

**DEPARTMENT OF THE INTERIOR
AND
TRIBAL REPRESENTATIVES
SELF-GOVERNANCE PROGRESS ACT
NEGOTIATED RULEMAKING COMMITTEE**

ORGANIZATIONAL PROTOCOLS

PREAMBLE

The Self-Governance PROGRESS Act Negotiated Rulemaking Committee has been established pursuant to P.L. 116-180 and is further detailed in a Committee Charter approved by the Secretary of the Interior. The Committee is charged with the development of regulations to implement amendments to the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended.

1. PARTICIPATION

- A. Attendance at meetings. Each Committee Member for each party must make a good faith effort to attend each full negotiating session. All Committee Members are responsible for contacting the DFO in writing as soon as the Committee Member is aware of their inability to attend. The person acting as Alternate will have the full authority of the absent Primary Committee Member. Travel expenses for Primary Committee Members will be paid by the Department and, in addition, subject to additional funding being made available for this negotiated rulemaking, travel expenses for Alternate Committee Members will be paid by the Department so they may join Primary Committee Members in Committee meetings. Alternate Committee Member travel expenses will be paid by the Department when they are attending in place of the Primary Committee Member. The Department will ensure that all Committee Members can participate telephonically or virtually, where possible, in all meetings.
- B. Constituents' Interests. Committee Members are expected to represent the concerns and interests of their constituents. A Committee Member may be accompanied by such other individuals and seek recognition without objection for such persons to address the Committee as that Member believes is appropriate to represent and discuss the interest of their constituents.

- C. Technical Advisers, Subject Matter Experts, or Consultants. The Committee or Subcommittee Members may call upon non-members to address the Committee or Subcommittee in order to provide technical expertise or assistance, advice, views, opinions, alternatives, or recommendations. These experts are not members of the Committee and may be identified on the agenda to present on specific topics. These technical advisers, subject matter experts, and consultants are not Members of the Committee, and no Federal compensation will be provided to them.

2. MEETINGS

- A. FACA. The negotiations will be conducted under the Federal Advisory Committee Act (FACA), the Negotiated Rulemaking Act of 1990 (NRA), and the PROGRESS Act.
- B. Rules of Order. The Committee will adopt the rules of procedure provided by Robert's Rules of Order adapted to the Protocols. In the event of a conflict, these Protocols will govern.
- C. Open Meetings. Consistent with FACA requirements, Committee meetings will be announced in the Federal Register prior to the meeting and will be open to the public. The agenda for each Committee meeting will provide an opportunity for the public to make comments or raise questions. Members of the public may also submit written statements to the Committee at any time at *comments@bia.gov*.
- D. Minutes. The Committee shall observe the requirements of the Charter regarding minutes, records, and documents. Approved minutes will be maintained and distributed to all Committee Members and made available publicly at <https://www.bia.gov/service/progress-act>.
- E. Agendas. Meeting agendas will be developed by the Leadership Team identified in Section 8, below, and approved by consensus.
- F. Caucus. A caucus can be declared at any time by a Committee Member. The Committee Member requesting the caucus will be asked for an estimate of the time needed for the caucus. The Facilitator or DFO may call for a caucus at any time. Internal procedures will be determined by each respective caucus.
- G. Facilitators. In coordination with the DFO, the Facilitators may chair each meeting of the Committee.

3. DECISION MAKING

- A. Consensus. The Committee, Leadership Team, and any subcommittees will operate by consensus of the whole. Consensus is defined as a unanimous concurrence of the Primary Committee Members or, in the absence of the presence of a Primary Committee Member, his or her alternate. If the Committee reaches consensus on part or all of a proposed rule, the Committee will recommend that the Department adopt the Committee's consensus when publishing a proposed rule for comment in the Federal Register. The Committee may also recommend changes in the proposed rule in response to comments.
- B. Quorum. A quorum will consist of no fewer than five Tribal Primary Members and no fewer than four Federal Primary Members of the Committee. In the absence of a Tribal or Federal Primary Member, their designated Alternate Member shall count for purposes of determining whether a quorum of the Committee is present. For purposes of establishing a quorum, the presence of a Committee Member may be established by an audio connection in which the Member can hear, and be heard by, all Members of the Committee.
- C. Sub-committees. Sub-committees may be formed by consensus of the Committee and approval of the DFO to address specific issues and to make recommendations to the Committee. Subcommittee meetings are open to any Committee Members or the Member's designee, plus such other individuals the Committee believes would enhance the functioning of the Subcommittees. Subcommittees are not authorized to make decisions for the Committee as a whole. All subcommittees will report back to the committee regarding status of the assignments. All Committee Members will be notified of all Subcommittee meetings by the Leadership Team and DFO.

4. AGREEMENT

- A. Product of Negotiations. The Committee shall, with the assistance of a neutral facilitator, attempt to reach consensus on the text or content of a proposed rule to implement the PROGRESS Act. The Secretary agrees to use the Committee's preliminary report and proposed regulations as the basis of the Notice of Proposed Rulemaking.
- B. Final Rule. The Committee will review all consultation session transcripts and written comments received in response to the Notice of Proposed Rulemaking. The Committee may recommend changes in the proposed rule in response to comments as part of its final report with recommendations that will be submitted to the Secretary for promulgation of the final rule.

- C. The Committee may include in either of its reports any other information, recommendations, or materials that the Committee by consensus considers appropriate. Any Committee Member may include as an addendum to either report additional information, recommendations, or materials.

5. GROUND RULES FOR THE COMMITTEE MEMBERS

A. Good Faith. All Committee Members must:

1. commit themselves to participate respectfully, with civility, and in good faith during all negotiations and discussions;
2. have as their goal the development of consensus recommendations;
3. commit themselves to be informed of Committee business, preparing in advance for Committee meetings and attending Committee and subcommittee meetings;
4. take personal responsibility for getting caught up on deliberations and decisions made at meetings a Committee Member was not able to attend;
5. represent the geographical balance and diversity of interests by articulating the interests of and bringing concerns and ideas from your constituent groups;
6. listen to the points of view of others and try to understand their interests;
7. openly discuss issues with Committee Members who hold diverse views and cooperatively participate in problem-solving to resolve differences;
8. offer an alternative proposal if the Committee Member disagrees with a proposed approach or solution during Committee deliberations;
9. generate and evaluate options to address the needs expressed by others;
10. support and abide by the requirements of these protocols.

B. Information.

1. Committee Members agree to exchange information in good faith.
2. Committee Members will provide information called for by this paragraph as much in advance of the meeting at which such information is to be used as possible.
3. All Committee Members agree not to divulge information shared in confidence. Ideas raised during negotiations and prior to the development of the reports for the proposed and final rule will be considered and labeled “for discussion purposes only,” and will not be construed to reflect the final conclusion of the Committee or subcommittee.
4. It is the responsibility of the Committee Members to brief their Alternates.

6. SCHEDULE

Negotiating sessions will be held regularly as determined by the Committee. Unless extended by Congress, the deadline for the negotiations is thirty months from the date of enactment of Public Law 116-180 on October 21, 2020.

- A. To the greatest extent possible, Committee meetings will be conducted in person at venues agreed upon by the Committee. Committee meeting venues should include the necessary infrastructure and technological capabilities and space to support and accommodate participation by Committee Members, Facilitators, support staff, and the public, including facilities accessible to persons with disabilities and capabilities to support participation telephonically or virtually, where possible. In light of the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes, the Committee will strive to select suitable venues located on Tribal lands and in Washington, D.C. that meet the above criteria. The Committee, however, may agree to hold meetings virtually, without in-person attendance, if it determines that doing so promotes public health and/or safety and the efficient work of the Committee.
- B. Subject to a statutory extension by Congress, the Department shall renew the Committee's charter prior to its expiration if the Committee has not yet completed and submitted its final report to the Secretary and the Department has not published the final rule.

7. FACILITATOR

The Department has contracted with the Federal Mediation and Conciliation Service (FMCS) to serve as facilitators for the Committee's activities and to ensure that the negotiations process runs smoothly. FMCS responsibilities may also include suggesting potential agenda topics, facilitating Committee and select subcommittee discussions, assisting the Committee and subcommittees with resolving impasses that may arise, and other functions the Committee requests. FMCS will remain neutral on the issues before the Committee and serve at the will of the Committee.

8. LEADERSHIP TEAM, AGENCY LEAD, DFO, AND TRIBAL LEAD

The Leadership Team may convene administrative meetings for the limited purposes of administrative, operational, or logistical issues. Administrative meetings are not subject to FACA's open meeting requirements.

The Leadership Team will be a subcommittee tasked with conducting administrative meetings and will be composed of the following:

Non-Committee Members:

- 1) DFO;
- 2) Alternate DFO;
- 3) Facilitators

Committee Members:

- 1) Agency Lead;
- 2) Tribal Lead;
- 3) One Member selected from the Tribal Committee Members; and
- 4) One Member selected from the Federal Committee Members.

The Tribal Lead must be a Committee Member and may include a Co-Tribal Lead as the Tribal Committee Members may select. The Co-Tribal Lead shall act in the absence of the Tribal Lead.

Passed by consensus action of the Committee on November _____, 2022

Agency Lead

Tribal Lead

Designated Federal Officer

Tribal Co-Lead