

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF NATIVE AMERICAN PROGRAMS

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session
July 21, 2010, Day 2

Taken at 1113 Sixth Avenue

Seattle, Washington

REPORTED BY: Thad Byrd, CCR

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A P P E A R A N C E S :

Committee Members Present:

JASON ADAMS
MARGUARITE BENCENTI
RODGER BOYD
PHIL BUSH
LARRY COYLE
MARK BUTTERFIELD
ROBERT DURANT
KARIN FOSTER
CAROL GORE
LAFE HAUGEN
SANDRA HENRIQUEZ
RETHA HERNE
LEON JACOBS
MARVIN JONES
BLAKE KAZAMA
JUDITH MARASCO
THOMAS MCGEISEY
SHAROL MCDADE
REBECCA PHELPS
S. JACK SAWYERS
MARTY SHURAVLOFF
RUSSELL SOSSAMON
JAMES VOLLENTINE
SUSAN WICKER

1 SEATTLE, WASHINGTON; WEDNESDAY, JULY 21, 2010

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4 MR. SUNOO: Are there any announcements today
5 of any type if anyone wants to give them?

6 Okay. As of our meeting last night, we decided to
7 go back into our negotiated session that we were
8 finishing up yesterday; isn't that right? Yes, Roger?

9 MR. BOYD: Well, we were going to have
10 Jennifer give her announcement with regard to the PDR
11 needs assessment.

12 MR. SUNOO: We could have them right now if
13 you want to.

14 MR. BOYD: Yeah, I think we're ready to do it
15 now if the committee would like.

16 MR. SUNOO: Fine. Jennifer?

17 MS. STOLOFF: Hi, everybody. My name is
18 Jennifer Stoloff, and I work at HUD and headquarters, and
19 my office is Policies Development and Research. I know
20 some of you from when we had the formula negotiated
21 rulemaking, so it's great to be in front of you again.

22 The reason I'm here is to let you know that we are
23 planning to do a study and assessment of Native American,
24 Alaska natives and Hawaii native housing needs. We are
25 just at the stage where we're starting to get -- well,

1 soon we'll get proposals from potential contractors, and
2 we hope to have the project under contract by September
3 30th.

4 It's two phases. So the first phase is going to be
5 run by ONAP, and they'll do a series of consultations to
6 get input on the part of the study on the research design
7 to make sure that we're covering the right issues. So
8 tribal representatives will have input on the questions
9 that we'll be asking and make sure we're covering the
10 right issues.

11 The general approach of the study will first be an
12 in-depth analysis of all the census data and comparing it
13 across the years for which we have information. If
14 you're familiar with the study that HUD published in
15 1996, the same topic, the basic model is the same for
16 that as in that study. Some things have changed, of
17 course, because NAHASDA was passed after that study was
18 published. So we will also be looking into some issues
19 around NAHASDA and how that's changed things, but it's
20 not -- it's not a study of NAHASDA in particular.

21 And the most crucial part of this will be a survey
22 that we'll do in a sample of tribal areas. We have not
23 selected that sample yet. That will be part of what the
24 contractor does, but for that part we'll be going
25 hopefully door to door and talking to families and

1 finding out about their housing situations and looking at
2 the conditions of the housing units.

3 So we're hopeful that we can spread the word that
4 this is going to be potentially a very influential study
5 if it can show a true picture of the needs in tribal
6 reservation areas about what the actual housing situation
7 is. So that's a message that we can send to Congress if
8 we get a good response rate to that study.

9 There'll be more components. We'll do interviews
10 with tribal leaders and housing officials, so it will be
11 a good national representative picture. It won't tell
12 the story for any particular tribe. We can't do it at
13 that level, but we will be able to talk about some
14 regional variations. And if there's any questions, I
15 guess I can take some now, or you can just come find me.
16 I'm going to be here.

17 MR. JONES: When do you expect those
18 consultations to take place?

19 MS. STOLOFF: Rodger?

20 MR. BOYD: We'll probably -- we will start
21 this fall.

22 MS. STOLOFF: And I think that'll be enough
23 time for us to use the input and get it into the survey
24 part of the study because we have -- there's a lot of
25 other pieces that we have to do before we actually go out

1 in the field, so we'll make sure that those two parts are
2 coordinated. That's really crucial.

3 MR. SUNOO: Any more questions? Thank you.

4 MS. STOLOFF: Thanks, everybody.

5 MR. SUNOO: Good morning, everybody. We are
6 going to continue where we left off yesterday with Group
7 C's discussion. As some of you who may be new to this
8 process in the audience may not realize, we give
9 ourselves a maximum of two hours to debate or negotiate
10 any difficult issues.

11 So yesterday we used up about half an hour or say 28
12 minutes of that time on this particular issue, which is
13 the 1000.227, so we're going to continue moving from
14 here.

15 And I just want to kind of remind everybody also
16 that in our protocol, as we go through these discussions,
17 we do encourage that if we vote on something, someone has
18 an objection to anything, please state what the objection
19 is, and also come up with some sort of a proposal to help
20 move the thing along that would help to bring consensus
21 within this group. Marvin?

22 MR. JONES: Just an overall question: I was
23 talking to Carol yesterday about this form and that it's
24 not updated, and we were going to get one updated so we
25 can really see how many issues are left.

1 MR. SUNOO: Well, I think we're going to work
2 on that, weren't we, Jeremy? Marvin is referring to a
3 checklist we have of all the items that this committee
4 has successfully negotiated and reached consensus on,
5 this one here.

6 And so if you look at it, you can see that the
7 committee has successfully negotiated and reached
8 consensus on more than 80 percent of all the regulations.
9 So, I mean, we made really good progress. We've got a
10 few things left. But if we can get that updated as of
11 yesterday I guess, then -- is there an updated one that
12 they have access to?

13 MS. GORE: That checklist was really provided
14 by me at the beginning of the last meeting. It has not
15 been updated. I don't see Earl in the room, but Earl
16 accepted the responsibility to update the list.

17 And so we'll work with Earl and make sure that
18 everyone has an updated list, but it really wasn't handed
19 through the contractor, so it's not their fault they
20 don't have access to it. I didn't realize it was going
21 to be handed out again at this meeting, so we're working
22 on it.

23 MR. SUNOO: Okay. Well, thank you, and thank
24 you for taking the initiative to do that, Carol. That is
25 really inspiring for us to look at that list and see that

1 we're almost done with that page.

2 So as we have kind of done, we're getting through
3 most of that low-hanging fruit. We'll get a few more
4 that we can hopefully get through today. And then as we
5 get into more difficult issues -- well, I think we have
6 sufficient time to deal with those.

7 So, Jason, why don't you pick up where we started
8 yesterday?

9 MR. ADAMS: Well, good morning, everyone
10 again, friends and Oklahoma. We'll go ahead and get
11 started here.

12 We are in the middle of discussion, and I think the
13 clock was down to an hour and 32 minutes left on this
14 item, and so I think we just need to pick up where we
15 were at on that.

16 Our proposal was Section 1000.227. What I have in
17 my notes is that it should read, what should HUD do upon
18 receipt of an IHP waiver request? And I think there was
19 actually some additional language to that. I think
20 somebody proposed some changes to that yesterday, did we
21 not? I think in the title also there was some language
22 changed to that, was there not? Was that yours, Carol?

23 MS. GORE: Jason, I think you and I had a
24 side-bar, but I didn't have an opportunity to offer it.
25 I'd be happy to. I was going to just suggest that the

1 title is not as clear.

2 If you look at the prior 225, which says, when may a
3 waiver of the IHP submission deadline be requested, if we
4 clarified the question in 227 to coincide with 225, that
5 might be more clear.

6 So as a suggestion: What shall HUD do upon receipt
7 of a waiver request for an IHP submission deadline? So,
8 in other words, it just says, IHP waiver request in 227.
9 It's not clear if you just read the question that it's
10 about the deadline.

11 MR. SUNOO: Carol, can you repeat that again,
12 please?

13 MS. GORE: Let me see if I can try. So where
14 it says 1000.227, it also says, or addition to 1000.224,
15 the question --

16 MR. SUNOO: Right.

17 MR. JONES: If I could real quick, the rest
18 of that should be deleted. It should be just 1000.227.
19 The rest of that, "or addition to 1000.224," should just
20 be deleted.

21 MR. SUNOO: Right.

22 MS. GORE: I was going to recommend that the
23 question read, what shall HUD do upon receipt of an IHP
24 submission deadline waiver request, just to clarify the
25 question.

1 MR. SUNOO: Of an IHP submission deadline
2 waiver request; did I get that right? Henry?

3 MR. CAGEY: The thing that concerns me,
4 Sandra, is the point of HUD's failure to act. Whether
5 it's a waiver request or whether it's something else that
6 deals with the tribe's ability to respond to deadlines
7 and things that HUD -- hoops that HUD has us jump
8 through.

9 So, again, as you know, the system that you've
10 inherited, Sandra, it's a complicated system. It's full
11 of people that don't decide things; same thing with the
12 Bureau. We have a big problem with bureaucrats and
13 career folks and political folks making decisions, and
14 getting decision in a timely manner is very important to
15 us a lot of times.

16 And again, it seems like the agency wants to hold us
17 to accountability, but yet the administration itself
18 says, well, trust us. We'll do the right thing. Again,
19 what I expect to see is accountability and response in a
20 timely manner that these things that we're trying to do at
21 home are responsible.

22 And again, this is a new day. It's a new
23 administration. I know that the people are trying very
24 hard to get things done. We've been at this for over 30
25 years. The tribes have been at some of these programs

1 for over 30 years working for housing, working for
2 everything that we do. We've been at this a long time.

3 And again, it's getting the government to take
4 responsibility. Its actions and inactions is what I want
5 to see happen. And again, whether it's a simple waiver
6 request to extend a timeline or monkeying around with our
7 IHP, these kind of things are important to me as an
8 official as it flows down to our community and
9 administrative folks.

10 It causes a lot of frustration in our system when
11 you don't make decisions, and it causes a lot of ripple
12 effect when these things don't happen.

13 So, again, what I want you to understand is the
14 action that needs to be taken once it begins, because if
15 you're beyond those 45 days or you're beyond those 90
16 days, it has a big impact at home. And who's
17 accountable? We are. We have to be accountable to our
18 own committee to say, well, HUD didn't respond, or the
19 bureau didn't respond or Indian Health didn't respond.

20 These things have a big impact at home. So, again,
21 what I'd like to see is some mechanism that holds the
22 administration accountable, not you personally, but the
23 administration.

24 MR. SUNOO: Sandra?

25 MS. HENRIQUEZ: If I might, I do understand,

1 so we've got language that we'd like to offer if we might
2 put it up or have it put up. We understand and do
3 appreciate and respect the fact that we need to be held
4 accountable, so the language we're going to offer I think
5 goes towards this.

6 As I said yesterday, I just want people to
7 understand that the change is we are and want to be held
8 accountable for turning this around, this waiver request
9 around in a timely way.

10 MR. SUNOO: It's on the board there.

11 MS. HENRIQUEZ: So it's a little bit longer
12 than one sentence, but I think it gets at the substance
13 of this.

14 So what we're offering in response to, what shall
15 HUD do upon receipt of an IHP submission deadline waiver
16 request, we're responding with, if a recipient is unable
17 to submit an IHP within 75 days before the beginning of
18 each tribal program year, a recipient shall have 90 days
19 after the IHP submission deadline to request such a
20 waiver.

21 HUD shall decide within 45 days of receipt of a
22 waiver request, and HUD can only waive the recipient's
23 requirement to timely submit an IHP for a period of not
24 more than 90 days. That's statutory.

25 Even if a recipient has submitted a waiver request,

1 a recipient must submit an IHP not later than 90 days
2 after the deadline. A recipient that fails to submit an
3 IHP within 90 days after the submission deadline will be
4 ineligible for funding in accordance with 101(b)(1) of
5 NAHASDA.

6 It's a little bit longer, but we're trying to get
7 people to understand that we will respond within that
8 90-day window after the initial submission date. So if
9 you miss a deadline and you submit a waiver, let's say on
10 day one or two of that 90-day period, within 45 days we
11 will respond, and you'll still have then 45 days in which
12 to submit.

13 If the tribe decides that it wants to ask for a
14 waiver request on day 89, statutorily you're still bound
15 to have your IHP in 90 days after your submission
16 deadline. So the 45 days really -- we can still respond,
17 but you're then out of compliance from day 91 for the
18 next 44, 45 days, which is the point I tried to make
19 yesterday.

20 So if you're going to do this, get your submissions
21 in early. We will respond, and move forward. This does
22 not answer the question from yesterday, which is and what
23 if HUD doesn't respond in the 45 days?

24 I just need to reiterate that, one, we will respond;
25 and, two, I don't have the liberty, and I don't want to

1 take the liberty to lessen the Secretary's authority in
2 this regard. So I won't say trust me because I think
3 that that's not a correct response, but I can't -- I'm
4 not ready to abrogate this responsibility on the other
5 end.

6 MR. SUNOO: Thank you, Sandra. Judy?

7 MS. MARASCO: Judith with Yurok. Sandra,
8 with all due respect, I've been fortunate with the HUD
9 people that I worked with, but I've heard so many stories
10 that I have to support Henry's concern that a lot of
11 times we don't get timely responses from HUD. And you,
12 like myself, was brought to this table with the authority
13 to negotiate, and I'm wondering why you don't feel that
14 you can do that.

15 MS. HENRIQUEZ: Because it's a statutory
16 requirement that gives the Secretary his authority, and
17 so none of us are able to waive statutory requirements.

18 MS. MARASCO: Okay. So is there any other
19 avenue that would assure us that HUD would respond? Is
20 there some sort of process that would allow us to --

21 MS. HENRIQUEZ: I just wanted to get clear on
22 where the law is on this one, so let me see if I can do
23 this right.

24 If HUD fails to act, the statute does not give me or
25 the Secretary any ability to do anything outside of the

1 statute, which would be, for example, to say we could
2 deem it approvable in the absence of HUD's action. We
3 have no statutory authority to do anything like that
4 except to make a determination to grant or deny a waiver.

5 And so as much as I might want to get to that place,
6 I don't have the law or the standing to do that unless
7 there's a statutory change, so the alternative is our
8 failure to act. As in other issues where the statute is
9 unclear or where HUD doesn't take an action, we then are
10 allowed to be -- you can sue us, which I know is a
11 protracted crazy issue, but to get our attention to act.

12 I guess the only thing I would say then is that
13 short of that, I don't know how to answer that
14 appropriately. I don't know how to get -- I don't know
15 how to get us to yes on that issue without statutory
16 authority behind it to do it.

17 MS. MARASCO: Okay. I'd like to just go one
18 step further. I know that in some of the previous NegReg
19 sessions where we were negotiating, especially in the
20 formula area, when tribes were noncompliant, those monies
21 were to come back into the system. They were to be
22 recaptured if they weren't used within a certain period
23 of time.

24 What this is saying is if we don't meet that
25 deadline, we would be ineligible for funding for that

1 particular year. Am I correct in my assumption there?

2 MS. HENRIQUEZ: As I understand it, but
3 that's not a change from what exists now.

4 MS. MARASCO: I know, but that's never been
5 enforced historically. My question to you is, is it
6 going to be enforced at this point? And if it is
7 enforced, will that money get dumped back into the pot?

8 MS. HENRIQUEZ: These are always hard
9 questions.

10 MS. MARASCO: Yes, they are.

11 MS. HENRIQUEZ: Well, philosophically. So an
12 administrator's failure to comply with a statutory
13 requirement would require HUD to issue a sanction to stop
14 the money, but ultimately who does that harm? Not the
15 person who failed to file the report, but the folks on
16 the reservation land who are the beneficiaries of the
17 programs that that money supports.

18 And so it's the same struggle I have with housing
19 authorities on the public housing side because who really
20 gets harmed when HUD says we're taking away the money, or
21 when the IG says there's been a finding here and there
22 has to be a repayment, and it can't come from federal
23 funds? Well, who's really being harmed in that regard?
24 And that's the balancing act.

25 I could tell you -- don't write this down -- I'm not

1 prepared to say failure to -- I guess I'd have to look
2 historically. Have we ever withheld someone's money if
3 they're late filing their IHP? You have? And withheld
4 it and never given it back, or withheld it, but has it
5 gone forward afterwards, an instance where someone has
6 not filed a waiver and not gotten money?

7 MS. GORE: Yeah.

8 MS. HENRIQUEZ: Really? Okay. That doesn't
9 help where that was going to go for me. I think I'm
10 going to shut this off now for a moment.

11 MR. SUNOO: Yes, Henry?

12 MR. CAGEY: Your attorneys are really doing
13 their best to protect HUD. It's their job to protect
14 HUD. And again, if we have to sue the HUD over a waiver,
15 the deadline, then there's something wrong with the
16 system. If we have to go back and sue the HUD for a
17 waiver request on a denial or funding, there's something
18 wrong with the system.

19 So, again, is that -- there's no reason in this
20 rulemaking committee that you can't agree to a compromise
21 in holding the Secretary accountable if his people fail
22 to act. So, again, everything is put on us.

23 We may have to go back and ask for a solicitor's
24 opinion or ask for some other opinion on these waiver
25 requests and deadlines.

10 So it's not that we're not negotiating. It's that
11 -- and you're right. We may have come to a point where
12 we can't get to consensus on this but for real statutory
13 legal reasons.

20 MR. SUNOO: Okay. I think where we're at
21 right now then is there's a response by the federal side
22 to the request to put the consequence of either denial or
23 approval of a waiver if they don't meet a deadline.

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1 of deadline of days to respond to a case; is that
2 correct?

3 So I guess we should ask the committee what your
4 pleasure is on this. Do you want to -- would you like to
5 take half an apple, or do you want to just leave it?
6 What's your pleasure on this?

7 MR. ADAMS: I guess we've heard two sides of
8 this very clearly now for quite some time. I guess I
9 would ask for consensus on the proposed language that HUD
10 has put on the table and see where we go.

11 MR. SUNOO: See where we're at with that?
12 Okay. So can I ask for consensus on the -- who's in
13 favor? Please indicate. HUD's language, anybody in
14 favor? Anybody opposed? Okay. Two opposed.

15 And so now could you clearly state your reasons for
16 objection, and if you could offer any suggestions for how
17 to bring us to consensus?

18 MS. FOSTER: Karin Foster, Yakima. This
19 isn't a major point, but it is in practice. There needs
20 to be a notification requirement there. There's a
21 sentence that -- I can't see it when I'm turned around,
22 but it has to do with when HUD acts.

23 Shall decide between -- shall decide within 45 days.
24 If you look back to the Section 114, which does contain a
25 similar kind of -- well, the kind of requirement I think

14 MS. HENRIQUEZ: I assumed it was always in
15 writing, but to clarify, you're right.

18 MS. HENRIQUEZ: Right.

20 MR. ADAMS: So is there a proposed language
21 change that gets --

24 MS. FOSTER: It's hard to do this turned
25 around. The second sentence, which I won't try to

1 quote --

2 MR. SUNOO: Why don't you do it this way,
3 Karin.

4 MS. FOSTER: Okay. Thank you. That's
5 helpful, Jan.

6 HUD shall notify the recipient in writing within 50
7 days of receipt of the waiver request, whether the
8 request is approved or denied. That would be in the
9 second sentence.

10 And at the end of where it says waiver request, you
11 need to say whether the request is approved or denied,
12 because we're not saying what HUD notifies the recipient
13 of.

14 MR. SUNOO: HUD shall notify the recipient in
15 writing in 45 days of receipt of the waiver request,
16 whether the request is approved or denied.

17 MS. FOSTER: Thank you. That's the proposal.

18 MR. SUNOO: Yes, Henry?

19 MR. CAGEY: Again, I objected mainly because
20 it's a principle for me, Sandra. Again, the failure to
21 act, you may want to go back and look at the failures to
22 act throughout the system.

23 Maybe we have -- maybe it's an opportunity for you
24 to review these things that HUD is required to do under
25 the statute that they're failing to act on. You may want

1 to go back and ask your people to find out to know where
2 else in the system besides waivers we are failing to act
3 in a timely manner.

4 As a compromise, what I would ask Sandra is get your
5 system to review itself and look at how many times has
6 this happened throughout the year. How many times has
7 this happened when we can't get a response from HUD? And
8 look at what it's going to take to clean up that system
9 on acting and deciding things in a timely manner.

10 So, again, I objected because mainly it's a
11 principle for me, and I think that HUD needs to be held
12 accountable just like us. And, again, we have example
13 after example where the HUD has been failing to respond.

14 MS. HENRIQUEZ: So I need a little help
15 understanding what those examples are. So if people have
16 examples that they would like to share with me, I'd like
17 to know that because I see the waiver requests that
18 come --

19 MR. CAGEY: Not waiver requests.

20 MS. HENRIQUEZ: So I'd like to know what
21 those are and what -- I'd just like to know what they are
22 and when they've occurred. And part of it -- I
23 understand there may be a total historical perspective if
24 you go back maybe three, four, seven years. I don't know
25 the body of the issues and the scope.

9 MR. KAZAMA: I want to enforce the protocol.
10 If there's an objection, I want wording up there that
11 corrects it. I don't want philosophy. Let's get to the
12 work at hand here.

17 MR. SUNOO: We have a -- yes?

24 MR. SUNOO: Again, we're taking a vote on the
25 last change.

1 MR. ADAMS: So let's call for consensus on
2 the changed language.

3 MR. SUNOO: Okay. Then we can move forward.
4 So all in favor of the language the way that it is
5 currently put with Karin's correction indicate by showing
6 yes, thumbs up. Any opposed? Okay. It passes. Thank
7 you. Let's move on.

8 MR. ADAMS: It passed? Okay. Thank you.
9 So essentially the change as proposed rewords 226 to
10 227. The new language becomes 226, and so the rest of
11 our proposal goes away.

12 The next item we have is item numbers -- I'd like to
13 handle this -- well, first of all, on your chart it has
14 -- and I'm working off of the previous yellow copy. It's
15 actually document No. C-167 is the document I'm operating
16 off of. I think that was what was put on our chairs
17 yesterday morning.

18 It has NAIHC worksheet Item No. 7 and 8, and it's on
19 local cooperation agreements. We actually had a new
20 issue come into our work group yesterday. And it's not
21 specific to the changes in the statute at 101(c), but it
22 was an issue that was sent out to I think several of the
23 committee members, and we shared it with the work groups
24 yesterday. It's an issue that was specific to Alaska,
25 and was --

1 MR. SUNOO: Excuse me, Jason. What number is
2 that document?

3 MR. ADAMS: The document that we've condensed
4 this to and we have the proposed language on is C-174.

5 MR. SUNOO: C-174?

6 MR. ADAMS: Yeah. At the top of the page it
7 says, Section 1000.241 and 1000.504. Everyone should
8 have that. We handed that out yesterday.

9 So the proposed regulation at Section 1000.241 is do
10 federally recognized tribes and TDHEs within the
11 Unorganized Borough in Alaska have to enter into Local
12 Cooperation Agreements with the State of Alaska? And the
13 simple, quick answer to the question is no.

14 This is an issue that Mr. Vollentine shared with us.
15 I think he's handing out the background information to
16 that issue. I thought we hoped to get that out to
17 everyone yesterday, but it appears that did not happen,
18 and so we're sharing that with you now.

19 But the background information and -- I don't know
20 if we want Mr. Vollentine to go into the information or
21 what the history is on this issue, but this issue is just
22 an issue specific to Local Cooperation Agreements in the
23 State of Alaska dealing with the Organized Borough as I
24 understand it.

25 If you have any questions, I would give those

1 questions to Mr. Vollentine. Otherwise, we'd ask for a
2 consensus on this item as its own item, 1000.241.

3 MR. SUNOO: Any questions? Yes, Larry?

4 MR. COYLE: Jason, this was waived by our
5 Assistant Secretary for Alaska.

6 MR. ADAMS: Yes. That's part of the
7 documentation that was presented is that the -- there was
8 a waiver request, and that HUD had done this. So that no
9 further waiver request is needed by other tribes, this
10 action will clarify that issue for all future references
11 to the Unorganized Borough, correct, Mr. Vollentine?

12 MR. VOLLENTINE: Yes, that's correct.

13 MR. SUNOO: Any other questions? Okay, call
14 for a vote. All in favor? One moment. Yes?

15 MS. HENRIQUEZ: If I might, I'd like to have
16 our legal counsel explain the legal position on this.
17 While I granted a waiver, which is talked about here,
18 there are different implications when it comes to the
19 actual changing of a statutory issue with the
20 federal-state relationship, and I'd like them to explain
21 it.

22 MR. ATALLAH: Good morning. Jad Atallah,
23 attorney for HUD. First of all, this issue did -- we
24 understand this is an issue, at least for the Alaskan
25 villages and the Organized Borough in Alaska that they've

1 had some significant challenges in terms of securing a
2 Local Cooperation Agreement.

3 So we understand that the issue first came up when
4 the Alaskan tribes were looking to secure a Local
5 Cooperation Agreement. Because of the nature of the
6 Unorganized Borough in Alaska, there's no governing body.
7 And our counsel in Alaska at the time, our chief counsel,
8 provided an opinion to our Alaska office saying that,
9 well, for purposes of NAHASDA, because under Alaska law,
10 there's no governing body in the Unorganized Borough.
11 The Alaska constitution says that the State Legislature
12 is the governing body.

13 And so he's provided an opinion saying that the
14 tribes have to secure a Local Cooperation Agreement with
15 the State Legislature.

16 Obviously, it was very challenging. The tribes that
17 had to go through this documented well their efforts to
18 secure that Local Cooperation Agreement and eventually
19 were not able to naturally because the State Legislature,
20 and we totally understand, is either not receptive or is
21 not efficient enough to address it in time.

22 As a result, the waiver request did come in through
23 -- the statute does authorize HUD to grant a waiver of
24 the Local Cooperation Agreement requirement, and the
25 Assistant Secretary went ahead and granted that waiver.

15 We have a problem with codifying this in the
16 regulations for several reasons really. No. 1, it sort
17 of pushes up against the state in terms of what we can
18 tell the states about their taxation authority, and that
19 might be problematic from our standpoint.

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1 don't have to secure it from the State Legislature may
2 defeat the purpose and may be contrary to the statute.

3 I think the way we get around it is through the
4 waiver. And our position is that because of these legal
5 issues that are implicated with the State of Alaska, we
6 would rather not have a regulation that specifically says
7 the State of Alaska is not the local governing body, but
8 rather have the waiver take care of that.

9 And I think it achieves what we're trying to achieve
10 here, but I don't know if a regulation is the way to go,
11 specifically our chief counsel's position in Alaska at
12 the time thinks from a legal standpoint it's a problem.
13 So I think the waiver is the way to go, and that's our
14 position.

15 MR. VOLLENTINE: Mr. Chairman?

16 MR. SUNOO: Yes?

17 MR. VOLLENTINE: Jim Vollentine. You know,
18 basically we're challenging HUD counsel's determination
19 that the State of Alaska is a local governing body
20 because that's almost ridiculous when you think about it.

21 The statute says the tribe must enter into a
22 Cooperation Agreement with the governing body of the
23 locality. The governing body of the locality is not the
24 State of Alaska.

25 Although the state has authority under the Alaska

1 constitution as an assembly would in an Organized
2 Borough, it hasn't exercised any authority. It doesn't
3 impose taxes. It doesn't provide services in these
4 villages, and it's not the local governing body. The
5 local governing body is a tribe or a potential city that
6 could be created there. It's just simply not the local
7 governing body, and you can read the statute that way.

8 So I don't know why HUD took this -- you know,
9 Anchorage Chief Counsel took this almost ridiculous
10 position that the State of Alaska is a local governing
11 body. I mean, it just doesn't make sense. And so if the
12 state isn't the local governing body, then there's no
13 reason for us to enter into a Cooperation Agreement with
14 it.

15 Now, the problem with the waiver is that Sandra is
16 not always going to be here, and things change, and you
17 could get somebody else in there that might not grant a
18 waiver.

19 I don't know if our representative ABCP is here, but
20 they spent months and months and months trying to deal
21 with the state. The state has no agency or anything to
22 deal with with native villages.

23 It couldn't do anything. They said what do you mean
24 we're the local governing body? They don't even consider
25 themselves the local governing body, so I don't see what

1 the problem there could be with the State of Alaska. It
2 doesn't tax. The land's basically tax exempt, and it
3 doesn't provide services, and it's not a local governing
4 body. That's the main thing. It's not local.

5 MS. HENRIQUEZ: Let's ask just a couple
6 layman's not legal mind questions here. One is, before
7 my waiver, was there a previous waiver in place?

8 MR. VOLLENTINE: There was nothing. I don't
9 know where this idea came up.

10 MS. HENRIQUEZ: Okay. So if there was
11 nothing in place, what happened with the Cooperation
12 Agreement?

13 MR. VOLLENTINE: There weren't any.

14 MS. HENRIQUEZ: There weren't any?

15 MR. VOLLENTINE: No. No one's ever entered
16 into a Cooperation Agreement with the State of Alaska.

17 MS. HENRIQUEZ: My second question is this
18 local governing body issue. So I understand your point
19 that you don't consider the Alaska Legislature as the
20 local governing body, but you did say that it could be a
21 village. What are the local governing bodies as you see
22 them?

23 MR. VOLLENTINE: Either the tribe or a
24 municipality in a village, or there may not be a
25 governing body that taxes or provides services. So it's

1 possible there just isn't one, and that's what we're
2 saying here. In most of the cases there just isn't.
3 There isn't a taxing authority in the village, so there's
4 basically no local governing body.

5 MS. HENRIQUEZ: And, therefore, public
6 services are not rendered?

7 MR. VOLLENTINE: Well, there's services
8 rendered that the state renders to citizens as a whole.

9 MS. HENRIQUEZ: Fire, police and something
10 that they --

11 MR. VOLLENTINE: Well, they don't deal with
12 fire protection. You know, they have a village public
13 safety officer program, but I think that these
14 Cooperation Agreements in this Section 101 deals with
15 services provided to the housing, not just general
16 services that a government provides as a whole.

17 MR. SUNOO: Blake, did you want to add
18 something?

19 MR. HOFFMAN: Good morning. For the record,
20 Ron Hoffman. I'm the President and CEO for ABCD Housing
21 Authority based in Bethel, Alaska. I serve 49 tribes.
22 Within my organization I have 26 unincorporated
23 communities in an Unorganized Borough. As a result of
24 that, it is a big problem primarily because the state is
25 not complying with Section 102 because I cannot enter an

1 agreement with the State of Alaska.

2 Now, the Legislature would have to go and act on
3 this particular situation. Unfortunately, they're
4 reluctant to do so. Therefore, it is problematic for
5 Alaska.

6 Within my region and in any Unorganized Borough no
7 taxation exists, period, and that is a concern. There's
8 no borough. There's no taxation enforced in the borough.

9 All the houses that I build, which is roughly close
10 to two thousand, they're not subject to any taxation
11 whatsoever. That also applies to the other privately
12 owned homes situated in my respective region. There is
13 no taxation to the individual homes, nor we're subject to
14 any taxation whatsoever. There is no enforced taxation.

15 Now, in regards to -- well, first of all, I'd like
16 to thank you for allowing and granting the waiver, and I
17 think where we're coming from is we'd like to go ahead
18 and have a permanent fix to this particular issue.

19 And I agree with Jim. The State of Alaska, they're
20 not the local governing body, they're not. They don't
21 have that authority. Are you saying your interpretation
22 is that the municipality of Anchorage is governed by the
23 State of Alaska?

24 MS. HENRIQUEZ: No.

25 MR. HOFFMAN: Is the city of Bethel where I

4 MR. HOFFMAN: And this is a debatable issue,
5 and I think what we have to do is just explore a possible
6 solution whether or not -- I don't know whether or not it
7 conflicts with statutory language. I cannot interpret
8 that. I'm not an attorney, but what I'm saying is that
9 it's a problem. It's creating a hardship.

15 I further would like to advise within the 26
16 unincorporated communities, the federally-recognized
17 tribes are the service providers. They are the
18 protectors of the tribal and other members of that
19 particular community.

25 MS. HENRIQUEZ: I understand. I should move

1 to Alaska because you don't -- right now the state has
2 the taxing authority. They just choose not to exercise
3 it at this point.

4 MR. HOFFMAN: That is correct, and
5 traditionally the Federal Government can trump state law,
6 right?

7 MS. HENRIQUEZ: Well, generally, yes.
8 There's a federal preemption in general.

9 MR. HOFFMAN: I think this particular
10 regulation would allow us to continue in providing
11 affordable housing services without an obstacle in order
12 to provide this service.

13 MS. HENRIQUEZ: But in the case of tax law,
14 and I'm not an attorney, so correct me, but in the case
15 of tax law HUD or the only regulatory body that on a
16 federal level has federal preemption around taxation with
17 the states would be the IRS.

18 So if we were to do something here in NAHASDA
19 without it coming out of the Treasury, we're still a
20 problem. So we would -- federal preemption doesn't take
21 that effect out of HUD federal law preempting taxation
22 because that's an IRS jurisdictional issue at the federal
23 level dealing with the state.

24 MR. ATALLAH: And it's really more of an
25 issue of -- it's a federal limit issue in terms of --

1 you're right. Preemption can be done. It's very suspect
2 when it's done through regulations, federal regulations
3 that preempt state law, but it can be done.

4 A bigger concern is not just that. It's the
5 requirement in NAHASDA that every recipient secure a
6 Local Cooperation Agreement, and then there's a specific
7 congressionally set waiver process.

8 If we promulgate a regulation like this, the concern
9 is that the regulation in some respects conflicts with
10 NAHASDA because NAHASDA requires you to try to secure
11 this Local Cooperation Agreement.

12 Your remedy, if you cannot do so, is the waiver.
13 And I promise you, we are so sympathetic. And with Local
14 Cooperation Agreements, generally we've been very, very
15 liberal in terms of granting the waivers.

16 We just have a legal concern about, No. 1, limiting
17 the state's, under state constitution law, ability to tax
18 properties, even though they don't -- right now
19 technically they can.

20 And second of all, concerns with NAHASDA; and third
21 of all, if they are providing services, from a policy
22 standpoint there may be implications in terms of if they
23 provide police services and so forth. Does the State of
24 Alaska cut services when we promulgate a regulation like
25 this that said they don't have to secure that Local

1 Cooperation Agreement? I don't know, but it's a concern
2 from a policy standpoint.

3 MR. HOFFMAN: Well, my interpretation of this
4 regulation is it's a bad regulation. And I don't want to
5 go and beat it to death, but I could -- I understand
6 where HUD's coming from.

7 And it appears that it's not going to go anywhere
8 with the objection under the protocol requirements that
9 you would have to obtain full consensus in this respect.
10 But, again, the way we're -- how long is it good for? I
11 mean, that's our...

12 MR. ATALLAH: And I can answer that, too.

13 MS. HENRIQUEZ: But that is the question I
14 just asked because I was asking is there a way to put the
15 waiver in perpetuity in place? And I get the luxury of
16 asking that question because I'm not an attorney. I was
17 right there with you, but we can't get there that way.

18 MR. HOFFMAN: If I may, Madam and Blake,
19 Alaska is situated in a lot of wetlands, and we had a
20 blanket -- I think it was a blanket waiver to accommodate
21 that particular regulation. So we didn't have to go
22 ahead and file every time for a development to build
23 within a wetland area.

24 I mean, you can imagine how time consuming that
25 would be, especially when you're dealing with multiple

1 land owners and federal reserves and whatnot.

2 And again, Alaska is so unique because there's
3 regional corporations that are the land owners in the
4 respective villages. There's tribal lands under other
5 programs as well that is not subject to taxation, and I
6 guess are we going to get an opinion in regards to the
7 blanket waiver?

8 MS. HENRIQUEZ: I just asked and was told we
9 can't. It would stay in effect as long as I'm around,
10 and then someone would have to come back in my position
11 and re-execute that kind of thing, or it stays in for as
12 long as nobody else undoes it.

13 So it could remain in place because the next
14 Assistant Secretary isn't told about it, doesn't figure
15 it out, doesn't look at it, and it just continues on.

16 You mentioned a blanket waiver on the environmental
17 wetlands. I'm assuming that was a blanket waiver that
18 came from the State of Alaska as opposed to federal?

19 MR. HOFFMAN: I really cannot answer you
20 truthfully in that respect.

21 MS. HENRIQUEZ: That's normally a local -- a
22 state jurisdictional issue.

23 MR. SUNOO: Leon, and then Susan.

24 MR. JACOBS: I guess my question is should we
25 just limit this to Alaska? Are there areas in all of

1 NAHASDA that this should be addressed and so forth? I
2 think there was a question that Ed Brooks brought up from
3 North Carolina as well.

4 MR. SUNOO: Yes, Susan?

5 MR. HOFFMAN: Mr. Chair?

6 MR. SUNOO: Go ahead.

7 MR. HOFFMAN: Could I propose something for
8 the committee to consider that a blanket waiver be
9 considered during the reauthorization of NAHASDA, and
10 that it could be brought up during the next
11 reauthorization, and this is specifically related to the
12 waiver, the HUD waiver.

13 MS. WICKER: I'd like to turn my time over to
14 Tim.

15 MR. HUMPHREY: Tim Humphrey, Stetson Law
16 Offices. Not to disagree with my brother from Alaska, I
17 would like to say I do not understand HUD's position at
18 all in this situation.

19 In the lower 48, we have tribes that exist within
20 states. The position that's been taken by HUD would seem
21 to suggest that if the state provides any services on
22 that reservation, the tribes would have to enter into
23 Cooperative Agreements with the state.

24 This is not saying that the -- the proposed
25 regulation is not saying that Local Cooperative

1 Agreements are not required. It's simply saying that the
2 State of Alaska is not an entity with which they have to
3 enter into a Local Cooperative Agreement.

4 There's nothing in the statute that requires anybody
5 to view the state as a local government. And if you look
6 at most state constitutions, they separate the state from
7 the local governments.

8 So I think it's an easy fix for the Unorganized
9 Boroughs. That does not go against the statute. It does
10 not go against IRS taxing requirements. And if there's a
11 failure to deal with this, it could technically impact
12 the lower 48.

13 MR. SUNOO: Okay. Carol?

14 MS. GORE: May I offer a suggestion? It
15 seems to me the problem is really having to ask for a
16 very complicated waiver process on an annual basis. I
17 wonder if HUD would consider once that waiver is given,
18 if a tribe submits a certification on an annual basis to
19 HUD that certifies nothing has changed with regard to a
20 local government, if HUD would accept that instead of a
21 resubmittal of a very complicated process, that would at
22 least be one step in the right direction for efficiency.

23 MR. SUNOO: So a yearly extension?

24 MS. HENRIQUEZ: As I understand it, the
25 waiver, once it's given, remains in full force and

1 effect. So I don't think you have to do an annual
2 resubmission or certification of it; is that correct?

3 But let me -- we would like to propose something
4 else that doesn't necessarily get us the language here,
5 but I'd like to put a HUD counsel, someone, an attorney
6 for the Alaska -- maybe someone at the Alaska State
7 Legislature Council level together to talk about -- I
8 don't know if it makes sense to talk background to try
9 and figure out if there's some meeting of the minds on
10 this issue, that we then could propose a reauthorization,
11 or even prior to reauthorization. That might be helpful,
12 but at least to put some minds together in a room to talk
13 about it, but the waiver is good to go and will stand.

14 MS. GORE: So just to clarify if I could as a
15 follow up, we are under the misunderstanding that we have
16 to submit that request on an annual basis. And so if we
17 don't have to submit on an annual basis, that's already a
18 step in the right direction. I think that's from Ron
19 Hoffman.

20 MS. HENRIQUEZ: On the Cooperation Agreement,
21 we're saying if you tried and you can't get anywhere and
22 you've asked for the waiver and this stands, you should
23 be good to go for as long as you're good to go as long as
24 this is here.

25 MR. SUNOO: Karin?

1 MS. FOSTER: Karin Foster, Yakima Nation
2 Housing Authority. This isn't an issue I've looked at or
3 researched, but I know the gentleman behind you probably
4 has. And I'm very interested in their idea of the
5 language "governing body of the locality" and what that
6 is intended to mean, and it seems reasonable to me that
7 that language could be interpreted to mean local
8 government.

9 And if there's nothing else in the legislative
10 history or something I don't know about in other statutes
11 you could borrow from that would lend any other meaning
12 to that than local government, I don't see why we
13 couldn't adopt a regulation that simply states for
14 purposes of that particular section of the act that
15 governing body of the locality means a local government.
16 I think that would take care of the problem because local
17 government is a recognized term in federal law.

18 MR. SUNOO: Jason?

19 MR. ADAMS: I think it's obvious we're not
20 going to have consensus on this, so I'd call for a
21 consensus just we can close the record on this and move
22 on. Maybe the attorneys want to visit and bring this
23 issue back at a later meeting.

24 The one comment I do want to make is it's a little
25 frustrating to me, being the chair of a work group, when

1 we have the work group working on these issues and HUD
2 gives their thumbs up from the work group, and then it
3 hits the floor and then all this happens, it's just
4 really discouraging to see that happen because I thought
5 this was a five-minute issue because we have the
6 agreement from HUD in the work group. There was no
7 comments made there.

8 MS. HENRIQUEZ: That concerns me because I'm
9 -- who did that? I just need to know because I would
10 agree with you in that regard.

11 MR. ADAMS: So with that, Mr. Facilitator,
12 I'd ask for consensus on this issue.

13 MR. SUNOO: Okay. But I think we also are
14 aware that we can also table it until this gets resolved
15 another way. Is that okay?

16 MR. ADAMS: I don't think our protocols have
17 anything in there about tabling issues. It's up or down.

18 MR. SUNOO: Okay. Let's call consensus on
19 this issue, proposed Regulation 241. All opposed?

20 MR. ADAMS: Okay. Thank you. We can move
21 on.

22 Then the next item is on the bottom of that same
23 page, Section 1000.504. And basically all we have there
24 is that as you look in the regulations at 504, it talks
25 specifically to performance objectives, and that was

1 something that we noticed in going back and making sure
2 we have our bases covered that this section here. 504
3 says, what are the recipient performance objectives?

4 And with the changes in the statute, there are no
5 more performance objectives. And so our work group
6 recommendation is that Regulation 1000.504 just be
7 deleted, and I'd ask for a consensus on that.

8 MR. SUNOO: Okay. All in favor of deleting?
9 Any opposed? It passes.

10 MR. ADAMS: Okay. Thank you very much.

11 Then the next item we have is -- it's kind of
12 encompassing both 7, 8, 9 and 10, and it's the item that
13 is titled -- at least the sheet I have is it's a
14 draft-looking form. It's document No. C-171, and it's
15 titled 1000.244 and 1000.246.

16 These are new sections to the regulation in regards
17 to Local Cooperation Agreements and exemption from
18 taxation. And so I will read the new section, and we'll
19 take these -- I would like to take these together if we
20 could.

21 1000.224 says if the recipient has made a good faith
22 effort to negotiate a Cooperation Agreement and tax
23 exempt status but has been unsuccessful through no fault
24 of its own, may the Secretary waive the requirement for a
25 Cooperation Agreement and a tax exemption?

1 The answer is yes. Recipients must submit a written
2 request for waiver to the recipient's very own act. The
3 request must detail a good faith effort by the recipient,
4 identify the housing units involved and include all
5 pertinent background information about the housing units.

6 The recipient must further demonstrate it has
7 pursued and exhausted all reasonable channels to it to
8 reach an agreement to obtain tax exempt status, and that
9 failure to obtain the required agreement and tax exempt
10 status has been through no fault of its own.

11 The area owner before the request, its
12 recommendation, comments and any additional relevant
13 documentation to the Deputy Assistant Secretary for
14 Native American programs for processing to the Assistant
15 Secretary, so that is a new section, 1000.244.

16 1000.246, the question is how must HUD respond to a
17 request for waiver of the requirement for a Cooperation
18 Agreement, and, again, a tax exemption?

19 A, HUD shall make a determination to such request
20 for a waiver within 30 days of receipt or provide a
21 reason to the requestor for the delay. Identify all
22 additional documentation necessary, and provide a
23 timeline within which a determination will be made.

24 B, if the waiver is granted, HUD shall notify the
25 recipient of the waiver in writing and inform the

1 recipient of any special condition or deadlines with
2 which it must comply.

3 C, if the waiver is denied, HUD shall notify the
4 recipient of the denial and the reason for denial in
5 writing. If the request is denied, IHBG funds may not be
6 spent on a housing unit. If IHBG funds have been spent
7 on a housing unit prior to the denial, the recipient must
8 reimburse the grant for all IHBG funds expended.

9 I would ask for a consensus on this language.

10 MR. SUNOO: Okay. Yes, Judy?

11 MS. MARASCO: I want to address this comment
12 to Carol. Is this where you want to put in that the
13 waiver is going to stand?

14 MS. GORE: Thank you, Judith. I was going to
15 ask. Is this a place where we might clarify that a
16 waiver continues to stand beyond a one-year period,
17 because then there's confusion amongst the area ONAP
18 offices.

19 MS. HENRIQUEZ: A waiver stands until it is
20 revoked? So it could be that if I were to table a waiver
21 today and tomorrow your waiver -- and the next person
22 coming in could undo it. So I don't know if we can -- if
23 I can obligate beyond. Whether a grant will be waived,
24 I'm not sure. Oh, so it just stays in place until it's
25 revoked. That language can go in here.

1 MS. GORE: That would be helpful.

2 MR. SUNOO: Can somebody propose some
3 language for B? Do you want to add that?

4 MS. GORE: Well, I'll offer a sentence. I'm
5 not an attorney, but maybe at the end of "the." The
6 waiver shall stand until it's revoked by HUD. That seems
7 simple.

8 MR. SUNOO: Simple, to the point.

9 MS. GORE: Marvin is going to help me.

10 MR. SUNOO: Such waiver shall remain
11 effective until revoked by HUD. So we can add that
12 sentence to the end of B, such waiver shall remain
13 effective until revoked by HUD.

14 Yes, Marvin?

15 MR. JONES: Might I make a suggestion that
16 you need or could consider a -- just don't put HUD
17 because that might allow the local office to revoke it,
18 so maybe you want to say the Secretary or something like
19 that.

20 MR. SUNOO: Who has the power to revoke that?

21 MS. GORE: Thank you, Marvin.

22 MR. COYLE: Who has the power to approve it?

23 MS. HENRIQUEZ: The Secretary of the
24 delegation can speak to that.

25 MR. SUNOO: By the Secretary?

1 MS. MARASCO: That should be the same person
2 that has the power to revoke it.

3 MR. SUNOO: So such waiver shall remain
4 effective until revoked by the Secretary or designee? I
5 don't know. What should we put there?

6 MS. HENRIQUEZ: I would say appropriate HUD
7 official because in our internal pecking order, it has to
8 be one of two -- the Secretary, the Deputy Secretary or
9 the Assistant Secretary, so depending on where that is,
10 but generally it's devolved to the Assistant Secretary.

11 MR. SUNOO: So until revoked by the
12 appropriate HUD official. Is everybody okay with that?
13 Yes, Karin?

14 MS. FOSTER: I'm not sure I'm okay with that
15 because I'm not sure that the appropriate HUD official is
16 going to be clear enough to be understood in practice.
17 And I guess if we don't know if it's going to be the
18 Deputy, the Assistant or the Secretary, I think we should
19 say until revoked by the Deputy, the Assistant or the
20 Secretary. I think it's going to be interpreted as a
21 local official or not being appropriate. I find the term
22 appropriate official to be too vague.

23 MR. SUNOO: Yes, Jack?

24 MR. SAWYERS: The Secretary's the one who has
25 the authority. He may assign other people to do that,

1 but doesn't the Secretary have the authority? It would
2 be the Secretary no matter who signs the order, so let's
3 put Secretary if that's all right with you.

4 MR. SUNOO: Okay. Until revoked by the
5 Secretary.

6 MS. HENRIQUEZ: Right. And the Secretary --
7 and internally there may be a delegation down to the
8 Assistant Secretary, but he really does have or the
9 person in that position does have the power to say at
10 what level. So does that work if we leave it at
11 Secretary?

12 MR. SUNOO: Jason?

13 MR. ADAMS: I think that's appropriate
14 because the statute states the Secretary may waive the
15 requirements of the subsection, so to be consistent it
16 should be the Secretary.

17 MR. SUNOO: Okay, good. Any other concerns?
18 Are we ready to vote on this? All right. All in favor
19 of the entire reg? Any opposed? It passes.

20 MR. ADAMS: We're moving right along here.
21 The next item I have is Item No. 11 under NAIHC worksheet
22 Item No. 11. It's dealing with housing community
23 development activities.

24 And these items, Items 11 and 22, my next and last
25 two items, were completed a couple of meetings ago and

1 ready for negotiation. And so they're on these old
2 forms, or before they were actually ready before the form
3 was implemented, and so I've asked them -- I think we
4 handed them out last meeting.

5 MR. SUNOO: We had new copies, Jason.

6 MR. ADAMS: And so I apologize for not
7 getting these out again to you yesterday, not realizing
8 that these items were presented to you previously in
9 Denver.

10 This item, the first item then is Issue No. 11. It
11 deals with what are eligible administrative and planning
12 expenses and -- what is this? No, this ain't it. It's
13 these two pages.

14 These were handed out yesterday? These forms were
15 handed out to you yesterday afternoon I'm being told.
16 The first form says Issue No. 11 on top of it, so do you
17 have this? I didn't have it on my -- I didn't receive it
18 yesterday.

19 And the item they are handing out now that's titled
20 table of contents, that has nothing to do with any
21 discussions from our work group at this point, so please
22 don't associate that with the work group product.

23 Co-chairs, maybe it's a good time to take a
24 five-minute, 10-minute break, let our contractor get
25 organized. Then we can come back and hopefully get

1 started again.

2 MR. SUNOO: All right. Let's come back at
3 ten o'clock.

4 (Recess taken.)

5 MR. ADAMS: The next issue we have is on the
6 work progress summary, Item No. 11 on the NAIHC
7 worksheet.

8 MR. SUNOO: Excuse me, Jason. Could we have
9 the attention of everybody, please?

10 MR. ADAMS: And I would ask for consensus on
11 that. Issue No. 11 was handed out again to you here just
12 this morning, and it's dealing with two regulations,
13 1000.236, "what are eligible administrative planning
14 expenses," and 1000.238, "what percentage of IHBG funds
15 can be used for administrative and planning expenses?"

16 Both of these are a result of the change in statute
17 at Section 101, block grants, Subsection H,
18 administrative and planning expenses. There were
19 amendments there.

20 And so the terminology changed in 236, and you see
21 that specific change in letter B. And so that is the
22 only change in 236. It says staff and overhead cost
23 directly related to carrying out affordable housing
24 activities, or comprehensive and community development
25 planning activities can be determined to be eligible

1 costs of the affordable housing activity or considered
2 administrative or planning at the discretion of the
3 recipient. That is just a language change to be the same
4 as the statute change.

5 In 238, probably the more important issue for many
6 folks is we made a change there on the -- and I'll just
7 read the whole section: Recipients receiving in excess
8 of \$500,000 may use up to 20 percent of their annual
9 expenditures of grant funds.

10 It's answering the question what percentage of IHBG
11 funds can be used for administrative and planning
12 expenses?

13 The changes -- the next section, recipients
14 receiving \$500,000 or less may use up to 30 percent of
15 their annual expenditures or grant funds, HUD approval is
16 required if the higher percentage is requested by the
17 recipient. HUD approval is required.

18 HUD must -- when HUD approval is required, HUD must
19 take into consideration any cost of preparing an IHP,
20 challenges to and collection of data, the recipient's
21 grant amount, approved cost allocation plans, and any
22 other relevant information with special consideration
23 given to the circumstances of recipients receiving
24 minimal funding.

25 So those are the changes in those two sections. I'd

1 ask for consensus.

2 MR. SUNOO: Any questions or concerns on that
3 regulation? Carol?

4 MS. GORE: Jason, did the committee talk at
5 all about recipients that leverage money? And let me
6 just clarify my question. NAHASDA encourages leveraging
7 of NAHASDA money. And typically that money would be
8 capital in nature, and it would not include an
9 administrative component.

10 Was there any discussion within the work group of
11 providing an incentive and allowing a higher
12 administrative percentage for those that leveraged their
13 money?

14 MR. ADAMS: I would have to look to the work
15 group, but I honestly don't recall us having a discussion
16 about that opportunity for that. I don't recall that. I
17 don't know if Jennifer or -- not specifically to
18 leveraging. We talked about the effect with the tribal
19 program year and the rolling grant and how it affects
20 that, but not in terms of leveraging money. So if you
21 have a proposed change or language...

22 MS. HENRIQUEZ: Could I just ask a question?
23 So are you suggesting you want to leverage more -- use
24 more of the NAHASDA money, or are you saying that --
25 because I would say if you leveraged money using NAHASDA

1 up to the -- and used the levels that listed that are
2 proposed here, what you took administratively out of
3 non-NAHASDA leveraging, we wouldn't see or want to know.
4 Does that help the issue or not? Am I missing it?

5 MS. GORE: No, let me clarify. If our
6 leveraging is really capital funds that typically doesn't
7 include any operating funds, then that capital money
8 would not provide any administrative support.

9 So as you're leveraging your NAHASDA money and
10 bringing in capital sources, those capital sources have
11 no administrative funds with which to supplement that
12 additional activity.

13 So as an incentive, let's say a tribe -- I'm just
14 going to make up a number. A tribe receives a million
15 dollars in NAHASDA, but they're successful in leveraging
16 that money, whether it's -- let's call it Federal Home
17 Loan Bank. They might -- yeah, Federal Home Loan Bank,
18 and that would be a capital source, and somehow they
19 cobble together enough money to have a \$2,000,000 budget.

20 They still face a limit of that 20 percent because
21 those other sources have no administrative component, so
22 it would be helpful if NAHASDA would allow a higher
23 administrative percentage if there's evidence of
24 leveraging where there's no other administrative source.
25 Did I clarify it, or did I complicate it?

1 MR. SUNOO: Yes, Sharol?

2 MS. MCDADE: Carol, the only thing we did
3 discuss a little bit more in the committee was the fact
4 that we wanted a higher percentage for the smaller
5 tribes. We didn't really get into the leveraging
6 component, but we wanted -- I know that we had some
7 discussion with regards to the smaller tribes because we
8 didn't feel that this was adequate, but again, you know,
9 consensus, so that kind of took away from what we were
10 talking about.

11 MR. SUNOO: Yes, Sandy?

12 MS. HENRIQUEZ: Does the rest of 1000.238 not
13 get to it?

14 MS. GORE: No. We already have up to 20
15 percent. That isn't new, but for small tribes they can
16 do 30 percent. I think that's a good idea.

17 MS. HENRIQUEZ: No, but read on. My copy
18 says, HUD approval is required if a higher percentage is
19 requested by the recipient. And when that happens, we're
20 supposed to take into account a variety of other things.
21 Does that help or not?

22 MR. ADAMS: Maybe the proposal, Carol, would
23 be if you're seeking that approval, adding in leveraging
24 to that list.

25 MS. GORE: I think this language has -- what

1 you just read, Assistant Secretary Sandra, that's new. I
2 think that would be helpful, so I can't -- no?

3 MR. ADAMS: No, that language is existing
4 language.

5 MR. SUNOO: Blake?

6 MR. KARZAMA: Okay. I guess I want to put in
7 dollars and cents clarification working off of what Carol
8 has said. NAHASDA receives a million dollars. You
9 leverage the million dollars.

10 Normally, you would get 20 percent of the million
11 dollars for administration, but you've leveraged it to
12 gain another million dollars for two million. So can I
13 get 20 percent off of the \$2,000,000? Is that what this
14 is saying? That's what Carol is talking about.

15 I would have to then remain at the 20 percent of the
16 NAHASDA funds, but it works against us to go up and try
17 to leverage and get more money at the second million
18 dollars because now our administrative cost is
19 significantly less to the overall budget at the 20
20 percent NAHASDA money. That's what we're saying here.

21 MS. HENRIQUEZ: But this initial language
22 doesn't get it?

23 MR. KARZAMA: I just wondered if it gets it,
24 but I want to be able to leverage off the two million if
25 I can. Then if I'm going after more money for my

1 operation, I want the 20 percent off the two million, not
2 the million.

3 MR. SUNOO: Carol and Blake, do you guys have
4 any kind of proposed language correction or clarification
5 on this?

6 MS. GORE: Okay. I'll throw something out.
7 Let me just throw out a phrase. If a recipient can show
8 evidence of leveraging, HUD may approve the use of
9 NAHASDA for up to 25 percent for admin costs.

10 I'd just like it to be specific and clearly about
11 leveraging, and not about providing -- I don't know what
12 that approval process is. I mean, I could see myself
13 getting into data collection and what this refers to.

14 So a simple statement that might provide a
15 percentage, I'm just throwing that out, but that would be
16 immensely helpful to those of us that are leveraging.

17 MR. SUNOO: Marvin?

18 MR. JONES: We did have a discussion, not on
19 this particular issue, but when people were bringing up
20 various examples of how they may be spending 50 percent
21 or 75 percent of their grant for what they were terming
22 administration and planning, in some of those cases we
23 referred people to the 1000.236(b) provision where the
24 staff and overhead costs could be determined not to be
25 administration and planning, but rather direct costs.

1 is per tribe? Then could we have language that mentions
2 that per tribe?

3 MR. ADAMS: It is per grant, so it is per
4 each tribe. I guess I'm not understanding.

5 MS. HENRIQUEZ: It depends on how your IHP
6 rolls out, though, right? So you might want to think
7 about how you ask.

8 MR. BUSH: The way this is worded and by
9 striking out, the percentage, you mean housing plan. It
10 looks like it's a cumulative total. I had the same
11 question that it looks like it's a cumulative total.

12 And I'm an umbrella Housing Authority, and grants
13 vary. I'd love it to say per IHBG, but even then that
14 creates a problem because if you look at Northern Circle,
15 Northern Circle submits one Indian Housing Plan for nine
16 tribes. It's collective, so that's real tough when you
17 look at, gee, it's nine different tribes. And obviously
18 they all get a different allocation, but it's contained
19 into one Indian Housing Plan.

20 So even saying per grant isn't correct, and even per
21 IHP isn't correct. It has to be per allocation. It
22 can't be the recipient. It has to be targeted toward
23 that funding to that specific tribe for that year.

24 What I'm saying is there's umbrella housing
25 authorities out there currently that has one IHP and one

1 grant agreement. They don't sign eight or nine different
2 grant agreements. They don't submit eight or nine
3 different Indian Housing Plans.

4 The regs allow them to submit one and have one grant
5 agreement, but it doesn't take into account that there is
6 actually eight or nine tribes.

7 MR. SUNOO: Jack?

8 MR. SAWYERS: Getting back onto the original
9 of what Carol was talking about, can you just say that
10 the total cost or the total -- not your total grant, but
11 your total cost, including 20 percent of whatever you
12 leverage, to specify that there would be 20 percent, I
13 don't think anybody argues with that.

14 It's just if you've got two million instead of a
15 million, you shouldn't have 20 percent of the two
16 million, and people like you can write that in. I can
17 just tell you how I feel.

18 MR. SUNOO: Marvin?

19 MR. JONES: And I agree with that after
20 thinking about it because the only way you can use
21 NAHASDA funds to leverage is that you adopt all of the
22 NAHASDA requirements with that leveraged funds. So it
23 only makes sense that the combination of those is where
24 you would if you're consistent and applying the NAHASDA
25 requirements.

1 MR. SUNOO: Is HUD in agreement with that?

2 MS. HENRIQUEZ: We may have a difference of
3 opinion. I'm not sure.

4 MR. ADAMS: I think before we go any further,
5 we need language so that we can all negotiate on what the
6 language is going to say to accomplish that end. I agree
7 with that also.

8 MR. SUNOO: I just want to state in theory
9 and principle we're in agreement with that concept.

10 MR. SAWYERS: I'll have my best people on it.

11 MR. SUNOO: Yes, Sandy?

12 MS. HENRIQUEZ: Can I ask a couple questions
13 for clarification?

14 MR. SUNOO: Yes.

15 MS. HENRIQUEZ: You have a million in
16 NAHASDA. You leverage another million. When you
17 leverage that money, it may or may not have admin funds
18 attached to it, right? So you're assuming generally it
19 does not? It's strictly capital and doesn't support any
20 administrative costs? Okay.

21 When you also bring in that million dollars of extra
22 leverage, do you then treat it or is it then bound by
23 NAHASDA in terms of its application and how you use it?

24 Okay. So you've sort of taken private money and
25 "NAHASDAized" it, if you will, theoretically. Not all

1 the time, but that's theoretically what you're asking in
2 terms of this question?

3 And then are you suggesting you want them to take an
4 additional 20 percent out of that leveraged million? And
5 the reason I ask that question is because a 40 percent
6 admin fee on capital money is like -- I don't know. I
7 can't sell the optics no matter what I try to do, so help
8 me understand how you think that operation might be.

9 MS. GORE: So let me just say if you had a
10 million dollars of NAHASDA, your admin would be \$200,000.
11 What we're saying is if you brought in another million,
12 you would be able to use up to \$400,000 of NAHASDA using
13 Jack's example of the 20 percent, but you would have
14 brought in -- so it's not 40 percent. It's 20 percent of
15 the total cost, so it's inclusive. It's not intended to
16 double dip.

17 And I guess if I could just -- it would be 40
18 percent of NAHASDA, but it would be 20 percent of your
19 total cost, and it would philosophically align the intent
20 of NAHASDA, which is to leverage. And frankly, it's very
21 difficult to leverage if you don't have the
22 administrative support.

23 Because we're in the affordable housing business,
24 it's not expensive. So it would provide an additional
25 incentive for leveraging since capital money doesn't

1 generally come with an administrative component.

2 MS. HENRIQUEZ: So let me just look at the
3 language that's proposed here.

4 MR. SUNOO: Sandra, what we need is somebody
5 to propose language to get us to that effect.

6 MR. ADAMS: This language doesn't get us
7 there. No, this language doesn't get us there.

8 MS. HENRIQUEZ: The language in black doesn't
9 get us there?

10 MR. SAWYERS: No. We're working on it.

11 MS. FOSTER: I'm working on it for you, Jack.

12 MS. HENRIQUEZ: I guess I don't know why it
13 doesn't get us there. Help me understand that one.
14 Didn't this come out of the working group?

15 MR. SUNOO: Yes, and then Carol just wanted
16 to add something to make it more specific to include the
17 extra money.

18 MS. HENRIQUEZ: So can you help me understand
19 why the language in black that's been in existence
20 doesn't get us there?

21 MR. SUNOO: Carol?

22 MS. GORE: Only if you've been on our side
23 and had to ask for approval and trying to debate it.
24 It's not clear to me by reading the language. Even
25 though we have permission to apply, what is the process

1 and what an ONAP office might require for that submittal.

2 And so I'm looking for a more simple way to solve
3 that question. I'm not sure. 20 percent of the total
4 cost, that might be a little aggressive in terms of
5 funding, but I think there should be some incentive.

6 MR. SUNOO: Jack?

7 MR. SAWYERS: Well, you can put up two 20
8 percent of the total cost, and it might not be -- you'd
9 still have to have approval, so it may not be 20 percent.
10 It may be just your actual cost.

11 The trouble is if you have a new program, you have
12 to have additional money to administer that program. My
13 thoughts are if you get \$2,000,000, you should be able to
14 have an administrative cost of 20 percent of that because
15 your -- that's good for us. It's good for HUD. It's
16 good for everybody to leverage our money, and I don't see
17 why you wouldn't be able to get a 20 percent
18 administration fee out of that up to 20 percent.

19 It may not be 20 percent, but I still believe that
20 that's fair, and I think that's going to encourage more
21 leveraging because it really is difficult within our
22 present situation to leverage and take the time to
23 leverage and all of the effort and so on, so it seems
24 reasonable. Maybe that's the reason it won't work.

25 MS. HENRIQUEZ: I don't disagree in

1 principle, having tried to figure out how to run a real
2 estate development operation at my Housing Authority and
3 needed either admin fees of this sort or it's only
4 active.

5 Do you all take developer fees and plow them back in
6 to run your operation? And so this would be on top of
7 developers' fees as well? I'm just curious.

8 MS. GORE: I can only speak to our case, but
9 developer fees don't always apply. In fact, if you're
10 using low income housing tax credits, you can include
11 developer fees. But if you're using Federal Home Loan
12 Bank or other sources like that, whether it's a private
13 foundation, generally there are no administrative fees
14 included with that.

15 MR. SUNOO: Marvin had a question. And I'm
16 also trying to find out, did anybody -- Karin, were you
17 drafting some language for this?

18 MS. FOSTER: Well, I do have language that we
19 could put up there.

20 MR. SUNOO: Okay. Marvin, why don't you ask
21 your question, and then we'll get to language.

22 MR. JONES: The question I was going to ask,
23 just so I understand it, in effect you're saying -- a
24 possibility in the example you gave, spending \$200,000
25 additional IHBG funds and bringing in \$800,000, in

1 effect, outside funding that's now in NAHASDA that wasn't
2 there previously. Is that -- okay.

3 MR. SUNOO: Karin is sharing her language
4 with Kiana, so we'll have it up on the board in a few
5 minutes. Any other comments? Yes, Phil?

6 MR. BUSH: I don't want to get away from
7 this, you know, Blake's question. Maybe we can have
8 HUD's interpretation on this, but the way this is, it's a
9 cumulative total per grant because it talks about a
10 recipient.

11 MR. SUNOO: Sharol?

12 MS. MCDADE: And, Phil, I guess when I read
13 it, I don't interpret it that way because the definition
14 of recipient has -- in the statute it's clear in what it
15 says, so I don't read it as saying cumulative total
16 anywhere.

17 So that would be my question because the definition
18 clearly describes who the recipient is. So if it's a
19 blanket, there's nine, clearly nine of them are
20 recipients. So am I misinterpreting that?

21 MR. BUSH: Nine of them could be
22 beneficiaries. You look at the cumulative total of the
23 \$500,000 is what we're talking about. It says, if the
24 recipient receives \$500,000 or more, they may use up to
25 20 percent.

1 My question is, is that per tribe? The way this
2 reads is just one recipient receiving \$500,000, and to me
3 I would read I would have to add up eight different
4 grants. And if I'm in excess of the \$500,000, I don't
5 get the benefit of the one tribe being a minimum funded
6 tribe that's only getting \$48,000, and they're still
7 stuck at the 20 percent.

8 Now, if I'm reading this wrong, somebody please tell
9 me.

10 MR. SUNOO: Jason?

11 MR. ADAMS: I just wanted to make sure I
12 understood this. The language that we're proposing here
13 in this is not changing any practice that currently
14 happens. It's not changing anything as to how this
15 applies to current practice. It's not doing that, and we
16 weren't intending for it to do that. I just want to make
17 sure we understood that.

18 MR. BUSH: Well, Jason, that's always the
19 hope, but when there is a change, sometimes we have HUD
20 staffers that really like to read the changes and
21 sometimes apply.

22 I just want to make it real clear. To me, it's easy
23 for HUD to say, well, we're not going to change the
24 practice. But what's written, to me, isn't real clear on
25 the way they're going to apply the change. Like I said,

1 the way I read it, it's going to add up what we totally
2 received.

3 MR. SUNOO: Okay. We put some language on
4 the board, and Judy had a comment.

5 MS. MARASCO: I think the clarification that
6 needs to be made is are the umbrella authorities the
7 recipients or not, and that's what Sharol and I are
8 talking about, although I do support Phil's concerns
9 because most of these umbrella housing authorities
10 consist of very, very small tribes, and in each instance
11 that tribe needs to be able to access the 30 percent.

12 So if this is not clear, then possibly we can put
13 something in here that would make it clear for umbrella
14 tribes that receive less than \$500,000. Each tribe under
15 the umbrella that receives less than \$500,000, they would
16 be able to utilize that 30 percent cap.

17 Those umbrella tribes are struggling. You guys need
18 to go to Northern Circle where she's got 27 council
19 people sitting at her table asking for state dinner, and
20 she only has money for beans. So out of respect for
21 Darlene, I do have to support Phil's concern.

22 MR. SUNOO: Can we all take --

23 MS. MCDADE: Well, just for clarification,
24 since we need -- since that is Phil's issue, can we get a
25 legal opinion on what that definition is? I read it

1 pretty clear that it says recipient, so that to me means
2 the individual tribes, not the umbrella housing
3 authorities.

4 And I definitely respect what Darlene and the Alaska
5 tribes are dealing with, but it's pretty clear that we
6 didn't change any of the language. We intended it to
7 remain the same. So if we can get one of the hundreds of
8 attorneys in here to give us an opinion, that would be
9 very helpful.

10 MR. SUNOO: Carol?

11 MS. GORE: I just -- Sharol, I've been
12 following what you said, and so I looked up in the
13 statute the definition. I think this is where it got
14 sticky for us. If I could just -- it says recipient.
15 The term recipient means an Indian tribe or the entity
16 for one or more Indian tribes. Thank you.

17 MR. SUNOO: Does that answer your question?
18 So where do we go from here? Blake?

19 MR. KARZAMA: Really the issue comes down to,
20 because you're an umbrella organization and you have
21 multiple tribes and they're under \$500,000, you penalize
22 the tribe if you take it collectively because they total
23 a million dollars say.

24 And what we're trying to do is simply say can we
25 take the individual tribal amount allocation at 30

1 percent to help those small tribes out? We penalize them
2 by being under an umbrella where individually they could
3 have gone to 30 percent. That's what it comes down to.
4 I think the language can go either way because it's using
5 the term recipient.

6 MR. SUNOO: Marvin?

7 MR. JONES: Aren't umbrella tribes supposed
8 to be more efficient?

9 MR. KARZAMA: And we are.

10 MS. MARASCO: Be nice, Marvin.

11 MR. SUNOO: Yes, Blake?

12 MR. KARZAMA: I guess I'd like to make a
13 recommendation that we replace the second sentence, the
14 one we're addressing, change recipients to tribe or
15 beneficiary.

16 MR. SUNOO: What was the terminology, Blake?
17 You're proposing in the second sentence you change
18 recipients to what?

19 MR. KARZAMA: Tribe.

20 MR. SUNOO: To tribes? Phil?

21 MR. BUSH: I've got a comment here, because
22 as the language says, it's annual expenditures of grant
23 funds. If you go per tribe under an umbrella situation,
24 how do you make that calculation because it's on
25 expenditures? Something to think about.

1 MR. SUNOO: Yes, Sandy?

2 MS. HENRIQUEZ: I would also add that we have
3 a term grant beneficiary already which says it means an
4 Indian tribe or tribes on behalf of which a grant is made
5 under this act to a recipient.

6 So if you're an umbrella and you're getting money on
7 behalf of a number of tribes, then you are the entity.
8 And the aggregate dollar amount above or below \$500,000
9 would apply to the entirety that you're getting, not
10 tribe by tribe in the umbrella.

11 And if you try to say it's by tribe and you've got
12 an umbrella and you've got a tribe that's under \$500,000
13 and some are over, then you've just, I think, added to
14 your administrative cost because now you're going to have
15 to track 30 percent here and 20 percent there, which is I
16 think the reason you don't want to do that, which is why
17 you probably have umbrella organizations in the first
18 place.

19 MR. SUNOO: Phil?

20 MR. BUSH: We have to track them separately
21 anyway because we report on each grant separately. I
22 mean, that administrative burden doesn't increase. It's
23 already in existence.

24 I'm going to take it back to where I can -- a
25 recipient receiving \$500,000 or less to be used at 30

1 percent, again, I made a suggestion, and I'd like to
2 suggest again it needs to be based off of each tribe's
3 allocation, not an accumulative total, not as the
4 recipient and who the beneficiary is. The \$500,000 is to
5 me what the focus is.

6 And so knowing that, I would like to offer that we
7 insert in the second sentence, recipients receiving
8 \$500,000 or less, based on each tribe's allocation, may
9 use 30 percent of their annual expenditures -- hold on,
10 now I can't even read what I wrote. Does that work?

11 MR. SUNOO: Okay. So we go back to
12 recipients rather than tribe. The second sentence, go
13 back to recipients.

14 MR. BUSH: Because it is the recipient.

15 MR. SUNOO: Go back to recipients receiving
16 \$500,000 or less based on -- and what were your words,
17 Phil?

18 MR. BUSH: Each tribe's allocation.

19 MR. SUNOO: Of each tribe's allegation. They
20 use up to 30 percent of their annual expenditures of
21 grant funds. Is everybody okay with the second sentence
22 there?

23 MR. ADAMS: I guess, if I can, Jan, I'm still
24 -- because it's still on the expenditure side, it's not
25 this tribe gets \$400,000 so we take 20 percent of that,

1 and that's what they use for admin and planning. It's
2 the expenditure of the funds because we're on a tribal
3 program here now, so they might not spend all \$400,000
4 this year. It's what the tribal year is and what the
5 expenditure is for that year.

6 So it doesn't go back to the -- you got to get out
7 of the mindset of the grant amount and go to the
8 expenditure for the year, and how do you track that?

9 MR. SUNOO: And so we should what? How would
10 that impact the language up there? Yes, Sharol?

11 MS. MCDADE: Well, we could go back to the
12 original language, which says annual grant amount for
13 administration of funding because that annual
14 expenditures came from the work group. So we could go
15 back to the original language, which says the recipient
16 can use up to 20 percent of its annual grant amount for
17 administration and planning.

18 MS. MARASCO: So why did you guys change the
19 expenses?

20 MR. ADAMS: We went through the long
21 drawn-out discussion in our work group because it's not
22 based on grant amounts anymore. It's based on the tribal
23 program and what you're expending this year, the 20
24 percent cap.

25 If you get \$400,000 this year and you're banking

1 your money, you're putting away a majority of it, let's
2 say \$300,000 and you're only going to spend \$100,000 this
3 year, you get the 20 percent of that.

4 So it's saved and put away for the future. So then
5 two years from now, even if two years later you get a
6 \$400,000 grant still that year, you bring all this money
7 forward. If this year you're going to spend a million
8 dollars, you get 20 percent of that.

9 MS. MCDADE: But the annual expenditure came
10 only because of the change in definition of the tribal
11 program year. It's not going to change the allocation
12 amount unless they don't submit an IHP for the next year
13 or unless they don't expend it out.

14 So you could go from year to year based on your
15 annual allocation irregardless. Am I missing it, because
16 that's the way I understand it.

17 MR. ADAMS: I can turn it over to Jennifer,
18 and she can explain to you the chaos that it would create
19 for HUD to track that because 20 percent of the annual
20 expenditure per year is pretty easy, and it's not just a
21 HUD issue. It would be a small tribes issue on how we
22 would track that and account for that because it's an
23 expenditure. It's not based on the grant.

24 MR. SUNOO: Jack and then Sandra.

25 MR. SAWYERS: It seems to me the committee

1 has looked at this for a long time and did not want to
2 change the present situation. It did not want to change
3 that part of it.

4 The discussion should be on other funds, not
5 changing what's already in place because that wasn't the
6 intent of the committee. And if you change to tribe,
7 then you've changed the allocation. And it doesn't
8 matter to me because I don't fit into that situation.
9 I'm just saying that's not what the committee intended,
10 and I don't think that's what we intend to do here.

11 MR. SUNOO: Phil?

12 MR. BUSH: Okay. Jason, I understood what
13 you just said, but the sentence says recipients receiving
14 \$500,000. It starts off by receive, so you just confused
15 me even more. There's something not right because it's
16 receiving, and then you're looking at an annual
17 expenditure.

18 MR. ADAMS: That's it. You have to have the
19 cap based on something consistent, so the cap is based on
20 what your allocation of grant funds are.

21 MR. BUSH: Well, take the word receiving out.

22 MS. HENRIQUEZ: No, take out annual
23 expenditures.

24 MR. BUSH: Right.

25 MR. SUNOO: I didn't hear.

1 MS. HENRIQUEZ: I'm going to agree with Phil
2 for a moment. Mark the time and date. The problem is
3 complicated because we're talking about size of grant,
4 and then size of expenditure of that grant, so we've got
5 to create balance. It's got to be one or the other, and
6 it makes sense to be percent of the grant or the
7 allocation how much you receive as opposed to how much
8 you spend.

9 But we agree in principle. It just needs to be
10 wordsmithed, and so if we could get together and do some
11 of that to create balance in the first two sentences at
12 least anyway.

13 I still struggle with the point Carol raised about
14 the percent you used. So we don't want to "disincent,"
15 if there's such a word. But again, I'm worried about
16 having the NAHASDA funds bear the full brunt of the -- of
17 what would appear because people would say it's still 20
18 percent, and I can sell that. That's an easy one. The
19 optics is when you change it into a real number. That
20 becomes a little bit harder, and so we'd just have to
21 figure out a way to try to do a construct.

22 MR. SUNOO: I think there's an agreement in
23 principle here, but I think if we could table this for
24 the time being and give you guys time to kind of work out
25 the language and all of you who are interested, just kind

1 of form a little informal subcommittee and work out some
2 language on this and bring it back. You don't want to do
3 that? Okay. Jason doesn't want to table it. We could
4 vote it down and bring it back.

5 MR. ADAMS: I guess we're negotiating.

6 MR. SUNOO: We're negotiating.

7 MR. ADAMS: There's some issues that folks
8 need to work out the language for us to negotiate on. I
9 mean, I'm just fearful the protocols don't give us any
10 room to table things. We just negotiate. We've got an
11 hour and 23 minutes to come up with language and
12 negotiate this through.

13 MR. SUNOO: Okay. In that case, can I
14 suggest then that we just take like 10-minute breaks and
15 let people in a smaller group work rather than everybody
16 in a formal way to come up with language. Yes, Larry?

17 MR. COYLE: I'm kind of at a stalemate here.
18 Our administration and my housing authority is constant.
19 We don't hire and fire every year because of the amount
20 of the grant itself or what we spend.

21 If we spend more on a loan for a big job or
22 something else, we just stack it up. And we say we have
23 to prove up every year what we -- on the new plan, the
24 IHP/APR. It's still going to be constant, isn't it,
25 Carol?

1 MS. GORE: Not for us.

2 MR. COYLE: Do you hire and fire every year?

3 MS. GORE: Absolutely, but that's not really
4 capturing the essence of the conversation, so let me
5 clarify. If you're doing development, you may have to
6 hire professionals that are part of that admin and
7 planning cost to get you to that.

8 And so that's where I think NAHASDA can be that
9 additional fuel to help us look at more creative ways to
10 leverage. It costs money to get there, and it's not
11 about your typical staff that runs your programs and does
12 your development. If you're going to do more, it's going
13 to take more people, whether you hire them third party or
14 you have an internal.

15 I guess I was going to just ask the Secretary --
16 first of all, thank you, Karin, for the language. Maybe
17 I'll wait for the 10-minute break.

18 MR. SUNOO: Leon?

19 MR. JACOBS: Before we go, let's fool around
20 with this language here real quick, if I could. I think
21 Carol brought up an interesting point. She wanted to
22 know what you do in the event that you leverage your
23 NAHASDA, right?

24 So in this event that a recipient uses the NAHASDA
25 to leverage other funds, the recipient may use 20 percent

1 of the total unless the leverage contributor has other
2 administrative requirements.

3 If you're going to use NAHASDA to leverage Federal
4 Home Bank, for instance, they may have other requirements
5 on the percentage of administrative costs and so forth.

6 But if there aren't any requirements, you build it
7 in, and you can use the 20 percent of the total amount
8 that you leveraged, plus your NAHASDA is what I'm trying
9 to say. Does that make sense?

10 MS. GORE: If I could, I think -- while yours
11 is more permissive, I'm, again, looking for agreement.
12 The language that Karin proposed would require someone
13 that wanted to use more than 20 percent to request that
14 from HUD, and I'm okay with that.

15 I think that clarifies the second half of that
16 paragraph and would give us the authority to ask for
17 permission, and I think that clarifies it for me. That
18 would work for me. I can't say for the other committee
19 members.

20 MR. SUNOO: Leon?

21 MR. JACOBS: But if we build it in the
22 regulations, why would we have to request it to HUD if we
23 put language in here that clarifies it? I don't want to
24 put more burden on the tribe by having to make a request
25 on something that you're trying to do to provide services

1 to the tribal members.

2 MR. KARZAMA: I agree with, Carol. I would
3 go along with that as well. I recognize that we have to
4 have some limitations in terms of how we use admin and
5 planning.

6 And if I have brought in -- you know, for example,
7 when you get foundation monies that comes in for senior
8 housing say and you're trying to bring in matching with
9 some NAHASDA funds, they're not going to provide
10 administrative monies for that, and so it costs us more
11 in terms of getting architectural designs and so forth,
12 so the costs go up.

13 If I could convince HUD that that is okay in terms
14 of I want to be able to hire the necessary people to make
15 this project doable, I want to be able to do that is what
16 I'm saying, that language does that for me.

17 MR. SUNOO: Yes, Phil?

18 MR. BUSH: I'll just turn it over to Ed and
19 let him kind of go over the changes.

20 MR. GOODMAN: All right. The proposal would
21 be that -- to revise in the first sentence where it says
22 annual expenditures of grant funds. It would be annual,
23 the annual allocation of grant funds to each beneficiary,
24 each grant a beneficiary.

25 MR. SUNOO: Do you guys want to just take

1 that 10-minute break because everybody's got some things.

2 (Recess taken.)

3 MR. SUNOO: Okay. Let's see what we have as
4 a new product, the proposal for the language on 238.

5 MR. ADAMS: Jan, are we back in session?

6 MR. SUNOO: We're back in session.

7 MR. ADAMS: The clock's going to be turned
8 back on? We're back at this?

9 MR. SUNOO: They're typing in the language
10 that they arrived at over the break.

11 MR. ADAMS: Now, this language is in response
12 to a per tribe allocation of admin money? Is that what
13 we're looking at now?

14 MR. SUNOO: Yes.

15 MR. BUSH: No, Jason. That's not the new
16 language. Ed's over there typing away right now.

17 MR. ADAMS: But that's where we're headed
18 with this issue? I guess that's what I'm asking.

19 MR. BUSH: What was the question?

20 MR. ADAMS: Is the proposed language going to
21 -- looking towards a 30 percent allocation of admin money
22 per grant per tribe? Is that where we're headed?

23 MR. BUSH: Well, not quite that way.

24 MR. ADAMS: I'm just trying to understand.

25 MS. HENRIQUEZ: Very smooth, Jason, very

1 smooth.

2 MR. ADAMS: I'm not for that position. I'm
3 just trying to see where we're heading.

4 MR. SUNOO: Sandra?

5 MS. HENRIQUEZ: While Ed's typing in 238, we
6 were trying to figure out how to address the issue that
7 was raised by Carol around leverage of admin fees paid on
8 other leveraged dollars, and help me with the protocol
9 because I -- have we approved or come to a consensus on
10 236 already?

11 MR. ADAMS: No. I presented these as a
12 package, 236 and 238 together.

13 MS. HENRIQUEZ: All right. So I don't want
14 to -- we would propose the following, that under
15 1000.236, what are eligible administrative and planning
16 expenses, that under A, eligible administrative and
17 planning expenses of the IHBG program include, but are
18 not limited to, and we would add a No. 6 that would -- we
19 would add a No. 6, which would address and make eligible
20 out of IHBG funds -- to make available out of those funds
21 an eligible cost, the administrative costs associated
22 with leveraging other financing.

23 And then we would come into 1000.238, because then
24 that talks about the percentages that you could use for
25 those expenses.

8 MS. HENRIQUEZ: They're brainstorming now.

11 MS. HENRIQUEZ: Right.

16 Now, can we look at 238, the new language that was
17 proposed around 238? So here's the new language with
18 238. Would someone explain the language or read through
19 the language for us?

25 When a recipient is receiving grant funds on behalf

1 of one or more grant beneficiaries, the recipient may use
2 up to 30 percent of the annual expenditure of the grant
3 funds of each grant beneficiary, whose allocation is less
4 than \$500,000, and up to 20 percent of the annual
5 expenditure of grant funds of each grant beneficiary,
6 whose allocation is greater than \$500,000.

7 HUD approval is required if a higher percentage is
8 requested by the recipient. Recipients combining grant
9 funds with other financing may request approval to use up
10 to 20 percent of the total annual expenditure.

11 When HUD approval is required, HUD must take into
12 consideration any cost of preparing IHP and collection of
13 data, the recipient's grant amount of allocation plans
14 and any other relevant information with special
15 consideration given to the circumstances of recipients
16 receiving minimal funding. Carol?

17 MS. GORE: May I offer one amendment? The
18 red line, recipients combining grant funds with other
19 financing or grant funds, because it may not be
20 financing. It may be -- I'm sorry. I thought the red
21 line was new language.

22 MS. HENRIQUEZ: Yeah, it is.

23 MS. GORE: It is? It reads -- I don't need
24 to offer an amendment if there's other language coming.
25 To be clear, my only concern was in the red sentence it

1 talks about combining grant funds with other financing,
2 underlying financing. That seems too narrow. If it
3 could be financing and other grant funds --

4 MS. FOSTER: Even simpler might be just to
5 say with other funds.

6 MR. SUNOO: Recipients combining grants funds
7 with other funds. Recipients combining grant funds with
8 other funds may request approval. How does that sound?
9 Sandra?

10 MS. HENRIQUEZ: So I think we could eliminate
11 that sentence totally if we put it up -- well, the
12 amendment in 236 at (a)(6) that we're proposing should
13 take care of that and leave it as flexible as you would
14 want because it's going to just talk about combining
15 funds in general. That's not going to talk about other
16 financing. So if people could just put up -- could you
17 just put up 236, please?

18 MR. SUNOO: If you go back to 236 this is the
19 proposed addition, No. 6: Administrative expenses
20 associated with expenditure of non-IHBG funds on
21 affordable housing activities if the source of the
22 non-IHBG funds does not permit expenditures of its funds
23 on such administrative expenses.

24 MS. HENRIQUEZ: We're just trying to get to
25 the issue on leveraging and see if this does it or not.

1 MR. SUNOO: So the question is if this No. 6
2 is added to the question, what are eligible
3 administrative and planning expenses?

4 MS. HENRIQUEZ: Yeah.

5 MR. SUNOO: Sharol?

6 MS. MCDADE: Jason, I need some clarification
7 from you. When we discussed this in the work group --
8 and I'm putting it on you. The expenditure wording is
9 what keeps coming up, the annual expenditure. And if
10 memory serves me correctly, the reason why we went to the
11 annual expenditure was because of the definition of the
12 tribal program year.

13 So we're still having some clarification problems
14 with the language in this because we don't understand why
15 we would take the percentage on the expenditure.

16 But the way I understood it in all of our
17 conversations is that it has to be on the expenditure,
18 because if you don't submit an IHBG for that upcoming
19 year, you wouldn't have that percentage to go from
20 because you don't have the rollover anymore. You don't
21 submit an IHP after that tribal program year. You can
22 only base it on that current year.

23 So for the next year, say if I'm using two years, we
24 submit our IHP, the next year we don't. Even though
25 we've only had an annual expenditure of \$500,000 instead

1 of our full allocation of a million, we didn't -- we
2 couldn't use that year that we did not submit an IHP.

3 Did I miss that? That was my understanding of it.
4 The tribal program year had to be based on expenditure
5 for the next tribal program year, and that's the reason
6 why we went to the expenditure language, right?

7 MS. HENRIQUEZ: That's my understanding, but
8 I wasn't in the room. I'm going to ask Jennifer.

9 MS. BULLOUGH: It didn't really have anything
10 to do with whether or not you were going to submit an IHP
11 for the next year. We pretty much assume that people are
12 going to submit an IHP every year.

13 The issue is you don't want to have to track in
14 perpetuity how much money you received, what your 20
15 percent is, how much you expended, do that math, do it
16 again next year, do it again next year in perpetuity,
17 because if you base it on your grant allocation, that's
18 what you have to do.

19 So the alternative is to base it on your
20 expenditure. So in one year if you expend a million
21 dollars, you get 20 percent of your million dollars. If
22 the next year you expend a million and a half, you get 20
23 percent of your million and a half and don't have to
24 worry about how much allocation you got each year.

25 But for the purposes of determining 20 and 30

1 percent, it sounds like we need to go back to tribal
2 allocations so we can determine which percentage applies
3 to the amount of funds you might expend on an annual
4 basis. Does that makes sense?

5 MS. MCDADE: It does make sense, and I think
6 that's part of the confusion with regard to how the
7 tribal program year works is that it's not clear because
8 we changed the definition, and we've already reached
9 consensus on the changes to the definition of tribal
10 program year, that people have to understand how that
11 process works and how the percentage would actually apply
12 to the tribal program year.

13 MR. SUNOO: Okay. Phil?

14 MR. BUSH: I'm even confused more then, and
15 here's the reason why. It's an assumption of what your
16 expenditures are going to be, correct? We're going to
17 assume that if my allocation for a particular tribe --
18 and I'm going to really focus in on the small tribes, and
19 the reason why is sometimes currently it takes us three,
20 four, five years' worth of savings to be able to develop
21 one unit.

22 So I'm assuming that knowing that I'm -- in our
23 planning process it's going to take me three years' worth
24 of funds to be able to actually do the project I want to
25 pull off.

13 The second comment is, and hopefully I heard this
14 incorrectly, every tribe will submit or their TDHE or the
15 recipient will submit an Indian Housing Plan for that
16 particular upcoming year. But if they fail to submit,
17 did I hear that any rollover is automatically gone? No
18 or yes? I heard -- I get a yes here, a no here. I need
19 clarification on this because if that's the case --

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15 Phil, on your issue, which is if you're a small
16 tribe and you're saving up money and so one or two years
17 you're really just doing a lot of admin stuff, we
18 discussed it pretty much ad nauseam, and we agreed that
19 it could be a problem.

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6 MR. JONES: And just to follow up, in that
7 particular discussion it was pointed out that already in
8 1000.238, as a justification for a higher percentage is
9 specifically the wording information with special
0 consideration given to the circumstances of recipients
1 receiving minimal funding, and it was intended for that
2 particular provision to take care of those circumstances.

14 MR. BUSH: So I hope there's not a smaller
15 tribe out there that receives one dollar over the minimum
16 funding that's going to have to come in and request
17 special circumstances. To me, you're creating a bigger
18 administrative burden on the smaller tribe.

25 MS. HENRIQUEZ: How?

1 MR. BUSH: Because if -- again, the smaller
2 tribes when they're in the planning process are going to
3 bank some of the money.

4 Right now we can go 20 percent and still bank money
5 without any additional administrative burden or
6 requesting any additional from HUD to exceed the 20
7 percent. So you have -- everybody's saying it's not,
8 reality it is.

9 MR. SUNOO: Jason?

10 MR. ADAMS: I was busy with some other
11 things, I apologize, but I think that's why we bumped it
12 up for small tribes to 30 percent. I mean, we gave that
13 in consideration for that. We did add that bump in there
14 for 30 percent.

15 MR. SUNOO: Sharol?

16 MS. MCDADE: Well, Phil, we actually even
17 debated about a higher percentage, so my question is -- I
18 understand where you're coming from, Phil. I guess my
19 question would be directed to HUD.

20 If our assumption for a small tribe would be that
21 we're going to expend the entire grant amount, say we're
22 going to spend the \$200,000 and we bank or we put the 30
23 percent off of the \$200,000, what does HUD do if we don't
24 spend it? Is there going to be a sanction, or what is
25 HUD going to do with regard to that?

1 I understand where you're coming from, Phil, as far
2 as the administrative requirement, but we can assume that
3 we're going to expend our entire tribal program year
4 grant amount for that year. What would HUD's response be
5 if we don't spend it?

6 MR. SUNOO: Marty?

7 MR. SHURAVLOFF: Well, I think I'd kind of go
8 back to what Phil's talking about. Those of us that are
9 especially umbrella housing authorities or TDHEs, let's
10 say in one year we're only at 10 percent admin fees, and
11 the next year we go into a year that we're doing a lot of
12 planning with the tribes that we bump up to 30 percent
13 admin fees for our costs for the year. What happens
14 then? We have to go ask for a waiver when we've never
15 exceeded the 20 percent other than we did in one year.
16 What would be the process in that instance?

17 MS. BULLOUGH: In your APR where it talks
18 about your admin expense, you would simply explain that
19 you exceeded your admin and provide the reason. And if
20 it's within the items that are identified here, then it
21 should for the most part be simply rubber stamped by the
22 area office.

23 MR. BUSH: I don't think I like that.

24 MR. SUNOO: Judith?

25 MS. MARASCO: I would still like an answer to

1 Sharol's question. What happens if we assume we're going
2 to spend the entire grant, and then we only spend say 50
3 percent of it, but we've eaten up our 20 percent in
4 administration? I mean, that doesn't sound as simple as
5 you're making it.

6 See, I have the same problem with the word
7 expenditures that Phil does. Right now we calculate our
8 administrative costs based on 20 percent of our annual
9 grant amount. That stabilizes our staff and keeps us in
10 business. Even when appropriations aren't coming
11 through, we're still fairly stable.

12 What happens if I decide, okay, we're getting one
13 million dollars next year, and I calculate my
14 administrative costs based on that one million dollars,
15 and at the end of the year something comes forward? It
16 could be lead-based paint. It could be environmental
17 issues. It could be political issues, and I don't spend
18 the million dollars, say I spend \$250,000, a quarter of
19 it.

20 Is HUD going to recapture the money that I've put
21 into administration, because administration has to
22 continue, and it has to be stable. You want the housing
23 authorities to stabilize and grow, and this is going to
24 be a detriment to that whole process.

25 And we all know, everybody at this table, the

1 political environment and the human capital in the Indian
2 Housing is hard to stabilize. It really is. If we're
3 not allowed to do that, then we'll never create a level
4 of success that'll take us to where we want to go. I
5 don't see that the word expenditures is going to help us
6 accomplish that goal of stability and success.

7 MR. SUNOO: I'll let Jennifer respond, and
8 then Marvin.

9 MS. BULLOUGH: We would -- I mean, the
10 concern is that if it's based on the annual grant amount,
11 then you have to track those annual grant amounts and
12 expenditures back to those specific grants, and you have
13 to do that in perpetuity, which is what we're trying to
14 get away from.

15 So unless you can think of something -- I mean, we
16 discussed this quite a bit, and we couldn't come up with
17 anything better.

18 MS. MARASCO: But we've been tracking those
19 now.

20 MS. BULLOUGH: And if you want to keep it
21 that way, we can keep it that way, but remember that's
22 the burden that we were trying to get away from, and
23 that's why we went to annual expenditures.

24 MS. MARASCO: So let's put the shoe on the
25 other foot. So let's say I have -- I predicted that I

1 have an annual expenditure of a million dollars, and I
2 bring in old money and I spend \$2,000,000. Does that
3 mean I get to base the next month's year on \$2,000,000 in
4 expenditures?

5 MS. BULLOUGH: You base your percentage on
6 the year that you expended the two million.

7 MS. MARASCO: And that's what I'm saying. It
8 doesn't make sense to me. It doesn't make sense to me.

9 MR. SUNOO: Marvin?

10 MR. JONES: We had an extensive discussion,
11 and an answer, or a partial answer to both questions is
12 we can amend the Indian Housing Plan every single month
13 or every single week. When we determine we're not going
14 to expend that money, you can wait till the APR.

15 But during the year when you start expending money
16 and you figure out, hey, I'm not going to expend that
17 amount of money, you amend the IHP, send it to HUD and
18 get the okay.

19 MS. MARASCO: Marvin, that still does not
20 answer the issue of stabilizing the staff. You have to
21 have a base amount of money to run a housing authority,
22 and there are certain key players that actually bring the
23 success to the table. And even though I can amend the
24 IHP, that still does not give me enough security to
25 stabilize my human capital at the Authority.

1 MR. SUNOO: Marvin and then Jack.

2 MR. JONES: And as we extensively discussed,
3 one of the things that we found out was that people are
4 calling a bunch of expenditures administrative and
5 planning, which they could properly classify as direct
6 program costs that don't even count against the 20
7 percent or 30 percent or whatever it is.

8 MS. MARASCO: But I'm not in that category.

9 MR. SUNOO: Jack?

10 MR. SAWYERS: What if we looked at projected
11 instead of -- projected costs or projected expenditures?

12 MR. SUNOO: Judy and Phil.

13 MS. MARASCO: How is that going to look to
14 appropriations if we go in annually? We don't expend
15 what we say we're going to expend, so in our APRs we're
16 saying, okay, our administration was at 49 percent
17 because this project fell apart, so to speak.

18 That doesn't look any better for us than just taking
19 -- than having to track the annual grant amount based on
20 the 20 percent. I'm just saying that's going to make us
21 look worse.

22 MR. BUSH: I'm looking at the clock. We're
23 running out of time quick here.

24 MS. MARASCO: Well, then hush.

25 MR. BUSH: I don't understand. Knowing that

1 we have a new Indian Housing Plan format and new program
2 year when we're going to be submitting our Indian Housing
3 Plan, we all get notified from the formula center what
4 our proposed annual grant amount's going to be in the
5 coming year based off the previous year's appropriation.

6 When I hear we have to track this 20 or 30 percent
7 in perpetuity and we base it off a grant amount to me is
8 totally incorrect, and the reason why is we know what the
9 upcoming year grant is. That's the assumption. Rather
10 than expenditure, you assume what your grant's going to
11 be because that's currently what we do, and that's the
12 way this new system is structured.

13 So the argument that we'd have to track the 20
14 percent or 30 percent in perpetuity doesn't work because
15 we know what our upcoming years' allocation is going to
16 be, and that's our limit on what you can actually budget
17 for administration.

18 It doesn't have to be tied into expenditures at all,
19 and this is where I'm getting a little bit confused.
20 Knowing that -- we know what the up year proposed
21 allocation is based off of last year's appropriation.

22 We all get that, now don't we? Don't we run our
23 Indian Housing Plans and do our planning based on that
24 now? I thought we did, at least we do.

25 So, again, I'm a little bit confused where I'm

1 hearing we're going to have to track this in perpetuity.
2 It doesn't make a bit of sense because we already know
3 what our proposed allocation is going to be. And even if
4 appropriations change dramatically, so what? What do we
5 do now? We go revise our Indian Housing Plan, so I don't
6 understand.

7 MR. SUNOO: Marvin?

8 MR. JONES: Just one more. Phil's talking
9 about a specific situation, which may, in fact, be
10 applicable. But if, in fact, you're carrying over a
11 whole bunch of money, then based on a percentage just on
12 what you're going to potentially receive, it's not
13 adequate to other situations, so we had that situation.
14 So I would propose everybody can spend at least \$100,000
15 a year.

16 MR. BUSH: Actually, when you're looking at
17 planning and for planning purposes now, you're looking at
18 the upcoming allocation coming in. Hopefully, you're
19 drafting your Indian Housing Plan ahead of time and
20 submitting it.

21 Now we have no choice. You know, it's going to be
22 75 days prior to our year end, so it's going to be a
23 projection for probably 90 percent of us. Knowing that,
24 I'm not saying take the rollover money. Take your
25 administrative percent based off of your projected grant

1 allocation that's coming. That's all I'm saying.

2 And if you budget toward that, that's your cap. It
3 has nothing to do with rollover money. It has nothing to
4 do with anything like that. It has everything to do with
5 what your projection is.

6 MR. SUNOO: Yes, Jason?

7 MR. ADAMS: Since this is part of the Work
8 Group C's presentation on this item, I guess what I want
9 to propose is that we -- I understand what you're saying,
10 Phil. I understand what you're saying, Judith. I
11 understand what everybody's contributing to the
12 discussion, but we should be talking about if you don't
13 agree with the language, then propose change to the
14 language, and we give thumbs up or thumbs down to that.
15 That's what I want to get back to. I think that's what
16 we're supposed to do.

17 MS. MARASCO: All right. Go for it, Phil.

18 MR. BUSH: Okay. My proposal is to remove
19 expenditure and this annual grant amount. It could even
20 be based off of the actual -- when you submit your APR
21 because it's going to be projected when you submit your
22 Indian Housing Plan. It doesn't matter to me. Just
23 removing the word expenditure solves the problem.

24 MR. SUNOO: And replace it with anything or
25 just leave it out?

1 MR. BUSH: Remove the word.

2 MR. SUNOO: Okay. Marvin?

3 MR. JONES: And we would object to that
4 because we may have two years' worth of money, and what
5 you would then be basing that on for us is 20 percent of
6 let's say -- let's just give an example, five million.
7 We may have 10 million that we're actually going to
8 expend, and you're basing it on five million, doing 20
9 percent of five million if you do that.

10 MR. BUSH: You have the exact opposite
11 problem that we have, and I understand that because it's
12 exactly opposite from what we're -- that's the difference
13 I guess between large and small. They have money, we
14 don't.

15 MR. SUNOO: Russell?

16 MR. SOSSAMON: In the top line, why don't you
17 put -- why don't you give an option and let it be
18 either/or the annual expenditure or the grant amount,
19 annual grant amount.

20 MS. MARASCO: Thank you, Rusty.

21 MR. SOSSAMON: Why does it have to be one or
22 the other? If that fits you and the other fits him, why
23 not have the option?

24 MR. SUNOO: Judith?

25 MS. MARASCO: Well, Marvin, you talk about

1 five million and 10 million. If you had based it on the
2 annual grant amount, you would have that 20 percent cap,
3 plus the 20 percent cap you're going to get the following
4 year on the next five million. You still receive the
5 same amount of money. It doesn't have anything to do
6 with expenditures.

7 MR. SUNOO: Let me just ask first, Marvin,
8 does Russell's language change work for you? Does
9 anybody have a problem with that, with Russell's
10 suggestion? Russell, can you just give that proposal
11 again, please?

12 MR. SOSSAMON: At the end of the first
13 sentence after funds, just add, "or their annual grant
14 amount."

15 MR. SUNOO: Or their annual grant amount, but
16 after grant funds?

17 MR. SOSSAMON: The second sentence would need
18 that same change.

19 MR. SUNOO: Okay. The second sentence, can
20 we add that also?

21 MR. ADAMS: The second sentence would also
22 need that change.

23 MR. SUNOO: Okay. The second sentence, can
24 we add that also? Any further modifications?

25 MR. BUSH: You need to add it to the third

1 sentence also. In essence, you have to add it at the end
2 of every sentence.

3 MR. SUNOO: Wherever you see grant funds, you
4 need to add annual grant amounts as well.

5 MR. BUSH: Right.

6 MS. HENRIQUEZ: So the edit should be -- if
7 we're going to be consistent, as I understand the
8 proposal, to add, "or their annual grant amount," tied to
9 the expenditure language, then you'd have to say like you
10 did, recipients receiving \$500,000 or less, may use up to
11 30 percent of their annual expenditures of grant funds or
12 their annual grant amount.

13 When a recipient is receiving grant funds on behalf
14 of one or more, the recipient may use up to 30 percent of
15 the annual expenditure of the grant funds of each grant,
16 or the annual expenditure or their annual grant amount
17 for each grant. So you've got to have a parallel all the
18 way through it.

19 Wherever you see, "annual expenditure of the grant
20 funds," you've got to follow that with, "or their annual
21 grant amount," all the way through the language, to
22 balance it out all the way through.

23 MR. SUNOO: Okay. So we need to put, "or
24 their annual grant amount," anywhere where we see grant
25 funds, correct?

1 MS. HENRIQUEZ: Where you see annual
2 expenditure of the grant funds, right. You've got to
3 put, "or their annual grant amount," if that's what the
4 proposal is to balance it out.

5 MR. SUNOO: Marvin?

6 MR. JONES: Can I go back to the language
7 that was added, "or their annual grant amount," and
8 suggest we might just for clarification put something
9 like, "whichever is greater," or something like that.

10 MS. HENRIQUEZ: And I would add that once you
11 declare the way in which you're going to do this, I would
12 suggest -- we would not recommend you flip flopping every
13 year playing the odds. Do you know what I mean?

14 MS. GORE: Why?

15 MS. HENRIQUEZ: Why?

16 MS. MARASCO: Nobody said this was easy,
17 Sandra.

18 MR. SUNOO: So the language that Marvin
19 recommended was after the word annual grant amount,
20 whichever is greater, or is it "or whichever is greater,"
21 or "whichever is greater"? Somebody put the words in
22 there for me.

23 MR. JONES: Phil, can you put the words in
24 there?

25 MR. BUSH: Just put the greater of.

1 MR. JONES: Somebody will gripe about a
2 preposition being at the end of the sentence, and we'll
3 discuss it for an hour.

4 MR. SUNOO: Grant fund or their annual grant,
5 whichever is greater. So can we add whichever is greater
6 after everywhere it says their annual grant amount?

7 Okay. Can we go for consensus on this now? HUD,
8 are you okay with this?

9 MS. HENRIQUEZ: No, so just shoot me now.
10 I'm being reminded to further clarify that it's 20
11 percent of their annual expenditures of grant funds, or
12 20 percent of their annual grant amount, whichever is
13 greater, again, to use the same percentage modifier that
14 goes with annual expenditures tied to the annual grant
15 language that was just added at each place. Do you see
16 what I mean?

17 If that's what you mean, because otherwise -- I'm
18 assuming that's what you mean. That's what I want you to
19 mean. Do you get that? So recipients receiving in
20 excess of \$500,000 may use up to 20 percent of their
21 annual expenditures of grant funds, or up to 20 percent
22 of their annual grant amount, whichever is greater,
23 right?

24 MS. BULLOUGH: You're not saying 20 percent
25 of their annual expenditures or their entire grant

1 amount?

2 MS. HENRIQUEZ: Right. I want to modify that
3 you're not spending your entire grant, and recipients
4 receiving \$500,000 or more or less may use up to 30
5 percent of their annual expenditures or grant amount or
6 up to 30 percent of their annual grant amount, whichever
7 is greater.

8 MR. BUSH: Oh, I got it.

9 MR. SUNOO: Marvin?

10 MR. JONES: I object now.

11 MR. SUNOO: So, Kiana, could you have the
12 same consistent phraseology all the way through there?
13 Can we then vote on this now? All in favor? Oh, a
14 question? I'm sorry, Marlene?

15 MS. LYNCH: I would like to recommend a
16 language change to what Carol had presented on
17 leveraging. Conceivably there could be efforts and a lot
18 of expenditures incurred to seek other funding, which may
19 not be successful at the end.

20 What I'm reading is recipients combining grant funds
21 with other funding may request HUD approval to use a
22 higher percentage based on this total annual expenditure
23 whether successful or not in securing such funds.

24 We have spent a lot of time. We've incurred a lot
25 of expenditures in seeking low income housing tax credits

5 MR. COYLE: That, I believe the Secretary
6 said before, was covered under 236.

13 MR. COYLE: Could we bring No. 6 back in and
14 read that again? I believe it covers all expenditures
15 for leveraging.

19 MR. SUNOO: Marlene, do you want to take a
20 look at No. 6 and see if that answers your question? Can
21 we go up to 236 and look at No. 6 there, the new
22 language, which we haven't approved yet.

23 Administrative expenses associated with expenditure
24 of non-IHBG funds on affordable housing activities if the
25 source of non-IHP funds does not permit expenditure of

1 its funds on such administrative expenses to answer the
2 question, what are eligible administrative and planning
3 expenses?

4 MS. LYNCH: Provided it allows us to seek
5 over and beyond the 20 percent threshold.

6 MR. SUNOO: Sharol?

7 MS. MCDADE: Marlene, I'm sorry. Where did
8 you want to see that provision included? In 36 or in 38?

9 MS. LYNCH: My preference is under 238
10 because there it speaks to if you need additional funds
11 over and above the 20 percent of your annual grant amount
12 or actual expenditures.

13 MR. SUNOO: Go down to 238, please. Yes,
14 Karin?

15 MS. FOSTER: Would it address your concern if
16 you were to insert the word projected annual expenditure,
17 total annual expenditure? It wouldn't? It doesn't sound
18 like it would resolve the Assistant Secretary's concerns,
19 however.

20 MR. SUNOO: Carol?

21 MS. GORE: Could we go up to 236 once again?
22 I'm wondering -- I'm going to see if I can respond a
23 little bit because what Marlene is saying is correct,
24 that often there are significant third-party application
25 expenses.

11 I think the phrase that you're talking about also
12 needs to be clarified like the previous ones, that it's
13 expenditure or annual allocation amount. I think it
14 needs further work, but if we could clarify it here first
15 to make sure it's allowable and then go down to 238, that
16 might help us get to a solution.

20 MS. HENRIQUEZ: I'm still trying to think
21 about the principle, but I think B might have the
22 language in it without --

25 MR. ADAMS: Jan, if I could, could we let

1 this negotiation with the language continue through lunch
2 maybe, and then we break for lunch and come back after
3 lunch, maybe have some language? I think it's a good
4 time to break for lunch to work on language to accomplish
5 where we're at.

6 MR. SUNOO: All right, if that's the
7 committee's pleasure.

8 (Recess taken.)

9 MR. ADAMS: The bell has rung, and so I think
10 we're back in session, so I'll go ahead and make a call
11 for consensus.

12 MR. SUNOO: Let's hand out -- Kiana and
13 Jeremy have printed up the version on hard copy of what's
14 on the screen here. So we'll take a moment to pass those
15 around, and everybody can take a look at that and see if
16 that reflects what it looked like we were getting done
17 before we left.

18 So on No. 236, the changed language is Item No. 6.
19 We'll let everybody review this, and then we'll take a
20 vote on it.

21 MR. ADAMS: Are we back on 236, Item No. 6
22 there? Is that the language that is the latest
23 discussion item?

24 MR. SUNOO: Yes.

25 MR. ADAMS: Okay.

1 MR. SUNOO: Let's put 236 on the screen,
2 please, for those who don't have a copy. So in answer to
3 the question, what are eligible administrative and
4 planning expenses, we added No. 6, administrative
5 expenses associated with expenditure of non-IHBG funds on
6 affordable housing activities if the source of the
7 non-IHBG requires a significant application process, and
8 does not permit expenditure of its funds on such
9 administrative expenses. Jason?

10 MR. ADAMS: What I had heard -- Marlene had
11 mentioned also, and I think she was pointing out was
12 trying to make a point that if the application for those
13 other funds was successful or not, because you're
14 expending the money hoping to get the money. And if it's
15 unsuccessful, I mean, you still have an outlay of funds.
16 And so I'm just wondering if we have to include that in
17 there, or if that was part of the discussion.

18 MR. SUNOO: There was some reference that
19 that might be addressed in the second part; is that true?
20 Jason is raising whether the -- if it were unsuccessful,
21 whether that would be included in the top or the bottom.

22 MS. GORE: If I could respond, letter 6 was
23 revised to allow those expenses to be considered. So if
24 they want them to be considered in a higher than 20
25 percent of their admin, then you would go to the next 238

1 and request a waiver.

2 I think that's -- that's my understanding of how
3 this is supposed to work, and I just had a brief side-bar
4 with Marlene. She might want to further describe that.

5 MR. ADAMS: Barring waiting for everyone to
6 return, do we call for a consensus now or do we wait to
7 hear if this solves the issue? I don't know.

8 MR. SUNOO: All right. We're calling for a
9 consensus on Issue 11. You presented a vote?

10 MR. ADAMS: I presented it as one package, so
11 it's consensus on the whole thing.

12 MR. SUNOO: Okay. Has everybody had a chance
13 to read the bottom part as well? Rodger?

14 MR. BOYD: We're taking a look at this right
15 now. I'd like Jennifer to respond on -- are we on 236,
16 or are we on 236 and 238?

17 MR. SUNOO: Yes.

18 MS. BULLOUGH: I think that we accidentally
19 added too many, "or their annual grant amount, whichever
20 is greater." If you look at the sentence, it's the first
21 full sentence in red. When a recipient is receiving
22 grant funds on behalf of one or more grant beneficiaries,
23 the recipient may use up to 30 percent of their annual
24 grant expenditure of grant funds, or up to 30 percent of
25 their annual grant amount, whichever is greater, of each

1 grant beneficiary, whose allocation is \$500,000 or less,
2 or up to 20 percent of the annual expenditure of grant
3 funds, or up to 20 percent of their annual grant amount,
4 whichever is greater of each beneficiary, whose
5 allocation is greater than \$500,000, period, instead of,
6 or their annual grant amount, whichever is greater.

7 MR. SUNOO: Any other corrections to that,
8 Karin?

9 MS. FOSTER: I'd just like to suggest a few
10 comments, and they should be fairly non-controversial,
11 but before every "whichever," I'd like to see a comma.
12 And if greater doesn't have a period after it, I'd like
13 to see a comma there, too, so that whichever is greater
14 is a clause. I just think that the sentence is so long
15 that it just helps.

16 MR. SUNOO: Phil?

17 MR. BUSH: First off, let's back up a way,
18 non-joking. I want to thank the work group, and sorry we
19 dissected this thing. Now it seems to be a little
20 complicated, but I think it's going to serve everybody a
21 little bit better. So I do thank the work group for
22 their hard work and all the answers that were given.

23 On No. 6 -- and I had nothing to do with No. 6.
24 Just one quick recommendation, and it doesn't bother me,
25 but I think it helps a little bit. On No. 6 on the

1 second paragraph right at -- or the second sentence right
2 at the end where it says, "and does not permit
3 expenditures," I'd prefer to see where it says, "and
4 limits expenditures."

5 MR. SUNOO: Any objection to Phil's --

6 MS. MARASCO: He's starting to scare us with
7 his reasoning.

8 MR. SUNOO: So that in No. 6 on 236 where it
9 says does not permit, we would say, "and limits"?

10 MR. BUSH: Correct.

11 MR. SUNOO: So take out does not permit and
12 add limits. Jason?

13 MR. ADAMS: Go ahead, Carol.

14 MS. GORE: It's been recommended to me in 238
15 that there might be some inconsistencies, so I don't
16 think this will be controversial either.

17 We can go to 238, and the new sentence that -- it's
18 close to the end in red that begins, recipients combining
19 grant funds. If we could, as consistent with the others
20 and that sentence with the same language, whichever is
21 greater would say at the end, based on its total annual
22 expenditures or annual grant amount, whichever is
23 greater. That would make it consistent with the rest of
24 the paragraph.

25 MR. SUNOO: Say that one more time, Carol.

1 MS. GORE: Sure. Again, it's the last
2 sentence in red on the screen and on your page. It
3 reads, recipients combining grant funds with other
4 funding may request HUD approval to use a higher
5 percentage based on its total annual expenditure, and I'm
6 suggesting we add, "or annual grant amount, whichever is
7 greater."

8 MR. SUNOO: Does anybody have a problem with
9 that?

10 MS. GORE: It's been suggested to me that
11 that would make it consistent with the rest of the
12 paragraph.

13 MR. SUNOO: So after annual expenditure or --

14 MS. GORE: I think it's on the board now.

15 MR. SUNOO: Or annual grant amount. Yes,
16 Karin?

17 MS. FOSTER: I think that's probably okay,
18 but I'm not sure I see the situation where -- I mean, I
19 think the idea of this is to address situations where the
20 annual expenditure, which is not the total expenditure,
21 which is different than the annual, where the total
22 expenditure from all funds exceeds the grant amount, so
23 I'm not sure that that does need to be in there.

24 MS. GORE: Thanks for saying that. That was
25 my understanding, but it was a recommendation from the

1 audience, and so I wanted to make sure that the committee
2 had an opportunity to consider it. I'm fine with the way
3 it was worded originally. Thank you.

4 MR. SUNOO: So are you suggesting we take it
5 out then and put it back the way it was?

6 MS. FOSTER: Well, I think so because the
7 annual grant amount and the total amount expended are
8 different things.

9 MR. SUNOO: I see.

10 MS. FOSTER: Can I also request that there be
11 commas after the two greaterers in that longest sentence?

12 MR. SUNOO: Okay. Can we go back? Using
13 that same sentence, amend it where it says expenditure
14 and take out that thing we just added. On the second to
15 last sentence, take out what we just added, what Carol
16 just added, and leave it expenditures, ending at
17 expenditure where it says, recipients combining grant
18 funds, the second to last.

19 It should read, recipients combining grant funds
20 with other funding may request HUD approval to use a
21 higher percentage based on its total annual expenditure.
22 And then, Karin, where did you want those commas?

23 MS. FOSTER: My request earlier was the
24 commas after the word greater.

25 MR. SUNOO: Okay. We'll take care of the

1 grammar.

2 MS. FOSTER: Thank you.

3 MR. SUNOO: Yes, Jason?

4 MR. ADAMS: I guess then I'd call for
5 consensus on Issue No. 11.

6 MR. SUNOO: Okay. All in favor? They went
7 back to the old version. It's not on the board yet, but
8 what we're voting on is the version that's on your paper;
9 is that right? Yes, Rodger?

10 MR. BOYD: Also, could you scroll down so --

11 MR. SUNOO: To see the language in the first
12 sentence?

13 MR. BOYD: Yes.

14 MR. SUNOO: No. 6, can you show us 236,
15 please. Karin?

16 MS. FOSTER: Now, I am an attorney, so I work
17 things to death, so I apologize. I'm looking at this
18 sentence that I put up there, which is the last one,
19 recipients combining grant funds with other funding may
20 request HUD approval to use a higher percentage based on
21 its total annual expenditure, and it doesn't really say
22 total annual expenditure of what. Of grant funds? Of
23 all funds?

24 And I guess what I'm going to offer as an amendment
25 to my own suggestion is that we strike the word annual so

1 that that phrase -- and add some language so that that
2 phrase reads total expenditure of funds from all sources
3 for that year. I think that will be clearer. So strike
4 the word annual from that last sentence, and add after
5 expenditure, "of funds from all sources for that year."

6 MR. SUNOO: Is everybody okay with that
7 amendment? Did you catch that HUD, Carol's last
8 amendment there? Repeat it, Karin, please.

9 MS. FOSTER: The sentence that begins,
10 recipients combining grant funds with other funding, that
11 should continue to read, may request HUD approval to use
12 a higher percentage based on its total -- strike the word
13 annual. Then continue with expenditure, and add of funds
14 from all sources for that year, period.

15 That's just for purposes of clarity. I think we all
16 knew what we meant, but I'm not sure that everyone would
17 when they read it later on. That should read, of funds
18 from all sources for that year was the intent, not just
19 funds.

20 MR. SUNOO: Sandra, are you guys okay with
21 these language changes?

22 MS. HENRIQUEZ: Yes. We're okay with the
23 first one, but we're not for the other one.

24 MR. SUNOO: You're okay with this one?

25 MS. HENRIQUEZ: Yeah, we're okay with 238.

1 MR. SUNOO: You're okay with 238? How about
2 236?

3 MS. HENRIQUEZ: No.

4 MR. SUNOO: You're not? Okay. Let's go back
5 to 236.

6 MS. HENRIQUEZ: So a point of clarification,
7 what this is saying in the second clause is if the source
8 of the non-IHBG funds require a significant application
9 process and does not permit expenditure of its funds on
10 such administrative expenses.

11 So does that mean, for example, you put in a low
12 income housing tax credit application, it costs you
13 \$200,000, it doesn't fit within your 20 or 30 percent of
14 your expenditure for housing-related development
15 activities and you're looking to have NAHASDA funds pay
16 that \$200,000 fee?

17 MR. BUSH: That's not the way I see it.

18 MS. HENRIQUEZ: Okay. So that's why I'm
19 asking a point of clarification. Tell me what it's
20 supposed to cover.

21 MR. BUSH: Well, first off, Madam Secretary,
22 before I answer the question, I had requested earlier
23 that remove does not permit to limit.

24 But then to answer the question, it's my
25 understanding that 236 obviously applies. If you're

1 going to exceed the amounts described in 238 in the first
2 paragraph, the 20 percent or 30 percent is still going to
3 require HUD approval, correct? So the caps are
4 automatically built in.

5 MS. HENRIQUEZ: The caps are automatically
6 built in, but then this under 236 describes what's
7 ineligible and planning expense.

8 And so I'm having a hard time understanding why a
9 not successfully funded application chasing somebody
10 else's money, which is laudable, which is appropriate,
11 ends up being a cost that has to be absorbed by -- in
12 excess of the 20 or 30 percent expenditure. It's a cost
13 of doing business, and sometimes you're successful and
14 sometimes you're not.

15 MR. BUSH: I don't think it says in excess.
16 It's already -- it's just in -- I believe what it's
17 saying is it's an eligible expense. And to exceed the 20
18 or 30 percent, we're still going to be required to
19 receive HUD approval. It isn't allowing to do it right
20 now, which we're currently unable to do.

21 MS. HENRIQUEZ: So does anybody have what was
22 originally proposed for 6 since I don't seem to have a
23 copy?

24 MR. SUNOO: No. 6 is what was originally
25 proposed except that we only changed -- we took out -- at

1 the very end it says, does not permit. We changed that
2 to limits. Other than that, that's the same language.

3 MS. HENRIQUEZ: This is the language we had
4 before we went to lunch?

5 MR. SUNOO: Yes. Karin?

6 MS. FOSTER: I'd just like to speak to the
7 question of whether that is a reasonable use of NAHASDA
8 funds, and I think it is because NAHASDA encourages us to
9 go out and try to leverage. And we don't have the
10 ability or the opportunity really to leverage funds as
11 easily as other entities do, but we go out there, and we
12 work at it and we try.

13 And sometimes we're not as successful, and it's not
14 our fault. It's because the funders aren't out there who
15 are willing to give us some money. And that's actually
16 very true in tax credits around the country, and people
17 are battling to try to get those funds.

18 So I think that if somebody isn't successful, that's
19 a part of the policy of NAHASDA stated in the beginning
20 of the statute is to encourage other financings. And if
21 we had enough in the budget for NAHASDA, we maybe
22 wouldn't have to be so dependent on those, but we don't.
23 So I think that if it's been successful, that should
24 still be a legitimate use.

25 MR. SUNOO: Carol?

1 MS. GORE: Let me make a suggestion on No. 6.
2 The 20 percent is really for admin and planning. So if
3 the phrase said administrative and planning expenses
4 associated with expenditure of non-IHBG funds on
5 affordable housing activities and delete everything that
6 follows that, I think then it's consistent with what's in
7 the regulations.

8 I'm going to look at Marlene to see if that responds
9 to her concern. I think it might also respond to the
10 Assistant Secretary's concern. And frankly, the language
11 is a little mysterious. I'm not sure I even understand
12 it, so that's just a suggestion.

13 MR. SUNOO: Okay. Did you catch Carol's
14 suggestion? Her suggestion is that everything after
15 activities, after activities get cut, that we delete
16 everything after the activities. So administrative
17 expenses associated with expenditure of non-IHBG funds on
18 affordable housing activities, period.

19 MR. ADAMS: Jan, she also corrected the first
20 part of that, administrative and planning expenses.

21 MR. SUNOO: Okay. So add in administrative
22 and planning expenses.

23 MS. HENRIQUEZ: Didn't we also have a
24 qualifier at the end of that, that the administrative and
25 planning expenses could be expended if the non-IHBG funds

1 didn't allow for non-administrative expenses? I thought
2 that was a qualifier that was at the end that we were
3 discussing before.

4 MS. MARASCO: They changed it.

5 MS. HENRIQUEZ: I know, but that's the
6 problem.

7 MR. SUNOO: So is that language all right?
8 Carol?

9 MS. GORE: I guess I would just -- I'm trying
10 to make sure that we're tracking. 236 is asking a very
11 simple question. What are eligible administrative and
12 planning expenses? And No. 6 attempts to provide a very
13 simple response that would help tribes and recipients
14 that are using or leveraging their funds.

15 So it's simply suggesting that it's eligible. It's
16 not telling you that you can spend more than 20 percent.
17 You'd have to go to 238 to seek that approval for that
18 additional 20 percent. We're already doing what's in
19 No. 6. We're already doing this. This just clarifies
20 it, at least that was my intent.

21 MS. HENRIQUEZ: Let me just ask this: If
22 you're already doing what's in No. 6, which is fine, I
23 appreciate that. If you go for other non-IHGB funds that
24 allow admin and planning costs to come out, this language
25 as it is proposed would allow you not to take it out of

1 that funding source, but to load it into IHBG, and so
2 that's what I want to avoid.

3 So this is fine as far as it goes, but it needs the
4 ability to say that if you're getting funds that -- the
5 point we're trying to get to I thought was the ability to
6 cover admin planning costs where you couldn't take them
7 out of the non-IHBG source.

8 This says that you can take any admin and planning
9 costs out of IHBG regardless of whether the non-IHBG
10 source gives it to you or not. That's what this reads,
11 and so that's why I'd like something going back to if the
12 source of those non-IHBG funds doesn't permit or doesn't
13 allow the expenditure of administrative and planning
14 expenses, which is what I thought we had.

15 MR. SUNOO: Carol and then Sharol.

16 MS. GORE: Could I clarify that, because
17 what's in No. 6 we're already paying for out of IHBG.
18 We're already doing that. So when we apply, we have to
19 put an application together. There is administrative or
20 planning costs. We're already doing what's in No. 6,
21 whether or not it's reimbursed. The only reason that
22 this is even necessary -- maybe it's not necessary.
23 Maybe we don't need it.

24 When you go to 238, that's when I think we would
25 make an argument to HUD that we needed to exceed that 20

1 percent cap to leverage the monies.

2 Right now we don't really have that specific reason
3 to ask for that request, but I don't -- my goal here is
4 not to limit what we're already able to do because we're
5 already using our NAHASDA money to apply for other
6 funding sources without limitation.

7 MR. SUNOO: Sharol?

8 MS. MCDADE: Right, and that was my follow up
9 is that this is preapplication, preparation and
10 application, because you're still going to be able to get
11 an approval after the fact. Your planning and admin may
12 qualify under a grant for whatever reason, but that's
13 still after the fact. That's not preapplication, and
14 that's what we're trying to allow this to do. That's my
15 understanding of it, Carol, correct?

16 MR. SUNOO: Judy?

17 MS. MARASCO: Just so that I understand
18 Sandra's concern, she's concerned that if the grant
19 allows administration funds, we would have the ability to
20 shift those financial responsibilities to the block grant
21 and not use the administration money that might come with
22 that funding. Is that what you're saying?

23 MS. HENRIQUEZ: Yes. So I guess I would
24 propose that the second clause come back in: If the
25 source of the non-IHBG funds does not permit expenditure

1 of the funds on such administrative expenses, and delete,
2 "requires a significant application process and."

3 MR. ADAMS: Jan?

4 MR. SUNOO: Yes, Jason?

5 MR. ADAMS: I guess my concern, Sandra, is if
6 you're doing this and you're staying under the 20 percent
7 cap, what's the problem? In a lot of cases when --

8 MS. HENRIQUEZ: Right. I don't necessarily
9 care. It's the -- if you can get all this under the 20
10 or 30 percent, then that's fine, but that's not what I
11 understood because the last conversation I had with a
12 couple people before lunch was suppose we spend lots of
13 money applying for an application for something, and we
14 don't get it. We've spent that money. It's above our
15 cap. We want to get reimbursed for it, and that's what
16 I'm trying to prevent.

17 MR. ADAMS: I think that's when 238 kicks in
18 because then they've exceeded their caps, and they have
19 to have the conversation with you to get the approval.

20 MS. HENRIQUEZ: All right. Then they have to
21 come to us. So tell me why we need the significant
22 application process, the language anyway.

23 MR. ADAMS: That all just went way.

24 MR. SUNOO: It's just striking all that.

25 MR. ADAMS: No. 6 now just reads,

1 administrative and planning expenses associated with
2 expenditure of non-IHBG funds on affordable housing
3 activities, period.

4 MS. HENRIQUEZ: I can be okay with that.

5 MR. SUNOO: Sandra, are you okay with that
6 No. 6 now?

7 MS. HENRIQUEZ: Yes, although there's some
8 consternation here.

9 MR. SUNOO: Susan?

10 MS. WICKER: On 236 it states what is
11 eligible for the A and P expenses, and it's a list of
12 things that are associated with the -- that are
13 considered.

14 So why do we need administrative and planning on the
15 beginning of the No. 6 sentence? Why can't we just start
16 it with the expenses associated and go from there?

17 MR. ADAMS: That's a good fix.

18 MR. SUNOO: So, Susan, your suggestion again?

19 MS. WICKER: Just start off the sentence with
20 expenses.

21 MR. SUNOO: On No. 6?

22 MS. WICKER: Yes.

23 MR. SUNOO: Yes, Sharol?

24 MS. MCDADE: I think there is a little bit of
25 a differential because in 236, it pertains to the IHBG

1 program, but Section 6 refers to the non-IHBG program.

2 So I think that's a little bit of a variation there,
3 and I think that was the intent was that when we're
4 applying for those grant dollars, other financing, that
5 we have some flexibility with regard to how we're able to
6 prepare that. That's how I distinguish the two.

7 MR. SUNOO: Susan?

8 MS. WICKER: I was just looking at it as an
9 answer to the question and put it in the same format as
10 the rest of the answers. None of them start with
11 administrative and planning expenses associated with
12 whatever. I was just looking at the format, and I just
13 didn't see the need for it. Thank you.

14 MR. SUNOO: So where do we stand with Susan's
15 proposal. Carol? You don't have any objection to it?

16 MR. ADAMS: After reading it, because it is
17 -- in its entirety as a sentence, it's specific to
18 administrative and planning expenses associated with
19 expenditures. So I think it's cleaner if it stays
20 because it's an expenditure of those administrative and
21 planning monies.

22 MR. SUNOO: Okay. So we'll just leave it
23 then. HUD, where are we at with this?

24 MS. HENRIQUEZ: I just want to raise one
25 other point. In Section 202, eligible affordable housing

1 activities, Section 9, on the bottom of page 18 and
2 continues to 19, under this you also have the ability to
3 establish a reserve account only for the purpose of
4 committing amounts for administration and planning
5 related to affordable housing activities under this
6 section in accordance with Indian Housing Plan of the
7 Indian tribe.

8 A reserve account established under Subparagraph A
9 shall consist of no more than the equal amount of one
10 quarter of the five year average of the annual amount
11 used by a recipient for administration and planning under
12 Paragraph 2.

13 So we've got this additional amount -- I just wanted
14 to point out -- that you can set aside for administration
15 and planning, which you could then use for other expenses
16 associated with potentially non-IHBG funds. I'm still
17 struggling over leaving 6 intact except for striking,
18 "requires a significant application process and." I
19 don't know what to do with that.

20 MR. SUNOO: Yes, Phil?

21 MR. BUSH: To me, when your tribes
22 constantly look to leverage or seek additional funding,
23 and if the ultimate goal is affordable housing and it
24 clearly talks about affordable housing, who cares where
25 the administration expense comes out? It all washes at

1 the end if the ultimate goal is affordable housing.

2 MS. HENRIQUEZ: And I could accept that, but
3 having just gotten hammered by Congress on another
4 program where we wanted to do some other non-housing
5 related activities that we thought supported the housing
6 and the community and got hammered badly, housing dollars
7 for housing issues, I've sort of got that lens on as
8 well.

9 MR. SUNOO: Where would you like to see No. 6
10 end up, Sandy?

11 MS. HENRIQUEZ: That whole thing reads as its
12 written to include a strike out except -- I'd like it to
13 read the following: Administrative and planning expenses
14 associated with expenditure of non-IHBG funds on
15 affordable housing activities if the source of the
16 non-IHBG funds limits expenditure of its funds on such
17 administrative expenses, which is where I think we were
18 before lunch.

19 MR. SUNOO: Is everybody okay with that? So
20 let's make sure we get this. One more time, please,
21 No. 6, and we'll write this down.

22 MS. HENRIQUEZ: If the source of the non-IHBG
23 funds limits expenditure or prohibits expenditure --
24 would you change -- either way. It's a wordsmith that
25 the lawyers will have to figure out, limit, prohibit,

10 MS. HENRIQUEZ: Under non-IHBG, and then
11 supplement the difference by coming here?

13 MS. HENRIQUEZ: And if it fits within your 20
14 or 30 percent, all is good.

16 MS. HENRIQUEZ: You have to then come back.

18 MS. HENRIQUEZ: Fine.

20 MS. HENRIQUEZ: If you change prohibits back
21 to limits, I get it.

25 MR. ADAMS: Yes. I call for consensus on

1 Issue 11.

2 MR. SUNOO: Any objections? Issue 11 passes.

3 Thank you.

4 MR. SAWYERS: Phil, I think we got snookered
5 here.

6 MR. SUNOO: All right, Jason?

7 MR. ADAMS: Okay. With that that behind us,
8 now we have the hard one. The last issue that Work Group
9 C has to present today on the NAIHC worksheet is Item
10 No. 22. And if you look at the last potentially relevant
11 regulation that's listed there, it is regulation -- there
12 should be a sheet, Issue 22.

13 It's the regulation at 1000.552, which reads, how
14 long must the recipient maintain program records? And
15 this issue is the change to be, and again this is a
16 change due to tribal program year.

17 MR. SUNOO: Excuse me. It's on the flip side
18 of Issue 11. It's the old one, the old Issue 11 that was
19 issued this morning. Turn it over, and that's Issue 22,
20 the old 11. The Issue 11 that we handed out before
21 earlier, turn it over and you see Issue No. 22 on it.
22 We're trying to save paper.

23 MR. ADAMS: So the new Section B states --
24 the question is how long must the recipient maintain
25 program records? B says, except as otherwise provided

1 herein, records must be retained for three years from the
2 end of the program year during which the funds were
3 expended. Again, that's a change from grant years to
4 program years, so that's simple. Call for consensus.

5 MR. SUNOO: Any questions?

6 MS. MCDADE: Jason, didn't we have it as
7 tribal program year? I thought we tried to make it all
8 consistent.

9 MR. ADAMS: I think we had it at -- it ended
10 at program year I think because that's what the word is
11 being used throughout is program year.

12 MS. MCDADE: I thought we were trying to
13 maintain the consensus.

14 MR. ADAMS: This is the document that we
15 brought out of our committee. Recipient program year, is
16 that what you're asking to be added, tribal program year?

17 MR. SUNOO: Judy?

18 MS. MARASCO: I just have a clarification for
19 myself. My housing authority has been considering going
20 all electronic. Are electronic filings considered
21 adequate if we held those for three years?

22 We've had some situations in the past where we've
23 gone electronic, and HUD's come in and said, no, you need
24 hard copies also. So just so I know, under this new Dark
25 Star system, we can put everything into an electronic

1 filing system. Is that an adequate tracking system for
2 HUD?

3 MS. HENRIQUEZ: That's a great question. I
4 don't know the answer, and none of us here are subject
5 matter experts on that, so I can't give you an answer.
6 We'd have to back to you on that. Do you run backup
7 tapes on your system?

8 MS. MARASCO: Yes, we do, and we keep them
9 off site in a fireproof container. I know we are good.

10 MS. HENRIQUEZ: It's incumbent on us to get
11 you a response to that. I just don't know because more
12 and more agencies are moving in that regard anyway.

13 MS. MARASCO: Well, you've got to go
14 paperless now. We're killing way too many trees.

15 MR. SUNOO: Thank you. Getting back to Issue
16 22, any questions or clarification on 22? Carol?

17 MS. GORE: I've been asked by the drafter of
18 the language to suggest that the intent was for the last
19 sentence, end of the program year during which the funds
20 were allocated and not expended. And that came from Tim,
21 and then he deserted me.

22 MR. SUNOO: Explanation for that change?

23 MR. ADAMS: Yeah, we talked at length about
24 this in the work group. I mean, it's the year your
25 program is -- the program year the funds are expended,

1 the close of that year when they're expended. The clock
2 starts on retention of the records from that time. It's
3 not the year it's allocated. It's expended. It's the
4 close of the year.

5 MS. GORE: Expended makes sense to me. I was
6 asked to bring that up. He said he drafted the language,
7 and he thought it was an error. So I'm simply bringing
8 the message forward to the committee since he said he was
9 the drafter, but he's not here to defend it.

10 MR. ADAMS: Well, we're going to shoot the
11 messenger.

12 MR. SUNOO: Is everybody okay with expended?
13 So we'll take a call for the question. All in favor of
14 Issue 22? Any opposed? It passes.

15 MR. ADAMS: That means that work Group C is
16 completed. Thank you very much.

17 MR. SUNOO: Thank you, good work.

18 All right. If that completes the Work Group C, I
19 think we have one work group left, Work Group F.

20 MR. HAUGEN: Thank you, Jason. At this time,
21 Jan, our Work Group F is requesting a tribal caucus in
22 this room to clarify the issues noted with 74, 75, 76 and
23 79, and also to go through the nice little chart that was
24 handed out last night that we can all -- that we all need
25 help with I should say, but at this time Work Group F is

1 requesting a caucus.

2 MS. MCDADE: Don't we have to have a
3 consensus to do a tribal consensus?

4 MR. SUNOO: Yes. All in favor of a tribal
5 caucus, thumbs up. How long will you need?

6 MR. HAUGEN: One hour. Remember, they're
7 working by the hour. 45 minutes.

8 MR. SUNOO: Okay. Lafe, I know how long your
9 hours are. In the tribal caucus, are you including the
10 main part of the audience?

11 MR. HAUGEN: Yeah. The people in the
12 audience are considered part of the tribes, so that's
13 fine if they stay.

14 MR. SUNOO: In that case, I'll ask the HUD
15 folks to please leave because they would include the
16 audience here as part of the tribal caucus. 45 minutes
17 and we'll check.

18
19 (The proceedings were adjourned
20 at 3:45 p.m.)

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1 STATE OF WASHINGTON)
2) ss.
3 COUNTY OF KING)
4
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6

7 I, the undersigned Washington Certified Court
8 Reporter, do hereby certify:

9 That the foregoing proceedings held on the date
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15 Signed this day of , 2010.
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NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 239

A				
ABCD	111:17,19	ad	156:23 184:9	230:11,14,25
133:20	accountable	191:18	addition	232:5,7
ABCP	112:17,17,22 113:4	ADAMS	110:14,19 186:19	administrative
131:19	113:8 118:21	103:3 109:9 120:7	additional	112:9 151:11
ability	123:12 124:4	121:20 124:18	109:19 146:12,22	152:13,15,18
111:6 115:25	accumulative	125:1,8 126:3,6	155:12 163:4,24	153:2,11 154:9,12
137:17 191:20	173:3	127:6 143:19	165:12 166:25	155:8,11,21,23,24
222:10 225:4,5	achieve	144:11,16,20	179:9 193:5,6	157:18 162:20
226:19 230:2	129:12 130:9	145:10 150:13,20	208:3,8,9,11	163:22 164:1
238:14	achieves	151:6 152:5,10	209:10 224:18	165:14 166:13
able	130:9	154:14 156:22	230:13,22	172:14,22 180:2,5
106:13 115:17	act	157:3 160:3 162:4	address	181:10 183:15,16
119:16 128:19	102:8 111:4 115:24	164:6 168:11	128:21 147:11	183:21 184:12,14
157:24 159:17	116:8,11 117:24	173:23 174:20	183:6,19 209:15	186:19,23 187:3
163:12 165:13,17	118:22 119:3,19	175:17 176:18	210:1 216:19	190:1,2 192:18
169:11,16 181:14	122:21,22,25	178:5,7 182:5,7	addressed	193:5 194:2 195:8
181:15 189:20,24	123:2 134:2	182:11,17,20,24	140:1 212:19	195:14 198:4
208:10 226:4,10	143:14 146:2	183:2,11 193:10	addressing	200:25 208:23
229:5	172:5	201:7 203:21	171:14	209:1,2 210:5
abrogate	acting	210:25 211:9,21	adequate	212:3,4,9 220:10
115:4	123:9	211:25 212:10	156:8 200:13	223:3,16,20,21,24
absence	action	213:5,10 215:13	234:21 235:1	224:11 225:13,19
116:2	112:14 116:2,9	218:4 223:19	adjourned	227:1 228:1,14
Absolutely	127:10	227:3,5,17,23,25	237:19	229:11,18,20
179:3	actions	228:17 229:16	admin	231:13,17
absorbed	112:4	232:25 233:7,23	158:9 162:17 163:6	administratively
221:11	active	234:9,14 235:23	163:10 166:3	155:2
accept	166:4	236:10,15	174:1 179:6 181:4	administrator's
141:20 231:2	activities	add	182:12,21 183:7	117:12
accepted	121:6 150:23	133:17 148:3,11	191:17,24 192:2	adopt
108:16	152:24,25 186:21	164:16 168:3	194:10,13,18,19	143:13 161:21
access	208:24 212:6	169:1 172:2	208:3 212:25	advise
108:12,20 169:11	220:15 223:5,15	183:18,19 193:13	223:2 224:24	135:15
accidentally	223:15,16,18	203:13,20,24,25	225:6,8 226:11	afford
213:18	228:3 230:1,5	204:1,4,8 205:10	administer	232:8
accommodate	231:5,15	206:5 215:12	165:12 232:8	affordable
138:20	activity	216:6 219:1,4,13	administration	136:11 152:23
accomplish	153:1 155:12	223:21	111:17,23 112:22	153:1 163:23
162:6 196:6 211:4	acts	added	112:23 157:11	186:21 208:24
account	120:22	172:13 187:2 205:7	158:22,25 165:18	212:6 223:5,18
156:20 161:5	actual	206:15 212:4	174:13,17 178:18	228:2 229:25
175:22 230:3,8	106:6 127:19	213:19 217:14,15	190:4 195:4,21,21	230:5,23,24 231:1
accountability	165:10 201:20	217:16 234:16	198:16 199:17	231:15
	209:12	adding	226:19,21 230:4	afternoon

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 240

151:15	126:11,12,23	allowing	105:12	197:11,11,20
agencies	127:5,25 128:6,7	134:16 154:11	Anchorage	209:1 212:2
235:12	128:8,9,11 130:5	221:19	131:9 134:22	220:22,24 229:9
agency	130:7,11,19,24,25	allows	announcement	235:4,5
111:16 131:21	131:10 132:1,16	209:4 226:19	104:10	answering
aggregate	132:19 133:21	alternative	announcements	153:10
172:8	134:1,5,19,23	116:7 188:19	104:4	answers
aggressive	135:2,12,21 136:1	amend	annual	208:20 214:22
159:5 165:4	137:24 138:19	197:12,17,23	141:16,18 142:1,16	229:10
ago	139:2,18,25	217:13	142:17 153:8,15	anybody
150:25	140:16 141:2	amendment	171:22 173:9,20	120:13,14 141:4
agree	142:6,6 170:4	185:17,24 186:12	174:12,13,16	161:13 166:16
118:20 134:19	Alaskan	218:24 219:7,8	175:9,15,19	203:9 216:8
144:10 161:19	127:24 128:4	amendments	176:16,22 181:22	221:21
162:6 177:1,9	align	152:19	181:22,23 184:21	anymore
181:2 201:13	163:19	American	184:23 185:2,4,10	174:22 187:20
agreed	allegation	102:2 104:23	187:9,11,25 189:3	anyway
191:18	173:19	146:14	190:1 192:23	172:21 177:12
agreement	allocated	amount	195:8 196:10,11	227:22 235:12
128:2,5,14,18,24	235:20 236:3	153:21 159:24,24	196:23 197:1	apart
129:3,10,21	allocation	170:25 172:8	198:19 199:4	198:17
130:22 131:13	153:21 160:18,21	174:7,12,16	201:19 202:18,19	apologize
132:12,16 134:1	170:25 173:3,8,18	175:12 178:19	203:2,13,15 204:4	151:6 193:11
137:6,11 138:1	175:11,15 176:7	180:7 185:13	204:8,11,12,15,16	218:17
141:3 142:20	176:20 177:7	189:3 193:21	204:16,19,20,24	appear
144:6 145:22,25	181:23 182:12,21	194:4 195:9	205:1,3,7,19	177:17
146:8,9,18 161:1	185:3,6,13 188:1	196:10 197:17,21	206:4,6,11,12,14	appears
161:5 162:1,9	188:17,24 189:17	198:19 199:7	206:14,21,22,25	126:17 138:7
177:22 180:11	199:15,21 200:3	201:19 202:18,19	207:5,6,22 208:3	apple
agreements	200:18 201:1	203:2,5,14,15	209:11,16,17	120:5
125:19 126:12,22	210:13 214:1,5	204:8,12,16,21,24	210:13 213:19,23	applicable
133:14 137:14	allocations	205:3,7,19 206:6	213:25 214:2,3,6	200:10
140:23 141:1	189:2	206:12,22 207:1,5	215:21,22 216:5,6	application
145:17 161:2	allow	207:6 209:11	216:13,15,20,21	162:23 209:24
ahead	115:20 129:1,13	210:13 213:19,25	217:7,21 218:21	210:4 212:7,12
109:10 128:25	136:10 148:17	214:3,6 215:22	218:22,25 219:4	220:8,12 221:9
129:13 134:17	155:22 161:4	216:6,15,22 217:7	219:13 230:10	225:19 226:10
138:22 140:6	212:23 224:1,24	217:7 230:9,10,13	annually	227:2,13,22
200:19 211:10	224:25 225:13	amounts	198:14	230:18
215:13	226:14	174:22 196:11	answer	applies
ain't	allowable	204:4 221:1 230:4	114:22 116:13	134:11 168:15
151:12	208:2 210:15	amount's	126:13 138:12	189:2 220:25
Alaska	allowed	199:4	139:19 146:1	apply
104:24 125:24	116:10 196:3	analysis	170:17 194:25	164:25 166:9

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 241

168:21,25 172:9 189:11 225:18 226:5 232:6 applying 161:24 227:13 229:4 appreciate 113:3 124:13 224:23 approach 105:11 appropriate 149:6,12,15,21,22 150:13 221:10 appropriately 116:14 appropriation 199:5,21 appropriations 195:10 198:14 200:4 approvable 116:2 approval 119:23 153:15,17 153:18 156:18,23 158:12 164:23 165:9 185:7,9,11 186:8 191:21 207:21 216:4 217:20 218:20 219:11 221:3,19 224:17 226:11 227:19 approve 148:22 158:8 approved 121:2,10 122:8,11 122:16 153:21 183:9 208:22 APR 194:17 197:14 201:20 APRs	198:15 architectural 181:11 area 116:20 138:23 146:11 147:17 194:22 areas 105:22 106:6 129:14 139:25 argues 161:13 argument 199:13 225:25 232:3 arrived 182:10 aside 230:14 asked 138:14 139:8 142:22 151:3 235:17 236:6 asking 105:9 138:14,16 163:1 169:19 182:18 220:19 224:10 234:16 assembly 131:1 assessment 104:11,23 assign 149:25 assistant 121:5 127:5 128:25 139:14 146:13,14 149:9,10,18,19 150:8 157:1 209:18 223:10 associate 151:22 associated 183:21 184:12,14	186:20 208:23 212:5 223:4,17 228:1,12,16 229:11,18 230:16 231:14 assume 188:11 189:17 194:2 195:1 199:10 assumed 121:14 assuming 139:17 162:18 189:22 206:18 assumption 117:1 189:15 190:6 192:23 193:20 199:9 assure 115:19 Atallah 127:22,22 136:24 138:12 attached 162:18 attempts 224:12 attention 116:11 152:9 attorney 127:23 135:8 136:14 138:16 142:5 148:5 218:16 attorneys 118:12 143:22 170:8 191:9 audience 107:8 217:1 237:10 237:12,16 authorities 117:19 160:25 169:6,9 170:3 194:9 195:23	authority 115:1,12,16 116:3 116:16 129:18 130:25 131:2 133:3,21 134:21 136:2 143:2 149:25 150:1 160:12 166:2 178:18 180:16 191:9,12 197:21 197:25 234:19 authorize 128:23 automatic 191:24 automatically 190:17 221:4,5 available 183:20 avenue 102:12 115:19 average 230:10 avoid 225:2 aware 144:14 <hr/> <p style="text-align: center;">B</p> <hr/> B 146:24 148:3,12 152:21 210:21 233:23,25 back 104:7 116:21 117:7 118:4,16,23 119:1 119:4 120:24 122:21 123:1,24 139:10 143:23 145:1 151:25 152:2 161:8 166:5 172:24 173:11,13 173:15 174:6,11 174:15 178:2,4	182:5,6,8,8 186:18 189:1 194:8 196:12 201:15 205:6 208:13 211:2,10 211:21 214:17 217:5,12 218:7 220:4 225:11 226:24 232:16,20 232:23 235:6,15 background 126:15,19 142:8 146:5 backup 235:6 bad 138:4 badly 231:6 balance 177:5,11 204:22 205:4 balancing 117:24 bank 155:17,17 166:12 180:4 193:3,4,22 banking 174:25 Barring 213:5 base 187:22 188:17,19 197:3,5,21 199:7 based 133:21 173:2,8,16 174:22,22 175:14 175:23 176:19,19 188:4 195:8,14 196:10 198:19 199:5,21,23 200:11,25 201:20 203:1 207:22 215:21 216:5
---	--	---	---	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 242

217:21 218:20 219:12 bases 145:2 basic 105:15 basically 130:18 132:2 133:4 144:23 basing 190:5 202:5,8 basis 141:16,18 142:16 142:17 189:4 battling 222:17 beans 169:20 bear 177:16 beat 138:5 beginning 108:14 113:17 222:19 228:15 begins 112:14 210:2 215:18 219:9 behalf 172:4,7 184:25 204:13 213:22 believe 165:19 208:5,14 221:16 bell 211:9 BENCENTI 103:3 beneficiaries 117:16 167:22 185:1 213:22 beneficiary 171:15 172:3 173:4 181:23,24 185:3,5	214:1,4 benefit 168:5 best 118:13 162:10 238:14 Bethel 133:21 134:25 better 121:3 196:17 198:18 214:21 beyond 112:15,15 147:16 147:23 209:5 bickering 124:15 big 111:12 112:16,20 133:24 178:21 bigger 137:4 192:17 bit 113:11 114:6 156:3 177:20 196:16 199:19,25 200:2 209:23 214:21,25 228:24 229:2 black 164:8,19 blah 184:15,15,15 Blake 103:10 124:8 133:17 138:18 157:5 158:3 159:13 170:18 171:11,16 Blake's 167:7 blanket 138:20,20 139:7,16 139:17 140:8 167:19 block	152:17 226:20 board 113:10 167:4 169:4 216:14 218:7 bodies 132:21 body 123:25 128:6,10,12 129:4,10 130:7,19 130:22,23 131:4,5 131:7,11,12,24,25 132:4,18,20,25 133:4 134:20 136:15 143:5,15 borough 126:11,23 127:11 127:25 128:6,10 131:2 133:23 134:6,8,8 Boroughs 141:9 borrow 143:11 bother 214:24 bottom 144:22 212:21 213:13 230:1 bought 140:10 bound 114:14 162:22 boy 190:9 BOYD 103:4 104:9,14 106:20 213:14 218:10,13 brainstorming 184:8 break 151:24 179:17 182:1,10 211:2,4 breaks	178:14 brief 213:3 bring 107:20 120:17 143:22 162:21 175:6 178:2,4 181:8 197:2,22 208:13 236:6 bringing 155:10 158:19 166:25 236:7 Brooks 140:2 brother 140:16 brought 115:12 140:2 163:11,14 179:21 181:6 234:15 brunt 177:16 budget 155:19 157:19 199:16 201:2 222:21 build 134:9 138:22 180:6 180:21 built 221:4,6 BULLOUGH 188:9 191:6 194:17 196:9,20 197:5 206:24 213:18 bump 193:13 194:12 bumped 193:11 bunch 159:2 198:4 200:11 burden 172:22 180:24 192:18 193:5	196:22 bureau 111:12 112:19 bureaucrats 111:12 BUSH 103:4 160:8 167:6 167:21 168:18 171:21 172:20 173:14,18 176:12 176:21,24 181:18 182:15,19,23 189:14 192:14 193:1 194:23 198:22,25 200:16 201:18 202:1,10 203:25 204:5 205:25 207:8 214:17 215:10 220:17,21 221:15 230:21 business 163:23 195:10 221:13 busy 193:10 BUTTERFIELD 103:5 Byrd 102:17
C				
C 103:1 147:3 233:9 236:15,18 CAGEY 111:3 118:12 122:19 123:19 calculate 195:7,13 calculation 171:24 calendar 121:6				

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 243

call 124:20 125:1 127:13 143:20 144:18 155:16 211:10 213:6 218:4 232:25 234:4 236:13	177:13 178:25 179:21 181:2 183:7 185:16 207:16 209:20 215:13,25 217:15 222:25 224:8 225:15 226:15 229:15 235:16	CEO 133:20 certain 116:22 197:22 certification 141:18 142:2 Certified 238:7,21 certifies 141:19 certify 238:8,13 chair 140:5 143:25 Chairman 130:15 chairs 125:16 challenges 128:1 153:20 challenging 128:16 130:18 chance 213:12 change 113:7 116:7 117:3 119:18 121:21 124:14,25 125:9 131:16 152:16,21 152:22 153:3,4,6 154:21 168:19,23 168:25 170:6 171:14,17 174:18 175:10,11 176:2,2 176:6 177:19 191:13 200:4 201:13 203:8,18 203:22 207:16 231:24 232:20 233:15,16 234:3 235:22 changed 105:16,19 109:22 125:2 141:19	152:20 176:7 189:8 211:18 221:25 222:1 224:4 changes 109:20 125:21 145:4 153:13,25 168:20 181:19 189:9 219:21 changing 127:19 168:13,14 176:5 channels 146:7 chaos 175:18 chart 125:13 236:23 chasing 221:9 check 237:17 checklist 108:3,13 chief 128:7 130:11 131:9 choice 200:21 choose 136:2 Circle 160:14,15 169:18 circumstances 153:23 185:15 192:10,12,17 citizens 133:8 city 131:5 134:25 clarification 119:5 157:7 158:4 159:14 162:13 169:5,23 187:6,13 190:19 205:8	220:6,19 234:18 235:16 clarified 110:4 210:12 clarifies 180:15,17,23 224:19 clarify 110:24 119:2 121:15 127:10 142:14 147:15 154:6 155:5,25 179:5 206:10 210:6,14 225:16 236:22 clarity 210:8 219:15 classify 198:5 clause 214:14 220:7 226:24 clean 123:8 cleaner 229:19 clear 110:1,5,9 115:21 149:16 164:24 167:14 168:22,24 169:12,13 170:1,5 185:25 189:7 clearer 219:3 clearly 120:8,15 158:10 167:18,19 230:24 clock 109:13 198:22 236:1 clock's 182:7 close 134:9 143:21
calling 198:4 213:8	Carolina 140:3	certifies 141:19	changing 127:19 168:13,14 176:5	clarify 110:24 119:2 121:15 127:10 142:14 147:15 154:6 155:5,25 179:5 206:10 210:6,14 225:16 236:22
cap 159:7 169:16 174:24 176:19,19 201:2 203:2,3 226:1 227:7,15 232:5	Carol's 219:7 223:13	certify 238:8,13	channels 146:7	clarity 210:8 219:15
capital 154:8 155:6,7,10 155:10,18 162:19 163:6,25 196:1 197:25	carry 129:2	chair 140:5 143:25	chaos 175:18	classifi 198:5
capped 232:7	carrying 152:23 200:10	Chairman 130:15	chart 125:13 236:23	clause 214:14 220:7 226:24
caps 221:3,5 227:18	carryover 190:21 191:12	chairs 125:16	chasing 221:9	clean 123:8
caption 238:10	case 119:25 120:1 121:3 121:8,9 129:11 136:13,14 159:15 166:8 178:13 190:19 237:14	challenges 128:1 153:20	check 237:17	cleaner 229:19
capturing 179:4	cases 133:2 158:22 159:2 227:7	challenging 128:16 130:18	checklist 108:3,13	clear 110:1,5,9 115:21 149:16 164:24 167:14 168:22,24 169:12,13 170:1,5 185:25 189:7
care 130:8 143:16 186:13 192:12 217:25 227:9	catch 219:7 223:13	change 113:7 116:7 117:3 119:18 121:21 124:14,25 125:9 131:16 152:16,21 152:22 153:3,4,6 154:21 168:19,23 168:25 170:6 171:14,17 174:18 175:10,11 176:2,2 176:6 177:19 191:13 200:4 201:13 203:8,18 203:22 207:16 231:24 232:20 233:15,16 234:3 235:22	chief 128:7 130:11 131:9	clearer 219:3
career 111:13	category 198:8	chance 213:12	choice 200:21	clearly 120:8,15 158:10 167:18,19 230:24
cares 230:24	caucus 236:21 237:1,5,9 237:16	challenge 128:16 130:18	choose 136:2	clock 109:13 198:22 236:1
Carol 103:7 107:23 108:24 109:22 110:11 141:13 147:12 154:3 156:2,22 157:7,14 158:3 161:9 164:15,21 170:10	causes 112:10,11	challenging 128:16 130:18	chief 128:7 130:11 131:9	clock's 182:7
	CCR 102:17 238:22	chance 213:12	choice 200:21	close 134:9 143:21
	census 105:12	change 113:7 116:7 117:3 119:18 121:21 124:14,25 125:9 131:16 152:16,21 152:22 153:3,4,6 154:21 168:19,23 168:25 170:6 171:14,17 174:18 175:10,11 176:2,2 176:6 177:19 191:13 200:4 201:13 203:8,18 203:22 207:16 231:24 232:20 233:15,16 234:3 235:22	circumstances 153:23 185:15 192:10,12,17	
	center 199:3	challenging 128:16 130:18	citizens 133:8	
	cents 157:7	changed 105:16,19 109:22 125:2 141:19	city 131:5 134:25	
			clarification 119:5 157:7 158:4 159:14 162:13 169:5,23 187:6,13 190:19 205:8	

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 244

215:18 236:1,4 cobble 155:19 codifying 129:15 coincide 110:4 collection 153:20 158:13 185:12 collective 159:21 160:16 collectively 170:22 combination 159:1 161:23 combining 185:8,18 186:1,6,7 186:14 207:20 215:18 216:3 217:17,19 218:19 219:10 come 106:15 107:19 116:21 117:22 119:11 121:17 123:18 124:22 125:20 128:22 139:10 151:25 152:2 164:1,14 178:11,16 183:9 183:23 191:20 192:16 196:16 211:2 224:24 226:21,24 227:21 232:16 234:23 comes 127:18 170:19 171:3 181:7 195:15 230:25 coming 134:17 136:19 138:6 147:22 185:24 187:9	193:18 194:1 195:10 199:5 200:18 201:1 232:11 comma 214:11,13 commas 217:11,22,24 comment 143:24 147:11 169:4 171:21 190:12,13 comments 144:7 146:12 167:5 214:10 committee 103:3 104:15 108:3 108:7 112:18 118:20 119:6 120:3 125:23 140:8 154:4 156:3 159:12 175:25 176:6,9 180:18 217:1 234:15 236:8 committee's 211:7 committing 230:4 communities 133:23 135:16 community 112:8 135:19 150:22 152:24 231:6 comparing 105:12 completed 150:25 236:16 completes 236:18 compliance 114:17 complicate	155:25 complicated 111:10 141:16,21 177:3 214:20 comply 117:12 147:2 complying 133:25 component 154:9 155:21 156:6 164:1 components 106:9 comprehensive 152:24 compromise 118:20 123:4 124:22 Conceivably 207:17 concept 162:9 concern 115:10 134:7 135:10 137:4,8,16 138:1 169:21 185:25 190:23 196:10 209:15 223:9,10 226:18 227:5 concerned 192:2 226:18 concerns 111:3 137:20 144:8 150:17 154:2 169:8 209:18 condensed 126:3 condition 147:1 conditions 106:2 conflicts 135:7 137:9	confused 176:14 189:14 199:19,25 confusion 147:17 189:6 Congress 106:7 119:4 231:3 congressionally 137:7 consensus 107:20 108:4,8 119:12 120:9,12 120:17 124:23 125:1 127:2 138:9 143:20,21 144:12 144:18 145:7 147:9 152:10 154:1 156:9 183:9 189:9 206:7 208:17 211:11 213:6,9,11 218:5 232:19,24,25 234:4,13 237:3,3 consequence 119:22 consequences 119:4 consider 131:24 132:19 140:8 141:17 148:16 217:2 consideration 153:19,22 185:12 185:15 192:10 193:13 considered 140:9 153:1 212:23 212:24 228:13 234:20 237:12 considering 121:4 234:19 consist 169:10 230:9 consistent	150:15 161:24 176:19 204:7 207:12 215:19,23 216:11 223:6 234:8 constant 178:18,24 constantly 230:22 consternation 228:8 constitution 128:11 131:1 137:17 constitutions 141:6 construct 177:21 consultations 105:5 106:18 consuming 138:24 contain 120:24 contained 160:18 container 235:9 contents 151:20 continue 107:6,13 136:10 195:22 210:24 211:1 219:11,13 continues 139:15 147:16 230:2 continuing 129:8 contract 105:2 contractor 105:24 108:19 151:24
---	---	---	---	--

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 245

contractors 105:1	221:3 226:15 238:14	132:5 150:25 162:12 227:12	curious 166:7	deadline 110:3,7,10,24
contrary 130:2	corrected 223:19	course 105:17	current 168:15 187:22	111:1 113:15,19 114:2,3,9,16
contributing 201:11	correction 125:5 158:4	Court 238:7,21	currently 125:5 160:25	116:25 118:15 119:15,17,19,23
contributor 180:1	corrections 214:7	cover 220:20 225:6	168:13 189:19 192:20 199:11	120:1
controversial 215:16	correctly 187:10	covered 145:2 159:2 191:22	221:20	deadlines 111:6 118:25 119:3
conversation 179:4 227:11,19	corrects 124:11	208:6	cut 137:24 223:15	119:8 147:1
conversations 187:17	cost 152:22 153:19,21	covering 105:7,9	C's 107:7 201:8	deal 109:6 124:14,14
convince 181:13	157:18 161:10,11	covers 159:3 208:14	C-167 125:15	131:20,22 133:11
cooperation 125:19 126:12,22	163:15,19 165:4,8	COYLE 103:5 127:4 148:22	C-171 145:14	141:11
128:2,5,14,18,24	165:10,14 172:14	178:17 179:2	C-174 126:4,5	dealing 126:23 136:23
129:3,10,21	179:7 183:21	208:5,13		138:25 150:22
130:22 131:13	185:12 192:3	Co-chairs 151:23		152:12 170:5
132:11,16 133:14	221:11,12			deals 111:6 133:14
137:6,11,14 138:1	costs 153:1 158:9,24,25	crazy 116:11		151:11
142:20 145:17,22	162:20 179:10	create 175:18 177:5,11	Dark 234:24	death 138:5 218:17
145:25 146:17	180:5 181:10,12	192:20 196:3	Darlene 169:21 170:4	debatable 135:4
Cooperative 140:23,25 141:3	183:21 184:12,14		data 105:12 153:20	debate 107:9 164:23
coordinated 107:2	190:2 191:24	created 131:6	158:13 185:13	debated 193:17
copies 151:5 234:24	194:13 195:8,14	creates 160:14	date 114:8 177:2 238:9	decide 111:11 113:21
copy 125:14 156:17	198:6,11 220:12	creating 135:9 192:17	day 102:10 111:22	120:23,23 195:12
211:13 212:2	224:24 225:6,9,20	creative 179:9	114:10,14,17 238:15	decided 104:6
221:23	council 142:7 169:18	credit 220:12	days 112:15,16 113:17	decides 114:13
corporations 139:3	counsel 127:16 128:7,7	credits 166:10 207:25	113:18,21,24 114:1,3,10,11,15	deciding 123:9
correct 115:3 117:1 120:2	131:9 142:5	222:16	114:16,18,23 119:16 120:1,23	decision 111:14 121:13
124:2 127:11,12	191:14	crucial 105:21 107:2	121:6 122:7,15 146:20 200:22	decisions 111:13 112:11
136:4,14 142:2	counsel's 130:11,18	cumulative 160:10,11 167:9,15	day-to-day 135:20	declare 205:11
160:20,21 189:16	count 198:6	167:22		
204:25 209:23	country 222:16			
210:9 215:10	COUNTY 238:3			
	couple			

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 246

deem 116:2	Deputy 146:13 149:8,18,19	difference 162:2 190:23 202:12 232:11	176:4 190:20 191:1 192:7 197:10 201:12 211:23 212:17	236:6
deemed 121:2	describe 213:4	different 127:18 160:17,18 161:1,3 168:3 216:21 217:8	discussions 107:16 151:21	drafter 235:17 236:9
defeat 130:2	described 221:1	differential 228:25	disincent 177:14	drafting 166:17 200:19
defend 236:9	describes 167:18 221:6	difficult 107:10 109:5 163:21 165:21	dissected 214:19	draft-looking 145:14
definitely 170:4	deserted 235:21	dinner 169:19	distinguish 229:6	dramatically 200:4
definition 167:13,17 169:25 170:13 175:10 187:11 189:8,9	design 105:6	dip 163:16	doable 181:15	drawn-out 174:21
delay 146:21	designee 149:4	direct 158:25 198:5	document 125:15,15 126:2,3 145:14 234:14	due 115:8 233:16
delegation 148:24 150:7	designs 181:11	directed 193:19	documentation 127:7 146:13,22	dumped 117:7
delete 223:5,15 227:1	determination 116:4 130:18 146:19,23	direction 141:22 142:18 238:12	documented 128:17	DURANT 103:6
deleted 110:18,20 145:7	determine 189:2 197:13	directly 152:23	doing 118:12 159:4 168:15 179:5 191:17 194:11 202:8 221:13 224:18,19,22 225:18,20 227:6	duty 129:9
deleting 145:8	determined 152:25 158:24	disagree 140:16 165:25	dollar 172:8 192:15	<hr/> E <hr/>
demonstrate 146:6	determining 188:25	disapproved 121:10	dollars 155:15 157:7,8,9 157:11,12,18 162:21 163:10 170:23 175:8 183:8 188:21,21 195:13,14,18 197:1 229:4 231:6 232:4	Earl 108:15,15,17
denial 118:17 119:22 147:4,4,7	detriment 195:24	discouraging 144:4	door 105:25,25	earlier 217:23 220:22 233:21
denied 122:8,11,16 147:3 147:5	develop 129:13 189:20	discretion 153:2	double 163:16	early 114:21
Denver 151:9	developed 129:22	discuss 156:3 206:3	drafted	easily 222:11
deny 116:4	developer 166:5,9,11	discussed 187:7 191:18 196:16 198:2		easy 141:8 159:8 168:22 175:20 177:18 205:16
DEPARTMENT 102:1	developers 166:7	discussing 224:3		eaten 195:3
dependent 222:22	development 102:1 104:19 138:22 150:23 152:24 166:2 179:5,12 220:14	discussion 107:7 109:12 154:10,15 156:7 158:18 174:21		Ed 140:2 181:18
depending 149:9	devolved 149:10			edit 204:6
depends 160:5				Ed's 182:16 183:5

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 247

effect 112:12 136:21 139:9 142:1 154:18 164:5 166:23 167:1	154:6 222:8 ended 234:9 ends 221:11 enforce 124:9 enforced 117:5,6,7 134:8,14 enter 126:11 130:21 131:13 133:25 140:22 141:3 entered 132:15 entire 150:19 193:21 194:3 195:2 206:25 207:3 entirety 135:13 172:9 229:17 entities 222:11 entity 141:2 170:15 172:7 environment 196:1 environmental 139:16 195:16 equal 230:9 error 236:7 especially 116:19 138:25 194:9 essence 179:4 204:1 essentially 125:9 establish 230:3 established	230:8 estate 166:2 event 179:22,24 eventually 128:18 everybody 104:17 107:4,5,15 149:12 152:9 165:16 173:21 178:15 195:25 200:14 211:15,19 213:12 214:20 219:6 231:19 232:23 236:12 everybody's 182:1 193:7 201:11 evidence 155:23 158:8 exact 202:10 exactly 129:12 202:12 210:9 example 116:1 123:12,13 159:18 163:13 166:24 181:6 202:6 220:11 examples 123:15,16 158:20 exceed 193:6 221:1,17 225:25 exceeded 194:15,19 227:18 exceeds 216:22 excess 153:7 168:4 184:20 206:20 221:12,15 exclude 232:1	Excuse 126:1 152:8 233:17 exempt 132:2 145:23 146:8 146:9 exemption 129:3,24,25 145:17 145:25 146:18 exercise 136:2 exercised 131:2 exhausted 146:7 exist 140:19 existence 164:19 172:23 existing 157:3 exists 117:3 134:7 expect 106:17 111:19 expend 175:13 188:20,22 189:3 193:21 194:3 197:14,16 198:14,15 202:8 expended 147:8 188:15 197:6 217:7 223:25 234:3 235:20,25 236:1,3,5,12 expending 174:23 190:8 197:15 212:14 expenditure 173:24 174:2,5,8 175:9,20,23 176:17 177:4 185:2,5,10 186:20 187:8,9,11,15,17 187:25 188:4,6,20	190:6,8 192:23 197:1 199:10 201:19,23 202:18 204:9,15,16,19 205:2 207:22 208:11,23,25 209:16,17 210:5 210:13 212:5,8 213:24 214:2 216:5,13,20,20,22 217:13,17,21 218:21,22 219:2,5 219:13 220:9,14 221:12 223:4,17 225:13 226:25 228:2 229:20 231:14,16,23,23 expenditures 153:9,15 171:22,25 173:9,20 174:14 176:23 181:22 184:22,24 186:22 189:16 195:7 196:5,12,23 197:4 198:4,11 199:18 203:6 204:11 206:11,14,21,25 207:5,18,25 208:2 208:14 209:12 215:3,4,22 217:16 229:19 expense 194:18 221:7,17 230:25 expenses 151:12 152:14,15 152:18 153:12 174:19 183:16,17 183:25 186:19,23 187:3 208:23 209:1,3,25 210:5 212:4,5,9,23 220:10 223:3,17 223:20,22,25
---	---	--	--	--

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 248

224:1,12 225:14 227:1 228:1,11,16 228:20 229:11,18 230:15 231:13,17 expensive 163:24 experts 235:5 explain 127:16,20 175:18 184:18 194:18 explained 119:24 184:7 Explanation 235:22 explore 135:5 extend 112:6 extension 141:23 extensive 197:10 extensively 198:2 extra 162:21 164:17 extremely 191:23	117:15 failing 122:25 123:2,13 fails 114:2 115:24 failure 111:4 116:8 117:12 118:1 119:3,18,19 122:20 141:11 146:9 failures 122:21 fair 165:20 fairly 195:11 214:10 faith 145:21 146:3 fall 106:21 familiar 105:14 families 105:25 121:5 far 194:1 225:3 fault 108:19 145:23 146:10 222:14 favor 120:13,14 125:4 127:14 145:8 150:18 207:13 218:6 236:13 237:4 fearful 178:9 federal 117:22 119:21 136:5,8,16,16,20 136:21,22,25 137:2 139:1,18 143:17 155:16,17 166:11 180:3	federally 126:10 federally-recogni... 135:16 federal-state 127:20 fee 163:6 165:18 220:16 feel 115:13 156:8 161:17 fees 166:3,5,7,9,11,13 183:7 194:10,13 232:5,7 fell 198:17 felt 191:7 field 107:1 figure 139:14 142:9 166:1 177:21 183:6 197:16 231:25 232:1 figured 159:7 file 117:15 138:22 filed 118:6 filing 118:3 235:1 filings 234:20 financial 226:20 financing 183:22 185:9,19,20 186:1,2,3,16 229:4 financings	222:20 find 106:15 123:1 149:21 166:16 208:1 finding 106:1 117:21 fine 104:16 217:2 224:22 225:3 227:10 232:18 237:13 finishing 104:8 fire 133:9,12 178:19 179:2 fireproof 235:9 first 105:4,11 119:7 125:13 127:23 128:3 134:15 151:10,16 172:17 177:11 179:16 181:21 184:6 190:12,22 191:7 203:7,12 210:1,6 210:7,14,18 213:20 214:17 218:11 219:23 220:21 221:1 223:19 fit 176:8 220:13 fits 202:22,22 232:13 five 189:20 202:6,8,9 203:1,4 230:10 five-minute 144:5 151:24 fix 134:18 141:8	228:17 flexibility 229:5 flexible 186:13 flip 205:12 233:17 floor 144:3 flopping 205:12 flows 112:8 focus 173:5 189:18 folks 111:13,13 112:9 117:15 153:6 178:7 237:15 follow 142:15 192:6 204:20 226:8 following 170:12 183:14 203:3 231:13 follows 223:6 fool 179:19 foot 196:25 force 141:25 foregoing 238:9 form 107:23 145:14 151:2,16 178:1 190:23 formal 178:16 format 199:1 229:9,12 forms
F				
F 236:19,21,25 face 155:20 Facilitator 144:11 fact 113:3 156:3 166:9 191:11 200:9,10 226:11,13 fail 118:21 190:16 failed				

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 249

151:2,14 formula 104:20 116:20 191:10 199:3 forth 137:23 140:1 180:5 181:11 fortunate 115:8 forward 114:21 118:5 124:3 125:3 129:2 175:7 195:15 236:8 Foster 103:6 120:18,18 121:16,24 122:4 122:17 143:1,1 149:14 164:11 166:18 186:4 209:15 214:9 216:17 217:6,10 217:23 218:2,16 219:9 222:6 found 198:3 foundation 166:13 181:7 four 123:24 189:20 frankly 163:20 223:10 friends 109:10 front 104:21 fruit 109:3 frustrating 124:16 143:25 frustration 112:10 fuel 179:9 full	111:10 138:9 141:25 177:16 188:1 213:21 fund 206:4 funded 168:5 221:9 funders 222:14 funding 114:4 116:25 118:17 153:24 160:23 165:5 167:1 174:13 185:16 192:11,16 207:18,21 208:11 216:4 217:20 218:19 219:10 225:1 226:6,22 230:22 funds 117:23 147:5,6,8 152:14 153:9,11 153:15 155:6,7,11 157:16 161:21,22 162:17 166:25 171:23 173:21 174:2 176:4,20 177:16 179:25 181:9,22,23 183:20,20 184:22 184:24,25 185:3,5 185:9,18,19 186:1 186:3,5,6,7,7,8,15 186:20,22,22 189:3,24 191:13 191:13 203:13,16 204:3,11,13,15,20 204:25 205:2 206:11,21 207:20 207:23 208:3,9,9 208:24,25 209:1 209:10 210:3,5 212:5,8,13,15	213:22,24 214:3 215:19 216:3,22 217:18,19 218:19 218:22,23 219:2,5 219:10,13,17,19 220:8,9,15 222:8 222:10,17 223:4 223:17,25 224:14 224:23 225:4,12 226:19,25 227:1 228:2 230:16 231:14,16,16,23 234:2 235:19,25 further 116:18 127:9 135:15 146:6 162:4 191:14 203:24 206:10 210:14 213:4 238:13 future 127:10 175:4 <hr/> <p style="text-align: center;">G</p> <hr/> gain 157:12 gee 160:17 general 105:11 133:15 136:8 186:15 generally 136:7 137:14 149:10 162:18 164:1 166:13 gentleman 143:3 getting 109:2 111:14 112:3 151:7 158:13 161:8 168:6 172:6 172:9 181:11 195:12 199:19 211:16 225:4	235:15 give 104:5,10 107:8 115:24 126:25 170:8 177:24 178:9 180:16 197:24 201:14 202:6,17 203:10 210:7 222:15 235:5 given 118:4 141:17,25 153:23 185:15 191:11 192:10 214:22 gives 115:16 144:2 225:10 go 104:7 106:25 107:16 109:10 116:17 118:9,16 118:23 119:1,4 120:10 122:21 123:1,24 126:20 128:17 129:1,13 130:10,13 134:2 134:17 135:11 138:5,7,21 140:6 141:9,10 142:13 142:23,23 147:25 157:16 162:4 169:18 170:18 171:4,23 173:11 173:12,15 174:6,7 174:11,14 175:14 179:19 181:3,12 181:19 184:13 186:18 187:19 189:1 190:7,11 192:22 193:4 194:7,11,14 196:4 198:14 200:5 201:17 205:6	206:7 208:21 209:13,21 210:6 210:10,15 211:10 212:25 215:13,17 217:12 220:4 222:9,11 224:17 224:23 225:24 228:16 235:13 236:23 goal 196:6 226:3 230:23 231:1 goes 113:5 125:11 206:14 225:3 232:22 going 104:9 105:4,24 106:4,16 107:6,13 107:24 108:1,20 109:25 110:22 113:4 114:20 117:6 118:9,10 123:8 124:3,18 131:16 135:11 138:7 139:6 143:20 145:1 147:13,14 148:9 149:16,17,20 155:14 157:25 162:6 165:20 166:22 168:23,25 169:1 172:14,24 175:2,7,11 177:1 178:24 179:12,12 179:15 180:3 181:9 182:7,20 184:13 186:14,15 188:8,10,12 189:16,16,18,23 190:2 192:16,22 193:2,21,22,24,25 194:3 195:1,20,23 196:5 197:13,16
--	---	---	--	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 250

198:13,15,20 199:2,4,10,15 200:1,3,12,21,22 201:21 202:7 203:3 204:7 205:11 208:16 209:22 214:20 218:24 221:1,2,18 223:8 225:11 226:10 232:4 234:19 236:10	118:6 231:3 governed 134:22 governing 128:6,10,12 129:4 129:10 130:7,19 130:22,23 131:4,5 131:7,10,12,24,25 132:3,18,20,21,25 133:4 134:20 143:5,15 government 112:3 133:16 136:5 141:5,20 143:8,12 143:15,17 governments 129:6 141:7 grammar 218:1 grammatically 210:9 grant 116:4 128:23 129:8 131:17 147:8,23 153:9,15,21 154:19 158:21 160:3,20 161:1,2 161:4,10 167:9 171:22 172:3,4,21 173:21 174:7,12 174:16,22 175:6 175:23 176:20 177:3,4,6 178:20 181:22,23,24 182:22 184:22,24 184:25 185:1,2,3 185:5,5,8,13,18 185:19 186:1,3,7 188:17 193:21 194:4 195:2,9 196:10,11 198:19 199:4,7,9 200:25 201:19 202:18,19 203:2,13,15,16	204:3,4,8,11,12 204:13,15,15,16 204:17,19,21,24 204:24 205:2,3,7 205:19 206:4,4,6 206:11,12,14,21 206:22,25 207:3,5 207:6,20 208:3,8 209:11 213:19,22 213:22,24,24,25 214:1,2,3,6 215:19,22 216:3,6 216:15,22 217:7 217:17,19 218:19 218:22 219:10 226:12,18,20 229:4 234:3 granted 127:17 128:25 146:24 granting 134:16 137:15 grants 152:17 160:12 168:4 186:6 196:12 232:6 grant's 199:10 great 104:21 235:3 greater 185:6 205:9,20,20 205:21,25 206:5,5 206:13,22 207:7 213:20,25 214:4,5 214:6,12,13 215:21,23 216:7 217:24 greaters 217:11 gripe 206:1 ground 190:10	group 107:6,21 125:20 143:25 144:1,2,6 145:5 151:21,22 154:10,15 164:14 174:14,21 178:15 187:7 190:21 191:1 201:8 214:18,21 233:8 235:24 236:15,18 236:19,19,21,25 groups 125:23 grow 195:23 guess 106:15 108:11 116:12 118:1 120:3,7,8 124:18 135:22 139:6,24 149:17 157:6 160:4 163:17 164:12 167:12 171:12 173:23 178:5 179:15 182:18 193:18 201:8 202:13 218:4,24 224:9 226:23 227:5 guys 158:3 169:17 174:18 177:24 181:25 219:20 <hr/> H <hr/> H 152:17 half 107:11 120:5 180:15 188:22,23 hammered 231:3,6 hamper 129:4	hand 124:12 211:12 handed 108:18,21 126:8 151:4,14,15 152:11 233:20 236:24 handing 126:15 151:19 handle 125:13 happen 112:5,12 126:17 144:4 happened 123:6,7 132:11 191:5 happens 144:3 156:19 168:14 191:22 194:13 195:1,12 happy 109:25 232:23 hard 111:24 117:8 121:24 196:2 211:13 214:22 221:8 233:8 234:24 harder 177:20 hardship 135:9 harm 117:14 harmed 117:20,23 HAUGEN 103:7 236:20 237:6 237:11 Hawaii 104:24 head 190:10
good 106:8,11 107:5 108:9 109:9 127:22 133:19 138:10 142:13,23 142:23 145:21 146:3 150:17 151:23 156:16 165:15,15,16 211:3 228:17 232:14 235:9 236:17 GOODMAN 181:20 GORE 103:7 108:13 109:23 110:13,22 118:7 141:14 142:14 147:14 148:1,4,9,21 154:4 155:5 156:14,25 158:6 159:4 163:9 164:22 166:8 170:11 179:1,3 180:10 185:17,23 205:14 209:21 212:22 215:14 216:1,10,14,24 223:1 224:9 225:16 235:17 236:5 gotten				

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 251

headed 182:17,22	138:13 139:8,21 141:24 142:20	216:4 217:21 218:20 219:12	151:25 190:13 200:18	115:19,24 116:9 117:13,20 118:13
heading 183:3	144:8 147:19 148:23 149:6	hire 178:19 179:2,6,13 181:14	hoping 212:14	118:14,14,16 119:8 120:9,22
headquarters 104:18	150:6 154:22 156:12,17 157:21	historical 123:23	hour 107:11 109:13 178:11 206:3 237:6,7	121:3,4,6 122:6 122:12,14,24
health 112:19 232:15	160:5 162:2,12,15 164:2,8,12,18	historically 117:5 118:2	hours 107:9 237:9	123:7,11,13 127:8 127:23 128:23
hear 176:25 190:17 199:6 213:7	165:25 172:2 176:22 177:1	history 126:21 143:10	houses 134:9	130:18 131:8 136:15,21 140:12
heard 115:9 120:7 159:18 190:13,18 212:10	182:25 183:5,13 184:8,11 185:22	hits 144:3	housing 102:1 104:24 106:1 106:2,6,10 112:1 117:18,19 121:6 129:13 133:15,20 136:11 143:2 146:4,5 147:6,7 150:22 152:23 153:1 160:9,12,15 160:19,24 161:3 163:23 166:2,10 169:9 170:2 178:18 181:8 186:21 190:15 194:9 195:22 196:2 197:12,21 199:1,2,23 200:5 200:19 201:22 207:25 208:24 212:6 220:12 223:5,18 228:2 229:25 230:5,6,23 230:24 231:1,5,6 231:7,15 234:19	140:20 141:17,19 141:20 142:5 144:1,6 146:16,19 146:24 147:3 148:6,11,13,16 149:6,12,15 153:15,17,18,18 153:18 156:18 158:8 162:1 165:15 168:19,23 175:19,21 180:14 180:22 181:13 185:7,11,11 192:3 193:6,19,23,25 195:20 197:17 206:7 207:21 216:4 217:20 218:20 219:7,11 221:3,19 225:25 229:23 235:2 237:14
hearing 200:1	186:10,24 187:4 188:7 192:25 204:6 205:1,10,15 206:9 207:2	Hoffman 133:19,20 134:25 135:4 136:4,9 138:3,18 139:19 140:5,7 142:19		
held 113:3,7 123:11 124:4 234:21 238:9	210:17,20 219:22 219:25 220:3,6,18 221:5,21 222:3 223:23 224:5,21 226:23 227:8,20 228:4,7 229:24 231:2,11,22 232:10,13,16,18 232:20 235:3,10	hold 111:16 159:11 173:9		
help 107:19,20 118:9 123:14 124:6 148:9 155:4 156:21 163:7 164:13,18 171:1 179:9 183:8 196:5 210:16 224:13 236:25	Henry 111:2 118:11 121:1 122:18	holding 118:21		
helpful 122:5 142:11 148:1 155:22 157:2 158:16 170:9	Henry's 115:10	holds 112:21		
helps 214:15,25	HERNE 103:8	home 111:21 112:16,20 135:24 155:16,17 166:11 180:4		
HENRIQUEZ 103:8 112:25 113:11 115:15,21 117:2,8,11 118:8 119:6 121:14,18 123:14,20 127:15 132:5,10,14,17 133:5,9 134:24 135:3,25 136:7,13	hey 197:16	homes 134:12,13		
	Hi 104:17	honestly 154:15		
	high 191:23 192:2	hoops 111:7		
	higher 153:16 154:11 155:22 156:4,18 185:7 191:21 192:8 193:17 207:22 212:24	hope 105:2 124:19 168:19 192:14		
		hoped 126:16		
		hopeful 106:3		
		hopefully 105:25 109:4		
			housing-related 220:14	
			HUD 104:18 105:14 109:17 110:6,23 111:7,7 112:18 113:15,21,22 114:23 115:8,11	
				HUD's 111:4 116:2 119:2 120:13 138:6 140:17 167:8 194:4 234:23
				human 196:1 197:25 232:15
				Humphrey 140:15,15
				hundreds 170:7
				hush

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 252

198:24	implemented	235:10	173:7 209:16	105:12
<hr/> I <hr/>	151:3	incurred	inspiring	irregardless
idea	implicated	207:18,24	108:25	175:15
132:9 143:4 156:16	130:5	Indian	instance	IRS
159:12 216:19	implications	112:19 121:5	118:5 169:10 180:4	136:17,22 141:10
identified	127:18 137:22	160:15,19 161:3	194:16	issue
194:20	important	170:15,16 172:4	intact	107:12 116:11,15
identify	111:14 112:7 153:5	190:15 196:1	230:17	117:13 124:23
146:4,21	impose	197:12 199:1,2,23	intend	125:20,22,24
IG	131:3	200:5,19 201:22	176:10	126:14,16,21,21
117:21	impossible	230:6,7	intended	126:22 127:10,19
IHBG	232:5	indicate	143:6 163:15 170:6	127:23,24 128:3
147:5,6,8 152:14	inactions	120:13 125:5	176:9 192:11	132:18 134:18
153:10 160:13	112:4	indicated	intending	135:4 136:22,25
166:25 183:17,20	incentive	238:10	168:16	136:25 139:22
187:18 225:1,9,17	154:11 155:13	individual	intent	142:10 143:2,23
228:25	159:6 163:25	134:13 170:2,25	163:19 176:6	144:5,12,19
IHBG-funded	165:5	individually	219:18 224:20	151:10,16 152:5
129:5	include	171:2	229:3 235:18	152:11 153:5
IHP	146:4 154:8 155:7	ineligible	intention	155:4 158:19
109:18 110:3,7,8	164:16 166:10	114:4 116:25 221:7	124:4	159:11 169:24
110:23 111:1	183:17 212:16	influential	interested	170:19 175:21,21
112:7 113:15,17	231:12 237:15	106:4	143:4 177:25	182:18 183:6
113:19,23 114:1,3	included	inform	interesting	184:2 186:25
114:15 118:3	166:14 209:8	146:25	179:21	188:13 191:15
129:7 153:19	212:21	informal	internal	192:4 197:20
160:5,21,25	includes	178:1	149:7 179:14	213:7,9 218:5
175:12 185:12	184:14	information	internally	233:1,2,8,12,15
187:21,24 188:2	including	105:13 126:15,19	150:7	233:18,18,19,20
188:10,12 191:2,4	161:11 237:9	126:20 146:5	interpret	233:21 235:15
191:8,11 197:17	inclusive	153:22 185:14	135:7 167:13	236:14
197:24	163:15	192:9	interpretation	issued
IHP/APR	income	inherited	134:21 138:3 167:8	233:19
178:24	121:5 166:10	111:10	interpreted	issues
imagine	207:25 220:12	initial	143:7 149:20	105:7,10,18 107:10
138:24	inconsistencies	114:8 157:21	interviews	107:25 109:5
immensely	215:15	initially	106:9	116:8 123:25
158:16	incorrect	191:7	invested	130:5 144:1,17
impact	199:8	initiative	190:24 191:4,13	178:7 195:17,17
112:16,20 141:11	incorrectly	108:24	investment	231:7 236:22
174:10	190:14	input	191:5	item
impasse	increase	105:6,8 106:23	involved	109:14 124:20
124:19	172:22	191:14	146:4	125:12,12,18
	incumbent	insert	in-depth	127:2,2 144:22

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 253

127:2,2 144:22 145:11,12 150:21 150:21,22 151:10 151:10,19 152:6 201:8 211:18,21 211:23 233:9 items 108:3 150:24,24,25 151:8 194:20	213:15 Jeremy 108:2 211:13 Jim 130:17 134:19 job 118:13 178:21 JONES 103:9 106:17 107:22 110:17 148:15 158:18 161:19 166:22 171:7 192:6 197:10 198:2 200:8 202:3 205:6 205:23 206:1 207:10 Judith 103:10 115:7 147:14 194:24 201:10 202:24 Judy 115:6 147:10 169:4 198:12 226:16 234:17 July 102:10,18 104:1 jump 111:7 jurisdictional 136:22 139:22 justification 192:8	218:15 219:8 222:5 Karin's 125:5 KARZAMA 157:6,23 159:14 170:19 171:9,12 171:19 181:2 KAZAMA 103:10 124:9 keep 124:6 190:9 196:20 196:21 235:8 keeps 187:9 195:9 key 197:22 Kiana 167:4 207:11 211:12 kicks 227:17 killing 235:14 kind 107:15 109:2 112:7 120:25,25 139:11 145:11 156:9 158:4 177:24,25 178:17 181:19 194:7 KING 238:3 knew 219:16 know 104:19,22 111:9,23 116:10,13,14,14 116:18 117:4 119:2,14 123:1,17 123:20,21,24 126:19 130:10,17 131:8,8,19 132:9 133:12 135:6	138:1 142:8 143:3 143:10 144:9 147:22 149:5,17 154:17 155:3 156:6,8 158:11 163:6 164:12 167:7 179:22 181:6 195:25 199:8,15,20 200:2 200:21 205:13 213:7 224:5 230:19 232:1,7 234:24 235:4,9,11 237:8 knowing 173:6 189:22 198:25 199:20 200:23	171:22 174:10,12 174:15 177:25 178:2,8,11,16 179:16,20 180:12 180:23 181:16 182:4,9,11,16,20 184:2,6,16,17,18 184:19 185:21,24 187:14 188:6 201:13,14 203:8 204:9,21 205:6,18 206:15 207:16 208:22 210:18,22 211:1,3,4,18,22 215:20 218:11 219:1,21 222:2,3 223:10 224:7,24 227:22 235:18 236:6 large 202:13 Larry 103:5 127:3 178:16 208:4 late 118:3 latest 211:22 laudable 221:10 law 115:22 116:6 128:9 136:5,13,15,21 137:3,17 140:15 143:17 lawyers 231:25 layman's 132:6 leaders 106:10 lead-based 195:16 leave
J				
Jack 103:12 124:8 149:23 161:7 164:11 165:6 175:24 198:1,9 Jack's 163:13 JACOBS 103:9 139:24 179:19 180:21 Jad 127:22 JAMES 103:14 Jan 122:5 173:23 182:5 210:25 223:19 227:3 236:21 Jason 103:3 109:7,23 126:1 127:4 143:18 150:12 151:5 152:8 154:4 168:10,18 176:12 178:3 182:15,25 187:6 193:9 201:6 212:9,20 215:12 218:3 227:4 233:6 234:6 236:20 Jennifer 104:10,16,18 154:17 175:17 188:8 196:7				
	K			
	Karin 103:6 120:18 121:22 122:3 124:13 142:25 143:1 149:13 166:16 167:3 179:16 180:12 209:14 214:8 216:16 217:22			
			L	
			Lafe 103:7 237:8 land 117:16 139:1,3 lands 139:4 land's 132:2 language 109:19,21 113:1,4 120:9,13 121:2,20 124:13,21 125:2,4 125:10 126:4 135:7 142:4 143:5 143:7 147:9,25 148:3 153:3 154:21 156:25 157:3,4,21 158:4 159:15 160:1 162:5,6 164:3,5,6 164:7,8,19,24 166:17,18,21 167:3 168:12 169:3 170:6 171:4	

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 254

120:5 150:10 186:13 201:25 217:16 229:22 237:15 leaving 230:17 left 107:6,25 108:10 109:13 211:17 236:19 legal 119:13 127:16,16 130:4,12 132:6 137:16 169:25 legally 232:2 legislative 143:9 Legislature 128:11,15,19 129:11 130:1 132:19 134:2 142:7 legitimate 222:24 lend 143:11 length 235:23 lens 231:7 Leon 103:9 139:23 179:18 180:20 lessen 115:1 letter 152:21 212:22 let's 114:9 124:11,15,23 125:1,7 132:5 144:18 150:2 152:2 155:13,16 175:1 179:19	182:3 184:6 190:9 190:10 194:9 196:24,25 202:6,6 211:12 212:1 214:17 220:4 231:20 level 106:13 136:16,23 142:7 150:10 196:3 levels 155:1 leverage 154:5,23 157:9,17 157:24 161:12,21 162:16,17,22 163:20,21 165:16 165:22,23 179:10 179:22,25 180:1,3 183:7 222:9,10 226:1 230:22 leveraged 154:12,25 157:11 161:22 163:4 180:8 183:8 leveraging 154:6,18,20 155:3 155:6,9,15,24 156:5,23 158:8,11 158:16 159:5 163:25 165:21 183:22 184:13,14 186:25 207:17 208:15 224:14 liberal 137:15 liberty 114:25 115:1 limit 136:25 139:25 155:20 199:16 220:23 226:4 231:25 limitation	226:6 limitations 181:4 limited 183:18 limiting 137:16 limits 215:4,9,12 222:2 231:16,23 232:3,9 232:21,23 line 185:18,21 202:16 linked 121:12 list 108:16,18,25 156:24 228:11 listed 155:1 233:11 little 113:11 114:6 123:14 143:24 156:3 165:4 177:20 178:1 199:19,25 209:23 214:19,21,25 223:11 228:24 229:2 236:23 load 225:1 loan 155:17,17 166:11 178:21 local 125:19 126:11,22 128:2,4,14,18,24 129:3,4,9,21 130:7,19 131:4,5 131:6,10,12,24,25 132:3,4,18,20,21 133:4 134:20 135:1 137:6,11,13 137:25 139:21	140:25 141:3,5,7 141:20 143:7,12 143:15,16 145:17 148:17 149:21 locality 130:23,23 143:5,15 long 112:2 135:11 138:10 139:9,12 142:23,23 174:20 176:1 190:10 210:24 214:14 233:14,24 237:5,8 longer 113:11 114:6 longest 217:11 look 108:6,25 110:2 118:1 120:24 122:21 123:5,8 139:15 141:5 144:24 154:14 160:14,17 164:2 167:22 179:9 184:6,16 198:13 198:18,21 208:20 208:21 210:17 211:15 213:14,20 223:8 230:22 233:10 looked 143:2 170:12 176:1 191:10 198:10 211:16 looking 105:18 106:1 128:4 165:2 176:16 180:11 182:13,21 198:22 200:16,17 218:17 220:15 229:8,12 looks 160:10,11	lose 191:3,12 lot 106:24 111:15 112:10,11 115:10 138:19 191:17 194:11 207:17,24 207:24 227:7 lots 227:12 love 160:13 low 166:10 207:25 220:11 lower 140:19 141:12 low-hanging 109:3 lunch 211:1,2,3,4 222:4 227:12 231:18 luxury 138:15 LYNCH 207:15 208:7,16 209:4,9
M				
Madam 138:18 220:21 main 132:4 237:10 maintain 233:14,24 234:13 maintaining 190:9 major 120:19 majority 159:20 175:1 making 111:13 145:1 195:5 manner				

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 255

111:14,20 123:3,9 MARASCO 103:10 115:7,18 116:17 117:4,10 147:11 149:1 169:5 171:10 174:18 194:25 196:18,24 197:7 197:19 198:8,13 198:24 201:17 202:20,25 205:16 215:6 224:4 226:17 232:3,12 232:15,17 234:18 235:8,13 MARGUARITE 103:3 Mark 103:5 177:2 Marlene 207:14 208:19 209:7,23 210:7 212:10 213:4 223:8 Marty 103:13 194:6 Marvin 103:9 107:21 108:2 148:9,14,21 158:17 161:18 166:15,20 171:6 171:10 192:5 196:8 197:9,19 198:1 200:7 202:2 202:25 203:7 205:5,18 207:9 matching 181:8 math 188:15 matter 150:2 163:7 176:8 201:22 235:5 maximum	107:9 MCDADE 103:11 156:2 167:12 169:23 174:11 175:9 187:6 189:5 190:20 193:16 209:7 226:8 228:24 234:6,12 237:2 MCGEISEY 103:11 mean 108:9 131:11,23 135:10 138:11,24 143:6,7 158:12 160:9 172:22 178:9 190:5 193:12 195:4 196:9,15 197:3 205:13 206:16,17 206:18,19 212:15 216:18 220:11 235:24 meaning 143:11 means 143:15 170:1,15 172:3 236:15 meant 219:16 mechanism 112:21 meet 116:24 119:23 meeting 104:6 108:14,21 119:3 142:9 143:23 151:4 meetings 150:25 members 103:3 125:23 135:18 180:19	181:1 memory 187:10 mentioned 139:16 212:11 mentions 160:1 message 106:7 236:8 messenger 236:11 middle 109:12 million 155:14 157:8,9,10 157:12,12,17,24 158:1,2 161:14,15 161:16 162:15,16 162:21 163:4,10 163:11 170:23 175:7 188:1,20,21 188:22,23 195:13 195:14,18 197:1,6 202:6,7,8,9 203:1 203:1,4 mind 132:6 minds 142:9,12 mindset 174:7 minimal 153:24 185:16 192:11 minimum 168:5 192:15 minutes 107:12 109:13 167:5 178:11 210:23 237:7,16 misinterpreting 167:20 missed 191:14	missing 155:4 175:15 misunderstanding 142:15 model 105:15 121:6 modifications 203:24 modifier 206:13 modify 207:2 moment 118:10 127:14 177:2 211:14 money 117:7,14,17,20 118:2,6 154:5,7,7 154:13,20,24,25 155:7,9,16,19 157:17,20,25 162:17,24 163:6 163:25 164:17 165:12,16 169:20 172:6 175:1,6 179:10 182:12,21 188:14 190:7,11 191:16 193:3,4 195:20 197:2,14 197:15,17,21 200:11,24 201:3 202:4,13 203:5 212:14,14 221:10 222:15 226:5,21 227:13,14 monies 116:20 181:7,10 226:1 229:21 monkeying 112:6 month 197:12 months 131:20,20,20	month's 197:3 morning 107:5 109:9 125:17 127:22 133:19 152:12 233:19 mouths 124:5 move 107:20 114:21 124:15,20,23 125:3,7 135:25 143:21 144:20 moving 107:13 150:20 235:12 multiple 138:25 159:16 170:21 municipality 132:24 134:22 mysterious 223:11 <hr/> <div style="text-align: center;">N</div> <hr/> N 103:1 NAHASDA 102:8 105:17,19,20 114:5 128:9 135:11 136:18 137:5,10,10,20 140:1,9 154:6,7 154:24,25 155:9 155:15,22 157:8 157:16,20 158:9 161:21,22,24 162:16,23 163:10 163:12,18,20 167:1 177:16 179:8,23,24 180:3 180:8 181:9 220:15 222:7,8,19 222:21 226:5
---	--	---	---	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 256

NAHASDAized 162:25	needed 127:9 166:3 225:25	161:6 167:19,19 167:21	120:20 121:12,17	220:25
NAIHC 125:18 150:21 152:6 233:9	needs 104:11,24 106:5 112:14 120:19 121:11,11,17 123:11 169:6,11 173:2 177:9 210:12,14 225:3	noncompliant 116:20 non-administrati... 224:1 non-consensus 124:20,23 non-controversial 214:10 non-housing 231:4 non-IHBG 186:20,22 208:24 212:5,7 220:8 223:4,17,25 224:23 225:7,9,12 226:25 228:2 229:1 230:16 231:14,16,22 232:10 non-IHP 208:25 210:3 non-joking 214:18 non-low 121:5 non-NAHASDA 155:3 normally 139:21 157:10 North 140:3 Northern 160:14,15 169:18 noted 236:22 notes 109:17 noticed 145:1 notices 129:7 notification	notified 199:3 notifies 122:12 notify 121:8 122:6,14 146:24 147:3 number 126:1 155:14 159:21 172:7 177:19 numbers 125:12	occurred 123:22 odds 205:13 offer 109:24 113:1,4 119:14 120:16 141:14 148:4 173:6 185:17,24 218:24 offered 119:25 124:21 offering 113:14 office 102:2 104:19 128:8 148:17 165:1 194:22 officer 133:13 offices 140:16 147:18 official 112:8 149:7,12,15 149:21,22 officials 106:10 OGC 191:14 Oh 147:24 207:8,13 okay 104:6 108:23 115:18 116:17 118:8 119:20 120:12,14 122:4 124:8 125:3,6,8 127:13 132:10 141:13 144:13,15 144:18,20 145:8 145:10 147:10 149:12,14 150:4 150:17 157:6
name 104:17 narrow 186:2 Nation 143:1 national 106:11 native 102:2 104:23,24 131:22 146:14 natives 104:24 naturally 128:19 nature 128:5 154:8 nauseam 191:18 necessarily 142:4 227:8 necessary 146:22 181:14 225:22,22 need 109:14 113:3 114:24 122:11 123:14 144:9 148:16 162:5 164:4 169:17,24 178:8 185:23 187:6 189:1 190:18 203:17,22 203:25 204:4,23 209:10 216:23 225:23 227:21 228:14 229:13 234:23 236:24 237:5	negotiate 107:9 115:13 145:22 162:5 178:8,10,12 negotiated 102:9 104:7,20 108:4,7 negotiating 116:19 119:10 178:5,6 negotiation 151:1 211:1 NegReg 116:18 never 117:4 118:4 194:14 196:3 new 107:7 111:22,22 125:10,19 145:16 145:18 146:15 151:5 156:15 157:1 159:2 165:11 178:23 182:4,15 184:16 184:17 185:21 199:1,1,12 208:21 215:17 233:23 234:24 nice 171:10 236:23 night 104:6 236:24 nine 160:15,17 161:1,2		object 202:3 207:10 objected 122:19 123:10 objection 107:18,18 120:16 124:10 138:8 215:5 229:15 objections 233:2 objectives 144:25 145:3,5 obligate 147:23 obligated 190:24 obligation 129:9 obstacle 136:11 obtain 138:9 146:8,9 obtaining 208:8 obvious 143:19 obviously 128:16 160:17	
O				

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 257

158:6 162:20,24 166:20 167:2 169:3 173:11,21 176:12 178:3,13 180:14 181:13 182:3 184:20 189:13 190:23 191:6 195:12 197:18 198:16 201:18 202:2 203:19,23 204:23 206:7,8 210:23 211:25 213:12 216:17 217:12,25 218:6 219:6,20,22 219:24,25 220:1,4 220:18 223:13,21 228:4,5 229:22 231:19 233:7 236:12 237:8 Oklahoma 109:10 old 151:1 197:2 218:7 233:18,18,20 OMD 192:3 ONAP 105:5 147:17 165:1 once 112:14 141:17,25 191:14 205:10 209:21 ones 210:12 one's 132:15 one-year 147:16 oo 104:2,2 opens 129:20,22 operate	191:9 operating 125:15 155:7 190:9 operation 158:1 163:8 166:2 166:6 opinion 118:24,24 128:8,13 139:6 162:3 169:25 170:8 opportunity 109:24 122:23 135:13 154:16 217:2 222:10 opposed 120:14,14 125:6 139:18 144:19 145:9 150:19 177:7 236:14 opposite 202:10,12 optics 163:7 177:19 option 202:17,23 order 136:11 149:7 150:2 organization 133:22 135:1 159:16,25 170:20 organizations 172:17 organized 126:23 127:25 131:1 151:25 original 161:8 174:12,15 originally 217:3 221:22,24 outlay 212:15 outside 115:25 167:1 overall	107:22 157:19 overhead 152:22 158:24 owned 134:12 owner 146:11 owners 139:1,3 o'clock 152:3 <hr/> P <hr/> P 103:1,1 228:11 package 183:12 213:10 page 109:1 126:6 144:23 216:2 230:1 pages 151:13 paid 183:7 paint 195:16 paper 218:8 233:22 paperless 235:14 paragraph 180:16 215:1,24 216:12 221:2 230:12 parallel 204:17 part 105:6,21,23,24 106:24 123:22 127:6 176:3 179:6 189:6 190:20,22 194:21 201:7 212:17,19 213:13 222:19 223:20	237:10,12,16 partial 197:11 particular 105:20 106:12 107:12 117:1 134:3,18 135:19 136:9 138:21 143:14 158:19 189:17 190:16 192:7,12 parts 107:1 party 179:13 pass 211:14 passed 105:17 125:8 passes 125:6 145:9 150:19 233:2 236:14 pay 135:24 220:15 paying 225:17 PDR 104:10 pecking 149:7 penalize 170:21 171:1 people 111:11,23 113:6 114:7 115:9 118:21 123:1,15 149:25 158:19,23 161:16 162:10 169:19 177:17 178:15 179:13 181:14 186:16 188:11 189:10 198:3 222:16 227:12 237:11	percent 108:8 153:8,14 155:20 156:15,16 157:10,13,15,20 158:1,9,20,21 159:17,21 161:11 161:12,15 163:4,5 163:13,14,14,18 163:18 165:3,8,9 165:14,17,18,19 167:25 168:7 169:11,16 171:1,3 172:15,15 173:1,9 173:20,25 174:16 174:24 175:3,8,19 177:6,14,18 179:25 180:7,13 182:21 184:21,23 185:2,4,10 188:15 188:21,23 189:1 190:3,7 192:1,1 192:21,22 193:4,7 193:12,14,23 194:10,12,15 195:3,3,8 198:7,7 198:16,20 199:6 199:14,14 200:23 200:25 202:5,9 203:2,3 204:11,14 206:11,12,20,21 206:24 207:5,6 208:2 209:5,11 212:25 213:23,24 214:2,3 220:13 221:2,2,12,18 223:2 224:16,18 226:1 227:6,10 232:14 percentage 152:14 153:10,16 154:12 155:23 156:4,18 158:15 160:9 180:5 185:7 187:15,19 189:2
--	--	---	---	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 258

189:11 191:21,23 192:8 193:17 197:5 200:11 206:13 207:22 216:5 217:21 218:20 219:12 percentages 183:24 performance 144:25 145:3,5 period 113:23 114:10 116:22 134:7 135:22 147:16 214:5,12 219:14 223:18 228:3 permanent 134:18 permission 164:25 180:17 210:8 permissive 180:11 permit 186:22 208:25 210:4 212:8 215:2 215:9,11 220:9,23 222:1 225:12 226:25 perpetuity 138:15 188:14,16 196:13 199:7,14 200:1 person 117:15 147:21 149:1 150:9 personally 112:22 perspective 123:23 pertains 228:25 pertinent 146:5	phase 105:4 phases 105:4 PHELPS 103:12 Phil 103:4 167:5,12 171:20 172:19 173:17 176:11 177:1 181:17 189:13 191:15 192:13 193:16,18 194:1 195:7 198:12 201:10,17 205:23 214:16 230:20 233:4 philosophically 117:11 163:19 philosophy 124:11 Phil's 169:8,21,24 194:8 200:8 215:5 232:9 phrase 158:7 210:2,11 219:1,2 223:3 phraseology 207:12 pick 109:7,14 picture 106:5,11 pieces 106:25 place 106:18 116:5 119:15 132:7,11 138:15 139:13 147:15,24 172:18 176:5 206:15 plan 160:9,15,19 178:23 190:8,15 197:12	199:1,3 200:5,19 201:22 230:6 planning 104:23 151:11 152:13,15,18,25 153:2,11 158:22 158:25 174:1,17 179:7 181:5 183:15,17 187:3 189:23 193:2 194:12 198:5 199:23 200:17,17 209:2 212:4 221:7 223:2,3,20,22,25 224:12,24 225:6,8 225:13,20 226:11 228:1,14 229:11 229:18,21 230:4 230:11,15 231:13 plans 153:21 161:3 185:13 199:23 players 197:22 playing 205:13 please 107:18 110:12 120:13 124:15 151:21 152:9 168:8 186:17 203:11 208:17 209:13 212:2 218:15 219:8 231:20 237:15 pleasure 120:4,6 211:7 plow 166:5 plus 180:8 203:3 point 111:4 114:18 117:6 119:11 120:19	124:3 132:18 136:3 148:8 151:21 177:13 179:21 212:12 220:6,19 225:5 229:25 230:14 pointed 192:7 pointing 212:11 police 133:9 135:21 137:23 Policies 104:19 policy 137:21 138:2 222:19 political 111:13 195:17 196:1 position 127:16 130:4,11,14 131:10 139:10 140:17,20 150:9 183:2 possibility 166:24 possible 133:1 135:5 possibly 169:12 pot 117:7 potential 105:1 131:5 potentially 106:4 200:12 230:16 233:10 power 148:20,22 149:2 150:9 practice 120:19 149:16	168:13,15,24 preapplication 226:9,13 predicted 196:25 preempt 137:3 preempting 136:21 preemption 136:8,16,20 137:1 prefer 215:3 preference 209:9 preparation 226:9 prepare 229:6 prepared 118:1 preparing 153:19 185:12 preposition 206:2 present 103:3 165:22 176:2 233:9 presentation 201:8 presented 127:7 151:8 159:12 183:11 207:16 213:9,10 President 133:20 pretty 159:5 170:1,5 175:20 188:11 191:18 prevent 227:16 previous 116:18 125:14
---	---	--	---	--

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 259

132:7 199:5 210:12 previously 151:8 167:2 primarily 133:24 principle 122:20 123:11 162:9 166:1 177:9 177:23 210:21 printed 211:13 prior 110:2 142:11 147:7 200:22 private 162:24 166:12 privately 134:11 probably 106:20 143:3 153:5 172:17 200:23 216:17 problem 111:12 124:7 129:15,23 130:12 131:15 132:1 133:24 135:9,23 136:20 141:15 143:16 160:14 177:2 190:22 191:7,19 195:6 201:23 202:11 203:9 216:8 224:6 227:7 problematic 129:19 134:4 problems 187:13 proceedings 237:19 238:9 process 107:8 115:20 137:7 141:16,21 158:12	159:8 164:25 189:11,23 193:2 194:16 195:24 210:4 212:7 220:9 227:2,22 230:18 processing 146:14 product 151:22 182:4 professionals 179:6 program 113:18 133:13 154:19 165:11,12 174:3,23 175:11 183:17 187:12,21 188:4,5 189:7,10 189:12 191:10,25 194:3 198:6 199:1 229:1,1 231:4 232:4 233:14,16 233:25 234:2,4,7 234:10,11,15,16 235:19,25,25 programs 102:2 111:25 117:17 139:5 146:14 179:11 progress 108:9 152:6 prohibit 231:25 prohibits 231:23 232:20,22 project 105:2 181:15 189:24 198:17 projected 198:10,11,11 200:25 201:21 209:16 projection 200:23 201:5 projects	129:2 promise 137:13 promises 124:5 promulgate 137:8,24 properly 198:5 properties 129:5,20,22 137:18 proposal 107:19 109:16 121:4,7,9 122:17 125:11 156:22 181:20 182:4 192:19 201:18 203:10 204:8 205:4 229:15 proposals 105:1 propose 140:7 142:3,10 148:2 164:5 183:14 200:14 201:9,13 226:24 proposed 109:20 120:9 121:20 125:9 126:4,9 140:24 144:19 154:21 155:2 158:4 164:3 180:12 182:20 184:17 186:19 199:4,20 200:3 221:22,25 224:25 proposing 168:12 171:17 186:12 protect 118:13,13 129:5 protection 133:12 135:21 protectors	135:18 protocol 107:16 124:9 138:8 183:8 protocols 144:16 178:9 protracted 116:11 prove 178:23 provide 121:5 131:3 132:3 135:20,22 136:12 137:23 146:20,22 155:8 158:14 163:24 180:25 181:9 194:19 224:12 provided 108:13 128:8,13 133:15 209:4 233:25 providers 135:17 provides 132:25 133:16 140:21 providing 136:10 137:21 154:11 158:11 provision 158:23 159:2 192:12 209:8 public 117:19 133:5,12 published 105:14,18 pull 189:25 purpose 129:1 130:2 230:3 purposes 128:9 143:14 188:25 200:17	208:3 219:15 pursued 146:7 pushes 129:17 put 113:2,2 118:22 119:7,15,22 120:10 121:23 125:5,16 138:14 142:5,12 147:12 148:16 149:5 150:3 157:6 165:7 166:19 169:3,12 175:4 180:23,24 184:2,7 186:11,16 186:17 193:22 195:20 196:24 202:17 204:23 205:3,8,21,23,25 212:1 217:5 218:18 220:11 225:19 229:9 234:25 putting 175:1 187:8 p.m 237:20 <hr/> Q <hr/> qualifier 223:24 224:2 qualify 226:12 quarter 195:18 230:10 question 107:22 110:4,9,15 110:23,25 114:22 117:5 126:13 132:17 138:13,16 139:24 140:2 146:16 153:10 154:6,22 159:15
--	---	---	--	--

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 260

160:11 163:2,5 165:3 166:15,21 166:22 167:7,17 168:1 170:17 182:19 187:1,2 192:21 193:17,19 195:1 207:14 208:20 209:2 212:3 220:22,24 222:7 224:11 229:9 233:24 235:3 236:13	reached 108:4,7 189:8 read 109:17 110:9,23 131:7 145:18 153:7 156:17 157:1 167:12,15 168:3,20 169:1,25 173:10 184:18 208:14,18 213:13 217:19 219:11,17 219:17 231:13	170:19 179:3 188:9 189:18 191:17 196:2 218:21 222:10 223:2 226:2	receives 155:14 157:8 159:25 167:24 169:15 192:15	216:3 217:17,19 218:19 219:10 224:13
questions 105:8 106:14 107:3 117:9 126:25 127:1,3,13 132:6 154:2 162:12 197:11 234:5 235:16	reading 164:24 168:8 207:20 208:7 229:16	reason 104:22 118:19 131:13 146:21 147:4 163:5 165:24 172:16 187:10 188:5 189:15,19 194:19 199:8 225:21 226:2,12	receiving 121:7 153:7,14,23 168:2 172:25 173:7,15 176:13 176:16,21 184:20 184:22,25 185:16 192:11 204:10,13 206:19 207:4 213:21	recipient's 113:22 146:2 153:20 185:13
quick 110:17 126:13 179:20 198:23 214:24	reads 168:2 185:23 216:3 219:2 225:10 227:25 231:11 233:13	reasonable 143:6 146:7 165:24 222:7	receptive 128:20	recognize 181:3
quite 120:8 182:23 196:16	ready 104:14 115:4 150:18 151:1,2	reasoning 215:7	Recess 152:4 182:2 211:8	recognized 126:10 143:17
quote 122:1	real 110:17 119:12 160:16 166:1 168:22,24 177:19 179:20	reasons 119:13 120:15 129:16	recipient 113:16,18,25 114:1 114:2 121:9 122:6 122:12,14 137:5 145:3,21 146:3,6 146:25 147:1,4,7 153:3,17 156:19 158:7 159:23,25 160:22 167:10,14 167:18,24 168:2 170:1,14,15 171:5 172:5,25 173:4,14 174:15 179:24,25 184:25 185:1,8 190:15 204:13,14 213:21,23 230:11 233:14,24 234:15	recommend 110:22 205:12 207:15
R	reality 193:8	reauthorization 102:8 140:9,11 142:10,11	Red 158:7 159:23,25 160:22 167:10,14 167:18,24 168:2 170:1,14,15 171:5 172:5,25 173:4,14 174:15 179:24,25 184:25 185:1,8 190:15 204:13,14 213:21,23 230:11 233:14,24 234:15	recommendation 145:6 146:12 171:13 214:24 216:25
R 103:1	realize 107:8 108:20	REBECCA 103:12	red 158:7 159:23,25 160:22 167:10,14 167:18,24 168:2 170:1,14,15 171:5 172:5,25 173:4,14 174:15 179:24,25 184:25 185:1,8 190:15 204:13,14 213:21,23 230:11 233:14,24 234:15	recommended 205:19 215:14
raise 229:24	realizing 151:7	recall 154:15,16	red 158:7 159:23,25 160:22 167:10,14 167:18,24 168:2 170:1,14,15 171:5 172:5,25 173:4,14 174:15 179:24,25 184:25 185:1,8 190:15 204:13,14 213:21,23 230:11 233:14,24 234:15	record 133:19 143:21
raised 177:13 183:7	really 107:2,25 108:9,13 108:18,25 114:16 117:19,23 118:8 118:12 129:16 136:24 139:19 141:15 144:4 150:8 155:6 156:5 165:21 168:20	recapture 195:20	recipients 146:1 153:7,13,23 154:5 167:20 169:7 171:14,18 173:7,12,13,15 176:13 184:20,22 185:8,15,18 186:6 186:7 192:10 204:10 206:19 207:3,20 215:18	records 233:14,25 234:1 236:2
raising 212:20		recaptured 116:22		red 185:18,20,25 213:21 215:18 216:2
ran 159:7		receipt 109:18 110:6,23 113:15,21 122:7 122:15 146:20		reduced 238:11
rate 106:8		receive 129:24 151:17 169:14 176:14 177:7 200:12 203:4 221:19		reference 212:18
reach 146:8		received 169:2 188:14		references 127:10

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 261

regard 104:10 115:2 117:23 141:19 144:10 189:6 193:25 229:5 235:12	related 140:11 152:23 230:5 231:5	102:17,18 238:10	113:23 115:16 117:13 120:20,25 121:11 128:24 129:21 137:5 145:24 146:17 194:2	119:16 120:1 123:13 146:16 196:7 209:22 212:22 213:15 223:9
regarding 159:15	relationship 127:20	Reporter 238:8,21	requirements 115:17 138:8 141:10 150:15 161:22,25 180:2,4 180:6	responding 113:16 119:9
regardless 225:9	relatively 190:2	representative 106:11 131:19	requires 129:23 137:10 141:4 210:3 212:7 227:2 230:18	responds 223:8
regards 134:15 139:6 145:16 156:7	relevant 146:12 153:22 185:14 233:10	representatives 105:8	research 104:19 105:6	response 106:8 111:19 113:14 115:3 119:21 123:7 182:11 194:4 224:13 235:11
region 134:6,12	reluctant 134:4	request 109:18 110:7,8,24 111:2,5 112:6 113:8,16,19,22,25 114:14 118:17 119:17,22 122:7,8 122:10,11,15,16 127:8,9 128:22 142:16 146:2,3,11 146:17,19 147:5 180:13,22,24 185:9 186:8 191:21 192:16 207:21 213:1 216:4 217:10,20 217:23 218:20 219:11 226:3	researched 143:3	responses 115:11
regional 106:14 139:3	remain 139:13 148:10,12 149:3 157:15 170:7	requested 110:3 153:16 156:19 185:8 220:22	reservation 106:6 117:16 140:22	responsibilities 226:20
regs 161:4	remains 141:25	requesting 193:6 236:21 237:1	reserve 230:3,8	responsibility 108:16 112:4 115:4 119:2
regulation 126:9 129:25 130:6 130:10 136:10 137:8,9,24 138:4 138:4,21 140:25 143:13 144:19 145:6,16 154:3 233:11,11,13	remedy 137:12	requestor 146:21	reserves 139:1	responsible 111:21
regulations 108:8 129:16 137:2 137:2 144:24 152:12 180:22 223:7	remember 196:21 237:6	requests 118:25 123:17,19	reside 135:1	rest 110:17,19 124:6 125:10 156:12 215:23 216:11 229:10
regulatory 136:15	remind 107:15 210:19	require 117:13 165:1 180:12 220:8 221:3	resolve 209:18	restrictive 192:20,24
reimbursable 208:12	reminded 206:10	required 122:24 141:1 146:9 153:16,17,18 156:18 185:7,11 221:18	resolved 144:14	resubmission 142:2
reimburse 147:8	remove 201:18 202:1 220:23	requirement	respect 113:3 115:8 138:9 139:20 169:20 170:4	resubmittal 141:21
reimbursed 225:21 227:15	removing 201:23		respective 134:12 139:4	result 128:22 133:23 152:16
reimbursement 210:4	rendered 133:6,8		respects 137:9	retained 234:1
reiterate 114:24	renders 133:8		respond 111:6 112:18,19,19 114:7,11,16,21,23 114:24 115:19	retention 236:2
	repayment 117:22			RETHA 103:8
	repeat 110:11 219:8			
	replace 171:13 201:24			
	report 117:15 172:21			
	reported			

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 262

return 213:6	224:7 226:2,8 227:8,20 232:22 233:6 236:18	Russell 103:13 202:15 203:10	175:25 198:10 233:4	Seattle 102:13 104:1
review 122:24 123:5 211:19	ripple 112:11	Russell's 203:8,9	saying 116:24 122:12 128:8,13 133:2 134:21 135:8 140:24,25 141:1 142:21 154:24 157:14,20 160:20 160:24 163:11 166:23 167:15 176:9 181:16 193:7 197:7 198:16,20 200:24 201:1,9,10 206:24 209:23 216:24 220:7 221:17 226:22	second 121:25 122:9 132:17 137:20 157:17 171:13,17 173:7,12,21 180:15 190:13 191:6 203:17,19 203:21,23 210:2 212:19 215:1,1 217:14,18 220:7 226:24
reviewed 192:3	ROBERT 103:6	Rusty 202:20		
revise 181:21 200:5	Rodger 103:4 106:19 213:13 218:9	<hr/> S <hr/>		
revised 212:23	Roger 104:8	S 103:1,12		
revoke 148:17,20 149:2	rolling 154:19	safety 133:13		
revoked 147:20,25 148:6,11 148:13 149:4,11 149:19 150:4	rollover 187:20 190:17 191:2 200:24 201:3	sample 105:22,23		
rewords 125:9	rolls 160:6	sanction 117:13 193:24		
re-execute 139:11	Ron 133:20 142:18 159:18	Sandra 103:8 111:4,10 112:24 115:6,7 122:20 123:4 131:15 157:1 164:4 175:24 183:4 186:9 205:17 219:20 227:5 228:5	says 110:2,8,14,14 111:18 117:20,21 122:10 126:7 128:11 129:25 130:6,21 145:3,21 151:16 152:22 156:18 167:15,23 170:1,14 171:22 172:3 174:12,15 176:13 181:21 206:6 215:2,3,9 217:13,17 221:15 222:1 225:8 233:25	Secretary 115:16,25 118:21 127:5 128:25 139:14 145:24 146:13,15 148:18 148:23,25 149:4,8 149:8,9,10,18,20 150:1,2,3,5,6,8,11 150:14,16 157:1 179:15 208:5 220:21
ridiculous 130:20 131:9	room 108:15 142:12 178:10 188:8 236:22	Sandra's 226:18		
right 104:8,12 105:7,10 110:16,21 111:2 111:18 115:23 119:11,21 121:15 121:18 135:14 136:1,6 137:1,18 138:17 141:22 142:18 150:3,6,18 150:20 152:2 160:6 162:18 176:15,24 179:23 181:20 182:16 183:13 184:3,11 188:6 192:21 193:4 195:7 201:17 204:5 205:2 206:23 207:2 211:6 213:8 213:14 215:1,1 218:9 221:19	roughly 134:9	Sandy 156:11 162:11 172:1 184:7,9 231:10		Secretary's 115:1 149:24 209:18 223:10
	rubber 194:21	save 233:22		section 109:16 120:24 121:4 126:7,9 133:14,25 143:14 144:23 145:2,18 146:15 152:17 153:7,13 229:1,25 230:1,6 233:23
	rulemaking 102:9 104:21 118:20	saved 175:4	scare 215:6	
	run 105:5 166:1,6 197:21 199:22 235:6	saving 190:7 191:16	scope 123:25 124:6	sections 145:16 153:25
	rung 211:9	savings 189:20	screen 184:5 211:14 212:1 216:2	secure 128:4,14,18 129:9 130:1 137:5,10,25 208:10
	running 198:23	SAWYERS 103:12 149:24 161:8 162:10 164:10 165:7	script 208:18	securing 128:1 129:2 207:23
	runs 179:11		scroll 218:10	security

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 263

197:24	sentence	set	sides	situations
see	113:12 120:21	137:7 230:14	120:7	106:1 200:13
107:25 108:6,15,25	121:25 122:9	seven	side-bar	216:19 234:22
110:13 111:19	148:4,12 171:13	123:24 210:23	109:24 213:3	Sixth
112:5,21 115:22	171:17 173:7,12	sewer	sign	102:12
120:10,11,21	173:21 176:13	135:20	161:1	size
123:17 131:25	181:21 185:25	share	Signed	177:3,4
132:21 135:23	186:11 203:13,17	123:16 124:1	238:15	small
143:12 144:4	203:19,21,23	shared	significant	156:15 169:10
152:20 155:3	204:1,2 206:2	125:23 126:14	128:1 209:24 210:3	171:1 175:21
158:12 165:16	210:9 213:20,21	sharing	212:7 220:8 227:2	189:18 190:6
182:3 183:3	214:14 215:1,17	126:18 167:3	227:21 230:18	191:15 193:12,20
186:25 195:6	215:20 216:2	Sharol	significantly	202:13 232:7
196:5 204:3,19,24	217:11,13,15	103:11 156:1	157:19	smaller
205:1 206:15	218:12,18 219:4,9	167:11 169:7	signs	156:4,7 178:15
208:20 209:8,22	228:15,19 229:17	170:11 174:10	150:2	192:14,18 193:1
211:15 214:11,13	235:19	187:5 193:15	similar	smooth
215:3 216:18	sentences	209:6 225:15	120:25	182:25 183:1
217:9 218:11	177:11	226:7 228:23	simple	snookered
220:17 223:8	separate	Sharol's	112:5 126:13 148:7	233:4
229:13 231:9	141:6	195:1	148:8 158:14	solicitor's
233:21	separately	sheet	159:8,9 165:2	118:23
seek	172:20,21	145:13 233:12	195:4 224:11,13	solution
129:24 207:18	September	238:10	234:4	135:6 210:16
209:4 224:17	105:2	shift	simpler	solve
230:22	series	226:20	186:4	165:2
seeking	105:5	shoe	simply	solves
156:23 207:25	serve	196:24	129:25 131:6 141:1	201:23 213:7
selected	133:21 214:20	shoot	143:13 170:24	somebody
105:23	serves	206:9 236:10	194:18,21 224:15	109:20 131:17
sell	187:10	short	236:7	148:2 164:4 168:8
163:7 177:18	service	116:13	single	205:21 206:1
send	135:17,22 136:12	show	197:12,13	221:9 222:18
106:7 124:1 197:17	services	106:5 158:7 218:14	site	someone's
senior	131:3 132:3,25	showing	235:9	118:2 184:3
181:7	133:6,7,15,16	125:5	sitting	something's
sense	135:20 136:11	SHURAVLOFF	169:19	184:13
131:11 142:8	137:21,23,24	103:13 194:7	situated	soon
161:23 177:6	140:21 180:25	shut	134:12 138:19	105:1
180:9 189:4,5	session	118:10	situation	sorry
197:8,8 200:2	102:9 104:7 182:5	side	106:6 134:3 140:18	185:20 207:14
236:5	182:6 211:10	117:19 119:8,21	159:22 165:22	209:7 214:18
sent	sessions	164:22 173:24	171:23 176:2,8	sort
125:22	116:19	233:17	200:9,13 216:18	107:19 115:20

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 264

119:25 124:2 129:8,16 162:24 166:3 184:4 231:7 SOSSAMON 103:13 202:16,21 203:12,17 sound 186:8 195:4 209:17 sounded 124:21 sounds 124:19 189:1 source 155:18,24 186:21 208:25 210:3 212:6 220:7 225:1 225:7,10,12 226:25 231:15,22 sources 155:10,10,21 166:12 219:2,5,14 219:18 226:6 speak 148:24 166:8 198:17 222:6 speaks 209:10 special 147:1 153:22 185:14 192:9,17 specific 125:21,24 126:22 137:6 152:21 158:10 160:23 164:16 196:12 200:9 226:2 229:17 specifically 130:6,11 140:11 144:25 154:17 192:9 specify 161:12 spend	174:3 175:2,7 177:8 178:20,21 193:22,24 194:5 195:2,2,17,18 197:2 200:14 224:16 227:12 spending 158:20 166:24 207:3 spent 131:20 147:6,6 207:24 227:14 splits 184:1 spotlight 191:24 192:2 spread 106:3 ss 238:2 stability 196:6 stabilize 195:23 196:2 197:25 stabilizes 195:9 stabilizing 197:20 stable 195:11,22 stack 178:22 staff 152:22 158:24 179:11 195:9 197:20 staffers 168:20 stage 104:25 stalemate 178:17 stamped	194:21 stand 142:13 147:13,16 148:6 229:14 standing 116:6 standpoint 129:19 130:12 137:22 138:2 stands 142:22 147:19 Star 234:25 start 106:20 197:15 228:15,19 229:10 started 109:7,11 152:1 starting 104:25 215:6 starts 176:14 236:2 state 107:18 120:15 126:12,23 128:11 128:15,19 129:6 129:11,17 130:1,5 130:7,19,24,25 131:10,12,21,21 132:1,16 133:8,24 134:1,19,23 135:2 135:12,21 136:1,5 136:23 137:3,17 137:23 139:18,22 140:21,23 141:2,5 141:6,6 142:6 162:8 169:19 238:1 stated 222:19 statement 158:14 states 129:18 136:17	140:20 143:13 150:14 228:10 233:23 state's 137:17 status 129:3,24,25 145:23 146:8,10 statute 115:24 116:1,8 122:25 125:21 128:23 129:23 130:2,21 131:7 141:4,9 145:4 150:14 152:16 153:4 167:14 170:13 222:20 statutes 143:10 statutorily 114:14 statutory 113:24 115:15,17 116:3,7,15 117:12 119:12 127:19 135:7 stay 139:9 190:10 237:13 staying 227:6 stays 139:11 147:24 229:19 stenographically 238:11 step 116:18 141:22 142:18 Stetson 140:15 sticky 170:14 Stoloff	104:17,18 106:19 106:22 107:4 stop 117:13 124:15 stories 115:9 story 106:12 strictly 162:19 strike 218:25 219:3,12 231:12 striking 160:9 227:24 230:17 structured 199:12 struggle 117:18 177:13 struggling 169:17 230:17 stuck 168:7 study 104:23 105:6,11,14 105:16,17,20 106:4,8,24 stuff 191:17 subcommittee 178:1 subject 134:10,13 135:1 139:5 235:4 submission 110:3,7,24 111:1 113:15,19 114:3,8 114:15 119:17 191:2 submissions 114:20 submit 113:17,23 114:1,2
---	--	--	---	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 265

114:9,12 142:16 142:17 146:1 161:2,4 175:12 187:18,21,24 188:2,10,12 190:14,15,16 191:3,4,8,11 201:20,21 submits 141:18 160:15 submittal 165:1 submitted 113:25 191:4 submitting 199:2 200:20 Subparagraph 230:8 subsection 150:15 152:17 substance 113:12 success 196:4,6 197:23 successful 155:15 207:19,23 208:1,8,10 212:13 221:13 222:13,18 222:23 successfully 108:4,7 221:9 sue 116:10 118:14,16 sufficient 109:6 suggest 109:25 121:22 140:21 173:2 178:14 205:8,12 214:9 235:18 suggested 184:9 216:10 suggesting 154:23 159:6,9,10	163:3 216:6 217:4 224:15 suggestion 110:6 141:14 148:15 173:1 203:10 218:25 223:1,12,14,14 228:18 suggestions 120:16 summarize 119:25 summary 152:6 SUNOO 104:4,12,16 107:3 107:5 108:1,23 110:11,16,21 111:1 112:24 113:10 115:6 118:11 119:20 120:11 121:19,22 122:2,14,18 124:8 124:17,24 125:3 126:1,5 127:3,13 130:16 133:17 139:23 140:4,6 141:13,23 142:25 143:18 144:13,18 145:8 147:10 148:2,8,10,20,25 149:3,11,23 150:4 150:12,17 151:5 152:2,8 154:2 156:1,11 157:5 158:3,17 159:13 161:7,18 162:1,8 162:11,14 164:4 164:15,21 165:6 166:15,20 167:3 167:11 168:10 169:3,22 170:10 170:17 171:6,11 171:16,20 172:1	172:19 173:11,15 173:19 174:9 175:24 176:11,25 177:22 178:6,13 179:18 180:20 181:17,25 182:3,6 182:9,14 183:4 184:5,9,12 186:6 186:18 187:1,5 189:13 192:5,13 193:9,15 194:6,24 196:7 197:9 198:1 198:9,12 200:7 201:6,24 202:2,15 202:24 203:7,15 203:19,23 204:3 204:23 205:5,18 206:4 207:9,11 208:4,19 209:6,13 209:20 210:19,23 211:6,12,24 212:1 212:18 213:8,12 213:17 214:7,16 215:5,8,11,25 216:8,13,15 217:4 217:9,12,25 218:3 218:6,11,14 219:6 219:20,24 220:1,4 221:24 222:5,25 223:13,21 224:7 225:15 226:7,16 227:4,24 228:5,9 228:18,21,23 229:7,14,22 230:20 231:9,19 232:19,22 233:2,6 233:17 234:5,17 235:15,22 236:12 236:17 237:4,8,14 supplement 155:11 232:11 support 115:10 155:8 162:19 163:22	169:8,21 supported 231:5 supporting 232:9 supports 117:17 suppose 227:12 supposed 156:20 171:7 201:16 213:3 220:20 sure 105:7,9 107:1 108:17 145:1 147:24 149:14,15 159:3,11 162:3 165:3 168:11,17 210:8,15 216:1,18 216:23 217:1 219:16 223:11 224:10 231:20 survey 105:21 106:23 Susan 103:14 139:23 140:4 228:9,18 229:7 Susan's 229:14 suspect 137:1 sympathetic 137:13 system 111:9,10 112:10 116:21 118:16,18 122:22 123:2,5,8 199:12 234:25 235:1,1,7 <hr/> T <hr/> table	115:12 120:10 144:14 147:20 151:20 169:19 177:23 178:3,10 195:25 197:23 tabling 144:17 take 106:15,18 112:3 115:1 116:9 120:5 123:8 130:8 136:20 143:16 145:19,19 151:23 153:19 156:20 161:5 163:3 165:22 166:5 169:22 170:22,25 172:24 173:25 176:21,22 178:14 179:13 181:25 185:11 186:13 187:15 189:23 192:12 196:4 200:24,24 208:19 211:14,15,19 215:11 217:4,14 217:15,25 224:25 225:6,8 232:23 236:13 taken 102:12 112:14 140:20 152:4 162:24 182:2 211:8 takes 189:19 talk 106:13 142:7,8,12 154:4 159:19 186:14,15 202:25 talked 127:17 154:18 190:21,24 235:23 talking
--	--	--	---	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 266

105:25 107:23 121:1 156:10 157:14 161:9 167:23 169:8 177:3 194:8 200:8 201:12 210:11 talks 121:3 144:24 167:9 183:24 186:1 194:17 230:24 tapes 235:7 targeted 160:22 tax 129:3,24,24 132:2 132:2 136:13,15 137:17 145:22,25 146:8,9,18 166:10 207:25 220:12 222:16 taxation 129:18 134:7,8,10 134:13,14,14 135:23 136:16,21 139:5 145:18 taxed 129:6,23 taxes 131:3 132:25 135:24 taxing 133:3 136:2 141:10 TDHE 190:14 TDHEs 126:10 194:9 technically 137:19 141:11 tell 106:11 117:25 129:18 161:17 168:8 220:19 227:21	telling 224:16 ten 152:3 term 143:17 149:21 170:15 171:5 172:3 termining 158:21 terminology 152:20 171:16 terms 119:8,9 121:1 124:13 128:1 129:17 136:25 137:15,22 154:20 162:23 163:2 165:4 181:4,11,13 Thad 102:17 thank 107:3 108:23,23 115:6 122:4,17 125:6,8 134:16 144:20 145:10 147:14 148:21 170:16 179:16 202:20 214:18,21 217:3 218:2 229:13 233:3 235:15 236:16,17 236:20 Thanks 107:4 216:24 theoretically 162:25 163:1 theory 162:8 thing 107:20 111:3,11,18 116:12 132:4 139:11 156:2 191:7 213:11	214:19 217:14 231:11 things 105:16,19 108:10 111:7,11,20,24 112:7,12,20 122:24 123:9 124:4 131:16 156:20 178:10 182:1 193:11 198:3 217:8 218:17 228:12 think 104:14 106:22 108:1 109:5,12,14 109:18,19,21,23 113:4,12 115:2 118:9 119:20 120:25 121:2,11 121:16 123:11 125:16,22 126:15 129:11 130:3,9,13 130:20 133:13 134:17 135:5,13 136:9 138:20 140:2 141:8 142:1 142:18 143:16,19 144:13,16 149:18 149:20 150:13 151:3 156:16,25 157:2 160:6 161:13 162:4 163:8 165:5,20 169:5 170:13 171:4,25 172:13 172:16 176:10 177:22,23 179:8 179:20 180:10,15 180:17 184:1 186:10 189:5 190:5 193:11 194:7,23 196:15 201:15 210:11,13 210:20,21 211:3,9	212:11 213:2,18 214:14,20,25 215:16 216:14,17 216:19 217:6 219:3,15 221:15 222:8,18,23 223:6 223:9 225:24 227:17 228:24 229:2,3,19 231:17 233:4 234:9,10 236:19 thinking 161:20 210:7 thinks 130:12 third 137:20 179:13 203:25 third-party 209:24 THOMAS 103:11 thought 126:16 144:4 159:2 185:20 199:24 224:1 225:5,14 231:5 234:7,12 236:7 thoughts 165:13 thousand 134:10 three 123:24 189:19,23 190:3 234:1,21 threshold 209:5 throw 158:6,7 throwing 158:15 thumbs 125:6 144:2 201:14 201:14 237:5	tied 199:18 204:8 206:14 till 197:14 Tim 140:14,15 235:20 time 106:23 107:12 109:6 112:2 116:23 119:7 120:8 121:17 128:7,21 130:12 138:22,24 140:13 151:23 163:1 165:22 176:1 177:2,24,24 198:23 200:19 207:24 211:4 215:25 221:8 231:20 236:2,20 236:25 timeline 112:6 146:23 timeliness 119:8 timely 111:14,20 113:9,23 115:11 123:3,9 times 111:15 115:11 123:5,6 191:22 title 109:21 110:1 titled 145:13,15 151:19 today 104:4 109:4 147:21 233:9 told 139:8,14 151:15 tomorrow 147:21 top
--	---	---	---	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 267

top 126:6 151:16 166:6 202:16 212:21	105:22 106:5,10 113:18 135:1,18 139:4 154:18	tried 114:18 142:21 166:1 234:7	120:14 134:10 149:8 150:25 151:13 152:12	123:23 124:6 126:24 127:24 128:3,20 132:18
topic 105:15	170:25 174:2,4,22 175:10 181:1	trouble 165:11	153:25 157:12,24 158:1 161:14,15	135:25 138:5 140:17 141:24
total 123:23 159:24 160:10,11 161:10 161:10,10,11 163:15,19 165:3,8 167:9,15,22 170:22 173:3 180:1,7 185:10 207:22 209:17 215:21 216:5,20 216:21 217:7,21 218:21,22 219:2 219:12	187:12,21 188:4,5 189:1,7,9,12 194:3 233:16 234:7,16 236:21 237:3,4,9,16	true 106:5 212:19 222:16 238:14	165:7 175:5,5 177:11 187:23 191:16 197:6 202:4 217:11 229:6	163:8 164:13,18 166:23 175:16 182:24 187:14 189:10 193:18 194:1 198:25 200:6 201:9,10,11 202:11 204:7 223:11 226:17
totally 128:20 169:1 186:11 199:8	tribe 106:12 114:13 130:21 131:5 132:23 141:18 155:13,14 159:22 159:23 160:1,2,4 160:23 168:1,5,6 169:11,14 170:15 170:22 171:14,19 171:23 172:4,10 172:10,11,12 173:12,25 176:6 180:24 182:12,22 189:17 190:6,14 191:16 192:15,18 193:20 230:7	trust 111:18 115:2	type 104:5	understanding 123:15 160:4 188:3 188:7 192:19 213:2 216:25 220:25 221:8 226:15
tough 160:16		truthfully 139:20	typewriting 238:12	understood 149:16 168:12,17 176:12 187:16 227:11
track 172:15,20 174:8 175:19,22 188:13 196:11 198:19 199:6,13 200:1	tribes 111:25 116:20 126:10 127:9 128:4,14,16 133:21 135:17 140:19,22 156:5,7 156:15 159:16,18 159:19 160:16,17 161:6 169:10,14 169:17 170:2,5,16 170:21 171:1,7,20 172:4,7 175:21 189:18 193:2,12 194:12 224:13 230:21 237:12	try 110:13 121:25 129:9 135:11 137:10 142:8 157:16 163:7 172:11 177:21 222:9,12,17	typical 179:11	
tracking 196:18 224:10 235:1		trying 111:20,23 114:6 129:12 130:9 131:20 164:23 166:16 170:24 180:8,25 181:8 182:24 183:3,6 186:24 196:13,22 210:20 212:12 224:9 225:5 226:14 227:16 233:22 234:12	typically 154:7 155:6	
traditionally 136:5		turn 140:13 175:17 181:18 233:19,21	typing 182:9,16 183:5	
transcription 238:13		turned 120:21 121:24 182:7	ultimate 230:23 231:1	undo 147:22
Treasury 136:19	tribe's 111:6 173:2,8,18 173:19	turning 113:8	ultimately 117:14	undoes 139:12
treat 162:22		two 105:4 107:1,9 114:10,25 120:7	umbrella 159:16,19,24 160:12,24 169:6,9 169:13,15,17 170:2,20 171:2,7 171:23 172:6,10 172:12,17 194:9	Unfortunately 134:3
trees 235:14			unable 113:16 221:20	unincorporated 133:22 135:16
trial 105:8			unclear 116:9	unique 139:2
tribal			underlying 186:2	unit 147:6,7 189:21
			undersigned 238:7	units 106:2 146:4,5
			understand 112:13,25 113:2,7 114:7 117:2 119:7	Unorganized 126:11 127:11 128:6,10 133:23 134:6 141:8
				unsuccessful 145:23 212:15,20
				upcoming

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 268

187:18 190:16 199:9,15 200:18 update 108:16 208:17 updated 107:24,24 108:10 108:11,15,18 URBAN 102:1 use 106:23 153:8,14 154:23 158:8 159:21 161:20 162:23 163:12 167:24 173:9,20 174:1,16 179:25 180:3,7,13 181:4 183:24 184:21,23 185:1,9 188:2 204:10,14 206:13 206:20 207:4,21 213:23 216:4 217:20 218:20 219:11 222:7,24 226:21 230:15 uses 121:2 179:24 utilize 159:17 169:16 <hr/> <div style="text-align: center;">V</div> <hr/> vague 149:22 variation 229:2 variations 106:14 variety 156:20 various 158:20 vary 160:13 version	211:13 218:7,8 view 141:5 village 132:21,24 133:3,12 villages 127:25 131:4,22 139:4 visit 143:22 Vollentine 103:14 126:14,20 127:1,11,12 130:15,17,17 132:8,13,15,23 133:7,11 vote 107:17 124:24 127:14 150:18 178:4 207:13 208:18 211:20 213:9 voting 218:8 <hr/> <div style="text-align: center;">W</div> <hr/> wait 179:17 197:14 213:6 waiting 213:5 waive 113:22 115:17 145:24 150:14 waived 127:4 waiver 109:18 110:3,7,8 110:24 111:2,5 112:5 113:8,15,20 113:22,25 114:9 114:14 116:4 118:6,14,17,24 119:17,23 121:8	121:10 122:7,10 122:15 123:17,19 127:8,9,17 128:22 128:23,25 129:1,7 129:8,11 130:4,8 130:13 131:15,18 132:7,7 134:16 135:12 137:7,12 138:15,20 139:7 139:16,17 140:8 140:12,12 141:16 141:17,25 142:13 142:22 146:2,17 146:20,24,25 147:3,13,16,19,20 147:21 148:6,10 148:12 149:3 194:14 213:1 waivered 147:23 waivers 123:2 137:15 want 104:13 107:15 112:4,13 113:6,7 114:25 116:5 120:4,5 122:21,25 124:9,10,11 126:20 133:17 138:4 143:22,24 147:11,12 148:3 148:18 154:23 155:3 157:6,24 158:1 159:10 160:6 162:8 163:3 167:6 168:16,22 172:16 176:1,2 177:14 178:2,3 180:23 181:14,15 181:25 183:13 186:14 188:13 189:24 191:23 192:4 195:22 196:4,20 201:8,15	206:18 207:2 208:19 209:8 210:24 212:24 213:4 214:18 217:22 225:2 227:15 229:24 wanted 115:21 156:4,6 159:11 164:15 168:11 179:21 180:13 217:1 230:13 231:4 wants 104:5 111:16 114:13 washes 230:25 Washington 102:13 104:1 238:1 238:7,21 wasn't 108:18 167:1 176:5 188:8 water 135:20 way 113:9 119:1 122:2 125:4 130:3,10,13 131:7 138:10,14 138:17 144:15 159:9 160:8 161:20 165:2 167:8,13 168:1,25 169:1 171:4 175:16 177:21 178:16 182:23 184:1,1 187:16 196:21,21 199:12 204:18,21,22 205:11 207:12 208:7 214:17 217:2,5 220:17 227:23 231:24 235:14	ways 179:9 WEDNESDAY 104:1 week 197:13 went 128:25 174:20 187:10 188:6 196:23 218:6 222:4 227:23 weren't 108:2 116:22 132:13,14 168:16 wetland 138:23 wetlands 138:19 139:17 we'll 105:1,9,22,24 106:9,20 107:1 108:17 109:3,10 111:18 145:18 166:21 167:4 184:2 191:6 196:3 206:2 211:14,19 211:19 217:25 229:22 231:21 232:23 236:13 237:17 we're 104:14,25 105:7,9 106:3 107:13 108:1,21 109:1,2 111:20 113:4,14 113:16 114:6 117:20 119:10,20 120:11 122:12 124:19,24 126:18 129:12 130:9,18 131:24 133:1 134:13,17 136:19 138:10 142:21 143:19 150:20
--	--	--	--	--

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 269

156:19 157:20 159:4 162:9 163:11,23 164:10 167:23 168:12,23 170:24 171:14 174:2 177:3 178:5 178:6 182:6,8,13 182:17,22 183:3 186:12,24 187:13 189:16 193:21,21 194:3,10,11 195:1 195:11,12 196:2 196:13 197:13 198:15,15,22 199:2 200:1 201:16 202:7,12 204:7 211:5,10 213:8,14 218:8 219:22,23,25 221:18,20 222:13 224:10,18,19 225:5,17,18,20 226:4,4,14 229:3 229:5 233:22 235:14 236:10 we've 108:9 111:24 112:2 113:1 119:7,15,16 120:7 126:3 135:10 137:14 177:4 178:10 184:5 187:25 189:8 194:14 195:3 196:18 207:24 227:14 230:13 234:22,22 whatnot 135:21 139:1 whatsoever 134:11,14 whichever 205:9,20,20,21 206:5,5,12,22 207:6 213:19,25	214:4,6,11,13 215:20,22 216:6 WICKER 103:14 140:13 228:10,19,22 229:8 willing 124:22 222:15 window 114:8 withheld 118:2,3,4 wonder 141:17 wondered 157:23 wondering 115:13 209:22 210:1 212:16 word 106:3 176:21 177:15 195:6 196:5 201:23 202:1 205:19 209:16 217:24 218:25 219:4,12 232:9 234:10 worded 160:8 217:3 wording 124:10 187:8 192:9 words 110:8 173:16 205:21,23 wordsmith 231:24 wordsmithed 177:10 work 104:18 108:1,17 124:12 125:20,23 143:25 144:1,2,6 145:5 150:10 151:21,22 152:6	154:10,14 165:24 173:10 174:14,21 177:24 178:1,8,15 180:18 187:7 190:21 191:1 199:14 201:7 203:8 210:14 211:4 213:3 214:18,21,22 218:16 222:12 233:8 235:24 236:15,17,18,19 236:19,21,25 worked 115:9 working 108:21 112:1,1 125:14 144:1 157:7 164:10,11 164:14 184:3 237:7 works 157:16 189:7,11 worksheet 125:18 150:21 152:7 233:9 worried 177:15 worry 188:24 worse 198:21 worth 189:20,23 202:4 wouldn't 155:3 165:17 187:19 209:17 222:22 write 117:25 161:16 231:21 writing 121:9,12,15 122:6 122:15 146:25	147:5 written 146:1 168:24 231:12 wrong 118:15,18 168:8 wrote 173:10 <hr/> <p style="text-align: center;">Y</p> <hr/> Yakima 120:18 143:1 yeah 104:14 118:7 126:6 155:17 185:22 187:4 219:25 232:12,17 235:23 237:11 year 113:18 117:1 123:6 154:19 160:23 174:4,4,5,8,23,25 175:3,6,7,11,12 175:14,14,20 178:19,23 179:2 187:12,19,21,22 187:23,24 188:2,4 188:5,11,12,16,16 188:20,22,24 189:7,10,12 190:16 191:5,12 194:3,4,10,11,11 194:13,15 195:13 195:15 197:3,6,15 199:2,5,9,20 200:15,22 203:4 205:13 219:3,5,14 219:18 230:10 233:16 234:2,7,10 234:11,15,16 235:19,24,25 236:1,3,4 yearly 141:23	years 105:13 111:25 112:1 123:24 175:5,5 187:23 189:20,23 190:3 191:16 199:15 202:4 234:1,3,4 234:21 year's 199:5,21 yellow 125:14 yesterday 104:8 107:6,11,23 108:11 109:8,20 113:6 114:19,22 125:17,20,24 126:8,17 151:7,14 151:15,18 Yurok 115:7 <hr/> <p style="text-align: center;">\$</p> <hr/> \$100,000 175:2 200:14 \$2,000,000 155:19 157:13 165:13 197:2,3 \$200,000 163:10 166:24 193:22,23 220:13 220:16 \$250,000 195:18 \$300,000 175:2 \$400,000 163:12 173:25 174:3,25 175:6 \$48,000 168:6 \$500,000 153:8,14 159:20 167:23,24 168:2,4
---	--	---	--	---

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 270

169:14,15 170:21 172:8,12,25 173:4 173:8,16 176:14 184:21,23 185:4,6 187:25 204:10 206:20 207:4 214:1,5 \$800,000 166:25	101 133:14 152:17 101(b)(1) 114:4 101(c) 125:21 102 133:25 11 150:21,22,24 151:10,16 152:6 152:11 213:9 218:5 233:1,2,18 233:18,20,20	188:14,21,22,25 192:21 193:4,6 194:15 195:3,8 198:6,20 199:6,13 202:5,8 203:2,3 206:10,12,20,21 206:24 208:2 209:5,11 212:24 214:2,3 220:13 221:2,12,17 223:2 224:16,18 225:25 227:6,9 232:13	224:10 228:10,25 236(b) 210:17 238 153:5 159:1 182:4 183:5,12 184:16 184:17,18,20 209:9,13 210:7,10 210:15 212:25 213:16 215:14,17 219:25 220:1 221:1 224:17 225:24 227:17	105:3 32 109:13 36 209:8 38 209:8
<hr/> 0 <hr/> 0 104:2	<hr/> 1113 102:12 114 120:24 121:4 12:00 210:24 18 230:1 19 230:2 1996 105:15 135:11	2008 102:8 2010 102:10,18 104:1 238:15 202 229:25 2052 238:22 21 102:10,18 104:1 22 150:24 233:10,12 233:19,21 235:16 235:16 236:14	241 144:19 25 158:9 26 133:22 135:15 27 169:18 28 107:11	<hr/> 4 <hr/> 40 159:19 163:5,14,17 192:1 44 114:18 45 112:15 113:21 114:10,11,16,18 114:23 120:23 122:15 237:7,16 48 140:19 141:12 49 133:21 198:16
<hr/> 1 <hr/> 1 129:16 137:16 10 145:12 194:10 202:7 203:1 10-minute 151:24 178:14 179:17 182:1 1000.224 110:14,19 145:21 1000.227 107:13 109:16 110:14,18 1000.236 152:13 183:15 1000.236(b) 158:23 1000.238 152:14 156:12 183:23 192:8 1000.241 126:7,9 127:2 1000.244 145:15 146:15 1000.246 145:15 146:16 1000.504 126:7 144:23 145:6 1000.552 233:13	<hr/> 2 <hr/> 2 102:10 129:20 230:12 20 153:8 155:20 156:14 157:10,13 157:15,19 158:1 161:11,12,15 163:4,13,14,18 165:3,7,9,14,17 165:18,19 167:25 168:7 172:15 173:25 174:16,23 175:3,8,19 177:17 179:25 180:7,13 184:21 185:4,10	2008 102:8 2010 102:10,18 104:1 238:15 202 229:25 2052 238:22 21 102:10,18 104:1 22 150:24 233:10,12 233:19,21 235:16 235:16 236:14 225 110:2,4 226 125:9,10 227 110:4,8 125:10 23 178:11 236 152:20,22 183:10 183:12 184:3,6 186:12,17,18 208:6,21 209:21 210:8 211:18,21 212:1 213:15,16 215:8 218:14 220:2,5,25 221:6	<hr/> 3 <hr/> 3:45 237:20 30 111:24 112:1 146:20 153:14 156:16 159:17,21 169:11,16 170:25 171:3 172:15,25 173:9,20 182:21 184:23 185:2 188:25 190:3,7 192:22 193:12,14 193:22 194:12 198:7 199:6,14 204:11,14 207:4,6 213:23,24 220:13 221:2,12,18 227:10 232:14 30th	<hr/> 5 <hr/> 50 122:6 158:20 192:1 195:2 504 144:24 145:2 <hr/> 6 <hr/> 6 183:18,19 184:9 186:12,19 187:1 208:13,20,21 210:2 211:18,21 212:4,22 214:23 214:23,25 215:8 218:14 221:22,24 223:1 224:12,19 224:22 225:17,20 227:25 228:6,15 228:21 229:1 230:17 231:9,21

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session

July 21, 2010
Page 271

60 121:6 <hr/> 7 <hr/> 7 125:18 145:12 74 236:22 75 113:17 158:21 200:22 236:22 76 236:22 79 236:23 <hr/> 8 <hr/> 8 125:18 145:12 80 108:8 89 114:14 <hr/> 9 <hr/> 9 145:12 230:1 90 112:15 113:18,24 114:1,3,15 119:16 200:23 90-day 114:8,10 91 114:17				
---	--	--	--	--