minutes) was the 2000 Amendment proposed language.

Mr. Sawyers then stated that there are 26 issues on the sheet, and that the committee will focus on these. Mr. Sossamon commented on Attachment 5, stating that there are a few versions of language available, and requested that they are all considered. Mr. Sossamon then drew the committee's attention to the list of proposals (see Attachment 3). He also asked the committee to please bring forward any other issues at this time.

Mr. Ducheneaux requested that the issues of multiple race be placed on the list. Mr. Coyle requested that the issue of Section 8 be added.

Mr. Swanson clarified that the list, which was handed out, includes the proposal (renumbered) along with pertinent documentation. He added that everything has been tabbed in the binders. Mr. Hudson asked if the numbering refers to the order in which we will discuss the proposals. Mr. Sossamon responded that was not necessarily the case. There was discussion on the proposal binder. It was pointed out that the binder contains all the proposals and recommendations, including the tracking sheets from the workgroups. Dr Kazama noted that there are some issues that relate to level of funding and that either as a region or tribe there may be difficulties, but that it is important to get the issues out on the table. He added that if no one here is willing to give up money, we should know that now, understand it, and get away from funding issues and move to the issues that are language issues. He urged the committee to examine this during the regional caucuses. Mr. Sossamon agreed, and stated that he hopes that this can be accomplished in the caucuses, and that the regions determine what can be lived with. Mr. Sawyers reiterated that it is time to determine what areas you are willing to negotiate on and what areas are you pretty firm, so that the committee can decide what it really wants to look at and where there is room to negotiate. And, at the same time, determine what areas the committee is not willing to negotiate. Mr. Sawyers also suggested that for specific issues, such as AEL, the committee needs to talk to the Alaska delegation to discuss the issues. He further agreed that some of these issues could be talked about in caucus. If everyone is pretty happy with the funding as it now, then ok, but there are some areas that can be negotiated.

Mr. Sossamon reiterated that each committee member and each region should identify problems, and determine if there is room for negotiation. He called again for issues left off of the list.

Ms. Tooley asked for clarification regarding the addition of new issues and when they would be discussed. Mr. Sawyers responded that the committee should finish the ones on the list first. Mr. Sossamon concurred, but added that if there are other issues, the committee can address them as well. Mr. Sossamon added that he hoped to use the binder as a guide to address the issues.

Mr. Ducheneaux suggested adding the data challenge and appeals process. Mr. Sawyers noted that there was a subgroup working on this and that they are ready to present at the proper time. Mr. LaPointe and Mr. Sossamon thanked staff for putting together the binders.

Mr. Sossamon then asked if HUD would address the census issue and census data before caucuses. A/S Liu asked for clarification on what to address. Mr. Sossamon clarified that the issue is the use of multiple race. A/S Liu asked Mr. Anderson and HUD staff to explain the materials that were available.

Mr. Anderson handed out document #83 (see Attachment 4), the IHBG FY04 estimate run. In response to a query by Mr. Ducheneaux, A/S Liu clarified that multiple race was

used in the FY04 allocation estimate. Mr. Ducheneaux requested that A/S Liu respond to the legal definition of Indian and how that relates to the use of multiple race in the census data. A/S Liu turned the floor over to Ms. McFadden, who responded that NAHASDA doesn't address what data are to be used, only that the data must be the best data available. The decision was made to use the decennial census data. She reiterated that NAHASDA does not address whether multiple race or AIAN only is used, which would be up to HUD to define. Mr. Ducheneaux disagreed. He noted that the law defines that an Indian is a member of an Indian tribe, and that a mixed race person might not be a member of an Indian tribe. He added that the purpose of NAHASDA is to serve Indians and tribal members, and that it isn't up to HUD to choose the data. He stated that the decennial census was to be used for the initial implementation, but then we were to come back and determine the best source of data.

Mr. Sossamon responded that the designation of multiple race doesn't preclude membership in a tribe. He also noted that this issue was raised and discussed at the end of the last meeting. Further, Mr. Sossamon stated that he didn't agree that multiple race is contrary to the law. Mr. Ducheneaux requested to know how HUD came up with the policy to use mixed race. He reiterated that the law states that the definition of Indian relates to tribal membership. Mr. Sossamon noted that verification is not required at all. Mr. Ducheneaux indicated that his point was that the census doesn't require verification, but that NAHSADA does require verification. He added that the Supreme Court ruled that it was up to the tribe to determine who its members are. Mr. Sossamon agreed, but added that the issue was fund distribution, and that the decennial census data was selected because it was the least flawed, consistent set of data. He reiterated that the census data doesn't have anything to do with who receives housing services, and that those people must meet the definition. He restated that the determination was made at the first negotiated rulemaking. Mr. Ducheneaux responded that it was to be determined if the decennial census was the best data. He added that he didn't that it was because you are allocating funds and serving people who are not Indians. Mr. Sossamon countered that you are in violation if you are serving people who are not Indians, and reiterated that HUD uses the decennial census data for the allocation and distribution of funds. HUD is allocating funds to the tribes; and the tribes are to provide services. A/S Liu stated that HUD rejects the notion that it violated the law. Mr. Ducheneaux stated that he rejects HUD's position.

Mr. Humphrey commented that the funding process is separate from the services process. He noted that the level of funding impacts the tribes, and that under the 1990 census, with single race, there was less of a chance of people who are not Indians from being counted. He added that now there is an incentive for people to acknowledge heritage, and that the result may be skewed. He asked if this could be clarified.

Mr. Jones responded that if you go through every region, with the exception of Northwest, the enrollment figure is greater than the number of AIAN persons. That means that even if multiple race is used, the total still doesn't equal enrollment. Therefore, data using multiple race seems to get closer to the AIAN number. Mr.

LaPointe commented that when the house-to-house census was conducted in his area, people were instructed and encouraged to use multiple race, and to indicate tribal affiliation. He added that quite a few enrolled members are multiple race. Mr. Hoffman asked how you prove or verify that the people who are counted are tribal members.

Governor Anoatubby commented that it's another case of what's closer to reality. It appears that multiple race gets closer for Chickasaw, in fact, much closer than single race.

Mr. Ducheneaux requested seeing the OGC rationale that counting 'other' is not a violation of the law. He then turned the floor over to Ms. Kidder, who reiterated that she would like to see HUD's rationale, and why it was determined that multiple race was more accurate data. She noted that based on what Mr. Jones said, the AIAN and BIA data have no relationship to one another, so there are three very different numbers. Moreover, BIA service area data are very different. She suggested looking at BIA data and enrollment data and stated that this issue needs to be looked at in more detail. She also stated that NAHASDA requires us to serve tribal members.

Governor Anoatubby offered that his tribe shows names and addresses for 48,000 persons, and that the 2000 census showed 46,000 persons. He stated that they worked hard to get people to fill out census forms and that previously the count was off even more. He reiterated that the census data are the basis for funding, and that if you know your numbers are better, there is a challenge process.

Mr. Sossamon stated that the committee would break for regional caucuses in 5 minutes. Mr. Ducheneaux again requested that HUD provide their rationale for determining that multiple race is better than single race. Mr. LaPointe commented that by using multi race, we are still identifying need. He referenced technical request (TR) #53. Mr. Ducheneaux stated that he was requesting an answer from HUD.

Mr. Sossamon explained that there were two breakout rooms (the Map Room and the Caucus Room) directly above the general session room, but that it was necessary to go back to the escalators in order to get there. He pointed out that staff had provided a diagram. He also noted that Mr. Naize had arrived.

A/S Liu stated that HUD made the same determinations based on many of the same reasons that had just been stated by various committee members, and that this was HUD's response. Mr. Ducheneaux requested a policy statement from HUD.

Mr. Sossamon recessed the meeting for regional caucuses and announced that the committee would reconvene at 1:00 pm.

**MONDAY AFTERNOON, SEPTEMBER 22, 2003**  
**FULL COMMITTEE**

The meeting reconvened at 2:00 pm. Mr. Sossamon noted that Jason Adams had joined the meeting and that Jennie Greene was attending as alternate for Joel Frank. He also mentioned that he had discussed some of the items that the drafting committee is working on with Mr. Boyd. Mr. Boyd added that there are a number of areas that need further clarification, for example tabs #4, #12, #29, and #30. He also added that the plan is for the drafting committee to work either during breaks or after 5 pm. Mr. Sossamon stated that would depend on who is available to work on the issues. He noted that he had additional questions on tabs #20 and #21. Mr. Heisterkamp clarified that the two were the same except for some alternate language. Mr. Jones further clarified that Tab #21 included a percentage, whereas Tab #20 left the percentage blank. It was agreed that tabs #20 and #21 represented one proposal. Mr. Sossamon asked if it was something that could be taken up in the full committee at this time. Mr. Heisterkamp confirmed that it could. He added that for the overlapping area definition, Ms. Silliman and Mr. Jones are going to work on the Oklahoma portion. Mr. Jones confirmed that was accurate, but added that Chief Beaver is waiting for some additional information before the issue could be finalized from their perspective. Mr. Heisterkamp added that there was some draft language from Oklahoma and that staff would make copies available.

In continuing on the list of proposals, it was noted that Tab #8 and Tab #9 had been rejected. There was brief discussion, clarifying the status of the two proposals, and that Tab #9 had been effectively absorbed into Tab #8, which was subsequently reviewed and rejected, so that tabs #8 and #9 are out of discussion. Mr. Sawyers commented that the committee did not object to whether there is a challenge, and didn't think it had come to a conclusion, although there was not agreement on national baseline AEL. There was further discussion, and it was pointed out that the problem with the proposal was that the committee could not agree on what side of the formula the funding would come from. The minutes from the previous meeting were consulted. Ms. Greene pointed out that there had been a call for consensus, which was not reached. Mr. Sossamon commented that he interpreted this as the committee not being able to come to consensus on the AEL challenge process because members of the committee were opposed to a successful challenge coming out of either CAS or Needs, although the average AEL question is yet to be determined. Mr. Sossamon reiterated that it was his understanding is that tabs #8 and #9 have been dealt with.

Mr. Ducheneaux brought up the issue of having consensus to revisit an item and having to reach consensus on all the regulations. Mr. Sossamon stated that it isn't necessary to have consensus on the entire rule. There was disagreement from the committee, which voiced the opinion that it was necessary to reach consensus on the entire rule. Mr. Sossamon stated that he was not clear on what was being asked. Mr. Ducheneaux restated that the committee was going through each item at this time, but also noted that he was certain that he had previously raised the question of whether or not there needs to be consensus on the entire rule. Mr. Sossamon stated that in his opinion, if the committee

reached consensus on language to be changed, then it has consensus. Mr. Ducheneaux queried if that meant that the committee doesn't have the opportunity to revisit the whole. Mr. Sossamon replied that it was his understanding that Mr. Ducheneaux would not now give consensus until the language is in context. However, Mr. Sossamon noted that the committee had reached consensus on one item, and that there have been a few non-consensus items.

Mr. Anotubby noted that in order to revisit any item, there needs to be consensus. Mr. Ducheneaux commented that he felt that the committee is being "railroaded" and that he came prepared to negotiate. He added that the primary objective of the law is to serve Indians and low-income people, not multiple race, for example. But he stated that he specifically reserved his right to revisit, as stated in discussion at the last meeting:

"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" (p. 12, August minutes).

Mr. Sawyers noted that there are two proposals that are dead, but the issue is not dead, and another proposal could be submitted. He added that he didn't think that the committee was that far apart on this issue, and that the committee should continue the process. Mr. Sossamon responded that neither of the proposals (tabs #8 and #9) could reach consensus, and that if reintroduced, they will likely be voted down again.

Ms. Greene commented that there would need to be consensus on the whole rule, as there may be inconsistencies. She also asked why alternative proposals shouldn't be submitted. Mr. Ducheneaux stated that at the first meeting, he tried to introduce mandatory negotiation into the protocols and it did not reach consensus. Therefore, at this point, he can say anything is dead on arrival, just like Mr. Coyle and Dr. Kazama did on the AEL challenge. He added that he would now object to anything, unless there is some real negotiation on how to implement the law. Mr. Sossamon restated that these two proposals did not get consensus, but if Mr. Ducheneaux had another proposal on AEL, he could submit it. Mr. Ducheneaux then asked if all the other proposals would have to be resubmitted, since he objected to them all. Mr. Sossamon asked if Mr. Ducheneaux wanted to shut the process down and go home. Mr. Ducheneaux responded that he didn't want to do that but did think that the committee would have to come to some understanding of how this process works. He added that the people who need to negotiate are sitting here, and should just get to work. Mr. Sossamon asked if Mr. Ducheneaux had withdrawn his objection. Mr. Ducheneaux stated that he is willing to negotiate; he is willing to talk about AEL; but he wants to be on the record as being willing to object.

Ms. Hobucket stated that she is put off by this process. She noted that the chairman was both a committee member and was also facilitating. For example, Mr. Sossamon shut

down the conversation on the use of multiple race census data and why HUD hadn't put forth a policy on multiple race. She then asked for a facilitator. Mr. Sossamon noted that this was brought up during the protocols, and that he can make comments that represent those who he is representing at the same time as he is chairing. He stated that he certainly didn't mean to insult anyone. Mr. Swanson commented that it sounds as though the committee wanted a discussion on how to begin negotiating, and was requesting clarification on the protocol regarding putting alternatives on the table. He added that the committee might be interested in having a discussion on negotiation, including identifying mechanisms that can be used or put in place to avoid roadblocks. Mr. Sawyers stated that he felt the committee was getting way off base, and added that if you are going to negotiate, you state why you can't support a proposal, and should give an alternative. He reiterated that he thought that the committee might not be that far apart. He suggested selecting four or five items to begin discussing to see if the committee can come to consensus. He noted that there is a lot of work to do. He then suggested starting with the birth and death adjustment, adding that the committee should either begin to negotiate or go home. He also stated that he thought that Mr. Sossamon was doing a great job.

Mr. Naize stated that at the last meeting, before the committee left, he had submitted a request for a run on Needs with weights, and that he didn't find that in his packet. Mr. Ducheneaux commented that Mr. Sawyers put forth a recommendation, but HUD wants clarification on tabs #4, #12, #29, and #30. A/S Liu responded that HUD would provide a summary, and turned the floor over to Ms. Lalancette.

Ms. Lalancette then stated that the only item requiring clarification was Tab #12, and that there were some questions from the committee about the statutory provision. She added that HUD also has to discuss tabs #4, #29, and #30. She noted that there was a workgroup on Tab #4, which provided language to HUD to be reviewed and discussed. She also reported that HUD had received language on challenges and appeals, but had not yet discussed them, as government offices had been closed due to the storm.

Mr. Ducheneaux stated that he had requested a response from HUD on multiple race before the lunch break and wanted to know if he would be getting that response. A/S Liu stated that HUD had already responded. Mr. Ducheneaux stated that he did not accept the Assistant Secretary's comment that the reasons had been stated by committee members, and that he still wants to know what HUD's rationale was, adding that this was a policy decision and was therefore supposed to be subject to negotiated rulemaking. He reiterated that he did not think that HUD had answered his query. Mr. Sossamon responded that there are differing opinions. Mr. Ducheneaux reiterated that he wanted a statement from HUD and A/S Liu. A/S Liu reiterated that HUD had provided its response. Mr. Ducheneaux stated that he would submit a formal request for a response from HUD.



Mr. Sossamon directed the committee's attention to Tab #25 on birth and death language. He noted that staff had also checked into the requests for data that had been submitted at the last meeting, and that the run that was requested by Mr. Naize was not yet available.

Ms. Hobucket commented that she agreed that HUD must write a position paper on the use of multiple race and bring it forward to the committee immediately. It was her opinion that HUD had stepped into the middle of tribal politics and the definition of Indian. She added that there had been some discussion over lunch as to what the effect is on funding levels. Mr. Jones noted for the record that question #6 on the 2000 Census form asks about a person's race, and that one box (answer) is American Indian or Alaska Native. Ms. Greene commented that you could also mark other boxes. Mr. Sossamon responded that single or multiple race is self-identified. Mr. Jones reiterated that you check boxes, not single or multiple, and that there is a box for American Indian or Alaska Native.

The committee returned to the birth & death rate issue. Mr. Sceeles asked what the effect was when mothers go to other places to have their children. Ms. Stoloff responded that both the place of residence of the mother and place of birth are listed on the birth certificate. She added that the National Center for Health Statistics states that the place of residence is supposed to be used, and if it is recorded correctly, then your reservation or village would get credit for the birth no matter where the child was born.

[Mr. Boyd provided updated information that Mr. Naize's technical information request would be available on Tuesday, and had been held up due to the work needed on the census tabs.]

Ms. Marasco, getting back to the birth and death data, commented that she thought that as a result of discussions held at the previous meeting, the tribes had the right to provide the data or challenge the data. The language was then displayed on the overhead (Attachment 5). Seeing the language, Ms. Marasco retracted her statement.

A/S Liu stated that the language was acceptable to HUD. Mr. Sossamon asked if there were any additional comments on the language. Mr. Ducheneaux turned the floor over to Ms. Kidder, who noted that the last sentence should reference 'data' challenge, instead of 'census' challenge. Ms. Kruszek responded that the intent was that if a tribe submitted a census challenge, the IHS data would be applied to the challenge. Ms. Kidder asked if a tribe had to submit a census challenge in order to challenge the birth and death rate data. Ms. Kruszek responded that it was not necessary, and clarified that if you did submit a census challenge, the birth and death rate data would apply. Ms. Gore commented that it was her belief that this section would also be referenced in data appeal process language. Mr. Ducheneaux, noting that there is a reference to 'Needs variable,' asked if this language replaces §1000.330, and if the entire regulation was being changed by dropping the 's' on 'variables.' Mr. Boyd clarified that this was a typo, and that the reference should be to 'variables.' Mr. Ducheneaux commented that he still thinks that the birth and death data is a separate rule, and should not be part of the Needs variables. Ms.

Tooley stated that there would be a separate section on how the data for the Needs variables are challenged (§1000.331). Mr. Humphrey reiterated that what is happening is that §330 refers to all Needs variables, and that something must be included to indicate that only the population variables are updated in this way. A/S Liu suggested that the attorneys work on this for the next fifteen minutes and then present language. Mr. Sawyers suggested that the committee take a 15-minute break. Ms. Hobucket requested that the committee return in exactly 15 minutes, and no longer, and added that she waited for 55 minutes after lunch for the committee to reconvene.

There was a 15-minute break.

Mr. Sossamon reconvened the meeting at 3:20 pm, although there was a brief delay as the team working on the birth and death language was not quite finished. The new language was presented on the screen (Attachment 6).

During the delay, Mr. Sossamon noted that the committee could continue going through the tabbed list, and perhaps address the easy ones first. He suggested Tab #5, which directs HUD to become an active participant in the process. Mr. Boyd stated that HUD has tried to help facilitate the process and move forward as smoothly as possible. He added that his staff has been inundated with requests and is basically up-to-date at this time. He stated that HUD believes that it has participated fully and honestly. Mr. Ducheneaux noted that he respectfully disagreed with Mr. Boyd, and that HUD hasn't come forward with its proposals, and was therefore not negotiating.

Mr. Bush commented that Nevada Cal introduced the resolution, and referred specifically to HUD's trust responsibility to the tribes. He noted that although there are tribes that are satisfied with the funds they are receiving, Nevada Cal is not satisfied. Mr. Bush reiterated that there are problems for smaller tribes; that unmet needs are not being addressed; and, he reiterated that they are not satisfied with the current formula. He closed by noting that there has been a lot of discussion today that should have happened six months ago, and that any time the committee wants to take up minimum funding, he's ready.

Mr. Sossamon asked if there were any further comments on Tab #5 or any proposals for further action on it. Mr. Ducheneaux asked if the committee had reached consensus on this item. Mr. Sossamon stated that there had not been a call for consensus, but that if Mr. Ducheneaux wanted to call for consensus, he could. Mr. Ducheneaux called for consensus. Mr. Bush commented that the main objective was to get this in the record. Mr. Sawyers requested clarification on what was being brought up for consensus.

Mr. Anotubby stated that he was uncomfortable calling for consensus on this item, since it appears to reflect the concerns of the Nevada Cal Housing Association. He added that he wouldn't be able to support this without having more information. He then suggested simply requesting to have the resolution entered as part of the record of the proceedings. Mr. Bush indicated that he would be satisfied, so long as Nevada Cal's position was

stated in the record. Mr. Anoatubby stated that it was not, therefore, necessary to call for consensus. Mr. Ducheneaux stated that he would like consensus on the resolution, and that the committee should decide.

Mr. Sossamon asked those who agreed with the resolution to raise hands. Mr. Ducheneaux requested that the question should be rephrased to ask those who object to the resolution to so indicate. Mr. Sossamon agreed, and asked those who object, to raise hands. There were 18 objections.

Mr. Ducheneaux requested that those who objected provide a reason, although he noted it was not required by the protocols. Ms. Marasco responded that she objected because there is no outcome to the vote, and she didn't really understand why it was included in the proposals. She added that HUD is participating, regardless of whether you agree with what HUD is saying. She clarified that she was not part of Nevada Cal. Mr. Anoatubby stated that he did not agree with the resolution. Ms. Tooley asked if the Nevada Cal resolutions are part of the record. Mr. Sossamon responded that they are. Ms. Tooley noted that being part of the record was all that Nevada Cal wanted. Mr. Sossamon confirmed that the resolution would be part of the record.

Mr. Naize suggested that the committee return to Tab #25 (birth and death issue). Mr. Sossamon agreed and asked Ms. Falkner to read the language (see also Attachment 6). He then asked if there were any questions. Mr. Gorynski called for consensus. Mr. Ducheneaux requested that §1000.336 be read before voting. Mr. Reed asked if there was more than ¶a, b, and c. It was clarified that the complete language was on the screen. Ms. Greene noted that when §1000.336 is discussed, the birth and death rate language must be referenced. Ms. Marasco asked for a redline strikeout version. Mr. Pereira stated that ¶a is the original language, and that ¶b and ¶c are new. Ms. Marasco asked for confirmation that nothing had been stricken from the original language. Mr. Humphrey confirmed that was true. He added that §336 is now specifically mentioned, and will have to be expanded to include birth and death rate data, as §336 only mentions census data. Mr. Sawyers commented that this will happen quite a bit, and so the committee should just go forward one item at a time so we can move forward.

Mr. Ducheneaux referred to his earlier comments and noted that he will give conditional consensus on this, so long as he has the ability to revisit the regulations as a whole and within the context of the whole. Mr. Sossamon reiterated that the only way the committee can go back is by consensus. Mr. Ducheneaux responded that if he gives conditional consensus, he wants to maintain the right to withdraw consensus. He added that he has no objection to the language per se, but that he doesn't agree with the process. Mr. Sossamon stated that if he wants to revisit this at some point later, he should withhold consensus now.

Ms. Greene suggested that the committee agree now to look at the complete regulations as a whole at the end of the process. That way, the committee can move forward. Mr. Sossamon noted that would change the Protocols. Ms. Greene disagreed, and commented

that the committee would merely be asking for consensus on the whole, and added that the first Neg-Reg committee did that.

Mr. Sossamon stated that there was a call for consensus on this language, and that members of the committee could either consent or withhold consent. Mr. Sawyers stated that he agreed with Ms. Greene, and that you may reach consensus today, but the committee will still have to reach consensus on the whole after looking at everything. Mr. Sossamon stated that it was his opinion that the committee follows the Protocols. Mr. Sawyers then stated that after the comment period, the committee will have to reach consensus on the entire rule, so no matter what the Protocols state, according to law, you still have one more chance to review. Mr. Sossamon stated that there was not a call for conditional consensus; there was a call for consensus.

Ms. Greene commented that the committee is trying to get beyond this problem. There was further discussion on this point. Mr. Gorynski withdrew his call for consensus. Mr. Sawyers called for conditional consensus on birth and death language, based on a review of the final rule. Mr. Sossamon asked what conditional consensus meant. Mr. Sawyers responded that it meant that at the end of the process, members of the committee would be able to reach consensus on the final rule, and that this call was to get beyond the current stalemate.

Mr. Sossamon asked if there were any objections. Mr. Shuravloff stated that since there is no formal definition of conditional consensus, it appears that either the Protocols would have to be changed or there could not be a call for consensus until the end. Mr. Sossamon suggested that one solution is that there would be no further recommended changes or action on this item. Mr. Shuravloff responded that he would still ask for consensus on items, but then at the end, call for consensus on the entirety. He then called for consensus on calling for consensus on the entire rule. Ms. Tooley asked if that would be before or after the public comment period. Mr. Shuravloff clarified it would be prior to publication. Mr. Sossamon queried if the entire rule is published or only the parts that are changed. Mr. Shuravloff responded that it would be only the sections that have been changed.

Mr. Sossamon recapped that the current call for consensus is for a call for consensus on the regulations that have been changed as a whole (when the committee's work is complete).

Mr. Sceeles asked for clarification on whether HUD policy decisions would go to the tribes for comment. Mr. Sossamon confirmed that was true. Mr. Sceeles then asked if HUD would provide a rationale on the use of multiple race census data at the time of publication so that the tribes would have the ability to comment. Mr. Sossamon responded that it was his understanding that HUD will provide a rationale. Mr. Bush restated that the question was whether or not non-consensus items will be published, adding that during the last negotiated rulemaking, this was true. Then there was public comment and workgroups were established to look at the items. A/S Liu stated that HUD

had no objections to printing non-consensus items, and would be looking at the record for the rationale. He noted that the public would have a chance to comment. Mr. Anoatubby queried if there would be consensus on what non-consensus items would be published. Mr. Hudson queried if the entire regulation would be published or only the changes, and would people be able to comment only on the changes. A/S Liu responded that public comment would only be on the changes. Mr. Hudson commented that if only the changes are published, then there wouldn't be any non-consensus items published. A/S Liu stated that as part of the process, there was some discussion in the Preamble, which provides the public with context. He added that this is something that can be discussed further.

Mr. Sossamon recapped that there are two action items: Mr. Sawyers' call for consensus; and Mr. Shuravloff's call for consensus. Mr. Sawyers stated that he would change his call for consensus, so long as Mr. Shuravloff call was taken first. Mr. Shuravloff restated that his call was for a call for consensus at the end of the process on the changes to the regulations as a whole prior to publication.

Mr. Sossamon asked if there were any comments. Mr. Ducheneaux stated that he agreed, but wanted it understood that he reserved the right to object.

Mr. Sossamon stated that consensus had been reached and therefore, the committee will call for consensus on all the consensus items taken in totality.

Mr. Sawyers then called for consensus on Tab #25, birth and death rate language. Mr. Ducheneaux noted that he agreed with the language, but reserved right to object later, adding that he agreed in order to move the process along.

Mr. Sossamon announced that the committee reached consensus on Tab #25, and requested that the document be dated and submitted for the record. He also commented that the Protocols were essentially altered.

Mr. Sossamon then asked the committee if it was ready to move to a discussion on substantial housing services, tabs #20 and #21. The language was displayed on the screen (Attachment 7). Ms. Greene commented that it was necessary to address tabs #17 and #18 before addressing tabs #20 and #21, because formula area must be defined first. Mr. Sossamon noted that the two issues were separated in the sub-workgroups and they were not presented in a sequential manner. He added that it was his opinion that substantial housing services could be defined without formula area. He then put the question to the committee.

Mr. Heisterkamp pointed out that the definition of substantial housing services is one of three pieces that have been presented by the workgroup: formula area, overlapping area, and substantial housing services. He added that the committee had already made some progress on the formula area definition, and then had to pull back, and he proposed going back to formula area, then overlapping area, then substantial housing services. Mr.

Carlile commented that the definition of substantial housing services is referred to in the formula area definition, and so it was necessary to define it before going forward with formula area. Mr. Sossamon asked if this would be a better sequence.

Mr. Heisterkamp recapped that there was some proposed language on formula area when the committee broke last time. However, one of the other pieces could be addressed instead. Mr. Hudson noted that there are two different proposals for §1000.326: one that includes substantial housing services and one that does not. Mr. Humphrey stated that substantial housing services appears in the regulations, but was never defined. Mr. Sossamon made the recommendation to go to formula area first. There was another recommendation to address substantial housing services first. Mr. Hoffman suggested addressing all three, since there is a question in respect to overlapping area in formula area. Mr. Sossamon commented that with the procedures as they are now being followed, the committee will be able to come back later in any case. He commented that the substantial housing services definition was displayed on the screen and the committee may as well address it at this time.

Mr. Heisterkamp suggested that for sake of discussion, the committee look at the version with percentages. Mr. Sossamon asked if under ¶1, the housing activities in the area equivalent to 100% have to be spent prior to the increase in formula area. Mr. Heisterkamp replied that was correct and the expenditure had to be shown in the IHP. He added that there would have to be some commitment to make certain the money is there, and once the challenge is submitted, the best way is to take the expansion and money to show commitment. If not, you can show that most of your population is in that area and so you should be able to get the area. Mr. Heisterkamp noted that it was thought that tribes that had the ability to invest in the prior year would fall under ¶1, and others would fall under ¶2. Ms. Greene queried if a tribe could expand at all, unless your tribal members live in the area. Mr. Heisterkamp noted that this would cover a landless small tribe that could show that the tribal population resides somewhere and that they have never had the funds to provide services there. He added that the intent was to address the smaller tribes. Ms. Greene stated that she was planning to expand her area to an historical area, but she couldn't reach 51%. Mr. Heisterkamp asked if she would comply under ¶1. Ms. Greene responded that she would if local median income level is used, but not national. She added that both California and Alaska would have the same problem. Mr. Humphrey suggested adding '80% of median as defined in NAHASDA.' Ms. Greene stated that she could live with that. A change was made to ¶1 and ¶2 to include: 80% of median income as defined by NAHASDA.

Mr. Heisterkamp referred to the definition of 'median income' as follows:

“...median income means, with respect to an area that is an Indian area, the greater of - (A) the median income for the Indian area, which the Secretary shall determine; or (B) the median income for the United States (see 25 usc 4103 (14).”

Regarding ¶1, Mr. Heisterkamp noted that the opinion of the sub-workgroup was that if the tribe has resources, they could make an investment for a year, and will then take 100% of the increase for continued commitment. Mr. Sossamon asked what would happen if 50% of tribal members reside in the Dallas metroplex, for example. Mr. Heisterkamp responded that there are other definitions of overlapping area and population cap that would apply. Mr. Sossamon stated that he doesn't want Oklahoma to be confined to Oklahoma, and California to be able to expand. Mr. Heisterkamp reiterated that this section refers to the type of services provided, not the area, and that this is simply defining housing services. He added that Oklahoma has not agreed to consensus on formula area. Mr. Bush stated that he had requested ¶i and ¶ii. Mr. Heisterkamp pointed out that this refers to the number of tribal members. Mr. Bush clarified that the paragraph says 51% of tribal enrollment. Mr. Heisterkamp stated that the sub-workgroup had a concern that the tribe determines the number. Mr. Bush suggested taking out "as determined by the tribe" and adding "for that tribe." Ms. Kidder asked for a clarification on whose official tribal enrollment the "51% or more" referred. Mr. Chavez asked what it would mean that overlapping areas would be cut off by other tribes wanting to take an area. Mr. Heisterkamp responded that the issue was addressed in the definition of overlapping area. He added that 51% is a threshold, and that it was thought that where a tribe has a large concentration, you could show the percentage. The minimum is 51%, so 30 % would not be 'substantial.'

Ms. Greene asked why 51% was selected. Mr. Carlile responded that 51% was used as a starting point. Ms. Greene suggested that the number be reduced to 30% since many members are encouraged to live outside the service area. Mr. Adams queried about the relationship between substantial housing serves and overlapping area. Mr. Heisterkamp responded that this is a component, and that if the percentages are changed, you might have three tribes in an overlapping area that need to be dealt with. He then brought up what happens when the tribes share a geography, and that the percentage doesn't matter in that case.

Mr. Bush stated that he didn't like the 30% figure, but agreed with the overall concept. Mr. Sawyers stated that he agreed with Mr. Bush on the concept and further stated that 51% is a better figure. He then asked if the committee could agree with the concept, and move to the other two issues at this time.

Mr. Sossamon asked if the committee was comfortable with the language, if not the percentages. Mr. Chavez stated that he would like to move to the other two pieces. A/S Liu commented that HUD would have an additional paragraph to add for both informational and technical levels. Ms. Greene requested that since the regulations are in question and answer format, that the section be put into language that will be clear to those who have not been part of the process. Mr. Sossamon noted that this could happen in the drafting committee

Mr. Sossamon then raised the issue of formula area definition. Mr. Heisterkamp directed the committee to the second document in Tab #19, §1000.302 (see Attachment 8), which

was displayed on the screen. He noted that the Oklahoma and Alaska tribes had additional language, for example, ¶3 relates to the Alaska language, which has changed and the new language will be inserted when available. Mr. Heisterkamp returned to the beginning, and noted that ¶1 includes the basic definitions, and that there are two different proposals on the table, and that the alternate language is in ¶2ii. Ms. Marasco asked for a clarification on the added ¶ix.

Mr. Bush responded that there are tribes in California that don't have geography, and that if the tribe doesn't have geography, under this section, they would get a county. Ms. Marasco asked how these tribes are currently funded. Ms. Tooley responded that balance of county is assumed, and the tribes wanted to put something specific in the regulations. She added that this doesn't affect the population cap. For example, if the tribe has 5 members, and the county has 5000, the tribe can only count up to 10 persons, or the tribe would have to conform to the other options. She reiterated that this is not a way for small tribes to get a lot of other area. Ms. Kruszek commented that the solution being proposed captures some of what is done now, but not all. She added that HUD looks at substantial housing investment: including the ratio of how many dollars are invested relative to how many dollars are at the tribe's disposal. She suggested that this language is still a bit vague, and could be discussed further, perhaps later this evening as a smaller group. Ms. Tooley recommended that the ¶xi be left in and looked at along with other issues, such as Oklahoma and Alaska. Mr. Gorynski reported that his tribe had three counties identified in the area we are serving. Mr. Heisterkamp asked if ¶ix was the only way his tribe complies, confirming that the tribe had no other geography. Mr. Gorynski responded that the tribe had no reservation, and no trust land.

Mr. Heisterkamp reiterated that tribes would have at least one way that they could approach formula area (¶i – ix). Then, ¶2 would be for expansion purposes or to redefine formula area. Ms. Greene, referring to ¶2i, noted that she objected to HUD designing the forms on the basis of sovereignty, and reminding the committee members that the IHP is difficult to use. Ms. Kruszek clarified that HUD would simply like to have an official form designed with HUD input, but that HUD didn't have to design the form, and noted that technical request 39 might provide the basis for the form. Mr. Sossamon, referring back to ¶ix, asked if the appropriate balance of county would be assigned, noting that HUD makes that determination. Ms. Tooley suggested that the question be noted, but that it is discussed later on.

Ms. Greene stated that she would like to see language added to ¶2 A, B, and C that refers to historical area. Mr. Heisterkamp asked if she had any proposals. He then added that such a definition might belong under ¶1. Ms. Greene clarified that she was referring to expansion. Mr. Heisterkamp directed her to provide language that the committee could consider. Ms. Lambert asked if sub ¶A should specifically state 'substantial.' Mr. Heisterkamp responded that ¶A is an 'and' situation. Mr. Humphrey noted that ¶A is merely housing services, and the definition of 'substantial' is used to establish whether a tribe can get into an area. This presupposes that a tribe is in that area, and may be used to get another entity to agree to allow your tribe to provide housing services. He suggested



going back to the top of ¶2, and that one of the things the tribe has to show is that it attempted to obtain an MOU. This is not an agreement to provide substantial housing services, the tribe merely needs to provide services. Ms. Lambert reiterated that she wants to show substantial housing services.

Heisterkamp clarified that the tribe would have to demonstrate ¶A and ¶B, or ¶C. If the tribe can show something in ¶1, but ¶A will almost always be shown in combination with ¶C. Ms. Greene asked about court jurisdiction, for example, if the tribe has jurisdiction over children. Mr. Heisterkamp indicated that would be tribal jurisdiction. Mr. Sossamon indicated that he did not agree with ¶C as an option, and the tribe must be providing substantial housing services. Mr. Heisterkamp reiterated that the approach was ¶A and ¶C or ¶B. Ms. Greene restated that she has a problem with that because if you don't have the money to begin with, the door is shut. Mr. Heisterkamp pointed out that the tribe would then fall under ¶1. Mr. Evans pointed out that the first part of the definition is separate, and that whatever new funds a tribe receives if you expand, the tribe must spend 100% of the new funding from any source. Ms. Greene commented that the language states that you must already be providing services. Mr. Evans asked if the tribe was providing services in the area the tribe wants to expand into. Ms. Greene responded that the tribe was not providing services, except for septic systems, because it doesn't have the funding. Mr. Evans commented that funding septic systems is an affordable service. Ms. Greene responded that wasn't true because they might not be low income, since installing septic systems doesn't look at income.

Mr. Humphrey restated that ¶A, ¶B, ¶C are already in the regulation, and that the location has moved. He read from the original regulations to demonstrate that the language is almost identical. Ms. Greene suggested that perhaps it's HUD's interpretation that is the problem. Mr. Humphrey pointed out that HUD has a list of examples, which became the interpretation. Ms. Greene opined that the intent of the original has been lost.

Mr. Sossamon reiterated that the tribe must meet ¶A and ¶C or ¶B. Mr. Heisterkamp confirmed that was correct. Mr. Gorynski commented that the tribe would not be able to get an MOA. Mr. Heisterkamp responded that is why the language refers to an attempt to obtain an MOA. Ms. Greene requested that someone explain why plan was taken out, and that she would like to have it put back into ¶C. Mr. Heisterkamp stated that there was quite a bit of concern in the workgroup regarding awarding funding based on what a tribe plans to do, puts a lot of things in play. It then becomes a problem of enforcement. For example, what if the tribe doesn't use the money? What if the funding is used for something else? He pointed out that it could be months or years in order to recognize that this is occurring and during that time, other tribes wouldn't be getting money for what is actually being done.

Ms. Greene asked how this is different from the IHP. Ms. Kruszek responded that under the current regulation, the definition is 'planned and future' provision of services, and that this regulation discusses future funding. Ms. Greene noted that the language doesn't say that. Ms. Kruszek noted that the regulation wasn't written that a tribe could get an

area based on planned development. Mr. Humphrey stated that his position was that the statement was different than that of the workgroup, and that the original language stated previous and planned development, which was interpreted in a certain way. Ms. Tooley commented that the regulation was previous and planned, not one or the other. Mr. Humphrey noted that additional areas are not identified and that there is a difference between what you did previously and what you have planned. If a tribe can show substantial planned development, that should be included. Mr. Sossamon stated that the tribe has to show a substantial investment, and that the tribe will continue that investment with the additional funding received. Ms. Greene noted that this isn't clarified.

Mr. Heisterkamp pointed out that there are two different viewpoints, but the HUD has never awarded any funding for planned services. The question is then do we accept that as a practice or try to change the practice. He added that perhaps there should be a proposal to change ¶C. Ms. Greene commented that a poor tribe couldn't just start pouring money into services that are not part of your IHP. Mr. Heisterkamp asked if she had language. Ms. Greene suggested: "is providing or plans to provide."

Mr. LaPointe suggested: "is planning to or is providing substantial housing services."

Mr. Sossamon asked what would happen if a tribe states that it plans to provide \$40 million in housing services. Ms. Greene responded that the tribe would still have to prove need in the expanded area. Mr. Bush added that the tribe also has to prove substantial housing services. Mr. Humphrey commented that if this new language is accepted, the tribe still has to meet the definition of substantial housing services. Mr. Sossamon stated that the tribe would only have to prove it after the fact. Mr. Humphrey responded that in that case, the funding would be recouped if the tribe doesn't follow through. Mr. Sawyers commented that he didn't think that providing only planned activities is what was intended. Mr. Evans concurred, and asked how many years a tribe could plan to provide services. Mr. Sossamon stated that he would find it difficult to agree to fund on planned services. Ms. Greene commented that the IHP is only a plan. Mr. Sossamon responded that the IHP is based on services in the established jurisdictional area. Mr. Bush stated that when you talk about an IHP, you are talking about services. But that the IHP is not designed to establish formula area. It was his opinion that if there is a problem funding a specific area is, this isn't the way to fix it, and should go back to formula area definition. Mr. Sawyers agreed with Mr. Bush.

Mr. Heisterkamp reiterated that this is the proposed language, and the point is for the committee to think about it. Ms. Greene reiterated that the bottom line is that the committee has to come up with language. Mr. Heisterkamp suggested that perhaps the people who are interested should come back with language. Mr. Sossamon suggested going back to original. Ms. Greene stated that she wouldn't agree. Mr. Sossamon then suggested going with the interpretation HUD is using now, adding that if the committee doesn't reach consensus he could live with the status quo. Mr. Sawyers noted that the problem is that under the original regulation a tribe has the ability to expand, but under HUD's rule of thumb it doesn't. Ms. Greene commented that the rule of thumb is not

legal. Mr. Sossamon responded that under the current language, the Secretary has the ability to make policy and administer policy. Ms. Kidder suggested that a small group meet and come to some agreement, that this is a small piece of a larger piece that has merit.

Ms. Greene asked why was this changed. Mr. Heisterkamp stated that the workgroup wanted to make the regulation match the practice, and that some other changes would satisfy the tribes. Ms. Greene asked if this would be complying with what HUD has been practicing. Mr. Heisterkamp replied that wasn't the case. He then suggested that be taken up as a side conversation. He pointed out that a larger part of the discussion is ¶ii, when a tribe moves into another area, that there be notice to other affected tribes, and written notice of HUD's determination. He added that this includes the ability of tribes to bring other information, which would apply only where there are other affected tribes.

Mr. Gorynski asked how this relates to new tribes. Mr. Heisterkamp responded that if you are a newly federally recognized tribe, there is usually a congressionally mandated service area, and so the tribe wouldn't necessarily have to use this regulation. Mr. Gorynski commented that in his case, three tribes are claiming the same geography. Mr. Heisterkamp pointed out that all affected tribes should bring to the table any information that is pertinent, and that's exactly what the group was trying to capture. Mr. Chavez queried why it should be easier for a new tribe to take over an area, pushing out the existing tribe. He opined that the new tribe should have to prove that they have certain numbers. Ms. Kruszek commented that this particular case required a change in census definition, and that the new tribe received its geography through census. Mr. Chavez asked if the other affected tribes were notified. Ms. Kruszek responded that there is a participation component in the census process, and that according to census procedure; there should have been tribal input. However, she added that it is possible that the census worker didn't know the procedure. Ms. Kidder stated that all this is requiring is that the notification is made so that the other tribes can come into the process, and that the language is drafted is that if there is a new service area, you have to notify to enable the affected tribes come to the table. Mr. Hudson commented that the way this is written, HUD shall notify all affected tribes within the area. But, what happens if an area isn't currently a part of any formula area. Mr. Heisterkamp stated that there was quite a bit of discussion on notification. He noted that according to HUD, the easiest way is to include the notification in the formula response form mailings, so that every tribe in the country knows which tribes are expanding their formula area. He then asked if HUD wanted to comment. Ms. Tooley commented that tribes would we be getting the information after the fact. Ms. Kruszek stated that the notification could be made either annually or biennially in the federal register with time for comments, so meaningful input could be obtained. Mr. Bush stated that all tribes are potentially affected, and this can be fixed. Mr. Hudson suggested that language be included that HUD shall notify all tribes. Ms. Hobucket commented that she didn't understand the relevance. Mr. Heisterkamp responded that this language would provide everyone in the country the ability to comment on HUD's determination on expanding formula area, and that what the tribes deem relevant could be something else. For example, if your tribe wants to comment, it

can use any information that the tribe thinks is relevant. He added that the workgroup believed that it was appropriate information could be submitted. Ms. Hobucket asked what recourse would be available to a tribe that might not have been paying attention and a tribe came in and took a balance of county. Mr. Heisterkamp stated that the tribe could attempt to expand back into the geography. He added that there had been some discussion on whether there should be HUD-mandated consequences, and it was thought that it was up to the tribes to pay attention. It was also pointed out that HUD has stated that it would be possible to publish the information in the Federal Register, either annually, or other. Ms. Hobucket stated that she disagreed with the change that any tribe can comment. Ms. Baker asked if there would be a timeframe for a response. Mr. Hudson commented that he didn't understand Ms. Hobucket's opposition. She responded that she preferred the original. Mr. Hudson reiterated that the notification process expands the number of tribes that are notified, so that a tribe can't expand without others knowing. Ms. Hobucket asked what a tribe's recourse would be. Mr. Heisterkamp suggested that if she is proposing that there be some recourse, she should propose language. He also suggested that the workgroup thought that tribe's ability to comment is the recourse. Ms. Hobucket asked if a tribe could be prevented from expanding if one tribe says no.

Ms. Tooley stated that if only the tribes within the proposed expansion area are notified, and there is currently no tribe in that area, then no one is notified. She noted that this is the situation that was being addressed. Mr. Evans commented that some of this is addressed in the overlapping areas section, but in terms of nationwide, there will be a standard of measurement for HUD to evaluate. He asked if there was any suggested language on a standard of measurement that would enable HUD to deny an expansion. Mr. Gorynski asked if it is possible to include some language that would direct a notification to the affected tribes, plus language that would notify the rest of the nation. Perhaps the tribe wishing to expand should mail a letter to affected tribes. Mr. Humphrey commented that HUD raised the issue of a nationwide notice, and that the concern was that the notification would be ignored. He added that it would be a good idea that there be both nationwide and more local or state notice, adding that the notice shouldn't just be a formality. Ms. Greene stated that it could be similar to an abutters notice, perhaps by area, e.g. USET. It would be then be the responsibility of the tribe to send out the notice.

Mr. Heisterkamp noted that it was never the burden of the tribe wishing to expand to provide the notice. Mr. Chavez suggested stating what a tribe can present in objection, and that there isn't currently a way to object. Further, even if a tribe did object, what process would the tribe go through to object. Mr. Heisterkamp deferred to HUD. Ms. Kruszek responded that the first thing is that the notice, limited to affected tribes, since there are some areas in which there are no tribes. She also added that there are complicated overlapping areas going on, and that it is possible that some tribes may be affected without knowing. HUD would like to make certain that all tribes are notified. She added that HUD is open to other ideas. For example, regional notification is easy, state notification is easy; but HUD may be uncomfortable limiting the process since

everyone is affected by the change. Mr. Chavez restated his concern that if a tribe is moving into his area and he objects, what does he need to do to substantiate the objection. Ms. Kruszek responded that HUD is required to provide a determination, and that the guidance is substantial housing services, and that documentation is required. She added that a possible challenge would be something that states that the expanding tribe’s documentation isn’t accurate. Then HUD would summarize the challenge and send it out to all tribes. Mr. Chavez stated that he would like to see that written into the language. Mr. Humphrey asked if this would be a notice of final determination or planned determination. Ms. Kruszek responded that as it’s currently written, the notification would be at the request stage; then comments would be requested, and any information received would be processed according to a set procedure; finally, the determination and rationale would be provided. Mr. Humphrey clarified that this would be a notice of planned determination, and then tribes would have 30 days to comment. Ms. Kruszek commented that HUD could make the proposed determination and accept public comment on that. Mr. Humphrey disagreed and that the public comment should form the basis for the decision, not the final determination, and should not be a challenge to go back. Ms. Kruszek stated that HUD receives the request to expand, processes the request, makes a determination, and then the notification is the determination. Mr. Humphrey noted that he prefers the HUD receives the request, and then publishes the request for expansion, and receives public comment. HUD then makes its determination. He summarized that there are two notices; one is notice of the plan, and the other is the notice of the determination. And, there would be two comment periods.

Mr. Sossamon stated that it has been suggested that we adjourn. Mr. Heisterkamp recapped, going back to ¶2, that the expansion provisions are intended to apply to those situations that are not included in ¶1.

It was agreed that the committee would reconvene at 9:00 am on Tuesday morning. The meeting was adjourned at 6:30 pm.

**TUESDAY MORNING, SEPTEMBER 23, 2003**  
**FULL COMMITTEE**

Mr. Sossamon called the meeting back to session at 9:20 am. He mentioned that per staff request, if anyone has proposed language, to please submit it on a disc if possible. He also mentioned that staff was passing out final language from yesterday’s consensus item (Attachment 9).

Heisterkamp recapped that the committee was discussing formula area definition ¶2 yesterday. Ms. Greene stated that she had a proposal for ¶2, and that the intention, during the first negotiated rulemaking, was to allow tribes to expand to areas in which they had historical preference. She is proposing taking away the term ‘investment’ and including ‘planned services’ or historical presence. Therefore, she would strike: “what previous and planned investment it has made in the area.”

Mr. Heisterkamp asked if this would fit into the proposed language in ¶2 as discussed yesterday. Ms. Gore asked for clarification, noting that there was a great deal of discussion on ¶2 in the workgroups. She added that she is pretty committed to the language in the proposed ¶2 presented yesterday, noting that the workgroup had worked hard to provide HUD guidance on 'fair and equitable.' She stated that she is not opposed to ¶1, ¶2, and ¶3. Mr. Heisterkamp noted that if you go to ¶ii, it describes the documentation. Ms. Greene commented that she did not have a problem if the committee is satisfied that HUD will be making the decision on how to include this area. Ms. Gore noted that she would be opposed to eliminating ¶2i and substituting your new language. She added that they had consensus on the language in the workgroup on ¶A, ¶B, and ¶C. Ms. Greene reiterated that she has a problem with ¶c and is proposing her italics (Attachment 10). Ms. Gore reiterated that at this time, substantial housing services is something that HUD evaluates on its own, and the workgroup wanted to define substantial housing services, not leave it to HUD. Ms. Greene asked if the term substantial housing services is needed. Ms. Gore responded yes, that HUD has defined substantial housing services, not the tribes. Ms. Greene stated that the intent of the committee initially was not to include substantial housing services.

Ms. Tooley stated that at first negotiated rulemaking, the committee members had a lot of ideas on how this would work. However, what has happened is that tribes that attempt to expand formula area will impact other local tribes, or take a huge formula area that affects everyone. She added that in the workgroup during this negotiated rulemaking process, participants have had to both acknowledge the idealism or 5 or 6 years ago, and then find a better way to define how this expansion would work. She reiterated that formula area expansion can have a huge impact on just a few tribes in an area as well as everyone, citing the example of tribes close to large urban areas that could possibly manipulate the system that might not be in everyone's best interest. Ms. Greene pointed out that it was her intention to state what your planned services will be and then, you have to demonstrate what tie you have with the area. Mr. Sossamon commented that if you look at the definition of substantial housing services, it includes a threshold on historic presence and that if the tribe has a legitimate claim to an area, it would be advantageous to have a clear process that allows the tribe to get into that area, not just areas you would like to claim. Ms. Greene stated that requiring 51% or more means that you must have more than half your tribal members living in an area. She added that in her opinion, this is too high. Mr. Sossamon responded that this is something we have to look at when we look at substantial housing services, but that the committee could look at the actual percentage when it is discussed. However, he added that there should be a commitment to the area. Ms. Greene reiterated that small tribes don't have the financial ability to commit to an area they want to expand into, but the only way to help these people is to expand into the area. Mr. Sossamon commented that a tribe isn't forced to expand. Ms. Greene then stated that her tribe cannot maintain FCAS and put at the same time put 51% in another area. She noted that this is a small tribe issue, and that small tribes don't have the funding to arbitrarily put it somewhere else. Mr. Sossamon opined that this is a choice.

Ms. Greene countered that if you don't have it, you can't spend it. Mr. Sossamon suggested that perhaps this should be looked at on the Needs side, or perhaps 51% is too high.

Mr. Gorynski stated that in his area there are 25+ tribes and they are overlapping, and that in the 3 county formula area, there are 5 tribes claiming the same area. He queried how it would be possible to separate the area using 51%, pointing out that no tribe currently has 51% of total population. Mr. Heisterkamp responded that the proposal being discussed is for expanding formula areas beyond your existing formula area and that there is another section on overlapping areas. He pointed out that the definition of substantial housing services is for previously unserved areas or other expanded areas, and has nothing to do with splitting geography.

Ms. Gore stated that to her knowledge, the committee has not agreed on the substantial housing services definition, and that 51% was a plugged-in number. She added that she continues to believe that a definition is critical, but she is not married to the 51% threshold. Ms. Kidder commented that here are places where there is no way to get housing and that the purpose of NAHASDA was to get more money into those areas, which tend to be rural areas that are poor. Tribes try to expand formula area into such areas in order to be able to begin leveraging of other funds. The definition of substantial housing services requires only that you have to demonstrate services using any funds, for example, CDBG, HOME, etc. Ms. Kidder added that NAHASDA funds are targeted to places where there is no eligibility, etc. If the areas of expansion are outside of Indian Country (not trust lands, for example), they are eligible for other HUD programs. She noted that you have to show some commitment to a portion of your population. Look at the purpose of NAHASDA. Mr. LaPointe commented that if the tribal operation was to commit to services, but then doesn't receive funding from HUD the next year, the tribe will still have to keep funding the services. He noted that this would cause problems.

Mr. Heisterkamp asked if there more comments, and if so, did the committee want to continue to try to integrate them at this time. Ms. Greene suggested looking at the percentage. Mr. Heisterkamp asked if that was a recommendation to go back to the substantial housing definition. Ms. Greene responded in the affirmative. The discussion returned to Tab #20. Mr. Heisterkamp recapped that at the end of the discussion, there were some proposals to change 51% to something lower. Ms. Greene reiterated that it is unrealistic to assume that a tribe will have 51% of its population outside of its reservation. She proposed 25%, which she felt was more realistic, adding that by law, her tribe must maintain its CAS, and that she didn't think that any tribe will have that many members living off formula area lands. Mr. Sawyers commented that what might then happen is that some tribes could then take large urban areas, for example, Navajo could take all of Phoenix. Further, he commented that tribes with traditional areas might be able to pick up areas that were not intended. He cautioned against opening up something the tribes can't live with. Ms. Greene stated that in the initial regulation, one of the determinations that HUD had to make was 'fair and equitable' to all tribes. Ms. Gore proposed 35%, which is more efficient if an area is going to be carved up four

ways. Ms. Greene pointed out that this would refer to overlapping areas. She added that her tribe isn't moving into anyone's area. Ms. Kidder noted that 4 tribes, for example, would carve up Rapid City. She also stated that she doesn't agree with using a dollar value cut off, adding that if the tribe is asking for money, it should have to be spending at least that amount. Ms. Greene reiterated that small tribes don't have the ability to do this. Ms. Kidder responded that it is a commitment, and you have one or the other. If Indians are counted in all areas, there will be no more money left to serve Indians living on the reservation, and 25% every metro area in the country will be served by NAHASDA.

Mr. Anoatubby asked why there has to be the same percentage in ¶ii, and that it makes more sense to leave 51% there. Ms. Greene stated that she could live with that. Mr. Anoatubby went on to say that he also thinks that 25% is a bit low, but would go along with 35% for ¶i. Mr. Humphrey, referring to ¶ii, commented that perhaps the percentage should be of the Needs-based portion of the grant, not the total IHBG. Mr. LaPointe stated that he agreed with Mr. Anoatubby on 35% for ¶i.

Mr. Heisterkamp asked for comments on the Needs-based portion. Mr. Reed requested clarification. Mr. Heisterkamp clarified that the definition used to state 51% of the total IHBG; now we are saying 51% of Needs side of your grant as a commitment to an area. He added that in order for a tribe to meet substantial housing services definition, 51% of a tribe's needs-based grant would have to be committed. He added that this would have the effect of lowering the amount of money a tribe would have to invest. Ms. Tooley noted that on the other end, for a tribe that gets a lot of money the amount would go up. Mr. Heisterkamp reiterated that was the point of using a percentage, which is in proportion to the amount the tribe receives. Mr. Bush, referring to Alaska where the corporations get the funding, asked how this would affect those tribes that get little or no Needs money. Mr. Heisterkamp responded that Alaska is a unique situation, but that there was a section in ¶1 that addresses that situation. Ms. Gore clarified that the corporations do not get the money. She further noted that there are some regions where the Needs component is very small and she is thinking of how this would affect them. She asked how HUD would interpret this, for example, does ¶i take precedence over ¶2

A/S Liu stated that it would be a choice. He added that if there is consensus, HUD would have a responsibility to do some monitoring and collection of evidence to support a request. He noted that HUD would not accept what comes in the door without some accountability. He also stated that HUD would add some language on its ability to accept documentation. Mr. Heisterkamp asked if HUD had that language now. Ms. Marasco commented that although this might aid small tribes, all would suffer from the drain on funds. Mr. Bush stated that 51% was put there for a reason, but that he would want to put in safeguards for Alaska. He also noted that there are some tribes in California where pretty close to 100% live elsewhere; some tribes don't have tribal land or have land without infrastructure. He stated that he would have trouble dropping below 51%, although he understands the funding problem. Ms. Gore reminded the group that Alaska has a separate proposal. However, she added that the Alaska tribes are concerned about any drain on the total allocation that isn't fair. Ms. Greene reiterated that everyone must



remember to be fair and equitable to all. Ms. Gore stated that she is here to serve tribal members wherever they live. Mr. Bush asked about the Alaska language, and would there be an exclusion for Alaska. Ms. Gore responded that she stands corrected, and that she was referring to the bigger formula area definition, where Alaska has a separate proposal.

Mr. Heisterkamp pointed out that the reason we went back to discussing the substantial housing services definition was to address Ms. Greene's issues, and did this current discussion address the issue. Ms. Greene stated that putting it into the Needs portion is helpful, and that she could live with that. Mr. Heisterkamp asked if this was a substitute for her previous proposal. Ms. Greene stated that she would like to see something regarding the presence of the tribe prior to being able to expand, but she is not sure how to word it. Mr. Heisterkamp asked if trust land is part of the primary issue. Ms. Greene responded that in her case, the land is now part of a state park, so she doesn't think they'd ever be able to put people there. She added that wasn't the intent of the trust land. However, she also stated that the language must protect against manipulation of the system, and so the population threshold may not be the answer. Mr. Heisterkamp asked if there something else that could be included in the substantial housing services definition. Ms. Greene noted that she would like to put in a safeguard.

Mr. Heisterkamp announced that HUD had requested a 5-minute break to write up HUD's proposed language.

There was a break.

After the break, Mr. Sossamon proposed that the committee spend the time until lunch wrapping up the formula area definition. He also announced that Mr. Heisterkamp had requested one hour after lunch to discuss overlapping areas. Mr. Sossamon further proposed that the committee begin looking at minimum funding at 2 pm.

Mr. Pereira provided the HUD language by adding a new ¶3 to substantial housing services on verification (see Attachment 11). Mr. Sawyers requested that 'developed by HUD' be changed to 'developed' to ensure that tribes to have input on the form. Ms. Kruszek suggested 'in a form approved by HUD.' Mr. Bush asked if 'will' should it be changed to 'shall.' Mr. Pereira agreed. Ms. Tooley requested clarification on whether the tribe must demonstrate annually how much money is being invested in order to continue to have that area included. Ms. Hobucket commented that reporting annually would be burdensome. Ms. Kruszek responded that this is not new, and refers only to expanded formula. She added that HUD currently includes something about 'continuing to spend funding' in the approval letter sent to tribes. She noted that this language simply formalizes the procedures. She also stated that HUD currently looks at APR, IHP, etc, and that this would be a separate form.

A/S Liu reiterated that for the Inspector General's office would be looking at monitoring mechanisms and so such mechanisms should be kept in the back of our minds as we

move forward. He stated that it would be necessary to demonstrate an understanding that accountability is part of the process within the context of sovereign-to-sovereign relationships. Ms. Greene noted that it would seem logical for this new form to be part of the APR. Ms. Kruszek commented that there are currently some issues with the APR and IHP forms, adding that one of the ways to improve the process may be to improve the reporting processes. She suggested that if there were a better, more reliable, and more direct mechanism for reporting, it would be helpful. Ms. Marasco stated that many tribes rotate through their communities, providing services of some kind to one on e year, another year. She suggested that a commitment might be on a 3 – 5 year basis, and hoped that HUD would be able to address that. A/S Liu stated that isn't in conflict with the language here, and that a tribe can verify on an annual basis that this is what you are doing, that you are moving to a different area on a specific basis.

Mr. Heisterkamp stated that he would like to come back to ¶2. Ms. Greene stated that she would like to propose language specific to Wampanoag. Mr. Heisterkamp asked Ms. Greene if the committee adopts this language, would she then withdraw her previous proposal. Ms. Greene stated yes. Ms. Marasco commented that she would go agree, so long as the percentages are changed back to 51% and the 'Needs-based' phrase is removed. Ms. Greene agreed.

Mr. Heisterkamp recapped that Ms. Greene had a proposal for specific language for the Aquinnah Wampanoag Tribe, along with reference to 51% of the total grant. He then asked for comments.

Mr. Carl stated that the intent of the Neg-Reg was being expanded to cover a tribal issue, which is not necessarily a Neg-Reg issue. He reiterated that if a tribe has trust land, it doesn't need an exception. Ms. Greene queried if her tribe could expand to on or near trust lands under the current regulations. Mr. Carl answered that was correct, so long as it is the tribe's land. Ms. Greene stated that the land is shared with another tribe that is not a federally recognized tribe. She asked for guidance from HUD. A/S Liu responded that there are lots of small tribes with similar issues. He added that HUD has the ability to provide waivers to ensure fair and equitable outcomes. Further, he suggested that the waiver process provides an alternate avenue instead of dealing with a specific issue here. Ms. Greene stated that she was not aware of a waiver. Mr. Pereira responded that HUD's waiver is found in 24 CFR part 5.110, and is referenced in NAHASDA §1000.8.

Mr. Heisterkamp noted that Mr. Anoatubby yielded to Mr. Carl, who asked if Ms. Greene would then withdraw her proposed language. Ms. Greene indicated that she would withdraw the language. Mr. Anoatubby requested going back to the original language in ¶2i (51% of total grant) and ¶ii (51% of population). Ms. Greene asked if the committee was still in agreement to take out 'national.' Mr. Heisterkamp confirmed that was true. Ms. Kidder asked if Ms. Greene was talking about trust lands, and if so, they are held in trust for your tribe providing legal basis, which then forms the basis for the waiver. Ms. Greene responded that the problem is that the city that holds the deed refuses to hand it over to Department of the Interior.

Mr. Heisterkamp restated that there was no longer a separate proposal on the table, and that the definition for expanding formula areas remains as it was. Ms. Greene commented that she would still prefer the percentage as 51% of Needs-based funding. Mr. Anotubby disagreed. Ms. Greene reiterated that if the grant isn't large enough, the 51% will eat into CAS, but you can't require a small tribe to take away from its CAS funding. Mr. Sossamon stated that the money could come from any funding source, so long as it is equal to 51% of your grant. He clarified that this language doesn't require you to spend IHBG funds, just an equal amount. Mr. Coyle argued that 51% but your CAS monies can't be spent, and that some tribes don't receive Needs funds. Mr. Humphrey stated that there is nothing in the regulations that requires spending on 37 Act units, so long as you show that you are maintaining the homes. Ms. Marasco commented that the language did say any investment and that it now states IHBG. Mr. Heisterkamp, referring to ¶1, clarified that the amount is equivalent to any funds. Ms. Marasco agreed. Ms. Hobucket queried if a tribe already has a portion of a county, will the tribe now have to meet these criteria. Ms. Kruszek clarified that this is for any new expansions from this point on, and that the old would continue to be treated as they were before. Mr. Humphrey suggested adding language to grandfather anything previously recognized. Ms. Kruszek stated that HUD could propose language.

Mr. Heisterkamp noted that should be added to the discussion of overlapping areas. He recapped that currently the committee was discussing formula area definition ¶1 ix. Ms. Kruszek clarified that this language was drafted last night, and that some tribes didn't qualify for any geographies, and that in order to participate in the program, a tribe would have to have something. She added that the language was developed through consultation with tribes and area ONAPs. She stated that the language could be applied to the broader issue, as well on substantial housing services as a grandfather clause.

Mr. Evans queried if unless there is specific language, does a new regulation become effective as of its passage. For example, do we need language retroactively or does it only apply forward. Mr. Heisterkamp responded that in this case if you take a snapshot of FY 03, these regulations would apply. For FY 04 and forward, if a tribe doesn't have the geography, it would operate under the new regulations.

Ms. Tooley requested that the committee go back to substantial housing services  
Ms. Wilson commented about the small tribes that do not have an identified geographic area, and that won't be able to take advantage of the regulations, since it is near the end of the fiscal year. A/S Liu responded that from a HUD perspective, what is being discussed is not intended to give an unfair advantage to any entity, and that he was not aware of any unfairness that this would impose on any tribe. He added that he didn't believe that any changes would affect current status. Ms. Wilson stated that if there are 5 overlapping tribes in an area, one or more may have an unfair advantage over the other tribes. A/S Liu suggested that this would fall into the overlapping area discussion, but that he didn't believe that situation is effected by this discussion. Ms. Wilson responded that overlapping area has been discussed at the grass roots level, and most agree that it

could become a problem. She also commented that the status of trust lands has been, and continues to be, a barrier to receiving services. Mr. Bush stated that the intent was to protect and grandfather the tribes that currently don't have trust lands but were assigned a geographic area for formula purposes. He noted that now, every tribe has a geographic formula area assigned. However, he added that there isn't a set policy on how this was done. In addition, he acknowledged that expansion was not prohibited. It simply keeps what we have now as a starting point. Ms. Greene commented that it is not stated anywhere that if a tribe receives permission from HUD to expand, that the tribe will be able to continue to keep that area.

Mr. Heisterkamp suggested going back to the reporting form, and that the subject now being discussed is covered in ¶ix. Ms. Greene asked for clarification on whether that means that once your formula area is accepted, it will remain. Mr. Heisterkamp stated that the discussion refers to what exists as of FY 03, and that any additional area you obtain in future you, will have to continue to report. Ms. Kruszek further clarified that the language in the formula area definition refers to "...was providing and continues to provide." Mr. Humphrey reiterated that the first 9 definitions are 'per se' identification of areas. In addition, there are areas that are recognized without any other provisions that have been established and will continue to be.

Mr. Heisterkamp asked if Ms. Greene's concern has been addressed. He then suggested that the committee move on by going back to the definition of substantial housing services. He recapped that the group had left off at the recommendation to keep 51% or more throughout, and 51% of the total grant amount. Mr. Doty commented that the Title 1 definition clearly states in ¶10 what an Indian area is. He added that it was his opinion that Indian area is your formula area. Regarding expanding services, he asked if his tribe was providing services to families in Oklahoma, for example, does that give his tribe a right to claim that area. Mr. Heisterkamp reiterated that we are talking about Formula Area as opposed to Indian Area. He stated that formula area is the area geography for determining funding. Indian area is where you operate, and it may be an area in which another tribe calculates its formula. He added that there may be an issue if you want to claim the funding, and these are the issues we are trying to address. Mr. Doty stated that formula area is not in the statute, but that Indian area is. He opined that there needs to be something in the statute that clarifies this. Mr. Heisterkamp stated that the only way that the tribes in the lower 48 could implement the statute practically was to define formula area. He added that Indian area is easy if you have a reservation or trust land. He clarified that ¶ix applies to those tribes that don't have reservation or trust lands. The formula area and these definitions are used to implement NAHASDA. They are intended to apply in other areas of federal law that have to do with Indian area. Mr. Heisterkamp commented that this is not an attempt to rewrite the law on Indian area. He reiterated that this is to help assign geography for allocation purposes, recognizing that this is a balancing act.

Mr. LaPointe called for consensus on the substantial housing services definition.

Mr. Sossamon announced that there was a call for consensus. He clarified that this was conditional upon review of the whole document at the end of the process. He asked if anyone was opposed. Mr. Heisterkamp reread the definition (see also Attachment 11). Mr. Gorynski stated that he was opposed to 51% of tribal enrollment. Ms. Greene asked if Mr. Gorynski had an alternate proposal. Mr. Gorynski stated that he thought that 35% would be stretching it, but that he could live with it. He also restated that the geographic area is the formula area. Mr. Sossamon clarified that this definition is only for expansion.

Mr. Gorynski withdrew his opposition.

Mr. Ducheneaux yielded to Ms. Kidder, who commented that the numbers should be calculated based on AIAN households, since income is defined by households, not by person. Mr. Sossamon agreed. Mr. Humphrey asked for clarification that total grant refers to the current IHBG grant. Ms. Kidder added that 'persons' needs to be changed elsewhere.

Mr. Sossamon recapped that there had been a call for consensus on the revised proposal. There were no objections. Consensus was reached on the definition of substantial housing services (see Attachment 12).

Mr. Heisterkamp initiated a discussion on the process of how HUD notifies tribes under ¶2ii of formula area definition. Mr. Humphrey stated that there was a proposal for a more formal notice procedure, which required HUD to reach a tentative determination before public comment (see Attachment 13). Mr. Heisterkamp noted that this language was developed in conjunction with HUD. He recapped that there had been a discussion on how HUD would notify tribes. He added that this proposal is a stepped process: the tribe submits a request for expansion with supporting documentation; HUD then makes a preliminary determination, which goes out for 30-day comment period public comment, along with the basis of determination. The comments are reviewed by HUD, which then makes its final determination. Ms. Marasco suggested a 90-day comment period. Mr. Humphrey suggested that if we can agree on the process, we could come back to the time period. Ms. Marasco mentioned that tribes typically meet monthly. Ms. Greene suggested notifying tribes through Federal Register or separate mailing. But added that if HUD uses the Federal Register, the extra time will have to be allowed for. Mr. Humphrey reiterated that the first notice would be for affected tribes, and that the final determination would be in the Federal Register. He noted that there is a two-week lag before getting a notice into the Federal Register. He then asked HUD if the notification could be by letter. Mr. Pereira confirmed that letter notification would be OK.

A/S Liu requested that staff provide an outline of the process. Mr. Pereira clarified that Notices generally go through OMB faster than Rules, but that there are specific timeframes within the approval process. Mr. Humphreys asked if it would be possible to require the initial notification by certified mail. Ms. Kruszek indicated that would be OK. Mr. Pereira added that for a Notice of this type, the process could be streamlined, probably through shortened department clearance, to give affected offices a chance to

review in 5 business days. He added that OMB may or may not have to review (10 days), so that 3 – 4 weeks would be a conservative estimate. He suggested that HUD could batch these in groups, publishing once a year, and providing an opportunity to comment.

Ms. Greene noted that her concern is that if a tribe is trying to expand its area, it will end up having to spend 51% for 2 years. Ms. Kruszek commented that a 90-day comment period could push the request for expansion into another FY. Mr. Carl asked if the intent was for HUD or to provide efficient notification for tribes. Mr. Pereira responded that the intent is to provide the widest possible notification. Mr. Carl asked for HUD's position. Ms. Kruszek responded that HUD could live with a mass mailing once a year, without going through the Federal Register process. Ms. Greene commented that the issue is not the Federal Register; it's notification only once a year that is troublesome. A/S Liu asked how many requests for expansion are received annually. Ms. Kruszek responded that there have been approximately 25 per year. A/S Liu queried if a burden would be placed on HUD to provide notification on a more specific basis. Ms. Kruszek responded that the burden is on an individual basis, as HUD typically receives all the requests at the same time. She added that if requests were submitted on an ongoing basis, the workload would be smoothed out and there would likely be more consistency and accuracy. A/S Liu suggested working toward three times a year.

Mr. Humphrey commented that if final determination is published in the Federal Register, it is more formal and more challengeable. Mr. Carl asked if the sovereign relationship was being expanding to the Federal Register. Mr. Humphrey noted that the public comment is not in the Federal Register; only the final determination would be published in the Federal Register.

Mr. Sossamon noted for the record that Mr. Carl is the official alternate for Mr. Naize at this time.

Ms. Hobucket asked if the final determination goes through the Federal Register process, would that mean that the funding for that tribe is then permanent. Ms. Kruszek responded that wouldn't be the case, and that reporting is required annually to show that substantial housing services are continuing to be provided to the area. Mr. LaPointe asked if the public comment would occur prior to formal determination. Mr. Pereira responded affirmatively, and added that there could be a preliminary determination and then HUD would consider comments before making a final determination.

Mr. Humphrey suggested looking at the time frame. He added that 90 days might be too long. He also noted that A/S Liu had suggested allowing for public comment three times a year. Ms. Marasco commented that she would like to stay with 90 days. Mr. Pereira noted that the standard for HUD documents is 60 days. Mr. Heisterkamp asked if the proposal from the committee is 90 days. He then recapped that the proposal on the table is that this language will become new ¶2 ii for expanded areas. Mr. Sossamon stated that if there is no further discussion, the committee should move on to the next issue.

Mr. Heisterkamp stated that there are three remaining pieces on the formula area definition: Alaska, Oklahoma, and overlapping formula areas. He suggested allowing for two hours after lunch to address these items. Mr. Sossamon stated that there was a request to return from lunch at 1:00 pm and conclude the discussion on formula area and overlapping area from 1:00 – 3:00 pm.

The committee broke for lunch until 1:00 pm.

**TUESDAY AFTERNOON, SEPTEMBER 23, 2003  
FULL COMMITTEE**

The committee reconvened at 1:15 pm. Mr. Sossamon turned the meeting over to Mr. Heisterkamp and the discussion on formula area. Mr. Heisterkamp stated that the Alaska caucus has language for ¶3.

Mr. Goodman stated that the caucus has been working on this for the last month. He introduced new ¶3 (see Attachment 14). He stated that the language addresses the concerns of both the regional housing authorities and villages. He then read the language from the screen. He noted that the language acknowledges how the IHBG funds are credited in Alaska. He added it in workgroup, the issue had been raised one or two villages have been able to establish an area outside of their aboriginal areas, and the concept is to give the regional authority an opportunity to challenge villages that move into other areas. He restated that this language gives an effective housing authority an opportunity to challenge a larger formula area than a village had previously had. Going on, he noted that ¶ii is similar to the previous language; and ¶iii gives Native villages an opportunity to expand within the state of Alaska, referencing ¶2 on expansion, which is dealt with §1000.327, which describes how the Alaska data is configured by counting only village members and the regional housing authority counts other AIAN persons.

Ms. Marasco asked if the small tribes in Alaska are satisfied with the language. Mr. Goodman responded that the small tribes were not that happy, but that this is a better solution than before. He added that the purpose is not to take away area, but to give the regional tribes the opportunity to challenge. Ms. Tooley commented that Alaska is huge, and queried if there were large geographic areas that are unassigned. Mr. Goodman responded that area belongs either to a village or regional housing authority. Ms. Gore clarified that the villages always have priority and always trump a regional housing authority. She noted that this language does not change that, and does not impact sovereignty. She stated that in Alaska, there is no overlapping, and as a result, villages can trump other villages. The purpose of this language is to make certain that everyone has access to services. She added that it is important to tribes to serve members who live in neighboring villages. For example, if tribal membership is 50, and they circle an area with 500 people, the tribe’s funding is capped at 100. That means that 400 people go without service. Ms. Gore conclude by stating that they are concerned that there be adequate service.

Ms. Marasco commented that was true everywhere. For example, in her county, there are people who are unserved because tribes are capped. Ms. Gore responded that people who were already receiving services, would lose them. This language ensures that tribes could still grow their area as defined earlier. Ms. Marasco commented that the language enables expansion without any process. She stated that she felt as though we are getting into special considerations for Alaska and Oklahoma. Further, Ms. Marasco commented that the rest of the committee doesn't necessarily understand the issues or the language. She stated that she would like to have language that ensures that every Native American receives services. Mr. Hutchings stated that this isn't a special consideration, and that the regulations were set up for the lower 48, and Alaska has difficulty applying the regulations. He added that there is a difference in Alaska because the tribes are not linked to the land. Instead, there is a nesting situation, with a hierarchy of tribes. For example, most Alaska Natives are members of two tribes – a village tribe and a regional tribe – making it difficult to count members. He further explained that when the regulations were drafted, a decision was made to send the data from villages to the village tribe, and data outside of a village, goes to the regional tribe. Mr. Hutchings noted that the procedure gets difficult where the villages don't have clear boundaries, although some 'place markers' have been used, such as AVNSA and TDSA. He added that it is a zero sum game in Alaska, it's just a question of how the tribes, villages, and regionals are going to work it out, concluding by saying that he didn't know of any tribe that is delighted with this language, but that he thinks everyone can live with it.

Ms. Hobucket stated that she would rather not keep in the corporations. Ms. Gore responded that the village trumps corporation, and that depended upon whoever was previously credited. Ms. Hobucket queried if that included corporations. Ms. Gore stated that if a village comes in, it trumps the corporation. Mr. Carl stated that there is an order of preference, and that there was language in §327 that may have to be changed to designate villages, instead of the order of preference. Ms. Gore stated that would be in violation of tribal code. Mr. Hutchings stated that NAHASDA defines both villages and corporations as Native Tribes. Mr. Sossamon commented that this was to ensure that tribal and Alaska Natives are not disenfranchised due to the cap resulting if a village claims an area. He added that this is not providing services to someone who isn't already receiving services. Ms. Gore confirmed that the language was to prevent disenfranchisement.

Mr. Bush asked for clarification on the reference to the 1990 census. Mr. Hutchings responded that the villages in Alaska were not assigned clear geographic dimensions and since HUD uses the census, they wanted to make certain that all were covered. Ms. Gore added that all of the 229 villages are ANVSA, except for a few. Ms. Wilson asked where the grant money goes when a tribe in the lower 48 does not apply for its grant; is it distributed throughout all tribes. Ms. Kruszek responded that it did. Ms. Wilson then asked if a tribe in Alaska defaults, does the funding come back into whole. Ms. Kruszek responded that it may or may not, depending on the filing time (§327). For example, if an ANV doesn't come in, the claim is established in the next level up. But, she added, that's not guaranteed, although it has happened. Ms. Wilson asked if there was another



method other than the census of counting Indians, and are they credited to corporations, or the tribes, and is there duplication.

Mr. Hutchings stated that one of the problems is to avoid double counting and this language does that. Ms. Kruszek added that this language is similar to the lower 48 and in Alaska an AVSA exists, similar to a reservation. Further, in the lower 48 there is balance of county, which describes the land outside the reservation. In Alaska there are AVSAs that are distinct. Ms. Wilson commented that she couldn't be double counted. She gets counted at Quinault. Ms. Kruszek responded that census counts you as an AIAN person. If you are in a geography, you are designated as one AIAN, not as a specific tribe. She reiterated that tribal membership has nothing to do with the allocation. Ms. Wilson commented that her tribe's enrolled membership is part of its formula. Ms. Kruszek restated that membership only comes into play in the population cap, and that there is no double counting. Ms. Wilson stated that she is not comfortable with the language. She added that no one in the lower 48 receives funding by default. Moreover, she noted that she has always had a problem with Alaska funding staying in the region instead of going into the whole allocation. Mr. Sossamon commented that the reason that there's the appearance of a default is because of the way tribes are defined in Alaska, and that it is unique to Alaska. He clarified that there are three entities: village, village corporation, and regional corporation. Further, if the village claims the grant money and receives funding, then neither the village corporation nor the regional corporation can claim the allocation.

Mr. LaPointe stated that his region has discussed this and is uncomfortable with the fact that a lot of the funds that are put back into the whole allocation are from Eastern/Woodlands. Mr. Bush again mentioned that he did not understand the reference to the 1990 census and why it is needed. He also asked if the geographic area changes as the default kicks in and the ANV decides to take the allocation; and, is that formula area now changed for the next default. Mr. Hutchings responded that there are also regional tribes, which are the tribes for an entire area. He added that if a village within the area files an IHP, the data is not counted for the regional tribe. If the village does not file, the members of the village tribe are counted as members of the regional tribe, but the area does not change. Mr. Reed reiterated that there are three tiers: village, regional tribes, and regional corporations. He pointed out that there is also a distinction between CAS and Needs, and queried how the funds are allocated. Ms. Gore responded that the corporations do not own homes. Mr. Hutchings stated that the Housing Authorities are the recipients and hold the deeds. Mr. Reed asked for clarification that these separate entities own the CAS. Ms. Gore stated that the regional corporations were set up as a conduit for distributing NAHASDA funds and that they are essentially TDHEs. Mr. Reed asked for clarification that if the IHA owns the home, who has authority over the IHA. Mr. Hutchings stated that there is a two-pronged answer. The CAS, particularly MH, is owned by the HA, which is the owner of record. The HAs are controlled by regional native associations. When NAHASDA was enacted, since the HAs were not tribes, regional corporations were set up to be the recipients of the CAS allocations. Mr. Reed restated that the regional corporations are acting like tribes, even though they aren't

really tribes. He then asked who receives the Needs money. Ms. Gore responded that the village tribes receive the Needs portion of the grant. Mr. Carl suggested that the language might be fixed by allowing the provision that each Native village designates its formula area under its village or its regional corporation as a one-time designation.

Ms. Gore stated that they thought this was the way it was supposed to work, but no one informed census. This current proposed language is an effort to make it work with census. Mr. Carl suggested that §327 could be revised to express that the villages can designate how they would like to be defined. Ms. Gore noted that under that scenario, sovereignty would be violated. Mr. Carl questioned whether by using the default, the villages were already not conducting themselves as a sovereign. Ms. Gore stated that the caucus was not willing to open up §327.

Mr. Sossamon asked if each of the 229 villages have the sovereign right to receive NAHASDA funds. If so, and they chose not to be a recipient, then by law does the responsibility fall to the regional corporation. It was confirmed that this is correct. Ms. Gore stated that the village may chose to call the local housing authority and designate them as a TDHE. Mr. Sossamon asked if the proposed language allows this. Ms. Gore responded in the affirmative. Mr. Sossamon asked if the proposed language prevents a regional housing authority from providing services. Ms. Marasco commented that she likes the idea that no Native American is unserved, and would like to see it in all places, not just Alaska. Ms. Greene asked if a village defaults and doesn't apply for funds, will the village be served by the next tier up. Ms. Gore noted that this procedure doesn't change the count; it simply gives HUD the tools to deal with the differences.

Mr. LaPointe mentioned that his concern is that the sovereign rights of villages not be impeded. He also wanted to be certain that all low-income folks are included, and that high income not be serviced. Mr. Bush stated that the numbers are the same. If a native village defaults, the numbers go to the regional corporation. The data that is used is the same; it doesn't expand. Ms. Gore confirmed that was correct. The formula dictates how the people are counted. Mr. Bush commented that the Arctic Slope Regional Corporation has 7,200 members, which represents a lot of villages. He asked if one village has 143 AIAN and decides not to receive its allocation, is the same number funded to the regional corporation. Ms. Gore replied that was correct. Ms. Kruszek asked why the TDSA was pegged to 1990 census, as it will be difficult for HUD to go back to old geographies that are not tabbed. Ms. Gore responded that the TDSA applies to one exception. She pointed out that HUD is aware of the exception, which has been reviewed at length with Jim Anderson. She added that Mr. Anderson felt the proposed language offers a good fix. Ms. Kruszek stated that she would speak with Mr. Anderson. Ms. Kruszek also suggested that the language in ¶iii need not include all in §336 when an alternative method is specified, instead of referencing. Mr. Hutchings pointed out that HUD has not treated this as overlapping, but has been treated as all or nothing. In the proposed language, it would be overlapping. However, given that it will be viewed as overlapping, the methodology is to credit the tribe that has expanded with its tribal membership in that area. It gives the tribe the ability to serve members in off-tribal area.

Ms. Kruszek clarified that this is not substantial housing services; this refers to areas defined by 1990 census that have been defined differently in the 2000 census. Mr. Gore pointed out this is only for TDSA. Mr. Goodman noted that if there is a village that has members they want to serve in a village nearby, they request an expansion. Ms. Kruszek stated that HUD would have considered that overlapping. If you are talking about expanding in the context of substantial investment, then §326 clearly applies. She added that it is only confusing when the census-designated geography is changed. She stated that this is taken care of in the previous language. She suggested that the committee might want to take out §326; or put the whole issue in §326. Ms. Kruszek asked if it was their intent to leave income out of ¶iii, where mention is made of splitting housing data and population data. If all three are to be included, you could simply refer to Needs data. She also asked who would provide the documentation.

Mr. Hutchings suggested that this would be better left to §326, and whatever methodology is used would probably apply here. Mr. Sossamon queried if by accepting this regulatory language, more grant money would be going to Alaska. Mr. Carl asked about the protocol for challenging an existing regulation (§327). He noted that the 229 Native villages have the first order of preference, and that's where it should stop. He suggested allowing §327 to address this. Mr. Hutchings asked how that would deal with the regional tribes. Mr. Carl suggested that the Native villages would declare, thereby exercising true sovereign rights. Mr. Sossamon pointed out that the procedure to challenge any regulation is set forth through HUD. Mr. Carl asked if that would be addressed during this Negotiated Rulemaking. Ms. Marasco stated that the committee reserved the right to look at the areas that impact the funding formula, and did not want to limit the discussions to the allocation (Part D). She stated that the door was open to look at areas that didn't specifically come through allocation. Mr. Sossamon agreed, but pointed out that the committee was charged to review all the regulations that relate to the formula. Mr. Pereira commented that under Subpart D, anyone could suggest a recommendation for §327. Mr. Sossamon asked if §327 is consistent with the law as to how the tribes are designated in Alaska or for HUD's distribution of funds. Mr. Pereira responded that this is regulatory policy from the first Neg-Reg, and is not based on the NAHASDA statute.

Ms. Gore noted that in the statute, the regional corporations are described as tribes. Mr. Carl agreed that was clear, and that the villages are also described as tribes. He added that under NAHASDA, the first step is the villages. Ms. Gore reiterated that the way the ANKSA law is written, it also applies to health and social services. Therefore, any change will affect all areas of the way we do business. Ms. Hobucket stated that she did not understand which tribes belong to which corporations, and how the CAS is handled. Ms. Gore clarified that the corporations were not in existence prior to NAHASDA, so there was no CAS. She added that she appreciates that this is confusing. Mr. Hoffman agreed that this is very confusing, especially when you're not familiar with the structure within Alaska itself. He clarified that regional housing authorities own the CAS. Under NAHASDA, the 229 tribes are the recipients of the Needs funding, and they have the authority to perform their own housing activities. They also have the right to enable the

regional housing authority to operate on their behalf, but they can change this whenever they want. Further, the owner of record is the housing authority; the CAS is funneled through the regional corporation, and the funds are transferred to the HA through agreement. He pointed out that all the regional corporations follow this process. Mr. Hoffman added that the housing authority board of commissioners is appointed by the regional tribes. He noted that in his region, there are 56 tribes, which gather together to select the board of commissioners. They also give directives by resolution to a health corporation to perform health related activities, and designate by resolution a regional non-profit to perform BIA or other services. He reiterated that the tribes have the opportunity to govern their own program. Mr. Hoffman commented that he would be uncomfortable in trying to deny the regional corporation's right to exist. Under NAHASDA there is a statutory requirement that they exist. Further, all 229 tribes exist. He reiterated that the purpose of the proposed language is to try to deal with some of the unique Alaska issues in ways that are relatively similar to the lower 48. He assured that Alaska would not be receiving more money. He added that this is a compromise amongst the Alaska tribes, and although not perfect, appears that it can work. Mr. Hoffman stated that he represents small and large tribes in Alaska. They are trying to make it simpler to deal with the unique structure and are not trying to hide anything. He reiterated that Alaska is unique. And, just as he respects the tribes in the lower 48, he asks that others respect the wishes of the tribes in Alaska. He concluded by stating that it is everyone's best interest to avoid more conflicts.

Mr. Pereira stated that he wanted to emphasize that HUD was addressing Mr. Carl's question, and that all of subpart D is open to discussion and therefore §327 is also. In response to Ms. Hobucket's questions, the formula distribution is made to the village; and, it is up to the village to decide how to use the funds. Mr. Carl responded that it is matter of incorporating language into §327, which he read (see Attachment 15) and noted the problematic provision. He suggested that if you change the part that allows a village to change structure, then the default provision goes away. Ms. Gore requested seeing this in writing and that the Alaska caucus is willing to look at it. Mr. Sossamon asked if there was anything objectionable to requiring the villages to designate. Ms. Gore responded that there would likely be villages that would object. Mr. Ducheneaux asked if the ANSVA would be grandfathered. Ms. Gore stated that it would be flexible under census and that a village could expand under substantial housing services and fit the same structure as the lower 48. Ms. Greene asked if any native villages were represented at this table. Mr. Hoffman stated that he would proud to say he was designated by a small tribe, he is a member of a small tribe, and is a TDHE for small tribes. Ms. Greene queried the size and Mr. Hoffman responded that it was about 150 members.

Ms. Wilson stated that at the first Neg-Reg committee, when §327 came up, many conceded to the language so that the work could be finished. She added that she had objected strenuously at the time, and only agreed when it was assured that the issue would come up for consideration in 5 years. She pointed out that Alaska was supposed to fix the tiered approach, and she didn't see this as the solution. Mr. Heisterkamp asked if anything in the §327 suggestion addressed Ms. Wilson's concerns. Mr. Sossamon asked

if the regional corporation, by default, has a responsibility to the people of the village, or is there a tribal responsibility to the people in the village. Also, if the village does not act, does the responsibility for tribal members default to the responsibility of the regional corporation. Ms. Gore replied yes, that was true. Mr. Sossamon queried why the money doesn't go to where the responsibility goes if the village didn't claim the grant money.

Ms. Marasco pointed out that in the lower 48, a resolution is required in order to appoint a TDHE, and if a designation is not made, then the grant money goes into the allocation pot. She added that she would like the same rules to apply everywhere. Mr. Sossamon restated that in the lower 48, if the tribe chooses not to act, the responsibility doesn't go to any other entity. Ms. Marasco asked to see where in the document it states that the responsibility goes up. Mr. Vollintine pointed out that in Alaska all entities overlap, for example, villages are inside regions. So, if the village defaulted in applying, the area still resides inside the region. Ms. Marasco noted that the same thing exists in California. If a tribe chooses not to apply for grant money, the funding goes back into the allocation pot. She added that the issues are pretty constant for all tribes. Mr. Vollintine stated that the committee went through this during the last Neg-Reg and that §327 was the result. Moreover, he added that the funds don't always default to the regional corporation. For example, if a village says that it will file but doesn't submit an IHP, then the money goes back into the allocation pot. Ms. Marasco stated that she wanted the same consideration.

Mr. Evans suggested that the drafting committee take a crack at a regulation that when any tribe didn't get funding, the money goes back to the region, not the general allocation pot. Mr. Heisterkamp restated that Mr. Evans had a proposal that specifying that in the lower 48, unclaimed funding stay in the region. Mr. Carl commented that he didn't think this was the answer. He stated that he thinks §327 needs to be revised so that the regulation specifies that the native village can decide to maintain the allocation, or by resolution a village can turn the allocation over to the regional corporation, and that the tribe may operate under an umbrella scenario. Ms. Greene asked if he was suggesting that they have to designate to whom the funds are distributed. Mr. Carl noted that he was not talking about funds; he is talking about the data. Ms. Greene commented that it didn't seem fair that funds automatically stay in Alaska if a village doesn't respond; she thinks that the village must designate. Mr. Carl pointed out that the committee would also have to discuss CAS and regional corporations. Ms. Hobucket suggested taking Mr. Carl's language. It would then be up to the corporation to make certain that villages are doing what they are supposed to do. The money is still there. Mr. Carl reiterated that he thought that the native villages needed to take action by resolution, but the way §327 reads there is a default. He stated that by developing a resolution, there is a clear process.

Mr. Bush queried if the Native village can they pass resolutions appointing a TDHE, then it doesn't go into default mode. So, isn't that the same thing that Mr. Carl is suggesting. Dr. Kazama indicated that was correct. Mr. Bush then noted that there were only 3 or 4 villages that go into the default. Dr. Kazama indicated that was correct. Ms. Marasco stated that her concern is the rights of the tribes and their ability to control what happens to their members. Mr. Sossamon agreed and also wants to protect the integrity of the

tribes in Alaska. However, an Alaskan tribe can be a native village or the regional corporation, and the members of a village are members of a village tribe and a regional tribe. If the village tribe does not act, it doesn't mean that they aren't members of the village tribe. They are counted for funding. He noted that this is not in effect, a default. It is just a way of counting tribal members. Ms. Gore confirmed this was correct.

Mr. Ginnis identified himself as the Executive Director of the Interior Regional Housing Authority (IRHA), and noted that in his region there are 43 tribes, serving 24 villages. He stated that the housing authority does not conduct its business without authorizing resolutions from tribes. He pointed out that each of the villages receives a block grant, but they also have opportunity to designate. He added that in the region there are small, medium, and large tribes, and the choice generally depends on the leadership in the villages. Typically, the smaller villages designate the HA, which then provides services. He emphasized that the HA does not impose upon the tribes. Mr. Ginnis stated that the regional corporations work the same way. The regional HA is designated; in his region it's Doyon. He pointed out that all follow the guidelines in §327. He stated that he didn't understand what the issue is. However, you have to understand the structure in Alaska, and the fact that housing is a strong economic force in the region.

Mr. Heisterkamp announced that two hours had been designated for discussion and that the committee is still in middle of the Alaska conversation. He noted that the other two pieces are overlapping area and the Oklahoma issues. He related that he was informed that the Oklahoma language would not be ready until tomorrow morning. So, the committee could continue on this issue or go on to minimum funding (and come back to Alaska and Oklahoma issues tomorrow morning). Mr. Sossamon asked if anyone had a preference. Mr. Bush stated that his preference would be to continue on what we're doing and get through it. Mr. LaPointe stated that he would like to go on to minimum funding, as there may be some negotiating on the Alaska issue in the interim.

Mr. Sossamon announced that since the Oklahoma language is not ready, and there are lots of questions on Alaska, he recommended going on to small tribes funding. He added that this will allow time for committee members to ask questions and find out more information and come back to it tomorrow morning to finish the Alaska issue. Ms. Hobucket asked for clarification on what was left to discuss, what hasn't been agreed to, and would the proposed language for §327 a resolution. Mr. Carl responded by stating that he was asked to provide an alternative. Ms. Gore stated that she would like the opportunity to discuss this further and would like to revisit the issue this in the morning after we have an opportunity to speak with the people it will affect. [The §327 language was put up on the screen (see Attachment 16)].

Mr. Sossamon called for a 15-minute break.

The committee reconvened at 3:30 pm and Mr. Sossamon announced that the committee would address minimum funding (Tab #6). Mr. Hudson asked if there was a difference between tabs #6 and #26. Mr. Bush replied that there was a difference. He then

suggested that Mr. Heisterkamp lead the discussion, since he did such a good job earlier. He first pointed out that Tab #6 is a resolution from Nevada Cal that refers to minimum funding. He added that it was introduced last month, prior to having a sub-workgroup agreement, and that Nevada Cal wanted the resolution to be part of the record. He further explained that the full committee charged the workgroup with figuring out minimum funding. A sub-workgroup then looked at 10 proposals, from which one proposal was developed. He reiterated that the resolution in Tab #6 is mainly for information. Tab #26 is the proposal that the sub-workgroup agreed upon, with the exception of the actual percentage and dollar values. However, he would be happy to explain the proposal, since the full workgroup did not get an opportunity to review it. Mr. Sossamon clarified that Tab #6 is similar to Tab#5 in that it is in the record, but is not an item that we need to address at this time. Mr. Bush concurred, but also noted that at the time the resolution was introduced, the sub-workgroup did not yet have a proposal. Mr. Sossamon confirmed that Tab #6 is simply for the record. Mr. Bush stated that was correct. He then added that there was a request from the full committee for a formula run from the last meeting, which was based on dollar amount and a different proposal. In addition, a request was put in yesterday morning that is based on a percentage, allowing the figure to fluctuate. Mr. Bush then requested that the concept be discussed until the data run is completed and distributed. What he would request is the concept, knowing that we don't have the data run. He noted that there was a data run using 5 different numbers, but using the old 1990 census data. He believed that data run was not accurate. Mr. Bush pointed out that they used .02% of \$640 million, which is roughly \$126,000. Newly participating tribes receive a one-time allocation of \$50k. If you can't demonstrate need, you don't get minimum funding. If you receive more than \$500k in CAS and your Needs funding is only \$25k, you still don't get any more in Needs funding.

Mr. Humphrey commented that the minimum funding should be based off the Needs portion of the allocation. Mr. Bush responded that it is calculated from the total grant. Mr. Hudson stated that the percentage is actually 2% of 1% of 640 million. Mr. Bush pointed out that is if every tribe below \$25K qualifies. Mr. Hudson stated it would be \$16.25 million out of \$640. Mr. Bush reiterated that until the new data run is completed, the impact would not be known. However, he pointed out that there are 12 – 15 tribes that have zero need, and there are a number of tribes that are above \$500k in CAS. Mr. Sawyers noted that there was some confusion regarding where the money would be coming from. Mr. Bush clarified that it would come from the Needs side. Mr. Carl commented that the percentage was more than 2%. Mr. Bush responded that the percentage was backed out to get to \$100k, as discussed at their regional meeting. However, he noted that they had not taken into account the tribes that would get the \$50k grant, and those that are over on CAS. Mr. LaPointe added that they had wanted to get close to \$10 million. Mr. Hudson stated that a quick calculation indicated that .015% would be about \$9.5 million. He then suggested, getting back to Mr. Sawyers' concern, that it might be better to take a percentage of the Needs funding, not total IHBG, and in that case, the percentage would be 3.23%. Ms. Greene agreed that the Needs side makes more sense, in order to protect CAS, in case Congress chooses not to fund the IHBG program. Mr. Bush commented that was the point of going with a percentage. If the

appropriation changes, up or down, it's still a percentage. Mr. LaPointe stated that the sub workgroup had discussed identifying the multiplier during this funding cycle. Mr. Carl commented that the problem is that as more units that get paid off, the Needs portion gets bigger. Ms. Greene pointed out that after units are paid off, funds from the Needs component will be used for everything.

Mr. Bush asked if the committee could come to agreement on the concept without looking at the percentage or dollar amount. Ms. Marasco stated that at the last meeting, we allocated \$150k for funds for new tribes and HAs to give them enough funding to participate in an existing program. Then, once they could prove need, they would be funded. She asked what sort of guarantee is there that providing base funding for tribes translate into establishing real programs, as it didn't happen the first time. Mr. Bush agreed that the current formula is flawed in that area, and after 5 or 6 years of the current program, he believes that the current formula doesn't address the small tribes needs. Ms. Marasco asked if he was trying to establish a minimum floor, and if so, why not establish a maximum ceiling as well. Mr. Bush stated that the sub workgroup did look at caps and ceilings. He added that they also looked at tiered systems, funding under TDC, and competitive grants, but felt that this was the best solution. He noted that it took the sub workgroup 5 months to get through all of proposals. He also stated that the cap scenario only affected Navaho. Mr. LaPointe commented that the percentage approach establishes a base and a ceiling, and doesn't allow the funding to go through the roof. Ms. Marasco suggested that was an interior ceiling. Ms. Tooley asked for clarification that the recommendation from the sub-workgroup is that any tribe receiving \$500k in CAS will not be eligible. Mr. Bush confirmed that was correct. Ms. Tooley asked if the reason this was included was because there are tribes that get significant funding for FCAS who may also qualify for minimum funding under the Needs portion. It was clarified that this approach had relevance for some situations in Alaska, and that some tribes that received funding for FCAS would then be ineligible for minimum funding.

Dr. Kazama stated that as far as Alaska is concerned, CAS is a regional HA issue and so this proposal doesn't address tribes who would qualify. Ms. Wilson stated that she is concerned that Needs will be weighted from tribe to tribe, and that small tribes are asking for a greater weight in their Needs factor than other tribes. She suggested funding administrative capacity right off the top, and was curious to know why administrative capacity had not been addressed. Mr. Bush responded that the administrative capacity issue was discussed in detail in the sub-workgroup, but it kept coming back to the formula to address every tribe's unmet need. He added that the current formula doesn't address the very small tribes, and so is not equitable. He stated that there has to be a solution, and that this proposal seems to be the best one. He reiterated that the sub-workgroup discussed very small tribes and very large tribes and their capacity to receive too little or too much. He noted that there had been many proposals and lots of data runs performed to look at impact. Mr. Bush pointed out that the small tribes are asking for the same opportunity to provide housing services just like the larger tribes.



Ms. Wilson asked if the sub-workgroup saw the small tribes working themselves out of the Needs factor. Mr. Bush responded that had been discussed. For example, if a tribe only has 10 members, after a few years and a few houses, they won't have need. Ms. Wilson stated this was exactly why administrative capacity makes sense. She added that having the ability to leverage and meeting the need is what NAHASDA was developed for. She acknowledged that there isn't enough money for any tribe to meet the need, but if you are given administrative capacity, tribes are able to leverage. She expressed her belief that this was a better way. Mr. Bush pointed out that there was one proposal that developed a tiered system to address this, but that HUD had heartburn pertaining to the 20% administrative rule). He also noted that NAHASDA was designed with leveraging as one part, but it was also designed to provide housing. He added that currently, there is a national distribution system that doesn't fund every tribe to build even one home. He stated that you can't build one home with \$25k, so that minimum funded tribes currently can only provide rental assistance or leveraging, but without administrative capacity, even that can't be done. Ms. Wilson asked if it is a HUD issue that small tribes are not funded over 20% for administrative costs. Mr. Carl stated that there was a discussion that language that would direct more than 20% would not pass muster, and so HUD would provide administrative guidance.

A/S Liu stated that exceptions could be made to the 20% cap under just cause. He added that if there is a desire to create a capacity-building regulation, it would be as a separate issue and there is nothing that precludes that discussion. He restated that the current rules regarding 20% do not prevent creation of a capacity-building grant or a grant solely for administrative purposes. Ms. Wilson reiterated that tribes can't administer anything with 20% of \$25k. She added that an administrative grant doesn't take the Needs funding away from another tribe, and could be used to leverage other grants, such as USDA, self-help, etc. Mr. Chavez asked if this would be new money or existing IHBG allocation. A/S Liu responded that this would come out of existing funds, but that tribes could always try to get more money from Congress. Ms. Greene suggested that HUD should try to find money to support administrative capacity. Ms. Marasco stated that one of the reasons we provided an appropriation for training and technical assistance (TA) was to help the small tribes, and that part of the allocation provides funding to NAIHC for technical assistance. She asked what kind of TA was being provided. Mr. Sossamon replied that NAIHC responds to requests from tribes. Ms. Marasco pointed out that the first Neg-Reg committee wanted to make certain that the tribes received TA, and that was why the funding was allocated to NAIHC off the top. She again asked what effort is NAIHC is making to meet the needs of tribes, and if those needs are not being met, the funding should go back into the allocation. Mr. Sossamon stated that NAIHC holds classes continually, and has responded to every tribe that has requested TA. But, he added that NAIHC cannot force a tribe to participate or just show up on their doorstep. Ms. Marasco suggested that NAIHC could market more forcefully. Further, she pointed out that if the funding is earmarked for capacity building, the tribes would have to accept TA.

Ms. Greene commented that you can't hire someone to do the work for 10k, let alone 20%, and she would like to see HUD help provide the money to fund programs. Mr. Carl stated that HUD also receives money off the top for TA. He also pointed out the NAIHC has been working hard to create partnerships. It was pointed out that there are no statistics on the tribes that have administrative need, although he is aware of some tribes have asked for assistance. In these cases, funding is provided through a sub-recipient agreement. However, there may still be tribes with administrative need no matter how much leveraging or TA is available. Ms. Marasco asked if currently small tribes can't make it, why do we think that we can do it any other way. Mr. Carl responded that there are also success stories of tribes that have been able to gain administrative capacity. But, he also pointed out that there is an issue of sovereignty. He suggested rather than developing another provision, this issue be addressed through the regional offices.

Ms. Tooley stated that while she appreciates the small tribes' need for administrative capacity, the fact is that you can have pretty good administrative capacity and be very creative, but if you only have \$25k or \$50k, you still can't build houses. She noted that in her opinion, that's the bottom line. Mr. Ducheneaux suggested that NAIHC target their training efforts to the small tribes specifically. He added that he would object to a percentage off the top going to the small tribes, and that even if the amount goes down in a bad year and up in a good year, he would rather provide a fixed amount. Further, he commented that if the grant goes up, the money should go to the poor people. Mr. Ducheneaux stated that he had mentioned the idea of a per capita formula, although that doesn't work either. He added that at the last Neg-Reg \$50k was provided in the first year to establish need. Then if established, a grant of \$25k was provided for the next 3 years, which could be used administratively or whatever, and HUD agreed to that. He suggested that HUD agree to this same approach again, because if there is going to be minimum funding, there cannot also be a 20% administrative cap. Mr. Bush asked if Mr. Ducheneaux could suggest a dollar amount. He reiterated that the 20% administrative cap is imposed on the \$50k and \$25k, and that there are regulations that speak about special consideration to exceed the 20%. He expressed discomfort that the 20% cap was set by HUD without consultation, and that for that reason, the 20% cap should be removed. Mr. Ducheneaux pointed out that there are people in the field offices who try to work within an intent to allow exceptions. Mr. Bush opined that was the problem with using a percentage.

Ms. Kidder stated that if the idea is that there is a certain amount of money needed to run a program, then it's an amount, not a percentage. This acknowledges that regardless of your need, there is a certain amount you need to run a program; it is a specified amount of money to hire a staff person, leverage, build a house, etc. She added that increases in appropriations should go to poor people. The intent of providing minimum funding is to ensure enough money to run a program, even if you don't have enough people to demonstrate greater need. Mr. Hudson asked if the appropriation goes down, would the dollar amount remain constant. Mr. Bush stated that the sub-workgroup had discussed what it costs to run a program. As it stands now, the tribe must have a low-income need to be eligible to qualify for funds appropriated by Congress and administered through a

national housing program. He added that it is up to this committee and HUD to distribute those funds. He noted that in his opinion, the current formula does not address every tribe's need, and the small tribes are at a disadvantage. He stated that somehow this group is going to have to look at the unmet needs. Mr. Bush said that he thinks that the cost of running a program is closer to \$300k, not \$100k, and that is what the committee should be talking about. He suggested looking at what it costs to develop one unit (TDC), but when everyone looks at it, it's too much money. He reiterated that although everyone thought NAHASDA would solve all problems, but the small tribes have taken a big hit. He stated that he would like to scrap the entire formula, but as governor Anotubby stated at the outset, let's just fix what's broken. He added that this part of the formula is broken.

Mr. Ducheneaux commented that when the regulations were developed, all agreed that where the statute was clear, there would be no need for a regulation. He noted that the statute refers to administrative expenses (he read from Sec.101(h) of the statute), and that he didn't see anyplace in the law that talks about a 20% cap. Mr. Bush responded that the Secretary adopted minimum funding in §1000.238 although allowance for special consideration can be made. He also noted that he knows of tribes that have applied and have been ignored. Mr. Bush pointed out that HUD has said that it would develop an internal guidance for the field offices on this issue. Mr. Ducheneaux stated that at one point there had been discussion about building capacity, and asked if this had been abandoned, and if so, then §238 should be part of the discussion. Mr. Bush stated that the sub-workgroup agreed to deal with this internally because they understood from A/S Liu that there might be a problem. He added that they were working on some language. Mr. Ducheneaux asked if the minimum funding is based on using only 20% for administrative capacity. Mr. Bush responded that the minimum funding was based on unmet need. Mr. Ducheneaux suggested keeping the formula as is, tweaking it to establish a baseline floor, or changing the formula. Ms. Marasco asked if the waiver comes into play with the 20% administration cap. A/S Liu stated that a similar element is addressed in §238, and a guidance will address the hesitations to implement the waiver in the field. However, he added that if this committee wants to address an administrative capacity-building grant into the allocation that would be a separate issue.

Ms. Hobucket commented that she is concerned about creating a negative impact on the funding source for other tribes. For example, if there is baseline funding, the tribes in the middle will be negatively impacted; any kind of increase or decrease will have an impact. Mr. Sossamon reiterated that any changes in the formula and the mechanisms of the formula that results in any tribe's allocation going up, means that another tribe's will go down. He suggested that the committee would have to be willing to accept that and to determine by how much. If the committee is not willing to accept that, it should move on to language issues. He added that he thought there was a willingness to accept some reductions in order to address the minimum funding issue. He noted that the committee needs to decide whether it is conceptually willing to accept this. Ms. Hobucket stated that she felt that the real issue at hand is small tribes can address administrative capacity. She stated that she is also concerned about large tribes being able to expand formula area

and take even more of the funding. Mr. Sossamon responded that under the definition of substantial housing services, it would be difficult to expand into a metropolitan area since the threshold has been raised.

Ms. Marasco suggested going back to HUD's concept of capacity building, and setting up \$5 million for capacity building grants (\$1 million from HUD TA, \$1 million from NAIHC TA, and \$3 million from tribes) on an annual basis. Mr. Sossamon suggested that NAIHC was currently doing the job with the \$2 million it is receiving. Ms. Marasco restated that she would like to see \$1 million of that funding to go to capacity building grants. Mr. Sossamon suggested that Ms. Marasco ask a member of NAIHC to raise the issue at the next NAIHC board meeting. Mr. Roy spoke about Smith River, and how they lack the money to build houses. He noted that millions of dollars have been given to tribes since the 1960s, but his tribe's land was sold, along with others in California when they were terminated and then restored by court order. As a result, there are tribes with 900 – 2,000 members. For these tribes, he opined that is an insult to receive only \$150k. He stated that the committee has a responsibility to the California tribes and the small tribes. He stated that these tribes must buy back their land at a high cost, and build infrastructure. He suggested that \$1 million was needed to get started to build something, and that NAIHC's \$4 million should be put back into the allocation. Ms. Greene pointed out that California is not the only place with small tribes that don't have enough money to build.

Ms. Kidder suggested that it might be a good idea to go into caucus to discuss other proposals, develop some alternatives, request data runs, and begin negotiating. Mr. Sossamon stated that he did not like the percentage approach, because the funding available to the other tribes decreases. Ms. Kidder stated that there had been a request for a caucus. She also pointed out that requests for data had been run to help look at percentages. Mr. Sossamon asked how long was needed for caucus. It was agreed that the committee would break for 30 minutes, but that time would be allowed for comments first.

Ms. Wilson stated that she took offense at the implication that tribes don't care about tribal needs. She pointed out that tribalism takes over. She stated that there are no homeless. There may be homes with 20 people, but people are not on the street. She stated that all tribes want something that is equitable, and that the Needs factors are fair, and if a tribe doesn't have the numbers to support need, it is not equitable to request additional weighting. Mr. LaPointe mentioned that a few months ago in a regional caucus, the Eastern/Woodlands tribes suggested \$100k as a cap, and started moving from there. He added that there was a great deal of discussion with the result in a proposal to take 1.5% of the total IHBG appropriation. He added that he would agree to a caucus at this time. Ms. Greene asked how long it would take to get the results from additional requests for data. Mr. LaPointe commented that he felt that the small tribes issue a really big and must be addressed, even though it doesn't have that much effect on his region. Mr. Sossamon cautioned against creating a flood of data run requests, and that some of the runs that have been performed will help to understand the effects. Ms. Greene asked

if this issue could be determined on a regional basis, instead of by tribe. Mr. Sossamon responded that he wasn't sure, but that the fewer changes requested in each data run, the quicker the results.

Mr. Sossamon called for regional caucuses until 5:30 pm.

The committee reconvened at 5:45 pm, and Mr. Sossamon recognized Jana Harrison as alternate for Governor Anotubby. He also suggested picking up where the committee left off before the break.

Ms. Kidder presented an alternative to minimum funding proposal. The first part is \$50k regardless of need to establish data the first year under §328. She stated that this is a variation of proposal #4, which provides for \$100k in a needs-based grant with conditions. For example, any tribe receiving more than \$200k in CAS is not eligible. She added that over half of the NAHASDA recipients receive less than \$300k. Therefore, if the rationale is that there is a certain amount to run a program, this proposal suggests that the amount is \$100k. She pointed out that if the recipient is a TDHE, the funding for each tribe would be counted, thereby limiting the possibility that an umbrella entity of 20 tribes would qualify. She also stated that since the Alaska Regional Corporations receive a lot of funding, then any of the villages would have received more than \$200k in CAS (even though the regional corporation gets the funding) then they wouldn't qualify. She stated that she wasn't certain how this would be stated in language, but was certain there would be a way. She added that need would also have to be demonstrated. Lastly, she stated that a request for a data run would be submitted to analyze the impact. Mr. Hudson suggested adding CAS funds over \$200k. Mr. LaPointe stated that one of the things they wanted to do was to tap the unused funding. Mr. Hoffman suggested that the regions could submit their proposals, request data runs, and then the committee could discuss the proposals in the morning.

Mr. Sossamon asked if there were any questions on the proposal put forth. Mr. Bush requested a printed copy. He also asked for printed copies of any other proposals. Mr. Sossamon asked Ms. Kidder to number, copy, and distribute the proposal, which she agreed to do. Mr. Sossamon also asked for clarification from Mr. LaPointe regarding limiting minimum funding to carryover funds. He pointed out that the carryover funds currently become part of the next FY total allocation. Mr. Sossamon also asked if the data run for .0125% had been completed. Mr. Bush stated that there was a problem in that 1990 census numbers were used. Mr. Sossamon asked if there were any further proposals.

Dr. Kazama stated that the Alaska caucus was waiting for the results of a data run, which keeps minimum funding at \$25k. He added that Alaska had taken some major hits on the last estimate, for example, in Ms. Gore's region no one benefits from minimum funding but she has already lost a few million dollars. Dr. Kazama pointed out that for this reason, it would be impossible for her to go back home and announce that even more money was given away. Ms. Gore stated that she wanted to make an informed decision

and would like to see the numbers. Mr. Sossamon asked if there were any further questions. He then noted that there had been a request for a data run request (TR) #44 that he would like the committee to look at. He added that the request had been submitted by Mr. Doty, includes 5 proposal categories, and was performed using the 2000 census data. Ms. Kidder stated that the run shows FY 2003 grants compared with FY2004 estimates, and that they needed to compare FY 2004 estimates to the proposals. She suggested changing Column 1 to the FY04 numbers. Mr. Sossamon asked if they couldn't get some idea of the impact from the information presented. Ms. Kidder responded that was not possible, because last year's grants were very different from this year's and it skews the impact. Ms. Gore suggested looking at TR#44 for discussion purposes, but not coming to any conclusions until they have the correct FY04 numbers. Mr. Sossamon added that the total amount appropriated is about the same for FY03 and FY04, and therefore wouldn't this information give the committee some idea of the impact. Ms. Kidder reiterated that there were two committee members who want the new run. Mr. Sossamon stated that he wasn't against the new run; he was simply asking if they could discuss the proposal based on the information they had. Mr. Carl reiterated that the committee is requesting the actual numbers in order to be able to make a decision. Mr. Hudson stated that he was confused, since they were just given the FY04 estimate yesterday, and the FY 04 appropriation had not yet been passed. Mr. Boyd clarified that the estimate is based on the FY04 appropriation request, but it is not yet approved. Mr. Gerber further clarified that there was a House bill, but there was not yet a Senate bill, or conference. Mr. Sossamon asked what the FY04 estimates were based on. Ms. Kruszek stated that the FY04 estimate is based on last year's appropriation minus the carryover, and was a conservative estimate.

Mr. Carl proposed that the committee recess and obtain the appropriate data run instead of trying to sort out the numbers from other runs. Mr. Sossamon restated that a recommendation had been made to recess until tomorrow morning when the new data runs will be completed. Mr. Sossamon also stated that .0125% had been requested. Mr. Hudson noted this was based on 1990 census data.

Mr. Sossamon announced that the committee would recess until 9:00 am Wednesday morning.

**WEDNESDAY MORNING, SEPTEMBER 24, 2003**  
**FULL COMMITTEE**

The meeting reconvened at 9:15 am. Mr. Sossamon began by making some announcements. He noted that Mr. Hoffman would be absent for a short period, during which time Mark Charlie would be acting as his alternate. Mr. Sossamon also welcomed new attendees. He then suggested picking up where the committee left off on the previous day, and asked if the new data runs were available. Mr. Bush responded that Mr. Anderson needs to review the output and then the data would be distributed.

Mr. LaPointe stated that there had been an earlier run for \$100k with a combined cap on Needs factored at 1.5%. He added that the run was based on FY03 funding with 1990 census data. Mr. Sawyers asked if a new data run had been requested since the 1990 data won't tell us much. Mr. Sossamon commented that he didn't think it had been requested. Mr. LaPointe stated that he would submit a request. Mr. Sossamon suggested that in the meantime the committee either continue with the discussion on minimum funding or go on to another subject. Mr. Ducheneaux commented that he didn't like minimum funding in general, however, he had thought a data run was requested with 2000 census data and that he would want to see the results before going any further. He then requested that run be performed. Mr. Adams asked if there were any HUD staff present who could provide an answer to whether the FY04 estimate considered minimum funding. Mr. Fitzgibbons responded that the FY04 estimate did not include minimum funding. Mr. Bush pointed out that the estimate also did not include the 1996 modernization subsidy adjustment either, and that the estimate formula was run without minimum funding, without 1996 subsidy, and without carry-over. Mr. Naize suggested waiting until HUD representatives arrived, and also noted that the data runs he had requested still were not available.

Mr. Sawyers stated that every region supposedly had a proposal, and in the absence of runs, he would like to hear them. He suggested putting the proposals on the table, and mentioned that if the Eastern/Woodlands region has a proposal for 1.5%, he'd like to see it. He also asked if there was a timeframe for receiving requested data runs, for example, if a run is requested today, will it be available tomorrow. Mr. Sossamon asked if anyone knew the status of TR#48. A/S Liu responded that HUD staff would look into it. He acknowledged that there was frustration in the time needed to create the new databases incorporating the new census data.

Mr. Sossamon stated that he would like to address the FY04 estimate that was just sent out to tribes and that there are factors that were left out, and asked if the new runs being performed would include the missing pieces, such as minimum funding and carryover. Ms. Marasco stated that Ms. Kruszek had mentioned that the carryover was not included but would likely be between \$7 and \$9 million. Ms. Kruszek stated that the FY04 estimate is based on the same dollar amount as last year's appropriation. She reiterated that it did not include carry over, noting that it is a conservative estimate that is likely to go up. She added that the column titled 'unadjusted FY 04 grant' provides the unadjusted grant. Mr. Sawyers asked for clarification as to whether the \$25k minimum funding was included. Ms. Kruszek stated that the minimum funding was not included. Ms. Marasco asked for an estimate of the carryover. Ms. Kruszek stated that for the estimate run, it was set to zero, but that last year it was \$7 – \$9 million. Mr. Sossamon asked if there had been a request for information on carry over for FY03. Ms. Kruszek noted that information is contained in Part 2 of the Briefing Book, 'Worksheet for Estimating Allocations' and added that she would get that number.

Mr. Sossamon then returned to Mr. Sawyers question regarding a timeframe for requests. Mr. Anderson responded by providing a status on the requests. He stated that he was still working on 4 requests; and that TR#56 and TR#57 are complete and are being formatted;

TR# 58 is in draft stage and needs to be reviewed; TR# 59 is being formatted (he added that this was a version of TR#44); and that TR#48 (requested by Mr. Naize) required additional programming time. He then asked if he had missed any other requests. Dr. Kazama stated that he had requested a data run for \$25k based on the FY04 estimate and would submit the formal requests. Mr. Sossamon noted that it isn't possible to provide a set time for completing the requests. Mr. Sawyers commented that he was trying to determine how to best use the time. He suggested putting all the proposals on the table, submitting requests, and moving on.

Ms. Kruszek then stated that the carryover for FY03 was \$9,336,038. Regarding the data runs, she commented that it has been necessary to take raw data from census and format it, and that the data had to be prepared on 4 levels due to multiple race and formula area. She reiterated that HUD staff and support staff have been working hard to get the information out.

Mr. Sossamon asked if there were any other proposals on minimum funding that may or may not require a run. He then stated that if there can be no further discussion until the committee receives the data runs, he suggests that the committee move to a different subject. He added that since the HUD delegation is present, it would be a good time to look at the question of the state funded tribes (Tab #22). There were no objections. Mr. Sossamon then asked for an interpretation of the issue from the HUD delegation. Mr. Kenison stated that since the statute expressly refers to state recognized tribes, they cannot be excluded. However, he added that the formula calculation does not have to be the same (i.e., weights) as for the other tribes. Further, he noted that to the degree that you provide something different, you will have to provide a rationale. Mr. Sossamon then noted that there are five questions listed under 'action items' for which he would like a HUD response:

1. Determining if state tribes are eligible for Needs funding; and can state tribes be excluded from the Needs portion

Mr. Kenison, referring to the statute, responded that he did not believe that they can be excluded from the need portion of the formula. He asked how many state recognized tribes were participating in the IHBG program. Mr. Sossamon responded that there are five tribes.

2. Can state recognized tribes be treated differently than federally recognized; how are they treated; and, how can they be treated?

Mr. LaPointe suggested reducing percentages and asked how the committee could justify treating the tribes differently, for example, do they receive state funding. Mr. Sossamon asked if there was anyone present who could answer Mr. LaPointe's question. Mr. Kenison noted that CDBG funds can be used in many contexts, but that is not housing. Further, he commented that what states do on their own is outside this statute. Mr. Lynch commented that in his case, the tribe receives no funding from the state at all. There was a question as to whether the tribe had the opportunity to apply for state grants. Mr. Lynch responded that they did, but that the grants are minimal. Mr. Naize commented



that the committee needs to know if there are representatives of other state recognized tribes here. He also wanted to know if HUD had information from the states on funding to the state recognized tribes. A/S Liu responded that HUD did not have that information, and that HUD does not keep records on non-HUD funds or resources tribes receive, whether state or federal.

Mr. Carl asked for a clarification on HUD's explanation, as Sec. 4 (12)(C)(ii)(I) of the statute addresses the allocation to be determined for state recognized tribes (per date of enactment), and that it appears that there is a formula that has been developed. Mr. Kenison noted that the date of enactment is for tribal membership eligibility criteria, which sends you back to Sec. 302 of the statute, and that the IHBG program has to provide for state recognized tribes to some degree. Mr. Carl asked if the state recognized tribes are different from the federally recognized tribes. Mr. Kenison responded that the definition of provision does not mean that every state tribe has to be treated the same; it means they have to be treated. Mr. Carl queried if the committee could then develop other criteria. Mr. Kenison stated it could, so long as the criteria are defensible and rational. Mr. Sawyers commented that as a state recognized tribe, they are entitled to funds that are appropriate. He added that the state law says they are a legal subdivision of the state. He also noted that there are funds available from the state if you are organized under a state. Mr. Hudson pointed out that there were 5 state recognized tribes at the time of the first Neg-Reg. He asked if there were more than 5, and requested come background information.

Mr. Sossamon commented that it was his understanding that these 5 state tribes had received funding under the 37 Act and therefore had CAS. The intent was that they should continue to receive funds under NAHASDA, since they had already participated in a federal program. Mr. Hudson asked if there was a reason that these tribes were not federally recognized. Mr. Sossamon responded that the tribes hadn't met the federal guidelines. Mr. Fagan stated that under the 37 Act, the definition of Indian tribe was broader. At the time when NAHASDA was enacted, there were 5 tribes with ACCs; these tribes were grandfathered into the program. He added that there were other tribes that were eligible, but that had not received funds at the time of enactment. Mr. Humphrey, getting back to Mr. Carl's previous comments, asked if ¶I, relating to the use of tribal enrollment criteria, precludes the use of census data for the formula. Mr. Kenison responded that he didn't know what the tribal enrollment criteria are; however, ¶I speaks to the allocation for states to be determined by eligibility criteria in existence at the time of enactment. He added that it does not state that the number is frozen. Mr. Humphrey asked if the census data relates to state-tribe enrollment. He added that the criteria state that the funding is in relation to enrollment, not census. Further, enrollment is self-reported, census does not deal with enrollment, but the criteria are available for all tribes. Therefore, in this instance it is required to look at the criteria. Mr. Kenison pointed out that there could be growth in data based on criteria. Mr. Humphrey agreed, but added that census data does not relate to the enrollment criteria. Mr. Sossamon noted that the problem is that the criteria could be changed. Mr. Kenison stated that the language makes it clear that the criteria cannot be changed. Mr. Sossamon restated that if the

criteria had changed, for the purposes of the allocation, the formula would have to use the criteria at the time of enactment. Therefore, it is necessary to look at the criteria at the time of enactment in order to verify the number of tribal members who are eligible to participate. Mr. Humphrey reiterated that the census data does not relate to enrollment, but looks at AIAN population in the locality, which for these tribes is based on enrollment.

Mr. Carl stated that the way he interprets this is that since tribal membership criteria at the time of enactment was used for state recognized tribes, HUD has to recognize an allocation formula that may be different than for federally recognized tribes. He suggested that the committee should take the direction of maintaining the contract between HUD and tribes through ACC. Further, he pointed out that there is no census data to relate to the state tribes because the information is not available. Mr. Kenison responded that there is census data for the state recognized tribes. He added that based on the statutory interpretation, the 5-year contract under the 37 Act is an eligibility consideration, and that criteria are not raw numbers. Mr. Carl reiterated that the tribal enrollment criteria refer to what was in effect and that if there are no census data to support the numbers, then the committee must deal with it. Mr. Kenison commented that perhaps the use of data for state tribes has been flawed since the beginning of NAHASDA. Mr. Humphrey agreed with the suggestion. Mr. Sossamon recounted that the first Neg-Reg committee recognized the flaws in census data, but agreed to use it because it is the only consistent set of data. He added that perhaps there is a rationale for departing from the use of census data for the state recognized tribes. In fact, he noted that there is a requirement that we depart from using census data.

Mr. Jones asked for further clarification on §302 b and c, specifically ¶c2. Mr. Kenison responded that §302c is the portion that refers, among other considerations, to Title V for State tribes. He added that this was a removal title that ended programs for tribes. He pointed out that he didn't think that the repealer had an effect for the tribes that are not covered under NAHASDA, but that this may be a signal that if the committee wanted to, it could provide more funding to state tribes. He added that he didn't think so, but it was his guess that it was something that HUD was to take into consideration. Further, it may be that if state recognized tribes are still eligible for a home, it might be a rationale for reducing the amount under IHBG or the McKinney Act (HOME). Mr. Fagan stated that HUD as looked at this and as far as Indian programs are concerned, they funds are for federally recognized tribes. The state tribes were not eligible except for 37 Act, and no state recognized tribes have raised this issue to address potential losses. Mr. Kenison noted that to the extent that state tribes were not eligible for these programs, they might have been eligible for state funds.

Ms. Gore stated that she would like to know how formula area is determined for the state recognized tribes, and if they have used expansion language to grow their populations. Mr. Sossamon restated the question: can state tribes grow their formula area. A/S Liu responded that the staff person who can answer is not available at this time. Ms. Greene

reiterated that the committee looked into state tribes during first Neg-Reg and determined they did not qualify for other programs.

Mr. Sossamon pointed out that there were three other questions (in Tab #22):

- 3. Can state tribes expand their formula area?
- 4. Can state tribes increase their population cap?

Population cap is for purposes of expansion and they would be bound by same rules as anyone else.

Mr. Carl pointed out that if this committee decides by consensus to use census data, and census does not apply to state recognized tribes, then those tribes would not be able to receive funding. Mr. Sossamon stated that there is census data available for those tribes. He asked which set of data should be used: census data or tribal enrollment data. He added that as far as the population cap, in regard to expansion, they would be limited to the same regulation as federally recognized tribes. Mr. Jones asked what 5 tribes are included in the IHBG. Mr. LaPointe responded that TR#36 provides the information and that all 5 are within the Eastern/Woodlands region. The tribes participating are: MOWA Band of Choctaw Indians, Coharie State Tribe, Haliwa-Saponi State Tribe, Lumbee State Tribe, and Waccamaw Siouan State Tribe. Mr. Jones stated that in the FY04 estimate, the Lumbee state tribe has 32,076 enrolled members yet it looks as though they're getting funded for 64,000. Mr. LaPointe responded that there was an error made (in TR#36). Ms. Marasco asked if he had a total number. Mr. LaPointe responded that the final grant was \$14,712,000 and that \$1.7 million had to be factored out. Mr. Hudson asked if the tribe had been funded for Needs in the past. Mr. LaPointe stated that funding for CAS was \$2 million and funding for Needs was \$11 million. Ms. Greene commented that the first Neg-Reg felt they should be treated the same as federally recognized tribes, and that the committee at this time should only look at whether they are being considered under the eligibility as defined in the act.

Mr. Sossamon stated that the last question pertaining to the issue was:

- 5. Can state tribes serve non-member Indians?

Mr. Sossamon noted that this ties back to the interpretation of the legislation that says that their population will be looked at in light of eligibility criteria at the time of enactment. In addition, it is necessary to ask if AIAN population is considered in formula area or only enrolled members as required by statute.

Mr. Coyle asked if the regulation could be enacted for 5 years and looked at again. He added that if not, we are picking up public housing units. Mr. Sossamon stated that it was his understanding that the responsibility and authority to review does not allow us to supercede the NAHASDA statute, which says that these tribes shall be eligible to participate. He added that the committee has input as to the extent of the participation and if there is a rationale for adjusting the formula for those tribes, then it can be adjusted.

Ms. Greene stated that she believes that §203d spells out what you can do, and so they can develop their criteria for who they can bring in. Mr. Sossamon pointed out that was true and is required of each recipient. He added that §203d refers to eligibility of the families, and we are discussing eligibility to participate. Ms. Greene noted this is in reference to non-tribal Indians. Mr. Sossamon commented that the argument is that it is superceded by the language that states that participation is limited to eligibility criteria at the date of the enactment. Ms. Greene restated that it is up to the tribe to determine to whom they provide services. Mr. Sossamon stated that as far as the allocation, it is based on regulation; once the tribe receives the funding, it can choose how to use it. Ms. Greene stated that the only thing that can be looked at is whether the criteria are being used to determine the allocation, that is, are the numbers for enrollment correct. Mr. Sossamon pointed out that he was not certain if it is the number or criteria. Ms. Greene clarified that it is the criteria. Mr. Sossamon asked if it was necessary to look at census data that counts all AIAN persons or look at enrollment. Ms. Greene stated that HUD should verify that the criteria are the same and that census numbers are correct. Mr. Sossamon stated that the census data do not verify tribal enrollment. Ms. Greene commented that the committee does not have the right to say that they can't serve non-tribal members. Mr. Sossamon reiterated that the committee is only talking about population for allocation purposes.

Mr. LaPointe stated that he didn't disagree that the criteria count, but that he doubted that anyone asked for the criteria at the time. Ms. Hobucket commented that the committee did ask for the criteria at the first Neg-Reg, and that the state recognized tribes would be the only tribes whose funding would be based on tribal enrollment. She asked whether or not this included the multiple race issue. She added that the lawyers have stated what can and can't be done, and that the committee should be looking at enrollment and how HUD verifies the enrollment. Mr. Evans commented that in looking at the AIAN person count in the FY04 estimate run, in some cases the tribal enrollment is higher, and in some cases it is lower. Therefore, it appears that it's a wash to use census data. Furthermore, he asked if the discussion on who is an eligible recipient of NAHASDA funds something that is up for discussion since it is in the statute. Mr. Sossamon, referring back to Ms. Hobucket, asked if multiple race is included in the data that we have here under AIAN. Ms. Kruszek replied that it was included.

Ms. Hobucket asked if the Lumbee have 32,000 enrolled, how would you know if they all live in their area. Ms. Kruszek answered that under the current policies, HUD would not know. She added that the state recognized tribes are assigned TDSA. The Lumbee expanded into a county and received all the AIAN population up to 2 times tribal enrollment. Mr. Sossamon restated the question of whether the state recognized tribes should be limited to tribal members for Need allocation distribution; and, if this group determines that the statute intended limiting the allocation, how would that be verified.

Ms. Kruszek pointed out that the concept of relying on tribal enrollment came up and the only way is by self-reporting. Any verification procedure by HUD would be through random selection and survey or statistical analysis to see if data are correct. Mr.

Sossamon queried if the regulation says that state tribes are to service only tribal members that reside in formula area, there would have to be a methodology established for verification. Ms. Kruszek responded that it would be up to the committee. Mr. Sossamon further asked if so, would it be up to HUD to develop the methodology. Ms. Kruszek confirmed that would be correct. Ms. Wilson stated that it is up to this committee to apply weights, and the committee could chose to apply a different weight factor. Mr. Kenison responded that would generally be correct. He reiterated that what he said was that the statute compels funding. Whether the formula has to be the same, is not specified, however, if different weights were to be assigned, the committee would need a rationale. Ms. Wilson pointed out that tribes on federal trust lands have not had the ability to participate in programs such as mortgages, and so it was reason enough to exclude state tribes that have had that opportunity. Mr. Kenison agreed that was a factor that could be considered. He added that the only factors it is required to consider are those in Title V, but others may be considered.

Mr. Sossamon announced that there has been a request for a break. However, before breaking, he would like to return to the questions posed by Ms. Gore and Mr. Evans. Then after the break, he would recognize Mr. Ducheneaux.

Ms. Gore restated her question on how formula area was originally established for state tribes and have there been any changes through expansion. Ms. Kruszek responded that §302¶1viii defines TDSA. She added that HUD has taken that to mean that once census describes a TDSA, then HUD will use the numbers tabulated for the TDSA. She reiterated that this is provided for and processed through the Census Bureau. In the case of Lumbee, the tribe worked with the Census Bureau to incorporate a county they believed was part of their TDSA and Census accepted it. Mr. Evans commented that this is not an appropriate part of the discussion for this committee on who is eligible, since the Act defines eligible recipients. Mr. Kenison stated that anything that is related to the allocation is ok, but this committee is not charged with redefining the eligibility per statute. However, fair questions have been raised on the fit of eligibility and count. He noted that there are some issues, but it is possible that the committee would limit itself to those calculated under the tribal eligibility criteria. At the same time, it doesn't mean that you can't have an outside construct of formula areas. Mr. Kenison stated it was therefore appropriate to discuss.

Mr. Sossamon announced that the committee would break for 15 minutes and would resume at 11 am.

The committee reconvened at 11:20 am. Mr. Sossamon recognized Mr. Ducheneaux, who deferred until Ms. Kidder returns.

Mr. LaPointe, getting back to the issue of the 5 state recognized tribes, suggested that perhaps there is language that can be added that would require the burden of monitoring the criteria on HUD, to include an annual review to ensure that the tribes stayed within the criteria set forth. Ms. Hobucket pointed out that the Lumbee had a hearing on federal

recognition, and one of the issues was the number of members. She stated that the Lumbee has increased by about 4,000 members per year, although this isn't necessarily documented. Ms. Marasco stated that she would like to see HUD verify actual tribal enrollment over the last 6 years of NAHASDA in order to determine if they have been over- or under-funded. Ms. Kruszek stated that in Briefing Book 2, the tribal enrollment was 32,076 in FY98, and that the same number is reported in FY03, indicating that tribal enrollment has remained stable. Ms. Marasco reiterated that for her, the issue is that the state recognized tribe is funded based on enrollment numbers and not AIAN data per census, so that their funding can be tied to enrollment per statute. Ms. Kruszek agreed that was a proposal that the committee could recommend. Ms. Marasco pointed out this would not be a change since it is the way the regulation was written and should have been implemented. Mr. Heisterkamp stated that the language the committee was looking at on formula area is where the provisions on population cap reside, and that the committee has not yet gotten that far. He added that at a minimum, when the committee looks at the language, it should specify that population cap is tied to enrollment with the exception of state recognized tribes, which would be tied to their enrollment per statute. He added that they were already revising this section. Mr. Sossamon asked if there was a proposal to submit the language. Mr. Heisterkamp confirmed and stated it would be easy to enter that sentence into the redline version, and that he assumed that the committee would support discussing that language. Mr. Sossamon suggested that it be written out so it can be considered and not forgotten. Ms. Marasco reiterated that funding based on AIAN persons for state tribes was an error and that HUD should correct it in the same way that over- and under-funding is considered by HUD.

Mr. Sossamon suggested that a sub-group work on the state issue. Mr. Sawyers suggested that in the meantime, the committee go on to another subject. He added that the committee had spent a lot of time on this issue, and needed a proposal to consider. Mr. Naize yielded to Mr. Carl, who requested that before leaving the subject, the committee deal with the provision that specifically speaks to the formula -- ¶c2 'terminations of assistance under title V.' Mr. Sossamon responded that the sub-group will be submitting a proposal relative to the state tribe issue. He asked if there were any other questions.

Ms. Kidder pointed out that the statute defines Indian and Indian tribe. She also noted that under the formula, poverty and Indian families on formula lands are to be considered, an issue that relates to multiple race. She further suggested that if multiple race is accepted for one area, it must be accepted for all. For example, for those tribes without a reservation, when census changes the area (e.g., TDSA) it is unfair, just as expansion without notification is unfair. She suggested looking at the challenge process on this also, noting that the Lumbee expanded because census changed their TDSA, and there had been no notification, no comment, and no commitment to housing services. She stated that this is an exception, but the issues are related when you move away from the definition of an Indian. Ms. Kidder reiterated that a shift is being made from rural areas to the more populated urban areas, and that multiple race causes the same shift. She stated that the purpose of NAHASDA was to help Indians where there was no infrastructure and no access to programs. Mr. Sossamon responded that as a committee

member he understands the concern over the use of multiple race in the 2000 census data, but that the issue was raised previously by the committee and that it was the opinion of many is that although the census is not perfect, it is the instrument that is being used, and that it is applied consistently across the US. He noted that within the context of state tribes, there is statutory language that refers to membership. Mr. Ducheneaux pointed out that the statute defines Indians, not the census.

Mr. Naize yielded to Mr. Carl, who restated the position as requiring that multiple race be used for allocation purposes and requested a rationale. Mr. Sossamon responded that he would provide a rationale, but there are many reasons that were cited. In particular he stated that the approach gets closer to a full count of Indian people. Mr. Evans commented about the statutory requirement of using tribal enrollment, and noted that there is also a basis for using tribal enrollment for federally recognized tribes as well, in order to be fair and equitable for all tribes. He stated that to use tribal membership for state tribes would not be fair and equitable to federally recognized tribes. Mr. Ducheneaux reiterated that was exactly what he was asking for. Ms. Kidder added that because census is self-identified, it has nothing to do with whether you're a tribal member. She referenced the multi-race effect, and noted the percentage of persons checking AIAN alone or AIAN in combination. She reiterated that her point is that there are regional and cultural differences. For example, in Northern Plains, it's not a good thing to be an Indian, so unless you are, you don't check AIAN. On the other hand, she commented that in the Northwest, it is culturally preferable to identify as Indian, so there are more people who check multiple races. She stated that this is a sociological effect, and therefore enrollment must be taken into account. Mr. Sossamon asked how the sociological effect could be proven. Ms. Kidder suggested looking at the studies on identity to see that it varies by region and so there needs to be some verification through enrollment. Mr. Sossamon responded that you can challenge under the current regulations. Ms. Kidder stated that enrollment isn't used in weighting, so the challenge won't address this. She reiterated that the result is that rural areas are losing percentage-wise to urban areas. She suggested factoring enrollment and weighting it, or coming up with some other number that can be use, for example, use enrollment or IHS population to identify based on definition of Indian. Mr. Sossamon recommended that Ms. Kidder submit this as a written proposal to the committee.

Ms. Marasco stated that if multiple race is not considered, the tribes will be committing statistical elimination. Mr. Doty stated that he agreed with Ms. Kidder, and asked how HUD planning on implementing multiple race and AIAN. He also commented that since census is self-identified, it is possible for the census taker to determine what race they are. He added that there are issues related to fair and equitable as well, and the burden of measurability is on the tribes. Mr. Ducheneaux pointed out that he had requested a rationale from HUD on the use of multiple race. He added that he had not yet submitted a formal written request, but that he would. He also noted that Mr. Kenison had stated that the committee could not go outside the statute, and the statute defines Indian. Mr. Gorynski noted that multiple race can include several Indian tribes, for example, there could be someone who identified with 5 or 6 tribes. Ms. Wilson stated that her opinion is

that a person with blood from many tribes might be considered 'multiple race' even though you are AIAN. She suggested going back to enrollment. Mr. Sossamon noted that when he responded to the census, he checked AIAN, and indicated his affiliation because he is a documented member of his tribe. He also checked other boxes on the census and did not believe that by doing so he diminished his AIAN identity.

Mr. Jones restated that so long as you check AIAN, you are counted as AIAN. Ms. Kruszek clarified that there is no designation of 'multi-race' on the census form, but there are 16 boxes and you can check as many as are applicable. She added that if all designations apply, then under 2000 census you were free to check as many as you wished to check. Mr. Jones added that each individual in the family checks a box. Mr. Carl opined that it appeared that HUD has developed a policy to use multiple race and to incorporate that policy into the implementation. Ms. Greene asked for clarification. Mr. Sossamon responded that the census data includes everyone who checked AIAN, regardless of any other box that is checked. Mr. LaPointe noted that his tribe was instructed to check AIAN plus enrollment and that other boxes could be checked if desired. Mr. Ducheneaux reiterated his concern that the statute says what an Indian is for the purposes of NAHASDA and therefore must be implemented by HUD. Ms. Kidder commented that there is a place on the form that asks for your enrollment and those people who check other boxes do not fill in tribal enrollment. She added that 36% of AIAN plus other didn't put anything down for tribal enrollment and she noted concern that this creates a serious problem. She stated that if the goal is to fund programs based on political status and not race, this should be addressed. She added that she did want programs based on political status, not race and that they are trying to allocate funds based on political status because that's what the statute says. Mr. Sossamon commented that those who have not indicated tribal alignment might be unaware of the political implications. Mr. Humphrey stated that he is an unenrollable descendent, and that his father belongs to the Wyandottes and Delaware. He added that although he is not enrolled, he does report multiple race. He stated that this is a racial classification not a political classification, but that Indian status is not racial; it is political. He restated that census looks at race and that many people do not meet the criteria for any specific tribe.

Mr. Sossamon pointed out that the discussion is who is eligible for distribution purposes. He suggested that this question has been debated several times, and that when the committee gets to weighting factors, there could be a proposal to substitute some other method other than census. Mr. Hudson stated that this should be an item decided by the committee, whereas HUD didn't even consider this to be a topic of discussion. He asked if this issue would be decided by HUD or the committee. Mr. Sossamon responded that HUD had made a policy decision to count everyone who responded by checking the AIAN box.

A point of order was raised by Ms. Hobucket that the question was directed to HUD and so should be answered by HUD. Mr. Sossamon yielded to a HUD representative. Mr. Boyd responded by noting that there had been some requests from Mr. Ducheneaux and that HUD was waiting for the request in writing. With regard to Mr. Hudson's question,



Mr. Boyd stated that there was a policy call on the part of A/S Liu for FY04, but that the issue was open for discussion for future years.

Mr. Ducheneaux requested a call for consensus on whether or not the regulation will use multiple race census data. Mr. Sossamon noted that there is no multiple race box on the census.

Mr. Sceeles reminded Mr. Boyd that multiple race was (from 2000 census) was used for the FY03 allocation, based on a HUD policy decision. Mr. Doty pointed out that there is a big debate going on nationally regarding 2000 census data amongst Latinos, African Americans, and others, based primarily on the use of the census to define electoral districts.

Mr. Sossamon announced that the committee would take a lunch break and would reconvene at 1:30 pm.

**WEDNESDAY AFTERNOON, SEPTEMBER 24, 2003**  
**FULL COMMITTEE**

The committee reconvened at 2:00 pm. Mr. Sossamon announced that Steve Ginnis would be sitting in as alternate for Dr. Kazama, and Karen Lambert would be sitting in as alternate for Mr. Shuravloff. He also noted that TR#58 and TR#59 had been distributed.

Mr. Ducheneaux restated that before lunch he had called for consensus on using multiple race. He clarified that he would like to call for consensus that only those persons marking AIAN only on the 2000 census form be used for the formula variables. Ms. Kidder restated that the committee use AIAN persons even if they mark another race as the data for every variables for the formula. Mr. Hudson stated that this is the same as HUD used for 2000 census. Ms. Kidder agreed. Mr. Sossamon clarified that as long as AIAN is checked, it would be counted even if another box were checked. Mr. Ducheneaux confirmed that was correct. Ms. Marasco asked that the variables be specified. Ms. Kidder listed: AIAN persons, HH between 50-80%, HH between 30-50%, HH below 30%, HH overcrowded or without plumbing, HH with housing cost burden, and housing shortage. Mr. Hudson asked if there is no consensus, is the alternative AIAN only. Ms. Kidder stated that they are prepared to offer alternatives. Ms. Greene asked if those numbers be used if there is another variable proposed. Ms. Kidder responded, yes.

Mr. Sossamon asked if there were any further questions. Hearing none, he asked if anyone was opposed. There were five objections: Mr. Ducheneaux, Mr. Hudson, Mr. Sawyers, Mr. Adams, Mr. Naize, Mr. Ginnis.

Mr. Gorynski asked if AIAN is defined in the regulations, pointing out that Indian is described; and if not, is it necessary to be included in the regulation. Mr. Sossamon responded that it may or may not be necessary. Ms. Kidder stated that the regulations

and statute do not require a definition of AIAN, but do define Indian. She also stated that on Monday, HUD stated that it made a policy decision that AIAN plus other would be used to calculate the Needs variables based on the fact that it was the best available data. Ms. Kidder also noted that the term AIAN is used by census and reiterated that HUD has made the decision to use that figure. Lastly, she pointed out that HUD has also said that this committee has the ability to set the data. Mr. Boyd provided a clarification, stating that Mr. Hudson had raised the question regarding HUD's policy for FY04. However, the committee has the right to look at future years. Ms. Tooley stated that under §324a, AIAN household is mentioned, but that she hasn't found any place where it is otherwise defined.

Mr. Sossamon requested that those who are opposed to the proposal raise their hands again. There are ix opposed, and therefore consensus has not been reached on continuing to use AIAN plus other for the Needs variables.

Mr. Sossamon called for consensus to discontinue use of census data for those who check AIAN and other. He clarified that this proposal is the opposite of the previous proposal. There was some discussion. Ms. Gore commented that she was confused and that there was no disclosure on an alternate in relation to the previous proposal. She stated that without known alternatives, she must stick with what she knows. Ms. Hobucket stated that she would like to ask HUD why the policy was changed, and added that by countering this vote, the committee is wasting time. Ms. Hobucket then called for a point of order. Mr. Sossamon stated that as a member of the committee, he disagrees. Ms. Greene reiterated that the question to HUD is: when you decided on the policy, were runs using AIAN and AIAN plus other performed, and were comparisons made to determine which benefited the tribes most. A/S Liu responded that runs were performed using both sets of information, and the issue came down to which data are better. He added that HUD chose to use the multiple race based on the fact that HUD thought it was best for the programs and tribes.

Mr. Naize posed a question on procedure, noting Mr. Sossamon's dual role as member of the committee and Chair. Mr. Naize suggested that someone else take over as chair when Mr. Sossamon brings forth his issues. Mr. Sossamon responded that the Protocols allow for the chair to recognize itself.

Mr. Ducheneaux stated that he disagreed with Mr. Boyd and A/S Liu. Ms. Hobucket stated that she didn't like HUD making decisions for the tribes and that the tribes should be speaking for themselves. She added that wants to be on the record as objecting. Mr. Doty pointed out that we will all have to live with this decision for 10 years and that A/S Liu believed that it was for the benefit of the tribes or the program. A/S Liu responded that HUD has the responsibility to use the best information available and has the legal authority to use the best data available. He noted that this group has the ability to change that, but as Mr. Boyd has indicated, the change will only take effect at the end of the rulemaking process probably FY06. Mr. Ducheneaux respectfully disagreed. Mr. Carl commented that HUD has made its policy decision known, and it is up to the committee

to take a position. He stated that we need to keep our identity as true Native Americans; that our ancestors made it known that we need to hold onto our identity as Native Americans. He added that we have experienced the true terrorism of America, and should go to Congress if necessary to change that policy.

Mr. Sceeles stated that since consensus was not reached on the proposal, it should be reported in the preamble as a non-consensus item. Mr. Sossamon commented that there are those who believe that the census is the best instrument available, and the way that people self-report in no way diminishes tribal identity.

Mr. Sossamon noted that there is a call for consensus on the floor. Mr. Ducheneaux asked what the effect of Mr. Sossamon's call for consensus would be. Mr. Sossamon responded that he has called for consensus to discontinue use of data for those people who checked AIAN regardless if they checked another, and that if consensus is reached, the use of AIAN plus other would be discontinued. Mr. Gorynski requested further explanation on what would be used instead. Ms. Greene stated that she was confused and asked for clarification that this consensus would mean going back to AIAN with membership enrollment only. Mr. Sossamon clarified that it means we will not use AIAN regardless of other. Ms. Greene asked if this meant that census data would not be used. Mr. Sossamon confirmed that was correct.

Ms. Hobucket called for a point of order. Mr. Sossamon responded that this question has not been called for consensus before, and therefore doesn't believe that a point of order is valid that this has been called before. Ms. Lambert requested that the facilitator resolve the points of order. Mr. Sossamon agreed. Mr. Swanson requested permission from the committee to explore this. Mr. Sossamon clarified that the committee is concerned about where it's going and whether there is some other agenda. Mr. Swanson suggested that this is a critical time, and it would be good for the committee members to start sharing their interests in order to make the hard decisions. Mr. Sossamon stated that his call for consensus was offered to counter Mr. Ducheneaux's consensus item. The proposal is to not use data for those people who checked more than one box on the census form, that is, to continue to count those who check more than one box. Mr. Sossamon pointed out that this was procedural maneuver to counter Mr. Ducheneaux, and that he intends to use the same procedure to protect his interests and those of the people he represents. Mr. Ducheneaux asked what the outcome would be if consensus is reached. He added that his previous proposal was to continue to the use of census data and consensus was not reached. Therefore, he believes that census data can't continue to be used. Mr. Ducheneaux pointed out that if consensus is not reached on the proposal on the floor, then HUD can continue to count mixed race. Mr. Sossamon stated that he hoped that Indians who are proud of other heritage would be counted. Mr. Ducheneaux commented that he believes that HUD is required to use enrollment not census. Mr. Sossamon stated that he and Mr. Ducheneaux disagreed. Mr. Swanson asked for a clearer understanding of the issues behind the discussion, noting that it sounds as though the committee is trying to find a valid data source, which may be different in the future. Mr. Sossamon stated that Mr. Swanson had been included in the conversation to resolve the point of

order, and then the committee could go back to the call for consensus. Mr. Swanson asked if what the committee was looking for was a procedural answer on whether or not to go forward with the call for consensus. Mr. Carl responded that it was up to the facilitator to address the point of order that the move for consensus by Mr. Ducheneaux was dealt with and that it was unnecessary to address the same issue again. Mr. Sossamon asked if that meant that if for example, consensus is not reached on minimum funding that no other proposal can be considered. He added that his call for consensus was not the same as Mr. Ducheneaux's proposal. Ms. Marasco suggested stepping back further, because this issue was dealt with at the last meeting in Washington, DC. Mr. Sawyers requested clarification on the result of the non-consensus vote on Mr. Ducheneaux's proposal. He added it was his understanding that since consensus was not reached, then the census data continues to be used the way it is now. He then asked Mr. Sossamon what his proposal is for. Mr. Sossamon responded that his proposal is to not continue the way we are now. Mr. Sawyers asked for further clarification.

Ms. Marasco stated that she would like an answer on whether this maneuver is valid to begin with. Mr. Ducheneaux reiterated that the prior consensus item was to use single race and that failed. He added that he had not requested a point of order. Ms. Marasco stated that there was a call for consensus on that item at the last meeting. Mr. Ducheneaux responded that the call for consensus at the last meeting was to use single race only, and consensus was not reached. This was a call on using multiple race and it was also not reached.

Mr. Bush requested a tribal caucus. Ms. Gore requested that the last consensus item be written down while they are in caucus in order to better understand what the proposal is. She added that she was totally confused. Mr. Swanson stated that he felt uncomfortable calling a judgment on what can be discussed and would encourage everyone going into caucus to discuss what the driving interest is and then talk about it. Ms. Hobucket commented that she wanted to make certain that all information was shared. Mr. Sossamon responded that there were runs performed using AIAN only and AIAN plus other, and was she requesting this information. Ms. Hobucket responded that would be fair. Mr. Naize asked if there was a room available for caucus. Mr. Bush clarified that he had asked for a tribal caucus, not regional.

[Note: Tribal caucus met until 6:30 pm, and reconvened at 7:30 pm. At approximately 9:30 pm the tribal caucus ended and it was agreed to meet as a full committee at 8 am on Thursday.]

#### **THURSDAY MORNING, SEPTEMBER 25, 2003**

##### **FULL COMMITTEE**

Mr. Swanson opened the meeting at 8:00 am noting that when the full committee broke yesterday, he had been asked to clear up a point of order. He summarized that there had been two calls for consensus. He commented that the use of point of order is typically used under Roberts' Rules. Nevertheless, he reported that he went back to look at the

protocols, which only address decision by consensus and that this committee is not a parliamentary proceeding. Mr. Swanson suggested that the committee begin thinking about what the product will be. He stated that the committee must create a report, in which all parties will have a chance to report on non-consensus items. He added that Mr. Sossamon's call for consensus was reasonable. However, he suggested thinking about the report as opposed to raising consensus simply to get into the record.

Mr. Sossamon stated that the reason that he called for consensus was because Mr. Ducheneaux's non-consensus item would appear in the Preamble. However, he added that he is willing to work with Mr. Ducheneaux to ensure that the issues are framed equally in which case he was willing to drop his call. Otherwise, he will continue with his call for consensus. He noted that his intent is to clearly demonstrate that there isn't consensus either way. Mr. Sawyers reported that there is some discomfort since Mr. Sossamon is both a member of the committee and its chairman. He added that someone else should take the chairman's position when Mr. Sossamon raises his own issues. Mr. Sawyers commented that Mr. Sossamon was doing an excellent job, but that it would be wise to remove him on certain issues. Mr. Sossamon responded that the question came up during the drafting of the protocols, and according to his recollection, it was agreed upon that any member of the committee could recognize anyone, including the chairman recognizing himself. He stated that it was acknowledged at the time that he could. However, he added that he would be willing to transfer the duties of chair during such periods, even though he doesn't believe that he has abused the position of the chair.

Mr. Naize asked for confirmation that the committee is in full session at this time. Mr. Sossamon responded that it was agreed last night in tribal caucus that the full committee would reconvene this morning. He added that for the purposes of the question at hand, he would defer at this time to his Co-chair, Ms. Greene. Ms. Greene agreed to chair, but added that she would like to call upon the facilitators to recognize the speakers. Mr. Swanson stated that if agreement can be reached on how to frame Mr. Ducheneaux's non-consensus item, Mr. Sossamon would withdraw his call for consensus. Mr. Ducheneaux responded that had been discussed and if it was agreed that this item would go into the Preamble, then he would withdraw his call and Mr. Sossamon would withdraw his. However, he added that he would like to clarify that anytime there is a call for consensus that does not reach consensus, there can be a counter call for consensus. He reiterated that he would be ok with the language developed yesterday. Ms. Greene stated that she always believed that consensus meant that you could or could not live with something, and as far as she's concerned, the question is moot if consensus is not reached. She stated that the committee has become deadlocked. She requested that both Mr. Ducheneaux and Mr. Sossamon withdraw their calls, agree that we don't agree on consensus, and move on. Mr. Naize yielded to Mr. Carl who stated that the outcome on the deadlock on consensus was the decision to go into the breakout session. There, language was developed that would allow both to withdraw calls for consensus and start working on the alternate language. He urged Mr. Sossamon and Mr. Ducheneaux to accept the language and move on. Mr. Sossamon stated that he could accept both calls being stricken from the record. However, there was action taken on Mr. Ducheneaux's

call and so Mr. Ducheneaux would need to call for consensus to withdraw his consensus. If so, Mr. Sossamon indicated that he would withdraw his call and then we can move past this and focus on the agenda. Mr. Swanson indicated that this would follow the practice that we have followed before. He then asked the committee how it felt about calling for consensus to rescind. Mr. Ducheneaux commented that he agreed that if the language is considered, he was willing to withdraw, but the language wasn't approved. Mr. Swanson asked for clarification that Mr. Ducheneaux wanted the language approved before withdrawing his call. Mr. Ducheneaux stated that if the language doesn't pass consensus, then he will call for counter consensus.

Ms. Hobucket asked if those who agreed with Mr. Ducheneaux have to agree to withdraw. She asked who makes the final decision on this. Further, she expressed her opinion that if HUD used multiple race data for the FY04 estimate and it is going to be a continued practice, this committee is not negotiating in good faith. Mr. Swanson reiterated that all the decisions need to be made by the committee, and it is not his role to make a determination. He added that it is up to the committee to decide how to proceed and what is reflected in the report is what the committee wants to see in the report, not only was brought up for consensus. Mr. Naize yielded to Mr. Carl who commented that the committee is making a bigger issue on calling consensus than necessary. He pointed out that calling for consensus is just to gauge if there is an expressed disagreement. He reiterated that a call for consensus is not a vote. He added that he believes that there was expressed disagreement and there was an alternative proposed by the breakout group. He noted that the confusion was what the call for consensus was. Mr. Sossamon stated that he agreed with Mr. Carl, and the best course of action would be to proceed with his call for consensus. He added that it doesn't prevent us from proceeding on the language, and it also doesn't prevent us from counter calls in the future. Mr. LaPointe stated that his position is that the issue on the floor is the call for consensus. Since there will be non-consensus on both, that means we revert to status quo. Mr. Swanson agreed that one way to move forward is to call for consensus on Mr. Sossamon's proposal.

Mr. Sossamon restated that the call for consensus was to discontinue the use of census data counting AIAN persons, which includes AIAN only and AIAN in combination with other races.

Mr. Swanson asked if there was anyone who cannot agree. Mr. Ducheneaux asked for clarification that anytime there is a call for consensus and consensus is not reached, anyone could call for counter consensus. Mr. Swanson responded that would be within the committee's practice, but that the intent should be looked at. He added that the intent here is to neutralize what transpired yesterday. Mr. Ducheneaux stated that he was prepared to do that, and that the language puts the burden on HUD not the tribes. If indeed that language comes up on a call for consensus and consensus is not reached, then he can call for an opposite position, which would carry the day. Ms. Hobucket pointed out that there are other items in the formula that use census data, and would this call wipe out all variables. Mr. Sossamon confirmed that would be true. He also added, in response to Mr. Ducheneaux, that it is his understanding that a show of non-consensus,

it's simply that, and if there is a counter call and consensus is not reached, one doesn't trump the other. Mr. Ducheneaux reiterated that HUD made a policy decision and he requested a rationale. He added that the policy was not negotiated with the tribes, and HUD still hasn't provided the rationale. He pointed out that Mr. Sossamon has said that if his call does not reach consensus, then the default position is to use census for the distribution of funds. Mr. Ducheneaux reiterated that the disagreed that there is a default position, and that the formula states that the decennial census was the initial data, and that was the 1990 census. He added that if the 1990 census data is the default, that's ok with him. However, he wants to be sure that this gets in the Preamble that there is no default position. He also stated that it seemed to him that HUD isn't here to negotiate.

Ms. Greene called the question. Mr. Swanson asked if there is anyone who objects to Sossamon call for consensus. There were many objections. Mr. Swanson announced that consensus had not been reached. Mr. Sossamon commented that it has been the practice of the committee to count objections. Mr. Swanson asked the dissenters to raise their hands. There were 16. Mr. Swanson then suggested moving on to a discussion on the language from yesterday.

Mr. Sossamon took back the chair and reported that there had been discussion last night on how the committee would proceed. He noted that there was general agreement that there are some items that the committee has worked through, and there were some items that we began to work through (e.g., formula area, state tribes). He stated that it was suggested that the committee start with those items and methodically work through the rest of the list. He added that he would like to suggest they focus on, but also thought it would be a good idea to review where we are and also determine if we want to continue and schedule another meeting. He said that he felt there is the potential to work through many of these items but he's not certain if there is enough time. Mr. Sawyers commented that it was too early to decide if another meeting is necessary, and stated that he would like to review this at the end of the day, adding that he was unwilling to spend another week doing what they've been doing unless he can see some real progress. Mr. Sossamon asked if there were any objections to addressing this later. Mr. LaPointe suggested addressing the issue before the committee breaks for lunch. Mr. Sawyers agreed. Mr. Sossamon then stated that there were three open issues and recommended that the committee return to the small tribes issue if the data requests are available. Mr. Bush responded that the data is not yet available. A/S Liu commented that staff needed approximately one hour to finish. Mr. Sawyers suggested going back to formula area, since the committee is about half way through. Mr. Naize requested that the Alaska delegation bring its proposal to the table.

Dr. Kazama stated that he had requested a data run yesterday, and that they are waiting for the results. He added that they were concerned about the effects of the new census data and would like to see how big the effect is, based on the imbalance created from rural to urban. Mr. Carl requested that the Alaska delegation present the concept. Dr. Kazama stated that was already done, and that the proposal was to fund a minimum \$25k, but to look at \$50k. Mr. Sossamon asked for clarification on the proposal. Mr. Gorynski

also requested clarification that the committee is looking at the same proposal. Mr. Sossamon reiterated his request that all documents are numbered and dated. Staff also requested clarification.

Mr. Sawyers stated that he thought that the committee was discussing formula area, not minimum funding. Mr. Sossamon pointed out that there was a request to go to formula area, but then there was also a request regarding minimum funding. He added that Tab #31 was Dr. Kazama's proposal to keep minimum funding at \$25k, and Tab #32 was Dr. Kazama's proposal to increase minimum funding to \$50k. Mr. Hudson asked if there was an agreement to put a time limit on each topic. Mr. Sossamon responded that there was no such agreement. Ms. Greene suggested that the committee set a time limit. Mr. Heisterkamp stated this would be up to the committee. He added that if the committee goes back to formula area, there are three outstanding items: Alaska, Oklahoma, and overlapping area. He added that the next item is population cap for state tribes. Mr. Sossamon suggested that the committee try to be judicious and expeditious. Discussion then went back to formula area

Mr. Heisterkamp raised the Alaska issue. Mr. Hutchings noted that this refers to the new Alaska language, ¶3 under §302 (see Attachment 17), which allows for an ANV to expand according to regulations set forth for everyone else. He added that because the land will have belonged to someone else, the tribe would only count the data that comes with its own tribal members; but the tribe would be able to count the members that it is serving. The word 'overlapping' was removed. Ms. Hobucket asked if that meant that tribal members had to live in that area, and that it appeared that this language would prevent any tribe from trumping any other in any area. She added that this had already been addressed in Seattle, and that this would be preventing sovereignty and allowing the corporations to make decisions. Mr. Hutchings stated that his would allow tribes to follow the numbers, and not restrict the tribe. Ms. Greene commented that the discussion is on a special issue for Alaska, but that she doesn't see anything that prevents tribes from servicing Alaska Natives who move to the lower 48. Mr. Hutchings agreed that Alaska Natives could be served anywhere. Mr. Heisterkamp reiterated that this language defines which data goes into the formula, and does not restrict servicing. He added that it is linked to expansion and substantial housing services, and that under this proposal the Alaska tribes would have to meet the same criteria as other tribes. Mr. Doty mentioned that he has served members in South Carolina. Ms. Hobucket stated that the language "on all other tribes within area" separates one tribe from being different and stops them from getting twice enrollment. Mr. Heisterkamp stated that they had not gotten to population cap, but that he would assume that it would prevent the tribes from receiving two times enrollment. He added that the only time the population becomes an issue now, is when a tribe moves into an area that isn't serviced now, which applies to unaffiliated AIAN persons. Ms. Hobucket stated that she thinks that the sovereign tribes should have authority, not corporations. Ms. Kruszek responded that this is not limited in the lower 48, and if an Alaska village relocated to the lower 48, they would be limited to two times enrollment. Mr. Heisterkamp referred to ¶2 on expansion regulations. Mr. Sossamon stated that the regional corporations are considered sovereign tribes, so this protects the



integrity of all sovereigns. Ms. Greene stated that she thought that the language was changed and did not refer to a form developed by HUD. Mr. Heisterkamp mentioned that the committee could get back to that later.

Mr. Goodman stated that the only sovereign tribes in Alaska are the villages; the regional corporations are recognized as Indian tribes for the purpose of receiving funds under NAHASDA. He added that this new language is not ideal for the villages, but within the structure created by NAHASDA, there is an overlapping area issue already. He also stated that the regional corporation is the entity that provides services and that given the unfortunate way that NAHASDA sets up the tribes and corporations, this is the best we can do and is a compromise. Mr. Tillinghast stated that Tlingit Haida is a regional housing authority, which is an agent of, and is appointed by, the Tlingit Haida Indians. Therefore, it is a housing authority for a sovereign tribe, and it is not accurate to say that the only traditional tribes in Alaska are the villages. Mr. Goodman stated that he stands corrected. He added that he was addressing the issue of the regional corporations. Mr. Ducheneaux commented that he was disturbed by Mr. Doty's comment about serving folks in South Carolina. Mr. Heisterkamp reiterated that there are two issues: a service issue and a formula issue, adding that although you may not get the formula area, you can send rent money, for example. Mr. Ducheneaux commented that he could then provide services anywhere, and shouldn't he receive credit. Mr. Heisterkamp reiterated that was another issue having to do with expansion and substantial housing services.

Mr. Hudson asked if in Alaska, if a village or corporation wants to expand, that it will always go into another formula area, and is the implication that it wouldn't get credited with the count. Dr. Kazama confirmed that was correct. Mr. Doty stated that this is a tribal decision, and if you have a tribal member in need, even if they don't live in the area, you could provide services. Mr. LaPointe asked for clarification as to whether someone in South Carolina is getting counted as living in Alaska. He also stated that he is uncomfortable changing anything in the Alaska language with the pending legislation. Therefore, he would not be able to provide his consensus on any of these changes. Ms. Kidder stated that she disagreed if the committee members are saying that the purpose of NAHASDA is to serve members anywhere. She reiterated that the purpose was to serve Indians on lands that are not serviced by any other programs. She added that if you continue on this road, you would not be servicing rural poor Indians. She stated that there was no doubt to her that was the intent and that the funds have everything to do with the goals. She reiterated her opinion that if you are redirecting the money away from the rural Indians, your not in good faith. Ms. Wilson commented that the reason the Indian housing program was started was for the rural Indians, and was designed for those with no other opportunities. She agreed that the Alaska villages should be included, but urged not to send money to urban areas, not to corporations, but to sovereign Alaska natives. Mr. Sossamon responded that if a tribe chooses to serve outside its formula area, it is a sovereign decision that must be left to the tribe. He added that Alaskans have worked out a compromise among themselves with representation from the villages and the corporations, and the committee should consider that compromise and honor that

agreement. He added, that based on Mr. LaPointe's earlier comments, it will not be possible to reach consensus on this item and so the committee should move on.

Ms. Gore stated that the language in the regulations as currently written doesn't work in Alaska and that's why we were asked to craft new language, which has been presented. She added that the language is proposed on behalf of villages and ANVs and is not intended for others. She explained that there is a situation in which villages are trumping other villages, and this language will help. She also recognized that consensus will not be reached on this item at this time, but hoped that the members of the committee understand that they have come to agreement on this. Mr. Hutchings stated that they have worked for 6 months to develop something that will work for Alaska. He noted that a lot of time has been spent on substantial housing services and expansion, and that there are similar concerns in Alaska and that this language will work. Mr. LaPointe clarified his position in that he is uncomfortable supporting something that will get ignored at the legislative level. He stated that he understands that they worked together, but he thinks it will be ignored anyway. Mr. Goodman responded and referred to the proposed Title 9 legislation that concerns Alaska, adding that he thinks that everyone has seen the memo from Hobbs, Straus, Dean & Walker. He further clarified that this letter was sent to Hobbs' clients to inform them of the legislation. He added that his clients are opposed to the legislation, both the carving out of funds and the fact that the money all goes to the regions. However, he pointed out that this is not an issue for this rulemaking. Mr. Goodman stated that his firm and their client's position is in opposition to the legislation, and if it passes, it wipes out everything that the committee has been doing. Mr. Sossamon asked if Mr. Goodman's clients object to the language in the current proposal. Mr. Goodman responded that his clients have agreed to the compromise. Mr. Sossamon pointed out that if the legislation goes through, then anything the committee does might be irrelevant. Mr. Hoffman reiterated that the proposed language was a compromise. He added that he supports small tribes in his region, and is a member of a small tribe. He also stated that it is important to look at this now; we don't know what may happen in future. He restated that there is a problem that needs to be addressed and although it may not be the best solution, it is a compromise, which attempts to make the process simpler, especially in Alaska where there are 200 tribes. He stated that all in all, this is the best possible approach and that he would call for consensus on this language as written. Mr. Heisterkamp asked if there were any other comments. Hearing none, he turned the meeting over to Mr. Sossamon to address the call for consensus.

Mr. Sossamon asked if everyone understood the arguments. He added that he would like to limit any questions to clarifications on the call for consensus. Ms. Tooley asked if the call for consensus was only on the proposed Alaska language. Mr. Sossamon confirmed that the call is only on the Alaska proposal within formula area (see also Attachment 17). Mr. Hoffman confirmed that the call deals with this particular issue. Mr. Sceeles commented that he represents villages, a regional tribe, and the Taguigmiullu Nunamiullu. He reiterated that the discussion is about the data, which doesn't change no matter how you count – regional, villages, whatever. He stated that this is a zero sum

game for Alaska issue. Therefore, if Alaska has consensus, and someone outside Alaska objects, let the record reflect that.

Mr. Sossamon asked if there are any further comments. Hearing none, he asked if anyone was opposed. Mr. LaPointe stated that if this helps those villages where there is pending legislation, he will support it. He stated that he was unsure, but hoped that this has a positive impact on villages and their sovereignty. Mr. Heisterkamp stated that nothing in a regulation will trump a statute. Mr. LaPointe stated that he supported movement of the legislation that the Alaska region has unique issues. Mr. Sossamon requested again that comments be limited to clarification on the consensus item being discussed. Mr. Ducheneaux asked if the whole regulation would be reviewed and called for consensus at the end of the process. Mr. Sossamon stated that each issue is being looked at individually, and then we will then look at the whole. Mr. Ducheneaux asked for clarification that ¶3 only relates to Alaska. This was confirmed. Mr. Sossamon asked Mr. Heisterkamp to indicate the parts that pertain only to Alaska. Mr. Heisterkamp stated that all of ¶3 pertains to Alaska, including ¶i, ii, and iii under §1000.302. Mr. Ducheneaux asked if this is the only change to the regulation. The answer was no. Mr. Heisterkamp stated that if consensus is not reached on all, the committee would have to take up the issue of what happens to the consent items within the regulation. Ms. Hobucket stated that she is saddened that non-Alaska committee members are being threatened not to vote against. She added that she recognizes that the Alaska villages are different, but she's charged with protecting sovereignty. She stated that if something goes into the record that corporations don't have sovereignty over villages, ok. She also noted that she thinks that the call for consensus was premature.

Mr. Naize yielded to Mr. Carl, who stated that there was an issue raised on §327 and that Alaska was going to look at that. He added that the intent of §327 is more than just an alternative. He noted that this proposal relates to §327 and that he would draft language for review. Mr. Sossamon asked if the proposed draft of §327 would address Ms. Hobucket's concern and enable the committee to move forward. Mr. Carl stated that the draft language allows villages to give their data to the next level or retain the formula data on housing population. He summarized that it allows the decision to sit with the villages, instead of defaulting to an order of preference. Mr. Sossamon requested a response from the Alaska delegation. Mr. Hutchings responded that they have reviewed it, but that it is almost freestanding. He added that it does incorporate ideas from §327, but also assumes ¶2 and so it can't stand completely on its own. He noted that the section established formula area for Alaska, as well as how tribes relate when one wants to expand into another area. Mr. Sossamon agreed but added that it was his perception that in order to get consensus on the proposal being discussed, the committee may need to first address §327. Mr. Heisterkamp suggested that it would likely be necessary to discuss this further, but the committee should address the consensus now. Mr. Sossamon requested that if any committee members withhold consensus that they state the reason. Mr. Humphrey suggested that since consensus was 'qualified' that the committee could move forward on this and come back to §327 later. Mr. Sossamon suggested calling for consensus, identifying problems, and revisiting. Mr. Naize disagreed and requested that

§327 be addressed before calling for consensus. Mr. Hoffman stated that he would like to carry on to the next level, and so his call still stands.

Mr. Sossamon announced that the call for consensus stands and that objections need to be noted. He asked if there were any objections. There were three.

Ms. Greene requested that the three who objected provide alternative language. Mr. Sossamon stated that it was his belief that the three who objected wanted to see the language that Mr. Carl has drafted. Ms. Greene then requested that the committee move on to §327.

Mr. Heisterkamp suggested a 10-minute break.

The meeting reconvened at 10:55 am. Mr. Heisterkamp read through Mr. Carl's proposal for §327 on the screen (see Attachment 16), and opened the floor for discussion and questions. He pointed out that this would completely replace the §327 in the current regulation. Mr. Carl added that it would support the proposed language on formula area, and gives the decision-making back to Alaska villages. Ms. Gore reported that she had spoken with Mr. Carl about the proposal. Mr. Carl explained that the original language mixes up two issues: data and IHP. He felt that by rewording as proposed, all decision-making on the data rests with the villages. Mr. Hutchings asked if that wasn't already accomplished in the text, and perhaps the objection is the title of the regulation. Mr. Carl responded that it goes beyond that. He added that he has heard the concerns about tribalism and he stated that the concern is that grass root interests are not here and so this proposed language gives the sovereignty to the grass roots level. Mr. Hutchings stated that Alaska's counter proposal is to leave ¶a, as is, since it has worked well so far. He suggested that if there are issues in ¶b they could be discussed separately. Mr. Carl asked what in the proposed language is causing heartburn. Mr. Tillinghast stated that he represents a regional tribe, not a regional corporation and requested that the distinction be kept in mind. He added that as a regional tribe, they have a right to receive funding to help members. He noted that if a village says it wants to receive the funding, it can. However, he stated that this language would cause his client, a bona fide regional tribe, to lose its statutory right solely by virtue of the inaction of one of the villages that reside in his region. Mr. Carl responded that he understands this issue and that in the lower 48, if a tribe doesn't act, it loses funding. Further, as it is, the default system in place takes the sovereignty away. Mr. Tillinghast agreed that if he doesn't act as a regional tribe, he will lose the funds. But he will also lose if just one of the villages fails to act, drawing a comparison to Navajo. Mr. Carl responded that Navajo was one recognized tribe, not many village tribes, so the comparison is apples and oranges. Mr. Tillinghast responded that Mr. Carl's proposal was trying to impose an apple solution on an orange. Mr. Doty asked what the difference between a Nation and a region was. He added that most of the regional corporations work from the bottom up, and so there is tribal sovereignty within the regional corporation similar to the Navajo nation. Mr. Carl pointed out that the biggest difference is that NAHASDA recognizes Alaska natives in three different ways: village, regional tribe, and regional corporation. He reiterated that under NAHASDA, the

villages should make decisions by themselves, and that under the current language, the opportunity for villages to make their own decisions has been taken away. Mr. Hutchings responded that the data within the village would go to village; data outside the village would go to the region. He asked where the data would go under Mr. Carl's proposal. Mr. Carl pointed to the section on Alaska within §302. Mr. Hutchings stated that §302 reaches over to §327, and if you knock out §327, it undercuts the section we discussed earlier. However, he added that it might work to move this new language into §302. Mr. Carl asked if there were other comments. Mr. Sossamon commented that §327 as it exists allows exactly what Mr. Carl's language allows. Mr. Hutchings confirmed that was correct. Mr. Sossamon summarized that the village chooses first as it exists, so perhaps, just add the new language to the existing language to clarify. Mr. Hutchings agreed.

Mr. Bush commented that when the data outside of the tribes was being discussed within the current formula area, it was his understanding that the same data was being passed along. Mr. Hutchings responded that the village tribe has a formula area that is the village, and to the extent that there is data, it is attributed to the village tribe. He added that there are also Alaska Natives living outside of the villages, and their data goes to the regional tribe. Mr. Bush asked if there are different geographic formula areas or is it the same geographic area, the same data, and the same headcount. Ms. Gore responded that in the statute, the regional corporations are considered tribes for the distribution of funds, but that the village tribes get first choice to select data; the regional tribes get what is left over. She reiterated that there is no double count. Mr. Bush asked again if there are different formula areas. Ms. Gore responded that there are. Mr. Bush then restated that he had asked the other day if the data is the same as that used by the regional tribes. Mr. Hutchings stated that if a tribe failed to file and didn't appoint another entity, it would be as if their data flowed upward to the regional tribe. Ms. Marasco stated that the intent is to give the tribes to choice to choose or not, and if the village chooses not to act, no one should get the funding. She added that this would give villages the same sovereign right as the tribes in the lower 48. Mr. Tillinghast stated that the villages do not appoint a regional tribe to prepare an IHP. He added that the regional tribes have coequal rights, and are not the appointees of the villages. He requested that the committee members recognize the regionals as sovereign tribes in the same way that you recognize the sovereignty of the village tribes. Mr. Sossamon pointed out that the villages have the right to claim funding before the regional tribes. Mr. Tillinghast commented that was a concession from the first Neg-Reg. He added that this is going farther to state that villages can take the funding first, which is ok; but then you are adding that regional tribes will lose funding by virtue of a village not doing anything. He stated that if the funds go to the regional tribe if the village is silent, then it's a wording problem, not a policy problem. Ms. Hobucket stated that she had a problem with the default issue. Ms. Greene asked if there was any way that the proposal could be reworded that would be acceptable. Mr. Tillinghast responded that if §327b was removed, the default would be removed, but you would retain rights of regional tribes. He added that would be the only change to §327. Ms. Gore commented that she agreed with Ms. Hobucket that the default is the problem, and that this is the counter proposal (see Attachment 18).

Mr. Sossamon stated that the issue of village sovereignty was raised and that Mr. Carl's language reinforces it, but wouldn't eliminate the default. He added that if the default is the problem, he suggests focusing on that, but not to let that distract the committee from the proposed language from Alaska on §302. He added that it is clear that §327 as it exists doesn't infringe on village rights. He reiterated that the problem is the default status. Mr. Goodman stated that from the villages' viewpoint, the intent of §327 is to preserve sovereignty since the village gets first choice. He added that the proposed language addresses Mr. Carl's concern about default, since this will require the regional corporation to come to the tribe to get a letter from the village. He suggested that Mr. Carl's language imposes too much burden on the villages, and so this alternative would be better for the villages. Mr. Heisterkamp clarified that there was an alternative proposal to go back to original §327 with the deleted phrase 'b.'

Dr. Kazama called for consensus on the Alaska alternative to §327 plus the Alaska language for §302 ¶3i, ii, and iii. Mr. Heisterkamp recapped that the call is for §327 (Alaska alternate) plus §302 ¶3. Ms. Tooley asked if this included Mr. Carl's language. Mr. Heisterkamp indicated it did not.

Mr. Sossamon asked if there were any further questions or comments. Ms. Hobucket requested clarification and requested that the language be reviewed on the screen. Mr. Heisterkamp read §302 ¶3 section from the screen (see Attachment 15). Ms. Hobucket commented that during the first Neg-Reg, some unwanted changes were made because they did not see the final document. Mr. Hudson asked if an ANV doesn't submit an IHP or is not contacted by the regional corporation, where would the funds go. A/S Liu responded that the funds would go back into the national allocation pot. Mr. Sossamon reiterated that there would not be a default mode. He then added, in response to Ms. Hobucket, that this committee decided that there would be an opportunity to consent to the entire document with everything included and in context. Ms. Hobucket requested that they see a strikeout version to approve. She also asked who had control of all the documents. Mr. Sossamon responded that if there is a consensus item, it will be recorded and numbered. He added that if anyone on the committee thinks that something is incorrect, it can be brought up at the appropriate time. He also noted that the final document could include the strikeout version. Ms. Hobucket voiced her concern that her dissention on the last vote would be recorded in the Preamble. Mr. Sossamon stated that the last call for consensus was recorded.

Mr. Carl stated that he would not honor the call for consensus because §327 as written speaks to data that goes from one tier to another in ¶a. Provision ¶b speaks to the IHP. He added that the committee can go beyond this if the 'or' is deleted between the regional corporation and its TDHE. Ms. Greene asked if he had a way to correct it. Mr. Carl responded that he had presented a proposal, but it has not been called. Mr. Hutchings asked if the issues could be resolved by including the language proposed by Mr. Carl, along with the proposed language to §327. Mr. Carl suggested deleting the phrase and adding his ¶1 & ¶2. He added that this is Alaska's issue, but that the unique default

provision is not fair to the lower 48. Mr. Hutchings indicated that they would be willing to take out the default. Mr. Shuravloff suggested tabling the issue some further rewrites could be done. Mr. Heisterkamp stated that the call for consensus was still open.

Mr. Sossamon stated that everything would be dealt with in order, and that discussion may lead to call for consensus and/or tabling an issue. Dr. Kazama withdrew his request for a call for consensus and stated that he would accept Mr. Shuravloff's request to table the issue. Mr. Sossamon recognized Mark Charlie as alternate for Mr. Hoffman, and Ms. Wilson as alternate for Mr. Coyle. He then asked to go on to the next item. Mr. Heisterkamp indicated that the discussion on the Alaska definition was stopped.

Mr. Sossamon announced that it was 11:40 am and the committee needs to decide where it's going. He asked if the members of the committee think that there needs to be another meeting, and will such a meeting produce a result and bring closure to this negotiated rulemaking. He commented that if members of the committee don't think that the body can move to closure, then he would not recommend another meeting. However, he added that he thinks that every issue should be taken to its conclusion, whether that's consensus or non-consensus. He also stated that at some point there must be an end. Mr. Ducheneaux stated that he has an issue that he would like to bring forward today, which is national v. local median income (Tab #1). Mr. Sossamon said that he would come back to that. Mr. Bush, in response to the request for another meeting, stated that if the committee can't reach agreement on minimum funding today, he would agree to another meeting. He added that he has been waiting for data runs, which he now has. However, he added that if the next meeting is going to be like this one, he would say no. He reiterated that there are other items on the 'to do' list that have not yet been addressed. Mr. Sossamon stated that according to his notes, there are some items that we did get through, so there has been some progress. And, there are still some outstanding questions. He also noted that, as a result of our discussion last night, there was a commitment to focus on the issues and come to a conclusion, even if that conclusion is non-consensus. He added that trying to convince one another to change opinions was not working. Ms. Greene commented that she didn't know she was going to be sitting on the committee. From her perspective, on Monday she thought there was no way the committee was going to get anything done. But, in the last day, she has seen a change, and she thinks that if the committee met one more time, it would finish. Ms. Wilson posed a question to HUD as to whether the regulations would remain as they are if there is non-consensus to change. A/S Liu responded that HUD couldn't make changes in the rule arbitrarily, although there are some areas in which HUD has the discretion to make some changes. He added that HUD would have to go through the normal rulemaking process that incorporates proposals, comments, etc. He reiterated that HUD couldn't do whatever it wants. As to what changes can occur, A/S Liu stated that was still in the hands of the tribes, and HUD does not have a laundry list or agenda. Ms. Wilson stated that she came here in the same spirit as the first Neg-Reg: negotiation, concessions, trading, etc. She added that at the last rulemaking, everyone left with some things that they didn't agree on, but we did have a rule. She pointed out that the committee left last time agreeing to come back in 5 years to bring some of the issues back to the table. Ms. Wilson stated that there had been 5

years to fix the problems and she commented that it looked to her as though nothing had been fixed. She stated that those issues should be put on the table for discussion. She added that when the small tribes went for money off the top, it destroyed the faith of the group. She said that they all came here agreeing to deal with small tribes, and that other issues were clouding the committee's ability to deal with that. Mr. Sawyers stated that there are more than two issues. He agreed that the small tribes issue is important. But, he added that Alaska has worked on this for 5 months, and people who have not even looked at this issue have decided that they are going to be the conscience of the group. He stated that there are some fixes, but if you're going to negotiate you need to negotiate, not just say you're not going to agree. Mr. Sawyers then stated that if one more meeting will do it, he'd be happy, but he doesn't see it happening. He pointed out that those people with one issue are holding all the others hostage. He suggested looking at each issue on its own merit. Regarding small tribes, he reiterated that there are two proposals, but he won't be held hostage by any proposal. If we're not going to negotiate, we should go home. He restated his concern that committee members won't support proposals that have been worked on for months. It was his opinion that if the proposal doesn't affect you and your sovereign rights, don't hold it up.

Mr. Sossamon commented that some committee members believe that the formula was not flawed. He didn't agree that issues have been skirted. He stated that committee members are evaluating the proposals, but he did attribute some of the difficulty to the delays caused by the census data. He added that he has seen people working hard and he thinks the participants are committed to negotiate on these hard issues. He reiterated that he did not think of what has been done so far as a failure. Mr. Sawyers stated that he did not view it as a failure, but was asking what one more meeting will accomplish. He agreed that this is a dedicated group. But he added that the committee would have to have a better system than we have now to run through the issues. He suggested a time limit or something. He also suggested either saying we have consensus or non-consensus and then go on and state the reasons for the record. Mr. Sossamon stated that he agreed, but that it is not within the authority of the chair to set time limits. He added that it is the responsibility of the committee. Mr. Ducheneaux stated that a lot of his concerns would have been addressed if he had data earlier, and that it is hard to evaluate the data and meet at the same time. He suggested that if committee members could review the data, they could be prepared. He then recognized Ms. Kidder, who reiterated that the data were not available until the 4<sup>th</sup> meeting, and the proposals have to change, based on the data. Furthermore, she noted that the full committee didn't see proposals on the 26 issues until the last meeting. She agreed that there is value in getting issues on the table, but added that HUD also has to get something done. Mr. Pereira responded that there is no requirement to put anything in the Federal Register, nor is there a requirement that HUD must change the rule. He stated that all that is required is that the committee provides a report to HUD. Ms. Kidder stated that the committee came here to review the regulations. She added that she would encourage one more meeting, and that committee members should pick up the issues they want to look at. She commented that she has seen a lot of progress. Mr. Naize stated that he had finally received the data that he requested a month ago, and then asked if another meeting is possible. A/S Liu responded



that HUD is open to another meeting, but that there are logistical issues related to the calendar. He pointed out that it is getting into a tough time of year (for the government). Secondly, he acknowledged that there are resource questions. He suggested that some kind of sharing of costs would be fine, but there are a lot of details. Lastly, he stated that he doesn't know what will happen under the continuing resolutions, since the budget might not be passed, particularly since this is a tough budget year. He reminded the group that there are other needs of the department that could impact PIH budgets. A/S Liu clarified that he wasn't saying that it can't be done, but doesn't want to promise anything that HUD can't deliver on. It might be possible; it might not be possible. By this same token, he added that it might be worthwhile to have another meeting, but it might not be possible until after December 31. Mr. Naize suggested that if the committee has a way to share costs, the meeting should be held in Denver or Las Vegas, which are better from a cost perspective. A/S Liu indicated that it is also easier for him out of Washington, DC. He added that HUD is open to working with the committee, but doesn't want to overcommit.

Mr. Doty requested that if there is another meeting it be scheduled after the beginning of the fiscal year, for the benefit of those who are attending on their own dime. Mr. Ducheneaux commented that there are a lot of issues here and he would like to call for consensus to have another meeting. He added that if he has to, he'd pay his own way.

Mr. Sossamon announced that Mr. Ducheneaux has called for consensus. Mr. Sossamon suggested that instead of that, he would like to see who is committed to another meeting. He noted that HUD has indicated that it could not commit, but would commit to working with the committee. Ms. Kidder restated that they are looking for a consensus on having another meeting, regardless of when or who is paying for it. She asked if everyone is committed to another meeting that will be productive. It was pointed out that the average meeting costs \$150k, but there are other options, such as NAIHC. The question is simply are the committee members committed to having another meeting, provided the logistics can be work out. Mr. Ducheneaux withdrew his call for consensus. He added that at the first Neg-Reg, the committee worked late, and for two weeks at a time. He added that he would like to think that we could do that again this time to get issues on the table and work on them. Mr. Sossamon posed the question of who would be committed to another final meeting to conclude, no matter what it takes. There was a show of hands. Mr. Sossamon announced that it appeared that the majority would be committed to one more meeting. Mr. Gorynski asked if there was any consideration to continuing this meeting, and if so, would the space be available. Mr. Sossamon responded that it would be extremely difficult given the use of the spaces. Mr. Ducheneaux recognized Mr. Carl, who stated that it was his recommendation to tie a committee meeting to the Amerind conference being held in Las Vegas next month. He asked if HUD would be able to reimburse the committee members. A/S Liu replied that it would not. Ms. Greene asked if HUD is concerned about travel costs or hotel costs. A/S Liu replied that there are unexpected things that could affect the PIH budget, for example, last week there was a big cut. Ms. Greene stated that she might be able to contribute free space. She added

that she would like to go back to minimum funding after lunch. Mr. Ducheneaux stated that he would like to take up median income before this meeting is over.

Mr. Sossamon announced that the committee would break for lunch and come back at 1:30 pm. Mr. Hutchings stated that he would like to hold a meeting of the drafting committee at the conclusion of the meeting, since they will have to produce a report one way or another.

The committee broke for lunch at 12:15 pm.

**THURSDAY AFTERNOON, SEPTEMBER 25, 2003**  
**FULL COMMITTEE**

The committee reconvened at 1:25 pm. Mr. Sossamon entered letters into the record designating Mr. Evans as alternate for Mr. LaPointe, and Ms. Robbie Hobgood for Mr. Carlile. He also announced that requests have been made to address specific subjects during the remaining time, noting that there are 16 items that have not been discussed at all. Mr. Adams requested that the items be listed. Mr. Sossamon read the list, as follows: Tab #1, #2, #3, #4, #7, #10, #11, #12, #13, #14, #15, #16, #23, #24, #28, #29, #30, #31, and #32. Ms. Marasco stated that she would like to introduce two resolutions into the record: #03-R-78, requesting that the 2000 census data used by HUD move forward as a non-consensus item for comment, and #03-R-79, requesting that HUD establish a maximum annual IHBG allocation of no more than 10% of the total allocation (see Attachments 19 and 20).

Mr. Sossamon stated that he would like to take 5 minutes to go through each of these issues, and then if there is time left over, the committee would return to the other issues. He asked if there was agreement from the committee. There was general agreement.

Mr. Sossamon began with Tab #28, Section 8 modifications. He asked if there were any comments. Mr. Bush commented that according to the regulations these units should be taken out of CAS. Mr. Gorynski noted that the inflation factor is also a consideration. Ms. Wilson stated that as defined, Section 8 should be declining at the same rate as CAS. Ms. Greene stated that the committee should set a number and not Public Housing. Mr. Sawyers stated that nothing mentions taking out Section 8, which is part of the statute, and it isn't going away. Ms. Hobucket pointed out that the original intent was to come back and revisit the Section 8 issue in 5 years. She added that it has an impact on CAS and should be revisited. Ms. Greene stated that the program is no longer Section 8, it is tenant assisted (§502). Mr. Sossamon turned the chair over to Ms. Greene, and commented that the amendment to the statute is meant to include Section 8, so it can't be excluded, although it is something that the committee can review or evaluate, along with the weighting factors. He added that the cost of rentals have not gone down nor is there evidence that inflation has gone down. Ms. Greene returned the chair back to Mr. Sossamon. Mr. Bush stated that he was referring to the housing shortage variable, which

he doesn't want to remove. He added that he did want to subtract Section 8 out of the housing shortage variable.

Mr. Sossamon referenced Tab #14, Section 8 as a Housing Variable. He asked if there were any comments. Mr. Heisterkamp pointed out that this was introduced as part of the Needs report, and pertained to whether or not to continue to include housing shortage as a variable, and if so, whether to include Section 8 and NAHASDA Assisted Stock (NAS). Mr. Humphrey added that this is tied to the definition of CAS and FCAS. He noted that the workgroup was looking at bringing the definitions together so that they work better, and that the discussion also pertains to whether tenant assistance is included or not. Mr. Sossamon turned the chair to Ms. Greene, and stated that he recommended that housing shortage continue to be used, and that Section 8 not be included, adding that there is no consensus to include it. He also recommended that NAS not be included based on the difficulty in defining it. Ms. Greene turned the chair back to Mr. Sossamon. Mr. Hudson stated that there is a requirement that Section 8 is included; the statute requires that it be included in the Needs portion, not in CAS. Mr. Sossamon responded that this was not his impression. He asked if there were further comments. Mr. Boyd turned the floor over to Ms. McFadden, who stated that the formula doesn't require Section 8 to be funded out of either CAS or Needs; it just is to be included.

Mr. Ducheneaux complained that the discussion is jumping around. Mr. Sossamon reiterated that the committee would spend 5 minutes on each of the remaining items. He then directed the committee to Tab #1, Median Income. Ms. Hobucket commented that the discussion was moving too fast. Mr. Sossamon reiterated that the committee had agreed to open each item for 5 minutes for comment. Ms. Greene suggested that the items be taken sequentially, and not skip around. Mr. Sossamon asked if there were any objections to going through the Tabs sequentially, taking as much time as necessary. Ms. Kidder stated that the requested data is not yet available, but that they intended to call for consensus. She added that she believes the statute requires use of the local data and would also request that HUD comment on this interpretation. Mr. Boyd reported that the data had been finished and had been distributed. Mr. Heisterkamp noted that the request was TR#37, and that it had been completed. Ms. Wilson stated that she didn't have the documents.

Mr. Sossamon stated that there has been a call for consensus. He asked if there were any comments. Ms. Hobucket asked how there could be a call for consensus on something that has just been handed out. Mr. Gerber turned the floor over to Ms. McFadden. She first clarified that the question is whether it is permissible under NAHASDA to have one definition of median income, and if so, can it be national median income.

Mr. Sossamon reiterated that there was a call for consensus. He asked if anyone is opposed. There were 10 opposed. He then commented that this makes the point that there should be another meeting, as it makes the point that the committee can't make informed decisions without adequate information. Ms. Wilson agreed that was exactly her point.

Mr. Sossamon then opened discussion on Tab #2, AEL. Mr. Gorynski stated that AEL varies locally. Mr. Hudson suggested that this may be a good issue to take up at another meeting. He added that establishing a national baseline may lower AEL. Ms. Kidder brought up the concept of increasing the numerator without decreasing the denominator. Ms. Wilson requested that all supporting materials on items be referenced. Ms. Greene stated that she could not support a national AEL. Mr. Sossamon stated that more time is needed on this subject, either by consensus or non-consensus.

Mr. Sossamon announced that the next item is Tab #3 weighting to reflect low-income need. He asked for comments. Mr. Gorynski asked if there was a data run relevant to this item. Mr. Sossamon stated that there are at least four runs that are connected to this section. Ms. Wilson commented that there have been documents referenced on each one of these line items. She added that she would like to see them so that she could be making informed decisions. Ms. Marasco stated that there are binders in the Resource Room containing all the information and that copies can be made. Mr. Sossamon added that all the data requests are on the Internet also. Mr. Sawyers pointed out that data requests TR#53, TR#49, TR#18, TR#32 and TR#35 pertain to this section. Mr. Sossamon noted that it was his observation, not necessarily a position, that there has not been sufficient time to evaluate the data and make an informed decision. He then asked if there was any further comment on this. Hearing none, he moved to the next item.

Mr. Sossamon opened discussion on Tab #4 under/overcounts. Ms. Tooley commented that she was concerned that by going through so quickly, the committee will simply end up with having to look at everything. She asked if the committee wants to agree to revisit the regulations in another 5 years. She added that she doesn't know what's going to happen after this meeting, and at the very least, it might be a good idea to agree to revisit. She noted that this may be the only thing the committee can agree on. Mr. Sossamon pointed out that there is a pattern here and that it is clear that data was not available, and so informed decisions cannot be made. He asked if the committee could agree on that and then move on to some of the specific items. He asked if there was anyone who disagreed. There was no disagreement.

Mr. Gorynski suggested going back to minimum funding. Ms. Greene asked if the committee agreed to revisit the regulations 5 years. Mr. Sossamon stated that there was a request, but no action. Mr. Gorynski turned the floor back to Ms. Tooley and the discussion on revisiting the regulations in 5 years. Mr. Ducheneaux noted that if the committee agrees to revisit in 5 years, that he doesn't want to stop this current process. Ms. Tooley responded that it would not stop the process. She then called for consensus on revisiting the formula again within 5 years after the end of the current process. Mr. Gerber stated that HUD cannot give consensus at this time, but can agree to confer with the A/S when he returns this afternoon. Mr. Sossamon asked if the committee would like to vote now and then bring it up again later. Ms. Tooley requested that the vote go forward.

Mr. Sossamon stated that there was a call for consensus. There was one objection.

Mr. Gorynski yielded to Mr. Bush to continue the discussion on minimum funding. Mr. Bush pointed out that the data runs TR#56, TR#57, TR#60, TR#61, and TR#62 were distributed. He stated that he didn't want to backtrack, and asked if the Alaska delegation is standing fast on \$25k or \$50k, or could it accept a percentage, which would be around \$100k. Ms. Gore responded that it would depend on how the formula area issue is resolved. She added that in the absence of that fix, Alaska can't agree on a dollar amount. Ms. Hobucket asked which of the data runs are being proposed. Mr. Bush responded that TR #56 represents the proposal he is suggesting. Mr. Hudson asked Ms. Gore to clarify the relationship between formula area and minimum funding. Ms. Gore responded that it has to do with how the lines are drawn, and who would qualify for minimum funding. Mr. Ducheneaux turned the floor over to Ms. Kidder, who referred to TR #62. Mr. Bush recognized Mr. Doty, who stated that he agreed with the \$100k run that Mr. Bush has put forward, and that all small tribes will support it. Mr. Sossamon pointed out that there had been a request for a clarification on TR #56. Mr. Bush responded that request #56 was in support of a proposal for a percentage; TR#57 was to ascertain the effect of a minimum of \$100k with the qualifier that the tribe's total grant is less than \$200K. Ms. Marasco stated that she could support the proposal for \$100k minimum funding (as represented by TR #60), but wished to restate that there should be a minimum and a maximum. Mr. Evans yielded to Ms. Wilson, who stated that she didn't think she could support a maximum. She added that she thinks that the tribes in the middle would stay the same, but those at top would lose a lot. Mr. Evans stated that the Eastern/Woodlands region would support TR#60. Mr. Sossamon turned the chair over to Ms. Greene. Mr. Sossamon then stated that as far as his tribe is concerned, TR#60 is the closest so far to what they may be able to agree on, but under no circumstances should minimum funding be any less than what was in FY03. Ms. Greene turned the chair back to Mr. Sossamon. Mr. Bush reiterated that TR#60 was performed to show an effect, and it isn't a proposal. He added that his proposal was that the minimum applies to the Needs side only. He added that there is a significant difference in looking at total grant v. needs only. Mr. Ducheneaux commented that he as had some discussions with Mr. Bush, but could not support the proposal until he gets a final outcome on local v. national median income. Mr. Hudson stated that he agreed with Mr. Bush. He added that he had worked in the CAS workgroup and heard person after person state that they needed CAS funding to run housing and so the minimum funding must remain Needs-based.

Mr. Sceeles requested a clarification regarding the original total grant in TR#60. Ms. Kruszek responded that the figure is the FY04 estimate, without adjustments or repayment agreements. Mr. Sceeles asked if this number is less than the FY04 estimate in TR#83, and is that because it hasn't been adjusted. Ms. Kruszek pointed out that he should look at the FY04 unadjusted grant. Mr. Sceeles noted that the numbers are not the same in TR#60 and TR#83. Mr. Richardson stated that the answer is that the first FY04 estimate run was run with a few problems in the data. He added that those have now been corrected, and that the later runs have been corrected FY04 estimate. He noted that some tribes' numbers went up, and some went down. Mr. Sceeles asked if TR#83 is incorrect. Mr. Richardson replied that was true, but that the later documents are more correct. He

added that it is important to remember that the estimate will continue to change in small increments until the final run is performed after HUD gets the actual allocation. Mr. Bush reported that it had been indicated to the committee that there are at least two members will withhold consensus until other items are resolved. He added that he hoped that HUD heard everything that was discussed over the past 6 months. He stated that he would defer to another topic at this time.

Mr. Sossamon stated that these are not objections out of hand, but are based on obtaining an answer that is needed first. Ms. Wilson stated that the committee is very close on this issue. She added that she has a couple of questions and concerns with regard to funding by default and CAS, and that perhaps these can be resolved with a bit more discussion. Mr. Bush responded that the default is in the current proposal although the committee hasn't agreed on the number. He added that he had \$500k, and UNAHA had \$200k. Ms. Wilson asked if the data run splits out Needs from CAS. Mr. Bush responded that it is split on TR#56; if a tribe receives more than \$500k in CAS, the tribe will not receive minimum funding. Ms. Greene stated that she would like this committee to decide if it is willing to go forward with the idea of minimum funding for small tribes in concept. Mr. Hudson responded that he finds it difficult if the whole grant is counted, but that he could support it if it is needs-based. Ms. Gore concurred, and added that the problem with TR#56 relates to protecting CAS in Alaska. She stated that she would be happy to give qualified consensus so long as there is an understanding that the committee will address the qualifying issues.

Mr. Jones asked if the FY04 estimate that was sent out to tribes has changed. Ms. Kruszek responded that the number has changed, but that it is an estimate. She added that HUD has already identified some issues and they have been corrected. She reiterated that the numbers will change by the time tribes receive their final allocation numbers.

Mr. Carl stated his position which is that they support the concept of \$100k, but the proposal they support is the one submitted by UNAHA (see Attachment 21). Mr. Ducheneaux requested information from HUD on median income. He reiterated that he is sitting on the committee in order to protect poor Indians in the Northern Plains. Mr. Carl stated that the UNAHA proposal protects CAS. He reiterated that he would support UNAHA's position on the national median income issue.

Mr. Sossamon announced that the committee has 25 minutes left. He added that A/S Liu had returned, and so he would like to go back to the question that Ms. Tooley brought up for consensus earlier, even though Ms. Tooley is absent at this time. Mr. Sossamon restated that the call for consensus was to have another Neg-Reg within 5 years of the conclusion of this rulemaking session for re-evaluation of the formula. He reported that the result of the call was non-consensus, due to HUD's objection based on the absence of A/S Liu. Mr. Sossamon brought the question forward again, asking if the committee wishes to do this again in 5 years, or would it be reasonable to schedule it in conjunction with the next change in census data. Ms. Greene stated that the census has nothing to do with whether or not we meet again within this group process. Mr. Sossamon asked if

there was any further discussion. He restated that he was calling for discussion on the revisit issue. Ms. Greene pointed out that the charter speaks to the duration of the committee, which states that the committee is to continue to work until negotiations are finished. Ms. Greene read from the Charter, which states, “the number of Committee meetings shall be at least six.” Ms. Greene then asked about Ms. Tooley’s call. Mr. Adams noted that they were waiting for HUD to discuss this further.

Mr. Sossamon called for consensus to revisit the formula within 5 years of the conclusion of this Neg-Reg. He asked if there were any opposed. There were none. He announced that the committee had reached consensus.

Mr. Sossamon then stated that it was important that before leaving, the committee has an understanding that because of schedules and funding limitations, it must commit to concluding its work in the time between now and the time of the next meeting. Ms. Greene suggested that anyone requesting additional technical data runs should submit the request before the next meeting so the committee doesn’t get caught again. Mr. Sossamon restated that it has been agreed that if you have a data request, it should be submitted to Mr. Boyd instead of the regional representatives, so the requests can be performed as quickly as possible. Ms. Greene also suggested that if there are tribes that have hotels that are accessible, that they volunteer to provide space for the next meeting. She added that she would like to see the tribes help support the next meeting financially. Mr. Sossamon reiterated that committee members had expressed an interest to help share the costs, and that there are other organizations that may also be able to help. However, he added that the committee should agree that it would be the last meeting. Mr. Ducheneaux stated that he was not certain that he could commit to that, but he is willing to work as hard as necessary. Ms. Wilson stated that she appreciates the amount of work that HUD has done. She added that she thought that the census was an issue and problem, but that she is feeling optimistic that the committee can get through to the end. Ms. Kidder pointed out that NAIHC is meeting in December and that might be a good time to meet, since many of the committee members will be there.

Mr. Sossamon asked if there were any further comments. He commended everyone for their hard work, patience, and sense of humor. He also stated that although not generally done, he would like to close with a benediction. He then asked Mr. Charlie to give the benediction.

The meeting was adjourned at 3:00 pm

Submitted by C. J. Gardstein  
Steven Winter Associates, Inc.  
January 2, 2004