

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF NATIVE AMERICAN PROGRAMS

NAHASDA Reauthorization Act of 2008
Negotiated Rulemaking Session
July 20, 2010, Day

Taken at 1113 Sixth Avenue
Seattle, Washington

DATE: Tuesday, July 20, 2010

REPORTED BY: Kristin M. Vickery, CCR, 3125

A P P E A R A N C E S

Committee Members Present: JASON ADAMS
MARGUARITE BECENTI
RODGER BOYD
PHIL BUSH
HENRY CAGEY
LARRY COYLE
MARK BUTTERFIELD
ROBERT DURANT
KARIN FOSTER
CAROL GORE
LAFE HAUGEN
SANDRA HENRIQUEZ
RETHA HERNE
LEON JACOBS
MARVIN JONES
BLAKE KAZAMA
MARLENE LYNCH
JUDITH MARASCO
THOMAS MCGEISEY
SHAROL MCDADE
REBECCA PHELPS
S. JACK SAWYERS
MARTY SHURAVLOFF
SUSAN WICKER
JAMES VOLLENTINE

1 SEATTLE, WASHINGTON; THURSDAY, JULY 22, 2010

2 8:34 A.M.

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5 MR. COYLE: Madame Secretary, could you give the
6 prayer, please.

7 (Opening prayer.)

8 MR. COYLE: Thank you, Madame Secretary.

9 Now, I'd like to show the Cowlitz hospitality by
10 presenting the Cowlitz Family Drum Group.

11 GUEST SPEAKER: Good morning, everyone. We are
12 Te'Koop D'Kyu (phonetic). We are from the Cowlitz Tribe.
13 We're the family group. We are honored to be asked to come
14 here today and do some blessings for the work that you're
15 going to be doing, the work you did in the past, and all the
16 work you're going to do to help all the tribal families
17 across the nation.

18 We just wanted to open with a few blessing songs
19 to help you do your work right today.

20 (Drum ceremony.)

21 MR. COYLE: Jess -- Jess Groll is our Cowlitz CFO.
22 Could you introduce your guests?

23 (Introductions.)

24 Thank you. Thanks a lot, kids. You did a favor.

25 Now, we get right into business. We need to do

1 roll calls.

2 Jason Adams?

3 MR. ADAMS: Here.

4 MR. COYLE: Steven Angasan? Steven?

5 MR. VOLLENTINE: Steve Angasan is not here.

6 MR. COYLE: Did he get a letter in?

7 MR. VOLLENTINE: Yes.

8 MR. COYLE: Marguarite Becenti?

9 MS. BENCENTI: Present.

10 MR. COYLE: Rodger Boyd?

11 MR. BOYD: Here.

12 MR. COYLE: Henry Cagey?

13 MR. CAGEY: Oh, here.

14 MR. COYLE: Larry Coyle.

15 Ray DePerry? His alternate, Dan Hatfield?

16 And Robert Durant?

17 MR. DURANT: Here.

18 MR. COYLE: Karin Foster?

19 MS. FOSTER: Present.

20 MR. COYLE: Carol Gore?

21 MS. GORE: Here.

22 MR. COYLE: Lafe Haugen? There he is.

23 Sandra Henriquez?

24 MS. HENRIQUEZ: Here.

25 MR. COYLE: Retha Herne.

1 MS. HERNE: Here. Herne.

2 MR. COYLE: Excuse me. I'm not too good on some
3 of these names.

4 Leon Jacobs?

5 MR. JACOBS: Here.

6 MR. COYLE: Marvin Jones?

7 MR. JONES: Here.

8 MR. COYLE: Thank you, sir.

9 Ervin Keeswood?

10 MS. LYNCH: I'm here for him.

11 MR. COYLE: Judith Marasco?

12 MS. MARASCO: Here.

13 MR. COYLE: There she is.

14 Thomas McGeisey?

15 MR. MCGEISEY: Here.

16 MR. COYLE: Alvin Moyle?

17 MS. MCDADE: Sharol McDade in for Alvin Moyle.

18 MR. COYLE: Rebecca Phelps?

19 MS. PHELPS: Here.

20 MR. COYLE: Shawna Pickup? I thought I seen her
21 earlier.

22 Jack Sawyers?

23 MR. SAWYERS: Here.

24 MR. COYLE: Marty Shuravloff?

25 MR. SHURAVLOFF: Here.

1 MR. COYLE: I figured that --

2 Russell Sossamon?

3 Darlene Tooley?

4 MR. BUSH: Here.

5 MR. COYLE: Okay. Phil Bush.

6 Susan Wicker?

7 Okay. We have a quorum for sure.

8 We've got one announcement I'd like to make here.

9 It might be nice to have a little turn to acknowledge that
10 Robert Durant has been elected as Secretary Treasurer for
11 the White Earth Tribe. He was out of our group for a while,
12 while he was electing -- getting elected, and he came
13 through with flying colors.

14 Has everybody had a chance to look over the
15 agenda?

16 MR. BOYD: Thank you, Mr. Chairman. Rodger Boyd
17 from the Office of Native Programs. We also have with us
18 Jennifer Stoloff today. She is from Secretary -- I don't
19 know if you're in the room. There she is.

20 Jennifer is with the -- with PD&R, and one of the
21 reasons we asked her to be here, and at some point -- we
22 would like to discuss this a little bit -- is that -- and
23 some of you may recall, we will be doing a national Native
24 American needs assessment. It will be in two phases. One
25 that we will do from Public and Indian Housing. The second

1 phase will be conducted by PD&R.

2 So maybe towards the end of the session, we can
3 discuss that, just give you an overview as many -- as well
4 as to the audience as to how we are going proceed on this in
5 the coming months. Thank you.

6 MR. COYLE: Would it be all right to put that on
7 the last -- after the last break at 4:30? Will a half hour
8 be enough time, Rodger?

9 MR. BOYD: That would be appropriate, yes. And
10 you want to do that today, or...

11 MR. COYLE: Yes. Might as well get it over with.

12 MR. BOYD: Sounds good.

13 MR. COYLE: Does that have everybody's approval?
14 We're going to break right away, go back to our workgroups.
15 We had a meeting last night, and all of the chairmans
16 decided that they could finish up their workgroup problems
17 by eleven o'clock.

18 We're just a little bit behind time now. If it --
19 you see it's going to take any longer -- we'll go around and
20 check and see if it takes even longer, give us a thumbs up,
21 and we'll make allowances.

22 Any other -- yeah, Jan, can you give the room
23 assignments?

24 FACILITATOR: They're on the wall up here -- on
25 the floor -- I mean, on the screen. Okay. The room

1 assignments are on the screen here.

2 We might recommend is that you use the stairs
3 rather than the elevators, unless you are having problems,
4 because the elevator is so slow.

5 But Workgroup A and Workgroup B will be on the
6 third floor in the McKinley Room and the Yosemite Room.

7 A word of warning to Workgroup A, the McKinley
8 Room is extremely narrow. And so if you're going to be
9 needing to use the screen and look at data on the screen,
10 you may want to switch with Blake's group because his room
11 is more conventional looking. So whichever one of you guys
12 is going to be using a screen more, you know, that's the one
13 that will need room -- will need the Yosemite Room.

14 Workgroup C will be right here. So Jason, your
15 folks can stay in Grand Ballroom, as usual.

16 And the Workgroup F has the honor of the lower
17 level, down in Carlsbad, which is just one level below here.

18 MR. HAUGEN: Jan, Workgroup F will be in Carlsbad.
19 Is that the room with the dirt floor?

20 FACILITATOR: So any questions about your room
21 assignments?

22 Unless you give us indication you need extra time,
23 you will all be back up here at 11. Thank you.

24 MR. COYLE: They named that appropriate too,
25 Carlsbad. They figured that hooks into the old -- Old

1 Seattle that's down there. There might be a couple of
2 spooks. So you might get some help from them.

3 Nothing else. Let's go ahead and break for
4 workgroups. And the people out in the audience, go to these
5 different workgroups and work with these workgroups. This
6 is where the work happens, and we need all the participation
7 we can get.

8 (Workgroup break-out sessions.)

9 (A luncheon recess was taken at
10 12:00 p.m.)

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1 SEATTLE, WASHINGTON; TUESDAY, JULY 20, 2010

2 1:33 P.M.

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4 MR. JACOBS: Okay. It's time to move this session
5 forward. So if everyone could have a seat.

6 While everyone is getting seated, Jan has an
7 announcement. As you saw this morning, there's a lot of
8 tribes here in Washington state, and we try to make some
9 arrangements to visit one of the reservations tomorrow
10 night.

11 So Jan, could you give them that information,
12 please?

13 FACILITATOR: Okay. Good afternoon, everybody.
14 The activity planned for the Neg-Reg attendees is planned
15 for Wednesday evening, and we have, with the assistance of
16 the Tulalip Resort, for up to 30 attendees to be transported
17 to the Tulalip Resort for a guided bus tour of their
18 administrative offices, Indian Housing properties, and
19 marina area.

20 Tulalip? Tulalip. Tulalip. Thank you. Not
21 to-loo-lip. My bad. Tulalip, thank you.

22 So after that, they will be escorted to the main
23 hall and will eat dinner at their own expense at one of four
24 restaurants on site. And we've arranged for transportation
25 to pick up attendees at the hotel at six o'clock and to

1 return at 11:00 p.m. The transportation costs, round trip,
2 are \$20 per person.

3 So if anybody is interested in this event, they
4 should register with Jeremy. Jeremy raise your hand so
5 everybody can see you. Jeremy is with Nelrod over here, the
6 gentleman in the coat.

7 And we'd like -- we need -- they have emphasized
8 that they'd like to know ahead of time how many people might
9 be coming or be interested in this event. And so if you can
10 make up your mind by today or tomorrow at the latest, then I
11 think we can make sure that we have transportation
12 available. Thank you.

13 MR. JACOBS: Thank you, Jan. I hope that at least
14 30 of you -- us will sign up for this and have a good,
15 enjoyable evening tomorrow night by visiting one of the
16 resorts that is operated by one of the tribes here in the
17 local area.

18 As Larry mentioned this morning, there are a lot
19 of things that happened between meetings, and he announced
20 one.

21 There's one other thing that I would like to share
22 with you. I understand that not all of you received the
23 e-mail that some of us received that Sharol McDade had done
24 something I think was terrific. She donated one of her
25 kidneys to her own father. And if you see her, she's not

1 walking as fast as she usually is because she is
2 recuperating. So I think we should stand up and give her a
3 round of applause for this contribution.

4 I understand what she's going through because I
5 lost my right kidney six years ago, also, so...

6 Okay. It's time to start with negotiations. Are
7 you ready? Oh, hold on one moment.

8 MS. HENRIQUEZ: Point of order, Mr. Chair, I'd
9 like to make an announcement, please, if possible.

10 So today, as you see, it's -- if you would -- if
11 you would all join me, we were going to have some
12 accompaniment, but otherwise, I will just say, if you would
13 just join me in wishing Deb a happy 21st birthday. I don't
14 know which -- I think -- but let's be honest, I think it is
15 probably the sixth anniversary of her 21st birthday. So
16 with that, happy birthday to Deb.

17 Thank you, for indulging me, Mr. Chairman.

18 MR. JACOBS: Do you think her boss should stand
19 and sing happy birthday to her?

20 MS. HENRIQUEZ: That's Rodger.

21 (Pause in proceedings.)

22 MR. JACOBS: All right. That's good. Any other
23 fun things to do? I think the decision was made, as
24 announced by the other co-chair this morning, that we would
25 start with the Working Group B for the new negotiation

1 session. So Doctor, are you ready?

2 MR. KAZAMA: Yes, I'm ready. I did want people to
3 have the handouts in front of them, hard copies, and I don't
4 see that.

5 MR. JACOBS: Okay. So they're handing them out
6 right now.

7 MR. COYLE: Also, this will be on the clock from
8 now on. So are the clocks ready?

9 MR. KAZAMA: As documents are being handed out, we
10 will begin with the document that's titled 1000.104, .110,
11 and .147. So have that in front of you.

12 Basically, again, leading off, I want to take it
13 in sections. The first is just to make a presentation on
14 what we've discussed, and then I'll ask for consensus --
15 negotiation and consensus.

16 So just to give you guys an idea of -- to recap
17 how we've been progressing in terms of reaching consensus.

18 The first thing I want to do is, I recognized that
19 1000.104 and 110, we did have consensus on. But because we
20 wanted to change 147, we want to bring 104 and 110 back up
21 for reconsideration for consent.

22 So I need to consensus to bring 104 -- let me go
23 back and do it -- 104, subpart (e) and 110(a). So those are
24 the two parts that I want to bring back for -- we had
25 reached consensus on that matter. We're going to need

1 consensus to bring it back for reconsideration.

2 So I'm asking for consensus at this time to bring
3 back 104(e) and 110(a) for reconsideration.

4 Can I get consensus on that?

5 Is there any opposition to that?

6 Okay.

7 MR. BUTTERFIELD: I don't oppose, but could you
8 explain why it has to come back?

9 MR. KAZAMA: I will. The reason we're bringing it
10 back is -- we'll go through 104 and 110 is because we -- we
11 had questioned on previous -- and during the previous
12 negotiated rulemaking regarding 147.

13 And so as you fix language in one regulation, it
14 effects other regulations. And in this case, it will affect
15 104(e) and 110(a), and that's why we have to bring it back.

16 Because we were okay -- the committee agreed with
17 it, in terms of consensus and approving 104 and 110, but
18 when we looked harder at 147, we wanted to also make changes
19 in these others.

20 And it's not big changes, but I -- I don't know
21 with this group, maybe -- but I just wanted to bring that --
22 does that answer your question, Mark?

23 MR. BUTTERFIELD: Yes, it does. Thank you.

24 MR. KAZAMA: Let me get into this, then.

25 Dealing with 104, I just wanted to say that what

1 we're doing -- and Lafe, this is principally dealing with
2 the issues you've talked about. We've eliminated (e), which
3 is under 104 at the very bottom of that page, (e), we just
4 struck that out.

5 In that, it said -- every -- other -- other parts
6 of it was already addressing that. So that was sort of
7 redundant to have a -- just a broad statement like that in
8 (e). So the committee decided, let's just strike it. So
9 you'll see it on the board. We did strike that.

10 And so I -- and I do want to take each of this in
11 consensus. So I guess I'm opening up for negotiation if
12 there's any opposition to striking (e) under 104?

13 Yes?

14 MR. JACOBS: Wouldn't it be better to describe the
15 changes -- why you're changing them from your 104 -- 147, to
16 do it backwards, so that why we know why?

17 MR. KAZAMA: Okay. I can do that. I can go from
18 147 and work backwards.

19 Let me give you a little bit of background that
20 caused us to take this information back to Workgroup B.
21 When we first presented 1-4 -- 1000.147 to the committee
22 last time, we did not get consensus.

23 The committee decided to take it back, look at the
24 language, because there was discussion about whether or not
25 a person who started out in low income and became high

1 income or above low income, what do we do with that?
2 Because some of the tribes wanted to maintain the integrity
3 of a low-income housing program and not have high-income
4 people participating in the housing. Correct, Lafe?
5 Correct me if I'm wrong.

6 And so we decided, okay, in fairness to the group,
7 we would take back 147 before it reached consensus and deal
8 with it, look at the language. And so we proposed the
9 language in 147.

10 We also changed the question in 147. It
11 actually -- it was -- this gets complicated. It's initially
12 listed as 146 and it became 147, and we changed the
13 question. And the question says -- now states: When does
14 housing qualify as affordable housing under NAHASDA?

15 So we eliminated the question: Are families
16 required to remain low-income throughout the term of their
17 participation in a housing program funded under NAHASDA? So
18 we changed the question.

19 And then -- and that matches the statute. Let's
20 see. The statute -- it correlates to the statute, and the
21 statute is Section 205. And so we basically took what the
22 statute is saying and we put it down here. Okay?

23 Then we added -- we basically -- because we
24 changed the question, it wasn't a yes/no question. We
25 used -- so (a) states: Housing qualifies as affordable

1 housing provided the family occupying the unit is low income
2 at the following times:

3 And we listed those times. Those -- that -- that
4 does not -- we didn't change anything that the statute had
5 originally. So we just basically brought the statute
6 information there.

7 And then we made references -- reference to (b),
8 Families who are not low income as described may be eligible
9 under 1000.104 or 1000.110.

10 And that's why you will go back to the 1000.104
11 and 1000.110.

12 I guess, because I'm -- I'm switching the order,
13 I'm -- I should ask for negotiations on 1000.147 now, and
14 then consensus on this, and then go back and deal with the
15 others.

16 So is there any negotiating on this? Lafe,
17 especially from your perspective, is this okay? You're okay
18 with that?

19 If there's no further negotiation, I would just
20 ask for consensus, then, on 1000.147.

21 People in favor of it? Okay.

22 FACILITATOR: I think you have consensus on that,
23 Blake.

24 Question?

25 MR. BUTTERFIELD: Mark Butterfield. Ho-Chunk

1 Housing and Community Development Agency.

2 So essentially, you're just simply defining the
3 statutory point of at the time of initial occupancy of such
4 unit further to the four cases that you have?

5 MR. KAZAMA: That's correct.

6 MR. BUTTERFIELD: So it doesn't -- it still
7 doesn't change the effect that once they're in, they're in?

8 MR. KAZAMA: Correct.

9 And we're going to clarify that further, as you'll
10 see in 104 and 110 -- 104(e) -- actually, 110(a).

11 MR. BUTTERFIELD: So then we should do this as a
12 whole package so that it makes sense together?

13 MR. KAZAMA: Up to you. If you want to have me
14 review the entire thing and have consensus on the whole
15 package, that's fine, or take it individually.

16 These are separate regulations. That's why I
17 thought we would take it individually, but I'm open. You
18 want to take it individually? Okay.

19 So I guess, Mark, if it's okay. I would like to
20 ask for consensus, then, on this issue, 147.

21 FACILITATOR: Okay. Can we see, again, the --
22 your hands for consensus? Any opposed?

23 Okay. Go ahead, Blake. Thank you.

24 MR. KAZAMA: Okay. The next regulation is found
25 in 1000.110. Basically, we added or clarified -- and, Mark,

1 this might help your understanding as well -- we helped
2 clarify under (a).

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

5 And (a) is what we added: A family who was
6 low-income at the time described in 1000.147 but
7 subsequently becomes a non-low-income family due to increase
8 in income may continue to participate in the program in
9 accordance with the recipient's admission and occupancy
10 policy -- I want to emphasize that -- admission and
11 occupancy policies -- and may be subject to additional
12 requirements in (d) of this section based on those policies.
13 This includes a family member or household member who takes
14 ownership of a home ownership unit under Section 146.

15 What this (a) represents is that we wanted to give
16 the tribes the power to write the admissions and occupancy
17 policy to deal specifically with their issues on over income
18 or families that become over income subsequent to entering
19 the program when they were low income. So that's what (a)
20 specifically addresses.

21 So it's up to the tribe in how you write the
22 admission and occupancy policy.

23 Open for negotiations. Ask for consensus.

24 FACILITATOR: All right.

25 Questions? Mark?

1 MR. BUTTERFIELD: I'm concerned how this
2 affects -- I don't necessarily disagree with the overall
3 intent, but I guess I have a problem that never before would
4 someone who has had an increase in income suddenly be
5 subject to the 10 percent rule under (c).

6 See all these people, if they are between 80 and
7 100 percent, they go according to the formula. But then you
8 have the people that are over. And I guess I would like to
9 know what the effect would be on those people.

10 MR. KAZAMA: It's up to the tribe in terms of how
11 they want to structure that, Mark.

12 I'd like to have more clarification as well.

13 FACILITATOR: Okay.

14 MR. HEISTERKAMP: Yeah. To clarify, this -- these
15 are people who are -- started at low income and may
16 subsequently become over income. And HUD and the tribes
17 have conferred, this does not count as part of the
18 10 percent you may have housed as over income to begin with.

19 The 10 percent that you allow to house as over
20 income, only -- is only those people who started as over
21 income were when they were admitted to the program, over 80
22 percent of income.

23 What we're trying to capture here in 110(a) is
24 people who started low income and got higher as the program
25 went on. And then it's up to the tribe, but it -- we've

1 clarified with HUD, this will not count against the 10
2 percent that you may have chosen to house who are over
3 income to begin with. They're two separate requirements.

4 FACILITATOR: Jason?

5 MR. ADAMS: I guess the problem I'm having is what
6 you just explained, Dave, is I don't read (d) to mean that.
7 What I read (d) to mean is non-low-income families. So at
8 any time, when you go back and recertify them, if they were
9 low income before, then we get down to (d), at the time they
10 become non-low-income, they cannot not receive the same
11 benefit.

12 MR. HEISTERKAMP: I think the intention is to
13 leave it up to the tribe whether (d) applies or not to this
14 particular group. Again, you're correct, Jason. If you
15 start with a non-low-income family, they're mandated to
16 comply with Section (d).

17 But when you have a family who may have increased
18 their income who started as low income, the proposal is to
19 let the tribes decide whether or not to apply Regulation
20 (d). So (a) modifies (d) in this case.

21 MR. ADAMS: How? I guess I don't read it to say
22 that. Because (a) even makes reference to (d).

23 MR. HEISTERKAMP: Do you have a proposal that
24 would clarify --

25 MR. ADAMS: I guess my position is I don't want

1 to -- I don't want to close that gap. If you become over
2 income, you shouldn't pay the same amount as low-income
3 families.

4 MR. HEISTERKAMP: Well -- and that would be your
5 choice under the policy -- the admissions and occupancy
6 policy you'd write.

7 MR. ADAMS: But that's how I read this because (a)
8 makes reference to (d). So (d) is there. It's set.

9 MR. HEISTERKAMP: Right.

10 MR. ADAMS: They can't receive the same benefit.

11 MR. HEISTERKAMP: That's if they start as a low
12 income -- or start as an over-income family. I see what
13 you're saying. It's where they started in the process.

14 MR. ADAMS: I don't think so. I think (d) is --
15 especially with (a) making reference to it. It stands on
16 its own merit. It's -- if you become over income -- if
17 you're over income coming in, I see your point. But if you
18 become over income, (d) applies. You can't receive the same
19 benefit.

20 MR. HEISTERKAMP: Well, not according to the
21 proposed (a). That's -- and that can change.

22 MR. ADAMS: Okay. Explain me how, then.

23 MR. HEISTERKAMP: Okay. "...may be made subject to
24 the additional requirements in (d)...," "may be made subject."
25 It's not "will be subject to." They may be made subject to,

1 depending on what the individual admissions and occupancy
2 says. It's not, "they must be subject to." It's, "they may
3 be subject to."

4 MR. ADAMS: Okay.

5 MR. HEISTERKAMP: And that's where Blake was
6 trying to explain. Each tribe -- there were several
7 different tribal perspectives about whether they wanted to
8 automatically apply (d), whether it was a fluctuating-income
9 situation. And so it was determined that it would be up to
10 the tribe to decide when and how to apply (d).

11 MR. ADAMS: Okay. Okay.

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

14 MR. BUTTERFIELD: Well, my -- I represent a
15 per-cap tribe, and we have a number of people that -- all of
16 the people that are admitted are low income, but then
17 they -- over time, a lot of them float up. And in a sense,
18 they would be -- and I don't have a problem charging more.

19 But the problem I have is having it count against
20 your 10 percent because they started as low income, and you
21 never admitted them as non-low-income people, but then that
22 would be -- retroactively, could be a whammy to some of us
23 that are per-cap tribes.

24 So if his clarification is correct, I'm looking --
25 asking for Rodger to -- if that will not count against

1 your percent, then I don't have an issue with it.

2 MR. KAZAMA: We had a lot of those discussions.
3 And interestingly, in our workgroup here, we had many,
4 different scenarios in terms of on how this affects entering
5 in at low income and then -- you know, we don't want to
6 penalize a family that is wanting to do well incomewise, and
7 actually become over income.

8 So we wanted, though, however, to have the tribe
9 make that determination through the admissions and occupancy
10 policy, to -- because we saw in different parts of the
11 country, income levels varied. And so we wanted to help
12 those tribes make good decisions for their particular tribal
13 entities.

14 So that's why we came up with a broader
15 perspective, and basically saying, write it in your policy,
16 and that's the way it's going to be. And we'll -- and this
17 regulation honors that.

18 FACILITATOR: Any other questions?

19 Yes, Mark?

20 MR. BUTTERFIELD: I just wanted to ask HUD if
21 that's your understanding about the -- my concern over the
22 10 percent cap.

23 MS. LALANCETTI: Yes. Once they're in, they're
24 not subject to the 10 percent.

25 FACILITATOR: Once they're in, they're not subject

1 to the 10 percent.

2 I'm just repeating what Debra said because you
3 didn't say it into a microphone.

4 MR. BUTTERFIELD: Okay. Thank you. Then I don't
5 have a problem with it.

6 FACILITATOR: Yes, Karin?

7 MS. FOSTER: Karin Foster, Yakama Nation Housing
8 Authority. This is my workgroup, so I was great with this
9 language. But it sounds like it reads ambiguously to some
10 people, so maybe we should clarify it by stating it a little
11 more clearly maybe.

12 And I guess -- I mean, I'm looking at it, and I
13 can see how it might be read differently, perhaps, by
14 someone. So I'll make this friendly amendment, even to my
15 own workgroup, I'm sorry. But it just seems to me like it's
16 not clear.

17 What we could do is at the end of policies,
18 instead of a comma, put a period. And then state something
19 like, Subsection (d) will apply only as provided in those
20 policies or to the extent provided in those policies -- if
21 provided in those policies, something like that.

22 I don't know if that clarifies it. But I'm just
23 hearing questions, and I hate to have something that we have
24 to all understand here and agree to and not, you know, have
25 other people understand it.

1 FACILITATOR: Could you read that again, Karin?

2 MS. FOSTER: I know. I'm sorry, Judith, but it
3 needs to make sense to others.

4 Policies, period, and then there would be a
5 separate sentence that read, Subsection (d) will apply to
6 the extent provided in those policies.

7 MS. MARASCO: How does that clarify?

8 MS. FOSTER: Karin Foster. Well, it may be made
9 subject to the requirements seemed to be confusing to
10 some -- you know, it spurred -- it caused some discussion.
11 And so I just wanted to make it clear it was only as in the
12 policies.

13 MS. MARASCO: That's not the issue. This is
14 Judith with Yurok.

15 The issue is there's a 10 percent cap on
16 over-income people. That's what needs to be clarified.

17 MS. FOSTER: Correct.

18 MS. MARASCO: It doesn't need to be clarified -- I
19 mean, putting it in our policies is not the issue. The
20 issue is clarifying that we all recognize that people who
21 started as low income will not consume that 10 percent
22 window we have for over income people.

23 That's the clarification.

24 MS. FOSTER: Yes, yes, of course. But it -- it
25 does refer to whether -- you know, if it's based on the

1 policies themselves. So I thought -- perhaps that's not
2 clarifying anything.

3 MS. MARASCO: No. I don't think -- I don't think
4 the fact that you're putting in something that says you have
5 to have policies. I think what we're looking for is
6 something that says that the people who are low income at
7 admittance who then become over income don't consume the
8 opportunities that the 10 percent of over-income people
9 would normally have in the program -- am I saying that
10 right?

11 FACILITATOR: You're saying that very clearly.
12 Would that be all right with HUD, that type of language that
13 Judy's proposing.

14 MS. HENRIQUEZ: As long as it's consistent and
15 helps to clarify it, we're fine.

16 FACILITATOR: Can we -- Karin, do you mind if I --
17 we try Judy's language?

18 MS. FOSTER: That would be just fine.

19 FACILITATOR: Judy, can you repeat that so --

20 MS. MARASCO: No. You clarify it, Mark. It's
21 your issue.

22 MR. BUTTERFIELD: I think it's something on the
23 nature of the limitation listed in Subsection (c) shall not
24 apply to low-income family -- those who are admitted as low
25 income families at the time of admission.

1 FACILITATOR: Okay. Say it one more time. I'll
2 have -- we'll have our typist put it up. Say it, again,
3 please, Marty, one more time.

4 MR. BUTTERFIELD: The limitation in --

5 FACILITATOR: The limitation --

6 MR. BUTTERFIELD: The 10 percent limitation in
7 Subsection (c) shall not apply to low-income families --
8 people admitted as low-income families who subsequently
9 become non-low-income families.

10 FACILITATOR: Okay. I wanted to get that down.
11 Then we'll correct it.

12 The 10 percent limitation -- the 10 percent
13 limitation in Subsection (c) shall not apply to low-income
14 families -- go ahead, Marty.

15 MR. BUTTERFIELD: -- to low-income families who
16 subsequently become non-low-income families.

17 FACILITATOR: -- to low-income families who
18 subsequently become non-low-income families.

19 And then we're going to cross out what Karin put
20 up there, the (d)? Okay.

21 Now, any other corrections?

22 MR. BUTTERFIELD: It should say "non-low-income
23 families."

24 FACILITATOR: Shall not apply to non-low-income
25 families.

1 MR. BUTTERFIELD: At the end of the sentence.

2 FACILITATOR: Oh, at the end of the sentence.

3 The 10 percent limitation in (c) shall not apply
4 to low-income families who subsequently become
5 non-low-income families.

6 MS. MARASCO: There you go.

7 FACILITATOR: Okay. Blake, is that all right?

8 MR. KAZAMA: Yes.

9 FACILITATOR: Yes, Sandra?

10 MS. HENRIQUEZ: I'm sorry. If indeed, in (a), the
11 first sentence stands --

12 FACILITATOR: Can we have some quiet in the room,
13 please? Thank you.

14 MS. HENRIQUEZ: I'm sorry do this. So I'm just
15 going to propose a language change in that second sentence
16 that's in red that says, The 10 percent limitation in (c)
17 shall not apply to such families, period.

18 FACILITATOR: Okay.

19 MS. HENRIQUEZ: Because we already know which
20 families they are.

21 FACILITATOR: Okay. Right there. "Such families"
22 instead of "low-income families."

23 MS. HENRIQUEZ: No, no, no.

24 FACILITATOR: Just "low-income families." Strike
25 "low-income families."

1 You wanted to unstrike the part that says "and may
2 be made subject to the additional requirements"?

3 MS. HENRIQUEZ: Okay.

4 FACILITATOR: Okay. That comes back.

5 MS. HENRIQUEZ: I want to also -- to strike "who
6 subsequently become non-low-income families," I think.

7 So I want to strike "shall not apply to such
8 families" -- yeah. Period or comma or however you want to
9 do it. Take out the "who." Okay, period.

10 And then -- and then, again, "such families may be
11 subject to the additional requirements in (d)" -- I think,
12 period.

13 FACILITATOR: So the sentence should read, Sandra?
14 Such families may be subject --

15 MS. HENRIQUEZ: -- may be subject to the
16 additional requirements in (d) -- I don't care if you put
17 "of this section or not" -- in (d) below, based on those
18 policies, period.

19 FACILITATOR: Okay. Okay. Everybody all right
20 with that?

21 Yes, Jason?

22 MR. ADAMS: I was busy looking at something else.
23 I'm trying to catch up here. In the additional language, it
24 talks about "such families." What such families are we
25 talking about here? Shouldn't that be further defined?

1 MS. HENRIQUEZ: The ones from the first sentence:
2 The family who was low income at the time described in
3 1000.147, but subsequently becomes a non-low-income family
4 due to an increase. That's the "such family" definition.

5 MR. ADAMS: Okay.

6 FACILITATOR: Any other clarifications?

7 MR. ADAMS: One other, Jan.

8 FACILITATOR: Yes, Jason?

9 MR. ADAMS: In looking at the statute, it states,
10 under "eligible families," that exception to low-income
11 requirement be limits [sic]. It says: The Secretary shall
12 establish limits on the amount of assistance that may be
13 provided under this Act for activities for families who are
14 not low-income families.

15 Right there, there's -- you're not establishing
16 any limits, you're actually removing any limits. That's my
17 concern. We want limits because the program's a low-income
18 Indian family program.

19 FACILITATOR: Sandra --

20 MR. CAGEY: We wanted -- okay. Again, is -- I get
21 frustrated. Who is in charge?

22 Okay. Again, I would caution the tribes and
23 what's going on here as I'm listening to what we're doing,
24 and you're making this more difficult than it really is.
25 Now, we want as much flexibility as we can. You know, by

1 limiting in these words on "cans" and "shalls" and "limits"
2 is that we should have the discretion to service people who
3 we want.

4 And again, as to whether high income or low
5 income, we want that discretion. So again, is that we
6 caution on what you're doing here is that you want as much
7 flexibility as you can.

8 So again, is that -- I don't know whether this
9 does that or not. But I really think -- we're spending a
10 lot of time on a few words here. And the tribe should have
11 as much flexibility as it desires. And Sandra agrees.

12 FACILITATOR: Sandra and then Jason.

13 MS. HENRIQUEZ: I just want to create the parallel
14 so you understand a little bit of the context from HUD's
15 perspective. In the Public Housing Program, applicants who
16 come into the program, both for its public housing units,
17 come in and must meet income eligibility criteria.

18 The issue is that then those families can grow
19 their incomes in place, while their rent will go up, still
20 30 percent of income, et cetera, et cetera, in some places
21 it's capped at a ceiling or a flat rent. But the issue is
22 not to drive families who become more self-sufficient and
23 less dependent on subsidy of the program because you really
24 want that mix of incomes in a development.

25 So this language, we think, parallels that notion

1 on the public housing as well. Because you just don't want
2 an all very, very low-income community necessarily. You do
3 want to see a mix of incomes over time.

4 FACILITATOR: Thank you, Sandra.

5 Jason, then Judy.

6 MR. ADAMS: I guess, maybe I should have prefaced
7 my comments a little clearer. Again, I'm operating out of
8 the statute language because the statute language is
9 specifically talking about eligible families.

10 And it states: Assistance under eligible housing
11 activities in this Act shall be limited to low-income Indian
12 families on Indian reservations and other Indian areas.

13 And so as far as Mr. Cagey's comments, that's
14 where I'm operating from. I'm all for tribes' abilities to
15 establish their programs however they see fit, as long as
16 they're serving low-income Indian families. That's the
17 point I'm trying to make, and there's limits in the statute
18 as to what the Secretary can limit the activities so that we
19 are focusing back on low-income Indian families.

20 I'm just saying, this looks to me like it's
21 removing that opportunity for the Secretary to set limits by
22 adding this language.

23 FACILITATOR: Judy?

24 MS. MARASCO: If you look at statement
25 holistically, Jason, it's -- it's the best scenario that we

1 could ask for as sovereign governments. They're allowing us
2 to bring people into the program as low income and help them
3 grow their abilities along with their economic situations
4 and still not remove them from the programs.

5 That said, that doesn't mean your tribe can't
6 limit your housing to specifically low-income people. But I
7 don't want you telling me who I can serve, just like you
8 wouldn't want me telling you.

9 MR. ADAMS: I'm totally fine with that, as long as
10 we acknowledge that the statute says this is a low-income
11 Indian family program.

12 MS. MARASCO: It is.

13 MR. ADAMS: That's the only thing I'm trying to
14 make sure that we don't lose sight of.

15 FACILITATOR: Okay. Any other questions?

16 Yes, Karin?

17 MS. FOSTER: Karin Foster, Yakama.

18 This morning we were looking at this language and
19 we added in the word "made," may be "made" subject by the
20 policies. Our workgroup felt that that made it more clear
21 that the word "may" depended upon what was in the policy.

22 So I'd like to suggest that we go back to the
23 language in the strikeout, where it says "may be made
24 subject" -- where did it go?

25 FACILITATOR: The left screen.

1 MS. FOSTER: "Such families may be made
2 subject..." That's the suggestion.

3 MR. ADAMS: Where is that line, Karin? Sorry.

4 FACILITATOR: We just added it in. The second red
5 sentence: Such families may be made subject to additional
6 requirements of this section based on those policies.

7 MS. FOSTER: That's correct. That was the
8 suggestion.

9 FACILITATOR: Anybody have any objections to that?
10 We ready to vote on this one?

11 All right.

12 Yes, Lafe?

13 MR. HAUGEN: Lafe Haugen.

14 Again, just a comment, and I'm going to reiterate
15 what Jason said. I hope that the intent of this committee
16 workgroup is to note that is low-income -- for low-income
17 families.

18 My tribe is not a rich gaming tribe. So we don't
19 have a bunch of people who have a lot of money. We have
20 high unemployment. And this money is for those people, not
21 for the people who make a hundred, a hundred fifty thousand
22 a year, because it doesn't give them incentive to purchase
23 their own home.

24 FACILITATOR: Are you comfortable with that
25 language there, Lafe, the way it is?

1 MR. HAUGEN: I am not. Maybe say "such families
2 will be subject." Instead of "may be made," "will be
3 subject."

4 FACILITATOR: Yes, Mark?

5 MR. BUTTERFIELD: I would like to point out that
6 when they're admitted under this proposal, now that it's
7 broken out into four different sections, you -- by doing
8 that, you would be treating like people differently because
9 people who have MHOA agreements, their obligation is defined
10 by the MHOA, so they get to stay. The rental people, then,
11 don't get to stay. They're not treated the same.

12 So I think the language up there allows the
13 maximum amount of flexibility to the tribe, and if you want
14 to make them -- may be made subject to -- then you can.

15 So I don't think that it undermines the intent.
16 Everybody is admitted as low income. So I guess it's a
17 philosophical thing, but it's built into the statute.

18 FACILITATOR: Okay. Carol and then Jason.

19 MS. GORE: Thank you. Carol Gore, Cook Inlet
20 Housing.

21 Lafe, if I could respond to you. I think we're
22 all in agreement about the intent of the program. But if
23 you change the word "may" to "shall," it will create
24 conflicts when we're leveraging money with other programs
25 that allow people and provide an incentive for them to grow

1 their income.

2 So I would be an advocate for more flexibility and
3 retaining the word "may" to allow a tribe to be as flexible
4 as they need to be to either leverage money or adapt to
5 whatever the needs are in their region. That would be my
6 advocacy.

7 And I think there's plenty of room in the preamble
8 or other places to restate our agreement with the intent of
9 the program. Thank you.

10 FACILITATOR: Jason?

11 MR. ADAMS: I just wanted to point out one other
12 area in the statute that talks about the point that I'm
13 trying to make here, and it's under Section 201, "National
14 Objectives and Eligible Families."

15 The primary objective -- the national objectives
16 of this Act are --

17 (1) to assist and promote affordable housing
18 activities to develop, maintain, and operate affordable
19 housing in safe and healthy environments on Indian
20 reservations and in other Indian areas for occupancy by
21 low-income Indian families.

22 So it goes that additional step to state
23 "occupancy." So continued occupancy, continued use of the
24 program has to be by low-income Indian families. Now, we
25 can agree to this and move this forward. I just want to

1 make the statement for the record so that it's in the
2 record.

3 But it is in the statute, and in my opinion, we're
4 going against the statute.

5 FACILITATOR: So at this point, I guess, Lafe, are
6 you and Jason, like, opposed to this current language, or is
7 it something you can live with?

8 MR. HAUGEN: Lafe Haugen.

9 Again, I just think, like Jason noted, that we're
10 going against the intent of the statute, and we have to be
11 very careful with that.

12 And my fear, and I'll state it, is that there may
13 be certain members of Congress who look at this one day down
14 the road, and we're serving people who are not low-income
15 families. They may make some suggestions to the program to
16 change the program, and that's my fear.

17 Because the funding that we get for NAHASDA, as we
18 know, is limited. And we have to fight and scrap for every
19 dollar we get. I just don't think that agreeing to language
20 that conflicts with the intent is what we should be agreeing
21 on. I just want to make that noted.

22 FACILITATOR: So your proposal would be to make it
23 mandatory rather than may?

24 Yes, Leon?

25 MR. JACOBS: I agree with the intent of the

1 program, that it's a program for income -- low-income
2 families, but I don't think the intent of Congress is to
3 make these Indian families remain in low income -- income
4 status if they have the opportunity, through employment and
5 what have you, education, to move up the ladder.

6 The other concern that I have is that if you force
7 them out of the program immediately when the income changes,
8 what are their alternatives on the reservation where they
9 can move into? Sure, the program has some alternatives,
10 such as the 184 Program, but that takes a while to develop
11 and so forth.

12 So keeping some flexibility there so that Indian
13 families can participate in the great American dream of
14 owning a mortgage and what have you, I think is important.

15 So my concern -- my recommendation is to keep it
16 flexible. Let the policy address it, because the tribes
17 will be able to determine what is needed within the
18 reservation as to what will keep the program alive and well,
19 and making sure that the low-income are addressed.

20 But I don't want to keep any Indian family down
21 because they have an opportunity, and yet, force them out of
22 the house if they -- there's no other alternative.

23 FACILITATOR: Lafe?

24 MR. HAUGEN: Leon, I agree with your comments.

25 But in our policy, we noted that they had up to a year to

1 secure other housing or their rent would go to market rate,
2 and that's fair. I mean, there's situations like that where
3 it's fair, but it still keeps the intent.

4 It's just that those families are no longer
5 receiving subsidy through NAHASDA. It doesn't say we're
6 kicking them out. They just have to pay their fair share
7 now. So that's what I'm getting at, is that we just don't
8 want to get away from the intent.

9 MR. JACOBS: So you think that you could address
10 this in your occupancy policy at the local level?

11 MR. HAUGEN: Well, in this particular case, it
12 has, but it also keeps in mind the law, the statute that we
13 can't serve it -- we can't serve these people.

14 FACILITATOR: Sandra?

15 MS. HENRIQUEZ: I was simply going to suggest
16 that -- and you've touched on it a number of times -- that
17 your occupancy policy -- we wanted to preserve -- this
18 language preserves the flexibility, but I think to the
19 extent that there are strong feelings among some of the
20 tribes about their occupancy policies and who gets served,
21 having a written policy would then control who can stay in
22 and who has to go.

23 So having a policy that is silent is not helpful
24 either because then you've got no standing to move people
25 out or to keep people in. And we really think that that's a

1 call that you each want to make in your -- so that you can
2 be responsive to what works in your tribe and in your
3 communities.

4 FACILITATOR: Yes, Mark?

5 MR. BUTTERFIELD: I think what I understand Lafe
6 to have said is exactly that he does exactly that, that you
7 have a transitional program. And that's all I'm asking is
8 that the local tribe be able to have a transitional policy
9 to deal with those people who become subsequently
10 non-low-income.

11 You give them a year. Okay? Some people have
12 credit issues and they cannot afford a down payment inside
13 of a year. Our policy is moving toward giving them two
14 years to work with credit repair so they can then move out
15 of low-income housing.

16 But I think that's up to each individual TDHE.
17 And I think the wording that we've got up there,
18 respectfully disagree, gives that flexibility.

19 FACILITATOR: Anybody can shed any further
20 thoughts on this issue?

21 Yes, Lafe?

22 MR. HAUGEN: Lafe Haugen.

23 Again, prior to this meeting, we noted there
24 wasn't even going to be no language change. We're going to
25 leave it the way it was. And I'm assuming that that's what

1 we're going to do because it seems to be functioning
2 properly.

3 But we get to today, and now there's all kinds of
4 new proposed language again.

5 Again, it's just a concern that I have, that, you
6 know, in a couple years, five years from now, I hope that we
7 made the right decision today in preserving this as a
8 low-income program.

9 FACILITATOR: Yes, Jack?

10 MR. SAWYERS: Well, we've talked about this and
11 gone around and around, but actually, the original proposal
12 handles almost everything you folks have talked about. I
13 don't see that you need any more than what we've put into it
14 in the first place because clarification doesn't seem to be
15 doing it for us.

16 Let's just kind of leave it the way it is. To me,
17 it's what it is. It says that if you go over 10 percent,
18 that's all right. It's better to be silent than to list a
19 whole bunch of stuff that restricts you, and I think that
20 the original takes care of it all.

21 So I propose we go back to the original statement,
22 then, and get consensus.

23 FACILITATOR: Yes?

24 MS. LYNCH: Marlene Lynch with the Navajo Housing
25 Authority.

1 And I'm in agreement with Jack. I think the
2 original language, as presented, was to the point, very
3 simplified, and we understand that -- well, I do.

4 But the real issue appears to me that the --
5 originally, the -- we are serving the low-income families.
6 They're qualified initially the very first time when they
7 enter the program. I guess the issue is after they have --
8 they're occupying the housing unit.

9 That is a real issue, and I think each tribe
10 should have a responsibility and an opportunity to take care
11 of those families. And so this -- the way it's written, it
12 appears to me, will allow the tribe to do that, as it's
13 flexible.

14 It will allow us to deal with those who are now
15 considered over income who were originally qualified and
16 eligible. And so I'm in agreement with Jack, leave the
17 language as is, or be flexible enough to allow what the
18 other folks at the table are recommending.

19 FACILITATOR: Henry?

20 MR. CAGEY: Who's in charge? Are you in charge,
21 Larry? Who's in charge? Sandra?

22 MS. HENRIQUEZ: No.

23 MR. CAGEY: Who's in charge? You're in charge?

24 FACILITATOR: I'm facilitating. When we get into
25 the negotiation part --

1 MR. CAGEY: I'm really getting concerned here as
2 our facilitator -- so again, is that facilitate? You're
3 bringing us around circle after circle here and coming back
4 around. And again, this whole thing was about
5 self-determination.

6 As you read the statute, this thing is about
7 self-determination, where we decide. We decide who we want
8 to serve, not whether it's low income or high income. It's
9 the tribe deciding, not Congress, not HUD, but we.

10 So again, is that, you know, my concern with the
11 housing directors, you're all housing directors. Each and
12 every one of you are housing directors -- well, most, there
13 may be one or two leaders. You should know this. You
14 should know this. You've been doing this for years.

15 I'm a tribal official. I'm the tribal chair for
16 the Lummi Nation, and I'm listening to you housing directors
17 talk about these things, when you should know. And I'm
18 really getting frustrating in listening to you folks talk
19 about high-income/low-income. You should know this.

20 I'm really concerned about what we're doing here
21 negotiating with ourselves. We're negotiating with
22 ourselves here, and HUD is sitting over here just waiting
23 for us to decide something.

24 So again, some of you have been doing this for 20
25 years. I'm really kind of giving you an ass chewing, but

1 you know, I'm really getting tired of listening to these
2 things where we're not getting anywhere, folks.

3 You know, if we need to caucus about this, let's
4 caucus and get our position together, because I came here to
5 negotiate. I came here to negotiate with HUD, not with the
6 tribes.

7 So again, Facilitator, I'm really getting
8 frustrated with your controlling this meeting and managing.
9 So again, please get us through this.

10 FACILITATOR: All right. Thank you, Henry.

11 I have no illusions that I can control this group.
12 I try, respectfully, to hear everybody's opinions and let
13 you guys decide what you need to do. You know, and that's
14 my role here, is just kind of to maintain some order.

15 But not -- I don't lead this. I think you guys
16 have to lead this. And so I think we've heard a lot of
17 opinions about this now, and we've got several options in
18 front of us.

19 So, Blake, you were the head of the workgroup.
20 You've heard what's been said. Do you have any ideas?

21 MR. KAZAMA: My -- basically, what I see up on the
22 board, the addition is Part (c), we added that aspect
23 because we already defined (d). So if it's okay with the
24 group, in terms of our original statement included (d).
25 It's back up there, and we added the 10 percent limitation

1 in (c). So if everyone's okay with that section, then I
2 would ask consensus on that document up there.

3 That includes -- incorporates all the things we've
4 been discussing, I think, thus far. My -- the original
5 language did not include (c). You know, we didn't talk
6 about the 10 percent issues and stuff, but it appears to be
7 an issue for this group, and I'm okay with that.

8 So I guess what I'm saying is if people are
9 willing to accept that and establish that as consensus, then
10 we should vote on that. Unless there's other changes, but I
11 think we've discussed it enough.

12 FACILITATOR: Well, let's see. Let's get a show
13 of hands and see if we do have consensus upon -- on this
14 language at this point.

15 Can I see how many have consensus on that?

16 MR. ADAMS: On what language?

17 FACILITATOR: Sorry. On the current language on
18 the board.

19 MR. ADAMS: As in the additional red language is
20 what we're asking for consensus on?

21 MR. KAZAMA: All of (a).

22 MR. ADAMS: All of (a), as amended?

23 FACILITATOR: As amended.

24 So are any of those who would not agree with that
25 language? Okay.

1 MR. KAZAMA: Okay. Thank you.

2 FACILITATOR: Thank you, everyone.

3 MR. KAZAMA: Moving along.

4 We're going to be also dealing with -- that also
5 relates to 1000.147, and that's found in section 1000.104,
6 and this is a simple fix -- I think -- in that we are just
7 eliminating (e).

8 Now, I'm not going to -- and (e), the reason we're
9 eliminating (e), actually, is because it's a -- in a sense,
10 it's a redundant statement. The issues up above, there are
11 four areas that we're talking about what families are
12 eligible for affordable housing activities.

13 We basically say: (a) is low-income;
14 non-low-income families, that -- what we just talked about
15 in accordance with 1000.110; we're talking about essential
16 to the community is the third area; and the fourth is law
17 enforcement.

18 And so we didn't need an (e) to go back and
19 capture what was stated above. So that's why we decided,
20 just eliminate (e). So I guess I'm opening it up for
21 negotiation if you want (e) or remove (e).

22 FACILITATOR: So the proposal from your workgroup
23 is to remove (e)?

24 MR. KAZAMA: That's correct. Just remove (e).

25 FACILITATOR: Any questions about that?

1 MR. KAZAMA: I ask for consensus.

2 FACILITATOR: All in favor?

3 All opposed, any opposed?

4 Okay. Thank you. We have consensus on that.

5 MR. KAZAMA: Thank you very much. So that takes
6 care of the task that we were given at the last committee
7 meeting.

8 There is one issue that was always identified and
9 actually came over from Workgroup A to Workgroup B, and that
10 was regarding the concepts of negotiated rulemaking,
11 regulations that deal specifically with negotiated
12 rulemaking, and I just want to briefly explain what took
13 place with that, if it's okay with the committee.

14 Under Workgroup B, there was a group of people
15 that -- committee that -- a subcommittee, of sorts, that
16 wanted to take a better look at what negotiated rulemaking
17 involves. And so they took it upon themselves to establish
18 some -- a proposed regulation -- or proposed language,
19 ideas, concepts that we can discuss.

20 They have then, today, brought a proposal to us to
21 review in Workgroup B, and we kicked it around. We had a
22 lot of discussion on their proposal. I want to emphasize
23 that, also, we had HUD basically take a nonconsensus
24 position in terms of they abstained from discussion in this
25 area because they had made -- how do I put this? They had

1 already put -- made -- established a position that the
2 assistant Secretary at this time was not -- let's see -- was
3 not favorable of looking at this unless the committee as a
4 whole was able -- was willing to take a look at it.

5 I hope I clarified that correctly. Correct me if
6 I'm wrong, committee people. That was my understanding.

7 And so what we have now before you, under Issue
8 No. 35, 36, and 37 -- it's been handed out to you -- a new
9 rule workgroup -- for Workgroup B that is presenting this,
10 and it's under a new regulation, 1000.9, and reads: How is
11 negotiated rulemaking conducted when promulgating NAHASDA
12 regulations?

13 And so under this section, there are (a) through
14 (e) in terms of things that they wanted -- this committee
15 wanted us to take a look at.

16 In further discussing this matter in our
17 committee, we wanted to -- we had no difficulty with (a)
18 through (d) in terms of the language that we see there.
19 There is some, I thought, grammatical kinds of things, but
20 other than that, we were okay with it.

21 We wanted to get an understanding or an idea from
22 the different regions in terms of (e). And let me talk
23 about (e) for a bit.

24 It is, broadly, talking about a standing
25 committee, a standing committee that has meetings more often

1 than negotiated rulemaking does. It is -- and to help with
2 regulations. And so we wanted to ask for tribal caucus if
3 we could, so we can get a -- from each of the six regions
4 across the country, their thoughts and ideas of a standing
5 committee.

6 And maybe take, like, 15 minutes, 20 minutes to do
7 that and then come back and report in from the various
8 committee -- or regions what their thoughts are.

9 Anything else to add to that, committee members?
10 Did I say it okay?

11 FACILITATOR: Blake, may I ask you? So this is a
12 proposal. Has this proposal reached consensus within the
13 workgroup itself?

14 MR. KAZAMA: The proposal did not meet -- reach
15 full consensus in the group, and that's why we, sort of,
16 wanted feedback from the different regions. We were
17 wondering, across the country, what different regions
18 thought about this proposal.

19 So it isn't as though we are recommending this as
20 a regulation, but we wanted feedback from the different
21 regions on how to design this thing. We recognize it's in
22 the early stages.

23 And the key is focusing on standing committee as
24 one issue, and the other issue is: Do we need regulations
25 promulgating the negotiated rulemaking and defining it more

1 clearly. So two different aspects to it.

2 But the specific one is the concept of a standing
3 committee. So...

4 FACILITATOR: Okay. I understand.

5 Were there any other -- other -- before we get
6 into this, were there any other topics that you had reached
7 consensus on your committee that you wanted to present to
8 the group?

9 MR. KAZAMA: No. That -- this -- we had covered
10 147, and that was it. This came in this morning. So we had
11 none -- nothing else. That would be it.

12 FACILITATOR: Okay. Thank you.

13 I think the -- unless I'm wrong, last night, the
14 co-chairs and the workgroup committee chairs agreed that we
15 would first kind of go through, see what all the committees
16 had reached agreement on, and then we'll come back and cover
17 the issues that we need time to caucus or have further
18 debate on.

19 So would it be okay if we postpone that discussion
20 on this particular issue until we hear from the rest of the
21 committees and let them put forward what their agreements
22 were?

23 What we wanted to do was to get all the committees
24 to report out on what their low-hanging fruit was, all the
25 things they had agreed to within committee, and then we

1 would have leftover issues that we needed to discuss
2 further, such as this, and such as the IHP/APR, and those
3 kinds of things. At least that was my understanding.
4 Somebody correct me if I'm wrong.

5 Jason?

6 MR. ADAMS: I guess my recollection was that
7 Workgroup B was going to be finished today with all of their
8 items. I don't call them low-hanging fruit anymore because
9 that term is long past used, but that Workgroup B would be
10 done, all of their items would be done. And as part of that
11 process to being done, if they need a caucus, I think we
12 ought to do that caucus right now.

13 FACILITATOR: Hmm. Well, it's up to you guys.
14 Larry?

15 MR. COYLE: Dr. Kazama, you're calling for a
16 caucus now?

17 MR. KAZAMA: Yes, I am.

18 MR. COYLE: Okay. We'll have a caucus.

19 MR. KAZAMA: That will conclude Workgroup B -- and
20 as Jason is saying.

21 This was a new matter that was introduced today.

22 MR. COYLE: How long do we need?

23 MR. KAZAMA: I just want the regions to talk about
24 those two areas. So I'd say 15 minutes.

25 MR. COYLE: Why don't we have a short ten-minute

1 break, add onto that 15 minutes. So we'll be back here in
2 25 minutes. Would that be sufficient? Is that okay with
3 the total group? Okay.

4 (Recess taken.)

5 MR. JACOBS: Attention please. If all the
6 committee members could take your seats, we would appreciate
7 it.

8 Would all the committee members please take your
9 seats? Our caucus went a little longer than we anticipated,
10 but I know that Workgroup A is ready to make their
11 presentation. Are there handouts, or have they been handed
12 out already?

13 MS. GORE: I think there is a handout for Issue
14 No. 24 and 25. Thank you.

15 MR. JACOBS: Okay. Carol, you can go ahead.

16 MS. GORE: Thank you. I don't know if it's a good
17 idea to follow the sugar high or not, but we'll give it a
18 go.

19 Workgroup A, we have two items to present. They
20 both have consensus. One is not on the list, but we, as a
21 workgroup, was asked by this committee to look at PIH Notice
22 2000-18. It is not a handout.

23 Our recommendation is no action to the committee,
24 but we do have some recommendations that we'd like to report
25 to go into the record with the patience of the committee.

1 If we're ready, PIH Notice 2000-18, as a
2 workgroup, we were asked to look at that PIH notice because
3 it was developed by the original negotiating rulemaking
4 committee. It's my understanding it was a leftover item
5 from the original negotiated rulemaking committee. It took
6 them 18 months to come to this PIH notice.

7 It is very lengthy, and it involves the accounting
8 for program income.

9 In our discussions about the PIH notice, we were
10 looking for ways to conform the notice to our conversations
11 about program income, which will follow this discussion.

12 It's our understanding following negotiated
13 rulemaking, those items that are consensus from this
14 committee will then be looked at by HUD, and HUD will work
15 to conform PIH notices to the regulations that this
16 committee adopts.

17 So the conformance of PIH Notice 2000-18 is
18 exactly what our workgroup was recommending. But we have
19 some additional recommendations and an offer for assistance.

20 If you were to look at 2000-18, you would see that
21 it is a very long PIH notice. It is very complicated and
22 loaded with examples.

23 We understand and have no criticism for the
24 original committee that put this together, but we think now
25 that it's been no longer 1997, it's 2010, that there are

1 opportunities for HUD to look at ways to simplify the
2 notice, to look to inflation-proof that notice, and by that,
3 there is reference, today, to DC&E, which is no longer used.
4 It's been replaced by TDC.

5 It's also locked into a 1997 date. So it's no
6 longer inflation-proofed, as costs have changed.

7 So we're recommending that HUD look at simplifying
8 the notice; they look at inflation-proofing the notice; they
9 replace "DC&E" with "TDC" to make it current, as in a
10 current TDC and current to use of TDC; and Workgroup A would
11 volunteer to assist HUD to simplify the notice after hours,
12 as long as this negotiated rulemaking committee would meet.

13 We've also asked HUD to offer the revised notice
14 for tribal consultation, and it's my understanding that they
15 would be receptive to that request.

16 So we're asking no action from the committee, but
17 simply reporting because you asked us to look at that PIH
18 notice. I don't know if HUD wants to comment on my comments
19 before I move onto Issues 24 and 25.

20 There were other workgroup members here. I don't
21 know if you have other comments or if there are questions?

22 Yes?

23 MR. KAZAMA: Mr. Kazama.

24 Is there a timeline in terms of when HUD would
25 report back or work with Workgroup A, so we're not waiting

1 another 18 months to get this document?

2 MS. GORE: That's a good question. We have this
3 meeting and next meeting. I don't know what HUD's willing
4 to commit, but we're willing to commit.

5 MR. JACOBS: Rodger, I'm sorry. Do you have the
6 time on this question?

7 MR. BOYD: Would you repeat it, please?

8 MS. GORE: Sure. The recommendation from the
9 workgroup is that when HUD looks to conform PIH Notice
10 2000-18, that they look for ways to simplify the notice;
11 they look for ways to inflation-proof the notice; and in
12 that inflation-proofing and conforming, they replace "DC&E"
13 with "TDC," since DC&E is no longer used by this program;
14 and look to move the TDC to the current TDC, and not have it
15 locked in at 1997 levels.

16 And Workgroup A is willing to work with HUD in
17 that simplification process while we are meeting as a
18 negotiated rulemaking committee, with the permission of this
19 committee.

20 MR. BOYD: I think this is probably going to go --
21 continue on for a while, until after the regs are finished,
22 and we would be willing to work with you then.

23 MS. GORE: Thank you. From the workgroup, we
24 thank you very much.

25 Marvin?

1 MR. JONES: Marvin Jones.

2 Would that mean, then, that there have -- there
3 are some changes in the law that seem like they're purely
4 technical, and I'll give you an example. The law change in
5 where we don't have to spend program income first before we
6 expend grant funds, does that mean that that's going to be
7 further delayed until the regulations are issued?

8 MS. GORE: No. This is simply -- my conversation
9 is limited to the PIH notice, and not to the issues that
10 there are on the list. So this is off the list. We still
11 have your issue, which is going to be brought forward by
12 Workgroup F.

13 We also have Issues 24 and 25 to present yet to
14 this committee. So this was a nonlist issue that this
15 committee asked us to look at.

16 MR. JONES: Marvin Jones.

17 That particular provision is in the PIH notice,
18 and it's basically saying that we have to conform to the
19 Uniform Administrative Requirements, meaning we've got to
20 spend program income first, and that was really the nature
21 of my question.

22 MS. GORE: I understand you. My -- and I believe
23 this is correct, and I'm not in Workgroup F, but there is
24 now statutory language that would change that PIH notice.
25 And it's my understanding -- I've seen the handout -- that

1 would conform a regulation to that new statute that would
2 correct that PIH notice.

3 Sorry to speak for Workgroup F.

4 MS. HENRIQUEZ: So as we move forward, in looking
5 at this 2000-18 notice, I need to put on the table, just for
6 everyone to hear -- and we will talk about it as this notice
7 gets streamlined and moves forward. And I understand it was
8 mentioned in the workgroup, but I wanted to say it for the
9 entire committee.

10 As many of you know, maybe all of you know, the
11 Office of the Inspector General has been looking at program
12 income and how it is used. There is a disagreement between
13 us and the IG about that, and indeed, when the NAHASDA rule
14 went through clearance, the IG, years ago, signed off. We
15 think that should stand. That's been our position.

16 I did agree, however, based on a finding from the
17 IG that I would, at this session, at least say to each of
18 you that it is an issue. It's an outstanding issue. It's
19 an issue that we need to talk about. I have held the
20 position with the IG that it is in the context of NAHASDA
21 that it must be negotiated in good faith, and that is the
22 stance of my office, and we will do that in this context of
23 streamlining the notice.

24 But I thought I needed to put it on the table so
25 that you know where the pressure is coming from, you also

1 know where we are about that. I don't know the end point,
2 but we will negotiate in good faith as we work through the
3 rule and this regulation to try and get to a good outcome.

4 So I just wanted to put that on the record, having
5 fulfilled my obligation, now, to the Inspector General.

6 Thank you.

7 MS. GORE: Thank you for that.

8 I do want to say that we appreciated the
9 participation of HUD staff in the workgroup. Candidly, when
10 we looked at the PIH notice, there were several formula
11 elements that are used in that notice, and we thought that
12 was not within the boundaries of what we were allowed to
13 tackle as a workgroup or a committee, since this is not
14 about formula, but we do think our recommendation is within
15 the scope that's been assigned to this workgroup.

16 And I really appreciate, in particular, Deb
17 Lalancetti and Ed Fagan working with us. It's been -- made
18 it much easier for us as a workgroup to get through what was
19 a very complex PIH notice. Thank you.

20 If the committee has no other questions or
21 comments, I would like to move onto Issues 24 and 25.

22 MS. FOSTER: I do just have one question. Karin
23 Foster from Yakama.

24 In light of Rodger's explanation that's going to
25 go far beyond this meeting, is the suggestion that this --

1 that Workgroup A continue with that process beyond this
2 meeting?

3 And I hear HUD saying that they are willing to
4 negotiate, but of course, that would not exactly be an
5 intertribal negotiation, because not everyone's on that
6 group. So I'm just kind of wondering about process.

7 I appreciate HUD's statement that they will want
8 to negotiate with the tribes, but if we're not able to get
9 there on this, I wonder when that's going to happen.

10 MS. HENRIQUEZ: Let me just clarify because I
11 think I used the word -- Rodger may have used the word
12 "negotiate," but we -- not in the classic sense of the word,
13 but we will work with Working Group A about trying to get to
14 a good place, a reasonable place for both of us.

15 MS. FOSTER: Karin Foster, Yakama.

16 I'd like to request, then, that, you know, others
17 who are interested in this issue also then be able to
18 participate in that discussion. That might be something
19 that Yakama's interested in as well.

20 MS. GORE: And just a reminder, we did ask HUD to
21 offer the draft PIH notice for tribal consultation. So
22 we're -- we'd like full participation as well. Thank you.

23 Are we ready to move on?

24 All right. You have one handout from our group.
25 And if you'll just bear with me. I'm going to try to take

1 us slowly through the conversations that we had for these
2 two issues. I think they are very simple, but there's been
3 a lot of conversation about program income, and I want to
4 keep it focused on what our assignment was.

5 If you'll just bear with me, I think you will also
6 agree this is a fairly simple issue.

7 We're looking at -- in the statute, Section
8 104(a)(B). So I'm going to start you, basically, at the
9 beginning of the conversation with the workgroup.

10 If you look at Section (a)(1)(B), in the statute,
11 Congress struck the term "affordable housing activities,"
12 and replaced it with "housing-related activities." That is,
13 in essence, the simple change to this statute.

14 When the workgroup first began discussing this
15 change, they talked a little bit about not recommending any
16 regulatory changes, hoping that "housing-related activities"
17 could be understood and be used in a more broad way.

18 Our belief is that Congress intended program
19 income to be used for more activities than what seems
20 restricted to affordable housing activities, now
21 housing-related activities.

22 As we had that conversation, we realized there was
23 no definition for "housing-related activities," and that
24 left the definition up to HUD.

25 So as a workgroup, we have an offer to you for a

1 definition for "housing-related activities." Because we did
2 not want to offer a definition that we just plucked out of
3 the air and might not meet the intent, we then chose -- for
4 those of you that have this book -- Dan, you might have to
5 help me. I think it's on Page 4 if you have this little
6 green book.

7 It's actually at the top of Page 5, for those of
8 you in the audience, under Section 4, "Definitions," No. 8
9 is a new definition for "housing-related community
10 development." It's not "housing-related activities," but we
11 thought that was a similar-enough term that we could use
12 that definition and build on it, to recommend a definition
13 to this committee that would not be only be acceptable to
14 this committee but also would meet the intent of Congress
15 and offer an expanded use for program income.

16 So if you read through the definition for
17 "housing-related community development," you will see it is
18 very similar. The only things that we've added are energy
19 efficiency, and we've made it tie more to housing than
20 economic development.

21 We've also eliminated -- if you look at the
22 definition for community development, it has a Section B,
23 which is "Exclusion." That did not apply, so we do not have
24 an exclusion in our definition.

25 In essence, that was the work of the committee,

1 and then we looked for two -- there are two other places
2 where affordable housing activity hit the regulations but it
3 no longer applies. So we simply replaced that phrase with
4 "housing-related activity."

5 So if you look at the front page of our form,
6 prescribed form, we have described the background of how we
7 got to our work. And on the backside is a red-lined version
8 of Regulation 1000.64; 1000.10, which is a new definition;
9 and 1000.62, which will conform that one phrase.

10 I would like to talk a little bit about the new
11 the regulation, 1000.64, which says -- we're proposing:

12 What are the permissible uses of program income?

13 We proposed an answer:

14 Program income may be used for any housing or
15 housing-related activity and is not subject to other federal
16 requirements.

17 I wanted to explain that we've borrowed that
18 answer from the transition notice and the definition for
19 "net proceeds of sale." So we've tried very hard to tie our
20 work back to things that are already in use for the program
21 and not creating new language or new uses.

22 So we're trying to -- because program income is a
23 sensitive issue, we're trying to lock it into things that
24 are already prescribed by Congress. We believe that they're
25 acceptable to HUD, and we're posing that -- proposing them

1 to the committee as a consensus item from our workgroup.

2 If you look the at definition, we will have, once
3 we present that definition, one technical change to
4 recommend. I don't want to confuse this by recommending it
5 now. I'd just like to get it on the table and present it.
6 I'm not going to read that to you. I'm sure you can all
7 read it on the back.

8 And then, 1000.62, if you read the question, it
9 read previously:

10 What is considered program income and what
11 restrictions are there on its use?

12 We have stricken the second part of that sentence
13 which seemed to refer to compliance because we believe
14 Workgroup F is dealing with that. So we wanted to simplify
15 the question to:

16 What is considered program income?

17 And then the only other change in 1000.62, is
18 we've struck the original sentence which stated:

19 Any program income can be retained by a recipient,
20 provided it is used for affordable housing activities.

21 Remember, that phrase is no longer used. And
22 we've offered a new sentence -- or we just simply struck
23 that. We have offered nothing new. So we just struck the
24 sentence that related back to affordable housing activities.

25 That would conclude my presentation. I'd be happy

1 to answer questions. And if you don't have questions, we
2 can enter into negotiations.

3 MR. JACOBS: Jason?

4 MR. ADAMS: I guess the comment I have is you
5 didn't mention -- I guess you left it up to us to read
6 1000.10(b), the definition -- the new definition. My
7 question is, and maybe it's a grammatical thing I don't
8 understand.

9 But you have Item (I), (II), and (III) there.
10 After the (II), you have "or." Should that be "and," if
11 it's all-inclusive, like you state you want it to be?

12 MS. GORE: Excuse me. Our goal, if you use "and,"
13 then it means you have to meet the test of all of those. If
14 you say "or," then you have more flexibility to not comply
15 with all of them. So it's intended to be more flexible with
16 the "or" and not an "and."

17 MR. JONES: Marvin Jones.

18 Wouldn't you also -- might you also put "or" under
19 (I), too, then?

20 MS. GORE: I think that would be a good
21 correction.

22 It might be a good time for me to recommend under
23 (III), it currently says: "would otherwise advance the
24 purpose of this Act."

25 We lifted that sentence out of the statute. We

1 think it might be better stated: "would otherwise advance
2 the purpose of NAHASDA."

3 We offer that as a friendly amendment to our own
4 proposal.

5 MR. COYLE: Carol? Also, on 1000.64, would it be
6 advisable to put in after "housing or housing-related
7 activities," "as prescribed by 202, and is not subject to
8 any other federal requirements"?

9 MS. GORE: No. Because housing-related activity
10 will now have a new definition. This is program income and
11 not NAHASDA.

12 MR. COYLE: I have problems with converting
13 NAHASDA funds to program income.

14 MS. GORE: Can you say that again?

15 MR. COYLE: Have troubles converting NAHASDA
16 funding indirectly or directly to program income. Any money
17 derived, it goes down here to the grant.

18 MS. GORE: Are you --

19 MR. COYLE: I might not be reading this right.
20 But the way it looks right now, program income is
21 open-ended, and you can use it for anything you want to.

22 MR. JACOBS: Marvin?

23 MR. JONES: Just to follow-up from that, could you
24 go briefly over the thinking or the rationale or the
25 discussion about how -- you know, certainly it says it

1 here -- the discussion briefly about the use of the word
2 "affordable housing" and how you determine, therefor, it's
3 no longer subject to federal requirements because of the use
4 of this term? Could you just go over that discussion?

5 MS. GORE: Sure. In 1000.64, Marvin? Yeah.

6 In 1000.64, if you -- we lifted this sentence:
7 Program income may be used for any housing or
8 housing-related activity and is not subject to other federal
9 requirements.

10 In the transition notice, if you look at "net
11 proceeds of sale," under "net proceeds of sale," it also has
12 the same phrase, "and is not subject to other federal
13 requirements."

14 Candidly, we were going to recommend that
15 Workgroup C look at -- if this is adopted as consensus -- if
16 this language is adopted, that Workgroup C look at the
17 potential impact to the reporting requirements in the
18 IHP/APR.

19 MR. JACOBS: Phil, did you have a question?

20 MR. BUSH: No. I'll wait. I'll still mulling
21 over what Larry said up there.

22 MS. GORE: Yes, Marvin?

23 MR. JACOBS: Marvin?

24 MR. JONES: I was just referring more so to the
25 provision that you cite in the law, the 104(a)(1), the

1 difference between the new language (B) and the old language
2 (B), and just want you to reaffirm the basis of change -- of
3 the change from where it was definitely NAHASDA funds,
4 program income was, to the change in the wording to make it
5 not.

6 Just, if you could briefly go over that?

7 MS. GORE: Sure. I'd be happy to.

8 Again Section 104(a)(B), there is a change.

9 104(a) is titled "Program income." No. 1 is "Authority to
10 retain," just so you have the proper subject matters.

11 Just so we have the context, and it may be
12 difficult for the audience to read, so if you don't mind,
13 Marvin, I'll just read.

14 (a) says: Such income was realized after the
15 initial disbursement of the grant amounts received by the
16 recipient.

17 And the old sentence (B) said: The recipient has
18 agreed that it will utilize the program income for
19 affordable housing activities in accordance with the
20 provisions of this Act.

21 Congress struck that (B) entirely, inserted a new
22 (B), which says almost the same thing, with one exception.

23 And here's how the new sentence reads:

24 The recipient has agreed that it will utilize such
25 income for housing-related activities in accordance with

1 this Act.

2 And when the workgroup looked it at it, Marvin,
3 we -- we believed that Congress was intentional in changing
4 (B) from "affordable housing activities" to "housing-related
5 activities," allowing tribes, our interpretation, subject to
6 the committee's work, to invest program income in
7 housing-related activities, which we've then worked to
8 define under the next offer.

9 I don't know if that answers your question,
10 Marvin.

11 MR. JACOBS: We'll take one more comment, because
12 we're getting to negotiations, and we really need to start
13 the clock. So, Marvin, one more.

14 MR. JONES: Okay. Just to clarify. And that is,
15 could you just briefly, then, just -- what was your
16 discussion in the phrase "in accordance with this Act," and
17 how did you arrive at the decision that "in accordance with
18 this Act" doesn't mean, you know, it brings in all of the
19 requirements of this Act.

20 MS. GORE: I'm not sure I'm going to answer your
21 question. Maybe just to restate very briefly, that the
22 committee did consider not defining "housing-related
23 activity" at all, allowing tribes to simply define it and
24 negotiate with their regional offices what was
25 housing-related activity.

1 We thought it better, rather than to just --
2 because we're at the table, to offer a definition that we
3 thought was broad, and use a definition -- or at least a
4 foundation for a definition that Congress had already
5 written under community development, and use that as our
6 foundation and just tweak that some to allow some
7 flexibility.

8 I don't know if that really answers your question.
9 When we read the "in accordance with the Act" in the
10 regulation, we're suggesting that we just tie it back to "in
11 accordance with NAHASDA," we think that more proper.

12 I -- I think there are other areas, Marvin, if
13 you're talking about, when does program income carry the
14 same requirements as NAHASDA, I'm probably not an expert to
15 answer that.

16 MR. JACOBS: Okay. Marvin?

17 MR. JONES: Just one more clarification. So
18 you're saying -- you're argument -- the argument, then, was
19 "in accordance with the Act" meant that specific definition
20 of housing activities, then?

21 MS. GORE: Yes. And any other -- any other
22 regulation that would relate to program income.

23 MR. JACOBS: Henry, did you have a comment before
24 we go into negotiation?

25 MR. CAGEY: Yes. I agree with the committee,

1 except that this last Paragraph on 1000.62 on (b), is that
2 what -- if we're striking these paragraphs, what is this
3 25,000 come in? Why wasn't that struck?

4 You've got a cap here of 25,000, not to exceed 25.
5 Why can't we strike that?

6 MS. GORE: That's subject to this committee. We
7 didn't recommend it as a workgroup, but the committee can
8 certainly look at that. We have not excluded it.

9 MR. CAGEY: I just say there's a cap there. If
10 it's not in the statute, it should be taken out. I mean,
11 you've got a cap here, not to exceed 25,000. Where did that
12 come from? We're rewriting the regs?

13 MS. GORE: No.

14 MR. CAGEY: I'd like to see it taken out.

15 MS. GORE: I think it's statutory, Henry. But let
16 us check and get the reference.

17 MR. CAGEY: Well, you struck (b).

18 MR. BUSH: Can I go ahead and say something?
19 Okay. Thank you.

20 First off, the 25,000 was originally put there by
21 HUD during the original negotiations. If you were to strike
22 it out, then there would be no such thing as program income.

23 MR. CAGEY: If you limit it to --

24 MR. BUSH: No. But if you strike it and there
25 isn't a cap on it, then anything received is not program

1 income -- or is program income, excuse me. I had that
2 backwards here. Let me read it again.

3 MR. CAGEY: (Inaudible.)

4 MS. MARASCO: Can I clarify Phil's thinking?

5 Originally, anything up to 25,000 was not
6 considered program income. So for the smaller tribes, they
7 were allowed -- there was an allowance of 25,000 that
8 wouldn't be considered income.

9 Am I saying that right, Henry? So if you strike
10 that, then everything you receive is considered program
11 income. So for 25,000 of what you received was not
12 considered program income, and you could do what you needed
13 to do with it. So it allowed a little bit of an advantage
14 for the small tribes to get up to 25,000 in income and do
15 what they wanted to do with it.

16 Was that correct, Phil?

17 MR. BUSH: Well, for every tribe.

18 MS. MARASCO: For every tribe.

19 But I mean, the original thinking was that we
20 should have a little window of opportunity. That was a --
21 that was a hard fight at the HUD level. Program income was
22 a hard fight at the HUD level.

23 MR. JACOBS: Marvin?

24 MR. JONES: What would really benefit the tribes
25 is if we made it 25 million. But the --

1 MS. HENRIQUEZ: You're killing me with IG here.

2 MR. JONES: But the provision actually comes from
3 Uniform Administrative Requirements of all grants. They
4 have that 25,000, that if you don't earn that much, then
5 it's not considered --

6 MS. MARASCO: They don't look at you, basically.

7 MR. JACOBS: Are we ready to negotiate? Okay.
8 Jan, Carol? You ready?

9 FACILITATOR: Go ahead, Carol. Do you want to
10 take this piece by piece or the whole thing?

11 MS. GORE: I think -- unless there's any sort of
12 concern about it, let's take the whole thing. I think
13 they're all related together. I think they flow together.
14 I think we can do them all at one time, unless there's
15 considerable disagreement about one section or the other.

16 FACILITATOR: Okay. Any further questions for
17 Carol on this issue?

18 Yes, Karin?

19 MS. FOSTER: I just have one -- Karin Foster,
20 Yakama Nation Housing Authority.

21 I'm looking at the way that "housing-related
22 community development" is defined in the statute and how you
23 picked up that language. And I see that 3(i) talks about
24 otherwise advancing the purposes of the Act, and you said
25 would otherwise advance the purpose of the Act.

1 And I wondered, does NAHASDA only have one
2 purpose? And were we not trying -- were we trying to just
3 say it only had to serve one purpose and not of all them?
4 Was that the idea to -- and I guess what I'm suggesting is,
5 perhaps, to encompass the fact that there is more than one
6 purpose to NAHASDA. Perhaps it could say: "would otherwise
7 advance one or more purposes of the Act."

8 MS. GORE: We'd be receptive to that. We thought
9 it just was clumsy when it referred back to the Act, and it
10 didn't have any other intent.

11 MS. FOSTER: You wanted it --

12 MR. JACOBS: Karin, what you're recommending is to
13 take them individually, then?

14 MS. FOSTER: No. But I -- I was asked -- he asked
15 if there were any more questions. I wanted to -- I don't --
16 it doesn't matter to me whether we take them individually or
17 all at once. I just saw that and I thought maybe that it
18 would be a friendly amendment.

19 MS. GORE: We'd be receptive to that amendment and
20 still taking them collectively.

21 FACILITATOR: Okay. You want to -- yes, Judy?

22 MS. MARASCO: Doesn't changing "this Act" to
23 "NAHASDA" answer that for you, which is what Carol suggested
24 before under the (III), "would otherwise advance the purpose
25 NAHASDA."

1 Would that not answer that for you?

2 MS. FOSTER: I don't have any problem with saying
3 "NAHASDA" instead of "this Act." To me they would be
4 interchangeable, and so I didn't mean to read it without
5 that. But the -- even if you say "NAHASDA," I think NAHASDA
6 has more than one purpose, and so -- and it's a small
7 detail, but I thought, since the statute does use
8 "purposes," you could say "one purpose of NAHASDA -- "one or
9 more purposes."

10 MS. GORE: Maybe "one or more purposes of
11 NAHASDA," would that work for you?

12 MS. FOSTER: Yes, of course.

13 FACILITATOR: Okay. "One or more purposes of
14 NAHASDA."

15 MS. FOSTER: I can't see what's going on back
16 there. So I'm sorry.

17 FACILITATOR: It's "housing-related activities for
18 one more purposes", or where would it go?

19 MS. GORE: No. It would be under (III), would
20 otherwise advance...

21 FACILITATOR: "Would otherwise advance one or more
22 purposes of NAHASDA"?

23 MS. GORE: Correct.

24 FACILITATOR: Under (III). Kiana, do you got
25 that? Under (III).

1 MS. GORE: Thank you.

2 FACILITATOR: Okay. All right. Do we have
3 consensus on this on all parts?

4 Yes, Marvin?

5 Karin, you have to turn off your mic.

6 MR. JONES: You learned the trick to shut me up.

7 A couple of questions. We were talking about,
8 perhaps, putting the additional "or" in there.

9 FACILITATOR: Tell us where, Marvin.

10 MS. MARASCO: I got it in, Marvin.

11 MR. JONES: Okay. And I have a question: What
12 are -- what are the purposes of this Act and do we need to
13 define that? You know, there's various -- one -- as was
14 discussed earlier, in regard to eligible families, the major
15 purpose of the Act is to provide housing to, you know,
16 low-income families.

17 So do we -- do we feel a need to reference
18 anything into the law where it does define those purposes?
19 I guess that's just a question.

20 MS. GORE: Our workgroup did not see a need for
21 that, but we'd welcome the conversation.

22 FACILITATOR: Yes, Marvin?

23 MR. JONES: And if nobody does, I'll just leave it
24 at that.

25 FACILITATOR: Thank you. So we're ready to take

1 vote on this now?

2 Any other questions?

3 Yeah, Marvin?

4 Jason?

5 MR. ADAMS: Just real quick on the proposal here
6 -- the proposed rule, under -- there's a line that says:
7 "Alternatively this definition could be included in the new
8 regulation at 1000.66."

9 Is -- I don't have that, or is that going to be
10 proposed or where is 66?

11 MS. GORE: We just simply didn't know where it
12 would fit properly. And so we were going to ask the
13 drafting committee to properly seat whatever the -- if the
14 committee approves it, we were going to ask the drafting
15 committee to help us to cite it. We just didn't know where
16 to cite it properly.

17 FACILITATOR: Thank you. Marvin? You're okay?
18 All right.

19 Can we ask for consensus on these new regulations
20 here? All in favor? Any opposed?

21 Okay. Thank you, Carol.

22 MS. GORE: Thank you. That concludes Workgroup A.

23 FACILITATOR: Let's keep this forward momentum
24 going. Thank you, Carol. Thank you, Workgroup A and
25 Workgroup B.

1 Workgroup C? Jason?

2 MR. ADAMS: The first proposal that we have is
3 under the NHIC worksheet, it's Item No. 6, and so we should
4 have language to put on the screen and hand out also.

5 This language is waiver of IHP.

6 FACILITATOR: Okay. It's coming out.

7 MR. ADAMS: I'm hoping here -- you're handing that
8 out now?

9 FACILITATOR: Yes.

10 MR. ADAMS: This item is a change to a regulation
11 at 1000.246 -- one -- excuse me -- 1000.242 and 245. 246
12 was the original language.

13 1000.224 -- oh, my goodness -- is not amended.
14 That language stays the same, I believe. We did add some
15 language there. I apologize, because we did have some
16 changes here and they're not showing up as amendments.
17 They're -- it's all black, so I'm trying to compare the two.
18 I can't remember exactly what we added.

19 But I believe this was already -- we discussed
20 this before with the committee, but this language here,
21 you'll see, 1000.224 states:

22 "Can any part of the IHP be waived?"

23 The answer is:

24 Yes. HUD has general authority under Section
25 101(b)(2) of NAHASDA to waive any IHP requirements when an

1 Indian tribe cannot comply with IHP requirements due to
2 exigent circumstances beyond its control for a period of not
3 more than 90 days.

4 I believe the change there is the insertion of the
5 term "exigent," which is statutory.

6 The paragraph goes on to read:

7 The waiver authority under section 101(b)(2) of
8 NAHASDA provides flexibility to address the needs of every
9 Indian tribe, including small Indian tribes. The waiver may
10 be requested by the Indian tribe or its TDHE (if such
11 authority is delegated by Indian tribe), and such waiver
12 shall not be unreasonably withheld.

13 That last sentence was also included as a change.
14 And I believe and hope the -- some of the workgroup members
15 will help me if I missed something, but I believe that was
16 the only changes.

17 Exigent, yeah. I pointed exigent out.

18 So I believe those -- and I'd like to handle
19 these, if we could, individually. So 224 would be handled
20 individually. And so I would propose 224 up for consensus
21 with those changes.

22 FACILITATOR: All right.

23 Karin?

24 MS. FOSTER: Karin Foster, Yakama.

25 Jason, can you explain what the thought was behind

1 adding the word "exigent," what that's intended to
2 accomplish?

3 MR. ADAMS: Yeah. That language or that statement
4 was specifically taken out of -- I'm trying to find it here
5 real quick for you. Do you have it, Jennifer, or somebody
6 have it for me?

7 That was specifically added to the statute. That
8 was added to the statute, "exigent circumstances." I'm just
9 trying to find it here for you, Karin, real quick.

10 MS. FOSTER: Jason, it's at Section 101(b) --
11 (b) (2) .

12 MR. ADAMS: Yeah. 101(b) (2), "Required
13 information." Okay. 101, excuse me. 101(b) -- 101 is
14 block grants; (b), plan requirements; (2) is waiver. And
15 there's new language there.

16 And the "exigent circumstances beyond the control
17 of the Indian tribe" is specifically cited there. So that's
18 where we got the term "exigent circumstances."

19 MS. FOSTER: Thank you.

20 MR. ADAMS: Mr. Chairman, that's what we'd offer
21 for consensus on 224.

22 FACILITATOR: Does anybody else have a question on
23 that?

24 Yes, Larry? Okay. Call for consensus? All in
25 favor? All opposed?

1 Okay. Thank you.

2 Next one, Jason?

3 MR. ADAMS: Thank you. Then the next item we
4 addressed was the next item on the page, 1000.225, new
5 regulation. It states:

6 When may waiver of the IHP submission deadline be
7 requested?

8 And the answer is:

9 A recipient may request a waiver for a period not
10 more than 90 days beyond the IHP submission due date.

11 And the IHP submission due date is now defined as,
12 I believe, 75 days before the beginning of your program
13 year. Is that correct? So that is the deadline that you
14 have to make a submission request for waiver.

15 And we went round and round on these issues and
16 finally come to agreement on this language specifically.
17 This is the less restrictive of the proposals we discussed.

18 So I would offer that regulation, 1000.225, for
19 consensus by the committee.

20 FACILITATOR: Okay. Any questions? All in favor?
21 Any opposed?

22 It passes.

23 MR. ADAMS: The next item we have is -- we propose
24 it as additional language to 224, which I guess would kind
25 of go by the wayside now. So I would propose it as 227,

1 since we took 224 on its own.

2 So it'd be regulation at 1000.227 would read:

3 What shall HUD do upon receipt of a waiver
4 request?

5 The answer is:

6 The waiver shall be decided upon within 30 days of
7 receipt of waiver request.

8 That statement, HUD recommends 30 days, shouldn't
9 have been there. The answer goes onto state:

10 If HUD fails to act on the waiver request within
11 21 days, the request shall be deemed granted by the
12 Secretary.

13 That should be, again, 30 days. I apologize for
14 not seeing this and be able to make corrections, but that 21
15 days should be 30 days.

16 So the language should read:

17 The waiver shall be decided upon within 30 days of
18 their receipt the waiver request. If HUD fails to act on
19 the waiver request within the 30 days, the request shall be
20 deemed granted the by the secretary.

21 And the parentheses there should not be included,
22 but that is HUD's position. So I offer that for consensus
23 or discussion or negotiation on that issue.

24 MR. BUSH: Both.

25 FACILITATOR: Okay. Karin?

1 MS. FOSTER: Karin Foster, Yakama. Jason, does
2 HUD making its decision within 30 days always include that
3 they will notify the tribe within that time? Should there
4 be some -- should decide -- shall be decided upon and tribes
5 shall be notified within 30 days?

6 MR. ADAMS: Yes.

7 MS. FOSTER: Perhaps might, you know --

8 MR. ADAMS: If you have some language to change
9 that to better clarify that, sure. I mean, that's the
10 intent, is that they would be notified.

11 FACILITATOR: Can someone give us some language
12 for that?

13 Henry?

14 MR. CAGEY: Sandra, you know, one of the things --
15 this is where I came in on some of these things. You know,
16 the waiver process, you know, could be cumbersome.

17 You know, one of the problems we've seen from the
18 government is how long it takes to decide a waiver. You
19 know, we do have a precedence set already with 638 with
20 asking for waivers with a timeline.

21 You know, again under -- with the Bureau, for
22 example, we give them 90 days to decide a waiver. If the
23 secretary can't decide the waiver, it's granted. And one of
24 the things we asked your officials to do is how do we hold
25 you accountable?

1 Right now, everything is on us. Everything is --
2 everything that we're doing on asking for waiver, we meet
3 the deadline. You're held to no standard as far as any
4 90-day time frame in getting response to the tribe on its
5 waiver.

6 What we were told by one of your attorneys is,
7 Trust us. Trust us. Well, you may get an answer; you may
8 not get an answer on our waiver. So again, it's -- you
9 know, my concern is that, you know, HUD is not held
10 accountable to any waiver request of the tribe.

11 All the "what ifs." These are just "what ifs."
12 What if HUD doesn't respond? What if HUD does not get back
13 to us three, four, six months later for one reason or
14 another?

15 You need some provision that holds you
16 accountable. How are you going to be held accountable for
17 our request on a waiver?

18 MS. HENRIQUEZ: So what's being proposed? Is this
19 30 days or is it 60 or is it 90?

20 MR. CAGEY: 30 days. If you don't respond to the
21 tribe's waiver, it's granted.

22 MS. HENRIQUEZ: Impossible.

23 MR. CAGEY: Again, that's my question: How are
24 you going to be held accountable?

25 MS. HENRIQUEZ: So you said that you've got

1 something with someone with another federal agency for 90
2 days?

3 MR. CAGEY: It's an automatic waiver granted.

4 MS. HENRIQUEZ: And what agency is that with?

5 MR. CAGEY: (Inaudible).

6 FACILITATOR: Yes, Leon?

7 MR. JACOBS: I understood this morning there was
8 some discussion that HUD must respond. It doesn't mean that
9 they will grant the waiver, but they could respond within 30
10 days that, one, they've received it or they need more
11 information and so forth.

12 MR. ADAMS: That is a different proposal, a
13 different proposal.

14 MR. JACOBS: Oh, okay.

15 MR. CAGEY: What I'm saying, if you don't respond,
16 Sandra, there's no consequences on your end.

17 MS. HENRIQUEZ: So help me understand. Is it that
18 a decision is done in whatever the time frame is, or is it
19 that we notify you within that time frame as to why we're
20 not able to decide within that time frame?

21 I mean, so suppose there's -- it's a time frame
22 and we ask for additional information, and it comes on Day
23 29. Are you still expecting us to act within the 30-day
24 period? I'm just trying to figure out what the parameters
25 are that you're seeking and what constitutes notification or

1 decision.

2 MR. CAGEY: Again, Sandra, it's not the time
3 frame. It's how are you going to be held accountable to the
4 tribe's waiver request if you don't respond in a timely
5 manner? Because everything you see in this waiver is 90
6 days, the tribe has to get it in. We do our job.

7 And what -- how is HUD going to do its job in
8 responding to the waiver in a timely manner, saying, well,
9 look, we got your waiver. We can't find it. It's on
10 Rodger's desk or somewhere else, on the attorney's desk,
11 sitting there, and we just got to it. We need six, seven
12 months to decide. You know, you're not held accountable on
13 these waivers.

14 MS. HENRIQUEZ: I understood your point. What I'm
15 trying to get at is what is being proposed?

16 MR. CAGEY: I was saying if the tribe -- if Lummi
17 were to put a waiver in and request to waive something, we
18 don't hear a response back from HUD, it's going to be
19 granted, because you've had your chance to look at these
20 things, and you've had your 90 days to look at it and
21 respond. But if you fail to respond within a certain time
22 period, the waiver should be granted.

23 MS. HENRIQUEZ: Okay. So you're talking 90 days.

24 MR. CAGEY: Because, again, you're not held
25 accountable.

1 MS. HENRIQUEZ: You're talking 90 days. This
2 doesn't say that. So that's one issue. So I'm trying to
3 understand what the time frame is, No. 1.

4 No. 2, there are times and there will be times
5 when 90 days will not be enough. So the issue is, if we
6 answer within 90 days with a decision and/or within 90 days
7 of we need further time for review with a discussion that
8 says, we need another 30 days, another 45, but we'll tell
9 you another period of time, does that get at the issue?

10 MR. CAGEY: (Witness shakes head.)

11 MS. HENRIQUEZ: That's the best I can do.

12 Help me understand some time frames here of
13 what -- what.

14 MR. CAGEY: Again, Sandra, under 638 waiver, if we
15 want to do a waiver with Interior, we send it to the
16 Secretary because he has the authority to decide waivers.
17 If he doesn't decide, the waiver is granted. That's what --
18 that's how we got that thing designed with the Bureau
19 because the Secretary is held accountable.

20 MS. HENRIQUEZ: But you said it was --

21 MR. CAGEY: Because again, if you give us 90 days,
22 you have 90 days to decide something. If you don't decide,
23 then the waiver will be granted.

24 MS. HENRIQUEZ: I'm not disputing that we
25 shouldn't be held accountable to some time frame. I'm not

1 disputing that.

2 I am disputing what the -- I want to know what
3 the -- what we should negotiate as a time frame, because 30
4 days is far too narrow, and in some instances, 90 days may
5 not be enough, and if it's not, I don't feel comfortable
6 saying it's automatically granted if we don't respond back.
7 So I just need to get some greater sense of parameters.

8 FACILITATOR: I'm going to let -- James had a
9 question here.

10 MR. VOLLENTINE: James Vollentine, King Salmon
11 Tribe. Sandra, I think I can address your concerns. If HUD
12 fails to act, you know that's kind of a broad word. So it
13 should be "if HUD fails to approve or deny the waiver
14 request." That's what Henry means, I think, that we want an
15 approval or denial, and if there's no -- that should be long
16 enough for HUD to act. If it doesn't act within that
17 period, then it should be deemed approved.

18 MS. HENRIQUEZ: Within 21 days?

19 MR. VOLLENTINE: It's 30. We changed that to 30.

20 MS. HENRIQUEZ: I'm sorry. We simply cannot do
21 it, not within 21 or 30 days.

22 If you're asking 90 days, I'd feel more
23 comfortable, and then there might be some extenuating
24 circumstances that will extend beyond that. And I want the
25 flexibility to have those extenuating circumstances to go

1 beyond the 90 days, with cause to tell you what that is, et
2 cetera.

3 FACILITATOR: Judy? Leon? Jason?

4 MS. MARASCO: Judith with Yurok. I think that the
5 time frame should mirror each other. So if you're asking
6 for 120 days, the tribe should be able to have the same
7 amount of time.

8 So I don't think the time frame is the issue,
9 Sandra. I think it's a balance in what we're having to do
10 and what HUD is having to do.

11 So if 90 is not enough for you, then I would ask
12 the tribes to say, okay, 120 days on both sides. So we
13 would have 120 days to file. You would have 120 days to
14 respond.

15 Just -- I think if we just balanced that time
16 frame, I think we can come up with a time frame that will
17 work for both sides.

18 FACILITATOR: Leon? Okay.

19 Jason?

20 MR. ADAMS: Assistant Secretary, if I could, we
21 are specifically, this language is coming from the statute
22 language under 101(b)(2) waiver, and by that statute
23 language, it gives the Secretary 90 days to approve the
24 waiver of submission of the Indian Housing Plan. That's all
25 we're asking for here.

1 And so 90 days is the parameters that we have to
2 deal with. That's why the committee is saying, give us 30
3 days to at least get back to us and let us know, you know,
4 because 90 days is the absolute extent of the opportunity to
5 the get the waiver, by statute.

6 And I don't think the Secretary can waive statute.
7 So if we go 90 days or 120 days, we're outside of statute.
8 So we want an answer and a response back within time to deal
9 with that 90-day window that we have to request a waiver.
10 That was the discussion from the workgroup.

11 FACILITATOR: Okay. They're conferring.

12 MS. HENRIQUEZ: Help me. I'll walk through, and I
13 want you to help me -- I want you to clarify for me the
14 following: Jason, the citation spot that you said was
15 101(2) under -- or at 101(b)(2), correct?

16 MR. ADAMS: Correct. That is -- that is the area
17 of the statute that we are working with for this regulation.

18 MS. HENRIQUEZ: Okay.

19 MR. ADAMS: I believe. If I'm lying, from the
20 workgroup, correct me. But I believe that's where.

21 MS. HENRIQUEZ: And it's about the plan
22 requirement, not just waivers in general. As I read it,
23 it's about a waiver tied to a plan, the IHP? And so, the
24 Secretary can waive within -- all or in part, for a period
25 of not more than 90 days.

1 If the Secretary determines that a tribe has not
2 complied with or is unable to comply with the requirements
3 of the plan -- correct -- due to circumstances beyond the
4 control of the Indian tribe, all right? Limited to plan.

5 So you're asking for us to then, likewise, be held
6 to the 90-day waiver of approval of a plan, correct?

7 MR. ADAMS: Correct. That's what we did with just
8 approving the language at 1000.225. We just approved that.

9 MS. HENRIQUEZ: Okay. All right. So then, the
10 "What shall HUD do upon receipt of waiver request?" This
11 is: "What should HUD do upon receipt of an IHP waiver
12 request"; is that correct?

13 MR. ADAMS: Correct, correct.

14 MS. HENRIQUEZ: Okay. So I managed to clarify
15 that. And I would say that "The waiver shall be decided
16 upon within 90 days of receipt of the request, period."

17 I'm not prepared to say, failing that, it's
18 approved automatically.

19 MR. ADAMS: I'm sorry. I didn't hear you. What
20 was that comment? I'm sorry.

21 MS. HENRIQUEZ: That the recommended new
22 regulation would be: "What shall HUD do upon receipt of a
23 waiver request?" Right? That's the question at the bottom
24 of the page?

25 Okay. Since this is specific to an IHP

1 submission, that I'd like it to say: "What shall HUD do
2 upon receipt of an IHP waiver request?"

3 And then the answer would be that "The waiver
4 shall be decided -- if you want -- by HUD -- or whatever --
5 within 90 days of receipt of said waiver request."

6 MR. ADAMS: Okay.

7 MR. CAGEY: So, Sandra, my point, again, is that
8 what if you fail to act?

9 MS. HENRIQUEZ: If I failed to act? I think that
10 I would have -- in -- okay. So let me put it this way. I
11 think I would say, you will either get an answer on approval
12 within 90 days or you'll get a denial within 90 days, and it
13 will just -- it'll just have to -- we will just have to
14 monitor that.

15 I'm not to prepared to say that if we fail to act,
16 that you get -- that it's automatically approved. Does
17 Interior give it to you automatically that way too?

18 MR. CAGEY: Yes.

19 MS. HENRIQUEZ: Mm-hmm.

20 MR. CAGEY: The whole purpose is
21 government-to-government accountability. So again, I guess
22 what I'm stressing here is accountability and holding to
23 higher standards, like you hold the tribes to higher
24 standards.

25 Basically what this is, is it's a test of

1 accountability and standards that you hold us up to. All
2 the recipients are held to higher standards.

3 MS. HENRIQUEZ: Henry, I am not disagreeing with
4 you at all. And I just thought I balanced your request with
5 a response.

6 MR. CAGEY: What if you fail to act within 90
7 days?

8 MS. HENRIQUEZ: Well, does Interior, by statute
9 have to waive it or not? I'm just asking.

10 FACILITATOR: Excuse me. Let's get back to the
11 meeting here. The -- let's -- so -- Henry, I think the
12 Secretary has given you a response. I think, if there's --
13 and other people want to move on with this. Let's see --
14 that's the response, and I think --

15 Jason?

16 MR. ADAMS: I just wanted to say, that's what I
17 was trying to take out of this is: What was HUD's response?
18 Is that -- am I correct, Assistant Secretary, that your
19 response was you are okay with the first sentence remaining,
20 but the second sentence, you're absolutely not in favor of?

21 Is that what I heard you say?

22 FACILITATOR: No. She said 90 days for the first
23 sentence. And the second sentence was not acceptable.

24 MR. ADAMS: But that 90 days would -- I mean, if
25 somebody within that time frame, a month in, asked for the

1 waiver, the total horizon of approval time is 90 days.

2 You'd be outside of that, would you not?

3 If, let's say, 30 days in and somebody had a bad
4 storm, offices were shut down and they're not able to do
5 anything for 30 days, then they came back, realized they
6 missed the deadline, put in their request for waiver.
7 They've already lost 30 days in the process.

8 I'm just trying to --

9 FACILITATOR: Yes, Sandra, please?

10 MS. HENRIQUEZ: I need to have a short something,
11 because I --

12 FACILITATOR: Caucus?

13 MR. ADAMS: HUD caucus?

14 FACILITATOR: You can have a HUD caucus.

15 MS. HENRIQUEZ: Can we have a HUD caucus, please?

16 FACILITATOR: Yes, you may.

17 MS. HENRIQUEZ: Is that all right?

18 FACILITATOR: Yes.

19 Marvin?

20 MR. JONES: I would like --

21 MS. HENRIQUEZ: Ten minutes?

22 FACILITATOR: Ten-minute caucus for the --
23 ten-minute federal caucus.

24 (Recess taken.)

25 MR. JACOBS: Attention, please. We are over the

1 time limit.

2 Could all the committee members have their seats,
3 please.

4 Okay. Jason, you're on.

5 MR. ADAMS: I wanted to defer to my friends here
6 from Oklahoma.

7 FACILITATOR: Marvin?

8 MR. JONES: You don't have any friends in
9 Oklahoma.

10 MR. ADAMS: Okay, Marvin. All right. We know how
11 we relate in here.

12 MR. JONES: Actually, this comes from my friends
13 here, Tom, and whether this is pertaining directly to the
14 issue or not, there is precedence in Section 103(a)(2) in
15 which if HUD doesn't approve, make a decision, then
16 something is automatically -- meaning the Indian Housing
17 Plan -- is approved after 60 days.

18 And since we're discussing Indian Housing Plans,
19 it does have a little bit of relevance, as far as there is
20 some precedence for what we're -- for what was being
21 discussed.

22 So again, that's Section 103(a) -- was it two?
23 Was it -- was it two? Yeah. Section 103(a)(2).

24 MR. ADAMS: And also, Mr. Chairman, I'll say from
25 our -- from my enemies from the southwest, I don't know,

1 they pointed out that there's also precedence in the
2 regulations under Section 1000.114 on another matter,
3 whereas if HUD doesn't act, it's deemed approved.

4 So there's precedent in statute and regulation for
5 this to happen.

6 FACILITATOR: It would be good to get some
7 comments from HUD after their caucus.

8 MS. HENRIQUEZ: Is it time to be over yet?

9 FACILITATOR: Three minutes. Three minutes,
10 Sandra.

11 MS. HENRIQUEZ: So I understand the citation in
12 the 103 and the 114 that people have raised.

13 In each of those instances, like the language
14 we're discussing about the approval of waiver, each of
15 those, as we understand, as I understand, is statutory.
16 They're statutory in and of themselves. And so each one of
17 them is particular to the issue that it addresses.

18 So it's not that I can say because the statute in
19 this particular instance says X that I can change the
20 statute in another particular instance to match it, because
21 that one says and stands alone.

22 So what we talked about was -- if I can find the
23 right piece of paper again -- was do the following: We were
24 talking about the IHP -- oh, God, here it is -- and we agree
25 with the perspective that if we're holding you accountable,

1 we, too, should be held accountable. That's not up for
2 debate. We get that.

3 And so I'd like to propose that the waiver shall
4 be decided within 45 days of the receipt of the waiver
5 request.

6 Now, understand, when a tribe files its IHP, if
7 it's due July -- July 15 -- let's say, July 15 -- let me get
8 this right -- it is due then, but you -- but a tribe has 90
9 days from that date in which to file a waiver request,
10 correct? Okay. That's what the language is right above.
11 Okay.

12 And so you theoretically could wait until Day 89
13 to file that waiver request. Okay.

14 But if you do that, your IHP has got to come in
15 with it because the only thing that can be waived is up to a
16 period of not more than 90 days. So if you wait until Day
17 89 to file it without filing an IHP right behind it at the
18 same time, even if we took two days or five days or 45 days
19 or 90 days to approve the waiver, for whatever period of
20 time that goes beyond the 90 days, you're out of compliance.

21 So to avoid that, we will say -- it's going to
22 work a little funny because we're going to approve within 45
23 days of your request, but if you wait until the very end of
24 period, we could take the whole 45 days, and you're out of
25 compliance for 44 of them.

1 Does that make sense given what was just approved?

2 The other issue Mr. Cagey raised was: What if HUD
3 fails to act? It is statutory that the Secretary is able to
4 grant the waiver on the IHP. I'm not in a position, nor do
5 I want to abrogate the Secretary's authority.

6 If there were a statutory change, I could say yes,
7 but I'm not going to give up a legal right that he has to do
8 that. So, that's where I am or that's where we are.

9 FACILITATOR: Jason?

10 MR. ADAMS: I guess, then, in the situation that
11 we're in now, maybe it'd be best just to adjourn for the day
12 and pick this up in the morning right where we're at, and
13 give everybody some time to mull this over.

14 We've heard HUD's position on this following their
15 caucus. And so I would ask that we just adjourn for the
16 evening and pick up in the morning right here.

17 FACILITATOR: Okay. Thank you very much for your
18 response.

19 Yes, Blake?

20 MR. KAZAMA: I just want a quick clarification
21 before we adjourn, then. So if I heard correctly, you're
22 saying it should read: "The waiver shall be decided upon
23 within 45 days of receipt of the" -- and then delete the
24 second sentence; is that correct?

25 FACILITATOR: Yes.

1 MS. HENRIQUEZ: The second sentence -- yes, yes.

2 MR. KAZAMA: Okay. Thank you.

3 FACILITATOR: And --

4 MR. JACOBS: Before we leave, there was a request
5 made when we caucused, we didn't make a statement as to what
6 we decided in the caucus.

7 The decision was -- on this particular matter is
8 that it will be referred to the next meeting in Minnesota.
9 Is that correct, everyone? Okay.

10 Any other comments from any committee members?

11 Lafe?

12 MR. HAUGEN: Yes. Lafe Haugen.

13 Jan is passing out an item that has several issues
14 from Workgroup F. We just ask that the committee members
15 take a look at it. Some might have received it through
16 e-mail. In the morning, we're going to ask for tribal
17 caucus because of the issues.

18 MR. JACOBS: That's the one we received in mail
19 also, right?

20 MR. HAUGEN: Yes. We also discussed it last night
21 at our meeting as well.

22 FACILITATOR: Lafe, when are you asking for a
23 tribal caucus?

24 MR. HAUGEN: Yes. The item that is being passed
25 out has quite a few issues on it, five to be exact.

1 We're asking the committee members to take a look
2 at it. Once we're through with Jason's issues, then we're
3 going to ask for tribal caucus.

4 FACILITATOR: For today?

5 MR. HAUGEN: No, tomorrow.

6 FACILITATOR: For tomorrow?

7 MR. HAUGEN: Yes.

8 FACILITATOR: Okay.

9 MR. HAUGEN: Because it involves a lot of the
10 workgroups.

11 FACILITATOR: Okay. So after we move through the
12 rest of Jason's issues, then you want to have a tribal
13 caucus?

14 MR. JACOBS: Okay. Lafe, why don't you bring that
15 up in our meeting immediately afterwards?

16 Any other comments?

17 Okay. We'd like to see all of the working group's
18 chairs and HUD and the two co-chairs immediately after we
19 reserve -- excuse me -- I can't talk anymore. Good night.

20 (Proceeding adjourned at 5:04 p.m.)

21 -o0o-

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, the undersigned officer of the Court and Washington Certified Court Reporter, hereby certify that the foregoing proceeding was taken stenographically before me and transcribed under my direction;

That the witness before the examination was first duly sworn by me pursuant to RCW 5.28.010 to testify truthfully; that the transcript of the deposition is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions, and exceptions of counsel made and taken at the time of the foregoing examination;

That I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of , 2010.

Kristin M. Vickery
Certified Court Reporter, 3125

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1 DATE FILED: 7/26/10

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5 NOTICE RE FILING OF ORIGINAL TRANSCRIPT

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8 Case Name: ONAP DAY 1

9 Taken: 7/20/10

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11 Enclosed is the original sealed transcript of
12 proceedings.

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Kristin M. Vickery, CCR, 3125

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