

# Calendar No. 794

108TH CONGRESS  
2D SESSION

# S. 297

[Report No. 108-403]

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2003

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

NOVEMBER 10, 2004

Reported under authority of the order of the Senate of October 11, 2004, by Mr. CAMPBELL, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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## A BILL

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Federal Acknowledg-  
5 ment Process Reform Act of 2003”.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress finds that—

3 (1) Indian tribes were sovereign governmental  
4 entities before the establishment of the United  
5 States;

6 (2) the United States has entered into and rati-  
7 fied treaties with many Indian tribes for the purpose  
8 of establishing government-to-government relation-  
9 ships between the United States and the Indian  
10 tribes;

11 (3) Federal court decisions have recognized the  
12 constitutional power of Congress to establish govern-  
13 ment-to-government relationships with Indian tribes;

14 (4) in 1970, President Nixon ended the termi-  
15 nation policy and inaugurated the policy of Indian  
16 self-determination;

17 (5) in 1978—

18 (A) the Secretary of the Interior delegated  
19 authority to the Assistant Secretary for Indian  
20 Affairs to establish a formal process by which  
21 the United States acknowledges an Indian tribe;  
22 and

23 (B) the Bureau of Indian Affairs estab-  
24 lished the Branch of Acknowledgment and Re-  
25 search to carry out the Federal acknowleg-  
26 ment process; and

1           (6) the Federal acknowledgment process was in-  
2           tended to provide the Assistant Secretary with an in-  
3           formed and well-researched basis for making any de-  
4           cision to acknowledge an Indian tribe.

5           (b) PURPOSES.—The purposes of this Act are—

6           (1) to ensure that, in any case in which the  
7           United States acknowledges an Indian tribe, it does  
8           so with a consistent legal, factual, and historical  
9           basis;

10          (2) to provide clear and consistent standards to  
11          review documented petitions for acknowledgment;  
12          and

13          (3) to clarify evidentiary standards and expedite  
14          the administrative review process for petitions by—

15                (A) establishing deadlines for decisions;

16                and

17                (B) providing adequate resources to proe-  
18                cess petitions.

19   **SEC. 3. DEFINITIONS.**

20           In this Act:

21           (1) **ACKNOWLEDGMENT.**—The term “acknowl-  
22           edgment”, with respect to a determination by the  
23           Assistant Secretary, means acknowledgment by the  
24           United States that—

1           (A) an Indian group is an Indian tribe  
2           having a government-to-government relationship  
3           with the United States; and

4           (B) the members of the Indian group are  
5           eligible for the programs and services provided  
6           by the United States to members of Indian  
7           tribes because of the status of those members  
8           as Indians.

9           (2) ASSISTANT SECRETARY.—The term “Assist-  
10          ant Secretary” means the Assistant Secretary for  
11          Indian Affairs of the Department.

12          (3) AUTONOMOUS.—The term “autonomous”,  
13          with respect to an Indian group and in the context  
14          of the history, geography, culture, and social organi-  
15          zation of the Indian group, means an Indian group  
16          that exercises the political influence or authority of  
17          the Indian group independently of the control of any  
18          other Indian group.

19          (4) BOARD.—The term “Board” means the  
20          Independent Review and Advisory Board established  
21          under section 6(a).

22          (5) BUREAU.—The term “Bureau” means the  
23          Bureau of Indian Affairs.

24          (6) COMMUNITY.—The term “community”  
25          means any group of people living within a particular

1 area that, in the context of the history, culture, and  
2 social organization of the group, and taking into ac-  
3 count the geography of the region in which the  
4 group is located, is able to demonstrate that—

5 (A) consistent interactions and significant  
6 social relationships exist within the member-  
7 ship; and

8 (B) the members of the group are differen-  
9 tiated from and identified as distinct from non-  
10 members.

11 (7) CONTINUOUS.—With respect to the history  
12 of a group, the term “continuous” means the period  
13 beginning with calendar year 1900 and continuing to  
14 the present time substantially without interruption.

15 (8) DEPARTMENT.—The term “Department”  
16 means the Department of the Interior.

17 (9) DOCUMENTED PETITION.—The term “docu-  
18 mented petition” means a petition for acknowledg-  
19 ment consisting of a detailed, factual exposition and  
20 arguments, and related documentary evidence, that  
21 specifically address requirements for acknowledg-  
22 ment established by the Assistant Secretary under  
23 section 4(b).

24 (10) HISTORICAL PERIOD.—The term “histor-  
25 ical period” means the period beginning with 1900

1 and continuing through the date of submission of a  
2 petition for acknowledgment under this Act.

3 (11) HISTORY.—The term “history”, with re-  
4 spect to an Indian group or Indian tribe, means the  
5 existence of the Indian group or Indian tribe during  
6 the historical period.

7 (12) INDEPENDENT RESEARCH INSTITUTION.—  
8 The term “independent research institution” means  
9 an academic or museum institution that—

10 (A) employs significant resources toward  
11 the study of anthropology and other human  
12 sciences that are commonly used in reviewing  
13 petitions for acknowledgment; and

14 (B) could readily detail those resources to  
15 assist the Assistant Secretary in reviewing  
16 those petitions.

17 (13) INDIAN GROUP.—The term “Indian  
18 group” means any Indian band, pueblo, village, or  
19 community that is not acknowledged.

20 (14) INDIAN TRIBE.—The term “Indian tribe”  
21 has the meaning given the term in section 4 of the  
22 Indian Self-Determination and Education Assistance  
23 Act (25 U.S.C. 450b).

24 (15) INTERESTED PARTY.—

1 (A) IN GENERAL.—The term “interested  
2 party” means any person, organization, or  
3 other entity that—

4 (i) establishes a legal, factual, or  
5 property interest in a determination of ac-  
6 knowledgment; and

7 (ii) requests an opportunity to submit  
8 comments or evidence, or to be kept in-  
9 formed of general actions, regarding a spe-  
10 cific petition.

11 (B) INCLUSIONS.—The term “interested  
12 party” includes—

13 (i) the Governor of any State;

14 (ii) the Attorney General of any State;

15 (iii) any unit of local government; and

16 (iv) any Indian tribe, or Indian group,  
17 that may be directly affected by a deter-  
18 mination of acknowledgment.

19 (16) LETTER OF INTENT.—The term “letter of  
20 intent” means an undocumented letter or resolution  
21 that—

22 (A) indicates the intent of an Indian group  
23 to submit a documented petition for Federal ac-  
24 knowledgment;

1           (B) is dated and signed by the governing  
2           body of the Indian group; and

3           (C) is submitted to the Department.

4           (17) PETITIONER.—The term “petitioner”  
5           means any Indian group that submits a letter of in-  
6           tent to the Assistant Secretary.

7           (18) PILOT PROJECT.—The term “pilot  
8           project” means the Federal acknowledgment re-  
9           search pilot project established under section 6(e).

10          (19) POLITICAL INFLUENCE OR AUTHORITY.—  
11          The term “political influence or authority”, with re-  
12          spect to the exercise or maintenance by an Indian  
13          group, means the use by the Indian group of a tribal  
14          council, leadership, internal process, or other mecha-  
15          nism, in the context of the history, culture, and so-  
16          cial organization of the Indian group, as a means  
17          of—

18                 (A) influencing or controlling the behavior  
19                 of members of the Indian group in a significant  
20                 manner;

21                 (B) making decisions for the Indian group  
22                 that substantially affect members of the Indian  
23                 group; or

1           (C) representing the Indian group in deal-  
2           ing with nonmembers in matters of consequence  
3           to the Indian group.

4           (20) SECRETARY.—The term “Secretary”  
5           means the Secretary of the Interior.

6           (21) TREATY.—The term “treaty” means any  
7           treaty—

8                   (A) negotiated and ratified by the United  
9                   States on or before March 3, 1871, with, or on  
10                  behalf of, any Indian group or Indian tribe;

11                  (B) made by any government with, or on  
12                  behalf of, any Indian group or Indian tribe, as  
13                  a result of which the Federal Government or  
14                  the colonial government that was the prede-  
15                  cessor to the Federal Government subsequently  
16                  acquired territory by purchase, conquest, annex-  
17                  ation, or cession; or

18                  (C) negotiated by the United States with,  
19                  or on behalf of, any Indian group in California,  
20                  regardless of whether the treaty was subse-  
21                  quently ratified.

22           (22) TRIBAL ROLL.—The term “tribal roll”  
23           means a list exclusively of individuals who—

24                   (A)(i) have been determined by an Indian  
25                  tribe to meet the membership requirements of

1 the Indian tribe, as described in the governing  
2 document of the Indian tribe; or

3 (ii) in the absence of a governing document  
4 that describes those requirements, have been  
5 recognized as members of the Indian tribe by  
6 the governing body of the Indian tribe; and

7 (B) have affirmatively demonstrated con-  
8 sent to being listed as members of the Indian  
9 tribe.

10 **SEC. 4. ACKNOWLEDGMENT PROCESS.**

11 (a) LETTER OF INTENT.—

12 (1) IN GENERAL.—An Indian group that de-  
13 sires to initiate with the Department a petition for  
14 acknowledgment shall submit to the Assistant Sec-  
15 retary a letter of intent that provides to the Assist-  
16 ant Secretary relevant information concerning the  
17 Indian group that may be used to provide notice to  
18 interested parties.

19 (2) CONTENTS.—The Indian group shall in-  
20 clude in the letter of intent, to the maximum extent  
21 practicable—

22 (A) the current name of the Indian group  
23 and any name by which the Indian group may  
24 have been identified throughout the history of  
25 the Indian group;

1           (B) the ~~1~~ or more names of the governing  
2 body of the Indian group;

3           (C) the current address of the governing  
4 body of the Indian group; and

5           (D) a brief narrative of the history of the  
6 Indian group describing—

7                 (i) the geographic areas in which the  
8 Indian group may have been located dur-  
9 ing that history; and

10                (ii) any relationships of the Indian  
11 group with other Indian tribes or Indian  
12 groups.

13           (3) NOTICE.—Not later than 90 days after the  
14 date of receipt of a letter of intent from an Indian  
15 group, the Assistant Secretary shall notify the In-  
16 dian group and interested parties whether the letter  
17 of intent reasonably identifies the Indian group.

18           (b) REQUIREMENTS FOR PETITIONS.—

19                 (1) EVIDENCE.—

20                     (A) IN GENERAL.—Except as provided in  
21 paragraph (2), on or after filing a letter of in-  
22 tent, an Indian group that seeks acknowledg-  
23 ment shall submit to the Assistant Secretary a  
24 petition accompanied by evidence that dem-

1           onstrates the existence of the Indian group dur-  
2           ing the historical period.

3           (B) EVIDENCE RELATING TO HISTORICAL  
4           EXISTENCE.—To establish the existence of an  
5           Indian group during the historical period, a pe-  
6           tition shall include evidence that demonstrates  
7           with reasonable likelihood that each factor de-  
8           scribed in section 5 with respect to the petition  
9           has been achieved by the petitioner.

10          (C) ACCESS TO LIBRARY OF CONGRESS  
11          AND NATIONAL ARCHIVES.—On request by a  
12          petitioner, the appropriate officials of the Li-  
13          brary of Congress and the National Archives  
14          shall permit access by the petitioner to the re-  
15          sources, records, and documents relating to the  
16          petitioner for the purposes of conducting re-  
17          search and preparing evidence concerning the  
18          status of the petitioner.

19          (2) INELIGIBLE GROUPS AND ENTITIES.—The  
20          following groups and entities shall not be eligible to  
21          submit to the Assistant Secretary a petition for ac-  
22          knowledgment under this Act:

23                 (A) Any Indian tribe, organized band,  
24                 pueblo, community, or Alaska Native entity

1 that, as of the date of enactment of this Act,  
2 is acknowledged.

3 (B) Any Indian group, political faction, or  
4 community that separates from the main popu-  
5 lation of an Indian tribe, unless the Indian  
6 group, faction, or community establishes to the  
7 satisfaction of the Assistant Secretary that the  
8 Indian group, political faction, or community  
9 has functioned as an autonomous Indian group  
10 throughout the historical period.

11 (C) Any Indian group, or successor in in-  
12 terest of an Indian group (other than an Indian  
13 tribe, organized band, pueblo, community, or  
14 Alaska native entity described in subparagraph  
15 (A)), that, before the date of enactment of this  
16 Act, in accordance with regulations promul-  
17 gated by the Secretary, petitioned for, and was  
18 denied or refused, acknowledgment based on  
19 the merits of the petition (except that nothing  
20 in this subparagraph excludes any group that  
21 Congress has identified as an Indian group but  
22 has not identified as an Indian tribe).

23 (D) Any Indian group the relationship of  
24 which with the Federal Government was ex-  
25 pressly terminated by an Act of Congress.

1 (e) NOTICE OF RECEIPT OF A PETITION; SCHED-  
2 ULE.—

3 (1) PUBLICATION.—

4 (A) IN GENERAL.—Not later than 30 days  
5 after the date on which the Assistant Secretary  
6 receives a documented petition under subsection  
7 (b), the Assistant Secretary shall publish in the  
8 Federal Register a notice of receipt of the peti-  
9 tion.

10 (B) INCLUSIONS.—The notice shall in-  
11 clude—

12 (i) the name and location of the peti-  
13 tioner;

14 (ii) such other information as the As-  
15 sistant Secretary determines will identify  
16 the petitioner;

17 (iii) the date of receipt of the petition;

18 (iv) information describing 1 or more  
19 locations at which a copy of the petition  
20 and related submissions may be examined  
21 by the public; and

22 (v) a description of the procedure by  
23 which an interested party may submit—

1                   (I) evidence in support of or in  
2                   opposition to the request of the peti-  
3                   tioner for acknowledgment; or

4                   (II) a request to be kept in-  
5                   formed of all actions affecting the pe-  
6                   tition.

7                   (2) SCHEDULE.—Not later than 60 days after  
8                   the date of publication of a notice under paragraph  
9                   (1)(A), the Assistant Secretary shall establish a  
10                  schedule for—

11                  (A) the submission of evidence and argu-  
12                  ments relating to the petition; and

13                  (B) the publication of proposed findings of  
14                  the Assistant Secretary with respect to the peti-  
15                  tion.

16                  (d) REVIEW OF PETITIONS.—

17                  (1) IN GENERAL.—On receipt of a documented  
18                  petition, the Assistant Secretary, in accordance with  
19                  the schedule established under subsection (c)(2),  
20                  shall—

21                  (A) conduct a review to determine whether  
22                  the petitioner is entitled to acknowledgment;  
23                  and

1           (B) publish in the Federal Register the  
2           proposed findings of the Assistant Secretary  
3           with respect to that determination.

4           (2) CONTENT OF REVIEW.—The review con-  
5           ducted under paragraph (1) shall include consider-  
6           ation of—

7                   (A) the petition;

8                   (B) any supporting evidence; and

9                   (C) any factual statements contained in  
10           the petition relating to other submissions, in-  
11           cluding oral accounts of the history of the peti-  
12           tioner submitted by the petitioner.

13           (3) CONSIDERATION OF EVIDENCE.—Evidence  
14           received from interested parties under subsection  
15           (c)(1)(B)(v)(I) shall be—

16                   (A) considered by the Assistant Secretary;  
17           and

18                   (B) noted in any final determination re-  
19           garding a petition.

20           (4) OTHER RESEARCH.—In conducting a review  
21           under this subsection, the Assistant Secretary  
22           may—

23                   (A) initiate other research for any purpose  
24           relating to—

25                           (i) analysis of the petition; or

1                   (ii) the acquisition of additional infor-  
2                   mation concerning the status of the peti-  
3                   tioner;

4                   (B) initiate research through the pilot  
5                   project or the Board; and

6                   (C) consider evidence submitted by inter-  
7                   ested parties, including oral accounts of the his-  
8                   tory of the petitioner submitted by other Indian  
9                   tribes.

10                  (5) EXCEPTION FOR LACK OF CERTAIN EVI-  
11                  DENCE.—If the Assistant Secretary determines that,  
12                  for any period of time, evidence necessary to carry  
13                  out this subsection is lacking, the lack of evidence  
14                  shall not be the basis for a determination of the As-  
15                  sistant Secretary not to acknowledge a petitioner if  
16                  the Assistant Secretary determines that the lack of  
17                  evidence may be attributed to—

18                         (A) any applicable official act of the Fed-  
19                         eral Government or a State government; or

20                         (B) any applicable unofficial act of an offi-  
21                         cer or agent of the Federal Government or a  
22                         State government.

23                  (e) FINAL DETERMINATION.—

24                         (1) IN GENERAL.—On review of all evidence  
25                         submitted under section 5 and this section and the

1 results of research conducted under section 5 and  
2 this section by the Assistant Secretary (including  
3 through the pilot project or the Board), and after  
4 providing a petitioner an opportunity to respond to  
5 proposed findings of the Assistant Secretary against  
6 acknowledgment, the Assistant Secretary shall make  
7 a final determination in writing whether the peti-  
8 tioner is entitled to acknowledgment.

9 (2) FACTS AND CONCLUSIONS.—A final deter-  
10 mination under paragraph (1) shall include all facts  
11 and conclusions of law in accordance with which the  
12 final determination was made.

13 (3) NOTIFICATION OF ACKNOWLEDGMENT.—If  
14 the Assistant Secretary determines under paragraph  
15 (1) that a petitioner is entitled to acknowledgment,  
16 the Assistant Secretary shall—

17 (A) acknowledge the petitioner;

18 (B) notify the petitioner and any interested  
19 parties of the final determination to acknowl-  
20 edge the petitioner;

21 (C) provide to the petitioner and any inter-  
22 ested parties a copy of the final determination;  
23 and

24 (D) not later than 7 days after notifying  
25 the petitioner and any interested parties under

1           subparagraph (B), publish in the Federal Reg-  
2           ister a notice of the final determination of ac-  
3           knowledge.

4           (f) JUDICIAL REVIEW.—

5           (1) IN GENERAL.—Not later than 60 days after  
6           the date of publication of the notice of a final deter-  
7           mination described in subsection (e)(3)(D), a peti-  
8           tioner may seek judicial review of the final deter-  
9           mination by the United States District Court for the  
10          District of Columbia.

11          (2) STATEMENT OF INTENT.—It is the intent of  
12          Congress that, in accordance with Federal law relat-  
13          ing to interpretations of treaties and Acts of Con-  
14          gress affecting the rights, powers, privileges, and im-  
15          munities of Indian tribes, any ambiguity in this Act  
16          be liberally construed in favor of an Indian group or  
17          Indian tribe.

18          (g) AUTHORIZATION OF APPROPRIATIONS.—There is  
19          authorized to be appropriated to carry out this section  
20          \$5,000,000 for each of fiscal years 2004 through 2013.

21       **SEC. 5. DOCUMENTED PETITIONS.**

22          (a) FACTORS FOR CONSIDERATION.—A petition for  
23          acknowledgment submitted by an Indian group shall be  
24          in any readable form that—

1           (1) clearly indicates that the petition is a docu-  
2           mented petition requesting acknowledgment of the  
3           Indian group; and

4           (2) contains detailed, specific evidence as de-  
5           scribed in subsections (b) through (g).

6           (b) STATEMENT OF FACTS RELATING TO IDEN-  
7           TITY.—

8           (1) IN GENERAL.—A petition described in sub-  
9           section (a) shall contain a statement of facts and an  
10          analysis of those facts establishing that the peti-  
11          tioner has been identified as an Indian group in the  
12          United States on a substantially continuous basis.

13          (2) PREVIOUS DENIALS OF STATUS.—The As-  
14          sistant Secretary shall not consider any evidence  
15          that the status of the petitioner as an Indian group  
16          has previously been denied to be conclusive evidence  
17          that the factor described in paragraph (1) has not  
18          been met.

19          (3) EVIDENCE RELATING TO IDENTITY.—In de-  
20          termining the Indian identity of a group, the Assist-  
21          ant Secretary may use as evidence 1 or more of the  
22          following:

23                 (A) An identification of the petitioner as  
24                 an Indian entity by any department, agency, or  
25                 instrumentality of the Federal Government.

1           (B) A relationship between the petitioner  
2 and any State government, based on an identi-  
3 fication of the petitioner by the State as an In-  
4 dian entity.

5           (C) Any dealings of the petitioner with a  
6 county or political subdivision of a State in a  
7 relationship based on an identification of the  
8 petitioner as an Indian group.

9           (D) An identification of the petitioner as  
10 an Indian group by records in a private or pub-  
11 lic archive, courthouse, church, or school.

12           (E) An identification of the petitioner as  
13 an Indian group by an anthropologist, histo-  
14 rian, or other scholar.

15           (F) An identification of the petitioner as  
16 an Indian group in a newspaper, book, or simi-  
17 lar medium.

18           (G) An identification of the petitioner as  
19 an Indian group by an Indian tribe or by a na-  
20 tional, regional, or State Indian organization.

21           (H) An identification of the petitioner as  
22 an Indian group by a foreign government or an  
23 international organization.

24           (I) Such other evidence of identification as  
25 may be provided by a person or entity other

1 than the petitioner or a member of the member-  
 2 ship of the petitioner.

3 (c) STATEMENT OF FACTS RELATING TO EVIDENCE  
 4 OF COMMUNITY.—

5 (1) IN GENERAL.—A petition described in sub-  
 6 section (a) shall include a statement of facts and an  
 7 analysis of those facts establishing that a predomi-  
 8 nant portion of the membership of the petitioner—

9 (A) comprises a community distinct from  
 10 the communities surrounding that community;  
 11 and

12 (B) has existed as a community through-  
 13 out the historical period.

14 (2) EVIDENCE RELATING TO COMMUNITY.—In  
 15 determining whether the membership of the peti-  
 16 tioner meets the requirements of paragraph (1), the  
 17 Assistant Secretary may use as evidence 1 or more  
 18 of the following:

19 (A) Significant rates of marriage within  
 20 the membership of the petitioner, or, as may be  
 21 culturally required, patterned out-marriages  
 22 with other Indian populations.

23 (B) Significant social relationships con-  
 24 necting individual members of the petitioner.

1           (C) Significant rates of informal social  
2 interaction that exist broadly among the mem-  
3 bers of the petitioner.

4           (D) A significant degree of shared or coop-  
5 erative labor or other economic activity among  
6 the membership of the petitioner.

7           (E) Evidence of strong patterns of dis-  
8 crimination or other social distinctions against  
9 members of the petitioner by nonmembers.

10          (F) Shared sacred or secular ritual activity  
11 encompassing a majority of members of the pe-  
12 titioner.

13          (G) Cultural patterns that—

14           (i) are shared among a significant  
15 portion of the members of the petitioner;

16           (ii) are different from the cultural  
17 patterns of the non-Indian populations  
18 with whom the membership of the peti-  
19 tioner interacts;

20           (iii) function as more than a symbolic  
21 identification of the petitioner as Indian;  
22 and

23           (iv) may include language, kinship, or  
24 religious organizations, or religious beliefs  
25 and practices.

1           (H) The persistence of a named, collective  
2 Indian identity during a continuous period of at  
3 least 50 years, notwithstanding any change in  
4 name.

5           (I) A demonstration of historical political  
6 influence or authority of the petitioner.

7           (J) A demonstration that not less than 50  
8 percent of the members of the petitioner exhibit  
9 collateral kinship ties through generations to  
10 the third degree.

11           (3) CRITERIA FOR SUFFICIENT EVIDENCE.—

12 The Assistant Secretary shall consider a petitioner  
13 to have provided sufficient evidence of community  
14 under this subparagraph if the petitioner has pro-  
15 vided to the Assistant Secretary evidence dem-  
16 onstrating that, throughout the historical period—

17           (A)(i) more than 50 percent of the mem-  
18 bers of the petitioner reside in a particular geo-  
19 graphical area exclusively, or almost exclusively,  
20 composed of members of the group; and

21           (ii) the balance of the membership main-  
22 tains consistent social interaction with other  
23 members of the petitioner;

1           (B) not less than  $\frac{1}{3}$  of the marriages of  
2           the petitioner are between members of the peti-  
3           tioner;

4           (C) not less than 50 percent of the mem-  
5           bers of the petitioner maintain distinct cultural  
6           patterns, including language, kinship, and reli-  
7           gious organizations, or religious beliefs or prac-  
8           tices;

9           (D) distinct community social institutions  
10          (such as kinship organizations, formal or infor-  
11          mal economic cooperation, and religious organi-  
12          zations) encompass at least 50 percent of the  
13          members of the petitioner; or

14          (E) the petitioner has met the requirement  
15          under subsection (d)(1) using evidence de-  
16          scribed in subsection (d)(2).

17          (d) STATEMENT OF FACTS RELATING TO AUTONO-  
18          MOUS NATURE OF PETITIONER.—

19           (1) IN GENERAL.—A petition described in sub-  
20          section (a) shall include a statement of facts and an  
21          analysis of those facts establishing that the peti-  
22          tioner has maintained political influence or authority  
23          over members of the petitioner throughout the his-  
24          torical period.

1           (2) EVIDENCE RELATING TO AUTONOMOUS NA-  
2           TURE.—In determining whether a petitioner is an  
3           autonomous entity under paragraph (1), the Assist-  
4           ant Secretary may use as evidence 1 or more of the  
5           following:

6                   (A) A demonstration that the petitioner is  
7                   capable of mobilizing significant numbers of  
8                   members and significant member resource for  
9                   purposes relating to the petitioner.

10                   (B) Evidence that most of the members of  
11                   the petitioner consider actions taken by leaders  
12                   or governing bodies of the petitioner to be of  
13                   personal importance.

14                   (C) Evidence that there is widespread  
15                   knowledge, communication, and involvement in  
16                   political processes of the petitioner by a major-  
17                   ity of the members of the petitioner.

18                   (D) Evidence that the petitioner meets the  
19                   requirement of subsection (c)(1) at more than  
20                   a minimal level.

21                   (E) A demonstration by the petitioner that  
22                   there are conflicts within the membership that  
23                   demonstrate controversy over valued goals,  
24                   properties, policies, processes, or decisions of  
25                   the petitioner.

1           (F) A demonstration or description by the  
2           petitioner of—

3                   (i) a continuous line of leaders of the  
4                   petitioner; and

5                   (ii) the means by which a majority of  
6                   the members of the petitioner selected, or  
7                   approved the selection of, those leaders.

8           (3) EVIDENCE OF EXERCISE OF POLITICAL IN-  
9           FLUENCE OR AUTHORITY.—The Assistant Secretary  
10           shall consider a petitioner to have provided sufficient  
11           evidence to demonstrate the exercise of political in-  
12           fluence or authority if the petitioner demonstrates  
13           that decisions by leaders of the petitioner (or deci-  
14           sions made through another decisionmaking process)  
15           have been made throughout the historical period  
16           with respect to—

17                   (A) the allocation of group resources such  
18                   as land, residence rights, or similar resources  
19                   on a consistent basis;

20                   (B) the settlement on a regular basis, by  
21                   mediation or other means, of disputes between  
22                   members or subgroups of members of the peti-  
23                   tioner (such as clans or lineages);

24                   (C) the exertion of strong influence on the  
25                   behavior of individual members of the peti-

1           tioner, such as the establishment or mainte-  
 2           nance of norms and the enforcement of sanc-  
 3           tions to direct or control behavior; or

4           (D) the organization or influencing of eco-  
 5           nomic subsistence activities among the members  
 6           of the petitioner, including shared or coopera-  
 7           tive labor.

8           (e) GOVERNING DOCUMENT.—

9           (1) IN GENERAL.—A petition described in sub-  
 10          section (a) shall include a copy of the governing doc-  
 11          ument of the petitioner in effect as of the date of  
 12          submission of the petition that includes a description  
 13          of the membership criteria of the petitioner.

14          (2) ALTERNATIVE STATEMENT.—If no written  
 15          governing document described in paragraph (1) ex-  
 16          ists, a petitioner shall include with a petition de-  
 17          scribed in subsection (a) a detailed statement that  
 18          describes—

19               (A) the membership criteria of the peti-  
 20               tioner; and

21               (B) the governing procedures of the peti-  
 22               tioner in effect as of the date of submission of  
 23               the petition.

24          (f) LIST OF MEMBERS.—

1           (1) IN GENERAL.—A petition described in sub-  
2           section (a) shall include—

3                   (A) a list of all members of the petitioner  
4                   as of the date of submission of the petition that  
5                   includes for each member—

6                           (i) a full name (and maiden name, if  
7                           any);

8                           (ii) a date and place of birth; and

9                           (iii) a current residential address;

10                   (B) a copy of each available former list of  
11                   members of the petitioner; and

12                   (C) a statement describing the methods  
13                   used in preparing those lists.

14           (2) REQUIREMENTS FOR MEMBERSHIP.—In de-  
15           termining whether to consider the members of a pe-  
16           titioner to be members of an Indian group for the  
17           purpose of a petition described in subparagraph (A),  
18           the Assistant Secretary shall require that the mem-  
19           bership consist of descendants of—

20                   (A) an Indian group that existed during  
21                   the historical period; or

22                   (B) 1 or more Indian groups that, at any  
23                   time during the historical period, combined and  
24                   functioned as a single autonomous entity.

1           ~~(2) EVIDENCE OF TRIBAL MEMBERSHIP.—~~In  
2 making the determination under paragraph ~~(2)~~, the  
3 Assistant Secretary may use as evidence ~~1~~ or more  
4 of the following:

5           ~~(A) Tribal rolls prepared by the Secretary~~  
6           ~~for the petitioner for the purpose of distributing~~  
7           ~~claims money or providing allotments, or for~~  
8           ~~other any other purpose.~~

9           ~~(B) Any Federal, State, or other official~~  
10           ~~record or evidence identifying members of the~~  
11           ~~petitioner as of the date of submission of the~~  
12           ~~petition, or ancestors of those members, as~~  
13           ~~being descendants of an Indian group described~~  
14           ~~in subparagraph (A) or (B) of paragraph (2).~~

15           ~~(C) Any church, school, or other similar~~  
16           ~~enrollment record identifying members of the~~  
17           ~~petitioner as of the date of submission of the~~  
18           ~~petition, or ancestors of those members, as~~  
19           ~~being descendants of an Indian group described~~  
20           ~~in subparagraph (A) or (B) of paragraph (2).~~

21           ~~(D) An affidavit of recognition by tribal el-~~  
22           ~~ders, tribal leaders, or a tribal governing body~~  
23           ~~identifying members of the petitioner as of the~~  
24           ~~date of submission of the petition, or ancestors~~  
25           ~~of those members, as being descendants of an~~

1 Indian group described in subparagraph (A) or  
 2 (B) of paragraph (2).

3 ~~(E)~~ Any other record or evidence based on  
 4 firsthand experience of a historian, anthropolo-  
 5 gist, or genealogist with established expertise on  
 6 the petitioner or Indian entities in general,  
 7 identifying members of the petitioner as of the  
 8 date of submission of the petition, or ancestors  
 9 of those members, as being descendants of an  
 10 Indian group described in subparagraph (A) or  
 11 (B) of paragraph (2).

12 ~~(g)~~ EXCEPTIONS.—

13 (1) IN GENERAL.—An Indian group described  
 14 in paragraph (2) shall be required to provide evi-  
 15 dence for a petition for acknowledgment submitted  
 16 under this section only with respect to the period—

17 (A) beginning on the date on which the  
 18 Department first notifies the Indian group that  
 19 the Indian group is not eligible for Federal  
 20 services or programs because of a lack of status  
 21 as an Indian tribe; and

22 (B) ending on the date of submission of  
 23 the petition.

24 (2) INDIAN GROUP.—An Indian group referred  
 25 to in this paragraph is an Indian group that dem-

1        demonstrates by a reasonable likelihood of the validity of  
 2        the evidence that the Indian group was, or is a suc-  
 3        cessor in interest to—

4                (A) a party to 1 or more treaties;

5                (B) a group acknowledged by any agency  
 6                of the Federal Government as eligible to partici-  
 7                pate in a project or activity under the Act of  
 8                June 18, 1934 (commonly known as the “In-  
 9                dian Reorganization Act”) (25 U.S.C. 461 et  
 10              seq.);

11              (C) a group—

12                      (i) for the benefit of which the United  
 13                      States took land into trust; or

14                      (ii) that has been treated by the Fed-  
 15                      eral Government as having collective rights  
 16                      in tribal land or funds; or

17              (D) a group that has been designated as  
 18              an Indian tribe by an Act of Congress or Exe-  
 19              cutive order.

20    **SEC. 6. ADDITIONAL RESOURCES.**

21        (a)    INDEPENDENT REVIEW AND ADVISORY  
 22    BOARD.—

23              (1) IN GENERAL.—The Assistant Secretary  
 24              shall establish the Independent Review and Advisory  
 25              Board—

1           (A) to assist the Assistant Secretary in ad-  
 2           dressing unique evidentiary questions relating  
 3           to the acknowledgment process;

4           (B) to provide secondary peer review of ac-  
 5           knowledge determinations by the Assistant  
 6           Secretary; and

7           (C) to enhance the credibility of the ac-  
 8           knowledge process as perceived by Con-  
 9           gress, petitioners, interested parties, and the  
 10          public.

11          (2) NUMBER AND QUALIFICATIONS.—

12          (A) IN GENERAL.—The Board shall be  
 13          composed of 9 individuals appointed by the As-  
 14          sistant Secretary, of whom—

15               (i) at least 3 individuals shall have a  
 16               doctoral degree in anthropology;

17               (ii) at least 3 individuals shall have a  
 18               doctoral degree in genealogy;

19               (iii) at least 2 individuals shall have a  
 20               doctor of jurisprudence degree; and

21               (iv) at least 1 individual shall be  
 22               qualified as a historian, as determined by  
 23               the Assistant Secretary.

24          (B) PREFERENCE.—In making appoint-  
 25          ments under subparagraph (A), the Assistant

1 Secretary shall give preference to individuals  
2 having an academic background or professional  
3 experience in Federal Indian policy or American  
4 Indian history.

5 (C) CONFLICTS OF INTEREST.—No mem-  
6 ber of the Board shall, at the time of appoint-  
7 ment or during the 1-year period preceding the  
8 date of appointment, have represented, or con-  
9 ducted research for, any Indian group or inter-  
10 ested party with respect to a petition for ac-  
11 knowledgment filed, or intended to be filed,  
12 with the Assistant Secretary.

13 (D) STATUS AS EMPLOYEES.—A member  
14 of the Board shall not be considered to be an  
15 employee of the Department.

16 (3) TENURE; REIMBURSEMENT.—

17 (A) TENURE.—A member of the Board—

18 (i) shall be appointed for an initial  
19 term of 2 years; and

20 (ii) may be reappointed for such addi-  
21 tional terms as the Assistant Secretary de-  
22 termines to be appropriate.

23 (B) REIMBURSEMENT.—A member of the  
24 Board shall be reimbursed for reasonable ex-  
25 penses incurred in assisting the Assistant Sec-

1           retary under this section, in accordance with  
 2           Department policy regarding reimbursement of  
 3           expenses for individuals serving as advisory  
 4           board or committee members.

5           (4) REVIEW AND ADVICE.—

6           (A) BEFORE ISSUANCE OF PROPOSED  
 7           FINDINGS.—At any time before the date of  
 8           issuance of proposed findings under section  
 9           4(d)(1)(B) with respect to a petition for ac-  
 10          knowledge under review by the Assistant  
 11          Secretary, the Assistant Secretary may request  
 12          an opinion from the Board with respect to the  
 13          petition if the Assistant Secretary determines  
 14          that—

15                 (i) the petition contains 1 or more evi-  
 16                 dentiary submissions that raise unique  
 17                 issues or matters of first impression relat-  
 18                 ing to 1 or more requirements described in  
 19                 section 5; or

20                 (ii) the Assistant Secretary is unable  
 21                 to determine the sufficiency of evidence for  
 22                 1 or more of those requirements.

23           (B) AFTER ISSUANCE OF PROPOSED FIND-  
 24           INGS.—After issuance by the Assistant Sec-  
 25           retary of proposed findings under section

1 4(d)(1)(B), but before issuance of the final de-  
2 termination, with respect to a petition, the As-  
3 sistant Secretary shall request a review by the  
4 Board of the proposed findings.

5 (C) LEVEL OF REVIEW.—

6 (i) IN GENERAL.—The Board shall  
7 conduct a review requested under subpara-  
8 graph (B) to determine whether an evi-  
9 dentiary question or deficiency exists with  
10 respect to 1 or more requirements relating  
11 to a petition.

12 (ii) LIMITATION BY ASSISTANT SEC-  
13 RETARY OF SCOPE OF REVIEW.—In re-  
14 questing a review under subparagraph (B),  
15 the Assistant Secretary may restrict the  
16 scope of the review to address fewer than  
17 all matters with respect to a petition.

18 (iii) LIMITATION BY BOARD OF SCOPE  
19 OF REVIEW.—In carrying out a review  
20 under subparagraph (B), the Board, in ac-  
21 cordance with all applicable professional  
22 standards of the members of the Board,  
23 may—

24 (I) confine the review to—

1                   (aa) the evidence submitted;

2                   or

3                   (bb) the proposed findings

4                   issued under section 4(d)(1)(B);

5                   (II) extend the review to the evi-

6                   dence submitted by petitioners and in-

7                   terested parties;

8                   (III) request that the Assistant

9                   Secretary request additional submis-

10                  sions by petitioners or interested par-

11                  ties; and

12                  (IV) recommend that the Assist-

13                  ant Secretary hold a formal or infor-

14                  mal administrative proceeding at

15                  which the Board may present ques-

16                  tions to; and seek additional informa-

17                  tion from; petitioners and interested

18                  parties.

19                  (b) ASSISTANCE TO PETITIONERS AND INTERESTED

20 PARTIES.—

21                  (1) GRANTS.—

22                  (A) IN GENERAL.—Subject to paragraph

23                  (2), the Assistant Secretary may provide to a

24                  petitioner or interested party a grant to offset

25                  costs incurred in submitting—

1 (i) a petition (including related evi-  
2 dence or documents); or

3 (ii) a legal argument in support of or  
4 in opposition to a petition.

5 (B) LIMITATION.—In making grants under  
6 subparagraph (A), the Assistant Secretary shall  
7 ensure that not less than 50 percent of the  
8 amounts made available for the grants are re-  
9 served for petitioners.

10 (2) ELIGIBILITY.—The Assistant Secretary  
11 shall provide a grant under paragraph (1) based on  
12 a demonstration of need of a petitioner or an inter-  
13 ested party that is evaluated using such objective  
14 criteria as the Secretary may promulgate by regula-  
15 tion.

16 (3) OTHER ASSISTANCE.—A grant made to an  
17 Indian group under paragraph (1) shall be in addi-  
18 tion to any other assistance received by the Indian  
19 group under any other provision of law.

20 (4) AUTHORIZATION OF APPROPRIATIONS.—  
21 There are authorized to be appropriated to carry out  
22 this subsection such sums as are necessary for each  
23 of fiscal years 2004 through 2014.

24 (c) FEDERAL ACKNOWLEDGMENT RESEARCH PILOT  
25 PROJECT.—

1           (1) ESTABLISHMENT.—The Assistant Secretary  
2 shall establish a Federal acknowledgment research  
3 pilot project to make available additional research  
4 resources for researching, reviewing, and analyzing  
5 petitions for acknowledgment received by the Assist-  
6 ant Secretary.

7           (2) COMPOSITION.—

8           (A) IN GENERAL.—The Assistant Sec-  
9 retary, in consultation with the Secretary of the  
10 Smithsonian Institution, shall identify a variety  
11 of independent research institutions that have  
12 the academic and research facilities capable of  
13 assisting in the review of petitions described in  
14 paragraph (1).

15           (B) PROPOSALS.—The Assistant Secretary  
16 shall—

17           (i) invite each institution identified  
18 under subparagraph (A) to submit to the  
19 Assistant Secretary a proposal for partici-  
20 pation in the pilot project; and

21           (ii) approve not more than 3 pro-  
22 posals submitted under clause (i).

23           (C) GRANTS.—The Assistant Secretary  
24 may provide a grant to each institution the pro-  
25 posal of which is approved under subparagraph

1           (B)(ii) to assist the institution in participating  
2           in the pilot project.

3           (3) DUTIES.—Each institution approved to partici-  
4           pate in the pilot project shall assemble and pro-  
5           vide a research team that, under the direction of the  
6           Assistant Secretary, shall—

7                   (A) review submissions described in para-  
8                   graph (1); and

9                   (B) submit to the Assistant Secretary con-  
10                  clusions and recommendations of the research  
11                  team that are based on the submissions re-  
12                  viewed.

13           (4) USE OF CONCLUSIONS.—The Assistant Sec-  
14           retary may take into consideration any conclusions  
15           and recommendations of a research team in making  
16           a determination of acknowledgment under this Act.

17           (5) REPORT.—Not later than 3 years after the  
18           date of enactment of this Act, the Assistant Sec-  
19           retary shall submit to Congress a report that de-  
20           scribes the effectiveness of the pilot project.

21           (6) AUTHORIZATION OF APPROPRIATIONS.—  
22           There is authorized to be appropriated to carry out  
23           this subsection \$3,000,000 for each of fiscal years  
24           2004 through 2006.

1 **SEC. 7. INAPPLICABILITY OF FOIA.**

2 (a) **IN GENERAL.**—Section 552 of title 5, United  
3 States Code (commonly known as the “Freedom of Infor-  
4 mation Act”), shall not apply to any action of the Assist-  
5 ant Secretary with respect to a petition for acknowledg-  
6 ment under this Act, and the Assistant Secretary shall  
7 have no obligation to provide all or any portion of a peti-  
8 tion, or to provide information regarding the contents of  
9 a petition, to any person or entity, until such time as—

10 (1) the petition has been fully documented; and

11 (2) the Assistant Secretary has published a no-  
12 tice in accordance with section 4(c)(1)(A).

13 (b) **EXCEPTION.**—The restriction under subsection  
14 (a) on the provision of information contained in or relating  
15 to a petition shall not apply to any formal or informal  
16 request made or subpoena issued by a law enforcement  
17 agency of the United States.

18 (c) **ASSISTANCE FROM ATTORNEY GENERAL.**—

19 (1) **IN GENERAL.**—The Secretary may request  
20 assistance from the Attorney General in responding  
21 to requests for information relating to a petition  
22 made in accordance with section 552 of title 5,  
23 United States Code.

24 (2) **AUTHORIZATION OF APPROPRIATIONS.**—

25 There is authorized to be appropriated to the Attor-  
26 ney General to provide assistance requested under

1       this subsection \$1,000,000 for each of fiscal years  
2       2004 through 2008.

3       **SEC. 8. EFFECT AND IMPLEMENTATION OF DECISIONS.**

4       (a) **IN GENERAL.**—The acknowledgment of any peti-  
5       tioner under this Act shall not reduce or eliminate—

6               (1) the right of any other Indian tribe to govern  
7       the reservation of that other tribe (as the reservation  
8       exists before, on, or after the date of acknowledg-  
9       ment of the petitioner);

10              (2) any property right held in trust or recog-  
11       nized by the United States for the other Indian tribe  
12       (as that property right existed before the date of ac-  
13       knowledgment of the petitioner); or

14              (3) any previously or independently existing  
15       claim by a petitioner to any property right described  
16       in paragraph (2) held in trust by the United States  
17       for the other Indian tribe before the date of ac-  
18       knowledgment of the petitioner.

19       (b) **ELIGIBILITY FOR SERVICES AND BENEFITS.**—

20              (1) **IN GENERAL.**—Subject to paragraph (2), on  
21       acknowledgment by the Assistant Secretary of a pe-  
22       titioner under this Act, the newly-acknowledged In-  
23       dian tribe shall—

24                      (A) have a government-to-government rela-  
25       tionship with the United States;

1           (B) be eligible for the programs and serv-  
2           ices provided by the United States to members  
3           of other Indian tribes because of the status of  
4           those members as Indians; and

5           (C) have the responsibilities, obligations,  
6           privileges, and immunities of those other Indian  
7           tribes.

8           (2) PROGRAMS OF THE BUREAU.—

9           (A) IN GENERAL.—The acknowledgment  
10           by the Assistant Secretary of an Indian group  
11           under this Act shall not establish any imme-  
12           diate entitlement to participation in any pro-  
13           gram of the Bureau in existence as of the date  
14           of acknowledgment.

15           (B) AVAILABILITY OF PROGRAMS.—

16           (i) IN GENERAL.—Participation in a  
17           program described in subparagraph (A)  
18           shall be available to an Indian tribe de-  
19           scribed in paragraph (1) at such time as  
20           funds are made available for that purpose.

21           (ii) REQUESTS FOR APPROPRIA-  
22           TIONS.—The Secretary and the Secretary  
23           of Health and Human Services shall sub-  
24           mit budget requests for funding for in-  
25           creased participation in a program de-

1                   scribed in subparagraph (A) in accordance  
2                   with subsection (c).

3       (c) NEEDS DETERMINATION AND BUDGET RE-  
4 QUEST.—

5           (1) IN GENERAL.—Not later than 180 days  
6       after a petitioner is acknowledged under this Act,  
7       the appropriate officials of the Bureau and the In-  
8       dian Health Service of the Department of Health  
9       and Human Services shall consult with the newly-ac-  
10      knowledged Indian tribe concerning, develop in co-  
11      operation with the newly-acknowledged Indian tribe,  
12      and forward to the Secretary or the Secretary of  
13      Health and Human Services, as appropriate—

14                   (A) a determination of the needs of the In-  
15                   dian tribe; and

16                   (B) a recommended budget required to  
17                   serve the Indian tribe.

18       (2) SUBMISSION OF BUDGET REQUEST.—For  
19      each fiscal year, the Secretary or the Secretary of  
20      Health and Human Services, as appropriate, shall  
21      submit to the President a recommended budget for  
22      programs and services provided by the United States  
23      to members of Indian tribes because of the status of  
24      those members as Indians (including funding rec-  
25      ommendations for newly-acknowledged Indian tribes

1 based on the information received under paragraph  
2 ~~(1)~~ for inclusion in the annual budget submitted by  
3 the President to Congress in accordance with section  
4 1108 of title 31, United States Code.

5 **SEC. 9. REGULATIONS.**

6 The Secretary may—

7 (1) promulgate such regulations as are nec-  
8 essary to carry out this Act; and

9 (2) maintain in effect all regulations contained  
10 in part 83 of title 25, Code of Federal Regulations  
11 (or any successor regulations), that are not incon-  
12 sistent with this Act.

13 **SECTION 1. SHORT TITLE.**

14 *This Act may be cited as the “Federal Acknowledgment*  
15 *Process Reform Act of 2004”.*

16 **SEC. 2. FINDINGS AND PURPOSES.**

17 (a) *FINDINGS.—Congress finds that—*

18 (1) *Indian tribes were sovereign governmental*  
19 *entities before the establishment of the United States;*

20 (2) *the United States has entered into and rati-*  
21 *fied treaties with many Indian tribes for the purpose*  
22 *of establishing government-to-government relation-*  
23 *ships between the United States and the Indian*  
24 *tribes;*

1           (3) *Federal court decisions have recognized the*  
2 *constitutional power of Congress to establish govern-*  
3 *ment-to-government relationships with Indian tribes;*

4           (4) *in 1970, President Nixon ended the termi-*  
5 *nation policy and inaugurated the policy of Indian*  
6 *self-determination;*

7           (5) *in 1978—*

8           (A) *the Secretary of the Interior delegated*  
9 *authority to the Assistant Secretary for Indian*  
10 *Affairs to establish a formal administrative proc-*  
11 *ess by which the United States acknowledges an*  
12 *Indian tribe; and*

13           (B) *the Bureau of Indian Affairs established*  
14 *the Branch of Acknowledgment and Research to*  
15 *carry out the Federal administrative acknowl-*  
16 *edgment process; and*

17           (6) *the Federal administrative acknowledgment*  
18 *process was intended to provide the Assistant Sec-*  
19 *retary with an informed and well-researched basis for*  
20 *making any decision to acknowledge an Indian tribe.*

21           (b) *PURPOSES.—The purposes of this Act are—*

22           (1) *to ensure that, in any case in which the*  
23 *United States acknowledges an Indian tribe by ad-*  
24 *ministrative process, it does so with a consistent legal,*  
25 *factual, and historical basis;*

1           (2) *to provide clear and consistent standards to*  
2 *review documented petitions for acknowledgment by*  
3 *administrative process; and*

4           (3) *to clarify evidentiary standards and expedite*  
5 *the administrative review process for petitions by—*

6                 (A) *establishing deadlines for decisions; and*

7                 (B) *providing adequate resources to process*  
8 *petitions.*

9 **SEC. 3. DEFINITIONS.**

10 *In this Act:*

11           (1) *ACKNOWLEDGMENT.—The term “acknowledg-*  
12 *ment”, with respect to a determination by the Assist-*  
13 *ant Secretary, means acknowledgment by the United*  
14 *States that—*

15                 (A) *an Indian group is an Indian tribe*  
16 *having a government-to-government relationship*  
17 *with the United States; and*

18                 (B) *the members of the Indian group are el-*  
19 *igible for the programs and services provided by*  
20 *the United States to members of Indian tribes*  
21 *because of the status of those members as Indi-*  
22 *ans.*

23           (2) *ASSISTANT SECRETARY.—The term “Assist-*  
24 *ant Secretary” means the Assistant Secretary for In-*  
25 *dian Affairs of the Department.*

1           (3) *AUTONOMOUS.*—The term “autonomous”,  
2           with respect to an Indian group and in the context  
3           of the history, geography, culture, and social organi-  
4           zation of the Indian group, means an Indian group  
5           that exercises the political influence or authority of  
6           the Indian group independently of the control of any  
7           other Indian group.

8           (4) *BOARD.*—The term “Board” means the Inde-  
9           pendent Review and Advisory Board established  
10          under section 6(a).

11          (5) *BUREAU.*—The term “Bureau” means the  
12          Bureau of Indian Affairs.

13          (6) *COMMUNITY.*—The term “community” means  
14          any group of people living within a particular area  
15          that, in the context of the history, culture, and social  
16          organization of the group, and taking into account  
17          the geography of the region in which the group is lo-  
18          cated, is able to demonstrate that—

19                 (A) consistent interactions and significant  
20                 social relationships exist within the membership;  
21                 and

22                 (B) the members of the group are differen-  
23                 tiated from and identified as distinct from non-  
24                 members.

1           (7) *CONTINUOUS*.—With respect to the history of  
2 a group, the term “continuous” means the period be-  
3 ginning with calendar year 1900 and continuing to  
4 the present time substantially without interruption.

5           (8) *DEPARTMENT*.—The term “Department”  
6 means the Department of the Interior.

7           (9) *DOCUMENTED PETITION*.—The term “docu-  
8 mented petition” means a petition for acknowledg-  
9 ment consisting of a detailed, factual exposition and  
10 arguments, and related documentary evidence, that  
11 specifically address requirements for acknowledgment  
12 established by the Assistant Secretary under section  
13 4(b).

14           (10) *HISTORICAL PERIOD*.—The term “historical  
15 period” means the period beginning with 1900 and  
16 continuing through the date of submission of a peti-  
17 tion for acknowledgment under this Act.

18           (11) *HISTORY*.—The term “history”, with respect  
19 to an Indian group or Indian tribe, means the exist-  
20 ence of the Indian group or Indian tribe during the  
21 historical period.

22           (12) *INDEPENDENT RESEARCH INSTITUTION*.—  
23 The term “independent research institution” means  
24 an academic or museum institution that—

1           (A) *employs significant resources toward*  
2           *the study of anthropology and other human*  
3           *sciences that are commonly used in reviewing pe-*  
4           *petitions for acknowledgment; and*

5           (B) *could readily detail those resources to*  
6           *assist the Assistant Secretary in reviewing those*  
7           *petitions.*

8           (13) *INDIAN GROUP.*—*The term “Indian group”*  
9           *means any Indian band, pueblo, village, or commu-*  
10          *nity in a State (excluding Hawaii) that is not ac-*  
11          *knowledged.*

12          (14) *INDIAN TRIBE.*—*The term “Indian tribe”*  
13          *has the meaning given the term in section 4 of the In-*  
14          *dian Self-Determination and Education Assistance*  
15          *Act (25 U.S.C. 450b).*

16          (15) *INTERESTED PARTY.*—

17               (A) *IN GENERAL.*—*The term “interested*  
18               *party” means any person, organization, or other*  
19               *entity that—*

20                       (i) *establishes a legal, factual, or prop-*  
21                       *erty interest in a determination of acknowl-*  
22                       *edgment; and*

23                       (ii) *requests an opportunity to submit*  
24                       *comments or evidence, or to be kept in-*

1           formed of general actions, regarding a spe-  
2           cific petition.

3           (B) *INCLUSIONS.*—The term “interested  
4           party” includes—

5                     (i) the Governor of any State;

6                     (ii) the Attorney General of any State;

7                     (iii) any unit of local government; and

8                     (iv) any Indian tribe, or Indian group,

9                     that may be directly affected by a deter-  
10                    mination of acknowledgment.

11           (16) *LETTER OF INTENT.*—The term “letter of  
12           intent” means an undocumented letter or resolution  
13           that—

14                     (A) indicates the intent of an Indian group  
15                     to submit a documented petition for Federal ac-  
16                     knowledgment;

17                     (B) is dated and signed by the governing  
18                     body of the Indian group; and

19                     (C) is submitted to the Department.

20           (17) *PETITIONER.*—The term “petitioner” means  
21           any Indian group that submits a letter of intent to  
22           the Assistant Secretary.

23           (18) *PILOT PROJECT.*—The term “pilot project”  
24           means the Federal acknowledgment research pilot  
25           project established under section 6(c).

1           (19) *POLITICAL INFLUENCE OR AUTHORITY.*—  
2           *The term “political influence or authority”, with re-*  
3           *spect to the exercise or maintenance by an Indian*  
4           *group, means the use by the Indian group of a tribal*  
5           *council, leadership, internal process, or other mecha-*  
6           *nism, in the context of the history, culture, and social*  
7           *organization of the Indian group, as a means of—*

8                   (A) *influencing or controlling the behavior*  
9                   *of members of the Indian group in a significant*  
10                  *manner;*

11                  (B) *making decisions for the Indian group*  
12                  *that substantially affect members of the Indian*  
13                  *group; or*

14                  (C) *representing the Indian group in deal-*  
15                  *ing with nonmembers in matters of consequence*  
16                  *to the Indian group.*

17           (20) *SECRETARY.*—*The term “Secretary” means*  
18           *the Secretary of the Interior.*

19           (21) *TREATY.*—*The term “treaty” means any*  
20           *treaty—*

21                   (A) *negotiated and ratified by the United*  
22                   *States on or before March 3, 1871, with, or on*  
23                   *behalf of, any Indian group or Indian tribe;*

24                   (B) *made by any government with, or on*  
25                   *behalf of, any Indian group or Indian tribe, as*

1           *a result of which the Federal Government or the*  
 2           *colonial government that was the predecessor to*  
 3           *the Federal Government subsequently acquired*  
 4           *territory by purchase, conquest, annexation, or*  
 5           *cession; or*

6                   *(C) negotiated by the United States with, or*  
 7           *on behalf of, any Indian group in California, re-*  
 8           *gardless of whether the treaty was subsequently*  
 9           *ratified.*

10           (22) *TRIBAL ROLL.*—*The term “tribal roll”*  
 11           *means a list exclusively of individuals who—*

12                   *(A)(i) have been determined by an Indian*  
 13           *tribe to meet the membership requirements of the*  
 14           *Indian tribe, as described in the governing docu-*  
 15           *ment of the Indian tribe; or*

16                   *(ii) in the absence of a governing document*  
 17           *that describes those requirements, have been rec-*  
 18           *ognized as members of the Indian tribe by the*  
 19           *governing body of the Indian tribe; and*

20                   *(B) have affirmatively demonstrated consent*  
 21           *to being listed as members of the Indian tribe.*

22 **SEC. 4. ACKNOWLEDGMENT PROCESS.**

23           (a) *LETTER OF INTENT.*—

24                   (1) *IN GENERAL.*—*An Indian group that desires*  
 25           *to initiate with the Department a petition for ac-*

1 *knowledge shall submit to the Assistant Secretary*  
2 *a letter of intent that provides to the Assistant Sec-*  
3 *retary relevant information concerning the Indian*  
4 *group that may be used to provide notice to interested*  
5 *parties.*

6 (2) *CONTENTS.—The Indian group shall include*  
7 *in the letter of intent, to the maximum extent prac-*  
8 *ticable—*

9 (A) *the current name of the Indian group*  
10 *and any name by which the Indian group may*  
11 *have been identified throughout the history of the*  
12 *Indian group;*

13 (B) *the 1 or more names of the governing*  
14 *body of the Indian group;*

15 (C) *the current address of the governing*  
16 *body of the Indian group; and*

17 (D) *a brief narrative of the history of the*  
18 *Indian group describing—*

19 (i) *the geographic areas in which the*  
20 *Indian group may have been located during*  
21 *that history; and*

22 (ii) *any relationships of the Indian*  
23 *group with other Indian tribes or Indian*  
24 *groups.*

1           (3) *NOTICE.*—Not later than 90 days after the  
2           date of receipt of a letter of intent from an Indian  
3           group, the Assistant Secretary shall notify the Indian  
4           group and interested parties whether the letter of in-  
5           tent reasonably identifies the Indian group.

6           (b) *REQUIREMENTS FOR PETITIONS.*—

7           (1) *EVIDENCE.*—

8           (A) *IN GENERAL.*—Except as provided in  
9           paragraph (2), on or after filing a letter of in-  
10          tent, an Indian group that seeks acknowledgment  
11          shall submit to the Assistant Secretary a petition  
12          accompanied by evidence that demonstrates the  
13          existence of the Indian group during the histor-  
14          ical period.

15          (B) *EVIDENCE RELATING TO HISTORICAL*  
16          *EXISTENCE.*—To establish the existence of an In-  
17          dian group during the historical period, a peti-  
18          tion shall include evidence that demonstrates  
19          with reasonable likelihood that each factor de-  
20          scribed in section 5 with respect to the petition  
21          has been achieved by the petitioner.

22          (C) *ACCESS TO LIBRARY OF CONGRESS AND*  
23          *NATIONAL ARCHIVES.*—On request by a peti-  
24          tioner, the appropriate officials of the Library of  
25          Congress and the National Archives shall permit

1           *access by the petitioner to the resources, records,*  
2           *and documents relating to the petitioner for the*  
3           *purposes of conducting research and preparing*  
4           *evidence concerning the status of the petitioner.*

5           (2) *INELIGIBLE GROUPS AND ENTITIES.*—*The*  
6           *following groups and entities shall not be eligible to*  
7           *submit to the Assistant Secretary a petition for ac-*  
8           *knowledgment under this Act:*

9                   (A) *Any Indian tribe, organized band,*  
10                  *pueblo, community, or Alaska Native entity that,*  
11                  *as of the date of enactment of this Act, is ac-*  
12                  *knowledged.*

13                   (B) *Any Indian group, political faction, or*  
14                  *community that separates from the main popu-*  
15                  *lation of an Indian tribe, unless the Indian*  
16                  *group, faction, or community establishes to the*  
17                  *satisfaction of the Assistant Secretary that the*  
18                  *Indian group, political faction, or community*  
19                  *has functioned as an autonomous Indian group*  
20                  *throughout the historical period.*

21                   (C) *Any Indian group, or successor in in-*  
22                  *terest of an Indian group (other than an Indian*  
23                  *tribe, organized band, pueblo, community, or*  
24                  *Alaska native entity described in subparagraph*  
25                  *(A)), that, before the date of enactment of this*

1           *Act, in accordance with regulations promulgated*  
2           *by the Secretary, petitioned for, and was denied*  
3           *or refused, acknowledgment based on the merits*  
4           *of the petition (except that nothing in this sub-*  
5           *paragraph excludes any group that Congress has*  
6           *identified as an Indian group but has not iden-*  
7           *tified as an Indian tribe).*

8           *(D) Any Indian group the relationship of*  
9           *which with the Federal Government was ex-*  
10          *pressly terminated by an Act of Congress.*

11          *(c) NOTICE OF RECEIPT OF A PETITION; SCHEDULE.—*

12           *(1) PUBLICATION.—*

13           *(A) IN GENERAL.—Not later than 30 days*  
14           *after the date on which the Assistant Secretary*  
15           *receives a documented petition under subsection*  
16           *(b), the Assistant Secretary shall publish in the*  
17           *Federal Register a notice of receipt of the peti-*  
18           *tion.*

19           *(B) INCLUSIONS.—The notice shall in-*  
20           *clude—*

21           *(i) the name and location of the peti-*  
22           *tioner;*

23           *(ii) such other information as the As-*  
24           *stant Secretary determines will identify*  
25           *the petitioner;*

1                   (iii) the date of receipt of the petition;

2                   (iv) information describing 1 or more  
3 locations at which a copy of the petition  
4 and related submissions may be examined  
5 by the public; and

6                   (v) a description of the procedure by  
7 which an interested party may submit—

8                   (I) evidence in support of or in  
9 opposition to the request of the peti-  
10 tioner for acknowledgment; or

11                   (II) a request to be kept informed  
12 of all actions affecting the petition.

13                   (2) *SCHEDULE.*—Not later than 60 days after  
14 the date of publication of a notice under paragraph  
15 (1)(A), the Assistant Secretary, in consultation with  
16 the petitioner and interested parties, shall establish  
17 a schedule for—

18                   (A) the submission of evidence and argu-  
19 ments relating to the petition; and

20                   (B) the publication of proposed findings of  
21 the Assistant Secretary with respect to the peti-  
22 tion.

23                   (d) *REVIEW OF PETITIONS.*—

24                   (1) *IN GENERAL.*—Not later than 360 days after  
25 receipt of a documented petition, the Assistant Sec-

1        *retary, in accordance with the schedule established*  
2        *under subsection (c)(2), shall—*

3                *(A) conduct a review to determine whether*  
4                *the petitioner is entitled to acknowledgment; and*

5                *(B) publish in the Federal Register the pro-*  
6                *posed findings of the Assistant Secretary with re-*  
7                *spect to that determination.*

8                *(2) EXTENSION.—For good cause, the Assistant*  
9                *Secretary may extend the publication date for a pe-*  
10               *riod of not more than 180 days.*

11               *(3) CONTENT OF REVIEW.—The review conducted*  
12               *under paragraph (1) shall include consideration of—*

13                        *(A) the petition;*

14                        *(B) any supporting evidence;*

15                        *(C) any factual statements contained in the*  
16                        *petition relating to other submissions, including*  
17                        *oral accounts of the history of the petitioner sub-*  
18                        *mitted by the petitioner; and*

19                        *(D) submissions of interested parties sub-*  
20                        *mitted under subsection (c)(1)(B)(v) and within*  
21                        *the schedule established under subsection (c)(2).*

22                *(4) CONSIDERATION OF EVIDENCE.—Evidence re-*  
23                *ceived from interested parties under subsection*  
24                *(c)(1)(B)(v)(I) shall be—*

1           (A) considered by the Assistant Secretary;  
2           and

3           (B) noted in any proposed findings or final  
4           determination regarding a petition.

5           (5) *OTHER RESEARCH.*—In conducting a review  
6           under this subsection, the Assistant Secretary may—

7           (A) initiate other research for any purpose  
8           relating to—

9                   (i) analysis of the petition; or

10                   (ii) the acquisition of additional infor-  
11                   mation concerning the status of the peti-  
12                   tioner;

13           (B) initiate research through the pilot  
14           project or the Board; and

15           (C) consider evidence submitted by inter-  
16           ested parties, including oral accounts of the his-  
17           tory of the petitioner submitted by other Indian  
18           tribes.

19           (6) *EXCEPTION FOR LACK OF CERTAIN EVI-*  
20           *DENCE.*—If the Assistant Secretary determines that,  
21           for any period of time, evidence necessary to carry  
22           out this subsection is lacking, the lack of evidence  
23           shall not be the basis for a determination of the As-  
24           sistant Secretary not to acknowledge a petitioner if

1 *the Assistant Secretary determines that the lack of*  
2 *evidence may be attributed to—*

3 *(A) any applicable official act of the Fed-*  
4 *eral Government or a State government; or*

5 *(B) any applicable unofficial act of an offi-*  
6 *cer or agent of the Federal Government or a*  
7 *State government.*

8 *(e) FINAL DETERMINATION.—*

9 *(1) IN GENERAL.—On review of all evidence sub-*  
10 *mitted under section 5 and this section and the re-*  
11 *sults of research conducted under section 5 and this*  
12 *section by the Assistant Secretary (including through*  
13 *the pilot project or the Board), and after providing*  
14 *a petitioner and interested parties an opportunity to*  
15 *respond to the proposed findings of the Assistant Sec-*  
16 *retary, the Assistant Secretary shall make a final de-*  
17 *termination in writing whether the petitioner is enti-*  
18 *tled to acknowledgment.*

19 *(2) FACTS AND CONCLUSIONS.—A final deter-*  
20 *mination under paragraph (1) shall include all facts*  
21 *and conclusions of law in accordance with which the*  
22 *final determination was made.*

23 *(3) DEADLINE FOR ISSUANCE OF FINAL DETER-*  
24 *MINATION.—A final determination under paragraph*  
25 *(1) shall be made not later than 360 days after publi-*

1        *cation of the proposed findings in the Federal Reg-*  
2        *ister.*

3            (4) *NOTIFICATION OF ACKNOWLEDGMENT.*—*If the*  
4        *Assistant Secretary determines under paragraph (1)*  
5        *that a petitioner is entitled to acknowledgment, the*  
6        *Assistant Secretary shall—*

7            (A) *acknowledge the petitioner;*

8            (B) *notify the petitioner and any interested*  
9        *parties of the final determination to acknowledge*  
10       *the petitioner;*

11          (C) *provide to the petitioner and any inter-*  
12       *ested parties a copy of the final determination;*  
13       *and*

14          (D) *not later than 7 days after notifying*  
15       *the petitioner and any interested parties under*  
16       *subparagraph (B), publish in the Federal Reg-*  
17       *ister a notice of the final determination of ac-*  
18       *knowledgment.*

19        (f) *JUDICIAL REVIEW.*—

20          (1) *IN GENERAL.*—*Not later than 60 days after*  
21       *the date of publication of the notice of a final deter-*  
22       *mination described in subsection (e)(3)(D), a peti-*  
23       *tioner may seek judicial review of the final deter-*  
24       *mination by the United States District Court for the*  
25       *District of Columbia.*

1           (2) *STATEMENT OF INTENT.*—

2                   (A) *IN GENERAL.*—*It is the intent of Con-*  
3                   gress that, in accordance with Federal law relat-  
4                   ing to interpretations of treaties and Acts of  
5                   Congress affecting the rights, powers, privileges,  
6                   and immunities of Indian tribes, any ambiguity  
7                   in this Act be liberally construed in favor of an  
8                   Indian group or Indian tribe.

9                   (B) *APPLICABILITY OF OTHER LAW.*—*Noth-*  
10                  ing in paragraph (1) affects the applicability of  
11                  chapter 7 of title 5, United States Code (com-  
12                  monly known as the “Administrative Procedure  
13                  Act”), or any other rights under any other law.

14           (g) *AUTHORIZATION OF APPROPRIATIONS.*—*There is*  
15           authorized to be appropriated to carry out this section  
16           \$5,000,000 for each of fiscal years 2004 through 2013.

17   **SEC. 5. DOCUMENTED PETITIONS.**

18           (a) *FACTORS FOR CONSIDERATION.*—*A petition for ac-*  
19           knowledge submitted by an Indian group shall be in  
20           any readable form that—

21                   (1) *clearly indicates that the petition is a docu-*  
22                   mented petition requesting acknowledgment of the In-  
23                   dian group; and

24                   (2) *contains detailed, specific evidence as de-*  
25                   scribed in subsections (b) through (g).

1       **(b) STATEMENT OF FACTS RELATING TO IDENTITY.**—

2           **(1) IN GENERAL.**—*A petition described in sub-*  
3       *section (a) shall contain a statement of facts and an*  
4       *analysis of those facts establishing that the petitioner*  
5       *has been identified as an Indian group in the United*  
6       *States on a substantially continuous basis.*

7           **(2) PREVIOUS DENIALS OF STATUS.**—*The Assist-*  
8       *ant Secretary shall not consider any evidence that the*  
9       *status of the petitioner as an Indian group has pre-*  
10      *viously been denied to be conclusive evidence that the*  
11      *factor described in paragraph (1) has not been met.*

12          **(3) EVIDENCE RELATING TO IDENTITY.**—*In de-*  
13      *termining the Indian identity of a group, the Assist-*  
14      *ant Secretary may use as evidence 1 or more of the*  
15      *following:*

16           **(A)** *An identification of the petitioner as an*  
17      *Indian entity by any department, agency, or in-*  
18      *strumentality of the Federal Government.*

19           **(B)** *A relationship between the petitioner*  
20      *and any State government, based on an identi-*  
21      *fication of the petitioner by the State as an In-*  
22      *dian entity.*

23           **(C)** *Any dealings of the petitioner with a*  
24      *county or political subdivision of a State in a*

1           *relationship based on an identification of the pe-*  
2           *tioner as an Indian group.*

3           *(D) An identification of the petitioner as an*  
4           *Indian group by records in a private or public*  
5           *archive, courthouse, church, or school.*

6           *(E) An identification of the petitioner as an*  
7           *Indian group by an anthropologist, historian, or*  
8           *other scholar.*

9           *(F) An identification of the petitioner as an*  
10          *Indian group in a newspaper, book, or similar*  
11          *medium.*

12          *(G) An identification of the petitioner as an*  
13          *Indian group by an Indian tribe or by a na-*  
14          *tional, regional, or State Indian organization.*

15          *(H) An identification of the petitioner as*  
16          *an Indian group by a foreign government or an*  
17          *international organization.*

18          *(I) Such other evidence of identification as*  
19          *may be provided by a person or entity other*  
20          *than the petitioner or a member of the member-*  
21          *ship of the petitioner.*

22          *(c) STATEMENT OF FACTS RELATING TO EVIDENCE OF*  
23          *COMMUNITY.—*

24                 *(1) IN GENERAL.—A petition described in sub-*  
25                 *section (a) shall include a statement of facts and an*

1 *analysis of those facts establishing that a predomi-*  
2 *nant portion of the membership of the petitioner—*

3 *(A) comprises a community distinct from*  
4 *the communities surrounding that community;*  
5 *and*

6 *(B) has existed as a community throughout*  
7 *the historical period.*

8 *(2) EVIDENCE RELATING TO COMMUNITY.—In de-*  
9 *termining whether the membership of the petitioner*  
10 *meets the requirements of paragraph (1), the Assist-*  
11 *ant Secretary may use as evidence 1 or more of the*  
12 *following:*

13 *(A) Significant rates of marriage within the*  
14 *membership of the petitioner, or, as may be cul-*  
15 *turally required, patterned out-marriages with*  
16 *other Indian populations.*

17 *(B) Significant social relationships con-*  
18 *necting individual members of the petitioner.*

19 *(C) Significant rates of informal social*  
20 *interaction that exist broadly among the mem-*  
21 *bers of the petitioner.*

22 *(D) A significant degree of shared or coop-*  
23 *erative labor or other economic activity among*  
24 *the membership of the petitioner.*

1           (E) Evidence of strong patterns of discrimi-  
2 nation or other social distinctions against mem-  
3 bers of the petitioner by nonmembers.

4           (F) Shared sacred or secular ritual activity  
5 encompassing a majority of members of the peti-  
6 tioner.

7           (G) Cultural patterns that—

8               (i) are shared among a significant por-  
9 tion of the members of the petitioner;

10               (ii) are different from the cultural pat-  
11 terns of the non-Indian populations with  
12 whom the membership of the petitioner  
13 interacts;

14               (iii) function as more than a symbolic  
15 identification of the petitioner as Indian;  
16 and

17               (iv) may include language, kinship, or  
18 religious organizations, or religious beliefs  
19 and practices.

20           (H) The persistence of a named, collective  
21 Indian identity during a continuous period of at  
22 least 50 years, notwithstanding any change in  
23 name.

24           (I) A demonstration of historical political  
25 influence or authority of the petitioner.

1           *(J) A demonstration that not less than 50*  
2           *percent of the members of the petitioner exhibit*  
3           *collateral kinship ties through generations to the*  
4           *third degree.*

5           *(3) CRITERIA FOR SUFFICIENT EVIDENCE.—The*  
6           *Assistant Secretary shall consider a petitioner to have*  
7           *provided sufficient evidence of community under this*  
8           *subparagraph if the petitioner has provided to the As-*  
9           *stant Secretary evidence demonstrating that,*  
10          *throughout the historical period—*

11           *(A)(i) more than 50 percent of the members*  
12           *of the petitioner reside in a particular geo-*  
13           *graphical area exclusively, or almost exclusively,*  
14           *composed of members of the group; and*

15           *(ii) the balance of the membership main-*  
16           *tains consistent social interaction with other*  
17           *members of the petitioner;*

18           *(B) not less than  $\frac{1}{3}$  of the marriages of the*  
19           *petitioner are between members of the petitioner;*

20           *(C) not less than 50 percent of the members*  
21           *of the petitioner maintain distinct cultural pat-*  
22           *terns, including language, kinship, and religious*  
23           *organizations, or religious beliefs or practices;*

24           *(D) distinct community social institutions*  
25           *(such as kinship organizations, formal or infor-*

1           *mal economic cooperation, and religious organi-*  
 2           *zations) encompass at least 50 percent of the*  
 3           *members of the petitioner; or*

4                     *(E) the petitioner has met the requirement*  
 5           *under subsection (d)(1) using evidence described*  
 6           *in subsection (d)(2).*

7           *(d) STATEMENT OF FACTS RELATING TO AUTONOMOUS*  
 8           *NATURE OF PETITIONER.—*

9                     *(1) IN GENERAL.—A petition described in sub-*  
 10          *section (a) shall include a statement of facts and an*  
 11          *analysis of those facts establishing that the petitioner*  
 12          *has maintained political influence or authority over*  
 13          *members of the petitioner throughout the historical*  
 14          *period.*

15                    *(2) EVIDENCE RELATING TO AUTONOMOUS NA-*  
 16          *TURE.—In determining whether a petitioner is an*  
 17          *autonomous entity under paragraph (1), the Assistant*  
 18          *Secretary may use as evidence 1 or more of the fol-*  
 19          *lowing:*

20                    *(A) A demonstration that the petitioner is*  
 21          *capable of mobilizing significant numbers of*  
 22          *members and significant member resource for*  
 23          *purposes relating to the petitioner.*

24                    *(B) Evidence that most of the members of*  
 25          *the petitioner consider actions taken by leaders*

1            *or governing bodies of the petitioner to be of per-*  
2            *sonal importance.*

3            *(C) Evidence that there is widespread*  
4            *knowledge, communication, and involvement in*  
5            *political processes of the petitioner by a majority*  
6            *of the members of the petitioner.*

7            *(D) Evidence that the petitioner meets the*  
8            *requirement of subsection (c)(1) at more than a*  
9            *minimal level.*

10           *(E) A demonstration by the petitioner that*  
11           *there are conflicts within the membership that*  
12           *demonstrate controversy over valued goals, prop-*  
13           *erties, policies, processes, or decisions of the peti-*  
14           *tioner.*

15           *(F) A demonstration or description by the*  
16           *petitioner of—*

17                   *(i) a continuous line of leaders of the*  
18                   *petitioner; and*

19                   *(ii) the means by which a majority of*  
20                   *the members of the petitioner selected, or*  
21                   *approved the selection of, those leaders.*

22            *(3) EVIDENCE OF EXERCISE OF POLITICAL IN-*  
23            *FLUENCE OR AUTHORITY.—The Assistant Secretary*  
24            *shall consider a petitioner to have provided sufficient*  
25            *evidence to demonstrate the exercise of political influ-*

1        *ence or authority if the petitioner demonstrates that*  
2        *decisions by leaders of the petitioner (or decisions*  
3        *made through another decisionmaking process) have*  
4        *been made throughout the historical period with re-*  
5        *spect to—*

6                *(A) the allocation of group resources such as*  
7                *land, residence rights, or similar resources on a*  
8                *consistent basis;*

9                *(B) the settlement on a regular basis, by*  
10               *mediation or other means, of disputes between*  
11               *members or subgroups of members of the peti-*  
12               *tioner (such as clans or lineages);*

13               *(C) the exertion of strong influence on the*  
14               *behavior of individual members of the petitioner,*  
15               *such as the establishment or maintenance of*  
16               *norms and the enforcement of sanctions to direct*  
17               *or control behavior; or*

18               *(D) the organization or influencing of eco-*  
19               *nomics subsistence activities among the members*  
20               *of the petitioner, including shared or cooperative*  
21               *labor.*

22        *(e) GOVERNING DOCUMENT.—*

23               *(1) IN GENERAL.—A petition described in sub-*  
24               *section (a) shall include a copy of the governing docu-*  
25               *ment of the petitioner in effect as of the date of sub-*

1        *mission of the petition that includes a description of*  
 2        *the membership criteria of the petitioner.*

3            (2) *ALTERNATIVE STATEMENT.—If no written*  
 4        *governing document described in paragraph (1) ex-*  
 5        *ists, a petitioner shall include with a petition de-*  
 6        *scribed in subsection (a) a detailed statement that de-*  
 7        *scribes—*

8            (A) *the membership criteria of the peti-*  
 9        *tioner; and*

10          (B) *the governing procedures of the peti-*  
 11        *tioner in effect as of the date of submission of the*  
 12        *petition.*

13        (f) *LIST OF MEMBERS.—*

14          (1) *IN GENERAL.—A petition described in sub-*  
 15        *section (a) shall include—*

16          (A) *a list of all members of the petitioner as*  
 17        *of the date of submission of the petition that in-*  
 18        *cludes for each member—*

19            (i) *a full name (and maiden name, if*  
 20        *any);*

21            (ii) *a date and place of birth; and*

22            (iii) *a current residential address;*

23          (B) *a copy of each available former list of*  
 24        *members of the petitioner; and*

1           (C) a statement describing the methods used  
2           in preparing those lists.

3           (2) *REQUIREMENTS FOR MEMBERSHIP.*—In de-  
4           termining whether to consider the members of a peti-  
5           tioner to be members of an Indian group for the pur-  
6           pose of a petition described in subparagraph (A), the  
7           Assistant Secretary shall require that the membership  
8           consist of descendants of—

9           (A) an Indian group that existed during the  
10          historical period; or

11          (B) 1 or more Indian groups that, at any  
12          time during the historical period, combined and  
13          functioned as a single autonomous entity.

14          (3) *EVIDENCE OF TRIBAL MEMBERSHIP.*—In  
15          making the determination under paragraph (2), the  
16          Assistant Secretary may use as evidence 1 or more of  
17          the following:

18          (A) Tribal rolls prepared by the Secretary  
19          for the petitioner for the purpose of distributing  
20          claims money or providing allotments, or for  
21          other any other purpose.

22          (B) Any Federal, State, or other official  
23          record or evidence identifying members of the pe-  
24          titioner as of the date of submission of the peti-  
25          tion, or ancestors of those members, as being de-

1           *scendants of an Indian group described in sub-*  
2           *paragraph (A) or (B) of paragraph (2).*

3           *(C) Any church, school, or other similar en-*  
4           *rollment record identifying members of the peti-*  
5           *tioner as of the date of submission of the peti-*  
6           *tion, or ancestors of those members, as being de-*  
7           *scendants of an Indian group described in sub-*  
8           *paragraph (A) or (B) of paragraph (2).*

9           *(D) An affidavit of recognition by tribal el-*  
10          *ders, tribal leaders, or a tribal governing body*  
11          *identifying members of the petitioner as of the*  
12          *date of submission of the petition, or ancestors of*  
13          *those members, as being descendants of an In-*  
14          *Indian group described in subparagraph (A) or*  
15          *(B) of paragraph (2).*

16          *(E) Any other record or evidence based on*  
17          *firsthand experience of a historian, anthropolo-*  
18          *gist, or genealogist with established expertise on*  
19          *the petitioner or Indian entities in general, iden-*  
20          *tifying members of the petitioner as of the date*  
21          *of submission of the petition, or ancestors of*  
22          *those members, as being descendants of an In-*  
23          *Indian group described in subparagraph (A) or*  
24          *(B) of paragraph (2).*

25          *(g) EXCEPTIONS.—*

1           (1) *IN GENERAL.*—*An Indian group described in*  
2           *paragraph (2) shall be required to provide evidence*  
3           *for a petition for acknowledgment submitted under*  
4           *this section only with respect to the period—*

5                   (A) *beginning on the date on which the De-*  
6                   *partment first notifies the Indian group that the*  
7                   *Indian group is not eligible for Federal services*  
8                   *or programs because of a lack of status as an In-*  
9                   *Indian tribe; and*

10                   (B) *ending on the date of submission of the*  
11                   *petition.*

12           (2) *INDIAN GROUP.*—*An Indian group referred*  
13           *to in this paragraph is an Indian group that dem-*  
14           *onstrates by a reasonable likelihood of the validity of*  
15           *the evidence that the Indian group was, or is a suc-*  
16           *cessor in interest to—*

17                   (A) *a party to 1 or more treaties;*

18                   (B) *a group acknowledged by any agency of*  
19                   *the Federal Government as eligible to participate*  
20                   *in a project or activity under the Act of June 18,*  
21                   *1934 (commonly known as the “Indian Reorga-*  
22                   *nization Act”) (25 U.S.C. 461 et seq.);*

23                   (C) *a group—*

24                           (i) *for the benefit of which the United*  
25                           *States took land into trust; or*

1                   (ii) that has been treated by the Fed-  
 2                   eral Government as having collective rights  
 3                   in tribal land or funds; or

4                   (D) a group that has been designated as an  
 5                   Indian tribe by an Act of Congress or Executive  
 6                   order.

7 **SEC. 6. ADDITIONAL RESOURCES.**

8                   (a) *INDEPENDENT REVIEW AND ADVISORY BOARD.*—

9                   (1) *IN GENERAL.*—*The Assistant Secretary shall*  
 10                  *establish the Independent Review and Advisory*  
 11                  *Board—*

12                   (A) *to assist the Assistant Secretary in ad-*  
 13                   *ressing unique evidentiary questions relating to*  
 14                   *the acknowledgment process;*

15                   (B) *to provide secondary peer review of ac-*  
 16                   *knowledgment determinations by the Assistant*  
 17                   *Secretary; and*

18                   (C) *to enhance the credibility of the ac-*  
 19                   *knowledgment process as perceived by Congress,*  
 20                   *petitioners, interested parties, and the public.*

21                   (2) *NUMBER AND QUALIFICATIONS.*—

22                   (A) *IN GENERAL.*—*The Board shall be com-*  
 23                   *posed of 11 individuals appointed by the Assist-*  
 24                   *ant Secretary, of whom—*

1                   (i) at least 3 individuals shall have a  
2                   doctoral degree in anthropology;

3                   (ii) at least 3 individuals shall have  
4                   demonstrated expertise in genealogy;

5                   (iii) at least 2 individuals shall have a  
6                   doctor of jurisprudence degree; and

7                   (iv) at least 3 individuals shall have a  
8                   doctoral degree as a historian.

9                   (B) PREFERENCE.—In making appoint-  
10                  ments under subparagraph (A), the Assistant  
11                  Secretary shall give preference to individuals  
12                  having an academic background or professional  
13                  experience in Federal Indian policy or American  
14                  Indian history.

15                  (C) CONFLICTS OF INTEREST.—No member  
16                  of the Board shall, at the time of appointment  
17                  or during the 1-year period preceding the date of  
18                  appointment, have represented, or conducted re-  
19                  search for, any Indian group or interested party  
20                  with respect to a petition for acknowledgment  
21                  filed, or intended to be filed, with the Assistant  
22                  Secretary.

23                  (D) STATUS AS EMPLOYEES.—A member of  
24                  the Board shall not be considered to be an em-  
25                  ployee of the Department.

1           (3) *TENURE; REIMBURSEMENT.*—

2           (A) *TENURE.*—*A member of the Board—*

3                   (i) *shall be appointed for an initial*  
4                   *term of 2 years; and*

5                   (ii) *may be reappointed for such addi-*  
6                   *tional terms as the Assistant Secretary de-*  
7                   *termines to be appropriate.*

8           (B) *REIMBURSEMENT.*—*A member of the*  
9           *Board shall be reimbursed for reasonable ex-*  
10           *penditures incurred in assisting the Assistant Sec-*  
11           *retary under this section, in accordance with De-*  
12           *partment policy regarding reimbursement of ex-*  
13           *penditures for individuals serving as advisory board*  
14           *or committee members.*

15           (4) *REVIEW AND ADVICE.*—

16           (A) *BEFORE ISSUANCE OF PROPOSED FIND-*  
17           *INGS.*—*At any time before the date of issuance of*  
18           *proposed findings under section 4(d)(1)(B) with*  
19           *respect to a petition for acknowledgment under*  
20           *review by the Assistant Secretary, the Assistant*  
21           *Secretary may request an opinion from the*  
22           *Board with respect to the petition if the Assist-*  
23           *ant Secretary determines that—*

24                   (i) *the petition contains 1 or more evi-*  
25                   *dentiary submissions that raise unique*

1            *issues or matters of first impression relating*  
2            *to 1 or more requirements described in sec-*  
3            *tion 5; or*

4            *(ii) the Assistant Secretary is unable*  
5            *to determine the sufficiency of evidence for*  
6            *1 or more of those requirements.*

7            *(B) AFTER ISSUANCE OF PROPOSED FIND-*  
8            *INGS.—After issuance by the Assistant Secretary*  
9            *of proposed findings under section 4(d)(1)(B),*  
10           *but before issuance of the final determination,*  
11           *with respect to a petition, the Assistant Sec-*  
12           *retary shall request a review by the Board of the*  
13           *proposed findings.*

14           *(C) LEVEL OF REVIEW.—*

15           *(i) IN GENERAL.—The Board shall*  
16           *conduct a review requested under subpara-*  
17           *graph (B) to determine whether an evi-*  
18           *dentiary question or deficiency exists with*  
19           *respect to 1 or more criteria relating to a*  
20           *petition.*

21           *(ii) LIMITATION BY ASSISTANT SEC-*  
22           *RETARY OF SCOPE OF REVIEW.—In request-*  
23           *ing a review under subparagraph (B), the*  
24           *Assistant Secretary may restrict the scope of*

1           *the review to address fewer than all matters*  
2           *with respect to a petition.*

3           *(iii) LIMITATION BY BOARD OF SCOPE*  
4           *OF REVIEW.—In carrying out a review*  
5           *under subparagraph (B), the Board, in ac-*  
6           *cordance with all applicable professional*  
7           *standards of the members of the Board,*  
8           *may—*

9                     *(I) confine the review to—*

10                        *(aa) the evidence submitted;*

11                        *or*

12                        *(bb) the proposed findings*  
13                        *issued under section 4(d)(1)(B);*

14                     *(II) extend the review to the evi-*  
15                     *dence submitted by petitioners and in-*  
16                     *terested parties;*

17                     *(III) request that the Assistant*  
18                     *Secretary request additional submis-*  
19                     *sions by petitioners or interested par-*  
20                     *ties; and*

21                     *(IV) recommend that the Assistant*  
22                     *Secretary hold a formal or informal*  
23                     *administrative proceeding at which the*  
24                     *Board may present questions to, and*

1                    *seek additional information from, peti-*  
2                    *tioners and interested parties.*

3            (b) *ASSISTANCE TO PETITIONERS AND INTERESTED*  
4 *PARTIES.—*

5            (1) *GRANTS.—*

6                    (A) *IN GENERAL.—Subject to paragraph*  
7 *(2), the Assistant Secretary may provide to a pe-*  
8 *titioner or interested party a grant to offset costs*  
9 *incurred in submitting—*

10                    (i) *a petition (including related evi-*  
11 *dence or documents); or*

12                    (ii) *a legal argument in support of or*  
13 *in opposition to a petition.*

14                    (B) *LIMITATION.—In making grants under*  
15 *subparagraph (A), the Assistant Secretary shall*  
16 *ensure that not less than 50 percent of the*  
17 *amounts made available for the grants are re-*  
18 *served for petitioners.*

19                    (2) *ELIGIBILITY.—The Assistant Secretary shall*  
20 *provide a grant under paragraph (1) based on a dem-*  
21 *onstration of need of a petitioner or an interested*  
22 *party that is evaluated using such objective criteria*  
23 *as the Secretary may promulgate by regulation.*

24                    (3) *OTHER ASSISTANCE.—A grant made to an*  
25 *Indian group under paragraph (1) shall be in addi-*

1        *tion to any other assistance received by the Indian*  
2        *group under any other provision of law.*

3            (4) *AUTHORIZATION OF APPROPRIATIONS.—*

4        *There are authorized to be appropriated to carry out*  
5        *this subsection such sums as are necessary for each of*  
6        *fiscal years 2004 through 2014.*

7            (c) *FEDERAL ACKNOWLEDGMENT RESEARCH PILOT*  
8        *PROJECT.—*

9            (1) *ESTABLISHMENT.—The Assistant Secretary*  
10        *shall establish a Federal acknowledgment research*  
11        *pilot project to make available additional research re-*  
12        *sources for researching, reviewing, and analyzing pe-*  
13        *titions for acknowledgment received by the Assistant*  
14        *Secretary.*

15            (2) *COMPOSITION.—*

16            (A) *IN GENERAL.—The Assistant Secretary,*  
17        *in consultation with the Secretary of the Smith-*  
18        *sonian Institution, shall identify a variety of*  
19        *independent research institutions that have the*  
20        *academic and research facilities capable of as-*  
21        *sisting in the review of petitions described in*  
22        *paragraph (1).*

23            (B) *PROPOSALS.—The Assistant Secretary*  
24        *shall—*

1                   (i) invite each institution identified  
2                   under subparagraph (A) to submit to the  
3                   Assistant Secretary a proposal for partici-  
4                   pation in the pilot project; and

5                   (ii) approve not more than 3 proposals  
6                   submitted under clause (i).

7                   (C) GRANTS.—The Assistant Secretary may  
8                   provide a grant to each institution the proposal  
9                   of which is approved under subparagraph (B)(ii)  
10                  to assist the institution in participating in the  
11                  pilot project.

12                  (3) DUTIES.—Each institution approved to par-  
13                  ticipate in the pilot project shall assemble and pro-  
14                  vide a research team that, under the direction of the  
15                  Assistant Secretary, shall—

16                         (A) review submissions described in para-  
17                         graph (1); and

18                         (B) submit to the Assistant Secretary con-  
19                         clusions and recommendations of the research  
20                         team that are based on the submissions reviewed.

21                  (4) USE OF CONCLUSIONS.—The Assistant Sec-  
22                  retary may take into consideration any conclusions  
23                  and recommendations of a research team in making  
24                  a determination of acknowledgment under this Act.

1           (5) *REPORT.*—Not later than 3 years after the  
2           date of enactment of this Act, the Assistant Secretary  
3           shall submit to Congress a report that describes the ef-  
4           fectiveness of the pilot project.

5           (6) *AUTHORIZATION OF APPROPRIATIONS.*—  
6           There is authorized to be appropriated to carry out  
7           this subsection \$3,000,000 for each of fiscal years  
8           2004 through 2006.

9   **SEC. 7. INAPPLICABILITY OF FOIA.**

10          (a) *IN GENERAL.*—Section 552 of title 5, United  
11          States Code (commonly known as the “Freedom of Informa-  
12          tion Act”), shall not apply to any action of the Assistant  
13          Secretary with respect to a petition for acknowledgment  
14          under this Act, and the Assistant Secretary shall have no  
15          obligation to provide all or any portion of a petition, or  
16          to provide information regarding the contents of a petition,  
17          to any person or entity, until such time as—

18                 (1) the petition has been fully documented; and

19                 (2) the Assistant Secretary has published a no-  
20          tice in accordance with section 4(c)(1)(A).

21          (b) *EXCEPTION.*—The restriction under subsection (a)  
22          on the provision of information contained in or relating  
23          to a petition shall not apply to any formal or informal re-  
24          quest made or subpoena issued by a law enforcement agency  
25          of the United States.

1       (c) *ASSISTANCE FROM ATTORNEY GENERAL.*—

2           (1) *IN GENERAL.*—*The Secretary may request*  
3 *assistance from the Attorney General in responding to*  
4 *requests for information relating to a petition made*  
5 *in accordance with section 552 of title 5, United*  
6 *States Code.*

7           (2) *AUTHORIZATION OF APPROPRIATIONS.*—  
8 *There is authorized to be appropriated to the Attorney*  
9 *General to provide assistance requested under this*  
10 *subsection \$1,000,000 for each of fiscal years 2004*  
11 *through 2008.*

12 **SEC. 8. EFFECT AND IMPLEMENTATION OF DECISIONS.**

13       (a) *IN GENERAL.*—*The acknowledgment of any peti-*  
14 *tioner under this Act shall not reduce or eliminate—*

15           (1) *the right of any other Indian tribe to govern*  
16 *the reservation of that other tribe (as the reservation*  
17 *exists before, on, or after the date of acknowledgment*  
18 *of the petitioner);*

19           (2) *any property right held in trust or recog-*  
20 *nized by the United States for the other Indian tribe*  
21 *(as that property right existed before the date of ac-*  
22 *knowledgment of the petitioner); or*

23           (3) *any previously or independently existing*  
24 *claim by a petitioner to any property right described*  
25 *in paragraph (2) held in trust by the United States*

1       *for the other Indian tribe before the date of acknowl-*  
2       *edgment of the petitioner.*

3       **(b) ELIGIBILITY FOR SERVICES AND BENEFITS.—**

4           **(1) IN GENERAL.—***Subject to paragraph (2), on*  
5       *acknowledgment by the Assistant Secretary of a peti-*  
6       *tioner under this Act, the newly-acknowledged Indian*  
7       *tribe shall—*

8           **(A)** *have a government-to-government rela-*  
9       *tionship with the United States;*

10          **(B)** *be eligible for the programs and services*  
11       *provided by the United States to members of*  
12       *other Indian tribes because of the status of those*  
13       *members as Indians; and*

14          **(C)** *have the responsibilities, obligations,*  
15       *privileges, and immunities of those other Indian*  
16       *tribes.*

17       **(2) PROGRAMS OF THE BUREAU.—**

18           **(A) IN GENERAL.—***The acknowledgment by*  
19       *the Assistant Secretary of an Indian group*  
20       *under this Act shall not establish any immediate*  
21       *entitlement to participation in any program of*  
22       *the Bureau in existence as of the date of ac-*  
23       *knowledgment.*

24           **(B) AVAILABILITY OF PROGRAMS.—**

1                   (i) *IN GENERAL.*—*Participation in a*  
2                   *program described in subparagraph (A)*  
3                   *shall be available to an Indian tribe de-*  
4                   *scribed in paragraph (1) at such time as*  
5                   *funds are made available for that purpose.*

6                   (ii) *REQUESTS FOR APPROPRIA-*  
7                   *TIONS.*—*The Secretary and the Secretary of*  
8                   *Health and Human Services shall submit*  
9                   *budget requests for funding for increased*  
10                   *participation in a program described in*  
11                   *subparagraph (A) in accordance with sub-*  
12                   *section (c).*

13           (c) *NEEDS DETERMINATION AND BUDGET RE-*  
14 *QUEST.*—

15                   (1) *IN GENERAL.*—*Not later than 180 days after*  
16                   *a petitioner is acknowledged under this Act, the ap-*  
17                   *propriate officials of the Bureau and the Indian*  
18                   *Health Service of the Department of Health and*  
19                   *Human Services shall consult with the newly-ac-*  
20                   *knowledged Indian tribe concerning, develop in co-*  
21                   *operation with the newly-acknowledged Indian tribe,*  
22                   *and forward to the Secretary or the Secretary of*  
23                   *Health and Human Services, as appropriate—*

24                           (A) *a determination of the needs of the In-*  
25                           *dian tribe; and*

1                   (B) a recommended budget required to serve  
2                   the Indian tribe.

3                   (2) *SUBMISSION OF BUDGET REQUEST.*—For  
4                   each fiscal year, the Secretary or the Secretary of  
5                   Health and Human Services, as appropriate, shall  
6                   submit to the President a recommended budget for  
7                   programs and services provided by the United States  
8                   to members of Indian tribes because of the status of  
9                   those members as Indians (including funding rec-  
10                  ommendations for newly-acknowledged Indian tribes  
11                  based on the information received under paragraph  
12                  (1)) for inclusion in the annual budget submitted by  
13                  the President to Congress in accordance with section  
14                  1108 of title 31, United States Code.

15 **SEC. 9. REGULATIONS.**

16                  The Secretary may—

17                   (1) promulgate such regulations as are necessary  
18                   to carry out this Act; and

19                   (2) maintain in effect all regulations contained  
20                   in part 83 of title 25, Code of Federal Regulations (or  
21                   any successor regulations), that are not inconsistent  
22                   with this Act.



**Calendar No. 794**

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 297**

[Report No. 108-403]

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**A BILL**

To provide reforms and resources to the Bureau of Indian Affairs to improve the Federal acknowledgment process, and for other purposes.

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NOVEMBER 10, 2004

Reported with an amendment