

How Does an Indian Tribe Become “Federally Recognized”? An Overview of the Administrative Process for Federal Recognition

The Bureau of Indian Affairs (BIA) in the Department of the Interior established a process to recognize or acknowledge Indian tribes. The process was developed in 1978 pursuant to regulations; the regulations were last revised in 1994. Since 1978, the Department of the Interior has extended federal recognition to 17 Indian tribes and denied recognition to 34 petitioning groups. Some 30 tribes have been legislatively recognized by Congress in that time period.

Here’s how the *administrative* process works:

A petitioner submits what is called a “letter of intent,” requesting federal acknowledgment as an Indian tribe and stating its intention to submit a documented petition. (A “petitioner” is a group that wishes to be recognized by the federal government as an Indian tribe.)

The petitioner then submits a “documented petition,” which presents historical, anthropological, social, political, genealogical, cultural/religious, and other kinds of evidence that address the seven mandatory criteria under the Federal Acknowledgment Process. The process for gathering all the documentation for a petition can require many years of effort and may require considerable expense, including the hiring of experts to conduct the research.

The regulations require that a petitioner meet *all seven mandatory criteria* in order to achieve acknowledgment. Evidence must prove the following:

- that the petitioner has been identified as an American Indian entity on a substantially continuous basis since 1900;
- that the petitioner has comprised a distinct tribal community from historical times to the present;
- that the petitioner has maintained political influence or authority over its members from historical times to the present;
- that the petitioner has submitted a governing document, including its membership criteria, or describing its structure;
- that the membership of the petitioner descends from an historic tribe or tribes;
- that a majority of the members of the group are not members of another federally recognized tribe; and
- that the petitioner has not been the subject of congressional action which prohibits a federal relationship.

The BIA’s Office of Federal Acknowledgment (OFA) conducts a thorough review of the documented petition, using its team consisting of an historian, an anthropologist and a genealogist. After its review, OFA issues an initial decision called the Proposed Finding, laying out its determination as to whether the petitioner has addressed all seven mandatory criteria

satisfactorily. If so, the recommendation OFA makes to the Assistant Secretary - Indian Affairs for the Proposed Finding is positive, or for recognition as an Indian tribe; if not, the Proposed Finding is negative, against recognition.

The petitioner may then comment on the Proposed Finding, and provide additional material if the Proposed Finding is negative. Many petitioners who were ultimately recognized following a positive Final Determination initially received a negative Proposed Finding, holding that their document petition was deficient in proving the seven mandatory criteria.

The OFA then reviews the additional evidence, and makes a recommendation to the Assistant Secretary for the final decision, called the Final Determination. Again, the OFA must determine whether or not all seven mandatory criteria are addressed and satisfied. If so, the Final Determination is positive, for recognition; if not, the Final Determination is negative, against recognition.

An updated list of federally recognized tribes has just been published [here](#) in the Federal Register.