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DEPARTMENT OF THE INTERIOR
AT THE HEARING BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 611, THE INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT OF 1999

May 24, 2000

Good afternoon, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present our views on S. 611, the Indian Federal Recognition Administrative Procedures Act of 1999. The Administration shares the Committee's concern for providing a fair and effective acknowledgment process. The Administration supports the efforts to improve the acknowledgment process which is embodied in S. 611. However, the Administration cannot support S. 611 as written without amendments which I have included within my statement.

BACKGROUND

Federal acknowledgment entitles those tribal entities to the immunities and privileges available to federally recognized tribes by virtue of a government-to-government relationship with the United States of America, as well as to the responsibilities, powers, limitations, and obligations of those tribes. Federal acknowledgment grants tribes protections, services, and monetary benefits from the Federal Government.

In 1978, the Branch of Acknowledgment and Research (BAR) was established under the Bureau of Indian Affairs (BIA) for the specific purpose of reviewing and evaluating petitions for acknowledgment, and providing reports and recommendations to the Assistant Secretary for Indian Affairs (AS-IA). For the Department, the AS-IA makes decisions on acknowledgment petitions based on the facts of each case. The BAR staff works with petitioning groups which are seeking to be acknowledged under 25 CFR Part 83, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*.

RECENT DEVELOPMENTS

The Administration appreciates the work done by you and your staff to ensure a timely, fair, and objective process takes place. The Department has come under criticism over the past several years. We are committed to working with the Committee to improve the acknowledgment process. However, I must stress that many external factors affect the overall acknowledgment process. Responding to increasing numbers of Freedom of Information Act (FOIA) requests, preparing voluminous administrative records for appeals, answering questions concerning pending decisions before the Interior Board of Indian Appeals, and preparing the administrative records for litigation in Federal Court all put additional demands on our staff. Yet, we are continuing to look at ways to minimize delays, and reduce the length of time it takes to process acknowledgment cases within the

framework of the existing regulations.

In August 1999, the National Academy of Public Administration presented its report outlining recommendations on ways of improving the BIA administrative functions and services. In line with this report and to demonstrate our commitment, we changed certain internal procedures for processing petitions submitted by groups requesting Federal acknowledgment as an Indian tribe, and clarified other procedures. We published a directive in the February 11, 2000, Federal Register which makes administrative procedural changes to the process to alleviate the current delays in decisions. These revised procedures still work within the framework of 25 CFR Part 83, and do not change the acknowledgment regulations.

Let me tell you about some of the achievements we have made in the past 10 months. We are producing more decisions without increasing staff and we are pleased to report the following four final determinations: (1) acknowledgment of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan (eff. 8/23/99); (2) acknowledgment of the Snoqualmie Indian Tribe in Washington (eff. 10/6/99); (3) denial of acknowledgment of the Mobile-Washington County Band of Choctaw in Alabama (eff. 11/26/99); (4) denial of acknowledgment of the Yuchi Tribal Organization, Inc., in Oklahoma (eff. 3/21/2000). In addition, we published a Final Determination to acknowledge the Cowlitz Tribe of Indians in Washington on February 18, 2000, in the Federal Register.

Three proposed findings were published in the Federal Register as follows: the Steilacoom Tribe from the State of Washington on February 7, 2000, the Eastern Pequot Indians of Connecticut on March 31, 2000, and the Paucatuck Eastern Pequot Indians of Connecticut on March 31, 2000. We anticipate the publication of a proposed finding for the Little Shell Tribe of Chippewa Indians of Montana later this month.

Currently, the BIA is preparing four recommendations. We anticipate that final determinations for the Chinook and Duwamish petitioners and proposed findings for the two Nipmuck petitions from Massachusetts, will be published this summer. At the same time, the Department has been working with the terminated tribes of California seeking restoration.

AREAS SUPPORTED WITHIN S. 611

I would like to take this opportunity to highlight certain sections of S. 611 that we support. First, S. 611 establishes the criteria and standards for acknowledgment through legislation, rather than through regulation. The Administration supports this change as a means of giving clear Congressional direction as to what the criteria for acknowledgment should be.

Second, S. 611 provides a sunset rule. We have supported such a provision in the past. To implement this rule, separate deadlines for filing letters of intent and for filing documented petitions should be provided for in S. 611. The Commission on Indian Recognition (Commission) would then be able to define its anticipated workload, and determine whether sufficient funds have been

authorized to handle what may likely be a very substantial work load within a 12-year limit. We submit that the Congress will want to carefully consider the time constraints established for the Commission, and provide the resources needed to: (1) handle the FOIA requests, (2) protect privacy records, and (3) provide administrative records to the courts in case of appeals and other litigation.

Third, we strongly support the provisions concerning assistance to petitioners and the authorization of appropriations commensurate with the work load, the sunset rule, and staffing considerations.

Finally, we support the idea that neither positive nor negative past acknowledgment decisions would be reopened.

CONCERNS

We object to the language within S. 611 that would remove the authority of the Department to acknowledge tribes. Historically, the Department has had the authority and has the primary responsibility for maintaining the trust relationship with Indian tribes. The Government's expertise and institutional knowledge are housed within the Department. As I've stated earlier, we have made many improvements in the acknowledgment process. We believe this progress should continue.

S. 611 contains broad language which would exclude groups which were adjudicated by a court that were found not to be a tribe. We believe a blanket prohibition to be unnecessary and undesirable. We reference the acknowledgment of the Samish and Snoqualmie, who would not have been considered if the prohibition were in place.

We recommend additional provisions in S. 611 that would:

- Provide a detailed standard of proof as in the existing regulations (25 CFR 83.6 (d) and (e)), which mandate that a reasonable likelihood standard of proof be used;

- Allow for other evidence for previous acknowledgment besides that listed in the bill;

- Clarify the transfer of petitions currently on active consideration before the Department;

- Clarify the sunset rule. We recommend that the sunset rule should require a deadline for submitting a documented petition (see 5(d)), not just for a petition. In addition, after 12 years, neither the Department nor the Commission (which ceases to exist) has authority to acknowledge. We are concerned about cases where a court overturns a denial by the Commission;

- Clarify the Privacy Act protections and Freedom of Information Act exemptions when the Commission, a petitioner, or a concerned party uses or requests other tribes' rolls or membership lists;

- Provide a definition of the administrative record for purposes of judicial review;

- Clarify appeal rights. S. 611 limits a petitioner's appeal rights to 60 days, rather than the standard six years. At the same time, S. 611 does not limit the time for a third party to

challenge the decision to a parallel 60-day period;

- Clarify the section on appropriations. The current appropriations language accounts for 2001 to 2009, or only until the deadline for submitting a petition, not for the years remaining for the Commission to complete its work; and

- Delete section 4(e)(1)(A) which provides an excepted service appointment authority and administratively determined pay for the Commission staff. Such authorities are inappropriate for an organization which will exist for 12 years.

This concludes my prepared statement and I look forward to continuing our dialogue with the Committee on this issue. I will be happy to answer any questions the Committee may have.