

FORMULA NEGOTIATED RULEMAKING COMMITTEE  
 MEETING  
 January 13 – 16, 2004  
 Las Vegas, NV

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

The sixth meeting of the Formula Negotiated Rulemaking Committee was held on January 13 – 16, 2004, at the Crowne Plaza Hotel in Las Vegas, NV.

Committee Members in Attendance

Governor Bill Anoatubby (Wayne Scribner, alt.)	Dr. Blake Kazama
Mr. Rodger Boyd	Mr. Bruce LaPointe
Ms. Virginia Brings Yellow (Coni Wilson, alt.)	Mr. Michael Liu
Mr. Robert Carlile	Ms. Judith Marasco (Sami Difuntorum, alt.)
Mr. Larry Coyle	Mr. Johnny Naize
Mr. Wayne Ducheneaux	Mr. Michael Reed
Mr. Joel Frank	Mr. Jack Sawyers
Mr. Robert Gauthier (Jason Adams, alt.)	Mr. Marty Shuravloff
Ms. Carol Gore	Mr. Russell Sossamon
Mr. Ray Gorynski	Ms. Darlene Tooley
Mr. Ron Hoffman	Chairman Eddie Tullis
Mr. Terry Hudson	Chairman Brian Wallace (Phil Bush, alt.)
Mr. Marvin Jones	

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

Over the course of the four-day meeting, approximately 85 observers attended the public sessions. An attendee list is included (Attachment 1).

**TUESDAY MORNING, JANUARY 13, 2004**  
**FULL COMMITTEE**

Mr. Sossamon called the meeting to order at 8:30 am. Mr. Jason Adams provided the invocation. Mr. Sossamon called the roll and announced that there was a quorum (Attachment 2). He then reviewed the procedures for the meeting, and passed out the Supplementary Procedures on the Five-minute rule to the Committee members to ensure that each member has the opportunity to speak to all issues (Attachment 3). He then turned the meeting over to Ms. Falkner who proceeded to go outline the procedures. She explained that Mr. Heisterkamp would serve as the discussion leader. The 90-minute clock was described in conjunction with the agreed upon 90 minute discussion period format. It was explained that there would be a 15-minute break between discussion topics. It was further explained that the last 5 minutes of each segment would be set aside for a call for consensus. Regarding the clock, it was explained that there would be

a warning bell at both the 10-minute and 5-minute mark. Ms. Falkner explained that the clock keeps exact time. Mr. Heisterkamp then thanked the co-chairs and HUD chairs for asking him to do serve as discussion leader. He pointed out that he views the opportunity as an honor. He then read a Statement of Interest (Attachment 4). Regarding the procedures, he pointed to the yellow and lilac sheets in the binders, which he explained are supplemental to the Charter and Protocols. He stated that these documents (Procedures for January Formula Negotiated Rulemaking Session and Agenda for Seventh and Final Formula Negotiated Rulemaking Session) provide a framework to help move through the issues. He also noted that the five-minute discussion rule was added at the request of the tribal co-chairs and HUD representatives. Regarding the five-minute rule, Mr. Heisterkamp explained that initially everyone at the table has 5 minutes (for each discussion topic). He pointed out that there was time in between discussion periods to prepare, so that the time during the discussion periods could be used productively. Mr. Heisterkamp explained that during the session only committee members would be recognized; others will be recognized only if a committee member yields. He pointed out that both he and Ms. Falkner would be using timers to keep track of time of the five-minutes allotted. He then asked if there were any questions. In response to a query, he clarified that each committee member would be allotted 5 minutes per issue. He added that the 5-minutes would not apply during periods when the regulations were being drafted. Mr. Heisterkamp then encouraged the committee members to concentrate on reaching consensus and turning the language over to the drafting committee to complete. He also reminded the group that it is dealing with a proposed rule that will go through an extensive public comment period. Mr. Heisterkamp announced that there would be no new Technical Request (TR) data runs accepted or preformed during the week, adding that per the co-chairs' agreement, all TRs should have been submitted by December 1. He pointed out that an index to all the TRs, past minutes, attachments, and handouts has been included in the Meeting Binder, and that there are Resource Books in the back of the room. He stated that copies of any of these materials could be made available. Mr. Heisterkamp pointed out that within each Tab, there are references to the runs or handouts that pertain to each issue. Lastly, he requested that each person speak into the mics and identify yourself. He then asked if there were any other questions.

Mr. Naize asked how questions that arise during discussion would be addressed. He also stated that the committee members are here representing their tribes and regions, and have specific instructions, and would be making decisions based on representation. Mr. Heisterkamp responded by encouraging committee members to confer with folks at home before and after discussions. He added that if necessary, a committee member could go out of the room and make calls. He also stated that there is no prohibition on caucuses, but that the 90-minute clock would not be stopped. He encouraged committee members to discuss topics on the side and to try to come to consensus, but he reiterated that provisions couldn't be made to stop the clock. Mr. Sossamon commented that it was his understanding that this was what the co-chairs agreed to. Mr. Naize stated that if a caucus should be called, the clock should stop. He also, encouraged dissenters to provide an alternative.

Mr. Heisterkamp asked if there were any other questions. Mr. Hudson asked if there was a five-minute clock that was visible. Mr. Heisterkamp responded that the only visible clock is the 90-minute clock. Ms. Falkner added that both she and Mr. Heisterkamp had timers and would provide information to committee members on the amount of time left. Mr. Reed requested clarification that if a caucus is called, the clock won't stop, even if there is no longer a quorum. Mr. Sossamon responded that a quorum has been established, and whoever is at the table will be counted. He added that typically, the committee recesses, and does not adjourn until the last day, so the quorum, having been established, remains in effect. Mr. Naize reiterated that the committee members are here representing nations, and are here in good faith.

Mr. Sossamon took the floor to address administrative issues. He commented that the agenda was developed by the tribal co-chairs and HUD representatives, and that each issue that was identified has been given time for discussion. He pointed out that at the end of this administrative period, he would turn the meeting over to the facilitator, who would then be in charge of the meeting. Further, at the end of the day, during the administrative time, he would resume the role of chair. At the conclusion of the administrative session each day, the committee would recess until the following morning, at which time, the committee would begin with consensus discussions. He stated that Ms. Falkner would bring the meeting to order and the clock will begin. Mr. Sossamon then opened the floor to discussion.

Ms. Tooley stated that she had received a copy of the resolution from Alaska regarding the procedures. She also asked for clarification on who is on the drafting committee. Mr. Sossamon responded that the drafting committee was a voluntary committee and is open to anyone who wants to participate. There was clarification that the members of the drafting committee were: Mr. Pereira, Ms. McFadden, Mr. Heisterkamp, Mr. Dougherty, Ms. Foster, and Mr. Hutchings.

Mr. Hoffman requested clarification on the procedures. He stated that he appreciated the hard work of the co-chairs, but added that it was his understanding that it is up to the full committee to approve the agenda and the procedures. He pointed out that he would like to do that, and that he has some concerns that some of the processes of the Charter and Protocols have been violated. He noted that he didn't have the process in front of him, and also added that it was very clear that Mr. Heisterkamp has an interest. A/S Liu responded and commented that he appreciated Mr. Hoffman's comments; however, he wanted to assure the members of the committee that all the issues of the negotiated rulemaking process have been carefully looked at. He added that Mr. Pereira would address the issues. A/S Liu also stated that the co-chair from Alaska was involved in all the discussions. He then turned the floor over to MR. Pereira to address legal issues that of concern regarding Mr. Heisterkamp's being involved as a discussion leader.

Mr. Pereira stated that both HUD and other attorneys have looked at this and there aren't any specific restrictions keeping Mr. Heisterkamp from participating as a discussion leader in the Statute, Protocols, or Charter. He asked if there were any other provisions

that caused concern. Mr. Tillinghast stated that his reading of the Act is that the facilitator must be impartial and not have an interest. He noted that Mr. Heisterkamp was being referred to as a discussion leader, which would make a difference. However, he added that Mr. Heisterkamp has been given the powers of the facilitator and should therefore be called a facilitator. Mr. Tillinghast stated that an attorney has an ethical obligation to represent the interest of the client who is paying him. He added that he didn't think that Mr. Heisterkamp would be able to meet that ethical obligation and at the same time be dispassionate. Moreover, Mr. Tillinghast pointed out that procedurally, the Protocols do state that the draft agenda will be developed by the co-chairs and accepted by the full committee, adding that the agenda and procedures are not binding until they are approved by the full committee. He also pointed out that although Dr. Kazama did attend the co-chairs meeting, he was not given the opportunity to pass the procedures amongst the other Alaska members. Mr. Pereira, regarding facilitation, reiterated that Ms. Falkner is the facilitator, and Mr. Heisterkamp is the discussion leader, which he has done before. He added that Ms. Falkner was empowered to stop the discussion or take over the discussion at any point.

Mr. Sawyers stated that the co-chairs were not asked to make a decision at their meeting, but had 30 days distribute the proposed procedures and agenda to their members for review. He reiterated that this was not a snap decision. Mr. Heisterkamp, regarding the ethical issue that had been raised, stated that he has been instructed by his clients to proceed as effectively as possible. He pointed out that his role in moving this process forward is in his clients' best interest, and they have specifically instructed him to do what needs to be done to move the work of the committee forward. He added that UNAHA has issued a statement that there is no one issue that is as important as the process itself. Mr. Heisterkamp reiterated that his clients are satisfied that he is moving the process forward. Mr. Sossamon stated that as far as the Choctaw Nation is concerned, Mr. Heisterkamp has been released from his responsibilities and Mr. Wagenlander is the responsible party. As far as the powers of facilitator, Mr. Sossamon stated that Ms. Falkner had the power and that it was not being transferred or shared.

A/S Liu pointed out that there have been discussion leaders all through the process as part of this committee and the subcommittees, and that attorneys have taken this role. He added that Mr. Tillinghast himself has been a discussion leader. Further, A/S Liu stated that he didn't think there has been any change in authority or procedures, and that work is just being concentrated in this committee meeting, with the discussion leader identified and the facilitator identified. He added that having spent the considerable funds to support this process and the time, he could assure the committee members that there is nothing HUD would do to jeopardize the integrity of the committee. He reiterated that the legal and ethical questions have been thoroughly researched. Ms. Gore commented that she hoped that everyone understands that the Alaska representatives are interested in the integrity of the process; that their interest is in the outcome; and that they will be flexible. However, she pointed out that the representatives thought it was important to bring the issue to the table. She also asked if there is a conflict between the Protocols and the procedures for the week, which will have precedence. Mr. Sossamon responded that

it was his understanding that the consensus mechanism that is set forth in the Protocols will take precedence.

Mr. Tillinghast commented that he didn't have the power to recognize members of the committee (or not) when he was a discussion leader. He referred to the Procedures for January Formula Negotiated Rulemaking Session ¶8, which states that the Facilitator and Discussion Leader are in complete control; and ¶14, which states that committee members [can be] recognized only when recognized by the Facilitator or Discussion Leader. Mr. Tillinghast stated that this is his problem, and that in substance, if not in name, Mr. Heisterkamp is a facilitator. Mr. Boyd stated that last week HUD received a copy of the Alaska resolution. Referring to the discussions that had taken place in Las Vegas in December with the co-chairs, Mr. Boyd read into the record an email that Dr. Kazama had sent to Mr. Sossamon (Attachment 5). Mr. Hoffman stated that he wanted it known that the association's priority was to bring its issues to the committee, and that Alaska has some big concerns with the process. He added that all in all, he approved the procedures, but there are some issues that are problematic. He suggested that perhaps the committee could come to some agreement by altering ¶8, and ¶14. For example, he stated that he would like to see a chairman appointed to be in control of the process. He reiterated that the committee initially voted to have a chairman in control, and he is not comfortable with have someone who is not a committee member having control.

Mr. Sossamon commented that during the last meeting, there was a question about the chair advocating a position, and it was necessary at that point to transfer the seat of the chair to a co-chair, and then to the facilitator. He stated that what the procedures are attempting to do is to provide an opportunity for Mr. Sossamon to participate and advocate for those he represents without abuse of the chair. He added that it is an exercise of the authority of the chair to turn the meeting over to the facilitator and discussion leader. Mr. Sawyers suggested deleting 'Discussion Leader' from ¶8 leaving Facilitator only. Mr. Hoffman agreed and asked if that would also apply to ¶14. Mr. Sossamon recommended striking the three instances where Discussion Leader is equated with Facilitator. Mr. Hoffman called for consensus on the Procedures as amended. Ms. Tooley requested that the changes be clarified. Mr. Tillinghast noted that both ¶8 and ¶14 would be changed and that there was nothing in the 5-minute rule (handed out this morning) that needed to be changed. Mr. Sossamon directed staff to strike 'and the Discussion Leader' from the two referenced paragraphs. He added that the intent was to keep the integrity of the committee. He announced that there was a call for consensus.

Mr. Bush commented on the proposed 5-minute rule, stating that the committee has been negotiating for the last 6 months and that the proposals that have been included for discussion take us back to square one. He asked how new proposals and explanations of old proposals could be addressed in 5 minutes. Mr. Sossamon stated that he thought that that if you are presenting a position, you are limited to 5 minutes; if there is a question regarding the proposal, which is directed to you, that time answering will not be held to 5 minutes. He asked for confirmation. Mr. Heisterkamp stated that to relieve some of the burden, it was anticipated was that committee members could sit down prior to the time

that the issue is addressed within the facilitator and discussion leader so that the issue could be summarized by the discussion leader so that an individual member's time is not eaten up. He added that minimum funding is a particularly challenging issue, however, there are certain issues where very little background is needed due to previous discussions. Mr. LaPointe asked for clarification on whether one committee member could yield to another committee member. Mr. Heisterkamp responded that there were no provisions for that currently, but it is possible to change. Mr. LaPointe stated that he is uncomfortable yielding to non-committee members, but would yield to another committee member. Mr. Sossamon pointed out that there had not been such a provision included to ensure that the discussion isn't dominated. Mr. Sawyers stated that he thought a committee member could yield time to another committee member. He added that he didn't have heartburn on this issue either way, but it was what he understood. Mr. Ducheneaux asked why a committee member couldn't yield to another committee member if he could yield to someone in the audience. Mr. Sossamon explained that the rationale was if you feel strongly enough about the issue, you should articulate the position by yourself. The rule was meant to afford each committee member that opportunity, not afford members the opportunity to accumulate time. Mr. Adams suggested there be a one-time yield, with a limit of 10 minutes. Mr. Sossamon referenced ¶6 in the 5-minute rule procedure, which should be changed: ...Committee Member will be allowed to receive one additional five-minute period from another committee Member; and, ...will (not) be able to speak for more than ten minutes total....

Mr. Naize asked for clarification that what is being said is that a committee member would be allowed to yield to any member of the committee. Mr. Sossamon confirmed that was correct, and that each committee member can yield to someone in the audience or to another committee member. Mr. Naize stated that he would have a problem yielding to another committee member, since this could result in someone dominating the discussion. Mr. Sossamon responded that it gives a committee member an option, but prevents any committee member from accepting more than 5 minutes from any committee member. Mr. Naize commented that so long as the discussion on a particular item is allowed 5 minutes on each issue, he would agree. Mr. Sossamon restated that each committee member had their original 5 minutes, plus 5 more minutes that have been yielded. Mr. Naize clarified that a committee member could have 10 minutes, and if so, he stated that he would have a problem with that. Mr. Bush stated that he could accept the extra 5 minutes, if a committee member wants to yield to another. However, he reiterated that he still wanted to know how to address issues where there is more than one proposal. He stated that he doesn't understand how points are going to be articulated up front in such a short period of time. Mr. Sossamon commented that it is not what we have done; it is what we have not done that has gotten us to this point. He added that each proposal will be gone through and be put forward. Then each committee member can have 5 minutes to promote the proposal; and, there will be a call for consensus. He also stated that there was agreement on the procedures except for yielding of the time. He then read ¶6 of the 5-minute rule.

Mr. Sossamon asked if there were any objections. Mr. Bush asked for clarification that the committee is not limited to the 18 Tabs, and could submit language from a sidebar. For example, if committee members can hammer out a proposal outside the committee, and come up with one proposal, can a compromise be introduced that might be entirely different. Mr. Heisterkamp responded that was ok, so long as there is existing language in the Tab. He reiterated that having language provides something to negotiate from, so if you come up with a proposal that is different, yes. But if no one has submitted a proposal, then there is not the opportunity to introduce something new. Mr. Bush stated that Tab 18 is empty since no one submitted a proposal, so there is 90 minutes left over. Mr. Heisterkamp stated that any surplus time in the procedures can be redistributed to non-consensus items by consensus of the committee, but he cautioned the committee not to bank on extra time. Mr. Bush again asked if there is an empty slot, can there be language drafted up and submitted. Mr. Heisterkamp reiterated that under the current procedures, no. Mr. Bush commented that the procedures weren't adopted, and the committee is being asked to adopt the procedures now. Mr. Sossamon stated that in a case in which a tab is provided, if a proposal can be developed, it would seem reasonable to be able to submit that language. Mr. Sawyers commented that it may be reasonable, but committee members have had a month to submit proposals. He reiterated that a deadline was decided upon, and if someone didn't have the time or interest within the 30 days, why should you have the time now. Mr. Sossamon pointed out that a Tab without language, might fall into the non-consensus item batch. Mr. Tillinghast agreed that the deadline was January 9th for position papers, but if a few words could save language that had been discussed previously, it would be foolish to not address the issue. A/S Liu expressed support for the concerns articulated by Mr. Sawyers. He added that this meeting was not part of the original plan, and there shouldn't have been a seventh meeting. He reiterated that all these issues have been around for a long time, and if there is no language, there's probably a good reason.

Mr. Sossamon stated that the question was put forward to accept the procedures as amended. He asked if there was anyone who couldn't live with them. He asked if there were any objections. Hearing none, Mr. Sossamon announced that the committee would now move forward. (The revised and agreed upon Procedures and Five-Minute Discussion Rule can be found in Attachments 6 and 7, respectively.)

Mr. Sawyers stated that Tab 7 incorporates Tab 18.

Mr. Sossamon announced that there was a few minutes left until the scheduled break, but that the committee could chose to break now, and return at 10:15 am at which time the meeting will be turned over the facilitator.

The committee returned at 10:15 am at which time the 90-minute clock was started and discussion began on Issue 1. Mr. Heisterkamp introduced the issue, which is referred to as 'over/under' (Attachment 8). He read the proposal. The discussion began.

Mr. Adams clarified that the regulation on over/under, §315, was high on the priority list when the co-chairs met in December, and that HUD was in agreement to bring this up first. He added that there were some changes, and directed the committee to the language on the top of page 1. A/S Liu commented regarding drafting style and regulation writing, pointing out that the sentence in ¶1 beginning ‘they shall...’ is a restatement of what has already been stated and should be deleted; and that ‘they’ is not a term that is used in regulations. Mr. Adams stated that there was additional language on the proposal language, which was presented to the committee.

“With assurance and agreement made with the Negotiated Rule Making Committee that HUD will provide back-funding for any undercount of units which occurred and were reported or challenged prior to October 30, 2003, the Negotiated Rule Making Committee agrees that the following additional regulation provision shall be added to the NAHASDA regulations.”

He noted that these changes are conditioned upon a letter being sent by HUD upon finalization of the particular regulations summarizing this decision. A/S Liu confirmed for record that this is accurate and that HUD was addressing the points. Mr. Shuravloff asked for clarification. A/S Liu responded explaining that typically any changes have to be made within 45 days, and that HUD had compromised on 60 days, which is more time than is usually provided.

Regarding §319, Mr. LaPointe suggested that ‘timely manner’ should be more specific, and he suggested 2 fiscal years. Ms. Gore asked if setting a time period by which people can make corrections would have a cost in time and money. Mr. Adams replied that HUD didn’t know or have information on that. Mr. Reed commented that in some regions, HUD has allowed up to 5 years to pay back and so he suggested no more than 5 years. Mr. LaPointe motioned to change ‘timely manner’ to ‘5 years.’ Ms. Falkner asked if this discussion was fine-tuning, and asked the committee if there was basic agreement.

Mr. Adams called for consensus.

Ms. Falkner asked if there was consensus, with any additional wordsmithing to be handled by the drafting committee. Mr. Frank asked for clarification on the five-year period. Mr. Reed clarified that this referred to repayment within 5 years.

Ms. Falkner announced that consensus had been reached on Issue 1 (Attachment 9). She announced that the committee would take a 15-minute break. Mr. Sawyers announced that Alaska and UNAHA would provide coffee today and suggested that others do the same over the next few days.

The committee returned at 10:40 am at which time the 90-minute clock was started and discussion began on Issue 2 (Attachment 10). Mr. Heisterkamp introduced the topic, explaining that there is one proposal to change a definition that currently exists in the regulations, which includes a median income definition. He further explained that the proposal deletes some language, and then includes a change to §302, to strike ‘formula median income’. The discussion began.



Mr. Sawyers stated that this proposal is a definition change and only a definition change. He added that he has spoken with many people about this and when the regulations were drafted initially there was only one source of data, but now there is more data available. He stated that the proposed language would comply with national median.

[Ms. Falkner recognized Coni Wilson as alternate for Ms. Brings Yellow.]

Mr. Frank directed a question to HUD as to whether this would allow tribes to continue to utilize formula median income, even though it has been stricken. A/S Liu responded by stating that HUD wasn't sure. He added that under the current regulation, tribes have the flexibility to use formula median. This proposal would eliminate formula median income, and use median income under §414. He further pointed out that the intent was to use the higher of median income or national, and there would be an impact by allowing more people to be counted. A/S Liu added that there is an impact on the formula in general, as it will make some change. Ms. Gore stated that this would shift dollars from higher cost and higher income areas to lower cost areas. She stated that she wanted to make certain that this is clear. She also asked for clarification on whether the discussion was on the language that is deleted under §302 or the language submitted under the proposal. Mr. Sawyers responded that the discussion referred to the language per the proposal. Mr. Frank stated that if this is deleted, then he has a problem in his part of the country where the tribes rely on the local areas and counties. He reiterated that he would have to be opposed to the change or deletion of this portion. Mr. Naize yielded to Mr. Carl, who noted that he understands HUD's position that by changing the definition, it will disallow the tribes' ability to serve one or the other and may take away tribal determination. He added that according to the effect that Ms. Gore mentioned, he doesn't know what the effect will be. Mr. Adams provided a clarification that the strikeout language is actually going back to the statute language. Mr. Coyle agreed with Mr. Frank, pointing out that this change would affect the entire NW area, and he would not be able to accept the proposal as is. Mr. Frank commented that it was his understanding that the regulations are typically an attempt to clarify the statute. And, he asked if this proposal is an attempt to clarify. Mr. Naize asked for a clarification on the strikeouts relative to the statute. Mr. Sawyers responded that the only thing that would be stricken is what appears. He stated that it is reasonable to service anyone who is at or below the national median income, but you are only given credit for the people in your area. He added that it doesn't make sense not to count in one category and to count in another. He stated that it is the intent of the proposal to comply with the statute.

A/S Liu provided a clarification from a legal standpoint, stating that it is HUD's opinion that the use of formula median income is in compliance with the current statute. He added that the committee could chose to eliminate formula median income, but the effect is that the definition would be changed. He added that this would shift dollars. He then yielded to Mr. Richardson, who explained that in general, when you change the definition, it increases the total population in some areas, whereas the population stays the same in others. He pointed out that when you change the denominator where allocation of dollars is by share, money would shift around a little. For Navajo, for

example, the number of households below median income will increase, but the allocation will not change. He reiterated that places that have no growth as a result of this would lose 12 – 14%; places that gain, will gain about 12 – 14% (where shares translates into dollars). Ms. Tooley asked if there was a data run available that shows the shift in dollars if this proposal is implemented. It was pointed out that TR41 addresses the issue, and that it is available at the Resource table in the back of the room. Ms. Tooley pointed out that TR41 was missing from the reference book. It was clarified that TR37 addressed the issue.

Mr. Adams stated that the net effect is a shift for county people who are not getting money to serve the people in their counties. Mr. Hudson stated that local areas whose Indian income is lower than national median would gain because they will have more people falling below the national median; areas with higher incomes will lose. Mr. Sawyers pointed out that the reason we talked about this is because it was the only data we had, but now there is other data available and so you have to look at it differently. A/S Liu yielded to Mr. Richardson, who agreed with Mr. Hudson's observation and added that if you increase the number of households that are included nationally, anyplace where the median is above the national income will go down in income. Some places that have an increase in the number of households still will receive a decrease in funding due to other places that have a bigger increase. For example, the Oklahoma area will increase, while NW and Alaska will decrease. Mr. Hudson asked if growth is disregarded, is this the correct interpretation. The answer from Mr. Richardson was affirmative. Mr. Ducheneaux yielded to Ms. Kidder who stated that if the committee makes decisions based only on money, it wouldn't move anyplace. She added that the statute says that tribes must serve those at 80% or less of national or local median income, whichever is lower. She reiterated that these are the people who you are supposed to serve, and if you have to serve them, you should get funding for them. She stated that this is not a matter of regional – national or local, whichever is greater – it is a matter of what is equitable, and reiterated that the statute calls for the greater of local or national.

Mr. Sawyers called for consensus, but added that if this isn't possible, he'd like an alternative. Mr. Sossamon requested instead if there were any objections to the way it is, instead of consensus. He called for a show of hands, so that the committee could continue to engage in discussion that may lead to a compromise. Mr. Sawyers agreed. There was a request for committee members to raise hands to signify opposition. There were a few. It was asked if there was an alternative. Mr. Frank proposed the status quo.

Mr. Ducheneaux requested that the committee members look at the statute, which refers to the extent of poverty and need in the area. He added that if he can't serve people who are below the poverty level of the United States, then the statute isn't being met. Mr. Frank commented that if America was equal in all fronts, in banking or anything, and if these resources were available to tribes and reservations, then he would agree. But, he added, America isn't equal and that's why he's leaning to keep the regulation the way it is, in deference to the indifference to opportunities. He commented that keeping the

regulation as is would provide more flexibility. Mr. Sossamon asked if those who object could suggest something that could be offered in exchange. Ms. Wilson asked for clarification on the tribes in the NW that are gaming tribes that take less of a decrease than others. She noted that this was a concern and that the data doesn't look accurate or fair.

Mr. Adams yielded to Mr. Sawyers, who pointed out that your tribe may have low income, but the surrounding area has a high income, and you benefit from the folks who live around the reservations. He stated that was not fair, adding that the folks we represent do not have jobs and have a desperate need, and that the intent is to give as many Indians you can the opportunity to get help. He reiterated that if the county is high and the reservation is low and you use the county data, the folks on the reservation do not benefit. Mr. Sawyers again asked that a compromise be reached, because if not, a lot of poor people who need help will be eliminated. Mr. Gorynski noted that both ¶1 & ¶2 (under §1000.10) have been crossed out. He asked for clarification. Mr. Naize asked for a caucus. Ms. Falkner responded that clock would continue even if some committee members leave the room. Mr. Hudson yielded to Ms. Kidder, who suggested leaving language in §10, and deleting the language in §302, so that the tribe would receive funding at the greater of either the local or national median. Mr. Coyle asked if this could be phased in over a period of time, and would that be acceptable. Mr. Frank asked for a clarification. Mr. Coyle indicated that his tribe would be taking a 6% decrease, and a phase-in would help relative to other cuts it has had. He added that in five years, he will have accomplished some programs, but if he has to change now, it will be a problem. Mr. Frank stated that this recent proposal to §10 provides further clarification to the statute, so he is ok with it. He added that as far as §302, he sees no benefit in keeping it in since it is already addressed, so he stated that he did not have a problem striking §302.

Mr. Sossamon asked for clarification regarding whether this change would limit a tribe's ability to choose to serve based on the national or local median, and would it simply have an effect on the distribution side. He pointed out that on the service side, a tribe can provide to either or, but on the funding side, a national median is used. Mr. Ducheneaux stated that it would apply on both sides. He then asked for clarification on the phase-in from Mr. Coyle. Mr. Coyle responded that the phase-in would start immediately. He then asked for a clarification on the source of the local median income. Mr. Sawyers responded that the source hasn't changed. He added that there may be some discrepancies, but there is a challenge later. He pointed out that we are looking at what we have available. He also stated that he thought that this was a great compromise, and although there would be some adjustment in funds, it serves all Indian people very well. Ms. Tooley stated that it was her understanding that nothing will be implemented until FY 06. She asked if this was correct. There was confirmation that this was correct. Ms. Tooley yielded one minute to Mr. Adams, who asked if there was anyone who still objected.

Ms. Falkner requested a pulse check on these changes to determine if there were any objections. Mr. Boyd yielded to A/S Liu, who wanted to note that this is more than a

definitional change. He added that from a broader policy standpoint, this would raise red flags because it allows for the use of information not actually tied to the cost of living in a particular area. He pointed out that the statute allows this, with use of formula median income, which ties the median income. A/S Liu stated that he was not certain whether or not this will make implementation more difficult, but raised the question of why move away from a standard that is permitted, tied to the area, rather than to a potentially artificial cost of living. He added that in other areas of housing, the concern on the Hill and in OMB is growing regarding using data that is not tied to actual costs. He stated that this change would make the argument a bit more difficult. Mr. Sossamon asked if, understanding the shift, would it affect a tribe's ability to serve a local population. A/S Liu responded that it may or may not, but that it does permit the use of information that is not tied to the actual costs of the area. He reiterated that the proposal would use a standard that will shift to the higher of, instead of what might exist in a local area. He added that formula median income allows tribes to use data connected to the actual costs of a particular area. He stated that this is what the appropriators and OMB are looking for. Mr. Hudson yielded to Mr. Sawyers. [It was pointed out that this was not allowed, as his time was up.] Mr. Hudson yielded to Mr. Wagenlander, who pointed out that if OMB has these concerns, they would assert that after this committee makes a decision. However, he added that the process has been explained that this committee, which can make its decision, and then OMB can come back for further review. He added that 5 years ago, there was a lot of asserting about what OMB may be thinking. He reiterated that if this committee feels that this is statutorily acceptable and equitable, and that there is now data available for it to be done, then this committee should do what it thinks should be done, and allow OMB to come back later with their concerns. Mr. LaPointe asked for a clarification regarding whether tribes are currently being funding at local median. The answer was affirmative.

Ms. Falkner announced that there was a call for consensus. There was one objection. Ms. Falkner announced that the issue is closed. Mr. Bush asked if this will go into the Preamble as a non-consensus item. It was stated that it would go into the Preamble as a non-consensus item. Mr. Sawyers noted that it would state that there was one objection.

Mr. Naize stated that since there was still time left, could the discussion resume. Mr. Adams asked again if there was something that could be done to accept this, noting that there was only one objection. Ms. Wilson stated that Quinault wouldn't take a big loss, but sees some tribes that would, and there are wealthy tribes that are taking less of an increase than other poorer. She added that there would still be a shift in funds. She also stated that she feels as though she is expected to make an uninformed decision. She pointed out that there isn't enough funding to service all the people now, and they will have to take a decrease, and she doesn't know what the impact will be. Mr. Bush yielded to Mr. Sawyers. [It was pointed out that Mr. Sawyers reached 10 minutes and didn't have any time left to take.] Mr. Sossamon stated that this situation was one of the things we hoped we wouldn't run into, which is a new member who hasn't been here all along and who doesn't have the information available. He stated that this was holding up the entire

issue, and that the information has been available for months. Mr. Gorynski commented that the median income in the NW area affects that family as much as any other area, and when you change the formula, you will help people below median income. He pointed out that costs are different throughout the country, and this is reflected. He added that as far as a tribe's ability to help people, that's exactly what we should be doing.

Ms. Falkner asked if there were any other comments. Mr. Boyd stated that it was his understanding, based on the procedures, that once there was a call for consensus the discussion was over. He added that if the committee felt that it wanted to bring this issue up later, if there was consensus to do that, it could. He stated that the committee is going beyond these procedures by continuing the discussion at this time. Mr. Bush agreed with Mr. Boyd, noting that there was a non-consensus item with 25 minutes left. He asked why the time couldn't be reserved for use later on.

Ms. Falkner announced that the issue was closed.

Mr. Naize pointed out that Mr. Sawyers was being constrained by time, and asked if Mr. Sawyers and Ms. Wilson could proceed with their discussion and come to some conclusion. He asked the chair to allow the two members get together and come to conclusion. Ms. Falkner stated that if this discussion is stopped now, there may be time left at the end to revisit. Mr. Sossamon asked for a clarification on whether once consensus is called regardless of outcome, the committee is bound to move on. Ms. Falkner responded that according to the procedures, once consensus is called, whether it is reached or not, the committee would move on. She added that the remainder of the time could be used later, once all issues were raised. Mr. Bush stated that he had asked for a timeout at 25 minutes. Mr. Naize requested that the time be stopped. Mr. Hudson commented that any committee member could kill an issue by calling for consensus prematurely. He added that the committee is here trying to negotiate and he didn't think the discussion of the issue should stop if consensus is called, but there is interest in having the discussion continue. Mr. Reed stated that the rules are the rules and the committee cannot keep changing them.

Ms. Falkner stated that it was her job is to make certain that discussion continues until everyone is ready for the call for consensus. She announced that Issue 2 had 21 minutes remaining. Ms. Tooley asked if when this issue is revisited on Friday, the 5-minute rule starts over. Ms. Falkner stated that the 5-minute clock would be restarted but there would be no banking of minutes.

The committee recessed for a 90-minute lunch break, to reconvene at 1:30 pm.

**TUESDAY AFTERNOON, JANUARY 13, 2004**  
**FULL COMMITTEE**

The committee reconvened at 1:30 pm at which time the 90-minute clock was started and discussion began on Issue 3 (Attachment 11). Mr. Heisterkamp introduced the topic,

explaining that there the most proposals for this issue. He briefly explained each of the proposals in the order in which they appeared in the meeting binder. He explained that Mr. Sawyers proposal was from a supplemental grant program funded by an unspecified percentage of the IHBG allocation; the proposal from the Citizen Potawatomi Nation is to use unclaimed NAHASDA grant funds from previous years put into a pot from which tribes will be qualified to receive funds; there were two proposals from Phil Bush, the first contains a minimum amount of \$25k with restrictions on FCAS, and the second funds up to \$50k with additional restrictions on FCAS funding; the proposal from the Cherokee Nation is similar to the existing regulation, but tribes receiving less than \$100k, would receive \$25k, subject to FCAS restrictions; and, the proposal from Ms. Tooley is similar to the existing regulation. Mr. Heisterkamp stated that a lot of time and effort has been put into this issue in the past, and requested that committee members specify which proposal is being discussed. He also clarified that rationales had been eliminated, and we are looking only at language (on the screen). The discussion began.

Mr. Sawyers requested that Mr. Bush explain his second proposal. Mr. Bush asked if this counts against his 5 minutes, and if so, he directed Mr. Sawyers to read it himself. Mr. Heisterkamp pointed out that everyone has the language. However, he added that if there is a specific question, answering it wouldn't take away from a committee member's time. He clarified that the 5 minute rule pertains to advocating a position. Mr. Heisterkamp then pointed out that the second proposal was negotiated in sub workgroup and was being considered by the full committee during the last meeting in September. He added that he thinks that we should focus on this one, since it is most similar to what was discussed at the last meeting. He added that the blanks from the last meeting were filled in. Mr. Sawyers agreed that would be a good place to begin negotiating.

Mr. Hudson asked Mr. Bush if the percentage was correct and was intended to equal \$100k. Mr. Bush responded that the committee wanted the amount to be approximately \$100k, and that he thought that the percent was correct. He reiterated that the intent was \$100k. Ms. Falkner asked if there was further discussion. Hearing none, she asked if there was discussion on another proposal. Mr. LaPointe stated that he was concerned and that although he is in agreement in general, he would like to identify a total grant number. He added that he understood that we were at about \$150k inclusive of CAS, which would be the total grant. Mr. Adams asked Mr. Bush if this was what was negotiated in the sub workgroup, noting that the numbers were not included in the language. Mr. Bush responded that the workgroup had left the numbers blank, but that he filled in the blanks for the purposes of this discussion, knowing that the proposal had to be submitted for discussion. Mr. LaPointe suggested going back to blanks and work back to a total grant of \$150k, until we can agree to the total grant of 150k. Ms. Wilson stated that she was confused, and asked if the committee was going to go through each proposal and then come up with something at the end. Mr. Bush stated that the committee and workgroup has been doing that for the past 6 months, and narrowed all the proposals down to one proposal at the last meeting. He added that he was dumbfounded to see the other proposals this time.

Ms. Falkner asked if this was the proposal that the committee wants to work on and not look at the others. She asked if there were any objections. Mr. Sossamon stated that he wanted to look at Ms. Tooley's proposal. Ms. Tooley stated that this proposal was only submitted because the current provisions were enacted through a waiver, and so she submitted this proposal if all else fails.

Ms. Falkner asked again if there were other proposals to look at. Mr. Sossamon reiterated that he wanted to look at Ms. Tooley's proposal; Mr. Gorynski stated that he wanted to look at §352 from Mr. Sawyers' proposal, and perhaps move that into Mr. Bush's proposal. Mr. Naize yielded to Mr. Carl, who stated that there are three indefinite thresholds, although \$100k is what was conceptually agreed to in the sub workgroup. He added that his primary interest is what the threshold: \$25k, \$50k, or \$100. Mr. Carlile withdrew his proposal. Mr. Bush withdrew his first proposal.

Ms. Falkner directed the committee to take up the amount, as suggested by Mr. Carl. Mr. LaPointe suggested that the amount be \$100k for the total grant. Mr. Hudson suggested that the amount should be kept to Needs, and added that if it's a lower amount and based on the total grant, it will be confusing. Mr. Jones objected to the funding being only in Needs portion. Ms. Falkner announced that the Bush, Sawyers, Cherokee, and Tooley proposals are open. She asked for comments. Mr. Sossamon proposed that the minimum funding level should be \$50k per year, so long as total funding doesn't exceed \$500k per tribe (re: Bush 2 proposal). Mr. Shuravloff asked if this would apply to tribes that are in umbrella TDHE, specifically in cases where the TDHE owns the FCAS, not the tribes. Mr. Sossamon responded that if the tribe has need, it would be eligible, so long as that individual tribe's FCAS doesn't exceed \$500k.

Ms. Falkner asked if the committee was ready to make a decision on this issue. Mr. Sossamon responded that he did not think so. Ms. Falkner asked if there were any other questions or comments. Mr. Bush commented that when the workgroup was discussing this, it kept coming back to a percentage enabling the amount to fluctuate with changes in the allocation. He pointed out that a dollar amount wouldn't allow for that flexibility, but that he would still like the amount to end up at about \$100k. Mr. Sossamon stated that he would be willing to add language that is 'the greater of \$50k or a percentage,' but that the percentage for this proposal be based on the projected \$639 million available for FY04 and would be equal to \$50k. He agreed that there would be the potential for increases and decreases. Mr. LaPointe stated that he was in agreement, but is concerned that it will be earmarked as Need money. He added that he would like to earmark this money specifically for Need and not used for FCAS. Ms. Falkner asked how he would change the proposal to reflect that. Mr. Sossamon responded that FCAS and minimum funding could be taken out, and then allocate for Needs, which would do the same thing. Mr. Sawyers commented that if you agree on \$50k in the second section, then you could delete it from first section. Mr. Bush disagreed, and stated that if a tribe hasn't demonstrated need, it would get one-time funding of \$50k. Mr. Sawyers pointed out that the language doesn't say 'one-time.' Ms. Falkner clarified that the first section is

intended to be a one-time grant used to demonstrate need. [‘One-time grant’ was added to the language.]

Mr. Coyle asked HUD if the \$50k could be used for administrative cost. A/S Liu responded that this proposal only permits a tribe to request funding, but it is not a mandate that the tribe will receive the \$50k to demonstrate need. He stated that his concern is, as currently written, what standards would HUD use to approve or deny the request. For example, is the tribe going to use the money to gather information. Or is something more going to be provided. He added that the minimum funding has been around for years, and one would hope that those tribes having difficulty demonstrating need would use this funding for that purpose. He stated that he didn’t think that the proposal addresses the issues as written. Mr. Sawyers commented that he didn’t think that the criteria change, and so they would be the same as they were. He added that the other section kicks in when Need is demonstrated. He pointed out that 5 years ago the committee allowed for any tribe that wanted to put together some kind of a plan to do so with a one-time \$50k grant to help establish need or establish a program. Mr. Bush disagreed and stated that this was negotiated language. He reiterated that if a tribe is going to receive funds, it should have some basis. He then suggested that perhaps, the language should state that the tribe is eligible for one-time the first time. Mr. Sawyers suggested using the same language as before. Mr. Bush stated that he would like to remove the whole section, and added that when it comes to the first paragraph, he doesn’t have a proposal. He reiterated that he didn’t care if this section was in or not. He stated that his goal is minimum funding of around \$100k for tribes with need so that they have an opportunity to begin addressing that need. Mr. Bush emphatically stated that \$25k or \$50k is not fair. He added that committee members can go through all the data, and there are tribes that need 60 homes that are receiving \$25k. He commented that this doesn’t address the Need, pointing out that the workgroups looked at TDCs and all different issues and now we are back to where we started. He restated that if a tribe has need, this committee must figure out a way to fund.

Mr. Adams recommended striking the first paragraph, and then asked if there was any opposition and if so, why. Mr. Frank stated that he has a concern about dropping the first paragraph because of the new startup tribes. He pointed out that this language provides funding to those tribes to build up data, and he would rather see it stay in.

Ms. Falkner asked if there was further discussion on the second paragraph. Mr. Ducheneaux yielded one minute to Mr. Sawyers, who stated that the committee already has language. He suggested using the existing language to take care of this problem. He also suggested that the committee start by discussing the dollar amount and go from there. Mr. Sossamon proposed that a percentage be inserted instead the dollar amount, but that the amount be equivalent to \$50k. Then, if funding goes up, the minimum goes up. Mr. Adams stated that .0078% is roughly \$50k of \$650m. Mr. Sossamon asked if this was a percentage of the overall allocation, or what’s available for distribution. Mr. Bush replied that it was a percentage of the Needs distribution. Mr. Adams stated that .0078% would then be incorrect.



Ms. Falkner asked if the intent was for a percentage or dollar figure. Mr. Sossamon stated that his proposal was tying a percentage to the overall grant. Mr. Bush responded that the current regulation refers to Need only, and if you are talking about the total grant, then you need to look at a larger dollar figure. Mr. Sossamon clarified that a tribe would receive the minimum funding under Needs, but that the percentage would be tied to the overall grant. Mr. Bush agreed. Mr. Sossamon restated that the \$649m total appropriation and the percentage is tied to that number. Mr. Bush stated that he did not have a problem with the approach, but that he did have a problem with the dollar amount of \$50k.

Ms. Falkner requested that staff calculate the figure. Mr. Adams clarified that the dollar amount was \$50k. Mr. Naize yielded to Mr. Carl, who stated that the committee is trying to tie the percentage to a dollar amount, but the committee doesn't know what the set asides are. Mr. Sossamon responded that the committee was trying to determine the percentage based on the allocation available for distribution after set-asides. Mr. Naize yielded to Mr. Carl, who suggested that the committee not focus on the percentage, but rather begin to negotiate the dollar amount. Ms. Falkner pointed out that the amount being discussed at this time was \$50k. Ms. Tooley suggested \$100k. Mr. Sossamon asked for a show of hands for support amongst the committee for \$100k. [There were only a few hands raised in support.] Ms. Falkner asked if there was another amount to be discussed. Dr. Kazama suggested \$50k. Ms. Falkner asked if there were any other recommendations. Mr. Jones stated that the Cherokee proposal is still on the table.

Mr. Adams asked how many committee members would support \$25k. [There were two supporters.] Ms. Falkner: any discussion on dollar amount? Mr. Sossamon stated that he would support \$50k, to be taken out of the total block grant available for distribution after set asides. Mr. Jones stated that the Cherokee proposal could be zero. A/S Liu reminded the committee members, if a percentage is referenced, that set asides come in all different kinds and amounts, sometimes in the millions, or tens of millions, and that the committee should be aware that the unexpected might happen. He added that if there is a percentage tied back into a specific amount, there is a considerable amount of uncertainty.

Ms. Falkner announced that there were three proposals left. Mr. Gorynski suggested changing \$500k to \$250, as a threshold. Ms. Falkner asked if there were any objections to \$250k. Mr. Bush stated that he objects, and added that if the committee is now talking about \$25k or \$50k, similar to what we currently have, then both proposals should be withdrawn and the committee should move onto Ms. Tooley's proposal. He stated that if the amounts drop, he could never agree.

Ms. Difuntorum stated that she supported the proposal currently being discussed (Bush 2) because it was closest to what was agreed upon at the last meeting. She also commented that 90 minutes was not an adequate amount of time to discuss all these proposals. Mr. Bush asked if she was recommending 90 minutes for each proposal. Ms. Difuntorum responded that she was not suggesting 90 minutes on each proposal, but if there is time left over, perhaps it could be designated for looking at the minimum funding proposals

further. Mr. Hoffman pointed out that this issue has been discussed a lot in Alaska and in the committee. He stated that he has a lot of small tribes and would prefer to see a larger number, but agreed that this must be fair for all tribes. He also stated that it appears that a compromise could be reached and he urged support for \$50k so that the committee can move on. He added that the committee has heard many issues with respect to the needs of small tribes; it appears that \$100k is too high, and \$25k is too low. He stated that he thinks that \$50k is adequate because it was the initial amount that NAHASDA approved. He reiterated that he thinks that the committee is ready for the compromise, and the majority of the committee members are in agreement with \$50k. Mr. Hoffman stated that he didn't see any other alternative proposals, and felt that the small tribes shouldn't be zeroed out; that it would be unfair to wipe them out from the appropriation. He concluded by stating that \$50k is a reasonable amount. Mr. Sossamon reiterated that he would like to use the percentage so that as the appropriation goes up, the minimum funding can increase. He reiterated that it would be set to be equal to \$50k based on the FY03 allocation. He added that if appropriation goes down, then everyone feels it.

Ms. Falkner asked if there were any other comments. She asked if the committee was ready to call for consensus. She asked if the committee had finished its discussion. Ms. Falkner announced that there was a call for consensus on the Cherokee proposal. Mr. Frank yielded time to Mr. Sossamon. Mr. Sossamon stated that he would encourage everyone to support this proposal.

Ms. Falkner announced the call for consensus on the revised Bush 2 proposal. Mr. Bush objected to the call.

Ms. Falkner announced the call for consensus on the Cherokee proposal. Consensus was not reached.

Ms. Falkner announced the call for consensus on the Tooley proposal. Consensus was not reached; there were three objections.

Mr. Naize requested the floor, and yielded to Mr. Carl, who stated that the committee members have not called for consensus. He stated that the facilitator couldn't call for consensus or rush the decision. Ms. Falkner responded that the committee needs to let her know if it is not ready. Mr. Bush requested that the last 19 minutes be reserved in order to provide the committee the opportunity to continue to work on this issue off line.

There was agreement, and the clock was stopped at 19 minutes and 17 seconds.

The committee took a 15-minute break.

The committee returned at 2:55 pm at which time the 90-minute clock was started and discussion began on Issue 4 (Attachment 12). Mr. Heisterkamp introduced the topic, explaining that there were two proposals, one from HUD and one from Ms. Tooley that referred to the 2000 amendments, averaging 1992 – 1997 CIAP monies. Mr.

Heisterkamp summarized that the language amends §316 and §340 in the existing regulations. He further explained that the regulation is needed to implement the statute. He added that he believes that there is agreement to begin with Ms. Tooley's language. The discussion began.

Dr. Kazama yielded to Mr. Tillinghast, who directed attention to NAHASDA §302d (before 2000) regarding hold harmless for 1996 operating costs. He stated that there was a concern that in 1996 there was a CIAP windfall for some tribes, so Congress included language directing smaller tribes to use a 5-year average of their modernization grant. He added that the 'hold harmless' is for tribes with over 250 units, and the 5-year average is for tribes with fewer than 250 tribes. Mr. Tillinghast stated that the proposed language gives the tribes the option of the 5-year average or 1-year, whichever is greater. He added that he is aware that Congress tried to take away the windfall and exempted the smaller tribes from the windfall by using only the 5-year average. He stated that he recommended prefacing §1000.340 with 'except for a tribe described in §316' which would parallel the 2000 language. Mr. Sawyers commented that the small tribes are concerned that the CIAP funding was a competitive offering and in some years a tribe may not have received any funding. He added that he wouldn't have a problem if the 5-year average was a floor. Mr. Tillinghast responded that the CIAP tribes would only receive the 5-year average, and that this was not an option to use 1-year or 5-year. Mr. Sawyers commented that the proposal is attempting to fix that problem. He opined that this was not fixing the problem and that going back to the minimum of the 5-year average is not fair. He added that if the 1996 allocation is removed, then the small tribes wouldn't be hurt. Mr. Tillinghast responded by stating that Congress already took it away and that he would be surprised if HUD could change a statute through a regulation.

Ms. Falkner asked if there were other comments. Mr. Reed asked for a comment from HUD. Ms. Tooley stated that in the HUD proposal, they tried to clarify and implement the committee's direction the last time this was discussed. She explained that a tribe would never get less than the NAHASDA formula and in trying to ensure that and remain within the statute; you could only do it with the greater of the calculations. [The HUD representatives returned and it was pointed out that Mr. Reed had requested an explanation of HUD's position.] A/S Liu yielded to Ms. McFadden, who stated that the HUD proposal is the original proposal that was presented out of the workgroup and has not been changed except for the date. She added that it follows the statute and is very similar to Ms. Tooley's proposal except that it doesn't provide the additional cushion. Mr. Reed asked if a tribe with less than 250 units had the choice of using the 1996 amount or the 5-year average, and whether HUD's interpretation is the same as Mr. Tillinghast's interpretation. Ms. McFadden responded that HUD believes that this is a permissible approach and it is allowed in both the proposals. Mr. Reed stated that it was contradictory to Mr. Tillinghast's interpretation. A/S Liu commented that by providing a proposal, it is apparent that HUD takes its statutory mandate seriously. He added that this statute has to be implemented, even if they don't necessarily support the policy incorporated in the statute. He added that he is concerned about a situation in which Congress will come back and question the CIAP grant numbers to firm accomplishments

and counts regarding units. He also stated that the committee is talking about a grant amount, not actual units, and that HUD would implement what it had to implement.

Ms. Tooley asked Ms. McFadden to clarify the differences in the effect between the language in the two proposals. She added that the intent was to clarify the language, not to change how to apply it. Ms. McFadden responded that under the HUD proposal, the tribes that have fewer than 250 units that received an amount in 1996, will no longer receive that amount, and instead, would receive the amount of the 5-year CIAP average. Ms. Tooley stated that in her proposal, the language allows the tribe to take the greater of the calculation of the 1996 amount or the 5-year CIAP average. Mr. Hudson asked about umbrella housing authorities that have more than 250 units, but none of the component tribes have more than 250 units. He added that tribes have pulled out of the umbrellas, and so which calculation would a tribe that was part of an umbrella in 1996 but now stands on its own use; would they use the 5-year average of the housing authority. Ms. Tooley responded that it all goes back to the number of units in 1997. Mr. Hudson restated his question, and reiterated that the tribe has fewer than 250 units currently in own HA, but in 1997 was part of an umbrella with a total of more than 250 units. A/S Liu stated that because the CIAP grants were made to the organizations that were in existence at the time, HUD has not yet decided how to deal with this situation. He stated that he did not have an answer.

Dr. Kazama yielded to Mr. Tillinghast who stated that the issue is whether these tribes had to use the 5-year CIAP average or the 1 year amount. He added that if you were a CIAP tribe, then you have to use the 5-year average. He suggested that the committee look at §340b, which states the 1-year hold harmless clause. He added that there is no language in HUD's proposal that excludes CIAP tribes from using this. Mr. Sossamon stated that he interprets ¶b as a regulation that deals with the legislation guaranteeing that there will be no less funding than what a tribe received in 1996. Mr. Tillinghast disagreed. He commented that if you go to §302d, in 2000 Congress excepted CIAP tribes, which could no longer use the 1-year 1996 grant amount. Mr. Reed requested clarification that the rule that HUD has developed does not give small tribes the option of 1-year or 5-year, but Mr. Tillinghast is saying that there needs to be language to exclude; Ms. Tooley's proposal allows for both; and the HUD proposal provides an option.

Mr. Sawyers stated that HUD is saying that there is an option, but in effect, almost every tribe with fewer than 250 houses will have to use 5-year average. He added that most tribes did not receive CIAP every year of the 5, so that the net effect is that the amount will be reduced, and it will cost those small tribes significantly. He stated that the committee must agree on this and if it has to go to court, then we'll address it. He reiterated that this would have an effect on many small tribes. Mr. Sawyers suggested removing Mr. Tillinghast's proposal. Mr. Bush suggested looking closely at Ms. Tooley's proposal because it gets us closer to where we want to go. Mr. Sawyers asked for a show of hands.

Ms. Falkner asked if there were comments on Tooley proposal: any comments on ¶a in Ms. Tooley's proposal. There were none. Ms. Falkner then asked if there were comments on ¶b of Ms. Tooley's proposal. It was pointed out that the language was the same as in the HUD proposal. Ms. Tooley stated that what she was trying to do with ¶a was if you fell under §316b2 (fewer than 250 units) and the calculation came up to less than that in the regular FCAS modernization portion of the formula, then you would get the greater of the calculation. She added that it was her understanding that if the committee did not reach consensus on a regulation, then there would be tribes that would be receiving less than their 1996 modernization funding.

Ms. Falkner asked if there were any other comments or concerns. She asked if the committee was prepared to make a decision on this proposal. [There was approximately 10 minutes of offline conversation.]

A/S Liu commented that this is a significant issue and he requested that Mr. Richardson explain the impacts to the committee. Mr. Richardson stated that currently tribes look at total grant across CAS and Need, and if that amount is less than the 1996 modernization money, the tribe's grant is increased. He pointed out that this affects 13 tribes. He stated that this proposal looks at modernization and if the amount is less than the tribe would have received based on the 5-year average under CIAP, then the tribe's modernization grant is increased. He pointed out that this would affect 27 tribes by a total of \$3.4 million dollars. Mr. Sawyers stated that if the committee does nothing, then the result would be that the tribe goes back to the 5-year average, but this is not a floor. Mr. Richardson commented that he was not sure what would happen if the committee does nothing. He added that if we assume that the law states that we need to go to an average, then it would have a smaller impact than this proposal, and would probably affect 5 or 6 tribes.

Ms. Falkner asked if there were any other comments. Mr. Bush commented that he heard that the way the statute is worded that it caps those tribes, which is what we were trying to fix. He added that the run that was performed showed that the smaller tribes would receive less. Mr. Richardson pointed out that he was only speaking to the issue of Ms. Tooley's proposal language. He reiterated that he was only talking about the current system and going to an average under the current system. Mr. Sawyers stated that in our meetings, it was clear that if we don't do something to fix this, that the possibility of going to the average was real. He added that the intent was not to confuse the issue, but it seems to have. A/S Liu commented that the HUD counsel attempted to convey that the law required HUD to do something, given the 2000 amendments. He added that the proposal that was put forward, and upon which Ms. Tooley's proposal evolved, does effectuate the policy direction that appears to assist and help more of the small tribes. He acknowledged that a competing view has been put forward, which has a different policy effect, and which would depress the amount available for small tribes. He added that this is something for the committee to weigh. He did note that he foresees that the CIAP factor will be overturned at some point in the future and that there are competing interpretations with different program outcomes.

Ms. Tooley commented that it sounds as though the amendment that was passed may be removed. She asked if HUD was working to remove it. A/S Liu responded that HUD was not trying to have it removed, but this type of statute is being removed across the board. He pointed out that the appropriators are looking much more closely at these issues, and that the issues regarding appropriations for Indian housing are the same for VA and HUD overall, and the same questions are asked. Ms. Tooley queried if in the future, someone may remove the language from NAHASDA, does that mean we shouldn't put in a regulation. A/S Liu responded that HUD has an obligation to implement the law. Mr. Bush asked if HUD preferred one proposal over the other. A/S Liu responded that he had a slight preference to the HUD proposal. Mr. Bush asked if there was a problem with either proposal, or would it be just a matter of which we like better. Mr. Sossamon pointed out that the way he interprets §340, a tribe's modernization allocation can never go below the modernization and subsidy amount received in 1996 regardless of the number of units a tribe has. He added that then ¶b states that a tribe's overall grant can't go below that amount either, so a tribe's modernization could grow if the average is greater, but no tribe will receive less than its 1996 modernization and subsidy. Mr. Reed commented that he didn't see how that could be, and stated that if the 5-year average increases the amount, someone is subsidizing that increase. Ms. Gore stated that she was confused. She recapped that she has heard that there is an impact on 5 tribes, 27 tribes, millions of dollars, etc. She stated that she needs to know where the money is coming from and how much. She requested clarification. Mr. Ducheneaux stated that he was confused also.

Mr. Sossamon asked how this differs from what is currently being done, what is the dollar impact, and to whom. A/S Liu responded that HUD only had an aggregate figure of 27 tribes and \$3.4million dollars, which has to be offset from the overall allocation pie. Mr. Sossamon asked for clarification that these 27 tribes would receive \$3.4 million. He asked if the tribes are currently averaging or using the 1996 amount. A/S Liu responded that the tribes are currently using 1996 amounts. Mr. Sossamon asked if the amendment requires that they average. It was confirmed that this is correct. Ms. Gore asked if it was correct that the committee is trying to approve a regulation that will conform to a statute that is already approved. It was confirmed that this is correct. Mr. Reed asked if this was a net amount, or will tribes have to chose 5-year averaging, and if their 1996 modernization exceeds that amount, will there be a net amount. A/S Liu responded that it is the higher of the two and there is no choice. Mr. Reed commented that there are two proposals: one says that a tribe has a choice; the other suggests that there is no choice. He added that if his tribe had 1996 funding that exceeded the 5-year average, he would have to take a cut under the HUD proposal. Mr. Sossamon pointed out to further clarify, that the 27 tribes that received CIAP funding, whose average from 1992 – 1997 was greater than what they received in 1996, would receive the \$3.4 million. A/S Liu stated that was essentially correct. Mr. Sossamon then stated that the fact of the statute is not to offset the windfall; the actual effect is to provide a benefit to those that had a bad year in 1996. A/S Liu confirmed that was one part of the statute, but that if there is an increase in one part, there has to be a decrease somewhere else. Mr. Sossamon pointed out that

for those CIAP tribes that had a bad year in 1996, this results in an increased amount of funding for those tribes.

Ms. Falkner asked if there were any other questions for clarification. Mr. Adams asked HUD if the committee does not come to consensus on either proposal, and the current practice is not in concert with the 2000 amendments, would HUD change its practice. A/S Liu responded that yes, HUD would have to change the practice in accordance with the amendments. Mr. Sossamon asked what the net effect to the 27 tribes would be, when you compare the two proposals. A/S Liu responded that there would be somewhat less of an impact, but we have not been able to determine how much. He reiterated that there would be less of an impact under HUD proposals. Ms. Wilson commented that the committee is discussing shifting money again. She added that these 27 tribes received a windfall and that it was not fair, equitable, and consistent that she would have to take an increase that will result in a reduction elsewhere. She pointed out that the committee doesn't really know how it impacts the tribes. She asked how the small tribes can survive and stated that she was not feeling comfortable about how the formula was agreed upon initially.

Ms. Falkner asked if there were any other comments. Mr. Sossamon commented that by law this is going to take place, and there will be less impact under the HUD proposal than the Ms. Tooley's proposal. Mr. Frank commented that there were too many assumptions and so he felt that it was shortsighted. He pointed out that part of their job is to try to get more money under any circumstances. He suggested that the committee members should concentrate on getting the formula complete and then try to find out where extra money is going to come from. He added that was why we have organizations that help us to develop other sources.

Ms. Falkner asked if there were other comments. Mr. Coyle commented that under HUD's proposal, everyone is going to gain, but under the other proposal not, unless the tribe doesn't have any need. He commented that it isn't that big of an amount, and thinks that the HUD proposal is best way to go.

Mr. LaPointe called for consensus on the HUD proposal. Ms. Falkner asked if there were any objections. Mr. Frank indicated that he objected.

There was a call for consensus on Ms. Tooley's proposal. There were 9 objections.

Ms. Falkner announced that consensus was not reached on either proposal and that the issue was closed. Mr. Frank announced that he could live HUD's proposal.

Ms. Falkner asked if the committee could live with HUD's. The committee reached consensus on HUD's proposal for issue #4 (Attachment 13).

The committee recessed for 15 minutes.

The committee returned at 4:25 pm at which time the 90-minute clock was started and discussion began on Issue 5 (Attachment 14). Mr. Heisterkamp introduced the topic, explaining that there were three proposals on Section 8. He further explained that the first two deal with §1000.316, and that Coyle A, strikes 'adjusted for inflation' and Coyle B, is the same except it sets a baseline at 1996 subsidy. He explained that the third proposal §1000.318(2)(c) adds new language. Mr. Heisterkamp pointed out that the statute was amended in 2000 to deal with Section 8 units and the existing regulations do not include the 2000 language. The discussion began.

Ms. Falkner asked which proposal the committee would like to start with. Mr. Coyle suggested that the committee start with his first proposal. He stated that Section 8 only applies to roughly 42 tribes with about 4,200 units. He pointed out that he is not trying to get rid of Section 8, but that the inflation factor makes it a burden. He added that at the present rate, in 15 years there won't be any money left in Need. He reiterated that this is his primary concern, and that it is not the present, but rather the increase over time when at the same time, LR and MH are decreasing. Mr. Sossamon commented that while LR and MH leave the inventory, they will also be increasing in amount because they have an inflation factor. Mr. Coyle responded that he understood that. However, he added that LR and MH were part of the original regulations and Section 8 was added on a later date. He stated that he believes that it will be beneficial to go into the future, not the past and concentrate on Needs and not on 1937 Act housing. Ms. Wilson asked HUD how the 1937 Act rental units compare to the Section 8 units as far as operation and management, and the dollar figure. She added that initially there was an allowable expense level. She asked if the inflation factor was comparable, and how Section 8 phases out. She commented that it looked as though the Section 8 was continuing to grow, but rental units are reducing due to useful life. She added that this is not consistent, fair and equitable to how we manage rental units on tribal trust lands. A/S Liu responded that there is some language, which can be referred to and yielded to Ms. Jacobsen, who stated that Section 8 was not growing in the formula, and should be diminishing at the same rate as CAS. For example, as CAS units are being conveyed or demolished, Section 8 is being reduced also, if it is no longer being run as a Section 8 unit. Mr. Coyle pointed out that there was a data run early on that showed that LR and MH units were going down at a pretty fast clip and Section 8 was going up and continues to go up. He added that this is because the expired Section 8 units for public housing are coming into NAHASDA, but there are no set rules in place.

Ms. Difuntorum stated that she didn't understand the HUD response. She added that her tribe has some Section 8, and they are not tribally owned. She stated that private landlords own the units and so they don't convey, and if the renter is displaced, they will find another place to live. Mr. Hudson pointed out that §1000.306c states that Section 8 are reduced at same rate as LR. He asked if this is really being done, and have any Section 8s been reduced from the stock. A/S Liu responded that this section has been interpreted to apply to the 5<sup>th</sup> year, and that we are in the 5<sup>th</sup> year now, so there hasn't been any effect yet. He added that HUD was in the process of evaluating this now. Mr. Naize yielded to Mr. Carl, who stated that he didn't know where the information was



coming from, but under §503, Section 8 should be decreasing and that there shouldn't be growth in Section 8.

Ms. Falkner asked if there were any other comments. Mr. Coyle stated that he has read this several times, and it is his opinion that this refers to rental housing, not vouchers for rental. Ms. Falkner asked if there were any other comments. Mr. Sawyers asked if Mr. Coyle was suggesting that the tribes roll back to 1996. Mr. Coyle responded that his Proposal B calls for 2003 levels. Ms. Falkner reminded the committee that Mr. Coyle has submitted two proposals, and asked for comments on Proposal B. Mr. Coyle stated that this proposal brings the cost up-to-date as to the FY1903 national per unit subsidy, but without inflation. Mr. Gorynski called for consensus on Mr. Coyle's Proposal B.

Ms. Falkner announced that there was a call for consensus. Mr. Sossamon requested that the committee hold off so that there can be more discussion. It was agreed. Ms. Falkner announced that there was a small group that would like to caucus. Mr. Coyle called for consensus on his Proposal B. Ms. Falkner reiterated that there had been a request to wait. Mr. Sossamon stated that he would agree to this if Mr. Coyle agreed to support the median income proposal that was proposed earlier. Mr. Coyle requested that the clock be stopped, so that the committee can come back to this issue later in the week.

Ms. Falkner stated that the Cherokee proposal still needs to be discussed, and she asked if there were any questions or comments on the Cherokee proposal. Ms. Tooley requested that someone explain the effect of the Cherokee proposal. Mr. Jones responded that it doesn't change the amount of money, but it opens up the possibility to use Section 8 money for homeownership, for example. Ms. Falkner asked if there were any other comments on this proposal. Mr. Sawyers stated that he would like consensus to eliminate the Cherokee proposal, because he thinks there needs to be one proposal on the table. So, he called for consensus on the Cherokee proposal.

Ms. Falkner announced that there was a call for consensus on the Cherokee proposal. There were 4 objections. Consensus was not reached. Ms. Falkner announced that there were now two proposals on the table, Coyle A and Coyle B. She asked if there were any comments. Mr. Coyle withdrew proposal A. Mr. Jones stated that he was calling for consensus on Coyle B. Mr. Sawyers stated that he objects at the present time.

Ms. Falkner asked if there was any further discussion on Coyle B. Mr. Naize asked Mr. Sawyers to explain why he objected to the call for consensus. Mr. Sawyers responded that he didn't object to the proposal, he objected to the call for consensus, but he withdrew his objection.

Ms. Falkner announced that there was a call for consensus on Coyle B. Ms. Tooley asked where the FY2003 subsidy amount would come from; she asked that that amount would be. Mr. Heisterkamp pointed out that there is an amount used now, but that HUD is unsure of that figure. He added that it would be the 1996 subsidy inflated to FY03, and that would be existing in the current formula. Ms. Tooley asked what the number of units

in 1997 multiplied by the FY03 per unit subsidy equals. It was determined that the figure was \$3625, which would then have to be multiplied by the inflation factor. Mr. Richardson stated that inflation since 1997 has been 18%, and therefore, the figure would be \$4278. Ms. Tooley asked if this number would be static. It was confirmed that was correct. Mr. Coyle stated that if that figure amortized out 15 years, there would not be any Needs funding available. Mr. Sossamon asked to see the calculations. Mr. Coyle stated that he didn't have them available. Mr. Adams asked if this assumes that the grant doesn't increase. Mr. Coyle responded that was correct. Mr. Jones pointed out that the figure is also modified by the AEL or FMR. Mr. Hudson asked if this calculation takes into account that HUD is supposed to take the units off proportionally. He added that there is a regulation that states that this is the year that HUD was going to start. Mr. Coyle stated that if he was assured of that, he would withdraw his proposal.

Mr. Naize yielded to Mr. Carl, who stated that in looking at §502, any housing that was subject to a contract, shall be considered to be a unit under §302b1. Therefore, he added, that any Section 8 in existence since 1997, if used as a rental assistance unit, will remain under subsidy. Ms. Falkner asked if there were any other comments.

Mr. Coyle called for consensus on proposal B, and added that if the committee is not able to reach consensus, he would like to stop the clock and revisit the issue later on.

Ms. Falkner announced that there was a call for consensus. She asked if there were any objections. There were 7 objections. Ms. Falkner announced that consensus had not been reached and that the clock was stopped at 5:22. Mr. Boyd stated that as agreed to in the procedures, before any issue moves forward to be revisited, it must be agreed upon by consensus. Ms. Falkner agreed that revisiting an issue has to be decided by consensus, and then in priority order.

The committee recessed for a 15-minute break.

The committee returned at 5:23 pm at which time the 90-minute clock was started and discussion began on Issue 6 (Attachment 15). Mr. Heisterkamp introduced the topic, explaining that there were two proposals on the table; one to change existing §534 as to what constitutes non-compliance and when a tribe's administrative rights are triggered. He further explained that there was also a proposal on a revised §336 to substitute for the existing regulation, which is how to challenge data and HUD determinations. The discussion began.

Mr. Ducheneaux yielded to Ms. Kidder, who stated that §336 is also included under Tab #12 and so she requests that the committee focus on §534 under Tab 6 and discuss the data challenge under Tab 12. Ms. Falkner asked if there were any objections. There were none. She then asked for comments on §534. Mr. Ducheneaux stated that ¶1 is the same as existing, and that ¶2 is the addition, which ensures that if HUD wants to recapture \$50k or 20% of a tribe's grant, that is considered substantial noncompliance and a hearing would be allowed. Ms. Falkner asked if there were any comments. Mr.

Sossamon commented that he would like to encourage committee members who want to discuss this offline, to take time to go out and/or walk the table. However, he requested that this be done during the 90-minute periods, rather than put off until the end of the week. He added that if the committee continues to defer, issues might not get addressed. He pointed out that the deals should be made during the 90-minute periods.

Ms. Falkner asked for comments. Mr. Hudson asked if HUD had any objections to this proposal. A/S Liu responded that HUD does not believe that ¶2 rises to the level of substantial noncompliance. Mr. Hudson asked if HUD had an alternative. A/S Liu responded that HUD was willing to listen to alternatives. Mr. Hudson suggested 25% of the grant amount. Mr. Adams asked if HUD could then support the proposal. A/S Liu stated that he could not consent. Mr. Naize yielded to Mr. Carl who stated that based on HUD's current position, is this something that HUD intends to address at this Neg-Reg at all. A/S Liu responded that there have been discussions between HUD and the proponents, and that HUD is open to hearing what the proponents have. Mr. Carl stated that Mr. Sossamon made a point to actively participate in these discussions, and he asked if there was someone from HUD who is willing to discuss this further. A/S Liu reiterated that HUD has already discussed the proposal and is ready to hear from the proponents. Mr. Sawyers stated that he had an alternative proposal, and would like to put it on the overhead (Attachment 16). Mr. Sawyers explained that the alternate proposes that if a tribe has funding taken away, the tribe is entitled to a hearing. He added that a tribe could have a hundreds of thousands of dollars taken away, which is pretty substantial, over 20% of the grant. He pointed out that all the tribes are asking for is a hearing. A/S Liu stated that HUD doesn't think that the \$50k threshold is high enough to trigger the various processes that will have to be managed. Mr. Sossamon asked if this could be work from a percentage, and that it is obvious that 20% is a high enough threshold for administrative costs. He asked if this could be evaluated in that light. A/S Liu responded that was a possibility, and added that there were also other possibilities mentioned by the proponents.

Ms. Kidder commented that this is a new section, which is kicked in after substantial noncompliance has been demonstrated, and gives the tribe due process to a hearing based on a percentage or dollar amount. She reiterated that this is not substantial noncompliance, and urged the committee to focus the discussion on the dollar amount and/or percentage. Mr. Sawyers suggested that 100% or \$1 million was substantial. He asked if the committee could come up with something that we can all live with. He asked if there was an amount. A/S Liu stated 100% or \$1 million. Mr. Sawyers asked if there was any room for negotiation. A/S Liu responded that we have negotiated, and we are negotiating. He stated that he thinks that the existing regulation is fair, and if there were any changes, the thresholds would have to be significant. Mr. Sawyers asked if it was his opinion that 20% of the grant is not substantial enough to trigger a hearing. A/S Liu responded that HUD does not feel it is substantial enough to trigger an appeals process. Mr. Naize yielded to Mr. Carl, who stated that in listening to HUD's position, this is an attempt to come up with an administrative process, and he added that he didn't think that this negotiation was in good faith. Mr. Hudson yielded to Mr. Doherty, who stated that

they have been negotiating this for 7 months. He asked at what point does full due process and a hearing come into play for tribes who lose money if we divorce this from substantial noncompliance. He asked when is it a big enough deal; at 20%, at \$250k; both could be a big deal. He added that the process had broken down from the tribes' perspective, and this proposal provides a guarantee of due process for the tribes.

Ms. Wilson stated that she has been provided with a list of total amounts owed going back to 1998, and noted that we are talking about millions and millions of dollars. She asked how a tribe ends up owing millions of dollars. She pointed out that the committee is talking about minimum funding on the one hand, and these millions on the other. She asked again what happened; she asked if this was due to undercounting or conveyed units. Ms. Tooley commented that if any tribe lost half its grant, she thinks that is substantial. She asked if HUD would consider changing the proposal to 50%. She asked if \$500k and 50% would be high enough. Mr. Sawyers stated that he would accept these numbers. A/S Liu responded that there are a number of competing issues here that have been discussed. One, without getting into issues related to due process, if you open up the gates, as we think will occur, there will be too many appeals to issues regarding funding. He pointed out that this is not even allowed in public housing because there is a case to be made that it effects every HA, not just one HA. In addition, he pointed out that on a practical side, which impacts fairness and justice, is the capacity to deal with the number of informal appeals that go through the administrative law judge (ALJ) proceedings. He stated that the number is large. He also stated that the process is extremely time consuming, and can hamper the administration of the program at large. A/S Liu stated that currently, a \$540 appeal takes 6 months to a year to reach a decision. He added that some of the levels we are talking about, which has to be looked at vis-à-vis other HUD programs, are generally smaller than on the public housing side. He stated that the potential exists for appeals to flood the system; even at a 50% level, the potential for dispute is something HUD has to consider. Mr. Bush suggested increasing minimum funding. Mr. Hudson yielded to Mr. Doherty, who stated that he appreciates A/S Liu's concerns, but would also point out that for whatever amount the tribes may be contesting, it is that daunting to lay out money to hire attorneys. He added that he understands the fear of a flood of appeals, but you still have to comply with the other sections and the HA would have to decide whether it's worth it. He stated that he believes that it is only in those instances in the government-to-government relationship, that a tribe will decide it is worth it to appeal. Mr. Doherty pointed out that tribes aren't going to go out thinking it will be fun, and so the reality check on the part of the IHAs will act as a brake.

Mr. Boyd yielded to A/S Liu, who stated that he has confidence in and believes that the current appeals process regarding funding can work, and does work, in the majority of instances. As he indicated earlier, he reiterated that the current process works. Mr. Sawyers called for consensus on this proposal in the spirit of compromise.

Ms. Falkner announced that there was a call for consensus. She asked if there were any objections to the proposal as written. There were 2 objections.

Ms. Falkner asked if there was any further discussion on §534. Mr. Sawyers called for consensus. Ms. Falkner suggested that the committee discuss the proposal first. Dr. Kazama asked for clarification as to whether §338 is ¶2 and the rest of §534 is the same as the existing regulation, and so, will §534 will stand on its own. Ms. Kidder responded that the proposal being discussed adds ¶2. Mr. Sawyers requested that the proposal language be changed to 50% and \$500k. He also stated that he would like to call for consensus on this proposal. Ms. Falkner asked if there was any further discussion. Ms. Wilson commented that she thought the committee already acted on this proposal. She asked if the committee was discussing substantial noncompliance. Ms. Falkner clarified that this is a different proposal. She pointed out that consensus was not reached on the proposal for §328, and §534 is now on the table. Mr. LaPointe stated that he was also confused, and was this revisit. Mr. Heisterkamp pointed out that a committee member could modify a proposal as long as a proposal exists in writing. He further explained that in this case the modification proposed a new section. He stated that it would probably be appropriate for the committee to decide if it wants to reach consensus. Mr. Heisterkamp further clarified that if a particular Tab contains no language, then a committee member cannot propose language; if language exists, a committee member can modify the language, if necessary. He stated that was what negotiation was all about; if there is a modification that works, the committee can act on it.

Ms. Falkner announced that consensus had not been reached on §328. She then asked how the committee wanted to handle §534. Mr. Sawyers called for consensus.

Ms. Falkner asked if there was any further discussion on §534. She asked if there were any additional questions. She announced that there were no questions, and that the call for consensus had been made. Ms. Falkner asked if there were any objections to §534. There were 6 objections. Ms. Falkner announced that consensus has not been reached.

She then announced that the committee would take a break until 6:30 pm and then return for an administrative session. Mr. Heisterkamp stated that the agenda called for an administrative session at 6:30 pm. He added that the Discussion Leader and Facilitator requested time to meet with the co-chairs before the administrative session, and that it was agreed that they would meet at 6:15 pm.

The committee reconvened at 6:25 pm and Mr. Sossamon resumed the chair for the administrative session. He requested that the committee refer to the ¶10 on yellow sheet, "Procedures for January Formula Negotiated Rulemaking Session," in the Meeting binder. He read: "...If consensus is reached within less than 90 minutes, the Facilitator and Discussion Leader may immediately proceed to the next issue and Consensus Period. If time permits and if there is consensus to revisit an issue, each issue will be discussed in the order in which it was originally presented." He added that if the committee does not reach consensus, or stop the clock, it will go by what we agreed upon. He reiterated that the committee will discuss each issue for 90 minutes and will negotiate hard. He added that if the committee does not reach consensus, so be it. He reiterated that the committee would return to non-consensus items in order if the group agrees. Mr. Sossamon stated

that stopping the clock will not guarantee that there will be time at the end. He pointed out that the committee has gotten through 6 items, and so it is reasonable to anticipate that there will be some time to revisit items at this time, but there is no guarantee, except that 6:30 pm will arrive on Friday. He stated that if there is time at the end of the process between Tab 18 and 6: 30 pm on Friday, the committee would be able to revisit issues, but if there is no time, then issues will not be revisited. He then encouraged everyone to utilize the 90 minutes fully. He added that if members feel as though you are close, he urged committee members to get together at the end of the day, and keep the negotiating going. He also noted that the record is capturing only the number of objections, not the names. He asked the committee members if they wanted the identity reported on votes. He recommended to enter the number count only, but encourages everyone to note their opinion, so that all will know who to negotiate with, adding that if you want to negotiate in good faith, you need to make your position known. Mr. Sossamon reiterated that ¶10 would be adhered to as the process. He announced that the committee would recess after everyone has had an opportunity to comment. He further stated that the committee would begin on Wednesday at 8:30 am sharp and that the Facilitator would pick up on Issue #7. Mr. Heisterkamp pointed out that both rooms are available all week if you need a place for caucus or negotiating. He also stated that there are boardrooms that can be rented at your own expense.

Mr. Sossamon asked if there were any questions or comments. Mr. Jones asked if there was a time limitation to revisit. Mr. Sossamon responded that they had not agreed to time limitations at this point, but he added that the co-chairs had hoped that 90 minutes would be enough. However, he suggested that it would be wise to impose time limits and that it would take no longer than 5 minutes to put an issue on the screen and call for consensus. Mr. Sawyers recommended recording names of committee members who object to consensus. Mr. Sossamon responded that everyone in the room is capable of seeing who is voting. Mr. Frank agreed and stated that the count is sufficient and the minutes will reflect the voting. Mr. Sossamon responded that the minutes are reflecting only the number. Mr. Frank commented that if you state the reasons for objecting, then it would be in the record. Mr. Sawyers disagreed and stated that he thought that it was important that committee members are in the record if they object. Ms. Gore commented that the committee is negotiating in good faith, and each committee member should be reflecting his or her true positions. She added that there is nothing in the Protocols that requires naming names or counting, consensus is either reached or it isn't. Mr. Adams commented that for all the time and resources that have been invested in the process, he hoped that by this meeting each committee member has had an opportunity to agree or disagree and that everyone would know why. He added that for the record to not show why we couldn't come to consensus is wrong in his opinion.

Mr. Sawyers called for consensus to require the names of objectors be listed in the record. Mr. Sossamon asked if there was any further discussion on the call for consensus. Ms. Wilson stated that she did not have a problem with her name or tribe being recorded. Mr. Sossamon asked if there was any further discussion. He restated the call for

consensus, and asked if anyone was opposed to names being recorded. There were 6 objections. Consensus was not reached.

Mr. Jones asked what would be an appropriate amount of time to allot for revisiting an issue if there is time available at the end of the session. Mr. Ducheneaux suggested dividing the amount of time remaining by the number of issues. Mr. Bush stated that the committee has already agreed to table two items with time allotted. He added that he hoped that they would go with this since it was already agreed. Mr. Sossamon asked if there was any further discussion. He reiterated that there has to be consensus to revisit an issue if time permits. In the case of the two issues from today, there has been consensus to allow those issues to be revisited, and they would be revisited in with the remaining time allotted. He then asked the committee if it was going to continue to function in this fashion, or just average out the remaining issues. Mr. Bush recommended that the 19 or 20 minutes would be the minimum amount of time. Mr. Sawyers stated that the committee started out with 90 minutes for each issue. He added that he didn't think that 5 minutes, as suggested by Mr. Sossamon would be enough. He added that it was his understanding that you have time left, you still have to reach consensus to revisit. Mr. Sossamon agreed that was what ¶10 states. But he added that today the committee has tabled two issues and reached consensus to stop the clock. Mr. Bush reiterated that the committee did consent to revisit these issues, and that he had made it really clear that his 19 minutes would be reserved for that issue. Mr. Naize stated that since it was previously not known there would be a time crunch, he would agree with Mr. Bush and that at a minimum for the two tabled issues would be revisited and then average the amount of remaining time for any others. He then called for consensus on this procedure. Mr. Ducheneaux expressed displeasure with the process. He stated that the committee is here to assist the tribes, and so should hear the issues to the extent possible.

Mr. Sossamon announced that there was a call for consensus that there has been consensus to revisit two issues with a specified time allotted. Mr. Heisterkamp pointed out that the committee left issue #2 on the table with 21 minutes; issue #3 with 19 minutes; and issue #5 with 51 minutes. He clarified that what has been proposed is for the committee to go back and use all that time. Mr. Sossamon asked for clarification that this was the proposal and in addition, the other issues will be divided equally. Mr. Naize confirmed, and asked all the parties to take the time during the off times to come to some resolution. Mr. Sossamon stated that he would hope that if the committee revisits issues, that it could come to resolution in less than the time available. He asked if the committee consented to come back to these issues. He added that going forward, any non-consensus items, after these three, would be addressed on an average amount of time available. He asked if there was any further discussion. He asked if there were any objections. There were no objections, and consensus was reached.

Mr. Sossamon asked if there were any other comments or questions. Mr. Bush announced that there were some committee members who wanted to get together to discuss minimum funding in this room after the recess this evening. Mr. LaPointe suggested that committee members be available during the evening and also that it should

be made known if any negotiations or discussions are going on. Mr. Sawyers congratulated the group, adding that the committee has accomplished a lot and is ahead of schedule. He added that he appreciated the work that everyone is doing, that the committee is at the table and doing some honest work. He also stated that he was excited by the progress.

Mr. Sossamon asked if there were any further comments. Hearing none, he announced that the committee would recess until Wednesday morning at 8:30 am.

**WEDNESDAY MORNING, JANUARY 14, 2004**  
**FULL COMMITTEE**

The committee reconvened at 8:30 am. Mr. Sawyers gave the convocation for the day. After which the 90-minute clock was started and discussion began on Issue 7 (Attachment 17). Mr. Heisterkamp introduced the topic, explaining that there are three pieces of language that have been submitted. He further explained that the Cherokee submitted the first proposal; the second is revised language from Alaska; and third is submitted by UNAHA, and represents the committee work product with additional changes. He added that the proposals could be taken individually or together, and that since there had been extensive discussion on the topic during past meeting, everyone should be familiar with the issues. Mr. Heisterkamp then suggested that the committee work with the revised Alaska language first. The discussion began.

Mr. Hutchings clarified that there were only two changes from previous language. The first change is in ¶ iii, which refers to tribe instead of ANVA. The second change is to recognize that when a tribe has sought expansion into another area, if the tribe has 50% or more of the AIAN population, it would be handled in the same way as typical overlapping areas. If less, the tribe would simply receive data credit for tribal members in that area.

Ms. Falkner asked if there were any comments or questions.

Dr. Kazama stated that the Alaska representatives have been working on this since the beginning of the process and have reached agreement, and requested that the committee reach consensus on just the Alaska part if possible. Mr. Jones asked if before consensus is called, the committee could briefly go to the Cherokee position. Mr. Jones then withdrew the Cherokee language except the portion that relates to the state recognized tribes, which he suggested could remain in this section or be addressed under Tab 18. Ms. Falkner announced that the language (second paragraph of the Cherokee proposal) would be moved to Tab 18.

Mr. Boyd yielded to Mr. Anderson, who commented that Alaska is interesting in that its geographies are very different from any other area. He stated that ANSKA created ANRCs and ANVs, and both are legally described as geographies. He noted that in the 1990 Census, it was not possible to tie the census data to townships, but that can now be



done. Mr. Anderson stated that it might be possible to reorder reservations, trust lands, ANVs, ANRCs, and take out ANVSA. He added that this could be used within the census and that the ANV is the concentrated population area within the legal township definition. He stated that this could be a way to simplify.

Ms. Gore yielded to Mr. Hutchings, who stated that this is a reiteration of a previous discussion. He suggested that the committee move on to the rest of §302, and that HUD take time to review the revised definition. Dr. Kazama agreed. Ms. Falkner announced that the Alaska representatives would meet to discuss this further.

Mr. Heisterkamp brought the committee's attention to the UNAHA proposal, and restated that this language is basically what the committee has been working on with two additional pieces of language indicated by italics. Mr. Carlile suggested that in ¶ iv the phrase 'not approved by workgroup' be removed. Mr. Sawyers commented that the additions have satisfied the outstanding issues. He asked if the group wanted to go through the whole section or just the highlighted areas, but suggested going through the highlighted areas only, as the other portions have been discussed. Mr. Heisterkamp explained that ¶4 deals with population cap; and the final section has to do with state recognized tribes. He also noted that in ¶ ix, the language adds 'as of 1996,' and ¶ix adds 'federally recognized.' He stated that the general effect is to be consistent with the addition to ¶4 on the population cap.

A/S Liu yielded to Mr. Pereira, who asked what would be accomplished by the change in ¶xi. Ms. Tooley responded that this was the language requested at the September meeting that would provide for small tribes in California (and perhaps other places) that are in two counties. She added that the committee has been able to negotiate and challenge and we wanted to be certain that this wouldn't disappear in case we didn't fit into the other criteria.

A/S Liu stated that the intent is now better understood. He added that HUD's concern is that the language in the last line may have the unintended consequence of forever locking in the boundaries, regardless of whether services are being provided. He added that this might lock out the concerns that HUD or others may have if service declines or if there are other changes, or the ability or process of formula expansion described elsewhere. He reiterated that he understands the intent of the unique situation, but he doesn't think that the intent is to prevent review. He pointed out that there is precedent in other areas of the country where there has been a decline in services and HUD has had to take back areas where services were no longer being provided. He suggested that Ms. Tooley get together with Mr. Pereira to work on the language. Mr. Sawyers asked Ms. Tooley if she was in agreement. Ms. Tooley responded that she would be happy to discuss the issue. Mr. Coyle mentioned that he would like to participate in discussions on this issue.

Ms. Falkner asked if this would be worked on now. It was agreed that the interested parties would do so. Mr. Sawyers noted that the committee would go on with the discussion while the small group discussed the limited issue.

Dr. Kazama stated in regard to ¶C 'planning to provide' that he wants to avoid a situation where he is planning to provide services somewhere just for inclusion. Mr. Heisterkamp responded that this language is tied to the consensus language on substantial housing services, and that there is a very specific definition that relates to this piece. Dr. Kazama noted that he still recommended deleting 'is planning to provide.'

Ms. Falkner asked for other comments.

Mr. Sawyers asked Mr. Heisterkamp to go through the definition of substantial housing services. Mr. Heisterkamp responded that the committee had reserved time to discuss this under another Tab. Ms. Falkner asked if there were any other comments or issues.

Ms. Gore stated that she had a procedural question, noting that if the committee comes to a point where it is waiting, it seems unfair for the clock to continue running. Mr. Heisterkamp stated that in situations such as this, the clock would continue to run as this is the time set aside for consensus, whether committee members were working inside or outside the room. Ms. Difuntorum asked if regional corporations have enrolled tribal members. Ms. Gore replied in the affirmative. Mr. Sawyers noted that if there are any other issues, the committee could go forward.

Mr. Hudson yielded to Mr. Lynch, who commented that the state recognized tribes have statistical areas; they don't have state designated areas. He added that in his case, the tribal members all live close to Air Force and Army bases, and that they are providing services to other native people, not only state tribal members. He reiterated that the enrollment criteria have not changed, and that they should be treated the same as other tribes. Mr. LaPointe asked for clarification on the state designated statistical areas. Mr. Anderson commented that it was his recollection that there are six or seven, principally in the Eastern/Woodlands region: Alabama, the Carolinas, Louisiana, Texas, and include MOWA Choctaw. He stated that he could look it up, if necessary.

Dr. Kazama stated that he would like to call for consensus on this if HUD agrees.

Ms. Falkner asked if there was there any change. It was pointed out that there was none. She also noted that the committee was getting clarification on the Alaska proposal for which there has been a call for consensus. Dr. Kazama clarified that this would be on the revised language presented this morning.

Ms. Falkner asked if there were any other comments on the Alaska proposal. She asked if there was any further discussion. Ms. Falkner announced that there was a call for consensus on the Alaska proposal, and asked if there were any objections.

Mr. Naize pointed out that there are committee members absent. Ms. Falkner responded that pursuant to the procedures, there could be a call for consensus. She asked if there were any objections. There was one objection.

Mr. Hoffman asked the objector to elaborate on the concerns. Ms. Wilson responded that expanding service area by any tribe would shift dollars, and that will probably take funds out of Needs. She added that some tribes can't expand service area, and she is not quite certain how this fits in the big picture. She reiterated that expanding areas will take from other tribes, and that no one has sufficiently explained how that impacts the overall picture. Ms. Gore requested that Ms. Wilson express her concerns before consensus is called, and added that this has nothing to do with money, but has only to do with tribal lands. Ms. Gore reiterated that every area in Alaska is already counted, and then added that she would encourage Ms. Wilson to reconsider. Ms. Gore stated that she would be happy to help explain the issue. Ms. Wilson stated that the situation had just been explained and she pulled back her objection.

Ms. Falkner stated that therefore consensus on this portion of the language had been reached.

Mr. Sawyers asked about the status on the rest of the language. Ms. Tooley responded that HUD is still working on it. A/S Liu stated that the HUD counsel has raised a concern in ¶vi, with regard to locking into 1996. He added that there would need to be a statement of rational basis added to the record. He added that he was raising this issue for the benefit of those who are promoting the language, and that there must be something in the record as to its ability to withstand a legal challenge. He added that the state recognized statistical areas did not exist until 2000. Mr. Sossamon responded that this has been reviewed and the intent is that it should be tribally designated statistical area. He added that in 1996 the state tribes were able to participate in NAHASDA, but unlike federally recognized tribes, the state tribes expanded by going to the Census Bureau. Mr. Sossamon commented that it is his belief that the state recognized tribes should have to expand in the same way as other federally recognized tribes. Therefore, those tribes should start out with 1996, and then expand in the same way as federal tribes, instead of going to the Census.

A/S Liu noted for clarification that the intent is to set the baseline, and then permit expansion on the same standards as other tribes. He added that if that is the intent, perhaps there needs to be some revision to the language. Mr. Hudson yielded to Mr. Humphrey, who pointed out that if you look at the statute under state recognized tribes...[the facilitator interrupted and stated that someone else would have to yield in order to continue. Mr. Adams yielded]...under §302 under tribal membership eligibility, the criteria are locked to 1996. He stated that it was for this reason that 1996 was referenced in the other provision.

Ms. Falkner noted that there is a small group trying to work this out, and that there is a request that consensus is not considered until the group returns. Mr. Sawyers asked if there is any other discussion on this entire section in the meantime. Ms. Falkner asked if there were any other issues to be discussed.

Mr. Sawyers commented that the committee has spent six months on this with numerous caucuses, and has reached agreement on the entire proposal except the Alaska and Oklahoma language. He asked if the committee was ready for a call for consensus on this except for the state tribe issue. A/S Liu responded that work was still going on some other issues as well.

Ms. Falkner announced that the committee was at the 45-minute mark. [Note that several small groups worked on specific language for approximately 25 minutes as the clock kept ticking. Language was developed and then proposed and displayed on the screen.]

Ms. McFadden stated that HUD worked on this with the proponents, although it is not a HUD proposal (Attachment 18). She added that this language makes it so that all tribes have to expand in the same way. She further noted that it would be up to the drafting committee to find a place for it within the regulations. Ms. McFadden also stated that the reference to 1996 is deleted from ¶vi.

Mr. Sawyers called for consensus on this language.

Ms. Falkner asked if there was any further discussion on this language. Mr. LaPointe asked for clarification on ¶4. In response, it was noted that ¶4 remains and the new language would be placed somewhere else. Ms. Tooley further stated that the language would go somewhere in §302, in addition to other proposed language. Ms. McFadden commented that it may fit better somewhere else, but it is additional language.

Ms. Falkner commented that §302, ¶3 has already been changed. Mr. Frank asked if the form referred to in ¶2i had been developed. A/S Liu responded that it had not, but will be developed pursuant to direction. Mr. Adams asked if the proposed language under ¶2Cii had been added, noting that this would clarify the substantial housing services definition. Mr. Naize yielded to Mr. Carl, who commented that this discussion deals with formula area, not with IHBG formula, and that the heading should be changed. Mr. Heisterkamp noted that the section is for definitions in general, not just formula area. Mr. Carl asked if everything in this definition is a subpart of §302. It was confirmed to be true.

Ms. Falkner asked if there were any other questions about the changes. Mr. Bush asked about the addition by HUD to ¶ix. Ms. Gore asked for clarification on the intent of this addition, as it seems to dilute the original intent. Ms. Tooley responded that under the current regulations, policy and practice, this closes a loophole and would allow HUD to review areas that are no longer serviced. She added that the language provides the flexibility needed to provide services, but is not tied exactly to the definition of substantial housing services.

Mr. Sawyers called for consensus on §302.

Ms. Falkner announced that a call for consensus had been made. She asked if there were any objections; she asked if there was anything that anyone can't live with. Hearing no

objections, Ms. Falkner announced that the committee had reached consensus (Attachment 19).

The committee recessed for a 15-minute break.

The committee returned at 10:15 am at which time the 90-minute clock was started and discussion began on Issue 8 (Attachment 20). Mr. Heisterkamp introduced the topic, explaining that there was one proposal. He added that the record shows that in September, the committee reached consensus on a definition of substantial housing services. He clarified that the discussion at this time is on overlapping area only. [The consensus on substantial housing services was confirmed in the September minutes.] The discussion began.

Mr. LaPointe asked about the availability of previously distributed documents. Ms. Gardstein clarified that the referenced documents were available in the minutes the committee members had received. Mr. Heisterkamp reiterated that the committee was only discussing overlapping areas. He read the existing language (¶b), and noted that this would be changed relating to suggested language on US Decennial Census data.

Ms. Falkner asked if there were any comments. Ms. Tooley suggested ‘included, but not limited to.’ Mr. Heisterkamp pointed out that the language states ‘suggested.’ Ms. Tooley asked if other available data could be used. Mr. Richardson responded that so long as all the tribes agree, other data could be used. He also clarified that the Census Bureau has indicated a willingness to provide information on membership in specific tribes as reported to Census. He added that this information was previously suppressed, but is now available.

Ms. Falkner asked if there were any other comments or further discussion on the proposal. She then asked if the committee was ready to come to agreement. She asked if the committee was prepared to call for consensus. Ms. Falkner asked if there were any objections to this proposal. Hearing none, Ms. Falkner announced that the committee had reached consensus on the proposal (Attachment 21).

The committee recessed for a 15-minute break.

The committee returned at 10:45 am at which time the 90-minute clock was started and discussion began on Issue 9 (Attachment 22). Mr. Heisterkamp introduced the topic, explaining that there were two proposals submitted by Mr. Adams, and that both propose changes to an existing regulation. He further explained that the new language in the first is ¶(a)(2); and that in the second proposal, the change is in ¶(a). The discussion began.

Mr. Adams offered the proposal, based on his region’s interest in the AEL issue from the outset. He commented that the sub workgroup worked hard on the issues, which revolve around the fact that the AELs for his region are well below the national average. He clarified that in his region, the local area costs are not being adequately addressed, and

that he understands that there are issues raised by different regions. Therefore, he stated that he was proposing two options as a compromise. He pointed out that the first, for those tribes that are below the national average, allows the tribes to use the national average. The second proposal, allows for a challenge process.

Dr. Kazama stated that the Alaska region supports the first proposal, and added that this was discussed for a long time in the workgroup. He added that there should be a mechanism to challenge the AEL. In relationship to the second proposal, Dr. Kazama offered additional language that strengthens the denominator aspect. Mr. Tillinghast provided a sentence after ¶a1:

2. National average AEL factor without changing the denominator in the formula originally fixed;

Mr. Adams accepted the additional language. Ms. Tooley asked about the effect. To which Ms. Falkner referred to the referenced runs. She then asked if there were any other comments. Mr. Adams stated that there were some issues with some of the earlier runs that were performed, and so he suggested looking at the later runs. Mr. Gorynski stated that he would like to stay with the existing language. Mr. Hudson asked if the increased funding would be in CAS or would this shift dollars around. Mr. LaPointe stated that he supports being able to challenge AEL, but is not certain whether using the national average is the way to accomplish it. Mr. Sawyers asked if there is any other way of adjusting, aside from the challenge, because in his opinion the AEL needs to be adjusted since tribes are being hurt badly by the existing regulation. He then suggested that perhaps the second proposal is the way to go so that there is a challenge. Mr. LaPointe stated that he would support the second option. A/S Liu stated that he concurs with Mr. Gorynski, and added that as he has stated on numerous occasions, HUD would like to deal with real costs. He also stated that he did not agree on opening up an appeals process on unreal costs. He reiterated that he had previously suggested that AEL not be used at all, and so HUD cannot support a challenge to AEL.

Mr. Ducheneaux pointed out that if AEL isn't a true cost, he would prefer to go with something that can be challenged. Ms. Wilson commented that there is one pot of NAHASDA funds, and all this does is shift money from one area to another. She pointed out that the tribes have the greatest need in the nation. She added that there is \$290 million for CAS, and if more money is shifted into CAS, then the amount available for Needs will decrease. She stated that based on this, she can't approve either proposal. She reiterated that she does not want to take money out of Needs to subsidize existing homes that are already receiving funds.

Mr. Hudson asked about the Harvard Study, and was there a particular method of estimating these costs that we could have used. Mr. Sossamon stated that there are criticisms on the Harvard Study from an Indian standpoint, specifically, that the study didn't include Indian housing. He added that in workgroup discussion, it was suggested that although the AEL is flawed, it's the devil we know. He added that it was also suggested that perhaps there could be a similar study performed on Indian housing. Mr.

Adams emphasized that there has been a great deal of work on this issue, and that they have come to the table trying to understand all the positions that have been presented. He reiterated that the AEL is frozen in time, set many years ago. He stated that although he understands HUD's position on a challenge, there is an inequity in his region.

Mr. Reed commented that there was an opportunity to bring forward a new method in the workgroup, and didn't. Mr. Ducheneaux pointed out that the reason nothing was brought forth was that they were cautioned that OMB would not allow challenge.

Mr. Sawyers called for consensus. Ms. Falkner asked if there were any other comments. Mr. Ducheneaux stated that he has heard from the beginning that everyone is committed to what's fair and equitable, and he can't understand how the existing regulation is fair and equitable. He stated that half of his budget is spent driving from one place to another. He pointed out that his reservation is the size of Connecticut. He also added that the AEL was cut because the tribe wasn't performing well, and HUD should have come out to provide training. He reiterated that the cost of maintaining homes on his reservation is high, for example, they have the highest cost per watt in the nation and it gets as cold as -52°F in the winter. Mr. Sawyers yielded to Ms. Kidder, who pointed out that there are many tribes whose AEL is below the national average. She reiterated that the cost of building and maintaining houses is not being met, and the AEL in no way reflects the actual costs. She stated that this is a straight inequity. Ms. Tooley, referring to the second proposal, asked if there is challenge language elsewhere in the regulations or does language have to be developed to challenge. Mr. Sawyer responded that it is his understanding that HUD would develop the challenge language.

A/L Liu stated that both OMB and HUD would like to see AEL removed totally, which is why the issue was brought up to begin with. He reiterated that HUD is not attempting to preserve AEL. However, he added that if AEL were to be preserved as part of the formula, HUD would have a difficult time in knowing where to start an appeals process. He pointed out that every challenge would win, because HUD and OMB recognize that the AEL is not real. A/S Liu agreed that the Harvard Study lacks information on Indian country. However, he noted that the opportunity to look at real costs could only be done by moving on a comprehensive basis. He added that the committee was not prepared to go that way for a variety of reasons. He restated that the goal is acid-based management decisions and true costs. A/S Liu reiterated that this is something we need to work toward, but that HUD doesn't believe that this proposal will get us there or help us reach that goal.

Mr. Naize yielded to Mr. Carl who stated that it appears that the committee will not be able to reach consensus. He agreed that we do have a common goal, and asked if there something that can come out of this committee that will address the real costs. A/S Liu responded that he is working on allocating resources for a study to identify a methodology that will enable us to move toward that supports acid-based, true cost management. He reiterated that we are going to have to move toward that and that further discussion will likely be necessary. Ms. Tooley asked if such as study is in the

works, and 5 years from now a committee will be addressing this again, would it be acceptable to have the challenge available to get us through the next five years. She added that this would provide a mechanism to address the issue in cases where the AEL is clearly inequitable. Mr. Adams agreed with Ms. Tooley, but added that he was fearful that the committee missed an opportunity to address the inequities. Mr. Adams reiterated that there will have to be some give and take to address the inequities, and that he wanted to make certain that others at the table are willing to correct the situation.

A/S Liu stated that given the gravity of this issue and the direction of Congress, he is surely expecting that this subject will be brought up by Negotiated Rulemaking prior to 5 years from now. He added that Congress would do it for us if we don't do it ourselves. Mr. Sossamon summarized to in the subsequent Neg-Reg that you (A/S Liu) have indicated you are committed to, will include the AEL issue. He added that it was his understanding was that the next Neg-Reg would exclude all formula issues. A/S Liu responded that we would work to deal with the issues that need to be addressed, and some may deal with those issues that relate to the formula. He pointed out that any negotiated rulemaking addresses the issues that need to be addressed. He added that AEL is definitely an issue that must be dealt with.

Ms Tooley then asked, given all that and what the future will bring, can we live at this time with the ability to challenge the existing process. Ms. Wilson stated that she is not insensitive to needs and inequities, but she is concerned about the shift in funds from Need to CAS. She reiterated that the money has to come from someplace, and that it would be in everyone's interest to challenge, adding that the Quinault AEL is also low. She then stated that she was not prepared to risk her tribe's Need funding, and until the committee come up with a fix that helps everyone, she cannot support taking money out of the Need allocation.

Mr. Naize pointed out that the committee is discussing an issue that is a non-consensus item, and are talking about what may occur. He stated that the committee supports coming to a solution, but is relying on HUD leadership. He added that it appears as though the committee is wasting time on something that will not come to consensus. Mr. Sawyers yielded to Ms. Kidder, who directed the committee to TR 32, which demonstrates the reduction in MH units over time. She stated that as a result, money is going over to the Need side. She also pointed out that in her tribe, there are people living below the poverty level who are not being picked up at all in the Need side. Mr. Sawyers added that every issue shifts funds and that everyone in the committee knows that the money comes from all of us and we are shifting funds because it is fair and equitable. He stated that if we continue to say that we can't support something because it shifts fund, the committee members might as well go home. Mr. Adams asked if there was an opportunity for a tribe to submit information to HUD could that be the beginning of a process that enables HUD that to document that our costs are grossly inadequate. Mr. Boyd yielded to A/S Liu, who reiterated that the goal would be to work with tribes to come up with something that removes AEL. He emphasized that this is an important element. He added that as data are collected and models are developed, this would



change. However, he could not commit to such change on an ad hoc basis through appeals. A/s Liu stated that HUD has made a commitment to start the process. He added that HUD was beginning to allocate funds to collect data to replace AEL, which will be based on something closer to actual costs. He pointed out that unlike public housing with 350,000 entities, in the case of Indian housing there are many fewer entities and that will be an advantage.

Mr. Gorynski reemphasized that the data collection and surveys can be done by each tribe to provide information on actual costs. He suggested that in the next year, the tribes start documenting to establish real costs. Mr. Sossamon acknowledged HUD's commitment to move toward this goal and asked that HUD develop the data collection instruments in communication with the tribes and the tribal housing professionals in order to ensure that the information collected reflects real costs. He further requested that clear explanations be provided where certain costs are disallowed certain costs, so that the tribes understand the instrument when it is finalized. For example, he cited the OIG report in which the resulting goals and objectives were seen as paternalistic. He restated that the tribes are interested and committed to a study and want it to be as reflective of reality as possible.

Mr. Hudson asked A/S Liu if it would be appropriate or accurate to state that within two years there would be a replacement for AEL and would it be possible to include language to that effect in the regulations. A/S Liu responded that it is reasonable to expect that there will be research and dialogue, and that he would hope that there would be some actual implementation. However, he added that he didn't think it would be prudent to include in the regulations. He did add that it would be prudent to include in the preamble that the committee has had this discussion, that there is an interest in identifying real costs, and that HUD is committed to doing this. A/S Liu reiterated that this would not be a regulation, but would be in the Preamble. Mr. Naize yielded to Mr. Carl who commented that during the first Neg-Reg there was specific language regarding revisiting the issues, and asked if the Assistant Secretary would be willing to include a specific time period now. A/S Liu stated that he was not ready to do that, and would need to confer with the attorneys and others, and that all the committee members would need to discuss this further with tribal leaders to identify the best way to proceed. He clarified that he was not saying that the answer is no, but he thinks that language can be included in the preamble to achieve that course of action.

Mr. Carl stated that the committee was formed to resolve issues and this issue would likely come back and be part of the regulations. He added that the conditions are such that our needs are not being met, and as CAS decreases, there is even larger challenge. A/S Liu stated that he would work on language before the end of this session. He added that HUD prefers that it be part of the Preamble, rather than part of the regulations, and that if there is time available, the group would be able to discuss it further. Mr. Hudson asked if stopping the clock to reserve some time to revisit this issue could be considered. Ms. Falkner pointed out that the committee agreed not to stop the clock.

Mr. Sawyers stated that UNAHA was willing to withdraw its proposals at this time, but did want to include language in the Preamble. Dr. Kazama commented that Alaska is ok with AEL as it is. However, he also stated that he has met with members of NAHRO who had some problems with the Harvard Study. Dr. Kazama requested that the tribes be an active part of the research, and that it not be left to an outside consultant. He reiterated that the members of the committee wanted to keep as far from the Harvard Study as possible, and that this was a critical part of this group's discussions (in the workgroup). A/S Liu pointed out that NAHRO isn't opposed to the acid-based site-specific real cost approach. He also noted that there is some question regarding how cooperative the housing agencies were when they were approached by the researchers, adding that there was a sense by some HAs that they could freeze some costs. He stated that the consultants had a very difficult time with some HAs. He acknowledged that the study in Indian country would be very different since there is a willingness on the part of tribes to help come up with reliable data.

Ms. Tooley yielded to Mr. Wagenlander who observed that this is the best example of how negotiation works. This is a very complex issue with many different vested interests and concerns, not always concerns that affect their own tribes. He pointed out that the committee has come up with a way of addressing this problem that no one anticipated, which includes a little bit of each person's concern. He reiterated that AEL does not work, although it helps some and hurts some, and that the process to fix it is also a problem. He went on to say that this issue will not be fixed with a band-aid and that the A/S has made a commitment to take two years to try to come up with an approach with the support of the tribes. This is what makes negotiation work. – the withdrawal of the proposal and the willingness to look at this further means that the solution is not here, but it is within reach.

Ms. Falkner asked if there was any need for further discussion on this topic. Mr. Ducheneaux pointed out that in practically every run, his tribe loses money. He stated that the committee has come here to correct some of the inequities, but that the process is more important than any issue. And so, even though his tribe was going to lose money, he supported small tribes; on multi-race, he will also back off. But, he reiterated that his tribe is losing money on every issue that has come up.

Dr. Kazama clarified that based on the direction of the conversation, there is potential for having a preamble written. He stated his concern that he is able to review the Preamble and make comments. He pointed out that he has a responsibility to his tribes, and doesn't want the impression to be that it AEL has been removed. A/S Liu responded by stating that there will be an opportunity to see the language. Dr. Kazama added that it could be that Alaskans won't support it.

Mr. Naize asked if the committee could agree that this is a non-consensus item that will be addressed in the Preamble. Mr. Heisterkamp pointed out that all non-consensus items would be addressed in the Preamble. Mr. Ducheneaux asked if this was a non-consensus item. Ms. Falkner responded that the topics were withdrawn. Mr. Ducheneaux then

requested consensus on putting AEL in the Preamble. Ms. Falkner asked for clarification on whether the committee wanted the record to show that these items were put before the committee. Mr. Reed stated that he was confused, and if the proposal was withdrawn, then it isn't a non-consensus item. Ms. Falkner asked if the committee wants the proposal in the Preamble. Mr. Naize yielded to Mr. Carl who stated that it was clear that this is non-consensus based on the discussion, and that's why it was withdrawn. He then suggested putting it back on the table to get non-consensus if necessary.

Ms. Falkner indicated that there was a desire to put the topics back on the table and call for consensus. She asked if there were any objections to the two proposals. She noted for the record that there were 7 objections, and announced that consensus was not reached. She added that there was an agreement to work on Preamble language.

The committee then recessed for lunch, and agreed to return at 1:15 pm.

**WEDNESDAY AFTERNOON, JANUARY 14, 2004**  
**FULL COMMITTEE**

The committee reconvened at 1:15 pm, at which time the 90-minute clock was started and discussion began on Issue 10 (Attachment 23). Mr. Heisterkamp introduced the topic, explaining that the issue was discussed at length at the September meeting. He added that the language was produced during the caucus regarding the sources of data. He clarified that in addition to the decennial census, there would be additional baseline data, including tribal census, IHS data, or tribal enrollment. He further explained that this language would modify the existing regulation. Before discussion began, Mr. Heisterkamp announced that Mr. Fagan would serve as A/S Liu's alternate during the discussion, that Mr. Tullis had arrived, and that the data source document was available. Discussion began.

Ms. Falkner asked if there were any comments. Ms. Tooley asked for an explanation of why this was being introduced. Mr. Adams responded that that UNAHA region is working with others on compromise language, and that this refers to additional data that can be used for Needs variables. Ms. Falkner asked if there were any comments while the small group works on additional language. Mr. Ducheneaux yielded to Ms. Kidder, who brought forward the compromise language. She stated that currently, if you challenge number of AIAN persons, you only change 11% of the allocation, and that this would increase in each of the categories. Mr. Heisterkamp asked if it was necessary to have 'successfully' mentioned twice. One mention was deleted.

Ms. Falkner announced that the new language is the proposal. Mr. Heisterkamp clarified that the language modifies existing §330 in the regulations.

Ms. Falkner asked if there were any questions. Mr. LaPointe pointed out that the first paragraph refers to 'identified area' and asked if this should be 'formula area.' In response, Ms. Falkner announced that this should be changed to 'formula area.' Ms.

Gore, asking for clarification, pointed out that there are 7 variables, and that the AIAN count effects only the first variable. She then asked if this language would convert to households and would then apply to all the other variables. The response was affirmative. Ms. Gore asked if there is a data run that provides information on this. Ms. Kidder responded that it isn't possible to perform a run, because only tribes that submit a challenge would get this. Ms. Tooley asked if this is for those tribes that are unable to provide the number of households that fall within the categories and does it prohibit such challenges. Ms. Kidder responded that it would not prohibit a challenge, but that this would enable a challenge without performing a complete tribal census. She then asked HUD if census does a better job at this than anyone else. Ms. Tooley asked if this is what HUD does now. The answer was no. Ms. Gore asked if the current practice is to change only one variable if there is a successful challenge. She further asked about the current practice if a tribe is successful in a census challenge. A/S Liu responded that the tribe only adjusts the variable that is challenged.

Ms. Falkner asked if there were other comments. Ms. Wilson stated that she was confused, and asked for clarification on the intent of the proposal. Mr. Hudson responded that passage of this regulation would increase the impact of a successful census challenge. Ms. Kidder stated that it had been discussed that the data challenge is very difficult. For example, currently, unless a tribe undertakes a complete tribal census, the only thing that can change is the AIAN count. She added that this language would make the process less burdensome, and that a tribe would still have to prove that it had the people, but that number would then apply across variables. Mr. Hudson yielded to Mr. Humphrey, who responded to Ms. Wilson, pointing out the example of Pine Ridge where according to Census, there are 7 people per household. He stated that percentages were determined for 30 and 50 and 80% income, and by accepting the Census data, those ratios would be applied to actual collected data. He restated that currently, tribes take ratios developed by Census and apply them to the actual AIAN count.

Mr. Hutchings pointed out that there should be an additional reference to formula area in the proposed language. The change was made.

Mr. Adams asked HUD how many successful challenges have been submitted using tribal census data for all 7 variables. A/S Liu responded stating that he didn't have that information at this time. Mr. Bush noted that each year when HUD publishes the final run, they submit the successful challenges. The answer was affirmative. Mr. Bush continued, by stating that each year we all know how many successful challenges there have been. The answer was affirmative. Mr. Bush noted that he has been successful in challenging. He then asked if instead of using actual headcounts, there will be an applied average with the other factors, so if a tribe increased its AIAN count, it would then take the Census average applied to all 7 variables. Ms. Tooley asked if there could be a situation in which the number of AIAN persons is greater than on the current allocation formula, but because the census establishes the ratios, a tribe could you end up with fewer. Mr. Anderson stated that if the Census finds that there are 100 persons but the data shows 110, then the allocation is increased 10%. There was clarification that this

was not correct. Ms. Kidder clarified that if the Census stated that the number overcrowded is half, then half of the real number would be applied. Ms. Stoloff stated that it was mathematically equivalent to the 10%. Mr. Bush asked if every variable would then be decreased by 10%. Mr. Anderson responded that the percentage would be applied to each variable. Mr. Adams stated that the proposed language would accomplish this, but that it is not what is currently happening.

Ms. Falkner asked if the committee understood the intent of the language. A/S Liu stated that he believed that the result would be that there would be an increase in the number of challenges, which would increase the number of changes and that affects everyone else. He added that this would be manageable at this time, but he could not say what would happen in future. Mr. Sawyers pointed out that although he didn't disagree, he doesn't know that it will or will not increase number of challenges; but it isn't fair and equitable as it is now. He added that the committee is looking at what is fair, and this is fairer.

Ms. Tooley stated that this is a big difference, and a tribe would only have to prove one number. She pointed out that proving all the variables is a difficult thing to do, even for a small tribe, and when the big tribes start challenging, it will have a big effect. A/S Liu stated that fairness and equity must to be looked at in many ways, e.g., being able to manage the program within budgets, and being able to expect timely responses from HUD. Mr. Ducheneaux yielded to Ms. Kidder, who stated that the point is that if the Census is correct in its percentages, why not use them. She added that a tribe would still have the burden of proving that it has the numbers. She reiterated that the proponents think this approach is fairer. Mr. Sawyers commented that the number of challenges isn't the issue; it is the number of successful challenges.

Ms. Falkner asked if there were other comments or suggestions. She asked if there was a need for further discussion. Mr. Bush stated that there is currently a way that a tribe can challenge. He added that at this time, a successful challenge now only changes AIAN, which is different than challenging the entire census. Mr. Hudson asked if this language replaces what is in the briefing book. The answer was affirmative. Mr. Hudson then yielded to Mr. Humphrey, who again used the Pine Ridge example, stating that the Census shows 13,000 AIAN persons. He added that the tribe has proven that there are 35,000 AIAN persons. Further, he noted that if Census data is accepted as being sufficient for funding, and the difference from 13,000 to 35,000 is approximately three times, then there isn't any reason that the Census data would not be used across the correct number. He added that the Census data are not actual numbers and so there is no justification that a tribe can't use the ratios developed by Census on numbers that can be proven. Mr. Adams commented that there are larger tribes that will find the resources to do full challenges in any case, and so this language actually helps the small tribes.

Ms. Falkner asked if there were any other comments. She asked if there was a need for further discussion or whether the committee had concluded its discussion on this topic. It was agreed that the discussion was not finished and that the committee was not prepared to call for consensus at this time.

Mr. Adams stated that the Census does not show the actual number of AIAN people that must be served by his program. He again asked why a tribe can't get credit for the actual number of people. He added that this is an important point to remember; that the people are there, and they need services.

Ms. Falkner announced that there were 45 minutes remaining on the clock. Mr. Sawyers asked if the committee was ready to call for consensus and that he didn't think there were any arguments that have not been heard. He called for consensus.

Ms. Falkner asked if there was any other discussion. Mr. Sossamon asked what data is acceptable on successful AIAN challenges, and what is the credibility threshold for that data. A/S Liu yielded to Mr. Anderson, who stated that the current Census challenge process is described in a document. He added that there have been challenges based on survey data or samples and that such challenges are evaluated based on traditional survey methodology. He added that there have been challenges based on IHS data, in which case verification is tied to geography. He stated that for challenges based on tribal enrollment, HUD accepts a demonstration of per capita payment or other cases in which the tribe has an incentive to keep accurate numbers. He added that verification in these cases is also tied to geography. Mr. Anderson pointed out that there have been successful challenges in all categories. Mr. Sossamon asked if the same process and criteria would be used to establish AIAN count. Mr. Anderson responded that he would expect that HUD would review challenges the same way as it currently does, including site visits for confirmation. Mr. Sossamon asked the question of A/S Liu, who replied that HUD will use a process that has as much integrity as possible. He added that if there is a significant increase in the number of challenges, that might have an effect on the process, but that he couldn't predict what that would be. He reiterated that any changes would relate to the workload. Mr. Hudson asked what percentage of challenges are successful. A/S Liu stated that he did not have that information at this time, but that it is available.

Mr. Bush asked if HUD looks at the data that were submitted when there is an on-site review. He added that if the data were already there, what data would be there to review. Would it simply be the number of AIAN persons. The answer was affirmative. Dr. Kazama suggested include 'at the tribe's option' if the tribe can prove other information. He then yielded to Mr. Tillinghast, who commented that tribes occasionally get data on people who are poor and overcrowded that is better than Census data. He added that tribes should have the option of using that data.

Ms. Falkner asked if there were any other comments. Mr. Adams stated that UNAHA would accept that amendment proposed by Dr. Kazama. Mr. Sossamon asked if once a data challenge is submitted, is there a time period in which HUD is required to respond. A/S Liu replied that HUD has 45 days in which to respond. Mr. Sossamon asked for clarification if the 45-day period was a response or to make its ruling. Mr. Heisterkamp stated that the existing §336 provides the timelines for a challenge and response. He clarified that "...HUD shall respond not later than 45 days and either approve or challenge the validity of such data."

Mr. Sossamon stated that he had a concern that if there is a flood of challenges and HUD is required to respond, there may be a tendency to have a lower threshold that is be accepted. Mr. Sawyers commented that he doesn't think that's a reasonable concern. Further, he pointed out that was not what is being asked for. He stated that the large tribes have the ability to challenge. He added that his region came up with the idea that something be put on the table that will benefit the small tribes. He reiterated that it is fair and equitable, and gives smaller tribes the ability to challenge. Mr. Sawyers then stated that he would like to call for consensus. Mr. Bush pointed out that there are quite a few small tribes that have had successful challenges, and that he is concerned that if you have a finite pot of money, there must be a fairly constant process. He added that he didn't understand how HUD would monitor AIAN data, noting that in the Pine Ridge example if the 13,000 figure is changed to 35,000, that's 100% increase in every variable, and there would be nothing else to look at. He reiterated that this would hurt the small tribes because the pot would be divided even further.

Ms. Falkner asked if further discussion was necessary. She asked if the committee was prepared to call for consensus on this now (Attachment 24). Ms. Falkner announced that there was a call for consensus. She asked if there was anyone who could not live with this proposal. There were 9 objections. Ms. Falkner announced that consensus has not been reached.

The committee recessed for a 15-minute break.

The committee returned at 2:35 pm at which time the 90-minute clock was started and discussion began on Issue 11 (Attachment 25). Mr. Heisterkamp introduced the topic, multi-race. He explained that there was one proposal to add a new regulation. This is a new proposal. There are also some new formula runs that correspond, 79, 80, and 81, which were provided in committee member's packets. The discussion began.

Mr. Adams stated that this is an issue for which a decision was made which impacted everyone in the room without input. He added that everyone will have to live with the decision, and that going back to AIAN only is not an option. He stated that in the spirit of cooperation, his region has put forward an option that can be seen as a compromise. He added that he hoped that everyone would take a serious look at the proposal. Mr. Adams further remarked that there was a huge shift in using mixed race that really impacted rural Indians. He stated that was the reason the proposal was put forward. Mr. Sawyers commented that UNAHA felt this was a compromise, and there will still be a shift of funding, but in this proposal, the big winners will lose a bit, but they haven't put anything in their budgets yet. He added that the big losers would have the blow lessened a bit.

Ms. Falkner asked if there were other comments. Ms. Tooley asked if data run #79 applies the average and total grant effect. Ms. Falkner asked Mr. Boyd if Mr. Anderson was available to answer. Ms. Difuntorum stated that it was her understanding that this is an issue of tribal enrollment, and that by using AIAN only, a significant number of tribal

members would not be counted. She pointed out that her tribe's blood quantum is 1/8, and that her tribal members are almost all mixed race, and they wouldn't be counted. Mr. Sawyers commented that in many other areas, there is a significant impact to counting multiple race. He recognized that this effect varies, and added that this compromise equalizes the field. He pointed out that it would change the outcome, but would do so more fairly. Ms. Difuntorum stated that she was not speaking for just one tribe, but that looking at it regionally, it is a significant amount of money. She added that more importantly, she didn't feel that this committee could decide who is or is not an Indian.

Mr. Hoffman asked which data runs were applicable. He added that he understands this is a combination with an average, although he still sees that there is a significant reduction for his tribe as well. A/S Liu yielded to Mr. Anderson, who stated that the most applicable data runs are #79-#81, although #81 was a misunderstanding. He added that #81A uses the average input data, and was the run that should be referred to.

Ms. Falkner asked if there were other comments. Mr. Hoffman asked how the average was derived. Mr. Anderson responded that the average is from #79 and #80. Mr. Hoffman asked how the final grant amount was determined. Mr. Boyd yielded to Mr. Anderson, who responded that the first column is an average of single race and multi-race. He stated that #81A is based on averaging the data and calculating the formula based on the average data, then the two averages are compared in the last column.

[For the next 20 minutes, there was individual review of documents, discussion, and negotiation around the table.]

Mr. Gorynski asked if someone could explain the results. A/S Liu yielded to Mr. Anderson, who explained that #79 uses multi-race data with the FY2004 estimate data; #80 uses FY2004 data with single race only. He stated that the difference column in #80 is the difference between the two. He pointed out that there is a 5.3% increase over multi-race by single race. He further explained that the average is of single race computation and multi-race. Mr. Anderson then stated that #81A uses average input data and the percent difference is the difference between #80 and the new data. He clarified that the input data are the 7 needs variables, reported as straight multi-race, straight single, and an average in #81A. Mr. Gorynski asked if #79 was the starting point, so that if you subtract #79 from #81A, that would be the difference between what a tribe would receive without this proposal. Mr. Anderson clarified that #81A is this proposal as it stands, and #79 is multi-race.

Ms. Falkner asked if there were any other comments. Mr. Hudson asked if HUD has made an official decision to use the multi-race data as opposed to single race whether or not the compromise is agreed upon. A/S Liu stated that HUD will use multi-race data. Ms. Wilson commented that according to the figures, Quinault would increase its grant by \$40k. However, she added that the Quinault Nation has stated that it would not use multi-race data, based on its fear that the federal governments would come back and say they were not Indians. She stated that if she agreed to this, she would likely lose her job.



Mr. Sawyers pointed out that if you agree with this proposal, you're not taking multi-race, you are taking the average. He reiterated that this proposal has nothing to do with multi-race. Ms. Wilson asked if this is just jockeying around words. She added that she would have to explain this to her tribal council. Mr. Sawyers reiterated that support for this proposal means taking an amount of money that is an average of multi-race and AIAN only. He added that this compromise would be easy to explain. Ms. Tooley commented that the FY2004 estimate uses multi-race, and if Quinault won't accept that money, it could subtract the single race from multi-race and return it to HUD. She added that Quinault could still do that under this proposal. She added that the tribe could still return the amount the tribe felt was inappropriate.

Ms. Falkner asked if there was a need for any further discussion. Mr. Coyle stated that he would go along with Northwest Housing and Quinault. Mr. Gorynski stated that the Samish and others funding will go down, and that he will stand on their side, and will not go along with this. He added that his tribe has an \$88k loss, and if he also gives money to small tribes on top of that, he may as well not go home. Mr. Sawyers reiterated that the tribe is not losing any money, and that this is money that the tribe may get in the future. He emphasized that this represents funds that are not yet in the tribe's budget, and that actually, the tribe gains over last year. Mr. Sawyers restated that this is money that has been allocated a different way, but that Mr. Gorynski's tribe still gains over the 1990 Census. Mr. Gorynski stated that although he appreciated that, he was not speaking just for himself, and it looks as though other tribes would have up to a 50% loss. Mr. Sawyers stated it was still a gain.

Ms. Wilson asked if the committee could agree to strike ¶(b). Mr. Sawyers pointed out that there is no way to have an average with one factor, and that the proposal is the average. Ms. Tooley clarified that Ms. Wilson's proposal is to go back to AIAN only. Ms. Wilson confirmed that was her intent.

Ms. Falkner asked if there were any other comments and did the committee need additional time to talk about the new proposal. Mr. Adams commented that when the bombshell was dropped on us that multi-race was being used, his region tried to put a proposal on the table that was AIAN only, and it was soundly rejected. He added that as a result, all tribes would have to live with multi-race. He reiterated that this proposal is a compromise, with the understanding that some tribes will still gain, but they will not gain as much. He added that this funding has not been realized yet. He also pointed out that those tribes that lose, will not lose as much. Mr. Naize yielded to Mr. Carl, who stated that he supports the proposal to use AIAN only, however, the committee has not yet reached consensus on that. He added that ¶(a) really identifies Indians, and if you go to multi-race, the money shifts off the reservation and into the urban setting. He stated that a proposal had been submitted that looks at tribal enrollment as the true number, but that he has been told that can't be used because it is not verifiable and consistent. Mr. Carl stated that this compromise addresses a policy that the tribes had no input into.

Ms. Falkner asked if there were other comments. Mr. Hoffman commented that in the past he has expressed his opposition to the policy, but now would like to hear from HUD as to how they will address the averaging. A/S Liu responded that HUD believes that the path chosen is based on sound policy of using the best available data. He added that it is inclusive of those who self-identify as both AIAN and AIAN plus other. He stated that HUD continues to believe that it is the best information. Mr. Shuravloff yielded to Mr. Sceeles, who stated that he felt HUD has put that multi-race forth without adequate consultation. He commented that for HUD to use multi-race without a corresponding increase in funding is wrong, and that this action pit regions against each other for a limited amount of money. He also stated that Alaska tribes would support multi-race if funding levels were held at FY2003 levels (Attachment 26).

Ms. Falkner asked if the committee needed further discussion. Mr. Bush commented that he thought this was a good compromise that finds common ground. However, he asked if the proposal was acceptable to HUD and to the Alaska HAs, and would they support the compromise. Mr. Hoffman requested that HUD respond first. A/S Liu restated that HUD believes that it has chosen to use the best information, and that it is in the best interest of public policy to allow Americans who are tribal members, based on tribal membership criteria to be counted. He added that HUD would not support any policy that would deny anyone the ability to report his or her heritage. Mr. Adams asked whether HUD would consent. A/S Liu responded that HUD would not consent.

Ms. Falkner asked if there were any other comments. Mr. Naize yielded to Mr. Carl, who commented that the statement really blows the premise of NAHASDA out of the water. He added that the intention that Congress is funding reservations has just gone by the wayside. He stated that NAHASDA was created to serve Indians, not Americans. Mr. Sossamon commented that he disagreed with Mr. Carl, and that this is certainly not representative in Oklahoma.

Ms. Falkner announced that there was a call for consensus. She asked if there were any objections. There were 10 objections. Ms. Falkner announced that consensus had not been reached.

The committee recessed for a 15-minute break.

The committee returned at 4:05 pm at which time the 90-minute clock was started and discussion began on Issue 12 (Attachment 27). Mr. Heisterkamp introduced the topic, data challenge, explaining that there were two proposals: one is presented by Cook Inlet; and the other is from UNAHA. He then announced that Mr. Ducheneaux was withdrawing his proposal in favor of focusing on the Cook Inlet proposal. Mr. Heisterkamp pointed out that the discussion would focus on the language being proposed by Cook Inlet, and represents changes to §1000.336. The discussion began.

Ms. Gore yielded to Mr. Hutchings, who stated that the proposal is similar to the original language in §336 but broadens the scope of items that can be processed; and it adds a step

where HUD makes a decision that must be detailed in writing. He added that the June 15 deadline date is also removed. Mr. LaPointe stated that he would like to call for consensus on this item.

Ms. Falkner asked if there was need for further discussion. She added that she was aware of the protocol, and asked again if the committee wanted to proceed. Mr. Sawyers noted that there are committee members absent, but that the protocol states that if you're not at the table, too bad. Ms. Gore reiterated that there has been a call for consensus, and the rules stand. Mr. Adams agreed, and commented that the call for consensus has been made and the committee should proceed.

Ms. Falkner announced that there was a call for consensus on the appeals process. She asked if there was any further discussion. Mr. Jones asked what date would go in the blank. Mr. LaPointe responded that would be filled in by the drafting committee.

Ms. Falkner asked if there were any further issues before consensus. She asked if there were any objection. A/S Liu stated that HUD would like to have some time to discuss specific items related to the challenge processes described here and to refine the proposal to specifically address those items. For example, he commented that he did not understand what was meant by 'formula determination' since this term is not used elsewhere. He requested meeting with some of the proponents as to how this can be refined. Ms. Falkner asked if there was a group that would work this out. A/S Liu stated that Ms. Lalancette is prepared to meet with the proponents to work on the issue. Ms. Falkner reminded the committee that the clock would continue while committee members were meeting outside the room. There was no additional discussion and Ms. Falkner announced that would keep track of the clock while they discussed the issue.

Mr. Heisterkamp reiterated that there are two proposals out of the workgroup, and he read the language for §336 (a) and (b). Ms. Falkner asked if the language reflects the work of the workgroup. It was confirmed that was true. Ms. Gore suggested that FMR should be included in the list that can be challenged.

Ms. Falkner asked if there were comments. A/S Liu stated that he supported this language because it balances all of our interests in a better-defined challenge process. He added that it meets HUD's concerns regarding the previous proposals in that it provides limits for what can be challenged. Ms. Falkner asked if there were any other comments or any need for further discussion. Ms. Gore stated that there was an expression of interest in other items. She yielded to Mr. Hutchings, who commented that this is the list, and anything that is not on the list will not be considered. He encouraged anyone who had anything else to add, to do so at this time. Mr. Bush asked if the March 15<sup>th</sup> deadline would take the place of the June 15<sup>th</sup> and September 15<sup>th</sup> deadlines. Ms. Lalancette clarified that it would replace the June 15<sup>th</sup> deadline only.

Mr. Adams, referring to ¶(b), 'were collected in a manner acceptable to HUD' should be changed to 'are acceptable to HUD' noting that the important thing is to report data to

HUD. Ms. Lalancette indicated that this is the language that is in the regulation now. Mr. Sawyers asked if HUD had heartburn over 'acceptable to HUD' adding that the way it reads now, HUD determines how the data is collected. A/S Liu stated that he didn't have heartburn over this issue, but added that in fairness, there are issues related to how data are collected. He restated that he didn't have a problem, but that in some cases, how data are collected is significant. The language was changed.

Mr. Sawyers yielded to Mr. Wagenlander, recapped the discussion. He noted that language was placed on the screen; an alternative proposal was submitted listing the specific challenge items; committee members felt that the list was not complete; There was an alternative proposal that would make the items that could be challenged suggested rather than an inclusive group. That is, the list was not a complete list. A group working together then further refined it. A/S Liu commented that HUD didn't want to see a process that was open-ended because the process can only bear so much. He also added that if there are other specific items that members would like to see added, HUD is willing to entertain them. A/S Liu pointed out that HUD has some knowledge of the mutual areas of concern, and if there are other items that the committee would like to see added, they should be suggested, and they can be discussed.

Mr. Sawyers suggested taking the original language that was up before and calling for consensus. He stated that there is no challenge right now, so even if it isn't what we want exactly, it's better than nothing. Mr. Bush asked why 1999 is referenced. Ms. Gore responded that the reference should be removed. Mr. Sossamon asked if it would be too open-ended to include a sentence that recognized that if HUD and a tribe agree to something that is not listed, then it could be challenged, that is if a tribe can demonstrate to HUD that it is a valid challenge, can HUD agree to it and go through the data challenge process. A/S Liu responded that inherent in this proposal is the view that if there are additions that rise to the level that was totally unanticipated, this power exists to waive a restriction. He added that certainly, if an issue like that arises, a waiver could be provided, and such waivers become public. He pointed out that this is an open process that can be done without any additional language here, and utilizing existing language.

Ms. Wilson yielded to Ms. Foster, who noted that in terms of process, the existing §336 picks up §118, which provides for a further appeal up through to the Assistant Secretary. She added that this proposal would eliminate that, and if that isn't the intent, it should be clarified. Mr. Hoffman yielded to Mr. Hutchings who agreed but noted that the legal effect is the same and the A/S is the decision-maker whether we put the words in or not. He also added that although this language isn't perfect, an attempt was made to include as many items that we thought would be contentious, and currently there is not place where the process is set forth.

Ms. Falkner asked if there was further discussion. Ms. Wilson yielded to Ms. Foster, who noted that she appreciated the comments, and then requested a comment from A/S Liu. Ms. McFadden responded that it was correct, and that the regulation does not have to specify the A/S.

Ms. Falkner asked if the committee was prepared to call for consensus. She asked if there were any objections to the language on the screen. Hearing none, Ms. Falkner announced that consensus had been reached (Attachment 28).

The committee recessed for a 15-minute break.

The committee returned at 5:40 pm. Ms. Falkner directed the committee to Tab #13, commenting that there is nothing in the Tab (Attachment 29). Mr. Heisterkamp stated that there were no proposals submitted and therefore there will be no discussion according to the procedures. He added that at this point, he and the facilitator recommend that the committee recess so that they could meet with tribal leadership, prior to the administrative session. It was announced that the tribal leadership would meet for no more than 30 minutes.

The committee recessed and then returned at 6:15 pm for the administrative session.

Mr. Sossamon took over the meeting. He thanked each of the committee members for their efforts, as well as the audience participants. He added that everyone working together has greatly assisted in moving the work of the committee forward, and he also thanked A/S Liu, Mr. Boyd, and the HUD staff. Mr. Sossamon commented that the committee has made substantial progress and it looked as if the committee would be able to wrap up, possibly ahead of schedule. He stated that the committee would reconvene at 8:30 am on Thursday morning and would be addressing Tabs #14 – #18. He pointed out that there is no language under some of the Tabs, and that one Tab had already been addressed. He commented that the committee might be able to conclude getting through all the issues by noon, and at that time the committee would determine whether to break for lunch, or go into an administrative session to develop a schedule for the non-consensus items. Mr. Sossamon assured the committee that it would then address each of those items. He then asked if there were any questions or comments. Hearing none, Mr. Sossamon announced that the committee would recess until 8:30 am Thursday.

#### **THURSDAY MORNING, JANUARY 15, 2004 FULL COMMITTEE**

The committee reconvened at 8:30 am. Mr. Naize gave the convocation. Ms. Falkner announced that the NW region provided the coffee.

The 90-minute clock was started and discussion began on Issue #14 (Attachment 30). Mr. Heisterkamp provided the overview, explaining that there was one proposal, which deals with the existing housing shortage variable. He further explained that ¶(c) has been changed, and that if this is approved, the proposal contains a note that appendices a and b would also have to be amended in that regard, which would be an issue for the drafting committee. The discussion began.

Ms. Falkner asked if there were any comments. Ms. Gore requested that the author of the proposal explain the intent of 'formula median income' in brackets. Mr. Naize yielded to Mr. Carl, who referred the question to HUD, adding that he didn't see a data run that shows the impact of this. Ms. Gore stated that there was a non-consensus item on median income, and that the bracket was an attempt to address that. She requested that the brackets be removed until there is resolution of the previous issue on median income. The brackets were removed. A/S Liu stated that there were data runs performed to identify the impact. Mr. Carl stated that he would like an explanation of the data runs. A/S Liu responded that Mr. Richardson would review the data and provide an explanation.

Mr. Sawyers stated that there is no effect, and this is the same way that it is being treated now. Ms. Stoloff commented that this is reduced by formula CAS, and that it used to be CAS. She apologized for the confusion, and pointed out that Section 8 units will be subtracted from FCAS. She clarified that the regulation now reads 'CAS,' which is not defined as including Section 8. She also noted that the 'formula median income' is a different issue. Mr. Adams stated that the intent was to eliminate the units developed under NAHASDA, which would go back into CAS. Mr. Bush stated that he would not agree, and that the original intent of this change was to include Section 8. A/S Liu stated that the current language refers to CAS, which does not include Section 8. Mr. Bush asked if tribes have been receiving funds under this variable for Section 8 vouchers. Mr. Sossamon noted that he did not receive a reduction in funding for FCAS, and he added that he believes that this is correctly applied as Section 8 does represent a unit, but is not an actual unit.

Ms. Tooley commented that if her tribe was receiving a lot of Section 8 vouchers, she'd try to keep the funding, but given the whole formula and how inequitable it is for those Section 8 units not to be factored in is almost unreasonable. Mr. Sossamon stated that he feels this is sound from another perspective, which is that it does not create availability of another unit. He reiterated that he thinks it is fair. Ms. Tooley commented that she doesn't know how this affects overall funding, but she stated that she couldn't produce a unit with her entire grant. Mr. Naize yielded to Mr. Carl, who stated that he supports FCAS out of fairness. He pointed out that in this proposal, the vouchers are offset in the housing shortage variable, which is fair. He also stated that the committee has been trying to work through the fairness issue. For example, they have taken reductions in mixed race, which has gone to Oklahoma. He stated that this was one area that we had hoped that the Oklahoma tribes would be willing to give in on. Mr. Carl stated that he respected Mr. Sossamon's position, but would like to take some time to discuss this. Mr. Sossamon responded that he would be happy to discuss this, and asked Mr. Carl what aspect was unclear. Mr. Carl stated that it was his request to define FCAS to include Section 8. Mr. Sossamon responded that this has been considered. A/S Liu commented that the data runs listed on the Tab do not relate to this issue.

Mr. Sawyers stated that the attempt was to eliminate NAHASDA units. If including the word 'formula' makes that difference, then it needs to be taken out. He reiterated that

whatever else you come up with, he would like to make certain that NAHASDA units are eliminated. Mr. Carl commented that there isn't a question on NAHASDA units, and then if the intent is to offset the housing shortage variable, it should also include Section 8. Ms. Tooley stated that when she first read this, she thought that they were including the units that they are actually getting funded for and she thought it was the right thing to do. She added that apparently it was a mistake. Mr. Naize yielded to Mr. Carl, who stated that he had an amendment to specifically continue Section 8 under §502, and also §302 b1, and asked for guidance from HUD counsel on this in relation to the proposal on the board. A/S Liu responded that there was no effect on this issue. Mr. Carl asked that the committee look at §302, which states "...the number of low income units owned or operated..." Mr. Carl stated that he interprets that to include Section 8. He then referred to the last sentence in §502, which reads, "...should be considered a dwelling unit."

A/S Liu yielded to Ms. McFadden, who commented that the sections in §502 and §302 speak to FCAS, and these units are funded on the CAS side. She added that HUD interprets this to relate to the FCAS. Mr. Carl stated that §502 refers to a voucher as a dwelling unit. Ms. McFadden stated that §502 refers to including these under §302, which it does. Mr. Bush pointed out the two sections of the statute that refer to Needs and CAS components. He added that he was under the impression that CAS is under Need, and that the statute notes that everything is under Need. He commented that he didn't understand if one is funded under CAS and the other is funded under Need. He stated that it's all Need, and that he was confused by the answer. A/S Liu commented that it seemed clear to him. Mr. Carl stated that it was very clear.

A/S Liu stated that the committee has addressed this, and if there is consensus that the committee wants it clarified, then the committee can do that. He added that HUD is implementing the regulation as it is written currently. He reiterated that if this committee wants to change that, which is currently under discussion, that is perfectly appropriate. Mr. Hudson stated that §502 refers to section §302 b1, which refers to factors in determination of Need, so he agreed with A/S Liu, and didn't feel there was any confusion. Mr. Carl stated that the regulation does not support the statute. Mr. Hudson asked if §502 could be put up on the screen. [Staff put §502 (amended) and §302b on the screen.]

Ms. Falkner announced that the committee had reached the 45-minute point in the discussion. Mr. Sossamon requested that the committee look at the 2 questions separately: NAHASDA units and Section 8. Ms. Falkner stated that there were two proposals: one has to do with NAHASDA units; the other with Section 3 (FCAS). She asked if the committee wanted to look at the exclusion of NAHASDA units first. The committee agreed. She asked if there was any further discussion on this. She asked if the committee was prepared to call for consensus. She asked if there were any objections to excluding NAHASDA units. Mr. Naize stated that he want to know if there is anyone who has an objection before calling for consensus. Ms. Falkner asked if there was anyone who objected to excluding NAHASDA units. Ms. Wilson asked if the committee

was discussing excluding NAHASDA units from the discussion or the regulation. Ms. Falkner clarified that the exclusion was from the regulation.

Mr. Sossamon reiterated that the committee was looking at excluding NAHASDA units from the housing shortage variable. He added that the committee would then come back to the Section 8 issue. Ms. Wilson stated that she would object, as it will shift money from Need to CAS. Mr. Sossamon commented that as the current regulation currently stands, under §324c, "...and units developed under NAHASDA" because there is not a definition of a NAHASDA unit. Ms. Wilson removed her objection.

Ms. Falkner asked if there was any further discussion. She asked if the committee wanted to call for consensus. She asked if there were any further objections. Mr. Bush stated that he objected. He commented that he feels that the reason the committee wants to remove is because this committee couldn't come up with a definition of a NAHASDA unit. He added that he is counting on the Need side of the formula to get funding and that the housing shortage variable is where you subtract out units. He stated that if there is no definition, then the committee should develop one. He added that this has never been enforced, but he would like the opportunity to develop some NAHASDA units. He pointed out that it is a unit and it is serving a needy family, and it should be subtracted out. Mr. Sawyer stated that there was no intent to put NAHASDA units in; there is no definition, so you can't subtract. He added that it shouldn't be in the regulations to begin with. Mr. Bush pointed out that he was on the original committee, and it wasn't a mistake. He added that the mistake was that they didn't write a better formula and weight these factors a bit more. He added that the original committee mandated that a committee would come back to review the formula. He also stated that the original committee knew exactly what it was doing at the time.

Ms. Tooley agreed with Mr. Bush, and added that the committee got caught up at this session in the attempt to define a NAHASDA unit. She added that the workgroup looked at subsidy. She also stated that she hoped that the next negotiated rulemaking committee is able to define a NAHASDA unit so that it can at least be used in this factor. Ms. Wilson pointed out that no matter what numbers are run, small tribes never receive more, and if NAHASDA units were originally put in for operation and maintenance, this impacts small tribes. Mr. LaPointe commented that the committee had been remiss in not defining NAHASDA unit, and added that it isn't implemented because there is no definition. He stated that this is a problem, and these units can't be counted. He added that they were losing control.

Ms. Falkner asked if there were any additional comments or any further objections. She asked if the committee was prepared to call for consensus on this. There were 5 objections. Ms. Falkner announced that the second issue deals with the formula current assisted stock. She asked if the committee was prepared to call for consensus. Dr. Kazama yielded three minutes to Mr. Carl. [It was pointed out that this could not be done under the rules.] Mr. Carl commented that this was a dead issue. He added that it was all about money, not about fairness. But he pointed out that the statute is clear that the



intended purpose is that any program under contract expiration would be excluded. He added that then the amendment came along that continued the Section 8 contracts, with no expiration. Mr. Carl stated that this is where the inequity comes in, and that he wanted the regulation to comply with the statute and to eliminate double dipping. Mr. Sossamon wanted to comment for the record that it is unfortunate. He stated that he disagreed with Mr. Carl, and that it could be said that every issue is about money. He added that every issue the committee has dealt with has involved a shift in funds, but that everyone has negotiated in good faith, and each committee member has their own perspective of fairness.

Ms. Falkner asked if there were any other comments. Mr. Ducheneaux stated that regardless of what anyone says, a voucher is a house, and to him it is a house just the same as any other.

Ms. Falkner asked if there were any additional comments. She asked if the committee was prepared to call for consensus on this issue. She asked if there were any objections to formula CAS. There were 6 objections. Ms. Falkner announced that consensus had not been reached.

The committee recessed for a 15-minute break.

The committee returned at 10:05 am at which time Ms. Falkner noted that there were no proposals for either Tab #15 or Tab #16 (Attachments 31 and 32, respectively). Mr. Heisterkamp pointed out that according to the procedures, there will be no discussion on either issue # 15 or #16. He noted for the record, that the committee reviewed the Tabs for which there were no proposals.

Mr. Naize yielded to Mr. Carl, who stated that the discussion document is data run #48. Mr. Heisterkamp reiterated that the parameters are that a proposal must have been submitted by January 9 in order to open discussion. He added that discussing this without a proposal is outside of the procedures agreed to by the committee at the beginning of this meeting, and that it would be necessary for the committee to have a procedural discussion. Mr. Carl stated that he respects that the discussion is to eliminate the housing shortage variable and move to another area. However, he added that he doesn't believe there needs to be a proposal. Mr. Jones objected to any further discussion. Ms. Tooley asked if it is appropriate to bring this up at the end. Mr. Heisterkamp responded that it is possible, and that there would be an administrative session on the non-consensus. He added that there is no procedure for issues for which there are no proposals, but that the committee could take that up at a later time, and the committee could adopt another procedure. Mr. Carl pointed out that if you look under Tab #15, the proposal was first introduced on 8/20/03; therefore, there is a proposal on the table.

Mr. Heisterkamp referred to the lilac paper in the front of the binder, which states that a proposal must be provided by January 9, 2004. He reiterated that he was not saying the

committee can't change what it is doing, but it would need a procedural decision. Ms. Falkner stated that there would be an administrative session later today where this can be raised. She then asked if it was the desire of the committee to follow the procedures as set forth at the beginning of the session. Mr. Sossamon responded that the committee agreed by consensus to follow the procedures. He added that in regard to Mr. Carl's question of raising a proposal under Tab #15, if there is consensus to allot time to this issue during the non-consensus period, then Mr. Carl could speak to this issue at that time.

Ms. Falkner clarified that if the committee wants to change the procedure, it can be brought up during the administrative session. She added that under the current procedures, there is no discussion. She also suggested combining Tab #15 and Tab #16 where there are also no proposals. She then suggested that the committee recess for a 15-minute break and return to address Tab #17. Mr. Sossamon stated that it is his understanding that Tab #17 is going to be withdrawn. Mr. Heisterkamp reiterated that there is no language for Tab #15 and Tab #16 and therefore there would be no discussion. He added that it appeared that Mr. Ducheneaux was prepared to withdraw his proposal under Tab #17 (Attachment 33). Mr. Ducheneaux confirmed that he would withdraw his proposal under Tab #17.

Ms. Falkner announced that the committee would recess for a 15-minute break and then return to discuss Tab #18.

The committee returned at 10:30 am at which time the 90-minute clock was started and discussion began on Issue 18. Mr. Heisterkamp introduced the topic, explaining that a portion of Tab #7 had been moved to Tab #18 (Attachment 34), which he read, and noted that this would provide further modification to §302 ¶4, regarding state recognized tribes. He stated that copies of §302 would be distributed. The discussion began.

Mr. Jones stated that he was looking at the possibility of withdrawing this, but would like to get that information and go into discussion offline. Ms. Falkner stated that as soon as the copies are ready, they would be distributed. She added that the HUD breakout room is available for a small group discussion. Ms. Tooley asked if the committee members would get a draft of the consensus items before the end of the meeting. Mr. Heisterkamp stated that committee members would be provided with consensus language that has been agreed upon before leaving. Mr. LaPointe stated that the portion he is looking for is ¶3. Mr. Heisterkamp responded that we have to wait to see what was agreed upon previously, and that the paragraph numbers may have to be changed.

Mr. Jones confirmed that only this paragraph was moved forward into issue #18. He then yielded to Ms. Kidder, who stated that the committee agreed that a group would go out to discuss and that for the sake of saving time, the small group should go into the HUD room to discuss now. Ms. Falkner pointed out that the clock will continue to run and there can be discussion at the table during this time, if the committee so desires.

Upon his return, Mr. Jones withdrew his proposal under Tab #18.

Ms. Falkner stated that the discussion on Tabs #1 - #18 was now closed. She announced that there would be a recess for 30 minutes during which time a list of non-consensus items would be drawn up. She further announced that the facilitator and discussion leader would meet with the co-chairs at 11:30 am to prepare for the administrative session. Mr. Sossamon then announced that the committee would recess for one hour, reconvening at noon for an administrative session to decide on the non-consensus agenda. At the close of the administrative session, the committee will recess for lunch.

The committee reconvened at 12:00 pm for an administrative session.

The following was reported out from the meeting of the tribal leadership. A list of the non-consensus issues was distributed (Attachment 35). It was explained that the committee has reached consensus to bring back issues #2, #3, and #5 for further discussion. For the remainder, each discussion period will be 30 minutes, if the committee decides to revisit. It was further explained that the 5-minute rule will apply during discussion of whether or not to bring these issues back, and the facilitator will lead the discussion and keep time. It was also determined that the committee would recess for 1 ½ lunch, plus one hour for informal discussion to determine if any compromises can be reached on the first three items. After that time, the committee will reconvene and begin with issue #2, median income. It was explained that the 5-minute rule will be effect, and there would be a 5-minute break between issues.

It was reiterated that the purpose of this administrative session was to approve a process for the remainder of the time and to try to reach consensus on which non-consensus items would be revisited. The session was then opened up for discussion.

Mr. Bush commented that there was a proposal yesterday to divide the remainder of today and tomorrow into equal parts, and now there is a recommendation to allot 30 minutes to each issue. Mr. Sossamon responded that the co-chairs agreed to limit discussion because they determined that if for example, there were only two non-consensus items, the committee would have to allot the remainder of the time until tomorrow at 6:30 pm. He stated that the co-chairs were asking for a change, but it can only be done by consensus of the group. He added that yesterday when the committee agreed on the process, it was now known how many non-consensus items there would be. Ms. Gore pointed out that yesterday's proposal was conditional on the committee deciding on which items would be discussed. Mr. Sossamon reiterated that the committee would deal with that decision during the administrative session scheduled for this evening. Mr. Reed asked how that changes what is being proposed. Mr. Sossamon clarified that the committee will reconvene in administrative session limited to one hour to go through the items to decide if there is consensus to reopen issues. He added that the committee would then see how many issues it is going to deal with and can average the remaining time, or can ask for consensus to set a limited amount of time for each. Mr.

Reed then asked if issues #2, #3, and #5 are limited to the time allotted. It was confirmed that was correct.

Mr. Sawyers commented that it was imperative that the committee members use the informal session to see if compromises can be developed so that the committee can negotiate in good faith. Mr. Naize stated that yesterday the committee agreed that whatever was left on the table would be averaged over the remaining time. He expressed concern that the chairman might be making some decisions without the committee's consensus. Mr. Sossamon responded by stating that Mr. Naize was correct in that the committee did consent to a specific amount of time for issues #2, #3 and #5, and he added that those times are indicated on the handout. Mr. Sossamon also stated that Mr. Naize was correct that the committee agreed to allow for an averaged amount of time for non- consensus items. However, Mr. Sossamon added that it was not correct that he had unilaterally decided to change the averaging time, and that this could only be modified by consensus of the committee. He reiterated that the reason that the co-chairs recommended a change was because if the committee ends up with a small number of non-consensus items, it would then be required to stay here until 6:30 Friday and spend 4 hours on each. He added that he was only requesting that the committee agree.

Ms. Tooley asked if the committee was going to reconsider discussion items and procedures, is it also possible to reconsider the amount of time for the first three. Mr. Sossamon responded that technically that was possible, and if the committee wants to make a recommendation to change that time it could, and if there is consensus to change it, it will be changed. But, he added that the chair would allow at its discretion that the administrative session this afternoon would be limited to one hour. Ms. Tooley asked if the committee was going to give itself an opportunity to look at what will be included in the preamble, and talk about the consensus item that was reached in September regarding revisiting the formula within 5 years. She also stated that she would like to have some time to talk about what will be addressed at the next negotiated rulemaking. She wanted to be certain that the committee allotted time to talk about these things, as well. Mr. Sossamon pointed out that there would be a final administrative session to allow for comments and questions of that nature. He added that as far as the preamble is concerned, it will be taken from notes, minutes, etc., as well as comments during the public comment period allowed for in the Federal Register.

Ms. Tooley asked about the work of the drafting committee. Mr. Sossamon responded that the schedule for the drafting committee would also be discussed during final administrative session. Ms. Wilson commented that she reviewed the lilac sheet (procedures) to see if there was anything about the comment period, and found nothing. Mr. Heisterkamp responded that was covered in the Protocols and Charter, and that the lilac sheet handed out at the beginning of this meeting is supplementary to those documents. Ms. Wilson asked how the committee intended to respond to comments. Mr. Sossamon stated that he was not certain if those public comments are published. It was confirmed that they are not, but that they can be requested and accessed. It was further explained that the committee as a whole or individual committee members can obtain

copies of the comments, and that the comments will be taken into consideration before the Final Rule is published. There was a request from the committee that HUD respond to this issue. Mr. Ducheneaux yielded to Ms. Kidder, who read from the Protocols, ¶4 a, "...Prior to the publication of any proposed rule, the PFO will provide the Committee with notice and an opportunity to negotiate any changes in the proposed regulations" and ¶4 b, "...The Committee will review all comments and any clearance issues, including those of HUD and the OMB, received in response to any proposed rule and will submit a final report with recommendations to the Secretary of HUD concerning any proposal for change to the proposed rule."

Ms. Wilson asked if it was possible to get copies of the minutes on what transpired in committee on the three issues that are being revisited this afternoon. Mr. Heisterkamp responded that he would work with the support staff to see what can be done.

Mr. Sossamon announced that the committee would now recess for 1-½ hours for lunch and one hour for informal discussion, and would reconvene at 3 pm for an administrative session to decide on the non-consensus agenda.

**THURSDAY AFTERNOON, JANUARY 15, 2004**  
**FULL COMMITTEE**

The committee reconvened in administrative session to determine the non-consensus items agenda. Mr. Sossamon turned the meeting over to the facilitator, explaining that there would be one hour to develop the non-consensus agenda.

Ms. Falkner stated that there are already time limits allotted for issues #2, #3, and # 5 and that the purpose of this session was to discuss the other non-consensus items. She reiterated that the 5-minute rule is in effect. Ms. Falkner stated that the committee would take the items in order, and would begin by calling for consensus on adding the issue to the agenda.

Ms. Falkner began with Issue #6, Appeals Process, and asked if there were any objections. Ms. Tooley queried those who objected to begin with, as to whether they would be changing their position. Ms. Falkner asked again if there were any objections to reopening this issue. Mr. Adams suggested that those committee members who initially objected speak up and state why they objected. Ms. Wilson requested time to discuss this further. Mr. Heisterkamp pointed out that was not possible in the time period according to the agreed upon procedures and reiterated that this discussion was only to determine if an issue would be revisited. Ms. Wilson stated that she objected to revisiting issue #6.

Ms. Falkner asked if there was any discussion on the objection. Mr. Sossamon pointed out that the committee is calling for consensus to reopen. He asked what happens if a committee member objects. Ms. Falkner stated that there had not yet been a call for consensus. Ms. Falkner then called for consensus on revisiting issue #6. There were 7

objections. Ms. Falkner announced that issue #6, Appeals Process, would not be reopened

Ms. Falkner stated that the next issue was # 9, AEL, and asked if there were any objections to reopening the issue. She asked if there was any discussion. Ms. Falkner called for consensus. There were 9 objections. Ms. Falkner announced that issue #9, AEL, would not be reopened.

Ms. Falkner stated that the next issue was #10, Alternative Data Sources, and asked if there were objections or any discussion. Ms. Wilson commented that there was no point in reopening the issue without further information. Ms. Falkner called for consensus on reopening the issue. There were 7 objections. Ms. Falkner announced that issue #10, Alternative Data Sources, would not be reopened.

Ms. Falkner stated that the next issue was #11, Multiple Race. She asked if there was any discussion. Ms. Wilson cited the same reason as the previous issue. Mr. Sossamon pointed out that everyone here was present for each of these non-consensus items and was privileged to hear all the discussion as well as being able to access to all the months and months of discussion and research. Ms. Falkner called for consensus on reopening the issue. There were 9 objections. Ms. Falkner announced that issue #11, Multiple Race, would not be reopened.

Ms. Falkner stated that the next issue was #14, Housing Shortage Variable. She asked if there were any objections or discussion. She called for consensus to reopen. There were 9 objections. Ms. Falkner announced that issue #14, Housing Shortage Variable, would not be reopened.

[Mr. Gorynski stated that he wanted the record to show that he withdrew his objection to reopening issue #6, Appeals Process.]

Ms. Falkner announced that the committee would recess for a 15-minute break and then reconvene to address issue #2 Median Income.

The committee reconvened at 3:25 pm. Mr. Sossamon stated that there was some confusion on the time allotted for issues #2, #3, and #5. He mentioned that Mr. Bush thought the time remaining would be allotted to these three issues. However, Mr. Sossamon stated that it is his recollection that the time average was for the non-consensus issues. He added that he had reviewed the minutes, which confirmed his recollection. He reiterated that the time allotted for issues #2, #3 and #5 is as indicated on the handout, and if any other non-consensus items had been agreed upon to be reopened, they would have been averaged until Friday 6:30. However, Mr. Sossamon pointed out that there were no additional items that will be reopened, so at this point the committee needs to pick up on issues #2, #3, and #5 within the allotted times. Mr. Sawyers asked if at the end of the discussions it is agreed upon to allot more time, could that be done. Mr. Heisterkamp responded that any change would have to be addressed in another

administrative session, and that there was a session scheduled at the end of the day. Mr. Sossamon agreed that during another administrative meeting, there could be a call for consensus to reopen any of these three issues.

Mr. Bush commented that he thought it was clear yesterday when Mr. Naize called for consensus, and today, he also asked for clarification. He pointed out that the rules that the committee set state that if the committee reaches consensus to revisit, the committee can revisit, and he didn't think that there would need to be another administrative session to address this. He added that the process was for nothing if the time available can't be used. Mr. Sossamon responded that the committee will spend the allotted time, and if the committee so chooses, it can revisit afterwards. Mr. Sossamon turned the meeting over to the facilitator.

The clock was re-started and discussion began on Issue #2.

Mr. Ducheneaux yielded to Ms. Kidder, referred to the statute §4 ¶13, "...low income family means a family whose income does not exceed 80% of the median income for the area...except the Secretary...may...establish income ceilings higher or lower... because of prevailing levels of construction costs or unusually high or low family incomes." She stated that there are families living below the national poverty level who are not receiving funding, and therefore, the intent of the statute was not being met. She added that based on the number of CAS, the number of Indian families, and the extent of the economic distress in that area, results in a large number of families who continue to receive no funding. Further, she pointed out that these families are not counted at all. Ms. Kidder went on to say that the statute makes it clear that it is the greater of local or national median. She stated that there are families that earn \$4,000 per year, and that based on the criteria of fair and equitable; they must be counted somehow for funding. She reiterated that the intent of the statute was not being met, if people living below the poverty level are not counted. Ms. Kidder commented that ¶13 gives the Secretary the ability to waive the median income of the area, and that this committee has that discretion along with the Secretary. She added that there is no way that a family earning \$9,600 is making a living, and that their income is only a measure of their ability to survive. Lastly, she stated that if anyone believes that formula median is local median only, then the formula does not include a measure of poverty. She stated that Congress has mandated that this be addressed.

Ms. Falkner asked if there was any further discussion on this issue. She asked if the committee was prepared to call for consensus on this issue. She asked if there were any objections to the proposal. There were 2 objections. Ms. Falkner announced that consensus had not been reached.

Mr. Sossamon commented that he thought there was some confusion. Ms. Falkner clarified that there was a call for consensus on issue #2, Median Income, that there were 2 objections, and that consensus was not reached.

Ms. Falkner announced that there would be a 5-minute recess. Mr. Sossamon stated that for consistency, there should be a 15-minute recess.

The committee recessed for a 15-minute break.

The committee returned at 3:55 pm at which time the clock was re-started and discussion began on Issue #3, Minimum Funding.

Mr. Bush reopened the discussion on minimum funding by stating that he was going to propose an alternative at this time, which is a flat \$50k under the Needs component. He further clarified that this means that if a tribe's Need component is under \$50k, it would be adjusted up to \$50k. Mr. Heisterkamp read the new language. Mr. Bush stated that the \$50k amount would be replaced with a percentage. Mr. Sossamon requested clarification that the percentage would be based on the amount of the annual allocation available for distribution after set asides are taken out. Mr. Bush indicated that was correct. Mr. Sossamon requested further clarification that the percentage would be based on \$649 million. Mr. Bush responded that the percentage indicated in the proposal is supposed to equal \$50k, based on the FY04 allocation. He asked for verification that the percentage was correct. Ms. Gore suggested leaving the calculation to the drafting committee. Ms. Falkner clarified that the intent is to use a percentage, instead of a dollar value. Mr. Sawyers commented that he was worried about CAS, and requested clarification that the difference was a straight \$50k or setting \$200k CAS as a threshold, however he did agree to \$50k on Needs.

Ms. Falkner asked if there were any other comments. Mr. Sossamon requested clarification as to whether Mr. Sawyers was proposing no CAS threshold. Ms. Falkner restated that the language as it stands is a straight \$50k. She asked if there were any other comments.

Mr. Sawyers called for consensus.

Ms. Falkner asked if there was any further discussion. Dr. Kazama queried if the percentage is established so that if the allocation is reduced, the minimum will go down. Mr. Bush responded that the percentage is taken on the amount available for distribution on the whole. He confirmed that since this is a percentage, it would fluctuate. If the allocation goes down, the minimum will decrease; if the allocation goes up, the minimum will increase. Ms. Gore asked if the percentage is tied to fiscal year. The response was affirmative. Mr. Sossamon clarified that the percentage is applied annually to the FY appropriation for what is available for distribution.

Ms. Falkner requested clarification for the record on whether the percentage is based on the whole allocation or the funding available after set-asides. Mr. Sossamon reiterated that it is based on what is available for distribution by the formula, which is the total appropriation minus set-asides such as HUD TA, NAIHC, and anything else that is to be taken off the top. Ms. Tooley referred to existing §328.



Ms. Gore yielded to Mr. Hutchings who asked if the percentage would change each year. The response was that it would not. He further asked if the percentage is tied to the FY04 allocation and is to be calculated to equal \$50k. Mr. Sossamon clarified that the value of the percentage is tied to \$50k in FY04.

Ms. Falkner asked if there were any other questions or comments. Mr. Boyd questioned having the starting date tied to FY04 when the regulations won't be finalized until FY06. Mr. Sawyers responded that the reference to FY04 merely establishes the percentage. A/S Liu stated that from a drafting standpoint, there might want to be language about the first year of implementation. Mr. Bush pointed out that the reference to FY04 was there for a reason, which is that currently the minimum funding has expired. A/S Liu stated that was a separate issue. Mr. Bush asked if the committee could request that the minimum funding be applied this year. A/S Liu responded that the committee could request that.

Ms. Falkner asked if there were any other questions. Mr. Jones asked HUD if it anticipated any problems as far as administering this proposal. A/S Liu responded that HUD did not see any insurmountable issues. Ms. Falkner asked if there were any other comments. Mr. Bush requested that A/S Liu implement the minimum funding this year. A/S Liu responded that if this proposal reaches consensus, and there are no further comments on the notion of what we do in the interim, he would be extremely sensitive to the request.

Ms. Falkner announced that the committee was now in the 5-minute consensus period. Mr. Frank pointed out that without the CAS threshold, if you can't demonstrate that you have a need, it's going to be hard to justify showing the need. Mr. Naize yielded to Mr. Carl who commented that the language (on the screen) doesn't speak to a percentage. Ms. Falkner responded that the language provides the intent. Mr. Carl stated that the earlier language referred to CAS threshold, but referring to Mr. Frank's comment, in this proposal, the tribe must demonstrate a need. He added that the second part of that is the committee will have to get consensus (if it reaches consensus on this proposal) that the minimum funding should be implemented in FY04. Mr. Sossamon asked if Mr. Frank was referring to CAS or FCAS. Mr. Frank replied, both.

Ms. Falkner noted that there had been a call for consensus. She asked if there were any objections to the (new) language. For the record, she announced that there was 1 objection. She then asked if there were any objections to the language that included a \$200k cap. She announced that there were no objections. Ms. Falkner announced that the committee had reached consensus Attachment 36).

The committee recessed for a 15-minute break.

The committee returned at 4:35 pm at which time the clock was re-started and discussion began on Issue 5, Section 8.

Mr. Sawyers commented that he wanted the record to reflect that there are three issues, and that the desire up to the last minute was to compromise as much as possible.

Ms. Falkner asked if there were any comments. Mr. Shuravloff stated that if there were no comments, he would call for consensus. Mr. Heisterkamp recapped that there are two 2 proposals. Mr. Jones clarified that there was a call for consensus on the Cherokee proposal and that there were objections, and he withdrew his proposal. Mr. Heisterkamp then clarified that the committee was considering the Coyle B proposal.

Ms. Falkner asked if there were any comments. Mr. Coyle stated that this proposal was included in the original discussions on the issue and that he did the best he could in presenting and discussing the proposal. He added that per §306 ¶c, during the 5-year review of housing stock, the Section 8 units shall be reduced in the same way as CAS has been reduced. He added that this will probably take effect, but that there would still be the inflationary factor. He added that would still like to state that funds will be taken out of the Needs portion. He then yielded to Mr. Carl, who stated that he had previously pointed out some issues that resulted from amendments to the statute that do not support §502b. He reiterated that this should be counted against the housing shortage variable, but that there was a determination not to count against housing variable. Therefore, Mr. Carl stated that Section 8 is funded without any control. He added that under the §502 amendment, where Section 8 is considered a dwelling unit, the finding is that Section 8 continues to grow, taking more money out of Needs. Mr. Carl pointed out that Mr. Coyle put this proposal forward out of fairness, and to keep Section 8 from growing even more.

Mr. Shuravloff commented that the committee is aware that this is going to be a non-consensus item, and therefore he made a call for consensus.

Ms. Falkner announced that there was a call for consensus. There were 4 objections. Ms. Falkner announced that consensus had not been reached.

Ms. Falkner then announced that there had been a request for a 15-minute tribal co-chair meeting, after which the committee would reconvene for an administrative session at 5:00 pm. Mr. Sossamon announced that during the administrative session, Mr. Pereira would clarify the regulatory process for the committee.

The committee recessed for a 15-minute break.

The committee reconvened at 5:00 pm for an administrative session. Mr. Sossamon called the committee back to order. He began the session by requesting that HUD provide a brief description of where we are in the process and where we will go from here. A/S Liu stated that Mr. Pereira of OGC would discuss the issues outlined, adding that most of this is not new. He noted that there are some procedural issues.

Mr. Pereira stated that the next step is for the drafting committee to get to work. He pointed out that the Preamble would need to be drafted, and that the regional co-chairs

have agreed upon procedures. He then explained that the purpose of the Preamble is to provide background information for the general public to assist those reading the regulations in submitting comments. Mr. Pereira went on to say that a secondary purpose of the Preamble is to provide a 'plain language' explanation, as the regulatory language is often written in legalistic terms, which are difficult for laypeople to understand. So, the Preamble will walk the public through the goals for the regulatory text. He stated that the Preamble also sets out the issues on which the committee could not reach consensus, and the Preamble provides an opportunity to set forth opposing sides. He reiterated that the Preamble is included primarily to help the public, to explain how decisions were made, and it is not used to lay out the legal case. Mr. Pereira noted that the Preamble group would be writing the Preamble in the next days and weeks, further explaining that the preamble group is separate from the drafting committee, and that the regional co-chairs adopted this process. He stated that each region is being requested to submit 2 people to participate in the group, and that the drafting committee would be available to help the preamble group. Mr. Pereira stated that nominations should be emailed to him no later than COB Friday, January 22, 2004. [His email address was posted on the screen: [ariel\\_pereira@hud.gov](mailto:ariel_pereira@hud.gov). He then announced that there would be a brief meeting on tomorrow during which time he would be able to provide more information and answer questions. He noted that the Preamble group would meet at 8:30 am in this room, and the drafting committee would meet at 10:00 am.

A/S Liu stated that language has been drafted on AEL for consideration and was distributed (Attachment 37).

Mr. Sossamon then announced that a report on the consensus items was available for distribution. He then stated that the September meeting minutes had not been approved. He called for consensus to approve the minutes, and opened the floor for discussion. Ms. Difuntorum commented that one of the resolutions submitted by Ms. Marasco on behalf of Karuk was missing. Ms. Gardstein responded that it was a printing error and the electronic version of the minutes includes the document. She stated that the document would be inserted in the print version.

Mr. Sossamon asked if there was any further discussion. He then asked if there were any objections. Hearing none, he announced that the minutes were approved.

Mr. Sossamon then asked if there were any further questions or comments. Mr. Sawyers asked if, at the end of the process and before publication, the committee would meet again to review and discuss changes made by OMB. He added that he had thought that the procedure was that if there were any changes by HUD, the full committee would be able to meet again before the final regulations are published. A/S Liu responded that the protocol indicates that there will be attempts to do that. He added that HUD thinks it is appropriate to do so, but would be subject to resources, either from HUD or from other pockets. He reiterated that it would be appropriate.

Mr. Hudson referred to a question that Ms. Tooley had asked regarding HUD's providing an update on the next negotiated rulemaking. A/S Liu stated that staff has begun an internal review of the other issues and categories that are statutorily mandated that are high priority, for example amendments that must be implemented. He noted that probably within 60 days there would be some communication, either in the Federal Register or other means, as to what the items are and outlining the process. He added that there would then be a comment period. He restated that the target is within 60 days, hopefully sooner.

Ms. Tooley requested clarification on the drafting committee's work and whether there would be an opportunity for the committee to review comments. She added that it was her understanding that was in the protocols. A/S Liu replied that the Protocols don't specifically call for a meeting, although he thinks it would be appropriate. But, he added that resources might not be available at the point in time. He pointed out that HUD would provide some means to allow time on the part of the committee members to provide their input to HUD to follow through and implement the process. He noted that this did not occur last time.

Ms. Tooley stated that was not correct and during the first Neg-Reg, the committee did meet to discuss the comments. She then asked for clarification that the end result is the final report, which is after the comment period and after the comments are processed. Ms. Wilson commented that there were stacks of comments during the first Neg-Reg that were divided up amongst the subcommittees. She added that each comment was reviewed and addressed. She added it was important to allow tribal people to comment and for the committee to respond to the comments. A/S Liu stated that HUD does not disagree with the intent, and if the resources are available face-to-face meetings to deal with the comments are possible, but he cannot commit to scheduling meetings at this point. Mr. Sossamon reiterated that there would be some process, which we are committed to by protocol, regardless whether it is a face-to-face meeting, or some other process. He stated that there would be an opportunity to fulfill the intent of the Protocols. A/S Liu added that it never hurts to have many fingerprints on regulations.

Mr. Sossamon asked if there was a copy of the Protocols available. Mr. Sceeles stated that last time the proposed rule went out and there were unilateral changes made by HUD, some at the direction of OMB. He added that HUD agreed that the changes were looked at as tribal comments. He suggested that if the committee does not meet face-to-face, that an audience with HUD be requested to address any changes that are made. A/S Liu pointed out that the timeframes that are set must include the OMB process, because if you run up against the 90-day limit, you can potentially be back at ground zero. He stated that HUD is under an obligation to cause a timely process to move through and to educate OMB to the process. He added that HUD wants to work with the tribes, and that it will. Mr. Wagenlander underscored what A/S Liu said and then explained further how the process was completed last time. He stated that the full committee came back together, and at that meeting, it was not the ability for the committee to resolve all the changes with HUD and OMB. At that time, a subcommittee of 5 members was selected

to negotiate with HUD and OMB to try to resolve issues. He added that there was considerable pressure on the full committee and the special committee, and he reiterated that timing is very important. Mr. Wagenlander stated that the earlier the full committee can get involved in the process, the less everyone will be backed up against the time period. Mr. Sossamon commented that a very important part of this process has been concluded, but the process has not been completed. He added that this committee will not cease until the entire process is done, and that the committee would be in contact with HUD. As HUD notifies us regarding deadlines and opportunities, that information will be shared as quickly as possible with the full committee.

Ms. Wilson asked when there would be a data run available on the consensus items agreed upon by the committee. Mr. Sossamon responded by stating that HUD has worked with Ms. Gardstein and staff to post all items on the Internet.

Mr. Reed asked if OMB would be reviewing only the regulations that the committee has changed or the entire regulation. A/S Liu responded that OMB is limited to the scope that we provide, which is only the change the committee has recommended. Mr. Sawyers pointed out that the report on consensus items is missing the birth and death language and the 5-year review. Ms. Gardstein stated that the record would note that a complete set would be available on the Internet.

Mr. Sossamon announced that once the committee is finished this evening, it would not reconvene again until or unless it is necessary to review HUD/OMB changes. Further, the meetings scheduled during the Friday morning session will be for those who wish to work on the preamble and the drafting committee.

Ms. Wilson commented that she would like to thank everyone for their patience, and especially thanked HUD, the HUD staff, Ms. Gardstein, Mr. Heisterkamp, and Ms. Falkner.

Mr. Sossamon asked if there was any further comment. He then stated that also would like to thank each and every member of the committee for the work that has been done and will continue. He also thanked A/S Liu his time and commitment, and his staff, Ms. Gardstein and the support staff. He thanked the members of the public who have attended every meeting to support the work of the committee. He stated that everyone has served those who have sent you here to represent them.

A/S Liu thanked Mr. Sossamon. He then stated that HUD wanted to bring back the non-consensus item on median income to the committee for further consideration. He noted that in spite of HUD's concerns, if there is consensus to reconsider, HUD would withdraw its opposition. Mr. Sossamon clarified that there has been a call for consensus to deviate from the protocol to allow a non-consensus item to be brought back for discussion. Mr. Coyle commented that in that case, he would refer again to the three-item agreement, which had previously been negotiated.

Mr. Sossamon announced that there was a call for consensus to reopen the issue of Median Income. He asked Mr. Coyle if he was calling for consensus to include the other 3 items. A/S Liu stated that he would not accept that modification.

Mr. Sossamon restated the call for consensus on A/S Liu's proposal to reopen discussion on Median Income. He then asked if there was further discussion. [There was a short break for private discussions.]

Mr. Sossamon called the committee back at 6:55 pm, and recapped that there was a call for consensus to reopen issue #2, Median Income on the table. He stated that there would need to be consensus to reopen the issue. He asked if there was any further discussion. Hearing none, he asked if there were any objections. There 10 objections. Mr. Sossamon announced that consensus had not been reached.

Mr. Sossamon then asked if there was any further discussion. Dr. Kazama stated that he would like to have the opportunity to comment on the issue regarding the AEL letter. Mr. Coyle stated that he would like to present the three items that were negotiated previously to be brought up for consensus (median income, minimum funding, and Section 8). Mr. Sossamon stated that there was a call for consensus to reopen the three proposals. He asked if there was any discussion. He asked if there were any objections. There were 8 objections. Mr. Sossamon announced that consensus had not been reached.

Mr. Sossamon asked if there were any further comments. He stated that he wanted to specifically thank Ms. Falkner and Mr. Heisterkamp for a job well done. [There was a round of applause.]

Mr. Sossamon asked if there were any further questions or comments. Mr. Coyle thanked Mr. Sossamon and the committee. Mr. Gorynski stated that it had been an honor to serve on the committee on behalf of the Samish nation. He also thanked Ms. Gardstein for the minutes. [There was another round of applause.] A copy of the consensus items was distributed (Attachment 38).

Mr. Sossamon stated that as there were no further comments, the committee was adjourned.

Submitted by C. J. Gardstein  
Steven Winter Associates, Inc.  
January 31, 2004

NOTE: Special thanks to tribes and IHAs providing coffee breaks during the three-days of meetings: Nevada Cal and SW (Tuesday), UNAHA and Alaska (Wednesday), and NW (Thursday). Their generosity was greatly appreciated.