

**TESTIMONY
OF
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OFFICE OF THE ASSISTANT SECRETARY – INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
FOR THE HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
THE FEDERAL ACKNOWLEDGMENT PROCESS**

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Good morning, Mr. Chairman and Members of the Committee. My name is Lee Fleming, Director of the Office of Federal Acknowledgment within the Office of the Assistant Secretary – Indian Affairs at the Department of the Interior. I am here today to provide the Administration's testimony regarding the process that groups follow when seeking Federal acknowledgment as an Indian tribe under Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83). I would like to provide background information concerning the Department's Federal acknowledgment process, recent improvements to this process, and other potential improvements that can be made to promote clarity, transparency and efficiency in acknowledgment decisions.

BACKGROUND

The Federal acknowledgment regulations, known as "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," 25 CFR Part 83, govern the Department's administrative process for determining which groups are "Indian tribes" within the meaning of Federal law. The Department's regulations are intended to apply to groups that can establish a substantially continuous tribal existence and that have functioned as autonomous entities throughout history until the present. When the Department acknowledges an Indian tribe, it is acknowledging that an inherent sovereign continues to exist. The Department is not "granting" sovereign status or powers to the tribe, nor creating a tribe made up of Indian descendants.

Under the Department's regulations, in order to meet this standard, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

- (1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;
- (2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

- (3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
- (4) provide a copy of the group's present governing document including its membership criteria;
- (5) demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;
- (6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe; and
- (7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

A criterion is considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

The Federal acknowledgment process is implemented by the Office of Federal Acknowledgment (OFA), formerly the Branch of Acknowledgment and Research. OFA is staffed with a director, a secretary, three anthropologists, three genealogists, and three historians. The current workload consists of seven petitions on active consideration and 12 fully documented petitions that are ready, waiting for active consideration. The administrative records for some completed petitions have been in excess of 30,000 pages. Two hundred twenty groups have submitted letters of intent to petition or partial documentation. These groups are not ready for evaluation. Five final determinations representing four petitioners are under review at the Interior Board of Indian Appeals (IBIA) in response to requests for reconsideration. The IBIA referred a sixth final determination to the Secretary of the Interior who, in turn, affirmed the final determination. In addition, there are pending four lawsuits directly involving groups' Federal acknowledgment petitions or Freedom of Information Act (FOIA) requests related to the Federal acknowledgment process.

RECENT IMPROVEMENTS TO THE FEDERAL RECOGNITION PROCESS

In November of 2001, the General Accounting Office (GAO) issued a report entitled "Indian Issues: Improvements Needed in the Federal Recognition Process." The GAO made two primary findings in this report: first, the Federal acknowledgment decision making process is not sufficiently transparent; and second, it is unequipped to respond in a timely manner.

In response to the GAO report, the Assistant Secretary – Indian Affairs implemented a Strategic Plan to provide strategies to communicate a clearer understanding of the basis of Federal acknowledgment decisions, and to improve the timeliness of the acknowledgment process. As described below, many of the Strategic Plan's elements have been implemented and completed.

1. All proposed findings, final determinations, and reconsidered determinations are electronically scanned and indexed and are available on CD-ROM to the public. Immediate and user-friendly access to all prior decisions enhances both transparency and consistency in the decision making process. We are hopeful that interested parties will have access to this information via the Internet once the Bureau of Indian Affairs' (BIA) connection is restored.
2. Additional resources have enabled the OFA to fill two professional staff vacancies. The addition of these staff members resulted in the formation of three functioning teams composed of one professional from each of the three disciplines. With three teams, the OFA has increased its ability to review petitions and their accompanying documentation in a timely manner.
3. OFA has also hired two sets of independent contractors to assist with administrative functions: two FOIA specialists/records managers; and three research assistants who work with a computer database system, scanning and indexing documents to help expedite the professional research staff's evaluation of a case. Both sets of contractors assist in making the process more accessible to petitioners and interested parties, while increasing the productivity of the OFA researchers by freeing them from many administrative duties.
4. The Federal Acknowledgment Information Resource (FAIR) system, a computer database that provides on-screen access to all the documents in the administrative record of a case, has made a significant positive impact in the efficiency of the OFA. The FAIR system scans all submitted documentation and then the data is extracted, linked, and indexed to create a searchable administrative record. FAIR provides the OFA researchers with immediate access to the records and allows them to make more efficient use of their time. The system also allows petitioning groups and interested parties, such as States and local governments, to have "on screen" access to the administrative record and to any data entries made by the OFA researchers. We anticipate that the next generation of scanning for FAIR will allow electronic redaction of privacy information from the documents, which will save the Department a tremendous amount of time otherwise spent photocopying cases for interested parties or responding to FOIA requests.

Another significant improvement made to the Federal acknowledgment process was the realignment of the OFA. Effective July 27, 2003, the Branch of Acknowledgment and Research was realigned and renamed. OFA now reports directly to the Principal Deputy Assistant Secretary – Indian Affairs. Previously, the Branch of Acknowledgment and Research reported through the Office of Tribal Services and the Bureau of Indian Affairs

to the Assistant Secretary – Indian Affairs. This realignment eliminated two layers of review and now provides more direct and efficient policy guidance.

Due to the above mentioned improvements in the Federal acknowledgment process, OFA was able to assist the Department in completing 17 major Federal acknowledgment decisions since January 2001. These 17 decisions include: nine proposed findings, six final determinations, and two reconsidered final determinations.

OTHER IMPROVEMENTS TO THE FEDERAL ACKNOWLEDGMENT PROCESS

On April 1, 2004, Secretary Norton requested that Indian Affairs review the Strategic Plan and ensure that all the appropriate steps were being taken to implement the strategies developed in the plan. As discussed above, the Department has completed many of the action items identified in the strategic plan. We have nearly completed all of the remaining tasks that are within the control of the Department. Some tasks will take longer to implement because they may require Congressional action, regulatory amendments, or access to the Internet.

In addition, on March 31, 2005, we formalized an already existing internal policy of the Assistant Secretary – Indian Affairs' office that prohibits Federal acknowledgment decision makers from having contact and communications with a petitioner or interested party within 60 days of an acknowledgment decision. The Department published notice in the Federal Register of this policy, which will help ensure that all parties are made aware of this 60-day period and that the integrity of the process is protected.

CONCLUSION

The Department believes that the acknowledgment of the existence of an Indian tribe is a serious decision for the Federal Government. It is of the utmost importance that thorough and deliberate evaluations occur before the Department acknowledges a group's tribal status, which carries significant immunities and privileges, or denies a group Federal acknowledgment as an Indian tribe.

When the Department acknowledges an Indian tribe, it recognizes an inherent sovereign that has existed continuously from historic times to the present. These decisions have significant impacts on the petitioning group as well as on the surrounding community. Therefore, these decisions must be based on a thorough evaluation of the evidence using standards generally accepted by the professional disciplines involved with the process. The process must be open, transparent, and timely.

Thank you for the opportunity to testify about the Federal acknowledgment process. I will be happy to answer any questions you may have.