

Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
1849 C Street, NW, MS 4141
Washington, D.C. 20240

September 25, 2013

Dear Ms. Appel:

On behalf of the leadership of the Miami Nation of Indians of Indiana (MNI), I submit the following comments upon the Preliminary Discussion Draft ("Discussion Draft") regarding proposed changes to the regulations governing federal acknowledgment of Indian tribes, 25 C.F.R. Part 83. As a tribal community that has experienced the current broken system with problematic criteria and an absence of meaningful timelines, we are pleased to see that action is being taken to bring about effective changes in the current federal acknowledgment process.

The Discussion Draft proposes many significant changes to the process; however, more can be done to ensure that justice is served by communities such as ours who have been on the receiving end of admitted federal neglect. The comments below will first provide a summary of our nation's history and experience with the current federal acknowledgement process. Secondly, they will address the meaningful and helpful changes in the discussion draft. Lastly, they will discuss further changes that our nation believes are necessary to insure that reform is effective and inclusive of all interested parties.

MNI History and Experience with the Federal Acknowledgement Process

The Miami Nation was "recognized" as a tribe beginning in 1795 with the Treaty of Greenville. MNI signed successive treaties between 1795 and 1840 which shrank our historic land base from what is now the states of Indiana, western Ohio, southern Michigan, eastern Illinois, and southern Wisconsin, to a series of privately held reservations up to the "removal" treaty of 1838 which called for removal of the entire Miami Nation west of the Mississippi. During the removal, around one-half of the Miami Nation was exempt from removal through treaty stipulations and congressional exceptions. Other individuals simply refused to move. A treaty in 1854 created two different federally recognized entities - one as being in Kansas (Kansas Miami/current day Miami Tribe of Oklahoma) and our Nation (Indiana Miami/current day Miami Nation of Indiana). At this time the United States recognized the groups as two separate political entities with mutual interests.

The Miami in Indiana enjoyed all of the "protections" of the trust status associated with federal recognition including tax exemption on our lands and access to federal Indian schools until 1897 when the Bureau of Indian Affairs determined we were no longer a tribe.¹ This action was neither within the power nor reach of the Bureau of Indian Affairs. From this point forward the United States has refused to acknowledge the Miami Nation of Indiana as an Indian tribe

¹ See November 23, 1897 Opinion of Asst. Attorney General Van Devanter, 25 Decisions of the Department of the Interior and General Land Office in Cases Relating to the Public Lands 426, 431 (GPO 1898)

despite numerous attempts by tribal leaders to obtain Federal Recognition afterward. In 1978, when the Department of the Interior published final regulations providing a procedure for acknowledging the existence of Indian tribes, MNI began preparing their petition. On March 25, 1980, a petition for acknowledgment was filed pursuant to these regulations. In 1990, the Assistant Secretary of the Interior published his proposed finding that the plaintiffs did not meet the acknowledgement regulations' community and political influence criteria and, therefore, did not exist as an Indian tribe. 55 Fed. Reg. 29,423 (1990). On June 18, 1992, the Assistant Secretary published his final determination that the plaintiffs did not exist as an Indian tribe, and were not entitled to a government-to-government relationship with the United States. 57 Fed. Reg. 27,312 (1992). This determination became effective on August 17. On September 11, 1992, the plaintiffs filed their complaint in federal court which resulted in litigation that extended for 9 years.

Meaningful and Helpful Changes in the Discussion Draft

The Discussion Draft proposes a number of changes that would increase efficiency and inclusion in the federal acknowledgment process. The most important of these changes are addressed below. MNI encourages the Department to include these provisions while moving forward with the procedural revisions. Specifically, the Nation hopes that the process will allow reestablishment of a relationship that was unethically and illegally terminated in 1897 without excessive amounts of anthropological data.

1. Streamlined previous federal acknowledgment provisions, § 83.8. The Discussion Draft properly allows for unambiguous previous Federal acknowledgement as acceptable evidence of the tribal character of a petitioner.
2. Hearing upon Negative Proposed Finding, §87.10. The introduction of the ability to request a hearing provides an element of due process that is missing from the current process. A hearing in this context would appropriately allow for examination of conclusions reached by technical staff.
3. Previously Denied Petitioners, §87.10. Our community is supportive of the revisions which would allow those who have previously experienced the broken system to repetition through the new process. Allowing new petitioners to be recognized under less restrictive and daunting criteria without providing the same opportunity to those who have been previously denied would be unacceptably unjust. However, this section states that the petitioner must prove from “a preponderance of the evidence, that a change from the previous version of the regulations to the current version of the regulations warrants reversal of the final determination.” There are concerns that a preponderance of the evidence cannot be qualified and quantified. This places a significant burden on the petitioner. Ultimately, the regulations either need to be more explicit for simply state “evidence.”

Additional Changes are Necessary

Although the proposed changes take great steps to address unfairness and inequity in the current process to non-federally recognized tribes, there are additional changes that would benefit the process. Those are listed below.

1. Administrative Error. MNI proposes that the regulations restore and recognize to the list of acknowledged Tribes and Nation omitted from that list because of administrative error. Due to erroneous rational, such as that used to terminate MNI's federal recognition, this should not cause Tribes to endure the long, tedious, and expensive process currently required of petitioners.
2. Distinct Community Criteria. This criterion has been problematic for many Tribes including MNI. Communities are changing due to both internal and external factors. Although, we maintain a core membership in a three county radius, our tribal membership of approximately 6,000 individuals has been distributed around the country due to a lack of economic opportunity in our traditional homelands. Tribes should not be penalized for failure to meet an unduly restrictive definition of "distinct Indian community." The new criteria should take into account the uneven way in which colonization has affected individual communities and their responses to this over time. We advise either eliminating the examples of marriage or living in a distinct community and replacing with a more open ended example, or expanding this to numerous ways in which community can be maintained. Doing so would acknowledge the adverse ways in which federal and state policies aimed to dismantling tribal lands, hunting/fishing/gathering rights, community, language and culture, as well as how population decrease, racism, etc. have affected communities while also acknowledging how they have persisted as tribes despite this history. Furthermore, the legacy of removal and other Federal policies historically split tribes. Despite this, several communities have maintained relationships with other federally recognized tribes and often qualify for membership in these tribes as well as enroll in these tribes for sorely needed benefits. This should not be viewed as a repudiation of the petitioning tribe nor viewed as being members outside of the community, but acknowledged as a result of this legacy.
3. Political Authority. A community cannot exist without political leadership and we believe that evidence of one provides evidence of the other. We recommend that these two criteria be combined into a single criterion. We feel this is inclusive of the ways in which Indigenous nationhood is not solely vested in a top-down governmental authority, but also vested from the bottom-up, in the people and community themselves.
4. Decision Making Authority. Currently the professional analysis of and recommendations for federal acknowledgment are made by employees of the BIA and the final decisions are made by the Assistant Secretary of Indian Affairs. However, the proposed changes place even more control with the BIA and eliminate the ability of the Assistant Secretary to make final decisions on acknowledgment decisions. The determination of federal

acknowledgement is essentially a political relationship, one that should be decided by the Assistant Secretary himself, not staff people at the Office of Federal Acknowledgment. The Miami Nation of Indiana supports a change in the Discussion Draft to vest the authority to decide the merits of petitions for federal acknowledgment to the Assistant Secretary of Indian Affairs.

Thank you for the opportunity to comment on the Discussion Draft. The overhaul of these procedures is well overdue, and MNI commends the Department for taking steps to correct the current, broken system.

Sincerely,

Chief Brian J. Buchanan
Miami Nation of Indians of Indiana