



"A Tradition of Native American Housing"

October 1, 2009

Dear Negotiated Rulemaking Committee Members:

On behalf of the National American Indian Housing Council (NAIHC), I am writing to thank you for your strong support for amendments contained in the *Native American Housing Assistance and Self-Determination Reauthorization Act of 2008* (Pub. L. No. 110-411), which was signed into law on October 14, 2008. We look forward to working with tribal leaders and housing officials to implement these amendments through the negotiated rulemaking process.

As the new law is implemented, we are especially cognizant of section 105, which requires the Secretary of the Department of Housing and Urban Development to promulgate regulations to implement these changes not later than two years after enactment. NAIHC recognizes that this deadline will be met only with hard work, dedication, and strict adherence to established guidelines. The NAIHC's Board of Directors, with assistance from the NAIHC Legislative Committee, has discussed the rigorous statutory timelines of the rulemaking process and offers the attached draft protocols and charter for consideration by the negotiated rulemaking committee.

We present these documents as a time-saving mechanism in order to expedite rulemaking on the underlying amendments. This proposal has also been shared with the leadership of the National Congress of American Indians. NAIHC's submission of these protocols and charter is meant as a guide and has been offered as a suggestion only. We know there may be other ideas equally or more valid than the ones we offer. We trust, however, that our suggestions will be a helpful point of departure.

Thank you again for your support of the newest NAHASDA amendments and your ongoing support for housing and economic development in Native American communities across the country.

We are hopeful that the rulemaking can be accomplished in a disciplined and timely manner and offer our assistance and cooperation in any way we can. If you have questions, please do not hesitate to contact me or Mellor Willie, Executive Director, at (202) 789-1754.

Sincerely,

Marty Shuravloff
Chairman

**Department of Housing and Urban Development
Native American Housing Assistance & Self-Determination Act of 1996**

CHARTER

I. Official Name

The official name of the Committee established herein is the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee on Rulemaking Changes Related to Amendments to the Native American Housing Assistance and Self-Determination Act Between 1998 and 2008 ("Committee").

II. Purpose

This Charter establishes a Committee, pursuant to Public Laws 101-648, 104-330, 107-292 and 110-411, to negotiate with the United States Department of Housing and Urban Development ("HUD") to: (1) review amendments to the Native American Housing Assistance and Self-Determination Act ("NAHASDA") between and including 1998 and 2008 ("Statutory Amendments") to determine whether changes to NAHASDA's implementing regulations at 24 CFR Part 1000 are necessary, advisable or convenient with respect to some or all of those Statutory Amendments; and (2) propose regulations accordingly, to the extent necessary and consistent with: (i) the unique responsibility of HUD and the federal government to protect and support Indian tribes and Indian people; and (ii) other legal obligations. The establishment of this Committee provides a non-exclusive means of tribal participation pursuant to NAHASDA.

III. Goals and Objectives

The goal of the Committee is to negotiate a proposed rule implementing changes as described in Sections II and VII(a) of this Charter.

IV. Duration

Subject to the limitations of Section VIII of this Charter, the Committee shall be authorized to convene until such time as all negotiations are determined by the Committee to be final and all regulatory changes negotiated have been published as a Final Rule.

V. Principal Federal Government Officer

Pursuant to the Negotiated Rulemaking Act, the Assistant Secretary for Public and Indian Housing or his/her designee will serve as the Principal Federal Government Officer (PFO) for this Committee. The PFO shall endeavor to ensure that all internal HUD and OMB clearance issues are raised and addressed during the Negotiated Rulemaking process. Should the OMB and Departmental clearance processes identify necessary changes to the proposed rule developed

by the Committee, HUD will submit the changes to the Committee for review and approval. This Committee will report to the Secretary of HUD through the PFO.

VI. Composition of the Committee

Committee Membership

- (a) Tribal Membership: The Secretary of HUD shall appoint twenty-four (24) members representing geographically diverse small, medium and large tribes and other unique or significant tribal interests.
- (b) Federal Government Membership: The Secretary of HUD will appoint one (1) representative.

VII. Role of the Committee

a) The role of the Committee shall be:

- (1) to determine whether changes or additions to the NAHASDA regulations are necessary, desirable or convenient to implement, conform to or clarify any Statutory Amendment;
 - (2) to classify and expedite the development of any proposed regulation change that is not controversial or complex, and to prepare the report required by Section VII(a)(5) of this Charter with respect to such changes, in advance of development of more controversial or complex regulatory changes;
 - (3) to identify any Statutory Amendment that is not self-executing, and that requires an implementing regulation before taking effect;
 - (4) to develop proposed revisions or additions to NAHASDA regulations consistent with this Charter and protocols adopted under this Charter;
 - (5) to file a report with the Secretary of HUD in accordance with 5 U.S.C. § 566(f), both with respect to expedited proposed regulation changes under Section VII(a)(2) of this Charter and subsequent proposed regulation changes; and
 - (6) to conduct its activities in accordance with the Negotiated Rulemaking Act as adapted to the unique relationship between the Government of the United States and the governments of Indian tribes.
- b) The Committee shall keep detailed minutes of each meeting and make available for public inspection, subject to 5 U.S.C. § 552, all records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda or other document made available to or prepared by the Committee. Such materials will be available for copying and inspection at a single HUD office.

- c) In accordance with the Negotiated Rulemaking Act, if the Committee reaches agreement on a proposed rule, at the conclusion of either the expedited phase of the negotiations described in Section VII(a)(2) of this Charter, or the final phase, the Committee shall, with respect to agreements reached in that phase, transmit to HUD a report specifying any areas in which the Committee has reached agreement. The Committee may include in a report any other information, recommendations or materials that the Committee considers appropriate, and the report shall be in a form suitable for publication in the *Federal Register* as a preamble to the proposed rule. Any Committee member may include as an addendum to the report additional information, recommendations or materials; however, any such addendum shall not be included in any preamble.

VIII. Meetings

- a) The number of Committee meetings shall be no more than six (6). Meetings shall be scheduled no less frequently than monthly, if feasible. To expedite the work of the Committee, at least one meeting shall be held in Washington, D.C., Denver, Colorado, and Seattle, Washington.
- b) The date, time, place, purpose, and the proposed agenda for each Negotiated Rulemaking Committee meeting will be published in the *Federal Register* at least 15 calendar days prior to each meeting. The *Federal Register* notice will also include a statement whether all or part of the meeting is open to the public.

IX. Compensation for Services

- a) HUD has determined that the participation of 24 tribal committee members is necessary to assure adequate representation of tribal interests.
- b) Members of the Committee shall receive no pay, allowance or benefits by reason of their service on the Committees. In accordance with the requirements of the Act and the Negotiated Rulemaking Act, 5 U.S.C. 568(c), while away from their place of residence or business and in performance of services for the Committee, Committee members may be authorized to be reimbursed for travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Federal Government service if:
 - (1) such member certifies a lack of adequate financial resources to participate in the Committee; and
 - (2) HUD determines that such member's participation in the Committees is necessary to assure an adequate representation of the member's interest.

X. Financial and Support Services

HUD shall provide travel costs, technical support, copies of public comments, and logistical support services for the activities of the Committee.

XI. Statutory Authority

This Negotiated Rulemaking Committee is established pursuant to Public Law 104-330, Public Law 101-648, Public Law 107-292 and Public Law 110-411.

Assistant Secretary
Public and Indian Housing

Date

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT AND TRIBAL REPRESENTATIVES

NATIVE AMERICAN HOUSING ASSISTANCE & SELF-DETERMINATION
NEGOTIATED RULEMAKING COMMITTEE ON RULEMAKING CHANGES RELATED TO
AMENDMENTS TO THE NATIVE AMERICAN HOUSING ASSISTANCE AND SELF-
DETERMINATION ACT ("NAHASDA") BETWEEN 1998 AND 2008

COMMITTEE-ENDORSED
ORGANIZATIONAL PROTOCOLS

Preamble

The Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee on Rulemaking Changes Related to Amendments to NAHASDA Between 1998 and 2008 has been established pursuant to Public Law 104-330, Public Law 101-648, Public Law 107-292 and Public Law 110-411, and is further detailed in a Committee Charter approved by HUD. The Committee is charged with rulemaking related to implementation of all statutory amendments to NAHASDA between and including 1998 and 2008 ("Statutory Amendments").

1. NUMBER OF MEETINGS; PHASING OF NEGOTIATED RULEMAKING

There shall be no more than five meetings of the Committee before both the Phase 1 and Phase 2 Proposed Rules are publicly noticed. Each meeting may consume no more than three consecutive business days. The meetings shall be divided thusly:

Meeting 1: Organizing the Committee. Preparing and authorizing public notice for all proposed "Phase I" regulations, and adopting a preamble for Phase I regulations;

Meetings 2-4: Identifying and deciding upon all proposed "Phase II" regulations. No more than one day of a meeting within this category may be set aside for considering and acting upon public comment on the proposed Phase I regulations; and

Meeting 5: Adopting a preamble for Phase II regulations.

After the close of Meeting 1, HUD shall separately initiate the formal public notice and other required processes for the proposed Phase 1 rules. After consideration of public comments on the proposed Phase 1 rules, HUD shall separately take final agency action on the proposed Phase 1 rules, irrespective of the status of Phase 2 negotiations.

Upon receipt of comments on the proposed Phase 2 rules, the Committee may hold a sixth meeting solely to review those comments and make any resultant changes to the final Phase 2 rules.

As used in these Protocols:

- a. **Phase 1 Rules** means those rules that are necessary, advisable or convenient with respect to a Statutory Amendment, and upon which the Committee believes consensus can be reached without material controversy; and

- b. **Phase 2 Rules** means any rule that the Committee believes is likely to involve material controversy in substance or wording.

2. PARTICIPATION

- a. **Attendance at Meetings.** Committee Members are expected to attend every day of each Committee meeting. In the event a Committee Member fails to attend any two days of a Committee meeting session for two such sessions, HUD will remove the member from the Committee and designate a replacement member from the same Region as the removed Member. A Committee Member may be accompanied by such other individuals as the Member believes appropriate. However, only Committee Members may sit at the Committee table, and participation by non-Committee members is limited by Article 3(i) of these Protocols.
- b. **Designated Alternates.** Alternates are not permitted. Participation on the Committee is a personal privilege that cannot be delegated or assigned.
- c. **Constituents' Interests.** Committee Members are expected to represent the concerns and interests of their constituents.
- d. **Public Participation.** Subject to Article 3(i) of these Protocols, comments from the public will be taken only during the designated opportunity for public comment provided in Article 3(c) of these Protocols.
- e. **Effect of Failure to Participate.** If a Committee Member is not physically present when the Committee is lawfully in session and a vote on a matter is taken, whether because of non-attendance at the meeting, delayed return from a caucus or recess, or any other reason whatsoever, he or she shall be conclusively presumed to have consented to the matter being voted upon, and that Member shall not be allowed to request reconsideration or reopening of the matter.

3. MEETINGS

- a. **Quorum.** A quorum of the full Committee shall consist of two-thirds of the Members of the Committee who are present during a call of the roll taken on opening day at the start of a negotiated rulemaking committee meeting. Once a quorum is initially established, the Committee may take action during the remainder of that meeting, including action on succeeding days, as long as the Committee is lawfully in session pursuant to these Protocols, and whether or not a quorum is present.
- b. **Structure.** The negotiations will be conducted consistent with the Committee Charter and the Negotiated Rulemaking Act of 1990 ("NRA") as adapted to the unique relationship between the Government of the United States and the governments of Indian tribes.
- c. **Open Meetings.** Committee meetings will be announced in the Federal Register prior to the meeting and will be open to the public. Members of the public and persons other than Committee Members will be given opportunities to make comments, raise questions or submit materials for the record during the public comment period established by this paragraph. Such comment must be concise and limited to not more than five (5) minutes per speaker per comment period. One 60

minute public comment period will be provided at the end of each Committee session day. The Chair shall give priority to recognized tribal leaders and may extend that leader's time to speak, provided that: (1) no tribal leader's presentation may exceed 10 minutes; and (2) no more than one leader from any one tribe may be recognized during the public comment on any one session day.

- d. **Minutes.** The Committee shall observe the requirements of the Charter regarding minutes, records and documents. In addition, draft minutes will be prepared and distributed to Committee Members by the representatives of the Department of Housing and Urban Development ("HUD") ten (10) calendar days prior to the next meeting. HUD will maintain a record of all minutes and will distribute approved minutes to Committee Members and Tribes.
- e. **Agenda.** Draft meeting agendas will be developed by the Principal Federal Government Officer ("PFO") and Regional Representatives for approval by the Committee. A draft agenda for each meeting shall be distributed to all Members such that receipt by the Member will be had not later than 10 calendar days in advance of such meeting.
- f. **Caucus.** Caucuses may be called by a Region, by HUD, or by the Tribes as a whole. Regional caucuses may be called only by the Regional Representative for that Region. A tribal caucus may be called by consensus of the tribal Committee members. A region or HUD may call a caucus only once each day, and any regional or HUD caucus may not exceed 15 minutes in length. Regional Representatives shall determine who may attend Regional Caucuses. Each Region may establish its own caucus procedures.
- g. **Time Limitations for Interruptions.** Whenever the Committee process is interrupted, whether for a caucus, recess, lunch break, or any other reason, the Chair shall announce the exact length of the interruption, and the time when Committee business will resume. The Chair shall, without exception, reconvene the Committee at the exact time stated. Any Committee member who is not physically present at the designated time of reconvening is subject to Article 2(e) of these Protocols with respect to any action taken in his or her absence.
- h. **Time Limitations on Debate.** Debate on any Phase 1 rule is limited to 20 minutes, and no Committee member may speak for more than two minutes on that matter. Debate on any Phase 2 matter is limited to 2 hours, and no Committee member may speak for more than 10 minutes on that matter. Time may be yielded from one Committee member to another. Time not expended on a matter shall be banked, and shall be available for the entire Committee for additional debate on subsequent matters until exhausted. The facilitator appointed under Article 7 shall be authorized and directed to enforce the time limitations established by this Article.
- i. **Time Limitation for Non-Committee Members.** It is the intent of these Protocols that Committee Members themselves, and not their agents or representatives, debate the matters that come before the Committee. Nonetheless, the Committee recognizes that, in exceptional situations, a Committee member may need to rely on an expert in the area being debated. Accordingly, a Committee member may yield the following portion of his or her time on a matter to a non-Committee member: the entire 2 minutes on a Phase 1 matter, and five of the Committee member's 10

minutes on a Phase 2 matter. A non-Committee member may not accumulate additional speaking time on a matter by acquiring time from multiple Committee members on that matter.

4. DECISIONMAKING

- a. **Consensus.** All decisions of the Committee shall be made by Consensus. Subject to Article 6(b) of these Protocols, Consensus means unanimous agreement as shown by an absence of expressed objection by any Committee Member present at the Committee meeting with regard to a particular issue. Work Groups may report to the Committee both: (1) decisions reached by consensus; and (2) decisions reached by majority vote, as long as a summary of any significant dissenting position, as determined by the Regional Representative, is included in the report.
- b. **Voting.** No Committee member may abstain on a vote. Unless a Committee Member expressly signals his or her opposition to a proposal, that Committee Member shall be conclusively presumed to have consented to the matter being voted upon, and that Member shall not be allowed to request reconsideration or reopening of the matter. Every Committee vote is subject to the good faith requirements of Article 6(a) of these Protocols.
- c. **Chair.** The Tribal Co-chairs ("Chair") are entitled to vote on any matter, other than a motion to overrule the chair's own parliamentary ruling. The Chair may debate any matter by temporarily assigning the chair to the other Tribal Co-Chair, and then resuming the Chair when his or her comments are completed.
- d. **Appeal of Parliamentary Rulings.** Except as provided in Article 6(b) of these Protocols, a parliamentary ruling of the Chair may be overruled by an affirmative vote of: (i) 80% of the Committee; and (ii) a majority of each Regional delegation.
- e. **Reconsideration.** A matter on which consensus has been achieved may not be reconsidered by the Committee, except by a consensus vote of the Committee. A proposal with respect to which consensus was not achieved may be reconsidered only: (i) by a request made by a Committee member that opposed the matter on the original vote; and (ii) if the matter received at least an 80 percent affirmative vote from the Committee on the original vote. Once reopened under this paragraph, a matter still requires consensus to be adopted. Except as provided in this paragraph, once a proposal is voted upon and fails to achieve consensus, it cannot be brought back before the Committee.
- f. **Work Groups.** Smaller Work Groups may be formed by the Committee from Committee Members or their designees to address specific issues and to make recommendations to the Committee. No more than six Work Groups may be formed at any one time, and each Work Group shall be chaired by a Regional Representative, who shall establish procedures for conduct of the Work Group in order to expedite the Work Group's work. The Work Group shall appoint a designated secretary to accurately record the Work Group's efforts. Work Groups are open to any Committee Member or the Member's designee. Interested persons and members of the public are permitted and encouraged to participate in Work Group proceedings. Each Work Group must include a HUD representative. Work Groups are not authorized to make decisions for the Committee as a whole. The

agenda for each Work Group shall be distributed with the Agenda for the Committee meeting under Article 3(e) of these Protocols. The Regional Representative shall report any Work Group recommendation to the Committee, which recommendation must take the form of specific proposed language (if any regulation or regulation change is proposed), together with proposed draft preamble language to accompany that language. At the end of each Work Group session day, the Regional Representatives and HUD's representative shall meet to review progress made at each Work Group session and the Work Group's agenda.

- g. **Standing Committees.** The Committee shall appoint a Drafting Committee and a Preamble Committee, each consisting of no more than 14 persons, and which shall include two persons selected by each Regional Representative and at least one HUD representative. Appointees need not be members of the Committee, and shall be chosen based on demonstrated drafting ability. As Work Groups or the Committee reach consensus on an issue, the matter shall be referred to the: (i) Drafting Committee for preparation of precise regulatory language; and (ii) Preamble Committee, for preparation of the preamble insert required for each proposal under Article 4(f) and Article 5(a) of these Protocols. The Preamble Committee shall also be responsible for preparing a proposed final, comprehensive preamble for presentation to the Committee. The Drafting Committee shall elect its own chair by a 2/3 vote of the members of that committee. The Preamble Committee shall be chaired by a representative of HUD. Both the Preamble and Drafting Committees shall act by consensus. However, the chair of the standing committee shall rule out of order an objection that the chair finds is an attempt to depart from, or alter, the underlying Work Group or Committee consensus, and that objection shall not prevent achievement of standing committee consensus. The chair's ruling may be appealed to the full standing committee, which may reverse the chair on a consensus vote, not counting the vote of the chair. Matters on which the standing committee cannot reach consensus may be referred back to the Work Group or Committee for resolution, with all competing drafting proposals presented to the Work Group or Committee.

5. AGREEMENT

- a. **Product of Negotiations.** The intended product of the negotiations is a preliminary report setting forth any proposed regulations, or changes to regulations, that the Committee finds necessary, desirable or convenient with respect to any Statutory Amendment. The report shall be in the form of a written statement developed by the Committee Members on behalf of the Secretary of HUD and Tribal Committee representatives, and shall include both proposed rule language and an accompanying proposed preamble. As the Committee makes decisions on individual rulemaking proposals, each such individual decision shall consist of both exact rulemaking language and a proposed accompanying insert into the preamble. The Secretary agrees to use the Committee's preliminary report and any proposed regulations and preamble as the basis for any proposed rule implementing or relating to any Statutory Amendment. Prior to the publication of any proposed rule, the PFO will provide the Committee with notice and an opportunity to negotiate any changes in the proposed regulations. This process shall be done separately for Phase 1 and Phase 2 rules, as provided in Article 1 of these Protocols.

- b. **Final Report.** The Committee will review all comments and any clearance issues, including those of HUD and the OMB, received in response to any proposed rule and will submit a final report with recommendations to the Secretary of HUD concerning any proposal for change to the proposed rule. This process shall be done separately for Phase 1 and Phase 2 rules, as provided in Article 1 of these Protocols.

6. SAFEGUARDS FOR THE COMMITTEE MEMBERS

- a. **Good Faith.** All Members agree to act in a good faith effort to reach consensus in all aspects of these negotiations by encouraging the free and open exchange of ideas, views, and information. Personal attacks and prejudiced statements will not be tolerated. If a Committee member opposes a proposal, he or she shall: (i) state the reason for that opposition; and (ii) propose an alternative to the proposal that meets that Committee member's concerns.
- b. **Committee Member Diligence.** It is the responsibility of each Committee member to remain constantly abreast of developing Committee and Working Group proposals. Committee members may not object to a proposal on the ground of unfamiliarity, missing discussions pertaining to the proposal, the need to consult other persons, or on a ground that violates the duty imposed by Article 6(a) of these Protocols. If the Chair finds clear evidence that an objection is based on such a ground, he or she shall rule the objection out of order, and the objection shall not be counted in determining the existence of consensus. The ruling of the Chair under this subsection may be overruled by a consensus vote of the Committee, not including the Chair.
- c. **Cooperative Communication.** Committee members, Working Group members, and other advisory staff are strongly encouraged to discuss and exchange ideas and information prior to the first and all subsequent meetings of the Committee with the intent of exploring common positions on any issues that may be considered by the Working Groups and/or voted on by the Committee in formal session. In this way, formal Committee activities and Working Groups will be made more productive and less controversial in nature.
- d. **Information.**
 - 1) The Members of the Committee agree to exchange information in good faith.
 - 2) Members of the Committee will provide information called for by subparagraph (1) above in advance of the meeting where such information is necessary.
 - 3) All Members of the Committee agree not to divulge information shared by others in confidence.
 - 4) The media release spokespersons, comprised of the two Co-Chairs, will provide Committee communications with the media. The media is welcome to attend Committee meetings, but must identify and display their media credentials.
- e. **HUD Assistance to Committee Members.** HUD will provide requested information and technical assistance needed for the work of the Committee.

7. FACILITATORS.

The Committee may utilize a facilitator selected pursuant to 5 U.S.C. sec. 566(c). The role of the facilitator includes impartially facilitating Committee and certain Work Group discussions, assisting in the development of draft agendas, working to resolve any impasses that may arise, preparing meeting records, assisting in the location and circulation of background materials and materials the Committee develops, and other functions the Committee requests. The facilitator will take no position on the issues before the Committee and serves at the will of the Committee.

8. CO-CHAIRS AND REGIONAL AND HUD REPRESENTATIVES

- a. **Regional Representatives and Co-Chairs.** Six (6) regional representatives, one each from the Eastern/Woodlands, Northern Plains, Southern Plains, Southwest, Northwest and Alaska Regions shall be selected, respectively, by Committee Members from each such region. The role of the regional representatives includes developing draft agendas with the PFO and facilitator, chairing Work Group discussions, working to resolve any impasses that may arise, reviewing meeting summaries, assisting in the location and circulation of the background materials and materials the Committee develops, and other functions the Committee requests. The Regional Representatives will represent positions of the full Committee and serve at the will of the Committee Members from the region that the Regional Representatives represent. The Regional Representatives shall designate two tribal co- chairs to chair Committee meetings. The Regional Representatives and/or other representatives of the Committee may be authorized by the Committee to negotiate Tribal positions with the PFO and shall report the results of any negotiations to the full Committee for further action and/or ratification. Meetings of the Regional Representatives shall be open to the Committee.

- b. **PFO and HUD Representative.** The PFO is the Assistant Secretary for Public and Indian Housing or his/her designee. The role of the PFO and the HUD Representative includes developing draft agendas, working to resolve any impasses that may arise, reviewing meeting summaries, and other functions the Committee requests.

CERTIFICATION

We certify that these Organizational Protocols were considered and endorsed as a result of a meeting conducted in _____ by the Negotiated Rulemaking Committee formed to review regulations implementing or relating to the Statutory Amendments.

[Name]
Principal Federal Government Officer
Housing and Urban Development

[Name]
Tribal Co-Chair

[Name]
Tribal Co-Chair