

DEPARTMENT OF THE INTERIOR
THE SELF-GOVERNANCE PROGRESS ACT - NEGOTIATED
RULEMAKING COMMITTEE
TRIBAL COMMITTEE MEMBERS

July 11, 2024

**Tribal Committee Members' Summary of Non-Consensus Items in the
Department of the Interior's Proposed Part 1000 Rule**

Dear Tribal Leader:

On July 1, 2024, Assistant Secretary – Indian Affairs Bryan Newland [announced](#) that the Department of the Interior will host Tribal consultations from July 15-22, 2024 on a proposed rule amending the 25 C.F.R. Part 1000 regulations (the “Proposed Rule”). We invite you to participate, whether in person or at the virtual session, and provide oral and written comments by the deadline August 22, 2024, to consultation@bia.gov. The Proposed Rule governs the U.S. Department of the Interior's Tribal Self-Governance Program and implements amendments to Title IV of the Indian Self-Determination and Education Assistance Act following the enactment of the Practical Reforms & Other Goals to Reinforce the Effectiveness of Self Governance & Self Determination for Indian Tribes (PROGRESS) Act. Solely on behalf of the Tribal representatives on the Negotiated Rulemaking Committee for the PROGRESS Act (the “Committee”), we would like to express our general support for the Proposed Rule with certain limited reservations. We emphasize that the Proposed Rule largely reflects consensus among the entire Committee. However, we would like to highlight key non-consensus items for your consideration as you review the Proposed Rule and prepare written comments. Your comments will be considered by the Committee and Department to prepare the final rule.

During negotiations, the Committee encountered several areas at issue where Tribal and Federal negotiators could not reach agreement. These non-consensus issues addressed:

- The minimum required contents for a compact and funding agreement (Subparts E and F)¹;
- Whether identification of inherent Federal functions is a permitted subject of discussion during negotiations (Subpart F)²;
- Whether the Part 1000 regulations should incorporate long-standing Interior Solicitor guidance on inherent Federal function determinations when the underlying program, service, function, or activity (or portions thereof) at issue relates to Tribal sovereignty (Subpart G)³;
- The calculation and payment of contract support costs for non-BIA funding agreements (Subpart G)⁴;

¹ Committee Final Report at 15–17, 19–21.

² Committee Final Report at 20–21.

³ Committee Final Report at 21–25.

⁴ Committee Final Report at 21–25.

- Whether a Tribe/Consortium may lawfully assume the Federal responsibility to make final environmental determinations under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and related laws (Subpart K)⁵;
- The process to recognize a Tribe/Consortium as having lead, cooperating, or joint lead agency status on a construction project and providing a clear definition for a “categorical exclusion” (Subpart K)⁶; and
- Whether the ability to pursue an administrative appeal through an appropriate bureau head or Assistant Secretary, as an alternate path to filing with the Interior Board of Indian Appeals (IBIA), should be expanded to cover all pre-award disputes (Subpart R)⁷.

The Tribal Committee representatives contend that the non-consensus issues should be decided in a manner favorable to Tribes, the promotion of self-governance, and the inclusion of programs in Title IV funding agreements and compacts as Congress intended.

We encourage you to review the Committee’s [Final Report](#) to learn more about these issues and the positions of the Tribal and Federal negotiators. For your consideration, we have attached a copy of the language supported by the Tribal representatives on the Committee which was not included in the Proposed Rule.

Please comment on these issues and provide any other comments on the Proposed Rule. We also encourage you to express support for the swift promulgation of a final rule before the Department’s rulemaking authority expires on December 21, 2024. For over a decade, Indian Country advocated for the enactment of the PROGRESS Act and anticipated reaching this moment. The Tribal representatives on the Committee believe that revisions to the Part 1000 regulations are critical to the future success of Tribal self-governance and will have lasting impacts in Indian Country for decades to come.

On behalf of the Tribal representatives on the Committee, we look forward to your comments and further discussions on the Proposed Rule. Please feel free to contact either of us at rallen@jamestowntribe.org or (206) 369-6699 and mfourkiller@choctawnation.com or (918) 453-7338 if you have any questions. Thank you.

Sincerely,



W. Ron Allen, Tribal Co-Chair
PROGRESS Act Rulemaking Committee
Tribal Chairman/CEO
Jamestown S’Klallam Tribe



Melanie Fourkiller, Tribal Co-Chair
PROGRESS Act Rulemaking Committee
Director, Office of Self-Governance
Choctaw Nation of Oklahoma

Enclosure: Part 1000 Regulatory Language Supported by Tribal Representatives on the PROGRESS Act Rulemaking Committee

⁵ Committee Final Report at 28–34.

⁶ Committee Final Report at 28–34.

⁷ Committee Final Report at 37–40.