TRIBAL CONSULTATION

DRAFT REVISIONS TO FEDERAL ACKNOWLEDGMENT REGULATIONS
(25 CFR 83)

PARAGON CASINO RESORT
MARKSVILLE, LOUISIANA
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Panel Members:

Larry Roberts, Deputy Assistant Secretary - Indian Affairs
Kaitlyn Chinn, Office of the Solicitor - Division of Indian Affairs
Elizabeth Appel, Office of Regulatory Affairs - Indian Affairs

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BY LARRY ROBERTS:

My name is Larry Roberts. I am the Deputy Assistant Secretary for Indian Affairs. It is out of respect for Chief Earl Barbry’s family that we are going forward with this tribal consultation and public meeting this morning. Shortly after Chief Barbry passed we reached out to his family, and his family asked that we go forward with both of these meetings. So as you all can understand, there’s no one from leadership that’s available this morning from the Tunica Biloxi Tribe, so I would ask that we take a moment of silence at in memory of Chief Barbry at this point in time.

In terms of today, what we are going to do is I am going to ask Katie Chinn from Solicitor’s office to go through the presentation; it should take about fifteen to twenty minutes. At that point we will open it up for comments from tribal representatives. A couple of points to flag at the onset,
that is that the redlined version that
everyone has of the regulations, that’s
the redline against the existing
regulations. As we are going through
this rule making process, we will change
the language in the regulations to plain
language. It’s just something that we
do generally as we are promulgating or
amending new rules. So whatever the
proposal we move forward with, it will
put in plain language. In the interest
of time, we are going to go forward with
the presentation this morning, and then
we will hear comments from tribal
representatives.

BY KAITLYN CHINN:

Again, my name is Katie Chinn. I’m
a citizen of the Wyandot Nation of
Oklahoma and I work in the Solicitor’s
office. There are three ways in which
the U.S. Government can acknowledge or
recognize an Indian tribe. The first is
as a result of a Federal court decision.
The second is through legislation from
Congress. And the third is
administratively, which is a
determination by the Assistant Secretary
of Indian Affairs. And that’s what we
are talking about today. Before 1978
the assistant secretary reviewed
petitions by groups seeking Federal
acknowledgment as tribes. On September
5th, 1978, the Department promulgated
regulations that established a uniform
process for the assistant secretary to
review petitions. In 1994, the
Department revised the regulations,
leaving the criteria unchanged, but
adding a section for unambiguous
previous Federal acknowledgment. In
2000, 2005 and 2008, the Department
published guidance with internal
processing changes but did not change
regulations themselves. Of the five
hundred sixty-six (566) Federally
recognized tribes, seventeen (17) were
recognized through the Part 83 process.
We’ve heard that and many have
criticized the process as broken. They
say it’s too long, that it’s burdensome,
that it’s expensive, that it’s unpredictable, and that it’s not transparent. In 2009, Secretary Salazar testified before the Senate Committee on Indian Affairs and committed to examining ways to improve the process. In 2010, the Assistant Secretary’s office, the Solicitor’s office, and the Office of Federal Acknowledgment worked on a draft of revisions to Part 83. In 2012, Assistant Secretary representative Brian Newland identified guiding principles, which are the goal. In 2013, Assistant Secretary Washburn testified before the House Committee on Indian and Alaskan Native Affairs, and promised to release a discussion draft of the initiatives. On June 21, the assistant secretary released the discussion draft. And that discussion draft was developed by a DOI workgroup that consisted of people from the assistant secretary’s office, people from the Office of Federal Acknowledgment, and people from the
solicitor’s office. The goals of the discussion draft are transparency. Making the petitioning process more easily understood and open. Timeliness. Moving petitions through the process, responding to requests for information quickly, while ensuring an appropriate level of review. Efficiency. Being mindful of limited resources of petitioners and the government. Flexibility. Accounting for the unique histories of tribal communities. And integrity. Maintaining the accuracy and integrity of decisions. This slide provides an overview of the primary changes the discussion draft puts forward. First is the discussion draft eliminates the Letter of Intent. It also adds for expedited favorable and negative proposed finding. It clarifies some criteria. It allows a petitioner to withdraw after active consideration begins and any time before a proposed finding is released. It provides for automatic final determinations under
certain circumstances. It examines who
issues the final determination. And it
eliminates Interior Board of Indian
Appeal’s review. And it also includes
placeholders for input. The elimination
of the Letter of Intent. So under the
discussion draft the process begins when
a petitioner files a documented
petition. And that’s meant to
streamline the process. The draft also
provides for expedited negative review
at the beginning of active
consideration. Under the expedited
negative review, the Department looks at
three criteria. First is criterion (e),
descent from historical Indian tribe.
(F), membership principally of persons
who are not members of another
acknowledged tribe. And (g), Federal
relationship was not terminated or
forbidden. If a petitioner is not able
to establish any of these three
criteria, the Department issues a
proposed finding declining to
acknowledge the group within six (6)
months after beginning active consideration. If the petitioner meets all three of these criteria, then the petitioner proceeds to a full evaluation of the petition or an expedited favorable evaluation if that was asserted. The draft also puts forward an expedited favorable review. And this is only done if the petitioner asserts that they are eligible for that review. And it’s done after the petitioner passes the expedited negative review of criteria (e), (f), and (g). A petitioner is eligible for an expedited favorable if it can show either that it has maintained since 1934 a reservation recognized by the state, and continues to hold that state reservation. Or that the U.S. has held land for the group at any point in time since 1934. So if a petitioner can provide a governing document, which is criterion (d), and it meets either of the above criteria, in addition to meeting criteria (e), (f), and (g), then the Department will issue
a proposed finding acknowledging the tribe within six (6) months after active consideration begins. If a petitioner does not meet those criteria, then the Department will undertake a full evaluation. The draft also deletes criterion (a), which is external observers identify the group as Indian. And this is under the idea that identification of an Indian tribe shouldn’t require outside identification as such. The discussion draft also modifies criteria (b), which is community, and ©, which is political influence or authority. And under the discussion draft the Department only looks at 1934 to present. Though this is intended to limit the administrative burden on petitioners and the government, we chose 1934 because that was the year that signified a shift in Federal Indian policy from assimilation and allotment to self determination. The discussion draft does not change criteria (e), descent from a historical
tribe. So it does suggest that historians’ and anthropologists’ conclusions are allowed as evidence of descent from a historical tribe. And also the discussion draft asks for your input on more objective criteria. So we have placeholders in criteria (b), which is community, and criteria (e), which is descent from a historical tribe. We’re asking for your input on whether we should add numbers to make that close criteria more objective. Under the discussion draft a petitioner can withdraw their petition at any time before a proposed finding is released. In this situation the Department will cease consideration upon withdrawal, and the petitioner will be placed at the bottom on the numbered register if they later resubmit their petition. Under the current regulations a petitioner cannot withdraw their petition after active consideration begins. The draft also provides for an automatic final determination if a proposed finding is
positive and if the Department does not
receive any timely arguments in
opposition to acknowledgment from either
an acknowledged tribe located in the
same state or from the state or local
government where the petitioner’s office
is located. The discussion draft also
looks for your input about who should
issue the final determination. Under
the current regulations, the Office of
Federal Acknowledgment prepares and the
assistant secretary’s office issues both
the proposed finding and the final
determination. What we are hoping for
feedback from you is whether the Office
of Hearings and Appeals or the assistant
secretary’s office should issue the
final determination. The Office of
Hearings and Appeals conducts hearings
and decides appeals from decisions of
the DOI bureaus and offices and is meant
to be an impartial forum. The draft
also deletes Interior Board of Indian
Appeals review. Currently, a final
determination from the assistant
secretary under the current regulations is the only Assistant Secretary/ Indian Affairs decision appealable to the Interior Board of Indian Appeals. The discussion draft deletes the opportunity to challenge the final determination before the IBIA, which exists currently for petitioners and interested parties. Under the new draft all challenges to final determinations are instead filed in Federal court. Under the draft the new regulations would automatically apply to anyone who hasn’t yet reached active consideration. And anyone who is on active consideration would have the choice to proceed under the new regulations or the old regulations. The draft also provides for re-petitioning for petitioners that have been denied Federal acknowledgment under previous regulations if a petitioner can prove by a preponderance of the evidence that a change from the previous version to the new version warrants reversal of the final determination. We are also
seeking comment from you on anything in the draft that you think needs revision. So that’s just very open-ended. Anything that you think needs to change. Specifically we’re wondering if the definitions should be revised, and, if so, how. We’re also looking for your input on whether we should have a standard form for the petitioners or whether that standard form should be optional. As I said before, we are looking for input from you on the suggested forms of evidence for community and whether we should have specific percentages in there. We are also looking for feedback on whether we should incorporate the bilateral relationship idea into criterion ©, which is political influence or authority. And we’re looking for input on what the percentage should be for criterion (e), descent from a historical tribe. So what percentage of the group’s membership should descend from the historical Indian tribe. And also
if there are any other objective standards that could be used to show descent. We are also looking for input on page limits. Do you think that we should have page limits for each of the documents required under this process. Comments on the draft are due by August 16th. You can e-mail them or you can mail them to Liz. And going forward, we will be reviewing the comments and making any appropriate changes to the regulations, and then we will be publishing a proposed rule in the Federal Register.

BY LARRY ROBERTS:

Thanks, Katie. So that’s sort of a brief overview of the discussion draft. As Katie said, this is – you know, we’ve issued a discussion draft before we even started the rule making process here to get as much input from everyone as possible. So with that, I will turn now to the tribal leadership in terms of any questions or comments that they have. Before everyone speaks, everything is
being transcribed, so if you could just
state your name and which tribe you are
with.

BY AUDREY GARDNER:

I’m Audrey Gardner, Eastern Shawnee Tribe of
Oklahoma. If you could go back to 11. One
of the problems I see initially is that
second paragraph where it says an
acknowledged tribe located in the same state
as petitioner. When you are talking about
the Shawnee tribe, we have a historical
territory of twenty-eight (28) states and
were removed to Oklahoma. So I think for us
that would pose a problem. You know, we were
removed, so we’re located in Oklahoma. I
don’t really see why we would not have input
on somebody petitioning in Ohio or Missouri,
Mississippi, somewhere like that where we
have a historical presence there. Initially
that’s the one that stood out to me as being
problematic.

BY CEDRIC ROBERTS:

Cedric Sunray, Mowa Band of Choctaw Indians. The
question I have with that is how it’s framed.
I know Earl Barbry, some of the forces stood
up for our tribal community. In the packet I handed out you will see a letter of him supporting our tribe’s Federal recognition. The gentleman whose funeral many of our tribal members are at today. And my question is why should Federal tribes with gaming venues in close to petitioning tribes have any say whatsoever in this process. Our tribe, the Mississippi Band of Choctaw Indians (inaudible) and the Poarch Creek collectively spent Fifteen Million Dollars against our Federal petition and used Jack Abramoff as the catalyst to fight our Federal petition. He then served six years in jail as a convicted felon for his role in fighting against our Choctaw community. That’s a well documented process. So is it expedient to take Federal tribes in the regional areas of petitioning tribes, (inaudible) groups, and use them as a barometer for recognition when it’s very clear as to why they fight against those communities. I’m not talking about just any old group. I’m talking about tribes like in the back, of historically attended generationally Federal Indian boarding
schools who live on state recognized Indian reservations. My tribe is intermarried with thirty (30) different Federal tribes, including members of the Cherokee Nation, Creek Nation of Oklahoma, Eastern Band of Cherokee Indians, and many, many more, Kickapoos from Kansas, Ottawas, Navajo Nation. That’s my question. Why would they be allowed to even have a say.

BY LARRY ROBERTS:

So what we are talking about here is one part of the discussion draft that essentially embodies the Department’s current practice, which is if a - this is only limited to a proposed favorable finding. If the Department issues a proposed favorable finding, and essentially no governments within the area object to that favorable finding, that it go automatic. So this is an automatic finding favorable. So this is the discussion draft. We’ve gotten some comments on this sort of across the board. We appreciate your earlier comment. We appreciate your comment.
It’s something we will look at as we are looking forward with the proposed rule.

BY PERRY SHELL:

Perry Shell, Eastern Band of Cherokee. Flying out here I had the opportunity to sit next to a gentleman from Florida. And he claimed to be part Cherokee. I don’t know how many people come through the park; it’s nine million, I think now, that come through the national park. We’re at the eastern entrance. But the vast majority claim to be part Cherokee. There are, I’m not sure how many groups now, over two hundred (200) that claim to be Cherokee that many of them are seeking Federal recognition. So if have twelve percentage of petitioning groups just show they derive their ancestry from a historical tribe, I think a hundred percent should show. Otherwise, I think a good portion of the United States would be members of the Cherokee Nation. I mean, I think what that does, I think, when we lower this, it waters down the authenticity of those people who fought and who protected their culture and their society for years. You know, your
culture is what defines you as a people. It’s your world view, it’s what you eat, it’s what you think. It’s how you live your life. You know, where we are located in Cherokee, we probably had the most extensive archaeological study ever done in the southeast where we have our school. We showed in that location over ten thousand years of continuous habitation. To us it is insulting many times, and there may be people out there that have a percentage or they are a part Cherokee. There’s been intermarriage, you know, for three hundred years now or more. But I think that when we lower the standards here we take the authenticity of all native people. This process, when you put an arbitrary number like 1934 on it, too, you know, our interaction and many tribes in the east with non Indians goes back to the 1600s or more documented, you know. Why start at 1934? Is this to help some tribes that can’t prove their authenticity, to give them some authenticity? I think that we need to be very careful when we look - I know we are going to put this in writing, but I think...
this is so important to the future of all tribes. Especially, I think, as more tribes have interaction in this greater society that we will become communities more and more. I think this is a step toward that, the advancement of Indian tribes whenever you allow so many others to become a tribe, a sovereign, reigning, self governing nation. That’s just an opening statement. There are other items I want to talk about later. Thank you.

BY LARRY ROBERTS:

Is there anyone here that hasn’t had a chance to speak yet that would like to speak at this point in time?

BY WILSON PIPESTEM:

I’m Wilson Pipestem. I’m here with the Eastern Band of Cherokee Indians. I just want to start off by thanking the Department, Bureau of Indian Affairs and the officials who are here endeavoring to streamline a process that certainly cries out for some changes to ensure that the process becomes more efficient for both the petitioners and the Interior Department decision makers. I think
we agree that the process is inefficient, takes too long, needs to be more transparent. And the principles that Assistant Secretary Washburn has put forward makes sense as a basis for changing the regulations. So I do think that, and on behalf of Eastern Band, that this effort to make the regulations more fair, fundamentally more fair are well received. At the same time we have concerns about lowering the standards. So as Councilman Perry Shell has said, the 1934 date, we are still trying to understand better. We assume that that meant that the Indian Reorganization Act was a basis for that number change or that year change. But based upon our experience, tribes particular in this area, native people who are from this general region can demonstrate a relationship or can document histories, many back to the 1600s. So picking a date can be somewhat arbitrary for determining historical existence, but it seems to me as a principle, maintaining and requiring of showing historical tribal identity is something that is particularly important to ensure and
maintain legitimacy of the Federal acknowledgment process and, as Councilman Shell put it, the authenticity of existing Federally recognized tribes. I just want to make one quick - there’s a number of other statements I know other council members here are going to make statements as well. But I just want to open by thanking you by endeavoring to begin this process. One more thing, though. You mentioned the August date for providing comments is August 16th. I would like to request that we could be granted an extension because, one, we would like to look at the other transcripts to be able to comment on the draft rule with as much understanding of the rule as we can. This is our first time to go through this presentation. It was very helpful. But to kind of better understand where the Department, what its goals are through this consultation process, we could use more time. I don’t think it has to be an extensive period of time, but additional time, maybe thirty (30) days, to provide comments so they can be as prepared a possible.
BY LARRY ROBERTS:

    Thanks. And this is, again, an
initial step that we normally start just
a proposed rule. So there will be
additional opportunities of time. But
we will take that request under
advisement in terms of extending the
deadline. In terms of the 1934 date, it
is tied to the shift in Federal policy
from one of allotment, assimilation to
tribal self determination. So it’s tied
to the passage of the Indian
Americanization Act. That doesn’t
preclude petitioners from submitting
information prior to 1934. But it’s a
starting date for all of the criteria
except for descent from a historic
tribe.

BY CEDRIC SUNRAY:

    What I tend to be hearing in all these meeting is
the term authenticity. So when I was a
student at Haskell Indian Nation University
and I’m sitting next to a Cherokee Nation of
Oklahoma tribal member and he shows me a CEIB
and it says 1/1024. Is that individual
someone that raised in the Cherokee culture, spoke the Cherokee language, was affiliated with historic Cherokee churches and/or ceremonial grounds? Is this someone that they’re referring to in terms of authenticity? Or are those individuals on the board back there who generationally attended the Federal Indian boarding schools, including my own family, whose yearbook photos are there, whose bloodlines are listed on the board by the Federal government, and who attended the boarding schools when a requirement by the Office of Indian Affairs, which was then the Bureau of Indian Affairs, became that, and the Bureau of Education that stated you must be one quarter or more Indian blood to attend those school. But yet those tribes sit in denial. In the Cherokee Nation those fifteen thousand tribe members every six month period (inaudible) with three hundred forty thousand tribal members. I lived in Balko, Oklahoma. I was a Cherokee language instructor at Balko High School and (inaudible) State University, and my wife worked at the Cherokee Nation Health
Department. We know very, very well the community. So I think terms like authenticity need to be stricken in terms of defining what that is. Because I have lived the social reality of those individuals, and they certainly weren’t people that were quote, unquote, as authenticity being thrown around here, “authentic.”

BY LARRY ROBERTS:

So one of the things that we’re looking at in terms of the acknowledgment process that Katie set forth is what criteria should we be looking at in terms of “community,” quote, unquote, what objective criteria can we use to demonstrate so that everyone knows when a petition comes in that those objective criteria are met or not met, and what is a clear process. And I think one of the challenges we have is having objective criteria so everyone knows what the rules of the road are, but flexible enough so that, you know, every tribe’s history is unique, right, and so we need to have
that objectivity but also have the rules flexible enough to cover different situations. So what we are really looking for in terms of comments from everyone is objective criteria. What are the objective criteria that we use and, you know, how can we best move forward and prove this process. So thank you for your comments.

BY AUDREY GARDNER:

Audrey Gardner, Eastern Shawnee Tribe. Is it Cedric?

BY CEDRIC SUNRAY:

Yes.

BY AUDREY GARDNER:

I can understand the comment you just made as well as the earlier comment about tribes that are in the state. I guess the point I would like to make is I think when there is a group coming forward wanting to be a band of a certain tribe of associated descendent from a certain tribe, I think going back to that tribe is, to me, a logical step. I mean, there are three examples I want to give with the Shawnees in particular. The first was in
one of the national park services in the Cumberland Gap, there they advertised on a national park site that there was to be a (inaudible) dance. Now, without really divulging information, those are ceremonials. Those aren’t things that get advertised. Those aren’t things that should be held at national parks. So when you have groups coming in trying to be Indian, trying to present to the public things that are sacred to us that are ceremonials, I think that’s where we take offense to that. That’s where - you know, we fought for so long to maintain things that were taken away from us that we do hold them sacred. And when you are misrepresenting them or over representing them to the public, that’s offensive. And I think a lot of times that’s where these French groups or these state groups give a bad name to groups that...

UNIDENTIFIED SPEAKER:

Whoa, whoa.

BY AUDREY GARDNER:

Let me finish what I was saying. Give a bad name to groups who do have that history, who have
maintained that. Because there are groups out there that don’t know or they read on the internet and try to learn ways. And there is that difference there between people who have maintained that and who do have that culture and that heritage and people who don’t and who misrepresent that. And I think that gives a bad name, not only to the Federally recognized tribes, but to tribes that are trying to gain that recognition and having those other groups represent what their cause is which is not true.

BY B. CHERYL SMITH:

B. Cheryl Smith, Jena Band of Choctaw Indians. Recognized in 1995. We began this mission in the ‘70s to get recognition. I think we are the perfect example of what a tribe has to go through to meet the seven (7) criteria to show that you are a real Indian tribe. To meet the criterion we’ve had inefficiencies. You name it, we have done it. Have had to have a (inaudible). I mean, we have done the whole gambit of whatever Federal government to prove that we were an Indian tribe. My first question is, I see that
you’ve had all these comments, Oregon, California, Michigan, Maine. Have you had good input and have you had good tribal tribes come to these meetings or are you mostly receiving state tribes who were against the policies? What is your ratio of Federal tribes coming to these consultations?

BY LARRY ROBERTS:

I would say general attendance of Federally recognized tribes have been relatively low. A handful in Oregon, a handful in California, Michigan. So it’s been primarily the public and non-Federally recognized tribes that have attended these sessions.

BY B. CHERYL SMITH:

I assumed that. I assumed that. Well, today is a bad day for people who are traveling and coming to something like this. But I am just speaking for my state of Louisiana. I am speaking because, I mean, from the 70s, and I know what my people fought for to become recognized. It is not an easy process. This state of Louisiana has so many Federal tribes — excuse me. I mean state recognized tribes,
I can’t even begin to name them. I don’t even know their names. It’s such a simple process here to get state recognition. I honestly believe that we are the last tribe that’s going to be recognized in the state of Louisiana. And I hate that; they fought the battle and fought the battle. But at some point I don’t - like Cherokee, you have to have criteria, you have to meet those criteria. How can we (inaudible) when my people suffered and died and were gone before we could ever prove that we were Indian people. And never were able to receive any services from the Bureau of Indian Affairs. But I do see points where there are tribes out there. This is overwhelming. It is expensive. I can’t tell you dollars that we spent to fight to get recognized. And if it hadn’t been through AMA grants and so forth we would have never reached recognition as we did in 1995. But there has got to be some criteria. I think every tribe got to stand up and say there are criteria; these other tribes have to meet them just like our tribe met them. But there has to be a place - and
a lot of these state tribes, there’s no way,
I know there’s no way they can meet these
seven (7) criteria that we did. But there
are legitimate tribes out there who have been
turned down. So there is the few tribes out
there I know who should get another chance.
And that’s not the kind of communities that -
I see both worlds, but in Indian country, I
know what my people went through, I know what
we fought for this, and I’m not going to
stand by and let twenty (20) tribes in
Louisiana get Federal recognition just
because they want it and they say they are -
that’s not fair. We have John Darden, the
Chitimacha. I don’t know how you stand on
this Earl - Earl, God. John Paul. But it’s
a very emotional day and I know that Earl
supported the Indian people. He knew who the
Indians were just as I do. And it is a hard
thing to prove that you are Indian first.
And it shouldn’t be like that. But the
Federal government makes it like that. But
then if your tribe has fought hard and
received it, other tribes should fight the
right way. You can either get along with the
Federal government or you can buck the system. It will get you nowhere. I don’t care how much - if you’re a teacher, those things don’t matter. When you deal with the Federal government, you have to cooperate and you have to at some point realize if you are fighting for something, you have to get along with people and you do have to follow rules. And that’s not right, but we did that and we finally prevailed. There is a way to do it. If you go by the rules, if you abide, you meet the criteria, and there are too strict criteria; it takes too long. When we were waiting recognition, I think we were a hundred and something on that list. How crazy is that? I think that we were told that they only got to three a year. That’s crazy. How can you wait that long. It was terrible. It was horrible. Things need to be changed. They do. Everything needs to be changed. But there are some changes I think that we cannot just loosely change, because that’s not right for the real Indian people who have suffered like my people have and have fought to get recognition. And that’s
my only comment.

BY LARRY ROBERTS:

Thank you.

BY JULIE WILKERSON:

Julie Wilkerson, Jena Band of Choctaw Indians. I didn’t start working with the tribe until 2000. They were recognized in 1995. But I have had the good fortune and honor of being able to listen to the stories about what they have been through from Chief Smith and then our late former Chief Jerry Jackson. One of the things that a comment was made from the lady with the Shawnee is correct. I think that the Mississippi Band of Choctaw tribe can show that they have emanated from and came from Newton County. And the Mississippi Band of Choctaw were contacted, and they actually sent a letter in saying, yes, the Jena Band of Choctaw were part of our community at one time. I think that was what I understand from Chief Smith or Chief Jackson. That was very instrumental in assisting them also in the process. And I’m sure – because I see two were Federally recognized in 1981. I heard talk about the
long term relationship she had with Chairman Barbry where that was during their process of trying to get Federal recognition and support that the Tunica Biloxi, especially Chairman Barbry, supported the Jena Band of Choctaw.

BY GENE CROWE:

Gene Crowe, Eastern Band of Cherokee. First of all, I’d like to state that we are not a Cherokee Nation; we are the Eastern Band of Cherokee. We’re out of North Carolina.

BY CEDRIC SUNRAY:

And I know that.

BY GENE CROWE:

So I want to clarify that.

BY CEDRIC SUNRAY:

Yes, I know that. You don’t have to explain that.

BY GENE CROWE:

Just so you understand that.

BY CEDRIC SUNRAY:

Yeah, I understand that. You don’t have to talk to me like that. Don’t talk down to me.

BY GENE CROWE:

Is this necessary?

BY LARRY ROBERTS:

Let’s just talk about regs, please.
The regs is what I’m talking about here. You know, the Eastern Band, we support anybody, any legitimate tribe to be Federally recognized. Chief Smith, I stand with you on the Houma Indians. Those guys, they’ve been here since back – they’ve got documentation back in the 1600s. I’ll support them a hundred percent. The state tribes, so many pop up every day because, you know, “I want to be an Indian.” They wake up one morning “I want to be an Indian.” So that happens daily. It happens throughout the United States. We don’t support that. And we hope that the rules and the regulations that you guys are putting down here, like Wilson stated earlier here, we want to make sure that those – the standards aren’t lowered. There’s a process to go through. We are not against anybody going through the process. If you can go through that process and gain Federal recognition, then we support that a hundred percent. You know, we are behind you. But, you know, being a legitimate tribe, we know what it takes to have to do...
that. We’ve been there; we’ve done it. So
that’s my comments there, sir. I appreciate
the opportunity to be able to speak.

BY CEDRIC SUNRAY:

Can I ask this question of everybody? When you
see those people there on those boards, when
you see those individuals on those boards
that generationally attended Federal Indian
boarding schools that were sent there by the
Board of Indian Affairs. My family attended
Choctaw Central High School, a BIB run school
on Mississippi Choctaw reservation where our
family members were boarded out because we
were not allowed to attend the black and
white schools in our area, we were sent to
Haskell, we were sent to Bacone, we were sent
to Acadia, how with any modality of ethics
could you look at this small number of tribes
back there – we’re not talking about these
groups you guys are talking about. Everybody
knows that groups spring up all over the
place. We all know that. That they
certainly should not be Federally recognized
tribes. Of course not. There is a small
minority, however, that certainly are
legitimate communities. And throwing the baby out with the bath water, which is the way the Cherokee Nation has been pumping millions into this...

BY LARRY ROBERTS:

Sir...

BY CEDRIC SUNRAY:

Q. ... is not the issue. But I’m asking them. Are they telling me, these Federal tribal leaders in here, are they telling me that those people on those boards are not Indians?

BY LARRY ROBERTS:

Sir.

BY CEDRIC SUNRAY:

That’s my question.

BY LARRY ROBERTS:

Right. But the dialogue is between us and you all, not the dialogue...

BY CEDRIC SUNRAY:

Okay, well, I’m asking you. Those people that were sent to BIE schools by the Bureau of Indian Affairs for generations, are you saying now that the BIA who sent them and who sent them and who listed their bloodlines, are you saying now that they are not Indians?
Because when Beth Norwood, who graduated from Aspen Institute in the 1950s, she’s a Nanticoke from Delaware. She applied to attend Haskell in 2008. She’s a Haskell Institute graduate. She applied to go back and get her bachelor’s degree, and she was rejected. A Haskell Institute graduate was rejected from Haskell. They said she wasn’t Indian. She’s listed as half Indian by blood by BIA in the 1950s. She attended the school. She was sent there as a thirteen (13) year old, eleven hundred (1,100) miles away from home because she could not attend the black and white schools and because she was an Indian. And now the same agency who sent her there is saying she’s not an Indian. So I am asking you are you saying that.

BY LARRY ROBERTS:

I’m not making determinations.

BY CEDRIC SUNRAY:

Of course not. That wasn’t a question because it’s a moral and ethical question that no one wants to answer.

BY LARRY ROBERTS:

What I need from everyone in terms
of comments and suggestions here, in terms of whether it’s written comments or verbal comments, I need objective criteria. So if you think...

BY CEDRIC SUNRAY:

That’s my criteria. If you attended a Federal Indian boarding school generationally, your tribe, obviously you should be a Federally recognized tribe. No question about it.

BY LARRY ROBERTS:

We will take a look at that. Chief Smith.

BY B. CHERYL SMITH:

Cedric, I understand what you are saying. I don’t think anyone is talking down to you today. I don’t think Indian people should talk down to Indian people at all, because we know we don’t do that. Indian people treat Indian people as brothers and sisters. At least we do. And I don’t appreciate your comment, but I will tell you, all those pictures you’ve got on those board, my tribe could put twenty of those pictures on that board. My people did not go to school either with the whites, nor with the blacks. My mother went to the
first grade at thirteen (13) years old, finally.

BY CEDRIC SUNRAY:

(Inaudible)

BY B. CHERYL SMITH:

Let me speak, please. You’re right. I agree with you. I agree with everything you say on that board. But you must meet the set of criteria or either you loosen some of these things up for people like your tribe. And I think that your attitude needs to change. That nobody is fighting you. Nobody is against you. If you can prove that you are an Indian tribe and you meet the criteria just as all of the rest of us had to go through this, then you can get recognition.

BY CEDRIC SUNRAY:

We meet all seven (7) criteria without question.

BY B. CHERYL SMITH:

Well, you need to reapply to the Bureau of Indian Affairs. And I think this consultation, I hope, will lead to something that is to the betterment of your people in your tribe. But I think that cooperation is fifty percent (50%) of where you need to go today. And I
do appreciate the comments. I hope that they are good comments from all over the country on changing the bar. It is really, really an instrumental thing to get recognized. Because at one point I was ready to give up myself. I knew we were Indian people. And it is very, very hard to do. But if you’ve got the criteria, you’ve got the leadership, you can show everything that you’ve done, there should be some place some time for these groups who are really Indian tribes that have criteria to come back and reapply. At that point, I’m not saying another word. This is my comment. I will just say for twenty (20) years we fought for it; I know what we fought for. I am leaving this meeting. I hope this afternoon that you have a peaceful, peaceful - but I doubt it will be. You may want a security guard in here because some of these tribes I’ve seen and dealt with this morning or heard this morning already. Indian tribes are not going to respect that kind of talk or comments if they cannot act in a formally civilized brother and sister forum. And I would suggest that
you have some security in here. I will come back this afternoon and I would like to hear what these tribes have to say, and I want to know why they think they should be recognized through the state of Louisiana. So thank you for coming. I appreciate all of you. I am going to say my farewell to my dear friend Chairman Barbry. Thank you.

BY LARRY ROBERTS:

Thank you.

BY JOHN DARDEN:

John Darden, Chairman of the Chitimacha Tribe.

Everything I am hearing is the same thing all the tribes face. Luckily for us as a tribe, we’ve always been recognized here. So we didn’t have to fight for the Federal recognition. We already had it where each government that came in. When the U.S. Government came in back in the 1850s gave some of our lands back. So we’ve always been recognized. So we haven’t had to fight for recognition. But what we have had is, and I hear all the tribes, you know, you have splinter groups. For me, we need to have criteria there that we can live with.
Because, yes, there are some tribes now that - Houma, I support Houma as well. They are great friends and have been allies. I’ve known them for years. My parents and my grandparents knew a lot of the tribal members there. I know they have been fighting for recognition, trying to get it. I hope that one day they do get it. But I don’t want to see this loosened up so much where, you know, any group could come in and get it. Because, I mean, there are right now - we have issues all the time. I have people coming to the chairman - the past chairmen have had the same thing where you have people coming out saying they’re Chitimacha with no proof that you are Chitimacha whatsoever, no tie to our community. And for us, where our community is - I mean, archeologically, we’ve been right there for - we’ve been in southeast Louisiana for a long time. We’ve been there almost six thousand years. So we’ve been here a long time. And when you start coming in and saying you’re Chitimacha and you’re part of the Chitimacha. And you see their Chitimacha names and add three or four
different names. For me, when you decide
you’re going to be a tribe, you know, pick
the tribe that you are. I’m Chitimacha.
Although I’m half white, my mom is white, I’m
Chitimacha. So if you ask me, I’m
Chitimacha. For me, first you choose that.
And then if there is a tribe - and for us, if
there’s another tribe in Louisiana claiming
to be Chitimacha, I would want the right to
respond to that. You know, if they were a
group, I would like some comments on that.
Because our people would like some say on
that, too. We’ve been here for a long time.
But I would like proof. And I do want to see
the proof here. And I like the criteria.
You maybe need to loosen up a little bit, but
also we’ve got to find a medium that we all
can live with. Because we don’t want just
anybody to get recognized saying they’re a
tribe.

BY CEDRIC SUNRAY:
We don’t want that either.

BY JOHN DARDEN:
We’ve run into that. I’ve seen people wanting to
be destroy mounds and different things in the
state, sites that we have, putting poles on them. I’ve seen so many things over the years with some groups that are wanting to be recognized. I know we’ve all seen that. We’ve all seen the education issues. I mean, our grandparents, our great grandparents were sent off to schools elsewhere because we didn’t have schools on the reservation. My great grandfather...

BY CEDRIC SUNRAY:

Your family went to school with my family at Haskell. I’ve seen pictures of the Chitimachas with us.

BY LARRY ROBERTS:

If we could have just one person speak at a time.

BY JOHN DARDEN:

That’s all I wanted to say. I do agree – I mean, there are some things that I seen in there, and I will send in some comments on some of this stuff. But I thought it was important to be here today, too, so I could listen to what everyone had to say. I do understand the state tribes, you know, it’s unfortunate – you know, I had no problem with them being
in here. But I know sometimes it causes a lot of tension and you can’t speak freely. So I understand both ways. For those of us that would like to stay for the evening, we’ll stay for the evening session. Thank you.

BY LARRY ROBERTS:

Thank you. And just to make clear, the discussion draft doesn’t change the process for input from tribes or the public. So if it’s a proposed negative or proposed positive finding, there’s still that opportunity for public input before it goes final. So there are no changes with regard to that.

BY CEDRIC SUNRAY:

When I look through here, like with the boarding school tribes that aren’t recognized, we’ve got a full unanimous resolution promised American Indians passed in 2011 supporting it. Tunica Biloxi is supporting our tribe, and NAACP. National Congress of American Indians supporting our Federal recognition. Poarch Band of Creek Indians supporting our Federal recognition. And anyone (inaudible)
they started calling us mulattos. Another
rule from 2006 saying they will support us if
the rates change. Council member from the
Mississippi Band of Choctaw Indians
supporting our Federal recognition. Listen
to me for a second. Census records listing
every one of our tribal members as Indian,
all of our military records listing all of
our tribal members as Indians. Kevin Gover
saying he made a mistake, that he was fooled
by Lee Fleming. He said that in
congressional testimony in 2004, that he
denied our tribe after he was only on the job
for two days. Lee Fleming purposely waited
for the new assistant secretary to come in,
and asked him to sign off on a negative
determination. I have a letter here of Lee
Fleming showing his hostility for state
recognized tribes as well as calling some
blacks. Now, the reason I am saying all
this, why is some little governmental arm
that’s a low level group, the Office of
Federal Acknowledgment was changing its name
and then turned into a new process. Why is
it that national Indian organizations,
Federally recognized tribes that support us - (inaudible), Jr., the most prolific Indian author in the history of Indian country writes the forward to our history book demanding our Federal recognition. Why does OFA have that weight above all of these Federal Indian entities who supported us? That’s my question.

BY LARRY ROBERTS:

They’re the institutional body, right?

BY CEDRIC SUNRAY:

If you’re seeking Federal input, there’s input.

BY LARRY ROBERTS:

I hear your comment. Your comment is should there be a process in place in terms of support from - what weight shall we give support from other Federally recognized tribes and tribal organizations.

BY CEDRIC SUNRAY:

Lee Fleming said that our language tapes recording our speakers and our dates on our boarding school records were received out of time, therefore couldn’t be considered. As if
there’s an out of time. How convenient. How politically convenient for him to say that our Federal boarding school records, our Federal schools as listed in the Library of Congress, was built in 1835 and we still are in it. It’s the only Indian school in the state of Alabama. Built by the bureau. And he said that was received out of time, too. So if you guys keep him on in this new revised process, everyone already knows the result. There’s no tribe that is as clearly shown through Federal Indian support, national Federal organization support that we are clearly a tribe. We even live on a state recognized historic reservation. What more do we need to do to get relief?

BY LARRY ROBERTS:

So in terms of the process and how we have developed a discussion draft, the Office of Federal Acknowledgment has been involved in that discussion draft. And then the other point to be made is that the discussion draft does suggest a process where after the proposed finding is issued, there is question for tribes
and the public here, should that process then transition over to the Office of Hearings and Appeals. Which is separate from IBIA. IBIA is one component in the Office of Hearings and Appeals. But there’s actually a component within the Office of Hearings and Appeals which is staffed by administrative law judges that are within the Department of Interior. They may not have background on Indian issues and Indian history and policy and legal issues, but they are administrative law judges that are appointed there. And should that entity issue a final determination based on materials that would be provided to it from petitioners and interested parties. It would essentially be an administrative judicial proceeding. That’s a question we need comment on. So is there anyone else that has comments today, this morning?

BY CEDRIC SUNRAY:

You need to take these four guys sitting right here and they should make the decision on my
tribe. Y’all won’t have to hire nobody else. They’ve got it figured out.

BY LARRY ROBERTS:

We’re not here on any specific tribe. It’s the regulations, itself.

Any else? The reason I’m asking is does anyone object to ending this now so that we can attend the funeral for Chairman Earl Barbry. If anyone objects or has final comments, please let me know.

BY WILSON PIPESTEM:

Let me say one thing. I think it’s a priority to pay respects to Chairman Barbry, but at the same time the Eastern Band of Cherokee Indians has come here for a government to government consultation. And it’s difficult to have that sort of conversation and that dialogue that we are promised by this presidential memorandum on consultation when this sort of conduct is going on. So I would ask you again, we are trying to have a review, we’ve got other things to say. Understanding, though, that you’ve got an unusual situation where the chairman is lying here and has passed on. But we would like to
have government to government consultation
that’s meaningful. And it’s difficult to
have that in this kind of environment.

BY CEDRIC SUNRAY:

When you’re being held accountable it is
difficult. You’re right.

BY LARRY ROBERTS:

We’re not going to have people
interrupting folks. So please.

BY CEDRIC SUNRAY:

I don’t say anything else.

BY LARRY ROBERTS:

So don’t interrupt. I am happy to
keep this consultation open as long as
you guys want to stay and talk. We are
happy to stay here. We scheduled it
until noon, and I am going to be here
for that entire time.

BY PERRY SHELL:

Perry Shell, Eastern Band of Cherokee. I don’t
think this dialogue has been very effective
this morning. This probably would have
happened had we kept all of the groups in
here, you know, even worse than it is now.
But there are other things that we wanted to
touch on, and we’d like to have that
opportunity. It’s difficult to get away,
come down here to do this. But at some point
we would like to have just a meeting with
you.

BY LARRY ROBERTS:

Okay. We’re happy to have a
meeting if the Eastern Band is - I mean,
we’re not going to do separate
consultations for every recognized
tribe. That’s not really consultation.
But we are always happy to meet with
tribal leadership on any issue.

BY PERRY SHELL:

I think the circumstance of this meeting...

BY LARRY ROBERTS:

Yes, and the circumstance of this
meeting...

BY PERRY SHELL:

I think needs consideration.

BY LARRY ROBERTS:

Yes. Like I said earlier,
obviously this meeting had been set up
way in advance of the chairman’s
passing. We did reach out to his family
and ask whether they wanted us to move the meeting. And they actually asked us to move forward with the meeting out of respect for him. But I understand the Eastern Band of Cherokee, they are requesting a meeting, and we are happy to meet with them.

BY AUDREY GARDNER:

Audrey Gardner, Shawnee. I guess I’m just a little bit curious, kind of piggy-backing on that. Why wasn’t a meeting held in Oklahoma where there is a large population of Federally recognized tribes? I mean, I would agree it’s difficult to get time away from your schedule and travel. You know, one of the reasons I am here instead of Chief is because of that. She doesn’t have the time to take two days of travel to come down here with such a busy schedule. I guess I would be curious as to why a state with so many Federally recognized tribes wasn’t considered as a location for this consultation.

BY LARRY ROBERTS:

We had a lot of comments in terms of, you know, why haven’t you been to
our state or different locations. The fact of the matter is that we are having five tribal consultations and public meetings. That’s more than typically do. This is a discussion draft. It’s not a proposal we’re making. So, for example, on the tribal leasing regs, which impacted all tribes across the country, I think we had three tribal consultations throughout the country. So as we move forward with the proposed rule where there will be additional opportunities for comment, and tribal consultation will be looking at going to areas and regions where perhaps we didn’t visit this time around. The other thing I would add is just that sequestration has hit the Department pretty hard. We have a Hundred Twenty-Six Million Dollar budget. It’s hit the Department, it’s hit tribes hard. Tribes have been feeling it on the ground in terms of those budget cuts. So while we have done more here than we normally do, it’s also difficult to hit
every state. Are there any other comments this morning? Any objection to ending this at 10:30? That’s okay? Okay. If that’s okay we will go off the record and we will be back at 1:00.

(MORNING SESSION CONCLUDED AT 10:30 A.M.)

(AFTERNOON SESSION BEGINS AT 1:10 P.M.)

BY LARRY ROBERTS:

I would like start the public meeting today with just a moment of silence for Chairman Earl Barbry, who was a longstanding leader for the Tunica Biloxi tribe. We will take a moment of silence to pay our respects to him.

Okay. So as we return for this afternoon, a couple of just basic housekeeping issues. One is whenever you have a question or comment, please state your first and last name and who you are with for our court reporter so that she can get that down and make sure that your comments are preserved for the record. The records of all of our tribal consultations and public meetings will be on our website, as well as it’s
our attempt to have all of our written comments that we receive be posted on our website as well so that people can see what comments were made at all of the various tribal consultations and public meetings, and then written comments that the department has received.

In your packet of materials that you have received today there is a red line, that is the discussion draft that we will be talking about. That is a red line against the existing regulations. As we’re going through this process to issue a proposed rule, what we’ll be doing is putting the regulations in plain language. That’s one of the requirements that we have at the Department in terms of whenever we amend or promulgate a rule, that we put it in a format that is easier to read.

There is coffee and water on the other side on the table there. And the other thing that I would ask is that if someone is talking with a comment, that
whoever has the microphone, that you
allow them to finish whatever they are
saying so that everybody has an
opportunity to provide comments. At
earlier consultations and public
meetings we’ve had situations where
everyone in the room essentially wanted
to comment. That’s great; that’s what
we’re looking for. If we get into a
situation where everybody wants to
comment and their comments are running,
say, longer than five (5) minutes, what
we would ask is that you take – you take
five (5) minutes. If you have a line of
folks behind you, have them be able to
give their comments, and then we would
be more than happy, you are more than
free to speak again and provide
additional comments. But I want to make
sure that everybody has an opportunity
to share their comments with everyone in
the room.

So does anyone have any concerns
with those sort of basic ground rules,
rules of the road? Okay. Great. So
thank you for coming this afternoon. We are going to get through a presentation that is going to take about twenty minutes, and then we are going to open it up for comments and questions. It’s just a general overview of the discussion draft.

So very briefly, though, there are essentially three ways that a tribe can become Federally recognized. It can be through congress, by legislation. It can be through a court order, and it can be through the Department of Interior. And what we are here to talk about today is the Part 83 Process for Federal acknowledgment. So prior to 1978 we had the Department of Interior address petitions for acknowledgment on a case by case basis. So we addressed those on a case by case basis. And then in 1978, as most of you know in the room, the Department promulgated regulations. In 1994 the Department revised those regulations, in large part adding a section to address petitioners who
argued that they had previous or ambiguous Federal acknowledgment. In 2002, 2005 and 2008, the Department issued guidance to the public, to petitioners and to the Office of Federal acknowledgment staff on how to basically work under those existing regulations. Of the five hundred and sixty-six (566) Federally recognized tribes today, seventeen (17) have gone through the Federal acknowledgment process. And as many of you know in the room, Tunica Biloxi was the first petitioner. They were petitioner number one.

So some of the criticisms that the Department has heard is there have been a number of comments that the process is broken: That it takes too long, that its burdensome, that it’s expensive, that it’s not transparent, that it’s unpredictable in its results and that the criteria is too subjective. And so in response to those comments we’ve started working to look at the Part 83 process. And our efforts started in
2009 with Secretary Salazar. Secretary Salazar, who was the Secretary of the Interior at the time, testified before the Senate Committee on Indian Affairs that he would examine ways to improve the process.

And later that year, in November of 2009, the Department again testified to the Senate Committee of Indian Affairs, and at that testimony the Department said that they would look at eliminating unneeded steps, that they would take a hard look at the standards. And in 2009, the Department testified that it would take approximately a year to issue a proposed rule and approximately another year to issue a final rule. In 2010, the Department internally started working on potential revisions to the Part 83 Process.

Then in 2012, the Department again testified before the Senate Committee of Indian Affairs in response to questions from the Senate Committee in terms of why the Department yet issued a proposed
rule. The Department testified that they were identifying a handful of goals in their revisions and that they were still working through what those revisions might look like. And so some of the goals that they testified to, that the Department testified to was transparency, timeliness, efficiency, flexibility and maintaining the integrity of the process.

Earlier this year the assistant secretary and myself testified before the House Natural Resources Committee, a subcommittee that works directly on tribal issues. In that testimony we laid out a certain path that we’re on now, that we would issue a discussion draft, that we would hold tribal consultations and public meetings, that we hoped to issue a discussion draft this summer – by this summer, and that we would go forward with our normal rule making process after that.

So this is – what the Department is doing here with the discussion draft,
typically, for those of you that don’t follow the regulatory process in terms of how the Department has changed their rules, typically the agency just issues of proposed rule and asks for comment. On this one, what we’ve done is we’ve taken an early additional step to get maximum involvement from the public in terms of comments on how to improve the process.

So that’s why we’re starting with the discussion draft. And then we’ll start our normal rule making process after we’ve received comments on the discussion draft.

So I’m not going to read all of these changes in the discussion draft. We’re going to go through and talk about them in more detail, each one, and you are following slides, but this sort of identifies some of the primary changes in the discussion draft.

So the first change is to eliminate the letter of intent. Right now, as most of you may be aware, the
regulations provide for a petitioner to submit a letter of intent, and then it may take some time, it’s really up to the petitioner, in terms of when they actually submit a petition.

And so this process, what it would do essentially is just eliminate the letter of intent and start the process with when a petition is filed.

We added a process criteria for expedited negative findings. What we are looking for comment on on these changes, this criteria, whether we’ve got it right or whether there is other criteria we should be looking at for expediting negative rulings. And essentially how it would word in the discussion draft is a petitioner would submit a petition, the Department would review the petition for criteria (e), descent from historical Indian tribe, (f), that its membership is not primarily composed of a Federally recognized tribe, and (g), that Congress has to pass legislation that forbids a government to government
relationship. So if Congress has
terminated a tribe or has basically
forbidden the Department from
acknowledging a tribe, we obviously
cannot process that petition. That
would take an act of Congress to change.
And so if a petitioner did not satisfy
all three of these criteria, then we
would issue an expedited negative
finding with the six (6) months of
active consideration. If the petitioner
met all three of those criteria at the
onset, then we would go to the next
stage to see whether the petitioner is
asserting a basis for an expedited
favorable finding or processing under
the remaining criteria.

So we’ve added provisions in terms
of expedited favorable finding, again,
we’re seeking comment and input on
whether these criteria are appropriate
or whether we should be looking at other
criteria. But that expedited favorable
finding would be for those petitioners
that can satisfy that they’ve maintained
a reservation recognized by the state since 1934 to the present or if the United States has held land for the group at any point in time since 1934.

If a petitioner satisfies either of those two criteria, then it would - the Department would issue a proposed favorable finding, in which case we would then receive notice and comment from - or we would receive comment from the public essentially. If a petitioner failed one of those two expedited favorable criteria, then they would be processed under the remaining criteria.

In terms of the remaining criteria, the discussion draft proposes elimination of criteria (a), which is external identification of the group as Indian from 1900 to the present. That is primarily for the purpose that if a petitioner satisfies all the other criteria for a tribe, to constitute a tribe that should be Federally acknowledged, it shouldn’t matter whether an external observer chronicled
the existence of that tribe from 1900 to the present.

In terms of criteria (b) and (e), community and political authority, the discussion draft proposes to start that review at 1934 to the present. And the reason that the discussion draft has 1934 is because that’s a date in our nation’s history where Federal policy shifted from one of allotment and assimilation to tribal self-determination with the passage of the Americanization Act. That would preclude petitioners or others from submitting evidence prior to 1934, but we would start our review in 1934 and take into account any information submitted prior to that date that may be relevant to the criteria after 1934.

In terms of criteria (e), the only change in the discussion draft is to provide – right now as the process currently stands we rely currently on genealogy information to prove criteria (e). This would allow historians’ and
anthropologists’ conclusions to be submitted as evidence of descent from an historical Indian tribe.

And then you’ll see throughout the discussion draft we have placeholders for input in terms of what numbers we should have for the criteria. And we’re looking for suggestions in terms of other objective criteria that we could use to improve the process.

The discussion draft has provisions in it that would allow a petitioner to withdraw a petition at any time before a proposed finding is published. We have heard some comments that sometimes petitioners may want to withdraw their petition for whatever reason and they’re sometimes not allowed to do so. The discussion draft would allow them to do that as long as they have – as long as a proposed findings hasn’t been published yet. And essentially OFA would then cease consideration and the petition would be resubmitted. If a petition were resubmitted, it would essentially
lose its place in line and be considered
- it wouldn’t regain its initial
priority number.

So we also have a provision for
automatic final determinations if the
Department is essentially embodies
existing practice by the Department.
That is if a proposed finding is issued
and it’s favorable, and the department
doesn’t receive any arguments or
evidence in opposition to
acknowledgment, then that would go –
essentially be finalized as a favorable
finding. What we have added here is if
we don’t receive any arguments or
opposition from either the other
Federally recognized tribe in the state
or from the state or local governments
where petitioner is located. If we
didn’t receive evidence or arguments in
opposition, then it would just go to
automatically be final.

One area that we’re seeking input
on is who should make a final
determination for Federal
acknowledgment. As the process currently stands, the assistant secretary makes that final determination. The discussion draft leaves placeholders for input after a proposed finding is issued whether the process should then shift to the Office of Hearings and Appeals, which is an office within the Department that is essentially independent from the rest of the Department. It’s staffed by administrative law judges. And the discussion draft asks whether after a proposed finding is issued, should the process then move over to an administrative law judge, who would then receive comments from the public, set a briefing schedule, and then based on all the evidence before that administrative law judge, make a final determination.

In terms of a review by the Interior lawyer to eliminate that review, right now Federal acknowledgment decisions are the only decisions that are made by the assistant secretary that
are subject to administrative review. And so we delete that administrative review. The assistant secretary’s decision would be final for purposes of the Department and any challenges to that final decision would go to Federal court.

While we’re very early on in the process, we thought we should address for those petitioners that are already in the process and maybe under active consideration how would their petitions be handled if we issue an amended rule.

And the discussion draft addresses it by basically saying for those petitioners that haven’t received an active consideration, that they would fall under the new rules where if those would be in a final rule maybe. And anyone who is under active consideration would have a choice as to whether to stay under the existing rules or be processed under the new rules.

And so that’s something that we’re looking for comment on in terms of how
should the new rules apply to petitioners as we’re going through this rule making process, knowing that it’s going to be some time before the final rule is in place.

Finally, the discussion drafts as for an opportunity for a petitioner who has been denied Federal acknowledgment under the previous regulations to repetition if they can prove by a preponderance of the evidence, either through the assistant secretary or the Office of Hearings and Appeals that the changes from the previous version to the new version warrants reversal of the final determination.

So we are seeking comments on all aspects of the rule. There may be ideas or suggestions that you have that are not incorporated in the discussion draft that are not in the existing rules that we would welcome that input and comment. Specifically, any changes to the definitions. When we’ve talked about should the Department put out a standard
form for petitioners, not requiring petitions to utilize that form, because we know every tribe’s history is unique and petitioners may need flexibility in their petitions to show that. But it could be optional, at least stating some sort of guidance to petitioners in terms of what the Department is looking for in a petition.

In terms of the various criteria, and I’m going to flip through these relatively quickly, but what objective criteria should we be using, and are there additional objective criteria that we haven’t considered that we should consider.

Same thing with political influence and authority and the (inaudible) for a tribe.

One of the things that we’re asking and seeking comment on is should there be page limits applied to the process and should there be page limits, for example, applied to the petition. I’m not talking about the source of
historical documents that a petitioner would rely upon. I’m talking about the narrative petition that a petitioner may submit in terms of summarizing that instead of preparing. Should the proposed finding have page limits. I think our proposed findings have gone over time from less than a hundred (100) pages to maybe hundreds of pages. And could we – would it be an improvement to the process, would it be more readable for the public, for petitioners and everyone involved if we impose page limits on ourselves as part of a proposed finding. And then in terms of comments, should we impose page limits.

Comments are due August 16th, and you can e-mail them to the e-mail or site in your materials. You can mail them to Liz Appel. August 16th won’t be your only opportunity to provide comments as we go through this process. As I mentioned, once we receive all the comments and look at those we will move forward and issue a proposed rule. And
once we issue a proposed rule, the public will have another opportunity to make comments on that proposed rule.

The proposed rule will be based on the comments that we receive, and our internal incorporations in proposed rule may not look like the discussion draft, but we want to have early input and early comments. But once the proposed rule is put out there for public comment, we will probably have a period of somewhere between thirty (30) to sixty (60) to ninety (90) days for further comment. And then we’ll move forward with a final ruling.

So with that, I am going to open it up to questions and comments. And I think it would be helpful if, if you can, if you could please come up to this microphone, I think that would be helpful in terms of allowing everyone to hear. For whatever reason, if you can’t make it to this microphone, just raise your hand and we’ll bring a microphone around to you so that we can have your
BY THOMAS DARDO:

My name is Thomas Dardo, Principal Chief of United Houma Nation. I would like to thank everybody for coming down and giving us this period to comment. I have three points. I support and agree with the changes in time line for criteria (b) and ©, and ask that OFA set the same time line for criteria (e). The requirements for historical time is overly burdensome and makes no allowance for the oral tradition of our people. Secondly, the second concern of our tribe is that ensuring that qualifying staff are assigned in appropriate cases where they are knowledgeable in the preparation of historical, region and tribal relations. This would lead to consideration in decision making relative to applicants. For instance, in our petition John Swine (spelled phonetically) was discredited for his work in our tribe, and yet in a prior petitioner he was revered for his work. Finally, the final thing is we ask for clarification regarding
our tribe’s choices of following the new proposed regulation. Will we be required to start from the beginning? Recommendations that the tribes that have been in the process for the longest period of time be considered first.

BY LARRY ROBERTS:

Thank you.

BY CEDRIC SUNRAY:

Cedric Sunray, Mowa Band of Choctaw Indians. I set out packets here. Various people have them. I want to give you my background real quick. My background is useless outside of this room. It’s not anything to brag about, but in this room it’s something that will tell you it’s part of my involvement. I am an enrolled member of the historic (inaudible) tribe, as well as a Federally recognized tribe. I hold a bachelor and master’s degree in Indigenous Nations/American Indian studies. I taught American Indian studies in six colleges and universities, and I’m currently a student at the University of Oklahoma’s College of law.
So my involvement - I’ve reviewed every single petition denial from the beginning to the end. I’ve wrote extensively and I have seventy-five (75) published articles on the issue of Federal Recognition in both academic journals, as well as national magazines and newspapers. I have also written two book drafts as well regarding the subject. So that’s my background. But like I said, once I leave this room, who cares. So the first one is living language communities should be immediately considered or reconsidered for recognition. Any current non Federally recognized tribe who has obtained their tribal language to the present. Not revitalized it, but has maintained it consistently throughout their tribe’s history should be reconsidered immediately. That’s the MOWA Choctaws, that’s the (inaudible) of Oklahoma, that’s the Houmas, and related communities in Louisiana who has had a mixed language of French and Muskogee/Choctaw language that has been documented by a PhD linguist to show that that is a viable continuos indigenous
language form. Second, would be those tribes who attended the Federal and closely related mission and boarding schools. In the back of the room you will see many documentations regarding photos, direct correspondence with the Department of the Interior, direct communication with Indian Affairs of twenty-two (22) tribes nationally who attended the Federal Indian boarding schools. A generation. I, myself, attended Haskell Indian Nations University in Lawrence, Kansas. My family members attended Choctaw Central High School on the Mississippi Choctaw reservation. Which, interestingly, in Congress, the former chief of the city Choctaw said he never heard of our people, yet his office was directly across the street from the very boarding school on his reservation that our families attended, and our attendees were friends with his children and stayed at his home. Third, would be those tribes who continue to reside on reservations officially designated by the colonial state governments. So that’s already something that they’re talking about
now. Those tribes immediately be
reconsidered or have consideration. Four,
place those tribes who have high rates of
intermarriage with other Federal tribes. And
this is what I’m saying. It’s not trying to
be a part of the colonial project and say if
you were married (inaudible) more than
anybody else. What it is saying is in our
tribe we have thirty different recognized
tribes from across the country married in our
community. Our children, our grandchildren
and great grandchildren are enrolled members
of Federal tribes all across the nation.
There is no way that that many Federally
recognized tribes would have married into a
non Indian community in rural Alabama with no
job opportunities or anything of that nature.
It’s a social impossibility. So it speaks to
itself very clearly. Fifth, in line may be
those tribes who were disallowed attendance
at area white and black schools. And set up
Indian schools in their local communities.
Our school was set up by the Bureau Indian
Affairs, which had a different name at that
time back in those days. And our school was
continually inhabited, and it continually
today is now run by the State of Alabama, the
very same school. And it’s in the Library of
Congress. Every record attests to that.
Sixth, may take into account the tribes with
Indian designations on census, military and
education records. When I look at our title,
our military records, our census records,
except for a couple censuses, and insofar as
educational records we’re listed as Indians
from the very beginning to the end. But
(inaudible) shows two census time periods
where we were listed as mulattos and
(inaudible). Okay? And that’s the ones that
he put forth. Notice of our language,
everything else that was submitted, he sent
all those (inaudible) received at the time,
how convenient to say something like that
when they were submitted with the initial
petition. Seventh, I will say that tribes
who have retained separate languages and
cultural spaces from Federal tribes who have
politically consumed them, should be afforded
an opportunity to remove themselves from
their legal grip. The Shawnees, there’s a
Shawnee in here, they are separating themselves from the Cherokee Nation of Oklahoma, as did the Delaware Nation, the Ugee (spelled phonetically) tribe attempted to do that for many years in Oklahoma; they have a separate language, separate ceremonial grounds, separate historic Indian churches. But, like us, millions of dollars and congressional time has been spent against in order to prevent them to proceed and be a possible future gaming competitor. Our tribe had Fifteen Million Dollars ($15,000,000) spent against it, and Jack Abramoff, the lobbyist involved in it, went to jail for six years because of his direct involvement. Finally, these tribes who demonstrate all these issues, those who have already been denied and demonstrated, many of these here, should be immediately brought to the front for reconsideration. Because what’s going to end up happening in this process is the twenty (20) or thirty (30) years it’s going to take. The issue is not with the previous set of criteria. The issue is how the set of criteria was applied. Lee Fleming, you will
see in these packets, had open hostility that, under affidavits people said from various (inaudible), that he exhibited towards non-Federal tribes prior to him joining the Bureau of Indian Affairs. He’s now the man who makes that decision for everybody. Any registered lobbyist should be completely removed from any involvement in this process whatsoever. Registered lobbyists should have no say. Anything in writing, respond to or hired as hired guns of multi-gaming Federal tribes should be removed from the process completely. (Inaudible) who has fought religiously against non-Federal tribes, (inaudible) 2004, passed a resolution saying that (inaudible) same thing. Will not support any tribe going through the congressional route. They will not support any. That’s interesting because (inaudible) tribe recognized by the US Congress and not by the (inaudible) of Federal acknowledgment. If that’s not the pot calling the kettle black, throwing stones in glass houses, then I’ve never seen one that clear and that obvious. My final statement. The Assistant
Secretary of Indian Affairs, when our petition was denied, was Kevin Gover. He’s a member of the Pawnee Nation of Oklahoma. Mr. Gover, Lee Fleming waited until he was only two days on the job and asked him to deny our tribal petition, because the previous assistant secretary would not deny it. So he waited until the new assistant secretary was on the job for two days and got him to deny it, in 1999. In 2004, Kevin Gover got up in front of the US Congress, and you will see the US Congressional testimony in the packet, and, in essence, apologized for making a mistake with our tribe. He apologized to me personally over the telephone. He said he hadn’t reviewed the petition, he had only been there two days, and he took the word of Lee Fleming in making the decision. And that’s all I have to say.

BY LARRY TOWNSEND:

Good afternoon. I am Larry Townsend, and I am here today in my capacity as the Southeastern area Vice President of the National Congress of American Indians. I strongly support the Bureau of Indian Affairs’ efforts to revise
the Federal acknowledgment process Part 83.

There are numerous petitioning tribes who are members of the NCAI and who have a vested interest in this endeavor. The process for Federal acknowledgment is broken. And there is a dire need to amend the process. As one great leader said, “Justice delayed is justice denied.” It is long past time for our government to do the right thing for all American Indian tribes. I commend the Assistant Secretary Washburn and his staff for eliminating the process with the current Federal acknowledgment process. And I commend the attempt to make the process more transparent, timely, efficient and flexible. The proposed changes will certainly enhance and maintain the integrity of future decisions for all of our people. I look forward to the positive outcomes of these efforts. Thank you.

BY MR. CALDWELL:

Hello, I’m Robert Caldwell. I am representing the Choctaw/Apache Community of Ebarb. We are petitioner #37. If you’ll please, if someone will let me know when I’m at four and a half
minutes, because we have a lot to say and I don’t want to take all of your time immediately. The Choctaw/Apache Community Ebarb welcomes the opportunity to discuss the proposed changes to the Federal acknowledgment Regulations today, to explain our concerns and to ask questions. We offer comments on the preliminary discussion draft as well as problems we have seen with interpretation of the regulations from 1978 to present. First, we agree with what other people said in that support 83.6 (e-1), which clarifies that evidence should be viewed in the light most favorable to the petitioner. We think that evidence must be always be in the light most favorable to the petitioners. But OFA policy suggests that there’s a bright line between groups who are tribes and others. However, in reality, they are many competing definitions of tribal existence. Critics have suggested that the OFA uses the most restrictive notions of tribal nation, a practice that seems to be rooted in the fear of criticism more than sound conclusions. The cannon of interpretation of Federal
Indian law and tribal sovereignty demanded an ambiguity to be resolved in the favor of tribes. The correct standards of the OFA action should be also to resolve ambiguities in favor of petitioners. In that light we appreciate the modified 83.6 (b-1) requiring that applicants be viewed in the light most favorable to the petitioner. Secondly, we assert that OFA interpretations of tribes which combine and function as a single autonomous political entity have been overly stringent. OFA has interpreted tribes which combine and function as a single autonomous political entity in ways that we believe has let to illogical conclusion. The case of United Houma Nation and related groups is illustrative of this. In this finding regarding the Houma, the OFA concluded that the Houma family ancestors were a group of accidental neighbors who happened to be Indian rather than a group who chose to live with each other because they could live as Indians together. The fact that they and their descendants stayed together and maintained an Indian community identity is
certainly evidence of their intention to form
a political and cultural community with one
another. While most would prefer to have had
written constitution or a declaration of
independence to provide proof of their
political community, historical contingencies
meant that many communities did not.

Previous OFA interpretations have not
accepted documentation that a person or group
of people is Indian as evidence of descent
from historical tribe or tribes. How can a
group be Indian and not be descended from a
tribe? While it’s true that Federal
Recognition is rooted in indigenous political
primacy, acknowledgment that Indian nations
governments predated United States. However,
Indian communities all over the United States
were comprised with individuals from a
variety of tribes. People from whom the idea
of tribe did not always have the same
significance. And if you want historical
documentation of this, James Merrill’s work,
The Catawbas, Little Republics; Richard
White’s work and Harmon’s work are probably
all useful here. Third, we maintain that
tribal Federal Recognition is a Federal obligation. It’s not an entitlement program. As former head of the PIA Michael Anderson has said “Tribal recognition is a Federal obligation, not an entitlement program.” Supreme Court’s 1832 decision, Chief Justice John Marshall wrote that tribal sovereignty is not only acknowledged, but guaranteed by the United States. Given this fiduciary responsibility to guarantee tribal sovereignty, the United States government is obligated to actively investigate whether some Indian nations sovereignty is currently being violated by non-recognition. Recognitions has been a currently interpretive, passively way for tribes to conduct the extensive research required to petition for acknowledgment on their own. Official OFA policies specifically ordered its employees to do no research work to assist petitioning nations. This might speed up the notoriously slow rate in which petitions are reviewed, but have the opposite effect of what criticisms of their speed intended. Rather than obtaining more
attention for each petitioners case from the Federal government, this regulation results in less attention.

BY LARRY ROBERTS:

Let me just stop you there just for a second and ask these gentlemen waiting whether - how much longer your comments are?

BY MR. ROBERT CALDWELL:

I have a number, but I could finish this thought.

BY LARRY ROBERTS:

Sure.

BY MR. ROBERT CALDWELL:

Research support and advice should be an ongoing obligation of the Federal government for groups showing evidence of Indian ancestry up until the moment of final decision. Ongoing eligibility for such support could be tied to various progress markers as grants typically are in order to prevent abusive ways, while not delivering much needed support to tribes. We certainly have the need for ongoing support. The process as it currently exists is very costly, and we believe that we could benefit from support.
BY LARRY ROBERTS:

Thank you.

BY FRAMON WEAVER:

My name is Framon Weaver. Good afternoon, ladies and gentlemen. I am an elected tribal chief of the MOWA Band of the Choctaw Indians of South Alabama. On behalf of my people, thank you for the opportunity to provide a few comments on the Federal Recognition process and the changes. It is widely accepted that the Federal Recognition process is broken. So I’m not here just to simply reiterate that strong belief. But what I’d like to do is remind everyone that you can’t legislate hearts and minds, nor can you regulate them. That being said, the problems that we seek to solve are not only found in these regulations, but mostly in those who administer them. As your job is to follow the regulations that essentially provide a fair, uniform and systematic approach to evaluate the facts as presented; they do little to ensure that the bureaucracy charged with administering them would do so according to strict protocol and limit bias, politics.
and all other forms of outside influence. They do nothing to ensure that the Department will evaluate the facts as presented in an independent and objective manner instead of using the might and power and resources of the Federal government at their disposal to seek out evidence to support a prejudicial notion. Make no mistake about it, the very same individuals who purport to provide help and resources to petitioners have the power to actively and secretly work to derail their efforts; which they do. Our experience was one of both patronizing misdirection and spin. Any evidence that they felt served to support a denial was presented in esteem regard while more solid and compelling evidence that supported our petition was either completely and totally disregarded or was marginalized. They knew full well and in advance what the decision would be, as they did not evaluate the mound of evidence we spent years gathering. The expedited rules process should be more seriously evaluated as it has allowed OFA to take the path of least resistance in its evaluation of documented
petitions by granting them the authority to pick the area that a tribe’s petition is most vulnerable to denial, while not even having to evaluate other areas where strong supporting evidence may be found. We were naive to believe we would receive a fair evaluation. Instead, the BIA completely disregarded any and all evidence that could serve to support our claim while actively and aggressively working to find any evidence they could find to support a denial. Please allow me to share with you the thoughts of a few renowned experts after we were denied under the existing process. Renowned legal scholar and member of the Standing Rock Sioux, Professor Vine Deloria wrote “The Federal acknowledgment process today is confused, unfair, and riddled with inconsistencies. Much of the confusion is due to the insistence that Indian communities meet strange criteria which, if applied to all Indian nations when they sought to confirm a Federal relationship, would have disqualified the vast majority of presently recognized groups.” He further wrote, “The
MOWA Choctaws have a typical profile for Southeastern Indians. Their traditions are solid and the historical data that identifies them as Indians extends to the days when they were integral villages in the Choctaw Nation. Few people realize that not all people removed when the army marched the Nation to the West. Indeed, the fragmentation of the Five Civilized Tribes before, during and after removal makes their history a fascinating store of persistence and survival, but certainly does not eliminate them from the groups of people that should rightfully be recognized as Indians.” Dr. Richard W. Stoffle, PhD, Department of Anthropology, University of Arizona wrote in response to the BIA decision to deny recognition, “I can only express my deepest disappointment in the BIA’s decision. As someone who has reviewed your petition at length and has talked with your elders, there is no just argument against recognizing your status as an American Indian Tribe. After working for twenty-seven (27) years with more than eighty (80) American Indian tribes, it
is my considered opinion that the MOWA Choctaw people are a persistent tribal society. It is difficult for me to understand how that point could have been missed by the BIA.” Dr. Kenneth York, PhD, member of Mississippi Band of Choctaw Indians, after critical review of our evidence writes, “It is my belief as a member of the Mississippi Band of Choctaw Indians that members of the MOWA Band are descendants of the Great Choctaw Nation which was disbanded by the U.S. Government during the Indian Removal Period. It is my professional opinion that the MOWA Band has provided documentation regarding the history, culture, and ancestral relationship as well, if not better, as any tribal petition in recent years.” Dr. Loretta Cormier, PhD at the University of Alabama at Birmingham wrote, “As you are well aware, I have had the opportunity to work among the MOWA Choctaw over the course of the last three years and have researched your cultural history. Let me say unequivocally that I have no doubt that the MOWA Choctaw are an American Indian
community. I am astounded by the BIA’s denial of your Federal Recognition and find the technical report they prepared to be seriously flawed in terms of its historical, cultural, and even logical analysis of MOWA Choctaw history.” Dr. Gregory A. Waselkov, PhD and professor at the University of South Alabama wrote to say, “I am more than willing to testify before the United States Congress on behalf of the MOWA Choctaw people in your quest for Federal tribal recognition. After years of historical and archaeological research on the prehistory and history of south Alabama, I am convinced that the MOWA Choctaw deserve Federal recognition as an American Indian tribe.” Even former Assistant Secretary Kevin Gover testified before the U.S. Senate on these very same problems when he explained, after acting on our petition and several others, that he was taken advantage of by his own staff and, as a result, remained disturbed by his decision to deny our tribe and several others. For this reason, we praise the committee for allowing the possibility for reconsideration under
these new proposed regulations. At least for us, the underlying credibility and integrity of the process, not so much the criteria themselves, is at issue. Since most petitioners can’t afford the likes of Abramoff or Scanlin, please do more to ensure that petitions are evaluated with independence and objectivity free of any undue influence. Thank you.

BY LARRY ROBERTS:

Thank you. I notice that you were reading. If you want to share that with us or give it to us, we’ll make sure that the transcriptionist has that to make sure that everything is accurate.

Thank you.

BY EARL SYLVAIN:

My name is Earl Sylvain. I am an elder with the Avoyel-Taensa tribe. My information is not as long as theirs. But I do have a question. As I stated in this room this morning, we are a recognized tribe. I have the paperwork that’s stated we were recognized on December the 4th of 1980 along with the Tunica, the (inaudible-Offer) and the Avoyel tribe was
recognized in 1980. But yet and still, we
have been denied the privilege of being or
receiving the benefits that we were supposed
to get under those recognitions, those
Federal recognitions. As a member of the
tribe, I was told by the person that we
memorialized this morning, “I know who you
are, but the roles are closed and we’re not
going to let you in.” My point is this, how
can you be a recognized tribe, you use
thirty-seven (37) chiefs names to get your
recognition. And that’s what the Tunica
Biloxi did. They used thirty-seven (37)
chiefs names of the four tribe – the last
known four chiefs prior to 1976, when the
last ones died, were Joseph Sylvain, who was
my great grandfather; Ursin Thomas, Ursin
D’Augusine; and Chief Valentine. The last
known chief of my age was my uncle, Grover
Sylvain. And he was recognized as Chief
Sylvain of the Sylvain tribe. Now, saying
all of this, my questions are these. Avoyels
tribe was recognized with several other
tribes, why is it that this tribe has to
reapply for Federal recognition. If we’ve
already been recognized, why do we have to reapply. Second, why is it that the Avoyels tribe is unable to receive Federal land grant when this tribe is an historical tribe.

Third question is as an historical descendent of the original Avoyels ancestry, having been said to be extinct. You can see they’re not extinct. There are six hundred (600) members of our tribe that are still actively living at this time. And I am pretty close to — just remember, I was born in 1936. I’m seventy-seven and a half (77½) years old. My brother Ken is now the chief of the Avoyels tribe. He is in his late sixties. So you can see, we are not extinct. My mother died about eight (8) years ago. She was ninety-two (92) years old. She was born in 1910. Her grandmother was Blackfoot. Her mother was Blackfoot. Her father was a Benjamin who was Apache. Like I said, there are two hundred (200) family members right now of the Avoyels/Taensa tribe. There are six hundred (600) and something members total that are still here that are direct descendant. All of us are still pure. We did the DNA tests.
like we were supposed to do, and it came out ninety-nine point nine (99.9) still pure. Because anybody we marry, anybody we marry within this area, we’re related to them. We’re either first, second, third cousin down the line. All the people, would you stand, please? Please stand. Every one of us here are related. We have different names, but we’re either first or second cousin. We come from the same root. So what I can’t understand is how can you use thirty-seven (37) chief from a group that’s still living, you use their names, and yet deny them the benefit, but you give it to a couple of people that you want to come in, but you deny the rest. Thank you for coming. Thank you for letting me speak my peace.

BY LARRY ROBERTS:

Thank you. I’m not sure that we - and it’s not just with your comments, but a lot of people’s comments. I know that we have comments on specific matters, issues that are very factual, specific to your circumstance. We’re more here to talk about sort of the
broader approach of the Part 83 process. But if you want, we can certainly take your comments, we’ll have it all transcribed, and maybe we can talk during break.

BY EARL SYLVAIN:

But my point is I can’t understand how we can be recognized but then not given the benefit.

BY MR. KENNETH SYLVAIN:

Sir, that is only part of the complete recognition. This is the complete recognition. Do you want it?

BY LARRY ROBERTS:

Sure. Why don’t we - I don’t want to get into the specific matters as part of this public meeting.

BY MR. EARL SYLVAIN:

He just asked if you wanted the complete recognition paper.

BY LARRY ROBERTS:

Sure.

BY KENNETH SYLVAIN:

That is the complete recognition.
Okay. Thank you.

Hello. My name is Bobby Redhawk Sterling. I am the Chief of the Cherokees of Alabama. We meet all of the criteria to be Federally recognized. We have been working on it for quite a while. The only problems that we have, and I'm sure every Native person in Alabama, our the people did not go on the Trail of Tears. My great great grandfather was John (inaudible). He was Chief. He was born in North Carolina in 1794, and he died in (inaudible) County in 1876.

Hold on one second. I'm sorry.

All right. Continue.

But all of our members in our tribe are direct descendants of Native blood, full. And Dr. Earl keeps asking me where was your chief fifty (50) years ago. In the state of Alabama fifty (50) years ago you couldn't live as an Indian group or an Indian tribe because it just was illegal. They would not let you. Our people had to hide out, work as sharecroppers, be black, mulatto or whatever. But they could not live as
an Indian tribe. So we can’t prove that. But our
genealogy proves who we are. That’s the problem that
we have with our Federal papers. We’ve got our
petition that’s #322. I would love for them to change
that in the criteria. We will make the rest of it.
But that’s the one what we have problems with, because
it’s just impossible. You couldn’t do it. You just
could not do it. When I was a kid growing up, my dad
had twenty (20) brothers and sisters. And our house
was always full of people and they did some Native
studies. The law was (inaudible). So what we’re
doing, we are losing our heritage, period. We cannot
do our ceremonies the way they should be done. And we
are not asking the government for money. We put in our
letter of intent “We do not want your money.” We just
want to be able to be who we are, and we can create our
own funding. We would love to have schools, clinics,
houses, raise our own food, process it, not be filled
up with all these hormones and stuff that they shoot
stuff up with. We would just like to be who we are.
That’s what the Creator made us; why can’t we be that.
Thank y’all.

BY LARRY ROBERTS:

Thank you.

BY ROBERT CALDWELL:
Robert Caldwell again, Choctaw/Apache Community of Ebarb. Petitioner #37. We agree with the deletion of the criteria (a), external observers identify group as Indian. By relying excessively on external characterizations of petitioners, the OFA is privileged racial and racist, quote, “police” regarding Indianness. History has shown that people with African and Indian ancestry are less to be regarded by others as Indian than Indian people with equal amounts of white ancestry. Similarly, in the full racial taxonomy in the United States, being a Spanish speaking community can lead a group to be racialized or conceptualized as being, quote, “Mexican.” Which is seem as exclusive of being Indian, regardless of how much indigenous ancestry they may have. Such outsider misidentification of an Indian tribe should not be weighed against a tribe, but rather be considered as evidence supporting petitioners’ claim of being a distinct community. So we’d like to know if the elimination of 83.7 (a), outside characteristics of a group, that if they
will actually no longer be taken into account or if there is (inaudible). Next, we believe that interested parties have too much power in this process. Potentially affected property owners and economic motivations for ensuring the tribe is never recognized should not have a louder voice than those who know the tribe’s history and ethnology. If the (inaudible) supposed to be an objective social scientific process for ethno-historical determination whether a tribe exists or not, there is no justification for considering potentially affected property of legal interests. Interested parties currently have the power to appeal recognition decisions based not upon historical facts, but upon their supposed property interests. For this reason we would like to see 83.11, the deletion of 83.11, independent review, reconsideration and final action. Next, we believe there should be a timely transition from the moment of proposed positive findings. As soon as a proposed positive finding issues, the transition process should begin towards the
establishment of Federal services and
government to government relations. The
process should be initiated at this point
rather than waiting up to six (6) months as
stated in 83.12 (d). Navigating the Federal
bureaucracy and Federal Indian policy is no
easy task. And the formalized process of
advising and needs assessment should begin
immediately to make it easier and faster for
newly recognized tribes to access available
services and protections. For this reason
the 83.12 © seems unnecessary against the
spirit of acknowledgment. I’m just going to
read one more for now.

BY LARRY ROBERTS:

There’s no one lining up behind
you, so...

BY ROBERT CALDWELL:

Okay. The Office of Federal Acknowledgment
decisions too often read like a prosecutor’s
brief. In responses to petitioner’s, OFA’s
language has occasionally been unrealistic
and unbalanced, saying there is, quote, “no
evidence” of Indian ancestry in communities,
when there is at least, at very least some
evidence, even if it is not the kind the OFA accepts as proof. The change of working in the 83.6 (d) is appreciated in the spirit. And evidence should be viewed, again, in the light most favorable to the petitioner. I’ll continue later. Thank you.

BY ANN TUCKER:

I am Ann Tucker from Muscogee Nation of Florida group. We are petitioner #32, and we are currently on active consideration with the Office of Federal acknowledgment. I have been at two testimonies on the process and problems that our tribe has encountered. We were in the original process before this, in 1977. We had documents filed. They were returned to us. We started again. And that’s something that I know my tribal council doesn’t want to happen to us this time. But what I wanted to tell you was, while we are on active consideration, while your offices are looking at us, call us. In the last year noone has contacted us while we have been extended six (6) months. We have now been suspended by regulation. This is a process that we have been in for over thirty
(30) years. So I ask that when you are working with the tribe, work with the tribal government. If there are questions that you have, we can answer them. A lot of the times we can put some of this aside that is of concern if we are simply contacted. And I just - I want to thank you for this, because I know this is a difficult process and I know this is a complicated process. And I appreciate what you are trying to do. All of our tribe government does. So thank you.

BY NANCY CARNLEY:

Nancy Carnley, the Ma-Chis, and that’s spelled M-a, hyphen C-h-I-s, Lower Creek Indian Tribe of Alabama. I really appreciate what all the government is doing to create and try to clarify the process. We appreciate you coming to the South and having a meeting with us. The first thing I’d like to say is we really need someone to take into consideration the southern history of the United States. We went through Trail of Tears, Removal of the Five Civilized Tribes. After it was promised us “You will become U.S. Citizens. You become assimilated into
the white nation, the white world, you can stay.” That promise was broken to us, along with other promises. And we can’t hold what our ancestors done no more than can we hold what your ancestors done to us. So we need to let bygones by bygones and start a whole fresh new page. And do it in a loving, caring, Christian or whatever faith you want to do it, but have good faith to it.

Secondly, everything needs to be transparent. There needs to be some checks and balances. There needs to be a watch person, a watch group created from both state and Federally recognized tribes to come together and create and watch, make sure that no one is trying to back door, back stab, or any of the other things that went on in the past. Also, we need to create deadlines and use business days instead of calendar days for everybody. Forty-five (45) business days. Forty-five (45) business days for the other groups. And I’m going to go through a brief history of Alabama history. We first started with the settlers coming in from Georgia. They set illegally in my home - in one of my home
communities, one of my home villages of what is now present day known as Eufaula, Alabama. The government forced them back into Georgia. Then we went through all the war, the Creek war, the Creek-Seminole war. Removal. Then we come along to the Civil War. From the Civil War, we go to the Era of Reconstruction. The Era of Reconstruction, our houses got burned. Then we went to the history KKK. I don’t know how many of you have ever had KKK visit. I can be a true witness of KKK in 1965. My daddy was threatened; we was threatened. And it went on up into the 1990s. They created us a racial cleansing law in the state of Virginia in 1924 when we became U.S. citizens. And it just trickled on down. As today in the state of Alabama, if you had an Indian child or an Indian to die, you cannot have American Indian put on your birth certificate. It doesn’t hurt another race but American Indians. It doesn’t hurt the Hispanics; it doesn’t hurt the African Americans; it doesn’t hurt the Caucasians. It hurts us. We are not allowed to identify ourselves in
hospitals. They will identify you with what they think you are. We have gone through so many racial remarks and prejudice. As far as 1995 in the state of Alabama public school system my children were being assaulted just because they were American Indian. 1995, we should have been long past this. I had to get the United States Department of Education Civil Rights Division involved. That is discrimination. They had to rule and say “You stop. These are Indian children. They’re entitled to a free and public education.” Our tribal house that held our documents got burned in 2004 because we were Indian and, heaven forbid, they thought they might get something. Just for a few greedy people, which the state never could prove who it was. To this day I could probably tell you who it was, but because I don’t have the proof, I’m not going to slander that person or persons. It’s over and over again what the American Indian faces in the south. We have a unique history, different from any other group in the area of the United States. The last thing I’d like to say, state tribes,
I know the state of Alabama, North Carolina, South Carolina, Louisiana, other states, they have a criteria to go through. We have the criteria, we went through it. We went through it and we got the state recognized. We weren’t one of the first tribes that got state recognized. We were one of the first tribes that did go through state recognition. And I feel like the tribes that has to go through the state recognition, it has rules similar to y’all’s, we should get an extra point or something. Thank you.

BY LARRY ROBERTS:
Thank you.

BY YVONNE FERGUSON BOHNEE:

Yvonne Ferguson Bohnee, Point-Au-Chien Indian Tribe. First, thank you very much for being here and having a meeting for the stakeholders, for all of the stakeholders to participate. We know that the process is broken, and we think that this is a step forward. On behalf of the Point-Au-Chien Indian Tribe, I’d like to make a couple of comments about the working draft. And one refers to some comments other folks have made...
with regards to active consideration. There are five (5) tribes in Louisiana who are on active consideration right now. We have amended - four of us have amended proposed findings. And with the new regulations in place, we agree that it’s good to allow the tribes to choose which process they would like to be considered under. But I am wondering whether we would receive a new amended proposed finding or whether it would be a final decision once we submit to the new process. And that’s - I’m not sure...

BY LARRY ROBERTS:

I think we’re open to suggestions at this point because we’re at an early stage in the discussion draft in terms of mechanics, how that should work. So if you have suggestions, especially those petitioners that are in active consideration, you know, we would appreciate that input. I think as the discussion drafts for right now, if you chose to go under the new regulations, then it would start over essentially.

BY YVONNE FERGUSON BOHNEE:
Yes. It wasn’t clear to me, but I appreciate that. I’ll take another look at that and we’ll make a proposal. Also, we agree with the changes to 1934 to the present in (d) and ©. And I’d like to focus on criterion (e), because for our tribes in Louisiana it’s the hardest criterion. Obviously, none of the other criterion matter if you can’t meet criteria (e), which is the historical tribe. And I appreciate that there is one added subsection in criterion (e) to allow for historians and anthropologists. And I heard that you noted earlier that that is to deal with sometimes the controversies with the - the controversies or how the genealogists may view individuals because they’re looking for specific information. For the tribes of Louisiana, specifically they’re looking for who are the parents of the progenitors from 1767, which is a time period that we don’t have information for. So I would – if that is something definitely that you’re looking at, I would suggest that that is clearer in the regulation. Because over time I think the interpretation is changed within the
office. And we’ve seen over time with the fact process, or Federal acknowledgment process, that interpretations change and become more difficult. And our friends here, the Tunica Biloxi, they descend from five (5) tribes. They’re a small tribe and they were able to meet this requirement over time, the interpretation of what it means to establish a historical tribe and how you join together, how you meet that criterion has changed. So one of the suggestions we have is that if you actually exist as a political unit from - I would say from when the time your state became part of the United States, that you would look at that and not go back prior to that time period where you may not have any historical evidence. I know that there was some guidance that was issued by Carl Artner, I think it was in 2008 or 2009, stating that the sustained contact for historical time to the present begins at 1789. I don’t see this in the working draft, but I also don’t see sustained contact in the criteria. So I would just make that suggestion, that the Federal relationship can’t start when the
The United States hasn’t been created. And so it shouldn’t go back prior to, at a minimum, 1789. And for those states in which they weren’t part of the United States yet, it should go back to whenever that state became part of the union. Just because that, if you were existing as a political unit, I think that should satisfy it. I have a couple more comments that deal more with transparency, because I think that’s a big issue for our tribe. I don’t think that there is a solution in this working draft for the lack of transparency. And what I mean by that, although it says that third parties must submit copies of their comments to petitioning tribes, I don’t know how you enforce that. And there are lots of third party individuals who submit comments, and we shouldn’t have to FOIA those documents. We know what’s in the file. And I know that within the working draft they say, it says during the response period they shall make available any records not already held. And I just want to mention our experience dealing with FOIA. We made an initial FOIA request.
in 2002 for a specific document. It was one document. And it took the Department after two years only fifteen (15) minutes to obtain the document, but I received it two years later. When we went on active status, there were a ton of documents which we didn’t have access to. We didn’t know what was in our file. We submitted a FOIA request for copies of the materials, and it took over seven (7) years, several additional FOIA requests, and numerous visits to OFA. And these documents were finally received, not all of them, but most of them, in November of 2012. And we’re on active consideration. And all of these documents, initially we were told it would cost us over Five Thousand Dollars ($5,000). And all of these documents are scanned in. So, you know, and over time they waived the cost of producing it because it took so long. But I think that’s a huge consideration and something that should be looked at. And it goes towards the transparency of the process. And also a lot of notes were withheld, the expert notes. And I think that is something that we would want to look at. Within
litigation, I appreciate that in the working draft there is an opportunity to basically cross-examine the expert. I appreciate that. I think that tribes appreciate that opportunity, because we feel like we don’t receive real answers to our questions. But I would caution eliminating any review. I know that the IBIA review right now is not effective. But you may want to consider some review. Over time, under another administration, the regulations may be interpreted differently. They may not apply the standard of proof as it’s set out. And I think there should be an opportunity for review. Thank you.

BY LARRY ROBERTS:

Thank you.

BY MARY SIXWOMEN BLOUNT:

My name is Mary Sixwomen Blount. I am the tribal administrator for the Apalachicola Band of Creek Indian. We have had the pleasure of already responding to your draft proposal. So I just wanted to come and say just a couple of things at this time. One, our disappointment in everything, underscoring
from what the council said of last meeting,
was we were disappointed in that there was no
option in which we have input on staffing.
Because, as so many of the people who have
spoken before, it tells me that we are an
international multi-cultural group of very
important people. Our cases are being
reviewed by people who apparently do not
fully understand either the cultural
significance of each tribe, or they would not
just be saying “Let’s hire an intermediate
bureaucrat to review all Indians who are all
the same.” Each culture has its own nuances
and differences. And it seems to me — like,
say, even the cultural piece of it. Our
tribe, particularly, was the first tribe that
was ever contrived by the United States as a
gift from President Andrew Jackson. And we
have the metal. We have the documents. I
have the surname of the first chief. And
it’s taken twenty (20) years and we have
still not been reconstructed or re-recognized
as a standing organization. So let me say
this, the Bureau of Indian Affairs or DOFA,
whoever it was that wrote these or will write
anything in the future, you are excellent, absolutely excellent at writing rules. What you have a little bit of problem with are the people that you hire to administer and to judge that which they do not know and lack major understanding of. We have no input for that. All we can do is respond to what you have said you need or would like to hear from us. But we have no say over who reviews our case or how ugly or how nice we are treated by any of them. And that brings us great sadness. Thank you.

BY MR. LARRY ROBERTS:

The idea, if I haven’t said before, the idea with the regulations is to have input from everyone in terms of objective criteria, so everybody knows the rules of the road as they’re going in. I mean, that’s the goal of the objective criteria. So any public comments on that or written comments would be appreciated.

BY LORA ANN CHAISSON:

Hi, my name is Lora Ann Chaisson. I am elected
Vice Principal Chief for the United Houma Nation. It’s great concerns to me with the current system is its handling of the splinter groups. Allowing for the preferential treatment by attaching to a host tribe and picking and choosing the pieces of historical data submitted by the host tribe. And they are allowed a second bite at the apple by being given the opportunity to submit their vision after the fact. This process has encouraged splinter groups and political strife. The draft regulations don’t say how it will treat splinter groups. We don’t think we should continue to all be treated as one petition. If and when we proceed under the new regulations, we think that we should be separated from the other petitioners, and each required to submit their own separate petition. We recommend splinter groups not be allowed to attach to host petition, and have to start as new applicants. If splinter groups want to stand on their own feet, then they should start from scratch like we have. I am also concerned that the proposed changes include
the removal of the proposed finding and rebuttal process. In our own petition, due to the size and volume of our documentations on file, some of the materials were overlooked in the initial review. Through the rebuttal process we were able to reach our OFA staff to inform all the information that was overlooked. So our recommendation was that they actually keep that.

BY LARRY ROBERTS:

I don’t think we’ve changed that proposed finding and rebuttal process. So that when the proposed finding is issued, then third parties can submit evidence and given an opportunity to rebut that. So if you are reading that that has changed in there, I don’t think that that was our intent. So we will take a close look at that. And if you are able to point us to the particular sections, that would be helpful.

BY JACKIE WOMACK:

Hello, I’m Jackie Womack, and I’m Chief or Chairman of 4 Winds Cherokees in Louisiana.
I don’t know if Ms. Appel is here or not, but her crew has been real good to me these last two days, answering questions for me. And it’s interesting to me that, just listening to the comments, it seems like everybody in the South is about having the same problems over and over. It’s interesting. And it’s good that y’all brought us together here so we can hear each other’s concerns. And for y’all to see what we are facing, you know.

Of course, I’m from the Eastern Cherokee. Our tribe had went to Georgia and got some way in the Trail and Tears and got lost off down towards Louisiana from the Trail of Tears. And ours has been a hard time trying to get our history together. But we have finally, we think we are ready, and we’re fixing to apply for our recognition. Hopefully we will. But I thank y’all for having this. I think it’s real good. I’ve heard some wonderful comments today that was interesting, you know, about all of this. And it helps us to learn more from others by having this meeting. We thank y’all for having us.
BY LARRY ROBERTS:

Thank you.

BY ROBERT CALDWELL:

Robert Caldwell, Choctaw-Apache Community of Ebarb. I guess the next point that I really wanted to make is that we appreciate the plain language that’s going to be forthcoming. We think it is absolutely necessary. And the Powerpoint is also useful. So we will be sharing that. We think, in addition to plain language, it would be useful to have some kind of explanation to achieve, you know, full and effective public comment, some kind of explanation of the reasons for various proposed changes. Now, I know a lot of this stuff has been demanded by us, you know, those seeking acknowledgment, but we would really like to know what the justification is on each one so that we can get a better sense of the implications of some of them.

BY LARRY ROBERTS:

If I could interrupt you on that.

When we do issue a proposed rule, we
will have a preamble for that proposed rule that will attempt to sort of explain why we’re making various changes. But we wanted to get out the discussion early on to receive comments on it to see how we are moving and how we should be moving forward. But the proposed rule will have it, a discussion in terms of those changes.

BY ROBERT CALDWELL:

Secondly, I know we’ve already addressed this, but I think it’s important that the limit on pages in the petition should clearly exclude supporting documentation, and petitioners should be able to request additional pages for good cause shown. There may be cases where, you know, I don’t what the proposed limit is, what XX means. If it means fifty (50) pages, I mean, our prior petition said, you know, basically it was way too short, and it was, you know, in that range. So if it’s three hundred (300) pages or five hundred (500) pages, you know, maybe that makes more sense. But I would certainly note that
shorter might be easier for those of us in
the room to achieve. But some way in which
it’s clear that this does not include
supporting documentation. We also support
the proposal to add the expedited favorable
finding for tribes mentioned in 83.10. We
think that a proposed expedited finding
process would help clear the backlog of
petitions and help even those of us who
wouldn’t qualify under that expedited
finding. Lastly, we think - not lastly, but
we believe that the changed regulation should
clarify that the assistant secretary’s role
is to adjudicate a petition; not to act as an
adversary party. Lastly, I think it’s
important for us just to say until you hear
this, indigenous scripts have survived in
many forms. And it’s important to nurture
them where they persist. I think it bears
repeating the tribes that have not been
Federally recognized are not always going to
look exactly like the tribes that have been
Federally recognized for hundreds of years
for a variety of reasons. Brian Papodic
(spelled phonetically) has written about that
through Tribes in Louisiana, and there are others that I could suggest good readings on. But I think it’s important to say that we are not any better or worse than Federally recognized groups; we’re just different. Yet we cherish our indigenous communities. And Federal government is legally and morally obligated to recognize our status as indigenous peoples under the UN framework, and as indigenous peoples who have survived hundreds of years despite simulation and pressure. So I want to end on thanking you for bringing us all together, as other people have said, and turn it over to my chairman, John Procell.

BY JOHN PROCELL:

Good morning. I just want to let y’all know that we really appreciate what y’all are doing here. But, you know, I never did understand why it shouldn’t be all right, hey, why don’t y’all come out and visit some of the people. Y’all have got all the good jobs. Come out and see who we are. Come out and see that we have the first Native American school in the state of Louisiana. Come see our people. I
invite all of y’all to come be with us and see who we are. Thank you very much.

BY STEPHANIE WEBB:

Good afternoon, my name is Stephanie Webb. I am a member of the Avoyel Tribe of Louisiana. This is new to me. I want to thank y’all for doing this. We put application in in 2000, and we are still waiting. I want to thank y’all. We have hit a lot of obstacles trying to get recognized. One of them is the Tunica, when they got recognized in 1981, there were five (5) tribes that was listed to get recognized. One was the Ofo, the Tunica, the Biloxi, the Avoyel. We’re state recognized. We’re not Federally recognized like the Tunica. The only thing our tribe is looking for is to be Federally recognized. We are not looking for money. We’re not looking for things like this. We just want to show people in the nation the kind of people. Our tribe, we’ve always helped people. We’ve been here since 3000 B.C. When man first came here we took them in, we taught them our ways. And because of the things that we did for these people to have a
better life when they settled here, our people lost their life for that. We’re not here to slander anyone. A lot of our history was pretty much pushed under the rug, because people think that the tribe that existed here when Avoyelles Parish was formed was the Tunica. It wasn’t the Tunica. It was the Avoyel. The Avoyel took the Tunica tribe in because the Natchez Indians were going to kill them. So to keep them from being killed off, the Natchez Indians asked the Avoyel tribe to take them in. And we did that. Because they were dying. And today we just ask to be recognized the same way they are. And it’s been a hard road for us. What we don’t understand is for this tribe to be recognized they have five tribes. We are one of those tribes. And we’ve been fighting to get recognized and we keep getting pushed off. As a tribe, I mean, I’m not going to go through a lot of things we’ve – we’ve been through a lot of hardship, we lost lives. And we want people to know that we are not extinct. We still exist here in Avoyelles Parish. And I appreciate y’all taking the
steps to make it a little bit easier for us to get recognition. Thank you.

BY LARRY ROBERTS:

It’s now 2:40. Given that there’s no one at the microphone to provide comments at this point, why don’t we take a ten (10) minute break here. We will reconvene at 2:50. Thank you.

(Briefly off the record)

BY LARRY ROBERTS:

We are back. If there are any comments or questions, the microphone is yours.

BY SHIRELL PARFAIT DARDAR:

Hi, good afternoon. I am Chief Shirell Parfait Dardar with the Grand Caillou Dulor Band of the Biloxi-Chitimacha Choctaw. Thank you very much for having this meeting and letting us get the chance to give our comments and suggestions. One of the issues that we are concerned about is we are not exactly very comfortable with the page limit on the petition submission. One thing you need to understand is that each tribe is very unique.
And in a lot of cases, if we limit the amount of pages that they are allowed to submit, that could take away from the chances of gaining Federal acknowledgment by being able to explain it thoroughly. The other thing is we do agree that we should be allowed to submit it in any readable format. I think that is a pretty good change, and it is less expensive tribes, and we like trees, so I think that’s why it’s a very good point. The other thing is if you are going to have a hearing, we would prefer that they be held in or near the tribal community so that is it less expensive for the tribe, but it also gives you guys the opportunity to experience our communities as well. Thank you.

BY LARRY ROBERTS:

Thank you.

BY VIOLET HAMILTON:

I am Violet Hamilton. I’m another one of the state recognized Indians from Alabama. I’m one of your senior citizens. I’ve lived in Indian country all my life. I was one of the final six that we had four years of working before we were recognized by our legislation.
as a union. When we first started, started
talking to the legislators, they said there
wasn’t no Indians in Alabama. And I said
“Well, they’re here.” But we had to suppress
our lineage. We could not talk about being
Indian. Our children were told to be quiet,
don’t answer family questions. Part of that
was because it was 1927 before it became
illegal to kill an Indian in Alabama. And
it’s well documented that they would have
Indian hunts and chase the Indian down like
they were running a deer or something of that
nature, in my own family. I remember some of
the elderly people when I was growing up, the
women wore bandanas tied in a knot. And I
began to ask why. And their reply was “We
don’t want our hair long.” And several of
them wore it until they went to the grave.
In fact, their family put the bandanas on
them. And we went through a very lengthy
process for state recognition. We are
governed by the administrative code, and it’s
very strict. And I do feel that the Indians
who are state recognized and have been for
many years should be given extra preference
for Federal recognition.

BY LARRY ROBERTS:

Thank you.

BY CHARLES YOW:

My name is Charles Yow. Last name is spelled Y-o-w. I am with the United Cherokee Ani-Yun-Wiya. We are a state recognized tribe in the state of Alabama. We’ve actually gone through an administrative process very similar to the BIA process. It’s standard but it’s in place in Alabama. The administrative process that was mentioned just a second ago relies on a very large amount of the same criteria that are already in place with the BIA. Our concern isn’t so much for the criteria. One of the biggest concerns that we really do have is the way that the BIA’s bureaucracy has really had a floating interpretation of the way that the Federal regulations should be interpreted. And this can be seen very clearly through the Federal acknowledgment process in provisional tribes that went through the process had actually quite a bit smaller applications when all was said and done than some of the
more recent tribes. The (inaudible) when all was said and done their application would have filled an eighteen wheeler truck basically. Whereas the original applications were only a couple hundred pages long. That revolving and changing process is one that we think is a serious problem. And we certainly appreciate the revisions that have been made and are very supportive of those. I’d also like to point out that, as has been mentioned several times, there is a long history of state recognition of Indian tribes in the United States, particularly here in the state of Louisiana. The Tunica Biloxi were state recognized before being Federally recognized. The Jena Choctaw were state recognized before Federally recognized. In the state of Alabama, the Poarch Creek were state recognized before being Federally recognized. And the list goes on. It’s really an issue, I think, that we see the states recognize on a local level the existence of Indians (inaudible) The locals recognize the existence of Indians in their communities. And it just takes a while for the Federal
government to catch on that we actually do exist. So we welcome the revisions. We do appreciate them. One final suggestion would be if the appeal is going to be a negative, adverse finding, if it’s going to get a Federal court to review would be a good way to address that. That would take a lot of the concerns that the tribes have addressed over issues with certain innate bureaucrats that we’ve addressed repeatedly in various meetings, take it out of their hands and give it a little more transparency and a stronger sense of justice and fair play if a Federal court is actually reviewing that decision from the very beginning instead of just reviewing whether or not the steps were followed. Thank you.

BY LARRY ROBERTS:

Thank you.

BY JAMES WRIGHT:

Chief James Wright of the Ma-Chis Lower Creek Indian Tribe of Alabama. I just have one brief comment or recommendation for the criteria. That if your tribal community was ever on Federal land, such as a national
forest, Department of Defense, land being held, or after 1900 your tribal community was removed from land that the Federal government become ownership of, or they had, for instance, came in to do work in a national forest and find a community alive there and remove them, you know, I think that should be placed somewhere in the criteria, because you have so much wilderness that you’re taking into consideration when you deal. Because the Native American community a lot of times didn’t want to be found due to the removal or the killing of the people. So you would literally hide out. Sometimes it would be in the deepest forest. And just like if you tried to go out now and find like – I was going to mention on the unabomber. He was not hiding out on Wall Street. He was hiding out in a one room shack in the mountains. That’s what took us so long to find him because he didn’t want to be found. So many of the Native American didn’t want to be found in the 1900s due to fear. So with that being said, any time that they was found living or removed from U.S. Government land,
I think that should be considered in the criteria some way. Thank you.

BY LARRY ROBERTS:

Thank you.

BY GARY WALLS:

My name is Gary Walls, Chief of the Cherokee tribe of Mississippi, petition #326. I understand that you want to make the rules a little more transparent. But I’d like to suggest we establish some kind of precedent on what is acceptable for proof. Other tribes will do something for proof, and then they tell us that we can’t use the same thing. We need some kind of definition of why we cannot use the same information that has been acceptable for someone else. And that has happened to us. There should be, in my opinion, some sort of precedent on proving criteria. If it’s been accepted before, why disallow it next time.

BY LARRY ROBERTS:

Okay. Thank you very much.

BY RUFUS DAVIS:

I’m Rufus Davis, Chief of the Adai Nation, Robeline, Louisiana. First of all, I’d like
to thank you guys and thank President Obama for initiating changes to the regulations. Our tribe certainly supports those changes in them. And hopefully it will just be a start to do better things. It’s many things that I think can be done. But it’s hard to just get these comments out. What I’d like to do is – we will get minutes of this meeting, right, the morning and the afternoon meeting?

BY LARRY ROBERTS:

It will be put up on our website.

BY RUFUS DAVIS:

On your website, okay. And is your website on this paperwork?

BY LIZ APPEL:

It’s on the back.

BY LARRY ROBERTS:

It’s www.bia.gov.

BY RUFUS DAVIS:

Okay. Appreciate it. We can sit up here all day and talk about it, but what I’d like to do is just take a minute and read the criteria that’s being proposed and have our professional team evaluate, and we can write
- we’ve got until August 16th, right, to write in comments?

BY LARRY ROBERTS:

Yes, and then we will issue - we will move forward with proposed ruling, and then you will have an opportunity to provide comments on that proposed ruling.

BY RUFUS DAVIS:

Okay. Thank you very much.

BY YVONNE FERGUSON BOHNEE:

I have one additional comment. Yvonne Ferguson Bohnee. I have one additional comment, because this has come up several times with regards to endogamy and how that percentage is developed. Whether you have two tribal members who are married to each other, is that considered as two marriages or one marriage. Because you could have a significant number of your population who inter marries, but it doesn’t rise to fifty percent (50%) because of the way it’s treated. And I think having some sort of guidance as part of the process with regards
to endogamy, since it is relied upon already. Whatever that percentage is, fifty (50) percent or whatever. What is the standard for determining endogamy.

BY NANCY CARNLEY:

Nancy Carnley with Ma-Chis Lower Creek Indian Tribe, Alabama. I have two questions. When will y’all put the hearing, the stuff that we’re doing now, when it is going to be where we can go on and listen to it on the website?

BY LARRY ROBERTS:

There will just be paper transcripts. There won’t be audio. Well, it depends on each court reporter, their time frame. So we’re hoping that we will get them on the website a couple of weeks after – this is our last one. So hopefully we will start seeing some of the earlier public meetings and consultations on our web page pretty soon.

BY NANCY CARNLEY:

And my second question I have, when you put it out in the Federal register for the final – for
the public comment section, any changes that
people are submitting, will they be taken
into consideration for possible changes on
your final rule or are they just going to be
ignored?

BY LARRY ROBERTS:

We will consider all comments.

BY JOHN VOTTA:

John Votta Potawatomi Ottawa Ojibwe. I believe I
was adopted in the late 60s, early 70s. So
my situation is said to be, not necessarily
unique, but different from any of the people
here today. I probably represent a class of
people. And while whatever their intent
might have been, some of us later found
ourselves happy living in the woods. So when
you recognize us as such, if you could just
be helpful as to find our proper place with
our proper tribal affiliation, that would be
very helpful and effective. Thank you.

BY MELISSA WRIGHT:

Melissa Wright, Ma-Chis Lower Creek Indian Tribe
of Alabama. I just want to make a comment.
You said that you are receiving comments - it
says would a standard form for petitions be
helpful. I believe it would. That’s is what I have to say.

BY MR. LARRY ROBERTS:

Okay. Thank you. It’s 3:10 now. I don’t want to rush anyone. I think we will give it a couple more minutes to see if you have any comments you want to make. If not, we will end early this afternoon. I certainly don’t want to preclude anyone from making comments that want to do so. Is there anyone else that wants to make any final comments?

BY UNIDENTIFIED SPEAKER:

I wanted to say thank you to the Lieutenant Moot, I think was his name, who made arrangements for us after we were dismissed from the morning meeting. He made arrangements for us to have a caucus room upstairs. It was very comfortable, offered drinks. And I am, and I am sure everybody who is with me here was very, very pleased to get a chair, because there was nowhere to sit. There were many elders and many disabled people here. So we appreciate that courtesy from the local
tribe. Thank you.

BY LARRY ROBERTS:

Okay. It looks like there are no other comments or questions for today. I want to thank you all for attending. I encourage you to submit written comments by August 16th. I want to say thank you to the Tunica Biloxi tribe for opening this suite.

(CONCLUDED AT 3:13 P.M.)
CERTIFICATE:

I, Dori Glisson Ard, to hereby certify that the foregoing 143 pages are a true and accurate transcription to the best of my understanding and ability, recognizing the “public forum” nature of the meeting not under my control.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the 27th day of August, 2013.

_________________________________
DORI GLISSON ARD

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