



## HIGHLIGHTS OF THE FINAL FEDERAL ACKNOWLEDGMENT RULE (25 CFR 83)

On June 29, 2015, the Department of the Interior (Department) released its final rule to reform the process for Federal acknowledgment (“Part 83”) criticized by many as “broken” and in need of reform. The final rule carries forward the standard of proof and seven mandatory criteria to maintain the substantive rigor and integrity of the Part 83 process. The final rule promotes fairness and consistent implementation by providing that prior decisions finding evidence or methodology sufficient to satisfy any particular criterion is sufficient to satisfy the criterion for a present petitioner. The final rule further promotes consistent application by establishing a uniform evaluation period of more than a century, from 1900 to the present, to satisfy tribal identification, community and political authority. The primary reforms implemented by the final rule are as follows:

- **IMPROVES TRANSPARENCY**

- Increases Public Access to Petitions for Federal Acknowledgment

Previously, petitions for acknowledgment and associated materials were not readily available to the public. The final rule makes all publicly available petition documents available on the Department’s website, allowing the public full access to information.

- Increases Notice of Petitions

Under the previous rule, Departmental notice was limited to the Governor and attorney general of the State in which the petitioner is located, as well as any potentially interested recognized tribe and petitioner. The final rule increases notice to include local governments. In addition, any other person or entity may request to receive notice and the Department will provide notice to them throughout the process.

- **IMPROVES TIMELINESS, EFFICIENCY AND FLEXIBILITY WHILE STRENGTHENING THE INTEGRITY OF THE CRITERIA.**

- Provides for expedited decisions

The final rule provides that the Department will issue an expedited denial if the group cannot demonstrate descent from a historic tribe, if the group is comprised primarily of individuals who are already members of a federally recognized tribe, if the group has been terminated, or if the group fails to provide its governing document. If the proposed finding is favorable and no substantive comments, with supportive evidence, are received from anyone, the proposed finding becomes final for the Department.

- Uniform evaluation start date for identification, community, and political authority

The previous rule imposed different documentary burdens by evaluating petitioners based on first sustained contact. The final rule implements a uniform date of 1900, which promotes efficiencies over the previous rule while still requiring over a century of documentation.

- Consistent baseline for criteria

The previous rule was criticized as inconsistent and unpredictable. The final rule promotes consistency by requiring that evidence or methodology that the Department has found sufficient to satisfy any particular criterion previously shall be sufficient to satisfy the criterion for a present petitioner. In other words, if a particular amount of evidence or a particular methodology was sufficient to satisfy a criterion in a decision made in 1980, 1990 or 2000, that baseline threshold remains the same for petitioners today.

- Specifies types of evidence that may satisfy the criteria

The final rule provides additional clarity by including types of evidence that may be considered under the process. For example, the final rule clarifies that documents concerning a state reservation may provide evidence of community and political authority, depending on the specific facts of a particular petition, but the existence of a state reservation would not by itself satisfy community or political authority. With regard to land held by the United States for a petitioner, the final rule makes clear that this constitutes previous federal acknowledgment under the existing regulations. Such a petitioner would continue to be required to satisfy the requirements for those groups that can demonstrate previous federal acknowledgment. The final rule also allows the Department to accept any and all evidence, such as the petitioner's own contemporaneous records, as evidence that the petitioner has been an Indian entity since 1900.

- **IMPROVES TRANSPARENCY AND INTEGRITY WITH HEARING BEFORE FINAL DECISION.**

The previous rule provided for limited reconsideration of a final determination to a petitioner or interested party. The final rule eliminates the limited reconsideration of a final decision and increases due process prior to the issuance of a final determination. Under the final rule, tribes, states, local governments and the public may comment and provide evidence on a proposed finding issued by OFA. If the proposed finding is negative, the petitioner may request a hearing before an administrative law judge (ALJ) to hear testimony and tribes, states, local governments and third parties may participate in that hearing. The ALJ issues a recommended decision after the hearing and the Assistant Secretary issues the final decision. The Assistant Secretary's final decision is subject to judicial review.

- **DOES NOT ALLOW FOR RE-PETITIONING**

Given the number of pending petitions as well as those that have not submitted complete petitions, the final rule does not allow re-petitioning. Any petitioner that was previously denied Federal acknowledgment under this process may not re-petition. This includes any petitioners that have reorganized or been renamed or that are wholly or primarily portions of groups that have been denied under these or previous acknowledgment regulations.

- **UTILIZES A SINGLE PROCESS**

In a separate policy statement, the Department explained that it would no longer accept requests for acknowledgment of groups outside of the Part 83 process. So long as the newly reformed Part 83 process is in effect and being utilized, it will serve as the sole administrative avenue for acknowledgment as a tribe.