

NAHASDA Negotiated  
Rulemaking Session  
August 17, 2010  
St. Paul, Minnesota

1 (Whereupon, the Negotiated Rulemaking  
2 Session commenced at 8:20 a.m.)

3 (The flag ceremony and drumming  
4 commenced at 8:20 a.m.)

5 MR. JACOBS: All right. From the  
6 Ho-Chunk Nation, the White Earth Nations, I would like  
7 to introduce the veterans that have come in. The  
8 White Earth Nation staff, Erik Goodland, Navy; White  
9 Earth Honor Guard staff, Tim St. Claire, U.S. Army;  
10 the American flag, Patrick Blough, U.S. Army; the  
11 Canadian flag, Terrance Burnett, Junior, U.S. Army;  
12 White Earth tribal, Terrance Burnett, Senior, U.S.  
13 Army; KIA, Curt Palacheck, U.S. Air Force; Don York,  
14 U.S. Air Force, POW flag; Ho-Chunk, Paul Paterma,  
15 United States Marine Corps. I would like to thank and  
16 introduce the drum group. The Ho-Chunk Nation Iron  
17 Young singers: Jack Blackdeer, James Blackdeer,  
18 Orange Cloud Eddie Blackdeer. The White Earth Nation  
19 drums: Lucas Hiskin, Henry Fox, Robert Kettle, Robert  
20 Tibbits Junior, Robert Pitts Senior, and Randy Hechek.  
21 Thank you.

22 MR. COYLE: Lee Brown is going to give  
23 the prayer and benediction. Lee?

24 MR. BROWN: I would like to say good  
25 morning, everybody. Good morning, again. I hope

1 everybody had a safe trip here. I was given some  
2 tobacco this morning to say a little prayer to you  
3 guys, and that's a privilege and an honor to talk to  
4 our creator. And when somebody asks you to do  
5 something, you never say no. Welcome, everybody, here  
6 to the negotiated rulemaking session. We have a lot  
7 of big plans for our people in housing. I've been in  
8 housing for over 20 years, and I can never do enough.  
9 I'm so proud to do it for my people. It makes me real  
10 glad to see somebody when they get a new house. I  
11 would like to -- I would like to acknowledge some  
12 people that I met a long time ago down here, and one  
13 of the people is Leon Jacobs; I see he's still around  
14 yet. Hi, Leon. I met him way back in the '80s. I  
15 think he's getting younger. I would like to ask you  
16 to bear with me when I talk to the creator. Let us  
17 pray. Lord, I come to you this morning in a word of  
18 prayer and ask for your forgiveness of all my sins. I  
19 thank you, Lord, for all the beautiful days you have  
20 given us, Lord, beautiful weather, and everything you  
21 provided for us, Lord. Thank you for that, Lord. And  
22 I ask, Lord, that you bestow on us some knowledge that  
23 is going to be decided here today for housing for our  
24 people as we discuss certain items, come out with the  
25 best decision. We ask for guidance, Lord, in that

1 category. Lord, I also ask that you bless the elders,  
2 Lord, and bless the sick and bless the people that are  
3 incarcerated, Lord, that can't be here with us today.  
4 Lord, we ask that you bless the people that came a  
5 long ways to be here with us today and make their  
6 journey safe and ask that you bring down your angels  
7 and clear a path for them on their way home. I ask  
8 these things, Lord, and I pray for these things, Lord,  
9 in your holy name and our savior Jesus Christ. Amen.

10 MR. COYLE: Thank you, Lee. Leon, I  
11 believe, has got a little announcement.

12 MR. JACOBS: I would like to say thank  
13 you, Lee, for that beautiful prayer. We decided to do  
14 something a little different, the two -- having the  
15 drum groups here has certainly given us a good start  
16 in this closing meeting. And we also have another  
17 first: We have Morgan Hunt-Warrick, who is from the  
18 Lumbee tribe, and she's going to sing a song for us  
19 this morning. So give her a welcome, if you don't  
20 mind. Morgan Hunt. While she's setting up, she is  
21 the director of volunteer services for the Lumbee  
22 tribe, and she informed me this morning that she's  
23 starting tomorrow night working on her master's degree  
24 at the university, so she needs to get back. Morgan,  
25 thank you very much for being here.

1 MS. HUNT: Thank you for having me.  
2 The song I'm going to sing, it's kind of a last minute  
3 thing. It's entitled Something to Believe in. I  
4 thought it was appropriate. I love working for my  
5 tribal community, and I'm sure you do, as well, and I  
6 believe in my tribal community. I get this natural  
7 high off my work, so I would like to dedicate this  
8 song to all of you.

9 (Whereupon, the song was sung.)

10 (Whereupon, the negotiated rulemaking  
11 session began at 9:08 a.m.)

12 MR. JACOBS: Thank you, Morgan. Okay.  
13 All right. We need to get started. I guess there's a  
14 few housekeeping things that we should address. First  
15 we have some alternates, and I would like the  
16 alternates to introduce themselves. So we'll start,  
17 Betty, with you, if you don't mind.

18 MS. BROWN: Betty Brown, housing  
19 authority out in California.

20 UNIDENTIFIED SPEAKER: (Inaudible).

21 MR. JACOBS: Anyone else that's an  
22 alternate?

23 UNIDENTIFIED SPEAKER: (Inaudible) with  
24 the Lumbee Nation.

25 MR. JACOBS: Okay. I think we also

1 have the chairwoman for the National American Indian  
2 Council, Cheryl Parish. Is she here? Did she leave?  
3 Okay. She was in here earlier. We'll recognize her  
4 again, I'm sure. Well, Larry, let's ask everybody,  
5 this is the last meeting and where do we go from here,  
6 what are we going to do the next three months or  
7 six months? We knew from the last -- since March  
8 where we were going the next month, but what are we  
9 going to do?

10 MR. COYLE: I guess we have to finish  
11 up all these stimulus projects in a hurry, I guess.

12 MR. JACOBS: Well, I think, Larry, you  
13 and I need to go on the road. The census group forced  
14 us to share all of the meetings. Now, don't be  
15 surprised that Larry and I don't show up at your  
16 reservation, but if we go on the road, we need some  
17 writers. Who would like to volunteer to write for us?  
18 We'll have to set up an LLC. It has been fun to work  
19 with you, and thank you for the honor of having us  
20 share these meetings. There's a -- I think we have  
21 got a lot accomplished and, hopefully, it's going to  
22 help us when we get back to the reservations, home  
23 communities, to provide better services to the  
24 membership, I think, and that's the overall goal for  
25 this community, and get regulations that are easier to

1 administer and so forth. Okay. Larry?

2 MR. COYLE: You notice how many elders  
3 we've got here, who's sitting next to me. He's got a  
4 birthday coming up here in the last part of the month,  
5 so we're getting prepared for it. First off, we had a  
6 meeting last night of the group chairs, and  
7 (inaudible), and we'd come up with a type of slant  
8 that we would like to all have a consensus with, and  
9 we decided to break it down and to see on the preamble  
10 work that we have a work group for the IHP/APR and a  
11 work group for the preamble and a work group for the  
12 parking lot issues. We would like to confirm in that  
13 order if it's in consensus with the rest of the group,  
14 and we're not trying, in any way, to force this way.  
15 If you have another option, please bring it forward at  
16 this time and not when we have a consensus on it.  
17 And, also, we weren't going to designate a chairman  
18 for the board groups. We would like to have them be  
19 voluntary, and then the work groups themselves  
20 designate their own guidance. Does that approve with  
21 everybody? Do we have a consensus on it? Okay. In  
22 that respect, Rodger, do you have -- you had a handout  
23 here you wanted to bring (inaudible).

24 MR. BOYD: (Inaudible). We had tabled  
25 an issue and we were looking for a (inaudible), is

10 MS. McFADDEN: Good morning  
11 (inaudible), general counsel. The question that was  
12 asked is whether, before HUD puts an edit on your  
13 account and locks, we must offer an opportunity for a  
14 hearing in front of the administrative law judge.  
15 Section 401(a) of NAHASDA says that the secretary can  
16 limit the availability of payments under the act  
17 (inaudible) program is not affected by the failure to  
18 comply with (inaudible). So you have an opinion on  
19 what Jad drafted and I contributed on, our boss  
20 (inaudible) indicating that that's not a substantial  
21 non-compliance remedy because, when we say that you  
22 need to submit your paperwork in order to have funds  
23 released to you, it's not a limitation on payments. A  
24 limitation on payments is something like when we say,  
25 after monitoring you, you can't continue with the



1 project you're working on. You can have your funds  
2 for other projects, but not that project or not for  
3 that type of program. I'll let Jad walk you through  
4 things.

5 MR. ATALLAH: Good morning. Jad  
6 Atallah, (inaudible). I hope everybody has a copy of  
7 this opinion. I think Marion provided a pretty decent  
8 -- a good summary of -- an overview of what the  
9 opinion says. As you all recall, last time, there was  
10 some dispute about the meaning of Section 401 of  
11 NAHASDA and, as a result, this is basically an opinion  
12 that summarizes our position on it. I don't know  
13 where we're going to go from here, but the opinion has  
14 been provided and, in fact, this is an overview of our  
15 position on this. We essentially say what Marion just  
16 said, and there's a much more substantive discussion,  
17 so I don't know if there's any questions or debate or  
18 discussion about this. It's still an issue that I  
19 believe is up for negotiation, so we had started  
20 discussing this and then we requested the legal  
21 opinion and we decided to put it off. So it's up to  
22 the committee how you want to move forward with it,  
23 but I think that's the overview.

24 MR. JACOBS: Any questions from any  
25 committee members? Blake.

1 MR. KAZAMA: (Inaudible). I noted  
2 79(b) was an issue that involved (inaudible) HUD, and  
3 I noted in your matrix, it was not dealt with, so we  
4 received this legal opinion. And as noted, I did not  
5 (inaudible) and I don't want our last item  
6 (inaudible).

7 MR. JACOBS: Any comments? Okay.

8 UNIDENTIFIED SPEAKER: (Inaudible).

9 MR. JACOBS: Well, according to the  
10 agenda, I don't think we were going to discuss this  
11 matter right now. We are ready to take a vote, if  
12 that's what we want to do.

13 MR. COYLE: You think this is an item  
14 that we can discuss in the parking lot?

15 UNIDENTIFIED SPEAKER: (Inaudible).

16 (Whereupon, there were technical  
17 difficulties and reporter couldn't hear anything.)

18 MR. JACOBS: Do you want to, say, table  
19 it until this afternoon or tomorrow? What's your  
20 call?

21 UNIDENTIFIED SPEAKER: Well, with the  
22 attorneys with our work group, we noted that we wanted  
23 to share, basically, our sides, as well; response to  
24 this opinion, so.

25 MR. COYLE: Is it a consensus with the

1 body that we want to continue on with discussion right  
2 now?

3 UNIDENTIFIED SPEAKER: If we could hold  
4 off until this afternoon, as noted when I received the  
5 opinion -- excuse me -- forwarded accordingly, we  
6 haven't had enough time to our work group to really  
7 formulate a response that we would like the committee  
8 to hear. So with that noted, I am requesting to see  
9 if we can table until this afternoon.

10 MR. JACOBS: You think this afternoon  
11 would be enough time or would you rather say tomorrow  
12 morning?

13 UNIDENTIFIED SPEAKER: Tomorrow morning  
14 would be fine.

15 MR. JACOBS: Okay. What is the  
16 consensus of everybody? You want to move it to  
17 tomorrow? Okay.

18 MR. COYLE: We'll set it on tomorrow's  
19 agenda first off. Jack.

20 MR. SAWYERS: I guess I misunderstood.  
21 When you talked about the different groups, I don't  
22 see any advantage of going into different groups,  
23 looking at different things when it will come back  
24 before us again, anyway. I don't object to having  
25 chairmen, but I kind of object to having -- to leaving

1 and coming back and discussing it again. If you  
2 decide to do that, everybody is going to be going to  
3 the parking lot issues. You're only going to have  
4 three people in the other committees. So I'm saying  
5 that I know I would go to the parking lot. I think  
6 everyone, most everyone, will, and then we would have  
7 to come back and discuss it all over again. Why not  
8 stay in this group, select our chairs for each  
9 individual area, but not waste time going back and  
10 forth because we're going to discuss the same thing  
11 all over again. It's not like the issues we had  
12 before; they were pretty well set in stone. These are  
13 issues that we've either discussed or were aware of,  
14 and I think we would waste our time going into --  
15 breaking into different groups.

16 MR. COYLE: Any other comments?

17 MR. JACOBS: Excuse me, Larry. I want  
18 to remind everyone please state your name for the  
19 reporter.

20 MR. COYLE: Jas, it's all yours.

21 MR. JACOBS: So we have a  
22 recommendation here on the floor so we need to address  
23 it. Do you want to move into the groups or do you  
24 want to stay in one area? Jason.

25 MR. ADAMS: With all due respect, Jack,

1 I thank you for your comments. I think that breaking  
2 off into these additional groups, new groups, if  
3 you'll notice the suggestion is just this morning and  
4 some hour and a half this afternoon just to give some  
5 time to focus, I think, on the work group effort on  
6 what issues will be brought to the table. With that  
7 time limitation, I think the work groups would be a  
8 good idea just to focus on what items would be brought  
9 before us just to better utilize our time.

10 Especially, I think speaking from the IHP/APR work  
11 group, we had some ideas at the end of our last  
12 session I don't think the work group really got a  
13 chance to work through and flesh out, and if we had  
14 some time to do that, I think our time here at the  
15 committee level would be better spent. That's my  
16 hope, anyway.

17 MR. COYLE: Thank you, Jason. Go  
18 ahead.

19 MR. KAZAMA: This is Blake Kazama.  
20 Also, regarding parking lot issues, we have a list of  
21 parking lot issues as a start, but there may be people  
22 in the audience that want to also discuss and  
23 contribute parking lot issues, and that would best be  
24 served in a work group session rather than around the  
25 table here, so that's why I would recommend going to a

1 work group session.

2 MR. COYLE: Could we get consensus on,  
3 say, taking a head count on how many would be  
4 interested in the different committees so we don't get  
5 too lopsided in our work groups? That's our main  
6 concern. We're afraid everybody is going to go to one  
7 side of the room and tip the boat over. So would that  
8 be okay with you if we took a head count on the number  
9 in each one of these groups and then break out into a  
10 work group? If we get too lopsided, we can voice our  
11 authority or something. Would that be feasible,  
12 Carol? Is that good with you?

13 MR. JACOBS: I'm electrified.

14 MR. COYLE: First off, who in the  
15 audience and the board here would want to be in the  
16 IHP/APR? Raise your hands, please. We got about 16  
17 or 18 right there. The preamble? Thank you, Carol.  
18 I'm surprised we don't have more lawyers with their  
19 hands in the air.

20 MS. GORE: It looks like our work group  
21 will be done by noon.

22 MR. COYLE: Your work is just started,  
23 Carol. Roger, do you have people that could work in  
24 that preamble? You have the authority to designate,  
25 get a couple, three more in there. And I think we can

1 con some more people to get on that. Okay. The  
2 parking lot. Okay. So we've got about 15 there. So  
3 the first and the last are in pretty good shape.  
4 We've got to create some more people for that  
5 preamble. Rodger can probably come up with another  
6 three or four?

7 MR. BOYD: We have staff that will  
8 work.

9 MR. COYLE: Is that okay with you,  
10 Carol?

11 MS. GORE: What, you don't think I can  
12 handle it?

13 MR. COYLE: I just officially made you  
14 the chairman of it. Is that in consensus with  
15 everybody now? Okay. Let's see if that's workable.  
16 If not, we'll make adjustments. Now, I would like to  
17 make a roll call. Let's keep this legal. And we'll  
18 go through the roll call. Leon, do you want to run  
19 that?

20 MR. JACOBS: Okay. Okay. Jason?

21 MR. ADAMS: Here.

22 MR. JACOBS: Steven?

23 MR. ANGASAN: Here.

24 MR. JACOBS: Marguarite?

25 MS. BECENTI: Present.

1 MR. JACOBS: Rodger?

2 MR. BOYD: Here.

3 MR. JACOBS: Henry? Okay. Okay. All  
4 right. Larry is here. Ray DePerri, he's here.  
5 Robert?

6 MR. DURANT: Here.

7 MR. JACOBS: Karin?

8 MS. FOSTER: Here.

9 MR. JACOBS: Carol?

10 MS. GORE: Here.

11 MR. JACOBS: Lafe?

12 MR. HAUGEN: Here.

13 MR. JACOBS: Sandra?

14 MADAM SECRETARY: Here.

15 MR. JACOBS: Retha? I haven't heard  
16 from her. Okay. Okay. Leon Jacobs. Marvin?

17 MR. JONES: Here.

18 MR. JACOBS: Blake?

19 MR. KAZAMA: Here.

20 MR. JACOBS: Irwin? Okay. Judith?  
21 Thomas?

22 MR. McGEISEY: Here.

23 MS. BROWN: I'm sitting in for Judith.

24 MR. JACOBS: Right. Okay. Alvin?

25 Anybody -- okay. Rebecca?



1 MS. PHELPS: Here.

2 MR. JACOBS: Okay. Jack?

3 MR. SAWYERS: Yes.

4 MR. JACOBS: Marty?

5 MR. SHURARLOFF: Here.

6 MR. JACOBS: Russell?

7 MS. PHAIR: Here.

8 MR. JACOBS: Darlene Tooley? Susan?

9 MS. WICKER: Here.

10 MR. JACOBS: Okay. We have a quorum.

11 MR. COYLE: We have a list here of  
12 where the work groups will go. Governors 1 will be  
13 the IHP/APR. Governors 5 will be the preamble. The  
14 Governors 4 will be the parking lot. I'll even come  
15 over with you, Carol. All right. Is there any other  
16 -- yes, Jas.

17 MR. ADAMS: If I could just ask -- make  
18 a request that the IHP/APR folks just stay here? Can  
19 we do that?

20 MR. COYLE: The IHP/APR -- Rodger?

21 MR. BOYD: Just as a reminder, we would  
22 like Dan to give the overview of the process that we  
23 will be going through for the next coming months  
24 before we break.

25 MR. COYLE: It would be a good time for

1       that.

2                   MR. BROWN: Good morning. This is Dan  
3 Brown from (inaudible) counsel of HUD. I just wanted  
4 to give a very brief review of what we discussed  
5 before, which was the process that stands between when  
6 we close today and when the rules actually publish in  
7 the federal register. It is a somewhat lengthy  
8 process, so I want to make sure people understand.  
9 The first step will be for the document to go through  
10 internal HUD departmental clearance. That's when all  
11 the internal offices within HUD have a chance to  
12 submit comments and potentially, if they want, to  
13 non-concur on any item. That's relatively rare, but  
14 it does happen sometimes. And that's when the Office  
15 of Inspector General and offices of that sort will  
16 have a chance to submit their reviews on the rule.  
17 We've already committed, I believe, if HUD does have  
18 any changes that come out of departmental clearance,  
19 that those will be provided to the committee. That  
20 process typically takes about 10 business days for the  
21 actual clearance. If there are any non-consensus  
22 items -- if there are any non-consensus items, then  
23 that will generally take a while longer for us to  
24 resolve, but hopefully there won't be any and the  
25 process will be pretty quick. The next step then is

1 to go to the Office of Management and Budget. And  
2 then there's an office called OIRA, Office of  
3 Information and Regulatory Affairs, and they have up  
4 to 90 days to review the rule; basically to satisfy  
5 themselves that the -- that any regulatory burden  
6 that's imposed on the public is justified, that the  
7 agency is exercising due care with public funds, and  
8 that sort of thing. And then -- now, we are not able  
9 to share any changes that OMB makes to the rule prior  
10 to the publication under the terms of the executive  
11 order, but since the committee will see what goes to  
12 OMB and then what's published, you'll be able to  
13 identify exactly what changes OMB has made. And then  
14 the only remaining step prior to actual publication is  
15 that we then send the rule to both of the HUD  
16 committees in both the House and Senate for a 15-day  
17 review. They do not approve or disapprove the rule;  
18 they simply have that time to comment. We almost  
19 never receive comments from the Hill. It's extremely  
20 rare for us to receive anything. So chances are that  
21 that last 15 days and then, from there, we go to the  
22 federal register. That typically takes between three  
23 and seven days from the time that we get it back from  
24 the Hill to the time it's actually published in the  
25 federal register. And then, of course, from there, we

1 have 60 days for public comments, and then we'll go on  
2 with it to the final stage. We'll provide those  
3 comments to the committee and proceed from there.

4 MR. COYLE: Yes, Rodger.

5 MR. BOYD: Dan -- if you add up all the  
6 dates that -- the days that he mentioned in his  
7 presentation, it seems to me that this will be  
8 finalized sometime next year. I don't know. Dan,  
9 maybe you can give an estimate.

10 MR. BROWN: Yeah. I would say  
11 optimistic would be shortly after the new year, and  
12 depending on if there are other delays that we don't  
13 anticipate but delays that may happen in any stage of  
14 the review process, it could be longer than that. But  
15 we certainly hope it will be, hopefully, soon after  
16 the new year. I'm sorry. And that is just -- after  
17 the new year would include HUD departmental clearance,  
18 OMB, and the review on the Hill, so that would be  
19 publication of the federal register of the proposed  
20 rules shortly after the new year.

21 MR. COYLE: Thank you. Karin.

22 MS. FOSTER: I have a couple of  
23 questions. My first question -- Karin Foster, Yakima  
24 housing authority -- is whether this committee --  
25 whether it's contemplated will reconvene once the

15 MR. BOYD: Yes. As you know, we are  
16 coming into the end of this fiscal year and our budget  
17 for this neg reg committee meeting has been expended.  
18 We will not be able to acquire additional funds until  
19 the new fiscal year. So we are planning, at the will  
20 of the committee, to have at least one more meeting, a  
21 general meeting. I think what we have to decide is  
22 when you would like to have that meeting in this  
23 process. I mean, is this meeting -- you know, after  
24 it goes through clearance within HUD and OMB and goes  
25 to the Hill, there aren't a lot of comments. I mean,

1 OMB may have comments, but I think the comments --  
2 and, Karin, correct me if I'm wrong, but I think you  
3 were -- were you talking about the public comments? I  
4 think last year or the last, last year -- the last neg  
5 reg meeting we had is that we got together as a  
6 committee to review the public comments before it goes  
7 into final publication, and that may be the  
8 appropriate time. If that's the case, then trying to  
9 add up all these dates and timelines, this probably  
10 wouldn't happen until maybe next spring of next year.

11 MR. COYLE: Is that in agreement with  
12 the committee? Do we have a consensus on it, kind of  
13 tentative dates after comment? Any other comments?  
14 Did we have a consensus? Yes, Rodger.

15 MR. BOYD: Just again to put it in a  
16 sense of time frame, we will probably know better  
17 right after the first of the new year, the calendar  
18 new year, when that meeting possibly could happen. We  
19 don't have, obviously, an exact date, month, what have  
20 you, but I think as the process goes through, sometime  
21 right after the first of the new year, possibly we  
22 could present some dates at that time.

23 MR. COYLE: Karin.

24 MS. FOSTER: My other question was for  
25 Dan, and I appreciate, Dan, you going through the

1 process because that's really helpful for me to  
2 understand what all the review is. When OMB reviews  
3 the rule, do they also review the preamble and make  
4 suggestions for changes there?

5 MR. BROWN: Yes. Usually, they are  
6 more concerned with the regulatory text, but, yes,  
7 they can also make changes to the preamble.

8 MS. FOSTER: Because we won't have any  
9 opportunity, of course, to review any real changes  
10 they might make at that point. Will the preamble  
11 reflect potentially those differences between -- I  
12 guess they can't really, can they, reflect the  
13 differences between what we decided here at this table  
14 and what OMB changes? I think there was some concern,  
15 you know, last time around that there wasn't an  
16 opportunity to review the changes that OMB made and  
17 that there was, perhaps, a representation that was  
18 actually coming directly to the committee, so I just  
19 wanted to ask.

20 MR. BROWN: Okay. I mean, obviously,  
21 there is a somewhat unusual process. It's slightly  
22 different from the usual OMB process. I guess I can  
23 say OMB can make changes to the preamble. They  
24 usually are less concerned about that. If an  
25 impression would be given that a change that OMB makes

1       was what the committee wanted, I can certainly try to  
2       prevent that impression by making some changes to the  
3       preamble. I don't think that OMB would find that  
4       controversial, so I think if we can just remember to  
5       do that --

6                   MS. FOSTER: Thank you.

7                   MR. COYLE: Any other comments before  
8       we break into our work group? Jason says he wants --

9                   MR. ADAMS: I was told that we have to  
10      leave this room. There's something going on in here,  
11      so.

12                  MR. COYLE: We got outvoted again,  
13      didn't we, Jason?

14                  MR. JACOBS: Two housekeeping items.  
15      Jan wants to take some photographs in the work groups,  
16      so if you have any objections to your pictures being  
17      taken, let Jan know. Okay.

18                  MR. COYLE: And we strongly advise the  
19      people in the audience to participate in these work  
20      groups. This is your chance to voice your opinions,  
21      and we need all the help we can get. We're just one  
22      little group here, so have at it. Thank you.

23                   (Whereupon, the committee broke out in  
24      work groups until 3:28 p.m.)

25                  MR. COYLE: Please, if all the



1 committee members could please take your seats, we  
2 could start the afternoon session. We don't have HUD  
3 here, so we get all the things that you want -- oh,  
4 they are just coming in. Some of the committee  
5 members are not seated, but we are ready to start.  
6 Okay. Are the chairs ready to move forward? I think  
7 the most pressing session, that I understand, is the  
8 IHP. And Jason is ready to move forward. And Jason,  
9 are you ready?

10 MR. ADAMS: Yes, Mr. Chairman. We will  
11 do the best we can. I know that we have several items  
12 to present, and we just finished our work here a few  
13 minutes ago and then took the break, and just now  
14 getting the information on the screen so that we can  
15 present it to the rest of the committee members that  
16 weren't in our work group in that form initially;  
17 hoping to have paper documents in front of you to look  
18 at further. I understand we're having a problem with  
19 color documents, and so I think we're going to work on  
20 just the black and white format this afternoon, trying  
21 to get some paper before, understanding that, as we  
22 move forward, we're going to present information. The  
23 best we can do right now immediately is get it on the  
24 screen. Again, a lot of this information was just  
25 produced here within the last hour or two, and so I

1 hope that's good enough for the committee.

2 MR. COYLE: Jason, well, I think a  
3 couple of other working groups have just one or two  
4 items and they might be ready. Would one of the other  
5 groups want to proceed and give Jason a few minutes  
6 more time? Blake, what about the parking lot?

7 MR. KAZAMA: Yes, our work group was  
8 the parking lot issues, and if it's okay, I could  
9 present part of it, anyway, at this time.

10 MR. COYLE: Jason, will this be helpful  
11 to delay yours for a few minutes and move on?

12 MS. ADAMS: That would be fine. We do  
13 have -- we have a dilemma because some of the items  
14 that we addressed that are relevant to the IHP/APR are  
15 in sections -- subsection D of the regulations, which  
16 the charter specifically says that we wouldn't go  
17 into. We're not in areas specific to the formula, per  
18 se. They are areas that are asking for information in  
19 those sections that are relevant to the IHP/APR. And  
20 so we have a dilemma that we're going to have the  
21 committee either give thumbs up that we move away from  
22 our charter language, which, in the purpose section of  
23 the charter, specifically says that we wouldn't touch  
24 that area. So there's a discussion that has to be had  
25 there. We actually had three sections in that

1 regulation that we touched upon and are proposing to  
2 change. So there's that discussion that needs to be  
3 had.

4 MR. COYLE: What is the consensus of  
5 the committee? Can we move to the parking lot issues  
6 to give more time to the IHP?

7 MR. KAZAMA: Mr. Chair, regarding some  
8 of the parking lot issues, I would like to have it put  
9 on the record, the screen, for the rest of the  
10 committee to view, and I'm not sure if it's there. I  
11 would have to check. It's 1000.58, principally, and  
12 1000.42, also. So I need to check to see if that can  
13 be put on the screen.

14 MR. COYLE: Mike, is that possible?

15 MR. KAZAMA: Also, for the committee,  
16 those who might need a hard copy. The people in the  
17 work group received hard copies of that, but I'm not  
18 sure that committee members received hard copies of  
19 it.

20 MR. COYLE: How many committee members  
21 did not receive a copy? So we need about a dozen of  
22 those or so.

23 MR. KAZAMA: In the meantime, I would  
24 like to call for a consensus on both of those items.

25 MR. COYLE: Why don't we wait five

1 minutes and let you enjoy your ice cream while we get  
2 this set up. Is that consensus with everybody? We're  
3 just trying to be on time; right?

4 MR. KAZAMA: Mr. Chair, while we're  
5 waiting, I would like to make a quick announcement, if  
6 I may. The work group that dealt with the parking lot  
7 issues, the last issue that we dealt with was 1000.42,  
8 and there was concern regarding Section 3 of that.  
9 And so, there is a subgroup that is meeting --  
10 subcommittee that is meeting to further study,  
11 research the statute in comparison to the regulations.  
12 They will meet right after we're done here in Governor  
13 4 where we were meeting previously in terms of the  
14 work group. So for those of you who volunteered to be  
15 a part of this subcommittee, you'll be meeting after  
16 we're done here in Governor 4 where we were before.  
17 So I would just note that. Thank you.

18 MR. COYLE: Any other announcements  
19 while we're -- Carol.

20 MS. GORE: I was just going to say the  
21 preamble group will really not have any action items  
22 to propose, but I can certainly report out if that  
23 would help with the timeline, and then we would get  
24 that off the agenda. So I would volunteer to do that,  
25 if you would like.

1 MR. COYLE: Marvin.

2 MR. JONES: Marvin Jones. I was just  
3 wanting to make sure in the Section 3 that that was  
4 open to the rest of us that weren't able to attend  
5 that work group.

6 MR. COYLE: Blake, you want to respond  
7 to Marvin's questions?

8 MR. KAZAMA: I'm sorry --

9 MR. COYLE: Marvin, would you repeat  
10 the --

11 MR. JONES: I was just asking, you said  
12 there were volunteers for it and some of us were in  
13 other work groups. Is that still open, that we can  
14 attend and participate?

15 MR. KAZAMA: Yes. And I'm speaking on  
16 behalf of the chair who is doing that, but I'm  
17 assuming -- he says fine, Marvin. He welcomes your  
18 participation, yeah, and others who would like to  
19 join.

20 MR. COYLE: Yeah. Anybody that wants  
21 to join in that session right at five o'clock --

22 MR. KAZAMA: Correct.

23 MR. COYLE: -- please feel free to  
24 attend.

25 MR. KAZAMA: 5:30.

1 MR. COYLE: 5:30, okay.

2 MR. KAZAMA: I think hearing from  
3 Carol's group is great while we're waiting.

4 MR. COYLE: Okay. Carol, repeat your  
5 statement earlier, if you would, please.

6 MS. GORE: Sure. As a way to fill the  
7 time productively, the preamble work group really will  
8 have no action items to present. It's merely a report  
9 back because a preamble just encompasses the consensus  
10 items that we've already done. So there's no further  
11 action. I would be happy to report back to the  
12 committee while we're waiting for hard copies, et  
13 cetera. So that would complete our work group's work,  
14 if you would like me to do that.

15 MR. COYLE: Please proceed.

16 MS. GORE: I'm not sure I can push,  
17 talk, and turn pages, so bear with me. I'm sorry. It  
18 was push, hold and talk, and turn pages. I thought  
19 just maybe for the purpose of the audience that has  
20 not participated in the work group, I would give just  
21 a very brief overview of what you should see until the  
22 preamble. There are copies of the preamble. I think  
23 they are available for everybody. I don't think it's  
24 necessary for my report back, but when you look at the  
25 preamble, it's really in two parts. The first part of

1 the preamble is really the narrative that describes  
2 the conversations that happened with the committee.  
3 The narrative will -- probably the most important part  
4 -- speak to the intent of the action of the committee,  
5 it will also speak to minority and majority positions  
6 where there was non-consensus. That is important so  
7 you understand, when you read the regulations that are  
8 in the second part, what was the purpose of the  
9 regulation, the change that the committee agreed to.  
10 So the second part of the preamble shows the  
11 regulations. Underlined words are new language;  
12 struck language is deleted language from the existing  
13 regulations. Even the renumbering is intended to be  
14 represented in the preamble. So the purpose of our  
15 work group was really to do some due diligence. I  
16 want to thank those that are on the drafting committee  
17 and the preamble committee. They've done just an  
18 absolutely fabulous job, speaking from participating  
19 in the last negotiated rulemaking where the preamble  
20 work was begun after the committee completed their  
21 work. It was very difficult, as you might imagine, to  
22 recall the conversations and the purposes of those  
23 conversations. So this group has gone from minutes  
24 and transcripts and their participation to come up  
25 with language that I think is really very good. We

1 did, however, find some -- there are only two areas --  
2 three areas where we'll have some ongoing work. The  
3 first, I would say, is the preamble can't be complete  
4 until the committee's work is complete. So there is  
5 no finished product until we're done. I think that's  
6 a given. We also discovered one item that's reached  
7 consensus in the group, 1000.26 in the regulations,  
8 that was unintentionally missing from the preamble.  
9 That's corrected and will be put into the preamble,  
10 but that's really the purpose of the due diligence of  
11 our work. There is one other issue that we're waiting  
12 for clarification. There was a grammatical, technical  
13 amendment to consensus language. The drafting  
14 committee is looking for that. It may require some  
15 further conversation with the committee but, right  
16 now, it doesn't require any additional work. And the  
17 only other issue we discovered is Issue No. 98, which  
18 is on your worksheet here. It is the very last item.  
19 It was not in the notice for negotiated rulemaking.  
20 It was not addressed by the committee. But it's my  
21 understanding it was referred to the drafting  
22 committee and both Jad and Dave Heistercamp have been  
23 working offline. They will be prepared at some point  
24 today when they have hard copies when they present  
25 that to the committee. My job is simply to alert the



1 committee that that work is not done. So it's up to  
2 the committee to decide when they want to take it up  
3 and who will bring that work to the committee. But  
4 unless there are questions, that's the end of our work  
5 as a work group. Thank you.

6 MR. JACOBS: Thank you, Carol. Are  
7 there any questions from committee members? The item  
8 No. 98, what is the preference of the committee?  
9 Would you like this addressed on the agenda tomorrow?  
10 Any comments? Carol.

11 MS. GORE: Let me just ask Dave. Dave,  
12 would you be ready to present Issue No. 98 now or --

13 MR. HEISTERCAMP: Give us just a minute  
14 and we can put it up here. Unfortunately, hard copies  
15 are not available at this time.

16 MS. GORE: Thank you. I just thought I  
17 would go for broke and get one item behind us. Thank  
18 you.

19 MR. JACOBS: Okay. So tomorrow would  
20 be best on this item? Could we have consensus on  
21 this? Could you meet -- address item No. 98 on the  
22 agenda tomorrow?

23 MR. HEISTERCAMP: We can put it up on  
24 the screen now. We would be happy to make that  
25 available momentarily.

1 MR. JACOBS: Dave, the committee has  
2 already agreed to put it on the agenda tomorrow. The  
3 items for -- Blake's committee, are you ready to put  
4 those on the screen?

5 MR. HEISTERCAMP: I'm sorry, which  
6 ones, Leon?

7 (Whereupon, a discussion was had out of  
8 the hearing of the reporter.)

9 MR. JACOBS: And just to remind you, if  
10 you would please state your name before making  
11 comments and also to speak directly into the  
12 microphone. It would be helpful to the transcriber.  
13 Blake, are you ready now on one of your items?

14 MR. KAZAMA: Mr. Chair, I guess, just  
15 as an introduction to the work group that dealt with  
16 parking lot issues, if you recall, early on in the  
17 process, we asked members of the audience as well as  
18 committee members to present or put their parking lot  
19 issues on butcher paper that was in the front of the  
20 room. People had done that, we had compiled a list of  
21 parking lot issues for -- that people wanted to share  
22 for this go-around. We also included, from the  
23 previous former negotiated rulemaking in 2003, those  
24 parking lot issues, and we combined them both. And so  
25 our task initially for the work group who dealt with

1 parking lot issues was to go through each of those  
2 items and to look at the relevance of each of the  
3 items. We found that the majority of the things that  
4 were listed under parking lot issues, we had either  
5 completed the task in earlier discussions of issues  
6 and consensus, or some of those items referred to  
7 formal negotiated rulemaking, so we wanted to move on  
8 to parking lots for that neg reg. We were actually  
9 concerned that our parking lot was actually going to  
10 turn into a parking garage when I saw 30 people around  
11 the table, but it turned out to be fine. Parking lot  
12 issues, I wanted to sort of give people a definition  
13 of that and especially people in the audience, that  
14 this was memorable to me to have a work group that  
15 dealt with parking lot issues, because there aren't  
16 tribal concerns about HUD regulations, NAHASDA  
17 regulations, and the relevance of different  
18 regulations, and this was their opportunity to voice  
19 their concern, opinions, and bring it to the table for  
20 us to review and discuss. People did that. And so I  
21 feel good that -- or feel that we made an effort to  
22 listen to our constituents out there, people who had  
23 concerns over NAHASDA. And so, I would like to  
24 suggest that that become an issue or become a process,  
25 part of the process, in future negotiated rulemaking:

1       that public comment is taken to that level of concern,  
2       that they have an opportunity to bring things to the  
3       table and speak to it and have us on the committee  
4       address it. So that was done today, and that's why I  
5       thought it was a memorable work group. Having said  
6       that, then we basically went through the parking lot  
7       issues that were listed. As I said, there was some  
8       forwarded on and I will make sure that -- and  
9       certainly the preamble should reflect it -- that there  
10      were some issues that we wanted move to the parking  
11      lot issues for the next negotiated rulemaking. Having  
12      said that, can we put 1000.58 on the -- oh, there it  
13      is. And can you go to (f) and (g), which is at the  
14      bottom of 1000.58, please? Keep going. Yeah, there  
15      you go. Thank you. Basically, the -- just for  
16      discussion purposes, the group looked at this, the  
17      regulations here, in terms of investment amounts, and  
18      we decided that, under (f), we would simply put a  
19      period after the word amount and leave out the rest,  
20      basically taking into account -- to invest the annual  
21      grant amount equal to the annual formula grant amount.  
22      So I guess I want to take this in two parts. I want  
23      to first deal with (f) in terms of negotiating (f) and  
24      seeking consensus with (f), and then I want to go to  
25      (g). Having said that, is there any negotiations on

1 (f) ?

2 MR. COYLE: Carol.

3 MS. GORE: I just have a question. The  
4 first sentence in (f) talks about an annual grant  
5 amount, and I'm wondering if that limits the amount of  
6 the investment for a tribe to its annual grant amount.  
7 And I guess I'm trying to talk myself through the  
8 confusion of now having a program year instead of an  
9 annual grant year. And if I have a year and a half of  
10 money in the bank, say, then can I only invest  
11 one year of that or can I invest that year and a half?

12 MADAM SECRETARY: I just had to talk to  
13 the staff a little bit. The intention is that every  
14 program year, when you get a grant amount, you can  
15 invest that grant amount, and it's not contingent upon  
16 on what you invested from your grant amount the year  
17 before or in the succeeding years.

18 MS. GORE: Thank you.

19 MR. JACOBS: Okay. Any other questions  
20 or comments? You're asking for consensus on this?

21 MR. KAZAMA: Yes, I am.

22 MR. JACOBS: Okay. What is the  
23 pleasure of the committee? Consensus? Okay.  
24 Consensus. Okay.

25 MR. KAZAMA: Mr. Chairman, the second

1 issue is regarding (g): Investments under this  
2 section may be for a period no longer than five years.  
3 We've extended it from two years to five years.

4 MR. JACOBS: Any comments or questions?  
5 If not, consensus?

6 MR. KAZAMA: I want to especially thank  
7 the assistant secretary for that. That was a big  
8 decision. HUD did good.

9 MR. JACOBS: Blake.

10 MR. KAZAMA: Yeah. Mr. Chairman,  
11 another item is 1000.42. Could we have that on the  
12 board? And we need hard copies. We will be dealing  
13 with Section (a), so just scroll down to (a). I guess  
14 (a) is being handed out, hard copies of (a) is being  
15 handed out, Section 42. Okay.

16 MR. JACOBS: Can you scroll down to the  
17 item he's asking for, please?

18 MR. KAZAMA: This is the -- you can see  
19 it by -- in the red there, I know it's not reflected  
20 here, but up on the screen it's red. We added this  
21 part to it. And maybe if I could have Jad address  
22 this item. There was a lot of concern about this, but  
23 I think, with this language, it helps to take care of  
24 that, so.

25 MR. JACOBS: Jad, could you give your

1 name for the recorder?

2 MR. ATALLAH: Jad Atallah, OGC, HUD.

3 In previous sessions, a question was raised about  
4 Section 3, compliance with Section 3, and how that  
5 would work with the new tribal preference provision in  
6 Section 101(k) of NAHASDA. Section 101(k) of NAHASDA  
7 says "notwithstanding any other proposition of law, if  
8 a tribe adopts a tribal preference law that relates to  
9 contracting and employment, that tribal preference law  
10 will apply." And the question was raised about how  
11 does Section 3 work with this new tribal preference  
12 provision. We initially informed the committee that  
13 we may have differing views within the agency about  
14 how Section 3 would work. We went back and we  
15 discussed it internally and fair housing in HUD  
16 basically told us that we want to see language before  
17 we concur on it. So I'll start this off with a big  
18 disclaimer, which is that this is language being  
19 proposed and -- but there is a chance it may not be  
20 cleared internally. And this was something I said the  
21 first time around, but anyhow, we can propose it and  
22 then see where it goes internally. But it's really a  
23 legal concern, mostly internally. What this says is  
24 that, as you see up there highlighted in red,  
25 initially, in the beginning, what it says is that

1 Section 3 applies to the program. If you have Indian  
2 preference, the way they typically work is that  
3 Section 3 applies but not in derogation of Indian  
4 preference. And then we added some language to  
5 address not just Indian preference in Section 3, but  
6 the more specific tribal preference in Section 3. It  
7 says, "Indian tribes may comply with Section 3 by  
8 adopting and complying with tribal employment and  
9 contract preference laws in accordance with Section  
10 101(k) of NAHASDA." What that means is, if a tribe  
11 chooses to adopt a tribal employment and contract  
12 preference law and it complies with that law, then it  
13 is deemed to have complied with the Section 3  
14 requirements. The second little paragraph at the end,  
15 highlighted also, simply just states the language in  
16 Section 3 that is already applicable to all activities  
17 under NAHASDA, not just when you have tribal  
18 preference. And what it says is, if an Indian tribe  
19 has not adopted a tribal employment and contract  
20 preference law, then, where feasible, priority should  
21 be given to low- and very-low income persons residing  
22 within the service area of the project or the  
23 neighborhood where the project is located. That's  
24 listed from the statutory language in Section 3, which  
25 is under a separate statute. It's not under NAHASDA.



12                   MADAM SECRETARY: Let me go a little  
13                   bit further. The department -- a couple things are  
14                   happening at the same time. The department has  
15                   affirmed and yet again reaffirmed its interest and its  
16                   obligation to expand and give greater prominence to  
17                   Section 3 throughout all of HUD's programs  
18                   department-wide. With that being said, my colleague,  
19                   John Trasviña, who is the assistant secretary for Fair  
20                   Housing and Equal Opportunity at HUD, he and his staff  
21                   are currently drafting an expanded Section 3 program,  
22                   which we have not yet seen, but really takes into  
23                   account the department's belief that issues of  
24                   economic opportunity and self-sufficiency should be a  
25                   goal and should be part of what HUD's federal dollars

1 are used for. So until that gets finalized, I'm not  
2 prepared -- so I'm going to abstain. I do not want to  
3 do non-consensus because I don't want to necessarily  
4 kill this language, but until the department really  
5 codifies for itself what it means for Section 3 of the  
6 expanded version and all the pieces of its programs  
7 it's going to touch, I need to -- or HUD needs to  
8 abstain from supporting this language. It may mean  
9 that it comes back again at some other point, but  
10 that's the position I feel comfortable that we need to  
11 take at this point.

12 MR. JACOBS: Judith.

13 MS. MARASCO: Since we're talking about  
14 Section 3, I just want to give you a real life story,  
15 since this is an issue that HUD is working on. I once  
16 had a bid challenge from a contractor who claimed he  
17 was Section 3 and, in fact, he started out in a mutual  
18 help program and had long since crawled past any  
19 income limits, paid off his house, built onto it so it  
20 was just gorgeous. But he claimed in the protest  
21 that, because he started out as a mutual help tenant,  
22 that he could therefore claim Section 3 preference.  
23 So I think deciding where Section 3 begins and ends,  
24 I'm a believer in Section 3, but sometimes it's used  
25 to make end runs, so to speak .

4 MR. JACOBS: Marvin.

MR. KAZAMA: Blake here. I guess I'll speak on behalf of the committee, subcommittee. My understanding is we were working on actually (b) of the language, which was threshold. And when we looked at threshold, there was an amount of \$200,000, but when we referred back to the statute, it broke it out

11 MR. JONES: Marvin Jones. With that  
12 said, then let me comment in general. The Parkland 35  
13 regulations are probably the worst piece of regulation  
14 as far as how they are written, the inconsistencies  
15 that exist that I know of, and so it makes it almost  
16 impossible to even know how you're supposed to comply.  
17 As I read 1000.42 as written, it doesn't have the  
18 critical determination, nor does the rest of the 42,  
19 either (a) or (b), in which the law itself states that  
20 you have to make a determination of what type of  
21 funding that you get and then that impacts the  
22 applicability, the way that Section 3 is applicable.  
23 For example, it explicitly states that, if you have  
24 1937 Act housing, you comply in one way, and if you  
25 don't have 1937 Act housing, you comply in another way

1 with a more limited range of activities of which  
2 Section 3 applies, and that is nowhere in this .42  
3 yet. And that's a clear issue that needs to be  
4 resolved with or without -- I mean, as we have to  
5 comply with it right now, the fair housing people  
6 don't know anything about it. I mean, they simply  
7 can't answer the question, and they look at the  
8 language and say oh, Indian housing, that's you, you  
9 need to comply with this. Well, apparently, they  
10 haven't even read the law in which it limits the way  
11 that Section 3 is supposed to be implemented by the  
12 type of funding, and the type of funding is explicitly  
13 in the law 1937 Act housing. And if you don't have  
14 1937 Act housing, then there's another category which  
15 it would seem that we would fall into. But that's one  
16 of the issues I hope that 1000,42(a) and/or (b)  
17 addresses, if we possibly can.

18 MR. JACOBS: Any other comments on  
19 this? Blake, are you asking for a consensus from the  
20 group with the understanding that the secretary will  
21 have to abstain?

22 MR. KAZAMA: Yes.

23 MR. JACOBS: What is the pleasure of --  
24 Marvin, you have a question/comment?

25 MR. JONES: Yeah. Marvin Jones again.

1 Again, it's dependent upon what happens at this 5:30  
2 meeting, you know, as to whether -- if we're not going  
3 to address the issue I just discussed at that, then it  
4 has to be in this (a) section. It either has to be in  
5 (a) or (b), and if I can have a commitment it's going  
6 to be addressed in (b), then I'm fine with this (a)  
7 language. If it's not, then we need to address it  
8 here in this 1000.42(a) part.

9 MR. JACOBS: Thank you, Marvin. Blake.

10 MR. KAZAMA: I guess Dave would like to  
11 speak.

12 MR. HEISTERCAMP: Marvin, it turns out  
13 that we did identify the section of the statute you're  
14 talking about. In fact, the threshold levels are  
15 directly linked to whether you interpret it as Indian  
16 housing funding or public community development  
17 funding or the other things. And so we are trying to  
18 address that issue in subpart (b) and we welcome --  
19 your staff did a great job. We welcome your  
20 participation directly in that work group, as well.  
21 But that action is where a lot of the difference in  
22 how and when you apply it comes under the threshold  
23 limits.

24 MR. JACOBS: Marvin.

25 MR. JONES: Marvin Jones. So we are

1 going to try to then propose (b), revision to (b), and  
2 address that issue, if that's what we're saying?

3 MS. FOSTER: Karin Foster, Yakima  
4 Nation Housing Authority. I haven't spent a lot of  
5 time with these regulations, Marvin. You may have  
6 spent more time recently than I have. But there is a  
7 distinction between 1937 Act Assistance, on the one  
8 hand, in which the regulations say "shall comply," and  
9 other assistance in which the regulations say shall --  
10 are encouraged to provide. It's different language  
11 that applies to the two, and I guess, if you -- since  
12 you've raised that issue, it would make sense to me to  
13 go ahead and wait on this until we've had that  
14 discussion at 5:30. This was my work group, so I  
15 don't mean to say anything inconsistent with my work  
16 group, but it does raise that issue for me, too.

17 MR. JACOBS: Blake.

18 MR. KAZAMA: Yeah. I guess in light of  
19 the discussion that we're having here -- and that's  
20 the purpose of this -- maybe we should wait, take it  
21 as a whole tomorrow, let the work group do its thing  
22 in terms of research, study, those who want to  
23 participate with Dave. Can you stand up? That's the  
24 man you'll be tracking down. He will chair the group  
25 at 5:30.

1 MR. JACOBS: What's his name?

2 MR. KAZAMA: So he will -- and I agree  
3 that there maybe needs more clarification in this  
4 whole 1000.42, and my recommendation then is to sort  
5 of take it tomorrow, then, and let this alone.

6 MR. JACOBS: Okay. We'll table it for  
7 tomorrow. Anything else from the parking lot?

8 MR. KAZAMA: Yeah. I guess I did say  
9 that, thanks to work group A, I believe, who sent over  
10 this idea of negotiated rulemaking and the parameters  
11 around negotiated rulemaking and it -- for several  
12 sessions now, we have been talking about, you know,  
13 new language, proposals and things of that nature that  
14 is in regards to negotiating rulemaking. And so I --  
15 the issue fell in work group B, and so I wanted to  
16 bring it up before -- you all have copies of it. It  
17 addresses Issues No. 35, 36, and 37, but -- and there  
18 is a 1000.09 in a box proposal, and I wanted Dave to  
19 address it for discussion purposes. And, ultimately,  
20 because of its issues, I think we need to look at it  
21 from a consensus perspective in terms of whether or  
22 not we would accept something like this or just where  
23 we are in terms of regulations. I just want to toss  
24 that out, that kind of discussion, and I wanted Dave  
25 to address this.



1 MR. JACOBS: What is the consensus of  
2 the committee? Is this something that you want to  
3 bring up at this time?

4 MR. KAZAMA: If you recall, the last  
5 session, we broke into regional caucuses and this  
6 issue was discussed and each of the caucuses were  
7 asked the question about whether or not we wanted to  
8 look into this proposal further in terms of negotiated  
9 rulemaking, if we agreed to it in concept and so  
10 forth. Basically, the issue was whether or not this  
11 appeared to be a standing committee concept and  
12 whether or not our region would that support that.  
13 But, again, I want the author of this to speak to  
14 that. But if you recall, that's what happened: We  
15 broke into groups and we kind of left it at that and  
16 the business was not completed. So I want to bring it  
17 to the table and deal with it. So can Dave address  
18 that?

19 MR. JACOBS: Is the pleasure of the  
20 committee that you want to address this now, or do you  
21 want to go into the IHP? Okay. Well, go ahead, Dave,  
22 and we'll give you -- apply the four minutes.

23 MR. HEISTERCAMP: In fairness, Mr.  
24 Chairman, it was a discussion of work group B and then  
25 the tribal caucus, so hopefully this is my

1 presentation time. If we could get 1000.09? Okay.  
2 It's over here. And this language, as Blake said, was  
3 passed out in Seattle and discussed at both regional  
4 caucuses and a tribal caucus, and the request was, at  
5 the tribal caucus, that people have the time to think  
6 about it, look at it, bring it back. So, other than  
7 the notation that Section (e) is an optional section,  
8 detachable at the pleasure of the committee depending  
9 on how everyone feels about that provision, this is  
10 the same proposal you were given in Seattle.  
11 Additionally, I'll mention, during the parking lot  
12 work group, we found in the parking lot an issue that  
13 now affects this proposed regulation, too. And when  
14 it was put in the parking lot, it was not a statutory  
15 issue but, in 2008, with the amendments to the  
16 statutes, became a statutory issue that also fits  
17 under 35, 36, and 37 from the matrix. So when we get  
18 to the end of this proposed language, I have some  
19 additional proposed language at the request of the  
20 work group that met this morning to address the issue  
21 here, and we can look at it. This is an attempt,  
22 after some discussion, to put together some guidelines  
23 largely based on how previous negotiated rulemaking  
24 committees have operated under NAHASDA and to codify  
25 that somewhere. So the procedure continues to work,

1 at least with the best and broadest aspects that have  
2 worked. So it talks to forming committee membership,  
3 how the committee would commence business, how it  
4 would use work groups to prepare some of the work  
5 product, that there would be an effort to make further  
6 review after the regulations that the committee  
7 proposed have been published and have come back from  
8 public comment, similar to what we discussed this  
9 morning. And then, in addition, Section (e)  
10 contemplates whether a committee would stand for a  
11 fixed amount of time to deal with specified issues  
12 that may come up during that time. And, again, that's  
13 a concept that proposers wanted to see discussed.  
14 Additionally -- and I don't know if we have it ready  
15 yet -- we're going to propose, based on the parking  
16 lot committee, there's some language under (f) that  
17 deals with the statutory provision that exists as of  
18 2008, how frequently do the regulations get reviewed  
19 under NAHASDA and the current statute. And the same  
20 section of the regulations that talk about neg reg  
21 under Section 106 now include pretty much exactly this  
22 language: Not less than once every seven years, the  
23 secretary, in consultation with Indian tribes, shall  
24 review the regulations in effect on the date on which  
25 the review is conducted," with the exception of the

1 fact that the statutory language talks about  
2 regulations promulgated under this section in effect  
3 on the day. This is the statutory language and this  
4 was discussed, again, in the parking lot work group  
5 this morning, that it would be nice to address this  
6 out of the parking lot now that it's actually a  
7 statutory amendment. So the proposal would be this  
8 fits onto the end of this proposed 1000.09. I guess  
9 we can open for negotiation discussion at this time.

10 MR. JACOBS: Any comments? Judith.

11 MS. MARASCO: I'm still not convinced  
12 that a standing committee is the right answer, I  
13 guess, and I don't -- you haven't given me any  
14 alternates to choose from. And, again, I could go 1  
15 through (b) and (f), but if the neg reg committee is  
16 seated to address any regulatory -- I mean, any law  
17 changes, I don't understand why you would need a  
18 standing committee between that, because it states  
19 that it has to be formed to address any changes in the  
20 law. Am I correct?

21 MR. HEISTERCAMP: If I can -- if the  
22 committee will allow me to respond, I think the  
23 thought was -- and, actually, it came up several times  
24 at the last Seattle meeting that, because it does take  
25 time to appoint, establish, and implement a committee,

1       that, often, there are long periods in between when  
2       committees are sitting to establish. And so those  
3       would be times you would not have a committee  
4       available to discuss regulations, and I think, in  
5       addition, it was discussed in the work group that a  
6       standing committee would be just like a committee that  
7       gets appointed for a period of time. It would just be  
8       a period of longer time. There would have to be a  
9       charter, there would have to be protocols, there would  
10      have to be a defined set of issues that the committee  
11      would be limited to looking at. So all the pieces  
12      would be the same; the difference would be, perhaps,  
13      the committee would meet only once or twice a year or  
14      as needed depending on what amendments had to be --  
15      had to be -- have implementing regulations. And,  
16      again, the way this is being proposed is (a) through  
17      (d) is one set, (e) is a separate set, and then (f) is  
18      another piece that came up. So if people have  
19      heartburn with this, this is a good time to discuss  
20      it.

21                   MS. MARASCO: Okay. So my concern is  
22      not the speed but the fairness of the process. And I  
23      know that Karin has expressed not only her  
24      frustrations but her amazement in how this process is  
25      balanced out, and we all feel that way, but this is

1        what works for us. And I'm still not comfortable with  
2        the optional section. I wouldn't mind the (f). But  
3        if the committee wants to do this, that's fine. It  
4        doesn't bother me that much, but I'm just raising  
5        concerns because, in the past, I've seen a handful of  
6        people make a big difference that has impacted us  
7        nationwide. And if they don't like what the committee  
8        is doing, even though they're committee members, they  
9        go in and they set legislation and that triggers the  
10       whole scenario. So I just want the process to be fair  
11       for all tribes. So I'm a little concerned about this.

12                    MR. JACOBS: Sandra.

13                    MADAM SECRETARY: I just have a  
14       question. So help me understand the impetus for this.  
15       Is this because we were late? Is this to get at HUD's  
16       timeliness issue or not? Because we can always fix  
17       timeliness without going through all this.

18                    MR. HEISTERCAMP: I think in part that  
19       was the concern that, even with the best intentions,  
20       it's been difficult, especially during an  
21       administrative transition, for HUD to implement this.  
22       And I don't think that's the only motivating factor  
23       for the proposal, but I think it is one of them, yes.

24                    MS. MARASCO: But it's the law now.

25                    MR. JACOBS: Jason.

1 MS. ADAMS: I guess I just want to know  
2 where we're at in the process because I heard him say  
3 that he wants to propose this in three different  
4 steps. So are we asking for consensus on the first  
5 step, which is (a) through (d), if I heard you  
6 correct, and (e) by itself and (f) by itself? Is that  
7 how it's proposed?

8 MR. HEISTERCAMP: If that's the  
9 committee's pleasure to handle it that way, I think  
10 that's up for the committee to decide, but that would  
11 be one way to handle it, Jason.

12 MR. KAZAMA: So, Mr. Chairman, we are  
13 taking (a) through (d) in terms of asking for  
14 consensus first, I guess, and then going to the rest  
15 of the other items; that's my understanding.

16 MADAM SECRETARY: Could I just ask  
17 another question so I can make sure? If I look at  
18 (b), Section (b), commence business. So the -- it's  
19 time to have a committee, you get the membership going  
20 but from that point until the first meeting session  
21 can be no more than 90 days? Is that what (b) really  
22 says?

23 MR. HEISTERCAMP: Yes, I believe that's  
24 what it says, Madam Secretary. If it would help  
25 people to see, these timelines are coming out of

1       Section 106(b)(2) of the statute, trying to match --  
2       as Jason said, there's legal deadlines that are now  
3       included in the statute.

4                   MADAM SECRETARY: The reason why I  
5       raised it is only because the process now is, as I  
6       understand it, we get people who get nominated or  
7       self-nominate; that gets published in the federal  
8       register for about 30 days. And so I'm just thinking  
9       about the time frame of all of it and whether -- if  
10      this is what's already there, but I was wondering if  
11      it was a little tighter than normal.

12                  MR. HEISTERCAMP: I guess I would refer  
13      to Section 106(b)(c)(1) talks about a 90-day period in  
14      the statute. Section 106, there we go, the red line  
15      there titled "Subsequent Negotiated Rulemaking." 106,  
16      sorry, if you could scroll back down a little bit.  
17      There we go.

18                  MS. FOSTER: Dave, the way this reads,  
19      it says -- I just want to make sure I'm understanding  
20      it correctly. Karin Foster, Yakima. "The committee  
21      begins operating and conducting business not later  
22      than 90 days of the date the NAHASDA statute requires  
23      the committees to be formed or initiated." So that  
24      means, then, that there's 90 days to establish the  
25      committee and then 90 more days before the work has to



1       begin; right?

2                   MR. HEISTERCAMP: Yes, I think that's  
3       the intention: to try to match up with this section  
4       of the statute.

5                   MS. FOSTER: Because the section  
6       requires appointment within 90 days or establishment  
7       within 90 days, then there would be 90 more days to  
8       get everything together and set up the meetings?

9                   MR. HEISTERCAMP: Right.

10                  MS. FOSTER: So it's 180 days before  
11       anything really starts?

12                  MR. HEISTERCAMP: There's a business  
13       commence -- there's the initiation of the committee  
14       and then there's the business commencement date.  
15       We're trying to capture both of those.

16                  MS. FOSTER: Thank you.

17                  MR. JACOBS: Carol.

18                  MS. GORE: A different topic, just a  
19       question, Dave. In your proposal, it doesn't seem to  
20       differentiate between formula negotiated rulemaking  
21       and non-formula negotiated rulemaking, and I wonder  
22       what your proposal has done to talk about that.

23                  MR. HEISTERCAMP: I'm not sure I  
24       understand why this broad set of things would be  
25       different for either one of those topics.

1 MS. GORE: I'm asking because that  
2 makes the optional items more important to me and it  
3 will change my position. If the optional items apply  
4 to formula negotiated rulemaking, then I know we're  
5 taking that as a separate vote. But the first part  
6 doesn't speak to that and nor does the second part  
7 speak to that. Was there intent to not to speak to it  
8 and for it to be all-inclusive generally, or is there  
9 some thought that it would apply to one negotiated  
10 rulemaking and not the other? This seems to say that,  
11 if there's a standing committee, it's everything,  
12 formula and non-formula.

13 MR. HEISTERCAMP: First of all, it was  
14 the intent not to try and distinguish between the  
15 types of negotiated rulemaking because the statute  
16 doesn't distinguish. It puts the same requirements on  
17 all negotiated rulemaking under the statute. And,  
18 again, the only other way to address it would be every  
19 negotiated rulemaking committee has to have a charter  
20 and protocols that limit its scope of review and what  
21 items it would speak to. And so I would assume, as in  
22 previous committees, including this one, those items  
23 would be more appropriately addressed in the charter  
24 and protocol with the committee, whichever format you  
25 see, and that's where it would be addressed; that it

1 was not the regulations. It's going to be very  
2 difficult, I think, to propose any regulations that  
3 would somehow split those two topic areas.

4 MR. JACOBS: Judith.

5 MS. MARASCO: You seem to have --  
6 you've clearly identified and outlined the 90 days  
7 that the committee will begin to operate and conduct  
8 business. But, in the membership, you have not  
9 outlined that 90 days, because I read it like Karin  
10 reads it; they have 180 days.

11 MR. HEISTERCAMP: Would you like to  
12 propose some language that fits in maybe under  
13 subsection (a) --

14 MS. MARASCO: Go for it.

15 MR. HEISTERCAMP: -- to make it  
16 consistent?

17 MS. FOSTER: Karin Foster, Yakima  
18 Nation Housing Authority. I think this works because  
19 it also works not only on the reauthorization, but  
20 NAHASDA in that time frame, that 90 days within which  
21 to constitute a committee, it works on the part (d)  
22 review, not less frequently than once every seven  
23 years, you got 90 days from that date to begin work.  
24 I don't have a problem with that being general. 180  
25 days seems like ample time for HUD to be able to get

1 the committee going.

2 MR. JACOBS: Blake.

3 MR. KAZAMA: I guess I would really  
4 like to know how the different regional caucuses --  
5 how -- what the discussion was within those caucuses.  
6 I can tell you when we in Alaska met and was presented  
7 this, we liked the way things were. We were not in  
8 support of this proposal. We said let's keep things  
9 as the way it is currently being run in terms of the  
10 current regulations that deal with negotiated  
11 rulemaking. We were -- and I think it was unanimous  
12 across the board, people felt strongly about that. So  
13 I want to know what other regions thought or  
14 discussed. I mean, we had 20 minutes to discuss it  
15 and what was the outcome of some of the regional  
16 caucuses?

17 MR. JACOBS: Okay. Any other --  
18 Judith.

19 MS. MARASCO: I think that Nevada/Cal  
20 discussed this same issue and, if any memory serves me  
21 correct, and I wouldn't bet any money on it, but (a)  
22 through (d) was acceptable to us, and then I don't  
23 have any issue with (f); that just speaks to the  
24 language in the act. I think we were happy with the  
25 way things were working, also. And if Sandra needs

1       that 90 days written into that first -- into (a), I  
2       wouldn't be opposed to that. I don't think that it's  
3       clear that HUD actually has 180 days the way this is  
4       worded.

5                   MR. JACOBS: I guess I have a question  
6       to HUD. Is this obligating funds that the secretary  
7       doesn't have control of and so forth?

8                   MADAM SECRETARY: So you must be  
9       clairvoyant, Leon, because I was going to raise an  
10      issue about the 90-day time frame, what about costs  
11      not aligning. So, as you know, we've got a budget,  
12      we've planned for this in this budget. If we go  
13      longer, we'll have to wait longer until we get into  
14      another funding year. So, I mean, I just worry about  
15      when it lines up and when it doesn't line up and what  
16      the penalties are. I think whether the 90 days is in  
17      here in terms of committee membership, it just says to  
18      me that before the -- sometime before the  
19      authorization ends, which now is -- what, 2013,  
20      something like that -- that HUD has got to start a  
21      process to select committee member so it can --  
22      however long out that's got to be so it can do the  
23      selection, post to the federal register, get comments,  
24      confirm so that it can convene within 90 days of that  
25      2013 end date. Again, I don't know when the money

1 will be there or not be there, so that is a concern.  
2 There's no such thing as administrative reserves at  
3 HUD. Talk to treasury.

4 MR. JACOBS: Blake, in response to your  
5 question about some other regions, I've heard from  
6 some other regions that they are not in favor, but --  
7 and that's why I raised the question to HUD. You  
8 know, if this is something that's obligated on the  
9 secretary and something that we can't control and so  
10 forth or he can or she can and so forth, this could be  
11 somewhat of a problem. Let's take any other comments.  
12 Jason.

13 MS. ADAMS: I guess I'm just -- Jason  
14 Adams. I'm just wondering where we're at in the  
15 process because I don't remember a call for a  
16 consensus for us to start negotiating on anything. It  
17 was still presentation and three items. I'm just  
18 trying to catch up where we're at in the process.

19 MR. JACOBS: I heard that there was --  
20 I understand and I heard that there was some  
21 objections on the consensus. So do we want to call  
22 for a consensus again on the three items or --

23 MR. KAZAMA: No. Mr. Chairman, maybe I  
24 can please the group. I just wanted to clarify in  
25 terms of discussion items, not consensus. Although I

1 did -- I was responding to Jason's earlier question  
2 regarding the three subject areas. (a) through (d),  
3 we would ask consensus for, and then the optional  
4 items after that. But, for now, our discussion should  
5 pertain to (a) through (d) and discuss that item and  
6 negotiate on (a) through (d) and then ask for  
7 consensus once we've done that. And it's part of my  
8 question regarding regional caucuses pertaining to  
9 discussion of this in helping vote on that matter.

10 MR. JACOBS: Jason.

11 MS. ADAMS: Then I do have a comment,  
12 then -- Jason Adams -- on 1000.09 because, as I  
13 understand this, this is putting in regulation the  
14 negotiated rulemaking process. And so if the order of  
15 business is (a) through (d), I don't have any problems  
16 with it, and I don't know if our region even met to  
17 discuss this. But I don't have any problems with (a)  
18 through (d) because it does put in regulation what  
19 isn't in regulation now.

20 MR. JACOBS: Blake.

21 MR. KAZAMA: I also -- because of my  
22 earlier conversation, I guess, I don't have a problem  
23 with (a) through (d), as well, mainly because it is,  
24 as Jason says, it clarifies more of the law, the  
25 statute regulation. So that was the intent, I think,

1 of bringing this forward. And, actually, putting  
2 better parameters, and that would be helpful to us.

3 MR. JACOBS: Karin.

4 MS. FOSTER: Karin Foster, Yakima.

5 Dave, I just have a question about the 90-day period  
6 in subparagraph (d), rules -- "once rules are proposed  
7 by the secretary, they shall be published for comment  
8 not later than 90 days." Does that mean after HUD has  
9 gone through its departmental concurrence and OMB and  
10 all of that, then the secretary -- so that encompasses  
11 that whole process having already been completed and  
12 then there's a proposed rule that then is published  
13 within the 90 days? Is that the idea?

14 MR. HEISTERCAMP: Yes.

15 MS. FOSTER: Okay.

16 MADAM SECRETARY: It is an impossible  
17 standard to apply. You're asking me to impose  
18 something on OMB that the secretary can't get OMB to  
19 comply with. In due course, (inaudible) figure it  
20 out, they will. If they can't, they'll do their best  
21 and it might be longer.

22 MR. HEISTERCAMP: Would you propose an  
23 alternate timeline, then?

24 MADAM SECRETARY: No, I would not.

25 MR. HEISTERCAMP: You would propose



1 removing the time limit, then?

2 MADAM SECRETARY: I would propose not  
3 changing the system that we have.

4 MR. HEISTERCAMP: The system you have  
5 now, with all due respect, provides for some further  
6 review. We were discussing it. So if the objection  
7 is to the timeline on when that review occurs, would  
8 it be objectionable to simply strike the second  
9 sentence in (d) and leave the rest in?

10 MADAM SECRETARY: You're striking the  
11 last sentence, "any comment will be further reviewed  
12 by the committee"?

13 MR. HEISTERCAMP: No, the second  
14 sentence. So "once rules are proposed by the  
15 secretary, they should be published for comment in the  
16 federal register not later than 90 days." Or we could  
17 just alternatively say, once rules are proposed by the  
18 secretary, they shall be published in the federal  
19 register, period, and then leave the rest as is.

20 MADAM SECRETARY: That's how that  
21 operates now, anyway, so as long as it's affirming --

22 MR. HEISTERCAMP: Can we ask to strike  
23 the "not later than 90 days" language?

24 MR. JACOBS: Okay. Blake, we've had  
25 the discussions that you called for. Do you want to

1 move to consensus on this?

2 MR. KAZAMA: Yes, I would like to move  
3 to consensus regarding (a) through (d) as on the  
4 board.

5 MR. JACOBS: Okay. Let's make it clear  
6 that we're talking about (a), (b), and (c).

7 MR. KAZAMA: And (d).

8 MR. JACOBS: And (d), also. Consensus?  
9 Objections? Okay. We've had the discussion and we've  
10 gotten a vote, so we're going to move on. Any other  
11 items on the parking lot items? Jason.

12 MR. ADAMS: Mr. Chairman, Jason Adams.  
13 Just a point of clarification. I think if there's an  
14 objection, there's -- according to our protocols,  
15 there's supposed to be justification for the objection  
16 if there's any opportunity to come to terms with the  
17 objection so we can move the issue forward.

18 MR. JACOBS: I think that Sandra made  
19 her point earlier that she would prefer the process  
20 that is now in operation.

21 MS. ADAMS: If, again, recalling what  
22 happened, I thought that's why we dropped no later  
23 than 90 days.

24 MADAM SECRETARY: But I also have an  
25 objection to (b).

1 MS. ADAMS: To?

2 MADAM SECRETARY: To (b).

3 MS. MARASCO: That's what the statute  
4 says.

5 MADAM SECRETARY: I understand, but the  
6 issue then ties to whether or not the funding is  
7 available. I know what the statute says, but there  
8 are times where we're not going to be able to meet  
9 that deadline; funding issues, transition between  
10 administrations, et cetera. So I don't want to make a  
11 promise I can't keep.

12 MR. JACOBS: Okay.

13 MS. MARASCO: I have to say something.  
14 We're required to meet what the statute says. I don't  
15 know how you're getting off with that statement.

16 MADAM SECRETARY: I do understand, and  
17 I understand we were late for this negotiated  
18 rulemaking, and I understand what happened, and we've  
19 apologized a thousand times over. I know that doesn't  
20 absolve us and you'll keep raising the issue. I do  
21 understand that, although I wish you wouldn't because  
22 I would like to move beyond it. But anyway.

23 MS. MARASCO: Well, when you come  
24 monitor me and I haven't followed the law, do I get a  
25 break?

1 MADAM SECRETARY: You get to appeal,  
2 yes.

3 MR. JACOBS: Marvin.

4 MR. JONES: Would it help if we loaned  
5 you money if you're short?

6 MADAM SECRETARY: Yes, because now you  
7 have five years to invest, I have to say, and we don't  
8 use the NAHASDA money for these. It comes out of our  
9 personnel travel money. And let me just give you a  
10 point in fact. We're finishing up this negotiated  
11 rulemaking section and we still have some business  
12 that we will have to transact with public comments and  
13 so on, but there's a real possibility, given that this  
14 is a mid-term election in November, that we will be  
15 facing a continuing resolution that may, like in the  
16 years past, take us well beyond October 1st for the  
17 federal fiscal year start. And two years ago, it took  
18 us until May, early in March to get the budget  
19 approved by Congress and money start flowing from that  
20 budget. When that happens, you're not allowed to  
21 spend more than one -- we're not allowed to spend any  
22 more in a given month than we spent in that month a  
23 year ago. So if we're in a continuing resolution in  
24 October of 2010, I'm going to be only allowed to spend  
25 what I spent in October of '09 and so on. And so,

MR. ADAMS: I guess I'm still hung up on the item of, if we can't consensus, then is there language that you would alternatively propose? And then, if not, then, you know, are we going to just move past this? Because the protocols state propose an alternative to the proposal. Maybe, is it specifically the 90 days issue because that, again, is statute. And if you're not following the statute, then it really doesn't matter if you're not following the regulation.

24 MADAM SECRETARY: I would like to  
25 follow up. The two attorneys are consulting right

1 now, so give us a moment.

2 MR. JACOBS: Okay. To the committee  
3 members, we've had a vote on this and there was  
4 objections and so forth, so we're moving on to the  
5 next item. I'm sorry. The next item we need to  
6 address, I think there's a lot of concern about the  
7 Indian housing plan and --

8 MR. HEISTERCAMP: Just a minute and we  
9 may have some alternative language.

10 MR. JACOBS: Let me ask the committee.  
11 Since we're -- I'm a little concerned about this  
12 because this was not an item on the agenda and so  
13 forth. It was now brought up under the parking lot  
14 issues and so forth. We've spent a lot of time on it,  
15 almost an hour on this issue. Do we want to spend  
16 more time, or do we want to go into the more important  
17 issues because I understand that the IHP is very -- a  
18 priority to everybody here on the committee and we've  
19 lost that time. So what is the pleasure of the  
20 committee? Do you want to move on to the IHP, or did  
21 you want to further discuss this even though we've had  
22 a vote on it already? Karin.

23 MS. FOSTER: Well, we had a vote on it  
24 already, but the objection didn't offer an  
25 alternative, and I think now the objection is offering

1 an alternative. So that's -- as Jason said, I think  
2 that's consistent with our protocol, to allow that to  
3 be done and to require that. So I think that -- I  
4 would like, personally like, to devote a few more  
5 minutes to this and see if that alternative is  
6 something that the committee can feel, you know,  
7 comfortable with on consensus.

8 MR. JACOBS: Any other comments?

9 MR. KAZAMA: Mr. Chair, my time says  
10 about eight to five, so, you know, can we conclude  
11 this discussion by five o'clock so we can -- and maybe  
12 tomorrow pick up the rest of this stuff?

13 MR. JACOBS: Is this consensus of the  
14 committee? We move it on -- all right. Jason, you're  
15 on.

16 MS. ADAMS: I can tell some pretty good  
17 stories. What do you want to know?

18 MADAM SECRETARY: Maybe I can bail you  
19 out a little bit. How is that?

20 MR. ADAMS: Thank you, Sandra.

21 MADAM SECRETARY: You're welcome.  
22 They're working to put language up, but let me just  
23 walk through. We would propose that the language as  
24 written here in (a) under committee membership remain  
25 the same. I'm going to skip (b) for a second. We

1 would propose that the work group language under  
2 Section (c) remain the same. We would also propose  
3 that under Section (d), further review, that, with the  
4 amended language deleting "not later than 90 days,"  
5 that then stays the same. And let me go back to (b),  
6 commence business, and we would propose the language  
7 that is already in the Rule 106(c): to initiate  
8 negotiated rulemaking in accordance with the section,  
9 not later than 90 days. Now -- and for us, the  
10 difference is the following: The language that's  
11 presented here under (b) says we actually have to have  
12 a meeting, a convening, to conduct business within  
13 that 90 -- not later than 90 days. The language of  
14 initiate for us gives us a little bit of latitude,  
15 because initiate for us really means the start of  
16 putting together and nominating the committee, and it  
17 gives us a little bit more wiggle room, which would  
18 then try and help us pick up the vagaries of funding  
19 cycles and et cetera. And so we would propose that  
20 change in the language in Section (c) -- I'm sorry,  
21 Section (b).

22 MR. JACOBS: Okay. Any questions of  
23 Sandra's proposal?

24 MADAM SECRETARY: We're going to add  
25 one other thing. The staff is suggesting that we



1       broaden it, not just tied to a reauthorization, which  
2       would come up every five years or thereabouts, but  
3       when there are significant amendments that need to be  
4       re-incorporated into such is the work we're doing  
5       here. So we want to broaden this a little bit more in  
6       terms of what it includes and when a committee should  
7       be convened. I thank the committee for its  
8       indulgence.

9                   MR. KAZAMA: Mr. Chairman, I guess I'm  
10       not sure, based on the protocol, if I would be asking,  
11       then, for consensus on the amended changes as noted on  
12       the board, asking for a consensus on those changes  
13       once the changes are made.

14                  MR. JACOBS: Blake, would you want to  
15       table this to give them more time and bring it back  
16       tomorrow morning?

17                  MR. KAZAMA: I think we're there in  
18       terms of the changes. I just heard Sandra say they  
19       wanted to broaden the reauthorization to include  
20       amendments, as well, and that language has not been  
21       added up there yet.

22                  MADAM SECRETARY: They're going to go  
23       add that. The conversation just now was what's the  
24       change. Is it a word, a comment, a comma, or is it a  
25       more significant change? And we want to make sure

1 we've cleaned it up, so we're not (inaudible) someone  
2 has changed something grammatically.

3 MR. KAZAMA: Mr. Chair, I would ask for  
4 a consensus on the amended change in (a) through (d)  
5 that is on the board.

6 MR. JACOBS: Do we have consensus?  
7 Okay. Blake, we're going to move on to the next  
8 group, okay? Do you have anything else from the  
9 parking lot? I hope that it's on the agenda. If not,  
10 we'll move on.

11 MR. KAZAMA: I want to kind of just  
12 survey the wishes of the group. If you scroll further  
13 up, you see optional sections -- additional sections  
14 in there, (e). And do we want to discuss those items  
15 now versus tomorrow? What is the wishes of this  
16 group?

17 MS. ADAMS: Mr. Chairman, I would  
18 suggest we vote on (e) because that was the next step  
19 in this process.

20 MR. JACOBS: Any discussion? If not,  
21 you have consensus on the other items?

22 MADAM SECRETARY: Can I just ask a  
23 question?

24 MR. JACOBS: Sandra.

25 MADAM SECRETARY: I guess my question

1 -- I'm just trying to get an understanding. So the  
2 way I understand this to read, we can either -- the  
3 secretary can either decide to do what's been known in  
4 the past, fixed-term committee such as this one, whose  
5 work will end, and then a new committee gets selected  
6 and convened the next time we have to do this, or he  
7 can decide to do a single-standing committee? I mean,  
8 is that solely within his discretion? Is that the  
9 intent of this?

10 UNIDENTIFIED SPEAKER: Yes.

11 MR. JACOBS: Carol.

12 MS. GORE: On the optional items, I am  
13 concerned that a negotiated rulemaking committee could  
14 meet twice a year and change rules. They could change  
15 funding streams every six months. I just don't think  
16 that's a smart business plan. My counterproposal is  
17 to eliminate this proposed section. I'm not in favor  
18 of it. Thank you.

19 MR. JACOBS: Any other comments? Do  
20 you all have the same concern at this time that Carol  
21 brought up? What is the pleasure of the committee?

22 (Whereupon, a discussion was had out of  
23 the hearing of the reporter.)

24 MR. JACOBS: Sorry. What's the  
25 pleasure of the committee? You all want to take a

1 vote now on the consensus? Yes, Sandra.

2 MADAM SECRETARY: This is not exactly  
3 what's in the -- so I'm just asking -- where it's --  
4 after regulations, the word promulgated pursuant to  
5 this section in effect -- three words are dropped out:  
6 Promulgated pursuant to this section; that's four  
7 words.

8 UNIDENTIFIED SPEAKER: Do you want to  
9 take it back to the act --

10 MADAM SECRETARY: I don't know if they  
11 were dropped out intentionally for some reason or not.

12 MR. JACOBS: Carol.

13 MS. GORE: My only question is I think  
14 we've worked very hard as a committee not to restate a  
15 statute that seems perfectly clear in the regulation.  
16 So I guess my question is: What's the purpose of  
17 restating the statute in a regulation if we're just  
18 simply using the same words and repeating it? Maybe  
19 that's a question for a work group and someone that  
20 was in that work group. I mean, if we don't need it,  
21 why take action? We're just creating more language.  
22 I'm just asking. I'm not against it in its intent,  
23 but why bother?

24 MR. KAZAMA: Mr. Chair, I guess, in  
25 light of that, I would ask for a consensus to remove

1       that and call it a day. No, scratch that call it a  
2       day. But in light of the fact that it is part of the  
3       law, that would be redundant.

4                   MR. JACOBS: We've had consensus up to  
5       this item now already. So anybody in consensus for  
6       adjournment? See you all in the morning.

7                   (The Negotiated Rulemaking Session  
8       concluded at 5:04 p.m.)

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10       \*\*\*REPORTER'S NOTE: The original transcript is being  
11       delivered to Kiana Faucette.

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REPORTER'S CERTIFICATE

I, Jenelle K. Lundgren, Professional  
Reporter and Notary Public, hereby certify that the  
foregoing is a true and accurate transcript of the  
meeting of said parties on the date and place  
hereinbefore set forth;

I FURTHER CERTIFY that I am neither  
attorney nor counsel for, nor related to or employed  
by, any of the parties to the action in which this  
meeting was taken, and further that I am not a  
relative or employee of any committee member in this  
action, nor am I financially interested in this case;

WITNESS MY HAND AND SEAL this 27th day  
of August 2010.

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Jenelle K. Lundgren, Court Reporter  
My Commission Expires January 31, 2013

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