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FORMULA NEGOTIATED RULEMAKING COMMITTEE
MEETING MINUTES
June 17 - 19, 2003
Seattle, Washington

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

The third meeting of the Formula Negotiated Rulemaking Committee was held on June 17 - 19, 2003, at the Edgewater Hotel in Seattle, Washington.

Committee Members in Attendance

Governor Bill Anoatubby (Wayne Scribner, alt.)
Mr. Robert Carlile
Mr. Larry Coyle
Vice Chief Beasley Denson
Mr. Wayne Ducheneaux
Mr. Robert Gauthier (Jason Adams, alt.)
Ms. Carol Gore
Mr. Ray Gorynski
Mr. Ron Hoffman (Mark Charlie, alt.)
Mr. Terry Hudson
Mr. Marvin Jones
Dr. Blake Kazama
Mr. Bruce LaPointe
Mr. Michael Liu (Michael Gerber, alt.)
Ms. Judith Marasco
Mr. Johnny Naize
Mr. Michael Reed
Mr. Jack Sawyers
Mr. Marty Shuravloff
Mr. Russell Sossamon
Ms. Darlene Tooley
Chairman Eddie Tullis
Chairman Brian Wallace (Phil Bush, alt.)

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

Over the course of the three-day meeting, approximately 75 observers attended the public sessions. An attendee list is included (Attachment 1).

TUESDAY MORNING, JUNE 17, 2003
FULL COMMITTEE

Mr. Sossamon called the meeting to order at 9:20 am. Mr. Jason Adams alternate for Mr. Gauthier) gave the invocation. Attendance was taken by roll call (Attachment 2) by Mr. Sossamon and he reported there was a quorum. Mr. Sossomon then referred to the proposed agenda (Attachment 3), and directed the group to the first order of business, approval of the minutes from the last meeting.

Mr. Sossomon commented that the minutes were detailed as requested. The Chair then entertained a motion to approve minutes. Prior to opening the floor to comments, Mr. Sossamon commented that the minutes from the first meeting have not yet been revised due to a short turnaround time between meetings, but that the minutes from the April meeting should be revised and available for review at the July meeting. Mr. Sossamon asked for comments on the May meeting minutes.

There were no comments. Mr. Hoffman motioned for consensus to approve the May meeting minutes. Mr. Sossamon asked for objections. Hearing none, Mr. Sossamon declared that the May meeting minutes had been approved by consensus.

Mr. Sossamon then moved to the next agenda item and opened the floor for public comment.

A/S Liu commented that the HUD team had brought a staff member (Chris Kubacki) to deliver a presentation on the Harvard Cost Study, including a history of the AELs, background on the study, etc., and that the presentation would be given at the appropriate time. Mr. Hoffman asked if there was a final report and A/S Liu confirmed that the report was available in final form.

Mr. Sossamon asked for other comments. Mr. Sossamon commented that there had been an informal discussion the previous evening regarding the aforementioned subsequent or follow-up Neg-Reg meetings that are meant to deal with other issues besides Formula. The question that was raised is whether that committee will be formed and meet within this year or one year within date of announcement. A/S Liu responded that it would be anticipated that the actual meetings would begin within a year of the announcement. However, he added that the Department would be working hard to get the process going before the end of this calendar year to move forward. For clarification, he reiterated that the committee would convene within a year of announcement and that the announcement will be before the end of this calendar year.

Ms. Gore thanked HUD for providing copies of the Harvard study, but she requested that Appendix A be distributed to the full committee, as it specifically addresses Alaska issues. HUD staff agreed to have Appendix A copied and distributed to the group as soon as possible.

Dr. Kazama made a request for a regional caucus of the Alaska delegation before breaking into workgroups.

Mr. Sossamon asked if there was any further public comment. Hearing none, he turned the floor over to the HUD delegation for the presentation.

Chris Kubacki began his presentation by introducing himself. He is with the financial management division of HUD's PIH. He went on to say that his office has three main functions:

- Develop and implement policies and procedures to assure that PHAs follow sound financial management practices,
- Develop policies and procedures for the Operating Fund, and
- Formulate the funding requests that end up in the budget appropriations.

He began with a brief presentation that included an overview of operating subsidies, including a detailed explanation on allowable expense levels (AEL), and information on the Harvard Cost Study, including findings, and what the results of the study mean to public housing authorities. (A copy of the PPT is included in Attachment 4.)

Mr. Kubacki explained that the Operating Subsidies Fund provides funding to support a reasonable level of maintenance, utilities, protective and other services. The public housing Operating Subsidy Fund is approximately 3.5 billion provided annually to roughly 3,000 public housing authorities. The operating subsidies formula is as follows:

Operating Subsidy = [AEL + Utilities – tenant rental income]

He pointed out that operating subsidy does not take into account such things as unemployment. Furthermore, the use of AEL in this formula is different from its use in the IIHBG formula. However, in both cases, it is used to try to approximate the cost of running a public housing unit. The bottom line for the public housing formula is: how much should the HA receive. Mr. Kubacki explained that the AEL is based on a 1975 HUD-approved operating expense level, and was developed by looking at line item costs. He stated that there was a lot of subjectivity in the development of the AELs. For example, there was field office bias due to subjectivity of the people developing numbers, and there was also regional political bias. This means that that even from the very outset, the AEL numbers were different for different areas of the country. Over the past 30 years, the only thing that has changed is inflation, calculated annually, plus various one-time roll-ins (e.g., liability insurance). Lastly, AEL is calculated at the PHA level, not project level. He added that the AEL is not really tied to the real costs of operations and maintenance at this point in time.

Regarding the Harvard Cost Study, Mr. Kubacki reported that the study was initiated as a result of the Quality Housing and Work Responsibility Act of 1998 (QHWRA), which required HUD to develop a new Operating Subsidy and Capital Fund Formula under negotiated rulemaking (Sec. 519). The Negotiated Rulemaking commenced on March 16, 1999 and early on, the Committee and Congress realized that they were lacking data on what it costs to run public housing. HUD was then instructed to contract with the Harvard Graduate School of Design to complete a study to determine the cost of operating a well-run PHA. The study began in May 2000 and the final report was published in June 2003. Mr. Kubacki confirmed that the Study was limited to public housing authorities and did not include Indian Housing Authorities.

James Sceeles asked whether the Study would address Alaska issues. Mr. Kubacki confirmed that the Study did address Alaska. Mr. Sceeles brought up the disclaimer regarding Alaska, and Mr. Kubacki clarified that the Harvard team did go back and completed further research in Alaska. He added that he had spoken with Greg Byrne, the Harvard Cost Study Project Director, on the Alaska issue specifically, and would address the issue after he completed the presentation.

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Mr. Kubacki stated that the approach was to benchmark public housing operating costs to real market experience of comparable projects (other Federally assisted housing programs), based on recent market conditions. In addition, the Study wanted to move to 'property based,' not Housing Authority based, costs, recognizing that was the only way true costs could be identified. The goal was to then build a platform for better policy. The researchers couldn't use PHA data because of the circular logic issue and so the researchers used Federal Housing Administration (FHA) data. He noted that the researchers determined that there were a similar number of units, similar residents, similar neighborhoods, and that the FHA has audited financial data. Mr. Kubacki explained that since this was a statistical analysis, the researchers then threw some data out, such as: the bottom 5%, data for last 2 years (lacking), data with large swings. In addition, data where the AEL was less than $184 or more than $650 was thrown out. Then, 25% of the data pulled out. Mr. Kubacki reiterated that these data were pulled in order to comply with statistical analysis methodologies.

Mr. Kubacki mentioned some of the issues raised during discussion with industry and the Department. For example, there were concerns about using FHA data to approximate PHA due to the differences in the programs:

- PHAs are more heavily regulated and so costs should be higher. However, Harvard concluded that even though regulations are a burden, there is no difference on the cost side and therefore, regulations are not a cost driver
- Salaries and wages are different. In 50% of the cases, PHA and FHA were comparable, in others; issues such as benefits (e.g., health insurance) were different. Harvard concluded that these type of issues are local decisions, not something that the feds should support
- Organization and work rules varied, with those for PHA being more complicated, more process driven, not outcome driven, with compliance, not real estate, often the focus. Harvard noted that this created inefficiency, but then posed the question of who should pay for that inefficiency. The Study notes that in FHA programs, non-profits are encouraged to provide community services, and to do so with fundraising, other grants, etc.
- PHAs had more information technology (IT), but Harvard concluded that this is to support the inefficiency.
- Population housed was compared and it was found that income levels were substantially the same, eligibility rules were the same, and security and legal costs were the same.
- Local mandates were compared and Harvard concluded that there weren't any substantial differences. In cases where they determined that, for example, fringe benefits were difference based on local or state government mandates; again the question was asked whether the federal government should be applying for those costs.

Mr. Kubacki pointed out that as a result of the analysis, the Harvard researchers developed a list of cost drivers:

Size	Age of property	Unit size	Building type
Occupancy	Location	Neighborhood Poverty Rate	Percent Assisted
Ownership type	Geographic Area		

Mr. Kubacki stated that of the cost drivers, the three main ones were geographic area, unit size and bedrooms, and ownership type. He added that FHA has limited dividend, non-profit, and profit type programs and that within those, non-profit data showed 10% increase (using the new data set), which is likely due to the fact that non-profits probably provide a wider range of services. The geographic area is the biggest cost driver, with a range in cost from +30 to -30%. The result was determined that if you are in the city use a higher adjustment; in suburbs, use a lower adjustment; and in a rural area, use a 'rural coefficient.'

Mr. LaPointe commented that the costs typically reflect the Lower Michigan information, never Upper Michigan, and there is a big difference.

Mr. Kubacki directed the group to pages 18 – 19 (in the Harvard Cost Study) to see a step-by-step application of the model.

> The cost to operate a property with the exact set of baseline characteristics described above is $178 PUM, i.e., a property in Cleveland, OH, with the indicated reference categories. The natural log of this baseline property, also known as the model intercept, is 5.18, which, as shown, will be used below to calculate model estimates for all other properties.
>
> With the above as background, there are four steps to generating a model estimate for any individual public housing property.[13]
>
> - One, add the sum of the nine coefficients described in Chapter 1 (all except ownership type) to the model intercept of 5.18.
> - Two, take the exponent of that sum.
> - Three, multiply the result by 110% to reflect the non-profit adjustment.
> - Four, apply the floor and ceiling rules. The floor is $200 for a senior property and $215 for a family property. The ceiling is $420 ($480 for New York City). Estimates greater than $325 are reduced by 4%, with the exception of New York

To review, they started with a number of $178; then adjusted for the nine coefficients (location (6%), size of unit (-1%), etc.) and the result for the specific property, with adjustments, was $300.

Mr. Kubacki reported that the researchers then ran a field verification by first comparing the 25% that was thrown out, and they found that the numbers were comparable. Also, the researchers compared actual data with model data, noting that the model was higher than actual project costs. Lastly, the researchers used project management experts for 50 projects in 8 regions that determined that the actual predicted costs were reasonably close

to what the model was producing. Another sample was done with scattered sites, old properties, etc. and the model was still valid.

Mr. Kubacki commented that as a result of the Study, a minimum of $200 and maximum of $420 (except NY gets $480) was set. He noted that almost 25% of PHAs say they are under funded and, the Harvard model overall agreed that more funding was needed. He then provided the caveats identified, which were that utility expenditures were not adequately addressed, that the model was not as accurate with small data size, and that there was no adjustment for modernization because there was no database for that information. He also identified the benefits of the Study: that it was independent and unbiased, it provided updated and uniform data across the country with little to no subjectivity, it provided direction on how to address utility costs in future, it identified policy issues the Department should be looking at, and it implement project-based accounting and management.

Mr. Kubacki concluded his presentation by stating that inefficiencies are not the fault of the PHA. However, public housing programs should be about real estate and providing housing, first and foremost. He then concluded by posing three questions: how to best implement programs, what are the basics of project-based accounting? And, what are the specifics of property-based management?

As promised, Mr. Kubacki returned to the Alaska issue. He reported that Greg Byrne had stated that the researchers did conclude that there wasn't enough data to feel really confident in Alaska, so they went back to the Alaska Housing Finance Corp, which provided additional data. They determined a range of $187-$253 PUM.[1] Mr. Kubacki clarified that these figures were Anchorage and Fairbanks and that the Study revealed that rural areas usually cost less, unless you are in remote area, in which case it will cost more to get materials out. However, the Study felt that would be operations and maintenance, not capital. Nonetheless, for Alaska, the AEL should be $333. Mr. Kubacki reiterated that this is what Harvard is saying, not necessarily what the policy is or should be.

Mr. Kubacki then took questions:

Tim Humphrey asked whether mutual help (MH) was included. Mr. Kubacki answered that MH is less than 2 million units and so the specifics for such projects were not evaluated, but would be funded.

Ed Philips pointed out that if you look at AEL and who uses it, it's primarily in Alaska where you can't use fair market rent. He expressed concern about using a study that has no clue about operating in Alaska and that you can't extrapolate Alaska from the rest of the country. He also stated that HAs are provide services; we're not lenders and so can't be compared to private sector. Based on the services provided, we have higher costs.

[1] PUM refers to per unit per month

Mr. Kubacki responded that Harvard agreed there wasn't enough information in Alaska. That's why they went back. He did agree that there are concerns.

James Sceeles asked when will Appendix E would be available. Mr. Kubacki answered that it was available. There was some discussion regarding whether or not Appendix E was available. It was pointed out that it was not downloadable from the website. It was agreed that HUD staff would follow up on this.

Jon Tillinghast questioned the comment that operational costs in rural Alaska were less than Anchorage and asked if the Harvard Study said that or did PIH. Mr. Kubacki responded that Harvard doesn't implicitly say that. He pointed out that the researchers talked to similar like programs, e.g., Department of Agriculture Farmers Home program, which is similar to PHA, except that most of the programs are in rural America. It was the Agriculture Department that determined that programs in rural areas cost less than in a city. However, he added that it brings up the question of what does rural mean? For example, is Upper Peninsula Michigan rural?

Jon Tillinghast asked if the Harvard Study said that rural Alaska costs less than urban Alaska. Mr. Kubacki responded that it hadn't stated that. Mr. Tillinghast commented that then we ought not put the Harvard imprimatur on something that is not real.

Mr. Ducheneaux questioned whether the reference is the cost of living there or costs for maintaining homes. Mr. Kubacki responded that the reference was to maintenance and operation. At which point Mr. Ducheneaux commented that in rural areas there was a lot of time needed for maintenance just driving from site to site and to procure supplies, amounting to hours of driving time.

Mr. Kubacki stated that one of the things to look at is what is the cost of operation, e.g., administrative costs and insurance costs, and that certain goods and services are provided. Maintenance may be high due logistical issues, but should other costs be higher. He suggested that not everything is tied to logistics.

Jim Wagenlander commented that there are no FHA projects on the majority of reservations and so didn't understand how the issue of scattered site development could be addressed. He reiterated that Mr. Kubacki had mentioned that there was no variable for scattered sites. Mr. Wagenlander continued that might make sense for FHA but some IHAs operate over 1,200 scattered sites. How do we overcome that? Mr. Kubacki referenced page 6 of the Study and the factor for scattered sites, which said that from a building type perspective, scattered site doesn't figure in. Mr. Wagenlander added that the study is looking at multi-project sites, not single-family detached units. Mr. Kubacki mentioned that Appendix A contains a lot of information on the characteristics of the data. Mr. Wagenlander commented that on the surface it doesn't make sense that operating 1,200 scattered sites should cost less than operating three units.

Mr. Kubacki clarified that the Harvard Cost Study was looking at modeling Phase. For IHAs it may be that location is the biggest factor and so you might not want to use Harvard, but there's probably a methodology to get you there.

Mr. LaPointe asked who was included in the study, for example, were there any certified property managers. He commented that he was concerned that Congress will be looking at the Study and accepting it outright. That would make what we're doing here a waste of time. Regarding the question about who was included in the study, Mr. Kubacki stated that Harvard subcontracted to other groups, although he is not certain who or how much they contributed.

Mr. Hudson commented that the calculations ended up with $1 PUM to inspect a unit, and that wouldn't cover the costs of planning, traveling, inspecting, counseling, and dealing with results. He stresses that there must be more than $12 (per year). Housing is extremely complex work. He added that in his opinion the study didn't address these complex issues.

Jeff Doherty commented on the reality of his having to pay $.46 /kWh, and pointed out that this is an operational cost. This is a real difference. Mr. Kubacki responded that the Study doesn't take into consideration utilities because they didn't know what the costs were. He suggested that HUD should look at utilities to determine how to evaluate the effect. Moreover, although you can't change the rate charged, you can reduce consumption by implementing incentives for reducing consumption. He asked the question, should the Federal government be paying for over consumption and referenced Chapter 6 of the Report.

Mr. Gerber commented that A/S Liu was called out temporarily, but would like to be part of the discussion. So, he requested a short break.

There was a 15-minute break.

After the break, Mr. Sossamon reconvened the Committee and thanked HUD for the presentation. He reiterated that the presentation was meant to give the Committee an example of how AEL is being looked at by OMB and the appropriators. Moreover, the group must understand that AEL is a concern and there needs to be a basis for the number. He added that by no means does it suggest that this method be used for Indian housing, but it is a good example as we look at AEL in our formula. Mr. Sossamon commented that perhaps we would like to see a study over the next two years that looks specifically at AEL in Indian country in the lower 48 states and Alaska and Hawaii and that hopefully this is something that HUD will look at over the next 18 months to two years. He commented that perhaps when the next Neg-Neg group is at the table they would be able to have that data. Mr. Sossamon thanked HUD again for providing the information so that we can better look at AEL and how it relates to our formula.

Mr. Sossamon opened the floor to public comment.

Mr. Sawyers requested a regional caucus, adding that since Alaska had also requested a caucus, he suggests that the committee go to caucus, then break for lunch, and then meet in workgroups in the afternoon.

Mr. Sossamon requested that committee members please speak into the mics, and that the audience, please use a floor mic when making comments. He then asked if there were any further questions or comments?

Barb Baker (alternate for Mr. Sawyers) referred to the four attachments noted in the minutes and requested copies. Staff agreed to make copies.

James Sceeles commented that at the last meeting he had requested document control, so that if there are attachments, etc. the attendees could go to a central location, find the document by number, and then request a copy. Staff mentioned the Codetalk website will likely be where all documents will be archived and agreed to look into a numbering system.

Mr. Sossamon asked for any further comments.

Jim Vollintine commented that he was confused on how the Harvard Cost Study will be implemented. For example, does it need to be approved by Congress and if so, how would it apply to Indian country. He also asked if HUD would substitute this new AEL data for the present AEL used in the formula. A/S Liu responded that this cost review is not self-implementing. It does need to go through rulemaking with HUD and may require statutory changes. Furthermore, it only applies to public housing. However, it does affect IHBG indirectly, because there is reference to AEL in the IHBG, and there is a historical connection to why it was used when the formula was developed. He stated that questions would be raised by Congress, OMB, and the appropriators on the continued use of AEL. To that end, we must be prepared to justify and discuss whatever route the group decides to take. A/S Liu summarized by stating that the Harvard cost Study does not directly affect IHBG, but because there are a lot of issues raised about the concept of AEL, there will be questions raised in regard to what we are doing here.

Mr. Naize requested a Southwest regional caucus. He also made a recommendation to propose that the Harvard Cost Study include the Navaho Nation as a case study to see how it compares to study

Marvin Hudson commented that it would help if we could conduct our own analysis in our neck of the woods and really look at the economics and how the economics flow in the AEL. He added that the process makes a big difference when you are trying to meet the criteria. He also mentioned that we have to look at the social side, too.

Mr. Gorynski commented that on the need for HUD and IHS working together and being able to get funding from both agencies. He pointed out that not being able to access both has a drastic impact on small tribes. He also commented on TDC not actually covering

cost expenses in his area. He added that for small tribes, the 20% allowable administrative costs is not enough money to hire someone who can do the job.

Steve Hutchings asked if HUD is amenable to conducting a similar study in Indian county within 18 – 24 months. A/S Liu commented that he would be looking at this in the FY05 budget. He pointed out that the Harvard cost Study was initially contracted for $3 million with an additional $.5 to 1 million, and that even that didn't allow researchers to get as far as they wanted. He added that if a study is undertaken, it might be similar but different and that they are trying to get some pricing. A/S Liu stated that he could not commit to such a study by would be looking at it as a possibility. He added that it would also depend on what the group wants to do. For example, if the committee decides on no change in AEL, then a study would be useless. However, if there is some discussion about revising or changing AEL as time goes by, then it would make more sense for the Department to consider a study and look into it further.

Mr. Sossamon commented that the AEL plays an important function in the formula distribution, but also, it needs to be revised from time to time. Therefore, in his opinion, not only should a study be conducted, but it would also be helpful to include a mechanism to revise the data from time to time. A/S Liu pointed out that if there is revision over time, the information collected would be molded into an updated database with new and validated information. For example, we are still analyzing all the things involved in the Harvard study for public housing. A goal is for HUD to go further to get PHAs to base management on real estate site-by-site, but that's going to take time. So they have proposed something in between for the short term. If you believe that it would be good to do a better analysis on an individual basis, that is something that may be worthwhile and he would need to look at resources.

Ms. Marasco asked A/S/Liu if he thinks this is a valuable tool to use to increase funding levels in the future. A/S Liu responded yes, to the extent that a site-specific philosophy or approach, over time, might provide a firmer basis for whatever the numbers come out to be. For example, one might think actual numbers are higher due to rural areas, long distances, and the unique features of tribal housing. If the data support that the costs are higher, we would at least get a better framework. With more data and information at least you'd be able to say that the subsidy represents x% of the real cost. That could form the basis for saying it's too low. Without information, we are in a vacuum. A/S Liu added that he doesn't know if it such information would support a case for more money. And, he pointed out that even on the intermediary model presented, there are some entities that will get more money and some that will get less in the short run.

James Sceeles commented that during the first Neg-Reg, the Committee's approach allowed for the benefit of doubt by using either AEL or FMR, whichever is higher. In Alaska, AEL works, in other locations, FMR, works better. At least we came away from the table with that.

Tim Foster asked if the AEL developed from the Harvard Cost Study would be supported legislatively as the cost to run housing programs. A/S Liu responded that the study might

serve as the basis for legislation. Mr. Foster asked for clarification on whether or not there would be a subsidy. A/S Liu responded yes, there would still be an operating subsidy. Mr. Foster continued, asking if there is anything in NAHASDA to support CAS or are we going to ask for the same subsidy as public housing, and will we have a guaranteed subsidy. A/S Liu stated that the operating subsidy is not guaranteed, nor is there a guarantee that there will be an Operating Subsidy Fund. There will be dollars available to assist public housing, but it may not always be the same.

There was an on-going discussion between Mr. Foster and A/S Liu regarding a provision of legislation to protect the cost of maintaining housing versus obtaining a better database from which to measure costs. Mr. Foster specifically asked if there is a stronger commitment on the part of the Department if there is legislation to which A/S Liu commented that the Department has a commitment as evidenced in its participation in this group.

Mr. Coyle asked if there has been a parallel drawn between the Harvard Cost Study and the existing costs. A/S Liu responded that just how comparable are the numbers is something they're talking about. But, short of another review or independent review, this has not been done as it relates to tribal entities.

Mr. Sossamon asked for any further comment or questions. He concluded that the question of AEL needs to be looked at further, hopefully in the workgroups, and that the Committee will have to come to a conclusion as to whether to continue to use AEL in the IHBG formula or not, and how it would be valued. He urged the Committee members to keep in mind the possibility that some point in the future, it may be possible to revisit this issue again, and that perhaps the formula could be revisited through Neg-Reg every year or two (instead of 5) to make adjustments as necessary.

Mr. Sossamon then called for regional caucuses; afterwards there would be a lunch break.

Mr. Denson commented that when looking at formula and housing, we need to look at a system that will work for years to come. He pointed out that he sees a problem in just looking at NAHASDA where we are fighting over diminishing funding. He suggested that there is a problem, there are housing needs everywhere, and so we need a formula that is fair and equitable. He concluded by stating that he hopes that we can walk away somewhat satisfied.

Mr. Hudson asked for clarification on room assignments for the workgroups. HUD staff stated that CAS would be in the Terrace Room and Need would be on the third floor in the Alki Room.

Mr. Sossamon mentioned the Request for Technical Information form (see Attachment 5), and that all requests must be submitted on a form. He then called for recess until 1:30 pm at which time the workgroups would be meeting. Prior to lunch, there will be regional tribal caucuses

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TUESDAY AFTERNOON, JUNE 17, 2003
FULL COMMITTEE

Mr. Sossamon reconvened the full committee at 5:05 pm. He stated that the purpose of the session is to get reports from the workgroups. Mr. Sossamon then turned the floor over to Dr. Kazama for reports from the CAS workgroup.

Dr. Kazama recapped that the CAS workgroup had broken into four study groups during the May meeting. He added that there are now three study groups, as one has completed its task. In addition, he reported that another is close to completion. He then turned the floor over to the chairs of the three groups for reports. He concluded by stating that most of the work accomplished today was reviewing the progress already made, and determining what still needs to be accomplished:

Jim Vollintine introduced himself as the chair of the study group looking at NAHASDA assisted stock (NAS). He reported that they have a work document prepared which will be vetted by the full CAS workgroup tomorrow. He added that his group expected to have a proposal on the table by tomorrow night. He reported that at this point, the group was suggesting a definition of NAS: units that are 51% financed, acquired or constructed with NAHASDA funds. Mr. Vollintine stated that there would be changes to some definitions already in the formula, and also a provision to remove NAS from CAS. Overall, he commented that this approach will decrease need and will increase CAS in the short run, but that since CAS are dropping out and NAS will do the same, in the long run, CAS will decrease.

Ron Hoffman reported for the study group looking at formula issues. He stated that the study group managed to accomplish some things, but was not yet finished with their task. He added that in general, the group was looking at: a congressional study on Indian country on AEL, FMR, and the need for a process to challenge AEL. He reported that the group plans to break down further into smaller groups to address the specifics tomorrow, along with addressing other issues in the formula. He commented that the group has had good discussions on the issues.

Marvin Jones reported on the study group looking into criteria and consequences for removing units from the formula. He reported that the study group went through the existing regulations to identify the parts that pertain to the issue. The group also came up with several new areas of regulations that might be needed to address the issues. He summarized that there are also a few issues that need further attention and should perhaps be part of a new study group: definition of formula area, and who can modify the formula. He added that the group had assigned research, and would get to the reports starting tomorrow morning.

Dr. Kazama thanked the study group chairs for their reports and then clarified that the process was for the study groups to present to the whole CAS group. If the whole group reaches consensus, the recommendation will be brought to the full committee. He

commented that this would likely be an iterative process. Dr. Kazama's report was completed and the floor was turned over to Jack Sawyers.

Jack Sawyers reported for the Needs workgroup and began by stating that there had been some discussion on what the measuring factor would be. At that point, the workgroup requested that HUD staff provide information and Jim Anderson delivered a presentation on alternative data sources. Mr. Sawyers turned the floor over to Mr. Anderson for a brief presentation to the full committee.

Jim Anderson began by presenting background information on the Report on alternative Data Sources, which was completed in February 2001. A coy of the PPT is included in Attachment 6. The Report was prepared in response to 24 CFR 1000.306, which states that alternative measures may be used. He stated that the Report addressed a number of key questions with regard to possible alternative data sources:

- Does it really address an existing need variable
- Is there a method of data collection that is consistent across tribal lands
- Is the data collected and reported in the geographies that are used in the formula
- How often is the data collected – if one time data source, not useful
- Are there issues of confidentiality.

Mr. Anderson said that in the Report, they concluded that there were 6 alternatives that met the general criteria and each was examined. The Report provides the strengths and weaknesses of each of the following:

- Bureau of Indian Affairs (BIA) Indian Labor Force Report,
- Indian Health Services (IHS) Population User Data (collected from IHS Clinics),
- Head Start Early Childhood Education Program participant data,
- Indian Community Development Block Grant Program data,
- Tribal Enrollment Records, and
- HA administrative records.

Mr. Anderson summarized that in the end, the conclusion was that the US Decennial Census is the only source that is collected consistently across the nation. However, it was also concluded that some of the alternative sources may be useful for individual tribes in challenging the data.

Mr. Sawyers thanked Mr. Anderson and then continued with his workgroup report. He stated that after listening to the presentation this morning, the group felt that the Census was the only source that met all the criteria and also recognized that we can challenge with other sources. He added that the group formed a committee to talk about challenges in response to some tribes expressing concerns about not being heard properly. Mr. Sawyers turned the floor over to Steve Hutchins to report on the subcommittee.

Steve Hutchins reported that the subcommittee would be examining not only the mechanics of the review process set forth in Sec. 336, but also, the issue of who ought to bear the burden, and who the reviewing body should be. He stated that the subcommittee would meet after the conclusion of the Full Committee meeting today.

It was reported that the workgroup had continued to look at need factors and had narrowed down the field somewhat to:

- Number of AIAN persons
- HH <30, <50, and <80%
- HH that are overcrowded, lack plumbing and kitchens, and extended families
- HH that pay more than 50% and affordability (and someway to combine the two
- HH less than 80% median income
- Available housing units and available affordable housing units

It was reported that Phil Bush would head up a subcommittee on affordable housing. Mr. Sawyers concluded by stating that there are still issues to be discussed and that the Need workgroup would meet tomorrow morning at 8:30 am.

Dr. Kazama stated that the CAS workgroup would also meet tomorrow morning at 8:30 am in the Alki Room.

Mr. Sossamon thanked the workgroups from their reports and opened the floor to any further comments, questions, or concerns.

A/S Liu extended an invitation to all to attend the June 24 HUD Homeownership Express bus visit at the Paiute reservation. He also reiterated that the work being accomplished here is a part of the HUD agenda and the Administration's agenda.

Mr. Sossamon called for any further comments. Hearing none, he recessed the Full Committee.

WEDNESDAY AFTERNOON, JUNE 18, 2003
FULL COMMITTEE

Mr. Sossamon reconvened the Full Committee 4:45. He opened the session by noting that Ron Hoffman had designated Mr. Mark Charlie, as his alternate, for the remainder of the meeting. Mr. Sossamon then turned the floor over to the workgroup chairs for reports.

Mr. Sawyers reported on the Need workgroup and commented that they have narrowed some of scope of the factors and would hopefully be able to get to the point where we have the factors pretty much in place and then start weighing them by tomorrow. He reported that there are three subgroups that have met and he turned the floor over to the subgroups.

Steven Hutchins reported for the subgroup looking at the data review process. He stated that the group is looking at the method and mechanics of the challenge process. He added that the group determined that it would be useful to use the same process for data challenges, CAS counting, and formula area challenges. In addition, he reported that the group would like to create a vehicle for dispute resolution. He stated that the group is

anticipating smoothing out timing issues, dealing with notification, and the opportunity to be heard, particularly as it pertains to formula area. He added that the subgroup was also interested in looking at TDC as a geographic multiplier. He summarized that the subgroup was looking to expand beyond data challenge and to create a coherent review process.

Mr. Sawyers turned the floor over to the subgroup on TDC, cost of living, utilities, and delivery of services.

Mr. Coyle reported for the subgroup. He stated that they had requested information on TDC fro HUD and were waiting for it. He added that the subgroup was particularly interesting in if or when TDC could be changed, including changing or challenging on an individual basis. He reported that they were also trying to put together with challenge program.

Mr. Sawyers reiterated that the cost of delivery of services, the cost of living, and the costs of utilities are all included in TDC, which is a formula item because it is an adjustment.

Phil Bush reported on the subgroup looking at available and affordable housing units, overlapping areas, lack of land base, and minimum funding. He turned the floor over to Dave Heisterkamp for an update.

Dave Heisterkamp reported that the subgroup decided that all the formula issues go back to geographic areas and how formula areas are currently defined. He reported that within the subgroup, there had been several suggestions, and that they spent a lot of time looking at formula definition, and how that would work. The subgroup has begun to think about how to manipulate the language, and will start looking at some of the other issues. He stated that the subgroup would likely get together tonight to start on draft language.

Mr. Sawyers thanked all the reporters and said that the Needs workgroup would meet as an entire group tomorrow morning at 8 am. He commented that they are now getting to where the rubber hits the road. He added that he was hopeful that the workgroup would get all the components together and at least get the issues defined by end of the day tomorrow, and would want to start with weights next month. .

Mr. Sossamon turned the floor over to Dr. Kazama

Dr. Kazama began his report by saying that he had a good learning experience in consensus today. He stated that the Workgroup would start tomorrow by looking at the proposals submitted by the study groups using the consensus process, and that he would be asking the facilitator (Pete Swanson) for help with the process. Dr. Kazama added that it was his hope that by the end of tomorrow, the workgroup would have a few issues that could be presented to the full committee. He reported that the study groups have worked hard in bringing resources and issues forward and are now getting down to differences of opinion, the diversity of regions, etc. He stated that the study groups are

working with statistics and other research, and he thanked HUD for its support in this regard. He then turned the floor over to the study group chairs for reports.

Jason Adams reported for Ron Hoffman on formula issues. He reported that the study group has been working on was the allocation formula, specifically on steps 1, 2, and 3. He reported that the group had listed pros and cons of all the issues and the processes, including AEL and FMR factors. He added that the group had included the Harvard Cost Study report in these discussions. He reported that the study group, having gone through the issues. They reached consensus and recommended to the whole workgroup that the formula remain as is. They will now look at adding a process for challenging AEL, although it is the recommendation to leave AEL as is. Knowing that Congress may question this, Mr. Adams added that the group felt that if Congress isn't satisfied, it could direct HUD to undertake a study. The subgroup also requests and assurance from HUD that the current Harvard Cost Study would not impact the IHBG formula. Mr. Adams reported that the subgroup also decided to leave steps 2 and 3 as is, but would review the inflation factors. Mr. Adams concluded by stating that there was a longer list of items that was generated in discussion with the whole CAS workgroup and that with the exception of one issue, the subgroup has addressed all the items. The subgroup will report to the whole CAS workgroup tomorrow to ask for further direction.

Jim Vollintine reported for the study group looking at NAS. He reported that the subgroup came up with a proposal to include NAS in CAS. He added that they also came up with an alternative proposal to include NAS in the Need portion of the formula. He reported that the definition of NAS would be: rental units 100% financed with NAHASDA funds. He added that they don't have information on how many units there are, but since the definition is very limiting, the subgroup felt that it's likely that not too many units will be involved. He stated that the subgroup looked at changes to regulations that would be necessary, and also, developing a process for how a NAS can be removed. Regarding the alternative proposal, he stated that the definition would be the same.

Marvin Jones reported on the subgroup looking at criteria and consequences of removing CAS units from the formula. He commented that there are real differences in approach and that the subgroup had attempted to provide documentation through research. He added that there had been no attempt to reach consensus yet, but will begin to look at that tomorrow. He reiterated that there had been a real desire to be prepared to back up proposals and recommendations with documentation. Mr. Jones stated that there are a few distinct issues: Section 8 and possible removal of units in some manner, the responsibility to fund CAS units, and possible alternatives to the way it's currently being done. He commented that the group was expecting different opinions. In addition, he commented on the issue of 1937 Act pipeline units, which was addressed with A/S Liu, and the fact that there are funds and units that haven't been developed yet and the question of whether this issue is within the scope of this committee.

Dr. Kazama thanked the reporters and again wanted to emphasize the hard work being done. He mentioned that the issues are complex and controversial, and thanked all for their efforts.

Mr. Sossamon thanked Kazama and Sawyers, and commended everyone for their hard work. He reiterated that we're not necessarily here to change, but to review and scrutinize, as is being demonstrated in the workgroups, which are both in the study phase. He commented that this approach would help determine the appropriate changes that should be made.

Mr. Sossamon then addressed the Drafting committee, which will work on sections of the regulations that needs reworking. He stated that the committee was comprised of Steve Hutchins, Dave Heisterkamp, Karin Foster, and Steve Doherty, working with HUD staff Bob Kenison, Ariel Pereira, and Marion McFadden. He suggested that the committee get together and try to come up with a format for the workgroups to use in submitted changes. He added that this should include concepts of the new language and the intent of the change. Mr. Sossamon commented that it would be important to have in mind the intent of the workgroup when developing the language.

Mr. Sossamon then asked if the HUD delegation had any comments.

Mr. Gerber commented that the HUD delegation was happy with the progress being made.

Mr. Sossamon stated that regional caucuses have been called.

Mr. Boyd stated that there would also be a HUD caucus.

Mr. Sossamon called for a recess of the Full Committee at 5:45 pm.

THURSDAY AFTERNOON, JUNE 19, 2003
FULL COMMITTEE

Mr. Sossamon reconvened the Full Committee at 1:40 pm. He stated that there would be Workgroup reports and then public comment. He turned the floor over to Mr. Sawyers.

Mr. Sawyers turned the floor over Phil Bush, who in turn asked for a brief report by Dave Heisterkamp.

Mr. Heisterkamp reported that a subgroup met last night to redraft the definition of formula area. The subgroup looked at how formula area affects Needs and data, and was thinking about how formula area is defined. He stated that they had an initial draft, which was revisited this morning and would continue to circulate and revise the draft, including information from Jim Anderson on 2000 census. He reported that they had developed an email list of interested persons who will continue to work on this and hoped to be ready for a consensus discussion at the next meeting in Denver.

Mr. Sawyers mentioned that in addition to the other two groups which reported yesterday, the Needs workgroup was addressing the minimum funding proposals from the

Small Tribes Task Force (see Attachment 7). Mr. Sawyers reported that there was nothing else to share at this time.

Mr. Bush added that the Small Tribes Task Force proposals had been introduced for review purposes, and that the group was also looking for other proposals or different variables. He reiterated that they are looking for ideas and suggestions and had barely gotten into the issues. He added that they are going to start evaluating.

Mr. Sawyers concluded the Need workgroup report.

Mr. Sossamon turned the floor over to Dr. Kazama.

Dr. Kazama began by stating that there were two issues that he wanted to present to the Full Committee, both of which came up in the CAS workgroup. The first is a request to have HUD staff present the process of what happens when consensus cannot be met and there's an impasse, for example, where does the regulation go, if we can't work it out in committee. The second issue is in regard to agenda. He commented that if we, as a committee, say we are going to stay to a certain time, we should try committing to that time. He added that it seems odd to say we're going to add a day because there isn't enough time, and then leave early. Returning to his workgroup report, he stated that the group met as a whole to discuss the consensus process in general. He added that the group was getting good support from the facilitator (Pete Swanson) in this regard. Dr. Kazama commented that as the issues become more critical, it is harder to reach consensus, and resolving conflicting issues, takes a bit longer. On the other hand, he reported that the workgroup did come to consensus on a few issues. He turned the floor over to the CAS formula study group.

Jason Adams reported. He stated that the consensus recommendation was the same as reported by him on the previous day. In addition, under step one, the CAS workshop requested that the study group continue to look at how we can bring back (from pre 1996) the ability to challenge AEL on an individual tribal basis and resurrect that process. The recommendation for Step 2, operating subsidy, is to leave as is. He added that the workgroup requested that the study group look at inflation factor to see if it can be applied more directly, i.e. benchmarking against a more recent year, giving the appearance that the numbers are more up to date. Mr. Adams reported that the same recommendation was made for Step 3, modernization subsidy, that it should be left as is, and that the group will look at the inflation factor. He added that the issue of minimum baseline funding contained in the Technical Amendment did not address including Section 8 units in the minimum. The study group will revisit this to see if it can be addressed in regulation language.

Dr. Kazama reported that the two other study groups had made presentations to the whole CAS workgroup. He stated that the discussion on NAHASDA assisted stock units took a lot of time, and determined that because of insufficient statistics and different perspectives, they would break into three smaller groups to continue their investigation, asking three or four questions: should NAS be a part of CAS, should NAS be part of

Needs, or should NAS be not included at all, or other. Dr. Kazama reported that the plan is for each of the smaller groups to prepare presentations to be delivered at the next meeting in Denver. He added that the issue brought a lot of excitement and really became a logjam, but they were able to devise a method to break free. He stated that this would be the first topic the workgroup will discuss in Denver.

Jim Vollintine commented that he was initially in favor of counting NAS as part of CAS, but as a result of the discussions has abandoned that view and now thinks it should be part of Need. He added that his study group would like to interface with the Need group on this issue at some point. He also commented that during the discussion, Ed Phillips came up with some persuasive arguments.

Dr. Kazama reported that the third study group is still gathering information and that there are some serious differences within the group. They will present to the whole CAS workgroup during the Denver meeting.

Mr. Sossamon asked if there was a drafting committee report. HUD staff (Ariel Pereira) reported that the drafting group got together just for a few minutes to exchange contact information and would set up a conference call prior to the Denver to discuss a process for receiving material from the workgroup.

Mr. Sossamon then opened the floor for public comment.

Mr. Bush queried Mr. Boyd on when the CDBG notice would be published, and if the minimum-funding waiver has been published.

Mr. Boyd turned the floor over to HUD staff (Deb Lalancette) who stated that the public comment period on the waiver was over, and the waiver should be going to Federal Register today. Regarding the NOFA, she commented that it should be released soon.

Ms. Marasco commented that in years past, CDBG money had to be obligated by September 30. She asked if tribes could expect a reasonable time this year. HUD staff responded that the deadline would be 60 days past issuance.

Mr. Sossamon brought up the issue of document control, which came up again in the Need workgroup.

Mr. Gerber stated that HUD staff was working on this, including numbering, and will hopefully have something up and running by the next meeting.

Mr. Sawyers asked if this would be through Codetalk. HUD staff (Cynthia Gardstein) reviewed the proposed approach for document distribution and control, which is as follows:

1. All full committee meeting minutes, and handouts will be made available in electronic and hard copy

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2. All resources will be made available in electronic (as available) and hard copies, for example, Harvard Study, Briefing Books, etc.
3. Requests for technical assistance from HUD staff will be numbered and dated, and the resulting data/information attached to the request.
4. A binder will be created with one hard copy of all documents that have been distributed at meetings, with each document labeled and dated. There will be a system developed so that documents that have been revised are so indicated.
5. A table of contents will be included with such information as:
    a. Author
    b. Date
    c. Revisions

Mr. Sossamon asked if there were any further comments.

Mr. Gerber turned the floor over to HUD staff (Deb Lalancette) to address the request process. Ms. Lalancette discussed the 'blue sheet' process and stated that HUD staff had learned a few things and that the process would hopefully be a bit smoother at future meetings. She reported that HUD had received 15 sheets, some with more than 5 items, and that most have to be programmed and run. She added that staff would date and time each blue sheet received so that they can prioritize the requests. Ms. Lalancette added that if the results (documents) were not available immediately, they would be emailed or prior to the next meeting. She concluded by stating that if you have any suggestions or comments, to please bring them forward.

Mr. Sossamon asked if there were any further comments. Hearing none, he made a final comment thanking all committee members and audience participants. He added that he also greatly appreciated everyone's sense of humor.

The meeting was adjourned at 2:15 pm.

Submitted by
C. J. Gardstein
Steven Winter Associates, Inc.
July 2, 2003