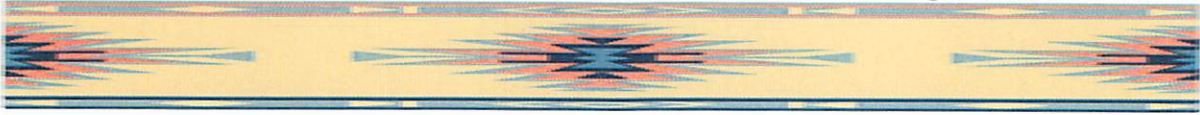


**U.S. Department of the Interior
Office of Self-Governance - Indian Affairs
Self-Governance PROGRESS Act Negotiated Rulemaking Committee**



MEETING MINUTES

Advisory Committee Management Officer (CMO)- Margaret Triebsch
Designated Federal Officer (DFO)- Vickie Hanvey

DATE: August 29, 2022
Federal Register Notice: FRN 2022-17284
Meeting Number: 1
DFO Convened at: 1:07 p.m. ET
DFO Adjourned at: 5:30 p.m. ET
Location: Hosted via ZoomGov (Committee Members)
Broadcast via MS Teams (Public Access)
Designated Notetaker: Kelly J. Latimer, Esq.
Attorney-Advisor, DOI Office of Hearings and Appeals
Facilitation: Federal Mediation and Conciliation Service (FMCS)

In accordance with the provisions of Federal Advisory Committee Act (Public Law 92-463, as amended), the meeting was open to the public.

CONSENSUS AGREEMENTS SUMMARY:

The Self-Governance PROGRESS Act Negotiated Rulemaking Committee (the “Committee”) reached consensus on the following during the meeting:

1. Recommending that the Department submit a draft bill as soon as possible to extend the statutory deadlines for the promulgation of regulations implementing the PROGRESS Act set forth in Section 5373 of Title 25, United States Code. Specifically, the Committee is recommending that:
 - a) The statutory deadline set forth in 25 U.S.C. § 5373(a)(2) be amended to extend the deadline for publishing the proposed implementing regulations in the Federal Register from no later than 21 months after the date of enactment of October 21, 2020, (July 21, 2022) to no later than 35 months after October 21, 2020, (September 21, 2023); and
 - b) The statutory deadline set forth in 25 U.S.C. § 5373(a)(3) be amended to extend the deadline for exercising authority to promulgate the implementing

- regulations from 30 months after the date of enactment of October 21, 2020, (April 21, 2023), to 47 months after October 21, 2020, (September 21, 2024); and
2. In regard to the conflicting audit threshold requirements set forth in the PROGRESS Act and Single Audit Act,
- a) defer consideration of the proposal to resolve the conflicting audit threshold requirements by technical amendment while the Department obtains a Solicitor’s opinion regarding how to deal with these conflicting provisions;
 - b) the Department confer with Indian Health Services regarding these conflicting audit threshold provisions; and
 - c) that the Committee continue to separately move forward with its request to extend the deadline for exercising authority to promulgate regulations implementing the PROGRESS Act.
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OPENING

The meeting was convened at 1:07 p.m. ET by the Designated Federal Officer (DFO), Vickie Hanvey, Program Policy Analyst, U.S. Department of Interior (DOI) Office of Self-Governance, Assistant Secretary—Indian Affairs. DFO Hanvey welcomed the Committee and provided a brief introduction.

INVOCATION

Chairman W. Ron Allen, Jamestown S’Klallan Tribe, opened the meeting with a prayer in which he expressed his hope that the committee would have a constructive meeting as it completes its tasks and moves forward with deliberating on the important matters before it.

WELCOME AND INTRODUCTORY REMARKS

Sharee Freeman, Director of the DOI Office of Self-Governance, Assistant Secretary—Indian Affairs, welcomed everyone to the first Self-Governance PROGRESS Act Negotiated Rulemaking Committee meeting. She thanked the participants for their attendance and expressed that she was looking forward to a productive meeting. Director Freeman then explained that Vicki Hanvey has been chosen to fulfill the role of Designated Federal Official for the Committee, and that the meeting would be facilitated by a team from the Federal Mediation and Conciliation Services (FMCS).

Ms. Freeman was followed by Moira Caruso, who provided introductory remarks on behalf of the FMCS team. Ms. Caruso congratulated the Committee on its leadership, dedication, and the patience and cooperation that the Committee members have shown up to this point. She expressed that it is a privilege for the FMCS to serve alongside the Committee and support it throughout this process.

ATTENDANCE

DFO Hanvey remarked that Kelly Latimer, an Attorney-Advisor for the DOI Office of Hearings & Appeals, would be acting in the capacity of notetaker for this session. DFO Hanvey then took a

roll call of the primary and alternate Committee members. See Appendix A for a list of all attendees.

Committee Attendance		
	Present	Absent
Tribal Primary Members	7	0
Federal Primary Members	6	0
Total Primary Attendance	13	0
Tribal Alternate Members	5	2
Federal Alternate Members	6	0
Total Alternate Attendance	11	2

APPROVAL OF MINUTES

As this was the first meeting of the Committee, there were no previous meeting minutes to be considered and approved.

AGENDA REVIEW AND MEETING LOGISTICS

Ms. Caruso reviewed the meeting agenda. She explained that the first item on the agenda would be briefings by technical experts on several different topics. The second item on the agenda is a FMCS-facilitated discussion of Committee operating protocols. Ms. Caruso explained that this discussion may include separate Federal and Tribal caucuses led by mediators in individual break-out rooms. She further explained that until the Committee can establish a set of operating protocols, FMCS recommends that any decision-making by the Committee be by unanimous consensus among primary and alternate Committee members. If unanimous consensus cannot be reached, then a decision will be delayed until after the Committee establishes set protocols. She asked that all primary and alternate Committee members have their cameras turned on, and that all other participants keep their cameras turned off and give input only during the expert briefings or during the public comment period. Chairman Allen had the following questions about the agenda:

- The tribal leaders have not yet discussed having a Tribal lead. When should that happen?
DFO Hanvey: The PROGRESS Act requires an agency lead, which will be Director Freeman. The agency has proposed in the draft protocol that there also be a Tribal lead, although it is not required by the Act. This will be discussed by the Committee as part of the draft protocol discussion.

Kayla Mack with FMCS next gave an overview of how the Committee would be taking public comments during this meeting and subsequent plenary sessions. Ms. Mack explained that there will be two 15-minute periods provided where the viewing public can call in and provide public comment, through either a posted Zoom link or a telephone call-in number. The first public comment period is scheduled for 3:00 to 3:15 p.m. ET and the second is scheduled from 4:45 to 5:00 p.m. ET. Members of the public that call-in during these times will be placed in a Zoom waiting room and admitted on an individual basis in order of when they log-in. Once admitted, the individual will be asked to introduce themselves and will be given up to three minutes to

speaking before they will be removed back to the waiting room. Comments will be taken from as many members of the public as possible during the scheduled 15-minute session.

NEGOTIATED RULEMAKING PROCESS BRIEFINGS

DFO Hanvey explained that the DOI Committee Management Officer, Margaret Triebisch, suggested that they have DOI presenters provide a Federal Advisory Committee Act (FACA) overview and Ethics overview for the benefit of the Committee and members of the public. These presentations are to each be followed by a Q&A period.

1. An Introduction to the Federal Advisory Committee Act (FACA)

Jennifer Heindl, an Attorney-Advisor with the DOI Division of General Law, provided a brief introduction to FACA, which is codified at 5 U.S.C. App. 2, with implementing regulations located at 41 C.F.R. Part 102-3. See Attachment 1. Ms. Heindl explained that the PROGRESS Act Committee is subject to FACA, which is a procedural statute that promotes public participation in government decision making, and which applies to “groups established or utilized by the Executive branch for the purpose of obtaining advice or recommendations.” FACA advisory committees have only advisory functions. The job of the PROGRESS Committee is to work to reach consensus on a proposed rule to present to the agency with a goal of promulgation. She explained that while there are no criminal penalties or fines for FACA violations, it is in the agency’s best interest to protect this process because violations could negatively affect the agency’s ability to defend the promulgation of the rule under the Administrative Procedures Act. A FACA Committee’s charter gives an overview of its objectives and the specific scope of the duties of the Committee members. Committee members are appointed by the Secretary of the Interior and serve at her pleasure. Only members appointed by the Secretary may deliberate and vote. FACA Committees terminate after two years unless renewed, or as established by statute. The PROGRESS Act Committee charter will be made available on the Committee website.

Ms. Heindl explained that FACA requires the agency to hold open meetings and maintain all Committee documents for public inspection but that meetings that are purely administrative in character do not need to be made public. FACA requires that members of the public have opportunity to speak and/or provide written statements. All meetings must be announced in the Federal Register at least 15 calendar days in advance, and the Committee must create and post publicly detailed minutes of all public meetings.

Ms. Heindl explained that the appointed DFO, in this case Vickie Hanvey, is the members’ primary liaison with the Department. The DFO is responsible for approving and calling meetings, approving meeting agendas, attending meetings, and adjourning meetings if determined to be in the public interest. FACA also allows for subcommittees, which are groups reporting to the full advisory committee. Although subcommittees may include non-committee members, it is recommended that they always include one full committee member. Subcommittees should be formed and tasked by the full committee in a public meeting. Subcommittees do not directly advise the President or any federal agency and act under direction of DFO. FACA notice and open meeting requirements do not apply to subcommittee meetings so long as the subcommittee reports to full committee for deliberation in a public meeting.

Section 10(b) of FACA provides for the contemporaneous availability of advisory committee records which, in conjunction with the ability to attend meetings and comments, ensures that interested members of the public have a meaningful opportunity to fully comprehend the work undertaken by the Committee. All Committee records, including draft recommendations, will be placed on the Committee website. Ms. Heidl explained that while Committee email communications won't be posted on the Committee website, they likely would be considered agency records and therefore could be subject to release pursuant to a request under the Freedom of Information Act.

Committee members had the following questions about FACA:

- *Does FACA affect the process for replacing any Committee members in case a member has to step away from the Committee or is no longer available to serve?* FACA and the FACA regulations have a fair bit of flexibility as to how Committee members are chosen. The agency would follow a process similar to how Committee members were originally chosen. There would be a Federal Register notice requesting nominations to the Committee, there would be some vetting of the nominees, and then the Secretary would decide whether to appoint the nominee.
- *Is there any requirement for retention of email messages or texts between Committee members regarding the subject of the Neg Reg?* No, it is not required. However, the DFO should be included in all full Committee communications and those would be retained by the agency email system

2. Ethics Briefing

Erica Boyd, Attorney-Advisor for the DOI Departmental Ethics Office, Training, Education, and Communications Branch, presented an Ethics Briefing to the Committee. See Attachment 2. Ms. Boyd clarified that the Committee's Non-Federal Committee or subcommittee members are not Government employees and so are not subject to Federal ethics statutes and regulations. However, non-Federal Committee members are subject to certain ethics responsibilities set forth in the Committee charter. Ms. Boyd also clarified that as the Committee's Federal members are Government employees and subject to Federal ethics statutes and regulations. Ms. Boyd reviewed the general ethics principles that Federal employees must abide by as well as restrictions that apply to Federal employees. She gave an overview of the limitations on financial conflicts of interest set forth in 18 U.S.C. § 208; impartiality provisions set forth in 5 C.F.R. § 2635.502; prohibitions against misusing public office for private gain set forth in 5 C.F.R. §§ 2635.702-705; exclusions or exceptions surrounding gifts, which are set forth in 5 C.F.R. § 2635, Subparts B & C; activities prohibited under the Hatch Act; and limitations on the use of social media. Violations of the ethics laws and regulations have consequences ranging from disciplinary actions up to the payment of fines or even imprisonment, depending on the statute violated.

Next, Ms. Boyd reviewed ethics considerations for Non-Federal Committee or subcommittee members set forth in the Committee charter. The Charter states that, "Non-Federal Committee or subcommittee members may not participate in any Committee or subcommittee deliberations or votes relating to a specific party matter before the Department or its bureaus

or office including a lease, license, permit, contract, grant, claim, agreement, or litigation in which the member or the entity the member represents has a direct financial interest.” Ms. Boyd described with particularity what constitutes a specific party matter, financial interest, and direct effect. Ms. Boyd clarified that the Charter language applies only to actions taken as part of a member’s advisory Committee duties. She advised non-Federal Committee members to notify the Departmental Ethics Office (DEO) immediately if, while performing their duties for the Committee, they are asked to participate in a specific party matter before DOI that would affect their financial interest or the financial interest of the entity they represent and to take no action on the matter unless advised to do so by the DEO. She then reviewed additional ethical considerations for non-Federal Committee members.

Committee members had the following questions:

- *Why has the chat feature in Zoom been disabled?* Because that feature is not visible to members of the public, all Committee discussions and deliberations need to be conducted verbally.
- *Can the Power Points and other materials presented today be emailed out to the Committee?* Any documents utilized during the meeting will be posted to the Committee website.
- *Where is the Committee Charter available?* The Charter was provided to the full Committee via email during Orientation and will also be posted to the Committee website. DFO Hanvey and Alternate DFO Gilbert has been working with the DOI web designers to develop an updated website specific for the Committee. The Charter, Protocols, Federal Register Notices, agendas, minutes, and other documents will be posted to this site and organized by meeting date. In the meantime, documents will be posted to the existing website. In addition, both the DFO and Alternate DFO have requested training so that there will be direct access to update the website without depending on a third party to post documents.

3. Extension of Authority

Next was an expert briefing by Matt Jaffe, Partner at Sonosky, Chambers, Sachse, Endreson & Perry LLP, and Bryan Shade, Attorney-Adviser, DOI Office of the Solicitor, Division of Indian Affairs, regarding the necessity of extending the statutory deadlines currently set forth in the PROGRESS Act. The PROGRESS Act was enacted on October 21, 2020. Section 413 of the Act, codified at Section 5373 of Title 25 of the United States Code, provides that the proposed regulations for implementing the Act “shall be published in the Federal Register not later than 21 months” after the date of enactment.” See 25 U.S.C. 5373(a)(2). Section 5573 further provides that the “authority to promulgate regulations . . . shall expire on the date that is 30 months” from the date of the enactment. 26 U.S.C. 5373(a)(3). Mr. Jaffe explained that because the date for publishing the proposed rules expired on July 21, 2022, and the date by which the Committee must promulgate the final rule expires on April 21, 2023, it is no longer feasible for the Interior to draft a proposed rule, publish it for notice and comment for 60 days, and then reconvene the Committee to draft a final rule.

Given the limitations with the current statutory deadlines, Mr. Jaffe recommended that the Committee:

- a) Request that Congress extend the above-discussed statutory deadlines to allow for a reasonable amount of time for the Committee to convene to draft the proposed rule while also ending no later than calendar year 2024 to ensure that the final rule is in place before the end of the current administration.
- b) Pursue extending these statutory dates by reaching out to the Senate Committee on Indian Affairs and House Natural Resources Committee as soon as possible and urgently request that they secure an extension of these deadlines this fall in order to: 1) provide certainty as early as possible in the rulemaking process as to the duration of time under which the Committee will be operating; and 2) to avoid any possible delays in securing the extension that may result from the November 25, 2022 mid-term elections; and
- c) That if the extension of these deadlines is an issue that requires Tribal consultation outside of or beyond the scope of the Committee, that the Department allow time for that.

Mr. Shade then presented draft language for amending Section 5373 of title 25 of the United States Code to extend the current statutory deadlines for promulgation of the regulations implementing the PROGRESS Act. See Attachment 3. The draft language proposes that subparagraph (a)(2) of section 5373 be amended to strike “21 months” with the stricken language being replaced with a new number of months after October 21, 2020, by which the proposed implementing regulations shall be published in the Federal Register. The draft language also proposes that subparagraph (a)(3) of section 5373 be amended to strike “30 months” with the stricken language being replaced with a new number of months after October 21, 2020, by which the authority to promulgate implementing regulations shall expire. Mr. Shade then presented the Committee with an Excel spreadsheet containing a formula to help calculate the proposed number of months based on the Committee’s desired end dates. The floor was then opened to the Committee members for discussion. Melanie Fourkiller stated her concurrence with the recommendation to extend the deadline for final promulgation of the rule to be no later than the end of the Presidential administrative term, which is the end of 2024, and then back calculating the date for publication of the proposed rule to be for the same number of months as what is in the current statute. She also agreed with the recommendation to make this request as soon as practicable so that there are no unexpected delays due to transitions or changes that may result from mid-term elections. Chairman Allen and Mr. Atterbury agreed with Ms. Fourkiller’s recommendations and as laid out by Mr. Jaffe and Mr. Shade.

DFO Harvey confirmed that the Department intends to engage in Tribal consultations and suggested the Committee factor in time for these consultations and for the Committee to consider comments received during consultation. Mr. Jaffe clarified that given the urgency of extending these dates, he is recommending that the Committee identify and reach agreement on the proposed language for the draft extension bill and present it jointly to Congress. Mr.

Shade also clarified that the Committee's authority under the Charter expires when a final rule is published.

There was further Committee discussion regarding whether the expiration of authority should be extended to the end of the fiscal year 2024 or the end of the calendar year 2024. DFO Harvey clarified that once a final rule is published, there is a 30-day delay before enactment. She also clarified that when a proposed rule is sent out through a Federal Register notice, there is a 60-day period for comments and consultation and that the Committee will need time to review any comments and make adjustments, if necessary. Members of the Committee expressed that there should be a six-month cushion between publication of the draft rule and the goal for having the final rule published to account for a 60-day notice and comment period and to give adequate time for addressing any comments and to engage in meaningful Tribal consultation. DFO Harvey pointed out that the original statutory language allows for 9 months from the deadline for publishing the proposed rule to the expiration of the Committee's authority and that could be a recommendation. Mr. Jaffe pointed out that the statutory deadline for publishing the proposed rule is a soft deadline. It was expressed that it may be possible for laws issued too close to the end of an administration to be repealed and that it would be more prudent to publish the final rule further from the end of the 2024 calendar year so that a change in administration won't affect the final rule.

There was a motion recommending that the Department submit bill language requesting an amendment to Section 5373 of Title 25 of the United States Code to extend the statutory deadline for the authority to promulgate regulations to 47 months from the date of the PROGRESS Act's enactment, which is September 23, 2024, and to extend the statutory deadline for publishing the proposed implementing regulations in the Federal Register to not later than 35 months after the date of enactment, which is September 23, 2023. **Consensus on the motion was tested by FMCS, with all Committee members concurring. Consensus was thus reached on this motion.**

4) Technical Amendment Audit Threshold

The Committee reconvened after a 15-minute break with an expert briefing by Geoff Strommer, Partner at Hobbs Straus Dean & Walker, LLP, and Committee member Melanie Fourkiller, regarding a suggested technical amendment to the bill regarding audit thresholds. Ms. Fourkiller explained that there is a conflict between the audit requirements set forth in the PROGRESS Act and the audit requirements set forth in the Single Agency Audit Act. Section 201(b)(2) of the PROGRESS Act requires Tribes to submit a single-agency audit report to the Federal government if the Indian Tribal organization expends \$500,000 or more in Federal awards during such fiscal year which was an oversight. *See* 25 U.S.C. 5305(f)(1). Section 405 of the PROGRESS Act states that the Single Agency Audit Act, Chapter 75 of Title 31, United States Code, shall apply to funding agreements. The Single Agency Audit Act gives the Office of Management and Budget (OMB) the authority to set the audit threshold. OMB has currently set a threshold of \$750,000 or more for a single-agency audit, which has resulted in these two statutes having conflicting monetary thresholds for Tribes to submit single audits. It appears this was unintentional during the drafting of the PROGRESS Act.

DFO Hanvey then shared her screen and walked the Committee through the conflicting language in these provisions. *See Attachment 4.* She also shared a proposal to resolve this conflict through a technical amendment to the PROGRESS Act by striking the sentence in section 5305 that refers to the \$500,000 threshold. DFO Hanvey advised the Committee that the Department has been alerted to the conflicting audit threshold amounts between the PROGRESS Act and Single Audit Act but that a Solicitor's opinion has not yet been requested. Accordingly, it is unknown at this point how the Department views the conflicting audit thresholds or how this issue will be addressed for Tribes currently undergoing audits for 2020 and 2021 under these two provisions.

Mr. Strommer recommended that the Committee wait to see if there are any other technical issues that may require amendments to the bill before moving forward with the proposal to amend Section 5305. He advised that regardless, a technical amendment to the bill should not be combined with the proposed amendment to extend the Committee's authority because of the urgency of getting that amendment passed. He expressed that it would be useful to hear how the Solicitor's office interprets these conflicting provisions before committing to resolve the situation with a technical amendment. Mr. Strommer thus proposed that DFO Hanvey obtain a Solicitor's opinion on this issue and that the Committee wait to discuss this issue until after receiving such an opinion.

There was a motion that: (1) Committee discussions regarding the proposal to resolve the conflicting audit requirements set forth in the PROGRESS Act and the Single Agency Audit Act by technical amendment be deferred while the Department obtains a Solicitor's opinion regarding how to deal with these conflicting provisions; (2) the Department confer with Indian Health Services regarding these conflicting audit threshold provisions; and (3) that the Committee continue to separately move forward with its request to extend the deadline for exercising authority to promulgate regulations implementing the PROGRESS Act. **Consensus on the motion was tested by FMCS, with all Committee members concurring. Consensus was thus reached on this motion.**

PUBLIC COMMENT SESSION #1

At this point in the meeting, members of the public were given an opportunity to comment via a Zoom link or telephone number. No members of the public logged into the Zoom meeting or called in for comment.

COMMITTEE OPERATING PROTOCOLS

Having determined that there was no need for separate Federal and Tribal caucus sessions at this time, the Committee moved into a discussion regarding the adoption of operating protocols. DFO Hanvey shared on her screen a document containing draft operating protocols for Committee discussion. *See Attachment 5.*

DFO Hanvey emphasized that the Committee's operating protocols must be in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2, the Negotiated Rulemaking Act of 1996, 5 U.S.C. § 561 *et seq.*, the Committee's approved Charter, and Department of Interior procedures. She then gave an overview of the draft protocols, which include: (1)

proposed ground rules for Committee engagement; (2) proposed safeguards for Committee members regarding media contact, the use of social media, document management, and adversarial or legal proceedings; (3) proposed roles and responsibilities of the Tribal lead and Facilitators; (4) proposed protocol for convening and conducting Administrative meetings, Committee meetings, and Subcommittee meetings; (5) proposed protocols for making Committee decisions, including a proposed definition of Consensus; and (6) proposed protocols governing Committee minutes, records, and public comments. DFO Hanvey concluded by emphasizing that these draft operating protocols are being provided for Committee discussion, but that it is up to the Committee to finalize and adopt its own operating protocols. She also apologized for the delay in providing the draft document to both the Tribal and Federal members.

Committee members had the following questions/comments:

- *Having 90 calendar days to certify the minutes of advisory Committee meetings seems excessive given the timeframe under which the Committee is operating. Is this a regulatory requirement?* Yes, but we have proposed that draft meeting minutes be provided for review and discussion by the Committee at the next Committee meeting, so the draft minutes will be provided to the Committee much sooner than 90 days.
- *If there is a disagreement regarding what is captured in the draft meeting minutes, does the Department have the final say in whether to accept suggested edits or corrections to the meeting minutes?* The approval of the draft minutes for the previous Committee meetings will be an item of discussion on the next Committee meeting agenda. Any Committee member may raise issues for clarification or discussion or may propose an amendment to the draft minutes. If there is any disagreement regarding the accuracy of the draft meeting minutes, the Committee will look back on everyone's notes and the facilitators will assist the Committee in having a discussion regarding the accuracy of the minutes and in reaching consensus on mutually acceptable language to include in the draft meeting minutes. The regulations do require that the Agency Lead certify the accuracy of all minutes of Advisory Committee meetings within 90 calendar days of the meeting to which they relate and post them on the Committee website. The meeting minutes will be marked as draft until they are finalized and certified.
- *Why wasn't the 12-page draft Operating Protocols for the Committee provided in advance of today's meeting?* It would be helpful and more efficient for Committee members to be able to review documents that are the topic of Committee discussion in advance of Committee meetings. This point is well taken. The DFO agreed that the unforeseen delay in providing this document to the Committee members did not provide members with sufficient opportunity to read through the document and provide feedback on the proposed language. The DFO stated that the Federal members were also just receiving the document. The agenda item today is to provide only an overview of the draft with Committee discussion at the next meeting. The DFO stated that moving forward, it is her intent to provide documents in further advance of meetings.
- *The draft operating protocols mention that a representative of the DOI Office of the Solicitor has been appointed to the Committee to provide legal advice to the Committee*

during deliberations. Will this legal advisor be speaking on behalf of both the Tribal Committee members and Federal Committee members, or should we also have a Tribal legal advisor present in case of a disagreement? The statute does not address this. When developing the Committee, the Department of Interior determined that it wanted at least one of the Federal Committee members to be from the Solicitor's office. There is nothing in the statute that allows for Tribal legal representation separate from a Tribal Committee member.

- *Can Committee members get a copy of a Word version of the draft operating protocols?* The Word version was emailed to the Committee prior to the meeting and the document will also be posted on the Committee website at <https://www.bia.gov/service/progress-act>. FMCS will also provide a Word version of the draft operating protocols to the Committee members immediately following this meeting.

There were several items in the draft operating protocols identified by Tribal Committee members as good subjects for initial discussion in caucuses, including the need for a Tribal lead, the definition of consensus, the process for achieving consensus and how it is reflected in the final rule, and how the Committee will define a quorum. It was thus proposed that the Tribal Committee members caucus and attempt to reach Tribal consensus on these issues before continuing discussion of the draft operating protocols at an open meeting.

PUBLIC COMMENT SESSION TWO

Before concluding the Committee meeting, members of the public were again given an opportunity to comment via a Zoom link or telephone number. No members of the public logged into the Zoom meeting or called in for comment.

SCHEDULE AND AGENDA SETTING

It was agreed that following this meeting, FMCS will reach out to the Tribal and Federal Committee members to schedule separate caucus sessions to discuss the draft protocols. It is expected that this will be the primary item for discussion on the agenda for the next Committee meeting. After discussion, it was also agreed that FMCS would send out a poll within 24 hours to assist the Committee in identifying the best date during the first half of October on which to hold the next Committee meeting keeping in mind that October 10, 2022, is a federal holiday. DFO Hanvey instructed the Committee members to provide her with any other proposed agenda items for the next meeting.

ADJOURNMENT

The meeting was adjourned by DFO Hanvey at 5:30 p.m. ET.

CERTIFICATION

I hereby certify that, to the best of my knowledge, the foregoing minutes are accurate and complete.



OCT 12 2022

Sharee Freeman,
Director Office of Self-Governance, Assistant Secretary – Indian Affairs
Agency Lead, Self-Governance PROGRESS Act Negotiated Rulemaking Committee

These minutes will be formally considered by the Committee at its next meeting, and any corrections or notations will be incorporated in the minutes of that meeting.

Appendix A—Attendees

Attachments (to be posted to the website (<https://www.bia.gov/service/progress-act>)

Attachment 1—Introduction to the Federal Advisory Committee Act (FACA) Power Point Slides

Attachment 2—Ethics Briefing Power Point Slides

Attachment 3—Draft Language Extending Authority to Promulgate Regulation

Attachment 4— Conflicting Audit Threshold Technical Amendment

Attachment 5—Draft Operating Protocols for Committee Act

Appendix A—Attendees

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

FEDERAL REPRESENTATIVES	
Present	PRIMARY Federal Representatives
	Name
	Affiliation
✓	Sharee Feeman Director Office of Self-Governance, AS-IA
✓	Bryan Shade Attorney-Advisor Branch of Self-Governance and Economic Development, Office of the Solicitor
✓	Kelly Titensor Native American Affairs Advisor Bureau of Reclamation
✓	Byron Loosle Division Chief National Conservation Lands, Bureau of Land and Minerals Management.
✓	Scott Aikin National Native American Programs Coordinator U.S. Fish and Wildlife Service Head Quarters.
✓	Rose Petoskey Senior Counselor to AS-IA Office of the Assistant Secretary—Indian Affairs.
ALTERNATE Federal Representatives	
✓	Matt Kallappa Northwest Field Office Manager Office of Self-Governance, AS-IA
✓	Jody H. Schwarz Attorney-Advisor Branch of Self-Governance and Economic Development, Office of the Solicitor
✓	Nathalie Washington Native American Affairs Advisor Bureau of Reclamation
✓	(Charles) David Johnson Tribal Liaison Bureau of Land and Minerals Management.
✓	Dorothy FireCloud Native American Affairs Liaison National Park Service
✓	Samuel Kohn Senior Counselor to ASIA Office of the Assistant Secretary—Indian Affairs.

Designated Federal Officers (DFOs) Present:

Vickie Hanvey, DFO

Regina Gilbert, Alternate DFO

Federal Mediation and Conciliation Service (FMCS) Members Present:

Martin Callaghan, Commissioner

Kayla Mack, Commissioner

Moira Caruso, Strategy Officer

Other Tribal:

Brandon Wisneski, Oneida Nation

Darrel Aubrey, Self-Governance Coordinator, Karuk Tribe

Madeline Sobeloff Levy, General Counsel, Central Council of the Tlingit and Haida Indian Tribes of Alaska

Sonya Diggs, Choctaw Nation of Oklahoma

Syngen Kanassatega, Mille Lacs Band of Ojibiwe

Shana McConville Radford -Deputy Executive Director, Confederated Tribes of the Umatilla Indian Reservation

Ruth Swaney, The Confederated Salish and Kootenai Tribes of the Flathead Nation

Jay Spaan, Executive Director of Self-Governance & Education, Cherokee Nation

Geoff Stromer, Hobbs, Strauss, Dean & Walker, LLP

Jordan Romero-Villanueva, Hobbs Strauss Dean and Walker

Stephen Osborne, Hobbs Strauss Dean and Walker

Matt Jaffe, Sonosky Chambers, Sasche, Endreson & Perry LLP

Tanner Amdur-Clark, Sonosky Chambers, Sasche, Endreson & Perry LLP

Phillip Baker-Shenke, Holland & Knight LLP

C. Juliet (Pitt) Pittman, President/CEO SENSE Incorporated

Joe Putt

Brian Upton

Other Federal:

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