

1 NAHASDA REAUTHORIZATION ACT OF 2008:

2 NEGOTIATED RULEMAKING MEETING

3 Scottsdale, Arizona

4 March 31, 2010

5 8:07 a.m.

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18 REPORTED BY:

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1           NAHASDA REAUTHORIZATION ACT OF 2008: NEGOTIATED  
2     RULEMAKING MEETING, taken on March 31, 2010, commencing  
3     at 8:07 a.m. at DOUBLETREE PARADISE VALLEY RESORT, 5401  
4     North Scottsdale Road, Conference Center, Scottsdale,  
5     Arizona, before CINDY BACHMAN and DEBORA MITCHELL,  
6     Arizona Certified Reporters, in and for the County of  
7     Maricopa, State of Arizona.

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9     COMMITTEE MEMBERS PRESENT:

10    Steven Angasan

    King Salmon Tribe

11  
    Carol Gore, President/CEO

12    Cook Inlet Housing Authority

13    Blake Kazama, President

    Tlingit-Haida Regional Housing Authority

14  
    Retha Herne, Executive Director

15    Akwesasne Housing Authority

16    Ray DePerry, Housing Director

    Red Cliff Chippewa Housing Authority

17  
    Robert Durant, Executive Director

18    White Earth Reservation Housing Authority

    Represented by Mark Butterfield, Alternate

19  
    Leon Jacobs

20    Lumbee Tribe of North Carolina

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1 Susan Wicker, Executive Housing Director  
Poarch Band of Creek Indians

2 Jason Adams, Executive Director  
3 Salish Kootenai Housing Authority  
4 Lafe Haugen, Executive Director  
Northern Cheyenne Tribal Housing Authority

5 Rebecca Phelps, Development Specialist  
6 Turtle Mountain Housing Authority  
7 S. Jack Sawyers  
Paiute Indian Tribe of Utah

8 Marguarite Becenti, Member, Board of Commissioners  
9 Umatilla Reservation Housing Authority  
10 The Honorable Henry Cagey, Chairman  
Lummi Nation

11 Represented by Diane Phair  
12 Larry Coyle, Executive Director  
Cowlitz Indian Tribal Housing

13 Karin Foster, Legal Counsel  
14 Yakama Nation Housing Authority  
15 Marvin Jones, Manager, Housing Oversight  
Cherokee Nation

16 Thomas McGeisey, Executive Director  
17 Seminole Nation Housing Authority  
18 Shawna Pickup, Housing Director/Secretary  
19 Eastern Shawnee Tribe of Oklahoma

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25

1 Russell Sossamon, Executive Director  
Choctaw Nation Housing Authority

2 Ervin Keeswood, Member

3 Navajo Housing Authority Board of Commissioners

4 Judith Marasco, Executive Director  
Yurok Indian Housing Authority

5 Alvin Moyle, The Honorable Chairman

6 Fallon Paiute-Shoshone Tribe  
Represented by Sharol McDade, Alternate

7 Darlene Tooley, Executive Director

8 Northern Circle Indian Housing Authority

9 Sandra B. Henriquez  
Assistant Secretary for Public and Indian Housing

10 Rodger J. Boyd

11 Deputy Assistant Secretary for Native American Programs

1 (Commencement of meeting at 8:07 a.m.)

2 \* \* \* \* \*

3 THE FACILITATOR: Before we get into our  
4 agenda this morning, Leon has asked me to make an  
5 announcement.

6 So, Leon.

7 MR. JACOBS: Good morning, everyone. A few  
8 weeks ago, Indian Country lost one of its great  
9 leaders, Philip Martin, the chief of the Mississippi  
10 Band of Choctaw. Now we hear of one of our other  
11 great, great leaders that is suffering a lot. This  
12 leader has been around the world as an ambassador for  
13 Indian Country and has made a difference for all  
14 Indian tribes. And she comes from the Cherokee Nation  
15 of Oklahoma, and I would like Marvin to say a few  
16 words.

17 MR. JONES: Thank you, Leon, for bringing that  
18 up yesterday and offering to have a moment of silence  
19 here pretty soon. Just briefly I want to say that, not  
20 only is Wilma a great Indian leader, a civil rights  
21 leader, as well as Cherokee leader, but a personal  
22 friend. The first job that I had was with her, so she  
23 gave me the opportunity to ultimately be here. And I  
24 think the one thing I would like to say is just what  
25 she said. And she has accepted what is going to

1       happen, that she is not going to be with us in the next  
2       few months.

3               But even with that, just a few days ago, she  
4       attended a Cherokee Tribal Council meeting that was  
5       recognizing her husband for his military service. But  
6       she made a couple of comments. And she said to the  
7       tribal council that they were, I guess, critical to the  
8       future, and to always keep that in mind as they perform  
9       their work.

10              And I think it's somewhat typical but also an  
11       extraordinary thing that a person who should be  
12       worrying only about themselves at this point is, in  
13       fact, worried and concerned about all of the people.  
14       So thanks again for the opportunity.

15              THE FACILITATOR: Thank you for sharing that,  
16       Marvin. So at this point, can we stand for a moment of  
17       silence, and then I would like to ask Marguerite to  
18       give us the invocation.

19                       (Ms. Becenti led the opening prayer.)

20              THE FACILITATOR: Thank you. I forgot what we  
21       agreed on last night when we left. Was it Jad first?

22              MR. ATALLAH: Good morning, everyone. Can  
23       everyone hear me? Thanks for coming out so early in  
24       the morning. My name is Jad Atallah. A work in the  
25       office of general counsel of HUD. I joined HUD about a

1 year and a half ago, the office of general counsel.  
2 And pretty much for a year and a half now, I've been  
3 working on Indian programs. It's been a real big treat  
4 for me.

5 About a month after I joined HUD, the NAHASDA  
6 Reauthorization Act of 2008 passed. So I pretty much  
7 hit the ground running in terms of working on NAHASDA  
8 and the reauthorization and ultimately leading up to  
9 the negotiated rulemaking.

10 So I think, after discussing yesterday, the  
11 purpose of this presentation is really just to give  
12 everyone sort of a broad overview of the amount of work  
13 that we have to do. It is a presentation that goes  
14 through chronologically from the beginning of the  
15 statute to the end of the statute and highlights every  
16 single statutory provision -- not every single one.  
17 There's plenty more -- but most of the statutory  
18 provisions that deal with the NAHASDA amendments from  
19 1998 to 2008.

20 Because the committee decided to open up the  
21 scope of the negotiated rulemaking to NAHASDA  
22 amendments in addition to what we have been calling the  
23 parking lot issues, there are more issues. And I won't  
24 be covering everything that this negotiated rulemaking  
25 committee will be working on and addressing, because we

1 don't know what those parking lot issues are. But  
2 hopefully this will give you a nice overview of most of  
3 the work we have to do.

4 Just some very basic stuff first. In the  
5 binders that you have, everyone should have the NAHASDA  
6 statute. The version that we like to use at HUD is the  
7 rainbow version. It's a very convenient tool that we  
8 use, because it highlights in color every single  
9 statutory amendment from every single year that the  
10 statute was amended.

11 And so it's a good way to sort of get a nice  
12 chronological sense of when the statute changed and how  
13 it changed and so forth. So that's a really good  
14 resource. And throughout these negotiated rulemaking  
15 sessions, that is really the key document that you will  
16 have to continually refer to.

17 The second really important document that you  
18 will really have to refer to are the Indian housing  
19 block grant regulations in addition to the Title VI  
20 regulations. That is found at 24 CFR 1000. I think  
21 everyone in the committee should have that also printed  
22 out.

23 And, really, the work of this committee is to  
24 essentially look at the statute and determine how the  
25 statute has been changed and how the regulations should



1 be changed, and that involves some policymaking and  
2 some more technical changes to the regulations as  
3 necessary.

4           The way we approached the sessions was to take  
5 some public comments and develop what we have been  
6 referring to as PIH Notice 2009-50. This is the  
7 document that includes those 52 items that we've been  
8 talking about. It goes through and states HUD's  
9 position on what we determined is self-implementing,  
10 meaning it doesn't really require any action, what we  
11 think can be implemented through administrative means  
12 through PIH notices and guidance and so forth, and what  
13 needs to be negotiated.

14           I have to stress that is a document that is  
15 really just a recommendation on our part. It is really  
16 ultimately the decision of the committee to determine  
17 the agenda, what to negotiate and so forth. It's  
18 really just a recommendation on our part in terms of  
19 how to break up the work. And what we do there is when  
20 we made the determination on each item, we really had  
21 to balance several things.

22           I think the first thing is how quickly do we  
23 want our recipients to take advantage of these  
24 particular provisions? Sometimes negotiated  
25 rulemaking -- because it is a process that takes a

1 while, and we didn't want to delay certain items from  
2 being implemented and from our Indian housing  
3 authorities and tribes to really take advantage of  
4 those particular provisions.

5 Other provisions really do need negotiation,  
6 and policy needs to be spelled out, and those are also  
7 ripe for negotiation. So I want to stress that right  
8 off the bat.

9 One thing to know is in the Indian housing  
10 block grant regulations and Title VI regulations -- as  
11 I said it's 24 CFR 1000 -- they are broken up into  
12 subparts. That is something to consider. Obviously,  
13 it's the decision of the committee, but we've looked at  
14 it, and one recommendation may be to break it up into  
15 work groups and breaking the work into subparts of the  
16 regulation. They break up pretty nicely, but, you  
17 know, it's really a matter of convenience however the  
18 committee decides to break up the work.

19 Subpart A of the regulation deals with the  
20 general provisions. Subpart B deals with affordable  
21 housing activities. That really deals with the  
22 eligible activities part of it. Subpart C deals with  
23 the Indian housing plan. Subpart D, which the  
24 committee has chosen to exclude from this negotiation  
25 and the charter, deals with the formula. Subpart E

1 deals with Title VI and the Title VI programs. And  
2 finally Subpart F deals with the monitoring of  
3 recipients and enforcement and so forth.

4 I think we will have our work cut out for us,  
5 and it's plenty of work. But as I said, I think that  
6 breaks it out pretty nicely.

7 So as I said, this presentation goes  
8 chronologically. I have incorporated most of the  
9 amendments. I've also incorporated some of the  
10 amendments from the previous years that HUD has  
11 published in the PIH Notice 2009-50 that we recommend  
12 rulemaking for, and there will be more discussions on  
13 other items that aren't necessarily in this  
14 presentation.

15 So just an overview, some of the highlights  
16 that came about in the NAHASDA 2008 Reauthorization  
17 Act. It reauthorizes NAHASDA through 2013. There is a  
18 special provision on GSA supply sources that was added  
19 to the statute that allows HUD to take advantage of  
20 some of the supply sources that GSA makes available to  
21 federal agencies.

22 There is a de minimis procurement exemption  
23 that we've already implemented, and I believe tribes  
24 are taking advantage of that already. There is a  
25 tribal preference law that deals with employment and

1       contracting. There are two demo programs, and there  
2       are plenty more.

3               Please feel free to ask questions. Feel free  
4       to interrupt. We can do this two ways. You can sort  
5       of listen to me running through this very quickly and  
6       then discuss items; or if you want, we can have this as  
7       much more of an organic dialogue in terms of discussing  
8       the agenda, in terms of discussing particular  
9       provisions.

10              Henry?

11              MR. CAGEY: You skipped over the demo programs.  
12       Can you go back to that last screen. What are the two  
13       demo programs? Is that new? Is that for areas or  
14       tribes or what?

15              MR. ATALLAH: Yeah. And I will get into more  
16       detail. They are two new programs that were added to  
17       NAHASDA through the 2008 amendments. I will go into  
18       much more detail as we go through them.

19              As I said, there are different categories in  
20       the manner in which we implement statutory changes. I  
21       think moving chronologically, the first statutory  
22       change is a language change in the statute. I think  
23       this is good for the committee to see, because this is  
24       a prime example of what we call a technical amendment.  
25       This is language in the statute that deals with

1 congressional findings.

2 The language used previously said instead of  
3 the word "shall," it was the word "should." The  
4 regulations have this exact language in them too. When  
5 the statute was amended in 2008, Congress changed the  
6 word should to shall. And in order to conform our  
7 regulations to the statutes, we need to change our  
8 regulations.

9 This is a typical item that is not  
10 controversial. And it is really just conforming the  
11 regulations through technical means. This is a good  
12 example of that. We have, obviously, items that are  
13 controversial or may require a lot more policymaking.  
14 So congressional findings have changed. It's less  
15 preparatory language and more mandatory language.

16 Marvin?

17 MR. JONES: I just think it is important. Some  
18 of us believe that a one-word change, especially when  
19 it is talking about recognizing the right of Indian  
20 self-determination and tribal self-governance, may be a  
21 critical word change. I just want to make that point.

22 MR. ATALLAH: It absolutely is. Yes. I think  
23 that's why the statute was amended, to reflect that.

24 Blake?

25 MR. KAZAMA: I guess also, of the 52 issues,

1     this is substantial in terms of the 52 items, like  
2     almost half of them are focusing on this.

3             MR. ATALLAH: Very substantial, yes. So I  
4     guess in terms of conforming to the regulation, it  
5     would reflect the exact statutory language so that the  
6     regulations would mirror the statute.

7             As I said in the beginning, GSA supply sources  
8     is a big item that we are working very closely with GSA  
9     on now in terms of providing guidance to our  
10    recipients.

11            There's a new provision in NAHASDA that says  
12    that federal supply sources through GSA are basically  
13    more accessible and the way that that happens is the  
14    statute says a tribe may elect to be considered an  
15    executive agency, and for purposes of the GSA, as a  
16    supply sources program.

17            What that means is, if the tribe elects to be  
18    considered itself or its TDHE an executive agency, it  
19    can tap into, just like any federal agency, the GSA  
20    supply sources. And that's a list of -- it's basically  
21    a database that provides both goods and services and  
22    contractors and so forth that are pre-negotiated  
23    government rate and very beneficial in terms of  
24    administering grants and programs and so forth.

25            And it also includes a provision that talks

1     about how employees of tribes and TDHEs are to be  
2     treated. And they are essentially -- they stand in the  
3     same shoes as federal employees for purposes of  
4     accessing the GSA supply sources.

5             A couple of other things. We've been talking  
6     to GSA, and we are expecting to provide more guidance  
7     to our recipients. There is the GSA excess personal  
8     property program that we're looking into. We initially  
9     were exploring whether the statutory language allows  
10    tribes to also take advantage of the GSA excess  
11    personal property program. We are still working with  
12    their office of general counsel, but it is not entirely  
13    clear.

14            And another thing is we have been advised that  
15    the GSA fleet program, which deals with the lease and  
16    purchase of motor vehicles, also is not covered by this  
17    provision in terms of tribes. It doesn't mean that  
18    tribes can't take advantage of the excess personal  
19    property program if they are deemed to not be eligible.  
20    It just means that they cannot purchase excess personal  
21    property directly from another federal agency.

22            There is a GSA process of doing it indirectly  
23    through, say, HUD or another federal agency. So expect  
24    some more guidance on that provision when we're  
25    developing it, but it's really going to be a lot of

1 work that GSA has to do in conjunction with HUD.

2           There is a tribal preference provision in  
3 NAHASDA. As you know, Indian preference -- there are  
4 requirements that Indian preference applies to the  
5 greatest extent possible or feasible. When it comes to  
6 employment and contracting, an additional provision was  
7 added to NAHASDA that says that when a grant is made  
8 for the benefit of one particular tribe, if the tribal  
9 has tribal preference laws in place, those laws will  
10 apply for employment and contracting.

11           This means that if a particular tribe has a  
12 tribal preference law, that is what controls, and not  
13 an Indian preference requirement. It is more specific  
14 to the tribe, and that deals with employment  
15 contracting.

16           The big thing about this item is we are  
17 recommending rulemaking. So I can't give you all the  
18 details because I don't know them. I think this  
19 committee will really have to develop that in terms of  
20 how to develop a regulation on tribal preference. It  
21 could be very detailed or very general. I don't know  
22 how that's going to play out. But that is an item to  
23 mark.

24           Indian housing plans. There is some revision  
25 in the statute on the section on the Indian housing



1 plan. Primarily, there is a change to a tribal program  
2 year system. The five-year IHP process has been  
3 scratched from the statute, and also there is a  
4 requirement that a tribe must submit its one-year  
5 IHP 75 days prior to the beginning of that tribe's  
6 program year.

7           There was a lot of mandatory language in the  
8 statute on a statement of affordable housing resources  
9 that tribes had to submit when they submitted their  
10 IHP, and that's been taken out too. This really came  
11 about through the IHP revision process -- IHPAPR  
12 revision process. HUD and our recipients have been  
13 engaged for several years in a tribal consultation and  
14 have been working to develop the IHP form.

15           I think the statute, to a great extent,  
16 reflect -- these changes reflect the revisions that  
17 were made on the IHPAPR form. Our position on this is  
18 that we don't recommend that you go to rulemaking.  
19 There's quite a few technical changes that need to be  
20 made. But in terms of negotiated rulemaking, one big  
21 concern that we have is really practical.

22           If this is something that the committee will  
23 want to negotiate, there's going to be a delay in the  
24 actual use of the form. My understanding is that we  
25 are really shooting to use the revised IHPAPR this

1 year, for this fiscal year.

2 Because we really have to wait for the  
3 regulations to develop and so forth, we really have to  
4 start over in terms of revising the IHPAPR form. That  
5 could be a delay to maybe fiscal year 2014 or 2015. As  
6 a practical concern, there has been a lot of hard work  
7 in terms of revising the form. But this is something  
8 that the committee will really have to decide.

9 MR. CAGEY: Are we going to see the revision  
10 format that you guys worked on?

11 Jennifer?

12 MS. BULLOUGH: We could make it available,  
13 absolutely. That's not a problem.

14 MR. CAGEY: Well, if we're going to agree to  
15 it, we should see it, I guess.

16 MS. BULLOUGH: It's been publicized many times.  
17 We can make that available.

18 MR. CAGEY: Yeah, but I haven't seen it though.  
19 I'd like to see it.

20 MS. BULLOUGH: We can make that available.

21 MR. CAGEY: Thank you.

22 MR. ATALLAH: Program income. I think I heard  
23 Darlene mention program income. It's a big issue and  
24 was raised in some of the consultation or listening  
25 sessions that are being held. There was a big change

1 in 2002 to the statute on the issue of program income.

2 It's multifaceted.

3 The first issue really is that the statute used  
4 to say that program income is to be used for affordable  
5 housing activities, which means under NAHASDA, eligible  
6 housing activities under NAHASDA, under Section 202.

7 The statute was changed to say program income should be  
8 used for housing-related activities as opposed to  
9 affordable housing activities. I assume that's  
10 broader. But we are recommending negotiated  
11 rulemaking. It is really going to be something for the  
12 committee to hash out in terms of what that means.

13 Another provision of this that was also revised  
14 was the provision that was added that says HUD may not  
15 limit availability of funds or take any enforcement  
16 action based solely on the fact that a tribe retains  
17 program income.

18 Just quickly there's also an issue dealing with  
19 non-program income that has been pretty big. We've  
20 been going back and forth with the HUD team on  
21 non-program income. And this might be a good time to  
22 at least address it in the negotiated rulemaking and  
23 maybe come up with a different system in terms of  
24 dealing with the controversial non-program income issue  
25 and also dealing with program income.

1           MS. MCDADE: Jad, what are the issues, if you  
2    can recall. (Indiscernible -- speaker not using  
3    microphone.) All of us have a pretty good idea of what  
4    non-program income is, so what would the issues be?

5           MR. ATALLAH: Sure. Essentially, there is a  
6    portion of income that is generated from NAHASDA funds  
7    that is non-program income based on the fact that  
8    tribes under the 37 Housing Act could retain a certain  
9    amount of the program income without any federal  
10   restrictions on them.

11           In the original negotiated rulemaking, there  
12   was an elaborate system of determining how that portion  
13   of program income is determined to be non-program  
14   income and isn't subject to federal restrictions. You  
15   could spend it on ineligible activities. You can spend  
16   it on whatever you want to.

17           The IG doesn't like that, and we've gone back  
18   and forth on that particular issue. So this might be a  
19   good time, if we are revising program income, to also  
20   deal with non-program income. It's something to  
21   consider, but I think the details will have to be  
22   hashed out in the work groups and the committee.

23           MR. CAGEY: (Indiscernible -- speaker not using  
24   microphone.)

25           MS. HENRIQUEZ: And I think he would probably

1 accept the invitation, in my conversations with him.

2 MR. CAGEY: This is a big issue as far as the  
3 interpretation of our income as far as how the tribe  
4 gets to use it.

5 MS. HENRIQUEZ: We agree.

6 MALE SPEAKER: (Indiscernible -- speaker not  
7 using microphone.)

8 MS. HENRIQUEZ: There are things I would say to  
9 you about that on the record, and there are things that  
10 I would say to you about that off the record. On the  
11 record, I would say that we agree. I would say that we  
12 have had similar conversations with the IG. That goes  
13 so far as to say we are not -- we, HUD, are not in the  
14 position, nor do we want to be in the position, to tell  
15 a tribal government how to spend its money. So that is  
16 what I will say on the record.

17 I think we should probably try to figure out  
18 ways to have some conversations around this in  
19 rulemaking and then really to have a conversation that  
20 we could help facilitate with the IG.

21 MR. CAGEY: Maybe that's a footnote we want to  
22 put in the preamble when we get done at the end of the  
23 day.

24 MR. ATALLAH: Marvin?

25 MR. JONES: A point of clarification. And I'm

1 asking if you agree with this characterization of the  
2 program income. Some of the change was intended that,  
3 once a tribe earns program income, it doesn't have to  
4 spend that money first before the block grant funds.

5 MR. ATALLAH: That is correct.

6 MR. JONES: Okay. Thanks.

7 MR. ATALLAH: Environmental review waivers.  
8 This is a provision that was added a few years back  
9 that we never really implemented through negotiated  
10 rulemaking, and we are recommending negotiated  
11 rulemaking on this. There is a provision in the  
12 NAHASDA that was added that authorizes environmental  
13 review waivers for tribes.

14 You have to satisfy four conditions prior to  
15 receiving this environmental review waiver. The first  
16 is the actions taken prior to completing the  
17 environmental review do not frustrate the goals of  
18 NEPA. The second is the action does not threaten  
19 health and safety of the community. The third is the  
20 result of an inadvertent error on the part of the  
21 recipient in terms of carrying out the environmental  
22 review prior to carrying out eligible activities. And  
23 the fourth is it may be corrected through sole action  
24 of the recipient.

25 Again, we're recommending negotiated rulemaking

1 on this. Really, I think we want to establish a  
2 process for how a tribal recipient really requests an  
3 environmental review waiver.

4 The community planning and development division  
5 of HUD has a notice that was published temporarily to  
6 deal with the time when the statutory provision was  
7 added until the time when we sit here and we actually  
8 develop a regulation on this. It basically governs  
9 temporarily how a tribe goes about requesting an  
10 environmental review waiver. But that is something  
11 really for the committee to address this time around, I  
12 think.

13 MR. CAGEY: How many have you done this year so  
14 far?

15 MR. ATALLAH: As far as I know -- yeah. They  
16 are not that frequent. They're not that common. I  
17 don't think we get too many requests either. As far as  
18 I know, it's a relatively extensive process of going  
19 through local clearance and headquarters clearance.

20 Jennifer, did you want to say something?

21 MS. BULLOUGH: Right now, we are following a CP  
22 notice that lays out the process for -- there you go  
23 (indiscernible -- speaker not using microphone) that  
24 lays out this process. And I have been doing this for  
25 five years, I guess, with the Navy. In that five

1 years, we have done probably six or seven waivers. And  
2 none of them have been disapproved by our office. So  
3 once they get to my office -- some don't get that far  
4 because they don't clear the area office review because  
5 they don't meet the statutory requirements for a  
6 waiver. But usually it takes about eight months to  
7 maybe a year from beginning to end to go through the  
8 waiver process.

9 MR. ATALLAH: Marvin.

10 MR. JONES: I apologize for going back to the  
11 Indian housing plan APR issue. I want to get a  
12 clarification though of your recommendation. The  
13 recommendation being that that is not subject to  
14 negotiated rulemaking, I believe you said. And  
15 included in that, when you change that format, it seems  
16 like you have to change one of the most fundamental --  
17 it is the most fundamental performance measure of  
18 NAHASDA, which is obligating funds within two years,  
19 90 percent.

20 And I just want to ask, your recommendation is  
21 you're going to change that without any kind of  
22 rulemaking. Is that your recommendation?

23 MR. ATALLAH: The form or the two-year  
24 obligation?

25 MR. JONES: The performance measure, the



1 two years to obligate 90 percent is based on having  
2 discrete separate Indian housing funds and that money  
3 retaining its identity. When you change that to a  
4 single IHP, that effectively says that money is no  
5 longer tied to a specific year. So that particular  
6 performance measure seems to not hold once the change  
7 takes place.

8 And if that is all true, it sounds like they  
9 are proposing to change the IHPAPR format, and you'll  
10 have to change that performance measure. That  
11 particular performance measure, apparently you are  
12 suggesting that that be changed based on a PIH notice  
13 rather than negotiated rulemaking.

14 MR. ATALLAH: The two-year 90 percent  
15 obligation of funds, we're recommending that be changed  
16 in the regulations through this process to conform to  
17 the statutory limits in NAHASDA. That performance  
18 measure is being revised. We're recommending that it  
19 is being revised, yes.

20 MR. JONES: In the PIH 2009-50, I don't see it  
21 saying that, you know, we're going to change the IHPAPR  
22 format. I don't see any reference in there where it  
23 says that the performance measure will be subject to  
24 negotiated rulemaking.

25 MR. ATALLAH: We are recommending the

1 performance measure in the regulations dealing with the  
2 90 percent obligation; it is in there. It is in the  
3 PIH notice under one of the provisions. I don't think  
4 it's under the IHPAPR. It's under the provision on  
5 carrying funds over to subsequent years.

6 When providing your IHP that you're going to  
7 use your grant amounts for a project over more than one  
8 year, then HUD doesn't have authority to limit or to  
9 assess performance based on obligations of two years.  
10 We are recommending that. It's in the PIH notice.

11 MR. JONES: Okay. Thank you.

12 MR. ATALLAH: It's hidden in regulatory  
13 language. It's a tough document to read. But you sort  
14 of have to refer it to every single provision, and it's  
15 a difficult task. We tried to make it as easy as  
16 possible, but it's in there.

17 MR. JONES: Thank you for the clarification. I  
18 will look for it.

19 MR. ATALLAH: Good luck.

20 Negotiated rulemaking. We talked about this  
21 last session. There's a provision in NAHASDA that  
22 specifically addresses when the statute is  
23 reauthorized. And this governs that this time around,  
24 it will govern every single time, every single act that  
25 reauthorizes NAHASDA for the future, there's a time

1 frame that is set up. I left the two-year and the  
2 seven-year mark in here because we're past the 90 days  
3 and the 180 days. But what the statute says is that,  
4 upon reauthorization, HUD is required to initiate  
5 negotiated rulemaking within 90 days of that  
6 reauthorization.

7 We are required to develop a committee within  
8 100 days of the reauthorization. We are required to  
9 promulgate regulations within two years of the  
10 reauthorization. And then we are required to review,  
11 in consultation with our recipients, those regulations  
12 that were developed within seven years. So whenever we  
13 developed our regulations, we will at some point have  
14 to go back and review the regulations that we developed  
15 this time around within seven years.

16 There's some changes that were made to the  
17 issue of non-low-income families in NAHASDA.  
18 Previously, recipients could serve people who were not  
19 low income, but the activities that they could provide  
20 or carry out for the benefit of those over-income folks  
21 were more limited. They really were limited to  
22 homeownership activities, model activities, and  
23 Title VI activities.

24 The statute was changed to broaden that so that  
25 when you're serving over-income families, as long as

1     they're eligible under the test that is in the statute,  
2     which is that families that cannot -- housing for  
3     families cannot reasonably be met without the  
4     assistance, if you can demonstrate that, you can serve  
5     over-income folks. And they are eligible to receive  
6     any eligible assistance under NAHASDA, not just  
7     homeownership, model activities and Title VI. That has  
8     broadened it up.

9             There is also a related provision on central  
10    families. There's a separate category in addition to  
11    over-income families. There is a category of families  
12    who may be over-income who are deemed essential. With  
13    essential families, the statute used to actually say  
14    that non-Indian families can be deemed essential.

15            It was really probably a drafting error on the  
16    part of Congress initially, and they didn't initially  
17    intend to do this. What they did was a non-Indian  
18    family could be deemed to be over-income and essential  
19    and receive assistance. But an Indian over-income  
20    family could not be deemed to be essential, and that  
21    was contrary to the original intent of Congress.

22            So they fixed it this time around. So you have  
23    a typical example is the Indian doctor in the  
24    underserved area could be deemed to be essential. The  
25    fact that you're Indian or non-Indian doesn't factor

1       into the determination whether you are essential or not  
2       or can receive assistance.

3               That is a two-part test. The tribe has to  
4       determine that the presence of the family is essential  
5       to the well-being of Indian families. Like I said, the  
6       typical example is the doctor in an underserved area.  
7       And also there is a need for housing for the family  
8       that cannot reasonably be met without the assistance.

9               There is a provision in terms of eligible  
10       activities in Title II of NAHASDA that specifically  
11       says that you can carry out operations and maintenance  
12       costs. We allowed this in the past. It was something  
13       that wasn't included in the statute expressly, and we  
14       had a former assistant secretary sign a memo that says  
15       this is an authorized model activity.

16              This time around, because the statute says so,  
17       it doesn't come under the model activity category.  
18       It's authorized under the statute. There's also some  
19       changes in terms of eligible activities for mold  
20       remediation and also rehab of units and also rehab of  
21       utilities, which includes things like energy efficiency  
22       changes and so forth.

23              Marvin.

24              MR. JONES: Going back to that other point, I  
25       see what you are referring to. A point of

1 clarification, then. Are you saying by this -- what  
2 HUD is proposing is that there's not going to be any  
3 performance measure related to the time money can be  
4 expended, that we can hold the money forever and not  
5 spend a dime of the grant funds?

6 MR. ATALLAH: The performance measure was  
7 90 percent obligation in two years. That is going out,  
8 right.

9 MR. JONES: So that sounds like a good  
10 attorney, but you're saying yes.

11 MR. ATALLAH: I think so, yes.

12 MR. JONES: Thank you.

13 MR. ATALLAH: Judith.

14 MS. MARASCO: In the original negotiations, one  
15 of the reasons that performance measure was put in was  
16 so that the tribes who were getting funding and not  
17 expending it within the time frame then would be  
18 assessed, and that money would come back into the pool  
19 and be redistributed.

20 But HUD, over all these years, has not  
21 implemented that performance measure. And the  
22 negotiations at the time on the formula itself were  
23 based on the fact that if we had tribes that weren't  
24 performing, that we could recapture those funds and put  
25 them to good use. And that has not been implemented by

1 HUD.

2 And now we're finding out that it's going out  
3 the door. So it really invalidates the original  
4 negotiations that distributed the funds to begin with.

5 I'm not saying it's right or wrong. I'm just  
6 saying we negotiated in good faith knowing that we  
7 wanted to put our money to work. And we knew that the  
8 formula was skinny in a lot of spots.

9 And that was our way of negotiating how the  
10 formula was assessed and distributed and how we would  
11 recapture those funds that were just going to tribes  
12 and not being used. And what I'm hearing from you  
13 today is, not only have you not implemented that, but  
14 you're going to wipe it out completely.

15 So at this point, when you come back and  
16 renegotiate the formula, what has happened in the past  
17 formula negotiations has been everybody comes to the  
18 table saying, we're not going to lose a dollar,  
19 basically. So nothing really happens to change that  
20 formula.

21 Where are the moral protections of the original  
22 negotiations? Answer that question for me.

23 MR. ATALLAH: In terms of enforcement, I have  
24 no sense of whether or how often we've enforced that in  
25 terms of changing that particular provision in the

1 regulations, and I understand it was a product of the  
2 original negotiated rulemaking.

3 It's really to conform to a provision in the  
4 statute that Congress put in place that says, we don't  
5 have the authority to take away money based on the fact  
6 that a tribe did not spend it in time. And so long as  
7 the tribe states in its IHP that it is going to use  
8 this money for a project over three years, we don't  
9 have statutory authority to take enforcement based on  
10 performance measures like the 90 percent obligation  
11 regulations. We simply don't have the authority to do  
12 that. It's the statute. I mean, I understand your  
13 concern.

14 MS. MARASCO: But it hasn't been the statute  
15 until now. You've had 15 years to enforce it.

16 MR. ATALLAH: I wasn't at HUD 15 years ago. I  
17 don't know. I don't have the sense, Judith, how often  
18 this was actually enforced. I really don't.

19 MS. MARASCO: Okay. I guess I'm just  
20 frustrated, because we come here, and we negotiate, all  
21 of us, and we set these rules in place. And HUD  
22 enforces some of the strangest things. But the more  
23 critical, most important issue, which is the formula  
24 and the funding, they just glaze over that and walk  
25 away from it. I don't get that part of it.



1           MR. KEESWOOD: I wanted to ask the question of  
2     the HUD secretary.

3           Madame Secretary, I was listening to Judith and  
4     others talking about the intent of the negotiated  
5     rulemaking. At the end of the day, it is to provide  
6     adequate housing for Native Americans throughout Indian  
7     Country, affordable homes. It seems like there is a  
8     disparity, though, between Native homes versus rural  
9     America or greater America, public homes, the public  
10    sector.

11          There is a vast amount of more money that is  
12    going to greater America than to Native projects. It  
13    seems that the formula is actually different to some  
14    degree when you're providing the same services to  
15    citizens of the United States. There's disparity  
16    between Indian Country and those who live in projects,  
17    for instance.

18          With your experience and knowledge, before we  
19    get into this whole issue of negotiating, is there a  
20    formula that you can share with us that we may  
21    incorporate to access additional funds? The bottom  
22    line here is, no matter what kind of document you come  
23    up with, the bottom line is that there's always going  
24    to be less funding. That is the real issue here, it  
25    seems like to me.

1           Now, with your experience, maybe you can  
2     provide some guidance for the group here of other  
3     federal program funds that we can tap into as the  
4     tribal organizations that would include Native peoples  
5     in homes and in development and subdivisions, et  
6     cetera.

7           MS. HENRIQUEZ: That's a great question. I  
8     don't have a good answer. When Rusty did his  
9     presentation last evening, one of the questions I asked  
10    and was struck by was what happened when the 37 Act  
11    fell way and NAHASDA came in? Because it seems to me  
12    that -- hindsight being 20-20, and I am new to this --  
13    but it seemed to me that when that happened, tribal  
14    lands were not able to access the same sorts of grants,  
15    et cetera, that public housing authorities have been  
16    accessing right along.

17           And I acknowledge, we all acknowledge, the  
18    disparity in the funding levels. If you were to talk  
19    to public housing authorities, they would say there is  
20    not simply enough money coming into the public housing  
21    arena as there is in the private sector affordable  
22    rental housing market. The same arguments you would  
23    make about public housing and the disparities in the  
24    funding levels as well.

25           With that as a given, it's always,

1       unfortunately, a zero-sum game, it seems like. There's  
2       never enough money to go around. But one of the  
3       questions I'm starting to ask is why is it that when  
4       funding availability comes -- notices come out for  
5       things like Hope 6, for things like other opportunities  
6       for additional funding for services, whether it is  
7       resident service coordination, not unlike the drug  
8       elimination program, why aren't tribes able to access  
9       that money?

10               And I don't have yet a clear enough  
11       understanding as to why this would happen, and more  
12       importantly, if there is a way to set aside why this  
13       would happen and try to figure out if there are  
14       opportunities to bring them closer together and get  
15       access. I just don't have an answer for you at this  
16       point, and I don't know how close we can get. It's  
17       questions I have begun to raise both with ONAP staff as  
18       well as within HUD itself.

19               MR. ATALLAH: The next provision deals with  
20       reserve accounts. There is a new amendment to NAHASDA  
21       that came about in 2008 that authorizes tribes to set  
22       up reserve accounts to accumulate funds for the purpose  
23       of admin and planning. So this reserve account is  
24       geared towards retaining and investing funds and so  
25       forth for the purposes of admin and planning.

1           I think this was proposed a couple of times  
2   when NAHASDA was reauthorized, and this was the final  
3   product that came out in the 2008 amendments.

4           There is a cap to how much tribes can actually  
5   accumulate. What you do is you look at the five year  
6   average of how much you spent on administration and  
7   planning. You take one quarter of that, and that is  
8   the cap.

9           We are recommending negotiated rulemaking on  
10   this. Again, I don't have all of the details. It's  
11   going to be up to the committee to decide how to set up  
12   the provisions that govern the setting up of this  
13   reserve account for each recipient.

14          Marvin.

15          MR. JONES: Since there is no cap and no  
16   performance measure for when we have to expend any IHPG  
17   funds, can't we put 100 percent in something other than  
18   administration and planning and effectively reserve  
19   everything for administration and planning when we  
20   change an IHP?

21          MR. ATALLAH: There is a cap on what you can  
22   put for your reserve account. There are regulations  
23   that govern what you can do for investment. That's all  
24   I can tell you.

25          MR. JONES: Fine.

1           MR. ATALLAH: But think about these issues when  
2   you break out in your work group and you come back and  
3   you really want to figure out how you want to have  
4   regulations that govern this. These are issues that  
5   you can sort of get creative on, and they are out  
6   there.

7           This provision sort of touches on what we have  
8   discussed. This is a provision added in 2008 on the  
9   use of grant amounts over extended periods of time.  
10   This is what I was touching on earlier. When you  
11   provide in your IHP that you're going to use funds for  
12   extended periods of time, you can carry the funds from  
13   one year to the next year. The funds are not really  
14   reserved for use for that particular year. You can use  
15   funds from one year to the next year. And this already  
16   happened.

17           As I said in the beginning, there is also a  
18   de minimis exemption for procurement of goods and  
19   services. We already published a PIH notice on this.  
20   When the statute was first amended, we got a lot of  
21   feedback from our tribes. A lot of them let us know  
22   that this is a self-implementing provision. We don't  
23   want to wait a year or two for negotiated rulemaking to  
24   take place for us to be able to do procurement and take  
25   advantage of this \$5,000 de minimis exemption.

1           So we looked at it and said yes, it is  
2   self-implementing, and we're going to publish a PIH  
3   notice and provide some guidance for our recipients of  
4   how to take advantage of that. PIH Notice 2009-14  
5   deals with it. It sort of addresses issues like Indian  
6   preference, the idea of how to determine what the bid  
7   price is, and different issues like that.

8           MALE SPEAKER: (Indiscernible -- speaker not  
9   using microphone.)

10          MR. ATALLAH: I don't think we have strong  
11   views on that. I think that would be fine. I think it  
12   would make sense.

13          Henry.

14          MR. CAGEY: Again, I want a copy of that  
15   notice. Is that in the book? Okay. Good.

16          MR. ATALLAH: It is in the book.

17          Jennifer.

18          MS. BULLOUGH: We were actually working on a  
19   notice like this before reauthorization came through.  
20   And we were doing it under the provisions of Part 85,  
21   because public housing had done the same thing. So we  
22   wanted to have the same type of expansion of the small  
23   purchase provisions that public housing did. And they  
24   were doing it under the existing regulations under  
25   Part 85.

1           So based upon conversation with our counsel, it  
2    did not appear as if we needed to make any changes to  
3    Part 85 or to our regulations to accommodate this type  
4    of provision. But then the statutory change came  
5    along, which made it even easier.

6           MR. ATALLAH: They have something in public  
7    housing that is sort of similar to this. I think it's  
8    a lower threshold, a \$2,000 threshold, but it is a very  
9    practical and good idea to have this in the statute.

10          There is a new provision on useful life  
11    restrictions. There was sort of a strange outcome that  
12    could conceivably take place, which is that NAHASDA  
13    authorizes assistance to units, but with that  
14    assistance, there are affordability requirements that  
15    are tacked on, and the units are supposed to remain  
16    affordable, meaning available to low-income families.

17          The statute requires the Secretary to enforce  
18    that the useful life of any dwelling unit that receives  
19    assistance be based on the useful life of the property  
20    because of that assistance. And that is enforced  
21    through binding commitments. There was a weird outcome  
22    that can possibly take place, which is that in  
23    situations where somebody who received NAHASDA  
24    assistance passes away, the property transfers to,  
25    let's say a child. And if that person is over-income,

1 the unit is no longer affordable.

2           So Congress sought to address that, and there  
3 is a new provision in NAHASDA that says if a unit that  
4 is subject to binding commitment transfers to someone  
5 in the family or household member, and that person is  
6 over-income, it really doesn't matter. Those binding  
7 commitments don't apply, and that person can take the  
8 property free of affordability requirements. It's  
9 really geared toward dealing with those situations of  
10 inheritance.

11           Henry, you mentioned the two demo programs.  
12 The first one is really a self-determination demo  
13 program. It is somewhat limited right now in terms of  
14 funds. But essentially, it is a very streamlined  
15 program where tribes have more deference in terms of  
16 carrying out activities with less -- subject to less  
17 monitoring and so forth. It is a five-year demo  
18 program.

19           And I think the purpose of the program is  
20 to provide Indian tribes the flexibility to use a  
21 portion of their grants in manners that are wholly  
22 self-determined by the Indian tribes for housing  
23 activities involving construction, acquisition, rehab,  
24 and infrastructure. You sort of have to look at the  
25 statute to know this program and what it's subject to.



1           Some of the provisions of NAHASDA are not  
2     applicable, namely Section 405, which deals with  
3     monitoring. That monitoring is delayed for a couple of  
4     years.

5           There's a list in the statute that lists every  
6     single provision that is applicable. And it says no  
7     provision is applicable to this program except this  
8     list of 17 provisions that I don't have to go through.  
9     But it's basically going to be -- it's a demo program.  
10    Our position is that, because it is a demo program, we  
11    don't think it's appropriate to put a demo program in  
12    the regulations because the nature of a demo program is  
13    temporary.

14          We do want to consult. The way we are  
15    proposing to approach this is to develop a PIH notice  
16    prior to the conclusion of these negotiated rulemaking  
17    sessions. Come to the table here and negotiate and  
18    consult with all of you on how to set up that program.  
19    But the mechanism we want to do it through is a PIH  
20    notice, because if this program is not made permanent  
21    after it expires, then we would have provisions in the  
22    regulations on a program that doesn't exist. Or if the  
23    program is changed, made permanent with change, then  
24    our regulations would not be aligned with the actual  
25    law.

1 Question?

2 MALE SPEAKER: (Indiscernible -- speaker not  
3 using microphone.) What is HUD's justification for  
4 denying us access to something we supposedly were able  
5 to use last fiscal year based on the nonexistence of  
6 regulations, which you just said HUD has no intention  
7 or writing?

8 MR. ATALLAH: I agree with your first point.  
9 It's not limited by funds. And really what I was  
10 getting at really was this slide that you were  
11 mentioning right here, which is there is a portion of  
12 your funds that you can use towards Subtitle B, which  
13 is that if you take the lesser of 20 percent of your  
14 grant or \$2 million, whichever is less, and you can use  
15 that portion of the funds for this Subtitle B program.

16 In terms of implementation, you know, what can  
17 I tell you? I think we are working hard on getting a  
18 PIH notice together in consultation with all of you,  
19 and hopefully, we will get it out before the year is  
20 up, before these sessions are over and allowing our  
21 tribes to take advantage of it.

22 I don't have an answer for you as to why we  
23 didn't do it in 2009. I don't know of situations. I'm  
24 sure they have taken place. They don't come my way in  
25 situations where that sort of thing happens where

1 someone submits an IHP proposing to do Subtitle B  
2 activities and have been turned down based on  
3 regulations.

4 I don't think the lack of regulations is a  
5 basis for turning it down. I think the lack of a PIH  
6 notice or some sort of guidance in consultation with  
7 all of you is the basis for turning it down. We wanted  
8 to develop this in consultation. We're here. We're  
9 going to get the PIH notice out. But, again, I don't  
10 think it should be in regulations. The lack of  
11 regulations should not be a basis for not allowing some  
12 to take advantage of the demo program, which is  
13 temporary.

14 Marvin, then Henry.

15 MR. JONES: Just a clarification. How are  
16 you -- what is HUD's position on interpreting the  
17 fiscal year 2009? Is that referring to an actual what  
18 common people think of as a fiscal year, or is it  
19 referring to the 2009 IHBG allocation, in which case if  
20 you still have funds, then you can still go back and  
21 use that?

22 MR. ATALLAH: I would think it would refer to  
23 the actual fiscal year. I mean, as a plain-meaning  
24 interpretation of the statute, it is probably the  
25 fiscal year.

1           MR. JONES: If I could just follow up. That  
2 first bullet up there is not a plain meaning. It talks  
3 about annual grants, which is tying it to an annual,  
4 which would be the 2009 IHBG. So you've got one  
5 interpretation of that, but you're changing the  
6 interpretation of fiscal year later. Is that basically  
7 what you are saying?

8           MR. ATALLAH: When I think about it, it is  
9 probably tied to the IHP. If you're talking about each  
10 particular grant, then, yes, it's a portion of the  
11 grant. Our problem is we haven't published -- haven't  
12 developed the PIH notice in consultation with you all,  
13 so we haven't had this program up and running. It's  
14 something to think about. That may be a reasonable  
15 interpretation.

16          MR. JONES: It is conceivable, then, that if  
17 you do interpret the 2009 as the IHBG, that if a tribe  
18 still has that funding, hasn't expended it all, it is  
19 possible at least.

20          MR. ATALLAH: My concern there would be that  
21 the statute requires you to specify in your IHP what  
22 Subtitle B activities, what self-determination  
23 activities you're going to carry out.

24          MR. JONES: If I could just follow up. We can  
25 amend our IHP as long as we have money?

1           MR. ATALLAH: Right. And I think that might be  
2     an appropriate amendment if we publish the PIH notice.  
3     That is something to consider in the PIH notice when we  
4     consult with you all in developing it is how to handle  
5     fiscal 2009 grants that are still open.

6           MR. CAGEY: I want to understand the history of  
7     this provision. Again, this is where we started in the  
8     beginning with housing, was this flexibility for our  
9     dollars. So, again, it seems like we've come full  
10    circle, now Sandra and Rodger, on where we started  
11    with amending the housing rules with NAHASDA was  
12    self-determination and flexibility.

13           So is this provision in the statute a  
14    HUD-driven provision, or was it a tribal provision from  
15    the housing authority? This section on the demo, where  
16    did that come from? How was it generated? Did it come  
17    from the tribes, or did it come from HUD? Do we know?

18           MR. ATALLAH: Ed Fagen.

19           MALE SPEAKER: To the best of our knowledge, it  
20    came from a house staffer, a Democratic House staffer  
21    who no longer works for the House financial services  
22    committee.

23           MR. ATALLAH: Darlene.

24           MS. TOOLEY: I think an idea was generated in  
25    Barney Frank's office with Jeff Riley. He's an

1 attorney on their staff. And he had done several tours  
2 in Indian Country in the previous several years. And  
3 he thought that an opportunity like this would at least  
4 be a beginning to address some of the tribes' issues of  
5 the constraints that are placed upon us using NAHASDA  
6 when the original intention in many of our minds was to  
7 have a really self-determined program.

8 MR. CAGEY: Again, this is where we started.  
9 Now we're back into this rulemaking. My recommendation  
10 to the tribes is that rather than kicking this  
11 self-determination thing around -- and 20 percent  
12 doesn't make a whole lot of sense -- is that I would  
13 rather see a demonstration going into other HUD  
14 programs, meaning that we should have a demo standard  
15 of looking at other HUD programs that we could access  
16 and use versus what money you already have. You know,  
17 I would rather recommend that we look at going back and  
18 clarifying this demo in a way that we can look at other  
19 programs.

20 MS. HENRIQUEZ: I hear you. I don't know that  
21 it's an either/or in this regard. And getting access  
22 to other programs may indeed be a much more enormous  
23 statutory legislative lift. But to pursue both prongs  
24 makes more sense than just say not doing this one  
25 versus pursuing the other.

1           MR. CAGEY: I apologize, but this provision  
2 doesn't make sense to me, because this is where we  
3 started. And now we are asking for 20 percent of our  
4 money instead of 100 percent. This just does not make  
5 sense why this is written this way.

6           MS. TOOLEY: Having been involved somewhat in  
7 discussions with Mr. Riley and people in Mr. Frank's  
8 office during the course of putting this thing  
9 together, their intention was really to allow the  
10 tribes the opportunity to show, with an admittedly  
11 smaller portion of their grants than many of us  
12 advocated for, that truly having a program that has  
13 little control by HUD and is controlled by the tribe is  
14 not only possible, but it will be more successful than  
15 what is happening.

16           And so there were a lot of compromises on the  
17 amount of money that Congress was willing to risk,  
18 because there was a lot of opposition to this idea that  
19 basically we could have some money that nobody could  
20 tell us, that we would just say this is our program,  
21 and we have this need, and that's how we're going to do  
22 it.

23           I'm not disagreeing with you Henry. I'm just  
24 trying to explain how we got where we are.

25           MR. CAGEY: I know. Again, I just want to

1 clarify that, when this bill was moving through, it was  
2 one of our Northwest tribes and our Northwest senator,  
3 Gordon, that got a hold of this language. And he  
4 designed it the way he wanted it. And, again, the  
5 history of this bill, when we were moving it through  
6 the system is that one of the tribes of the Northwest  
7 had some problems with the design of their homes, and  
8 our good Senator Gordon, we all know who he is, got a  
9 hold of this bill and redesigned it.

10 We had that language just the way we had just  
11 now in this 20 percent. Again, I'm just a little bit  
12 frustrated that it is in this 20 percent margin where  
13 it should be a 100 percent margin. So, again, that  
14 20 percent does not make a whole lot of sense.

15 MR. ATALLAH: I will make a point and then  
16 Marvin.

17 One thing about the idea of this demo program  
18 is to try it out for a couple of years. And then HUD  
19 is required to make a recommendation. And also  
20 Congress reassesses the program and the results of the  
21 program at the end of the demo year. And the idea is  
22 to see how it works, and if it does work, to possibly  
23 increase the cap. So that addresses the concerns that  
24 you are raising, Henry, about 20 percent being a  
25 limitation. I think it is a test to see if it is



1       successful, and if it is, where it can increase it.

2               Marvin.

3               MR. JONES: First, do you agree that what  
4 Congress does doesn't necessarily have to make sense?

5               MR. ATALLAH: Absolutely. I have learned that  
6 the hard way. You know, try doing the red-line for the  
7 statute and discovering provisions that do not exist.

8               MR. JONES: The second question is -- it's a  
9 rhetorical question. The idea is that neither HUD nor  
10 us in this format can change that provision. It is  
11 there. And we have to negotiate it or issue a notice.  
12 And any changes in that or any dislike is that it's a  
13 tribal-going-to-Congress matter. Is that fair to say?

14              MR. ATALLAH: You said it was rhetorical.  
15 You're not supposed to answer a rhetorical question.  
16 Rhetorically, yes.

17              MR. JONES: I thought you were going to give me  
18 a rhetorical answer.

19              MR. ATALLAH: I think you're right.

20              There's a couple of program restrictions.  
21 There's a provision that says you cannot use these  
22 self-determination funds under this program for  
23 economic or commercial development. And also, some  
24 tribes with troubling outstanding audits or monitoring  
25 findings within the last three fiscal years are not

1       allowed to participate in the program. Again, a PIH  
2       notice will flesh all of this stuff out.

3               Again, like I said, there is a program review  
4       aspect of this. Do you guys want to talk about  
5       formula? I can skip this, because the committee is not  
6       going to address formula issues. It's important. It's  
7       controversial, but it's a time issue.

8               MS. MARASCO: I would like to hear it. Go back  
9       and go through it.

10              MR. ATALLAH: Do you want me to do it, Judith?

11              MS. MARASCO: Yes, I do. That's what you're  
12       paid for.

13              MR. SAWYERS: If everybody agrees.

14              MR. ATALLAH: Whatever is convenient. The  
15       statute was amended in terms of --

16              Jason.

17              MR. ADAMS: I just wanted to say, we talked  
18       about this taking an hour at most yesterday. We've got  
19       a lot of business to do. I thought this was just going  
20       to be a presentation from you going over HUD's  
21       position, not really to start negotiating these things,  
22       because that's what we're here to do later. We're not  
23       here to negotiate on needs, so why cover it? I prefer  
24       that we just get this done so we can get on to the  
25       things we're here to do.

1           MR. CAGEY: I've got a clarification on this, I  
2     guess, to our facilitators or HUD. As I come into the  
3     meeting this morning, are these HUD's positions? And  
4     are these HUD's positions that we need to get consensus  
5     on? I've got several notes on my pad here on  
6     recommendations for rulemaking. Is this what HUD is --  
7     is this where we're at this morning is to clarify what  
8     HUD is recommending, should we or shouldn't we agree on  
9     some of the recommendations?

10          MR. ATALLAH: Right. These reflect HUD's  
11     position in the PIH notice in terms of recommendations.  
12     But we are here, and the committee sets the agenda.

13          MR. ADAMS: We have had HUD's position on this  
14     for quite some time. We kind of know that. We know  
15     where HUD is coming from, and we have known that since  
16     the Notice 50 came out. I don't think we're here to  
17     negotiate at this time. This is a presentation to kind  
18     of refresh our memories and kind of understand the  
19     basics of these issues. That's the point of the  
20     presentation, correct?

21          MR. ATALLAH: Sure. Whatever is convenient for  
22     you guys. I'm hearing some want to hear about the  
23     formula, and some don't. I will move right along. It  
24     is a time issue.

25           Let me touch on a few of the monitoring issues

1     that are really going to be important for the  
2     negotiated rulemaking. I think these are important and  
3     relevant for the committee.

4             There is a provision -- we're in Title IV  
5     NAHASDA right now -- there is a provision on HUD's  
6     authority to take enforcement action immediately under  
7     certain circumstances. HUD may immediately limit  
8     availability of funds when there's a determination that  
9     funds may be expended and are continuing to be expended  
10    on activities that are ineligible.

11            Typically the way HUD does monitoring and  
12    enforcement is to go through a long process of issuing  
13    letters of warning, notices of intent, and then a  
14    letter imposing remedies, and then going through the  
15    notice and opportunity for hearing process. Under  
16    certain circumstances, HUD has the authority to limit  
17    availability immediately upon providing notice to the  
18    recipient.

19            The catch is the statute requires HUD to hold a  
20    hearing within 60 days of freezing funds for a  
21    particular ineligible activity to determine whether to  
22    continue to limit the availability of funds or whether  
23    to proceed or not proceed with the enforcement. This  
24    is a provision that we are recommending negotiated  
25    rulemaking on. You should be aware of it

1       substantively, because I think it needs to be fleshed  
2       out.  There is also --

3               Sure, Blake.

4               MR. KAZAMA:  (Indiscernible -- speaker not  
5       using microphone.)

6               MR. TILLINGHAST:  There is a controversy  
7       between the tribes and HUD as to what a series of  
8       amendments between 2000 and 2008 have done in terms of  
9       when HUD has to give you a hearing before they take  
10      money away from you.  They always have to give you a  
11      hearing, or they only have to give you a hearing if  
12      they have found that you substantially noncomplied.

13              So that creates a great incentive for HUD to  
14      say you haven't substantially complied, even though  
15      millions of dollars are at stake, which sounds ironic  
16      and is one of the reasons that the tribes have a  
17      problem with it.  I don't know if this provision is at  
18      the center of the controversy, but it does raise that  
19      issue.  It's going to be one of the more interesting  
20      issues between the tribes and HUD in the course of the  
21      Neg-Reg session.

22              Was that your question, Blake?

23              MR. KAZAMA:  (Indiscernible -- speaker not  
24      using microphone.)

25              MR. TILLINGHAST:  That's a very good question.

1 It's going to be talked about a lot over the next few  
2 months.

3 MR. ATALLAH: There's a regulation in place in  
4 the IHBG regulations that defines substantial  
5 noncompliance, but it may be an issue that we need to  
6 develop.

7 MR. TILLINGHAST: The statute has changed since  
8 you wrote the regulation, is my point.

9 MR. ATALLAH: There is also a provision in  
10 Title IV on one remedy that HUD has at its disposal in  
11 terms of when there is noncompliance whether to take  
12 enforcement or actually provide TA for situations where  
13 a particular recipient is not complying because of lack  
14 of capacity as opposed to mistakes and so forth.

15 We are recommending negotiated rulemaking on  
16 this. There is a test for determining when HUD may  
17 provide for that remedy as opposed to taking strict  
18 enforcement. I think we need to develop that, but it  
19 is a process where we enter into agreement for one  
20 year, provide TA, there is good faith and continue to  
21 provide TA to get the recipient in compliance.

22 Inspections, we're also recommending negotiated  
23 rulemaking on this. There is a provision in the  
24 statute that now says that recipients must carry out an  
25 appropriate level of inspections. We think this needs

1 to be fleshed out in negotiated rulemaking in terms of  
2 what is appropriate. That's a standard that could be  
3 established through regulations, so just be aware of  
4 that.

5 I think this is the provision that you were  
6 talking about, John. So we have covered this.  
7 Specifically, there is some controversy on a section in  
8 the statute, Section 405 of the statute, that says that  
9 HUD can recapture funds through enforcement and so  
10 forth. But if funds have already been expended on  
11 affordable eligible housing activities, HUD does not  
12 have the authority to take enforcement and recapture  
13 those funds or seek those funds.

14 That provision of the statute was struck in  
15 2000. The regulation still cross-references the old  
16 statutory language that's still in there. So that's an  
17 issue we'll have to discuss. We are recommending  
18 negotiated rulemaking on that.

19 This is it. New Title VI demo programs. It  
20 allows you to do economic development activities. It  
21 is a weird mold between Title VI and the Section 108  
22 program under the regular CDBG program. The nice thing  
23 about it is it will allow economic development  
24 activities. It also has a cap or is limited in terms  
25 of funding. I think it is four tribes per ONAP region

1 take advantage of this. We will also develop a PIH  
2 notice in consultation with you all and get this demo  
3 program rolling.

4 I think that's it. Thank you. I'm sorry it  
5 went a little long. There are a lot of issues here. I  
6 think this is a good start. Here's my contact  
7 information if anybody wants to contact me. I work  
8 24 hours a day. No, I don't. That's my personal  
9 number.

10 Marvin.

11 MR. JONES: I actually appreciate your  
12 clarifications. I think you did a good job. Thank  
13 you.

14 MR. CAGEY: What is your title?

15 MR. ATALLAH: Attorney Advisor.

16 MR. CAGEY: Attorney Advisor Senior or Junior?

17 MR. ATALLAH: Very junior.

18 MR. CAGEY: Who is the senior attorney?

19 MR. ATALLAH: Marian McFadden. She will be  
20 involved in subsequent sessions.

21 Blake.

22 MR. KAZAMA: I was just wondering, when you  
23 first started out, you were talking about the subparts  
24 and dividing up the task. I'm still trying to focus on  
25 how do we get to the issues in the PIH notice and



1 the -- what is your recommendation for us to take a  
2 look at the subparts? There are some issues that are  
3 sort of nonconforming or those kinds of things. There  
4 are other issues that -- there seems to be three parts.  
5 Is that your assessment of it as well?

6 MR. ATALLAH: In terms of three categories?

7 MR. KAZAMA: Yeah, and the task of this group  
8 to maybe -- what I'm concerned about is I don't want a  
9 free-for-all here. I want to try to focus on how do we  
10 accomplish the task at hand so that we're  
11 constructively moving in a positive direction versus  
12 just going every direction. That's my concern.

13 MR. ATALLAH: I think it's a valid concern.  
14 Breaking it up into subparts would be a nice way to  
15 divide the work. That might not be advisable. It  
16 depends on how you want to proceed. But your concerns  
17 are very true and shared by me, I think. There's a lot  
18 of work to be done, and this is not everything.  
19 There's plenty more issues. For the committee to know,  
20 there's a lot of work to be done, and this should give  
21 you a good sense of that. Thank you.

22 THE FACILITATOR: Any other questions for Jad?

23 MR. HEISTERKAMP: (Indiscernible -- speaker not  
24 using microphone.) It seems to me there may be some of  
25 the subparts which contain a large amount of the

1 regulations upfront in administration, and some  
2 subparts which contain just a few regulations. Has  
3 that analysis been performed yet at all?

4 MR. ATALLAH: Yeah. I think we have a sense.  
5 Title VI for instance is in one subpart. There's not a  
6 lot to do there. The enforcement subpart, F, has  
7 plenty of work. So we haven't done the analysis in  
8 terms of getting the exact count, but we have a sense  
9 that some subparts are going to be a lot more involved  
10 in terms of revising them than other subparts.

11 THE FACILLATOR: Thank you, Jad. I think  
12 you've given us a preview of many of the controversial  
13 topics we will be jumping into very soon.

14 Going back to the agenda, last night I hope all  
15 of you -- all of you should have copies of the  
16 protocol, the clean copy as well as the copy with all  
17 of the things on it. Who needs a copy of that? We put  
18 a bunch out there on the table. I thought everybody  
19 picked them up. I guess most of you have had a chance  
20 to read it.

21 Can you look it over and see if there's  
22 anything -- we gave them out. We've agreed to these  
23 already. But we want to give everybody an opportunity  
24 to see if there were any points that were inconsistent,  
25 corrections that needed to be made, anything like that.

1 Jason needs a copy I think.

2 Ervin?

3 MR. KEESWOOD: I believe page 2 of 6.

4 THE FACILLATOR: Can we have some order here,  
5 please.

6 MR. KEESWOOD: On the clean copy, there's  
7 reference to regional representatives under E and F. I  
8 believe that needs to be taken out, since we don't have  
9 regional representatives.

10 THE FACILLATOR: I couldn't hear. Under  
11 caucus?

12 MR. KEESWOOD: Under E, agenda, and also under  
13 caucus.

14 THE FACILLATOR: Can everybody please go to  
15 where Ervin is directing us.

16 Under Agenda and under Caucus, what are the  
17 corrections?

18 MR. KEESWOOD: Regional representatives.

19 THE FACILLATOR: Okay. Regional  
20 representatives.

21 Okay. Let's look at the first one. It says,  
22 "Draft meeting agendas will be developed by the  
23 principal federal government officer, PFO," and here I  
24 guess it should be tribal co-chairs. It should be  
25 tribal co-chairs. So under agenda it should read,

1 "Draft meeting agendas will be developed by the  
2 principal federal government officer, PFO, and tribal  
3 co-chairs for approval by the committee."

4 And then on F, it is the caucus. Caucuses may  
5 be called by a region, by HUD, or by the tribe as a  
6 whole. Regional caucuses may be called only by -- and  
7 in that case we have one instance where we don't have  
8 regional representatives. So do we need to accommodate  
9 that?

10 Yes, Karin.

11 MS. FOSTER: Can I make a suggestion on  
12 paragraph F? I suggest that we replace "regional  
13 representative for that region" with "a consensus of  
14 the region." It parallels the provision for tribal  
15 caucuses being called by consensus of tribal committee  
16 members, and that way, if a region, if a whole region  
17 was to call a regional caucus, they can. And that is  
18 consistent with the limitation that there is only one  
19 regional caucus per day. So I think folks can look  
20 around and see that there is a consensus.

21 And in addition to that in the paragraph, I  
22 would strike out that section, "regional representative  
23 shall determine who may attend regional caucuses,"  
24 since we don't have regional representatives.

25 THE FACILLATOR: So Karin has made two

1 suggestions here. Under caucuses, the second sentence  
2 would read, "Regional caucuses may be called only by a  
3 consensus of the region." For the region?

4 MS. FOSTER: A consensus of the region.

5 THE FACILLATOR: "A consensus of the region,"  
6 and cross out "for the region."

7 And then the other thing is to delete the  
8 second-to-last sentence, "Regional representatives  
9 shall determine who may attend regional caucuses."

10 Question, Darlene?

11 MS. TOOLEY: To clarify, so the consensus of  
12 the region means a representative sitting -- the  
13 committee members representing a given region? That  
14 would be the idea? Okay.

15 THE FACILLATOR: Is everybody all right with  
16 that? Any objections? Okay. So amended.

17 Any other thing that anybody picked up?

18 MALE SPEAKER: (Indiscernible -- speaker not  
19 using microphone.)

20 THE FACILITATOR: The change in E is that they  
21 replaced regional representative with tribal co-chair.

22 MS. FOSTER: Just one other thing, and this  
23 picks up on Rusty's comment last time around. A couple  
24 of other things. Let's go to Section 8, page 5. I  
25 think on subparagraph C, the chair, the first sentence

1 reads, "The tribal co-chairs are entitled to vote on  
2 any matter." I believe we put back in the clause that  
3 reads, comma, "other than a motion to overrule the  
4 chair's own parliamentary ruling." We wanted that in,  
5 since we kept D. I think that was just a typo. There  
6 was a clause in there at the very end of the first  
7 sentence. It says, "other than a motion to overrule  
8 the chair's own parliamentary ruling."

9 THE FACILLATOR: We are talking about 8(c), the  
10 tribal co-chairs are entitled to vote on any matter  
11 other than --

12 MS. FOSTER: -- other than a motion to overrule  
13 the chair's own parliamentary ruling. That was  
14 originally in there, and it was taken out and put back  
15 in. It doesn't show up in the red-line either. But if  
16 you look back to what we were looking at yesterday,  
17 it's there.

18 THE FACILLATOR: Karin, can you say it one more  
19 time.

20 MS. FOSTER: Other than a motion to overrule  
21 the chair's own parliamentary ruling.

22 THE FACILLATOR: The chair's own parliamentary  
23 ruling.

24 MS. FOSTER: Yes. I have one other change.  
25 Shall I go ahead with that, or do we want to --

1           THE FACILLATOR: Is everybody okay with  
2   restating what we agreed to before? No objection? All  
3   right. The next one?

4           MS. FOSTER: The only other one, I have picked  
5   up on what Rusty raised yesterday. That is the  
6   Section 3(b) in voting, the sentence that says, "No  
7   committee member may abstain on a vote." If this is  
8   needed for clarification, one might add in right before  
9   the sentence an introductory clause to the sentence  
10   "subject to Article 8(c), no committee member may  
11   abstain on a vote." If that is necessary to capture  
12   8(c) which says that the chair cannot vote on a matter,  
13   a motion to overrule its own parliamentary ruling. I  
14   don't know that is necessary, but it was raised. It's  
15   not a recommendation.

16           I didn't find anything else that wasn't a lack  
17   of a period or something, which I'm sure the folks can  
18   clean up on their own.

19           THE FACILITATOR: All right. She's not making  
20   a recommendation to change the language, but just a  
21   clarification that we all understand that that is the  
22   one exception. Is everybody okay? Okay. No  
23   objection? Thank you.

24           There was one additional issue related to the  
25   protocols. And that was a proposal put forward by

1 Jack, and that is No. 9 here. I think this would  
2 probably be the appropriate place to deal with this.

3 So, Jack, this was a proposal to add to the  
4 protocols to this section. Is that correct?

5 MR. SAWYERS: Yes.

6 THE FACILITATOR: Does everybody have a copy of  
7 this, No. 9, process for dealing with Neg-Reg issues?  
8 Who needs a copy?

9 Jack, do you want to give an explanation or  
10 introduction?

11 MR. SAWYERS: We talked about it as part of the  
12 protocols. I still think that this is a good place for  
13 it. Some of the other sponsors and folks said that if  
14 it's going to hold anything up, then we -- we have to  
15 address it sometime. We think it should be in the  
16 protocols. I think it should be the protocols, because  
17 I feel like that gives us a direction on how we  
18 proceed. And it limits, as we go along, people  
19 introducing new subjects and getting off track.

20 So I felt like it would be a good part of the  
21 protocols. However, if this is going to be a lengthy  
22 thing, and we want to get through the protocols, then  
23 I'm willing to hold it off and introduce it a little  
24 later, because we would like to be able to say at least  
25 by the second day, that we have accomplished something.



1           And so, consequently, I am leaving it up to the  
2 group. If we do it now, or we do it later, it has to  
3 be done. So whenever you folks feel it would be -- let  
4 me just ask, is there any objection to having this part  
5 of the protocols?

6                   (Several hands were raised.)

7           THE FACILITATOR: Okay.

8           MR. SAWYERS: Then I withdraw it.

9           MR. JONES: To clarify, I think it will be a  
10 lengthy discussion. It's not that I opposed it being  
11 in there. I just think it would end up being a lengthy  
12 discussion.

13           MR. SAWYERS: We have no heartburn by changing  
14 it. Other than that, I think that I will just withdraw  
15 it.

16           THE FACILITATOR: Okay. So Jack is withdrawing  
17 some protocols. Obviously, it would be appropriate to  
18 raise these points when we start talking about what  
19 issues to discuss and negotiate, I think.

20           Rusty, do you want to comment.

21           MR. SOSSAMON: Yes. I was going to suggest  
22 that we just place this on our agenda and accomplish  
23 the same thing, I believe.

24           THE FACILITATOR: I think it is appropriate if  
25 you use all of these concepts that, obviously, how you

1 want to make choices about what to negotiate, how to  
2 negotiate, time line. I think when we talk about it,  
3 that we have that on our agenda. I think we can bring  
4 it up at that point.

5 MR. SOSSAMON: And is there a handout that  
6 lists the HUD presentation on what they recommend needs  
7 to go through?

8 THE FACILITATOR: We are in the process. They  
9 didn't have it ready this morning. But during the day,  
10 they are putting together and are going to distribute  
11 to the committee the color-coded amendments that they  
12 are using.

13 MR. BOYD: That really wasn't the question.  
14 The question that Rusty is asking is the presentation  
15 that was put on the screen and given our recommendation  
16 to the committee, and we should be able to provide  
17 that.

18 MR. SOSSAMON: Yeah, because I think at the  
19 time we're considering this, I think we would want to  
20 consider what HUD recommends being negotiated and what  
21 they recommend that doesn't need to be negotiated. And  
22 then the committee can decide on all of that at the  
23 same time.

24 THE FACILITATOR: Okay.

25 Marvin?

1           MR. JONES: Does that include HUD going to the  
2   recommendation of their idea to divide it into  
3   subparts? Are they going to provide -- could they  
4   provide that as well? Probably not, since they are  
5   busy. So I was going to put the idea that you can --  
6   your idea to put it into subparts. You can put it in  
7   that kind of format. Okay. Thank you.

8           THE FACILITATOR: Jack has a document that they  
9   prepared that we're passing out right now.

10          Can you explain what it is, Jack?

11          MR. SAWYERS: You're all going to be given a  
12   document that pretty well explains the NAHASDA  
13   amendments. And we'd like to have comments as we go.  
14   That would be in conjunction with what we looked at on  
15   the protocols that we have decided to table for a  
16   little while. So if you would read through this and  
17   write your comments down. It is just a little document  
18   that you can -- well, what is important and how we're  
19   going to approach this and so on, so please do that.

20          MS. MCDADE: Are we working on the agenda for  
21   today for what we're going to do? Is that we're going  
22   to do? What structure are we trying to focus on right  
23   now?

24          THE FACILITATOR: What we've done is we've just  
25   basically finished our protocols. And I think we have

1 approved our protocol. So congratulations.

2 Yes, Sandra.

3 MS. HENRIQUEZ: Help me understand. As I  
4 understand it, based on the language around electing  
5 co-chairs at every session, is it not -- is everyone  
6 prepared to sign the protocol, all members, which is  
7 what I thought we talked about, right? Should we  
8 expand the signature page?

9 THE FACILITATOR: Okay. So Sandra's point is  
10 that everybody would sign the protocols.

11 Yes, Blake.

12 MR. KAZAMA: Different subject. I guess we  
13 have been receiving these documents. What about the  
14 public? Will they have access to all of the documents  
15 we have? Should they have access to the documents so  
16 that they can follow along with our discussion? I  
17 guess I'm just -- I see a bunch of people out there,  
18 and they have no reference or information to what we're  
19 talking about. It would be nice for them to have that.

20 THE FACILITATOR: I think that is a HUD  
21 question.

22 Yes, Judith.

23 MS. MARASCO: At other Neg-Reg meetings, when  
24 documents were handed out, we gave them a number and  
25 put them in a library so that as they were presented to

1 the committee, any runs, any drafts, any additional  
2 documents got catalogued and numbered so that the  
3 committee members and the public could actually go to a  
4 central station and say I want number such and such,  
5 and that would be produced for them.

6 But the other thing that I would like to see  
7 would be, along with that resource table, maybe a  
8 hole punch and a recycling box for the paper. But just  
9 so that -- these are nice binders. If we could  
10 actually punch holes in these papers, we might know  
11 where to access them.

12 But just to make sure we number these documents  
13 that are being distributed and that enters into a  
14 document catalog and kind of gives a quick reference as  
15 to what the document is and who submitted it. Then we  
16 can really identify and make sure that we've received  
17 everything that has been circulated as a committee.

18 THE FACILITATOR: I'm going to address two  
19 points. One is Blake's concern about our audience who  
20 do not have hard copies of all of the documents that  
21 have been presented to the committee. Those are not  
22 being provided. They've only been provided to the  
23 committee, according to Mike. They are available on  
24 the website. So any document that we get that is  
25 approved that gets published will be on the website.

1           Mike, is there anything else you can clarify  
2   for us on that?

3           MR. ANDREWS: Good morning. Mike Andrews,  
4   Office of Native American Programs. In terms of all  
5   the documents, we will start first with the easy stuff.  
6   Everything that is approved will be on our HUD Office  
7   of Native American Program website with access to  
8   anyone that wants to get on it.

9           Secondly -- go ahead --

10          MR. SAWYERS: Why would you not have it for at  
11   least the support staff for HUD and for the committee?  
12   They should have documents for those folks. If you  
13   don't want to do it because you don't know how many  
14   folks are going to be here, but it is not much of a  
15   problem to expand that at least to the staff and those  
16   folks that need to stay up with what we are doing. I  
17   would suggest -- and I know you have a rule, but I  
18   suggest that we at least offer that and all your  
19   printed work material to support staff and to HUD's  
20   support staff.

21          MR. ANDREWS: I appreciate that. We'll take  
22   that into consideration. Thank you.

23          MR. KEESWOOD: I also think that in the room  
24   there are alternates. They should have access to these  
25   documents immediately since they are here today and

1 throughout this meeting.

2 MR. ANDREWS: As you alluded to, we build this  
3 out as best we can in terms of anticipation. All of  
4 the committee members will obviously be covered. All  
5 of the alternates will be considered. But in terms of  
6 the public, there's just no way to know. We took our  
7 best guess from our last negotiated rulemaking. And  
8 we'll do a recalculation as we move forward as well.

9 But in terms of having all of the documents,  
10 you should have all of the information that we have  
11 now. As documents are being approved, now that the  
12 charter and protocols have been approved, those will be  
13 accessible via the website.

14 Also when we first started, we also provided  
15 everybody with CDs. Again, that has all of the  
16 documents as well. If you don't have a CD, we can also  
17 provide that for you as well.

18 Sitting in the back there, please don't be shy.  
19 Come on up and let us know what you need.

20 Blake?

21 MR. KAZAMA: I guess the hard copy is valuable  
22 especially when we start talking about the work groups  
23 so that people out there know which work group they  
24 want to participate in. They can correlate and work it  
25 out with this. I'm guess I'm not seeing that as such a

1 large expense that we could not provide that for people  
2 here in the audience. I know that if I was sitting out  
3 there, I would really be lost.

4 Mr. Boyd.

5 MR. BOYD: I agree. I think that anything that  
6 we publish in real-time here, we will make available to  
7 the public as soon as we do it. We will have our staff  
8 then print everything out, copies for the public.

9 MR. KAZAMA: Thank you, Rodger.

10 MS. MCDADE: Rodger, will it be available this  
11 afternoon? The reason why we're asking is, for our  
12 region, we were going to take care of that. Are you  
13 going to do it sooner than that?

14 MR. BOYD: We will do it as soon as possible.

15 MR. JONES: This is on a different topic,  
16 meaning I want to make this official so that it is an  
17 agenda item. Maybe these kind of discussions need to  
18 take place after we get the protocols signed and those  
19 sorts of things. So is it appropriate for me to  
20 suggest an agenda at this point to get us on track?  
21 Can I do that?

22 THE FACILITATOR: Is everybody okay with the  
23 copy situation? We're going to take care of that and  
24 get more copies for people. Any more comments on that?

25 Thank you, Mike.



1           MR. JONES: Here's what I suggest for the  
2 agenda. I think we need to get the protocols and  
3 charter signed. But I understand that it will take a  
4 little bit to get the final documents. So here's my  
5 suggestion. What we had from 8:00 to 10:00 was the  
6 tools for successful negotiations. Let's go ahead and  
7 do that. That allows time to develop the final  
8 documents, the protocols.

9           Then we set aside time to actually sign the  
10 protocols. That would be on the agenda. I think the  
11 third thing would be, as I understand it, to designate  
12 the co-chairs at that point.

13           And then the fourth thing today would be what  
14 was from the Tuesday agenda, the 3:15 to 4:00, the  
15 committee meets, discussion on topics to negotiate and  
16 organization work. So we get into the meat of it.  
17 That is what I would suggest after we figure out some  
18 times.

19           MS. PICKUP: Marvin, can you add appointing the  
20 draft committee and getting that assigned also?

21           MR. JONES: Sure. That has to be after the  
22 protocols are signed, right? And that would be No. 4.

23           THE FACILITATOR: Are people in agreement with  
24 that as an order of business for today? Okay. Very  
25 good. Thank you, Marvin, for your assistance with

1       that.

2               MR. JONES:  I think you've got five minutes to  
3       do tools for successful negotiations.  Start the clock.

4               MR. ADAMS:  Maybe it's a good time to take a  
5       break, since we haven't had one yet this morning.

6               THE FACILITATOR:  Let's take a break.

7               (Recess taken.)

8               THE FACILITATOR:  Can we get started again?  We  
9       are starting.  This will be a very short presentation,  
10      and I apologize to those of you who are already  
11      professional mediators, facilitators, and group process  
12      experts.  This may be a repeat for you, but I wanted to  
13      take a short time to go over two important issues and  
14      tools.  I wanted to present two tools for you that have  
15      been used in successful rulemaking.

16              One is called interest-based negotiation, and  
17      the other is consensus.  We all think we know what  
18      consensus is, but I think this is something that we're  
19      going to be using again and again and again.  And I  
20      don't think it hurts to review a little bit what we  
21      mean when we talk about consensus.

22              The first thing I want to touch on -- and I  
23      don't want to talk too much about this -- is the  
24      interest-based negotiations.  Our negotiations here are  
25      a little bit different than other negotiations.  We

1 have many tribes represented here, and tribes who are  
2 not here who are also represented.

3 We have the federal government represented.  
4 It's a government-to-government relationship as well as  
5 a housing authority-to-government relationship. It's  
6 not a traditional negotiation. It's a negotiation  
7 where there's an opportunity for people to really  
8 express their interest and their concerns to each  
9 other.

10 The interests vary a lot because we have large  
11 tribes. We have small tribes. We have very, very  
12 sophisticated negotiators. We have first-time  
13 negotiators. What is very positive about this is that  
14 there is a committee of interest and that these  
15 negotiations are really based on many -- trying to  
16 accommodate the interest of the group and accommodate  
17 the interest of your different constituencies as well.

18 And so in this process -- I'm not going to go  
19 into too much about it -- I'll just say the most  
20 important thing that we talk about -- and I assume this  
21 happened already -- is that we have taken the patience  
22 and the time to give each one of us time to share your  
23 interests and concerns with each other before we make  
24 any final decisions.

25 So when we say "interest," basically, we have

1 to think of what our interests are: their needs, their  
2 concerns, their feelings. I think interest cannot be  
3 judged. Everybody has a right to their interest,  
4 whether they come from a small constituency or a very  
5 large one. Those interests may be different, but all  
6 the interests around the table have been respected and  
7 they have to be understood.

8           So it's important for us to take the time to  
9 understand each other, ask the questions so we know  
10 where everybody's at so we can accommodate each other.  
11 They can be identical. They can be conceptually  
12 similar. They could be on somebody else's list and not  
13 our list, but they can still be supportive. So there's  
14 many types of interest.

15           We look for interest because they help us  
16 create common ground. They promote understanding by  
17 avoiding fixed solutions. And, hopefully, as we get  
18 more into these discussions and we listen to each  
19 other, it builds better relationships and trust among  
20 all of us. It also helps avoid misunderstanding.

21           What is consensus? We all think we know what  
22 consensus is. It's a mutually acceptably statement  
23 that takes into consideration the interest of all  
24 concerned parties. It's also a process. It's a way of  
25 making decisions which aims to include everyone in the

1 decision-making process and resolve any objections.

2           It's a very basic form of grassroots or direct  
3 democracy. A forum that has probably existed in many  
4 forums and many of your cultures for years and years.  
5 Nothing that was invented recently.

6           The way we use it here in this Neg-Reg is in a  
7 way that rejects the representation forum or democracy  
8 associated with voting and hierarchy. So when it works  
9 right, it should give the smallest and the largest and  
10 the loudest and the quietest person an opportunity to  
11 have their views put forward, whether it's a majority  
12 or minority view.

13           There are certain attitudes that help build  
14 consensus. I've heard a lot of people talk about the  
15 negotiations with the formula and tried to contrast  
16 that with the negotiations here. I think there's one  
17 big difference. One is that with the formula  
18 negotiations, it is, as the secretary said, a zero-sum  
19 game. So what I get, you lose. What you lose, I get.  
20 It kind of makes people get competitive towards each  
21 other. This is not that way. This is not a zero-sum  
22 game. There should be no losses.

23           We have to assume everybody has good  
24 intentions. You have to state what you really need,  
25 but not as a demand, and value the contributions of all

1 members. We don't evaluate or belittle others'  
2 suggestions. That sign says, "Now does any anybody  
3 else have a stupid suggestion?"

4 When do we reach consensus? When we put our  
5 thumbs up or we say, "Is there anybody opposed?" So  
6 when nobody is opposed to an action and everybody  
7 understands the action, and everybody will support the  
8 decision, and it meets the 70-100 rule.

9 Now, what's the 70-100 Rule? One way of  
10 characterizing it is when you say that you can agree  
11 with the solution 70 percent, but you commit to  
12 supporting it 100 percent. Our whole protocols,  
13 everybody in this room did not agree to it 100 percent,  
14 but they agreed to it at least 70 percent, and they're  
15 willing to support it now 100 percent. Because when we  
16 sign these protocols and it goes around the room, that  
17 is our indication that we're willing to support this  
18 100 percent, even though there may be a little thing in  
19 there that we didn't 100 percent agree with, but we  
20 said, "We can live with it."

21 So the two kind of rules that we use when we're  
22 trying to reach consensus are: Number one, can you  
23 live with it? Even if it's not you're first choice,  
24 can you live with it?

25 Number two, do you not oppose it? So when we

1 think about consensus, we're going to be forced to make  
2 those decisions in our mind many, many times.

3 The other thing we talked a little bit about  
4 and addressed in our protocol is that we have to be  
5 careful that we get everybody's opinion. Silence  
6 doesn't only mean agreement. It could mean  
7 disagreement. So we have to make sure that we give  
8 everybody the opportunity to agree and make sure if  
9 everybody has not.

10 The other thing is, there's going to be times  
11 when everybody agrees on something or there might be  
12 one person who doesn't agree with it. We don't want to  
13 penalize that person. We don't want to treat them like  
14 deviants. They have a very strong belief and a reason  
15 for not agreeing with something, and peer pressure can  
16 become harmful if it shuts down the dialogue. So now  
17 we've given ourselves the cushion -- we've given  
18 ourselves a two-hour cushion to make sure that any  
19 issue has adequate time to be discussed and honest  
20 dialogue can take place.

21 We do think that if someone is a standout or if  
22 someone has a disagreement, they should clearly say  
23 what they disagree and explain why. And if they can,  
24 offer a specific way to change that option, that would  
25 satisfy the group. And this is how we keep people

1 engaged in the whole process of dialogue and meeting  
2 consensus is that we challenge each other. Because  
3 every single committee person has a very powerful veto  
4 vote if you want to use it. Every single person in  
5 this committee can say, "No, I disagree. Even if  
6 everybody else agreed with it, I can't go along with  
7 that."

8           So if you're going to then make that statement  
9 and hold the group from a consensus, then obviously  
10 it's your responsibility to come up for a good  
11 explanation of why you were in disagreement so other  
12 people can help to build a consensus.

13           That's it. Any questions? Okay. That was  
14 just a little reminder of the consensus process that we  
15 use every day, that we're using now to a big degree to  
16 meet our demands here.

17           So I think we're ready to move on now to our  
18 next item of business. So do you mind if we just  
19 continue to get into the topic discussion and how to  
20 organize the work, and then the protocols will be ready  
21 for signing soon.

22           There have been several helpful documents put  
23 forward to help us figure out how to organize the work.  
24 There is something that has been put out by the Housing  
25 counsel that indicated what they thought would --



1 Yes, Marvin?

2 MR. JONES: How much longer do we think on the  
3 protocols?

4 THE FACILITATOR: 20 minutes.

5 MR. JONES: I was wondering -- because I don't  
6 want to start a topic and switch back and forth. I was  
7 wondering if we might do some preliminary work on  
8 either the co-chair or the drafting committee thing and  
9 get those things taken care of in this next 20 minutes  
10 so that we don't jump back and forth today. That's a  
11 suggestion.

12 THE FACILITATOR: Okay. How do people feel  
13 about that? Does everybody want to go with that? Any  
14 objection?

15 MR. CAGEY: I couldn't hear him.

16 THE FACILITATOR: Marvin, make your suggestion  
17 again. Henry didn't hear it.

18 MR. JONES: To try to address the co-chair  
19 business and/or the drafting committee issue in this  
20 20 minutes or so before the protocols are ready, rather  
21 than jumping into a topic and then jumping out of that  
22 topic again, in regard to organizing the issues that  
23 we're going to be discussing ultimately.

24 THE FACILITATOR: Yes, Sharol?

25 MS. McDADE: I don't disagree with Marvin, but

1 did we approve what we were going to put onto an agenda  
2 yet? I mean, have we decided that we going to be A, B,  
3 and C timeframe and everything? I don't recall doing  
4 that.

5 I think we hit-and-missed on some of the  
6 sections, but I don't think we said, "Okay. This is  
7 what we're going to do. This is what we're going to  
8 work on before the protocol came out." I don't recall  
9 that. I think there was a suggestion, but I don't  
10 think that we --

11 MR. JONES: No, we agreed to the committee  
12 order that we were going to do. And now that we don't  
13 yet have the protocols, which was the next thing we're  
14 going to do, we either need to stick with what we  
15 previously agreed to, in which we go off for 20 minutes  
16 and don't do anything.

17 Or we fill that 20 minutes either jumping into  
18 the item -- I think we called it No. 4. Or we do the  
19 two issues following the approval of the protocol,  
20 which was the co-chair and the drafting committee.

21 So the suggestion is, okay, we don't have the  
22 protocol yet, so let's go to the next issue on the  
23 table, which is either the co-chair or the drafting  
24 committee, to fill that 20 minutes and get that done so  
25 we're doing something productive.

1 THE FACILITATOR: Does that answer your  
2 question, Sharol?

3 MS. MCDADE: Yes.

4 THE FACILITATOR: Okay.  
5 Darlene?

6 MS. TOOLEY: I would like to suggest that we  
7 begin with the drafting committee, because I think that  
8 the quicker we get those folks scribing, the better off  
9 we are.

10 THE FACILITATOR: Is everybody fine with the  
11 idea that Marvin suggested? We'll take up the drafting  
12 committee and then co-chairs, sign the protocols, and  
13 then going on to organizing work. Is that all right?  
14 Okay. Any objections?

15 Okay. Drafting committee, any suggestions  
16 about how to proceed on that?

17 Jack?

18 MR. SAWYERS: I think in the past we have --  
19 I think we've done several things, but I think the one  
20 that worked very well is to have some of lawyers that  
21 we have engaged -- some of the folks who have an  
22 interest, and make it not a huge gigantic thing, but  
23 make it so it's very workable.

24 First of all, I think we need to talk to who  
25 would like to be on that committee. Some of you would

1 do very well. Some of us would do very poorly. So,  
2 consequently, I think we need to find out who would  
3 like to do that and then go from there.

4 So my suggestion now is that we ask for those  
5 folks who would like to be on that committee, because  
6 it's going to take some work. It's going to take some  
7 extra time.

8 THE FACILITATOR: Darlene has a question. She  
9 says, "Would it be people from the committee or outside  
10 the committee as well?"

11 MR. SAWYERS: From the committee, we're talking  
12 about right now.

13 THE FACILITATOR: Okay. Rusty?

14 MR. SOSSAMON: What I recommend is, let's go  
15 back and look at our protocols that we've approved and  
16 we're just waiting to sign. At least one of the  
17 members will be a HUD representative. Maybe HUD would  
18 like to name somebody now or do we just want to say  
19 that's up to Rodger, each time they're working, who  
20 that one member is?

21 THE FACILITATOR: For those committee members  
22 to whom this is a new process, the drafting committee  
23 is generally just a technical committee. And  
24 everything that they write up is something that the  
25 working committees have given them, a product to write

1 up and draft. It comes back in its final form to the  
2 committee for final approval.

3 Yes, Darlene?

4 MS. TOOLEY: Just to clarify. So if committee  
5 members want to be on the drafting committee, that does  
6 not preclude them from being on other work groups,  
7 correct?

8 THE FACILITATOR: No, no.

9 MR. TOOLEY: It's up to them to deal with their  
10 time and all that stuff.

11 THE FACILITATOR: Yes, exactly.

12 MS. TOOLEY: Okay. Just to clarify.

13 THE FACILITATOR: Okay. Lafe, a question?

14 MR. HAUGEN: Just for clarification. Rusty,  
15 how many committee members were on the last drafting  
16 committee? Do you have an idea, thereabouts?

17 MR. SOSSAMON: Gosh, I don't know. And this  
18 one is open to any of the committee members. Of  
19 course, if you get too many people in there, then it  
20 becomes counterproductive.

21 But according to our protocols, it doesn't  
22 really say who's going to be on there. It's just  
23 they'll be selected based on their skills and abilities  
24 to draft. So I would think if anyone wants to  
25 volunteer to be on it, we identify who it is. This

1 committee says, "Great. I'm confident in their  
2 drafting skills. You're on the drafting committee."  
3 Is that acceptable for us?

4 MR. FACILITATOR: Any other questions? Do you  
5 have a question about the drafting committee?

6 Yes, Marvin?

7 MR. JONES: Can we have an essay contest?

8 (Laughter.)

9 MR. SOSSAMON: I thought that's what you did in  
10 the bar last night.

11 MS. TOOLEY: So to clarify for myself once  
12 again. We're going to, hopefully, get several members  
13 of this committee to participate on the drafting  
14 committee. And then after that, we're going to  
15 enlist --

16 MALE SPEAKERS: Lawyers.

17 MS. TOOLEY: -- other folks to help? How is  
18 that going to work?

19 MR. SOSSAMON: Well, our protocol says that the  
20 drafting committee doesn't necessarily have to be  
21 members of this committee.

22 MS. TOOLEY: I know. I'm just --

23 MR. SOSSAMON: So I would say the first thing  
24 is, is there anybody on this committee interested in  
25 working on the drafting committee?

1 MS. HERNE: (Indiscernible -- speaker not using  
2 microphone.)

3 THE FACILITATOR: Retha. Okay. We'll take  
4 note of that.

5 MR. SOSSAMON: Okay. Anyone else on the  
6 committee?

7 MS. FOSTER: I would be interested  
8 in participating on the committee.

9 MR. SOSSAMON: Okay.

10 MS. FOSTER: Again, with the understanding that  
11 I also want to participate on other work groups.

12 MR. SOSSAMON: Uh-huh. Sure.

13 MS. FOSTER: But I guess that's understood.

14 I think that in the last negotiated rulemaking,  
15 really anyone who wanted to participate on the drafting  
16 committee could do so, so that the efforts of all the  
17 lawyers who were paid to be here and work on these  
18 things were utilized.

19 So I would be in favor of really opening that  
20 up to anyone, and not necessarily even, you know,  
21 saying, "Okay. Everybody who's here today is the  
22 drafting committee, and nobody else can participate."  
23 I'd suggest that we leave it open.

24 MR. SOSSAMON: I think that's fine. Obviously,  
25 I think there's consensus that any member here can

1     serve on that drafting committee, if they would like  
2     to. Also anyone that HUD -- at least one person, but  
3     it's not limited to one -- that they would like to have  
4     on the draft committee can serve on it. I think, too,  
5     we would welcome any of the professionals who are here.

6             So maybe it would be simpler for us just to  
7     approve that if you're going to work on the drafting  
8     committing, you sign a sign-in sheet, so we know who's  
9     on the drafting committee. Is that easy enough?

10            THE FACILITATOR: Okay. Blake has a comment.

11            MR. KAZAMA: The only difference, I think,  
12     between last time and this time is this concept of the  
13     preamble committee. Last time we waited to the very  
14     end. I'd like to see this drafting committee working  
15     on preamble language as we go along, so it doesn't  
16     delay us even further.

17            That was originally stated, and I think we --  
18     I hope we have this understanding that it became a part  
19     of the drafting committee responsibility. So it's an  
20     oncoming process. I wanted to share that because it  
21     also requires more time and effort if you're going to  
22     participate in the drafting committee, not like before.

23            THE FACILITATOR: Lafe and then Rodger.

24            MR. HAUGEN: As a new member to this committee,  
25     I would ask that the veterans that have been here



1 before take charge at this point.

2 Blake, you and Rusty knew what didn't work and  
3 what did work from the last meetings. So take charge  
4 and let's get rolling.

5 THE FACILITATOR: Rodger?

6 MR. BOYD: Well, as I recall from the last  
7 negotiated rulemaking process, we wanted to make sure  
8 that there was good representation from all of the  
9 regions around the country. So I think what we  
10 originally had asked for at that time, or had agreed  
11 to, that there would be two representatives from each  
12 region as the key people to maintain a continuum  
13 through the process.

14 And also there's a logistics concern. Because  
15 a lot of this work eventually -- especially when we get  
16 towards the end, there's going to be a lot of work  
17 that's going to be done not when we meet as a  
18 committee. We're going to be meeting in between  
19 meetings.

20 So, one, I would suggest whoever is on the  
21 committee be committed to be there all the time, for  
22 logistics purposes and for a continuum of drafting, and  
23 that we have, I would suggest, a good representation  
24 from each one of your regions -- your respective  
25 regions.

1           I think that also, organizationally, make sure  
2   that all the regions are totally engaged, and then the  
3   respective representatives on the drafting committee  
4   then can easily report back to their respective region  
5   and provide information to their respective region on  
6   their accomplishments or any issues that may come up  
7   with regard to HUD.

8           The OGC will have our lead on the drafting  
9   committee, and the key person would be Marion McFadden.  
10   But then she also has two individuals that would also  
11   participate on an ongoing basis.

12           THE FACILITATOR: Yes, Marvin?

13           MR. JONES: I guess I have a slightly less  
14   organized view, maybe. I think we ought to draft all  
15   those people sitting back behind us that are taking  
16   advantage of those reserved seats, unless they don't  
17   want to be on there. Then that's an official draft.  
18   I want to draft those people.

19           So I'd like to hear if any of those people  
20   object. Hearing no objection -- no. (Laughter.)

21           THE FACILITATOR: Yes, Darlene?

22           MS. TOOLEY: I must say that we're not  
23   fortunate enough to be able to afford to have our  
24   attorneys sit in this room every time we meet -- most  
25   of us from at least California and Nevada -- but we are

1       very interested in participating in this whole process.

2       We did in the past.

3               So there has to be some commitment, I think,  
4       for us to be able to get things by e-mail, run it back  
5       through our attorneys or other people, whoever our  
6       ratifiers or experts are, and have that feedback to the  
7       overall committee.

8               I'm not trying to make it more cumbersome, but  
9       it's just a fact of life. We have people that need to  
10      review things in our interests, and we can't afford to  
11      have them sit here and be formally doing that. So I  
12      just want to be sure that it's understood that that's  
13      part of the process we're putting in place.

14              THE FACILITATOR: Carol?

15              MS. GORE: I just wanted to respond to Darlene  
16      and also to Lafe to say, I think the drafting preamble  
17      committee was one of the best communications this  
18      committee had in the last go-around. It was open to  
19      everyone. There was not just e-mail communication but  
20      also telephonic.

21              Some members were more active than others in  
22      the actual drafting, but everyone was able to listen in  
23      and participate to the level they chose to participate.  
24      I don't know of any region that was underrepresented at  
25      all.

1           And it seemed to be a pretty organized process.  
2   When you think about attorneys self-policing  
3   themselves, I think they did a pretty fine job of doing  
4   that, and they have my confidence. I see some of the  
5   same faces here, and they certainly have my confidence.

6           I know in Alaska we have more than two that  
7   want to participate, so we'll be represented. I know  
8   you'll make sure your regions are represented, too.  
9   I agree with Marvin. I'm ready to move on. Thank you.

10           THE FACILITATOR: Yes, Blake?

11           MR. KAZAMA: So it can be as simple as putting  
12   out a sheet of paper and have people volunteer so that  
13   we know who's on the list. If you find your region  
14   isn't represented, you might want to go back and talk  
15   to people who might want to serve on that.

16           With Darlene's situation, it talks about a  
17   spokesperson on here, but maybe we really need a  
18   chairperson to make sure that information gets out to  
19   us and to others. I don't know. So if you're not  
20   getting the information from the drafting committee,  
21   you'll know who to go see and get information.

22           THE FACILITATOR: Yes, Darlene?

23           MS. TOOLEY: And I appreciate that. I'm not  
24   trying to make it more complicated, really. You know,  
25   we all have constraints, and that's really one of the

1 things that the small tribes deal with is we just don't  
2 have the resources.

3 It did work well last time, and I'm not  
4 diminishing that at all. I just want to be sure that  
5 everybody understands that that's part of the process  
6 we're agreeing to.

7 THE FACILITATOR: So how do you want to go  
8 forward with this? Do you want to ask for volunteers  
9 now or do you want to think about it and put your names  
10 up on the drafting committee to make sure we have a  
11 representative group? You may want to discuss it among  
12 yourselves. Why don't we ask people --

13 Yes, Steven?

14 MR. ANGASAN: I think we could ask some of the  
15 members of the audience if they'd like to be -- to just  
16 stand up and say your name or something. Is there a  
17 process for that?

18 THE FACILITATOR: To participate in the  
19 drafting committee?

20 MR. ANGASAN: Yes.

21 THE FACILITATOR: Yes, Jason?

22 MR. ADAMS: Jan, the drafting committee, if  
23 you're looking for members there, just have folks go  
24 sign up and call it a --

25 THE FACILITATOR: Yes, that's what I'm

1       proposing.

2               MR. ADAMS:  And that list always remains open.

3               THE FACILITATOR:  Then we'll know by the end of  
4       the day who wants to do it.

5               MR. ADAMS:  Yes.  And there it is; it's open.

6               MR. ANGASAN:  Does there have to be a process  
7       to just come up and sign it?

8               THE FACILITATOR:  Steven's inviting anybody  
9       from the audience who would like to be on the drafting  
10       committee to participate also, to put your names up  
11       here, because it's an open committee.

12              Yes, Leon?

13              MR. JACOBS:  There were three or four people  
14       that raised their hands from the committee.  Shouldn't  
15       we have their names up there now?

16              THE FACILITATOR:  I think that was -- who'll be  
17       the first to sign up.

18              Thank you, Retha.

19              MR. JONES:  I can't read her writing, so she  
20       she's off.

21                       (Laughter.)

22              THE FACILITATOR:  Who else wanted to be on it?

23              Karin, did you want to?  Do you want me to  
24       write your name or do you want to put it up?

25              MS. FOSTER:  I'll write my name.

1           MR. SAWYERS: By the way, Retha is from  
2     Region 5.

3           THE FACILITATOR: Region 5. Oh, we should put  
4     that behind your name also. Why don't we put Region 5  
5     behind Retha, then we can kind of -- that would be  
6     helpful. Thank you.

7           MR. JONES: If we're putting regions, can we  
8     put if they're a big, small, or large tribe, too?

9           FEMALE SPEAKER: No.

10          MR. JONES: I'm being serious now. That's how  
11     we were selected. This time I'm being serious.  
12     I guess not.

13          THE FACILITATOR: Okay. Rusty?

14          MR. SOSSAMON: From listening to the comments,  
15     what I'm hearing is, one, I think the drafting  
16     committee has to have some communication mechanism, not  
17     only to keep the folks who are participating on the  
18     drafting committee informed, but also, I think, this  
19     committee.

20                 I know there's a list of e-mail addresses that  
21     perhaps products can be made available to the members  
22     or some way that if you're not sitting in the committee  
23     or you have someone at home that wants to review this  
24     information, it's easy. Then they can review it when  
25     they want to.

1           Number two, Rodger said that one of his  
2       concerns is to ensure adequate tribal engagement of the  
3       committee members on it.

4           And then, three, I think the sign-in sheet,  
5       anyone who wishes to participate in it, just basically  
6       needs to identify themselves on a sign-in sheet as  
7       participating in the drafting committee. And then all  
8       of this is made available to this committee and whoever  
9       this committee wants it available to.

10           THE FACILITATOR: Darlene?

11           MS. TOOLEY: I think all those points are  
12       appropriate, Rusty.

13           Miller just informed me that one of the  
14       mechanisms is to be sure that the information is  
15       distributed, not only to the drafting committee, but to  
16       the public, anybody that wants it, whether or not  
17       you're a member of NAIHC.

18           NAIHC has a fairly sophisticated list or  
19       service that is available to us to use for that  
20       purpose, just to be sure the information is widely  
21       distributed, and that they will make the commitment to  
22       have it adequately staffed so that the information is  
23       out in a timely manner and any of the work product is  
24       available as quickly as possible.

25           If that is of interest or it can be just one of



1 the mechanisms to get the information out.

2 THE FACILITATOR: Thank you.

3 Henry and then Marvin.

4 MR. CAGEY: What's our -- what's your name?

5 THE FACILITATOR: Me?

6 MR. CAGEY: Yeah.

7 THE FACILITATOR: Jan.

8 MR. CAGEY: Jan, again, my recommendation to  
9 the tribe is that, you know, this drafting committee is  
10 technical. This is your technical committee. These  
11 are your writers. These are your people that write.

12 Again, I think we're way ahead of ourselves.  
13 I don't see this exercise, Jan, saving us any time,  
14 because you've only got two names out here, and it's  
15 almost been 20 minutes.

16 So, again, I'd recommend to the committee that  
17 you get to the issues on what we're going to deal with  
18 on kind of a work plan or on an agenda of the work, and  
19 then your committee will fall behind that. But you're  
20 trying to create something that you don't know what  
21 you're going to write.

22 So, again, this drafting committee is the  
23 technical folks. I see some of these folks in the  
24 back -- that's the housing director that we brought to  
25 the table. Again, this drafting committee, I think, is

1 not saving us any time here on this exercise, Jan.

2 I'm getting a little concerned about trying to  
3 find names and bodies that we're going to assign to  
4 this committee. I'm more interested in getting to the  
5 agenda of the work. Then the drafting committee will  
6 come behind that.

7 But, again, I think you're taking us down a  
8 road here that's not saving us any time. You said we  
9 had 20 minutes, and it's been 20 minutes.

10 THE FACILITATOR: Okay. Thank you, Henry.

11 Marvin?

12 MR. JONES: The first of all, we're following  
13 what we agreed to on the agenda just a few minutes ago.

14 Second, I have a question for the NAIHC. Is  
15 that a commitment to make their list available to all  
16 non-members of NAIHC as well?

17 THE FACILITATOR: Yes.

18 MR. JONES: Okay. Thanks.

19 And the third thing is, maybe to Darlene's  
20 point, I may have missed it, but is there an  
21 opportunity for a committee member to sign up their  
22 attorney now on their behalf? Is that a good thing  
23 that they can do that and sign on behalf of them?

24 MALE SPEAKER: (Indiscernible -- speaker not  
25 using microphone.)

1 MR. JONES: Okay. Thanks.

2 THE FACILITATOR: Yes, Leon?

3 MR. JACOBS: And also if the attorney's not  
4 present -- and I've talked with them already.  
5 Ed Brooks was here for the last meeting, and he did  
6 volunteer, too. Can we nominate him or put his name on  
7 the list?

8 THE FACILITATOR: Sure.

9 So I think this list will kind of fill itself  
10 out in the course of the day, and we'll see by the end  
11 of the day, what we need to add to it: regions or  
12 areas; large or small tribes.

13 So I agree with Henry. With the committee's  
14 consent, we can just move ahead to our next topic.  
15 Anybody have any problem with that?

16 Okay. The next issue we wanted to complete  
17 actually before we got to the organization of the work  
18 was the co-chairs issue.

19 Yes, John?

20 MR. TALLINGHAST: Just a suggestion that  
21 perhaps sometime when you've got a break scheduled or  
22 sometime during lunch, that the drafting committee just  
23 have an organizational meeting at least for the purpose  
24 of getting a complete e-mail and cell phone list of all  
25 the members on it so they will be able to communicate

1 with each other. It doesn't need to be a long one, but  
2 if you could just find some time on the agenda.

3 THE FACILITATOR: Thank you for that  
4 suggestion.

5 Okay. If you look at the protocols that you  
6 just adopted, there is a section there about co-chairs.  
7 And I believe that we should have some co-chairs to  
8 help us.

9 Although it's not my practice or my  
10 responsibility to get involved with any of the content  
11 of what you folks discuss, under the co-chair, it says  
12 two tribal co-chairs shall be selected by committee  
13 members at the end of each session to co-chair the next  
14 section. I wasn't sure whether that included the  
15 federal committee members as well. Do they vote on  
16 tribal co-chairs? Anyway, the point is, we do need two  
17 tribal co-chairs. And so I leave it to you how you  
18 would like to proceed on this.

19 MR. SAWYER: I suggest we just nominate folks  
20 to start with. I would like to nominate Jason Adams  
21 and Marty.

22 MR. SHURAVLOFF: Thank you for that, but I  
23 would prefer not to be a co-chair.

24 MR. ADAMS: Me too.

25 MS. MARASCO: I'd like to nominate Henry and

1 Leon.

2 THE FACILITATOR: Henry and Leon? Henry

3 accepts.

4 Leon?

5 Just for this time, correct?

6 MR. JACOBS: Just for today, right?

7 THE FACILITATOR: Today and tomorrow.

8 MR. JACOBS: All right.

9 Rusty?

10 MR. SOSSAMON: I need a clarification on the

11 protocols, because it says at the end of each session.

12 We're not at the end of our session, and it's for the

13 next session. So are we going to follow this protocol

14 or amend this protocol? It doesn't matter to me. I

15 just want to be clear what we are doing.

16 MR. JACOBS: That's why I brought up the

17 question.

18 THE FACILITATOR: Yes, Henry.

19 MR. CAGEY: I recommend that -- Leon and I can

20 help you get through this session and into the next

21 session. We've got to get through this work and get

22 started. So I want to get things going, and we have a

23 little bit of time to do things. So let's get through

24 this.

25 So, again, I'm willing to kind of help co-chair

1       this whole effort and help organize the agenda. We've  
2       got to keep moving forward.

3               And, Rusty, I know it says at the end. I  
4       understand that. I wasn't here yesterday. But we have  
5       to start moving forward.

6               MS. MCDADE: Jan, I would agree with Rusty as  
7       far as adopting the protocols. Can we have it noted in  
8       the record because of where we are and because of our  
9       time frame, and because we didn't follow our agenda the  
10      first day, which is kind of throwing everything into  
11      unknown circumstances, that we just note that we  
12      understand that we have adopted this protocol; however,  
13      in the interests of what we have not been able to  
14      accomplish at this time, that we need to proceed with  
15      the co-chairs.

16              THE FACILITATOR: Okay. That will be put in  
17      the meeting notes there.

18              Let me understand this. Will this be for this  
19      session plus the upcoming sessions?

20              MS. TOOLEY: No.

21              THE FACILITATOR: Just for this session? So  
22      then tomorrow, we will see if they want to continue or  
23      nominate other people?

24              Yes, Steven.

25              MR. ANGASAN: I would like to move that we

1 waive the protocol and select the two tribal chairs for  
2 today's meeting, for the remaining session.

3 THE FACILITATOR: I'm sorry. Say that again.

4 MR. ANGASAN: I would like to waive the  
5 protocols and select two tribal co-chairs.

6 THE FACILITATOR: For this meeting. All right.

7 MR. SOSSAMON: Second.

8 THE FACILITATOR: Okay. All in favor? Any  
9 objection? Okay. Thank you. We will adopt Steven's  
10 waiver. Do you want to take a vote? Are there any  
11 other nominations?

12 Yes, Marvin.

13 MR. JONES: I would like to nominate anyone who  
14 hasn't declined yet, and I'm being serious now. Except  
15 me. And I am declining now. Not that anybody would  
16 nominate me. But I think everybody needs to  
17 affirmatively say no, that they don't want to  
18 participate at this point. I am being serious.

19 THE FACILITATOR: How would you like to  
20 accomplish that?

21 MR. JONES: Unless they decline, then I think  
22 each name should be called.

23 MS. MCDADE: Under normal circumstances, I  
24 would agree. But we had approved the protocol that  
25 there's two tribal chairs.

1           MR. JONES: I'm talking about who we have left  
2 to select from.

3           MR. KEESWOOD: I'm just wondering, did Leon  
4 commit earlier? There was a motion for Henry and Leon.

5           THE FACILITATOR: Leon accepted.

6           MR. KEESWOOD: So there's a motion on the floor  
7 for that.

8           THE FACILITATOR: There are two accepted  
9 nominees. Leon and Henry.

10          Jason.

11          MR. ADAMS: I move that we cease nominations,  
12 because we've got two names on the floor.

13          THE FACILITATOR: No, we don't.

14          MR. JONES: No, we don't.

15          THE FACILITATOR: Why don't we do it this way.  
16 Marvin, you nominated everybody else who didn't want  
17 it, you said unless somebody refused. So let me just  
18 say for the record, is anybody else accepting Marvin's  
19 nomination? Does anybody else want to accept Marvin's  
20 nomination who has been accepted? Let's put it that  
21 way.

22          Larry.

23          MR. COYLE: Why can't we do this real simple  
24 and just put everybody's name in a hat and draw them  
25 out as needed? That way they are obligated to accept.



1           MR. JONES: That's a really good suggestion. I  
2 actually like it. And I am being serious, Larry.

3           KARIN FOSTER: I'd like to nominate  
4 Larry Coyle.

5           MR. COYLE: To get the ball rolling, okay.

6           THE FACILITATOR: We have three nominees now to  
7 make it interesting. Any other nominations?

8           MR. SOSSAMON: Well, I just want for the record  
9 to clarify earlier what I said was if we're going to  
10 follow the protocol or not. We had a vote to make a  
11 waiver to it by Steven. That is great.

12           But I think my comment was characterized that,  
13 since we haven't followed the agenda anyway, and I  
14 don't agree with that. We have followed the agenda  
15 that was adopted. We have amended the agenda and  
16 followed the amended agenda. We have accomplished  
17 quite a bit. So I just, at this point in the record,  
18 want to make sure that that is clear. Thank you.

19           THE FACILITATOR: I just want to finish up on  
20 the nomination thing. Marvin did nominate everybody  
21 else. So if anybody accepts Marvin's nomination,  
22 please throw your hat in the ring at this point.  
23 Otherwise, I'm going to follow up with Jason's proposal  
24 to close the nominations. Is anybody else willing to  
25 accept the nomination for co-chair? Okay.

1           So then Jason put the motion on the floor to  
2   close nominations. How many people in favor of that?  
3   Any opposed? Okay. Nominations are closed.

4           You have to vote on two out of three. Should  
5   we do it by secret ballot? Can everybody just write on  
6   a piece of paper the two you would like to have.

7           MR. SAWYERS: Let me just suggest we do it by  
8   hand. It's a small group. Nobody's going to feel bad  
9   about it. Let's just get it over with. I suggest we  
10   just do it by a vote.

11          THE FACILITATOR: How does the committee feel  
12   about that? Is anybody uncomfortable doing it by an  
13   open vote?

14          MR. JONES: Just to clarify, are we going to  
15   select someone by consensus or the most votes? How  
16   ultimately are they going to be selected? Through what  
17   you're suggesting, through who gets the most votes, the  
18   two that gets the most votes, or through consensus of  
19   some sort?

20          MR. SAWYERS: On elections you have to have the  
21   one that has the most votes. There isn't any way to  
22   have consensus on all of these votes. Let's just --

23          MR. CAGEY: Let me make it easy for the tribes  
24   here. I will withdraw my name. I'll withdraw my name,  
25   and that way, you have two co-chairs. Vote on them,

1     and let's move forward. So I'm withdrawing my name,  
2     Jan. Take my name out. Okay. So you have two  
3     co-chairs. I call for the motion to vote for Leon and  
4     Larry. Let's vote, and let's move forward.

5             MR. HAUGEN: Just one other point. Can I get  
6     anyone to volunteer to take Marvin to dinner tonight so  
7     he's not thinking about things tomorrow? Do you know  
8     what I mean?

9             THE FACILITATOR: Okay. All in favor? Larry  
10    and Leon. Okay.

11            Congratulations, guys.

12            MR. COYLE: Leon, I think we got trapped.

13            MR. JACOBS: I think so.

14            THE FACILITATOR: Now we will have the  
15    acceptance speeches from Leon and Larry. Just kidding.

16            MR. JONES: I'm not sure who to direct this to.  
17    Are the other documents ready yet for the protocols?

18            THE FACILITATOR: Not yet. It will be moments.

19            MR. JONES: So we can maybe just take a break  
20    for a few minutes?

21            MR. KAZAMA: I want to again really emphasize  
22    that we need documents for the public out there. I'd  
23    really like -- it worked very well last time, and it's  
24    a follow-up of Judith's statement that we do need to  
25    have it labeled. There are times when we don't know

1     which copy we are dealing with. And as we get into  
2     more issues and there are more copies floating around,  
3     we definitely have to catalog them properly. And we  
4     need someone whose responsibility it will be to make  
5     sure that they are numbered properly so that we are all  
6     on the same page.

7             But I've got to emphasize it. And I'm speaking  
8     because there are people here who paid a lot of money  
9     to come here to be a part of this. And I want them to  
10    feel that they are engaged in this process as well.

11            THE FACILITATOR: Thank you, Blake.

12            Yes, Sandra.

13            MS. HENRIQUEZ: What we have asked for, and it  
14    will be provided after lunch, is a copy of the  
15    PIH Notice 50 which lists all of the amendments and the  
16    language and the things we will be talking about  
17    through the course of this session and moving forward.  
18    We've also got the list of how we think work groups  
19    might work, which sessions, what issues. That would be  
20    a companion piece to that so that people can follow  
21    along. We will have copies for members here and the  
22    audience as well.

23            THE FACILITATOR: They're being made now?

24            MS. HENRIQUEZ: They will be made available  
25    after lunch.

1 MS. TOOLEY: (Indiscernible -- speaker not  
2 using microphone.)

3 MS. HENRIQUEZ: I think that's up to the will  
4 of the committee which document you want to work from.

5 MS. TOOLEY: I think they're not exclusive. I  
6 think they're like companion documents. I'm going back  
7 and forth between them. Maybe it's just me.

8 MS. HENRIQUEZ: It is on the CD if people have  
9 them. If not, we will make copies of that as well. So  
10 people will have three -- at least three documents for  
11 the public after lunch today.

12 THE FACILITATOR: Those are the three key  
13 documents that they will need to follow our discussion  
14 this afternoon?

15 MS. HENRIQUEZ: Yes.

16 THE FACILITATOR: Yes, Blake.

17 MR. KAZAMA: I guess just to help delineate the  
18 difference between the chair and the facilitator, that  
19 would be the facilitator's role in making sure that it  
20 is -- the date, the discussion item, time, those kinds  
21 of things so that we know.

22 I've got to say, last time we had difficulty  
23 because there were a lot of number sheets. And so when  
24 people ran the numbers on the formula, we weren't sure  
25 at times which copies we were dealing with. There were

1 changes made.

2 And so I guess a word to the wise is to be as  
3 exact in your documentation of those sheets as  
4 possible. That would be -- I see that as a  
5 facilitator's responsibility to make sure HUD or  
6 whoever is on top of that stuff for us, or else it gets  
7 away easily.

8 THE FACILITATOR: You're talking about the  
9 finished product?

10 MR. KAZAMA: Yeah. And documents that people  
11 can work with. They will be coming in the morning and  
12 wanting to participate. And so that way they would  
13 have copies that they can utilize.

14 THE FACILITATOR: Okay. Thank you for that.  
15 Marvin.

16 MR. JONES: This is just a question. If it is  
17 needed, is it too early to just do the lunch break now  
18 and get that stuff organized? And it's a question.

19 THE FACILITATOR: With all due respect, Marvin,  
20 I think people are itching to kind of get into some of  
21 the organizing and the work and that kind of stuff. I  
22 think we can actually do some of that now.

23 I know you don't want to jump around too much,  
24 but when the protocol -- we've all accepted the  
25 protocol. When it comes in for the actual signing, I

1 think we can do it. We do have 45 minutes before  
2 lunchtime. We can use the time, I think, to share what  
3 people have prepared in terms of trying to organize the  
4 work. I think that would be worth our time to do.

5 I would like to ask the committee, does that  
6 sound like a good idea to you? There have been three  
7 documents essentially that have been prepared that show  
8 what it is that the tribal folks want to negotiate on,  
9 what the federal government feels is the appropriate  
10 things to negotiate on. I think those documents have  
11 been prepared, and they will help us to figure out how  
12 to organize the work. I think we can use the next  
13 45 minutes to start on that.

14 MR. ADAMS: I don't know if we have ever  
15 addressed Judith's concern this morning. She raised  
16 it, and it was a good concern, about cataloging and  
17 tracking our documents so we don't have -- you know,  
18 there's two documents. We have document A1, A2, A3  
19 that deal with this issue. We need some method so that  
20 we all know what we are working off of.

21 I mean, there's got to be a method to do that.  
22 I think it was halfway through the last negotiation  
23 that we figured that out that we needed some process.  
24 Because we had just piles of documents laying around,  
25 and we didn't know which one we were all referring to.

1 I think that was Judith's point that we get ahead of  
2 the curve here.

3 THE FACILITATOR: Thank you, Jason. I think  
4 our consultants, Kiana and the group, they have a very  
5 good system of tracking. I think you will see as we  
6 develop the product and put it out, that you will see  
7 Version 1, Version 2, et cetera. And it will have the  
8 date on top of the page so that we all know we are  
9 looking at the correct version.

10 MR. ADAMS: But what I guess I'm getting at is  
11 this includes all documents, not just the HUD  
12 documents. I mean, what was handed out this morning by  
13 Jack and his crew and copies made, there needs to be a  
14 labeling of that somehow. The other document that has  
15 all the NAHIC produced documents that they're going to  
16 use a lot and rely on it, I believe. This has to have  
17 some type of identification.

18 THE FACILITATOR: They don't always come  
19 through us. So if maybe if everybody would just  
20 agree --

21 MR. ADAMS: That's why I'm bringing this up, so  
22 that we develop the process now. How are we going to  
23 do that?

24 THE FACILITATOR: Right. Documents were handed  
25 out that we never saw. So I'm saying, if something is



1 handed out to the group, if we can have it go through  
2 our consultants, then she could add it into the already  
3 documented documents before it is handed out. Will  
4 that work?

5 MR. ADAMS: I understand what you're saying as  
6 far as cataloging and keeping track. But still there's  
7 got to be some type of identifier on here. Some kind  
8 of label, some kind of identification that says this is  
9 Document A1, some system.

10 THE FACILITATOR: Does it make any difference  
11 to the committee whether we -- we can work out a  
12 numbering system or work out a labeling system saying  
13 tribal documents, federal documents, HUD documents,  
14 that kind of thing.

15 MR. ADAMS: That's great. Thank you.

16 THE FACILITATOR: It would be easy to refer to.  
17 She says she has it like that. But we will  
18 consciously do that.

19 MS. FAUCETTE: I'm sorry. We may not have  
20 presented to you all like that, because we are  
21 generally just asked to give you revised editions or  
22 whatever. However, when we receive any documentation,  
23 whether it be from your tribal attorneys, or HUD's  
24 attorneys, or from the committee, or from HUD  
25 themselves, we have our own internal documentation

1       system so that we can keep track and give you what you  
2       need when you ask for it.

3               We don't have it listed by numbers per se, but  
4       we have labels. If you want us to provide you with our  
5       catalog that we have as of now, we can get that all to  
6       you today at lunchtime.

7               But there is a systematic format that we have  
8       in place internally so that we can always be able to  
9       provide you with the information as soon as you need  
10      it.

11              MR. ADAMS: I guess my point is I'm not so  
12      concerned about tracking for the future and the  
13      history. What I'm more concerned about is what Darlene  
14      was pointing out. As we start discussions, I want to  
15      make sure we all have the way to say this is tribal  
16      document A1, and it's on there. Not only us at the  
17      table, but everybody in the crowd and everybody in this  
18      room knows we are now talking about this document.  
19      That's what I'm more concerned with.

20              THE FACILITATOR: I agree. The simpler the  
21      better. That way I think everybody can quickly grab  
22      what they need. It makes it more user-friendly. Thank  
23      you. It should be really easy.

24              So I would like to move on to our next agenda  
25      item and open up the discussion. We have two items,

1     how to organize the work, and what items should be  
2     negotiated. I know some of you have done a lot of  
3     thinking about that. So this would be a good time to  
4     put forward your suggestions on that.

5             Jason.

6             MR. ADAMS: Jan, I would like to suggest that  
7     we have the discussion, and I don't know if it will  
8     take 45 minutes or longer. But I think it is  
9     appropriate to have that discussion on the paper that  
10    was presented this morning on the process to deal with  
11    issues as they come before us. It's not part of the  
12    protocols, but we have to have this discussion anyway  
13    at some point.

14            THE FACILITATOR: It's called 9, The Process  
15    for Dealing With Neg-Reg Issues. It was presented last  
16    night and distributed last night and this morning.  
17    Process for Dealing With Neg-Reg Issues.

18            MR. ANGASAN: Didn't we already do this?

19            THE FACILITATOR: It was decided not to be put  
20    into the protocols.

21            MR. ANGASAN: I think we need a process, a  
22    method to the madness, for figuring out the bureaucracy  
23    or history or whatever.

24            THE FACILITATOR: Rusty.

25            MR. SOSSAMON: I think we want to look at this

1 document just as a reference point. We are not asking  
2 anybody to approve this document. Just as a reference  
3 point to start our focus and have a method to go  
4 through the issues identifying them so they can be sent  
5 to the appropriate workgroups.

6 But since it is a reference document that this  
7 committee is asking to officially consider, I think  
8 this is one that needs to be catalogued, for future  
9 reference, as well as these are the documents that are  
10 going to be utilized.

11 So I think that is probably where Marvin is  
12 headed with his suggestion that we break for lunch  
13 early and give you and the co-chairs time to take this  
14 and really clarify what the agenda is from this point  
15 forward. Get these ready to be distributed so that  
16 when we come back in, and then I would expect one of  
17 the tribal chairs could pick up and chair the meeting  
18 from that point forward. Does that sound reasonable?  
19 That's what I am proposing that we do.

20 THE FACILITATOR: Okay. Does everybody agree  
21 with Rusty's suggestion?

22 The documents are here now, the protocols. Do  
23 you want to sign them now?

24 MS. HENRIQUEZ: Can I see one, please?

25 MR. ADAMS: That document that you are

1 proposing to hand out right now, is it catalogued? Did  
2 the process start with that document?

3 THE FACILITATOR: It is catalogued.

4 MR. ADAMS: I agreed to the fact that if we  
5 start this now with just the few documents we have on  
6 the table, then as we continue, the process will grow.

7 MS. HENRIQUEZ: Let me explain what we did  
8 before this issue of cataloging came up just now. In  
9 an attempt to honor the request of the committee, that  
10 because they are rotating co-chairs, you will see on  
11 this document that there's a special signature place  
12 for every single member of the committee. And three  
13 members of the committee are represented by alternates  
14 here. And you will see the third names appear in this  
15 document as well.

16 We made a couple of extra copies as well, which  
17 could and should get catalogued. But I would propose  
18 that we each take one. We sign on our respective  
19 signature lines and pass the document on to the person  
20 to the left or right, whichever way you want to go.  
21 The idea is that everyone signs the documents. When it  
22 is all said and done, we each have an originally signed  
23 protocol for each of us to keep, as well as two extras  
24 for the record that will get catalogued in.

25 And if there's a catalog number that we want

1 to assign or that you would like to have assigned now,  
2 we could figure out that and ask that you handwrite  
3 that on, what would end up being your own copy  
4 ultimately of this executed document.

5 So that is the proposal. Does that make sense?  
6 Or do people have questions?

7 MR. SOSSAMON: Just one suggestion. When we  
8 start one, how do we know which one comes back to us  
9 that was our original one? Why don't we take a pile  
10 and start them.

11 THE FACILITATOR: It won't matter because your  
12 signature will be on every single one.

13 MS. HENRIQUEZ: I would propose that everybody  
14 take the document in front of you and sign your own  
15 name on the signature line. In theory by the time the  
16 document comes back to you, Larry, it should have  
17 everyone's signature on it and it stops with you.

18 THE FACILITATOR: Can we all agree to pass it  
19 to your left. Everybody pass it to the left.

20 (Signing of protocols commenced.)

21 MR. CAGEY: I do not know why we are doing it  
22 this way. This is a waste of time.

23 MS. HENRIQUEZ: Henry, the reason was that you  
24 want to rotate co-chairs.

25 MR. CAGEY: That's fine.

1 MS. HENRIQUEZ: Let me finish, please. You  
2 wanted to rotate co-chairs. I also thought  
3 symbolically, it would be really nice if everybody  
4 signed a document as a continuing pledge both equal  
5 status and not just having tribal co-chairs sign it,  
6 et cetera.

7 So if that is a mistake, I apologize. But I  
8 thought, given how we operate and how we try to move  
9 pieces together in consensus, that it made sense for  
10 all of us to share in actually signing a document that  
11 had each other's original signatures and not a Xerox  
12 copy. That was my thinking.

13 THE FACILITATOR: It was suggested several  
14 times yesterday.

15 MR. JONES: And I appreciate the opportunity  
16 that has been given to sign each copy.

17 THE FACILITATOR: How do you guys want to do  
18 it?

19 (Signing of protocols continued.)

20 THE FACILITATOR: This is what has been called  
21 the copy with Jack's signature page on it.

22 We're going to adjourn for lunch, and we will  
23 return here at 1:30. I would like to request several  
24 of you have given us suggestions about organizing the  
25 work for this afternoon. If you just stay behind for a

1       few minutes and we could caucus on that so that we can  
2       have a productive afternoon and be well organized.

3                       (Recess from 11:48 a.m. until

4               MR. COYLE: We had a meeting over lunch, and  
5       we've come up with a few solutions, I believe, to  
6       getting this going and to start going a little bit  
7       faster than what we've been going.

8               First off, we've pretty well worked out that  
9       we've got four work parties that we'll need right off  
10      the bat. And those, we're going to guide them by our  
11      sections of our regulations. That's the way HUD had  
12      them stipulated, and they pretty well guide with ours,  
13      too.

14              So if you all agree with that, I think we'll  
15      have --

16              Jason, we decided not to explain it, didn't we?

17              MR. ADAMS: Excuse me?

18              MR. COYLE: We're not going to explain it now.  
19      We're just going to --

20              MR. ADAMS: Right. We were just going to send  
21      them off, and that's what I understood HUD was going  
22      to -- we were just going to use those as guiding  
23      documents, along with the document that was presented  
24      by Jack, in the individual work groups.

25              MR. COYLE: Right. Anyway, we're going to cut



1 right down to the work groups as taking care of  
2 sub A, which is a general of our reg. Sub B, which is  
3 the Indian preference tribal part of it. Sub C is the  
4 housing plan part of the reg, and sub F will be the  
5 monitoring.

6 We also had the Title VI loan program, which I  
7 don't believe there's too much to be done to it.

8 Do you have any comment on that?

9 MS. MARASCO: Are you looking at me?

10 MR. COYLE: Yeah.

11 MS. MARASCO: No, you can add it in any place  
12 you'd like.

13 MR. COYLE: Title VI was entered into as some  
14 work to be done on it, and I don't think there's that  
15 much. So we're going to hold off on a work committee  
16 on Title VI for right now.

17 MS. MARASCO: Okay.

18 MR. COYLE: Karin?

19 MS. FOSTER: Larry, I'm sorry. I didn't quite  
20 understand what document we'd be working from. You  
21 said something that HUD had prepared with the subparts?

22 MR. COYLE: We're going to work together with  
23 our national work slip. This here -- oops, wrong one.

24 MS. FOSTER: Is it this one?

25 MR. COYLE: Yes. And we're going to work in

1 correspondence with HUD on theirs. I believe Deb is  
2 going to have a handout.

3 Deb, do you have a handout?

4 And we're going to work together. They'll go  
5 in conjunction pretty well because they're parallel.

6 Yes, Marvin?

7 MR. JONES: If it's the same proposal that we  
8 had discussed right back here, I'd like to add  
9 something to it, if I could.

10 The intent will be that, hopefully, by the end  
11 of the day, we would have identified all of those  
12 issues that we can reach consensus on that are just --  
13 I'll call them stylistic changes that we can refer over  
14 to the drafting committee and to get them, essentially,  
15 off the table so that we could then look at what  
16 remains and see how much time that we have in order to  
17 address those issues through the remainder of the  
18 time -- not only this time, but the rest of our  
19 committee meetings.

20 And so that's the intent of the proposal is to  
21 use both the -- I'll call it the NAIHC document, as  
22 well as the HUD document, and see if we can reach some  
23 consensus on those items.

24 MR. COYLE: If you'll look at our national  
25 document, the NAIHC, you'll notice that there's a

1 comparison chart there. I believe the work groups can  
2 pretty well guide by that.

3 And, Marvin, yes, we definitely want to wipe  
4 out the ones that are just minor adjustments.

5 MR. JONES: And in discussing with Deb and the  
6 things that she's handing out, I don't know whether  
7 that's a complete list. But she had a couple of  
8 comments to make and she can either make those directly  
9 or I can try to say...

10 Some of the issues she pointed out aren't  
11 contained in any of the subparts. She gave an example  
12 of establishing a negotiated rulemaking committee, for  
13 example. It's not necessarily contained in any of the  
14 subparts, and it's an "other issue." But,  
15 nevertheless, it's an amendment to the law that we  
16 would want to figure out whether we need to have any  
17 further negotiations on it or not.

18 So I'm not sure if the thing that she has  
19 passed out right now contains those latest updates and  
20 a categorization of those particular issues yet.

21 MR. COYLE: Yes, Karin?

22 MS. FOSTER: I guess I'd like to ask --  
23 you know, in looking at the NAIHC categorizations, it's  
24 not something I've worked on myself directly, but the  
25 legislative committee put a lot of work into it.

1 I'm wondering, when this was done, if they  
2 actually went through all of the changes to the statute  
3 so that we can kind of guide by that, that if there was  
4 a change to the statute, it's mentioned here, even if  
5 it is something that there isn't already a rule on.

6 I suspect that that's what they did, but that  
7 way, we wouldn't have to worry about the kind of thing  
8 that maybe Marvin's talking about.

9 MR. COYLE: Right. Any other comments?

10 I'm going to have Deb kind of explain their  
11 side now. They don't have quite as many as we do on  
12 the national, but I think by the time it's over with,  
13 we'll have both lists pretty well condensed down.

14 MS. LAUCETTE: Okay. This one-page sheet that  
15 you have in front of you, the only purpose of that was  
16 to look at the PIH Notice that HUD put together and to  
17 sort of break out the items that we felt needed some  
18 kind of action, whether it's a conforming rule or  
19 negotiated rulemaking and sort of break it into  
20 subparts, so you could get an idea of how much work  
21 might be involved in that, and to show that four  
22 subparts may be the way to go, as far as work groups.

23 So on the left-hand side, the numbers  
24 correspond with the PIH Notice. It only lists the ones  
25 that we felt needed action. So of what Marvin was

1     talking about is there's probably 20-some other items,  
2     maybe a little bit more, that don't even have a reg  
3     right now or were technical corrections or something  
4     like that and didn't have a place to put them under a  
5     subpart for right now.

6             It wasn't meant that we wouldn't look at them;  
7     it was just for developing the work groups. So that's  
8     the only purpose of this one page, is just to get an  
9     idea of how the work might be divided.

10            MR. COYLE: Thank you, Deb.

11            One thing I do want to really overemphasize  
12     again is that this is negotiated items, clear on  
13     through. There's no consensus whatsoever between us  
14     and HUD. We are maintaining our  
15     government-to-government relationship throughout. We  
16     understood that at our lunch today. There's no  
17     cut-and-dried solutions to anything. We did both agree  
18     on that, that there hasn't been any.

19            Yes, Deb?

20            MS. LAUCETTE: Just to go over what we talked a  
21     little bit more about at lunch. The thought was that  
22     we would look at these four as possible work groups.  
23     That the committee could consider breaking up into  
24     those work groups, taking two documents with them to  
25     the work group: the PIH Notice and the NAIHC chart.

1           And then you would go through each item that  
2           belonged in that subpart, to determine whether or not  
3           there was agreement between HUD and NAIHC and what  
4           needed conforming rule with just a technical  
5           correction, basically, and what needed negotiation.

6           MR. COYLE: Karin and then Marvin and Jason.

7           MS. FOSTER: I guess I wanted to get an answer  
8           to my question. When this was prepared by the  
9           legislative committee folks, did you go through and  
10          include absolutely every amendment that was made to  
11          NAHASDA in this list?

12          MR. COYLE: Yes.

13          MS. FOSTER: So if there was an amendment, it's  
14          on here?

15          MR. COYLE: Yes.

16          MS. FOSTER: Okay. That way, when we go to  
17          this process we don't have to keep checking back to see  
18          if something wasn't captured?

19          MR. COYLE: Right.

20          MS. FOSTER: Okay. Thank you.

21          MR. COYLE: Marvin?

22          MR. JONES: I just want to give an example and  
23          get everybody on the same page. The PIH Notice, the  
24          2009-50, is in our books. I have it as tab 6. So when  
25          Deb was referring to the PIH Notice number, you go over

1 to that notice and go down. They have them numbered,  
2 and that corresponds with the numbers they have on the  
3 handout.

4 In addition, I'd like to maybe just give you an  
5 example. If you'd go over to that PIH Notice and go to  
6 page 11 and look down and see No. 18 -- and I just  
7 randomly picked that out as one of the numbers that is  
8 not on Deb's list.

9 This is the "Self-Determined Housing  
10 Activities," and so it's not on this list because HUD  
11 was saying that they didn't propose any regulations,  
12 didn't think that it needed any regulations, basically  
13 self-implemented.

14 Now, if everybody agrees to that, then that  
15 would simply be an issue that comes off the table, that  
16 we don't really have to negotiate. There may not be  
17 any language needed.

18 But if there's somebody within the work group  
19 that says, "Well, we really don't agree with that, and  
20 we believe No. 18 ought to be negotiated because of  
21 whatever reason," then that would be one that we're not  
22 going to easily reach consensus on, and it would need  
23 to be added to the longer term discussion -- the longer  
24 term negotiation.

25 Did I fairly represent that? Okay. Thanks.

1           MR. COYLE: Thank you, Marvin.

2           Yes, Jason?

3           MR. ADAMS: I just wanted to reiterate, as we  
4    had discussion on the process and as we move forward,  
5    it was my hope and the hope of many folks, that -- and  
6    Marvin already mentioned this -- that by the end of  
7    today, we would have all of the easy items, I guess --  
8    or I like Karin's term the best, "the low-hanging  
9    fruit" -- picked out and taken care of it, so that that  
10   could all be handed off.

11           We could come back here and agree that they are  
12   the list of the low-hanging fruit from our subsections  
13   and get that all handed off to the drafting committee  
14   to make the small changes or whatever work has to be  
15   done there. And get that work off the table because  
16   that, essentially, is the easy work.

17           So I just wanted to reiterate that that's the  
18   hope for today.

19           MR. COYLE: Are there any other questions  
20   before we break out into these work groups?

21           MR. SAWYERS: I don't have a question, but I do  
22   have comment so if you'll bear with me. I have to tell  
23   you a little story first, though.

24           A friend of mine is a veterinarian. He was  
25   sitting one day, and a lady came in and said, "My



1     little Daisy duck is sick."

2             He checked her out and said, "No, Daisy's  
3     dead."

4             She said, "That can't be. She was just playing  
5     in the yard a little while ago."

6             And he said, "No, sorry."

7             She said, "Well, I'd like another opinion. You  
8     better check it."

9             So he said, "All right." So he called a cat  
10     in. The cat came and looked at Daisy all over, looked  
11     up and shook his head and jumped off the table and went  
12     in the other room.

13            He called his little lab in and had him check  
14     him over. He checked him all over, and he looked at  
15     the table and left. He said, "I'm sorry. Your little  
16     Daisy's dead. That'll be \$250."

17            She said, "Do you mean it's \$250 to tell me my  
18     Daisy's dead?"

19            He said, "Well, if you would have believed me,  
20     it would be an office call, and that would have been  
21     15 bucks, but we had the CAT scan. We had the lab  
22     work." He said, "It's \$250."

23            What I'm saying is, I just think so far we've  
24     done a lot of lab work, and it's going to cost us  
25     later.

1 MR. COYLE: Thank you, Jack.

2 Jason?

3 MR. ADAMS: I don't know if I want to follow  
4 that. I just wanted to point out another issue that  
5 was proposed, too, the proposal that was put out by  
6 several of the regions and folks that were working on  
7 this, that this would kind of guide the work in the  
8 work groups on the subsection work.

9 You could refer to this document then to help  
10 you as you pick through the items. This would then, in  
11 term, be the definitions that we classify things by, if  
12 we could all agree to that, too.

13 MR. JACOBS: Let's see if everybody has the  
14 documents we're talking about. Do you all have the  
15 Notice of 50 and also the NAIHC's document, dated  
16 December 4, 2009? Okay.

17 We also have the other document, which is the  
18 process for dealing with the Neg-Regs. Does everyone  
19 have that as well?

20 MR. COYLE: Doctor?

21 MR. KAZAMA: Before we break into work groups,  
22 I guess if Jack will permit me, I'd like to call a  
23 caucus for Alaska to determine who will go to what of  
24 these subparts, in terms of committee work in the work  
25 group. So I just want to give you a heads up that

1 Alaska would like to call a caucus to appoint people to  
2 different committees. Thanks.

3 MR. COYLE: I was patiently waiting for it.  
4 Jason?

5 MR. ADAMS: Larry, maybe for folks to help  
6 determine where they want to go, if we could list the  
7 subparts -- you know, the listings you gave, Larry, as  
8 far as the title of the subparts --

9 MR. COYLE: Yes.

10 MR. ADAMS: -- so that folks can figure out  
11 what area they would want to be a part of.

12 MR. COYLE: Yeah, please. Alaska or any of the  
13 others going to caucus, try to decide which ones you  
14 think are more important for you. And when you come  
15 back, we're going to ask for volunteers. If we don't  
16 get volunteers, we're going to make volunteers, like I  
17 got volunteered. So that will get the ball rolling a  
18 little bit faster.

19 Yes, Karin?

20 MS. FOSTER: Just one clarifying comment.  
21 I think this is the way I understand the process. But  
22 to make sure I'm understanding it correctly, we're  
23 operating off these two documents, this and including  
24 the HUD PIH Notice. But there may be additional issues  
25 that are not listed on either one that may still be a

1 part of this rulemaking process. So this isn't an  
2 exclusive list. It's just a way for us to get going on  
3 the things that are right up in front of us. Is that  
4 right?

5 MR. COYLE: Yes.

6 MS. FOSTER: And so the process that's been  
7 recommended does deal with that issue, but we're not  
8 looking at this to adopt this. We're just kind of  
9 utilizing it as a guide.

10 MR. COYLE: Right. I also might state that  
11 this was given to HUD, and they're well aware of it.  
12 Deb said she read it, so I believe that HUD is well  
13 informed of it. I think they're well informed.

14 Okay. Ready for a caucus? Do all the areas  
15 want to go?

16 Go ahead, Marvin.

17 MR. JONES: Again, the so-called groups up  
18 there, the subparts, you can go to your regulations and  
19 see those mirroring the regulations. And, again, I  
20 have it as tab 4 in the regulations. And see in the  
21 table of content and down through there, you'll see  
22 subpart A, General, and then go on down to the table of  
23 contents of the regulations and see those various  
24 subparts.

25 Does everybody have those regulations?

1 MR. COYLE: Yes.

2 MR. JONES: And you can look at all the  
3 different topics and as to why HUD classified those in  
4 those particular subparts.

5 The other thing that I'd -- whether it's called  
6 a caucus or whatever we want, I think we do need  
7 30 minutes or so for everybody to simply, you know, go  
8 in whatever format to figure out where they want to go  
9 and things.

10 MR. COYLE: Okay.

11 MR. KAZAMA: And Alaska takes back it's caucus.

12 Thank you, Marvin.

13 MR. JACOBS: Okay. Let me ask you this. You  
14 see the numbers here. We're talking about four groups.  
15 Is there consensus that we need the four groups or do  
16 you need it reduced or what have you?

17 Karin?

18 MS. FOSTER: I just have a question. I'm  
19 sorry. You were talking about something else, so I can  
20 hold my question for a minute.

21 There's a reference to subpart, Regulation  
22 Title 6, and I'm wondering why that isn't represented  
23 up here. Is it the thought that it's going to be  
24 combined in with one of these other groups? HUD is  
25 listed as subpart E.

1 MR. JACOBS: Deb, do you want to respond?

2 MR. MARASCO: Because Larry doesn't want me to  
3 do it.

4 MS. LAUCETTE: There's only one issue in that  
5 subpart, and both HUD and NAIHC agreed that it was a  
6 conforming rule that was needed. So because it was  
7 only one issue, we thought that we would send that to  
8 the drafting committee for them to be able to bring  
9 back to the full committee to look at that issue.

10 If there's more issues that would like to be  
11 discussed, we could just add it to one of the other  
12 work groups.

13 MS. FOSTER: Well, I understand the  
14 practicality of that. But since it's only one issue,  
15 I don't know that I'd like to set a precedent for  
16 viewing these things as either HUD and NAIHC decide.  
17 I think that it would make more sense to take that one  
18 subparty and just combine it in one of these other  
19 groups.

20 MS. MARASCO: I agree.

21 THE FACILITATOR: Okay. Which one should we  
22 put it into? Any ideas? What's the smallest one?

23 MR. COYLE: That would be "Affordable Housing."

24 THE FACILITATOR: Do you want to put it into  
25 "Affordable Housing"?

1           MR. ADAMS: I think it better fits in  
2 "Affordable Housing," yeah.

3           MR. COYLE: Judy?

4           MS. MARASCO: All right. I'm doing (b),  
5 fellows.

6           MR. COYLE: Also, Mr. Wright, could you come  
7 forward and kind of explain. This gentleman is the  
8 head of section -- Title VI loans, and he would  
9 probably be the one that would have the answer for any  
10 of us on that Title VI. Do you want to explain it?

11          MR. WRIGHT: Okay. Basically, what we're  
12 looking at is to come up with language. I'm looking at  
13 "Consultation." Because it's a unique product, one of  
14 the things in the drafting of it, it has to have a  
15 negative credit subsidy.

16           And what that means for you that don't  
17 understand credit subsidy, every time the government  
18 takes a risk, there is a subsidy value placed to it.  
19 As an example, 184 in Title VI are positive subsidy,  
20 which means Congress has to appropriate funds. A  
21 negative credit subsidy means no funding, so it's  
22 supposed to be self-supporting.

23           That's a challenge to get something like this  
24 done with a negative credit subsidy. There are a  
25 couple of programs we can look at, which is the 232,

1       which is a multiple family FHA product. In the 242,  
2       one's for assisted living and the other is hospital.

3               But it's the idea that we've got to look at a  
4       product that doesn't use NAHASDA funds for repayment.  
5       It is business orientated in nature, so it either has  
6       to have a third-party revenue stream or be  
7       self-supporting. And that's why we're looking for some  
8       assistance in the drafting of this language. Because  
9       it is a very challenging product, in that there are  
10      only two real living examples of it, and they work  
11      well.

12             And then we also have to determine how much  
13      would be the loan guarantee fee to keep that negative  
14      credit subsidy. So there's a couple different parts to  
15      it, and that's the reason why.

16             MR. COYLE: It might sound a little bit  
17      complicated, but I don't believe it's that complicated  
18      when you get right down to it. I'm familiar with  
19      Title VI.

20             MR. WRIGHT: Let me put it in perspective.  
21      Title VI has a credit subsidy of 10. This is zero.  
22      That's the part that makes it complicated.

23             MR. COYLE: If everybody's in agreement with  
24      that, we'll put it in "Affordable Housing" then, under  
25      that workshop. Okay? Thumbs up? All righty.



1           You don't need a caucus now, right?

2           MR. KAZAMA: Right. Are we going to break for  
3 30 minutes?

4           MR. COYLE: Yeah. Let's break for 30 minutes  
5 and kind of work out among you --

6           Yes, Jason?

7           MR. ADAMS: I just had one comment or question.  
8 In the booklet, under the statutes, under the statute  
9 tab, I think it was Jad, he talked earlier about the  
10 statute being a rainbow. And what we got in our pocket  
11 is just a black and white.

12           So I was wondering at what point can we get --  
13 because that would be very helpful when we get into our  
14 work groups to have the statute with the colors  
15 included. And all we got was black and white. Is that  
16 going to be made available? Or if not, then the next  
17 meeting, I can sure bring a copy.

18           MR. BOYD: They were supposed to print these  
19 out. They'll have them available for you this  
20 afternoon so you can start working off of that section.

21           MR. COYLE: Yes, Karin?

22           MS. FOSTER: I heard a couple different  
23 explanations for Title VI. One was that it's really  
24 easy, and it's already been decided. And the other was  
25 it's kind of complicated, and it kind of sounds like

1 maybe it's kind of complicated. So I guess it was  
2 suggested to me here, is there anybody who would be  
3 interested in just dealing with that issue? If it's  
4 going to require a lot of work.

5 MR. WRIGHT: From a standpoint of developing a  
6 product, it exists in form in a 108 program, but it's  
7 the idea that we just have to come back with the  
8 language to get a negative credit subsidy. That's what  
9 makes it complicated. That's it. I mean, it is pretty  
10 straightforward otherwise.

11 MS. FOSTER: So is that something that you  
12 think could be handled in connection with another  
13 subpart? I mean, it wouldn't so large that --

14 MR. WRIGHT: Yes, yes.

15 MS. FOSTER: Okay. Thank you.

16 MR. COYLE: Yes, Marvin?

17 MR. JONES: I'm wondering if anybody here  
18 understood what he really said.

19 (Laughter.)

20 And if we don't, we possibly might want to have  
21 a little session and say, "Okay. Here's what it is" so  
22 that we are well-informed before they say, "Yeah. Go  
23 do a PIH Notice," and we understand what they're  
24 talking about. We got all this other stuff to do.  
25 It's just a suggestion.

1           MR. COYLE: It probably would be a good idea.  
2     If you're not familiar with Title VI, it probably would  
3     be better if we had -- could you come up with a handout  
4     on that, explaining the problem in hand?

5           MR. WRIGHT: It sounds as though we probably  
6     should have a work group just to go through it because  
7     it's not the same as the Title VI where you're  
8     leveraging your block grant. It's external. You have  
9     to have another source of funding, so an operation of a  
10    business or a third-party pledge revenues.

11          MR. COYLE: I don't think we should go into it  
12    at this time.

13          MR. WRIGHT: Okay.

14          MR. COYLE: I think maybe the next session, you  
15    have the information, and then we can start up another  
16    work group.

17          MR. WRIGHT: Sure. Okay.

18          MR. COYLE: So everybody will be more informed.

19          MR. WRIGHT: That sounds good.

20          MR. COYLE: Is that okay with everybody?

21                 Okay. Can we get this --

22                 Yes, Blake?

23          MR. KAZAMA: I guess, should we assign rooms or  
24    something for that? Do we know where we're going to  
25    go?

1 MR. COYLE: We'll have that when we come back.

2 The main thing I'd like to see is you people  
3 that were involved in the other Neg-Regs, volunteer and  
4 separate a little bit so one of you can handle the  
5 chairmanship or the guidance, or whatever you want to  
6 call it, of these work groups.

7 Yes, Sharol?

8 MS. McDADE: Larry, just for clarification. Is  
9 the work groups, the four groups, just the committee or  
10 the committee and everybody? Is it the four  
11 representatives from the region? What is it? Can you  
12 give me a little bit more clarification?

13 MR. COYLE: These are work groups for these  
14 sections up here and whatever information you can work  
15 up together and agree upon -- I didn't say consensus or  
16 anything else; I said agree upon -- bring it back to  
17 the full committee for consensus.

18 MS. McDADE: Yes, I understand that. But what  
19 I'm asking is, is it an individual within this  
20 committee, like the four of us from each region?

21 MR. COYLE: This committee is splitting up into  
22 different groups, and anybody else involved -- lawyers,  
23 the public, or anybody -- are free to go to the work  
24 groups.

25 Yes, Rusty?

1           MR. SOSSAMON: Larry, these are described in  
2     the protocols that we did, the work groups.

3           MR. COYLE: Yeah.

4           Yes?

5           MS. TOOLEY: Just again to clarify. These are  
6     the four initial work groups. It might not end up that  
7     these are the only work groups. We're just going to  
8     start with this?

9           MR. COYLE: Right.

10          MS. TOOLEY: And so when we take our 30-minute  
11     break, I'm requesting that everybody from Region 9  
12     gather so we can divide up who's going where. Thank  
13     you.

14          MR. COYLE: Would it be better before we break  
15     up for this session to name who's going to handle  
16     these?

17          MR. ADAMS: Also, Larry, are we going to --  
18     maybe Jan can answer this. Are we going to assign what  
19     rooms these are going to be?

20          THE FACILITATOR: Yes.

21          MR. ADAMS: Are they being identified now?

22          FEMALE SPEAKER: They're up there.

23          MR. ADAMS: Oh, they're up there.

24          THE FACILITATOR: I'm way ahead of you, Jason.

25          MR. ADAMS: It was a long lunch, and it goes

1 on.

2 THE FACILITATOR: Jason, as we speak  
3 (indicating).

4 MR. COYLE: Okay. Do we have some volunteers?  
5 Okay. General meeting, Room 8, do we have a gentleman  
6 here or a lady that will volunteer to run that session?  
7 One, two, three.

8 MS. GORE: Larry, I have a comment.

9 MR. COYLE: Yes, ma'am.

10 MS. GORE: I think it would be easier if you  
11 let the people choose which group they want to be in,  
12 and let that group choose their spokesperson, and then  
13 they can report back.

14 We may not be the right volunteers sitting at  
15 this table. We don't even know which part we're going  
16 to be in yet.

17 MR. COYLE: Well, yes --

18 MS. GORE: Thank you.

19 MR. COYLE: But we do want some volunteers when  
20 you come back. If we don't, we're going to name them.  
21 Okay? Is everybody in agreement?

22 Yes, Mark?

23 MR. BUTTERFIELD: Okay. So it's my  
24 understanding that at this point in time, we're going  
25 to break for 30 minutes so each individual region can

1       decide who's going to go to what, and then we will come  
2       back in 30 minutes. At that point, before we do  
3       anything else -- and then you'll know who -- then you  
4       may, after that, go to your room, pick who's going to  
5       be in charge or chair the work group --

6               MR. COYLE: Yes. And --

7               MR. BUTTERFIELD: -- to select what's going to  
8       be discussed?

9               MR. COYLE: I'd say the reason for coming back  
10       is that there's going to be some heavy committees, and  
11       there's going to be some light committees. We might  
12       have to shuffle around and point them in the right  
13       direction.

14               Is that kind of what you had in mind? All  
15       right. Let's break for 20.

16               THE FACILITATOR: By the way, one last thing.  
17       Group F can stay in this room and meet later on.

18               (Recess taken.)

19               MR. JACOBS: Okay. How did the process work?  
20       I guess what we should have asked for was a show of  
21       hands of how many will participate in working Group A?

22               Did you get those? How many did you get?

23               MR. COYLE: Six.

24               MR. JACOBS: No, we had some more.

25               Raise your hands again, please.

1 FEMALE SPEAKER: A?

2 MR. JACOBS: A.

3 MR. SAWYERS: We have at least four or five.

4 MR. JACOBS: One, two, three, four, five, six,  
5 seven, eight, nine, ten. Ten. Okay.

6 MR. ADAMS: Leon, what was the count?

7 MR. JACOBS: Ten.

8 Okay. And everyone in the audience, please  
9 raise your hands, too. We want you to participate for  
10 sure.

11 Okay. How about Group B?

12 FEMALE SPEAKER: I'm going to raise my hand for  
13 Judith because she's out of the room, but she's in  
14 Group B.

15 MR. JACOBS: Okay. 12. Okay.

16 Group C? Okay. 12.

17 And how about Group F? 10.

18 So what do you think? Should we go over those  
19 numbers again?

20 MR. COYLE: We've got a good coverage this way.  
21 Every one of them is over six. I think we can go  
22 around like that and go to your individual rooms.

23 MR. JACOBS: How much time? How much time do  
24 you want for this afternoon?

25 MR. COYLE: Why don't we go to 4:30 and



1 have a --

2 MR. JACOBS: Reassemble?

3 MR. COYLE: Yeah.

4 MR. JACOBS: Okay. Be back in the group  
5 meeting at 4:30. You can have your own break. You can  
6 decide that in your group when you want to break.  
7 Okay?

8 MS. TOOLEY: There was a suggestion that we  
9 only go to 4:00, and then we can have enough time to  
10 see what's been done. Maybe there are things that we  
11 can get to the drafting committee in that last hour.

12 MR. JACOBS: Okay. What are your thoughts on  
13 this? The comment is to break and reassemble here at  
14 4:00.

15 Jason?

16 MR. ADAMS: I agree with that.

17 Thank you, Darlene.

18 And, again, I just want to reiterate the point  
19 that we want to have items that are the, again, the  
20 low-hanging fruit, the easy items, to get to the  
21 drafting committee today. And that's my hope is from  
22 4:00 to 5:00, we report out on those items from our  
23 work groups so we get that stuff off the table and  
24 working on it.

25 MR. JACOBS: Is there anyone that doesn't agree

1 with that? Okay.

2 Marvin?

3 MR. JONES: And just to follow up on Jason's  
4 point. You know, you're free to bring up all these  
5 issues. But once somebody says, "Well, now I think  
6 something different," well, then you don't -- that's  
7 not something that is a low-hanging fruit at that  
8 point. So you don't want to get into -- I don't  
9 think -- a bunch of debates and trying to convince  
10 people too much on those issues.

11 MR. COYLE: Okay. Yes?

12 MR. KAZAMA: Also that we'll have a person who  
13 will report back, that would be like the chair or  
14 spokesperson.

15 MR. COYLE: Right.

16 MR. KAZAMA: Do we want a recorder as well to  
17 record the incidences, a work group person, just to  
18 cover so we're all on the same page?

19 MR. COYLE: That should be the first thing you  
20 do when you go into the rooms is designate your leader  
21 or your secretary, and, also by protocol, that we have  
22 a HUD person in each one of those.

23 MR. JACOBS: All right. Any other comments  
24 before you go into the session? Just think about,  
25 you're working for your tribe and your tribal members,

1       so let's give it your best shot. Okay? Thank you.

2               (The work groups met off the record until  
3       4:10 p.m.)

4               MR. JACOBS: We are ready to start. Larry is  
5       going to lead for the session at this time. Larry?

6               THE CHAIR: First off, we are going to hit A  
7       and B. Who is the leader on Group A?

8               Carol? And also make sure that the secretary  
9       of your group gets the paperwork of your group to the  
10      people back there, so we get copies for tomorrow  
11      morning. We need to keep everyone onboard that way so  
12      everybody will have a copy of a little bit of what we  
13      are talking about. Okay.

14              MS. GORE: I'm not sure if Tim is here. He was  
15      the recorder for our group. I know he took notes. I  
16      don't necessarily need him other than to make sure he  
17      passes on the list of items that we as a work group  
18      agreed to.

19              I just want to start by saying, we spent quite  
20      a bit of time trying to figure out NAIHC's list and  
21      HUD's list and the PIH notice. And after we got  
22      ourselves in a total complete tangle, we decided that  
23      we would follow the PIH notice.

24              And I want to thank Dan Brown and Ed Fagen from  
25      HUD. They were extremely helpful in the conversation,

1     number one, to get us disentangled; and, number two, to  
2     help keep us on track.

3             We have -- based on the assignment we were  
4     handed, we have five items to refer to the drafting  
5     committee. We also have a request. Because of the  
6     entanglement, we think there are items that should be  
7     referred to the drafting committee that are part of the  
8     NAIHC list that we didn't have time to go through  
9     because they are not titled as Subpart A, B, C, and F.  
10    That will take some work tonight. We would like some  
11    permission to refer additional items on to the drafting  
12    committee tomorrow if that is the pleasure of the  
13    committee.

14            So here's the list of the items that we in the  
15    committee are recommending to pass on to the drafting  
16    committee. I'm going to use the PIH notice if you want  
17    to follow along. It's pretty simple.

18            PIH notice page 2 and 3 and page 7. And the  
19    items are No. 6A1, Item 6A2, Item 6A3, and 6A4 and  
20    Item 11 on page 7. We believe these five items are  
21    also consistently listed as either a 1 or a 2 on the  
22    NAIHC work list as well. They are also listed  
23    similarly in the PIH notice. So the committee is  
24    supporting those five items as being sent to the  
25    drafting committee.

1           And that, Mr. Chairman, completes our report  
2 unless you have questions.

3           MS. MARASCO: Could you just briefly say the  
4 item numbers again? You got ahead of me.

5           MS. GORE: Sorry. Again, it will be page 2, 3,  
6 and 7 in the PIH notice. On page 2, Item No. 6A1,  
7 Item 6A2, 6A3, and 6A4. And Item 11 on page 7.

8           THE CHAIR: Thank you, Carol.

9           Does anyone have any questions from Group A?

10          Karin.

11          MS. FOSTER: Only that I'm having trouble  
12 following it so quickly.

13          MS. GORE: Trust me. I bet we spent 30 minutes  
14 just figuring out which document to work from. Let me  
15 start that we agreed as a committee to work from the  
16 PIH notice.

17          MS. FOSTER: I understand, but I'm  
18 cross-referencing to the statute to actually understand  
19 it.

20          MS. GORE: I can't help you with  
21 cross-referencing it to the statute. I will let  
22 you do that.

23          MS. FOSTER: We can take a look at that at a  
24 later time.

25          THE CHAIR: This will be more or less laid out

1 (indiscernible -- speaker not using microphone.)

2 MS. FOSTER: I'm not getting an understanding  
3 of why, you know, which one.

4 MS. GORE: I wasn't aware that was our  
5 assignment. I thought our assignment was to select  
6 items in Subpart A that the work group believed could  
7 be assigned directly to the drafting committee because  
8 they were simple.

9 MS. FOSTER: The only reason that I asked the  
10 question, of course, is because I think the work group  
11 has to bring it back to this committee, and this  
12 committee kind of has to bless that. So I was trying  
13 to understand it.

14 MS. GORE: We understand that. So our  
15 assignment was to pass them to the drafting committee.  
16 My understanding is that the drafting committee will  
17 then bring their work back to the work group and then  
18 this committee. It is not recommended as an approval  
19 but just an assignment. That is my understanding.

20 MS. FOSTER: Right. So I'm just trying to  
21 understand what your thought process was to be able to  
22 read it to see what it is. I just need a minute to  
23 read it.

24 THE CHAIR: Marvin?

25 MR. JONES: The initial time frame I think was

1 just that. It might be possible, or we may decide,  
2 okay, let's do the initial report, and the groups may  
3 want to go back and say, we will put it in this form,  
4 you know, or something like that. Or we can continue  
5 to discuss issues if somebody thinks that they can make  
6 some progress, as I understand it.

7 THE CHAIR: Yeah. I feel like we've got a  
8 running start at it. We've got to start anyway. We're  
9 going to have pitfalls, no doubt about it. We can  
10 correct them as we go, I think, as long as we keep  
11 moving. All right.

12 Who with Group B is speaking, the chairman?

13 MR. KASAMA: Here I am, sir.

14 THE CHAIR: Hi, there you are.

15 MR. KASAMA: First of all, I want to thank  
16 everybody that served on the committee. I think this  
17 part, Subpart B is complicated, first of all. There  
18 are many issues that deal with affordable housing in  
19 that category. I really want to thank the participants  
20 who participated in this exercise.

21 I think one of the things that really came to  
22 light is that we are all at different levels of  
23 understanding, because we're coming from different  
24 parts of the country. That was good to see.

25 But anyway, we did the exercise, and we came up

1 with basically things that we thought should be brought  
2 to the table and negotiated and things that we thought  
3 should be sent forward to the drafting committee. So  
4 I'm going to have Dave Heisterkamp share it. He was  
5 the notetaker.

6 MS. MARASCO: Can we have Dave give us the same  
7 reference in the PHI, then, just so that we can track  
8 it for consistency, because we actually used a  
9 different document as our only document.

10 MR. HEISTERKAMP: Right. Maybe I will explain  
11 that, and we can trace it back to the PIH document.

12 The group was to look at affordable housing  
13 activities, and we're also looking at loan guarantee  
14 activities, so the issues that involve that. We kind  
15 of rolled in Subpart E.

16 The committee worked from the NAIHC document as  
17 the primary document, and held the PIH notice to one  
18 side and the statute to the other side. So what I'm  
19 going to do is give you reference to the section in  
20 the statute and the regulations that are our  
21 recommendations. So whichever document you are looking  
22 at, you can go back by statute or regulation to figure  
23 out where we were.

24 We found one issue in the affordable housing  
25 that the work group would like to recommend the



1 committee send right to the drafting committee. That's  
2 section 200-8A of the statute and Regulation 1000.150  
3 concerning the criminal records, access to criminal  
4 records. The statutory amendment expands TDHE and  
5 grant recipient's ability to receive those criminal  
6 records and use them, not just to screen tenants, but  
7 also to screen employees, potential employees.

8 There is an existing regulation at 1000.150  
9 that talks about receiving and using that information  
10 for screening tenants, which would have to be updated  
11 and revised to include employees.

12 One of the points that was made at the  
13 committee level is the regulation doesn't tell you  
14 what to do with that information once you get it. That  
15 is up to you, but that you have access to it if you  
16 want.

17 In terms of guaranteed loan activities, there  
18 were two pieces of the statute, 601A and 601B. And  
19 they affect respectively Regulations 1000.424 and  
20 1000.428 to expand the use of the loan guarantee monies  
21 to include certain economic development activities.  
22 And also, to remove a regulation, 1000.408, which no  
23 longer applies due to a statutory amendment.

24 FEMALE SPEAKER: (Indiscernible -- speaker not  
25 using microphone.)

1           MR. HEISTERKAMP: (Indiscernible -- speaker not  
2     using microphone) if you look at page 17, that includes  
3     both the changes to 601, and page 9 contains a change  
4     to Section 208A. The work group is changing their  
5     mind. It's page 11 in section 208A and page 17 is  
6     Section 601. We recommend those three items go to the  
7     drafting committee.

8           THE CHAIR: Thank you, Dave.

9           Blake, do you have anything else that you want  
10    to add?

11          MR. KASAMA: I did have clarification in terms  
12    of -- our group ran across this where there was no  
13    regulation. So how do you want to handle that?

14          THE CHAIR: I don't know how others want to  
15    handle it, but I think we should bring it forward and  
16    maybe negotiate a solution.

17          MS. FOSTER: But I think that certainly those  
18    sections that did not have regulations, we didn't  
19    decide that they would go to the drafting committee, I  
20    don't think. So they are still on the table in some  
21    form.

22          THE CHAIR: Also I want to remind you, anyone  
23    that wants to be on the drafting committee, to meet in  
24    the corner here after we're finished tonight. We will  
25    get together then and come up with a plan, I guess.

1           A and B, is there any improvements that you can  
2   see right now that we should do?

3           MR. KASAMA: Just what we saw right now. We  
4   have to decide to use one form or the other form, so if  
5   we go with the PIH notice, let's go -- or everybody  
6   using that and cross-referencing everything else to  
7   it. But we need a body or a document that we can all  
8   relate to.

9           THE CHAIR: Yes, Carol.

10          MS. GORE: I want to enhance that. Because it  
11   took up a considerable amount of the work group's time  
12   in really good discussions. But if we're going to  
13   divide the groups into Subpart A, B, C, and F, then we  
14   should have documents that are divided that way. We're  
15   still trying to figure if this is Subpart A, or is it  
16   really being dealt with with the other committee,  
17   Subpart B? And there's some crossover. So even with  
18   attorneys in the room, we had some confusing  
19   conversation. So we need some master document to  
20   follow.

21          Karin asked a great question. Where's the  
22   regulation? Well, all right. We tried to do some  
23   cross-referencing, but we spent a lot of time doing  
24   that in the work group.

25          THE CHAIR: Jason.

1           MR. ADAMS: From our work group, Subpart C, we  
2 have the same concern. But our hope was that somebody  
3 would take the NAIHC packet and break those items out  
4 into the regulatory subsections. We think that is  
5 essentially what is missing from this document.

6           And, of course, there's going to be some things  
7 that are going to come up in that that are not in a  
8 subsection that will have to be -- that there's  
9 statutory changes that don't have any regulatory area  
10 that it covers.

11           THE CHAIR: Would it help to rework on that  
12 (indiscernible -- simultaneous conversation.)

13           MALE SPEAKER: I think so. I think that's what  
14 I'm hearing everybody saying. I think that has to be  
15 done.

16           THE CHAIR: Do we need a committee for that?

17           MS. FOSTER: Mr. Chairman, isn't that -- is  
18 that something that the drafting committee could help  
19 with?

20           THE CHAIR: That's what I was going to say.  
21 Maybe the drafting committee could hit on that this  
22 afternoon.

23           MS. FOSTER: I hate to stay with the HUD  
24 notice, because it misses a lot of other things.

25           THE CHAIR: Yeah.

1 MS. GORE: I would just say, we've already  
2 begun that work. I think the drafting committee is a  
3 great idea, but we are about halfway there already. So  
4 we should be in better shape tomorrow. Thanks.

5 MALE SPEAKER: (Indiscernible -- speaker not  
6 using microphone) I think generally we found the NAIHC  
7 was to be more helpful, because it is organized by  
8 sections of the NAHASDA, and it is generally obvious.

9 For example, we found that most pages to  
10 enforcement monitoring in Subpart F occurred in the  
11 400 series of NAHASDA. So it was fairly easy to  
12 find.

13 The problem with the PIH notice, which is a  
14 very well-prepared document, but it is organized by  
15 public law. And so you then go to one public law and  
16 find all the enforcement sections, and then you have to  
17 go to the next public law and find all the enforcement  
18 sections. So it's harder to go out and grab things  
19 rather than using the NAIHC notice.

20 THE CHAIR: See all the good information we're  
21 getting from you guys.

22 Any other questions on A and B?

23 MS. HENRIQUEZ: Help me understand. For those  
24 of you who are lawyers, forgive me. If you all did it  
25 with the NAIHC document that has it broken out in a

1 certain way, did you then tie it back to the PIH  
2 notices that all? And if not, why not? And maybe that  
3 is the work that should get done, if that is the  
4 document you want us all to work from.

5 MR. TILLINGHAST: Madame Secretary, was that  
6 directed to me?

7 MS. HENRIQUEZ: To any attorney in the room who  
8 worked on the document.

9 MS. FOSTER: Dave is better to speak to it if  
10 it's real detailed, but yes, it does refer back to the  
11 HUD notice. It's in the third column of the NAHASDA  
12 amendments 1998 and 2008. There is a reference in each  
13 section that tracks back to the statute.

14 MR. TILLINGHAST: That is the virtue of the  
15 NAIHC notice. It gives you both.

16 MS. HENRIQUEZ: Is this the document updated  
17 December 4, 2009?

18 MR. TILLINGHAST: Yes.

19 MS. HENRIQUEZ: Okay. And so as I look at the  
20 last column, it talks about the -- let me see if I  
21 understood this right. So let's look at Section 2. We  
22 have amendment, date, title, month. The 2008  
23 amendment, PL110-411, amended Section 2.  
24 Categorization of amendments for purposes of negotiated  
25 rulemaking. "2 (4 raters) or 3 (1 rater.)"

1           MR. TILLINGHAST: What that indicates is that  
2     the NAIHC people rated that issue, four raters thought  
3     that it was a 2, which means it is a minor conforming  
4     rule and noncontroversial. One rater thought it was  
5     going to be controversial. That was the NAIHC raters.

6           MS. HENRIQUEZ: And then the HUD notice, the  
7     comment is performing regulations required at  
8     24 CFR 1000.2?

9           MR. TILLINGHAST: And it's been pointed out to  
10    me, and I agree with it, that one improvement in this  
11    matrix would be to cross-reference the issue number in  
12    the PIH notice in that column rather than make you go  
13    chase it in the PIH notice.

14          MS. HENRIQUEZ: That's what I asked.

15          THE CHAIR: Go ahead, Marvin.

16          MR. JONES: I do want to mention, if I  
17    understood correctly, that HUD is going to work on the  
18    one-page document and further fill it out. And at the  
19    end, both of the documents should contain all of the  
20    same information, just in a different form, but they  
21    should contain all of the amendments that have been  
22    made throughout the year. If I understood correctly,  
23    they are going to --

24          THE CHAIR: It's just not in the depth that we  
25    are.

1           MR. JONES: That's right. They will fill this  
2 out because, as you can see, again, that was handed out  
3 earlier before we took to the various groups. The  
4 numbers aren't consecutive. There are some things  
5 missing, and they are going to fill those in so that  
6 it's a complete document. Again, it should contain all  
7 of the references to the law in the same way -- or in a  
8 different way than the NAIHC version.

9           THE CHAIR: A simplified version.

10          MR. JONES: Right. That's correct.

11          THE CHAIR: Any other questions on this?

12          Rusty, did you have a question?

13          MR. SOSSAMON: I like the proposal that we ask  
14 the drafting committee to cross-reference these  
15 documents so, regardless of if you're looking at one  
16 document or the other, it indicates where it correlates  
17 to the other document.

18          THE CHAIR: Right. Get them together, so  
19 they're both together.

20          MR. SOSSAMON: Ultimately, the work group will  
21 decide -- will recommend it to this committee what this  
22 committee could consider doing with it, either send it  
23 to the drafting committee for conforming language, or  
24 negotiate it. Or if -- those are the two options.

25          The reason we would look at these forms is



1 basically to see what was recommended by HUD under PIH  
2 notice and what was recommended by the constituency  
3 that made up this task force in NAIHC and what they  
4 recommended, just for our information and background,  
5 and then the work groups will make a determination  
6 whether they agree or disagree or what, and make a  
7 recommendation to this committee.

8 THE CHAIR: There was a lot of preplanning in  
9 both of these.

10 Go ahead, Marvin.

11 MR. JONES: I just want to emphasize the  
12 temporary organization by these subparts and -- or  
13 the -- how did you say it -- the constituency of NAIHC.

14 MR. SOSSAMON: (Indiscernible -- speaker not  
15 using microphone.)

16 MR. JONES: The version commonly known as the  
17 NAIHC version. Of the two versions, both of them are  
18 temporary and that we have not made a decision.

19 THE CHAIR: This is just preplanning work by  
20 both sides. I think there's a lot of good work there.  
21 But we have to condense it down now and make it into  
22 one pot.

23 MS. GORE: I just want to be clear. We have it  
24 divided into groups A, B, C, and F. In addition to the  
25 cross-referencing, that the drafting committee will

1 also identify those items that are under Subpart A, B,  
2 C, and F, so that the committees can be more efficient  
3 in their work. Thank you.

4 THE CHAIR: Definitely.

5 Any other before we proceed on? I will turn it  
6 over to my partner in crime.

7 MR. JACOBS: All right. Let's go to Group C,  
8 who were the leaders there?

9 MR. ADAMS: Mr. Chairman, that would be me. I  
10 had a secretary, and so I am going to move over here  
11 and follow along on her notes that are on the computer.  
12 With that, we went through Subpart C of the PIH notice,  
13 all those items listed there that were in reference to  
14 Subpart C.

15 One of the first items we touched on was the  
16 issue in PIH Notice No. 6. And in reference,  
17 cross-reference to NAIHC product, that is on page 5.  
18 The top of page 5 references that section also.

19 What that section talks about is the  
20 requirement for tribes to submit an IHP no later than  
21 75 days. That is a change there. HUD's position was  
22 that there was conforming regulations that needed to be  
23 changed at 1000.201, .214 and .216. So we talked about  
24 what the language change that needs to happen there,  
25 and the committee agreed to that and agreed to send

1       that work to the drafting committee for that work to  
2       happen.

3               One of the issues that first came up in the  
4       committee -- excuse me, in the work group -- was that  
5       the -- what involvement will the tribes have in the  
6       development of HUD notices. Because in a lot of these  
7       cases, in the PIH notice, you see that HUD's comment is  
8       that a notice will be issued. And so our committee was  
9       concerned about that fact, that how are we going to be  
10      involved in the process. And so that was a question  
11      that was posed.

12             The next section is in the PIH notice. It is  
13      Section No. 7, which discusses removal of the five-year  
14      plan requirement. As far as HUD's analysis, I don't  
15      believe they had -- there was a required conforming  
16      language change; and, thereby, that was then approved  
17      by the committee to move on to the drafting committee.

18             The next section we went to then was a  
19      section -- PIH Notice No. 8. That section is  
20      Section 102, which revised the one-year plan  
21      requirement. The HUD position is that there is no  
22      regulation required. The HUD notice required on the  
23      changes, the overall changes to the plan, and the work  
24      group agreed that no regulation was required. Everyone  
25      agreed that HUD should draft notice again with the

1 caveat of how we're going to have input into the  
2 notice.

3 FEMALE SPEAKER: (Indiscernible -- speaker not  
4 using microphone.)

5 MR. ADAMS: PIH notice is what we followed,  
6 No. 8.

7 MR. JONES: Jason, if it will help, again, the  
8 one-page summary from HUD, if you just go straight down  
9 that and look to the side. Anywhere it says Subpart C,  
10 Jason was following right along that.

11 MS. FOSTER: I don't want to interrupt, Jason,  
12 but there were also, when we went through in our  
13 committee, situations where we agreed maybe a rule  
14 wasn't required, but that was something we were going  
15 to deal with this afternoon in terms of consensus on  
16 what is required. So only those things that were going  
17 to the drafting committee?

18 MR. ADAMS: Yes. Now, where was I? No. 8.  
19 Then the next -- so we finished that section.

20 We went on to Section 9 of PIH notice. And  
21 Section 8, yeah, we finished. We agreed there was no  
22 regulation required there. There's nothing to send on  
23 to the drafting committee.

24 Section 9 dealt with the issue of Amendment  
25 103D of the statute to change requirements from fiscal

1 year to tribal program year and to remove references to  
2 the five-year plan. HUD's position on that in the PIH  
3 notice was no conforming regulations are required.  
4 Again, HUD will issue a PIH notice that will include  
5 revised IHP and provide information on the changes to  
6 the IHP process.

7 The work group had a very lengthy -- this took  
8 up most of our time. Our discussion centered on the  
9 issue of the definition of tribal program year. So  
10 that is something that we did not pass on to the  
11 drafting committee. That's something that the  
12 committee wants to work on within itself, what that  
13 definition of a tribal program year will be.

14 And then the last issue that we got to on the  
15 PIH notice was PIH Notice No. 32. And that issue  
16 amends Section 103. The work group believes that  
17 negotiated rulemaking is required on this. And it  
18 believes that it needs to come to this body. It is not  
19 a low-hanging fruit or easier item.

20 FEMALE SPEAKER: Can you explain that  
21 (indiscernible -- speaker not using microphone) or do  
22 you want me to explain that?

23 MR. ADAMS: Can you explain it, Jennifer?

24 MS. BULLOUGH: Sure. It's not that the work  
25 group disagreed with the notice. But since the notice

1       was issued, there is a concern regarding how to  
2       calculate the 20 percent cap because of the change in  
3       the Indian housing plan going from a grant-based  
4       program to a fiscal-year based program, and so there  
5       needs to be a negotiation on how the calculation of the  
6       20 percent cap is figured.

7               MR. ADAMS: The last section we covered was  
8       No. 32 on the PIH notice. It was 101H, and it amended  
9       the use of IHP funds to be included in planning  
10      expenses. And that's in PIH notice. And there was a  
11      couple of conforming regulations that have to be  
12      changed there, 1000.236 and 238. The work group agreed  
13      to that, and agreed to pass that on to the drafting  
14      committee.

15             One issue that we did have some discussion on,  
16      it was in the language of one of the statutory  
17      amendments, was the definition of jurisdiction. And  
18      one of our committee members wants that brought -- put  
19      on the parking lot issues to be brought back at a later  
20      date.

21             MS. BULLOUGH: Jason, I can clarify. Under 32,  
22      I don't think we had an issue with the regulation at  
23      1000.236, but we did have a problem with 1000.238.

24             MR. ADAMS: I think you are right, yes. And it  
25      was passed on to the drafting committee for the work to

1       happen.

2               So that's it for me, Chairman.

3               THE CHAIR:   Darlene?

4               MS. TOOLEY:   In the regulations reference  
5       (indiscernible -- speaker not using microphone) are you  
6       saying both of them are being recommended to pass on?  
7       Or are you saying one of them requires more discussion?

8               MR. ADAMS:   One of them doesn't require a  
9       change, and one does.   So, thereby, it doesn't have to  
10      go to the committee after further review.

11              MS. FOSTER:   I have a question just about our  
12      process.   I've been trying to track this back and forth  
13      as we go along, and I got some of them, and I'm sure I  
14      can put my notes together with others to get the rest.  
15      But this one, for example, the No. 32, an amendment to  
16      101H.   Is that right?   And No. 32, which is on page 3  
17      of the NAIHC and the No. 32 on HUD's list.

18              But you indicated that that would need a  
19      regulation, and so it should go to the drafting  
20      committee.   Did you decide that it was something that  
21      was just a conforming regulation and not something that  
22      would require any negotiation?

23              MR. ADAMS:   Correct.

24              MS. FOSTER:   Okay.   Because I was just seeing  
25      it rated as a 3 here, so I was wondering.   Usually if

1     it's rated a 3, there are issues. I was just trying to  
2     understand.

3             MR. ADAMS: Our review of it said let's pass it  
4     on to the drafting committee.

5             MS. FOSTER: So there are still some issues.

6             MR. ADAMS: On 236, but not 238.

7             MS. FOSTER: So there are still some issues,  
8     then, within your subpart that are going to need  
9     further negotiation? It won't go to the drafting  
10    committee but also still needs further negotiation,  
11    further rulemaking?

12            MR. ADAMS: Under what part?

13            MS. FOSTER: We're not approaching it as to  
14    whether it needs a regulation. It goes to the drafting  
15    committee, right? The ones that go to the drafting  
16    committee are just the ones that are the low-hanging  
17    fruit?

18            MR. ADAMS: Yeah, that's what these are.

19            MS. FOSTER: Okay.

20            THE CHAIR: Jason, I've got 103D and 103. Are  
21    they both connected to the same No. 9? You had 103 but  
22    not a 32. I wasn't writing fast enough.

23            MR. ADAMS: Yeah. 103D was changed in the  
24    amendments. And then 102, it makes reference to  
25    Section 102 also.



1 THE CHAIR: Okay.

2 Marvin?

3 MR. JONES: Jason, I think we also were going  
4 to say, I believe, that we didn't get all of the way  
5 through, that we didn't --

6 MR. ADAMS: That was going to be my --

7 MR. JONES: Oh, I'm sorry. Are you going to  
8 now?

9 MR. ADAMS: If you would like me to.

10 (Indiscernible -- simultaneous conversation.)

11 MR. JONES: Go ahead, and I have another point  
12 afterwards.

13 MR. ADAMS: The task that was identified for  
14 the work groups, as I understand, was that we go  
15 through the PIH notice and NAIHC notices to try to pick  
16 off what we have termed in our work group is the  
17 low-hanging fruit, the easy items. We got through the  
18 PIH notice and that was it in the time frame allowed.

19 THE CHAIR: Okay.

20 MR. ADAMS: But, again, when we had finished  
21 with the PIH notice, it was a strong recommendation  
22 from this committee, which I already reported to you,  
23 that we have the NAIHC notice add an additional column  
24 that would cross-reference the subparts that it  
25 affects.

1 THE CHAIR: Sandy.

2 MS. HENRIQUEZ: I just got lost. At the end I  
3 thought you said 103. Maybe I heard it wrong, or I  
4 just can't find it or both.

5 MR. ADAMS: The question I believe was  
6 asking -- I think Larry asked about it. It was under  
7 No. 9, PIH notice No. 9. It references 103D.

8 MS. HENRIQUEZ: Oh, okay. No. 9. Thank you.

9 MR. COYLE: He mentioned it twice, and I  
10 misquoted him.

11 Any other questions from anyone?

12 Yes, Marvin.

13 MR. JONES: I wanted to make the comment I made  
14 in the work group, and that was that the additional  
15 language that HUD says, talking about issuing a PIH  
16 notice and all of that thing, at least my okay with  
17 referring to the drafting committee to draft some  
18 language does not endorse the issuance of a PIH notice  
19 to implement an IHPAPR format at this point.

20 There are some additional issues and some  
21 additional requirements of this form that they have  
22 been working on that we don't have a copy of. I have a  
23 copy. I brought one from home.

24 So there are still some issues, and I didn't  
25 want it viewed as an endorsement for some of the

1 language rationale that HUD said it is going to proceed  
2 with. It doesn't give, at least from our view, the  
3 authority to proceed and issue a PIH notice.

4 THE CHAIR: Okay. Any problem with this from  
5 the committee? Any other questions for Group C?

6 Okay. Let's move on to Group F.

7 MR. TILLINGHAST: Mr. Chairman,  
8 John Tillinghast, and I led the group discussions. We  
9 used both the NAIHC and the PIH notice. And when I  
10 give you citations like the Group B, I believe, I'll  
11 give you the statute that was amended in NAHASDA. I'll  
12 give you the regulation that we are recommending be  
13 given to the drafting committee, and I will explain  
14 what the regulation does and why and what change we're  
15 recommending, why we don't think it's controversial.

16 Being the group in charge of monitoring and  
17 enforcement, virtually all of the issues that we have  
18 are inherently controversial and need a negotiation.  
19 But we did find four exceptions to that. We have two  
20 regulations that we'd like to refer to the drafting  
21 committee.

22 One involves a change to -- a 2008 change to  
23 Section 102 of NAHASDA, which abolished the five-year  
24 plan. In Section 524E of the regulation, there  
25 continues to be a reference to the five-year plan. We

1 are proposing to delete the reference to the now  
2 nonexistent five-year plan. We agonized over that one.

3 The other one that we similarly agonized over  
4 was in 203F of NAHASDA in 2008, Congress allowed us to  
5 use our grants over an extended period of time.  
6 Section 524A of the NAHASDA regulations, there is still  
7 a provision that says that you have to obligate  
8 90 percent of your grant within two years, which is  
9 obviously inconsistent with using your money over an  
10 extended period of time. We propose to appeal that  
11 regulation.

12 We also have two items that we believe need not  
13 be subject to negotiations. And I will mention those  
14 so that with the committee's blessing, we can cross  
15 those off the list.

16 One was a statutory change to 404B of NAHASDA,  
17 which amended the elements of what had to go into a  
18 performance report. The corresponding regulation,  
19 which is Section 512 of the regulations, merely says,  
20 in your performance report, you must do what the  
21 statute says. So it just references the statute; it  
22 doesn't repeat it. So it now just references the new  
23 statute. There's no need for a regulatory change.

24 The second was a change to -- the addition of  
25 Section 408 of NAHASDA, which required an IHP to be

1 made available to the public. We felt there was no  
2 need for a regulation there, because all we could think  
3 of doing was repeating the statute verbatim. That is  
4 my report.

5 THE CHAIR: Okay. Any questions?

6 Sandra?

7 MS. HENRIQUEZ: All right. So you used the  
8 NAIHC document. Could you just go through the sections  
9 now that I've figured out what you are following, and  
10 how it appears on this form.

11 MR. TILLINGHAST: If you go to the two issues  
12 where we recommend that there be no regulation, there's  
13 no need to do a regulation at all, appears on page 15  
14 of the NAIHC list under the heading Section 404. That  
15 is the section that we felt did not need negotiation.

16 The second, which involved Section 408 to  
17 NAHASDA that says an IHP has to be published, it's on  
18 page 16 in the middle under the heading Section 408.  
19 Those are the two where we said no regulation is  
20 necessary.

21 Now, if you can put your NAIHC notice down and  
22 pick up your PIH notice, you will find the two  
23 instances where we decided conforming regulations were  
24 necessary. And the first -- and we're referring it to  
25 the drafting committee. If you go to the bottom of

1 page 4, top of page 5 of the PIH notice, you'll see  
2 Item 7. And in the last line, it says recommends a  
3 conforming regulation change to 524. That is what we  
4 propose to do.

5 Then if you go to Item 16, which is the  
6 (indiscernible -- speaker not using microphone) you'll  
7 see where Congress has allowed us to use our grants  
8 over an extended period of time. And it then says the  
9 conforming regulation will be to remove 524A, which is  
10 a provision that still has the old two-year limit on  
11 obligation of funds. So we are implementing that  
12 (indiscernible -- speaker not using microphone.)

13 THE CHAIR: Okay. Marvin.

14 MR. JONES: Not a specific question, but could  
15 we get all of the proposals in one document listed on  
16 through and then the reference to both the PIH notice  
17 as well as the NAIHC, the 20 or however many there  
18 were?

19 MR. TILLINGHAST: I have it handwritten. Do  
20 you need it typed?

21 MR. JONES: All of them compiled from each  
22 group so that we have everybody sitting around  
23 (indiscernible -- simultaneous conversation.)

24 MR. TILLINGHAST: The drafting committee is  
25 going to need that for sure. Otherwise, we will forget

1 stuff.

2 THE CHAIR: That's kind of what the drafting  
3 committee is working on this evening, isn't it?

4 MS. FOSTER: Is somebody taking good notes?

5 MR. TILLINGHAST: I take pretty good notes.

6 THE CHAIR: We've got a couple of pretty good  
7 gals taking notes. Could a secretary of each of the  
8 groups meet with the drafting committee?

9 MR. ADAMS: Also, Leon, if I'm not mistaken, we  
10 have members of the drafting committee sitting in on  
11 each section. And so they should be able to come to  
12 the table with that information from their section to  
13 the drafting committee with some notes and some  
14 guidance. If the secretaries from the committees or  
15 work groups have their notes, they could pass those on  
16 to help. But we acknowledge that in our committee that  
17 there are members of the drafting committee at this  
18 table that will carry the message on.

19 THE CHAIR: Yeah. If a secretary from each  
20 group could meet temporarily or at first with the  
21 drafting committee to make sure that they have all of  
22 the information, we would appreciate that.

23 Marvin?

24 MR. JONES: I just want to make it clear. That  
25 is different than what we had talked about earlier

1 about the cross-referencing that they were going to do.

2 Okay.

3 THE CHAIR: I've just been informed that we've  
4 performed a big boo-boo here. We've got to state our  
5 names so we can get this on the record. So please  
6 state your name clearly before you start. It will make  
7 it a lot easier later on.

8 Any other questions of Group F? No questions?

9 Let me ask a couple of questions. Was time a  
10 factor? Or did you have enough time, or do you need  
11 more time or more meetings tomorrow? Or what are your  
12 thoughts? I am seeing some heads shaking.

13 Carol?

14 MS. GORE: I think we clearly stated in our  
15 committee that we think there's maybe 20 other items in  
16 the NAIHC document that might be referred to the  
17 drafting committee. We did not have time to review  
18 those. Thank you.

19 THE CHAIR: Okay.

20 Jason.

21 MR. ADAMS: I think that's why it's important  
22 to get the document that Marvin was just referencing,  
23 the NAIHC document with that cross-reference to the  
24 subsection for each one of those items. We didn't even  
25 get to look at that yet. So we have to do that work



1 yet.

2 THE CHAIR: Any other questions or any comments  
3 on the time? So we are saying that you need to meet  
4 again tomorrow. Okay. Everybody in support for time  
5 tomorrow?

6 MR. TILLINGHAST: Mr. Chairman, if we are  
7 meeting tomorrow, our subgroup is prepared to go ahead  
8 and begin negotiations on the matters that need  
9 negotiating. I think we probably need permission from  
10 the committee to do that. Otherwise, we are done.

11 THE CHAIR: Okay. Comments on that?

12 MS. FOSTER: I'm not sure I understand, but the  
13 question was do we have permission to begin negotiating  
14 on the other rules?

15 MR. TILLINGHAST: Right.

16 MS. FOSTER: I guess I hear a lot of people  
17 saying they didn't have time to completely feel  
18 comfortable that they had gone through everything they  
19 needed to in this process. I also hear that the  
20 drafting committee is going to be hard at work putting  
21 together a document that is really going to be more  
22 useful for these folks to be able to do that. So we  
23 are not starting negotiating quite yet probably until  
24 we're done with that process.

25 MR. TILLINGHAST: So that we have something to

1 do, one alternative would be during tomorrow morning's  
2 committee session is to have the drafting committee  
3 meet and do their drafting and catch up with their  
4 drafting work while you guys are in a work groups.

5 Mr. Chairman, how is that?

6 THE CHAIR: In reference to tonight's drafting  
7 meeting, how long are you going to try to work? Do you  
8 want to work tonight? Give me an indication of what  
9 you plan on doing.

10 MS. FOSTER: I would like to work for a  
11 significant time tonight to be able to pull this  
12 together for the committee tomorrow morning. I mean, I  
13 plan to sleep, but I do think it's important, and I'm  
14 willing to devote whatever time we need.

15 THE CHAIR: It is important time-wise. But we  
16 don't want to get anybody too tired to know what  
17 happens. So how much time is a good thing?

18 MR. CAGEY: I just got a clarification for  
19 my own mind here. Is the role -- I heard this  
20 gentleman -- I don't know your name.

21 MR. TILLINGHAST: I'm sorry. John Tillinghast.

22 MR. CAGEY: John Tillinghast. Let me clarify a  
23 statement you made earlier, is that you want the  
24 authority to negotiate from this committee. What  
25 authority are you asking for?

1           MR. TILLINGHAST: I presume if the work groups  
2 would start developing work group recommendations on  
3 the issues that require negotiations at some point in  
4 time to bring it to the full committee. I really don't  
5 care whether you offer our group -- I'm not asking for  
6 permission to negotiate. I'm actually asking for  
7 something to do tomorrow. We have ten people who just  
8 turned out to be very efficient.

9           MR. CAGEY: I just wanted to clarify the role  
10 of it, because I'm not sure what committee you're  
11 sitting on. Is it the drafting committee or what  
12 committee you're on, but this is just confusing. I  
13 think, Larry and Leon, the roles of the drafting  
14 committee are not clear. Is he on the drafting  
15 committee or not? I just want to clarify the role.

16          THE CHAIR: Go ahead.

17          MR. JONES: Since we will continue working  
18 tomorrow, come join our group.

19          MR. TILLINGHAST: Be careful what you ask for.

20          THE CHAIR: Karin.

21          MS. FOSTER: John, couldn't we get to work on  
22 the items that folks have said they are ready to send  
23 to the drafting committee and bring those items back as  
24 soon as we can so the committee can actually maybe make  
25 some progress on the low-hanging fruit? That is

1 something that needs work, and everybody has identified  
2 what those are. I think that would be a good task for  
3 the drafting committee.

4 MR. TILLINGHAST: We're going to have a  
5 drafting committee meeting right after here. And I  
6 presume we'll -- we have a lot of people who would  
7 divvy up assignments so that nobody is up all night.  
8 Maybe we will have everything done by tomorrow morning.

9 THE CHAIR: It is kind of my consensus that we  
10 are going to -- the drafting committee is going to work  
11 on condensing and getting the PIHs and NAIHCs together  
12 so that we will have a working base tomorrow. Is that  
13 the gist of it? Is everybody in consensus?

14 MR. ADAMS: As I understand it, they are going  
15 to do that, plus, they are going to start working on  
16 some of the low-hanging fruit language.

17 THE CHAIR: Yes. The ones that got wiped out.

18 MR. ADAMS: Right, to catch up. I guess that's  
19 what John said, to kind of catch up with the work  
20 that's been done.

21 My question was, as far as the agenda for  
22 tomorrow, at what point are we going to get this work  
23 started and then conclude? Because like John is  
24 pointing out, their work group is ready to go into the  
25 other issues now. I don't know when our work group

1 will get to that point or any other. So if we have  
2 these things kind of ending at different times, at what  
3 point are we going to set? Are we going to set a time?  
4 I need that. I think we need that. Because if we  
5 don't, we could drag this on for meetings.

6 THE CHAIR: Okay. Let's get the chairmen of  
7 the committees, and kind of give us a rough estimate of  
8 what they think time-wise.

9 MS. GORE: I'm willing to go first. If we have  
10 a good document to follow, we think it is no more than  
11 one hour in the morning to go through the NAIHC list  
12 that we couldn't easily identify as being either in the  
13 PIH notice or not, but necessary to send to the  
14 drafting committee. So if we have from 8:00 to 9:00,  
15 and if we have the right working document, and we're  
16 not flipping pages back and forth, we can make very  
17 quick progress. Thank you.

18 MR. KASAMA: I agree. I think for us, we did  
19 the job. It would be good to go back and double check  
20 our work with this separate.

21 MR. ADAMS: I totally agree. Once we have a  
22 document that gives us some guidance as to the NAIHC  
23 product, then we can work through that quickly. There  
24 was one issue too that we brought up, and at some point  
25 in time, the committee is going to have to determine

1     how we deal with new issues, new issues that aren't on  
2     the PIH notice that aren't on the NAIHC notice, and  
3     bring it back to the table here.

4             And how do we distribute that information out  
5     and then determine where it falls within which group?  
6     Is that now? Or is that an ongoing thing? It has to  
7     be dealt with at some point in time.

8             MS. FOSTER: You know, what we discovered when  
9     we went through it, we were able to use the NAIHC  
10    document, because it was fairly easy to track the  
11    subpart to the document, for our part anyway. But we  
12    found that there were members of the public there who  
13    did have other concerns that were able to talk about  
14    those in the context of the sections of the statute.

15            And sometimes there were a couple of sections  
16    where there isn't a rule necessarily, but we thought  
17    maybe there needs to be one, or some people thought  
18    there might need to be one.

19            And I think that if we go through it in a  
20    comprehensive way, off of a document that is more  
21    comprehensive, like you asked for, maybe we will catch  
22    some of those in this process. You know, I don't think  
23    that what we were coming up with is so much that it was  
24    unworldly or anything, but it helped to identify the  
25    real problems that people are dealing with out there in

1       this process.

2               MR. ADAMS: Just to clarify, one of the issues  
3       that was brought to the table in our group was an issue  
4       that we didn't have the time to dissect and find out if  
5       it was even germane to the work group that we had  
6       established as far as the Indian housing plan  
7       discussion that we are having.

8               Somebody is going to have to -- my belief is  
9       that the person bringing the issue to the table needs  
10      to have the statute area defined where it affects the  
11      statute and the regulation if there is a regulation  
12      that is not in conformance with the statute, or there  
13      needs to be a change there or a recommended change so  
14      that we have that information when it hits the table so  
15      we can determine where that falls in.

16              We were talking about issues that were kind of  
17      all over the place. And it's my hope that we would  
18      avoid that kind of thing.

19              THE CHAIR: Marvin.

20              MR. JONES: I think the process that we were  
21      going to follow was to get all of these issues out, and  
22      then we would start, okay, what is the next step of the  
23      process. We got all of those issues to the drafting  
24      committee. Now we will go back. Okay. We will  
25      proceed now and determine in the process, do we keep

1 the same committees? All of those kinds of questions  
2 would then take place.

3 Presumably let's say that we have an hour to  
4 finish tomorrow morning this first work, then I would  
5 anticipate, or I would think a reasonable thing is to  
6 say at 10:00, then we start addressing, do we keep  
7 those committees and then go forward from there, is  
8 what I think we might be headed to.

9 THE CHAIR: Darlene.

10 MS. TOOLEY: I know that we would like to think  
11 that when people have an issue that they are going to  
12 be able to cross-reference the statute, and they can  
13 see the regulation or lack thereof. I don't think that  
14 is a realistic expectation on our part as committee  
15 members. I think we need to acknowledge there are  
16 going to be issues put out there that we might not  
17 address at all.

18 But I don't think we want to set up such  
19 stringent requirements so that people that have, again,  
20 taken the time and invested in being here because they  
21 have an interest or a concern. I think we need to  
22 have -- whatever the process is that we do later on, it  
23 needs to honor that and not just say, well, you have to  
24 come to the table with a solution or a recommendation.  
25 Because I just think that is kind of unreasonable.



1 MR. ADAMS: Mr. Chairman, if I could reply.

2 Maybe I wasn't clear. I wasn't suggesting that  
3 anybody come to the table with solutions. I want to  
4 just understand the issue as to which statute and if  
5 there is a regulation that it affects, so that we can  
6 at least look at that area of what we are talking  
7 about. And not have -- you know, I have an issue with  
8 this area, well, how does that fall into the statute?  
9 Somebody has to do the legwork. That is all I'm  
10 saying.

11 THE CHAIR: Okay.

12 MS. FOSTER: We have a lot of lawyers here who  
13 want to be helpful to the whole committee and not just  
14 their clients. If I had a question about something  
15 like that, I would probably go over and ask Dave.  
16 Anybody can ask me if I can be helpful, if anybody has  
17 any issue. But there are a lot of people here who do  
18 have that background, and I think we should try and use  
19 that. And that will help us.

20 THE CHAIR: Okay. Any other questions of  
21 Group F? If not I would like to propose for tomorrow  
22 morning that we start at 8:00 with 15 minutes with a  
23 prayer and housekeeping. And then move into the  
24 committee meetings or groups, and use the time until  
25 9:30 to address whatever concerns or needs that you

1       have. And then we reassemble back here at 9:30 to see  
2       where we go from there.

3               MR. JACOBS: I would like to add to that that  
4       the committee working tonight, if it is possible to get  
5       some information to us first in the morning, and we  
6       will get that printed out and get it to the people here  
7       so that we will have a basis.

8               I would say at least two hours to go back  
9       through all of those. And then we can go about our  
10      business. Does that sound logical? Can we get that  
11      done? We're on a roll now. Let's keep moving.

12              THE CHAIR: The agenda that you have calls for  
13      having the group meetings until 10:00. So I am  
14      recommending that we cut it back by 30 minutes. Is  
15      that acceptable? Do you feel you need the full up to  
16      10:00? Thumbs up for 9:30. Is that good? Okay.

17              Anything else that the committee would like to  
18      bring up at this time? We have one housekeeping item  
19      on the protocol, the appointments or selection for the  
20      co-chairs for tomorrow. We will open the floor for  
21      nominations.

22              THE FACILITATOR: You're it for the duration.  
23      (indiscernible -- simultaneous conversation.) And you  
24      may get voted in again.

25              THE CHAIR: One announcement here.

1           THE FACILITATOR: Okay. Did everybody get a  
2     copy of the charter? We have more copies up here.

3           In response to the committee's request earlier  
4     about trying to document and keep everything nice and  
5     neat, in the future, if any of the committees or any of  
6     the committee members has a document that you would  
7     like distributed to the committees, rather than just  
8     make a copy yourself and passing them out, could you  
9     please hand them to me or Erin, and we can document it.  
10    We can list it and pass it out formally so that we know  
11    what they are and so we don't get them mixed up.

12           Thank you.

13                   (Recess at 5:18 p.m.)

1     STATE OF ARIZONA     )  
                                  )   ss.

2     COUNTY OF MARICOPA   )

3  
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17 of April, 2010.

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20 \_\_\_\_\_  
21 Debora Mitchell

22 AZ Certified Reporter No. 50768  
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