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CHEROKEE NATION®
P.O. Box 948 • Tahlequah, OK 74465-0948 • 918-453-5000 • cherokee.org

Office of the Chief

Bill John Baker
Principal Chief
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S. Joe Crittenden
Deputy Principal Chief
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September 25, 2013

Elizabeth Appel
Office of Regulatory Affairs & Collaborative Action
U.S. Department of the Interior
1849 C Street NW, MS 4141
Washington, DC 20240

Re: Docket ID BIA-2013-0007

Dear Ms. Appel:

Thank you for the opportunity to respond to the proposed changes to the Procedures for Establishing That an American Indian Group Exists as an Indian Tribe (Procedures) under the Office of Regulatory Affairs and Collaborative Action's (RACA) Consideration of Revisions to the Federal Acknowledgement Regulations. The Cherokee Nation has submits these comments on the Federal Acknowledgment Process for RACA's consideration.

The Indian Self-Determination Act of 1975 (P.L. 93-638) allowed any tribe "which is recognized as eligible for special programs and services provided by the United States to Indians" the right to directly administer federal programs due to their "status as Indians," which acknowledged the long government-to-government relationship between the United States and Tribal governments. After this law was enacted, it became necessary to create procedures for federally recognizing Indian Tribes. The Bureau of Indian Affairs (BIA) implemented Procedures for Establishing That an American Indian Group Exists as an Indian Tribe (25 C.F.R. Part 83), to recognize the government-to-government relationship between particular Indian Tribes and the United States government.

The Federal Tribal Recognition Process has long been an area that the Cherokee Nation has monitored with interest. Since Indian tribes hold a unique relationship with the U.S. government, it is the opinion of the Cherokee Nation that stringent procedures for the Recognition Process are in the best interest both of the U.S. government and of Indian Tribes. Federal recognition is a political, not race-based, relationship, which is defined by the acknowledgement of the inherent sovereignty of an Indian tribe. These

relationships are established by rich histories and such documents as intergovernmental treaties, compacts and other agreements between tribal and the federal governments.

While the current procedures are unwieldy at best, and certainly need revision, it is our opinion that the Preliminary Discussion Draft makes the process even easier to manipulate for those groups who do not have the historical relationship with the U.S. government that is necessary to support the government-to-government status of a Federally Recognized Indian tribe. We are concerned by these groups because they often have loose citizenship requirements and do not have the historical relationships with other governments that federally recognized tribes have held for generations. These fake “Indian tribes” or claimants are often the reason the process is so lengthy for legitimate Nations seeking recognition; the BIA devotes tremendous resources – in both time and money – determining whether claims are valid and historically supported. We oppose all efforts by the BIA that would allow illegitimate groups to obtain federal recognition. The Cherokee Nation is strongly opposed to any appropriation of our sovereignty and our unique history and culture, by non-Indian groups who wish to plagiarize our past.

The Cherokee Nation opposes the proposed change to the definition of “*Continuously or continuous,*” from a definition that acknowledges a group’s history up to their “first sustained contact with non-Indians,” to a definition that only gives a group credit for their existence after the 1934 Indian Reorganization Act. (25 C.F.R. §83.1) This proposed change is applied throughout the document – in each section that previously recognized a group’s unique history throughout the development of America. If this change is accepted, groups will only be required to prove their existence for a relatively short amount of time. Selecting the arbitrary year of 1934 is short-sighted, and will likely result in the same issues tribes are currently fighting as a result of the *Carciari* Supreme Court ruling.

Even more concerning, while petitioners are allowed to share “information and background for time periods prior to 1934,” the earlier information provided will only be considered “to the extent relevant to an analysis of the group from 1934 to the present” (25 C.F.R. §83.7 (c) 4). This is troubling because it discounts a huge swath of both Native American and US history. Not only does this lessen the value of the pre-1934 experiences of petitioning groups and existing Indian Tribes, but it also negatively impacts the ability of any legitimate Indian petitioning groups who went “underground” to protect their unique history and culture to earn their Federal Recognition.

Another area of concern to the Cherokee Nation is the proposed change to §83.7 (e) citizenship requirements for the petitioning groups. In the current policy, the entire citizenship of the petitioning group must consist of “individuals who descend from a historical Indian tribe or historical Indian tribes which combined and functioned as a single autonomous political entity.” The Discussion Draft suggests a change to this section that would no longer require that a group that claims to be “Indian” is actually

made up of people of Indian heritage. There are many non-Indians who are great friends to Indian tribes and individual Indian people, however, those people who do not share our heritage and culture should not be collectively recognized by the United States as an Indian Tribe.

Finally, the proposed change that is most alarming to the Cherokee Nation is the striking of §83.11 Independent review, reconsideration and final action. This section currently provides a necessary check on the Federal Recognition process for all interested parties. It allows a petitioner or any other interested party, the opportunity to challenge the determination of whether or not a petitioning group achieves recognition as an Indian Tribe. The opportunity to appeal the determination of a fallible body is a cornerstone of our system of justice. It is in the interest of petitioners, Indian Tribes and other groups, that an avenue to challenge agency determinations before they become final remain intact.

While we applaud the initiative to improve this policy to better serve groups and Tribes, to protect our Nation and all currently federally-recognized Indian Tribes' respective sovereignty, we request that the current Preliminary Discussion Draft address the issues we have raised and before RACA moves forward with any changes to the Federal Recognition Process. In addition, we are deeply disappointed that the BIA did not engage in tribal consultation in Oklahoma, which is home to 39 tribes. We request the Bureau of Indian Affairs to host a consultation in Oklahoma to consider any additional proposed changes to the recognition process.

We appreciate your consideration of the Nation's recommendations and comments. If you have questions, please contact our Director of Government Relations, Courtney Ruark-Thompson at 405-206-5268 or courtney.ruark@cn-bus.com.

Sincerely,

A handwritten signature in black ink that reads "Bill John Baker". The signature is written in a cursive, flowing style.

Bill John Baker, Principal Chief
Cherokee Nation