

**TESTIMONY
OF
R. LEE FLEMING
DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT
OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS
U.S. DEPARTMENT OF THE INTERIOR
AT THE HEARING
BEFORE THE
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON THE
FEDERAL ACKNOWLEDGMENT PROCESS**

March 31, 2004

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to speak on behalf of the Department of the Interior about the Federal acknowledgment process. My name is Lee Fleming and I am the Director of the Office of Federal Acknowledgment (OFA) within the Department's Office of the Assistant Secretary - Indian Affairs (AS-IA). OFA was formerly the Branch of Acknowledgment and Research (BAR), which was under the Bureau of Indian Affairs' Office of Tribal Services. The purpose of my testimony is to address what reforms are being made to improve the Department's Federal acknowledgment process, specifically what is being done to improve the consistency and reliability of the process and decisions, as recommended by the General Accounting Office (GAO).

BACKGROUND

The Federal Acknowledgment regulations, known as "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," 25 C.F.R. Part 83, govern the Department's administrative process for determining which groups are "Indian tribes" within the meaning of Federal law. A final determination that a group is an Indian tribe means, among other things, that it has continuously existed as a tribe, has inherent sovereignty, and is entitled to a government-to-government relationship with the United States. Tribal status is a political, not racial, classification. Whether to acknowledge tribal status is a decision taken seriously by the Department.

In recent years, legislation has been introduced almost annually to modify the criteria for acknowledgment of tribes or to remove the process from the Department. While some parties seek to change the administrative process by speeding it up, others believe that doing so will undermine the factual basis for the decisions. For example, 20 Attorneys General collectively stated their concern that quality in the review process should not be sacrificed in the name of expediency and that "all parties benefit from a careful and comprehensive review of the evidence on each petition."

WORKLOAD

OFA has a high volume of work. The current workload consists of nine petitions on active consideration and 13 fully documented petitions that are ready, waiting for active consideration. The administrative records for some of these documented petitions are in excess of 30,000 pages. There are 213 groups that have submitted only letters of intent or partial documentation.

These groups are not ready for evaluation and require technical assistance. There is one final determination under review at the Interior Board of Indian Appeals in response to a request for reconsideration. In addition, there are currently four lawsuits directly involving Federal acknowledgment or the Freedom of Information Act (FOIA) related to Federal acknowledgment.

GAO REPORT

The GAO investigated the “effectiveness and consistency of the tribal recognition process” in response to a request from several members of Congress, and issued its report in November 2001. The GAO report recommended that acknowledgment decisions be made more transparent and more timely. The GAO noted that the workload of the staff assigned to evaluate recognition decisions has increased while resources have declined.

In response to the GAO report, the AS-IA provided a strategic plan and needs assessment dated September 30, 2002, to GAO, OMB, and the pertinent Senate and House Committees under 31 U.S.C. 720. The AS-IA response to the GAO report is based on a commitment to the principle that acknowledgment decisions should continue to be based on fully documented records that have been carefully reviewed in accordance with regulatory standards and then made available to the public in a transparent and timely manner.

CURRENT IMPROVEMENTS

In response to the GAO report, all technical assistance review letters, proposed findings, final determinations, and reconsidered decisions of completed cases made under the regulations were electronically scanned and indexed and are now available on CD-ROM from the OFA. This CD will be updated, as necessary. Ready access to all prior decisions addresses both transparency and consistency in the decision making process.

Two vacancies within the OFA were filled, resulting in a professional research staff of three cultural anthropologists, three historians, and three genealogists. OFA's full time staff consists of one director, one secretary, and three professional research teams. A team composed of one professional from each of the disciplines is assigned to review and evaluate each petition. Congressional appropriations for FY 2003 and FY 2004 increased funding, allowing the hiring of two sets of contractors. The first set of contractors includes two FOIA specialists/records managers. The second set of contractors includes three research assistants who work with a computer database system; scanning and indexing the documents to help expedite the professional research staff evaluation of a case. Both sets of contractors assist in making the process more accessible to petitioners and interested parties, while increasing the productivity of the OFA researchers by freeing them of administrative duties.

A significant response by the Department to this GAO report has been the development and use of the Federal Acknowledgment Information Resource (FAIR), a computer database system that provides on-screen access to all the documents in the administrative record of a case. These are linked to entries of information extracted from them by OFA researchers. Documents are scanned and then the data is extracted, linked, and indexed to create a searchable administrative record. This system allows the OFA researchers to have immediate access to the records and allows them to make more efficient use of their time. This system also allows petitioning groups and interested parties, such as States and local governments, to have the record on CD and thus have “on screen” access to the administrative record and to any data entries made by the OFA researchers. This ready access to the record addresses both the GAO

report's recommendations that the decisions be made in a more transparent manner and that they be more timely. In fact, FAIR has been applauded by attorneys working for the towns in Connecticut related litigation.

We anticipate that the next generation of scanning for FAIR will allow electronic redaction of privacy information from the documents, which will save the Department a tremendous amount of time spent photocopying cases for interested parties or FOIA requests of these voluminously documented petitions. Such steps will further improve the acknowledgment process.

CONCLUSION

Thank you for the opportunity to testify about the Federal acknowledgment process and I will be happy to answer any questions you may have.