



## DEPARTMENT OF THE INTERIOR

### Office of the Assistant Secretary - Indian Affairs

#### 25 CFR Part 1000

[212A2100DD/AAKC001030 /A0A501010.999900 253G]

### Self-Governance PROGRESS Act Negotiated Rulemaking Committee Establishment; Nominations

**AGENCY:** Office of the Assistant Secretary - Indian Affairs, Interior.

**ACTION:** Notice of intent to establish committee; request for nominations.

---

**SUMMARY:** The U.S. Department of the Interior (DOI) is announcing its intent to establish a Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee) to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act). The DOI is soliciting comments on its proposal to form a negotiated rulemaking committee; and invites nominations for Committee members who will adequately represent the interests that are likely to be significantly affected by the proposed rule.

**DATES:** Comments regarding the intent to establish this Committee and nominations for Committee members must be submitted no later than **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Send written comments and nominations to Ms. Vickie Hanvey, by any of the following methods:

- (Preferred method) Email to: [consultation@bia.gov](mailto:consultation@bia.gov);
- Mail, hand-carry or use an overnight courier service to Ms. Vickie Hanvey, Office of Self-Governance, Office of the Assistant Secretary – Indian Affairs, 1849 C Street, NW, Mail Stop 4660, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vickie Hanvey, Program Policy Analyst, Office of Self-Governance, Office of the Assistant Secretary – Indian Affairs; telephone: (918) 931-0745; email: Vickie.hanvey@bia.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On October 21, 2020, the PROGRESS Act was signed into law. *See* Pub. L. 116-180. The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.*, which addresses Indian Self-Determination, and subchapter IV of the ISDEAA which addresses DOI's Tribal Self-Governance Program. The PROGRESS Act calls for a negotiated rulemaking committee to be established under 5 U.S.C. 565, with membership consisting only of representatives of Federal and Tribal governments, with the Office of Self-Governance serving as the lead agency for the DOI. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes.

This notice is published in accordance with the Negotiated Rulemaking Act of 1996 (NRA) (5 U.S.C. 561 *et seq.*); FACA; and the PROGRESS Act.

**II. Scope of the Proposed Rule to be Negotiated**

The PROGRESS Act requires DOI to establish the negotiated rulemaking committee to develop proposed regulations to implement subchapter IV, regarding the Self-Governance Program. *See* Pub. L. 116-180, Section 413. Current regulations implementing the Self-Governance Program are found at 25 CFR part 1000, Annual Funding Agreements under the Tribal Self-Government Act Amendments to the Indian Self-Determination and Education Act. It is anticipated that the proposed rule will revise those regulations at 25 CFR part 1000 to amend, delete, and add provisions as appropriate to implement the PROGRESS Act.

### **III. The Committee and Process for Negotiated Rulemaking**

The Committee will be charged with developing proposed regulations for the Secretary's implementation of the PROGRESS Act's provisions regarding the DOI's Self-Governance Program. In negotiated rulemaking, recommended provisions of a proposed rule are developed by a committee composed of at least one representative of the Federal Government and representatives of the interests that will be significantly affected by the rule. In compliance with FACA and the NRA, the DOI will use the following procedures for this negotiated rulemaking. The DOI may modify them in response to comments received on this notice of intent or during the negotiation process.

#### ***A. Committee Formation***

The Committee will be formed in full compliance with the requirements of FACA and the NRA, and operate in full compliance with the NRA and the guidelines of its charter.

#### ***B. Composition of Committee***

The Secretary is seeking nominations for representatives to serve on the Committee who can represent the interests listed in Section C, and who have a demonstrated ability to communicate well with groups about the interests they will represent. The Committee membership will consist of approximately 15, but not more than 25 members in accordance with the NRA.

Tribal Committee membership must:

- Include only representatives of the interests described below;
- Include representatives with a demonstrated ability to communicate well with groups about the interests they will represent; and
- Include Tribal representatives appointed by the Secretary that are:
  - Elected officials of Tribal governments acting in their official capacities;

- Or their designated employees with authority to act on their behalf in their official capacities;
  - Representative of Tribes with a geographical balance; and
  - A majority of whom are representative of Indian Tribes with existing self-governance funding agreements.
- Comply with the FACA.

FACA regulations require the membership of a FACA committee to be fairly balanced in its member in terms of the points of view represented and the functions to be performed. *See* 41 C.F.R. 102-3.30. In making membership decisions, the Secretary will consider whether the interest represented by a nominee will be affected significantly by the final products of the Committee, which may include report(s) and/or proposed regulations; whether that interest is already adequately represented by nominees; and whether the potential addition would adequately represent that interest.

Federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term “individual capacity” refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

### ***C. Interests Identified***

Under Section 562 of the NRA, “interest” means, with respect to an issue or matter, multiple parties which have a similar point of view or which are likely to be affected in a similar manner. A limited number of identifiable interests will be significantly affected by the rule. Those parties are Indian Tribes and Tribal organizations as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act that are currently participating in the Tribal Self-Governance Program and those that are not currently participating in, but are interested in participating in Tribal Self-Governance Program.

The DOI is accepting comments identifying other interests that may be significantly affected by the final products of the Committee, which may include report(s) and/or proposed regulations, until the date listed in the **DATES** section of this notice of intent.

***D. Committee Member Responsibilities***

The Committee is expected to meet approximately 3–5 times and each meeting is expected to last multiple hours for a consecutive 2–3 days each. The initial meeting will be held by teleconference and/or web conference; later meetings may be held either virtually or in person. The Committee’s work is expected to occur over the course of 6–12 months, and it is the Secretary’s intent to publish the proposed rule for notice and comment by the statutory deadline of July 21, 2022 (within 18 months of the anticipated date of the Committee’s establishment). However, the Committee may continue its work for up to two years.

Because of the scope and complexity of the tasks at hand, Committee members must be able to invest considerable time and effort in the negotiated rulemaking process. Committee members must be able to attend all Committee meetings, work on Committee work groups, consult with their constituencies between Committee meetings, and negotiate in good faith toward a consensus on issues before the Committee. Because of the complexity of the issues under consideration, as well as the need for continuity, the Secretary reserves the right to replace any member who is unable to participate in the Committee’s meetings.

Under 5 U.S.C. 568(c), members of a negotiated rulemaking committee are responsible for their own expenses of participation in such committee, except that an Agency may, in accordance with Section 7(d) of the FACA, pay for a member’s reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation, if:

- Such member certifies a lack of adequate financial resources to participate in the Committee; and
- The agency determines that such member's participation in the Committee is necessary to assure an adequate representation of the member's interest.

The DOI commits to pay the reasonable travel and per diem expenses of Committee members, if appropriate, under the NRA and Federal travel regulations.

#### ***E. Facilitator***

The Committee may use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to help the negotiation process run smoothly, and help participants define and reach consensus.

#### ***F. Administrative and Technical Support***

The DOI will provide sufficient administrative and technical resources for the Committee to complete its work in a timely fashion. The DOI, with the help of the facilitator, will prepare and provide a final report of any issues on which the Committee reaches consensus.

#### ***G. Training and Organization***

At the first meeting of the Committee, a neutral facilitator will provide training on negotiated rulemaking, interest-based negotiations, and consensus-building. In addition, at the first meeting, Committee members will make organizational decisions concerning protocols, scheduling, and facilitation of the Committee.

#### ***H. Committee Meeting Procedures***

The members of the Committee, with the assistance of the facilitator, may adopt procedures for Committee meetings.

### **IV. Request for Nominations to the Committee**

The PROGRESS Act requires that the Committee be comprised of only Federal and Tribal government representatives. Tribes may nominate Tribal leaders to serve on the Committee who will adequately represent the interests that are likely to be significantly affected by the proposed rule. Each nomination is expected to include a nomination for a primary representative and an alternate who can fulfill the obligations of membership should the primary representative be unable to attend. The Committee membership should reflect a diversity of interests, and nominees should only be of representatives and alternates who:

- Are elected officials of Tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and
- Will be able to:
  - Represent one or more of the specified interests with the authority to embody the views of that interest, communicate with interested constituents, and have a clear means to reach agreement on behalf of the interest(s);
  - Coordinate, to the extent possible, with other interests who may not be represented on the Committee;
  - Negotiate effectively on behalf of the interest(s) represented;
  - Commit the time and effort required to attend and prepare for meetings; and
  - Collaborate among diverse parties in a consensus-seeking process.

The DOI will consider nominations for representatives only if they are nominated through the process identified in this Notice of Intent. The DOI will not consider any nominations that we receive in any other manner. The DOI will not consider nominations for Federal representatives; only the Secretary may nominate Federal employees to the Committee.

Nominations must include the following information about each nominee:

1. A current letter from the governing body or chairperson of the Tribe representing one of the interest(s) identified supporting the nomination of the individual to serve as a representative for the Tribe on the Committee;
2. A resume reflecting the nominee's qualifications and experience, to include the nominee's name, Tribal affiliation, job title, major job duties, employer, business address, business telephone and fax numbers (and business email address, if applicable);
3. The interest(s) to be represented by the nominee (see Section III.C of this notice) and whether the nominee will represent other interest(s) related to this rulemaking; and
4. A brief description of how the nominee will represent the views of the identified interest(s), communicate with constituents, and have a clear means to reach agreement on behalf of the interest(s) they are representing.
5. A statement on whether the nominee is only representing one interest or whether the expectation is that the nominee represents a specific group of interests.

To be considered, nominations must be received by the close of business on the date listed in the **DATES** section, at the location indicated in the **ADDRESSES** section.

#### **V. Solicitation of Public Comments**

Members of the public are invited to submit comments on this proposal to establish the Committee.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment – including your personal identifying information – may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.



## **VI. Next Steps**

Following the receipt of nominations and comments, DOI will publish a second notice in the **Federal Register** with a list of persons to represent the interests that are likely to be significantly affected by the rule and the person or persons proposed to represent the DOI. Persons who will be significantly affected by the proposed rule and who believe that their interests will not be adequately represented by any person specified in that second **Federal Register** notice will be given an opportunity to apply or nominate another person for membership on the Committee to represent such interests with respect to the proposed rule.

Following the second **Federal Register** notice and responses to it, DOI expects to establish the Committee. After the Committee reaches consensus on the recommended provisions of the proposed rule, as discussed in more detail below, the DOI will publish a proposed rule in the **Federal Register**.

## **VII. Determination that Negotiated Rulemaking is in the Public Interest**

Under 5 U.S.C. 563, the head of the agency is required to determine that the use of the negotiated rulemaking procedure is in the public interest.

In making such a determination, the agency head must consider certain factors. Taking these factors into account, the Secretary, through the authority delegated to the Assistant Secretary – Indian Affairs, has determined that a negotiated rulemaking is in the public interest because:

1. A rule is needed. The PROGRESS Act directs the Secretary to conduct a negotiated rulemaking pursuant to the NRA.
2. A limited number of identifiable interests will be significantly affected by the rule.
3. There is a reasonable likelihood that the Committee can be convened with a balanced representation of persons who can adequately represent the interests discussed

in item 2, above, and who are willing to negotiate in good faith to attempt to reach a consensus on provisions of a proposed rule.

4. There is a reasonable likelihood that the Committee will reach consensus on a proposed rule within a fixed period of time.

5. The use of negotiated rulemaking will not delay the development of a proposed rule because time limits will be placed on the negotiation. We anticipate that these negotiations will expedite a proposed rule and ultimately the acceptance of a final rule.

6. The DOI is making a commitment to ensure that the Committee has sufficient resources to complete its work in a timely fashion.

7. The DOI, to the maximum extent possible and consistent with the legal obligations of the Agency, will use the consensus report of the Committee as the basis for a proposed rule for public notice and comment.

For the above reasons, I hereby certify that the Self-Governance PROGRESS Act Negotiated Rulemaking Committee is in the public interest.

**Tara Sweeney,**  
*Assistant Secretary – Indian Affairs.*

[FR Doc. 2021-01149 Filed: 1/29/2021 8:45 am; Publication Date: 2/1/2021]