

United States Senate
WASHINGTON, DC 20510

January 28, 2014

The Honorable Sally Jewell
Secretary
U.S. Department of Interior
Washington, D.C. 20220

Dear Secretary Jewell:

We are writing to you to express strong concern over the Discussion Draft Proposed Changes to Part 83 of the Federal Acknowledgement Regulations and to ask that you prevent these rules from going forward unless substantially revised.

Released for informal comment and tribal consultation last June, the Discussion Draft would make major changes to the procedures and criteria used to review petitions for acknowledging Indian tribes under federal law. Although the proposal has been cast as an effort to improve the efficiency of the tribal acknowledgment process, in fact, the Discussion Draft would dramatically alter the substantive standards for federal acknowledgement. If adopted, the Discussion Draft would abandon over 30 years of agency precedent and dictate positive findings for scores of petitioners who would not pass muster under the current rules. The Discussion Draft would even allow previously denied petitions that have been fully litigated to be reopened and reversed. This extreme approach to revising the regulations will result in very significant negative impacts in many states and for many existing tribes, without justification or support in law.

Witnesses for your Department have testified to Congress that the impetus for the changes to Part 83 is to make the regulations more streamlined and efficient for procedural purposes. We agree with that objective and would support proposed rules for that purpose.

Unfortunately, the Discussion Draft goes far beyond such a proposal. It would, for example, allow previously denied petitioners to reapply. The proposal would virtually guarantee federal acknowledgment merely based on the existence of state reservations, a position previously rejected by BIA and the courts. The Discussion Draft would terminate the highly-respected and objective Interior Board of Indian Appeals reconsideration procedure, which has played a major role in ensuring the integrity of acknowledgment decisions. The current proposal would even eliminate longstanding requirements such as the need to demonstrate tribal social community and political authority since the point of first historical contact for the Tribe in favor of the very brief period beginning in 1934. Every previous consideration of the Part 83 regulations has declined to use the 1934 date because it is at odds with Supreme Court precedent and lacks a rational basis.

These and other substantive changes included in the Discussion Draft are without justification and will greatly weaken the long-accepted tests for federal tribal acknowledgment.

While we share your goal of reforming the federal tribal recognition process, for the reasons above, we believe that the Discussion Draft as written is fundamentally flawed. If the Department is looking for ways to expedite the recognition process without weakening the criteria and eliminating an impartial review of such decisions, we urge the BIA to start anew with a substantially rewritten, narrowly tailored approach.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



CHRISTOPHER S. MURPHY
United States Senate