

Comments on the Procedural Changes to 25 CFR 83

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Petitioner No. 32

Petitioner Status: Currently on Active Consideration awaiting preliminary finding now in 4th Extension from the Office of Federal Acknowledgement until 3 January 2014, following a suspension for Administrative Problems from the Assistant Secretary and Solicitor General's lack of review.

General Comment:

What I notice in this regulatory change is the lack of the Assistant Secretary's involvement throughout the whole of this process. While the Office of Federal Acknowledgement is responsible for looking at evidence and issuing recommendations, there needs to be a checks and balance system in place that oversees the OFA interpretation of data and the fair and impartial treatment of each Petitioners before any type of determination is issued. Maybe this could be accomplished in the Deputy Assistant Director's office or maybe I am misunderstanding this draft and that is already being accomplished.

I am adding this comment because of the volatile nature of the public meeting in Marksville, LA and the comments and accusations that were made by an assortment of individuals, petitioners, etc. Bigotry and bias is never a good thing, particularly when the Office in question is where these comments are being directed. I would like to add that of the many people in attendance at this public meeting, I represented the one petitioner on Active Consideration that truly needed a Tribal Consultation. Rather, I was told to attend the public meeting because the federal Tribes did not want non-federal Tribes in their presence. I did appreciate the consideration of the people giving this briefing and am pleased to have the chance to comment.

We have elected to stay in the current process for the moment because there is no real time line on when this procedure will be finalized. There are many steps involved. Because of the elders in the Tribe who have struggled so long for federal recognition, the Tribal Council did not believe that staying on suspension until such time as there is a better viable option was possible.

General Comments on the Process:

A petitioner for federal recognition should have basic information provided into the OFA to be considered a valid petitioner. This documentation should include, as a minimum:

- a) a Tribal Roll;
- b) genealogical data or chart on each member listed on the Tribal Roll;
- c) an historical summary of the petitioner with general evidence to support the criteria established in this process;
- d) a list of Officers and Tribal Council Members, a physical address, a point-of-contact for correspondence and a Tribal Council resolution to support the point-of-contact and the filing of the petitioning data.

2. The current list of Letter of Intent petitioners should be officially notified of the above requirement when this new procedure is effective. They should be given 60 days to comply with the agency's notification or removed from the list of petitioners if there is no response.

The idea that there are hundreds of petitioners to process by the Office of Federal Acknowledgement is deceiving to external parties involved or interested in this process –both Federally Recognized Tribes and Public Agencies.

3. Petitioners who have racial identity confirmed by the Department of the Interior, Bureau of Indian Affairs through land claim settlement or other such decisions should not be required to furnish new and improved genealogical studies. Such petitioners have already proven they are Indian. The petitioning effort becomes solely a question of community and government based on evidence furnished and should be treated as such.

4. A sovereign relationship is between a petitioning Tribe and the agent of the U.S. Government. Tribes that are already federally recognized all over the United States have no reason to offer comments nor be consulted on determinations being made by the Assistant Secretary of the BIA. At most, comments should only be solicited from federal Tribes within the same state as the Petitioner and even then, fiscal interests and impact should be taken into account as these interests lead to their own issues.

5. There should be a finite date established for Petitioner to seek out the administrative process for federal recognition. The process for recognition of new Indian Tribes should not be never-ending. We have been in this process since 1977 and had a petition filed into the BIA at that time. The IGRA of 1988 changed the fiscal impact and earning potentials of federal Tribes and led to a series of new petitioners filing letters of intent with questionable resources. It changed the status quo.

This rule needs to *set an ending date* for accepting petitions, like 1 year from the date the new procedure takes effect. If by some chance a new Tribe appears, there is always Congress and the Federal Courts.

6. Failure to meet every aspect of every criterion should not be a reason for a negative finding. When there are local or states laws that created mitigating circumstances that are directly related to a petitioner's inability to meet each criterion, these laws, actions, data destruction, or Acts of God, should be taken into account and a waiver put into place.

This also becomes important in the idea that State recognition should be a mandatory for federal recognition. Florida has no Indian Commission and did not have Tribes on State Statute 285 until 1957 when the Seminole Tribe was federally recognized. It required a State Statute be created. The state recognition of Petitioner 32 in 1986 could not be codified because there was no Indian Commission for Oversight as is written on the notes passed between the State Senate and Legislative branches during this recognition effort. A concurrent resolution for the state recognition was eventually issued – it was all that they could do at the time. This puts the recognition at conflict in the separate branches of government.

Comments on the Preliminary Draft by Part

Part 83.5

(d) A list of who the Interested and/or Informed Parties are should be provided to the Petitioner and should be cited at the bottom of any correspondence issued by the Office of Federal Acknowledgement. The listing of Interested Parties can change over the length of this process. The Petitioner should always be notified of who is interested and informed of extensions, suspensions, or any other actions taken by the Office of Federal Acknowledgment.

83.6

(b) Changing membership requirements should not cited as a reason for the denial of a Petitioning group. Membership is required to be certified by the Tribal Council when the petitioner is moved to Active Consideration. That is the Roll that should be used to judge a petitioner. Memberships change and can be affected by outside elements, such as the involvement of the State in a Tribe's formalization or the Recognition process itself. The rules from the State often do not coincide with the Federal policies that are established for determining a separate and distinct community.

83.7

(a) Thank you for deleting this criterion. For communities that were racially discriminated against to the point of being eliminated by state or local laws, particularly in the certain geographic areas of the Southeast, this is an impossible criterion. It has harmed many Petitioners.

(b) Please furnish some type of guideline or definition for “substantial interruption”.

(2) Geographic residency or basic communication is important to define a community. However, in an information age such as we are now in and an English speaking society, marriage patterns and Language percentages are highly questionable.

(c) It is important that the sentence 'case-by-case' basis be included in this section and that efforts be made to understand how business has been conducted inside the Petitioner's community. Leadership can be from elections, or it can be implied simply by virtue of the actions that are taken to protect or support members of a community.

(e) (1) (v)

Isn't this section simply replacing part of the section of external identification that has been such a problem? When Tribes are not allowed to racially exist, how would an Anthropologist or Historian know to find them to study them, much less base an opinion on a lack of evidence like they want to see? Likewise, if an Anthropologist or Historian happened to find a group of Indians but didn't travel 90 miles further South and find another one just like it, it does not mean the 2nd group did not exist and that has been how this type of evidence has been interpreted in the past. This needs to be carefully considered. It is depending again on historical records that may – because of racial law – not exist. Case by case needs to apply on this.

83.9

(b) How many years constitute an historical relationship, particularly if a removal has been involved? And what are the valid reasons that a recognized Tribe should have a potential interest in a Petitioner, other than a Petitioner being a splinter group? The reasons for Petitioner interest should be listed in this section.

Likewise, it should not be the OFA's responsibility to decide if a federal Tribe has an interest in a Petitioner. If a federal Tribe is interested in a Petitioner, it should be their Tribal Council's responsibility to notify the OFA and cite this potential interest - particularly since the OFA will give public notice of a petition filed in the Newspapers. When the OFA receives such an 'interest letter', notification should be sent to the Petitioner listing the Tribe and reason for the interest. That way, the system is actually transparent. The OFA was established to have a working relationship with the Petitioner – not Tribes that are already successfully federally recognized.

(c) The OFA should notify the Petitioner of what newspaper(s) they have selected to publish the notice of receipt of a petition and send a copy to the Petitioner.

83.10

(a) The factual and/or legal arguments from interested parties should be furnished to the petitioner to ensure:

1. The argument of the interested party is clearly understood by the petitioner;
2. The Petitioner is given the opportunity to prepare documentation that rebuts the information submitted.

2. The OFA should be notifying the Petitioner where they are researching and what questions have been raised to force them to analyze furnished evidence. This way, the Petitioner can be working on the information required to respond to 'furnished evidence'.

(d)

The petitioner should have an opportunity to have a preliminary meeting with the persons attached to this petitioning effort. The persons attached to this effort should call the Petitioner when questions arise to enable the Petitioner the opportunity to answer the question - -not work in silence and wait until a determination has been filed.

(e) 1

If a Petitioner is suspended for 'Administrative Problems" that are not the fault of the Petitioner, the Petitioner should resume the same place they had when the agency decided to suspend them. Whichever Petitioner was moved up during the administrative suspension should be put back to where they were before the Petitioner was suspended for Agency Issues.

(j)

1. Interested parties should have 60 days to submit arguments if the Petitioner is only allowed 60 days to respond to them. Or, give the interested parts 180 days and give the same amount of time to the Petitioner. An extension should not be necessary nor allowed.

2. Interested and informed parties should provide a copy of arguments to the OFA that the OFA will then forward to the Petitioner – not the interested party. The OFA is the Office responsible – not an informed party. This protects the Petitioners' rights and ensures the Petitioner will get a copy of the Arguments

(k)

The Petitioner should be allowed the same amount of time to respond as the interested and informed parties are given to file their remarks. The petitioner should also be entitled to a discretionary extension depending on how many parties have initiated comments.

Additional Comments:

Delete the IBIA Review: Some sort of internal appeal should still be considered and made available to the Petitioner before requiring the Petitioner to take the matter to

Federal Court. It is not efficient to have no method of appeal to possibly overturn a negative finding and instead, tie up the Agency in Federal Court.

Which version of Part 83 will Apply: The preponderance of evidence initiating a completely new review under these rules should be determined by the Assistant Secretary of the BIA or someone outside the OFA - who was the Office that initiated the original negative findings. There are petitioners who should be reviewed again under these rules. However, they should be placed at the end of the list, after the ones who have been waiting for years for the opportunity just to be reviewed.

The Office of Federal Acknowledgement: There was a time in the many years that we have been in this process that the OFA had an open door policy and worked to assist petitioners, particularly poor petitioners. If the full discretion of a petitioner's fate is going to rest in this Office, the Petitioner and the OFA should not be at odds with one another. Communication has to increase. If a Tribe is on Active Consideration, the Office should be working extensively with the Tribe in question. That is not what is happening with the Petitioner. Rather, we are waiting for a preliminary determination that we are not able to address at all because no one has called and asked for explanations, clarification, additional paper, etc. We look forward to actively working with the OFA. We would like to have that opportunity. Working through questions automatically serves to streamline a process.

Petitioning Forms: Some forms could be used. However, I do not know how you can limit pages or types of evidence. Every Tribe's history is different. Some have limited historical documents, others are located in States that set up reservations and offices that served Indian people.

Fraudulent Documents: Petitioners who have destroyed documents or have altered official documents should be warned to withdraw the documents in question or prosecuted under penalty of law.

Thank you for your time.

Ann Tucker