Tribal Consultation: Draft Revisions to Federal
Acknowledgment Regulations (25 CFR 83)

Morning Session
July 17, 2014

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Tribal Consultation

Draft Revisions to Federal Acknowledgment Regulations (25 CFR 83)

Menominee Casino Resort
Keshena, Wisconsin
July 17, 2014

APPEARANCES:

LAWRENCE ROBERTS, Deputy Assistant Secretary - Indian Affairs

STEPHEN SIMPSON, Office of the Solicitor - Division of Indian Affairs

ELIZABETH APPEL, Office of Regulatory Affairs - Indian Affairs
TRANSCRIPT OF PROCEEDINGS

LARRY ROBERTS: Good morning, everybody. Thank you for attending this morning session here for our discussion on the proposed rule on the federal acknowledgment regulations.

Before we get started this morning, I want to thank Chairwoman Boivin for hosting this here in her territory this morning and would ask for her to provide a few opening remarks.

LAURIE BOIVIN: Welcome to the Land of the Menominee. Before we get started this morning, I would like to introduce Mr. David Grignon. He's our historic preservation director, one of our cultural leaders, and I would like him to give us an invocation this morning.

DAVID GRIGNON: I was given tobacco by Chairman Boivin to do the invocation this morning. I'm very honored to speak for this important meeting that you'll be having today.

I'll ask the great spirit for health, strength, and life for everyone here and that you have a good meeting. (Native language spoken.)

LAURIE BOIVIN: Waewaenen, Dave, for
those great words. So, again, good morning.
Welcome to the Land of the Menominee. I hope
that you've enjoyed your stay so far here.
Menominee is one of the indigenous tribes to
what is now known as the State of Wisconsin.
We've been here for over 10,000 years, and we
have an enrollment of almost 9,000 members. And
I think, from our perspective, anytime that we
have the opportunity to comment and have
consultations on changes, that's a good thing,
and so I commend the consultation process, and I
hope that anything that comes out of the
meetings today is taken into consideration.

For my tribe, we totally understand the
federal recognition process. For those of you
who may know this or may not know, but Menominee
Tribe was terminated in 1954. We were one of
the experiments. We were one of three tribes
that was selected, and we were selected for that
because at that time our tribe was very
successful, and the effects of that termination
was devastating to the Menominee Tribe. We
basically plummeted into poverty, and we've
never gotten back to the point where we were
prior to that termination, and we lost a great
deal of land, our security. We lost everything. We lost our cultural identity, and a lot of our members left our reservation and had to seek jobs, you know, in the cities to provide for their families, and that was another piece of historical trauma for us. So we understand the importance of federal recognition. And in 1973, after a long fight, our tribe was restored back to federal recognition. So we've never been the same, but we have our nation back, we have our identity, and so we understand the importance of federal recognition and what it means to Native people.

So with that, I would like to thank Mr. Larry Roberts for being here and the Bureau for having the consultation here at Menominee, and, again, I hope that you have enjoyed your stay and that you have good discussions today on such an important topic. Waewaenen.

LARRY ROBERTS: Okay. So thank you all for attending this morning. My name is Larry Roberts. I'm a member of the Oneida Nation of Wisconsin and principal deputy assistant secretary for Indian Affairs, and so before we get too far down the road, I want to
just make sure that everyone has this packet of materials. We're going to be going over the PowerPoint this morning. Basically I'm going to walk through a little bit of the history of the proposed rule, how we got to where we are today, and talk about sort of the high-level proposed changes in the rule and then really open it all up to you because this is a forum not for us to talk into the microphones for a long period of time but really hear directly from all of you in terms of your questions and your concerns and your comments on the proposed rule.

So given the number of people we have here today, what I would ask is that for folks that do want to make comments, try to limit your comments to about five minutes. I'm going to try to do that so that everybody has a chance to speak. I'm doing it for all of you so all of you have a chance to speak, and then if we have -- we'll have time afterwards, after everyone's had a chance, that if you want to make more extended comments, you're welcome to do so.

So by way of background, the United States recognizes tribes through one of three ways.
Tribes can be recognized through a federal court decision, they can be recognized congressionally through federal legislation, and they can be recognized administratively by the Department of the Interior.

And so prior to 1978, the Department of the Interior reviewed requests for acknowledgment on just an ad hoc basis. As those applications came in, they were reviewed by the solicitor's office, by the Bureau, and applying essentially five criteria that the Department developed, they looked to see whether they would recognize that tribe. In 1978 we promulgated regulations to establish a uniform process for federal acknowledgment. And so in 1994 we updated those regulations, so approximately 20 years ago we updated those, primarily to provide for those circumstances where there may have been previous federal acknowledgment for the tribes going through the process or groups going through the process. In 2000, 2005, and 2008 the Department of the Interior issued guidance to implement those regulations, and of the 566 federally recognized tribes, 17 have been recognized through the Part 83 regulations.
So in terms of the revisions and why we're taking a look at this rule, we've heard over time, certainly before my time at the Department, over a number of years that the process is broken, that it takes too long, that it's burdensome, that it's expensive, and that the results are unpredictable, that the criteria that we have on the books are being applied differently depending on who the petitioner is and that it's not transparent, that it's not a transparent process.

And so in 2009 when Secretary Salazar was confirmed for Secretary of the Department of the Interior, he testified before the Senate Committee on Indian Affairs, and at that hearing he committed to examining ways to improve this process, and in 2010 the Department of the Interior again testified before the Senate Committee on Indian Affairs and put out a goal of getting a proposed rule out in 2010, in about a year. So in 2012 the committee had another oversight hearing on federal acknowledgment, and in 2012 the committee -- members of the committee asked why we hadn't met our year time frame for getting out a proposed rule. So at
that hearing we identified guiding principles
explaining that we had been working internally
on a proposed rule, and those guiding principles
are transparency, timeliness, efficiency,
flexibility but maintaining the integrity of the
process, maintaining the integrity of the
standards.

And so shortly after that 2012 hearing
before the Senate Committee on Indian Affairs,
Assistant Secretary Washburn and I joined the
Department, and one of the first things that
Secretary Salazar directed Assistant Secretary
Washburn to do was really carry this effort
forward of improving the Part 83 process, and so
in 2013 Assistant Secretary Washburn testified
before the subcommittee on Indian Affairs before
the House of Natural Resources Committee and
talked about how we were putting out a
discussion draft last summer and sort of laying
out the progress and the path forward that we
would be taking with regard to this proposed
rule. So last summer, in June, we issued a
discussion draft. We had a number of public
meetings and tribal consultations across the
country on the discussion draft. We received
a lot of input and comments, over 2,000 comments. 350 comment submissions but over 2,000 commenters provided those comments.

And so what we did as a team is we convened the assistant secretary's office, the solicitor's office, the Office of Federal Acknowledgment, and the Office of Regulatory Affairs to really work on reviewing those comments and putting together a proposed rule.

So the proposed rule is completely rewritten from 1994 to today. The federal government just has a requirement that we put things in plain language, so it's in a question-and-answer format, and we submitted the proposed rule to OMB to review, and all the -- that was provided to all the federal agencies, and then we've issued the proposed rule in May of this year, and our comment period closes August 1st.

So in terms of revisions, I'm going to first talk about process, revisions to process, and then revisions and clarifications to the criteria, some clarifications we're making with regard to previous federal acknowledgment, clarification for the burden of proof, and then allowance for repetitioning under limited
circumstances, and then additional notice requirements that we're providing in the proposed rule.

So first off, for folks who are unfamiliar with the process, the current Part 83 process starts with a letter of intent, and that's simply just a one-page -- it could be as simple as a one-page letter that says, We at some time intend to submit a full application for federal acknowledgment. The proposed rule proposes to eliminate that letter of intent step and just start with a complete application, which is how the federal government starts most of its processes, is with a complete application.

We've also implemented a phased review of the petitions themselves, and so to be federally recognized through the Part 83 process, the petitioners have to meet all seven criteria that we've identified in the regulation. In the past what we have done is we have reviewed all seven of those criteria. Even if a petitioner, let's say, fails three of the criteria, we've reviewed all seven, and so what we're proposing here to provide more timely responses is to have a phased approach where the first thing in the
proposed rule is we would look at criterion (e), which is essentially genealogy, you know, is this an Indian group? Do they have Indian ancestry? And if that is met, then we would move forward to other criteria within the regulation such as is there federal legislation that forbids this group from being federally recognized? Has this group been terminated, for example? So the chairwoman spoke very eloquently about the termination legislation with regard to Menominee and Congress correcting that egregious error. If Congress passes legislation that terminates a tribe, the Department administratively can't recognize that because the federal law prohibits us from doing so. So there are other groups that have petitioned for federal acknowledgment through the Part 83 process that have similarly been terminated by Congress, and so that is one of the criteria. There can't be federal legislation forbidding the relationship. So we're proposing a phased review where if someone -- where if a petitioner fails one of these criterion at the outset, that we limit our review to that criterion and provide a more
timely answer. If these initial criterion are met, then the phased approach we have is then looking at community and political authority for those petitioners as sort of a second phase review because that is one of the more documentary, heavy parts of our review, and it's also a more timely -- time-intensive review for the Department, for third parties, and for the petitioners themselves.

So under our current process, a proposed finding is issued by the assistant secretary. In our proposed rule, we're proposing that a proposed finding be issued by the Office of Federal Acknowledgment and that we have a comment period, just similarly as we do now. We would maintain the comment period on the proposed finding.

Some of the changes that we're proposing is if the proposed finding is positive and we don't receive any substantive comments in opposition to that positive proposed finding, rather than going through a process of then writing a final determination that's positive, the rule provides just for that proposed finding to be finalized immediately if we don't receive any substantive
negative comments.

If the proposed finding is negative, what we provide is that the petitioner may ask for a hearing before the Office of Hearings and Appeals, before a judge, and the judge would make a recommended decision to the assistant secretary. And so third parties -- if, let's say, there's a proposed negative finding and a petitioner elects to have a hearing, third parties can intervene in that hearing process, but I want to underscore that the Office of Hearings and Appeals is independent within the Department of the Interior. They have administrative judges, and what they're providing is a recommended decision to the assistant secretary. The assistant secretary under the proposed rule still maintains final decision-making authority on the petition. With regard to a final determination, once that final determination is issued, it is under the proposed rule final for the Department. As it works right now, these decisions can have limited appeals to the Interior Board of Indian Appeals. These are the only decisions that the assistant secretary makes that are subject to
Interior Board of Indian Appeals review, and so what we have proposed is to eliminate that review and provide immediate access, immediate review to federal district court.

In terms of the hearing on the negative proposed finding, the Office of Hearings and Appeals, which is separate from Indian Affairs, has issued proposed procedures, and they're -- basically for any attorneys in the room, they are basically just civil procedures, how the hearing will be handled. One of the questions that they've asked in their rule is who should preside over these hearings? Should it be an administrative law judge, who maintains quite independent authority within the Department and within the Office of Hearings and Appeals, similar to a judge that you would think of in terms of either a tribal court or a federal district court? There is another category of judges called just administrative judges, and they report directly to the Office of Hearings and Appeals director, and there's a little bit more -- or a little less independence, I should say, with that position. And then the other option is to have an attorney designated by the
Office of Hearings and Appeals director to
preside over the hearing, and so that's one of
the things that the Office of Hearings and
Appeals is looking for in terms of feedback and
comment on that process.

Some of the revisions to the process in
terms of when may a petitioner withdraw their
petition, when may they sort of stop out of the
process, and under the proposed rule, we're
providing flexibility to the petitioner to
withdraw at any time prior to the proposed
finding is published. OFA will stop
consideration of that petition at that request,
but if a petitioner makes that decision, they
would need to resubmit it, and they would lose
essentially their place in line for
consideration by the Office of Federal
Acknowledgment.

The other thing that we have in the proposed
rule is for the Department to post on the
Internet basically all aspects of the petition
and comments on the petition that are releasable
under federal law. So if, for example, the
Privacy Act applies in this context, we're not
talking about releasing Privacy Act information.
We're talking about releasing the petition, how the petitioner feels that they've met the seven elements, those sort of things.

So with regard to criteria, let's segue to that, we currently have seven criteria. The proposed rule is carrying forward also seven criterion. We're making a change to the first criterion. Under the first criterion, we require the petitioner to show that they have been identified by third parties, outside entities, from 1900 to the present, and under the proposed rule we're eliminating that requirement and replacing it with a requirement that the petitioner provide a brief narrative of their existence as a tribe prior to 1900, and this should be -- we're talking about a brief narrative with evidence in the proposed rule, and our thoughts are that it shouldn't be a treatise, it shouldn't be a multi-volume treatise, but it should be something long enough to provide a good sense of the tribe's history, because through this process we're not creating new tribes; we are recognizing existing tribes. And so we're proposing eliminating the external identification requirement because one of the
things that we have been thinking about is, one,
we have never denied a petitioner solely on
criterion (a), and the other thing is is that if
you look at all of the other criteria, a group
that's maintaining community, a group that's
exercising political authority, they show
descent from a historic tribe, they have all the
attributes of a tribe but a third party hasn't
been out there writing about them, does that
make them any less of a tribe from 1900 to the
present?

So with regard to criterion (b), community,
which I was just talking about, we are proposing
to start our analysis of a petitioner's
community from 1934 to the present. Currently,
under the existing regulation, it's time of
first sustained contact or 1789, whichever is
later, and one of the reasons that we're
proposing the 1934 date is that that is the date
that Congress changed its policy towards tribes.
Prior to 1934, Congress's policy was either they
were at war with tribes or they were -- the
policy was allotment and assimilation and
breaking up tribal governments, and so 1934 is
one of the first times in the federal
government's history where the federal government is passing legislation to say those policies of allotment and assimilation are failed, in 1934 we're going to promote tribal governments and promote strong tribal governments, and so that's why we picked 1934. The other fact with regard to 1934 is that in looking at our almost 40 years of administering the Part 83 process, we've never had a situation where a petitioner has satisfied all the criteria post 1934 but failed them prior to 1934. So for administrative efficiency, we've never -- for administrative efficiency and also to align with federal policy, we're starting with the 1934 date because we've never had a situation where a petitioner has satisfied all the criteria from '34 to the present but has failed those criteria prior to that. So in terms of criterion (b) and (c), we're actually proposing a start date of 1934 to the present for both of those, for political authority and community, and we're also saying that for those two criterion, that if the group has maintained a state reservation since 1934 continuously to the present or the United States has held land
for the group, collective land holdings for the group, at any point since 1934, that those will satisfy criterion (b) and (c) in the proposed rule. And the thought behind that is that when I mentioned earlier about prior to 1978 the Department looking at the recognition of tribes on an ad hoc basis, one of the criteria that the Department looked at was collective ownership in land, and that could be a determinative factor for the Department.

In terms of without substantial interruption, so under the current rule, we require petitioners to show community and political authority without substantial interruption. The Department has applied that differently throughout the 40 years of administering the process. Sometimes without substantial interruption has been as much as 27 years; sometimes we have applied that to mean as little as 10 years. And so in the proposed rule, we're proposing that as a general matter it should be less than 20 years, and we're trying to provide consistency with our decisions in the past.

With regard to criterion (e), descent, we're
requiring that 80 percent of the petitioner's membership showed documentation that they descend from a tribe that existed prior to 1900. That 80 percent rule is something that we've applied as a standard administratively, and so we're codifying it here in the regulations. That doesn't mean that 20 percent of the petitioner's membership can be non-Indian. It just means for documentary evidence we require 80 percent of those members to provide that information.

One of the other things that we're doing in the proposed rule is we're allowing descent -- for many of you, you're aware that Congress from time to time has directed the Department to prepare rolls of Indian tribes and at other times the Department has done that themselves; and with regard to that criterion, if there is a specific roll prepared either at the direction of Congress or by the Department, a specific roll for a tribe, that we're going to use that roll and trace descent from that roll forward. If the group does not have a specific roll that was prepared at the direction of Congress or prepared by the Department of Interior, what
we're going to look at is the most recent
reliable evidence prior to 1900, and so that is
also consistent with various decisions that
we've made in the past where we will look at
information that we believe is accurate in 1880,
1890, 1900 and move forward from that point in
time.

In terms of criterion (f), membership, we
have proposed -- we have heard through our
consultations and public meetings last summer
that -- a number of petitioners in the process
have said a number of our members have left the
petitioning group and enrolled in federally
recognized tribes, they're eligible for
enrollment in either group, and it's because the
Department's process has taken so long they've
made this choice. And so we've proposed in the
rule that if their members had enrolled in a
federally recognized group and they have filed a
letter of intent by 2010, that we're not going
to penalize our slow process for that effect.
In terms of congressional termination, right now
the onus is on petitioners to prove that they
haven't been terminated. We're proposing to
change that so that it would shift the burden on
the Department to show that a petitioner has been terminated and is ineligible for the process.

In terms of previous federal acknowledgment, we haven't tried to substantively change this in any manner. We're basically trying to clarify it, and so we're not making a substantive change to that aspect of previous federal acknowledgment.

In terms of burden of proof, similarly, we're not substantively changing the standard, but we are clarifying the standard based on Supreme Court precedent, and we've heard that that burden of proof has been inconsistently applied over time by the Department, and so we're trying to clarify, but we're not changing the burden of proof.

In terms of repetitioning, because we have heard that the process is broken, that it's been applied inconsistently, we are providing a narrow opportunity for repetitioning, and this is how it works in the proposed rule. So if a petitioner has gone through the process and has been denied and third parties have litigated that petition either administratively before the
IBIA or to the administrative appeals process at
the Department or in federal court and those
third parties have prevailed, then the
petitioner needs the consent of those third
parties before they can take the next step in
the process. Now, for those petitioners -- and
there's about 30 that have been denied. For
those petitioners who did not have any
administrative or federal court litigation, it's
still not an open door. They still have to show
some things before they can have an opportunity
to restart the process, and how we structured it
is that an Office of Hearings and Appeals judge
would basically determine whether they could
re-enter and restart the process, and one of
the -- the petitioner has to show one of two
things to the Office of Hearings and Appeals,
either that the change in the regulations
warrants reconsideration or that the burden of
proof was misapplied in their earlier final
decision and that that misapplication of the
burden of proof warrants reconsideration. If an
OHA judge who is independent decides that the
petitioner has met one of those two things, then
what that provides is that they can just start
the process all over again. It doesn't mean
that they're recognized. It just means that
they can restart the process.

So in terms of notice, there are a couple of
changes. We're trying to increase notice on the
petitions, and so we're going to acknowledge
receipt to the petitioner within 30 days.
Within 60 days we're going to publish notice in
the Public Register. We're going to post
materials on our website, as I mentioned
earlier. We're going to continue to notify the
governor and the attorney general of the state.
We're going to notify any federally recognized
tribe within the state or within a 25-mile
radius of the petitioner. So if there's a
petitioner that's just across state lines, we
have a 25-mile radius. And we're going to
continue to notify, in addition to that, any
other recognized tribe, and this is what we do
currently, and any petitioner that appears to
have some sort of either historical or present
relationship with the petitioner who may have
interest in the acknowledgment determination.

So the next slide talks about how we're
going to provide notice and when we're going to
provide notice, and the Office of Federal Acknowledgment is going to provide notice when it begins its review, when it issues its proposed findings, if the assistant secretary grants any time extensions, when the assistant secretary begins his or her review of the petition. Once they either have a proposed favorable or have received a recommended decision from the Office of Hearings and Appeals, then they'll issue the final determination.

So the proposed rule -- comments on the proposed rule are due August 1st. The procedural rule that the Office of Hearings and Appeals has issued is due on August 18th. You can send any comments to our email address in the materials here. Next steps are going to be pretty similar to the steps that we've taken to get to this point. So we're going to look at all of the comments both here, that are transcribed as part of this meeting and all of the meetings that we hold and all the tribal consultations, and also written comments. We're going to go through all of those, and then our team of folks from the solicitor's office, from
the Office of Regulatory Affairs, from the assistant secretary's office and the Office of Federal Acknowledgment, we're going to go through those comments and move forward with a final rule based on those comments.

So with that, I'm happy to turn it over to you all, and I'm interested in hearing your comments on the proposed rule, so thank you. So I guess we have the microphone up here. I don't know if we can move this. I think the acoustics in this room are so good, I don't know that we need the microphone, but I guess it would be helpful for the person preparing the transcript if you would use the microphone for any comments.

FRANK ETTAWAGESHIK: Good morning. Good to see you folks again, and I'm Frank Ettawageshik. I'm the former chair at the Little Traverse Bay Bands of Odawa Indians in Michigan, I am now the executive director for the United Tribes of Michigan, and I serve as the co-chair for the Federal Recognition Task Force at the National Congress of American Indians.

We've been working on these issues for a
long time. We work primarily with those tribes that are state recognized or non-recognized that are in this process or seeking to be in this process, and my first comment is I want to commend Larry and Kevin for their dedication to working on this process and all those others who have been part of this over the years. We have been working for many years.

My tribe itself was not on the list of federally recognized tribes. We started in this process of federal recognition with one of those. Our letter actually wasn't a single page. It was a single sentence. "We intend to apply for our letter of intent," but our number was way up above 100. We were like 120, 126, somewhere in there, and at the rate that petitioners were being considered, we were looking at, we felt, maybe 50 years before we would get considered, and so we worked on legislation. We successfully in 1994 got legislation passed that reaffirmed our federal status, and so this September we're celebrating a 20th anniversary of that process.

There were many tribes that stayed in that process that were in that process at the time
through the federal recognition process that are still there today and have yet to make it through, and so, you know, when we talk about how this federal recognition process has been broken and how it's an onerous process and how things are -- the criteria which have not yet changed, by the way, but keep continually being reinterpreted in such a way as to make it more difficult for petitioners, we felt that it would be really important to have these proposed changes, and so we're very happy to see that this process is at the point that it's at, and we're supportive of this effort to make these changes and to make this -- keep this process a rigorous process because we don't want -- we don't want petitioners who may clearly be -- not eligible be able to make it through the process. However, for tribes that are eligible and for those tribal governments that -- you know, as we say, justice delayed is justice denied, and we look at this situation as it's taken a whole generation for many of the tribes to do this. There are elders who have -- who die in this process and who never see the end of it from the various petitioning tribes. So we believe that
making -- the process that has been outlined, you've laid out here is -- that would make this a more expedited and, we believe, more fair is a good thing.

I'm aware of the time. I wanted to comment that often those people who have expressed concern about any changes to the process generally are doing so because it would be inconvenient for them in some way and that that inconvenience often has to do with financial concerns. While that clearly can be true, I don't believe that those reasons are sufficient to continue a process or a system that clearly creates injustice for people, that we should do what's right even if it's inconvenient for us, and so I think that we need to keep those in mind as we look at these changes.

There is -- one of the substantive points that I wanted to make before I sit down and make room for others to speak is that while I applaud all of the changes as proposed, I am concerned about the repetitioning section and the veto that's given, that in this case the current wording is pretty absolute if someone had opposed in a previous -- in the previous
petition, the previous process. And while I certainly believe that someone who is opposed in the previous process should have a say, they should be recognized, but I don't believe that merely them saying no should be able to stop a process from being reconsidered and being looked into, and so I think that that -- I think that that would be an injustice that could -- further an injustice that already may have been -- may have happened because of the way the system was set up. So we would like to see some modification there.

You did ask about the -- for the hearing, and my personal opinion is that an administrative law judge would be the better way to go. I believe that this -- you know, I think that that's the better way to deal with that hearing.

And with that, I'm going to sit down and make room for others to speak, but once again, I want to thank everybody for all your hard work on this, and through the work through the task force, we will be making more detailed written comments that are specific to many of the points in the proposed rule, and those will be
provided, some of them in some of the
previous -- some of the subsequent hearings that
are coming up and also in written form prior to
the deadline. Thank you.

LARRY ROBERTS: Thank you.

STEPHEN SIMPSON: Thank you.

ELIZABETH APPEL: Thank you.

NOLA PARKEY: Hello.

LARRY PETERSON: Hello.

NOLA PARKEY: My name is Nola Parkey.

I'm from the Burt Lake Band in Michigan.

Burt Lake Band is kind of in an odd situation,
and you talked about it, about Congress not
terminating you. Back when we were told in the
beginning that we had to go through this
process, we thought we already were a federally
recognized tribe, but we were told we had to go
through the BIA process.

In 2004 -- excuse me, 2007 we filed for
reaffirmation, and Congress's findings say
they've never terminated us. So you said today
that if there's proof you weren't terminated,
then you can't go through this process? I
guess --

LARRY ROBERTS: So let me clarify --
NOLA PARKEY: Yeah.

LARRY ROBERTS: -- just clarify that, and I'm sorry to interrupt.

NOLA PARKEY: No, that's okay.

LARRY ROBERTS: I just want to clarify. If the Department -- the proposed rule -- so the longstanding rule has been if Congress has terminated a group --

NOLA PARKEY: Right.

LARRY ROBERTS: -- if Congress has terminated a tribe and hasn't -- the Department has to act consistently with federal law, so they're not eligible for the process.

NOLA PARKEY: Okay.

LARRY ROBERTS: If a -- what we're doing -- under the current rule, the onus is on the petitioner to show that they haven't been terminated.

NOLA PARKEY: Right.

LARRY ROBERTS: And so the proposed rule is switching that burden because if you haven't been terminated, then you are eligible for the process.

NOLA PARKEY: Okay. So would we then under the new rule, just to be clear about
everything, write a letter to the BIA or apply
to the BIA and ask them to tell us specifically?

LARRY ROBERTS: So we're not -- yeah,
so that's -- so we're not changing the
requirement, but we're putting the burden on the
Department.

NOLA PARKEY: Right.

LARRY ROBERTS: So rather than the
petitioner having to prove a negative, that they
haven't been terminated, we're putting the
burden -- the proposed rule would put the burden
on the Department to show that the petitioner
has been terminated and is not eligible for the
process.

NOLA PARKEY: Okay.

LARRY ROBERTS: Otherwise they are
eligible for the process if they're not on the
list of federally recognized tribes.

NOLA PARKEY: Okay. So I just -- I
would like to just sort of go along with
Frank -- I guess with what Frank said about, you
know, financially. I know Burt Lake Band has
been through millions of dollars, and we're
stuck in this whirlpool, and we need to get out
of it, and we don't have another million
dollars. And we do appreciate the efforts, the new rules. We're hoping that, you know, future groups maybe won't have to go through the turmoil that we've gone through. It's been many, many years. It seems as though we would jump through one hoop and another hoop would just be put in front of us. So it's nice to know that things are going to be down in writing and won't be so left up to individuals to sort of make their own judgment on something, and I think that's the only way to go on this because each tribe is individual, and you can't just, you know, put a stamp on something and say yes, you're Indian and no, you're not. So I appreciate your time. Thank you.

LARRY ROBERTS: Thank you. And so just -- and generally, you know, one of the reasons that we have the public comment period is, you know, what we're -- one of the goals is we want objective criteria, and so we in the proposed rule have tried to provide and -- provide clarity and provide objective criteria, but we want everyone to know what the rules of the road are. And so in your comments, if you can provide comments on objective criteria and
what those objective criteria should be, those
will definitely be appreciated and looked at.

RON YOB: I hope I talk close enough.
I am Ron Yob. I am the chairman of the
Grand River Bands of Ottawa Indians out of
Western Michigan. We are currently under the
old rules. We chose to stay in those rules, and
the only reason we did choose to stay in those
rules was because we were unsure of what the
proposed rules would be, so we stayed in those.

We appreciate -- we brought our tribal
council members. It's important they know what
is going on because until we're through the
process, we're still in the process. So even
though we're with the old rules, there's a
 possibility we could become part of the new
rules. With that, can I ask some questions?

LARRY ROBERTS: Sure. Yeah.

RON YOB: Okay. Well, a question got
brought up about the termination, for instance.
To be terminated, you have to exist to be
terminated. So who determines your existence?
See, we could say we were never terminated, but
then you could say, Well, you never existed to
be terminated.
LARRY ROBERTS: So the only reason we're looking at termination is to see if Congress has passed legislation forbidding the federal relationship with the tribe.

RON YOB: Okay.

LARRY ROBERTS: And if Congress has done that, forbidden, we can't act contrary to that law, but otherwise, you know, all of the groups that have been recognized, all of the tribes that have been recognized, there's 17, none of them have had termination legislation and we've recognized them, so it's not a --

RON YOB: Okay.

LARRY ROBERTS: So if you haven't -- if there's not specific federal legislation saying, for example, the Grand River Band is hereby terminated, then, you know, generally speaking that shouldn't be a barrier for going through the process.

RON YOB: Okay. But I guess to -- I'm kind of muddy yet because my thing is to be terminated, you had to be recognized, so then your guys are recognizing us. So if you don't recognize us, then how can we be terminated? You have to be in existence, so at some point
you have to prove that existence. Do you see what I'm getting at?

LARRY ROBERTS: Sure. Sure. I think so. I guess I'll use the example of the 17 tribes that have been recognized.

RON YOB: Uh-huh.

LARRY ROBERTS: They have been in existence, right? We're not -- like I said before, we're not --

RON YOB: But who's determining that?

LARRY ROBERTS: The Office of Federal Acknowledgment determined that through the application of the criteria.

RON YOB: Okay. But they're determining also that they don't exist.

LARRY ROBERTS: No. They did recognize them.

RON YOB: Okay. That wasn't the point I come up for, but when they brought up that, while it was a question in my head, I wanted to get that out because otherwise I could say Blue Lake Tribe out of Texas or something could be saying, Well, we were never terminated. Well, someone -- but if they never were in existence, they can't be terminated. You can't
terminate something that doesn't exist.

LARRY ROBERTS: Right, but on the same token, Congress hasn't terminated every tribe that's always existed, right?

RON YOB: Yeah. I guess it's just -- it's not going to be a problem in our case, but I just thought of that when I was sitting there.

LARRY ROBERTS: Okay.

RON YOB: It's like how can I spend money if I don't have it, you know, or something? I don't know. Anyway, that was one question.

The other question was the priority numbers. How do the -- is there anybody on that list yet or how do they -- how does that start out? Just by their date of petitioning?

LARRY ROBERTS: I believe that that's right. I think it's the date of the complete application. Now, for petitioners that are already in the process, the way the proposed rule reads is that for those petitioners that have, I believe, submitted a complete application and -- I think a complete application, they can -- so let's say a petitioner has submitted a complete application
and that tomorrow -- just for hypothetical sake, tomorrow the proposed rule became final. Under the proposed rule, those petitioners that had submitted a complete application would have a choice: Do they want to proceed under the rules that exist today or do they want to proceed under the new rules? And that would be up to each individual petitioner.

RON YOB: Okay. And now some unfortunate chance were to happen that we were -- we're on the active list right now, and if for some proposed -- for some -- I don't even want to bring this up like that, but if we were to have a negative finding, could we move over to the new or do we stay -- if that was going to happen, a hypothetical, would we stay with the old rules or would we move? At that point do we have an option?

LARRY ROBERTS: So what we've provided -- and Stephen or Liz can correct me if I'm wrong, but for those petitioners that are in the process, currently in the process, they can -- we've asked them to basically let us know at their earliest convenience whether they want to stay consideration of their petition, so --
and I think we've provided that stay option so long as the petitioner is still before the Department. So I think it doesn't matter whether the petitioner has a proposed finding that's already been issued or not. So long as it's still pending before the Department in some way, shape, or form, that the petitioner can choose to stay that consideration of that petition. The Office of Solicitor is shaking their head yes.

STEPHEN SIMPSON: Yes.

RON YOB: Then one other comment, kind of going on something Frank said about losing our elders, which is obvious. I mean, I don't need to keep bringing that point up, but one thing that -- I don't know if it's been brought up, but if not, I'll bring it up anyway. But besides our tribe, besides losing our elders, we're losing our future leaders, because what's happening in our tribe is by the other tribes, you know, giving incentives, education, whatever, per capita, anything, whatever the other tribes -- the benefits the other tribes give, especially in Michigan, we just lost our -- for our tribe not being federally
recognized, we lost our Indian Tuition Waiver, which probably -- I know three chiefs that went under Grand River but jumped to other tribes, I mean, we lost. So what's happening is our youngsters are losing. So what we're -- what I'm getting at is we're trying to rebuild our tribal council with youth, right? So if you get people coming up that -- and you want them to have a good, proper education, they're not being allowed to go to the colleges under the tuition waiver; and if they do go, they have to jump tribes. So what's happening is the cream of our crop is kind of just leaving us, you know, I mean. So besides elders, we're losing the bottom end of our group too.

LARRY ROBERTS: And so that type of situation is one of the situations that we've tried to address in the proposed rule, to say that if a petitioner has filed a letter of intent prior to 2010, that we're not going to hold against that petitioner if, as you're describing, members are leaving because, you know, of sort of on-the-ground, just real-life choices that they have to make, and so we have sort of -- in the proposed rule, we've addressed
that.

Now, with everything in the proposed rule, and I just want to, you know, emphasize this to everyone, is that, you know, we need your comments on the proposed rule. We need to know not only what you don't like about the proposed rule, we need to know what you like about the proposed rule so that when we're looking at it, we get a good sense. You know, sometimes people -- I complain about things I don't like, right?

RON YOB: Yeah.

LARRY ROBERTS: But I probably don't say as much about the things that I like, so we need to hear both. We need to hear both in this comment period.

RON YOB: Okay. Well, I do like a lot of the adjustments that you have made. We're still in the old ruling, but I can appreciate, you know, what's going on, and hopefully the next groups that come through will see the benefits of it, you know.

LARRY ROBERTS: Okay.

RON YOB: And I want to thank you for letting me speak and allowing us to come and
listen and hear and comment, and we'll take it
back with us. Chi miigwetch.

SANDRA SKINAWAY: Bousho. My name is
Sandra Skinaway. I'm the chairwoman at the
Sandy Lake Band of Mississippi Chippewa in
McGregor, Minnesota, and we've filed lawsuits
against the BIA in the last couple of years, and
it always resulted to having it come through the
administrative process, but we're here today
just to basically try to understand this process
a little more, and we had -- I had a question
about the third-party review. Now, the third
party, is that considered like other tribal
governments, local, state governments? Is that
what the third-party --

LARRY ROBERTS: Yeah, I don't think
we've -- I think the third party is
all-encompassing, so it could be state or local
governments, it could be other tribes, it could
be -- I don't think we've defined it to an
exclusive list. I think by third party we mean
someone other than the petitioner.

SANDRA SKINAWAY: Okay. My next
question then is how influential are these third
dparties in this review process, you know, of a
petition?

LARRY ROBERTS: Sure. So what we do is when we put out a proposed finding, we put it out there for essentially comment, and so we're going to look at all of the comments from those third parties in terms of, you know, are they providing substantive evidence to the Department, because that's what we want. We want to make a decision based on the facts, and so that's what we're looking at in their comments.

And so, you know, I think we're putting, you know, sufficient weight on actual facts that are, you know, truth basically. So if somebody puts in a comment that just says I'm opposed to this recognition but doesn't provide any facts, you know, we'll consider it, but we probably give more weight to actual facts being submitted.

SANDRA SKINAWAY: Okay. Because our tribe is a historic tribe, and we pretty much meet all the criteria; however, due to political influences by other tribes, they've opposed everything that we have done. So we're trying to look for, you know, an unbiased opinion, and
I'm not really sure this process, you know, is fair from political influences, but we're here today just basically to look at our options. I mean, we can always go back to court or we can try to go through this process, but first we need to try to understand it better.

LARRY ROBERTS: Okay.

SANDRA SKINAWAY: And I just had that question about the third party, and pretty much you told me that -- I get the feeling that they are pretty influential in the decision-making process.

LARRY ROBERTS: So we've heard that concern in the past about the criteria not being applied uniformly, and so we're trying to provide -- we're trying to provide more objective criteria so that everybody knows what the rules are.

So one of the things that I am thinking about in terms of that -- I forgot to mention it to you all this morning but it is in the PowerPoint, is that, for example, for criterion (b), community, we have put in there that 30 percent of the membership -- the petitioner needs to show that 30 percent of the...
membership is demonstrating community. So that's an objective standard, that 30 percent. It's not pulled out of thin air. It's pulled out of the Indian Reorganization Act and the requirements of the Indian Reorganization Act for a group to ratify -- or for a tribe to ratify a constitution under the IRA, to vote on a constitution I should say, so -- but it's examples like that where we're trying to provide objective criteria so that everybody knows what the rules of the road are.

SANDRA SKINAWAY: Okay. Another comment I'd like to make too is that, you know, many years ago in our treaty-making era, stages, I mean, we recognized the 10 treaties with the United States Government, and so we were thereby recognized. We had a government-to-government relationship, and I find it very ironic that we would have to try to petition for recognition. I mean, what we're trying to do is restore what we had. I mean, we consider ourselves recognized already through this treaty process. We were never terminated by Congress, and only Congress has the authority to terminate a tribe.

LARRY ROBERTS: So under the current
rules, we do provide a section for previous federal acknowledgment, like through a treaty, and so we're not proposing any substantive changes to that, but sort of a very simplistic description of that is that if a petitioner can show that they were previously federally recognized, let's say through a treaty that was signed in 1860, under the current rules we would start the analysis from that previous federal acknowledgment forward.

SANDRA SKINAWAY: Okay. All right. I just want to put on record that we kind of oppose the third-party proposed rule.

LARRY ROBERTS: Okay. That's for petitioners that have gone through the process and have been denied.

SANDRA SKINAWAY: Oh, that's just for them that have been denied?

LARRY ROBERTS: Uh-huh, and that they prevailed, that the third parties prevailed in court.

So let me also clarify this because I've clarified it at other meetings and tribal consultations. We've had comments and we had a comment today about the third party, to use
their words, veto is unfair, and let me explain that again. The way that it works is if a petitioner has gone all the way through the process and they have received a final determination that's negative, that says you do not satisfy the criteria and third parties -- or let's say -- either way, third parties, let's say, participated in administrative litigation before the Department, you know, say they agreed with the Department and intervened in the case and litigated it and the Court agreed with them or let's say that there was a final determination that was favorable and third parties sued under that final determination in court and prevailed, the Court found in favor of them, we're not saying that those parties are forever barred from restarting the process. What we're saying is that they need to get the consent of those third parties who litigated and won.

And so it's not unlike situations where, you know, tribes prevail in litigation and win. There's equities there in terms of not changing those rules, and so here if this provision only applies to those petitioners that have gone all
the way through the process, that have gotten a final determination that has been challenged either administratively in an appeal or in court, if they've been challenged in either one of those situations and that third party won, that's where the third-party consent comes in or some folks say the third-party veto comes in. Otherwise, there is no third-party veto.

SANDRA SKINAWAY: So what happens when there is a third-party veto in those cases?

LARRY ROBERTS: In those cases, that group that has lost in the litigation, if the third party doesn't consent, they cannot then take that next step of going to the Office of Hearings and Appeals to ask whether they may restart the process. They need to get that consent.

SANDRA SKINAWAY: And if they can't get the consent, then it's over with, done?

LARRY ROBERTS: If they can't get the consent, they can't take that next step of asking the Office of Hearings and Appeals whether they can restart the process, and so until they get that party's consent, that's right.
SANDRA SKINAWAY: And they can't go directly to federal court?
LARRY ROBERTS: I don't know.
SANDRA SKINAWAY: Do you know if they have to go through that process?
LARRY ROBERTS: I don't know. That's not something that we've contemplated in the proposed rule. I don't know whether they could go to court or not at that point.
SANDRA SKINAWAY: Okay. Well, miigwetch. Thank you for your time.
LARRY ROBERTS: And we're doing pretty well on time this morning, so, you know, I think I'm happy to let people go over a little bit as long as we're staying on topic of the proposed rule and questions on the proposed rule, so --
VERONICA SKINAWAY: Larry, how long does this process take?
LARRY ROBERTS: Can you just identify yourself just so that we have it in the transcript?
VERONICA SKINAWAY: My name is Veronica Skinaway. I'm from the Sandy Lake Band of Mississippi Chippewa. How long does this
process take usually, time frame?

LARRY ROBERTS: The federal acknowledgment process of Part 83? Under the current regulations, we have heard from groups that they've been in the process for decades, and so we're trying to improve that timeline process. Quite frankly, there are some groups that have sent in a letter of intent and maybe nothing else and so they have been technically, I guess, in the process for a long period of time but they haven't submitted a complete application, and so that's why we're proposing to start with the application itself.


FRANK ETTAWAGESHIK: For those people who know me, it's really hard for me to ignore a lonely microphone, but what we know is that -- I think the most important part of this that we support is that we do want a rigorous process. We want a process that is going to be --

And I should identify myself again. I'm Frank Ettawageshik. This is my second comment.

We do want that rigorous process. We realize that there are -- that there have been
in the past and there may be currently -- on the long list of people who have given intent to apply, there may be entities that would not meet the criteria, and there are a number of instances where -- and I use the term "fake" tribes only because there are some groups that would like to be considered tribes but clearly are not, and this has happened in the past, and we understand that part of the reason for this process in the first place was to make sure that there weren't mistakes made and that the federal government acknowledged some entities that did not deserve to be acknowledged, and I think pretty much all of the tribes understand that this is potentially an issue. So having a rigorous process is important, we believe.

Having an onerous process, on the other hand, is not what we would like to see, and we would -- you know, we have some concerns that the Office -- that the Branch of Acknowledgment and Research which became the Office of Federal Acknowledgment has often appeared to be under political influence to not recognize tribes. We believe that there have been -- you know, there's been a lot of time when it appeared that
way because they weren't doing any recognition at all. There weren't anyone coming through. We know people who have sent their petition in, they believed that that petition was being looked at and being taken care of, and after a couple of years they go to Washington and they find the boxes that they shipped sitting unopened in the hall of, in this case, the Branch of Acknowledgment and Research. We know that there are a number of instances where things like this have occurred. So things that will help make this process work better are good.

We like the -- you know, as we look through these things, there are some subtle -- you know, some subtle wording definitions in places that, as I said, we'll provide detailed comments and written comments to but that overall, as I mentioned earlier, we support this.

I know that this -- the decades-long process that has occurred for some tribes and the huge amount -- huge cost to this, I think it would be important to say in this hearing that because of the incredible cost to preparing the huge volume of information necessary and because for tribes
the sort of life-and-death situation of not wanting to blow their only chance at getting through this process, that they -- it costs millions of dollars to prepare a petition, to prepare the supporting documentation, and sources of funding for this have been drying up. There used to be grants for status clarification through the Administration for Native Americans that helped fund -- for instance, my tribe was one of the beneficiaries of those grants, but this was back in '94, '92, '93, '94, and those fundings, that funding source, has dried up. So what that means is that about the only source of funding for this -- to fund the process is speculators and developers in the gaming industry who would profit substantially if they had a relationship with the successful petitioner, and so this means that this issue of social justice has been turned into a question about gaming often and that -- since so much of the funding comes from people that are interested in the gaming industry. So a tribe that may or may not be interested in gaming as they move through this process, often the only source of funding for them is a gaming
developer, and so this -- any of the changes
that we have here that would lessen the burden
financially on the petitioner is greatly
appreciated and long overdue because this is not
an issue of gaming or not gaming, even though it
seems to be that, because the financial burden
is placed on petitioners, but it's actually a
question of social justice.

   Earlier, you know, you mentioned -- Larry,
you mentioned that this isn't a process of
creating a tribe; it's recognizing a tribe that
already exists. And the way that I think about
this is that it's the establishment of
diplomatic relations between a tribal nation and
between the United States, and that negotiation
or that establishment of those relations, it
actually cuts both ways because it is the United
States looking at a tribe and deciding do we
recognize this tribe, but it's also the tribe
deciding, and some tribes decide not to, to have
relations with the United States. And so
there's this sort of two-way criteria, and often
it's pretty much thought of as being one-way,
but this --

So the acknowledgment of an existing tribal
government is critical, and what we found often is that petitioners have often been discouraged from, quote, acting like a tribe. They've been discouraged from being able to take advantage of and to, for instance, establish a court or, you know, establishing public safety officers because of the lack of acknowledged jurisdiction for those public safety officers. Often for establishing some of the programs that might give assistance to their tribal citizens, they've been discouraged from that, and yet part of this whole process is looking at whether or not you have a functioning tribal government; and if you have a functioning tribal government, you're going to have to deal with public safety issues, you're going to deal with programs, you're going to be dealing with economic development issues, and so it's sort of like it's a catch 22. You can't act like a tribe until we acknowledge you, but we won't acknowledge you unless you're acting like a tribe, and so we have to try to find a way through all of that, and I believe that what's happened here with these changes is a long way down the road towards doing that.
I have one other comment that I wanted to mention and bring into this and that is that the United States has now endorsed the United Nations Declaration on the Rights of Indigenous Peoples, and in that, that -- while I've heard representatives of the United States describe that as an aspirational document, even with that definition, that is how the indigenous people of the world -- how the nation states of the world aspire to treat indigenous people, and it's also how indigenous peoples should aspire to be treated by the nation states, and in there are substantial parts of that UN declaration that deal with the issues that we're dealing with here in federal recognition, and while that says indigenous people should have -- should aspire to or should have these particular set of rights and the access to, for instance, sacred objects like eagle fathers and sacred sites, that the United States has been defining that as federally recognized have that right.

Well, we certainly appreciate what's happened in this case with the Department of the Interior holding not only a tribal consultation this afternoon with elected tribal leaders, but
also a public session with all of those other interested parties such as the tribes that are yet to be on the list of federally recognized tribes, the other interested parties to be part of this process on this rulemaking, so we appreciate that and appreciate that as part of the larger movement for indigenous rights and the recognition of the human rights for indigenous peoples, that this process is part of that larger movement, and I just wanted to add that perspective this morning.

LARRY ROBERTS: Thank you. So it's almost 10:00. Sure.

RON YOB: Every time I hear Frank, Ron Yob, Grand River Band of Ottawas, I think of something. The afternoon hearing, is that open only to federally recognized tribes or can we observe?

LARRY ROBERTS: It's open to only tribal leaders and federally recognized tribes and their staff.

RON YOB: Okay. Thank you.

LARRY ROBERTS: So we're about at 10:00 here. I know that there's a number of folks that are attending that maybe don't want
to make comments, and that's completely fine. I know sometimes folks come to public meetings and tribal consultations to learn about the proposed rule itself, but why don’t we go ahead and take a 15-minute break, we’ll reconvene at 10:15, and I'd be happy to take any additional comments then. Thank you.

SANDRA SKINAWAY: I have a question.

LARRY ROBERTS: So if you want to use the mic, sorry, just so that everything is -- and I guess I should also say we're transcribing this, but -- we're transcribing the public meetings, we're transcribing the tribal consultations. All of those will be put up on our website. So if you can't make all of the meetings, that you know what's being said at each one of them. That's why, you know, we have the transcriptionist, why we're using the microphone. We want to make sure that we have an accurate record of what was said, and so I think your question was why is the afternoon session closed and only open to federally recognized tribal leaders and their staff?

SANDRA SKINAWAY: Yes. In addition to that, I just want to know why they can make
comments about it when they're already federally recognized. I mean, is it just so they can oppose future petitioners or --

LARRY ROBERTS: No, I don't think that -- I don't think that all federally recognized tribes are opposed to this process, so I certainly would say that, but the reason that we're consulting with tribes --

SANDRA SKINAWAY: That's exactly what I'd like to know.

LARRY ROBERTS: -- is that President Obama -- under executive orders issued by President Clinton and President Obama, we are holding tribal consultations with tribal leaders on any regulations that may in one shape or form touch upon tribes, and so whether it's rights-of-way regulations or FTTA trust regulations or otherwise, we always consult with tribal leaders to abide by the executive order, and the executive order limits those consultations to tribal leaders and their staff. So that's why we're doing it.

SANDRA SKINAWAY: Okay. Thank you.

LARRY ROBERTS: Sure. So I guess we'll take a break here. We'll reconvene at
about 10:15. Thank you for coming.

(Recess held.)

LARRY ROBERTS: We're going to go ahead and get started here with the meeting, so if folks could -- hopefully during the break folks have had time to think about any additional comments or feedback on the proposed rule itself.

And before we get started -- restarted here for any additional comments, I just wanted to -- some folks had to ask questions, so I guess I wasn't necessarily clear prior to the break. So that afternoon session is open to tribal leaders from federally recognized tribes and their staff, and so it's not open to members of federally recognized tribes. It's the federal governments that we're meeting with this afternoon, so just to provide that additional clarity.

So, happy to hear any additional comments folks have this morning.

ELIZABETH APPEL: And while people are collecting their thoughts, Frank had asked me during the break to explain my role in this process, and my office is sort of the process
person role in all of this, so we collect all
the comments through all the various ways. You
can submit comments primarily through
consultation@bia.gov, that website. We organize
them all and get them in a place where they're
reviewable by the subject matter experts in our
Office of Solicitor and the assistant secretary
for Indian Affairs, and we manage getting the
publications into the Federal Register and up on
the websites, and if anyone has any questions
about process, please feel free to reach out to
me.

STEPHEN SIMPSON: And Larry just
asked me to, if I wanted to, explain the
solicitor's office role, and so I will do that.

The solicitor's office is separate from --
is in the Department of the Interior and is
separate from all the various bureaus. So we
are not part of the Bureau of Indian Affairs.
We are not under the assistant secretary. We
are not part of the Park Service. We are not
part of BLM. We are not part of any of those
people. We are separate, headed up by the
solicitor, who is a political appointee and is
actually the third-ranking person in the
Department, and we have statutory authority
given us by Congress to advise, to give legal
advice and do the legal work of the Department.
So we represent basically the Department as a
whole. And I am in the Division of Indian
Affairs, so what I do is -- or what my office
does in D.C. is just work on Indian issues.

Our role in the regulatory process is
basically to be part of those work groups that
Liz puts -- Liz's office puts together to write
regulations. We advise on the law and on how to
word things, what the underlying law is and sort
of how flexible the assistant secretary's office
and the folks who are actually working on these
regulations can be to stay within the law and
then still stay within the law. So it's not
that we are -- we sort of let them know the
bounds of their discretion and flexibility and
work to answer any legal issues and make sure
that we're in accordance with the statutes that
Congress passes.

LARRY ROBERTS: Great. Thank you,
Steve. And I don't want to dwell on the fact,
but we have had a number of folks just rejoin us
since the break, so I just wanted to just say I
started off by saying that the afternoon session is closed. It's just the tribal leaders and their staff. It's not tribal members. Under the executive order, it's consultation with tribal leaders and their staff.

So with that, we have a lot of time here this morning for additional comments, and happy to hear those comments. Does anyone -- before Frank grabs the microphone one more time here, can I just get sort of a show of hands in terms of folks who haven't commented yet that still want to comment? So a handful? So why don't we -- if you don't mind, we'll let those folks go first who haven't had a chance.

FRANK ETTAWAGESHIK: I just had a real quick follow-up question.

LARRY ROBERTS: Sure.

FRANK ETTAWAGESHIK: You mentioned that transcripts would be put online from these sessions. Do you know what the timetable for that is yet?

ELIZABETH APPEL: It usually takes our court reporters a couple weeks to put together the transcripts, but we're going to be posting them as soon as we get them, and so the
one from our first session in Marksville, Louisiana should be up fairly soon, and I would just keep an eye out on the website. Our goal is to get them all posted well in advance of the end of the comment period.

FRANK ETTAWAGESHIK: Thank you.

LARRY ROBERTS: Okay.

DON PARKEY: Hello. My name is Don Parkey. I'm on the tribal council of Burt Lake Band, and my question today is the Burt Lake Band has been through the affirmation process and failed, and we would probably consider an attempt -- another attempt at that, and I was wondering if possibly -- it's kind of a negative statement, but if the same people that kind of picked at our initial paperwork are going to be involved in making that decision again and if they would be able to make a decision that would be fair to us. Being as how they've already made a decision, they would have to go back on what they their feelings were initially.

LARRY ROBERTS: So we have full confidence in our Office of Federal Acknowledgment. We have full confidence in our
staff there. We work with them on a very regular basis, and the proposed rule doesn't change that. What we're trying to accomplish with the proposed rule is objective standards that can be applied. We have heard in the past that those standards that we have right now have been applied consistently. And so as I talked about earlier this morning, there are some changes in the process that we are proposing to provide those petitioners more process if they feel like they've received a -- if they've received a proposed negative determination, they can ask for a hearing before the Office of Hearings and Appeals, which is independent, and then the assistant secretary, as under the current process, would look -- would make the final decision, but I guess under the proposed rule, that hearing would provide a recommended decision from an administrative judge who would have heard the evidence both from the petitioner and from the Office of Federal Acknowledgment and any third parties that would intervene, and then that judge could look at the record and identify the areas that are really in dispute and provide a recommendation based on that.
hearing to the assistant secretary.

So the Office of Federal Acknowledgment will continue to play a vital role in this process, and they are playing a vital role in helping us with preparing the proposed rule, and they'll continue to play a role in helping us to prepare the final rule.

DON PARKEY: Okay. Thank you.

LARRY ROBERTS: Sure.

VERONICA SKINAWAY: Hello again. My question is exactly, since this new process --

LARRY ROBERTS: Can you just state your name so that she has it?

VERONICA SKINAWAY: Yes. My name is Veronica Skinaway. I am from the Sandy Lake Band, Mississippi Chippewa Band, and my question is exactly, since your new process, how many bands have you helped reorganize?

LARRY ROBERTS: So -- I'm only pausing because I'm not entirely clear on your question, so let me see if this answers your question. If not, we can just have a dialogue here, and hopefully I can provide you an answer.

So under the Part 83 process, we have recognized 17 tribes over the 40 years, and we
have denied approximately 30 petitions over that 40-year course of time. So we've recognized 17.

VERONICA SKINAWAY: Okay. And when was the last prior?

LARRY ROBERTS: I think the last tribe that we recognized was Shinnecock? The Shinnecock Tribe of New York. So through the Part 83 process, I think -- I think Liz is right. This is all up on our website though, but I think it is Shinnecock.

VERONICA SKINAWAY: Okay. All right. Thank you. That answers my question.

LARRY ROBERTS: Sure. Okay.

ELMER KNOX: Good morning. My name is Elmer Knox. I am a member of the Grand River Council. I brought three different things. When we started out, we had three different ways to be recognized, right? Now we're working on the third here.

LARRY ROBERTS: That's right.

ELMER KNOX: The other two, do they have the same criteria that we're going to have?

LARRY ROBERTS: I think the short answer is no. I think Congress -- Congress retains plenary authority to recognize tribes,
and they have done so repeatedly in the past, and I think Mr. Ettawageshik mentioned that the Little Traverse Band, for example, was recognized through federal legislation, so they did not use the Part 83 process.

ELMER KNOX: They won't have the same proof that we have to prove?

LARRY ROBERTS: Well, I don't know. In terms of tribes that were recognized legislatively, I don't know what information was provided to Congress when they made that decision.

ELMER KNOX: Okay. The next would be tribes and bands. Do you distinguish between the two?

LARRY ROBERTS: So we are looking at recognizing tribes or bands that have been independent governmental entities. So, for example, there are a number of federally recognized tribes in Minnesota that are bands, but we also recognize the Minnesota Chippewa Tribe. So we will recognize tribes or bands, but the importance is is that they have been functioning both politically and to their community and they meet all seven criteria
independently. They're showing that as a band that they are functioning in that way.

And so, you know, I think one of the things that I want to clarify for everyone in the room, if it's not already clear, is that, as I said before, we're not creating tribes through this process. We're not changing the rules so that we can recognize groups that came into existence in, say, the 1940s or the 1950s or the 1960s or the 1970s or the '80s or the '90s. We're recognizing preexisting tribes. So that's how we're looking at things in terms of — and that's something that we've applied consistently through the process in terms of, you know, we can recognize bands if they satisfy the seven criteria.

STEPHEN SIMPSON: The definition of tribe or Indian tribe in the current regulations and a tribe in the proposed regulations includes band, village, community, pueblo, and tribe, so bands are included under the definitions of tribe.

ELMER KNOX: Yeah, because when you go back into it, the Grand River Bands were made into a tribe.
STEPHEN SIMPSON: Right.

ELMER KNOX: Bands are families. So you have to have a continuous relationship with them. Okay. Thank you.

LARRY ROBERTS: Thank you.

TASHINA PERRY: Bousho. My name is Tashina Perry. I'm from the Sandy Lake Band of Ojibwe. I just kind of want to -- I don't really have as many questions as I just want to talk about, you know, what's been said and my position on everything.

Once the -- what do you call it, the phase approach starts, how long is it exactly going to take to become federally recognized or restored because, you know, we don't want to die waiting. I'm 25 years old and not enrolled anywhere, and we've been working on this since the '70s, since before bingos and before casinos. And how long is it exactly going to take? If there's only been 17 tribes recognized in that 40-year period, that's not very many to me and 30 were told no.

LARRY ROBERTS: Sure. So -- and my colleagues here can correct me if I'm wrong, but the proposed rule does set forth various
timelines for review, and so our hope is that
with a phased approach, that we're going to be
able to make more timely decisions, but we're
also going to have -- by starting it with the
complete application itself, because I think
a lot of times what we don't have is a complete
application before us, and so, you know, our
goal is to get decisions out as quickly as we
can. We have to have enough time to review them
on the merits. I don't think we've done an
analysis in terms of how much time would be
saved under the proposed rule. We have done an
analysis of how much paperwork would be saved
under the proposed rule, which is in your
materials here, but it's literally thousands of
hours of work on behalf of the Department and
the petitioner and third parties to maintain
this rigorous process but not have it overly
onerous. And so, you know, we haven't done an
analysis of how quickly the entire process will
take, but we have done an analysis of the
reduced burden of hours that it should take on a
petitioner and the Department, thousands of
hours, and that's detailed in this document
here, this Federal Register notice that's in
your packets of materials.

TASHINA PERRY: All right. When will the proposed final be?

LARRY ROBERTS: So the final rule is -- good question. Right now the comment period ends at August 1st, and so how quickly we move forward with the final rule will depend on the number of comments we get. We'll have to go through all those comments. You know, you guys are here investing your own time. You want us to consider your comments, so we've got to make sure that we consider those comments and go through them. So it's hard to say exactly how long it will take. It is a priority for the administration. It is a priority for the assistant secretary and Secretary Jewell that we move forward with this process, and so -- but I can't sit here today and say it will be two months or four months. I have no idea how long it will take before we publish it in the final rule.

TASHINA PERRY: Okay. Yeah, that's one of my biggest concern, is how long the whole process is actually going to take because, I mean, by the time we get through
everything, everyone is going to be enrolled in other tribes or married elsewhere, you know.

LARRY ROBERTS: And the other thing is if there are petitioners out there that want to submit an application now under the existing rules, there's nothing that prohibits them from doing so. So, for example, last year during our public meetings and consultations, I do recall someone saying, Well, I'm petitioner number -- and I'm making this up, but, you know, I'm petitioner number 157, for example, and I'm waiting to submit my application, and I'm waiting for you guys to finish the 156 before me, so let me know when my number is up. Sort of like when you go to the bakery or something, right?

And so we had to explain that the process -- the current process doesn't work that way. The current process assigns a petitioner a number, and that's triggered by the letter of intent. Petitioners are free to then submit an application under the process. They don't have to wait until we've decided all of those other petitions because a lot of times what we'll have is a letter of intent and we won't have the
materials behind that.

So just while we're going through this rulemaking process now, it's not -- our current process is still functioning. I think you heard from some of the other folks that commented this morning that they're actively being considered in the process.

TASHINA PERRY: Yeah.

LARRY ROBERTS: So --

TASHINA PERRY: Okay. That answered my question. Thank you.

LARRY ROBERTS: Thanks.

RON YOB: Ron Yob, Grand River Bands of Ottawa Indians. I keep thinking of other little questions.

When these proposed rules go into effect, my question, I guess, is the staff at the OFA, will they continue to be the -- I don't want to mention names, but will they continue -- it seems like their roles are going to change or their expertise needs to be different or will they just be a continuation of the people that are operating under the old rules?

LARRY ROBERTS: Yeah, we're not changing staff. The Office of Federal
Acknowledgment will remain involved, and in the proposed rule, you know, to a large extent we haven't changed their role. They're going to be applying the criteria, but we're still, you know -- I think you're very familiar with the process, and so, you know, there's -- I know that petitioners typically have to engage a genealogist, they typically have to engage a historian, they typically have to engage an anthropologist. None of that is changing with the proposed rule, and while these criteria are being changed to some extent, the changes to a large extent are either intended to provide consistency across our decisions that we've made in the past or to provide consistency with federal policy or federal law.

RON YOB: Okay. Miigwetch.

FRANK ETTAWAGESHIK: Frank Ettawageshik again. I talked briefly in one of my previous comments about the access to different programs and to different issues. I talked a little about the United Nations declaration and about -- what I didn't talk about is that the federal recognition process specifically sets up a -- there's a list published of the federally
recognized tribes, but many states have state
recognition processes, and they vary from state
to state, and those -- there are a number of
federal statutes that make programs available
under those statutes, available to federal or
state-recognized tribes, and so there are --
while the Bureau of Indian Affairs and Indian
Health Service don't recognize those in terms of
direct funding, many of the other programs do.
So there are state-recognized tribes, for
instance, that have access to the Department of
Justice programs, to HUD programs, to several
other places that have successfully run quite
large operations under these.

And so one of the things that we looked at,
and this is the specific wording that I think
needs to be noted, and this is -- it's a
recommendation to eliminate the phrase "for
purposes of federal law." In 83.2 the language
should be changed to take into account that
non-BIA listed tribes are considered Indian
tribes under some federal statutes. This
provision is really meant to clarify that tribes
recognized through the federal acknowledgment
process are eligible to be placed on the
Federally Recognized Tribes List Act, 108 §471. Therefore, the language "for purposes of federal law" should be changed to "for purposes of establishing a government-to-government relationship."

We ran into some similar issues in the -- when we were working on access to eagle fathers, for instance, when the Morton Policy, which has been around for a long time, did not mention federally recognized tribes but it mentioned Indians and that state-recognized tribes and some non-recognized tribes that are clearly Indian but are not in states where they have state-recognized -- state processes and these tribes that are not yet through the federal acknowledgment process, they have ceremonies in which they utilize eagle feathers, they have -- there are other sacred objects, but particularly the eagle feather policy. Under the Morton Policy which exists, which is still the policy for -- you know, for interior, it's not specific to federally recognized tribes.

The Department of Justice recently came out with a new definition which they said in its initial when they started that it was going to
be for -- it was merely going to have a
Department of Justice program that paralleled
the Morton Policy, and yet the language in it
specifically says federally recognized.

And so while I helped worked on that, worked
on those points, I think that -- and we
certainly applaud the Department of Justice for
doing this policy. It was long overdue, and it
was a good thing that they did it. I was one of
the ones who brought into that discussion the
fact that there were state-recognized tribes and
also brought in the UN declaration that
indigenous people should have access to their
sacred objects, and so that's the spirit in
which we're making this recommendation for
specific change in the language. This is one of
the many specific changes that we would be
proposing that will be in writing when we send
them in. Thank you.

ROCHELLE ETTAWAGESHIK: My name is
Rochelle Ettawageshik, and I just have a
question on your membership criteria, and I'm
just kind of curious. The part that says the
year 2010 was chosen because four years have
passed since then, since -- so I'm just trying
to understand what that means, and since then, what does that mean, so -- I'm curious about that.

LARRY ROBERTS: So I think generally we had to -- we had heard comments at other public meetings and tribal consultations about the loss of members from petitioning groups of federally recognized tribes, and so, you know, I think we had to propose some sort of date in terms of how to address that situation, and so as we said here in the spreadsheet, ideally, you know, under an ideal process, a final decision would be issued within at least four years, and so that's something that -- you know, that's why we put out the proposed rule. We want comment on it. If folks think it should be a longer period of time or a shorter period of time or whether that provision shouldn't be changed at all, that's what we need to hear, but I think that's sort of the rationale.

ROCHELLE ETTAWAGESHIK: Yeah. My opinion, I think it should be a shorter period of time. I don't know why 2010 was selected, but I just think of, you know, I have grandchildren that are not able to join and of
tribes that would be federally recognized, and I have children as well, and I would like to see that made more current in, you know, either 2014, 2015 to give those children time to make an application for citizenship in a tribe that is going to become -- will become federally recognized, because it still may take a number of years for them to become federally recognized.

LARRY ROBERTS: So we're not trying to determine tribal membership in any way, shape, or form in that criterion and that date. What that date is triggered to is, I think, along the lines of what you've said. So let's say that there is a petitioner that has a thousand members.

ROCHELLE ETTAWAGESHIK: Sure.

LARRY ROBERTS: And 50 of those members are eligible for enrollment in both federally recognized tribes and the petitioner. What this date -- this 2010 isn't to say you need to -- you, individual member, need to decide your citizenship by that date. What it's intended to say is if the petitioner has sent in a letter of intent -- right, it is a letter of
intent -- by 2010, that regardless of how those members decide as to, let's say, 2012, 2013, 2014, let's say for whatever reason they decide for tuition purposes that they want to enroll in another federally recognized tribe --

ROCHELLE ETTAWAGESHIK: Sure. Right.

LARRY ROBERTS: -- we're not going to hold that against the petitioner itself because they've already submitted an application by -- or a letter of intent by 2010. So whatever those members decide to do after -- during that time period is really up to them, but we're not going to -- under the current regulation, I think that there is a concern that those members making those decisions may be held against that petitioner, and so we're trying to avoid that because our process takes so much time, and so all that's doing is basically saying if you've sent in a letter of intent by 2010 and let's say your enrollment was X at that period of time and you lose membership because our process is taking so long, we're not going to hold that against you --

ROCHELLE ETTAWAGESHIK: Ah, okay.

LARRY ROBERTS: -- as you're going
through the process, and we're not trying to
determine what their membership is or whether
their citizens are going to reenroll with that
tribe after they're federally recognized.
That's not touching upon that issue at all.
That's not limiting that in any way, shape, or
form.

ROCHELLE ETTAWAGESHIK: I see.
You're saying that it's -- if I'm understanding
you correctly, you're saying that it's just a
matter for your ability to understand where
your -- where the membership is, the citizenship
of the tribe at that point in time?

LARRY ROBERTS: A little bit. And so
we've heard from some petitioners that say, Hey,
you know, your process is taking so long, we're
losing our --

ROCHELLE ETTAWAGESHIK: Members.

LARRY ROBERTS: -- we're losing our
citizens because you guys are taking so long.

ROCHELLE ETTAWAGESHIK: Right.

LARRY ROBERTS: And that's going to
hurt us under some of these criteria.

ROCHELLE ETTAWAGESHIK: In the long
run.
LARRY ROBERTS: And what we're saying is we're not going to hold that against you if you've submitted a letter of intent by 2010 just because our process takes so long.

ROCHELLE ETTAWAGESHIK: Okay. And if those tribes have submitted a letter of intent by 2010 and they've lost their members -- some members from that, that will not be held against them, those members?

LARRY ROBERTS: Exactly, or that petitioner.

ROCHELLE ETTAWAGESHIK: Or that petitioner. Okay. Well, thank you so much. I understand that.

LARRY ROBERTS: Okay. Thanks. Well, this is the last chance, I guess, for comments. If everyone's had a chance to speak that wants to say so, that's great. If you still want to make comments, I encourage you to do so now, otherwise we'll end this session early.

We thank you all for your time. Is there anyone else that wants to make any final comments?

(No response.)

LARRY ROBERTS: Okay. Well, thank
you all for attending today, and I hope everyone has safe travels home.

(Concluded at 11:07 a.m.)
STATE OF WISCONSIN   
COUNTY OF BROWN   

I, PAULA HUETTENRAUCH, a Notary Public and Registered Professional Reporter and Registered Merit Reporter and Certified Realtime Reporter in and for the State of Wisconsin, do hereby certify that the foregoing proceedings were taken at said time and place and is a true and accurate transcript of my original machine shorthand notes.

That the appearances were as noted initially.

That said witness was first duly sworn/affirmed to testify the truth, the whole truth and nothing but the truth relative to said cause.

Dated at Green Bay, Wisconsin This 30th day of July, 2014.

______________________________
PAULA HUETTENRAUCH
Registered Professional Reporter
Registered Merit Reporter
Certified Realtime Reporter
Notary Public, State of Wisconsin
My commission expires 9-13-15 (fc)