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Tribal Consultation: Draft Revisions to Federal
Acknowledgment Regulations (25 CFR 83)

Afternoon Session
July 17, 2014

REPORTED BY:
PAULA HUETTENRAUCH, RMR, CRR
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Tribal Consultation
Draft Revisions to Federal Acknowledgment
Regulations (25 CFR 83)

Menominee Casino Resort
Keshena, Wisconsin
July 17, 2014

APPEARANCES:

LAWRENCE ROBERTS, Deputy Assistant
Secretary - Indian Affairs

STEPHEN SIMPSON, Office of the Solicitor -
Division of Indian Affairs

ELIZABETH APPEL, Office of Regulatory
Affairs - Indian Affairs

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TRANSCRIPT OF PROCEEDINGS

LARRY ROBERTS: Okay. So for purposes of consistency and my being consistent with the process as part of the consultations on this proposed rule, I'm going to just ask that everyone respect that this is a closed session with tribal leaders from federally recognized tribes and their staff, and so I'm just asking you all to respect that and, yes, hopefully -- please comment on the proposed rule itself. The comment period ends August 1st, and everything that is being said in both the public meetings and in the tribal consultations is being transcribed and will be available on our website. So we really appreciate that, and we really appreciate everybody respecting the executive order that's in place on tribal consultation.

Okay. So before we get started, I'm going to ask the chairwoman to provide a --

(Discussion held off the record.)

LARRY ROBERTS: Chairwoman?

LAURIE BOIVIN: So good afternoon.

Some of you were here in this morning's session, so you may hear a repeat of some of the things

1 said. I'd like to welcome you to the Land of
2 Menominee, and as we always do, we like to start
3 all of our sessions in the way of a prayer. So
4 at this time I'm going to ask Dave Grignon to
5 come up and provide the prayer for us.

6 (Invocation given in Native language.)

7 LAURIE BOIVIN: So, again, on behalf
8 of the Menominee Indian Tribe of Wisconsin and
9 the Menominee Tribal Legislature, I welcome you
10 here to Menominee Casino & Resort in the Land of
11 Menominee, and I hope that if you had the
12 opportunity to stay here, that you had a good
13 experience, and we always welcome you back.

14 So a little bit about Menominee. We are
15 almost 9,000 members strong. We are indigenous
16 to what is now known as the State of Wisconsin.
17 We've been here for over 10,000 years.

18 We also understand the importance of federal
19 acknowledgment. Our tribe was very successful a
20 long time ago, and as part of a federal
21 experiment, we were one of three tribes that
22 were selected for federal termination. That
23 occurred in 1954, and with that experiment came
24 devastation to our tribe. We were no longer
25 recognized as Native Americans. We were no

1 longer recognized as a tribe. We suffered loss
2 of our identity, our culture, our land, jobs,
3 everything that goes along with the loss of your
4 identity, and the experiment failed for us, and
5 our tribal members realized that, and a
6 grassroots movement called Drums came into play
7 and fought for restoration of our tribe, and it
8 took many years for that to occur, but in 1973
9 we were restored, and so we fall under Menominee
10 Restoration Act.

11 And to this day, our tribe has never been
12 made whole from that experiment. We continue to
13 struggle, and so I think anytime when there's
14 the opportunity to have consultation and have
15 input on any changes to any of the federal law,
16 we should take the opportunity, because at the
17 end of the day, it's all about self-determination
18 and self-governance.

19 So I appreciate that Deputy Secretary
20 Larry Roberts is here with us today and that
21 Menominee is hosting this, and I hope that
22 there's good discussion here and that any
23 discussion that comes out, that the Bureau is
24 listening. So with that, waewaenen and thank
25 you.

1 LARRY ROBERTS: Thank you, everyone.
2 So I'm going to go ahead and get started. My
3 name is Larry Roberts. I'm a member of the
4 Oneida Nation of Wisconsin and deputy assistant
5 secretary for Indian Affairs.

6 This is our third consultation, tribal
7 consultation, on the proposed rule, and so I
8 know that some folks were here this morning and
9 are probably tired of hearing me talk, so I'm
10 going to introduce my colleague Steve Simpson
11 here from the Office of Solicitor with us and
12 also Liz Appel from our Office of Regulatory
13 Affairs, and Liz is going to go through a short
14 PowerPoint that should be in your materials and
15 walk you through that and then open it up to
16 tribal comments and questions after that
17 PowerPoint.

18 ELIZABETH APPEL: Okay. Can everyone
19 hear me? I speak softly, so I'll -- so I'm
20 going to walk a little bit through the
21 background of how we got to this proposed rule
22 and then discuss a little bit what the proposed
23 rule contains and we'll talk about next steps.

24 So beginning with the background, there are
25 three primary ways -- well, three ways that the

1 U.S. government can acknowledge an Indian tribe,
2 and those are judicially, congressionally, or
3 administratively, and what we're discussing here
4 is the administrative process for recognition.

5 So before 1978, the Department of the
6 Interior reviewed requests for federal
7 recognition on an ad hoc basis, and in 1978 the
8 Department promulgated regulations that would
9 establish a uniform system for reviewing those
10 requests for recognition, and those regulations
11 are at 25 CFR Part 83, which is what we're
12 proposing to revise. The regulations were
13 revised in 1994, and then in 2000, 2005, and
14 2008 the guidance documents were published to --
15 that didn't change the regulations but specified
16 how the Department would be implementing various
17 parts of the regulations. And so of the 566
18 federally recognized tribes, 17 have been
19 recognized through that Part 83 process since it
20 was established in 1978 and approximately 30
21 have been denied.

22 So we started looking at Part 83 because
23 over the years there have been several
24 criticisms that the process is broken,
25 criticisms from people going through the

1 process, people who make it through the process
2 successfully, congressional testimony. So to
3 paint with a broad brush, the complaints are
4 basically that the process is too long, it's too
5 burdensome, it's expensive, unpredictable, and
6 not transparent.

7 So in 2009, Secretary Salazar, the secretary
8 of the Department of the Interior at the time,
9 committed to examining the regulations and
10 trying to find ways to make improvements, and at
11 that time, in the following year, an internal
12 departmental working group was pulled together
13 to look at the regulations, and that included
14 people from the Office of the Solicitor, people
15 from the assistant secretary for Indian Affairs,
16 and people from the Office of Federal
17 Acknowledgment. And in 2012 the Department
18 again testified before the Senate Committee on
19 Indian Affairs, and they had in 2009 promised to
20 have a rule out within the year but failed to do
21 that. So when they testified in 2012, they said
22 that they have at least identified these guiding
23 principles for revisions to the process, and
24 those principles are listed: Transparency,
25 timeliness, efficiency, flexibility, and

1 integrity.

2 So shortly after that, in the fall of 2012,
3 Assistant Secretary Kevin Washburn and Deputy
4 Assistant Secretary Larry Roberts came on board,
5 and they tackled this pretty much right away and
6 promised the release of a discussion draft, and
7 in June of that following year they fulfilled
8 that promise and released a discussion draft of
9 changes that were aimed at meeting these five
10 goals.

11 So in June -- June 21st was when the
12 discussion draft was released, and then in July
13 and August there were tribal consultations and
14 open meetings held throughout the country, and
15 during that process we received over 350 unique
16 comments, and that included over 2,000 people
17 and representatives who signed in support of
18 those comments.

19 So we received all those comments on the
20 discussion draft and then reviewed them and
21 figured out how we could address them in a
22 proposed rule, and so this was the internal team
23 again. We had representatives of the
24 solicitor's office again, the assistant
25 secretary's office, and the Office of Federal

1 Acknowledgment review all the comments, make
2 additional changes, and we totally redrafted the
3 rule so that it's now in plain -- what they call
4 plain language. So it's question-and-answer format
5 and broken down into more digestible pieces.
6 The rule went through review at OMB and was
7 published in Federal Register on May 29th.
8 Comments are due August 1st.

9 So the proposed rule as far as the content,
10 we're going to talk about revisions to the
11 process and revisions and clarifications that
12 were made to the criteria. Because it's a plain
13 language draft, there is also -- the language is
14 different for previous federal acknowledgment
15 and burden of proof, but those are really
16 intended to be clarifications, and the proposed
17 rule also allows for repetition in limited
18 circumstances and provides for some additional
19 notice requirements. So we'll go through those.

20 So starting with the revisions to the
21 process, currently a petitioner can submit a
22 letter of intent to the Office of Federal
23 Acknowledgment, which can basically be a one
24 line saying, We intend to petition for
25 acknowledgment. This proposed rule would delete

1 that step so that the process would begin with
2 the documented petition, and we found that
3 several -- that the letter of intent was causing
4 confusion because petitioners would submit a
5 letter of intent and then expect to hear back
6 without having had submitted a documented
7 petition yet, so we're hoping that it clarifies
8 the start point of the process.

9 We also in the proposed rule have
10 established a phased review so that the
11 Department will first look at the descent
12 criterion (e) to determine whether the
13 petitioner descends from an Indian tribe and
14 then review -- if they are not of Indian
15 descent, then they would receive a negative
16 proposed finding at that point. If they meet
17 criterion (e), then the Department next reviews
18 criteria (a), which we'll talk about, it has
19 changed a bit; criteria (d), which is governing
20 document; (f), which is membership; and (g),
21 which is congressional termination. And then
22 assuming all those are met, then they would go
23 to phase II, and phase II is looking at criteria
24 (b) and (c), which are community and political
25 influence and authority, and those are the last

1 step, basically, because they tend to be the
2 most time-intensive steps.

3 So currently OFA prepares paperwork and the
4 assistant secretary signs off on the proposed
5 finding, and the proposed rule would instead
6 have OFA issuing the proposed finding. And if
7 the proposed finding -- there would be a comment
8 period on the proposed finding as there is now.
9 If the proposed finding is positive, the
10 proposed rule provides that it would
11 automatically become a positive final
12 determination then if no comments opposing the
13 positive determination are received. So
14 currently, rather than if -- rather than going
15 through the process of drafting a final
16 determination, it kind of cuts out the step
17 well. If there's a proposed -- positive
18 proposed finding and no one negatively comments,
19 then it's automatically final. If the proposed
20 finding is negative, the proposed rule allows
21 for a hearing before a judge in the Office of
22 Hearings and Appeals, and the Office of Hearings
23 and Appeals is still within the Department of
24 the Interior but an independent office, and that
25 OHA judge would then make a recommended decision

1 to the assistant secretary. So the assistant
2 secretary is still ultimately making the
3 determination, but there's that opportunity for
4 an independent review by a third body out there.
5 And then the assistant secretary issues the
6 final determination.

7 And the other big change is that currently
8 there's limited review of the assistant
9 secretary's final determination before the
10 Interior Board of Indian Appeals, IBIA, and this
11 rule would delete that process and instead the
12 assistant secretary's final determination would
13 be considered final for the Department, so it
14 would be available for immediate review in
15 federal district court then.

16 So with regard to the hearing on a negative
17 proposed finding, the Office of Hearings and
18 Appeals has published a separate rule, which is
19 also in your packet, and those rules address how
20 those hearings would be conducted. So it's
21 basically sort of a civil procedure type rule,
22 but some of the questions they're asking are who
23 should preside over that hearing? Should it be
24 an administrative law judge, who is probably the
25 most independent of supervision; an

1 administrative judge, who is someone who reports
2 to the director of the Office of Hearings and
3 Appeals; or should it be an attorney who could
4 be farther down in the Office of Hearings and
5 Appeals but still would ultimately report to the
6 OHA director? And they're also asking should
7 the basis for the OHA judge's decision be
8 limited to the hearing record or to the entire
9 body of evidence?

10 Another change to the process the proposed
11 rule provides is it allows the petitioner to
12 withdraw the petition at any time before the
13 proposed finding is published, and at that point
14 OFA will cease consideration of the petition.
15 The only thing is if the petitioner then
16 resubmits, they lose their place in line
17 essentially. And in the interest of
18 transparency, we're also providing in the
19 proposed rule that the Department will post on
20 the Internet those portions of the petition that
21 are releasable. So if they're not subject to
22 the Privacy Act, those will be available on the
23 Internet and reviewable by anyone.

24 So those are the primary changes to the
25 process. As for changes to the criteria, the

1 first criteria, criterion (a), currently --
2 well, first of all, there are seven mandatory
3 criteria currently, and the proposed rule also
4 has seven mandatory criteria, but this first
5 criterion (a) is changing a bit. Currently (a)
6 requires that external observers have identified
7 the group as Indian, and generally these
8 identifications are required every 10 years.
9 Instead we're replacing this criterion with a
10 requirement that the petitioner provide a
11 narrative of their existence prior to 1900.
12 Since we're not creating new tribes as part of
13 this process, we're recognizing tribes that have
14 been in existence, this external evidence isn't
15 necessarily something -- well, we've never
16 denied a petition solely on the current
17 criterion (a), for external evidence, and that
18 makes sense because if a tribe meets all the
19 other mandatory criteria, it doesn't really --
20 it's not any less of a tribe if third parties
21 haven't written about it. So the new, the
22 replaced proposed criterion (a), though, would
23 give some history of the petitioner's existence
24 prior to 1900 with some evidence but not a
25 treatise, as Larry would say, but a brief

1 narrative.

2 So moving on to criterion (b), community,
3 and criterion (c), political influence and
4 authority. Right now those -- the regulations
5 provide that those need to be shown back to 1789
6 or the period of first sustained contact, and
7 instead we are changing that so that the
8 analysis would be from 1934 to the present, and
9 that date comes from the Indian Reorganization
10 Act as the watershed legislation that identified
11 the change in federal policy from one of
12 assimilation and allotment to one supporting
13 tribal self-determination. And it's also
14 interesting to note that to date no petitioner
15 that has gone through the process has met these
16 criteria (b) and (c) from 1934 to the present
17 but failed up to 1934. So this seems like a
18 clear way that we can reduce the administrative
19 burden. Also to criterion (b), currently it
20 says a predominant portion must show that
21 distinct community for each time period, and in
22 an effort to make that more of an objective
23 criteria, we're providing that at least
24 30 percent must show distinct community for each
25 time period, and we're also specifying that

1 attendance of students at Indian boarding
2 schools are acceptable. Another change to both
3 criteria (b) and (c) is that we're providing
4 that if the petitioner has maintained a state
5 reservation since 1934 or if the U.S. has held
6 land for that group as a group at any point
7 since 1934, that those in effect meet criteria
8 (b) and (c), and that comes from the time period
9 when the Department reviewed requests on an ad
10 hoc basis, as I mentioned. One of the things
11 that the Department would look at was whether
12 there was a collective ownership in land. And
13 finally on this slide, as a general matter,
14 we're defining without substantial interruption
15 to be less than 20 years, and that's also an
16 effort to make the increased predictability and
17 transparency and make it more consistent in
18 applications.

19 So for criterion (e), descent, we are
20 specifying that 80 percent must descend from a
21 tribe that existed in historical times, which
22 we're defining to be pre-1900, and that
23 80 percent aligns with current practice. It
24 doesn't mean that 20 percent can be non-Indians.
25 It just means that you need the documentation

1 for 80 percent. And we're also specifying that
2 we are allowing descent to be traced from a roll
3 that was prepared by the Department or a roll
4 prepared at the direction of Congress. If that
5 roll -- whenever that roll was prepared, we
6 would look at that roll and descent from that
7 roll. If that kind of roll isn't available,
8 then we'll look at the most recent pre-1900
9 evidence that's available.

10 For (f), criterion (f), regarding
11 membership, we made one change in the proposed
12 rule. We heard on the discussion draft that
13 some petitioners' members had joined federally
14 recognized tribes just out of necessity because
15 they needed health care benefits or whatever
16 benefits were available through the federally
17 recognized tribe, and the Department was taking
18 so long with the petition that that was a
19 necessity, as I said. So we added an allowance
20 in that that if a petitioner filed a letter of
21 intent by 2010 and then had their -- any of
22 their members who had joined federally
23 recognized tribes wouldn't be counted against
24 their membership.

25 And in criterion (g), congressional

1 termination, currently the petitioner has to
2 prove that it hasn't been terminated by
3 Congress, and the proposed rule would switch
4 that so the onus will be on the Department to
5 show that petitioner was -- if they were, that
6 they were terminated.

7 And previous federal acknowledgment, as I
8 said, there's no substantive change here, but
9 the language has changed as a result of it going
10 through plain language.

11 And burden of proof, we've tried to clarify
12 the burden of proof. It's still reasonable
13 likelihood, but since the last revisions of the
14 rules, there has been a Supreme Court case that
15 explained what reasonable likelihood is, so we
16 incorporated that into the rule.

17 And for repetitioning, currently if a
18 petitioner goes through the Part 83 process and
19 is denied acknowledgment, there is no
20 opportunity for repetitioning. The proposed
21 rule would allow a narrow opportunity for
22 repetitioning, and it works like this. If a
23 petitioner was denied and third parties
24 litigated and prevailed, then the petitioner
25 would need to get the consent of those third

1 parties before they could request to repetition
2 essentially. If they get that consent or if
3 there wasn't any litigation with third
4 parties -- and that litigation includes both
5 administrative challenges and federal district
6 court challenges, but if -- so if they get the
7 consent of the third party or there was no third
8 party involved, then the petitioner would go
9 before an OHA judge and they would have to show
10 that either a change in the regulations warrants
11 reconsideration of their petition or that the
12 Department misapplied the burden of proof when
13 they reviewed the petition and that that
14 warrants reconsideration. And OHA in their
15 separate rule has set out procedures for how
16 that request would be reviewed by the OHA judge.

17 And finally we have in the proposed rule
18 attempted to increase the notice of petitions.
19 Currently when OFA receives a petition and
20 acknowledges the petition, it publishes notice
21 of receipt in the Federal Register. We would
22 add that OFA will also post the petition's
23 narrative and other information on the website.
24 It will continue to notify the governor and
25 attorney general in the state, but we've added

1 that any federally recognized tribe within the
2 state or within a 25-mile radius of the
3 petitioner, so that captures anyone who may be
4 across state lines, they will also receive
5 notification, and we'll continue to notify any
6 other federally recognized tribe or petitioner
7 that has a historical or present relationship
8 with the petitioner. And then notice goes to
9 the petitioner and informed parties at several
10 points in the process: When OFA begins review
11 of the petition, when it issues the proposed
12 finding, anytime AS-IA grants a time extension
13 or -- and when AS-IA begins review of the
14 proposed finding and the petition, and when the
15 assistant secretary issues a final
16 determination.

17 So comments on the proposed rule Part 83 are
18 due August 1st. Comments on OHA's separate
19 civil procedure rule for the hearings are due
20 August 18th. And, if possible, we prefer
21 comments to be emailed to us at
22 consultation@bia.gov, but we accept them also by
23 mail or through www.regulations.gov, whatever is
24 easiest for you all.

25 As far as next steps, we're going to run

1 through much the same process we did when we
2 reviewed the comments on the discussion draft,
3 and we'll make any appropriate changes and then
4 publish a final rule in the Federal Register.

5 LARRY ROBERTS: All right. Thank
6 you, Liz. So we will now open it up to tribal
7 leaders to make any comments or questions that
8 they have.

9 TERESA MCCOY: (Speaking in Native
10 language.) My name is Teresa McCoy, and I
11 represent the Big Cove Community, and I am a
12 member of Eastern Band of Cherokee, and for
13 years I have often questioned the entire process
14 anytime, anywhere for the federal government to
15 determine who is and is not a Native person, and
16 I think what I'm hearing and seeing here is that
17 you may be placing your cart before the pony
18 with the fact that you seem to already want to
19 go through with this and do it. And I know
20 that to me, I get the feeling that the
21 consultation process is just a nice thing that
22 you're wanting to do to accommodate the persons
23 who already met the criteria for federal
24 recognition.

25 I think you would do a greater service to

1 the Native populations if you would define the
2 word "descendant." You must define that word
3 because it's been kicking Cherokee in the
4 backside for a long, long time. We have defined
5 who is a descendant to our nation, but the
6 federal government has -- your definition of
7 descendant is so broad that it hurts our health
8 care, it hurts our grant funding, it hurts any
9 type of assistance that we receive from the
10 federal government. Your definition basically
11 says a person who is born to an enrolled member,
12 a descendant of that person. Does that mean
13 that descendant has to be enrolled also? Was it
14 meaning, like in 1934 -- let's go back to IRA
15 in 1934 when they said members of federally
16 recognized Indian nations and their descendants.
17 Did you mean that those descendants needed to be
18 enrolled or did you mean for persons who no
19 longer met the blood criteria for enrollment? I
20 would like that definition established. And
21 since we're on record, I need that to be
22 taken -- I want that to be taken seriously.
23 I've been asking about it for years.

24 Now, getting on with this thing we just saw
25 here, I too wish to say thank you to all of you

1 who took the time to be here and to offer your
2 expertise in this consultation process. I also
3 wish to thank the Menominee Nation, and yes,
4 ma'am, we've been treated very well since we've
5 been here. And I did research your history, and
6 I'm so happy that you were able to come back
7 like you did, and it hurts me that once again
8 the federal government deemed our Native people
9 an experiment, because you were right, that's
10 exactly what that was, and I'm glad you're here.

11 I am Cherokee, and I stayed in the mountains
12 in North Carolina while the rest -- during the
13 Jackson years our tribes of the south and the
14 east were rounded up and they were moved to
15 Oklahoma because somebody in Washington
16 determined that it was best to keep the Indian
17 people in the country all together. It wasn't
18 very -- it was a bad idea, and it divided my
19 tribe. There are three Cherokee nations in the
20 United States of America: Eastern Band, Western
21 Nation, and the United Keetoowah Band. That's
22 it. Between Cherokee, North Carolina and
23 Tahlequah, Oklahoma, there are probably 17,
24 18 groups of people who choose to step up and
25 say, "We're Cherokee." I am threatened. My

1 identity, my unique and special being Native is
2 threatened whenever these groups may be able to
3 fast-track their way into a recognition process
4 that I don't think they should get to.

5 I agree in transparency in government. I
6 have represented Eastern Cherokee for 18 years,
7 and I believe in transparency, responsibility,
8 and accountability. Those are important, but
9 what I don't believe in is that in 2014 the
10 federal government still has the authority to
11 jump up and say who is and is not a Native
12 American Indian. I don't agree with that, but I
13 don't agree with people jumping up all over the
14 country saying they are.

15 I listened to the comments here this
16 morning. People were jumping -- one of the
17 comments that caught me off guard was -- or got
18 my interest was, Well, we just couldn't get
19 people recognized quick enough so they went back
20 to other tribes. They should have always been
21 with the other tribe because apparently that's
22 where they belonged.

23 You talk about -- let me put my glasses back
24 on. Let me go through here right quick because
25 I know others want to speak, and I apologize for

1 this.

2 LARRY ROBERTS: No need to apologize.
3 I think we have plenty of time for you to speak.

4 TERESA MCCOY: Thank you. I'm going
5 to keep it brief. I can be long-winded.

6 Okay. You get down here to -- I don't
7 believe -- I think that we, the Eastern Band --
8 and I can only assume that the tribes who are
9 federally recognized here, we met the criteria.
10 If somebody today cannot meet the same criteria
11 that the tribes -- you already have 566
12 federally recognized nations, and if there are
13 groups of people in this country who cannot meet
14 that criteria, then I would question -- I highly
15 question it.

16 The next question is of blood. In my tribe,
17 we have people who are determined -- we have
18 full blood, and it goes all the way down to a
19 sixteenth, and then we recognize those not on
20 the roll at a thirty-second, and then we cut it
21 off there. It's the government, your federal
22 government, that chooses to recognize beyond,
23 and that's what causes a hardship to us. There
24 comes a time we picked a cutoff point. That
25 needs to be respected.

1 You talk about -- I think that 100 percent
2 of the people that petition to be Native and be
3 recognized by the federal government,
4 100 percent, not 80, 100 percent of those
5 persons need to be recognized as Native.

6 I also believe that if you are going to
7 determine -- and I'm only going to use Cherokee.
8 From my home in the mountains of North Carolina
9 to the plains of Oklahoma and all those tribes
10 in between, I would hope and I would pray that
11 somewhere in there you would consult with the
12 three Cherokee nations of the United States
13 before the federal government says, Oh, golly,
14 look, this bunch from Arkansas, they met four or
15 five of the criteria. Let's give them federal
16 recognition. Overnight you diminish -- you
17 diminish my tribe when you do that. I would
18 hope that the federal government would take into
19 consideration that whenever you decide that
20 these new groups are Cherokee, that you consult,
21 you ask the Eastern Cherokee. We know who we
22 are. You ask the Western Nation and the UKB,
23 Are the people between you Cherokee? Let us
24 have some input on that before you go through
25 with this because it's my personal opinion that

1 had they been what they claim to be, they would
2 have already been recognized. I'm not blaming,
3 I'm not pointing the finger or pushing fault on
4 anyone. I'm just speaking the truth.

5 And I'm going to tell you something. The
6 Menominee Nation, you come from longhouses, the
7 Iroquois. We do too. Most of your tribes from
8 the north and the east descend from one great
9 place, and the Cherokee and the tribes of the
10 south come from the same. And I'm here to tell
11 you, I just don't want to ever -- I'm so angry
12 at what's going on with how the federal
13 government doesn't listen to the Native people
14 of this country but take it upon themselves to
15 determine and define for us what is still best
16 for us 200 years after the creation of the
17 Bureau of Indian Affairs or longer. I have some
18 personal anger issues there. You see, my
19 grandparents were removed and they are buried in
20 Oklahoma when they should be buried at home.

21 I feel for the people that don't have the
22 recognition they say that they want, but I feel
23 that they should meet the very requirements that
24 all the other tribes had to meet. I don't
25 know -- I don't put the blame on those tribes

1 for having to wait decades to get an answer
2 back. I put that blame on the Interior. When
3 you get a request, that letter of intent, don't
4 do away with it. Keep the letter of intent but
5 respond to it in a timely manner because those
6 people deserve an answer.

7 And I don't know that I want to hear -- I
8 don't know -- I'm probably wrong here, but when
9 they have been told no, no, no, it's like you're
10 going out of your way to find ways to
11 accommodate them and to work it in. That is so
12 insulting to the Native people from where I live
13 to Alaska to Hawaii, from the north to the
14 south, the east and the west. I'm asking you to
15 take into consideration those that you already
16 have. I'm asking you to make sure that those
17 people are recognized nationally. I'm asking
18 that the Bureau of Indian Affairs, the
19 Department of the Interior, I know that you take
20 the issue of Indian business seriously, but
21 we're out here waiting, we're wondering, you
22 know.

23 So I have a sick feeling in my stomach that
24 what you've just presented here today and you've
25 been presenting all over the country, and thank

1 you for that, thank you, it's a done deal. I
2 feel like that is a done deal. Am I correct?

3 LARRY ROBERTS: No. No. And so, I
4 mean, part of the importance of the consultation
5 is to have this dialogue, and so I want to
6 clarify a few things.

7 One is that first off, we are looking at
8 improving the process because we don't think it
9 should take decades and millions of dollars to
10 go through. We are seeking input from Indian
11 country on how that process should be reformed.
12 So, for example, you've asked us to define
13 descendant.

14 TERESA MCCOY: Absolutely.

15 LARRY ROBERTS: And one of the things
16 that as part of this dialogue what we need to
17 hear from the Cherokee Nation in writing,
18 Eastern Band of Cherokee in writing or at one of
19 these consultations is your suggestions in terms
20 of how we should define it, right, because I
21 don't want -- I don't want to leave the
22 conversation where you're asking us, You need to
23 define this, and so we go back to Washington DC
24 and we come up with a definition that a couple
25 years down the road you're saying, Why did they

1 define it this way? We need ideas from Indian
2 country in terms of how to define these things
3 and how to clarify the rule. So it's not a done
4 deal.

5 I will say that Secretary Jewell,
6 Assistant Secretary Washburn, the administration
7 is committed to improving the process, but we
8 put out -- we've been trying to be extremely
9 transparent and get a lot of input from Indian
10 country by going out with the discussion draft,
11 getting comments, and having all of the
12 consultations and public input on the proposed
13 rule here today. So this is something that is
14 definitely going to change because of input.
15 We're trying to get as broad input as possible.

16 A couple of other things in terms of -- and
17 I've said this at a couple of other tribal
18 consultations and public meetings, and that is
19 that, and I said it this morning, we're not
20 looking at creating tribes; we're looking at
21 recognizing long-existing tribes. And so, you
22 know, a group that came together in the 1940s,
23 1950s, 1980s, 1990s that calls themselves
24 Cherokee or calls themselves whatever tribe,
25 they're not going to cut it under this proposed

1 rule, okay? So we've had a start date of 1934
2 for review for two of the criteria. The other
3 criteria -- there's also two criteria that are
4 prior to 1900. And so we're not looking at
5 recognizing splinter groups. We're not changing
6 that. We're not looking at recognizing groups
7 that just came into existence in the '60s, '70s,
8 '80s, '90s, today when it's more popular to, you
9 know, be Native.

10 TERESA MCCOY: Uh-huh.

11 LARRY ROBERTS: In terms of the
12 letter of intent, I just want to clarify that on
13 the letter of intent part, it's a letter that a
14 group sends to the Department, but the onus is
15 still on the petitioner to submit an
16 application. So there's no step after the
17 letter of intent for the Department to take, and
18 so I think some petitioners are unclear about
19 that, and I think the letter of intent, in
20 the -- we've proposed taking it out of the
21 proposed rule because we don't know what purpose
22 it serves. Every other process that we start
23 within the Department of Interior -- and we're
24 not fast on a lot of things, and I represented
25 a lot of tribes before I came to the Department,

1 but every process we start, we start with the
2 complete application, and so that's what we're
3 proposing to do here. Send us your application.
4 Don't send a letter from some group that came
5 into existence yesterday and thinks it's cool
6 and send in a letter. Send us an application.
7 Show us where you meet these criteria.

8 TERESA MCCOY: Then why don't you do
9 just that? Why don't you accept that letter of
10 intent, turn right around in a timely manner and
11 explain that clearly to them, We received your
12 letter, because there are --

13 LARRY ROBERTS: I think --

14 TERESA MCCOY: I'm going to say
15 something. I think there are people out there
16 that deserve to be listened to and to be heard
17 when it comes to -- this is important to them.
18 If they're Native people, this is their life.
19 The worst thing you can do to one of us -- our
20 boundaries, for instance, we can disenroll
21 somebody for certain crimes, and the worst thing
22 that you would do to a Cherokee where I come
23 from is to disenroll them. Take them out back
24 and shoot them in the head would do less damage
25 and be less detrimental to that human than to

1 take that person and to have them cast from the
2 tribe. So why don't you just go ahead and
3 continue to accept the letter of intent but turn
4 around and acknowledge that you've received it
5 and that they are going to be required to fill
6 out an application and start some dialogue with
7 them? I would recommend that. But just to
8 accept applications doesn't speed the process up
9 because I'm thinking that application is still
10 going to lay there for, what, a decade maybe?
11 I've heard that this morning, and that's not
12 good. I think this federal recognition thing
13 can happen quicker, you know, because the
14 people --

15 And another thing, and this bothers me, and
16 I'm going to get this on record. I am a gaming
17 tribe. We have a casino. We're building a
18 second one, and we're very successful at what we
19 do, and I'm very proud of that, but when I hear
20 Native people that look for enrollment, that
21 look for recognition say out loud that they feel
22 like those of us that are recognized, have that
23 status in gaming are trying to keep them from
24 being enrolled or being recognized because we
25 don't want them to have what we have is wrong,

1 and I will scream it from the highest mountain.
2 I am Cherokee because of language, land,
3 culture, history, tradition, community, and
4 blood. Money is not the color. My color is
5 red. Money is not red, it is green, and when
6 people want recognition thinking they're going
7 to jump through the -- go through NIGA and
8 whoever to get gaming, to get land into trust,
9 to me that is wrong. But when I heard that
10 today, I heard -- and I need whoever said that
11 and persons in the room to understand unh-unh,
12 unh-unh.

13 LARRY ROBERTS: So the other thing
14 that I wanted to touch upon was you had
15 mentioned in your comments about land. We do
16 receive a petition, and we're looking at a
17 petition that the Department should talk with
18 the Cherokee Nation of Oklahoma, Eastern Band of
19 Cherokee --

20 TERESA MCCOY: And UKB.

21 LARRY ROBERTS: -- and UKB, and under
22 our current process, we do that; and under the
23 proposed process, we're still proposing to do
24 that. We're not -- we're proposing to provide
25 greater outreach on that front than we typically

1 do.

2 TERESA MCCOY: I appreciate that.
3 Now, this morning you also spoke about third
4 party.

5 LARRY ROBERTS: Yes.

6 TERESA MCCOY: Is that what you're
7 talking about right now?

8 LARRY ROBERTS: No. No. I'm talking
9 about as part of the -- just as part of our
10 normal process right now. Let's say, for
11 example, we get a petition in and it -- a
12 petitioner relates to -- you can name the
13 federally recognized tribe. It doesn't matter.

14 TERESA MCCOY: Pick Cherokee, yeah.

15 LARRY ROBERTS: Whatever it is. We
16 then provide notice to that federally recognized
17 tribe and say, We've gotten this petition. We
18 need your input on it. We've expanded that so
19 that not only are we going to continue that
20 practice, but we're going to notify every
21 federally recognized tribe in the state and
22 every federally recognized tribe that's within
23 25 miles of that petitioner if it's across state
24 lines.

25 So what I would -- and I know that your

1 nation has been very involved in this
2 consultation process.

3 TERESA MCCOY: Right.

4 LARRY ROBERTS: I know that your
5 nation is going to submit written comments for
6 the record, and I want to assure you that your
7 comments will be considered through this
8 process. It's not -- we haven't made any
9 substantive decisions in terms of how the final
10 rule is going to look. This is a proposal. I
11 can say that, you know, we're committed to
12 improving the process.

13 TERESA MCCOY: Do you want those
14 comments from the tribe? Do you want them from
15 council? Do you want them from chiefs? Do you
16 want them from individuals? What are you going
17 to be considering?

18 LARRY ROBERTS: We will consider all
19 comments, so it's up to you. We're not going to
20 dictate who sends in comments.

21 TERESA MCCOY: So then you're not --
22 it doesn't matter that -- you don't prefer that
23 we have official comment from Eastern Band?

24 LARRY ROBERTS: Sure.

25 TERESA MCCOY: You would prefer that?

1 LARRY ROBERTS: I mean, if that's
2 what Eastern Band wants to do, they should do
3 that.

4 TERESA MCCOY: Okay.

5 LARRY ROBERTS: If that's what they
6 want to do, they should definitely do that.

7 TERESA MCCOY: Well, then having said
8 that, I once again wish to say thank you. I
9 know that this is time-consuming. I know -- I
10 hope -- please don't ever take the needs of
11 Native people lightly. We're still here. We're
12 going to be here.

13 PERRY SHELL: Good afternoon,
14 everybody, and I'd like to say thank you,
15 chairwoman, for the hospitality as well. I
16 really enjoyed it up here. I've enjoyed the
17 area and the people, and they've all been
18 friendly and very helpful.

19 Mr. Roberts, Mr. Simpson, and Ms. Appel,
20 "Ay-pel" --

21 ELIZABETH APPEL: "App-el."

22 PERRY SHELL: -- well, thank you all,
23 too, for having these consultations. This is
24 the second one I've been to. I was down in
25 Marksville. And for those --

1 LARRY ROBERTS: Please just identify
2 yourself for the record so we have it clear on
3 the transcript.

4 PERRY SHELL: My name is Perry Shell,
5 Tribal Council Representative Eastern Band of
6 Cherokee, Sergeant First Class Retired United
7 States Army, and serve on council. This is my
8 sixth term.

9 Anyway, I don't think it should be easy to
10 be federally recognized. I think that because
11 of the gravity of a nation-to-nation government
12 mandates that it be difficult. It should not be
13 easy, and I'm afraid that some of the criteria
14 that we're talking about now will make it easier
15 to do that.

16 This brief narrative about our history prior
17 to, what is it, 1934, 1900 --

18 LARRY ROBERTS: 1900, sir.

19 PERRY SHELL: 1900. Well, there's
20 one tribe in North Carolina that's looking to be
21 federally recognized that's 55,000 strong that
22 is outside of their -- outside of our homeland,
23 doesn't have our language, our culture but claim
24 to be us from 1913 to 1953, that would be
25 40 years, claiming to be a Cherokee tribe that

1 was maybe, I don't know, 400 miles from where we
2 were at.

3 There are over 200 groups of -- and they
4 may -- they're groups of people that have come
5 together that may have some Indian blood for
6 whatever reason who claim to be Cherokee. How
7 many are petitioned right now?

8 LARRY ROBERTS: We have 13 complete
9 petitions on file.

10 PERRY SHELL: That's Cherokee.
11 That's just our tribe. They're stealing our
12 culture, as we see it, that is taking what
13 isn't --

14 STEPHEN SIMPSON: That's Cherokee?

15 LARRY ROBERTS: No, not that -- I'm
16 sorry. Not that are saying they are Cherokee.
17 I'm sorry. I misunderstood.

18 PERRY SHELL: How many?

19 LARRY ROBERTS: From Cherokee? I
20 don't know.

21 PERRY SHELL: From Cherokee. I know
22 there's several that -- but there's over 200,
23 and they're everywhere, from Texas to Delaware
24 and where else. I've testified in Nashville,
25 Tennessee. I think there was a Cumberland

1 Cherokee, Tanasi Cherokee, Wolf Clan Cherokee
2 state recognized. I don't think we should give
3 credibility to the states because I don't think
4 they have the expertise or the knowledge to
5 determine who is a tribe or not.

6 The testimony that I heard from this group
7 of -- I don't know if they were Overhill
8 Cherokee or whomever, and they had a chief and
9 they had a government, and they were going to
10 build an Epcot Center outside of Memphis, and
11 their basis for being recognized was to bring
12 millions of dollars to the State of Tennessee
13 and thousands of jobs. They were going to build
14 a Cherokee town near Knoxville, near Gatlinburg,
15 near Hillbilly Heaven to bring in millions of
16 dollars and thousands of jobs, and they were
17 getting support for that, and most of the ones
18 that make up these groups are on those state
19 boards.

20 North Carolina recognized this other tribe
21 in North Carolina when they had no basis
22 whatsoever. If you're going to depend on
23 someone -- your credibility to some groups in
24 Tennessee, Alabama, Georgia, Mississippi or
25 Florida, or wherever you're at, whatever state,

1 I think that it's a huge mistake, and it's very
2 short-sighted. I think they don't have the
3 expertise at all. I see where you give some
4 credibility to state land or whatever, you know,
5 but the states I don't think have an idea of
6 what a tribal government is or who Indian people
7 are.

8 You see a lot of new-age Indian groups that
9 speak in 1950s movie talk, you know, and have
10 these names off the wall that are recognized by
11 these states and they come up and ask for
12 recognition. I don't think that we should give
13 any credibility to the state as far as
14 recognition. It's based on some grand idea or
15 whatever but not on facts. I think it should be
16 based on facts and evidence and not on
17 somebody's grandiose ideas or whatever.

18 There's a lot I want to say about this. We
19 are formulating more specific responses,
20 comments to what is proposed here, and there are
21 a lot of issues with it.

22 When you summarize a tribe's history into 10
23 pages or whatever it is, you know, you can go to
24 the Library of Congress now and you can see
25 volumes and volumes of Cherokee history,

1 interaction with not only United States
2 Government but foreign governments, the British,
3 the French, the Spanish, whoever else was in
4 that area, Worcester versus Georgia, Supreme
5 Court. It goes back. I don't think you can sum
6 up the Trail of Tears where all the tribes in
7 the southeast, the Choctaw, the Chickasaw, the
8 Creek, Seminole, the Cherokee were rounded up
9 and moved east of the Mississippi, west of the
10 Mississippi where a quarter of our people died,
11 that you just relegate that to 10 little pages
12 and say -- I don't think it's fair. I don't
13 think it's fair to the tribes that have -- and
14 our members that have given their lives, their
15 blood. I think we have an obligation to give
16 them more than that, especially when groups are
17 trying to steal their identity now for money,
18 whatever, you know, that for the last, I don't
19 know, however many years have been defined to
20 be non-Indian. And they may have some Indian
21 blood, I don't doubt that they do, but I think
22 we need to be very careful with that.

23 There's a tribe in North Carolina that is
24 55,000 now. They'd be the largest tribe east of
25 the Mississippi. Well, I'll say this. Whenever

1 Andrew Jackson sent General Winfield Scott down
2 into the southeast to round up the Cherokee
3 people and others, they didn't recognize them
4 either because apparently they weren't there at
5 the time. They've tried to get recognition
6 under four different names, I believe, four
7 different groups. There's no history there.
8 They've taken from every other group. I heard
9 someone say, Well, that just has to do with
10 money. It doesn't have to do with gaming. We
11 opposed their recognition because of our culture
12 ever since 1913, long before there was any idea
13 of gaming or whatever, you know.

14 So anyway, I'm sorry to get on this rant,
15 but it scares me for all Native people because I
16 think ultimately when we look seven generations
17 forward like we're supposed to do as tribal
18 leaders, I think this harms Native Americans
19 more than what they know. I think it's just
20 part of assimilation. I think that soon -- as
21 the society grows, that soon everybody is going
22 to be part Indian and you all are going to be
23 recognized, and I don't know where we go from
24 there, but I think we need to be very careful
25 with this.

1 But we will come up with more formal
2 positions on the different items here, but --
3 and the different proposed changes, but I think
4 that if you can't pass -- like Teresa was saying
5 a while ago, if you can't pass the criteria to
6 become recognized, if you can't pass the bar or
7 you can't pass the -- you know, to get licensed,
8 you know, you don't lower the standards, and I
9 think that's what we're trying to do. We're
10 trying to make the standards lower because you
11 get so many complaints and so many groups that
12 can't make it and that shouldn't make it. All
13 the time we have political influence or whatever
14 on a national level, and I think that our
15 national leaders need to think about this a lot
16 more than what they are. I think it's very
17 short-sighted. I think some of the positions
18 are taken without really considering the facts.

19 But anyway, Perry Shell, Eastern Band of
20 Cherokee. Thank you for your time.

21 LARRY ROBERTS: So I just wanted to
22 make a couple of comments on that. One is that
23 with regard to state recognition and the --
24 state recognition of tribes, that's not
25 something that's in the proposed rule. We do

1 have proposed the state reservations. If a
2 group -- and, again, we're looking at collective
3 ownership and land because that's one of the
4 things that the Department of Interior looked at
5 when they were implementing the Indian
6 Reorganization Act, and so we proposed state
7 reservations but not state recognition because,
8 you know, those vary all over the place in terms
9 of how states recognize tribes, and so we are
10 not proposing that.

11 The other thing that we're trying to do is
12 we are trying to reduce the administrative
13 burden on everyone, the paper documentary burden
14 on everyone, but yet maintain the high
15 standards, which we think we are maintaining the
16 high standards, but this is why we're having
17 this consultation, and this is why we want the
18 comments from Indian country on what those
19 standards should be. We are trying to -- just
20 to provide a little bit more feedback and, I
21 mean, we need this dialogue. We're trying to
22 provide -- what we've seen, quite frankly, are
23 inconsistencies. We've only -- we've recognized
24 17 tribes, right? We have seen where we'll
25 treat one petitioner who has been recognized one

1 way and another petitioner the other way. So we
2 need to have uniform objective criteria, and
3 that's, you know -- quite frankly, that's what
4 we need.

5 So what is helpful and what I'm hoping
6 tribes provide in their comments are specific
7 ideas on how to improve the process, specific
8 ideas for objective criteria. Comments that we
9 receive, if it's from Indian country or whether
10 it's from the public, if they say, you know, we
11 don't like it or we do like it without any
12 ideas, it leaves us -- we need to see the ideas
13 from Indian country on the path forward to
14 improve the process, because what I heard from
15 your colleague earlier is that everybody wants a
16 functional process and --

17 PERRY SHELL: And that's true. We
18 want the clarity, and we want the transparency,
19 we want it expedited in a fast -- in an
20 efficient manner, but it needs to be based on
21 fact. It needs to be based on -- rather than --
22 anyway.

23 LARRY ROBERTS: And nobody,
24 absolutely nobody, whether it's Assistant
25 Secretary Washburn and/or myself or Indian

1 country or anybody, nobody wants to recognize
2 non-legitimate tribes, but we want the process
3 to work, and we want the process to get answers
4 out in a timely fashion because, you know, quite
5 frankly, we have a petition sitting out there
6 for 30 years, 20 years. It's out there.

7 PERRY SHELL: What tribe is that, by
8 the way?

9 LARRY ROBERTS: Well, we've had
10 petitions out there with not a final decision
11 for over -- for at least over 20 years.
12 Shinnecock took decades to go through the
13 process. They're recognized. I don't have a
14 list off the top of my head, but my point is --

15 PERRY SHELL: Yeah.

16 LARRY ROBERTS: -- if it's lingering
17 out there --

18 PERRY SHELL: Right.

19 LARRY ROBERTS: -- it not only causes
20 headaches for the federally recognized tribes,
21 but it causes headaches for the community and
22 everyone else. So we're trying to provide
23 faster decisions that are based on the facts and
24 that are objective criteria so that at the end
25 of the day nobody is saying, You, Department of

1 the Interior, have applied the rules one way for
2 one group and another way for the other group,
3 and that's not fair either, so --

4 PERRY SHELL: Okay. I appreciate
5 your comments here.

6 LARRY ROBERTS: So --

7 PERRY SHELL: Yeah. And I understand
8 that, and we all need to do better than that,
9 you know, as far as coming up with a decision.
10 They deserve it, and we deserve -- and everyone
11 does for that matter, but anyway, you will see a
12 more formalized -- we're working on this. You
13 will get some more formalized and more, I guess,
14 to-the-point --

15 LARRY ROBERTS: Yes, sir.

16 PERRY SHELL: -- comments and
17 questions on this. Thank you.

18 LARRY ROBERTS: Thank you.

19 DAVID WOLF: Good afternoon.

20 David Wolf, Eastern Band Tribal Council. My
21 question is you mentioned three avenues: The
22 administrative, the congressional, and judicial.
23 Is this process going to be narrowed down to one
24 process or is it just going to be narrowed down
25 to one standard that everybody has to meet

1 within these three processes?

2 LARRY ROBERTS: We lay that out to
3 let folks know that there are three processes.
4 We only have control over Interior's
5 Administrative Part 83 process, and we're just
6 narrowing it down. That's what we're talking
7 about, is the Part 83 at Interior. You know,
8 Congress is -- you know, they have the authority
9 to write the laws, and we follow the laws, and
10 we implement those laws. So it's just meant to
11 say, Here are the ways -- Here are some of the
12 ways that tribes have been recognized in the
13 past. So, for example, Congress, you know, it
14 could be by statute, it could be by treaty,
15 right? I mean, Oneida Nation recognized the
16 1794 Treaty of Canandaigua. One of the first
17 signatories of our treaty is with George
18 Washington. I have a picture of it on my -- up
19 on my office wall. So there's all different
20 types of ways that tribes can be recognized, and
21 it's just meant to say -- what we're talking
22 about here today is just the Part 83 process.

23 DAVID WOLF: Okay. I won't go
24 over -- I think my colleagues there have
25 mentioned all of our concerns, and I won't go

1 over it again, but I'd just like to appreciate,
2 say a thank you for having this consultation and
3 taking our thoughts and our -- I want to say
4 that people deserve a speedy process, but I
5 think if we lower our standards, the things that
6 our grandparents, our elders went through
7 before, the Trail of Tears, and to summarize
8 that in a brief narrative, it would do them no
9 justice because what they lived in one day or
10 one week, it would probably take a year to write
11 about, you know, if you really put it into words
12 of what was really happening in those days,
13 so --

14 LARRY ROBERTS: So under the proposed
15 rule, that new criterion that you're just
16 talking about, I mean, that is a proposal, and
17 so we need feedback on how that should be
18 clarified.

19 And as Liz sort of mentioned, the existing
20 criterion, you know, as Liz said, we could have
21 a group, right, that demonstrates political
22 authority and community from time of first
23 sustained contact to the present and be Native
24 and can show all of those issues and can show
25 all of those things, that they have been

1 functioning as a sovereign tribal government
2 over time, and yet if there's not a third party
3 out there like the State of Wisconsin or the
4 State of North Carolina writing about it, a
5 petitioner could fail under that criterion. And
6 so we look at it saying, you know, just because
7 someone's -- some non-Indian is not writing
8 about this tribe, does that really make them any
9 less of a tribe? And so that's why -- one of
10 the reasons why we removed that criterion, but
11 we also wanted to maintain high standards, and
12 so we're proposing this. We've heard from other
13 folks that the proposal for criterion (a) is
14 less than clear and needs to be more clarified,
15 and we're looking to the public and tribes to
16 help provide that clarity on what that should
17 be.

18 DAVID WOLF: Another point that was
19 brought up, the 80 percent rule, how is that
20 going to be applied? If you've got it proposed,
21 then surely you've got some thought on how it's
22 going to be applied.

23 LARRY ROBERTS: So that is actually
24 being currently applied now. So the 17 tribes
25 that have been recognized through the process,

1 it's applied now, and that 80 percent rule
2 doesn't mean we're not -- we're not saying that
3 20 percent of the tribe can be non-Native.
4 We're not saying that at all. What we're saying
5 is that 80 percent of the petitioner who is
6 determining their own membership has to provide
7 documentary evidence that 80 percent of their
8 members apply -- or descend from a tribe, and it
9 is -- it's what we've used in past practice.
10 We're trying to just codify it here in the
11 regulation itself, but it's what OFA applies
12 right now, and so it's more based on documentary
13 evidence and talking about that documentary
14 evidence than anything else.

15 DAVID WOLF: But it mentions
16 historical tribes. Have do you determine
17 historical tribe?

18 LARRY ROBERTS: So in past practice,
19 there have been decisions where, for example --
20 and I'm not going to talk about specifics of any
21 tribe we've recognized, right, but there have
22 been situations where we have looked and said,
23 Yeah, they have evidence that they've been
24 functioning, political authority, community, and
25 we have censuses from 1890, 1880, 1900, 1910,

1 it's the same people, they're all identified as
2 Indian, they're all living together there, we
3 have accepted that in the past, and so we're
4 trying to provide some uniformity to that.

5 DAVID WOLF: All right. That's all I
6 have. Thank you.

7 LARRY ROBERTS: Okay.

8 REBECCA ALEGRIA: Bousho. My name is
9 Rebecca Alegria. I've been given permission to
10 speak from Chairman Laurie Boivin. I know they
11 had left, but I do want to thank you for being
12 here today. I also want to thank you for
13 allowing the tribes who are recognized in this
14 room and to be able to speak because in the past
15 I've served on the Menominee Tribal Legislature
16 for six years, and I've been to NCAI and I've
17 been in sessions like this, and I know the
18 tribes that are seeking recognition throw their
19 demands out there, sometimes they have no
20 respect, you know, and they're just -- they're
21 really pushing their issue, and so that's why I
22 thank you for allowing us to speak here today.

23 As Menominee, we're indigenous to Wisconsin.
24 We did not -- we are not allotted. This
25 reservation is all we have. This is it. We

1 have no other place to go to but this
2 reservation. I'm a tribal researcher for
3 historic preservation, and I do a lot of
4 different research, and our territory is vast.
5 We have Chief Tomah buried up on Mackinac Island.
6 We've been up into Canada. We've been -- we had
7 a village -- villages on the Illinois borders
8 where our people were murdered down there,
9 Prairie du Chien, we've been out west. So we
10 have a big territory, and we're lucky that we're
11 on our ancestral land, you know, and that the --
12 we also do repatriation of our human remains,
13 and we have more human remains and sacred items
14 out there than we have living Menominee.

15 And so my question is is that, you know, our
16 ancestors went through all of this and -- all of
17 this suffering and through the boarding school
18 era. We have had people -- we have children out
19 there and they don't even know they're enrolled
20 until they become adults and then they come to
21 historic preservation to find out who they are,
22 and I'm like, my God, you know, they don't even
23 know they're an enrolled Menominee until they
24 become adults.

25 Okay. Is that -- is this fair to them? Is

1 this -- what about these rules? Are they going
2 to -- are you setting standards like you set on
3 us? Are you -- you know, we have a creation
4 story. Our creation story is we emerged from
5 the mouth of the Menominee River. We have a
6 creation story. We have our own language. We
7 have our ceremonies. We have our songs and our
8 dances. We have our government. We have our
9 legal system, judiciary, education system. We
10 have all these things in place, and so is that
11 going to be the same for these tribes that are
12 trying to become recognized?

13 LARRY ROBERTS: We have the proposed
14 rule and the existing regulations. Certainly
15 that is evidence that those groups could submit,
16 but we've sort of -- you've sort of identified a
17 universe of things, right: Language, culture,
18 songs, ceremonies, all of those things, land.
19 There are -- we have boiled that down into --
20 and that can all be evidence of community,
21 right, and how is that community interacting?
22 It can be evidence of political authority,
23 right? Are there leaders? Are there leaders
24 that are making decisions for this group, not
25 just today or not just 1950, but we're going

1 back to looking at 1934, right, and starting
2 that analysis there, has there been continuous
3 leadership?

4 And one of the reasons that -- as we said
5 before, why we're going back to 1934, that's a
6 major shift in federal policy, right? And so
7 while Menominee has never been allotted, a lot
8 of reservations were allotted. Oneida was
9 allotted, and I know Oneida's reservation comes
10 from Menominee. But, you know, there are a lot
11 of reservations that were allotted, and the
12 federal policy at that time was to try to
13 destroy tribal governments and break them up.
14 And so we're looking at 1934 as the date where
15 Congress said, you know what, this policy of
16 destroying tribal governments isn't working and
17 we need to support tribal governments, and so
18 that's where we're starting our analysis. But
19 when you think about it, 1934, while we're
20 starting our analysis there, I mean, we're not
21 saying that someone born in 1934 can somehow
22 come into a tribe. We're looking at a community
23 that -- a community that's functioning in 1934,
24 that's exercising political authority in 1934.
25 You're talking about adults, you're talking

1 about elders, you're talking about those sort of
2 things. And so we're looking at 1934 because it
3 changes that policy from the federal government
4 policy, but we're also looking at it just that,
5 you know, we've been administering this process
6 for almost 40 years, and just administratively
7 we have never had a situation where if a group
8 petitions and says, We're a tribe, they failed
9 prior -- if they fail under our process, they
10 fail prior to 1934 and they fail after 1934.
11 They fail in both time periods. Every group
12 that has failed has failed both time periods.
13 Every group that we have recognized, every tribe
14 that we have recognized, they satisfy both time
15 periods. And so we're proposing -- and it's
16 just a proposal. We're proposing to shove our
17 evaluation back because it's -- you know,
18 there's a lot of historical documents out there.
19 There's a lot of records. It gets more costly
20 the more further back in time you go to find
21 those records. And so we're proposing 1934 for
22 administrative purposes.

23 REBECCA ALEGRIA: See, and that's
24 what I've been hearing from these tribes that
25 are pushing for recognition, 1934, 1934. So my

1 question is, is that what you're doing or are
2 you satisfying these tribes that are demanding
3 1934? And the records of these tribes or the
4 anthropologists or even, you know, their
5 historic -- their historical people or
6 foundation or whatever they have, is it
7 authentic?

8 LARRY ROBERTS: And we're -- oh,
9 right. Well, we definitely -- I mean, whether
10 it's the existing rule or the proposed rule,
11 we're not -- you know, we don't want to accept
12 any falsified evidence, right? That just goes
13 without saying. That's not any evidence at all.

14 REBECCA ALEGRIA: And how do you
15 know?

16 LARRY ROBERTS: Well, I mean, we have
17 experts in the Office of Federal Acknowledgment
18 that are, you know, historians and
19 anthropologists and genealogists that are paid
20 to look at those things. And when we have a
21 petition in, you know, we -- like I said
22 earlier, we send notice to those federally
23 recognized tribes that may have a relationship
24 with that petitioner to get that information
25 from them, so --

1 REBECCA ALEGRIA: Okay. Thank you.

2 LARRY ROBERTS: Thank you.

3 TERESA MCCOY: I'd like to clarify
4 something.

5 LARRY ROBERTS: Sure.

6 TERESA MCCOY: Teresa McCoy, Eastern
7 Cherokee. When I say define the word
8 "descendant," what I'm getting at is this. We
9 have just under 15,000 enrolled members Eastern
10 Cherokee, but at Indian Health Service, in our
11 hospital, we have probably close to 25,000
12 charts that are active for people who are not
13 enrolled members of Eastern Band. They are
14 descendants.

15 So I think what I'm leaning toward in a
16 definition from the federal government is at the
17 time your definition was written on we will
18 serve enrolled members of the federally
19 recognized nation and their descendants, I think
20 what you might have meant or what -- not you,
21 you were not even born, sorry -- they, the
22 government, meant was members of the federally
23 recognized Indian nation and their enrolled
24 descendants, meaning those that were there in
25 '34 and those that were going to come after them

1 who met that tribe's criteria for enrollment.
2 That's what I think it needs to say, because
3 when the federal government sends any type of
4 assistance to any nation, they're sending it to
5 Cherokee.

6 LARRY ROBERTS: Right.

7 TERESA MCCOY: Then why do 10,000
8 more people benefit from that? So I just wanted
9 to clarify that for you.

10 LARRY ROBERTS: Yeah, and that seems
11 more of -- you're talking about a services issue
12 right now.

13 TERESA MCCOY: Right.

14 LARRY ROBERTS: And so I'm just
15 saying that the services issue on those
16 individuals, on whether they're descendants and
17 eligible for services under existing federal law
18 is -- I hear what you're saying, that the
19 federal government needs to clarify that, but
20 that's outside the scope of this rule.

21 TERESA MCCOY: You're right, but I
22 tied it in because to me, what we have
23 petitioning you for recognition are descendants
24 from Native --

25 LARRY ROBERTS: Okay.

1 TERESA MCCOY: -- from persons who
2 are federally recognized.

3 What's happening to the Cherokee between my
4 home in Oklahoma are that -- one of the first
5 things you hear the Cherokee group say is, We
6 are direct lineal descendants of the people that
7 jumped off of the Trail of Tears, that hid in
8 the bush and made out with
9 great-great-great-grandma, and we're them.
10 Well -- so descendency does tie in.

11 LARRY ROBERTS: So you have three
12 Cherokee nations right now.

13 TERESA MCCOY: Right.

14 LARRY ROBERTS: And you all have --
15 you all have experience in how that came about.

16 TERESA MCCOY: Right.

17 LARRY ROBERTS: And so, you know, you
18 are positioned to, you know, help the Department
19 in terms of the process that we're going under
20 right now to understand, and your council and
21 you have been very helpful in these public
22 consultations -- in these tribal consultations
23 to help us understand more of what's going on,
24 but we need specifics in terms of how to
25 address --

1 TERESA MCCOY: Okay.

2 LARRY ROBERTS: -- the Cherokee
3 situation. I understand that me sitting here
4 saying we're not interested in recognizing
5 groups that came into existence in the '40s and
6 '50s, '60s and '70s and '80s and '90s that call
7 themselves Cherokee, they would fail under this
8 proposed rule, I understand that that's not --
9 that you're not so sure about that, you have
10 concerns about it, and so we need your comments
11 on it.

12 TERESA MCCOY: Well, then please
13 listen to the comments because --

14 LARRY ROBERTS: Yeah.

15 TERESA MCCOY: -- it's really hard
16 after 250 years of BIA and Interior federal
17 government for any Native to trust anything that
18 comes out of Washington. I'm not apologizing
19 for that. That is -- if you were me, you would
20 understand that, and I understand --

21 LARRY ROBERTS: We're doing our best,
22 ma'am.

23 TERESA MCCOY: Thank you very much.
24 Thank you.

25 BRANDON STEVENS: Good afternoon.

1 Welcome back. I'm Brandon Stevens. I'm a
2 councilman for Oneida Nation of Wisconsin, and I
3 guess when we talk about descendance, that's
4 kind of what we're getting at with
5 Councilwoman Teresa McCoy is it's kind of
6 difficult when we're doing administrative
7 rulings and definitions in administrative
8 procedures and then -- when they're not in
9 statute. So it's difficult to, you know --
10 especially IHS funding, we have a lot of issues,
11 because if we expand descendance in our health
12 care system, we get revenue back if they have
13 insurance, but if we also don't limit that with
14 descendance, it's also a drain of funding for
15 IHS because we're paying for that also, so I see
16 the back and forth with that.

17 But I guess this is kind of a question where
18 I'm kind of saying -- because we're originally
19 from New York, and so we lost millions and
20 millions of, you know, acres of land in upstate
21 New York, and so when we traveled to Wisconsin,
22 we left a community up in Thames, Canada and
23 Ontario, and so we're using our individual
24 tribal sovereignty to open up our enrollment to
25 allow them to be a part of us because they're

1 technically Canadians, first nations, so we're
2 allowing that.

3 So that's why I'm kind of saying, well, the
4 administrative ruling, you know, where those
5 Cherokees that traveled from -- they're a part
6 of something. You know, they're not -- they're
7 a community that became, you know, a community
8 of people, but they originated from the Eastern.
9 You know, we have Oneida and Eastern Cherokee as
10 well in North Carolina right now.

11 That's kind of what we're -- we're taking
12 that route to say, Yeah, we can take those, our
13 Oneidas. They're Oneidas. They're a part of
14 us, so we can take them, and that's where we're
15 asserting our tribal sovereignty and saying,
16 We're opening up our rolls. And that's why I
17 really kind of -- you know, I'm glad this -- the
18 procedures are more fluid, you know. The
19 criteria should still be difficult to maintain
20 but fluid and expedited as far as, you know,
21 getting an answer back, and so that's why I
22 really wanted to stress the individual tribal
23 sovereignty, just to be able to do those types
24 of things, where the Eastern Band, we're willing
25 to take those. You know, that's their

1 individual right as sovereign nations to be able
2 to do that for them.

3 And as far as -- you know, we sit on
4 Menominee land, you know, right outside of
5 Green Bay. So, you know, they were gracious
6 enough at that point in time to give us the land
7 to start a reservation, 65,000 square acres to
8 start our community. And this is way back when,
9 you know, the Buffalo Creek Treaty. So that
10 established our reservation, and we have a close
11 relationship with our Menominee brothers here,
12 and so that's kind of what I really want to say,
13 you know, just really broadly, because we
14 haven't looked, reviewed over the proposed
15 regulations too thoroughly yet, but we really
16 want to kind of gauge what descendancy means as
17 far as broadly. You know, we want that, you
18 know, applied across the board and say how can
19 we apply descendancy in an appropriate fashion
20 without affecting all these other, you know,
21 resources. And, you know, bottom line, that's
22 what it's really up to sometimes, and that's why
23 we shouldn't make a decision based on resources.
24 It should be based on exactly what you're
25 saying, you know, community, language, culture,

1 you know, blood, all those types of things.

2 And, you know, I'd like to thank you, you
3 know, Eastern Cherokee brothers. You know, we
4 have a close relationship going back, you know,
5 from then when we shared our songs, you know,
6 our longhouse, our social dance songs. So we
7 have a longstanding relationship, you know, the
8 Iroquois down to the Cherokees, where we used to
9 commerce, you know, back then, and I'd like to
10 welcome you in our territory and thank the
11 Menominee, you know, for being so gracious.
12 Thank you.

13 LARRY ROBERTS: Okay. Thank you.
14 Are there any more comments this afternoon? Do
15 folks -- raise your hand -- I guess just give me
16 a show of hands of folks who want to take a
17 break and reconvene? Does anyone want to take a
18 break and reconvene?

19 PERRY SHELL: Call it a day.

20 LARRY ROBERTS: All right. We've had
21 one folk -- one council member say let's call it
22 a day, so we will call it a day.

23 (Concluded at 2:47 p.m.)

24

25

1 STATE OF WISCONSIN)

2 COUNTY OF BROWN)

3

4 I, **PAULA HUETTENRAUCH**, a Notary Public
5 and Registered Professional Reporter and Registered
6 Merit Reporter and Certified Realtime Reporter in and
7 for the State of Wisconsin, do hereby certify that
8 the foregoing proceedings were taken at said time and
9 place and is a true and accurate transcript of my
10 original machine shorthand notes.

11 That the appearances were as noted
12 initially.

13 That said witness was first duly
14 sworn/affirmed to testify the truth, the whole truth
15 and nothing but the truth relative to said cause.

16

17 Dated at Green Bay, Wisconsin
18 This 30th day of July, 2014.

19

20

21

PAULA HUETTENRAUCH
Registered Professional Reporter
Registered Merit Reporter
Certified Realtime Reporter
Notary Public, State of Wisconsin
My commission expires 9-13-15 (fc)

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