

**Tribal Consultation
PROGRESS Act
Proposed Regulations
25 CFR Part 1000**

July 2024





Government-to-Government Tribal Consultation

- **Topic for Consultation:** Proposed Rule implementing 25 CFR 1000 – Annual Funding Agreements Under the Tribal Self-Government Act Amendments to the Indian Self-Determination and Education Act
- DOI Tribal Consultations are **closed to the Public**. Press please self-identify.
- **Court reporter will create transcript** to ensure we respond to comments.
- During today’s session, we will ask Tribal leaders and elected officials, and/or Tribal government representatives to provide comments. **When commenting, please begin with your name and Tribal affiliation for the court reporter.**



Tribal Consultation on PROGRESS Act Proposed Rule

Department Officials

- Kathryn Isom-Clause, Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development
- Sharee Freeman – Director for the Office of Self-Governance, DOI

Tribal Official

- Melanie Fourkiller, Director of Self-Governance and Health Policy, Choctaw Nation of Oklahoma

Facilitation Team

- Kearns & West



Process used for Negotiated Rulemaking

- On October 21, 2020, the Practical Reforms & Other Goals to Reinforce the Effectiveness of Self Governance & Self Determination for Indian Tribes (PROGRESS) Act was signed into law to amend subchapter IV of the Indian Self-Determination and Education Assistance Act (ISDEAA) and the Department's Tribal Self-Governance Program.
- The PROGRESS Act called for a negotiated rulemaking committee (Committee) to be established, with membership comprised only of representatives of Federal and Tribal governments, and the Director of OSG serving as the lead for the Department.



Process used for Negotiated Rulemaking

- The Committee met 15 times between August 2022 and April 2024 to negotiate and generate text of the Proposed Rule.
- Each meeting was open to the public and the public had the opportunity to provide comment. The Committee received no public comments during its meetings.



Self-Governance Negotiated Rulemaking Committee

Tribal Members of Self-Governance Negotiated Rulemaking Committee

W. Ron Allen, Chairman/CEO	Jamestown S'Klallam Tribe.	Sandra Sampson, Board Treasurer	Confederated Tribes of the Umatilla Indian Reservation.
Melanie Benjamin, Chief Executive	Mille Lacs Band of Ojibwe.	Jennifer Webster, Councilwoman	Oneida Nation.
Richard Peterson, President	Central Council of the Tlingit and Haida Indian Tribes of Alaska.	Gerry Hope, Transportation Director, Former Tribal Leader	Sitka Tribe of Alaska.
Michael Dolson, Councilman	The Confederated Salish and Kootenai Tribes of the Flathead Reservation.	Jody LaMere, Councilwoman	Chippewa Cree Indians of the Rocky Boy's Reservation.
Melanie Fourkiller, Director of Self-Governance	Choctaw Nation of Oklahoma.	Lana Butler, Secretary	Sac and Fox Nation.
Russel (Buster) Attebery, Chairman	Karuk Tribe.	Will Micklin, Second Vice President	Central Council of the Tlingit and Haida Indian Tribes of Alaska.
Karen Fierro, Self-Governance Director	Ak-Chin Indian Community.	Annette Bryan, Council Member	Puyallup Tribes of Indians.



Major Provisions of the PROGRESS Act and Proposed Rule:

The PROGRESS Act's amendments to Title IV include:

- 25 U.S.C. § 5363 – Eligibility – Will allow more Tribes to join Self Governance, a more relaxed standard regarding Tribal audits.
- 25 U.S.C. § 5364 – Compacts are now required.
- 25 U.S.C. § 5363(p) – Existing and Subsequent Funding Agreements – indefinite agreements are now possible by Tribal option.



Major Provisions of the PROGRESS Act and Proposed Rule:

The PROGRESS Act's amendments to Title IV include:

- 25 U.S.C. § 5366 – Final Offer (new provision)
 - Secretary has 60 days to act on a Tribal final offer, or may request, if a Tribe agrees additional time.
 - BIA final offer inaction will result in a “deemed approved” offer.
- 25 U.S.C. § 5365 – Final Offer Non-BIA
 - Final offer no action, Secretary is deemed to have rejected the offer for special geographic, historical, or cultural significant programs.
- 25 U.S.C. § 5367 – Construction (all new provisions)



Major Provisions of the PROGRESS Act and Proposed Rule:

- 25 U.S.C. § 5368 – Investment Standard has changed to "prudent investment standard".
- 25 U.S.C. § 5963(b) – Waiver of regulations - 120 days for decision, if no decision, it is deemed approved. For non-BIA it is deemed denied.
- Amends Title IV to be similar to Indian Health Service (IHS) Title V and allows for administrative efficiencies by enabling Tribes to operate under similar statutory frameworks for self-governance.
- Tribes requested and the Department agreed to codify the Executive Orders consultation process in the proposed regulation for all matters involving self-governance.



The Committee reached consensus on most of the rule:

- Subpart A – General Provisions
- Subpart B – Selection of Additional Tribes for Participation in Tribal Self-Governance
- Subpart C – Planning and Negotiation Grants for BIA Programs
- Subpart D – Financial Assistance for Planning and Negotiations Activities for Non-BIA Programs
- Subpart H – Negotiation Process
- Subpart I – Final Offer
- Subpart J – Waiver of Regulation
- Subpart L – Federal Tort Claims
- Subpart M – Reassumption
- Subpart N – Retrocession
- Subpart O – Trust Evaluation
- Subpart P – Reports
- Subpart Q – Operational Provisions
- Subpart S – Conflicts of Interest
- Subpart T – Tribal Consultation Process



The Committee did not reach consensus on:

Subpart E – Compacts and

Subpart F – Funding Agreements for BIA Programs

There was a disagreement between the Tribal and Federal representatives concerning the minimum content that must be included in a compact and in a funding agreement to reflect the requirements of Title IV. Disagreement was on these provisions:

- 1000.510 – What is included in a self-governance compact?
- 1000.515 – What provisions must be included in either a compact or funding agreement?
- 1000.610 – What must be included in a funding agreement?



The Committee did not reach consensus on:

Subpart F – Funding Agreements for BIA Programs

There was a disagreement between the Tribal and Federal representatives regarding negotiations about inherent Federal functions. Disagreement was on these provisions:

- 1000.695 – Is the amount of funds withheld by the Secretary to cover the cost of inherent Federal functions subject to negotiation?



The Committee did not reach consensus on:

Subpart G – Funding Agreements for Non-BIA Bureaus

There was a disagreement between the Tribal and Federal representatives on which functions may be inherent Federal functions in Non-BIA negotiations, and on language involving contract support costs for Non-BIA funding agreements. Disagreement was on these provisions:

- 1000.845 – Are there any non-BIA programs that may not be included in a funding agreement?
- 1000.885 – What funds are included in a non-BIA funding agreement?



The Committee did not reach consensus on:

Subpart K – Construction

There was a disagreement between the Tribal and Federal representatives on adding a definition of Categorical Exclusion. Disagreement was on these provisions:

- 1000.1301 – What key construction terms do I need to know?

There was a disagreement between the Tribal and Federal representatives on who is authorized to approve NEPA and NHPA compliance for a project.

There was a disagreement between the Tribal and Federal representatives regarding how a Tribe/Consortium is recognized for lead agency status for environmental determinations relating to a construction project or program performed by a Tribe/Consortium.



The Committee did not reach consensus on:

Subpart R – Appeals

There was a disagreement between the Tribal and Federal representatives on whether a BIA Title I eligible program/PSFA dispute may be administratively appealed to a Bureau head/Assistant Secretary as an alternate to the Interior Board of Indian Appeals (IBIA).

Disagreement was on these provisions:

- 1000.2302 – What does “title-I eligible programs” mean in this subpart?
- 1000.2351 – To whom may a Tribe/Consortium appeal a decision made before the funding agreement, amendment to the funding agreement, or compact is signed



Framing Question:

Given the nature of collaborative drafting inherent to the Committee's work, the Department seeks any comments on the Proposed Rule, including input on the following question:

Are there further revisions to the Proposed rule that the Committee could undertake to support Tribal Self-Governance?



Comment Period

- During the comment period, Tribal leaders and/or elected Tribal officials will be invited to provide comments first. Please state your name and Tribal affiliation for the court reporter.
- Any written comments must be submitted by email to consultation@bia.gov by 11:59 pm ET on Thursday, August 22, 2024. **Please submit written comments as early as possible.**
- On September 30, 2023, Congress extended the expiration of authority provision to expire on December 21, 2024. **Due to our timeline, the Department does not anticipate adding more consultation sessions or extending the comment period on this Proposed Rule.**