

SOUTHERN CHEROKEE INDIAN TRIBE

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August 15, 2013

Mr. Kevin K. Washburn

Assistant Secretary for Indian Affairs

Indian Affairs

MS-4141-MIB

1849 C Street, N.W.

Washington, D.C. 20240

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OFFICE OF THE
SOUTHERN CHEROKEE INDIAN TRIBE

Re: Comments on Preliminary Discussion Draft of Title 25, Part 83

Dear Mr. Washburn:

The officers and members of the Southern Cherokee Indian Tribe applaud the Obama Administration and the BIA efforts to establish a meaningful procedure for acknowledging the existence of Native American Groups. We welcome the opportunity to comment on the Preliminary Discussion Draft of the proposed revisions of Title 25, Chapter 1, and Part 83.

It is our observation that the complexity of the prior regulations, the burdensome requirements and, what appear to be, the intra and intertribal politic within the BIA by existing federally

recognized tribes and other anti-Indian interests, have kept many Native American groups from being Federally recognized. Therefore our comments will be directed at issues related to those concerns.

First, we are concerned about the ability of the Assistant Secretary to function independently in light of the history of the Federal Recognition process. We feel the Obama Administration will assure the independence of the process as long as he is in office. However, we are concerned about undue pressure which might be placed on the Assistant Secretary by future administrations. Therefore we would like to see stricter procedures to help insulate and assure the objectivity of the process in future years. Some of these procedures will be discussed later in these comments.

Second, the Preliminary Discussion Draft does little to reduce the politics of the States and existing Federally Recognized tribes and actually enhances their influences and ability to have an impact on the outcome of the process. As one reads the proposed procedures and criteria, they seem more geared to those who might object to the petitions. This is reflected in early notice of the petition filing before there has been even a technical review or a determination of compliance with the basic criteria. To provide for a premature and lengthy comment period for interested parties, rather than offer some modicum of assistance or latitude to the petitioners, who have so fervently worked to finally be recognized, seems grossly unfair. Therefore, we recommend the Paragraph 83.9 notice be delayed until later in the process under Paragraph 83.10. This would enable the OFA to more effectively evaluate the petition without interference until it reached the active consideration stage.

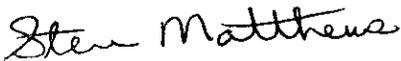
Thirdly, the cornerstones of prior and proposed draft procedures for recognition require substantial education and financial resources – two elements only recognized, federally subsidized groups possess. This is an extreme burden on poor and uneducated Native American who have valued their heritage for so many unacknowledged years. The Preliminary Discussion Draft does little to reduce that burden in meeting the strict requirements of the process. Therefore, petitioning groups have little hope of success from the outset. Even though Paragraph 83.1b provides for a technical assistance review prior to active consideration of the petition, the only assistance provided is a letter Notice of obvious deficiencies and the opportunity to withdraw the petition. If withdrawn, the group must resubmit and start all over again. Such provisions tend to discourage the less fortunate and signal to them a continued discrimination and exclusions. We respectfully request that petitioners be notified early of deficiencies along with positive recommendations on how to correct the deficiencies.

Finally, after reading the procedures as objectively as possible, we find the letter and intent of the Preliminary Discussion Draft remain burdensome to the petitioners and appear geared to limiting the pool of federally recognized Indian tribes. This is disappointing. Therefore we respectfully request that: the final regulations be more petitioner friendly; strict procedures be implemented to

assure the independence of the process; specific time sequences be provided for OFA action; interested party input be limited until the active consideration stage; and petitioners be assured more effective due process in the final decision making stage.

A more detailed response to each section of the Preliminary Discussion Draft is enclosed as Attachment 1. We respectfully request your sincere consideration of these comments.

Sincerely,



Steve Matthews

Council Speaker

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ATTACHMENT 1
SECTION BY SECTION
COMMENTS

1. SECTION 83.1 DEFINITIONS: No comment.

2. SECTION 83.2. PURPOSE: The purpose is very clear in legal terms. However, the Native American Groups, in personal terms see Federal Recognition as ending discrimination and enabling them to take their rightful place within the Native American community.

3. SECTION 83.3. SCOPE: Paragraph 83 (a) should described "Group" more specifically in relationship to the criteria specified in 83.7 (a) through (g) and this Section

4. SECTION 83.4 FILING A DOCUMENTED PETITION? This section is clear that groups with presently filed "Letters of Intent" must follow the new regulations. However, it does not make it clear as to their status in the reviewing process. Does this mean that Groups with Letters of Intent on file must resubmit and fall to the back of the line? If yes, this is unacceptable and unfair. The new regulations should allow groups with Letters of Intent on file to retain their position but follow the new requirements for their petitions.

5. DUTIES OF THE DEPARTMENT; Unfortunately, the duties of the department appear to be weighted in favor of the "Interested parties and unfriendly to the petitioners. Even though the Mission of the Bureau of Indian Affairs states that the "BIA has embodied the trust and government-to-government relationship between the U.S. and the *Federally Recognized Tribes*," it is important that our country make a concerted effort to recognize those that have long excluded and mostly forgotten by the practices of the past. This section needs to be greatly revised to reflect that change in attitude. To do so, it is important to emphasize the BIA's role and responsibility in the acknowledgment of the full realm of Native American people and their government to government relationship with the United States.

More specifically, section 83.5 (b) should be modified to require the guidelines include: 1) a detailed step by step procedure and time schedule for the acknowledgement process; 2) specific documentation requirement; 3) definitive, acceptable reference sources; 4) department responsibilities for action clearly defined; 4) specific steps for active consideration; 5) detailed due process procedures for participants; and 6) full disclosure of assumptions and conclusions at each stage of the decision-making process. To compliment these guidelines section 83.5d and section 83.9 should be combined with section 83.10 (d) and no notice should be published in the Federal register until the petition ready for the active consideration stage. We further recommend that 83.5 e not be deleted but strengthened by consultation.

6. SECTION 83.6. GENERAL PROVISIONS FOR THE DOCUMENTED PEITION. Section (b)(II) is not clear how the Department will determine whether the petitioner meets criterion (g). What is meant by (c)(2)? What is meant by “requirements of an expedited favorable finding”? These concepts should be clearly defined and described in the interest of all parties.

7. SECTION 83.7. MANDATORY CRITERIA FOR FEDERAL ACKNOWLEDGEMENT: **It is very difficult to evaluate and comment on the provisions where double X's reflect unknowns. These are key quantifiable elements of the criteria. To send a redline draft out without projected numbers defeats the purpose of this process.**

More specifically, Section 83.7 (b) is arbitrary and capricious. The meaning of a distinct community infers a geographically limited locality. Some groups were dispersed by war, federal policies and prejudice but, like the Jews, maintained interaction and significant social relationships within its membership at great cost and difficulty – especially in the case of the Southern Cherokee in Missouri and Arkansas. Therefore, significant revision or clarification needs to be made to definition and reference to a “Distinct Community”.

In light of the federal policies to assimilate Native Americans, the percentages of members who intermarry, maintain the language, etc does not seem to be very relevant. Therefore, we recommend that such items be deleted from 83.7 (b)(1) or given only

minor consideration in excluding a groups compliance. The provisions of Section 83.7b(2) should include both a period of time before or after 1934.

The purpose of 83.7b(3) is unclear. If strictly applied, it appears to deny Native Americans from recognition and acknowledgement that were dispersed by war, governmental policy or discrimination by larger tribal groups. We recommend this provision be given further consideration and broaden it to allow sincere Native Americans to participate on a equal basis.

Section 83.1(c) is very important. However, the limitations of 83.1(c)(3) and 83.1(c)(4) should be modified as discussed above.

8. SECTION 83.8 PREVIOUS FEDERAL ACKNOWLEDGEMENT: There is no definition or clarification of what is acceptable evidence. With a notice to the state and interested parties before making a technical assistance review or determining the adequacy of the evidence of prior federal acknowledgement, the processing of the petition turns into a political or quasi-legal proceeding which distorts and complicates the due process provisions of procedures. It is recommended that 83.8c(3) be modified to read "...collectively participate in tribal lands, fund and other tribal affairs."

9. SECTION 83.9. NOTICE OF RECEIPT OF A PETITION. This notice provision distorts the due process provisions of the acknowledgement process. It should be incorporated with 83.10 (d) after the Technical Assistance Review, determination of adequacy of evidence and the petition is ready for active consideration.

10. SECTION 83.10. PROCESSING OF THE DOCUMENTED PETITION. Paragraph 83.10(a) should be moved after 83.10 (d). Paragraph 83.10(h) needs to be made more specific to reflect the following:
 - a). The filing of the Petition

 - b). Notice to petitioner of receipt of the Petition

may work against us and others. Even though we tendered a Letter of Intent some time ago, it appears, after all this time, we may not be grandfathered in the proposed changes. We would welcome changes that actually benefit the petitioners...

Special Note: In discussions with other tribes, who are currently involved in the Recognition process, those I talked with were unaware of the suggested criteria changes and the regional meetings to discuss them. We had received notice, but could not afford to attend. It should be noted that it requires more than a two-month notice to raise the necessary money to make such a huge investment. I'm sure we were not alone in this respect. The BIA, more than any other federal agency, should be cognizant of the financial restrictions so many tribes face – especially those who have yet to be recognized. We fear the responses to this process will not be from the tribes who are *petitioning*; but rather from those who already are *recognized*. Therefore, the response may not be as broad-based as one would hope for from such a process.