Ms. Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action – Indian Affairs
1849 C Street, NW
MS 4141-MIB
Washington, DC 20240

Re: Discussion Draft Rule- 25 CFR 83

I Linda Marie Cox **support the letter of the Choctaw-Apache Community of Ebarb (petitioner #37) regarding proposed changes to the Federal Acknowledgement Process:**

The Choctaw-Apache Community of Ebarb (petitioner #37) welcomes many of the proposed changes to federal acknowledgment regulations. We appreciated the opportunity to participate in the productive public meeting at Marksville on August 6. We ask for additional clarification of certain proposed points in the preliminary discussion draft and offer comments on the as well as problems we have seen with interpretations of the regulations from 1978 to present.

The preliminary discussion draft correctly clarifies in §83.6(d)(1) that evidence must be viewed in the "light most favorable to petitioners." OFA policy suggests that there is a bright line between groups who are tribes and others; however, in reality there are many competing definitions of tribal existence. Critics have suggested that OFA clings to the most restrictive notions of tribe, a practice that seems to be rooted in fear of criticism more than sound conclusions. The canons of interpretation of federal Indian law and tribal sovereignty demand that ambiguities be resolved in favor of tribes, so the correct standard for OFA actions should also be to resolve ambiguities in favor of petitioners. In that light, we appreciate the modified 83.6(d)(1) requiring that evidence be viewed "in a light most favorable to the petitioner."

We agree with proposed changes to eliminate criteria (a), external observers identify the group as "Indian."By relying excessively on external characterization of petitioners, the OFA has privileged racial and racist folk beliefs regarding "Indianness." History has shown that people with African and Indian ancestry are less likely to be regarded by others as Indian than Indian people with equal amounts of white ancestry. Similarly, in the folk racial taxonomy of the U.S., being a Spanish-speaking community can lead to a group being conceptualized as "Mexican," which is seen as contradicting or excluding being "Indian." Such outsider misidentification of an Indian tribe should not be weighed against a tribe, but rather be considered as evidence supporting the petitioner's claim of being a "distinct" community.

OFA interpretations of "tribes which combined and functioned as a single autonomous political entity" have been overly stringent. In the past, OFA has interpreted "tribes which combined and functioned as a single autonomous political entity" in ways that led to illogical conclusions. The case of the Houma and related groups is illustrative. In its finding

regarding the Houma, OFA concluded that Houma founding ancestors were a group of accidental neighbors who happened to be Indian rather than a group who chose to live with each other because they could live as Indians together. The fact that they and their descendants stayed together and maintained an Indian community identity is certainly evidence of their intention to form a political and cultural community with one another. While most nations would prefer to have had a written Constitution to provide proof of their political community, historical contingencies mean that many communities did not. Previous OFA interpretations have not accepted documentation that a person or group of people is "Indian" as evidence of descent from a historical tribe or tribes. How can a *group* be Indian and not be descended from a tribe? It is true that federal recognition is rooted in indigenous political primacy (the acknowledgment that Indian nations' governments predated US), but Indian communities all over the US were comprised of individuals from a variety of tribes, people for whom the idea of "tribe" did not always have the same significance as contemporary people imagine (cf. James Merrill on the Catawbas, Richard White on the "little republics" of the pays d'en haut and James Harmon on the Puget Sound tribes). The OFA needs to adopt a more flexible interpretation regarding petitioners that formed in historical times through the combination of tribes and tribal fragments.

Tribal recognition is a federal obligation, not an entitlement program. As former head of the BIA Michael Anderson has said, tribal recognition is a federal obligation, not an entitlement program. In the Supreme Court's 1832 decision in *Worcester v. Georgia*, Chief Justice John Marshall wrote that tribal sovereignty is "not only acknowledged, but guaranteed by the United States…." Given this legal and ethical responsibility to guarantee tribal sovereignty, the US government is obligated to investigate whether some Indian nations' sovereignty is currently being violated by non-recognition. The regulations, as they are currently interpreted, passively wait for tribes to conduct the extensive research required to petition for acknowledgment on their own (or worse—actively prevent tribes from attaining acknowledgment).

Official OFA policy has specifically ordered its employees not to do research work to assist petitioning nations. This might speed up the notoriously slow rate at which it processes petitions, but it has the opposite effect of what criticisms of their speed intended [unclear]. Rather than attaining more attention for each petitioner's case from the federal government, this regulation results in less attention to each case. Research support and advice should be an ongoing obligation of the federal government for groups showing evidence of Indian ancestry, up until the moment of a final decision. Ongoing eligibility for such support could be tied to various progress markers, as grants typically are, in order to prevent abuse and waste while delivering much-needed support to tribes.

Potentially affected property owners and economic motivations for ensuring a tribe is never recognized should not have a louder voice than those who know a tribe's history and ethnology. If the FAP is supposed to be an objective, social-scientific process for making an ethnohistorical determination of whether a tribe exists or not, then there is no justification for considering potentially affected property or legal interests. "Interested parties" currently have the power to appeal recognition decisions, based not upon ethnographic or

historical facts but upon their supposed property interests. For this reason, we would like to see clarification regarding the deletion of § 83.11 "Independent review, reconsideration, and final action."
As soon as a proposed positive finding issues, a transition process should begin towards establishing federal services and government-to-government relations. A process should be initiated at the moment of a proposed positive finding to set up services for the tribe and establish or re-establish the intergovernmental relationship, rather than waiting up to six months, as stated in §83.12(d). Navigating the federal bureaucracy and federal Indian policy is no easy task, and the formalized process of advising and needs assessment should begin immediately to make it easier and faster for newly recognized tribes to access available services and protections. For this reason, 83.12(c) seems unnecessary and against the spirit of acknowledgment.

We look forward to the forthcoming "plain language," but to achieve effective public comment as required by law, the Department should explain reasons for the various proposed changes, rather than just having the proposed wording itself, in order to make implications clearer.

Some points need additional context or explanation for clarity. The changed regulations should clarify that AS-IA's role is to adjudicate a petition, not to act as an adversary party. The limit on pages in the petition should clearly exclude supporting documentation, and petitioners should be able to request additional pages for good cause shown.

The proposed expedited finding process established in preliminary discussion draft § 83.10 would help clear the backlog of petitions and direct OFA resources to more petitioners. For that reason we support the proposed changes.

Indigenous groups have survived in many forms, and it is important to nurture them where they persist. It bears repeating that tribes that have not been federally recognized are not always going to look exactly like tribes that have been federally recognized for hundreds of years, for a variety of reasons. We are not better or worse than federally recognized groups, just different. Yet we cherish our indigenous communities, and the federal government is legally and morally obligated to recognize our status as indigenous polities that have survived hundreds of years despite assimilationist pressures.

Please include these recommendations in any revisions of the Federal Acknowledgment Process.

Sincerely,

Linda Marie Cox