

**STATEMENT OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
FOR THE OVERSIGHT HEARING
ON THE
FEDERAL ACKNOWLEDGMENT PROCESS
April 24, 2008**

Mr. Chairman and Members of the Committee, I am submitting the Administration's statement on the process that the Federal Government follows when it receives a petition from a group seeking federal acknowledgment as an Indian tribe under 25 C.F.R. Part 83 and changes we are undertaking to expedite this process.

Implications of Federal Acknowledgment

The acknowledgment of the continued existence of another sovereign entity is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables that sovereign entity to participate in Federal programs for Indian tribes and acknowledges a government-to-government relationship between an Indian tribe and the United States.

These decisions have significant impacts on the petitioning group, Tribes and the surrounding communities, and Federal, state, and local governments. Acknowledgment carries with it certain privileges and immunities, including a government-to-government relationship with the federal government and partial exemptions from state and local government jurisdictions, and the ability of newly acknowledged Indian tribes to undertake certain economic opportunities.

Newly acknowledged Indian tribes are eligible to receive Federal health and education services for its members, to have the United States take land into trust that will not be subject to state taxation or jurisdiction, and to operate a gaming facility under the Indian Gaming Regulatory Act once it has met the conditions of that Act.

Background of the Federal Acknowledgment Process

The Federal acknowledgment process set forth in 25 C.F.R. Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision on whether to acknowledge a petitioner's government-to-government relationship with the United States. The regulations require groups to establish that they have had a substantially continuous tribal existence and have functioned as autonomous entities throughout history until the present. Under the Department's regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

- (a) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900;

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

A criterion is considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion. A petitioner must satisfy all seven of the mandatory criteria in order for the Department to acknowledge the continued tribal existence of a group as an Indian tribe.

The Federal acknowledgment process is implemented by the Office of Federal Acknowledgment (OFA). OFA is currently staffed with a director, a secretary, three anthropologists, three genealogists, and three historians. A team composed of one professional from each of the three disciplines reviews each petition. Additionally, OFA has a contract that provides for three research assistants and three records management/Freedom of Information Act specialists, as well as one Federal acknowledgment specialist and one computer programmer for the Federal Acknowledgment Information Resource (FAIR) database system.

OFA's current workload consists of six petitions on active consideration and ten fully documented petitions that are ready, waiting for active consideration. OFA describes its workload according to when an application is ready for review and when it makes a proposed or final determination.

Improvements to the Federal Recognition Process

The Department has taken several actions to expedite and clarify the Federal acknowledgment process. Some of these required changes to internal workload processes to eliminate backlogs and delays and some will require amendments to the regulations.

Since the last hearing before this Committee on Federal Acknowledgment in September 2007, the Department has made several decisions on petitions.

- Around the time of the last hearing, the Department's final determination to acknowledge the Mashpee Wampanoag Tribe had just become final and effective for the Department.
- In October 2007, the Department made a final determination not to acknowledge the St. Francis/Sokoki Band of Abenakis of Vermont. This determination became final and effective for the Department on October 1, 2007.

- On November 26, 2007, the Department issued two proposed findings for the Juaneno Band of Mission Indians, Achachemen Nation (Petitioner #84A), and the Juaneno Band of Mission Indians (Petitioner #84B) and published notice on December 3, 2007, starting 180-day comment periods for both of these California petitioners and interested parties.
- On January 28, 2008, the final determinations to not to acknowledge the Nipmuc Nation (Hassanamisco Band) and the Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians of Massachusetts became final and effective for the Department.
- On March 12, 2008, the Department issued a negative final determination on the Steilacoom Tribe of Indians.
- The Department just conducted two day-long formal technical assistance meetings on April 17 and 18, 2008, for the Juaneno Petitioners #84A and #84B.

OFA has instituted a change in its review of a documented petition in order to help speed up the review process. We have a genealogist review the petition first, followed by the historian and anthropologist. The genealogist's advance work, prior to the petition going on the "active" list, prepares the way for the other professionals during the active review process.

We revised the FAIR computer database. FAIR provides OFA researchers with immediate access to the records, and the revised version speeds up the indexing of documents and allows for more data review capabilities, allowing OFA researchers to make efficient use of their time.

OFA modified its contract to include a computer programmer to complete and to maintain FAIR and to design the final version of FAIR 2.0 to allow for electronic redaction of documents under the Freedom of Information and Privacy Acts. In addition, OFA has started the process to purchase a heavy duty scanner, new computers, printers, and software for faster scanning and work.

The OFA is revising its "Guidelines for Petitioners" and the "Guidelines for Petitioner Researchers." These guidelines will assist petitioners, interested parties, and researchers to better understand what the Department expects and what the regulations require in order to provide more clarity in submissions. Better prepared submissions will speed up the evaluations and prevent potential deficiencies in the petitions.

In the "Guidelines for Researchers," OFA will provide a recommended format for petitioners to use to point to the specific evidence in their submission that meets the criteria for specific time periods. OFA also will recommend that petitioners present their genealogies in a common format used by genealogists (GEDCOM) and provide membership lists in an electronic database.

Our goal is to continue to improve the process so that all groups seeking acknowledgment can be processed and completed within a set timeframe. We are considering various ideas for improving the Federal acknowledgment system such as:

- Recommending a waiver of the regulations to move to the front of the "Ready, Waiting for Active Consideration" list groups that can show residence and association on a state Indian reservation continuously for the past 100 years or groups that voted on the Indian Reorganization Act (IRA) in 1934, if the groups appear to have met subsections (e), (t), and (g) of 25 C.F.R. § 83.7.

- Limiting the number of technical assistance reviews and imposing a time period for petitioner response to a technical assistance review letter to move petitions along faster.
- Creating more concise decision documents to speed the process and improve the public's ability to understand the decision.
- Issuing negative proposed findings or final determinations based on a single criterion which would speed work and maximize use of researcher time.
- Clarifying the "first sustained contact" provision of 25 C.F.R. § 83.7(b) & (c) to ease the burden on petitioners and reduce time-consuming research into colonial histories.
- Hiring additional professional researchers.
- Revising the regulations to provide for a sunset provision of 15 years for the Federal acknowledgment process. This 15-year sunset provision would include deadlines for: (1) groups to submit letters of intent, (2) petitioners to complete their documented petitions, (3) the Department to issue technical assistance letters, (4) petitioning groups to respond to technical assistance review letters, (5) the Department to issue proposed findings, (6) the Department to provide comment and response periods, and (7) the Department to issue final determinations. This 15-year sunset provision would not include the post-final determination reconsideration process before the Interior Board of Indian Appeals or litigation under the Administrative Procedure Act.

Thank you for the opportunity to provide my statement on the Federal acknowledgment process. I will be happy to answer any questions the Committee may have.