

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF NATIVE AMERICAN PROGRAMS

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session
June 9, 2010, Day 2

Taken at 1635 Eighth Avenue
Seattle, Washington

DATE: Wednesday, June 9, 2010

REPORTED BY: Kristin M. Vickery, CCR, 3125

A P P E A R A N C E S

Committee Members Present: JASON ADAMS
STEVEN ANGASAN
MARGUARITE BECENTI
RODGER BOYD
LARRY COYLE
RAY DEPERRY
MARK BUTTERFIELD
KARIN FOSTER
CAROL GORE
LAFE HAUGEN
SANDRA HENRIQUEZ
LEON JACOBS
MARVIN JONES
BLAKE KAZAMA
LEONARD TELLER
JUDITH MARASCO
THOMAS MCGEISEY
ALVIN MOYLE
SHAROL MCDADE
REBECCA PHELPS
SHAWNA PICKUP
S. JACK SAWYERS
MARTY SHURAVLOFF
RUSSELL SOSSAMON
DARLENE TOOLEY
SUSAN WICKER

1 SEATTLE, WASHINGTON; WEDNESDAY JUNE 9, 2010

2 7:59 A.M.

3 --o0o--

4 MR. JACOBS: Take your seat. We want to start a
5 little early this morning.

6 Okay. While everyone is getting seated, Larry has
7 a very important announcement. So, Larry?

8 MR. COYLE: The salmon I dropped on your tables
9 yesterday morning, Marvin just inquired how long it stays
10 okay to eat. And I told him, Don't worry about it. You
11 just keep it cool, put it in the refrigerator, and then it
12 will be okay until you get home because it's pretty well
13 smoked. So don't worry about it if you don't eat it.

14 MR. JACOBS: Thank you, Larry. Thank you, Marvin.
15 And thanks to Larry for the gift. We appreciate it. Let's
16 give him a round of applause.

17 Last night at five o'clock, the working group
18 chairs, Larry and I, along with HUD staff and some others,
19 met to go over the activities for today. And a couple of
20 the groups are still working, so we've decided on the agenda
21 to let the two groups continue to meet this morning to try
22 to finish up their work.

23 And the other two groups that finished have
24 volunteered to sit in with the other two groups so that we
25 can probably help expedite.

1 So the morning is going to be very busy. We hope
2 that everything will be completed by noon so that at one
3 o'clock today, that we can start negotiating it.

4 So with that in mind, the assistant secretary is
5 going to give us the prayer this morning. So if you would
6 all stand.

7 (Opening prayer.)

8 MR. JACOBS: Jan, is there anything that you want
9 to add this morning before we go into the workgroups?

10 FACILITATOR: I can do a protocol review for the
11 negotiations. I think maybe I can do that right before we
12 enter into negotiations later this afternoon. I'll have
13 some words to say later on about the protocol negotiations,
14 later on.

15 MR. JACOBS: Yes, Carol?

16 MS. GORE: Just for Workgroup A, if you're
17 interested, come back to the meeting room. We have hard
18 copies if you'd like to go over them quickly, make sure that
19 everything is in order. And we can complete our discussion
20 on the PIH notice that came up at the end of our meeting,
21 though it's not on our task list, but it is related.

22 So for those in Workgroup A, if you'd join me this
23 morning, I thank you very much.

24 MR. JACOBS: Okay. Right. The contractors worked
25 late last night, until around nine o'clock or so, and they

1 had the packets ready. And I think there was ten
2 distributed last night. So all of you that haven't received
3 your packet with the hard copies, the work that's been
4 completed, please raise your hand.

5 Blake, any comments on Group B?

6 MR. KAZAMA: Yes. Just that this morning, as
7 well, I'd like to meet briefly with Workgroup B in terms of
8 reviewing the things that were in the packet, because this
9 afternoon we would like to begin with Workgroup B in terms
10 of presenting negotiations.

11 MR. JACOBS: Okay. I announced a few minutes ago
12 that we would resume with the full committee at one o'clock.
13 I hope that we can honor that time so that we can get
14 started now.

15 The decision has been made that Group B will start
16 first; am I correct?

17 MR. KAZAMA: That's absolutely, correct.

18 MR. JACOBS: Right. So this afternoon, starting
19 at one o'clock, Group B will be presenting all of the items
20 that they have covered and that they've reached a consensus
21 on within the group.

22 And then it would be followed by Group A. So
23 we're hoping that we'll be able to get all of this for Group
24 B this afternoon. If not, we will move on forward tomorrow.

25 On the agenda, it says that we're going start --

1 resume at 1:30, but we'd like to move it up to 1:00 if
2 that's possible. So if we could do a short lunch and try to
3 get ready to start negotiations this afternoon, I think that
4 would be a good thing to shoot for.

5 Is that acceptable to everyone? Good. Okay.
6 Anything from HUD, Madame Secretary or Rodger, any comments?

7 Okay. Any other comments from the committee?

8 Okay. We will resume with the workgroups. C will
9 be here. Is F going to be in the same -- everyone is the
10 same.

11 All right. Thank you, let's have a conductive
12 session today. Thank you.

13 (Recessed to workgroups until 1:08 p.m.)

14 MR. JACOBS: We have it quiet. If you can take
15 your seats. The contractor is passing out the new item --
16 Group B's material. We don't want to it get mixed with the
17 old.

18 So, yes, Jason?

19 MR. ADAMS: Mr. Chairman, if I could. I know the
20 agenda says we're going to move into negotiation this
21 afternoon. From the Workgroup C, I was asked to try and
22 find a way that we could talk about the Indian Housing Plan.
23 That was a charge -- as many of you know, the item was given
24 back to -- there was a notice put out. HUD rescinded that
25 notice, essentially giving it back to this committee to

1 negotiate on.

2 As I understand from the last meeting, the
3 committee then sent it to our workgroup to take a look at.

4 We completed this morning a review of the Indian
5 Housing Plan and APR format that HUD had proposed. What we
6 haven't done is actually pick apart -- we went through the
7 thing and identified all the pieces that are statutorily
8 required.

9 What we haven't done is then go back and review
10 those pieces that aren't statutorily required and decide if
11 we want to include them in a regulation so that they can
12 stay or just mark them optional. But some of the committee
13 members requested that I try and speak to the full group
14 this afternoon to see if we can get that on the agenda to
15 get it approved in some form so that we can start using it.

16 Because there's enough there that that enough of
17 the committee members would like for us to start using and
18 put out there for the tribes to start using.

19 As you will remember, Mr. Chairman, we covered
20 this briefly with Sandra and Rodger in our meeting the other
21 night. And they were of the opinion, at that time, that we
22 could move into some form of this approval to start using,
23 maybe not for this first quarter folks, whose deadline for
24 submission would be July 18, but then maybe the next quarter
25 folks, which, you know, would be -- July 18, would be the

1 October 1 folks. The next quarter would be January 1 folks.
2 And there's a lot of folks in the room that are anxious to
3 start utilizing the new form.

4 So I don't know. I'm, you know -- I hesitate to
5 do this because I don't have a proposal for you, per se.
6 But we have done what we were asked to do, is review the
7 proposed form from HUD. And from that discussion, we have
8 enough folks that are wanting to move that forward to the
9 committee to get approval to some degree so that we can
10 start using it.

11 MR. JACOBS: What is the pleasure of the
12 committee? Would you like to put this in between B and A,
13 or would you -- and that would give us a little time to talk
14 about it a little more, because I understand that you still
15 want to have a meeting after five today to talk about the
16 agenda for tomorrow.

17 Karin?

18 MS. FOSTER: I just had a question about the PIH
19 notice itself. It sounds like, then, there may be some
20 concerns about the notice itself, or at least you've
21 identified areas that aren't statutorily required.

22 Do you have a sense of the time frame of being
23 able to identify areas you think might need to be changed?

24 MR. ADAMS: I think, if the intent was by
25 rescinding that notice and bringing the issue back to this

1 committee, is giving us a chance to negotiate on that and
2 approve, essentially, that form, which strict reading of the
3 regulation says it's prescribed by the Secretary. But
4 our -- what HUD has been willing to do is bring it back to
5 us so we can take a look at it and negotiate it.

6 My thinking is that if we brought it forth as an
7 agenda item, we could start the clock. We could then
8 proceed with -- the negotiation part would be that we would
9 show you the pieces of the proposed form, its current form,
10 that we believe to be not statutorily required, and,
11 thereby, let this committee determine if it's willing to
12 mark those as optional or just take them out.

13 And I think we've done enough work this morning
14 where we could do that proposal in that form, and within the
15 two-hour time limit, get to a place where we could have
16 something that we could, then, approve and move forward with
17 from this meeting.

18 MR. JACOBS: Okay. Carol?

19 MS. GORE: Recognizing what happened at the last
20 committee meeting when good conversations were disrupted,
21 and we had to then come back to the table and figure out
22 where we were and reeducate, as a committee member, I'm in
23 favor of changing the agenda for today and allowing Jason to
24 go first. I'm in favor of that.

25 I don't know what action it takes to put that on

1 the floor for the committee, but if they're ready, it's
2 acceptable to me as a committee member.

3 MR. JACOBS: Okay. Is there a consensus on moving
4 this forward at this time -- or, Karin?

5 MS. FOSTER: What do we have to look at in terms
6 of documents?

7 MR. ADAMS: What I would propose that we would
8 present to you is the form we went through this morning in
9 its current form, the latest version of the IHP/APR format,
10 give that to you.

11 Maybe a subsequent request would be, if you don't
12 want to tackle it right now, then we put it on the agenda
13 for the first thing tomorrow morning. That would give you
14 tonight to look at the form. Either way.

15 We're just -- what our hope was is that we would
16 be able to address the issue here at this meeting so that we
17 would give the thumbs up or the thumbs down from this
18 meeting; thereby, HUD can issue its notice and start the
19 process.

20 MR. JACOBS: Karin?

21 MS. FOSTER: Jason, since you were approaching
22 this as some areas being statutorily required and some not,
23 would you be able to then identify in the PIH notice what
24 you think is not?

25 MR. ADAMS: I think we could, based on our review

1 this morning.

2 MS. FOSTER: And that way, then we'd be able to
3 focus on those areas that, maybe, you know, you wanted to be
4 talking about tomorrow, and we could sift through it
5 ourselves tonight and be ready to talk about it tomorrow?

6 MR. ADAMS: We could do that. I think we could,
7 by this evening, give you the notes from our meeting and our
8 review of the format and let you know what sections are --
9 what we did is we focused on those sections that weren't
10 statutorily required.

11 MR. JACOBS: Okay. One announcement. Please,
12 turn your mics on when you speak and give your name. You
13 don't have to give the other information, but please, for
14 the sake of our recorder, she needs to know the name of --
15 Marvin?

16 MR. JONES: Marvin Jones. I would -- here's what
17 I would suggest. It's critical, I think, that the assistant
18 secretary and/or the deputy assistant secretary be here to
19 know if it's possible for us to do this process this
20 quickly. If they say, no, we're -- under no circumstances,
21 then we can go back and take our time, I think.

22 And so it's critical that they be part of this
23 discussion, I think, before we -- before we go forward on it
24 so...

25 MR. JACOBS: Okay. I'm going to go ahead and say

1 that we will bring this up after we finish up B, whether
2 that's this afternoon or tomorrow morning.

3 Is that okay with everybody? We should have the
4 information by that time, by tomorrow morning.

5 MR. ADAMS: Mr. Chairman, thank you. Jason Adams.
6 Yes, I would. I appreciate that, and then that will give us
7 some time this afternoon to get the documentation printed
8 for everyone in the room that hasn't seen the format in its
9 current form.

10 And then we'll also get, for the committee, the
11 notes of our review, so you can see those also. Thank you
12 very much.

13 MR. JACOBS: Okay. I would like to mention to the
14 contractors that we don't have the information that you just
15 distributed to the others up here at the head table. Where
16 are they?

17 Okay. At this time I'm going to turn it over to
18 Jan, who will facilitate the afternoon session. Jan?

19 FACILITATOR: Okay. Thank you. Thank you, Leon.

20 Did all the committee members get the new B? Who
21 does not have the new B? Our chairman doesn't have it.

22 The new Bs are on the seat. They look like this.
23 Any of the committee persons need a new B? Anybody else got
24 one? Let me identify it on the bottom here. It starts with
25 C-137.

1 Okay. Just, if you'll indulge me for a few
2 moments, I'd like to just run over the negotiations protocol
3 summary for the committee as well as for our audience.

4 The process works like this: The working group
5 chairs present the material that they wish to have us
6 negotiate in the full committee. Then negotiations
7 commence, and we start the two-hour clock for the particular
8 item.

9 And then once all the questions are asked,
10 comments are made, we think we've reached a point, we'll ask
11 for a committee consensus.

12 If -- once a consensus is achieved, then the
13 material is referred to the drafting or preamble committee,
14 only for the sake of putting it into a regulatory format.
15 No changes at all to the content will take place in the
16 drafting committee.

17 And when that drafting preamble committee finishes
18 its work, the final document will come be -- be able to --
19 will come back to the committee for a final review, not for
20 consensus, but just for a final review, and you'll have an
21 opportunity to check it. And then that final document gets
22 sent on to HUD and to OMB.

23 I want to summarize just a few of the main
24 points about the protocol that you have all agreed to: That
25 there's a two-hour maximum time limit per item discussed;

1 that there is a four-minute time limit on noncommittee
2 members, who must first be invited by a committee person to
3 speak; there isn't any time limit on committee persons
4 speaking.

5 We have our good-faith principles, which we
6 say is to state -- if anybody has an objection to a
7 proposal, they state the reason for that objection, and they
8 also propose an alternative to the proposal that meets that
9 committee person's concerns for further consideration of the
10 committee.

11 The -- another note is that sometimes, if
12 something needs to be explained, there's a technical -- we
13 call it, like, a -- we need an explanation of a particular
14 clause or something like that, and it's a technical
15 explanation for a rule or procedure, if the committee
16 solicits that, it will not be counted as negotiation time
17 for the item.

18 We all understand what consensus means, but
19 our protocol states that consensus is unanimous agreement as
20 shown by an absence of expressed objection by any committee
21 member present.

22 So when we call for consensus, if somebody
23 doesn't raise their hand and say they agree, they're assumed
24 to agree unless they say no.

25 And in terms of reconsideration, if a

1 committee -- once something gets agreed to and it passes
2 consensus, it takes a full consensus to reconsider it, not
3 that we hope -- we hope that doesn't happen.

4 Now, I hate to be negative, but there are
5 some options for action if consensus is not reached.

6 One, there can be a regional or HUD caucus,
7 one per day, per region, not to exceed 15 minutes. Tribal
8 caucuses can be called by a consensus of the tribal
9 representatives. There's no limit or time limit on those.
10 But we should specify how much time you think you might need
11 if you do take a tribal caucus.

12 No. 2, you can -- if the item, after some
13 discussion, doesn't look like it's going anywhere, but
14 they -- you think there's some hope, you could refer it back
15 to the working group for further work, have the dissenting
16 members join that working group to assist them in reaching
17 consensus.

18 And finally, if there is an item that comes
19 up where it's very clear where there's not going -- reach
20 any consensus, the committee can just declare the item a
21 nonconsensus item and submit a majority and minority opinion
22 to HUD on that.

23 So those are basically, kind of, the ground
24 rules that we've laid out for ourselves here. And we've
25 been asked by the -- by everybody to, sort of, like, be the

1 protocol cops on this thing.

2 So -- Blake?

3 MR. KAZAMA: I wanted to have clarification on two
4 items. One is the protocols address matter, you know, as in
5 issues, matters. And so I wanted to define that a little
6 bit, because in our workgroup, we have lumped several of the
7 issue items as one topic area to be discussed. Rather than
8 breaking them out and having two hours per issue, we lumped
9 them together.

10 And so I just want clarification -- you know, I
11 don't want us to penalize Workgroup B's work because we ran
12 out of two-hour -- of the two-hour time limit by lumping
13 everything together under one topic. So I wanted to clarify
14 that.

15 FACILITATOR: Okay. I think, maybe, it would be
16 helpful, Blake, when you introduce an item for consensus or
17 for negotiation, if you say this is actually two items
18 together or three items together, or something like that.
19 Then we know we have a little bit more time leeway on that.

20 MR. KAZAMA: Correct. And we can do that.

21 The second thing I wanted to get clarification on
22 is regarding the introduction of these issue items. That I
23 wanted to be able to, for example, call upon -- you know, we
24 had a person who -- I want them to help me share the topic
25 areas that the group discussed and not -- so it's an

1 introduction for everyone to understand what we'll be
2 talking about, debating about. But I don't want that
3 included as part of the time factor, the two-hour, and I
4 wanted to be able to pull that in. Is that okay with
5 people?

6 FACILITATOR: I think that's all right, yeah. I
7 mean, as long as it's not -- I think when we talk about
8 negotiations, that's actually when we get into the debate
9 and the discussion and that kind of thing. But I think if
10 you introduce the topic and introduce the material, that's
11 fine. That wouldn't count on its own.

12 Yes, Larry?

13 MR. COYLE: Blake, would it be a good idea that
14 when we make the complete presentation, you state that
15 you're ready for --

16 MR. KAZAMA: That's correct. I would be willing
17 to do that.

18 MR. COYLE: -- and when you've got the
19 back-to-backs, if you have all the presentations and then
20 make the presentation that you're completed.

21 Is what you're --

22 MR. KAZAMA: Yes. Yes. And so, one, I will
23 introduce the topic areas in terms of what we'll be
24 discussing. I'll have an introduction on the reporting of
25 what that is. And then, once that's done, I will say, okay,

1 let's -- now, let's go into negotiations on this subject
2 matter.

3 Being the first, and you know, it's a little bit
4 awkward because I -- you know, you're going to have to bear
5 with me here. I'm first on the list. All right. Thank
6 you.

7 FACILITATOR: Yes, Jason?

8 MR. ADAMS: I just had one more thing -- Jason
9 Adams. Sorry.

10 I just had one thing to come up in looking at some
11 of this. Some of these regulations that one workgroup is
12 working on is making reference in their proposed language to
13 other sections of the regulation that another workgroup
14 might be working on. So I just want folks to keep that in
15 mind, that they're referencing, or could be referencing,
16 other sections that in your book aren't correct, because
17 there's proposed changes for those too.

18 So I just wanted to let you know that's going to
19 be happening.

20 FACILITATOR: Thank you. Any other concerns or
21 comments on protocol or any other matters?

22 Yes, Karin?

23 MS. FOSTER: Karin Foster, Yakama Housing
24 Authority. Jason, if there are areas like that where you
25 think there's a substantive issue in that particular section

1 that's being worked on by another group, that'd be very
2 helpful to know while we're considering these.

3 If it's just a number change in the regulation, I
4 think we can deal with that afterwards through the drafting
5 committee.

6 FACILITATOR: Okay. Jason. Okay. Any other --
7 yes, Blake? Any other questions? Okay.

8 Blake, I think you're first up.

9 MR. KAZAMA: Thank you very much. Little bit
10 awkward. First of all, I want to thank HUD, especially,
11 Debra, like I said, has been very helpful, Marion as well,
12 in terms of working with Workgroup B, and Workgroup B for
13 all their hard work in just getting right into the matter
14 and coming up with these things.

15 So I want to give them the credit, just in case
16 you guys object to the things I'm saying.

17 No, they really did work on think on these
18 matters. And I know that we will be shortly going into
19 formal negotiation, but I wanted to preface it by saying
20 there was a lot of hard work by people. Many revisions.
21 They call me the tree killer because we had to burn so many
22 paper.

23 But anyway, let's begin by dealing with -- and I'm
24 going to read you the -- first of all, the issue number,
25 which is No. 47. You should have it in front of you. It

1 was part of the packet for Workgroup B.

2 It references "1000.239 Reserve Accounts," is the
3 title of that. And as a note, this proposed rule change
4 would establish procedures for reserve accounts, NAHASDA
5 202, parenthesis, 2; 202, parenthesis, nine.

6 So then the text itself, 1000.239 states: May a
7 recipient establish and maintain reserve accounts for
8 administration and planning?

9 And the answer is, Yes.

10 And I'd like to have Dave maybe give a little bit
11 of background for that.

12 MR. HEISTERKAMP: Good afternoon. The proposed
13 regulation -- and this would be a brand new regulation.
14 This is not a change, but a new regulation altogether. The
15 proposed answer would read:

16 Yes. In addition to amounts established for
17 planning and administrative expenses under 236 and 238 --
18 which is the 20 percent cap that currently exists -- a
19 recipient may establish and maintain a separate reserve --
20 I'm sorry -- separate reserve accounts, plural, only for the
21 purpose of accumulating amounts for administration and
22 planning relating to affordable housing activities.

23 These amounts may be invested in accordance with
24 1000.58(c) -- which are just the eligible investment
25 vehicles without any of the other investment requirements.

1 Interest earned on reserves is not program income and shall
2 not be included in calculating the maximum amount of
3 reserves.

4 The maximum amount of reserves, whether in one or
5 more accounts, that a recipient may have available at any
6 one time is calculated as follows:

7 (a) determine the five-year average of
8 administration and planning amounts, not including reserve
9 amounts, expended in a tribal program year.

10 (b) establish one quarter of that amount for the
11 total eligible reserve.

12 MR. KAZAMA: So this is the presentation of Item
13 47, 1000.239. So we can open this up for negotiation.

14 FACILITATOR: Start the clock.

15 Any questions or comments on this presentation?
16 Karin?

17 MS. FOSTER: I do have a question I probably
18 should have asked before we got started, but I was just
19 wondering, are we going to be able to -- during this
20 process, to put up the statute on the screen, or do we kind
21 of have that taken over by our minute counter?

22 FACILITATOR: Should it be on the screen? It's
23 coming up. Thank you.

24 MS. FOSTER: It would be Section 202 of NAHASDA
25 Subsection 9 probably is the most useful part.

1 FACILITATOR: Okay. We'll put it up on the
2 screen. Thank you, Karin.

3 Any comments or questions on this?

4 MR. KAZAMA: Hearing none, I'd ask for consensus
5 on this matter.

6 FACILITATOR: All in favor indicate by raising
7 your hands? Any opposed?

8 Okay. Good. We have consensus. Thank you.

9 MR. KAZAMA: Thank you, everyone.

10 FACILITATOR: Next?

11 MR. KAZAMA: You're working with Workgroup B.
12 We're fast.

13 The next item is actually dealing with Issues
14 No. 40 to 46. They deal with Sections 1000.104 through
15 one -- I mean, 118.

16 And these deal with proposed regulations to add
17 provisions for providing housing assistance to law
18 enforcement officers and Indian families who are not low
19 income. And that's NAHASDA Section 201(b) for the people
20 who want to put that up on the screen. And I see the other
21 part on the screen.

22 And so it begins with 1000.104. And this is one
23 of those things that I talked about earlier. We are -- I
24 would like to get consensus on each of these sections -- for
25 example, we want to do deal with 104 first and get to the

1 next -- and get consensus on that and move to next, instead
2 of taking it all at the end, if that's okay with the group?

3 FACILITATOR: Okay. That's a good approach.

4 MR. KAZAMA: So the first one, 1000.104, What
5 families are eligible for affordable housing activities?
6 And I'll have Dave address that one.

7 MR. HEISTERKAMP: The proposed regulation, which
8 is a revised regulation, would read:

9 The following families are eligible for affordable
10 housing activities:

11 (a) Low-income Indian families on reservation or
12 Indian area.

13 (b) A non-low-income family may receive housing
14 assistance in accordance with section 1000.110.

15 (c) A family may receive housing assistance on a
16 reservation or Indian area if the family's housing needs
17 cannot reasonably be met without such assistance, and the
18 recipient determines that the presence of that family on the
19 reservation or Indian area is essential to the well being of
20 Indian families.

21 (d) A recipient may provide housing or housing
22 assistance provided through affordable housing activities
23 assisted with grant amounts under this act for a law
24 enforcement officer on an Indian reservation or other Indian
25 area if --

1 (1) the officer:

2 (a) is employed on a full-time basis by the
3 federal government or a state, county, or other unit of
4 local government or lawfully recognized tribal government;
5 and

6 (b) in implementing such full-time employment is
7 sworn to uphold and make arrests for violations of federal,
8 state, county, or tribal law; and

9 (2) the recipient determines that the presence of
10 the law enforcement officer on the Indian reservation or
11 other Indian area may deter crime.

12 (e) Families residing in housing assisted under
13 the 1937 Act or receiving any affordable housing assistance
14 under NAHASDA do not have to meet these requirements for
15 continued occupancy.

16 MR. KAZAMA: That is the presentation, so we can
17 negotiate on this matter.

18 FACILITATOR: Okay. Thank you. Any questions or
19 comments on this section? Carol?

20 MS. GORE: Did the --

21 FACILITATOR: Carol Gore.

22 MS. GORE: Sorry. Carol Gore. Did the workgroup
23 talk about housing assistance as a mortgage assistance for
24 homeownership? And how would that apply if the police
25 officer is no longer fully employed as a police officer?

1 Did you talk about that at all? The housing
2 assistance can be homeownership, correct?

3 MR. HEISTERKAMP: Yeah. The language is directly
4 out of the statute, and it was understood by the workgroup
5 that housing assistance means any type of housing
6 assistance, would could include mortgage assistance. The
7 language on law enforcement officers comes directly from the
8 statute verbatim, basically.

9 So I think it -- it is -- there's no discussion in
10 the statute of what happens if that police officer no longer
11 is employed, although there are several requirements that
12 when you house the police officer, they do have the power to
13 arrest people, that you've made that finding that they will
14 deter crime.

15 So there might be an assumption in enforcing that
16 that if the police officer no longer has those powers or is
17 no longer employed in that capacity, that the housing
18 assistance ends.

19 And I think it's up to the -- probably end up
20 being up to the tribe to interpret when they no longer meet
21 the criteria.

22 FACILITATOR: Does that answer your question,
23 Carol?

24 MS. GORE: Not entirely. I just -- I want to
25 understand how this works in practice, if I may. So may I

1 give an example?

2 If I provide housing assistance, as in a
3 down-payment assistance, to a police officer that meets
4 every requirement under the statute and is currently set out
5 in regulation, three years later, that same family no longer
6 meets the test of that regulation, am I then obligated to
7 repurchase that house or ask for repayment of those funds
8 somewhere down the road?

9 How long does that -- do I have to track that
10 eligibility? I'm trying to be practical in application.
11 Thank you.

12 MR. HEISTERKAMP: I think, Carol, in that
13 situation, there's the possibility that you could switch and
14 determine that this person was either still an essential
15 family and/or assisted as a non-low-income person and let
16 them continue in your program.

17 They would continue -- we have several regulations
18 to review here that come as a set. And so even though this
19 is the first one, the ones we'll be reviewing shortly will
20 discuss how you assist people that may no longer fit this
21 criteria, but are over income or otherwise essential to the
22 community as determined by the tribe.

23 FACILITATOR: Okay. Susan?

24 MS. WICKER: I want to know if this provision for
25 the officer, do they have to meet the income guidelines, or

1 is that out the -- so they could be over income and would
2 still be in compliance?

3 MR. KAZAMA: That is correct. They can be over
4 income and be in compliance. That's correct.

5 FACILITATOR: Any other questions? Seek consensus
6 on this issue. All in favor? Any opposed? Okay.

7 Reached consensus. Thank you.

8 Next?

9 MR. KAZAMA: On the next page, we're dealing with
10 1000.106, What families receiving assistance under Title II
11 of NAHASDA require HUD approval?

12 And so we -- let's see. Let's also take 106 and
13 108 together because 108 is fairly simple and somewhat
14 mimics 106. So I want to deal with both of those together.

15 108 says, How is HUD approval obtained by a
16 recipient for housing for non-low-income families -- Indian
17 families and model activities. We have it -- we removed the
18 "Indian" and put "families and model activities."

19 And I'll have Dave speak to this issue, each.

20 MR. HEISTERKAMP: On 106, the proposed new
21 regulation, which is a revision of an existing regulation
22 would read:

23 (a) Housing assistance for non-low-income families
24 requires HUD approval only as required in Sections 1000.108
25 and 1000.110.

1 (b) Assistance for essential families under
2 Section 201(b)(3) of NAHASDA for -- does not require HUD
3 approval, but only requires that the recipient determine
4 that presence of that family on the reservation or Indian
5 area is essential to the well being of Indian families, and
6 the family's housing needs cannot reasonably be met without
7 such assistance.

8 The proposed answer to 108 reads:

9 Recipients are required to submit proposals to
10 operate model housing activities as defined in Section
11 202(6) of NAHASDA and to provide assistance to
12 non-low-income families in accordance with Section 201(b)(2)
13 of NAHASDA. Assistance to non-low-income families must be
14 in accordance with Section 1000.110. Proposals may be
15 submitted in the recipient's IHP or at any time by amendment
16 of the IHP or by special request to HUD at any time. HUD
17 may approve the remainder of an IHP notwithstanding
18 disapproval of a model activity or assistance to
19 non-low-income families.

20 MR. KAZAMA: We're ready for negotiations.

21 FACILITATOR: Any questions, comments on this
22 item? Okay. Call for -- call for consensus. All in favor,
23 raise your hand, please. All opposed?

24 Okay. It passes. Thank you.

25 Next, Blake?

1 MR. KAZAMA: The next item is 1000.110. And I
2 just want to deal with that issue.

3 Under what conditions may non-low-income families
4 participate in the program?

5 And I'll have Dave address the answer.

6 MR. HEISTERKAMP: The proposed regulation, which
7 is a revision of an existing regulation reads:

8 (a) A family who is low income at the times
9 described in 1000.147 may continue to participate in the
10 program and is not subject to the additional requirements of
11 this section. This includes a family member or household
12 member who takes ownership of a homeownership unit under
13 Section 1000.146.

14 (b) A recipient must determine and document that
15 there is a need for housing for each family which cannot be
16 met -- reasonably be met without such assistance.

17 (c) A recipient may use up to 10 percent of the
18 amount planned for the tribal program year for families
19 whose income falls within 80 to 100 percent of the Indian
20 income without HUD approval -- I'm sorry -- the median
21 income without HUD approval. HUD approval is required if a
22 recipient plans to use more than 10 percent of the amount --
23 of its amount planned for the tribal program year for such
24 assistance or to provide housing for families with income
25 over 100 percent of the median income.

1 (d) Non-low-income families cannot receive the
2 same benefits provided low-income families. The amount of
3 assistance non-low-income families may receive will be
4 determined as follows:

5 (1) The rent (including homebuyer payments under a
6 lease purchase agreement) to be paid by a non-low-income
7 family cannot be less than: (the income of a non-low-income
8 family) divided by (the income of a family at 80 percent of
9 the median income) times (the rental payment of a family at
10 80 percent of the median income), but need not exceed the
11 fair market rent or value of the unit.

12 (2) Other assistance, including down payment
13 assistance to non-low-income families cannot exceed (the
14 income of a family at 80 percent of median income) divided
15 by (the income of a non-low-income family) times (the
16 present value of the assistance provided to a family at 80
17 percent of median income.)

18 (e) The requirements set forth in Paragraphs C and
19 D of this section do not apply to non-low-income families
20 which the recipient has determined to be essential under
21 1000.106(b).

22 MR. KAZAMA: Ready for negotiation.

23 FACILITATOR: Okay. Karin -- Carol?

24 MS. GORE: Carol Gore. Under Letter C, could you
25 explain the difference between annual grant amount, which is

1 struck, and the amount planned for the tribal program year?
2 What is the intent of that change?

3 MR. HEISTERKAMP: I believe the intent was to make
4 it consistent with regulatory language that's being adopted
5 elsewhere, especially in the Indian Housing Plan. The
6 workgroup understood that the term "annual grant amount" is
7 no longer going to be used, and instead will be called the
8 annual plan -- it will be the "tribal program year," and so
9 to identify an amount of money that would fit in that time
10 period, we came up with this terminology.

11 FACILITATOR: Any other questions? Yes, Mark?

12 MR. BUTTERFIELD: So by striking out these prior,
13 B, one, two, and three, you are now eligible to rent to
14 non-low-income people in 1937 Act units; is that correct?

15 MR. KAZAMA: That's correct. As long as they meet
16 the rest of the criteria.

17 FACILITATOR: Mark?

18 MR. BUTTERFIELD: Well, thank you. One other
19 question I had is on, I guess, it's E -- I'm not sure.
20 Maybe I'm reading this wrong, but it suggests that for
21 essential families, they don't have to go through the paying
22 more than the non -- the low-income families. And I guess I
23 was wondering, why is that? They may be essential, but
24 they're already over income.

25 MR. HEISTERKAMP: The workgroup looked at the

1 existing regulation and modified it accordingly. That
2 they're -- the requirement for essential families has always
3 been that they're not subject to those paragraphs, and we
4 just make it conforming to the rest of the rules, so we
5 didn't make the determination this time. We're simply
6 modifying an existing reg to be consistent, that previously,
7 essential families were exempt, and they still continue to
8 be exempt under the modification of the existing reg.

9 Only the redline strikeout language has been
10 struck. And I assume maybe an explanation to that is to say
11 it's up to the tribe to determine who's essential to the
12 community and what level of assistance they want to provide
13 to that family. It doesn't require, one way or the other,
14 what level of assistance, but it leaves it up to the tribe
15 for determination.

16 FACILITATOR: Does that answer your question,
17 Mark?

18 MR. BUTTERFIELD: Yes. It just seems to me to be
19 hurting yourself. But it doesn't -- it's not a regulatory
20 concern. It's just each tribe can determine that. These
21 are, generally, going to be police officers and other people
22 that are paid better than the average. And if you charge
23 them the same as low-income tenants, you're giving them a
24 huge break, which you could be realizing some income you
25 need to maintain the units. That's all.

1 MR. KAZAMA: Mark, it's really the tribe's
2 determination how they want to handle. That's all we're
3 trying do is trying to give more latitude, really, in this
4 situation.

5 MR. BUTTERFIELD: As long as that's understood.

6 FACILITATOR: Larry?

7 MR. COYLE: Would -- you say, inclusive of '37
8 housing, they would be eligible. How about Section 8?
9 Wouldn't that be in contradiction to the parameters of
10 Section 8, the old Section 8, or public housing Section 8?

11 MR. HEISTERKAMP: It might be if you were still
12 operating under those rules and programs, but this talks
13 about NAHASDA assistance. So any unit you assist, even if
14 you assisted in a Section-8-style program, you're giving
15 that unit NAHASDA assistance, it's no longer Section 8
16 assistance.

17 And so these rules can only apply to the
18 NAHASDA-assisted units. If for some reason there was an
19 Indian Housing Authority or TDHE that was administering a
20 Section 8 voucher program in the existing housing choice
21 voucher program, then, yes, you would probably have to
22 follow those rules. This is talking about NAHASDA-assisted
23 units, though.

24 MR. COYLE: These aren't NAHASDA-assisted units.
25 These are '37 housing units and designated as '37 housing in

1 NAHASDA.

2 MR. HEISTERKAMP: Is there a suggestion?

3 MR. COYLE: Exempt them from this unit.

4 FACILITATOR: Blake? Blake?

5 MR. KAZAMA: Yeah. Larry, I guess I'm not real
6 clear. What do you want to do with these families that are
7 in the '37 housing units?

8 MR. COYLE: I don't mind the statute the way it
9 stands. But we created '37 housing for low income. And now
10 they're acceptable to over low income on this. If they
11 don't have low income housing for these people, they should
12 have other alternatives.

13 MR. KAZAMA: It -- basically this is -- if you're
14 speaking to the essential to community, it's, again, a
15 tribal preference if whether or not they want to do this or
16 not. If they have the houses and they want to comply with
17 these regulations, then they're allowed to do that, is what
18 this does.

19 If there is no housing, of course they have to
20 seek additional housing elsewhere.

21 MR. COYLE: Yes. And I would just ask the
22 question if it was legal. If there's still a public housing
23 entity from '37 housing as Section 8, that was transposed
24 over to NAHASDA, but we're not using NAHASDA funds for that,
25 per se.

1 MR. KAZAMA: If you're not -- these rules pertain
2 to NAHASDA housing. If you -- if you're using outside
3 funds, they don't pertain to this. I guess that's the
4 simplest way of putting that. If it's still -- I mean,
5 Section 8 should have swung over, as you're indicating, then
6 they would be under these rules.

7 MR. COYLE: Okay. If that's legal, I'm all for
8 it; but if it isn't, I'm not for it.

9 FACILITATOR: Is it legal?

10 MR. KAZAMA: Trust me.

11 FACILITATOR: All right. Any other questions on
12 this item? Call for consensus on this item. All in favor?
13 Any opposed?

14 Okay. It passes.

15 Blake?

16 MR. KAZAMA: Okay. We are dealing now with
17 1000.112 -- let's see -- through 118. We'll take that as a
18 group, Mr. Facilitator.

19 And again, I will -- please look at the items.
20 You can see that the -- look at the redline issues on here,
21 and that gives you an indication of why I am taking this as
22 a group. But let me read each of the items.

23 1000.112 states: How will HUD determine whether
24 to approve model housing activities?

25 And 1000.114: How long does HUD have to review an

1 act on a proposal to provide assistance to non-low-income
2 Indian housing or model housing activity? And we redlined
3 "Indian."

4 And 1000.116: What should HUD do before declining
5 a proposal to provide assistance to non-low-income Indian
6 housing -- again, we redlined "Indian" -- or a model housing
7 activity?

8 And 1000.118: What recourse does a recipient have
9 if HUD disapproves a proposal to provide assistance to
10 non-low-income Indian housing or model housing activity?
11 Again, we redlined "Indian."

12 I'll have Dave address this.

13 MR. HEISTERKAMP: Okay. First of all, the
14 workgroup included 112 just so the committee could see how
15 the regulations flow. If you guess that there's no change
16 there, you're correct. So we're not asking consensus on
17 112.

18 For Items 114, 116, and 118, all we have done in
19 order to make it consistent with the other regulation is
20 just to strike the word "Indian" in front of families. So
21 now these regulations apply to all families, Indian or
22 non-Indian that you might house under this section.

23 If the committee would like, I could read all the
24 way through, but the only changes that are proposed, as
25 Blake noted, was to strike the word "Indian" in front of

1 families. So all these sections should read as applicable
2 to families receiving assistance in your program.

3 MR. KAZAMA: Open for negotiation.

4 FACILITATOR: Any questions? Karin?

5 MS. FOSTER: I would just call for consensus.

6 FACILITATOR: Anybody have questions or comments
7 on this? Call for consensus. All in favor, thumbs up? Any
8 opposed?

9 Okay. That passes. Thank you.

10 Next?

11 MR. KAZAMA: Okay. Mister -- I keep wanting to
12 say "Mr. Chairman."

13 The next area or subject matters will be covered
14 in -- that deal with Issue Nos. 52 to 54 and 62, partially.
15 And it deals 1000.141 to -- 1000.141 to 147.

16 And you will note, some of the issue items or
17 regulations do have different numbers. And we will explain
18 that, because we did add some regulations here. So bear
19 with us as we go through this section, 1000.141 to 147.

20 The first one deals with -- basically, by the way,
21 these issues deal with the proposed regulations that adds
22 new clarification to rules regarding affordability,
23 parenthesis, useful life. And it's in the NAHASDA Section
24 205(a)(1) and 205(a)(2) and 205(c) and 209. So -- but
25 we'll -- we will just work our way down.

1 The first one, 1000.141: What is "useful life,"
2 and how is it related to affordability?

3 MR. HEISTERKAMP: This is a new regulation that
4 would be added. And the proposed answer is:

5 Useful life is the time period during which an
6 assisted property must remain affordable as defined in
7 Section 205(a) of NAHASDA.

8 MR. KAZAMA: 205(a) is on the board there if you
9 need additional information.

10 Mr. Facilitator, again, I would like to take this
11 consensus issue by issue.

12 FACILITATOR: Okay. Any questions on this? Yes,
13 Phil?

14 MR. BUSH: Sorry. I was reading a couple of
15 different things. I probably should -- we're only looking
16 at 141 right now?

17 MR. KAZAMA: That's correct.

18 MR. BUSH: Sorry. Never mind. I was reading the
19 next one.

20 FACILITATOR: Okay. Any other questions?
21 You want to go piece by piece on this one?

22 MR. KAZAMA: That's correct. So I'll call for
23 consensus on this matter.

24 FACILITATOR: Okay. All in favor? Any opposed?
25 Okay. Passes.

1 Next?

2 MR. KAZAMA: We're dealing 1000.142: How does a
3 recipient determine the "useful life" during which
4 low-income rental housing or low-income homebuyer housing
5 must remain affordable as required in Section 205(a)(2) and
6 209 of NAHASDA?

7 MR. HEISTERKAMP: This is a modification of an
8 existing regulation. And the proposed answer is: To the
9 extent required in the IHP, each recipient shall describe
10 its determination of the useful life of the assisted housing
11 units in its developments in accordance with the local
12 conditions of the Indian area of the recipient. By
13 approving the plan, HUD determines the useful life in
14 accordance with Sections 205(a)(2) and for purposes of
15 Section 209.

16 MR. KAZAMA: Ready for negotiation.

17 FACILITATOR: Okay. Any questions on this
18 section? Yes, Phil?

19 MR. BUSH: This is where I thought I was going to
20 ask the question.

21 FACILITATOR: Phil Bush.

22 State your question.

23 MR. BUSH: Do we know what the IHP is going to
24 say? I mean, it says, "To the extent required in the IHP."
25 I'd like to see what the IHP said.

1 FACILITATOR: Judith?

2 MS. MARASCO: Judith Marasco. Currently, the IHP
3 allows you to determine that when you submit your plan. I
4 don't know what the new format -- maybe we could hear from
5 that committee on what the new format would allow us to do.

6 MR. ADAMS: Everybody's looking at me. I guess
7 that's me. I am not exactly sure. Maybe, I don't know if
8 you have the form listed there, we can look that up and see
9 what the -- what, specifically, the page refers to.

10 In the new form, on Page 16 of 29, it makes
11 reference to useful life and affordability period. And it
12 lists here: Listing of all unit types, excluding Mutual
13 Help units that will be developed or rehabilitated with IHBG
14 funds during the one-year plan period and the anticipated
15 useful life of these units.

16 If the recipient proposes to assign period of time
17 other than the useful life of the units, indicate that
18 affordability period below.

19 And I believe this is one of those sections --
20 correct me if I'm wrong, Jennifer. This is one of those
21 sections that are statutorily required.

22 FACILITATOR: Phil?

23 MR. BUSH: Right. Jason, isn't that -- the IHP,
24 you said you were going to go over later on?

25 MR. ADAMS: Yeah. That was the hope is that we

1 would get to that at this meeting to go through it. But
2 again, that's -- that's one of those areas that will more
3 than likely remain because it's statutorily required.

4 FACILITATOR: Marvin.

5 MR. JONES: Marvin Jones. We need to make sure
6 whether it's statutorily required to be included in the
7 Indian Housing Plan. That way, I think -- for sure it's
8 statutorily required. But if, in fact, it's not required in
9 the Indian Housing Plan, it may be excluded out of the
10 Indian Housing Plan. We don't know at this point.

11 FACILITATOR: Karin, you had a thought on that?
12 Do we need more information, Karin?

13 MS. FOSTER: As I was listening -- Karin Foster.
14 As I was listening to the conversation about this, I thought,
15 well, gee, you know, since it says, "To the extent
16 required," we could deal with it when we get to the IHP.
17 But if there's a real possibility that the IHP may not even
18 include useful life, then it would just kind of become, you
19 know, nonoperative, I guess.

20 FACILITATOR: Yes, Blake?

21 MR. HEISTERKAMP: And I think -- and this was
22 discussed in the workgroup, but why has it previously been
23 included in the IHP? The statutory requirement is that the
24 Secretary approve a useful life, slash, affordability
25 period.

1 The most feasible mechanism that the previous
2 negotiated rulemaking committee could think of on that was
3 to include it on the IHP. And then as a tribally determined
4 member in the IHP, by approving your IHP, the Secretary can
5 legally delegate their authority and have, quote, approved a
6 useful life for each of the units.

7 So it is correct. I don't believe the statute
8 requires that it be in the IHP, but the statute does require
9 that the Secretary approve it. And so if the committee ends
10 up removing it from the IHP, there would still have to be a
11 way for the tribes to report it HUD, for HUD to officially
12 approve, so that the statute -- statutory language would be
13 followed.

14 I would suggest for purposes of this workgroup
15 right now, what we know is it's included in the IHP. It has
16 been included in the IHP. This workgroup is just trying to
17 make a conforming regulation. If for some reason the
18 committee thought it didn't belong in the IHP, on further
19 review, this would be potentially an item that would have to
20 be opened for new consensus.

21 FACILITATOR: Okay. And I think we've also --
22 there is also an agreement that when -- if we agree on
23 something and later on we agree on something that
24 contradicts that, then we can pull that out through
25 committee -- through a consensus of committee.

1 So is it your desire to go ahead and approve it
2 for now?

3 MR. KAZAMA: Yes, it is. I think it just helps
4 simplify it to approve it. And I believe to bring it back
5 based on what the work of the IHP can see, then we can bring
6 it back.

7 FACILITATOR: Okay. Marvin?

8 MR. JONES: Marvin Jones. And I don't have a
9 problem with that. But let's make it clear that we need to
10 come back to the issue, if we need to come back to it, and
11 put it some place that -- wherever we might put that so that
12 we don't forget it -- inadvertently forget it.

13 FACILITATOR: I think we'll note that on our
14 official record.

15 MR. KAZAMA: I agree with Marvin.

16 FACILITATOR: Okay. All right. So given those
17 caveats, are we ready to vote on this now? All in favor?
18 All opposed?

19 Okay. That will pass.

20 MR. KAZAMA: The next regulation is 1000.143, how
21 does a recipient implement its useful life requirements?

22 MR. HEISTERKAMP: The proposed answer -- and this
23 is a brand new regulation -- is: A recipient implements its
24 useful life requirements by placing a binding commitment
25 satisfactory to HUD on the assisted property.

1 MR. KAZAMA: We can open for negotiation.

2 FACILITATOR: Any questions or comments on this
3 issue?

4 MR. JACOBS: Leon Jacobs.

5 How do you define a binding commitment?

6 MR. HEISTERKAMP: Stay tuned for 144, sir.

7 FACILITATOR: You want to take them one by one?

8 MR. KAZAMA: We'll take both of them. Because I
9 understand the question. And the next regulation -- by the
10 way, these are new regulations we added to help clarify
11 useful life and binding commitment. So bear with us as we
12 share these new regulations with you.

13 So 143 was: How to does a recipient implement its
14 useful life requirement?

15 And 144: What are binding commitments
16 satisfactory to HUD? And the answers are there. So let's
17 take those together. And I'll have Dave read the answer.

18 MR. HEISTERKAMP: The proposed answer would be: A
19 binding commitment satisfactory to HUD is a written use
20 restriction agreement developed by the recipient and placed
21 on an assisted property for the period of its useful life.

22 FACILITATOR: Any questions? Carol?

23 MS. GORE: Yeah, Carol Gore. And I'm wondering
24 about some of the what seems to be relatively vague
25 language, and I know sometimes that's intentional.

1 So a couple of terms that are -- that are used, a
2 "written use restriction agreement." The second term is
3 "placed on." And I wonder if you could explain what you
4 mean by that? Typically in real estate it's "recorded." I
5 realize that the reservation might be different. So if you
6 could just explain the intent of that. Thank you.

7 MR. HEISTERKAMP: Carol, you've identified an
8 important issue. In some cases, either because of the
9 shortness of the period or because of other circumstances,
10 it was determined in the workgroup that the agreement could
11 simply be a contract and not a lien against property. And
12 so it leaves it up to the tribe how best to implement that,
13 as long as the agreement's in writing.

14 And the use restriction agreement, you're also
15 correct, is a term of art used in real estate to limit
16 the -- you know, limit a time on a piece of property. But
17 it may not always be appropriate to record those agreements.

18 And so the workgroup determined to leave the
19 language open with HUD concurring in that, that this was
20 enough if you had it on record in writing that there was a
21 written use restriction agreement. And then it was up to
22 the tribe to determine how best to record that, if
23 necessary, and how best to enforce that, if necessary.

24 FACILITATOR: Thank you, Carol.

25 MS. GORE: Could I drill just a little bit deeper?

1 Did you talk at all about what you mean by "use"? I mean,
2 is that intended to be restrictive or open or vague? I'm
3 sorry do dig, but I -- if we're going to develop policy
4 behind them...

5 MR. HEISTERKAMP: Again, I think that the
6 workgroup's intention was to use a term of art. If it would
7 be more consistent for the committee's sake, you could tie
8 that -- you could substitute the words "use restriction" and
9 simply put "affordability agreement," so it became a written
10 affordability agreement.

11 I think the committee saw that as kind of
12 synonymous, so it would be up to the full committee whether
13 they think that needs to be changed. But would I propose if
14 there needs to be a change, that we take out "use
15 restriction" and add "affordability," but at the committee's
16 discretion.

17 MS. GORE: Thank you. "Use" works for me.

18 FACILITATOR: Larry?

19 MR. COYLE: Yes. I'd like to relinquish a little
20 time to my lawyer, Ed Goodman. I have a couple questions.

21 MR. GOODMAN: Thank you. I've run into some
22 issues with some clients, and I just want to clarify
23 something that I think the way this reads, but I'm not sure
24 if this is the way it works, if this is what it's intended
25 to do.

1 143 states that a binding commitment, to meet the
2 useful life requirements, must be satisfactory to HUD.

3 144 then defines what is satisfactory to HUD
4 through the terms that we're still, I guess, working out
5 here.

6 The question is: Does HUD have any discretion at
7 that point to approve or not, or is the adoption of this
8 regulation the binding -- or the recognition by HUD that
9 using the binding commitment described in the regulation
10 satisfactory to HUD? There's no step where it has to go
11 back to HUD to approve it as a satisfactory-to-HUD binding
12 commitment?

13 MR. HEISTERKAMP: Ed, we won't respond on behalf
14 of HUD. What we will understand is that the statute uses
15 the language that it must be a binding commitment
16 satisfactory to HUD, which is why the regulation was drafted
17 that way.

18 In previous practice, all HUD has done was to
19 draft a couple of guidances that address this issue. There
20 was not much discussion in the workgroup of whether there
21 needed to be approval beyond this process, but I would also
22 defer to the HUD representatives on the committee to see if
23 they have an opinion.

24 FACILITATOR: Sandra?

25 MS. HENRIQUEZ: So as I understand it, we've

1 provided and you provided model use restriction language for
2 individual tribes to adopt and to use. Are you able to
3 modify those documents as well? Our role, then, is not to
4 do a formal approval, but to -- on monitoring which with
5 those restrictions -- those use agreements are in place, are
6 documented, are in the file. And we will check to see what
7 the use restriction agreement says is, in fact, what's
8 happening in your housing.

9 Does that help?

10 FACILITATOR: Does that help?

11 MR. GOODMAN: I think so. Basically, the issue
12 we've run into in the past is having HUD treat the guidance
13 as binding or as the only way you can do a binding
14 commitment. If the guidance is simply seen as here's a way
15 to do it, here's one way to do it. But as long as you have
16 something that is a binding commitment, then that is
17 satisfactory to HUD.

18 MS. HENRIQUEZ: That is our understanding as well.

19 FACILITATOR: Okay. Any other questions? Yes,
20 Blake?

21 MR. KAZAMA: I guess I'll just ask for consensus.

22 FACILITATOR: Any questions? Yes, Mark?

23 MR. BUTTERFIELD: As a -- I was just wondering how
24 this would work as a practical matter. I know how it would
25 work with down payment assistance, but for '37 Act units or

1 NAHASDA units that you develop, are you going to have to
2 retroactively, then, come up with a useful life binding
3 agreement for each one of your properties? Because that's
4 the way it seems to read.

5 MR. HEISTERKAMP: This statutory requirement has
6 existed from the beginning of the program. So the strict
7 legal answer is you're always supposed to have been
8 determining useful lives as soon as you started using
9 NAHASDA money.

10 I know in practice it may not have been that way,
11 but this requirement has been there from the beginning of
12 the statute and still exists. So this is a -- hopefully, a
13 clearer way of helping tribes implement that, but this is
14 not a new requirement.

15 FACILITATOR: Does that answer your question,
16 Mark?

17 MR. BUTTERFIELD: Yes.

18 FACILITATOR: All right. We ready to vote on
19 this? All in favor? Can I see your hands, please? Any
20 opposed?

21 Okay. It passes. Thank you.

22 Blake?

23 MR. KAZAMA: I wanted to make this statement
24 earlier, the Workgroup B this two area we almost spent the
25 entire day on, going back and forth, back and forth. It was

1 a hard decision to even come up with these regulations, I
2 mean, to the point where some of us even left and said, You
3 guys figure it out. And they did.

4 And we were proud to come back when they did
5 figure it out. And so I'm glad that we do have consensus on
6 this. I want to thank those -- the group committee people,
7 the special committee, that really beat each up for this.
8 So your bloodshed was well worth it, I think. Okay.

9 Moving along. 1000.145 -- and let's see. I'll
10 just take that individually. Are Mutual Help homes
11 developed under the '37 Act subject to useful life provision
12 of Section 205(a)(2)?

13 And the answer is, No. No change there. Just the
14 number change.

15 FACILITATOR: Number change.

16 MR. KAZAMA: Okay. I'm not sure if you need
17 consensus on that.

18 FACILITATOR: Let's take a consensus, just to be
19 safe.

20 All in favor? Any opposed?

21 Okay. Move on.

22 MR. KAZAMA: Okay. 1000.146: Are binding for the
23 remaining useful life of property applicable to a family
24 member or household member who subsequently takes ownership
25 of a homeownership unit?

1 MR. HEISTERKAMP: This is a new regulation to
2 implement the new statutory provision. The answer is: No.
3 The transfer of a homeownership unit to a family member or
4 household member is not subject to a binding commitment for
5 the remaining useful life of the property. Any subsequent
6 transfer by the family member or household member to a third
7 party (not a family member or household member) is subject
8 to any remaining useful life under a binding commitment.

9 MR. KAZAMA: Open for negotiation.

10 FACILITATOR: Any questions? Comments?

11 MR. JACOBS: Leon Jacobs, sir.

12 FACILITATOR: Sorry. Go ahead.

13 MR. JACOBS: I have a question. You're talking
14 about a nonfamily member, who may not be a tribal member.
15 Did you address that?

16 MR. HEISTERKAMP: The statute does not speak to
17 whether the family member is a tribal member or not. Our
18 understanding in implementing this provision was simply to
19 correct a bad Catch-22 that had existed before that if a
20 family had been in one of these units and their income had
21 gone up over time, and then the primary homebuyers were no
22 longer available to complete the agreement, they didn't want
23 to have to throw the new family members out or household
24 members out if they transferred and the income was higher.

25 This doesn't speak to whether tribes have to house

1 nontribal members. It does not require you to house anybody
2 that's over income. It simply tries to correct the problem
3 that you are required to have a binding commitment, and the
4 binding commitment should not act as a legal impediment to
5 allow you to house family member successors, if, in fact,
6 that's what a tribe choses to do.

7 It does not require the tribe to go any further
8 than that, but it removes that legal barrier if the tribe
9 chooses to do so.

10 FACILITATOR: Does that answer your question,
11 Leon?

12 MR. JACOBS: Yes.

13 FACILITATOR: Any other questions? Call for
14 consensus? All opposed?

15 Okay. Passes.

16 MR. KAZAMA: The next issue or regulation is:
17 1000.147, Are families required to remain low income
18 throughout their term of their participation in a housing
19 program funded under NAHASDA?

20 MR. HEISTERKAMP: This one followed in sequence.
21 It's a modification of an existing regulation, and it has
22 less to do with the useful life, and more to do with the set
23 of regulations you previously gave consensus on.

24 The proposed answer:

25 (a) No. The family must be low income only at the

1 following times:

2 (1) in the case of rental housing, at the time of
3 their initial occupancy of such unit;

4 (2) in the case of contract to purchase existing
5 housing, at the time of purchase;

6 (3) in the case of a lease-purchase agreement for
7 existing housing or for housing to be constructed, at the
8 time the agreement is signed; and

9 (4) in the case of a contract to purchase housing
10 to be constructed, at the time the contract is signed.

11 (b) Families who are not low income as described
12 above may be eligible under Section 1000.104 or Section
13 1000.110.

14 FACILITATOR: Any questions? Lafe?

15 MR. HAUGEN: Lafe Haugen. You know, I'm dealing
16 with an issue similar to this back at home. And personally,
17 I don't agree with this because NAHASDA wasn't developed to
18 help over-income families. And yeah, they might be eligible
19 at the time, but if they get a good job and become over
20 income, I don't think that's fair to the program. It erodes
21 the program, so to speak.

22 People who make enough money should not be
23 subsidized. And I guess I don't agree with this. I don't
24 agree with that they will eligible forever.

25 FACILITATOR: Blake and then Karin.

1 MR. KAZAMA: I'll yield to Karin first.

2 MS. FOSTER: Thank you. Karin Foster. No. I was
3 just going to ask if we could see the statute because I
4 think this comes directly from the Act, and I thought it
5 would be helpful for everybody to kind of look at the
6 language and compare the two.

7 MR. HEISTERKAMP: 205(a)(1) is the section in the
8 statute.

9 MR. KAZAMA: It says -- well, to agree -- I agree
10 with Lafe. We have a statute that we're working with, and
11 that's what we were up against is the statute's language.
12 And so it is found in 205(a), (b), (c), and so forth. It
13 came right out of the statute. We took it right out of the
14 statute.

15 FACILITATOR: Larry?

16 MR. COYLE: It says "homebuyer families" at the
17 top, and then it says, No. 1, in case of rental housing.

18 How can you buy a house --

19 MR. KAZAMA: We crossed out homebuyers.

20 FACILITATOR: Marvin?

21 MR. JONES: Marvin Jones. I just want
22 clarification. In case of rental housing, at any point and
23 at any time somebody's eligible and moves in, from there,
24 that point forward, they're always eligible? That's what
25 this is saying, correct? And that's what the law's saying?

1 FACILITATOR: Yes, Sandra?

2 MS. HENRIQUEZ: So the Section 147 that we're
3 discussing says how one is eligible or when they have to
4 meet the income requirements to get in. This doesn't talk
5 about continued occupancy.

6 And so the way it's constructed is that for
7 continued occupancy, once an income-eligible family is in,
8 then it becomes over income, if you will, but remains in
9 residence, you then look to Section 1000-1110, small E,
10 [sic], which says you can charge more rent because they're
11 now not eligible for the low-income assistance, et cetera,
12 or there's flexibility for the tribes to develop a policy of
13 removal because people are over income, thereby freeing up a
14 unit or an income-eligible family to move in.

15 Does that get at it?

16 Oh. I'm also saying we should refer to 1000.128,
17 which is income verification required for assistance under
18 NAHASDA. So there are a number of subsequent pieces that
19 would follow this in order to define what actions you can
20 take for an over-income household.

21 FACILITATOR: Okay. Leon?

22 MR. JACOBS: I have a concern about this, because
23 in Indian Country, in most cases, you don't have other
24 resources available to the families when they move in. If
25 you had a lot of houses, like in a city and so forth, that

1 would be one thing. But when a family is on the reservation
2 or in Indian Country, whether they're rental or what have
3 you, there aren't those resources to move them.

4 So it's been a difficult situation in many cases
5 for Indian families to stay in a homeownership situation
6 because as soon as their income raises up, you have to move
7 or do something else. So you need to have some alternative
8 that they can buy the house or -- stability is important on
9 the reservation, as it is anywhere else in America.

10 FACILITATOR: Yes, Sandra?

11 MS. HENRIQUEZ: We agree. The section really
12 pertains not to the homeownership, except in terms of when
13 you become income eligible, but if you become over income,
14 we're not suggesting that families in homeownership units be
15 terminated. It really applies to the rental.

16 FACILITATOR: Lafe?

17 MR. HAUGEN: Lafe Haugen. That's the point I'm
18 making. You know, I agree with you, Leon. But on the flip
19 side, when you're establishing homeownership units, 184, for
20 example, we have to put those people who are over income
21 into those kinds of programs.

22 It's not fair to the other people on the waiting
23 list that have no income not to be able to have an access to
24 those low-rent units.

25 So I'm in disagreement with your comment, because

1 I think that most of us that are sitting around this table
2 are looking at homeownership opportunities. And if you make
3 enough money, you should begin homeownership.

4 FACILITATOR: Any further comments on this issue?
5 Yes, Carol?

6 MS. GORE: Carol Gore. And I just want to make
7 sure I'm clear. I think I'm clear. We've already reached
8 consensus on 144, which describes binding commitments. And
9 I guess when I read that, I anticipated that binding
10 commitment would include affordability.

11 So I'm just trying to talk this through and how
12 that relates -- that binding commitment, how that relates to
13 147 would suggest that your binding commitment should allow
14 for families to grow their income in place or your binding
15 commitment might not work if it's tied to affordability.

16 Am I tying these together properly? I just want
17 to make sure I understand. I don't really have a
18 disagreement with 147. I understand that's lifted out of
19 the statute. I just want to make sure I'm on the right page
20 on why these are presented collectively.

21 FACILITATOR: Dave?

22 MR. HEISTERKAMP: Carol, it's the sequence in
23 which the original regulations were written, which is why
24 it's -- even we -- both the workgroups dealt with the whole
25 issue, the useful life items stopped at 146. 147 is related

1 to another issue.

2 You're correct. This shouldn't be seen as an
3 extension of the useful life issue. And -- so just, if that
4 helps clarify for you why we're dealing with it here. It
5 was the next regulation in sequence that dealt with issues
6 that we had in our group.

7 MS. GORE: But they would still relate?

8 MR. HEISTERKAMP: Yes.

9 MS. GORE: You would still have to anticipate that
10 in your binding contract or lien on that property if you
11 anticipate that family might not be low income at some
12 point.

13 MR. HEISTERKAMP: That's why 1000.146 implements
14 the other part of the regulation that says, if a subsequent
15 homebuyer or family member becomes over income, the binding
16 commitment doesn't stand in the way as a legal impediment
17 for their continued occupancy, even though you were required
18 to put a binding commitment of affordability on that unit by
19 another provision of the law, so you don't get caught in
20 that Catch-22, where your own binding commitment then
21 creates a legal impediment to the family's continued
22 occupancy after their income goes up.

23 MS. GORE: Thank you. Sorry. I was in the slow
24 class. Thanks.

25 FACILITATOR: Marvin?

1 MR. JONES: Marvin Jones. Just again, I probably
2 missed something. But the -- in Section 205(a)(1)(a), if a
3 family, let's say, is low income and move into a rental
4 unit, and then somebody tries to kick them out because
5 they're over income, what is the statute -- what is the
6 other provision in the statute that says you have the
7 authority to remove them?

8 MR. HEISTERKAMP: We're not aware of anything in
9 the statute anywhere that requires you to move anybody based
10 on income. That doesn't mean you can't have a policy or
11 procedure that addresses that. But we're not aware of any
12 statutory requirement. And I think that would work against
13 us.

14 What this says, remember, is not just assistance,
15 but when do you have affordable housing that's eligible for
16 assistance. That's this part of the Act. So in order for
17 the PDT or tribe to choose to give continued housing
18 assistance to its housing, this is labeled to say, the
19 housing is still considered affordable housing if these
20 conditions are otherwise met.

21 I don't think it dictates to the tribe when you
22 have to house people that are over income. As the assistant
23 secretary pointed out, there's another set of regulations
24 that allow you to deal with that: When, how, how much you
25 charge somebody who is over income that's no longer subject

1 to the 30 percent rule, those kinds of issues come up.

2 This just makes sure that if you want to, you can
3 continue to count that as affordable housing.

4 FACILITATOR: Yes, Marvin?

5 MR. JONES: There's literally no statute if that
6 was interpreted somehow to say somebody moves in, you can't
7 move them out based on income. There is no statute that
8 says, except that, you can do it under such and such a rule?
9 Okay. Thanks.

10 FACILITATOR: Anybody else want to shed some light
11 on this?

12 MR. KAZAMA: Call for consensus?

13 FACILITATOR: Yes, Jason?

14 MR. ADAMS: I was just informed that the section
15 that's referenced in this proposal references a Section 110
16 that I understand there's proposed language that's going to
17 be presented by somebody else that changes, essentially,
18 what you had read?

19 MR. HEISTERKAMP: We just consensus on it 20
20 minutes ago.

21 MR. KAZAMA: We dealt with 110 already.

22 MR. ADAMS: Okay. Jan, I apologize. I'm okay.

23 FACILITATOR: Are we ready to seek consensus on
24 this issue now? Let's see where we're at.

25 All in favor? Opposed?

1 Okay. Lafe?

2 MR. HAUGEN: Again, Lafe Haugen. I'm not
3 satisfied with that. If you looked at the regulation that
4 was 1000.146 it talks about home buying. This -- and this,
5 if you back up one, as noted, it referred to Mutual Help.
6 And I'm just not satisfied that this is what the law
7 intended, to serve over income people.

8 I don't believe that. And like I noted, if you're
9 trying to develop a homeownership program and take advantage
10 of all these programs that 184 offers and USDA and all these
11 other entities that are offering these types of programs, it
12 doesn't make sense to allow NAHASDA to serve those. Because
13 then those other programs will go down the tubes. People
14 won't utilize them if they know they can stay in low-rent
15 units and be over income. It just doesn't make sense to me.
16 I don't agree with it.

17 FACILITATOR: Yes, Blake?

18 MR. KAZAMA: Lafe, are you -- I guess, you're
19 contesting 147, not 146; is that correct? And do you have
20 an alternative language that we could utilize that does not
21 contradict this statute?

22 MR. HAUGEN: The language that I would come up
23 with has been, like I noted -- it's noted as homebuyer here.
24 I mean it was previously. It's been scratched now. I mean,
25 that's what the regulation was intended for was for

1 homebuyers. Now we're changing that to "and families,"
2 which includes low income.

3 MR. HEISTERKAMP: The statute on the left-hand
4 side says, These are the things when it's considered
5 affordable. The rental language was added very early on.
6 That's a 1998 amendment. And it was only later, in 2008,
7 that the other sections, (b), (c), and (d), were added as
8 they were.

9 So we're understanding what you're saying, Lafe.
10 But this is -- this is part of the original statute from
11 1998 on that talks about rental units.

12 If we can figure out a way to still be true to the
13 law and draft a regulation, we're open to that. That's why
14 we just took the language directly out of the statute.

15 MR. HAUGEN: I would -- I would have been willing
16 to work with you on that Dave to try to figure out how we --
17 I just don't agree with it. I think it's a bad decision
18 that we're making.

19 FACILITATOR: Karin?

20 MS. FOSTER: I'm a part of this workgroup, and I
21 think this looks great. But in a way to just maybe -- you
22 know, a way to respond to Lafe's concerns, couldn't --
23 wouldn't one option be to just lead with this issue the same
24 way as the statute does, rather than to say: Are families
25 required to remain low income, talk about when does housing

1 qualify as affordable housing?

2 And so I guess I don't have the language all
3 worked out, but, Lafe, does that sound like it might allay
4 your concerns? It would certainly be consistent with the
5 statute, and it would avoid the focus on families and their
6 requirement.

7 MR. HAUGEN: Lafe Haugen. Yes, that would, what
8 you're saying.

9 FACILITATOR: Would you -- should we stop the
10 clock, table the discussion on this until the break, and see
11 if you can work something out?

12 MS. FOSTER: That would be acceptable to me if
13 that's acceptable to everyone else.

14 FACILITATOR: It looks like we're pretty close
15 right here.

16 MS. FOSTER: I'd be happy to help work on that
17 with anyone else who's interested.

18 MR. HAUGEN: I'm okay with that.

19 FACILITATOR: Why don't we do that. It's time for
20 our break anyway. Why don't we take a 15-minute break and
21 come back at three o'clock.

22 (Recess taken.)

23 FACILITATOR: Blake, did you have a chance to talk
24 a little bit during the break, and do you have any ideas how
25 you want to continue with the subject?

1 MR. KAZAMA: Yeah. I had some. Since we did not
2 reach consensus, there was an opposition, we will take this
3 matter, 1000.147, back into Workgroup B, invite anyone, Lafe
4 and others, who want to participate in this discussion to
5 really do it justice and research it to see, beyond the
6 statute, what can be done with this regulation.

7 I understand some of the examples that were used.
8 And so I think it's well worth reviewing it again and
9 bringing it back later.

10 FACILITATOR: While we're on break, there's also
11 some concern raised to me about our protocol, and our use of
12 lawyers' time or guests' time outside of the committee
13 members.

14 So I just want to explain that when David is
15 working -- doing a presentation for -- on behalf of
16 Workgroup B, he's -- we're considering him as a technical
17 adviser who has -- we don't count that on the clock. He's
18 doing a presentation of information to help us understand
19 Workgroup B's situation.

20 Once we get into negotiation, however, then I have
21 to view David as a guest outside of the committee. And if
22 Blake or anybody invites him to speak, he can only speak
23 once for a maximum of four minutes on any one topic.

24 And that would hold true for any of you if you
25 want to use a lawyer or somebody to raise concern, as Larry

1 did. That person can be invited by a committee person to
2 speak or make some comments on a subject, but only once and
3 only for a maximum of four minutes. And we're going to
4 control that carefully on the clock, on the board here.

5 Okay? So -- yes, Lafe?

6 MR. HAUGEN: Lafe Haugen. Thank you, Blake. I
7 will be a part of that group. I thank you for allowing that
8 to go back.

9 MR. KAZAMA: I want to please you, Blake.

10 FACILITATOR: That's because he didn't steal your
11 salmon.

12 MR. KAZAMA: Can I continue, then?

13 FACILITATOR: Yes, please.

14 MR. KAZAMA: The next issue deals with Subtitle B.
15 You will not see a handout coversheet that deals with it.
16 What you'll see is a PIH notice that lists subject matter:
17 "Demonstration Program -- Self-Determined Housing Activities
18 for Tribal Governments." And it is -- let's see. It is
19 Issue No. 63 and -- through 68, and statutory, it references
20 231 to 235.

21 What the committee decided to do -- Workgroup B
22 decided to do with this was, because this was a
23 demonstration project, it basically goes from 2009 to 2013
24 that we would not write regulations for that because it is a
25 demonstration project, and also that the statute is pretty,

1 what, self-explanatory in terms of making the parameters of
2 usage of this demonstration project.

3 So in other words, if you choose to use this
4 demonstration project, the statute speaks to the parameters
5 of that demonstration project. Therefore, we did not feel
6 that we needed to promulgate regulation as a duplication to
7 this. We would simply put it in a PIH notice that governs
8 the exact same thing that the statute says.

9 So if you want to compare what the PIH notice has
10 to what the statute, it's pretty much identical.

11 Ready for negotiations.

12 FACILITATOR: Yes, Marvin?

13 MR. JONES: Marvin Jones. So you're prepared to
14 explain the PIH notice?

15 MR. KAZAMA: Yes.

16 MR. JONES: Then I have a question. How are you
17 addressing the -- the amounts -- fiscal years 2009 through
18 2013 in light of the possible shift to the tribal program
19 plan year?

20 In other words, are the fiscal year 2009 already
21 lost, and we're not going to be able to claim the lesser of
22 the 20 percent and the \$2 million?

23 MR. KAZAMA: I believe that we can amend the IHP
24 to go back to the 2009. That's what we discussed, to amend
25 the IHP notice to include that for 2009, so we don't lose

1 the 2009 amount, and -- Deb?

2 MS. LALANCETTI: Yeah. So if you wanted -- once
3 this notice is published, if you wanted to use your 2009
4 funds to participate in the demonstration, you would just
5 revise the IHP and include the demonstration program in
6 2009. If the funds are already spent (Inaudible.)

7 FACILITATOR: Marvin?

8 MR. JONES: Marvin Jones. And then, what if the
9 note process becomes in effect and essentially wipes out the
10 2009 IHP and the 2010 IHP year?

11 MS. LALANCETTI: Well, the 2009 IHP won't be wiped
12 out. It will be always remain and 2010, because even the
13 new process only starts with 2011 or 2012, possibly.

14 And the statute addresses your total grant funds.
15 So when you're looking at the dollar amount you can use, you
16 still -- if you look under No. 5, "Amounts," the statute
17 talks about 20 percent of the total grant amount for the
18 recipient for that fiscal year. So you would still use your
19 total grant amount as far as dollar amounts that you can
20 use.

21 You might not use it all in one year in your IHP,
22 but you have that amount available to you for the
23 demonstration program.

24 Does that make sense?

25 MR. JONES: Marvin Jones. No. First of all, you

1 made the comment that the 2009 is not going to go away under
2 the new process, when in fact, it is going to go away. Once
3 we start the new process, it will lose its identity as the
4 2009 IHP and just simply be carryover money, in the same way
5 the 2010 IHP will lose its identity.

6 MS. LALANCETTI: Right. For the IHP, you're going
7 to account for your money differently, but your formula
8 allocation for 2009 still remains a formula allocation for
9 2009.

10 So the calculation here is 20 percent of the total
11 grant amount for the recipient for that fiscal year, or \$2
12 million.

13 So you have to look at it separately. You have to
14 look at an IHP in your program year, what you're going to do
15 here, and then a dollar amount that is going to be available
16 to you to use based on your formula allocation.

17 FACILITATOR: Marvin?

18 MR. JONES: Marvin Jones. Then was what does
19 matter whether you spent the money or not, then?

20 MS. LALANCETTI: Help me here. I'm not following,
21 Marvin. I'm sorry.

22 MR. JONES: You said that you had to have the 2009
23 IHP money still available, and you could only take a
24 percentage of that.

25 MS. LALANCETTI: Because we're talking about the

1 IHBG formula allocation. And this is a fiscal program, and
2 it talks about fiscal years, your grant amount -- total
3 grant amount for the fiscal year, and that's a formula
4 allocation calculation. Your IHP is just how you determine
5 your activities for the year.

6 Does that --

7 MR. JONES: I understand that perfectly well.

8 Let's do --

9 FACILITATOR: Yes, Marvin?

10 MR. JONES: Marvin Jones.

11 Let's go do an actual example. Let's say that an
12 Indian tribe had -- let's just say \$1 million from a 2009,
13 that was what IHP -- that IHBG that was originally awarded.
14 And let's say that it has expended all that.

15 So you're saying that zero of that money can be --
16 you know, you're saying that none of that money exists
17 anymore, so you can't use the greater of -- or the lesser of
18 the 20 percent and the \$2 million, 20 percent, obviously,
19 which would be 200,000?

20 MS. LALANCETTI: Yes. If you expended all of your
21 2009 grant amounts, which you shouldn't have, but if you
22 did, for some reason, smaller tribes maybe, something like
23 that, you wouldn't have the money available. You're not
24 going to be implementing the new IHP process for a while.
25 So you can implement this immediately and look at amending

1 your 2009 plan to deal with that 2009 issue.

2 FACILITATOR: Marvin?

3 MR. JONES: Marvin Jones. Okay. Let's give you a
4 another example. Let's say you had 2006 money and 2007
5 money and 2008 money and 2009 money and 2010 money. We go
6 into the new process and all of that money loses its
7 identity. And you have all that money -- you have a bunch
8 of money available, how are you going to know if the 2009
9 IHP money has been expended or not when it's lost its
10 identity?

11 MS. LALANCETTI: Well, you can't use previous-year
12 money, and you --

13 MR. JONES: That mic is not on.

14 FACILITATOR: It is. She's not talking loud
15 enough.

16 MS. LALANCETTI: Okay. Is that better?

17 FACILITATOR: Testing, testing. This one's
18 working, Deb.

19 MS. LALANCETTI: Okay. The program year is not
20 going to start -- the new IHP and the program year is not
21 going to start until 2011 at least. So you've got your 2009
22 right now. The notice gets signed tomorrow, and you look at
23 your 2009, tell what you have left, and you can use this
24 calculation on it.

25 You're good for then, right? You're good for

1 2010, and those are the only transition years you have to
2 worry about, right?

3 And then from 2011 on, if you want to continue the
4 demonstration program, you know what your calculation is,
5 right? And you can -- you know what your formula amount is
6 going to be when you get it, and you can use this
7 calculation and account for that money and say, okay, I can
8 use \$2 million, in your case.

9 And so you'll -- basically, for Cherokee, you have
10 \$2 million each year that you can use for the demonstration.
11 And it's just a matter of how you're going to account for it
12 on your IHP once it starts rolling. But you know you have
13 \$2 million.

14 FACILITATOR: Marvin?

15 MR. JONES: Marvin Jones. So as long as you have
16 so-called carryover money in the particular example you're
17 giving, is -- at least you have \$2 million times however
18 many years, you know, 2009, 2010, whenever it goes into
19 effect, as long as you have that amount of money, you can
20 still claim that as self-determined activities?

21 MS. LALANCETTI: Right. As long as it doesn't
22 exceed these amounts.

23 MR. JONES: Well, that answers the question for
24 me. I don't know about the rest in different situations.

25 MS. LALANCETTI: You're basing the calculation on

1 your actual formula. You just might not have all of that
2 amount available to you.

3 FACILITATOR: Blake?

4 MR. KAZAMA: Yeah. Just a point of order, I
5 guess. There's a point where we begin negotiating. There's
6 a point where we're sort of, what, I guess,
7 information-gathering, as Marvin is doing. And I notice
8 that the time clock right now regarding a HUD
9 representative, is she on the clock as well?

10 FACILITATOR: I consider -- I don't know what the
11 clock is doing. But I thought the point that we were
12 seeking -- technical -- the committee was seeking some
13 technical advice from Debra.

14 MR. KAZAMA: Okay. Again, can we -- then, maybe
15 we should -- because some of the HUD people, some of the
16 attorneys here in the room are -- were also resource people
17 that helped in terms of technical advice, as Dave was doing.

18 And so we stopped Dave from doing -- from
19 providing technical advice over a period of time, but -- and
20 I'm okay with that, since he's already done. But I just
21 want to make it clear, because it's not fair if we do one
22 and not the other. So I want to make that point.

23 FACILITATOR: And I think -- and it is -- we're
24 just kind of trying this thing out here. So we don't want
25 the protocol to get in the way of good exchange of

1 information. And I think we want to be fair to everybody.
2 That's the other thing.

3 In this case, I didn't see anything argumentative
4 going on. I just thought that the committee member was
5 asking some technical advice and explanation of a particular
6 form and a particular -- in this case, it wasn't even
7 wording, it was just really understanding this process.
8 So -- but thank you.

9 MR. KAZAMA: It's also -- was technical advice --
10 the clock was running so...

11 FACILITATOR: It should stop during technical
12 advice. I'm sorry.

13 MR. KAZAMA: I just want to clarify those kind of
14 things.

15 FACILITATOR: Are there any other technical advice
16 kinds of questions, questions of clarification around this
17 subject that we need to get clarified, that we have any more
18 questions for HUD about this?

19 Yes, Jason?

20 MR. ADAMS: I guess I'm going back to the process
21 that you just outlined. I guess I want you to tell us,
22 then, that this is technical advice time, and so we know
23 what's going on.

24 FACILITATOR: Okay. I'll call -- we'll call a
25 timeout.

1 MR. ADAMS: Because it should be you making that
2 decision, not us.

3 FACILITATOR: I should do that. You're right.

4 MR. ADAMS: And just to clarify, before that
5 exchange started, Blake made the statement that he was
6 asking for negotiations now.

7 FACILITATOR: It's real complicated. Yes, Marvin?

8 MR. JONES: Marvin Jones. I don't know whether
9 it's -- I think it's technical. Just when do we think this
10 is going to be issued?

11 MS. LALANCETTI: Sorry. I thought I was off the
12 clock. You asked when it gets issued? The notice has to
13 finish departmental clearance, and then if everybody is good
14 with it, we'll get it signed and get it issued right away.
15 But it had to come here first to agree that we would do the
16 notice.

17 MR. JONES: My question was when -- when do you
18 think the document will be issued?

19 MS. LALANCETTI: If everybody is good with doing a
20 notice, we can have it within two weeks at the most.

21 FACILITATOR: Blake?

22 MR. KAZAMA: I guess, for maybe Deb as well --
23 sorry, Deb -- this issue of clearance I think really needs
24 to be spelled out to this committee, because while we can
25 make determination, clearance has yet another say in what

1 goes on here.

2 So especially in the PIH notice, what I'm saying
3 is we can accept this PIH notice through consensus, but it
4 has to go through clearance. And we have another PIH notice
5 after this.

6 So I want to make that clear to this committee.
7 Because, while we say yes, we agree full, you know, 100
8 percent, with it, we might not get 100 percent. We might
9 get 99.9 percent if clearance alters words or languages or
10 whatever.

11 MS. HENRIQUEZ: Let me just go on the record. I
12 just want to make sure I was telling you the right thing.

13 When we put a notice through departmental
14 clearance, departments can either concur with comments or
15 without, and they cannot concur with comments, why they
16 don't want it to go through.

17 What typically happens is then we go to work with
18 those departments that had comments, whether they were
19 concurring -- sometimes they concur with comments because
20 they think something should be worded a little bit
21 differently, but they don't change the substantive meaning
22 of the notice.

23 If people are nonconcurring for some major reason,
24 there's always a negotiation back and forth to try and get
25 them to lift their nonconcurrence so the original language

1 stays in place.

2 If that's not possible and there is a substantive
3 change, those -- in a notice arrangement, we can come back
4 to workgroups and the committee to try and work through the
5 issue that tied to the nonconcurrence. So there's still an
6 iterative process with regard to notices like this.

7 If there are no changes, we'll just go ahead
8 and -- it looks like this, you all approved it, and we've
9 got consensus, and if it goes through concurrence without
10 comments of any kind, we'll just go ahead directly to
11 publish.

12 FACILITATOR: Marvin?

13 MR. JONES: Marvin Jones. Just to follow up from
14 that, who does it go to to get the concurrence?

15 MS. HENRIQUEZ: How much time you got? No. It
16 goes through all the major departments, even outside --
17 through HUD, even they are not part of PIH. So the
18 Inspector General's office, other offices get to look at it,
19 and so on. So throughout the entire food chain, and then it
20 comes back and off we go.

21 FACILITATOR: Blake?

22 MR. KAZAMA: I ask for consensus on the matter if
23 there's no other negotiations?

24 FACILITATOR: Any other questions? Yes, Jason?

25 MR. ADAMS: I'm sitting here trying to decide

1 whether I want to do this. I'm just trying to figure this
2 out in my head as to what we're doing. Because the
3 charter -- and forgive me, Blake, but maybe I should have
4 asked you this on the side. But our charter says we're here
5 to negotiate changes to regulations, and this is a PIH
6 notice.

7 So does this, then, set the stage that every PIH
8 notice that HUD is going to issue is going to come through
9 negotiated rulemaking?

10 FACILITATOR: Yes, Blake?

11 MR. KAZAMA: Very good question. I thought about
12 this as well, because this is a PIH notice. And I even, at
13 one point, asked what is the weight of a PIH notice, barring
14 regulation? You're absolutely correct. The charter says
15 we're here to provide regulation.

16 But, in the light of the number -- the issue
17 numbers that we had regarding Subtitle B, we felt we had to
18 come back with something. Rather than coming back with
19 regulations, we said, at least give the committee this,
20 which is the PIH notice.

21 So barring the fact that we don't -- we did not
22 write -- reinvent the wheel in the sense of bringing the
23 statute back in the form of a regulation, we chose this
24 method of just bringing it before the committee. But
25 technically, you're absolutely correct. The charter just

1 speaks to regulation.

2 FACILITATOR: Yes, Karin?

3 MS. FOSTER: I'd just like to add to that, that
4 one of the things that we have been doing as we go through
5 this process is deciding which areas don't need to have new
6 regulations. And when we were first presented with this in
7 our workgroup, we were looking at whether we needed to
8 negotiate new regulations through rule making, or whether we
9 could review the PIH notice if it looked acceptable to us,
10 then on that basis, we would recommend that no regulation is
11 necessary. So I think that's kind of how it fits within
12 that process.

13 FACILITATOR: Blake?

14 MR. KAZAMA: So if we wanted to be, I guess,
15 appropriate in the charter and protocol, we could say, there
16 is no regulation on this matter in Subtitle B. That would
17 be, you know, technically the appropriate way to do it.
18 However, in light that we did not produce regulations, we
19 said...

20 FACILITATOR: Yes, Marvin?

21 MR. JONES: Marvin Jones. So you can style the
22 consensus as saying, I want consent this that no regulation
23 is necessary.

24 MR. KAZAMA: That's correct.

25 FACILITATOR: Okay. So that's -- so we'll seek

1 consensus on the fact that no regulation is necessary on
2 this particular item.

3 Okay. So all in favor? Any opposed?

4 Okay. Thank you.

5 MR. KAZAMA: Moving right along. The last and
6 final PIH notice for issues that we were do to deal with.
7 It is another demonstration project, Issue No. 91.
8 Statutory reference is 606. It deals with Demonstration
9 Project for Loan Guarantees.

10 Again, I'm glad, Jason, you brought that up. This
11 is another matter where we are not bringing to the table any
12 regulations, but I think it's well worth discussing this PIH
13 notice because Workgroup B decided not to write regulations
14 for this.

15 Again, this is a demonstration project, much like
16 Subtitle B's demonstration project, the issue we just dealt
17 with. It goes from 2009 to 2013. And you know, that's the
18 time frame, and so, you know, all the things, I guess, that
19 we talked about regarding PIH notices apply to this as well,
20 since this is a PIH notice.

21 I have Tom Wright here to act as a resource
22 individual -- I want to make that clear -- to talk about
23 that. So he is off the clock.

24 FACILITATOR: Yes.

25 MR. KAZAMA: Go ahead, Tom.

1 MR. WRIGHT: Thank you. Basically, in essence,
2 what this is is a demonstration project to make economic
3 development accessible through a NAHASDA vehicle. But to
4 understand the process, it is really a negotiated commercial
5 loan that is wrapped with a loan guarantee.

6 Because in reality, you're not investing a penny
7 of NAHASDA dollars in it, and the project itself is
8 self-supporting. That's the intent of it. So it's --
9 really what it is, it is the ability to access economic
10 development, using this as a tool.

11 Any questions?

12 FACILITATOR: Marvin?

13 MR. JONES: Marvin Jones. Now, has this PIH
14 notice been issued?

15 MR. WRIGHT: No.

16 MR. JONES: This PIH -- 2010 -- submitted as
17 issued June 7, 2010, has not been issued?

18 MR. WRIGHT: No. It's just the date that was put
19 on there. We actually worked it out and finished it
20 yesterday in committee.

21 FACILITATOR: Leon?

22 MR. JACOBS: Leon Jacobs. What do we do about
23 2009 and 2010? The program was supposed to be implemented
24 in 2009. Did we lose that 200 million in Game B, or is it
25 possible that we could still use those years?

1 MR. WRIGHT: I think the biggest question is:
2 It's not actual -- I mean, there's no hard dollars attached
3 to it. And so I'm not sure exactly how we go about
4 accessing that, because, in essence, what it -- I mean, it's
5 lending authority, and it has a finite timeline.

6 MR. JACOBS: We would like to request that HUD
7 address that and let us know, because we would not want to
8 lose that possibility.

9 FACILITATOR: Marvin?

10 MR. JONES: Marvin Jones. I have two or three
11 other questions. I'll go one at a time.

12 The rest of the NAHASDA requirements appear not to
13 apply to this?

14 MR. WRIGHT: In essence, the -- if you put NAHASDA
15 dollars into it, it applies. But in reality, it is wrapped
16 in NAHASDA. The major difference being, though, 70 percent
17 has to address low income, and 30 percent has no
18 restriction. That's a break from NAHASDA.

19 MR. JONES: So would -- let's just say, Davis
20 Bacon, would -- environmental reviews, would Indian
21 preference, any of those apply?

22 MR. WRIGHT: It is basically -- we went through
23 this, and we stated it is exactly the same thing as Title
24 VI, because it is Title VI.

25 MR. JONES: I glanced through this proposed

1 notice, and I didn't see where it said that, that those
2 requirements applied. So that's why I was asking the
3 question. It makes it appear like they don't. So -- and if
4 they do apply, then, perhaps the notice, unless I missed
5 something, may actual -- may state that, that those -- those
6 requirements apply. Unless, you know, I'm missed something.

7 MR. WRIGHT: Right. It was discussed in
8 committee, but it could be stated more clearly.

9 FACILITATOR: Marvin?

10 MR. JONES: The -- it uses what I call the
11 community development definition, housing related to
12 community development. What was the reason for that?

13 MR. WRIGHT: Basically, when you look at the
14 notice, it summarizes the 108 program as a large portion of
15 it. We always cite OMB guidance -- excuse me, circulars as
16 our sources because we wanted to stick directly to statute
17 and regulation.

18 The program itself, when it was originally
19 designed, was to follow Part 1 of 108, the first sentence.
20 And that's really -- so we went back specifically to the 108
21 program so that we would be directly aligned.

22 FACILITATOR: Marvin?

23 MR. JONES: And with that, though, I don't think
24 that there's a definition -- that same definition is not
25 used in 108, is it?

1 MR. WRIGHT: Yes.

2 MR. JONES: The housing-related community
3 development comes from --

4 MR. WRIGHT: Basically, when you go to 5305, and
5 that's in -- I'm sorry. You're talking about the housing --

6 MR. JONES: The housing-related community
7 development.

8 MR. WRIGHT: That's in NAHASDA.

9 MR. JONES: That's in NAHASDA.

10 MR. WRIGHT: That's NAHASDA. That's the amended.
11 I'm sorry. I thought you were speaking to the next piece.

12 MR. JONES: Right. And you chose to use -- I know
13 it applies specifically to Title VI.

14 MR. WRIGHT: Right.

15 MR. JONES: What was the decision on why to use
16 that definition for this particular program?

17 MR. WRIGHT: That was the definition as we went
18 through housing community development. It was the
19 definition that was existing in NAHASDA. This was NAHASDA,
20 and so I brought it in. That's the reason.

21 FACILITATOR: Marvin?

22 MR. JONES: And one final question. It -- it uses
23 in a couple of places, I believe, in the first page, where
24 it refers to only economic development. For example, in
25 No. 1, the purpose, it -- midway through there it says, For

1 the purposes of finance of economic development activities.
2 And it doesn't necessarily use the other phrase about
3 community. In some places it does, and I was just wanting
4 to point that out.

5 MR. WRIGHT: The purpose in doing that is that you
6 could actually -- some people wanted to do community
7 development as part of it. But the focus in this one is
8 bringing in something that we don't have today, which is
9 economic development, and that's why it was emphasized in
10 that first paragraph.

11 MR. JONES: But it is -- a community development
12 is eligible?

13 MR. WRIGHT: Yes, it is. It is.

14 FACILITATOR: Yes, Blake?

15 MR. KAZAMA: I do want to point out that both of
16 those are demonstration projects that I believe Congress
17 really wanted to test waters on regarding tribal economic
18 development as well as the other kinds of -- the Subtitle B
19 as another project that it can review and see if there is a
20 need for more self-determination in these directions.

21 So that -- I believe, that's the purpose of this
22 type of, I guess, law that Congress is putting forward.
23 It's a demonstration project. It's limited in scope, five
24 years, to see what we can do with the money, what kinds of
25 projects we can build.

1 So if we don't use it, you know, it's not that we
2 lose out, but it sends a message to Congress as well. So I
3 just want to provide that information.

4 FACILITATOR: Okay. Does everybody understand
5 what we're talking about here?

6 Shall we move into the negotiation phase of this,
7 then? Are you ready?

8 MR. KAZAMA: I'm trying to think of the proper
9 way. We need to -- yeah, I guess we need to open it for
10 negotiations first before I ask for a consensus.

11 FACILITATOR: Before you ask for consensus on no
12 regs on this one?

13 Why don't we start the clock and just get people's
14 input? Any questions? Yes, Marvin?

15 MR. JONES: Marvin Jones. And I don't have any
16 questions. And will call for consensus of no regulations
17 needed.

18 MR. KAZAMA: Great.

19 FACILITATOR: Karin?

20 MS. FOSTER: I would agree that no regulation is
21 necessary. I'd like for the way we state the issue, though,
22 to recognize that it's based upon our review of this PIH
23 notice, and certainly, I guess, there's a possibility that
24 if this notice were changed and -- you know, substantively,
25 it could come back to us. We would still like to reserve

1 the ability to look at it and, you know, make the
2 redetermination if we need to.

3 You know what I mean? I hate to just let go of
4 the issue if there could potentially be changes, because
5 that's why we held onto it in the first place, just to make
6 sure that we had an opportunity to review it. And it's been
7 a great process.

8 And so I would agree no regulation is necessary
9 provided that this is the PIH notice we're looking at.

10 MR. KAZAMA: That matter is duly noted in our
11 minutes.

12 FACILITATOR: Okay. So before -- yes, Leon?

13 MR. JACOBS: I have a question for HUD. Since the
14 statute refers to 2009 through '13, can you, in a notice,
15 change that to 2010 through 2013?

16 MS. HENRIQUEZ: Just give us a moment.

17 FACILITATOR: Yes, Sandra?

18 MS. HENRIQUEZ: We did notice some inconsistent
19 dates throughout this. So we would propose maybe amending
20 the language to say, "up through 2013," if that's helpful.

21 MS. MARASCO: That would recapture it?

22 MS. HENRIQUEZ: Just a moment. So there's no
23 money to recapture. It's just a straight-forward outlay.
24 So there's nothing lost by -- you won't lose 2009 money
25 because there's nothing associated with that. It's just a

1 demonstration moving forward.

2 FACILITATOR: Blake?

3 MR. KAZAMA: Just a procedural thing. There's a
4 point where there's resource, and there's a point where
5 there's negotiation. The cochair should have brought it up
6 during the point of resource development, resource seeking,
7 not to confuse us in negotiations. Because I know
8 negotiating. That wasn't negotiation.

9 FACILITATOR: Right. Thank you.

10 MR. KAZAMA: Sorry, Leon.

11 FACILITATOR: Leonard?

12 MR. TELLER: Question to possibly HUD. Their
13 intent to issue this PIH. In their purpose section, under
14 1, it states that obligations issued by Indian tribes and
15 TDHEs with tribal approval.

16 Is that the word direct to -- and some TDHEs are
17 very promised from tribal organizations and enterprises
18 that, and we don't have to keep going back to the tribe for
19 approval.

20 MS. HENRIQUEZ: I just have a statutory question.

21 FACILITATOR: Yes, Carol?

22 MS. GORE: This is Carol Gore. May I offer a
23 procedural recommendation? If negotiations continue after
24 consensus has been called, it probably should go back to the
25 consensus caller and ask them to withdraw their call so that

1 negotiations can continue. I just want to keep the process
2 clean. Thank you.

3 MR. JONES: Yeah. I'll withdraw. Marvin Jones.

4 FACILITATOR: Sandra?

5 MS. HENRIQUEZ: In Section 606, it looks like you
6 just exactly picked up the same language. Issued by Indian
7 tribes or tribally designated housing entities with tribal
8 approval, for the purposes of financing an economic area of
9 Indian reservations or in other Indian areas.

10 So it's just following the statutory regulation
11 that already exists.

12 FACILITATOR: Leonard, does that answer your
13 question?

14 MR. TELLER: Yes.

15 FACILITATOR: Any other questions on this issue?
16 Okay. Are we ready to seek consensus for no regulations on
17 this? Okay. All in favor? All opposed?

18 Thank you.

19 Anything else, Blake?

20 MR. KAZAMA: At this time, I just want to remind
21 the committee I am done for -- in terms of introducing
22 consensus items. We have gone through the issues that we
23 were originally assigned.

24 We have been given additional tasks from other
25 groups, and I want to reserve that right to bring it back in

1 the future. One deals with negotiated rulemaking, and
2 there's a committee, I understand, working on that. We ask
3 to do that. And I want to bring that back at a later date.

4 I also have a 147 -- 1000.147 that we want to work
5 with Lafe on. So Workgroup B will come back with that. So
6 with that, I guess I want to thank the committee for your
7 review of our work.

8 Again, I want to thank the committee members for
9 their hard work in putting together the issues. I know it
10 was a great -- it was great for me to chair that committee,
11 and I was very fortunate to have such good members working
12 with me. So I want to thank everyone.

13 FACILITATOR: And you're not finished yet,
14 Blake --

15 MR. KAZAMA: Okay.

16 FACILITATOR: -- for good. Thank you.
17 Carol?

18 MS. GORE: With the permission of the committee,
19 we have a couple of reprints, and I'd like to maybe take a
20 five-minute break to make sure that the committee members
21 have the most current package from Workgroup A.

22 FACILITATOR: That's fine.

23 MR. JONES: Weren't we going to do in between B
24 and A or --

25 MR. JACOBS: I was just talking with the

1 facilitator about that. Jason, is the documents ready, or
2 do you want to postpone it until tomorrow morning?

3 MR. ADAMS: We can -- the documents are ready,
4 and -- I guess, I wasn't anticipating to getting to it this
5 afternoon, but we sure can. I guess, what I -- what I heard
6 earlier, I guess, was a concern that -- that folks wanted a
7 chance to see the form and read the issues that we
8 identified as optional.

9 And we were planning on handing that out --
10 planning on handing that form out right before we adjourned
11 at five today, so folks can take that tonight, review it,
12 look through it, educate themselves on it, and then first
13 thing in the morning, look at that. If that's...

14 MR. JACOBS: What is the consensus of the
15 committee?

16 MR. JONES: Marvin Jones. May I ask Jason a
17 question? Jason, is there -- is it possible that we can get
18 a sense without passing it out, stuff, just the HUD position
19 of whether or not that it's possible that we can do that
20 process?

21 MR. ADAMS: I would hope so. And maybe that's
22 something -- I don't know if the Madame Secretary can come
23 to the table, and we can ask that directly of her.

24 Madame Secretary, we talked briefly earlier this
25 morning or this afternoon about to beg for the indulgence of

1 the committee to allow for Workgroup C to proceed with
2 presenting the IHP/APR format and a review of that we
3 completed on that this morning.

4 The idea was that we would try to get that before
5 the committee in some form or fashion so that we could have
6 the discussion on it and then seek some level of approval on
7 those issues, I guess, because -- because of a majority of
8 that is tied back to statute so we can seek approval on
9 that. Because there's some folks in the room that would
10 like to utilize and then possibly then allow you to then
11 issue a notice in some form.

12 But that was the question that Marvin is asking
13 now is: Would that -- or could that happen? If we have a
14 discussion either this afternoon or tomorrow and then got
15 approval from the committee on the -- let's say, the bare
16 bones part of the plan that is just all tied back to
17 statute, this committee agreed to, could that then be
18 noticed soon to then start utilizing sometime this year,
19 still?

20 Remember the other night we talked about maybe the
21 second-quarter folks -- the second-quarter folks could use
22 it, third-quarter, fourth-quarter?

23 MS. HENRIQUEZ: I would just like to get
24 clarification. I still very much would -- I would like this
25 committee to consider, vote for consensus, but we could get

1 it published quickly.

2 We published it the first time before we went
3 through it under what we called the Emergency Paperwork
4 Reduction Act to get it to move more quickly. We would
5 propose doing that again and making the case back to OMB,
6 the decision-maker on this, the time frames.

7 And so we would petition them to let us refile as
8 an emergency, so we could push this, get it done and through
9 more quickly, so that you guys can maybe be get started so
10 it can be used for second-quarter or for fiscal years
11 beginning with January 1. And if people wanted to use it
12 then and move forward, we would try to put all that stuff in
13 place.

14 And the one caveat I would say is that I don't
15 know if whether or not I want to be able to accept it as
16 a -- as an emergency, since we withdrew it. But I would be
17 willing to make the case that it was part of this process,
18 the protocol, and that was important, and now we want to
19 move forward.

20 FACILITATOR: Marvin?

21 MR. JONES: Marvin Jones. Does -- let's talk even
22 about October 1. If a tribe used the form voluntarily, does
23 HUD have the authority to go ahead and allow a tribe to
24 submit, perhaps, not even going through OMB, because it
25 wouldn't be a required form at that point in time, and go

1 ahead and start utilizing the form as of October 1?

2 MS. HENRIQUEZ: That's a decision I would not -- I
3 would say is up to a particular tribe, but I would encourage
4 people who want to use it, to work with it as quickly as
5 possible.

6 Remember, we also wanted to do training, to run
7 concurrent with this process. And so we want to make sure
8 that people get trained. But if people wanted to use it in
9 October, fiscal year, program year, beginning agencies
10 wanted to go ahead and use it, if it's through the system
11 that quickly, or if you'd just like to use it because you
12 know what it looks like and you'd like to work with it and
13 collect the data and do all that stuff, I would say go for
14 it.

15 I'm being whispered to. Just a sec.

16 MR. JACOBS: Could someone please inform the A
17 Group that their five minutes are up?

18 While they're coming, Jason, did we settle the
19 issue that we will hand out, today, the document, and we'll
20 read it and you will address it tomorrow morning? Is that
21 the consensus of everybody?

22 MR. ADAMS: I believe so. As long as HUD's
23 willing to work with us and start implementing the thing.
24 Our concern is that if we tried to get this -- you know,
25 expedited this through the process here, and then it still

1 wasn't going to be utilized until fiscal year 2012, why be
2 so fast with it?

3 But if there's a chance that recipients could
4 start utilizing it second, third, and fourth quarter of next
5 year, by all means, let's try to get it through.

6 MS. HENRIQUEZ: That would be my preference.

7 MR. JACOBS: Okay. Marvin?

8 MR. JONES: Marvin Jones. And I asked the
9 question, and you answered that, yeah, if a tribe wanted to
10 go ahead and start using it -- then you said, wait a second,
11 people are speaking.

12 MS. HENRIQUEZ: I'm sorry. I would like us to go
13 ahead and let us process this, get this published so that
14 the second, third, and fourth quarter agencies can go ahead
15 and use it.

16 If the first quarter, the October 1 agencies,
17 wanted to use it, I think that that's fine. There's --
18 we've been having some discussion about going through the
19 Paperwork Reduction Act. What that means is we, then, have
20 to have an approved form. So we've agreed to this form. We
21 think this forms makes sense. We want to -- we'll go ahead
22 and do the process.

23 It could be at some point the form may change a
24 little bit. I sort of doubt that, but I think there's
25 always that possibility. So I want to be clear to say that

1 that could happen.

2 But once there's an approved form, we can go ahead
3 and start using that form. And you could do it voluntarily
4 if you're in the October 1 group, and then we'll just make
5 sure that you use it then or pick you up the follow year,
6 depending on what your agency decides.

7 MR. JACOBS: Marvin?

8 MR. JONES: And so we could submit the form as is,
9 and if we needed to update it, you know, as it goes through
10 the process, it changes, then we can simply, you know, do
11 the adjustments to the form?

12 MS. HENRIQUEZ: What we would do is ask you to
13 wait until we have an approved form out of OMB, which we
14 would try to get as close to, within that first quarter as
15 possible, other than do training on that form and let people
16 go ahead and go forward from there with that.

17 Just to save the back and forth on the change and
18 the machinations.

19 MR. JACOBS: Give us one more comment, and then
20 we'll move on.

21 MR. JONES: So if, in fact, we could -- then
22 there's a possibility that we could close out all the Indian
23 Housing Plans as of September 30, 2010. I mean, at some
24 point, we do the APR and we would start using the form for
25 fiscal year '11, and that works out that we have a form, and

1 then we use that form, that we could close it out.

2 MS. HENRIQUEZ: As long as the form is approved by
3 OMB, yes.

4 MR. JACOBS: Okay. Jason?

5 MR. ADAMS: I just want to clarify that. That is
6 assuming that we will then get through the parts of the form
7 tomorrow that we had questions on after that discussion,
8 correct?

9 MS. HENRIQUEZ: I'm sorry. I thought you all had
10 finished that discussion already.

11 MR. ADAMS: What we had planned to do, and what I
12 asked for this afternoon was that we would bring that
13 discussion to this group and identify those areas that
14 aren't statutorily required and have a discussion on them
15 and either mark them as optional on the form or remove them
16 or somehow give it some sense from this group as to what we
17 want to do with those pieces that aren't statutorily
18 required.

19 MS. HENRIQUEZ: Okay.

20 MR. ADAMS: Thank you.

21 MR. JACOBS: We're ready to go with Group A.
22 Before we do, we had announced earlier that we would
23 probably go beyond five o'clock today. So what time do you
24 want to stop tonight?

25 Do you want to set a time now, or do you wait

1 through the presentations and see if there's a convenient
2 time? What is your preference? Okay. Doesn't matter?
3 Okay.

4 We'll go until we find a convenient time. You can
5 tell us. Okay. I'll turn it over at this time to Jan.

6 FACILITATOR: Okay. Carol, the floor is yours.

7 MS. GORE: Well, I thought it was convenient now
8 too. Well, Workgroup B is going to be a hard act to follow.
9 They pretty much acted like everything they had was
10 low-hanging fruit which is why I got to hand them some extra
11 work.

12 Workgroup A, I just want to make some general
13 comments. It's been my privilege to chair this workgroup,
14 and I would put my workgroup members up against Blake's
15 workgroup's members. They were really great. They were
16 engaging. We had HUD staff in the room that I want to thank
17 for their real authentic engagement in the conversation.

18 And I can say the conversations were fearless, and
19 I doubt seriously if the issues we bring from our workgroup
20 will be as easy.

21 I did want to say for this group, I worked for a
22 gentleman years ago who said, you know, you have to be
23 careful that you don't study your navel. And I scratched my
24 head when he first told me that, and I wondered what he is
25 talking about.

1 But I applied that principle within this
2 workgroup, which is, we tried very hard to anticipate how
3 the work we were doing might impact other tribes, not just
4 those that are sitting at the table. But we tried very hard
5 to anticipate questions, barriers. To the extent we have
6 not identified them, I think it's an expressed interest from
7 the workgroup that we embrace your comments and your
8 revisions to the work that we've done.

9 And I just wanted to begin with that work, to say
10 it's my privilege to present the work, but we're also ready
11 to engage in whatever conversation we need to engage in to
12 come to a good conclusion to the negotiations.

13 I am going to make a couple of comments about the
14 work that was passed out. Workgroup A met this morning with
15 the specific intent of just saying the congratulations to
16 ourselves; our work was done.

17 At the end of yesterday, we were asked to look at
18 PIH Notice 2000-18 as it relates to program income. We did
19 conclude this morning that we'll need new regulations in
20 order to respond to that PIH notice. We are not prepared to
21 do so today and may not be prepared to do so until we meet
22 again in Seattle.

23 So that does mean when we deal with program
24 income, it's very likely that we'll have one more dangler,
25 if you will, to deal with related to program income. And

1 with the permission of the committee, I'd like to let the
2 workgroup get through that process and not bring it to you
3 too early.

4 I'm going to begin the discussion in the order
5 that it's presented in your packets so you don't have to
6 flip through. I think, unintentionally, the HUD contractors
7 put it together with the easiest in the front and the
8 hardest in the back, so that seems like a good order to me.

9 Let me set up, first of all, as Blake did, I'm
10 going to start with Issue No. 34, Environmental Compliance
11 Waiver. The statutory reference is 105(d). We are
12 proposing a new rule, and the new rule reference would be
13 1000.21.

14 I think I can save you from listening to my voice.
15 After much, much long debate and discussion, we simply chose
16 to lift the language out of the statute and duplicate it
17 perfectly into the regulation.

18 So the regulation 1000.21, our proposed is: Under
19 what circumstances are waivers of the environmental review
20 procedures available to tribes?

21 Underline, this is about waivers.

22 It continues on: A tribe or recipient may request
23 that the Secretary waive the requirements under Section 105
24 of NAHASDA. The Secretary may grant the waiver if the
25 Secretary determines that a failure on the part of a

1 recipient to comply with provisions of this section, colon,
2 then (a), (b), (c), and (d) are exactly duplicated from the
3 statute.

4 I'm ready to open for negotiation.

5 FACILITATOR: Thank you. Are there any questions?

6 All right. Can we call for consensus on this
7 issue? All in favor? Any opposed?

8 Okay. Thank you.

9 Carol, we can move to the next one.

10 MS. GORE: Yes, sir. Sorry.

11 FACILITATOR: We reached consensus on this one.

12 MS. GORE: I guess I should blame my technical
13 advisers. May I have just two minutes because I'm in
14 disagreement with my advisers on which one to do next? May
15 I just have two minutes off the record? Thank you.

16 (Pause in the proceedings.)

17 MS. GORE: Let me just start -- the next two
18 issues, Issue 51 and Issue 15 are integrally related. You
19 will see that both Issue 51 and Issue 15 touch regulation
20 1000.48 and 1000.52.

21 We, as a result of that, have reordered language
22 for Issue 15. So I guess I'm going to suggest to the
23 committee that we work through de minimus procurement, which
24 at one point we thought was a low-hanging fruit. I can
25 promise you, it is not. And that we -- we seek consensus on

1 de minimus procurement, then we move on to tribal
2 preference.

3 The only relationship is that de minimus
4 procurement language that you, hopefully will approve some
5 language, is then intended to lift exactly and be placed
6 into the tribal preference sections, as approved by this
7 negotiated rulemaking committee.

8 So if you make changes and revisions -- and I'm
9 going to recommend one -- to de minimus procurement, then
10 that will be lifted as changed into Issue 15. So I'm not
11 intending to confuse the committee, but we've been dealing
12 with these things in silos. I believe this make sense. Our
13 workgroup thinks it makes sense, but I didn't want you to
14 think that was an unintended conflict.

15 So let me start with de minimus procurement. The
16 statutory reference is 203(g), and it's Issue 51. And we
17 were proposing a revision to the rule.

18 And with the concurrence of the workgroup, I am
19 going to offer an immediate revision to the language we've
20 proposed on Page 1. I will admit our revisions are a little
21 hard to capture. They're in light gray instead of a color,
22 so I apologize in advance for that.

23 We're offering a revision to regulation 1000.26,
24 What are the administrative requirements under NAHASDA?

25 And if you read down under (a), and it's titled

1 "(11) Section 85.36." It currently reads: "Procurement,"
2 except paragraph (a). However, Section 85.36 shall not
3 apply with respect to any procurement using a grant provided
4 under NAHASDA, of goods and services with a value less than
5 \$5,000.

6 The committee's intent was to be permissive, and
7 we've -- we offer a minor change to the language that's
8 currently written to really better follow that intent. We
9 propose to replace the word "apply" with "be required,"
10 which is exactly consistent with the language in the
11 statute.

12 So let me read that sentence as it's intended to
13 read in our proposal.

14 However, Section 85.36 shall not be required with
15 respect to any procurement using a grant provided under
16 NAHASDA, of goods and services with a value less than
17 \$5,000.

18 I would like to deal with this separately. And
19 unless there are comments from advisers here, I would open
20 it for negotiation on that language.

21 FACILITATOR: Carol, are you asking for that
22 change from "apply" to "be required" to be with separately,
23 or just -- are you going to give us something here to go
24 over all the language?

25 MS. GORE: It seems I have a second -- what I just

1 provided to you is exactly what I shared with the workgroup,
2 and I have their concurrence on that. I have a second
3 proposal from someone on the HUD staff. I think the
4 workgroup would accept it.

5 Let me make sure that I've got this right.

6 I need five minutes.

7 FACILITATOR: Okay. We're not eating up any time
8 with this, by the way because right now I think Carol is
9 still presenting her workshop proposal.

10 Yes, Steven?

11 MR. ANGASAN: Can I get the HUD proposal up on the
12 screen too?

13 FACILITATOR: Can we get the HUD proposal on the
14 screen too? I think there's just going to be one proposal,
15 isn't there?

16 Carol, for clarification, are you going to make
17 this one proposal from the committee on this particular item
18 that incorporates both HUD's and your ideas.

19 MS. GORE: That's correct. That's my intent. I'm
20 sorry for creating confusion.

21 FACILITATOR: That's fine.

22 MS. GORE: Let me do this. I'm going to hand this
23 off.

24 MR. LAYMAN: So the intent here, if you look at
25 this language -- do you have the -- so the intent here is --

1 FACILITATOR: State your name, please, for the
2 record.

3 MR. LAYMAN: I'm Gabe Layman. What we're looking
4 at now is Section 1000.26 of the regulations. We're looking
5 at Section (a)(11). That section currently reads: Section
6 85.36, "Procurement," except paragraph (a). There may be
7 circumstances under which, et cetera, et cetera, et cetera.

8 The proposal that the workgroup is bringing forth
9 is to clarify that -- to clarify the de minimus procurement
10 exemption, and to -- in this regard, we're simply asking
11 that the language read: However, a recipient shall not be
12 required to comply with Section 85.36 with respect to any
13 procurement using a grant provided under NAHASDA, of goods
14 and of services with a value less than \$5,000.

15 And I'd be more than happy to come type that in,
16 if that would be helpful.

17 FACILITATOR: Okay. We'll put that up on the
18 board. All right. It's on the board on the left-hand side
19 here -- on the right side, yeah.

20 Okay. Carol, continue.

21 MS. GORE: On the left-hand side is the actual
22 statute, and on the right-hand side is the proposed
23 language, and there's several other places where there's
24 minor language added, but I would -- this language is key to
25 everything else that we respond to. So I'd like to know if

1 there are questions about this or concerns before we move
2 on.

3 FACILITATOR: I think that you just present what
4 you would like the group to consider as a whole. And this
5 is a very recent revision too, if this is what your group
6 agrees to, Carol.

7 MS. GORE: And I could move on, but it's further
8 on, and I'm concerned about this hanging together. But
9 let's give it a whirl.

10 FACILITATOR: Yeah.

11 MS. HENRIQUEZ: Let me just ask for a just a
12 moment because we're having a little discussion --

13 FACILITATOR: Microphone.

14 MS. HENRIQUEZ: Thank you -- a little discussion
15 about whether or not this is -- should be more narrowly
16 prescribed than -- because Section 85.36 is a broad section,
17 and we want to make sure that we -- in principle we agree
18 with this. We just want to make sure the language is
19 concise enough. There's a little bit of a debate going on.

20 It's -- we are fine. Thank you.

21 FACILITATOR: You're fine? Thank you. Okay.
22 Now, we do have full concurrence in that committee.

23 MS. GORE: Are we ready to move on?

24 FACILITATOR: Yes.

25 MS. GORE: Okay. So our revision offers three

1 changes. This is the first change, and the most
2 comprehensive introduction under de minimus procurement. So
3 if you follow on through, 1000.48 -- and it would be on
4 page -- there's no -- there's no page -- but it's Item D, as
5 in dog.

6 So for clarification, 1000.48 currently states:
7 Are Indian preference requirements applicable to IHP
8 activities?

9 And here says, "and tribal." That's in the next
10 issue, just so you know. Follows on, letter D, as in dog,
11 proposes this language: Exception for de minimus
12 procurements. Indian preference requirements under Section
13 7(b) of the Indian Self-Determination and Education
14 Assistance Act shall not apply with respect to any
15 procurement using a grant provided under NAHASDA, of goods
16 and services with a value less than \$5,000.

17 The third is under regulation 1000.52, and it is
18 on the very last page, also titled D, as is in dog -- yes?

19 MR. ADAMS: I just have a question, not being a
20 part of this work, where does this -- this Indian preference
21 requirement tie back to the statute?

22 MS. GORE: Hang on. My advisers are trumping you.
23 Sorry, committee member. Would you mind repeating?

24 MR. ADAMS: I'm just asking where does the Indian
25 preference requirement of this tie back to the statute.

1 MS. GORE: It's a separate statute. Remember, we
2 have -- tribal preference is the next one, and that's
3 101(k). Indian preference is a separate law. It's not
4 under NAHASDA. It's what I just read. Indian preference is
5 under Section 7(b) of the Indian Self-Determination and
6 Education Assistance Act. It's not under NAHASDA. It's
7 always been in regulations. This is not new.

8 MR. ADAMS: I understand that. Jason Adams,
9 sorry.

10 What I'm try to follow here is how that then ties
11 to any procurement that Indian preference form applies if
12 it's under \$5,000. Where do you make that connection?

13 MS. GORE: That's exactly why we're making the
14 proposal of new language, to make sure that it is allowed.

15 MR. ADAMS: So you're making this regulation to
16 put that in this --

17 MS. GORE: Yes.

18 MR. ADAMS: -- to regulate for the Indian
19 preference requirements to not apply for a procurement under
20 5,000?

21 MS. GORE: Correct.

22 MR. ADAMS: Why?

23 MS. GORE: Because it's a change in the statute,
24 101(k).

25 MR. ADAMS: 101(k) talks about tribal preference.

1 MS. GORE: Hang on. Sorry.

2 FACILITATOR: Karin?

3 MS. FOSTER: Can I speak to that? Does this not
4 reflect the language in the de minimus exemption, you know,
5 in the statute where it reads, A recipient shall not be
6 required to act in accordance with any otherwise applicable
7 competitive procurement rule or procedure? Doesn't this
8 reflect that Indian preference would be viewed as an
9 otherwise applicable competitive procurement rule or
10 procedure, and so that's why it comes in?

11 MS. GORE: Let me see if I can just state this
12 simply. We, as a workgroup, brought this to the negotiated
13 rulemaking committee with a recommendation that no
14 regulations be drafted because HUD told us that Indian
15 preference applied, even to de minimus procurement.

16 HUD revisited that decision and told us that it
17 would not apply to de minimus procurement, but the intent
18 with what we're proposing -- and I apologize, again, for not
19 being clear -- is that it be permissive but not required.
20 That's the intent.

21 I'm wondering -- I really -- I want to apologize
22 to the committee because my advisers are giving me several
23 pieces of new language, and I'm not pleased to present work
24 that's not complete to this committee. I would like to
25 withdraw discussion on this issue until the workgroup has

1 cleared language to present. Thank you.

2 FACILITATOR: That's fine, Carol. I'd like you to
3 go ahead and move on.

4 Yes, I'm sorry. Phil?

5 MR. BUSH: Phil Bush. Carol, I hate to bug you,
6 but I think you should just proceed. I don't see what the
7 issue is. I think we're in negotiations. Let's just go
8 ahead and proceed, and I think we can resolve it and get it
9 done.

10 MS. GORE: Then give me five minutes with the
11 folks that have new language that I did not talk to the
12 workgroup about and let them put it up on the screen, if you
13 don't mind. I think it's relatively simple, but I don't
14 want to stumble through it without the committee having
15 something specific to look at.

16 FACILITATOR: Yes, Jason?

17 MR. ADAMS: I think what the concern is, Carol, is
18 that we're beyond the workgroups now. When you produce the
19 original language that came out of the workgroups, we have
20 questions. Now we're negotiating and making the changes of
21 the committee, getting to a point where we can all agree to
22 the language as a committee.

23 MS. GORE: I agree with you, and I understand. My
24 challenge -- and if you'll give me just a few minutes to get
25 some language up -- is that I'm being given some new

1 language that I haven't seen either.

2 And so I'm prepared to put it on the screen. I
3 think it's pretty straight forward. But I don't want to
4 explain it without it being properly placed in the right
5 place in the regulation so the committee can see it.

6 So I just beg your patience, if you'll stick with
7 me. I don't want to talk through it. I want you to be able
8 to see where it sits and so we can clearly talk about
9 whether or not it's proper.

10 FACILITATOR: Yes, Phil?

11 MR. BUSH: I understand what you're saying, Carol,
12 but nobody's opposed this language yet. I don't see what
13 the issue is. And plus, that's part of negotiations when
14 there is different proposals coming out.

15 MS. GORE: Okay.

16 MR. BUSH: And if there is somebody that has a
17 different suggestion, that's part of negotiating. Let's put
18 it up there and get it done. We don't need to keep taking
19 five-minute breaks. I say insert. Let's negotiate and get
20 the thing done.

21 MS. GORE: We're doing it right now. I just
22 didn't want to talk -- to read it without you being able to
23 see it. That was my only point. I don't know need five
24 minutes, but I think Gabe is going to get it up on the board
25 here in a second.

1 FACILITATOR: Okay. Marvin?

2 MR. JONES: Marvin Jones. Another suggestion
3 would be we could move to another issue, and you could bring
4 this one back tomorrow morning or later on tonight, whenever
5 we continue if you have another issue that you want to
6 just -- you know, to present.

7 MS. GORE: I think in just a few minutes, we'll
8 have it up, because it's also related to tribal preference,
9 which is the next issue. And I really think we ought to
10 deal with them together. So I think we're just -- as fast
11 they can type, we can have it in front of you.

12 FACILITATOR: Shawna?

13 MS. PICKUP: Shawna Pickup. Now are we
14 negotiating or are we not, because the clock is not ticking?
15 Nobody has objected to this to come up with new language.
16 It's just your advisers. No one here has objected. So
17 that's my question: Are we or are we not negotiating?

18 FACILITATOR: At this point, we're not
19 negotiating. We're just trying to get clear on what the
20 proposal is. And then after everybody's clear what the
21 proposal is, then we start negotiating.

22 MS. PICKUP: Okay. So shouldn't she bring forth
23 what Group A approved, and then if anyone at this table has
24 objections, then rewrite it?

25 As of right now, we haven't even said "yeah" or

1 "nay" whether we like it or don't like it, and you're
2 already changing it. That's what I'm saying.

3 FACILITATOR: Yes?

4 MS. GORE: You are correct. My intent was we have
5 three changes that relate to de minimus procurement.
6 They're all that same change, instead of "apply," to use the
7 language that's absolutely in the statute.

8 And I misunderstood, frankly, the advisers. I
9 didn't realize that it was going to be a longer paragraph
10 than a change of one word to two words. That was my
11 misunderstanding. So I do apologize.

12 But the language that we would present would
13 probably not be acceptable to the committee.

14 FACILITATOR: Yes, Shawna?

15 And, Phil, I think at the earlier meetings, the
16 committee had all reached consensus that they didn't want to
17 reach consensus on materials unless they had hard copies in
18 front of them.

19 So we -- before we had had some frustration
20 because people were putting things on the board and that
21 kind of thing. And so we decided we're not going to make
22 decisions unless everybody has a hard copy to review in
23 front them. So I think that's the other thing that -- the
24 other reason Carol was looking to kind of withdraw until we
25 had something.

1 So it's up to you guys what you want to do. Yes?

2 MR. BUSH: I do have a hard copy right in front of
3 me, and it's the same thing that's up on the screen.

4 FACILITATOR: But the problem is that the
5 workgroup itself has decided that they don't want -- that
6 what they gave us in hard copy is not what they want to
7 submit to the committee for approval.

8 MS. GORE: I'm willing to move into negotiation
9 and propose the alternate language. That makes sense to me.
10 My apologies.

11 FACILITATOR: Okay. All right. It will be up in
12 a few seconds, Carol. Okay. Carol, I'm going to give you
13 the floor.

14 So the language that the -- that Workgroup A is
15 proposing is on the screen now. So, Carol, you can run
16 through that with us.

17 MS. GORE: The language that's reflected on the
18 screen shows our recommended change. This is
19 1000.26(a)(11). You'll see that our language offers this
20 sentence -- and I'm going to read it as amended. So I've
21 started at the beginning, just for clarification.

22 So the revised sentence should read: However, a
23 recipient shall not be required to comply with Section 85.36
24 with respect to any procurement using a grant provided under
25 NAHASDA, of goods and services with a value less than

1 \$5,000, period. Further, comma -- may we look at the next
2 change, please, so that the committee can see them
3 comprehensively?

4 This is regulation 1000.48. This is a new letter
5 D, as in dog: Exception for de minimus procedures [sic]. A
6 recipient shall not be required to apply Indian preference
7 requirements under Section 7(b) of the Indian
8 Self-Determination and Education Act with respect to any
9 procurement using a grant provided under NAHASDA, of goods
10 and services with a value less than \$5,000.

11 And the final, under regulation 1000.52, letter D.
12 This is new letter D: A recipient shall not be required to
13 apply Indian preference requirements under Section 7(b) of
14 the Indian Self-Determination and Education Act with respect
15 to any procurement.

16 You see, we've used the same language, but they've
17 really touched three regulations.

18 So unless my advisers have further comment -- this
19 is your last chance -- I'd like to open this for
20 negotiation.

21 FACILITATOR: Marvin?

22 MR. JONES: I have a technical question or a
23 technical request. Can somebody put on the record that this
24 provision does not forbid Indian preference? What's the
25 legal status? All I want to know is that this does not

1 forbid it.

2 FACILITATOR: Okay.

3 MS. HENRIQUEZ: Are you asking -- you want an
4 attorney to respond or -- tell me what you -- I'm sorry. If
5 you could repeat what you're looking for.

6 MR. JONES: Yes. Marvin Jones. I want to make
7 sure we've researched Section 7(b) clearly enough and,
8 previous to us reconvening here, Mary and Ed suggest that
9 why that the -- making -- in effect, making Indian
10 preference optional did not inadvertently make Indian
11 preference illegal.

12 And I just want to make sure -- just restate that
13 for the record. That's all I'm asking.

14 MR. LAYMAN: That's our understanding of it. And
15 that's what this regulation would do. It would make it
16 permissible. We don't see any conflict with the Indian
17 Self-determination Act because of the language in the
18 statute, the amended language in NAHASDA.

19 FACILITATOR: Marvin?

20 MR. JONES: And the language in the statute which
21 doesn't end -- doesn't inadvertently make it illegal is?

22 MR. LAYMAN: "Notwithstanding any other provision
23 of law," the opening sentence.

24 MR. JONES: Marvin Jones. That a different
25 argument than was -- that I was being told a few minutes

1 ago.

2 MR. LAYMAN: Let me clarify. It's the phrase
3 right after that. What the provision says is:
4 Notwithstanding any other provision of law, a recipient
5 shall not be required to act in accordance with competitive
6 procurement requirements.

7 The language in the statute basically says you're
8 not required to comply with applicable -- otherwise
9 applicable competitive procurement requirements. However,
10 our reading of that is, you may. All the statute says is
11 you're not required to comply with it. And I think that
12 should be the legal basis for the change that's being
13 proposed here by Carol and the workgroup.

14 MR. JONES: Thanks.

15 FACILITATOR: Thank you, Gabe. Okay.

16 Any other questions? Yes, Marvin?

17 MR. JONES: And this may not be an appropriate
18 question, but I'm wondering about the Section 3
19 requirements. Are those -- do we have anything in here that
20 those aren't applicable?

21 And is that an appropriate question within this
22 context?

23 MR. LAYMAN: I think it's an appropriate question.
24 It's a question we anticipated, and it's probably a legal
25 call in terms of whether Section 3 applies. It looks like

1 we'll probably have to look a little closer at it, and we
2 may have to revisit this in terms of maybe expanding and
3 addressing Section 3.

4 The language does say: "Notwithstanding any other
5 provision of law." Typically, what that means is provisions
6 of law that are in conflict with whatever provision that
7 follows would not apply.

8 The way Indian preference has worked with
9 Section 3 in the program is Indian preference -- Section 3
10 applies, but not in derogation of Indian preference. It's
11 conceivable that the same framework would also apply.

12 Whether the committee wants to address that, put a
13 specific regulation in, that would be fine, but it's really
14 going to be a matter of legal interpretation whether this
15 provision actually does that. And I don't know if we're
16 ready to make that call yet, as least as HUD.

17 FACILITATOR: Yes, Phil?

18 MR. BUSH: Yeah, I -- it was my understanding that
19 Section 3 had a threshold dollar amount of \$200,000 attached
20 to it. Anything over is when it applies. Anything under it
21 doesn't apply.

22 FACILITATOR: Marvin?

23 MR. JONES: Marvin Jones. Depends on how you
24 interpret how that threshold applies, I think. But to
25 follow-up, so is this a parking-lot issue, or is this an

1 issue going back to committee or just what do we see as
2 how -- what is the process to address?

3 MR. LAYMAN: You know, it could be an issue that
4 you may want to refer back to the workgroup to expand on
5 this already-approved regulation once you approve it. We
6 can either deal with it and discuss the legal implications
7 of whether Section 3 is applicable or not here.

8 If we don't, we'll have to make the legal call and
9 provide guidance to our recipients. I think it's a tough
10 call. It's a tough legal question, and we discussed it
11 amongst ourselves. We don't have consensus on that yet
12 within our little group here. So however the committee
13 wants to go about doing it...

14 Also, through departmental clearance, this does go
15 back. And when it goes back, it goes to our Office of
16 General Counsel, fair housing division, and they look for
17 Section 3 compliance. So they may raise issues even if we
18 do not address it or say Section 3 doesn't apply in a reg,
19 and they may raise questions and raise legal objections. So
20 just be aware of that also.

21 FACILITATOR: Marvin?

22 MR. JONES: I would propose it go back to the
23 workgroup, you know, after we -- you know, after we either
24 okay or not this particular portion related to Indian
25 preference, and at least have an opportunity to look at it

1 and work on -- with it, if it everybody would agree?

2 FACILITATOR: Karin and Carol?

3 MS. FOSTER: I withdraw my comment that I didn't
4 make.

5 FACILITATOR: Carol, what do you think?

6 MS. GORE: We did talk about Section 3 in the
7 workgroup. And at that time, we thought it was beyond the
8 scope of the assignment. I would be willing to accept that
9 on behalf of the workgroup, provided those HUD attorneys
10 that aren't in agreement, if they would agree to participate
11 in the workgroup, I'd rather have the disagreement in the
12 workgroup than within the committee presentation. So that's
13 the only caveat.

14 FACILITATOR: Yes, Jack?

15 MR. SAWYERS: I suggest we go ahead with this.
16 Let Section 3 take care of itself later on and have time to
17 look at it. And my understanding, it's 250,000, and it
18 wouldn't apply here. So I really believe that through the
19 clearance process, we will know more about that.

20 And I just think we need to get on with what we're
21 doing right now.

22 FACILITATOR: Marvin?

23 MR. JONES: Marvin Jones. In fact, that's what I
24 suggested, that we go ahead and consider the Indian
25 preference issue. But in addition to that, it's another

1 issue that can be worked during at the workgroup, but go
2 ahead and consider this provision as-is. But at the same
3 time, further consideration of -- to see if we can reach the
4 Section 3 resolution too.

5 MR. SAWYERS: That's three times we have agreed.

6 FACILITATOR: All right. Are we ready to move
7 forward on this one, then, you think? Okay.

8 So let's go into negotiation and seek consensus on
9 this last proposal, then.

10 Anybody have any questions, any additional
11 questions?

12 Okay. All in agreement with the last proposal?
13 Any opposition?

14 Okay. Thank you. Pass that one.

15 MS. GORE: Thank you for your patience on that
16 issue. I will remind you that the same language is intended
17 to be repeated in the next issue. It will not appear so,
18 but with your concurrence on this, we will direct the
19 drafting committee to make it so, if you approve the next
20 issue about tribal preference.

21 So moving onto Issue 15, Tribal Preference. The
22 statutory reference is 101(k).

23 We are proposing revisions to rule,
24 specifically the regulations are 1000.48, 50, and 52.

25 We did, as a workgroup, talk about creating a

1 separate regulation, but decided that it was simpler to take
2 the existing regulation that clearly looked at Indian
3 preference requirements and, instead, changed the titles of
4 these three regulations to refer to Indian and tribal
5 preference. So I'm happy to read through those changes.

6 1000.48: Are Indian and tribal preference
7 requirements applicable to IHBG activities?

8 The first paragraph would read: Grants under
9 this act are subject to Indian preference under Section
10 7(b) .

11 And it further states, as revised: And if
12 applicable under Section 101(k) of NAHASDA, tribal
13 preference in employment and contracting.

14 We did intentionally address Indian
15 preference first, because that would always apply if you had
16 no adopted tribal law. So it's intentional to change the
17 order and put tribal -- Indian preference first and address
18 tribal preference second.

19 So there was a renumbering that follows the
20 proposed language under 1000.48. And if you will follow
21 that renumbering, we recommended, or proposed, Paragraph (b)
22 that states: Section 101(k) provides that with respect to
23 any grant (or portion of a grant) made on behalf of an
24 Indian tribe under this Act that is intended to benefit one
25 Indian tribe, the tribal employment and contract preference

1 laws (including regulations and tribal ordinances) adopted
2 by the Indian tribe that receive the benefit shall apply
3 with respect to the administration of the grant or portion
4 of a grant.

5 Further, we added Paragraph (c): If tribal
6 employment and contract preference laws have not been
7 adopted by the Indian tribe, Section 7(b) Indian preference
8 provision shall apply.

9 We wanted this to be perfectly clear that
10 some preference would apply, whether it's Indian preference
11 or tribal preference at the election of that tribe or
12 recipient.

13 Shall I take 1000.48 first? I believe
14 they're fairly similar. So if we would take 1000.48, and
15 unless there are comments from advisers? No. I would open
16 this for negotiation and question.

17 FACILITATOR: Okay. Any comments of questions?
18 Jason?

19 MR. ADAMS: I guess my comment is that I had a
20 tough time following, to be honest. But my question is: In
21 the title here, we talk about applicable Section 101(k) of
22 NAHASDA, and then the new Section (b) basically repeats
23 101(k) of NAHASDA.

24 What is the necessity of repeating statute?

25 MS. GORE: May I respond?

1 FACILITATOR: Yes, please.

2 MS. GORE: First of all, there is Indian
3 preference, which already existed in the regulation. Tribal
4 preference is new. And rather than try to create an entire
5 new regulation and describe what a tribe might approve under
6 an ordinance, we thought it was much more permissive to just
7 simply restate what's in the statute and not try to guess
8 what a tribe might want to adopt as a law.

9 FACILITATOR: Jason?

10 MR. ADAMS: I guess, if I understand in previous
11 negotiated rulemaking sessions, when the statute was clear
12 on an issue, that then, just that section of the statute was
13 cited. It wasn't taken in context and repeated in the
14 regulation, you know, because then you're just growing the
15 size of the regulation, when it's repeating what's in the
16 statute, and the statute's clear.

17 MS. GORE: I think the workgroup would be
18 receptive to that. We talked about it, but we're receptive
19 to that.

20 Do you want to propose language?

21 MR. ADAMS: I'm just -- I just don't want to make
22 this so bulky and confusing that, you know, people should
23 take the statute and the regulation when they're rereading
24 these things. And the statute always has -- that always
25 trumps.

1 And so if it's clear in the statute, why repeat?
2 That's my only comment.

3 MS. GORE: Well, just -- we had a lively
4 discussion about that on virtually every issue we talked
5 about in the workgroup, about whether it was necessary to
6 provide clarification or not, whether it was clear that you
7 could look back at a statute. I think your idea to just
8 offer a reference is perfectly fine, if you want to offer
9 some language.

10 MR. ADAMS: Well, I guess what I'm saying is, in
11 the beginning of the section, you make reference to 101(k)
12 already. I'm just wondering why the necessity to add the
13 (b) in there, when it's already talked about in 101(k).

14 MS. GORE: I'd be receptive if you -- and I think
15 what I hear you saying is strike (b)?

16 MR. ADAMS: Essentially, yeah. I think that's
17 what I'm suggesting, just in the essence, the spirit of
18 condensing regulation instead of growing regulation.

19 FACILITATOR: So that would be a friendly
20 amendment? Okay. Jason's proposing to strike (b), and
21 then -- Blake?

22 MR. KAZAMA: I guess, in relation to that, can
23 someone clarify why the statute refers to one Indian tribe?
24 Why they -- that distinguish there? And maybe that's what
25 (b) could be, is identify what that means. I'm not sure.

1 What was the point of that?

2 FACILITATOR: Jad?

3 MR. ATALLAH: Let me just ask. Blake, are you
4 asking about the language in the statute that talks about
5 benefits one Indian tribe?

6 MR. KAZAMA: Yeah.

7 MR. ATALLAH: This is similar language to the
8 Indian Self-determination Act. There's a preference
9 provision in the Indian Self-determination Act that has
10 similar language.

11 We looked at this. We're sort of figuring --
12 trying to figure out previously what this really means. And
13 it's not that -- essentially what it means is if there's
14 tribal preference laws, those tribal preference laws should
15 apply to the tribe that has those tribal preference laws.

16 This specifically comes into play when you have
17 umbrella TDHEs that are serving more than one tribe. And
18 it's to prevent this concept of applying one member tribe's
19 tribal preference laws to another tribe. It's just to
20 retain that applicability of tribal law to that specific
21 tribe.

22 FACILITATOR: Blake?

23 MR. KAZAMA: Great. That's what I suspected, I
24 was hoping for. And maybe that could be a regulation, what
25 you just stated. To clarify -- I mean, given what Jason is

1 saying, rather than repeating the statute, maybe help
2 clarify that point. I don't know. It might be helpful for
3 people.

4 FACILITATOR: Yes, Karin?

5 MS. FOSTER: I have another question, and it
6 really relates, I guess, kind of to (c). But is it the
7 intent, then, that if tribal employment and contract
8 preference laws have been adopted, then Section 7(b) does
9 not apply? Isn't that just kind of an alternative to
10 Section (b) or would you say they both apply at that point?

11 FACILITATOR: Carol?

12 MS. GORE: My understanding -- this is probably a
13 legal question, but 7(b) always applies. Tribal preference
14 can, then, apply additional preferences that apply to the
15 tribe. That's my simple, layman's language.

16 And Jad, maybe should have you tackle this
17 question.

18 MR. ATALLAH: Right. No, essentially what you
19 said, Carol. The Indian preference requirements of the
20 Self-determination Act generally apply to grants under
21 NAHASDA. The provision in -- on tribal preference that was
22 added in 2008 is geared towards if a tribe happens to have
23 adopted tribal preference laws, those tribal preference laws
24 will govern in place of the generally applicable Indian
25 preference requirement that stems from the Indian

1 Self-determination Act.

2 FACILITATOR: Yes, Sandra?

3 MS. HENRIQUEZ: Help me understand, then, because
4 the way in which I read 1000.48, it appears that Indian
5 preference is first and tribal preference is second. But is
6 that what you really mean, or do you really mean that it
7 really is, if there's tribal preference, that really is in
8 the first position -- if there's -- if something -- if
9 there's tribal preference and it's spoken to, it's in the
10 first position; if it's not -- if it's silent, then it's
11 Indian preference?

12 But I read this just the opposite, and I just
13 don't know if that's -- I'm not reading it right and
14 we're -- you need to invert the language here.

15 FACILITATOR: Carol?

16 MS. GORE: I think the order was not intended to
17 recommend which comes first or second, to be clear.
18 However, what we -- the reason that we ordered it with
19 Indian preference first is because that always applies.

20 FACILITATOR: Okay. Can we keep the outside noise
21 down a little bit, all the little sidebars and things. It's
22 kind of difficult for people to hear.

23 MS. HENRIQUEZ: Because if you've got tribal
24 preference, you always, therefore, have Indian preference
25 anyway. That's -- was that the logic? Okay. I got it.

1 MS. GORE: But it can be reordered. I don't think
2 that changes the intent, or -- nor does it change the
3 language. It was from the workgroup that we thought it read
4 more properly in this order.

5 MS. HENRIQUEZ: Okay.

6 MS. GORE: But I think, so long as the language is
7 there, the intent is there. So certainly that would be a
8 welcome amendment if you wish.

9 MS. HENRIQUEZ: No. I just wanted to wrap my head
10 around it so I understood because it will help me think
11 about the language that follows on the others. Okay. Thank
12 you.

13 FACILITATOR: Shawna?

14 MS. PICKUP: Once again, you need a point of
15 order. Some of the people are getting time when they're
16 talking, in the orange, and are some are not. HUD has spoke
17 several times, not charged any time. So the rest of the
18 committee members, when we ask our attorneys to speak are
19 going to be timed.

20 So I mean, you need some definite clarification
21 here, because we've been negotiating almost ten minutes.

22 FACILITATOR: Thank you. How do you guys want to
23 handle that? I mean, this particular case, I wasn't timing
24 Jad because there was a specific question asked of HUD on a
25 technical matter.

1 MS. PICKUP: One question was asked. Not all
2 this.

3 FACILITATOR: So would you -- so we can apply
4 that -- according to our protocol, if there's a technical --
5 you know, if people are asking for technical advice or
6 technical clarification on the issue, it shouldn't be timed.

7 But I think -- so I'm just making a judgment call
8 as these things go along, and if I'm out of bounds here, let
9 me know, because I don't want to do that.

10 MS. PICKUP: What I was referring to: Marvin
11 said, I have a technical question. He asked Jad, it
12 stopped, and other comments were made. Since then, other
13 comments have been made from the attorneys and stuff and no
14 time. So that's why I was saying, he asked for a question.
15 They finished, and then negotiations continued.

16 FACILITATOR: I see. Jason?

17 MR. ADAMS: My question is not to this point. So
18 are you ready to move on?

19 FACILITATOR: I'd like to clarify what we're going
20 to do with (b) and get back to that and see what you're
21 going to -- there was -- the last -- as we left things here,
22 there was a request by Jason to the delete the (b) and just
23 make reference.

24 And then I think, Blake, you made a suggestion for
25 what should go into (b), and what -- and so we need to just

1 kind of stay on track with that.

2 MR. ADAMS: I guess, then, the next question will
3 probably muddy the water even more. But in understanding
4 the discussion that happened between HUD and Carol here a
5 minute ago, in regards to what comes first, the Indian or
6 tribal preference, in just reading and hearing that
7 discussion, the title of the section is: Are Indian and
8 tribal preference requirements applicable?

9 Shouldn't it be: Are Indian or tribal preference
10 requirements applicable?

11 FACILITATOR: Yes, Carol?

12 MS. GORE: You would be surprised how long you can
13 talk about one little word. Thank you for asking that
14 question.

15 We did talk about that. In fact, initially our
16 proposed language said "Indian or tribal preferences."
17 We've tried to err on more permissive than less restrictive.
18 And our thought was if it's "Indian and," you could apply
19 both. And you would --

20 MR. ADAMS: How do you follow -- it's either one
21 or the other. There's no -- if you don't have a tribal
22 preference ordinance in place, then you go with Indian
23 preference.

24 MS. GORE: That's correct.

25 MR. ADAMS: You can't have both. And in reading

1 this, because tribal would supercede Indian preference, the
2 correct question should be: Are tribal or Indian preference
3 requirements applicable.

4 MS. GORE: Just so that I don't duplicate the same
5 hour-and-a-half-long conversation we had about this same one
6 word, I'm going to ask -- and someone is going to have to
7 decide if this is on the clock or not.

8 This is a question I can't answer. It's a
9 technical question. I'm going to ask Melissa from HUD to
10 provide the answer.

11 FACILITATOR: Okay.

12 MS. PINGLEY: Hi. Melissa Pingley, Office of
13 Counsel with HUD.

14 The reason we ultimately went with "and" -- and I
15 should say we debated this back and forth -- you can have a
16 situation where both tribal and Indian preference would
17 apply.

18 And here's an example. What if a tribe adopts a
19 tribal employment ordinance, but maybe they don't allow for
20 a tribal contracting ordinance. They have one but not the
21 other, or they have a tribal employment preference for only
22 one type of employment.

23 Whenever there's a gap left open, so tribal law
24 doesn't speak to a portion of the employment or contracting,
25 then Indian preference applies. So a tribe could choose to

1 do one or the other. If they do both, then Indian
2 preference doesn't apply.

3 But if you only speak to a particular issue and
4 that gap is left open, it doesn't -- the mere fact of, if
5 you adopt a one-sentence tribal ordinance, that doesn't wipe
6 out Indian preference, and that's the way that they can both
7 apply. The tribal preference comes first.

8 So if your tribe adopts an employment ordinance,
9 that comes first. But let's say they only speak to certain
10 types of employment, then Indian preference still governs
11 those other aspects. There are situations where you can
12 have an "and."

13 And that's why we went with "and." We spent an
14 hour and a half on it, and that's why we went with "and,"
15 because we want to be as permissive as possible. So that if
16 the tribe makes the decision that they only want to apply
17 tribal preference to certain situations and that's the
18 ordinance that they've adopted, then Indian preference fills
19 that other gap.

20 FACILITATOR: Jason?

21 MR. ADAMS: I understand that now. And I
22 understand that there are tribes where that situation could
23 happen. I was coming from the perspective where my tribal
24 preference ordinance, it governs and nothing else does. So
25 I just wanted to make that clear.

1 FACILITATOR: Okay. So "and" is okay? Jason, so
2 "and" is okay?

3 MR. ADAMS: I would say in this context, if there
4 are tribes where they have this scenario that Melissa
5 described, then yeah, it would be the most permissive
6 position.

7 FACILITATOR: Okay. Karin?

8 MS. FOSTER: I'd like to speak to the same issue,
9 and I'm not sure that the language -- I'm not looking so
10 much at the title, although I think the title's important.
11 But since, you know, it's really the language that we're
12 most concerned with, I'm reading: "and, if applicable under
13 Section 101(k)...tribal preference," and I think that needs
14 to be an "or."

15 Because the way it's written, it really says that
16 it's always subject to both. And I think that in order to
17 really be the least restrictive as possible and give the
18 most self-determination to tribes, we do need to recognize
19 that this particular change in statute actually allows
20 tribes to apply their laws first before the federal statute.

21 Then if there -- if there is no tribal preference
22 in employment law, then it's not applicable. If there's no
23 employment preference, tribal employment preference law, but
24 there's a tribal contracting law, you know, it just -- if
25 it's there, it applies; if it's not, it doesn't. If it's

1 not there, then Section 7(b) applies.

2 So I really think that the "and" before the "if"
3 should change to an "or."

4 FACILITATOR: Judy?

5 MS. MARASCO: Can I make a proposal -- this is
6 Judith Marasco. Can I make a proposal? Just do an
7 "and/or," and that would address both sides of issue.

8 MS. GORE: I was told, Judith, that's not allowed
9 in regulatory language. We did try that. Sorry. I hate to
10 bear bad news.

11 FACILITATOR: Yes, Marguarite?

12 MS. BECENTI: Marguarite Becenti, Umatilla Tribe.
13 I really like the language that Karin brought forth, saying
14 that if you do put "or" tribal would proceed over it.

15 FACILITATOR: So, Karin, are you making a proposal
16 on this language?

17 MS. FOSTER: I'm making a proposal that in the
18 actual language in Subsection (a), the language that's been
19 added, "and, if applicable" would read "or, if applicable."
20 And I think that would capture what we heard from HUD a few
21 minutes ago is the concern that if there's one, there's not
22 the other, you know. It would capture that situation.

23 So yes, I propose a friendly amendment to change
24 "and" to "or" in that section.

25 FACILITATOR: Carol?

1 MS. GORE: May I just ask for clarification? Are
2 you asking for the same change in the title, Karin? And I
3 have no objection.

4 MS. FOSTER: I would like to see the same change
5 in the title, but, you know, recognizing that the guts of it
6 is actually where the law is, I wasn't pushing it.

7 MS. GORE: Okay. Thank you.

8 FACILITATOR: Okay. Everybody okay with that
9 suggested change then, to "or"?

10 Carol? I'm sorry. Yes, Karin?

11 MS. FOSTER: So you will agree to change the
12 title?

13 MS. GORE: I think it would be great to change the
14 title to "Are Indian or tribal preferences applicable?"
15 Yes, that would be fine.

16 FACILITATOR: Okay. So "or" in both places, the
17 title and also in the content there.

18 Okay. So can we summarize where we're at with
19 this now? Carol?

20 MS. GORE: We still haven't responded to Jason's
21 question about striking (b).

22 FACILITATOR: Oh, I thought you accepted that as a
23 friendly amendment.

24 MS. GORE: Yes. But then we haven't responded to
25 Blake's idea to offer some language that better explains the

1 one tribe issue.

2 FACILITATOR: Blake?

3 MR. KAZAMA: Yeah. I read through the whole
4 thing, and I can understand why they cited that, and I would
5 just leave it as it is and not try to expand upon it,
6 because (c) follows it, and it flows better, and that's why
7 they did -- they took that language and they put it there.

8 FACILITATOR: Okay. So thank you. So I think
9 that's it, then, isn't it? And yes, Jason?

10 MR. ADAMS: I guess I've got a procedural issue,
11 then, again, Jan.

12 I thought the -- what you presented was what you
13 presented, and then any amendments to that or changes that I
14 proposed or anybody else proposed had to be voted on,
15 correct, or is that just accepted by her as a friendly
16 amendment?

17 MS. GORE: No. I was simply offering no objection
18 as a committee member. That's all.

19 FACILITATOR: Okay.

20 MR. ADAMS: But I'm against -- is it only up to
21 her or everybody?

22 FACILITATOR: I think we should -- why don't we
23 just put forward what we have and see if we have acceptance
24 about that, the way -- as amended. Are you putting --

25 MR. ADAMS: Putting forward what? Everything that

1 we've changed?

2 FACILITATOR: Putting forward Carol's workshop's
3 proposal with the proposed amendments that they've accepted?

4 MR. ADAMS: Without Blake's proposed language?

5 FACILITATOR: He withdrew it.

6 MR. ADAMS: He pulled it off?

7 FACILITATOR: He pulled it off.

8 MR. ADAMS: Okay. I have one other thing, then.

9 FACILITATOR: Okay.

10 MR. ADAMS: If the acceptance -- or if the title
11 is changed from "and" to "or," then "are" needs to be
12 changed to "is." I'm just -- you know.

13 FACILITATOR: Yes. Yes.

14 MR. ADAMS: So it goes.

15 FACILITATOR: You're a sharp one, Jason. So --
16 okay. Yes, Jack?

17 MR. SAWYERS: Following up on Jason's idea, we
18 need to vote on Jason's amendment first, right, and get
19 that -- that's the first thing you have to do is -- that's
20 why we're negotiating.

21 If you present it, then we have to vote on that,
22 and then with that, we go to the next step. But you can't
23 do it all at once. You have to do it step by step, or else
24 it's going to get lost in the process.

25 FACILITATOR: Okay. I was trying to save time.

1 All y'all who are in agreement with Jason's
2 proposal to delete (b) from this proposal, indicate by
3 raising hands. Any objection? Okay. Thank you.

4 The second -- and the second one was to change the
5 "and" to "or" in both the title as well as in the content
6 and to change "are" to "is." All in favor? Any opposed?
7 Okay.

8 And now, it's to vote on the overall -- yes, I'm
9 sorry. Karin?

10 MS. FOSTER: May I have clarification on the
11 placement of the "is"?

12 MR. ADAMS: It's the title. It's the first word
13 in the question. It says "are." Once you change the "and"
14 to "or" --

15 MS. FOSTER: But "requirements" is plural.

16 FACILITATOR: It's still "are"?

17 MR. ADAMS: "Is" sounds better with "or." I got a
18 C in English.

19 MS. FOSTER: I don't have an objection as long the
20 word "requirements" came out, but with "requirements," I
21 think we should stay with "are."

22 FACILITATOR: Okay. All right. Can we get
23 things -- we'll leave it as "are"? Is that grammatically
24 correct? Grammatically correct is "are"? Okay. I'm sorry,
25 Jason.

1 Can we get a vote on the entire proposal as
2 amended? Does anybody have any confusion as to the
3 amendment?

4 And changing (c) to (b)? And changing (c) to (b)
5 as well, because we're getting rid of (b). Okay.

6 So are we ready to vote? Any confusion? Any
7 questions on -- on this -- do we all know what it says now,
8 please? All in favor. Any opposed? Opposed? Are you
9 opposed?

10 MS. FOSTER: No, I'm good.

11 FACILITATOR: All right. Thank you. Thank you
12 for guiding us through that.

13 It's 5:15. I'd like to know how long would you
14 like the committee -- would like to continue, or would you
15 like to end on this happy note?

16 Does anybody whose -- yes, Carol?

17 MS. GORE: Larry, there are -- the next two issues
18 are related. I think we could get through them quickly
19 because we've done the hard work already. And some of the
20 same changes that the committee has proposed would apply, I
21 think, to the next two. I think we could get through them
22 quickly if --

23 FACILITATOR: How many more minutes, you think?

24 MS. GORE: 30 minutes.

25 FACILITATOR: 30 minutes.

1 MR. JACOBS: I have a question.

2 FACILITATOR: Yes?

3 MR. JACOBS: Where is your advisers on it? Are
4 they going to change?

5 MS. GORE: I'm not allowing them to speak.

6 FACILITATOR: All right. Committee members, all
7 of you in favor for continuing for another a maximum of 30
8 minutes, give me a thumbs up. Anybody objecting to that?

9 We're going to extend to finish up the last two
10 related items in Carol's workgroup. A maximum of 30
11 minutes. Would that be all right?

12 MS. GORE: All right. We're moving on to 1000.50.

13 FACILITATOR: Yes, Phil?

14 MR. BUSH: I'm sorry. And I know this was called
15 for consensus, but when you -- if you go back to wherever we
16 just were.

17 MS. GORE: To 1000.48.

18 MR. BUSH: With the "is" or the "are" and the
19 "and" or the "or," when I read the entire final sentence,
20 when it was changed from "and" to an "or," to me, the
21 sentence was incomplete.

22 You were and I -- I think right at the end, it
23 says, "tribal preference and employment contracting," I
24 think you should say "shall apply." Because if you read it
25 that way, it doesn't make sense to me.

1 FACILITATOR: We voted on it already, Phil. Let's
2 just move on.

3 Carol, go ahead?

4 MS. GORE: 1000.50. The title was changed from:
5 What Indian preference requirements apply to IHBG
6 administration activities? It's been modified to include
7 "and tribal preference," just as before, and it is an "and."

8 We've struck the existing language and proposed
9 two paragraphs, an (a) and a (b), one that refers to Indian
10 preference, and one that refers to tribal preference.

11 Paragraph (a): A recipient must, to the greatest
12 extent feasible, give preference and opportunities for
13 training and employment in connection with the
14 administration of grants awarded under this part to Indians
15 in accordance with Section 7(b) of the Indian
16 Self-Determination and Education Assistance Act.

17 (b) In accordance with Section 101(k) of NAHASDA,
18 a recipient shall also apply the tribal employment and
19 contract preference laws (including regulations and tribal
20 ordinances) adopted by the Indian tribe that receives a
21 benefit from funds granted to the recipient under NAHASDA.

22 It's open for negotiation.

23 FACILITATOR: Larry?

24 MR. COYLE: Change the Indian -- or change the
25 "and" to "or" on all respects to keep in line with the

1 others.

2 FACILITATOR: Yes, Marguarite?

3 MS. BECENTI: Marguarite Becenti, Umatilla. I'd
4 also -- I agree with Larry, but I'd also like to add that
5 after the (a) paragraph, there be a comma and "or" to be the
6 last word there in the (a) paragraph. And in (b) paragraph,
7 in the middle of the first sentence, a recipient -- instead
8 of "shall also" -- a recipient "may apply" the tribal
9 employment.

10 FACILITATOR: All right. Marguarite has made a
11 proposal here. Any response to that?

12 Yes, Jason?

13 MR. ADAMS: I guess, again, in the argument
14 earlier about tribal preference and that coming first, I
15 agree with Marguarite's suggestion on the "shall" to "may."
16 But my thinking on this is that, then that paragraph should
17 be become (a) and (a) should become (b); therefore, tribal
18 preference is first.

19 FACILITATOR: Okay. We have two proposals for
20 change, and I think they're -- we'll consider them as one,
21 Marguarite's and Jason's. Any comment? Objection? Yes?

22 MS. HENRIQUEZ: On Section 101(k) of NAHASDA, the
23 language does stay, strictly out of the statute --

24 FACILITATOR: Can you pull you microphone down,
25 there, please, Sandra?

1 MS. HENRIQUEZ: Looking at Section 101(k) of
2 NAHASDA, the language does read -- talks about the tribal
3 employment and contract performance -- the contract
4 preference laws, including regulations and tribal ordinances
5 adopted by the Indian tribe that receives the benefit shall
6 apply with respect, not -- it's not an option. It's a must.
7 So I'd like to continue with the same language.

8 FACILITATOR: Are you talking about in Paragraph
9 (b)?

10 MS. HENRIQUEZ: In (a).

11 FACILITATOR: Paragraph (a), a recipient -- I see.

12 MS. HENRIQUEZ: No, it is (b). But I think it was
13 I heard a comment about making it a "may" as opposed to a
14 "shall." And the statute is clear. It has to say "shall."

15 FACILITATOR: Marguarite, that was your
16 suggestion. I'd like to hear your direct response to that.

17 Okay. Karin, can we stay on this subject here?

18 MS. FOSTER: I'm not sure what is the best way to
19 go about this in terms of protocol. I have an alternate
20 suggestion but -- if you're ready to hear that --

21 FACILITATOR: Okay.

22 MS. FOSTER: -- to accomplish the same goal.

23 FACILITATOR: Okay.

24 MS. FOSTER: I like the idea, Jason, of reordering
25 those paragraphs, but I'm not quite sure how to do it. But

1 if we did not reorder the paragraphs, then my suggestion
2 would be to accomplish HUD's concern about keeping a
3 "shall," we might insert after little (b): If applicable
4 under Section 101(k) of NAHASDA, a recipient shall also
5 apply. It kind of mirrors -- it mirrors what was done
6 earlier on in terms of that being applicable to the
7 situation. I see Tim shaking his head.

8 FACILITATOR: Jason?

9 MS. FOSTER: I'm looking at the language that we
10 went through in 1000.48: Grants are subject to Indian
11 preference under Section 7(b) or, if applicable under
12 Section 101(k), tribal preference.

13 MR. ADAMS: Jan, if I could, could I give Tim some
14 time?

15 FACILITATOR: Yes.

16 MR. HUMPHREY: What my concern here is, is going
17 back to, actually what Jad said. The statute says that you
18 will apply Indian preference unless you have a tribal
19 preference law. This regulation says you will "apply Indian
20 preference," and you "shall also apply." No.

21 What it's supposed to do is that if I have an
22 Indian preference law, if it's in contracting and employment
23 or one or the other, that's what applies. If it doesn't
24 have that, then Indian preference applies, not that you do
25 one and the other if it's there.

1 FACILITATOR: Thank you. Marguarite?

2 MS. BECENTI: In my suggestion, I had removed
3 "shall also," but I'm okay with the word "shall" if "also"
4 is removed.

5 MS. FOSTER: I would agree with that. I think
6 that's a good edit.

7 MR. ADAMS: Yes, I would too. And with the
8 caveat, still, that they are flipped.

9 FACILITATOR: Okay. So the -- currently, the
10 proposal is to leave "shall" -- in (b), leave "shall" there,
11 take out "also," add in "if applicable" to the beginning
12 there, and switch the positions of (a) and (b)?

13 Anybody have any -- are we ready to do that?

14 So in the new -- in the new (a), it should start
15 with "if applicable"; is that right? No? So correct me,
16 Karin.

17 MS. FOSTER: I had made that proposal, but I'll
18 withdraw it in, you know, light of the other comments here.

19 FACILITATOR: Okay. So then, the (b) should just
20 stay the way it's written, except for getting rid of "also,"
21 and then put -- and then put it into the new (a) and (b),
22 switch places.

23 MS. FOSTER: Can we go back to the other draft on
24 the screen? There it is. Thank you.

25 FACILITATOR: Can everybody take a look at that?

1 That's what we're looking at here. In accordance with
2 Section 101(b), a recipient shall apply.

3 Okay. Yes, Carol?

4 MS. GORE: We see a typo in the last sentence of
5 (b). After Section (b) it says "if." It should read "of,"
6 O-F, not I-F. That's just a typo.

7 FACILITATOR: Okay. Did you also want to change
8 the title with "or"? It has changed. Okay.

9 Okay. I think we're there. We're ready to seek
10 consensus on this change and adopt this -- yes, Jason?

11 MR. ADAMS: I think, then, with this reordering,
12 then wouldn't (b) -- the beginning (b) state, in the absence
13 of tribal preference law, then a recipient must -- just
14 adding to the beginning of (b), "in the absence of tribal
15 preference law"?

16 FACILITATOR: Steven?

17 MR. ANGASAN: Since we're flipping (a) and (b),
18 shouldn't we flip "tribal" and "Indian"?

19 FACILITATOR: Sandra?

20 MS. HENRIQUEZ: At the end of (a) is the word
21 "or," which I think does not need to be there.

22 FACILITATOR: At the end of (a) does "or" need to
23 be there? Larry?

24 MR. COYLE: If it's not a tribal law, then it is
25 the other law.

1 MS. HENRIQUEZ: So it's intentional to read then:
2 In accordance with Section 101 -- da-da, da-da, da-da
3 (phonetic) -- or in the absence of tribal ordinances, a
4 recipient?

5 FACILITATOR: Yes, Jason?

6 MR. ADAMS: I guess my read of that would be
7 either insert "in the absence of" at the beginning of (a)
8 and eliminate "or" -- it's one or the other, I think, not
9 both.

10 FACILITATOR: Marguarite?

11 MS. BECENTI: I put "or" in there when I first
12 made my suggestion to make "shall" into "may," and that's
13 where I had the "or" in there.

14 FACILITATOR: So what is your preference on that?

15 MS. BECENTI: For grammatical purposes, it can
16 come out.

17 FACILITATOR: For grammatical purposes, drop the
18 "or."

19 Steven, you had your proposal again?

20 MR. ANGASAN: Just -- I think I said just flip the
21 "Indian" and "tribal."

22 FACILITATOR: In the title, you mean?

23 MR. ANGASAN: Yeah, in the title.

24 FACILITATOR: So you would say, "What tribal or
25 Indian preference"?

1 Larry is pointing out that to be consistent, you'd
2 want to change the other one as well?

3 MR. ANGASAN: Yeah. Probably.

4 FACILITATOR: Well, it's up to you guys.
5 Yes, Jason?

6 MR. ADAMS: I just wanted to correct what I put up
7 there. I don't remember saying "ordinances." What I want
8 to say there in the beginning of (b), in the absence of
9 tribal employment and contract preference laws, because
10 that's the statute language.

11 FACILITATOR: We need to -- I want to finish up
12 with Steven's comment. Do you want to change the other one
13 and put it tribal and Indian, or what's the preference?
14 People in favor of that? Okay.

15 Let's just vote on that and make sure. So
16 everybody in favor of changing the order from tribal and
17 Indian, can I get a hands-up on that? Anybody opposed? And
18 we're doing this for both pieces? Thank you. All right.
19 Thank you.

20 Now, any more changes to this one here? Ready to
21 vote? Any other -- anybody see anything that needs to be
22 fixed? Okay.

23 Ask for consensus, then, on these changes. All in
24 favor? Any opposed? Thank you.

25 One more, Carol? We have another ten minutes to

1 go, Carol.

2 MS. GORE: One more. And it's the same exact
3 language that you just approved in (a) and (b). Under
4 regulation 1000.52, titled: What Indian and tribal
5 preference requirements apply to IHBG procurement?

6 So I'm not going to read stuff. I've already done
7 that, and you know it by heart. You could make the same
8 revision proposal.

9 The only difference in 52 is there is now a letter
10 (c), which states: The following provisions apply the
11 application of Indian preference under Paragraph (a) of this
12 section.

13 The rest of that section is already in the
14 regulation. So it's just meant to introduce that section,
15 and it has no other purpose other than to introduce it.

16 So otherwise, the language in 52 is exactly what
17 you considered under 50. And I have no further statements.
18 It's open for negotiation.

19 FACILITATOR: Any comments or questions? Jason
20 and then Marguarite.

21 MS. BECENTI: Are we applying the changes to 52
22 that we did apply to 50?

23 FACILITATOR: In terms of the title? Everything,
24 right? Yes. Mm-hmm. Shawna?

25 MS. PICKUP: I was going to say, Jan, the only

1 other additional change would be in Item (c), you would need
2 to change Paragraph (a) to Paragraph (b).

3 FACILITATOR: (c) change Paragraph (a) to
4 Paragraph (b)?

5 MS. PICKUP: Mm-hmm.

6 FACILITATOR: Okay. Any other changes needed? I
7 guess everybody's getting hungry.

8 MS. PICKUP: Carol, would you call for consensus?

9 FACILITATOR: Carol?

10 MS. GORE: May I ask you to hold up for just a
11 second?

12 FACILITATOR: Phil?

13 MR. BUSH: No. I was scratching.

14 FACILITATOR: Mark?

15 MR. BUTTERFIELD: Shouldn't -- should you put
16 the -- all the changes up there so we can see them? Because
17 I think Steve wanted the things flipped, and I don't know
18 whether they are.

19 FACILITATOR: They're up there already.

20 MR. BUTTERFIELD: No, the title.

21 FACILITATOR: Show Mark the title, there.

22 MR. BUTTERFIELD: Thank you. I just like to see
23 what I'm voting on.

24 FACILITATOR: Absolutely.

25 MS. PICKUP: Jan, would you make sure that they

1 change that in (c), to Paragraph (b)?

2 FACILITATOR: And change that to (c) already? Is
3 it done? Can you show us? Little bit more, I think.
4 Paragraph (c). All right, Shawna? (c), can you bring (c)
5 up a little bit? That's got to be changed, I think. Okay.

6 MS. GORE: Jan?

7 FACILITATOR: Yes?

8 MS. GORE: I want to make sure, when we duplicated
9 that, remember that 50 deals with IHBG administration
10 activities. 52 deals with procurement. So what was
11 originally Paragraph (a) under 52 should remain, but become
12 (b) under the revision, because it deals specifically with
13 procurement and not administration.

14 So when I said it's the exact same issue, it's
15 just that they deal with different activities: One is
16 administration; one is procurement. So I think the intent
17 of the committee, just for their review is that the
18 information is the same, except for descriptor of
19 activities.

20 So the recommendation to change the order in all
21 this, staying consistent with 50 is proper, but you need to
22 retain the originally drafted Paragraphs (a) and (b) and
23 just reorder them. Does that make sense? Thank you. With
24 the corrections, was my intent.

25 FACILITATOR: Carol, can you check what's on the

1 board there, to make sure that it's what you -- yes, Shawna?

2 MS. PICKUP: Carol, I guess, just clarification.

3 You're just wanting to take what is under 52, flip it like
4 we did in 50, instead of pasting what we changed in 50?

5 MS. GORE: Correct.

6 MS. PICKUP: Okay. Thank you.

7 MR. ADAMS: Jan?

8 FACILITATOR: Yes, Jason?

9 MR. ADAMS: I guess, Marguarite was the one that
10 asked for that change, and I think part of her suggestion
11 was that those changes made in 50, including the change --
12 the change in what is now (a) now also comes out.

13 Is that not acceptable?

14 MS. GORE: No, that's acceptable. I just want to
15 make sure that we had the right activity referenced under
16 the title. I was just trying to clarify that. That we
17 didn't lift what was under 50 and paste it under 52, because
18 they're different activities. Thank you.

19 FACILITATOR: Can everybody please check what's on
20 the board and make sure that we've got it right here?

21 Okay. Just give us a second to get it fixed.

22 Jason?

23 MR. ADAMS: I think under 50, I added on (b) some
24 language at the beginning of (a) -- of (b). Oh, there it
25 is. Okay.

1 FACILITATOR: Yeah. Slight technical delay is
2 all. Okay. Yes, Shawna?

3 MS. PICKUP: In the title, they also need to
4 change the "and" to "or."

5 FACILITATOR: "And" to "or" in the title. The
6 tribal or Indian preference. Okay. We've got that.

7 Anything else anybody spots? Have we got it all?
8 Okay. I think -- okay.

9 Can we see the document again? Run us through it,
10 Carol.

11 MS. GORE: I'm just told that in 50, is that still
12 up there? 52 is up there. I'm told in 50, we retained
13 "and," and in 52 we have "or." So can you scroll them up?

14 FACILITATOR: 50 -- 50 has "or."

15 MS. GORE: Has "or"?

16 FACILITATOR: Yeah.

17 MS. GORE: Okay. Thanks for the clarification.

18 FACILITATOR: Okay. So can we look at 52 again,
19 and take a vote on this? I think we have all the
20 corrections in there. All right.

21 Are we ready to vote on this one?

22 Okay. All in favor of these amendments, indicate?
23 Any opposed? Pardon? Want to flip it one more time?
24 Karin?

25 MS. FOSTER: We still have a typo after Section

1 7(b), "if" the Indians Self-Determination Education
2 Assistance Act, needs to change to "of."

3 FACILITATOR: Oh, "of."

4 MS. FOSTER: The credit goes to the audience for
5 that.

6 FACILITATOR: All right. Thank you. You have
7 sharp eyes out there. Yes, Lafe?

8 MR. HAUGEN: I thought, on consensus, we went with
9 "and" and not "or."

10 FACILITATOR: No. It was "or."

11 MR. HAUGEN: Okay. I really thought for a
12 second -- and Jason he said he agreed with it.

13 FACILITATOR: All right. So one more time, on 52,
14 can -- all in favor of this language? Any opposed?

15 MR. BUSH: I oppose.

16 FACILITATOR: You oppose?

17 MR. BUSH: I was trying to raise my hand before
18 you got there.

19 FACILITATOR: Oh, okay. Phil?

20 MR. BUSH: It's not that I oppose. I just have
21 a -- excuse me. I'll turn the mic on.

22 Well, I'm Phil Bush, and I have a quick question.
23 My question is: Is when you look at (c)(1), okay, that's
24 only applicable when you're -- everything following under
25 (c)(1), the way I read this, is only applicable when you're

1 applying Indian preference, correct?

2 FACILITATOR: Is that correct?

3 MR. BUSH: Then -- so if we have a tribal
4 ordinance in place, it's going to waive a lot of -- it could
5 read different than this. And 85.36 wouldn't apply then?

6 If you follow it all the way down, I want to make
7 sure, because all the way down, it references 85.36 -- maybe
8 I should just be quiet. Never mind.

9 I just talked myself into this. Call for
10 consensus, please.

11 FACILITATOR: Are there any further questions on
12 this article? You're reading your papers there. Call for
13 consensus on this? You want to wait? All right.

14 Call we call for the consensus on this? Any
15 opposed?

16 It's done.

17 Wait. One more thing. Jason, tomorrow morning,
18 we're going to talk about your issue. And we -- you want us
19 to pass out these documents now to everybody while we're
20 still here?

21 MR. ADAMS: Yes. I do have issues. Yes, if we
22 could. The documents that will be handed now are the Indian
23 Housing and Performance Report format forms. So please keep
24 those out.

25 And then also there's a one-pager that was typed

1 up and produced by our workgroup that has the sections of
2 the form that are not statutorily required.

3 FACILITATOR: So you want to --

4 MR. ADAMS: Makes references specific to the
5 numbered sections.

6 FACILITATOR: Thank you. So --

7 MR. ADAMS: If I could, Jan, I'd like folks to --

8 FACILITATOR: We haven't adjourned yet. Please,
9 let's listen to Jason here.

10 MR. ADAMS: If I could, I just want to make sure
11 folks understand the one-pager that's being handed out --
12 should be being handed out. I don't see it.

13 FACILITATOR: Can we have some -- can we have some
14 quiet, please? Please, we're almost finished.

15 MR. ADAMS: They're -- it's the one-page addition.
16 It's yellow. It's yellow. My scribe, she did turn that in
17 to the contractor. There was a one-pager that was -- that's
18 it right there. We need that with this document.

19 FACILITATOR: Okay.

20 MR. ADAMS: That document, it's -- I just want to
21 take a minute to describe it, because if you just get it,
22 you might wonder, okay, what does this mean? It doesn't
23 pertain to anything.

24 All it has on it is this: On top of the document,
25 it says IHP/APR template draft. Next line says, New Form.

1 Then it states, Optional Items, and then it lists those
2 items that our workgroup believes are optional, not -- what
3 I mean by "optional" is they're not tied directly back to
4 the statute or they are in the statute, and the statute
5 doesn't make reference that they have to be in plan.

6 I want to clear that up for you, Marvin, since
7 there were some issues to that degree. So that's what this
8 one-pager is about, just to clarify. So thank you.

9 FACILITATOR: Okay. Everybody have that
10 one-pager? Who does not have it? Everybody doesn't have
11 it. Okay. They're making copies of it. We have copies of
12 it? She just went to make copies of the one-pager. So that
13 will just take a few minutes.

14 Tomorrow morning, we'll be starting at eight
15 o'clock, and we'll be starting with Jason's -- Valencia has
16 those one-pagers there, so just grab one from her. They're
17 for you to look at.

18 (Hearing adjourned at 5:50 p.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned officer of the Court, under my commission as a Notary Public in and for the State of Washington, hereby certify that the foregoing deposition upon oral examination of the witness named herein was taken stenographically before me and thereafter transcribed under my direction;

That the witness before the examination was first duly sworn by me to testify truthfully; that the transcript of the deposition is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions, and exceptions of counsel made and taken at the time of the foregoing examination;

That I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of , 2010.

Kristin M. Vickery
NOTARY PUBLIC in and for
the State of Washington,
residing at Renton.
Commission expires 7/29/2010.

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