

**GAO**

Report to the Honorable Dan Boren,  
House of Representatives

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April 2012

# INDIAN ISSUES

## Federal Funding for Non-Federally Recognized Tribes



**G A O**

Accountability \* Integrity \* Reliability

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Highlights of [GAO-12-348](#), a report to the Honorable Dan Boren, House of Representatives

## Why GAO Did This Study

As of January 3, 2012, the United States recognized 566 Indian tribes. Federal recognition confers specific legal status on tribes and imposes certain responsibilities on the federal government, such as an obligation to provide certain benefits to tribes and their members. Some tribes are not federally recognized but have qualified for and received federal funding. Some of these non-federally recognized tribes are state recognized and may be located on state reservations.

GAO was asked to address (1) the key means by which non-federally recognized tribes have been eligible for federal funding and (2) the amount of federal funding awarded to non-federally recognized tribes for fiscal years 2007 through 2010. GAO also identified some eligibility and federal financial reporting issues related to non-federally recognized tribes. GAO compiled a list of about 400 non-federally recognized tribes and reviewed information from federal agencies, [USAspending.gov](#), states, and other sources to identify tribes' federal funding and eligibility.

## What GAO Recommends

GAO recommends that Education and HHS take specific actions to ensure that they are not making grants to ineligible tribes and to enforce federal financial reporting requirements. HHS agreed. Education stated its commitment to review its practices, but disagreed with GAO's finding on the statutory eligibility for the American Indian Vocational Rehabilitation Services Program, which is discussed more fully in the report.

View [GAO-12-348](#). For more information, contact Anu K. Mittal at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov).

April 2012

## INDIAN ISSUES

### Federal Funding for Non-Federally Recognized Tribes

## What GAO Found

Of the approximately 400 non-federally recognized tribes that GAO identified, 26 received funding from 24 federal programs during fiscal years 2007 through 2010. Most of the 26 non-federally recognized tribes were eligible to receive this funding either because of their status as nonprofit organizations or state-recognized tribes. Similarly, most of the 24 federal programs that awarded funding to non-federally recognized tribes during the 4-year period were authorized to fund nonprofit organizations or state-recognized tribes. In addition, some of these programs were authorized to fund other entities, such as tribal communities or community development financial institutions.

For fiscal years 2007 through 2010, 24 federal programs awarded more than \$100 million to the 26 non-federally recognized tribes. Most of the funding was awarded to a few non-federally recognized tribes by a small number of programs. Specifically, 95 percent of the funding was awarded to 9 non-federally recognized tribes, and most of that funding was awarded to the Lumbee Tribe of North Carolina. Similarly, 95 percent of the funding was awarded by seven programs in four agencies, and most of that funding was awarded by one Department of Housing and Urban Development program.

During the course of its review, GAO identified some instances where federal agencies had provided funding to non-federally recognized tribes for which grant eligibility is disputed and one instance where an agency was in the process of better enforcing federal financial reporting requirements with one tribe. Specifically:

- The Department of Education awarded American Indian Vocational Rehabilitation Services Program funding to the United Houma Nation, the Lumbee Tribe of North Carolina, and a consortium consisting of the Choctaw-Apache Tribe of Ebarb and the Four Winds Cherokee. Each of these four tribes is state recognized, but it appears that none of them has a "reservation" as required by the statute establishing the program. GAO has substantial questions about whether Education's interpretation of the term "reservation" is broader than the statutory definition supports.
- The Department of Health and Human Services (HHS) awarded funding to the Nanticoke Lenne-Lenape Indians of New Jersey and the Powhatan Renape Nation—two non-federally recognized tribes in New Jersey—under programs authorized to fund state-recognized tribes. The state of New Jersey, however, does not consider these entities to be state recognized.
- HHS has initiated action to enforce federal financial reporting requirements for the Accohannock Indian Tribe. The Accohannock Indian Tribe has not filed its required financial report for 2009 that was due no later than September 30, 2010. In 2009, the Accohannock Indian Tribe reported spending over \$1 million in federal funds from three different federal programs administered by the department. The department sent letters of inquiry about the delinquent financial report on March 8, 2011, and more recently, after GAO inquired about the issue, on February 7, 2012.

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### **Abbreviations**

BIA	Bureau of Indian Affairs
CFDA	Catalog of Federal Domestic Assistance
DUNS	Data Universal Numbering System
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
OMB	Office of Management and Budget

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G A O

Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

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April 12, 2012

The Honorable Dan Boren  
House of Representatives

Dear Mr. Boren:

Federal recognition of Indian tribes confers specific legal status on these tribes and imposes certain responsibilities on the federal government, such as an obligation to provide the tribes and their members with certain benefits. As far back as the 17th century, some tribes developed relationships with colonial governments by, for example, signing treaties or residing on reservations established by these colonial governments. The federal government has signed treaties with or taken other actions to recognize Indian tribes, although some tribes have never developed a formal relationship with the federal government. Changes in federal Indian policy throughout U.S. history have influenced which tribes are recognized today by the federal government. In this report, we refer to those groups that self-identify as Indian tribes but are not recognized by the federal government as *non-federally recognized tribes*.<sup>1</sup>

You asked us to report on federal funding for non-federally recognized tribes. Accordingly, this report addresses (1) the key means by which non-federally recognized tribes have been eligible for federal funding and (2) the amount of federal funding awarded to non-federally recognized tribes for fiscal years 2007 through 2010, by agency and program. In addition, this report provides information about some cases we identified during our work concerning non-federally recognized tribes' eligibility for funding and compliance with federal financial reporting requirements.

To address these objectives, we first compiled a list of approximately 400 non-federally recognized tribes in the contiguous 48 states from a variety of information sources, such as data collected by the Department of the Interior (Interior), and information provided to us by officials from

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<sup>1</sup>We use the term "non-federally recognized tribes" in this report in order to convey that these entities self-identify as Indian tribes even though Department of the Interior regulations use the term "Indian group" to refer to any Indian aggregation within the continental United States that the Secretary of the Interior does not acknowledge to be an Indian tribe.

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selected states.<sup>2</sup> We identified, from sources including information collected by Interior's Indian Arts and Crafts Board and the U.S. Census Bureau, a list of 15 states that were most likely to have state-recognized tribes within their borders. We reached out to officials in each of the 15 states to confirm the presence of state-recognized tribes in these states. On the basis of our interviews with state officials we determined that 12 of the 15 states had state-recognized tribes. For the other 33 states, we largely relied on information provided by these states to Interior's Indian Arts and Crafts Board. According to this information, these states had identified no state-recognized tribes within their borders that were not also federally recognized. We spot-checked this information by contacting 20 states for which we were able to identify a state official who could respond to our questions, and 9 of these states responded to our inquiry and confirmed that they did not have any state-recognized tribes.

To determine which non-federally recognized tribes had received funding and identify the programs that had provided funding to them for fiscal years 2007 through 2010, we searched publicly available funding data at [USAspending.gov](http://USAspending.gov) and reviewed agency-provided data.<sup>3</sup> For each program we identified as having awarded funding to non-federally recognized tribes for this period, we reviewed the authorizing statutes, program regulations, and eligibility requirements to identify the key means by which non-federally recognized tribes would have been eligible for federal funding from these programs. In addition, we collected information about the organizational and legal status of each entity and compared this information with program eligibility requirements. For example, we determined which of these non-federally recognized tribes are also organized as nonprofit organizations. When a non-federally recognized tribe was eligible to receive federal funding from a program through several means, we did not attempt to single out the means by which the

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<sup>2</sup>We excluded Alaska and Hawaii because of their unique histories and circumstances. See our complete scope and methodology in appendix I for more detailed information about why we excluded Alaska and Hawaii.

<sup>3</sup>In December 2007, the Office of Management and Budget launched [USAspending.gov](http://USAspending.gov), a publicly accessible website containing data on federal awards, to comply with the requirements of the Federal Funding Accountability and Transparency Act of 2006, which, according to a relevant Senate committee report, is intended to increase the transparency and accountability of federal government expenditures by providing access to information on federal funding awards through a single, searchable, publicly available website.

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tribe qualified for the funding it received. We limited the scope of our review to federal funding awarded directly to non-federally recognized tribes and excluded federal funding provided through loans or procurement contracts.

From the information we obtained from USAspending.gov and from the federal agencies, we compiled the total amount of federal funding awarded to non-federally recognized tribes for fiscal years 2007 through 2010, by agency and program. We assessed the reliability of this information by, for example, testing for missing data and outliers and comparing USAspending.gov data against agency information and financial reports filed by selected non-federally recognized tribes. Where we identified inconsistencies in these data, we worked with knowledgeable agency officials to update the data set. After taking these steps, we concluded that the updated data set was reliable for the purpose of estimating the amount of funding awarded by federal agencies to non-federally recognized tribes for fiscal years 2007 through 2010.

During our review, as we were comparing programs' eligibility requirements with the characteristics of the non-federally recognized tribes that received federal funding, we identified some instances where federal agencies had made grants to likely ineligible non-federally recognized tribes and where an agency had initiated actions to enforce federal financial reporting requirements. This report provides information on the three cases we identified as part of this analysis. Appendix I describes our scope and methodology in more detail.

We conducted this performance audit from June 2011 through April 2012, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



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## Background

Federally recognized tribes have a government-to-government relationship with the United States and are eligible to receive certain protections, services, and benefits by virtue of their unique status as Indian tribes.<sup>4</sup> Federal Indian policy—which has undergone significant changes since the end of the colonial era—has influenced how the federal government has recognized and currently recognizes tribes:

- *Treaty, reservations, and removal era.* During this period, the federal government entered into treaties with Indian tribes to, for example, establish peace, fix land boundaries, and establish reservations. For some federally recognized Indian tribes, treaties provided the basis for subsequent actions that established their recognition.
- *Assimilation era.* The Act of February 8, 1887, commonly referred to as the General Allotment Act or the Dawes Act, was a comprehensive congressional attempt to change the role of Indians in American society by encouraging assimilation through individual land ownership.<sup>5</sup> Under this policy, tribes surrendered tribally owned land for individual allotments of land and, in some cases, surplus land was sold to white settlers. As a result of this policy, the total amount of tribal land in the United States was reduced by about 90 million acres.
- *Indian Reorganization Act of 1934.* In the 1930s and 1940s, federal Indian policies generally reflected a shift away from assimilation policies toward increased tolerance and respect for traditional aspects of Indian culture. The Indian Reorganization Act of 1934 encouraged economic development, self-determination, cultural pluralism, and the revival of tribalism.<sup>6</sup> Specifically, the act permitted tribes to adopt constitutions and organize into federally recognized Indian tribes, including tribes without a common linguistic, cultural, or political heritage that lived together on one reservation.

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<sup>4</sup>For example, the Department of the Interior's Indian Affairs Programs—which includes programs administered by Interior's Bureau of Indian Affairs (BIA) and Bureau of Indian Education—provides services to federally recognized Indian tribes and their members and had a budget of \$2.94 billion for fiscal year 2011.

<sup>5</sup>Act of February 8, 1887, ch. 119, 24 Stat. 388 (1887) (known as the General Allotment Act or Dawes Act).

<sup>6</sup>Act of June 18, 1934, ch. 576, 48 Stat. 984 (1934) (known as the Indian Reorganization Act or Wheeler-Howard Act).

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- *Termination era.* On August 1, 1953, Congress adopted House Concurrent Resolution 108, which established a policy of making Indians “subject to the same laws and entitled to the same privileges and responsibilities” that apply to other citizens and declared that Indian tribes and their members “should be freed from Federal supervision and control.” Subsequently, in the 1950s and 1960s, the federal government terminated its government-to-government relationships with a number of tribes. Congress has since restored government-to-government relationships with 38 tribes that were terminated during the termination era (see app. II for more information about terminated and restored tribes).
  - *Self-determination era.* Since the 1970s, the federal government has adopted policies to promote the practical exercise of tribes’ inherent sovereign powers, including fostering economic development of Indian land and encouraging self-determination of Indian affairs. For example, the Indian Self-Determination and Education Assistance Act of 1975 enables federally recognized Indian tribes to administer certain federal programs for Indians, which were previously administered by the federal government on their behalf.<sup>7</sup>

In 1977, the American Indian Policy Review Commission reported that “[t]he distinction the Department of the Interior draws between the status of recognized and unrecognized tribes seems to be based merely on precedent—whether at some point in a tribe’s history it established a formal political relationship with the Government of the United States.”<sup>8</sup> The commission identified 133 non-federally recognized tribes. At that time, no administrative process was in place for these non-federally recognized tribes to seek federal recognition. In 1978, Interior established

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<sup>7</sup>Pub. L. No. 93-638 (1975), *codified as amended at 25 U.S.C. §§ 450 to 458ddd-2.*

<sup>8</sup>American Indian Policy Review Commission, *Final Report Submitted to Congress*, May 17, 1977, vol. I (Washington, D.C.: 1977), at 462. The purpose of the commission was to conduct a comprehensive review of the historical and legal developments underlying the Indians’ unique relationship with the federal government to determine the nature and scope of necessary revisions in the formulation of policy and programs for the benefit of Indians.

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an administrative acknowledgment process by which Indian groups could submit a petition to seek federal recognition.<sup>9</sup>

Interior maintains a list of entities that have submitted a letter of intent to petition for federal recognition or have initiated the administrative acknowledgment process by submitting a complete petition. This list includes at least 350 entities, according to Interior's Office of Federal Acknowledgment. The process of developing a complete petition is expensive and may take years. Consequently, as we reported in November 2001, and as of April 2011, most of these entities have not yet submitted a complete petition.<sup>10</sup> A complete petition must include information on seven criteria established in the regulations governing Interior's administrative acknowledgment process. For example, the entity must submit evidence that it has been identified as an American Indian entity on a substantially continuous basis since 1900 and that it has maintained political influence or authority over its members as an autonomous entity from historic times until the present.

Since 1979, Interior's Bureau of Indian Affairs (BIA) has regularly published a list of federally recognized Indian tribes in the *Federal Register*. The most recent list, published in October 2010, listed 565 federally recognized Indian tribes—340 in the contiguous United States and 225 in Alaska.<sup>11</sup> In addition, on January 3, 2012, Interior reaffirmed the Tejon Indian Tribe of California's federal recognition,

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<sup>9</sup>Interior's administrative acknowledgment process is governed by 25 C.F.R. pt. 83 (Procedures for Establishing That an American Indian Group Exists as an Indian Tribe). Since the American Indian Policy Review Commission report in 1977, action has been taken on an estimated 33 of the 133 non-federally recognized tribes listed in the report. Specifically, an estimated 21 tribes have since become federally recognized through a variety of means, including Interior's administrative acknowledgment process, and potentially 12 have been denied federal recognition through Interior's administrative acknowledgment process. Because some tribal names used in the report differ from current tribal names, it is difficult to determine with certainty whether action has been taken on some tribes listed in the report.

<sup>10</sup>GAO, *Indian Issues: Improvements Needed in Tribal Recognition Process*, [GAO-02-49](#) (Washington, D.C.: Nov. 2, 2001).

<sup>11</sup>75 Fed. Reg. 60810 (Oct. 1, 2010); supplemented by 75 Fed. Reg. 66124 (Oct. 27, 2010).

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making it the 566th federally recognized Indian tribe.<sup>12</sup> Non-federally recognized tribes can generally seek federal recognition through Interior’s administrative acknowledgment process or through other means, such as congressional action. For example, the Lumbee Tribe of North Carolina—which was the subject of legislation but not federally recognized in 1956<sup>13</sup>—petitioned Interior for recognition and has also sought recognition through legislation.<sup>14</sup> As of April 29, 2011, 17 entities had been granted federal recognition through Interior’s administrative acknowledgment process, and 32 had been denied.<sup>15</sup> Federal recognition of the Shinnecock Indian Nation in New York—the tribe most recently recognized through Interior’s administrative acknowledgment process—became effective on October 1, 2010.<sup>16</sup>

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## Non-Federally Recognized Tribes

No official list of non-federally recognized tribes similar to BIA’s list of federally recognized Indian tribes exists. Non-federally recognized tribes fall into two distinct categories: (1) state-recognized tribes that are not also federally recognized and (2) other groups that self-identify as Indian tribes but are neither federally nor state recognized.

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<sup>12</sup>Interior reaffirmed federal recognition of the Tejon Indian Tribe of California because an administrative error had resulted in the tribe’s exclusion from BIA’s list of federally recognized tribes for several years. The Tejon Indian Tribe of California was not recognized under Interior’s administrative acknowledgment process governed by 25 C.F.R. pt. 83.

<sup>13</sup>Act of June 7, 1956, ch. 375, 70 Stat. 254 (1956) (known as the Lumbee Act of 1956). In 1988, the Office of the Solicitor of the Department of the Interior determined that the Lumbee Act of 1956 did not provide federal recognition of the Lumbee Indians as a tribe. See *also* Lumbee Indians of North Carolina, 58 Comp. Gen. ¶ 699, B-185659 (Aug. 1, 1979) (the act constitutes neither congressional recognition of the Lumbees as Indians for the purpose of establishing eligibility for federal benefits nor congressional direction that they be denied benefits if otherwise entitled); *Maynor v. Morton*, 510 F.2d 1254, 1258 (D.C. Cir. 1975) (Congress was very careful not to confer by this legislation any special benefits on these people so designated as Lumbee Indians).

<sup>14</sup>In 1989, Interior’s Office of the Solicitor determined that the Lumbee Act of 1956 terminated or forbade a federal relationship with the Lumbee Tribe of North Carolina, and therefore the regulations for Interior’s administrative acknowledgment process precluded the Lumbee Tribe of North Carolina from petitioning for recognition through that process.

<sup>15</sup>A total of 71 petitions have been resolved as of April 29, 2011—49 through Interior’s administrative acknowledgment process, 3 by other Interior actions, 9 by congressional action, and 10 by other means.

<sup>16</sup>75 Fed. Reg. 66124 (Oct. 27, 2010).

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## State-Recognized Tribes

Twelve state governments officially recognize one or more non-federally recognized tribes within their borders, according to state officials we spoke with. Each state government determines which groups in the state, if any, should be recognized. Some of these 12 states—such as North Carolina and South Carolina—have formalized their procedures for recognizing tribes, while other states—such as Massachusetts—have not. For example, North Carolina’s Commission of Indian Affairs and South Carolina’s Commission for Minority Affairs have promulgated regulations outlining the process for entities seeking recognition in those states. Furthermore, some states have established state reservations that are not also federal Indian reservations. No federal agency maintains a list of state-recognized tribes and their reservations, but the U.S. Census Bureau collected information about state-recognized tribes as part of its effort to designate American Indian Areas for the Decennial Census of 2010. The U.S. Census Bureau considers an Indian tribe to be state recognized if it is specifically recognized by a state government through treaty (with, for example, 1 of the original 13 colonial assemblies), state legislation, or other formal process. (See app. III for a list of state-recognized tribes that are not federally recognized and more detailed information about how we compiled this list.)

In some instances, representatives of state governments have acknowledged the existence of a tribe or its members in the state, but the state has not officially recognized the tribe. Forms of acknowledgment may include a governor’s proclamation or legislative resolution. For example, in March 2009 the Texas Senate and House of Representatives each adopted a simple resolution (voted on only by the house in which it was introduced and not sent to the Governor to sign) to commend and recognize the Lipan Apache Tribe of Texas. The resolution stated that the tribe is the present-day incarnation of the clans, bands, and divisions historically known as the Lipan Apaches, who have lived in Texas and Northern Mexico for 300 years. According to Texas officials, such simple resolutions do not go beyond the bounds and the authority of the house that acts on it and do not officially establish any group as a state-recognized tribe. In another example, the California Native American Heritage Commission maintains a list of organized tribal governments in that state—including both federally recognized Indian tribes and non-federally recognized tribes. Despite acknowledging these organized tribal governments and requiring cities and counties to consult with them under certain circumstances, California does not have a process for officially recognizing non-federally recognized tribes, according to a state official we spoke with.

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## Other Self-Identified Tribes

A number of other groups self-identifying as Indian tribes are not federally or state recognized. These include groups in each of the following categories:

- groups self-identifying as Indian tribes that have initiated but not yet completed Interior’s administrative acknowledgment process,
- groups self-identifying as Indian tribes that have been denied federal recognition through Interior’s administrative acknowledgment process,
- Indian tribes whose status as a federally recognized Indian tribe was terminated by the federal government and has not been restored, and
- other entities that self-identify as Indian tribes.

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## The Single Audit Act’s Financial Reporting Requirements

The purpose of the Single Audit Act of 1984, as amended, was, among other things, to promote sound financial management, including effective internal controls, with respect to federal awards administered by nonfederal entities.<sup>17</sup> Under the act, certain nonfederal entities—such as a state, local government, Indian tribe, or nonprofit organization—that expend \$500,000 or more in federal awards in a fiscal year must have an audit conducted in accordance with Office of Management and Budget (OMB) Circular No. A-133 and submit a report regarding the audit to the Federal Audit Clearinghouse Single Audit Database.<sup>18</sup> OMB Circular No. A-133 sets forth standards for obtaining consistency and uniformity among federal agencies for the audit of nonfederal entities expending federal awards. Audits of nonfederal entities’ financial statements and schedule of expenditures of federal awards must be conducted by an independent auditor in accordance with generally accepted government auditing standards. The report on the audit provides information about the nonfederal entity, its federal programs, and the results of the audit.

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<sup>17</sup>Pub. L. No. 98-502 (1984), *amended by* Pub. L. No. 104-156 (1996), *codified as amended at* 31 U.S.C. §§ 7501-7507.

<sup>18</sup>The U.S. Census Bureau, in the Department of Commerce, maintains the Federal Audit Clearinghouse Single Audit Database that contains summary information on completed single audits, including information on the auditor, the recipient and its federal programs, and the audit results. It is available at <https://harvester.census.gov/fac/>.

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Audits are to be completed and the requisite report submitted within the earlier of 30 days after receipt of the auditor's report or 9 months after the end of the audit period. The federal agency that provides an award directly to the recipient (known as the federal awarding agency) is generally responsible for ensuring that audits for the federal awards it makes are completed and reports are received in a timely manner and in accordance with OMB Circular No. A-133. In cases of continued inability or unwillingness to have an audit conducted, OMB Circular No. A-133 directs federal agencies to take appropriate actions using sanctions such as:

- withholding a percentage of federal awards until the audit is completed satisfactorily,
- withholding or disallowing overhead costs,
- suspending federal awards until the audit is conducted, or
- terminating the federal award.

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## Most Non-Federally Recognized Tribes That Received Federal Funding Were Eligible as Nonprofit Organizations or State-Recognized Tribes

Of the list of about 400 non-federally recognized tribes that we compiled, we identified 26 that received federal funding for fiscal years 2007 through 2010. Most of the 26 non-federally recognized tribes were eligible for these funds because of their status as a nonprofit or state-recognized tribe (24 out of 26). Most of the 24 federal programs that provided this funding were authorized to fund either nonprofits or state-recognized tribes (18 out of 24). Other non-federally recognized tribes that received funding but were not nonprofits or state-recognized tribes were awarded funding through programs that had authority to fund other types of entities.

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## For Fiscal Years 2007 through 2010, 26 Non-Federally Recognized Tribes Received Federal Funding

Out of the approximately 400 non-federally recognized tribes that we identified, we determined that 26 non-federally recognized tribes had received federal funding for fiscal years 2007 through 2010. Twenty-four of these 26 non-federally recognized tribes were organized as nonprofit organizations (see table 1).<sup>19</sup> As nonprofits, these 24 non-federally recognized tribes would be eligible to receive federal funding from any program authorized to fund nonprofits. As we have reported in the past, the federal government is increasingly partnering with nonprofit organizations because nonprofits bring many strengths, such as flexibility to respond to needs and access to those needing services, and in fiscal year 2006, about 700 federal programs provided funding for nonprofits.<sup>20</sup> In addition, we found that 14 of the 26 non-federally recognized tribes that received funding over the 4-year period were state-recognized tribes and would be eligible to receive funding from programs specifically authorized to fund state-recognized tribes. (See app. IV for information about the nonprofit and state-recognition status of non-federally recognized tribes we identified as having received federal funding before fiscal year 2007.)

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<sup>19</sup>For purposes of this review, we define a nonprofit organization as any organization having federal tax-exempt status as approved by the Internal Revenue Service under section 501(a) of the Internal Revenue Code. This category includes all organizations covered under section 501(c) of the Internal Revenue Code, such as charities, social welfare organizations, and chambers of commerce.

<sup>20</sup>GAO, *Nonprofit Sector: Significant Federal Funds Reach the Sector through Various Mechanisms, but More Complete and Reliable Funding Data Are Needed*, [GAO-09-193](#) (Washington, D.C.: Feb. 26, 2009), and *Nonprofit Sector: Increasing Numbers and Key Role in Delivering Federal Services*, [GAO-07-1084T](#) (Washington, D.C.: July 24, 2007).



**Table 1: Nonprofit and State-Recognition Status of 26 Non-Federally Recognized Tribes That Received Direct Federal Funding, Fiscal Years 2007 through 2010**

Tribe name	City	State	Nonprofit <sup>a</sup>	State recognized <sup>b</sup>	Status in Interior's administrative acknowledgment process <sup>c</sup>
Accohannock Indian Tribe	Marion Station	MD	✓		Petitioner #149. Letter of intent submitted on Jan. 18, 1995.
American Indian Council of Mariposa County (petitioned as Southern Sierra Miwuk Nation)	Mariposa	CA	✓		Petitioner #82. Petition under active consideration since Nov. 1, 2010.
Burt Lake Band of Ottawa and Chippewa Indians, Inc.	Brutus	MI	✓		Petitioner #101. Denied, effective Jan. 23, 2007.
Choctaw-Apache Tribe of Ebarb	Zwolle	LA	✓	✓	Petitioner #37. Letter of intent submitted on July 2, 1978.
Coharie Tribe of North Carolina	Clinton	NC	✓	✓	Petitioner #74. Letter of intent submitted on Mar. 13, 1981.
Duwamish Tribe	Seattle	WA	✓		Petitioner #25. Denied, effective May 8, 2002.
Eel River Tribe of Indiana	Chalmers	IN			<sup>d</sup>
Euclidean (Yuchi) Tribe of Indians	Sapulpa	OK	✓		<sup>e</sup>
Haliwa-Saponi Indian Tribe of North Carolina	Hollister	NC	✓	✓	Petitioner #63. Letter of intent submitted on Nov. 27, 1979.
Lower Muskogee Creek Tribe	Whigham	GA	✓	✓ <sup>f</sup>	Petitioner #8. Denied, effective Dec. 21, 1981.
Lumbee Tribe of North Carolina	Pembroke	NC	✓	✓	Petitioner #65. Deemed ineligible to apply on Oct. 23, 1989.
Mashpee Wampanoag Tribe <sup>g</sup>	Mashpee	MA	✓	✓	Petitioner #15. Recognized, effective May 23, 2007.
MOWA Band of Choctaw Indians	Mount Vernon	AL	✓ <sup>h</sup>	✓ <sup>f</sup>	Petitioner #86. Denied, effective Nov. 26, 1999.
Nanticoke Indian Association	Millsboro	DE	✓	✓	Petitioner #40. Requested petition be placed on hold on Mar. 25, 1989.
Nanticoke Lenni-Lenape Indians of New Jersey	Bridgeton	NJ	✓		Petitioner #127. Letter of intent submitted on Jan. 3, 1992.
Occaneechi Band of Saponi Nation of North Carolina	Mebane	NC	✓	✓	Petitioner #148. Letter of intent submitted on Jan. 6, 1995.
Powhatan Renape Nation	Rancocas	NJ			<sup>i</sup>
Saponi Nation of Missouri Mahenips Band	Willow Springs	MO	✓		Petitioner #220. Letter of intent submitted on Dec. 14, 1999.
Sappony (High Plains Indians, petitioned as Indians of Person County)	Roxboro	NC <sup>j</sup>	✓	✓	Petitioner #95. Letter of intent submitted on Sept. 7, 1984.
Shinnecock Indian Nation <sup>g</sup>	Southampton	NY	✓	✓ <sup>f</sup>	Petitioner #4. Recognized, effective Oct. 1, 2010.

Tribe name	City	State	Nonprofit <sup>a</sup>	State recognized <sup>b</sup>	Status in Interior's administrative acknowledgment process <sup>c</sup>
St. Francis/Sokoki Band of Abenakis of Vermont Abenaki Tribal Council	Swanton	VT	✓		Petitioner #68. Denied, effective Oct. 1, 2007.
Tuscarora Nation of Indians of the Carolinas	Newell	NC	✓		Petitioner #286. Letter of intent submitted on Dec. 21, 2004.
United Cherokee Ani-Yun-Wiya Nation	Guntersville	AL	✓	✓	Petitioner #246. Letter of intent submitted on Nov. 8, 2001.
United Houma Nation	Golden Meadow	LA	✓	✓	Petitioner #56. Proposed negative finding published Dec. 22, 1994.
Waccamaw Siouan Tribe of North Carolina	Bolton	NC	✓	✓	Petitioner #88. Letter of intent submitted on June 27, 1983.
Wesget Sipu	Fort Kent	ME	✓		Petitioner #256. Letter of intent submitted on June 4, 2002.
<b>Total</b>			<b>24</b>	<b>14</b>	

Sources: The Internal Revenue Service for information about nonprofit status, state officials for information about state-recognition status, and GAO analysis of information from Interior's Office of Federal Acknowledgment for petitioner status.

Note: This table does not include non-federally recognized tribes outside the contiguous United States, such as those in Alaska or Hawaii.

<sup>a</sup>Non-federally recognized tribes that were organized as nonprofits at any time in fiscal years 2007 through 2010 are indicated by a check mark.

<sup>b</sup>Non-federally recognized tribes that were state recognized at any time in fiscal years 2007 through 2010 are indicated by a check mark.

<sup>c</sup>Status of the entity's efforts to petition for federal recognition through Interior's administrative acknowledgment process as of April 29, 2011.

<sup>d</sup>This entity may be associated with petitioner #304 (Eel River Tribe Inc. of Indiana), located in Lafayette, Indiana, which submitted a letter of intent to petition on September 13, 2006.

<sup>e</sup>This entity may be associated with petitioner #121 (Yuchi Tribal Organization), which was denied acknowledgment, effective March 21, 2000.

<sup>f</sup>This state-recognized tribe also has a state reservation, according to state officials we spoke with, and therefore would be eligible to receive funding from those federal programs that are authorized to fund tribes located on or in proximity to state reservations.

<sup>g</sup>Two federally recognized Indian tribes—the Mashpee Wampanoag Tribe and the Shinnecock Indian Nation—received federal funding during this period before the effective date of their federal recognition—May 23, 2007, and October 1, 2010, respectively. Both of these entities were state recognized for some or all of the period of our review, and the Shinnecock Indian Nation has a state reservation. Therefore, the Shinnecock Indian Nation would have been eligible to receive funding from those federal programs that are authorized to fund tribes located on or in proximity to state reservations.

<sup>h</sup>According to the Internal Revenue Service, this non-federally recognized tribe's nonprofit status was automatically revoked, effective May 15, 2010, because the entity had not submitted required nonprofit tax return information for 3 consecutive years.

<sup>i</sup>With respect to two entities in New Jersey—the Nanticoke Lenni-Lenape Indians of New Jersey and the Powhatan Renape Nation—a number of sources, including the 2010 Census and the entities' websites, imply that they are state-recognized tribes. Nevertheless, it is the official position of the state of New Jersey that there are not, and were not during the period of our review, any state-recognized tribes in that state.

<sup>j</sup>This entity is also located in Virgilina, VA.

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Of the 26 non-federally recognized tribes that received federal funding over the 4-year period, 2—Eel River Tribe of Indiana and the Powhatan Renape Nation—were neither nonprofits nor state-recognized tribes at any time in fiscal years 2007 through 2010. Federal grants awarded to these two entities are described later in this report.

As of April 29, 2011, at least 24 of the 26 non-federally recognized tribes have pursued, or expressed an interest in pursuing, federal recognition through Interior’s administrative acknowledgment process. Of these 24 entities, 13 have submitted letters of intent to petition for federal recognition and have advanced no further in the process, 5 have been denied, 2 have received federal recognition, 1 had a proposed negative finding published in December 1994, 1 has been under active consideration since November 2010, 1 was deemed ineligible to apply through the administrative acknowledgment process, and 1 requested that its petition be placed on hold.

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### For Fiscal Years 2007 through 2010, 24 Federal Programs Provided Funding to Non-Federally Recognized Tribes

We identified 24 federal programs that provided funding to the 26 non-federally recognized tribes for fiscal years 2007 through 2010. Specifically, of the 24 programs we identified, 11 programs were authorized to fund nonprofits, 6 had explicit statutory or regulatory authority to fund state-recognized tribes, 1 had authority to fund tribes located on state reservations, and 1 was authorized to fund state-recognized tribes on state reservations. See table 2 for information on the 24 programs, including their assigned number from the Catalog of Federal Domestic Assistance (CFDA). This catalog is administered by the General Services Administration, and it provides information on federal domestic assistance programs, including grant programs.<sup>21</sup> (See also app. V for a list of all federal programs with explicit statutory or regulatory authority to fund state-recognized tribes.) Some of these 24 programs were also authorized to fund other eligible entities, and in some cases non-federally recognized tribes could have received funding if they met the eligibility requirements for the other entities.

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<sup>21</sup>The CFDA is a governmentwide compendium for descriptions of federal programs that provide assistance to the American public. The CFDA data are available on the web at <https://www.cfda.gov>.

**Table 2: Statutory or Regulatory Authority of 24 Programs Awarding Funding to Non-Federally Recognized Tribes, Fiscal Years 2007 through 2010**

Agency and program	CFDA number(s) <sup>a</sup>	Nonprofits	State-recognized tribes
<b>Department of Agriculture</b>			
Rural Housing Preservation Grants	10.433	✓	<sup>b</sup>
Rural Business Enterprise Grants <sup>c</sup>	10.769	✓	
<b>Department of Commerce</b>			
Grant Program for Community Alert Systems	11.468		
<b>Department of Housing and Urban Development</b>			
Rural Housing and Economic Development	14.250	✓	
Economic Development Initiative-Special Project, Neighborhood Initiative and Miscellaneous Grants <sup>d</sup>	14.251		
Indian Community Development Block Grant Program (includes Recovery Act funding)	14.862 14.886		<sup>b</sup>
Indian Housing Block Grants (includes Recovery Act formula and competitive grants)	14.867 14.882 14.887		✓ <sup>e</sup>
<b>Department of the Interior</b>			
Cultural Resources	15.946	✓ <sup>f</sup>	
<b>Department of Labor</b>			
Native American Employment and Training (includes Recovery Act funding)	17.265	<sup>g</sup>	✓ <sup>g</sup>
<b>Department of the Treasury</b>			
Community Development Financial Institutions Fund (includes Recovery Act funding)	21.020		
<b>Department of Education</b>			
Indian Education Formula Grants to Local Educational Agencies	84.060		✓ <sup>h</sup>
American Indian Vocational Rehabilitation Services Program	84.250		<sup>i</sup>
Small, Rural School Achievement Program	84.358A		
<b>Department of Health and Human Services</b>			
Low-Income Home Energy Assistance	93.568		✓
Community Services Block Grant Program (includes Recovery Act funding)	93.569 93.710		✓
Community Services Block Grant Program (discretionary awards)	93.570	✓	
Administration for Native Americans' Improvement of the Capability of Tribal Governing Bodies to Regulate Environmental Quality	93.581		✓
Administration for Native Americans' Preservation and Enhancement of Native American Languages Program <sup>j</sup>	93.587	✓	
Job Opportunities for Low-Income Individuals	93.593	✓	
Head Start (includes Recovery Act funding)	93.600 93.708	✓	

Agency and program	CFDA number(s) <sup>a</sup>	Nonprofits	State-recognized tribes
Administration for Native Americans' Social and Economic Development Strategies Program <sup>i</sup>	93.612	✓	
<b>Environmental Protection Agency</b>			
Surveys, Studies, Investigations, Training and Special Purpose Activities Relating to Environmental Justice <sup>k</sup>	66.309		
<b>Corporation for National and Community Service</b>			
Retired and Senior Volunteer Program	94.002	✓	
Volunteers in Service to America	94.013	✓	
<b>Total</b>	<b>24 programs</b>	<b>11 programs</b>	<b>6 programs</b>

Sources: GAO and agency legal research.

<sup>a</sup>The Catalog of Federal Domestic Assistance (CFDA) details program descriptions for more than 2,000 federal assistance programs, and a unique CFDA number is assigned to each program. At least some federal programs that awarded funding appropriated by the American Recovery and Reinvestment Act of 2009 (Recovery Act) have a unique CFDA number to track Recovery Act funds. The table above includes relevant CFDA numbers for each program—including those for Recovery Act funding. CFDA numbers for funds appropriated in whole or in part by the Recovery Act are italicized.

<sup>b</sup>Eligible recipients include Indian tribes that were eligible under the State and Local Fiscal Assistance Act of 1972. To have been eligible under the act, Indian tribes needed a "recognized governing body which performed substantial governmental functions." We identified six currently non-federally recognized tribes that received funding under this act: (1) Golden Hill Paugussett Tribe, (2) Mattaponi Tribe, (3) Paucatuck Eastern Pequot, (4) Pamunkey Indian Tribe, (5) Poospatuck (Unkechaug) Indian Nation, and (6) Schaghticoke Tribal Nation. All six of these non-federally recognized tribes are state recognized, and none of them received funding during the 4-year period covered by our review. We identified five federally recognized tribes that received funding under the State and Local Fiscal Assistance Act of 1972 before they became federally recognized, including the Shinnecock Indian Nation.

<sup>c</sup>This program is authorized to fund Indian tribes on state reservations.

<sup>d</sup>The Shinnecock Indian Nation, a state-recognized tribe before becoming a federally recognized Indian tribe on October 1, 2010, received an Economic Development Initiative grant from the Department of Housing and Urban Development because of congressional direction in a committee report accompanying an appropriations act.

<sup>e</sup>To be eligible, a state-recognized tribe's housing authority must also have had a contract with the Department of Housing and Urban Development under the Housing Act of 1937 before October 26, 1996, and received funding under that contract between October 26, 1991, and October 26, 1996.

<sup>f</sup>The National Park Service has authority to enter into cooperative agreements with private nonprofit organizations and other entities.

<sup>g</sup>To be eligible, a state-recognized tribe or tribal organization must serve individuals who were eligible under section 401 of the Job Training Partnership Act. 65 Fed. Reg. 49373 (Aug. 11, 2000). In addition, the tribe or tribal organization must have legal status as a government or as an agency of a government, or private non-profit corporation in order to be eligible.

<sup>h</sup>To be eligible, a state-recognized tribe must represent not less than one-half of the eligible Indian children who are served by a local educational agency that has not established a required Indian parents committee.

<sup>i</sup>To be eligible, a tribe must be both state recognized and have a state reservation.

<sup>j</sup>Categories of eligible organizations also include incorporated non-federally recognized tribes.

<sup>k</sup>The Environmental Protection Agency awards environmental justice grants pursuant to research and development provisions in various statutes, such as the Clean Water Act and the Solid Waste Disposal Act. For example, the Clean Water Act authorizes research, investigation, and demonstration grants to public or nonprofit private agencies, institutions, organizations, and individuals. Although eligible grantees vary among the statutes, none of the statutes explicitly authorize funding to non-federally recognized tribes or state-recognized tribes.

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Examples of the 24 federal programs that awarded funding to non-federally recognized tribes in the 4-year period and that are authorized to fund nonprofit organizations that meet all applicable eligibility requirements include the following:

- the Rural Business Enterprise Grants program, administered by the Department of Agriculture, which has statutory authority to fund public bodies, including Indian tribes on state reservations, and private nonprofit corporations for measures designed to finance and facilitate development of small and emerging private business enterprises, among other measures;
- the Job Opportunities for Low-Income Individuals program, administered by the Department of Health and Human Services (HHS), which has statutory authority to enter into agreements with nonprofits for the purpose of conducting projects that provide technical and financial assistance to private employers that assist them in creating jobs for low-income individuals; and
- the Retired and Senior Volunteer Program, administered by the Corporation for National and Community Service, which has statutory authority to make grants to or contract with nonprofits to support programs for certain volunteer service projects for senior citizens.

Six of the 24 programs were not authorized to fund either nonprofits or state-recognized tribes, but non-federally recognized tribes received funding under these programs for other reasons. For example, the Department of Housing and Urban Development's (HUD) Economic Development Initiative-Special Project program awarded funding to the Shinnecock Indian Nation as a result of congressional direction in a committee report accompanying an appropriations act before the tribe was federally recognized.<sup>22</sup> In another example, the Environmental Protection Agency awards environmental justice grants pursuant to research and development provisions in various statutes, such as the Clean Water Act and the Solid Waste Disposal Act, and some of these statutes authorize broad categories of recipients, such as institutions and organizations. In addition, the Department of Education's (Education) Small, Rural School Achievement Program can provide grants to entities

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<sup>22</sup>Pub. L. No. 111-8, 123 Stat 524, 959 (2009); 155 Cong. Rec. H2089, H2519 (Feb. 23, 2009).

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as local education agencies, and the Haliwa-Saponi Indian Tribe of North Carolina received a grant because it is so organized.

The other three programs that were not authorized to provide funding to nonprofits or state-recognized tribes were authorized to provide funding to the following types of entities:

- Under the Department of Commerce’s Remote Community Alert Systems Program, eligible grant recipients include “tribal communities” that meet certain requirements.<sup>23</sup> The Eel River Tribe of Indiana received funding through this program.
- The Indian Community Development Block Grant Program is authorized to fund Indian tribes that were eligible recipients under the State and Local Fiscal Assistance Act of 1972. As explained in appendix V, we identified at least six non-federally recognized tribes that have received funding under the act, as well as five federally recognized Indian tribes that received funding before the effective date of their federal recognition.
- The Community Development Financial Institutions Fund can provide technical assistance grants for activities that enhance the capacity of a community development financial institution, which is an entity that meets the following five criteria: (1) has a primary mission of promoting community development; (2) serves an investment area or targeted population; (3) provides development services in conjunction with equity investments or loans, directly or through a subsidiary or affiliate; (4) maintains, through representation on its governing board or otherwise, accountability to residents of its investment area or targeted population; and (5) is not an agency or instrumentality of the United States, any state, or political subdivision of a state. The Lumbee Revitalization and Community Development Corporation, which was established by the Lumbee Tribe of North Carolina to foster economic development, received funding through this program.

Some non-federally recognized tribes may have been eligible for some of the federal funding they received through several means. For example, a non-federally recognized tribe that was organized as a nonprofit and was

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<sup>23</sup>The term “tribal communities” is not defined in legislation or the notices of funding availability.

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also state recognized may have been eligible to apply for some funding as either a nonprofit or a state-recognized tribe. In these cases, we did not attempt to determine the basis on which the funding was awarded.

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## **Federal Programs Awarded More Than \$100 Million in Funding to Non- Federally Recognized Tribes for Fiscal Years 2007 through 2010**

Federal agencies awarded more than \$100 million in funding to the 26 non-federally recognized tribes for fiscal years 2007 through 2010. As shown in table 3, the majority of this funding was awarded to a small number of non-federally recognized tribes. For example, funding to the Lumbee Tribe of North Carolina accounted for about 76 percent of the federal funding that we identified. Overall, the Lumbee Tribe of North Carolina received more than \$78 million awarded by 10 programs in six federal agencies during the 4-year period. Some of this funding was awarded to incorporated entities—such as the Lumbee Regional Development Association—that were created by the Lumbee Tribe of North Carolina to provide services to the Lumbee Indian community. Most of the funding (75 percent) awarded to the Lumbee Tribe of North Carolina was awarded by HUD’s Indian Housing Block Grants program.



**Table 3: Direct Federal Funding Received by 26 Non-Federally Recognized Tribes, Fiscal Years 2007 through 2010**

Dollars in thousands

Tribe name	Fiscal year				Total
	2007	2008	2009	2010	
Lumbee Tribe of North Carolina <sup>a</sup>	\$16,575	\$15,039	\$27,190	\$19,979	<b>\$78,782</b>
MOWA Band of Choctaw Indians <sup>b</sup>	636	723	2,080	829	<b>4,268</b>
Haliwa-Saponi Indian Tribe of North Carolina <sup>c</sup>	1,180	994	1,104	849	<b>4,128</b>
Coharie Tribe of North Carolina	676	681	930	587	<b>2,874</b>
United Houma Nation	421	433	503	748	<b>2,104</b>
Accohannock Indian Tribe	500	986	441		<b>1,926</b>
Choctaw-Apache Tribe of Ebarb <sup>d</sup>	385	395	416	425	<b>1,621</b>
Waccamaw Siouan Tribe of North Carolina	331	419	416	351	<b>1,517</b>
Lower Muskogee Creek Tribe	357	366	366	375	<b>1,463</b>
Shinnecock Indian Nation <sup>e</sup>	186			790	<b>976</b>
Euchee (Yuchi) Tribe of Indians	118	192	316	122	<b>747</b>
Burt Lake Band of Ottawa and Chippewa Indians, Inc.	91	128	126	122	<b>467</b>
Tuscarora Nation of Indians of the Carolinas	96		134	152	<b>382</b>
St. Francis/Sokoki Band of Abenakis of Vermont Abenaki Tribal Council	80	78	78	78	<b>314</b>
Wesget Sipu			146	160	<b>306</b>
Eel River Tribe of Indiana		99	175		<b>274</b>
American Indian Council of Mariposa County (petitioned as Southern Sierra Miwuk Nation)		12	170	78	<b>260</b>
Sappony (High Plains Indians, petitioned as Indians of Person County)		225			<b>225</b>
Nanticoke Lenne-Lenape Indians of New Jersey	185			23	<b>208</b>
Powhatan Renape Nation	200				<b>200</b>
Duwamish Tribe	107	70			<b>177</b>
Occaneechi Band of Saponi Nation of North Carolina			130		<b>130</b>
United Cherokee Ani-Yun-Wiya Nation		21		77	<b>98</b>
Saponi Nation of Missouri Mahenips Band		65			<b>65</b>
Nanticoke Indian Association	41				<b>41</b>
Mashpee Wampanoag Tribe <sup>f</sup>	33				<b>33</b>
<b>Total</b>	<b>\$22,198</b>	<b>\$20,926</b>	<b>\$34,720</b>	<b>\$25,743</b>	<b>\$103,588</b>

Source: GAO analysis of data from USAspending.gov as of December 14, 2011.

Notes: (1) This table does not include non-federally recognized tribes in states outside the contiguous United States, such as Alaska or Hawaii. (2) Totals may not add because of rounding. (3) Some of the funding identified in the table was used to provide services to members of federally recognized Indian tribes and Native Hawaiians. For example, non-federally recognized tribes that receive Native American Employment and Training grants, contracts, or cooperative agreements must provide services to meet the needs of Indians, Alaska Natives, or Native Hawaiians in the area served by the non-federally recognized tribe.

### The Lumbee Tribe of North Carolina and Federal Recognition

The Lumbee Tribe of North Carolina, located in Pembroke, North Carolina, was recognized by North Carolina in state legislation passed in 1953, but has yet to receive recognition by the federal government. The tribe has sought federal recognition through several mechanisms, including the passage of federal legislation. In 1956, legislation was enacted—commonly referred to as the Lumbee Act of 1956—that designated a group of Indians living in North Carolina as the Lumbee Indians of North Carolina; however, the act explicitly stated that it did not make the Indians eligible for any services performed by the United States for Indians because of their status as Indians and that none of the laws affecting Indians because of their status as Indians would apply to the Lumbees. In 1980, the tribe submitted a letter of intent to petition for federal recognition through Interior's administrative acknowledgment process but Interior's Office of the Solicitor subsequently determined that the tribe was ineligible to apply for federal recognition through this process because the Lumbee Act of 1956 terminated or forbade a federal relationship with the Lumbees, and therefore the tribe was not eligible to petition for federal recognition through this process. Since that time, the tribe has continued to seek federal recognition through congressional action, and in recent years legislation has been introduced in both the Senate and the House of Representatives to have the federal government recognize the Lumbee Tribe, which would make the tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians. With about 55,000 enrolled members, the Lumbee Tribe has more enrolled members than most federally recognized tribes.

<sup>a</sup>This table row includes funding awarded to incorporated entities, such as the Lumbee Regional Development Association, Inc.; the Lumbee Land Development, Inc.; and the Lumbee Revitalization and Community Development Corporation.

<sup>b</sup>This table row includes funding awarded to the MOWA Choctaw Housing Authority.

<sup>c</sup>This table row includes funding awarded to the Haliwa-Saponi Tribal School.

<sup>d</sup>The Choctaw-Apache Tribe of Ebarb received funding on behalf of the Intertribal Council of Central Louisiana, Inc.—a consortium of two state-recognized tribes—which also included the Four Winds Cherokee.

<sup>e</sup>The Shinnecock Indian Nation received federal recognition through Interior's administrative acknowledgment process, effective October 1, 2010. This table includes only funding the tribe received before the effective date of its federal recognition.

<sup>f</sup>The Mashpee Wampanoag Tribe received federal recognition through Interior's administrative acknowledgment process, effective May 23, 2007. This table includes only funding the tribe received before the effective date of its federal recognition.

Similarly, as shown in table 4, nearly all the federal funding we identified as having been awarded to the 26 non-federally recognized tribes over the 4-year period was awarded by a small number of federal programs. Specifically, 95 percent of the funding was awarded by seven federal programs in four agencies. Each of these programs awarded a total of more than \$1.5 million to non-federally recognized tribes during the period. About 67 percent (nearly \$69 million) of the funding we identified was awarded by HUD's Indian Housing Block Grants program.<sup>24</sup> Five non-federally recognized tribes have received funding through this program: the Lumbee Tribe of North Carolina (see sidebar), the MOWA Band of Choctaw Indians, the Haliwa-Saponi Indian Tribe of North Carolina, the Coharie Tribe of North Carolina, and the Waccamaw Siouan Tribe of North Carolina. To determine funding amounts for all federally recognized Indian tribes and eligible non-federally recognized tribes, the program uses a formula that considers factors such as the population and housing conditions of tribal communities. Program funds are used to support such activities as housing development.

<sup>24</sup>Most program recipients are federally recognized Indian tribes. Overall, funding to non-federally recognized tribes accounted for about 2.7 percent of the more than \$2.6 billion in program funds awarded over the 4-year period.

**Table 4: Twenty-four Federal Programs That Awarded Funding to Non-Federally Recognized Tribes, Fiscal Years 2007 through 2010**

Dollars in thousands

<b>Program</b>	<b>Agency</b>	<b>Number of unique recipients</b>	<b>Funds awarded</b>
Indian Housing Block Grants (includes Recovery Act formula and competitive grants)	Housing and Urban Development	5	\$68,887
Low-Income Home Energy Assistance	Health and Human Services	5	7,074
Head Start (includes Recovery Act funding)	Health and Human Services	1	7,029
American Indian Vocational Rehabilitation Services Program	Education	4	5,915
Native American Employment and Training (includes Recovery Act funding)	Labor	4	4,411
Administration for Native Americans' Social and Economic Development Strategies Program	Health and Human Services	13	3,626
Community Services Block Grant Program (includes Recovery Act funding)	Health and Human Services	5	1,764
Administration for Native Americans' Preservation and Enhancement of Native American Languages Program	Health and Human Services	3	732
Community Services Block Grant Program (discretionary awards)	Health and Human Services	1	686
Indian Community Development Block Grant Program (includes Recovery Act funding)	Housing and Urban Development	1	600
Rural Housing and Economic Development	Housing and Urban Development	1	590
Job Opportunities for Low-Income Individuals	Health and Human Services	1	500
Community Development Financial Institutions Fund (includes Recovery Act funding)	Treasury	1	283
Cultural Resources	Interior	1	260
Remote Community Alert Systems Program	Commerce	1	274
Administration for Native Americans' Improvement of the Capability of Tribal Governing Bodies to Regulate Environmental Quality	Health and Human Services	1	219
Economic Development Initiative-Special Project, Neighborhood Initiative and Miscellaneous Grants	Housing and Urban Development	1	190
Rural Housing Preservation Grants	Agriculture	1	186
Small, Rural School Achievement Program	Education	1	92
Indian Education Formula Grants to Local Educational Agencies	Education	1	90
Rural Business Enterprise Grants	Agriculture	1	80
Retired and Senior Volunteer Program	Corporation for National and Community Service	1	63
Volunteers in Service to America	Corporation for National and Community Service	1	25
Surveys, Studies, Investigations, Training and Special Purpose Activities Relating to Environmental Justice	Environmental Protection Agency	1	10
<b>Total</b>		<b>26</b>	<b>\$103,588</b>

Sources: GAO analysis of data from USAspending.gov as of December 14, 2011, and agency-provided data.

Note: Totals may not add because of rounding.

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## Agencies Have Funded Some Likely Ineligible Non-Federally Recognized Tribes, and One Agency Is in the Process of Enforcing Single Audit Act Requirements

During our review, we identified some instances where federal agencies had provided funds to non-federally recognized tribes for which grant eligibility is disputed and one instance where an agency is trying to enforce the Single Audit Act's reporting requirements. Specifically, when we compared the eligibility requirements for each federal program that provided funding to non-federally recognized tribes for fiscal years 2007 through 2010 with the characteristics of each entity, we found that Education funded some non-federally recognized tribes under the American Indian Vocational Rehabilitation Services Program that appear to be ineligible and that HHS funded two non-federally recognized tribes in New Jersey that the state does not consider to be state recognized. In addition, we identified one instance where HHS has initiated action to better ensure that a non-federally recognized tribe completes its required financial report under the Single Audit Act.

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## Under Its American Indian Vocational Rehabilitation Services Program, Education Funded Non-Federally Recognized Tribes That Appear to Have Been Ineligible

Education awarded American Indian Vocational Rehabilitation Services Program funding to two state-recognized tribes that do not have a state reservation—United Houma Nation and the Lumbee Tribe of North Carolina—and a consortium consisting of two additional state-recognized tribes—Choctaw-Apache Tribe of Ebarb and Four Winds Cherokee—that also do not have a state reservation. The statute establishing the program authorizes grants to the governing bodies of state- and federally recognized Indian tribes “located on federal and state *reservations*” and consortia of such governing bodies to pay for vocational rehabilitation services for disabled Indians “residing on or near such *reservations*.”<sup>25</sup> Although this program is designed to enhance the availability of vocational rehabilitation services to Indians living on and near reservations, many of whom have been poorly served by state agencies,<sup>26</sup> there are substantial questions about whether Education has interpreted the term “reservation” more broadly than its statutory definition supports and has awarded grants to ineligible tribes.

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<sup>25</sup>29 U.S.C. §§ 705(19)(B), 741(a) (emphasis added).

<sup>26</sup>See 124 Cong. Rec. S2519 (daily ed. Feb. 28, 1978) (statement of Sen. Randolph) (“during oversight hearings on the Rehabilitation Act and other programs, it was brought to the subcommittee’s attention that reservation based Indian tribes may experience unique problems”); S. Rep. No. 95-890, at 13-14 (1978) (the existing Vocational Rehabilitation Act “has proved to be an inadequate means of addressing the problems experienced by reservation-based Indians, particularly those located on reservations spanning more than one state”).

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The applicable statutory definition of reservation says:

“The term ‘reservation’ *includes* Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act.”<sup>27</sup>

Education told us that under its long-standing interpretation of this definition,<sup>28</sup> “reservation” includes not only the four categories enumerated in the statute, but also “a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services, such as the tribal service areas identified in the tribe’s grant application.” Education’s interpretation allows a tribe to self-define “reservation” by designating any area and providing structured services to tribal members there. Rules of statutory construction weigh against this interpretation. Under the *noscitur a sociis* rule, words grouped in a list should be given related meaning.<sup>29</sup> Courts rely on this rule “to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.”<sup>30</sup> Applied here, this rule means that to satisfy the statutory definition of “reservation,” the area should, like the four areas designated in the statute, be established by or pursuant to a treaty, statute, regulation, executive order, or other formal government recognition. The tribal service areas that constitute “reservations” for purposes of Education’s grants to the United Houma Nation, Lumbee Tribe of North Carolina, Choctaw-Apache Tribe of Ebarb, and Four Winds Cherokee, by

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<sup>27</sup>29 U.S.C. § 741(c) (emphasis added). See generally 124 Cong. Rec. S15562 (daily ed. Sept. 20, 1978) (statement of Sen. Bartlett) (because not all the Indians are on federal and state reservations, the Senator offered an amendment, which was enacted, to include a definition of “reservation” that “follows the customary language which defines reservation to include Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act”).

<sup>28</sup>The department did not provide us with any documentation of this long-standing interpretation, and this interpretation differs from the department’s regulatory definition. The regulatory definition states that “[r]eservation means”—rather than “includes”—the four categories enumerated in the statute. See 34 C.F.R. § 371.4.

<sup>29</sup>See, e.g., *Dole v. United Steelworkers of America*, 494 U.S. 26, 36 (1990).

<sup>30</sup>*Gutafson v. Alloyd Co., Inc.*, 513 U.S. 561, 575 (1995) (citing *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961)).

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contrast, have been delineated by the tribes themselves, which have then applied for federal grants on the basis of these self-created geographic areas. This approach essentially transforms the grant program into one for “Indian tribes no matter where they are located, to provide assistance to disabled Indians no matter where they reside.” Such an outcome is not what Congress intended or enacted.

In addition, the statute’s use of both the term “reservation” and “tribal service area” undercuts Education’s interpretation because it suggests Congress did not believe a tribal service area is simply a type of reservation. The statute authorizes the department to make grants to certain governing bodies of Indian tribes on federal and state reservations and, elsewhere, discusses how Indians with disabilities living on or near a reservation or tribal service area are to be provided vocational rehabilitation services.<sup>31</sup> If the term “reservation” included the term “tribal service area,” Congress would not have referred to them separately in section 101(a)(11)(F)(ii) of the Rehabilitation Act of 1973, as amended in 1998.<sup>32</sup>

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<sup>31</sup>Education makes vocational rehabilitation services grants to both designated state agencies and tribal entities. The latter is referred to as the American Indian Vocational Rehabilitation Services Program. If no tribal entities within a state receive American Indian Vocational Rehabilitation Services grants, Indians eligible for vocational rehabilitation services would be served by the designated state agency. The statute requires the state agency and any tribal entity within the state that has received an American Indian Vocational Rehabilitation Services Program grant to enter into a cooperative agreement that “describes strategies for collaboration and coordination” in providing vocational rehabilitation services to Indians. 29 U.S.C. § 721(a)(11)(F). The cooperative agreement, among other things, must include procedures for ensuring that American Indians who are individuals with disabilities and are living “near a reservation or tribal service area” are provided vocational rehabilitation services. Education believes this provision means the law has equated “reservations” with “tribal service areas.” For the reasons discussed above, we disagree.

<sup>32</sup>See, e.g., *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc.*, 131 S.Ct. 2188, 2196 (2011); *Connecticut ex rel. Blumenthal v. U.S. Dept. of Interior*, 228 F.3d 82, 88 (2000) (courts disfavor interpretations of statutes that render language superfluous).

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## HHS Funded Two Ineligible Non-Federally Recognized Tribes in New Jersey

The state-recognition status of some non-federally recognized tribes in New Jersey has been called into question.<sup>33</sup> The two non-federally recognized tribes in New Jersey that received federal funding in the 4-year period covered by our review were the Nanticoke Lenni-Lenape Indians of New Jersey and the Powhatan Renape Nation. About 30 years ago, the New Jersey legislature passed concurrent resolutions regarding the Confederation of Nanticoke-Lenni Lenape and the Powhatan Renape Nation.<sup>34</sup> Concurrent resolutions are not signed by the Governor and therefore do not have the force of law. In addition, these tribes are referred to in a few state statutes, including the statute establishing the New Jersey Commission on Native American Affairs. Since at least December 2001, however, the state of New Jersey has officially taken the position in correspondence with the Department of the Interior that these actions do not constitute official state recognition and therefore these tribes are not considered to be state recognized. In addition, in 2002, New Jersey law was amended to require specific statutory authorization for the recognition of the authenticity of any group as an American Indian tribe. No state laws contain specific statutory authorization for state recognition of any Indian tribe in New Jersey.

Notwithstanding this history, the Nanticoke Lenni-Lenape Indians of New Jersey and the Powhatan Renape Nation continue to consider themselves, and have represented themselves to HHS, as state-recognized tribes in applying for funding awarded by the Community Services Block Grant program and Low-Income Home Energy Assistance program, respectively, during the 4-year period of our review. These programs, however, are authorized to fund only states and federally and state-recognized Indian tribes.<sup>35</sup> The Nanticoke Lenni-Lenape's application repeatedly stated that it

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<sup>33</sup>Alexa Koenig and Jonathan Stein, "Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes across the United States," 48 Santa Clara L. Rev. 79, 126-28 (2008).

<sup>34</sup>A third concurrent resolution was also passed in 1979 regarding the Ramapough Mountain Indians.

<sup>35</sup>42 U.S.C. § 9906 (state allotments for Community Services Block Grants); 42 U.S.C. § 8623 (state allotments for Low-Income Home Energy Assistance). Under the regulations for both programs, the term *Indian tribe* includes federally recognized Indian tribes and organized groups of Indians that the state in which they reside has expressly determined are Indian tribes or tribal organizations in accordance with state procedures for making such determinations. See 45 C.F.R. § 96.44(b) (Community Services Block Grants); 45 C.F.R. § 96.48(b) (Low-Income Home Energy Assistance).

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was state recognized and included the concurrent resolution from the 1980s as evidence of state recognition. Agency officials told us they did not take any additional steps to verify that the entity was in fact state recognized; they also said they have had regular contact with state officials about the awards, and those state officials never told them that the tribe was not state recognized. On the basis of this statement in the grant application, the Nanticoke Lenni-Lenape Indians of New Jersey received two grants totaling \$44,405 from the Community Services Block Grant Program—one in fiscal year 2007 and one in fiscal year 2010.

Regarding the Low-Income Home Energy Assistance program, the Powhatan Renape Nation presented itself as state recognized in a letter submitted with its grant application. Agency officials stated that the entity's state-recognition status would have been verified when it started receiving program funding about 30 years ago. During the 4-year period of our review, the Powhatan Renape Nation received \$200,342 from the Low-Income Home Energy Assistance program in fiscal year 2007.

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### HHS Has Taken Some Initial Steps in Response to the Accohannock Indian Tribe's Noncompliance with the Single Audit Act

The Accohannock Indian Tribe, one of the non-federally recognized tribes that we identified as receiving federal funds during the period of our review, did not have an audit or submit a report for 2009 as required by the Single Audit Act. According to HHS data, the Accohannock Indian Tribe reported spending over \$1 million in federal funds for calendar year 2009 from three different HHS programs—Community Services Block Grant Program Discretionary Awards, Job Opportunities for Low-Income Individuals, and Administration for Native Americans' Social and Economic Development Strategies Program. The entity's expenditure of federal funds in 2009 was more than twice the threshold that triggers the Single Audit Act's requirements. Unless an exception applied, the entity's audit report would have been due 9 months after the end of the entity's fiscal year, at the latest. Since the entity's fiscal year ends on December 31, its audit report would have been due by September 30, 2010, at the latest. As of February 7, 2012, the Accohannock Indian Tribe had not submitted its required audit report for 2009 to the Federal Audit Clearinghouse, which maintains the Single Audit Database.

HHS is the federal awarding agency responsible for ensuring the entity's compliance with the act because it is the only agency that awarded the Accohannock Indian Tribe federal funds in 2009. The entity's noncompliance with the Single Audit Act was flagged, and the agency sent a letter of inquiry to the Accohannock Indian Tribe on March 8, 2011. According to agency officials, they did not receive a response to their



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letter. More recently, after we began inquiring about the issue, the agency sent the entity an Audit Deficiency Notice via certified mail on February 7, 2012. According to agency officials, because the Accohannock Indian Tribe is not a current grantee, the agency has limited enforcement options. Nevertheless, agency officials stated they plan to continue to pursue their administrative options to encourage the Accohannock Indian Tribe to meet its federal financial reporting obligations.

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## Conclusions

Determining the state-recognition status of non-federally recognized tribes can be a difficult and confusing task, as is trying to determine which entities have state reservations. No official consolidated list of state-recognized tribes or state reservations exists, and states have varying policies and procedures for providing state recognition. Nevertheless, Education provided funds under the American Indian Vocational Rehabilitation Services Program to state-recognized tribes that were not located on state reservations but rather had self-defined tribal service areas, raising substantial questions about the tribes' eligibility for the funding, and HHS provided funds to two non-federally recognized tribes in New Jersey as state-recognized tribes that are not officially recognized by the state. Finally, when entities expend \$500,000 or more in federal funds in a fiscal year, they are required to comply with the reporting requirements of the Single Audit Act. The Accohannock Indian Tribe did not comply with those requirements for 2009. In response, HHS has begun taking administrative steps to encourage the Accohannock Indian Tribe to meet its federal financial reporting obligations.

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## Recommendations for Executive Action

We are making the following three recommendations.

To ensure that grants under the American Indian Vocational Rehabilitation Services Program are made consistent with applicable law, we recommend that the Secretary of Education review the department's practices with respect to eligibility requirements and take appropriate action with respect to grants made to tribes that do not have federal or state reservations.

To ensure the proper award and oversight of grants by the Department of Health and Human Services, we recommend that the Secretary of Health and Human Services take the following two actions.

- Investigate whether the Nanticoke Lenni-Lenape Indians of New Jersey and the Powhatan Renape Nation met the statutory eligibility requirements for the grants they were awarded and take appropriate

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action as necessary. In doing so, the agency should consult with the state of New Jersey to determine whether the state has officially or formally recognized the tribes and treats them as state recognized.

- Continue to pursue the Accohannock Indian Tribe's noncompliance with the Single Audit Act and take appropriate action as necessary.

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## Agency Comments and Our Evaluation

We provided a copy of our draft report to the Departments of Agriculture, Education, Energy, the Interior, Labor, and HHS. In its written response, reprinted in appendix VI, Education stated its commitment to review its practices for determining eligibility for the American Indian Vocational Rehabilitation Services Program and taking appropriate action, if helpful, such as clarifying its interpretation. In addition, Education requested that we change the phrase "appropriate corrective action" in the recommendation to simply "appropriate action." We made that change to the recommendation. Education's commitment to review its practices and take appropriate action is consistent with our revised recommendation.

While agreeing to review its practices, Education disagreed with our finding (which was the basis for the recommendation) that state-recognized tribes without state reservations, but with self-defined tribal service areas, are likely ineligible for the American Indian Vocational Rehabilitation Services grant program. Education stated that its interpretation of the term "reservation" was reasonable and that we should defer to its interpretation. However, for the reasons detailed in the report, we continue to have substantial questions about whether Education reasonably interpreted the statutory definition of "reservation" for the American Indian Vocational Rehabilitation Services grant program to include tribal service areas. We note that Education's interpretation effectively rewrites the statute to allow tribes to unilaterally self-define a reservation and then apply for a grant. That reading appears to go beyond Congress's intent and language.

In addition, Education states that its interpretation is supported by the 1998 amendments to the statute, which (1) authorized American Indian Vocational Rehabilitation Service Program grantees to serve American Indians with disabilities living near reservations as well as those living on reservations, and (2) required states and American Indian Vocational Rehabilitation Service Program grantees to enter into cooperative agreements that, among other things, include procedures for ensuring that American Indians with disabilities living near a reservation or tribal service area are provided vocational rehabilitation services. However,

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expanding the universe of Indians eligible to receive vocational rehabilitation services to those living “near” a reservation does not alter what qualifies as a “reservation.” Moreover, Congress’s use of both “reservation” and “tribal service area” undercuts Education’s interpretation because it suggests Congress did not believe a tribal service area is simply a type of reservation.

HHS agreed with the two recommendations involving its activities and stated that it will seek to clarify with the state of New Jersey the status of the Nanticoke Lenni-Lenape Indians of New Jersey and the Powhatan Renape Nation. HHS also stated that it will continue to address issues related to compliance with the Single Audit Act related to the Accohannock Indian Tribe. (See app. VII for HHS’s written comments.) The Departments of Agriculture, Education, the Interior, and HHS also provided technical comments, which we incorporated into the report as appropriate. The Departments of Energy and Labor had no comments.

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As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to the Secretaries of Agriculture, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, and Labor; appropriate congressional committees; and other interested parties. The report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VIII.

Sincerely yours,



Anu K. Mittal  
Director, Natural Resources  
and Environment

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# Appendix I: Objectives, Scope, and Methodology

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This review's objectives were to address (1) the key means by which non-federally recognized tribes have been eligible for federal funding and (2) the amount of federal funding awarded to non-federally recognized tribes for fiscal years 2007 through 2010, by agency and program. In addition, this report provides information about some cases we identified during our work concerning non-federally recognized tribes' eligibility for funding and compliance with federal financial reporting requirements.

Because no comprehensive list of non-federally recognized tribes exists, we first compiled a list of about 400 such tribes in the contiguous 48 states.<sup>1</sup> To compile this list we relied on information from (1) the Department of the Interior, and obtained a list of all those entities that have submitted a letter of intent to petition for federal recognition through the department's administrative acknowledgment process or have submitted a complete petition but had not received federal recognition as of April 29, 2011; (2) selected states about state-recognized tribes; and (3) other documents and sources that identified other self-identified tribes that are not federally recognized.

For this review, we compiled a list of states with state-recognized tribes that are not federally recognized. We compiled this list by gathering information from a variety of sources, including information gathered by Interior's Indian Arts and Crafts Board on state-recognized tribes in all 50 states and information collected by the U.S. Census Bureau. On the basis of this information, we identified 15 states that were most likely to

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<sup>1</sup>We excluded Alaska and Hawaii because of the unique circumstances in those states. In addition to the 225 federally recognized tribes in Alaska, Alaska Native corporations were created pursuant to the Alaska Native Claims Settlement Act but are not federally recognized tribes and some federal programs have explicit authority to fund them. As a result, including Alaska would have required extensive and different research and legal analysis on how federal programs treat Alaska Native corporations. Hawaii enacted legislation in July 2011 to provide for and implement the recognition of the Native Hawaiian people by means and methods that will facilitate their self-governance. The Attorney General of Hawaii has identified over 160 federal laws explicitly addressing Native Hawaiians. See *Can Congress Create a Race-Based Government? The Constitutionality of H.R. 309 and S. 147, Hearing Before the House Subcomm. on the Constitution of the House Comm. on the Judiciary*, 109th Cong. 6, 60-80 (2005). Native Hawaiians are not eligible to apply for federal recognition through Interior's administrative acknowledgment process, and as a result, Interior's list of entities that have submitted a letter of intent to petition for federal recognition does not include information about Hawaiian entities that may self-identify as tribes. Like the situation in Alaska, including Hawaii would have required extensive and different research and legal analysis on how federal programs treat Native Hawaiians.

have state-recognized tribes, and we reached out to state officials in each of these states. On the basis of our discussions with officials in these states, we confirmed that 12 of the 15 states had state-recognized tribes. In addition, state officials in the other 33 states had at one time told Interior's Indian Arts and Crafts Board that their states had no state-recognized tribes that were not also federally recognized. As part of our contact with these 15 states, in addition to inquiring about any state-recognized tribes, we also asked about whether they were aware of any other non-federally recognized tribes within their borders. For the other 33 states, we relied largely on information provided by these states to Interior's Indian Arts and Crafts Board. According to this information, these states had identified no state-recognized tribes within their borders. We spot-checked this information by contacting 20 states for which we were able to identify a state official who could respond to our questions, and 9 of these states responded to our inquiry and confirmed that they did not have any state-recognized tribes.<sup>2</sup>

To address both objectives of this review, we obtained and reviewed statutes and agency documents; searched databases such as USAspending.gov and the Single Audit Database; analyzed agency-provided data; and met with officials of various federal agencies, including all six agencies with programs that have explicit statutory or regulatory authority to fund certain non-federally recognized tribes, such as state-recognized tribes that are not also federally recognized. These agencies are the Departments of Agriculture, Education, Energy, Health and Human Services, Housing and Urban Development, and Labor. In addition, we traveled to North Carolina and Virginia to meet with state officials, representatives of Native American organizations, and officials from several non-federally recognized tribes located in those states. We selected North Carolina because it had the highest concentration of non-federally recognized tribes that we identified as having received funding during the 4-year period (7 out of 26), including three of the top four recipients of federal funds during the period. We included Virginia because of its proximity to Washington, D.C., and because tribes in the state have received federal funding in the past.

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<sup>2</sup>The 15 states we identified as possibly having state-recognized tribes were the 12 states listed in table 7 plus California, New Jersey, and Ohio. The additional 9 states responding to our inquiry were Arizona, Arkansas, Colorado, Indiana, Kansas, Kentucky, Michigan, Oklahoma, and Texas.

To identify which non-federally recognized tribes had received federal funding during the period 2007 through 2010 and which programs had provided this funding, we searched publicly available funding data from USAspending.gov and agency-provided data. USAspending.gov, a publicly accessible website containing data on federal awards, was launched in December 2007 to comply with the requirements of the Federal Funding Accountability and Transparency Act of 2006.<sup>3</sup> Under that act, federal agencies are required to report information about all federal awards of \$25,000 or more. As a result of these searches, we determined that 26 of the about 400 non-federally recognized tribes that we had identified had received federal funding in the 4-year period from 24 federal programs.

To determine by which means non-federally recognized tribes were eligible to receive federal funding, we reviewed the authorizing statutes, program regulations, and eligibility requirements for all 24 programs that had awarded funding to the 26 non-federally recognized tribes during fiscal years 2007 through 2010. In addition, we collected information about the organization and legal status of the 26 non-federally recognized tribes. For example, we searched Internal Revenue Service data to identify which of the receiving entities were organized as nonprofits at any time during the 4-year period. We then analyzed how each entity could have qualified for the funding it received, by comparing the organizational and legal status of the recipient with the statutory and regulatory authority of the awarding program. When a non-federally recognized tribe was eligible to receive federal funding from a program through several means, we did not attempt to single out which means qualified the tribe for the funding received. In those instances where we could not identify any means by which a non-federally recognized tribe was eligible for funding received, we contacted agency officials to determine how the entity had qualified. For example, we contacted two agencies to determine how non-state-recognized tribes in New Jersey qualified for funding from programs that are authorized to fund state-recognized tribes but not to fund other non-federally recognized tribes.

For each non-federally recognized tribe we identified, we searched USAspending.gov and agency-provided data on relevant identifying information, including tribal names provided by Interior for petitioners and

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<sup>3</sup>Pub. L. No. 109-282, 120 Stat. 1186 (2006).

by state officials for state-recognized tribes and other non-federally recognized tribes in their states. Where possible, we used available information such as tribal names and addresses to identify each entity's Data Universal Numbering System (DUNS) number—a nine-digit number assigned by Dun & Bradstreet, Inc., to identify each physical location for businesses. Entities such as non-federally recognized tribes may have multiple DUNS numbers, and we took steps to identify all relevant DUNS numbers by, for example, searching Dun & Bradstreet's records for additional DUNS numbers associated with a particular entity, such as a previous DUNS number where applicable. We then searched USAspending.gov and agency-provided data on tribal names and DUNS numbers to compile an updated data set on federal funding awarded by federal agencies in the 4-year period to the non-federally recognized tribes we identified.

To determine the amount of federal funding awarded for fiscal years 2007 through 2010 to non-federally recognized tribes, we used the information that we obtained from USAspending.gov and agency-provided data. We supplemented USAspending.gov data with agency-provided data from (1) all seven programs that we identified as each having awarded a total of more than \$1.5 million in funding to non-federally recognized tribes in the 4-year period and (2) some additional programs administered by these agencies. Some programs awarded funding appropriated through the annual appropriation process as well as funding appropriated by the American Recovery and Reinvestment Act of 2009. Although the Catalog of Federal Domestic Assistance (CFDA)<sup>4</sup> may assign unique numbers to track these two funding sources, we did not consider the funding as coming from separate programs for the purposes of tallying the number of programs that awarded funding to non-federally recognized tribes.

We took a number of steps to assess the reliability of these data. For example, we compared USAspending.gov against information in single audit reports filed by those non-federally recognized tribes that filed these reports for one or more of the fiscal years included in this review. We also tested the data for missing data and outliers, interviewed agency officials from all seven programs that awarded more than \$1.5 million to non-federally recognized tribes in the 4-year period to discuss how they collect

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<sup>4</sup>CFDA details program descriptions for more than 2,000 federal assistance programs and assigns a unique CFDA number to each program. See <http://www.cfda.gov>.

and maintain these data, and contacted knowledgeable agency officials to resolve any inconsistencies in these data sources. For example, by reviewing single audits completed by the Lumbee Tribe of North Carolina, we identified an award that was not listed in USA Spending.gov; we contacted agency officials to confirm the amounts awarded by fiscal year and program and to determine why the award was not listed. An agency official stated that the award was not listed in USA Spending.gov because it was below the reporting threshold required by the Federal Funding Accountability and Transparency Act of 2006. On the basis of information provided by the agency, we were able to include the award in our updated data set. After taking these steps, we concluded that the updated data set was reliable for the purpose of estimating the amount of federal funding awarded by federal agencies to non-federally recognized tribes for fiscal years 2007 through 2010. After collecting this information, we compared the characteristics of each non-federally recognized tribe with applicable program eligibility requirements, and we checked for compliance with the financial reporting requirement in the Single Audit Act, as amended.<sup>5</sup> As a result, we identified some instances where federal agencies had made grants to likely ineligible non-federally recognized tribes and where an agency had initiated actions to enforce federal financial reporting requirements.

We excluded awards received by non-federally recognized tribes as subawards from other entities, including states, because neither USA Spending.gov nor the federal agencies maintain reliable information on subawards. We also excluded loans, procurement contracts, and tax expenditures and did not make any effort to determine the amount of funding received directly by individual members of non-federally recognized tribes through, for example, scholarships awarded by federal agencies.

We conducted this performance audit from June 2011 through April 2012, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>5</sup>Pub. L. No. 98-502 (1984), *amended by* Pub. L. No. 104-156 (1996), *codified as amended at* 31 U.S.C. §§ 7501-7507.



# Appendix II: Tribes Whose Recognition Was Terminated

This appendix provides information about tribes whose relationship with the United States was terminated. These tribes are not eligible to petition for federal recognition through the Department of the Interior's administrative acknowledgement process, but may have their recognition restored by other means.<sup>1</sup> As of October 1, 2010, federal recognition had been restored for 38 tribes whose relationship with the United States had been terminated (see table 5). These tribes were non-federally recognized upon termination until the effective date of restoration.

**Table 5: Years in Non-Federally Recognized Status for 38 Tribes Whose Recognition Was Terminated and Subsequently Restored**

Restored tribe	State	Date terminated	Date restored	Years non-federally recognized
Menominee Indian Tribe of Wisconsin	WI	Apr. 30, 1961	Dec. 22, 1973	12.65
Robinson Rancheria of Pomo Indians of California	CA	Sept. 3, 1965	June 29, 1977	11.83
Confederated Tribes of the Siletz Reservation, Oregon	OR	Aug. 13, 1956	Nov. 18, 1977	21.28
Ottawa Tribe of Oklahoma	OK	Aug. 3, 1959	May 15, 1978	18.79
Peoria Tribe of Indians of Oklahoma	OK	Aug. 2, 1959	May 15, 1978	18.80
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)	UT	Mar. 1, 1957	Apr. 3, 1980	23.11
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)	CA	Apr. 11, 1961	Sept. 21, 1981	20.46
Confederated Tribes of the Grand Ronde Community of Oregon	OR	Aug. 13, 1956	Nov. 22, 1983	27.29
Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians of Oregon	OR	Aug. 13, 1956	Oct. 17, 1984	28.20
Bear River Band of the Rohnerville Rancheria, California	CA	July 16, 1966	Feb. 13, 1985 <sup>a</sup>	18.59
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California	CA	Nov. 11, 1965	Feb. 13, 1985 <sup>a</sup>	19.27
Blue Lake Rancheria, California	CA	Sept. 22, 1966	Feb. 13, 1985 <sup>a</sup>	18.41
Buena Vista Rancheria of Me-Wuk Indians of California	CA	Apr. 11, 1961	Feb. 13, 1985 <sup>a</sup>	23.86
Chicken Ranch Rancheria of Me-Wuk Indians of California	CA	Aug. 1, 1961	Feb. 13, 1985 <sup>a</sup>	23.55

<sup>1</sup>For information on how federal recognition has been restored for these tribes see enclosure II of GAO, *Indian Issues: BLM's Program for Issuing Individual Indian Allotments on Public Lands Is No Longer Viable*, [GAO-07-23R](#) (Washington, D.C.: Oct. 20, 2006), and appendix II of GAO, *Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*, [GAO-10-768](#) (Washington, D.C.: July 28, 2010).

**Appendix II: Tribes Whose Recognition Was Terminated**

<b>Restored tribe</b>	<b>State</b>	<b>Date terminated</b>	<b>Date restored</b>	<b>Years non-federally recognized</b>
Cloverdale Rancheria of Pomo Indians of California	CA	Dec. 30, 1965	Feb. 13, 1985 <sup>a</sup>	19.14
Elk Valley Rancheria, California	CA	July 16, 1966	Feb. 13, 1985 <sup>a</sup>	18.59
Greenville Rancheria of Maidu Indians of California	CA	Dec. 8, 1966	Feb. 13, 1985 <sup>a</sup>	18.20
Mooretown Rancheria of Maidu Indians of California	CA	Aug. 1, 1961	Feb. 13, 1985 <sup>a</sup>	23.55
Northfork Rancheria of Mono Indians of California	CA	Feb. 18, 1966	Feb. 13, 1985 <sup>a</sup>	19.00
Picayune Rancheria of Chukchansi Indians of California	CA	Feb. 18, 1966	Feb. 13, 1985 <sup>a</sup>	19.00
Pinoleville Rancheria of Pomo Indians of California	CA	Feb. 18, 1966	Feb. 13, 1985 <sup>a</sup>	19.00
Potter Valley Tribe, California	CA	Aug. 1, 1961	Feb. 13, 1985 <sup>a</sup>	23.55
Quartz Valley Indian Community of the Quartz Valley Reservation of California	CA	Jan. 20, 1967	Feb. 13, 1985 <sup>a</sup>	18.08
Redding Rancheria, California	CA	June 20, 1962	Feb. 13, 1985 <sup>a</sup>	22.67
Redwood Valley Rancheria of Pomo Indians of California	CA	Aug. 1, 1961	Feb. 13, 1985 <sup>a</sup>	23.55
Smith River Rancheria, California	CA	July 29, 1967	Feb. 13, 1985 <sup>a</sup>	17.56
Klamath Tribes, Oregon	OR	Aug. 13, 1961	Aug. 27, 1986	25.05
Alabama-Coushatta Tribes of Texas	TX	July 1, 1955	Aug. 18, 1987	32.15
Ponca Tribe of Nebraska	NE	Oct. 27, 1966	Oct. 31, 1990	24.03
Guidiville Rancheria of California	CA	Sept. 3, 1965	Sept. 6, 1991	26.02
Lytton Rancheria of California	CA	Aug. 1, 1961	Sept. 6, 1991	30.12
Scotts Valley Band of Pomo Indians of California	CA	Sept. 3, 1965	Sept. 6, 1991	26.02
Mechoopda Indian Tribe of Chico Rancheria, California	CA	June 2, 1967	Apr. 17, 1992	24.89
Catawba Indian Nation (aka Catawba Tribe of South Carolina)	SC	July 2, 1960	Oct. 27, 1993	33.34
United Auburn Indian Community of the Auburn Rancheria of California	CA	Aug. 18, 1967	Oct. 31, 1994	27.22
Paskenta Band of Nomlaki Indians of California	CA	Apr. 11, 1961	Nov. 2, 1994	33.58
Federated Indians of Graton Rancheria, California	CA	Feb. 18, 1966	Dec. 27, 2000	34.88
Wilton Rancheria, California	CA	Sept. 22, 1964	June 8, 2009	44.74

Sources: GAO analysis of information reported in [GAO-07-23R](#), [GAO-10-768](#), and the *Federal Register*.

<sup>a</sup>We use February 13, 1985, as the restoration date because it is the date of publication of the first list of federally recognized tribes, by the Department of the Interior's Bureau of Indian Affairs (BIA), to include the tribe. Under section 7 of the court-approved stipulated agreement settling *Tillie Hardwick v. United States*, No. C-79-1710-SW (N.D. Cal. 1983), tribes involved in the litigation were to be recognized by the Secretary of the Interior and included on BIA's *Federal Register* list of recognized tribal entities pursuant to 25 C.F.R. § 83.6(b) (1983). Although the court approved the stipulated agreement on December 27, 1983, the Secretary did not publish a notice in the *Federal Register* regarding the settlement and restoration until June 11, 1984, and the BIA list of federally recognized tribes was not published until February 13, 1985.

**Appendix II: Tribes Whose Recognition Was Terminated**

For a variety of reasons, it is not possible to provide a comprehensive list of all existing tribes whose recognition was terminated and not restored. For example, some tribes located in western Oregon and terminated in 1956 appear to have been historic tribes that once resided in that area but were no longer organized as tribes at the time of their termination, according to the Department of the Interior.<sup>2</sup> Nonetheless, we identified nine tribes in California whose recognition was terminated and not restored and therefore are non-federally recognized tribes (see table 6).

**Table 6: Nine Tribes in California Whose Recognition Was Terminated and Not Restored**

<b>Terminated tribe</b>	<b>Date terminated</b>	<b>Federal Register termination notice</b>
Cache Creek Rancheria	Apr. 11, 1961	26 Fed. Reg. 3073
Mark West Rancheria	Apr. 11, 1961	26 Fed. Reg. 3073
Ruffeys Rancheria	Apr. 11, 1961	26 Fed. Reg. 3073
Strawberry Valley Rancheria	Apr. 11, 1961	26 Fed. Reg. 3073
Alexander Valley Rancheria	Aug. 1, 1961	26 Fed. Reg. 6875
Indian Ranch Rancheria	Sept. 22, 1964	29 Fed. Reg. 13146
Nevada City Rancheria	Sept. 22, 1964	29 Fed. Reg. 13146
El Dorado Rancheria	July 16, 1966	31 Fed. Reg. 9685, 9686
Mission Creek Reservation	July 14, 1970	35 Fed. Reg. 11272, 11273

Source: GAO analysis of BIA data and *Federal Register* notices.

Note: Pub. L. No. 88-419, § g, 78 Stat. 390, 391 (1964), authorized the Secretary of the Interior to sell any rancheria or reservation lying wholly within the state of California that was unoccupied as of January 1, 1964. From 1965 through 1967, the Secretary sold the unoccupied Colfax, Taylorsville, and Strathmore rancherias.

<sup>2</sup>Pub. L. No. 83-588, 68 Stat. 724 (1954); 21 Fed. Reg. 6244 (Aug. 18, 1956).

# Appendix III: State-Recognized Tribes

This appendix provides information on state-recognized tribes. We identified 12 states that had state-recognized tribes. Officials in these 12 states identified 61 state-recognized tribes that are not federally recognized, as of September 2011 (see table 7). Some states—such as California and Texas—have acknowledged non-federally recognized tribes in their states but have not officially identified these entities as state recognized, according to officials we spoke with.

**Table 7: State-Recognized Tribes Identified by States That Are Not Federally Recognized, as of September 2011**

State and tribe name	Status in Interior's administrative acknowledgment process <sup>a</sup>
<b>Alabama</b>	
Cherokees of Northeast Alabama	Petitioner #77. Letter of intent submitted on Sept. 23, 1981.
Cher-O-Creek Intra Tribal Indians (Cherokees of Southeast Alabama)	Petitioner #107. Letter of intent submitted on May 27, 1988.
Echota Cherokees of Alabama	Petitioner #321. Letter of intent submitted on June 10, 2009.
Ma-Chis Lower Alabama Creek Indian Tribe	Petitioner #87. Denied, effective Aug. 22, 1988.
MOWA Band of Choctaw Indians <sup>b</sup>	Petitioner #86. Denied, effective Nov. 26, 1999.
Piqua Shawnee Tribe	<sup>c</sup>
Star Clan of Muscogee Creeks of Pike County	<sup>c</sup>
United Cherokee Ani-Yun-Wiya Nation	Petitioner #246. Letter of intent submitted on Nov. 8, 2001.
<b>Connecticut</b>	
Golden Hill Paugussett Tribe <sup>b</sup>	Petitioner #81. Denied, effective Mar. 18, 2005.
Paucatuck Eastern Pequot <sup>b</sup>	Petitioner #35 and petitioner #113. Denied, effective Oct. 14, 2005.
Schaghticoke Tribal Nation <sup>b</sup>	Petitioner #79. Denied, effective Oct. 14, 2005.
<b>Delaware</b>	
Lenape Indian Tribe of Delaware	<sup>c</sup>
Nanticoke Indian Association	Petitioner #40. Requested petition be placed on hold on Mar. 25, 1989.
<b>Georgia</b>	
Cherokee of Georgia Tribal Council	<sup>c</sup>
Georgia Tribe of Eastern Cherokee Indians, Inc. <sup>d</sup>	Petitioner #41. Petition ready, waiting for active consideration since June 9, 2003.
Lower Muscogee Creek Tribe <sup>b</sup>	Petitioner #8. Denied, effective Dec. 21, 1981.
<b>Louisiana</b>	
Adai Caddo Tribe	Petitioner #138. Letter of intent submitted on Sept. 13, 1993.
Bayou Lafourche Band of the Biloxi-Chitimacha Confederation of Muskogeans	Petitioner #56A. Proposed negative finding published May 30, 2008.
Choctaw-Apache Tribe of Ebarb	Petitioner #37. Letter of intent submitted on July 2, 1978.
Clifton Choctaw Tribal Reservation, Inc.	Petitioner #30. Letter of intent submitted on Mar. 22, 1978.

**Appendix III: State-Recognized Tribes**

<b>State and tribe name</b>	<b>Status in Interior's administrative acknowledgment process<sup>a</sup></b>
Four Winds Cherokee	<sup>c</sup>
Grand Caillou/Dulac Band of the Biloxi-Chitimacha Confederation of Muskogeans	Petitioner #56A. Proposed negative finding published May 30, 2008.
Isle de Jean Charles Band of the Biloxi-Chitimacha Confederation of Muskogeans	Petitioner #56A. Proposed negative finding published May 30, 2008.
Louisiana Choctaw Tribe	<sup>c</sup>
Pointe-au-Chien Indian Tribe	Petitioner #56B. Proposed negative finding published May 30, 2008.
United Houma Nation	Petitioner #56. Proposed negative finding published Dec. 22, 1994.
<b>Massachusetts<sup>e</sup></b>	
Chappaquiddick Wampanoag	Petitioner #310. Letter of intent submitted on May 21, 2007.
Chaubunnagungamaug Nipmucks	<sup>f</sup>
Herring Pond Wampanoag Tribe	<sup>c</sup>
Nipmuc Nation Hassanamisco Band	Petitioner #69A. Denied, effective Jan. 28, 2008.
Pocasset Wampanoag Tribe	Petitioner #153. Letter of intent submitted on Feb. 1, 1995.
Seaconke Wampanoag Tribe	<sup>c</sup>
<b>Montana</b>	
Little Shell Tribe of Chippewa Indians of Montana	Petitioner #31. Denied, effective Oct. 27, 2009.
<b>New York</b>	
The Poospatuck (Unkechaug) Indian Nation <sup>b</sup>	<sup>c</sup>
<b>North Carolina</b>	
Coharie Tribe of North Carolina	Petitioner #74. Letter of intent submitted on Mar. 13, 1981.
Haliwa-Saponi Indian Tribe of North Carolina	Petitioner #63. Letter of intent submitted on Nov. 27, 1979.
Lumbee Tribe of North Carolina	Petitioner #65. Deemed ineligible to apply on Oct. 23, 1989.
Meherrin Indian Tribe	Petitioner #119a. Letter of intent submitted on Aug. 2, 1990.
Occaneechi Band of Saponi Nation of North Carolina	Petitioner #148. Letter of intent submitted on Jan. 6, 1995.
Sappony (High Plains Indians, petitioned as Indians of Person County)	Petitioner #95. Letter of intent submitted on Sept. 7, 1984.
Waccamaw Siouan Tribe of North Carolina	Petitioner #88. Letter of intent submitted on June 27, 1983.
<b>South Carolina</b>	
Beaver Creek Indians	Petitioner #184. Letter of intent submitted on Jan. 26, 1998.
Edisto Natchez Kusso Tribe of South Carolina (petitioned as Four Holes Indian Organization, Edisto Tribal Council)	Petitioner #23. Letter of intent submitted on Dec. 30, 1976.
Pee Dee Indian Tribe of South Carolina	Petitioner #152. Letter of intent submitted on Jan. 30, 1995.
Pee Dee Nation of Upper South Carolina	Petitioner #296. Letter of intent submitted on Dec. 14, 2005.
Santee Indian Organization	Petitioner #53. Letter of intent submitted on June 4, 1979.
Waccamaw Indian People (petitioned as The Chicora-Waccamaw Indian People)	Petitioner #144. Letter of intent submitted on Oct. 5, 1994.
Wassamasaw Tribe of Varnertown Indians	<sup>c</sup>

**Appendix III: State-Recognized Tribes**

<b>State and tribe name</b>	<b>Status in Interior’s administrative acknowledgment process<sup>a</sup></b>
<b>Vermont</b>	
Elnu Abenaki Tribe	<sup>c</sup>
Nulhegan Band of the Coosuk Abenaki Nation	<sup>c</sup>
<b>Virginia</b>	
Cheroenhaka (Nottoway)	Petitioner #264. Letter of intent submitted on Dec. 30, 2002.
Chickahominy Indian Tribe	Petitioner #168. Letter of intent submitted on Mar. 19, 1996.
Eastern Chickahominy	Petitioner #241. Letter of intent submitted on Sept. 6, 2001.
Mattaponi Tribe <sup>b</sup>	Petitioner #157. Letter of intent submitted on Apr. 4, 1995.
Monacan Indian Nation	Petitioner #161. Letter of intent submitted on July 11, 1995.
Nansemond	Petitioner #244. Letter of intent submitted on Sept. 20, 2001.
Nottoway of Virginia	<sup>c</sup>
Pamunkey Indian Tribe <sup>b</sup>	Petitioner #323. Letter of intent submitted on June 29, 2009.
Patawomeck	<sup>c</sup>
Rappahannock Tribe	Petitioner #61. Letter of intent submitted on Nov. 16, 1979.
Upper Mattaponi	Petitioner #62. Letter of intent submitted on Nov. 26, 1979.

Sources: Information provided by state officials for tribe name and GAO analysis of information from Interior’s Office of Federal Acknowledgment for petitioner status.

Notes: The table lists only state-recognized tribes as of September 2011. Maryland officially recognized two non-federally recognized tribes (Piscataway Conoy Tribe and Piscataway Indian Nation) in January 2012 by executive order as authorized by state law. The Piscataway Conoy Tribe includes the Piscataway-Conoy Confederacy and Sub-Tribes and Cedarville Band of Piscataway.

<sup>a</sup>Status of the entity’s efforts to petition for federal recognition through Interior’s administrative acknowledgment process, as of April 29, 2011, where we were able to confirm, on the basis of matching name and address, that the state-recognized tribe and petitioning group are the same entity. Because entities may have changed addresses since petitioning for federal recognition, this list may not be comprehensive.

<sup>b</sup>This state-recognized tribe has a state reservation, according to an official we spoke with. State officials in five states reported that a total of eight non-federally recognized tribes have state reservations in those states, but this list may not be comprehensive.

<sup>c</sup>On the basis of the names and addresses we were able to identify for this entity, we were unable to positively match it with any entity that has petitioned for federal recognition through Interior’s administrative acknowledgment process.

<sup>d</sup>According to Georgia’s Council on American Indian Concerns, four groups have claimed to be the state-recognized Georgia Tribe of Eastern Cherokee, which was recognized in 1993. Furthermore, according to Interior’s Office of Federal Acknowledgment, at least two groups have represented themselves as petitioner #41 (Georgia Tribe of Eastern Cherokees, Inc.). In November 2007, the Council on American Indian Concerns formally recommended to the Governor and the General Assembly that the state officially identify the Georgia Tribe of Eastern Cherokee Indians, Inc. (located at P.O. Box 607, Dahlonega, GA) as the true and legitimate state-recognized Georgia Tribe of Eastern Cherokee. As of February 2012, no further actions had been taken on this matter, according to a state official we spoke with.

<sup>e</sup>Massachusetts considers the listed entities to be state-recognized tribes but has not established a formal recognition process, according to an official we spoke with from the Massachusetts Commission on Indian Affairs.

<sup>f</sup>This entity may be associated with petitioner #69B (Chaubunagungamaug Band of the Nipmuck Nation, Webster/Dudley), which was denied acknowledgment, effective Jan. 28, 2008.

We cross-checked the information we received from state officials with information included in (1) a 2008 law review article,<sup>1</sup> (2) the 2010 Census,<sup>2</sup> and (3) correspondence between the states and Interior's Indian Arts and Crafts Board.<sup>3</sup> Trying to reconcile differences among these sources highlighted the difficulties inherent in trying to develop a comprehensive list of state-recognized tribes. For example, questions were raised about the legal status of legislative resolutions that are not signed by a state's governor and the significance of other types of designations, such as "historic" or "acknowledged" tribes.

Nonetheless, except for some recent events that have occurred since the 2008 law review article was written and the 2010 Census information was compiled, and a couple of other notable exceptions, the information that we present in table 7 generally matches these other sources. The notable exceptions include the following:

- We did not include any entities from New Jersey in table 7. New Jersey does not have any state-recognized tribes, according to New Jersey officials whom we spoke with, as well as correspondence between New Jersey officials and Interior's Indian Arts and Crafts Board. The 2008 law review article counted three potentially state-recognized tribes in New Jersey, and the 2010 Census data counted two state-recognized tribes.
- We did not include any entities from California and Ohio in table 7. The officials whom we spoke with from those states indicated that their states had not established processes for officially recognizing tribes. The 2010 Census data and the correspondence with Interior's Indian Arts and Crafts Board also confirmed that those states have no

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<sup>1</sup>Alexa Koenig and Jonathan Stein, "Federalism and the State Recognition of Native American Tribes: A Survey of State-Recognized Tribes and State Recognition Processes across the United States," 48 Santa Clara L. Rev. 79 (2008).

<sup>2</sup>For the 2010 Census, the U.S. Census Bureau identified state-recognized tribes in 11 states. Six of these 11 states include at least one state-recognized tribe with a state reservation, according to the 2010 Census data. For each state-recognized tribe without a state reservation, Census delineated a tribal land area referred to as a State Designated Tribal Statistical Area. A Census map of state-recognized tribes and their tribal land areas can be found at [http://www.census.gov/geo/www/maps/aian2010\\_wall\\_map/aian\\_wall\\_map.html](http://www.census.gov/geo/www/maps/aian2010_wall_map/aian_wall_map.html).

<sup>3</sup>The Indian Arts and Crafts Board provided correspondence from all 50 states on the topic of state-recognized tribes.

state-recognized tribes. On the basis of legislative resolutions in California and Ohio that were not signed by the states' governors, the 2008 law review article counted two state-recognized tribes in California and one state-recognized tribe in Ohio.

- We included six entities for Massachusetts in table 7 on the basis of the designation provided by a state official. The official also stated that Massachusetts does not have an established formal process for granting state recognition and that these entities are acknowledged by Massachusetts as historic tribes. The 2008 law review article included the same entities as state-recognized tribes, while the 2010 Census counted only one entity in Massachusetts as state recognized. In correspondence with Interior's Indian Arts and Crafts Board, dated November 16, 2000, the state provided a list of the historic tribes but also stated "[t]here are no officially state recognized tribes."

Some of the state-recognized tribes listed in table 7—such as the Mattaponi Tribe and the Pamunkey Indian Tribe—were recognized by colonial governments and considered state recognized since the beginning of statehood, while others became state recognized more recently, according to state officials we spoke with. For example, the two state-recognized tribes in Vermont were recognized in 2011, according to an official in that state. In some instances, state governments acknowledged a group long before officially designating it as a state-recognized tribe. Furthermore, some state governments have procedures for recognizing tribes today. As a result, the number of state-recognized tribes may increase, according to state officials we spoke with.

According to some state officials and state websites, their states officially recognize certain Indian entities, but these entities are not considered tribes. For example, South Carolina recognizes "Native American Indian groups," which the state defines as a number of individuals assembled together, which have different characteristics, interests, and behaviors that do not denote a separate ethnic and cultural heritage today, as they once did. That state also recognizes Native American Special Interest Organizations, which promote Native American culture and address socioeconomic deprivation among people of Indian origin, such as the Little Horse Creek American Indian Cultural Center. In another example, the state of North Carolina recognizes four Indian organizations, each of which represents Indian communities in one or more counties.



# Appendix IV: Non-Federally Recognized Tribes That Received Federal Funding before Fiscal Year 2007

This appendix provides information on non-federally recognized tribes that received federal funding before fiscal year 2007. During our review, we identified a significant number of non-federally recognized tribes that received federal funding before fiscal year 2007, as shown in table 8. However, we also found that the publicly available funding data for the pre-2007 period were neither complete nor comprehensive, and therefore we have not included funding that these tribes received in table 8.

**Table 8: Non-Federally Recognized Tribes That GAO Identified as Having Received Federal Funding before Fiscal Year 2007**

Tribe name	City	State	Nonprofit <sup>a</sup>	State recognized <sup>b</sup>	Status in Interior's administrative acknowledgment process <sup>c</sup>
Adai Caddo Tribe	Robeline	LA	✓	✓	Petitioner #138. Letter of intent submitted on Sept. 13, 1993.
Amah Mutsun Band of Ohlone/Costanoan Indians	Woodside	CA			Petitioner #120. Petition ready, waiting for active consideration since Sept. 15, 2003.
Amonsoquath Tribe of Cherokee	West Plains	MO	✓		Petitioner #155. Letter of intent submitted on Feb. 17, 1995.
The Bear Creek Band of Michigan Ottawa Indians, Inc.	Hopkins	MI			<sup>d</sup>
Beaver Creek Indians (funded as Beaver Creek Band of Pee Dee Indians)	Lexington	SC	✓	✓	Petitioner #184. Letter of intent submitted on Jan. 26, 1998.
Brothertown Indian Nation (also funded as Brotherton Indian Nation)	Fond du Lac	WI	✓		Petitioner #67. Proposed finding issued Aug. 17, 2009.
Chaloklowa Chickasaw Indian People	Hemingway	SC	✓		Petitioner #259. Letter of intent submitted on Aug. 14, 2002.
The Chi-cau-gon Band of Lake Superior Chippewa of Iron County	Iron River	MI	✓		Petitioner #183. Letter of intent submitted on Feb. 12, 1998.
Chicora Indian Tribe of South Carolina	Loris	SC	✓		Petitioner #134. Letter of intent submitted on Feb. 10, 1993.
Chinook Indian Tribe/Chinook Nation	Chinook	WA	✓		Petitioner #57. Denied, effective July 12, 2003.
Clifton Choctaw Tribal Reservation, Inc.	Clifton	LA	✓	✓	Petitioner #30. Letter of intent submitted on Mar. 22, 1978.

**Appendix IV: Non-Federally Recognized Tribes  
That Received Federal Funding before Fiscal  
Year 2007**

<b>Tribe name</b>	<b>City</b>	<b>State</b>	<b>Nonprofit<sup>a</sup></b>	<b>State recognized<sup>b</sup></b>	<b>Status in Interior's administrative acknowledgment process<sup>c</sup></b>
Coastal Band of Chumash	Buellton	CA	✓		Petitioner #80. Letter of intent submitted on Mar. 25, 1982.
Costanoan-Rumsen Carmel Tribe	Chino	CA	✓		Petitioner #143. Letter of intent submitted on Aug. 24, 1994.
Croatan-Peedee Indian People	Williston	SC	✓		<sup>d</sup>
Dunlap Band of Mono Indians	Fresno	CA	✓		Petitioner #92. Letter of intent to resubmit petition on Aug. 9, 2005. <sup>e</sup>
Edisto Natchez Kusso Tribe of South Carolina (petitioned as Four Holes Indian Organization, Edisto Tribal Council)	Ridgeville	SC	✓	✓	Petitioner #23. Letter of intent submitted on Dec. 30, 1976.
Fernandeno/Tataviam Tribe	Sylmar	CA	✓		Petitioner #158. Letter of intent submitted on Apr. 24, 1995.
Gabrieleno Band of Mission Indians of California	Beaumont	CA	✓		Petitioner #201. Letter of intent submitted on Nov. 3, 1998.
Gabrielino/Tongva Nation	San Gabriel	CA	✓		Petitioner #140. Letter of intent submitted on Mar. 21, 1994.
Georgia Tribe of Eastern Cherokee Indians	Dahlonega	GA			<sup>d</sup>
Georgia Tribe of Eastern Cherokee Indians, Inc. <sup>f</sup>	Dahlonega	GA	✓	✓	Petitioner #41. Petition ready, waiting for active consideration since June 9, 2003.
Golden Hill Paugussett Tribe	New Haven	CT		✓	Petitioner #81. Denied, effective Mar. 18, 2005.
Grand River Bands of Ottawa Indians	Grand Rapids	MI	✓		Petitioner #146. Petition ready, waiting for active consideration since Mar. 29, 2007.
Hatteras Tuscarora Tribe	(Unknown)	NC			<sup>g</sup>
Konkow Valley Band of Maidu	Oroville	CA	✓		Petitioner #197. Letter of intent submitted on Aug. 20, 1998.
Lipan Apache Band of Texas, Inc.	San Antonio	TX	✓		Petitioner #211. Letter of intent submitted on May 26, 1999.
Little Shell Tribe of Chippewa Indians of Montana	Great Falls	MT	✓	✓	Petitioner #31. Denied, effective Oct. 27, 2009.

**Appendix IV: Non-Federally Recognized Tribes  
That Received Federal Funding before Fiscal  
Year 2007**

<b>Tribe name</b>	<b>City</b>	<b>State</b>	<b>Nonprofit<sup>a</sup></b>	<b>State recognized<sup>b</sup></b>	<b>Status in Interior's administrative acknowledgment process<sup>c</sup></b>
Lost Cherokee of Arkansas & Missouri	Conway	AR	✓		Petitioner #204. Letter of intent submitted on Feb. 10, 1999.
Mackinac Bands of Chippewa and Ottawa Indians	Hessel	MI	✓		Petitioner #186. Letter of intent submitted on May 13, 1998.
Mattaponi Tribe	West Point	VA	✓	✓	Petitioner #157. Letter of intent submitted on Apr. 4, 1995.
Meherrin Indian Tribe	Winton	NC	✓	✓	Petitioner #119A. Letter of intent submitted on Aug. 2, 1990.
Mendota Mdewakanton Dakota Community	Mendota	MN	✓		Petitioner #169. Letter of intent submitted on Apr. 11, 1996.
Miami Nation of Indians of the State of Indiana, Inc.	Peru	IN	✓		Petitioner #66. Denied, effective Aug. 17, 1992.
Monacan Indian Nation	Madison Heights	VA	✓	✓	Petitioner #161. Letter of intent submitted on July 11, 1995.
Muscogee Nation of Florida (funded as Florida Tribe of Eastern Creek Indians)	Bruce	FL	✓		Petitioner #32. Petition ready, waiting for active consideration since Jan. 29, 2003.
Nipmuc Nation Hassanamisco Band (funded as Nipmuc Indian Development Corporation)	South Grafton	MA	✓	✓	Petitioner #69A. Denied, effective Jan. 28, 2008.
Nor-Rel-Muk Wintu Nation (formerly Hayfork Band)	Weaverville	CA	✓		Petitioner #93. Letter of intent submitted on Jan. 5, 1984.
Northern Cherokee Nation of the Old Louisiana Territory	Columbia	MO	✓		Petitioner #100B. Letter of intent submitted on Feb. 19, 1992.
Northern Cherokee Tribe of Indians of Missouri and Arkansas	Clinton	MO	✓		Petitioner #100. Letter of intent submitted on July 26, 1985.
Ohlone/Costanoan-Esselen Nation	Monterey	CA	✓		Petitioner #132. Letter of intent submitted on Dec. 3, 1992.
Pamunkey Indian Tribe	King William	VA		✓	Petitioner #323. Letter of intent submitted on June 29, 2009.
Paucatuck Eastern Pequot	North Stonington	CT	✓	✓	Petitioner #35 and petitioner #113. Denied, effective Mar. 18, 2005.

**Appendix IV: Non-Federally Recognized Tribes  
That Received Federal Funding before Fiscal  
Year 2007**

<b>Tribe name</b>	<b>City</b>	<b>State</b>	<b>Nonprofit<sup>a</sup></b>	<b>State recognized<sup>b</sup></b>	<b>Status in Interior's administrative acknowledgment process<sup>c</sup></b>
Pee Dee Indian Tribe of South Carolina	McCull	SC	✓	✓	Petitioner #152. Letter of intent submitted on Jan. 30, 1995.
Piedmont American Indian Association	Simpsonville	SC	✓		Petitioner #198. Letter of intent submitted on Aug. 20, 1998.
Piro/Manso/Tiwa Indian Tribe of Pueblo of San Juan de Guadalupe (funded as Tiwa Tribe and Turtle River Nation, Inc.)	Las Cruces	NM	✓		Petitioner #5. Petition under active consideration since Jan. 4, 2010.
Piscataway-Conoy Confederacy and Sub-Tribes, Inc.	La Plata	MD	✓	<sup>h</sup>	Petitioner #28. Letter of intent submitted on Feb. 22, 1978.
Pointe-au-Chien Indian Tribe	Montegut	LA	✓	✓	Petitioner #56B. Proposed negative finding published May 30, 2008.
Pokanoket Tribe of the Wampanoag Nation	Bristol	RI	✓		Petitioner #145. Letter of intent submitted on Oct. 5, 1994.
Pokanoket/Wampanoag Federation/Wampanoag Nation/Pokanoket Tribe and bands	Warwick	RI	✓		Petitioner #187. Letter of intent submitted on Jan. 5, 1998.
The Poospatuck (Unkechaug) Indian Nation	Mastic	NY		✓	<sup>d</sup>
Rappahannock Tribe	Indian Neck	VA	✓	✓	Petitioner #61. Letter of intent submitted on Nov. 16, 1979.
San Luis Rey Band of Mission Indians	Oceanside	CA	✓		Petitioner #96. Letter of intent submitted on Oct. 18, 1984.
Santee Indian Organization	Holly Hill	SC	✓	✓	Petitioner #53. Letter of intent submitted on June 4, 1979.
Schaghticoke Tribal Nation	Derby	CT		✓	Petitioner #79. Denied, effective Oct. 14, 2005.
Snohomish Tribe of Indians	Edmonds	WA			Petitioner #12. Denied, effective Mar. 9, 2004.
Steilacoom Tribe	Steilacoom	WA	✓		Petitioner #11. Denied, effective June 17, 2008.
Strawberry Valley Rancheria (funded as Strawberry Valley Native Cultural Protective Association)	Oroville	CA			<sup>i</sup>
Swan Creek Black River Confederated Ojibwa Tribes, Inc.	Saginaw	MI	✓		Petitioner #135. Letter of intent submitted on May 4, 1993.

**Appendix IV: Non-Federally Recognized Tribes  
That Received Federal Funding before Fiscal  
Year 2007**

<b>Tribe name</b>	<b>City</b>	<b>State</b>	<b>Nonprofit<sup>a</sup></b>	<b>State recognized<sup>b</sup></b>	<b>Status in Interior's administrative acknowledgment process<sup>c</sup></b>
Talimali Band, The Apalachee Indians of Louisiana	Libuse	LA	✓		Petitioner #166A. Letter of intent submitted on Feb. 5, 1996.
Todds Valley Miwok-Maidu Cultural Foundation	Foresthill	CA	✓		<sup>d</sup>
Tuscarora Nation of North Carolina	Maxton	NC	✓		Petitioner #102. Determined ineligible to petition on Oct. 23, 1989.
United Cherokee Indian Tribe of Virginia	Madison Heights	VA	✓		Petitioner #224. Letter of intent submitted on Aug. 3, 2000.
The Waccamaw Indian People (petitioned as the Chicora-Waccamaw Indian People)	Aynor	SC	✓	✓	Petitioner #144. Letter of intent submitted on Oct. 5, 1994.
Western Cherokee Nation of Arkansas and Missouri	Mena	AR	✓		Petitioner #191. Letter of intent submitted on May 1, 1998.

Sources: The Internal Revenue Service for information about nonprofit status, state officials for information about state-recognition status, and GAO analysis of information from Interior's Office of Federal Acknowledgment for petitioner status.

Notes: (1) This table does not include non-federally recognized tribes outside the contiguous United States, such as those in Alaska or Hawaii. (2) This table does not include non-federally recognized tribes that we identified as having received federal funding at any time in fiscal years 2007 through 2010, even if they also received funding before fiscal year 2007.

<sup>a</sup>Non-federally recognized tribes that were organized as nonprofits at any time in the past are indicated with a check mark, which may not reflect their current status or status at the time federal funding was awarded. For most non-federally recognized tribes listed in the table, we used employee identification numbers to identify their nonprofit organizations. We did not, however, have employee identification numbers for all of the non-federally recognized tribes in the table, and may not have identified all applicable nonprofits from our name searches. As a result, we may not have identified all non-federally recognized tribes that were organized as nonprofits at any time in the past.

<sup>b</sup>Non-federally recognized tribes that were state recognized as of September 2011, according to state officials, are indicated with a check mark, which may not reflect the state-recognition status at the time federal funding was received.

<sup>c</sup>Status of the entity's efforts to petition for federal recognition through Interior's administrative acknowledgment process, as of April 29, 2011.

<sup>d</sup>On the basis of the names and addresses we were able to identify for this entity, we were unable to positively match it with any entity that has petitioned for federal recognition through Interior's administrative acknowledgment process.

<sup>e</sup>This entity submitted a letter of intent to petition on January 4, 1984, withdrew its letter of intent on July 2, 2002, and submitted a letter of intent to resubmit a petition in 2005.

<sup>f</sup>According to Georgia's Council on American Indian Concerns, four groups have claimed to be the state-recognized Georgia Tribe of Eastern Cherokee, which was recognized in 1993. Furthermore, according to Interior's Office of Federal Acknowledgment, at least two groups have represented themselves as petitioner #41 (Georgia Tribe of Eastern Cherokees, Inc.). In November 2007, the Council on American Indian Concerns formally recommended to the Governor and the General Assembly that the state officially identify the Georgia Tribe of Eastern Cherokee Indians, Inc. (located at P.O. Box 607, Dahlonega, GA) as the true and legitimate state-recognized Georgia Tribe of Eastern Cherokee. As of February 2012, no further actions have been taken on this matter, according to a state official we spoke with.

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**Appendix IV: Non-Federally Recognized Tribes  
That Received Federal Funding before Fiscal  
Year 2007**

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<sup>9</sup>This entity may be associated with petitioner #34 (Hatteras Tuscarora Indians), which was determined ineligible to petition on October 23, 1989. According to Interior's Office of Federal Acknowledgment, the group merged with the Tuscarora East of the Mountains (petitioner #215) on March 22, 2004.

<sup>10</sup>Maryland officially recognized the Piscataway Conoy Tribe and Piscataway Indian Nation in January 2012 through executive orders, as authorized by state law. The Piscataway Conoy Tribe includes the Piscataway Conoy Confederacy and subtribes and the Cedarville Band of Piscataway.

<sup>11</sup>Strawberry Valley Rancheria was terminated on April 11, 1961. Groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the federal relationship are not eligible to petition for federal recognition through Interior's administrative acknowledgement process but may seek federal recognition through other means.

<sup>12</sup>The foundation was created by descendants of the Colfax Rancheria and the Foresthill/Todds Valley area, according to a website maintained by the Colfax-Todds Valley Consolidated Tribe. The Secretary of the Interior sold the unoccupied Colfax Rancheria in the late 1960s.

In addition to the 64 non-federally recognized tribes listed in table 8, we were able to identify that all of the 26 non-federally recognized tribes having received funding in fiscal years 2007 through 2010 also received funding before fiscal year 2007, except two—Eel River Tribe of Indiana and Wesget Sipu. Cumulatively, counting the post- and pre-2007 periods, we identified 117 non-federally recognized tribes that have received federal funding—26 in fiscal years 2007 through 2010, 64 additional unique non-federally recognized tribes before fiscal year 2007, and 27 additional federally recognized tribes that received funding before the effective date of their recognition.

# Appendix V: Statutes and Regulations That Explicitly Include State-Recognized Tribes or Tribes on or in Proximity to State Reservations

This appendix provides information on various statutory and regulatory provisions that authorize federal programs to provide federal funding for non-federally recognized tribes.<sup>1</sup> Specifically, as shown in table 9, there are 34 federal programs that have explicit statutory or regulatory authority to fund state-recognized tribes, tribes on state reservations, or tribes on or in proximity to a state reservation or rancheria.

**Table 9: Federal Programs with Explicit Statutory or Regulatory Authority to Fund State-Recognized Tribes and Tribes on or in Proximity to State Reservations or Rancherias**

Agency and program	Legal citation	State-recognized tribes <sup>a</sup>	Tribes on state reservations	Tribes located on, or in proximity to, a state reservation or rancheria <sup>b</sup>
<b>Department of Agriculture</b>				
Community Facilities Loans	7 U.S.C. § 1926(a)(1); 7 C.F.R. §§ 3575.2, 3575.20(c)(4)		✓	
Water and Waste Facility Loans and Grants	7 U.S.C. § 1926(a)(1), (2)		✓	
Rural Business Opportunity Grants	7 U.S.C. § 1926(a)(11); 7 C.F.R. § 4284.620(a)		✓	
Section 306C WWD Loans and Grants	7 U.S.C. § 1926c(a)(1); 7 U.S.C. § 1926c(e)(1)(A), (B)		✓	
Business and Industry Loan Guarantees	7 U.S.C. § 1932(a)		✓	
Rural Business Enterprise Grants	7 U.S.C. § 1932(c); 7 C.F.R. § 1942.305(a)(1)		✓	
Food Stamp Program	7 U.S.C. §§ 2012(v), 2020(d); 7 C.F.R. § 271.2		✓ <sup>c</sup>	

<sup>1</sup>The Department of Justice has raised constitutional concerns with legislation that provides government benefits to individuals who are not members of, or closely affiliated with, a federally recognized Indian tribe. According to the department, under the Supreme Court's decisions, a substantial likelihood exists that legislation providing special benefits to individuals of Indian or Alaska Native descent who do not have a clear and close affiliation with a federally recognized tribe would be regarded by the courts as creating a racial preference subject to strict constitutional scrutiny, rather than a political preference subject to rational basis review. See *Rice v. Cayetano*, 528 U.S. 495, 518-22 (2000); *Morton v. Mancari*, 417 U.S. 535, 551-555 (1974). In the event legislation is regarded as awarding government benefits on the basis of a racial classification, it would be constitutional only if it is supported by a factual record demonstrating that its use of race-based criteria to award the benefits at issue is "narrowly tailored" to serve a "compelling" government interest.

**Appendix V: Statutes and Regulations That Explicitly Include State-Recognized Tribes or Tribes on or in Proximity to State Reservations**

<b>Agency and program</b>	<b>Legal citation</b>	<b>State-recognized tribes<sup>a</sup></b>	<b>Tribes on state reservations</b>	<b>Tribes located on, or in proximity to, a state reservation or rancheria<sup>b</sup></b>
Food Distribution Program	7 U.S.C. §§ 2012(v), 2013(b)(2)(B); 7 C.F.R. §§ 271.2, 253.2		✓ <sup>c</sup>	
<b>Department of Education</b>				
Indian Education Formula Grants to Local Educational Agencies	20 U.S.C. §§ 7422(c)(1), 7491(3)(A)	✓		
Special Programs for Indian Children (demonstration grants)	20 U.S.C. §§ 7441(b), 7491(3)(A)	✓		
Professional Development for Teachers and Education Professionals	20 U.S.C. §§ 7442(b)(3), 7491(3)(A)	✓ <sup>d</sup>		
National Research Activities	20 U.S.C. §§ 7451(b), 7491(3)(A)	✓		
Grants to tribes for education administrative planning and development	20 U.S.C. §§ 7455(a), 7491(3)(A)	✓		
Improvement of Educational Opportunities for Adult Indians	20 U.S.C. §§ 7456(a), 7491(3)(A)	✓		
Capacity Building for Traditionally Underserved Populations	29 U.S.C. §§ 705(19)(B), 718(b)(2), (3)	✓		
National Institute on Disability and Rehabilitation Research's research and other covered activities	29 U.S.C. §§ 705(19)(B), 764(a)(1)	✓		
Rehabilitation Service Administration's Special Demonstration Programs	29 U.S.C. §§ 705(19)(B), 773(b)(2)(A)	✓		
Projects with Industry	29 U.S.C. §§ 705(19)(B), 795(a)(2)	✓		
American Indian Vocational Rehabilitation Services Program	29 U.S.C. §§ 705(19)(B), 741(a); 34 C.F.R. §§ 371.2, 371.4(b)	e	e	
<b>Department of Energy<sup>f</sup></b>				
Weatherization Assistance for Low-Income Persons Program	42 U.S.C. §§ 3002(27), 6862(6), 6863(d)			✓
<b>Department of Health and Human Services</b>				
Administration for Native Americans' Social and Economic Development Strategies Program <sup>g</sup>	42 U.S.C. § 2991b(a); 45 C.F.R. § 1336.33(a)(1)(iii)			
Administration for Native Americans' Preservation and Enhancement of Native American Languages Program <sup>g</sup>	42 U.S.C. § 2991b-3; 45 C.F.R. § 1336.33(a)(1)(iii)			
Administration for Native Americans' Improvement of the Capability of Tribal Governing Bodies to Regulate Environmental Quality <sup>h</sup>	42 U.S.C. § 2991b(d); 45 C.F.R. § 1336.33(a)(4)(ii)	✓		



**Appendix V: Statutes and Regulations That Explicitly Include State-Recognized Tribes or Tribes on or in Proximity to State Reservations**

<b>Agency and program</b>	<b>Legal citation</b>	<b>State-recognized tribes<sup>a</sup></b>	<b>Tribes on state reservations</b>	<b>Tribes located on, or in proximity to, a state reservation or rancheria<sup>b</sup></b>
Administration for Native Americans' Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities <sup>h</sup>	Pub. L. No. 103-139, § 8094A (1993); 45 C.F.R. § 1336.33(a)(3)(ii)	✓		
Grants for state and community programs on aging	42 U.S.C. §§ 3002(27), 3021(a)(2)(C)			✓
Older Individuals' Protection from Violence Projects Grants Program	42 U.S.C. §§ 3002(27), 3002(54), 3032b			✓
Community Innovations for Aging in Place Grant Programs	42 U.S.C. §§ 3002(27), 3002(54), 3032k(a)(1)(A)			✓
Native American Organization and Elder Justice Program	42 U.S.C. §§ 3002(27), 3002(54), 3058aa			✓
Low-Income Home Energy Assistance	42 U.S.C. § 8623(d)(1); 45 C.F.R. § 96.48(b)	✓		
Community Services Block Grant Program	42 U.S.C. § 9911	✓		
<b>Department of Housing and Urban Development</b>				
Indian Housing Block Formula Grants	25 U.S.C. §§ 4103(13), 4111	✓ <sup>i</sup>		
Title VI Loan Guarantee Program	25 U.S.C. §§ 4103(13), 4191(a)	✓ <sup>i</sup>		
<b>Department of Labor</b>				
Native American Employment and Training	29 U.S.C. § 2911(b)(2); 20 C.F.R. 668.200(c), (d); 65 Fed. Reg. 49294, 49373 (Aug. 11, 2000)	✓ <sup>j</sup>		
Older American Community Service Employment Program	42 U.S.C. §§ 3056(b), 3002(27)			✓
<b>Total</b>		<b>17</b>	<b>8</b>	<b>6</b>

Sources: GAO and agency legal research.

Note: This table includes federal programs with explicit statutory or regulatory authority to fund state-recognized tribes.

<sup>a</sup>State officials identified 61 state-recognized tribes in 12 of the 48 contiguous states that are not also federally recognized (see table 7).

<sup>b</sup>Some tribes, such as the federally recognized Berry Creek Rancheria of Maidu Indians of California, are referred to as rancherias, and their land is commonly referred to as a rancheria, rather than a reservation. California has both reservations and rancherias within its borders.

<sup>c</sup>Indian tribes on state reservations are eligible to be designated as administrators for food stamp programs if they hold a treaty with a state government.

<sup>d</sup>Eligible entities include Indian tribes in consortium with an institution of higher education.

<sup>e</sup>To be eligible, Indian tribes must both be state recognized and have a state reservation.

<sup>f</sup>The Secretary of Energy is also authorized to make competitive grants to "units of local government (including Indian tribes)" that are not eligible for energy efficiency and conservation block grants under 42 U.S.C. § 17156. Eligible entities are states, eligible units of local government, and federally recognized Indian tribes. As a result, Energy interprets 42 U.S.C. § 17156(a)(1) as authorizing grants to non-federally recognized tribes, who would otherwise not be an eligible entity.

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**Appendix V: Statutes and Regulations That Explicitly Include State-Recognized Tribes or Tribes on or in Proximity to State Reservations**

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<sup>g</sup>Categories of eligible organizations also include incorporated non-federally recognized tribes.

<sup>h</sup>Categories of eligible organizations also include incorporated non-federally recognized and state-recognized tribes.

<sup>i</sup>To be eligible, a state-recognized tribe must also have had a contract with the Department of Housing and Urban Development under the Housing Act of 1937 before October 26, 1996, and received funding under that contract between October 26, 1991, and October 26, 1996.

<sup>j</sup>Although the regulations do not identify state-recognized tribes as specifically eligible for designation based solely upon such status, the regulations establish the status of state-recognized tribal grantees under the repealed Job Training and Partnership Act as "Indian-controlled organizations in order to continue the eligibility of individuals who were eligible under that act as a result of being members of state-recognized tribes."

In addition to the statutes and regulations included in table 9, other statutes and regulations also explicitly include state-recognized tribes. For example:

- State-recognized tribes are eligible to participate in the Small Business Administration's section 8(a) business development program. This program is one of the federal government's primary means for developing small businesses owned by socially and economically disadvantaged individuals.
- The Indian Arts and Crafts Act, as amended, authorizes Indian groups that have been formally recognized as Indian tribes by a state legislature or by a state commission or similar organization legislatively vested with state tribal recognition authority to bring lawsuits against persons who offer for sale or sell a good in a manner that falsely suggests it is Indian produced. Under the act, it is unlawful to offer or display for sale or to sell any good in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian or Indian tribe or Indian arts and crafts organization resident in the United States. Under the act and its implementing regulations, an Indian is an individual who is a member of an Indian tribe—a federally or state-recognized tribe—or who is certified by an Indian tribe as a non-member Indian artisan.
- Regulations implementing the Native American Graves Protection and Repatriation Act authorize museums and federal agencies to transfer control of culturally unidentifiable Native American human remains in their possession or control to non-federally recognized Indian tribes under certain circumstances.

Additionally, Agriculture's Rural Housing Preservation Grants program and the Department of Housing and Urban Development's (HUD) Indian Community Development Block Grant Program have explicit statutory or regulatory authority to fund certain non-federally recognized tribes.<sup>2</sup> Specifically, eligible grant recipients under this statute and regulation include any Indian tribe which had been eligible under the State and Local Fiscal Assistance Act of 1972.<sup>3</sup> The act, which was repealed in 1986, established a trust fund in the U.S. Treasury for a revenue-sharing program among federal, state, and local governments, which included Indian tribes and Alaska Native villages having a recognized governing body which performs substantial governmental functions. The act did not define Indian tribe, but the Department of the Interior's Bureau of Indian Affairs (BIA), in cooperation with the Bureau of the Census, developed a list of tribes and villages eligible to participate in the revenue-sharing program.<sup>4</sup> BIA officials were not able to locate a copy of this list.

We identified six non-federally recognized tribes—all of which were state recognized—that received revenue-sharing payments and five federally recognized tribes that received revenue-sharing payments before they

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<sup>2</sup>In addition, two other programs—HUD's Rural Housing and Economic Development program and the Department of Labor's Youthbuild program—previously had explicit statutory or regulatory authority to fund eligible recipients under the State and Local Fiscal Assistance Act of 1972. From fiscal year 1999 through 2002, HUD's definition of Indian tribe for the purposes of its Rural Housing and Economic Development program included eligible recipients under the act. Until 2006, when the authorizing statute was amended, the applicable statutory definition of Indian tribe for the YouthBuild program also included eligible recipients under the act.

<sup>3</sup>Pub. L. No. 92-512 (1972), *amended by* Pub. L. No. 94-488 (1976); Pub. L. No. 96-604 (1980); and Pub. L. No. 98-185 (1983), *repealed by* Pub. L. No. 99-272, tit. XIV, § 14001(a)(1), 100 Stat. 82, 327 (1986).

<sup>4</sup>GAO, *Changes Needed in Revenue Sharing Act for Indian Tribes and Alaskan Native Villages*, GAO/GGD-76-64 (Washington, D.C.: May 27, 1976). According to our May 1976 report, BIA area offices used Bureau of the Census criteria to define a government with substantial governmental functions. The criteria were that the government (1) be organized, and possess some type of corporate powers; (2) have governmental character, indicated by officers that are popularly elected or appointed by public officials; and (3) possess substantial autonomy, such as the power to raise a portion of its revenue from resources it controls and to administer its activities independently of external administrative controls.

became federally recognized.<sup>5</sup> Therefore, at least six state-recognized tribes are eligible recipients of Rural Housing Preservation Grants program funding and Indian Community Development Block Grant Program funding.

Finally, some statutes identify members of state-recognized tribes but not the tribe itself as an eligible participant or recipient of a government program. For example, the Indian Health Service provides health care services for members of federally recognized tribes as well as urban Indians. The statutory definition of urban Indians includes Indians who are members of a tribe or other organized group of Indians recognized by the state in which they reside. Members of state-recognized tribes are also eligible for certain scholarships administered by HHS's Indian Health Service such as the Indian health professions scholarships.

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<sup>5</sup>The six state-recognized but not federally recognized tribes that received revenue-sharing payments were the Golden Hill Paugussett Tribe, Mattaponi Tribe, Paucatuck Eastern Pequot, Pamunkey Indian Tribe, Poospatuck (Unkechaug) Indian Nation, and Schaghticoke Tribal Nation. The five federally recognized Indian tribes that received revenue-sharing payments before being federally recognized were Alabama-Coushatta Tribes of Texas; Huron Potawatomi, Inc.; Mashantucket Pequot Tribe; Shinnecock Indian Nation; and Ysleta Del Sur Pueblo of Texas.

# Appendix VI: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAR 23 2012

THE ASSISTANT SECRETARY

Ms. Anu K. Mittal  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Mittal:

I am writing to provide the U.S. Government Accountability Office (GAO) with comments from the U.S. Department of Education (Department) on the draft report, "Indian Issues: Federal Funding for Non-Federally Recognized Tribes" (12-348). While the Department appreciates the work that went into this study, the Department respectfully disagrees with GAO's finding.

**Finding** – *Education funded ineligible non-federally recognized tribes under its American Indian Vocational Rehabilitation Services Program.*

The Department's interpretation of the law in question is a reasonable interpretation and gives appropriate meaning to all of the language and provisions of the law. The Department's interpretation is once again summarized in this response because GAO did not describe it fully in its draft report. It is clear from the report that GAO's interpretation differs from the Department's interpretation. Because, however, the statute is subject to different interpretations, GAO should accept the Department's interpretation since "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit," *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985). GAO's finding that certain grantees are ineligible is only valid if one accepts GAO's alternate interpretation of the term "reservation" in the American Indian Vocational Rehabilitative Services (AIVRS) program statute. As the agency charged with administering the program, however, the Department's interpretation should be given appropriate deference as a reasonable interpretation of the law. As explained below in more detail, the Department respectfully disagrees with GAO's finding.

Authorized by section 121 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 741) (the Act), the AIVRS program provides discretionary grants to the governing bodies of Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay 90 percent of the costs of vocational rehabilitation (VR) services for American Indians who are individuals with disabilities residing on or near such reservations. Section 121(c) of the Act provides that, "the term 'reservation' includes Indian reservations, public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated native groups, regional corporations, and

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

Ms. Anu K. Mittal – Page 2

village corporations under the provisions of the Alaska Native Claims Settlement Act.” (Emphasis added).

Because the authorizing statute’s definition is not exhaustive, using the term “includes” provides the Department with flexibility in interpreting the use of the word “reservation” in this program. The Department has exercised its authority to determine that, in addition to those lands listed in the statute, there may be other lands on which Indians reside that fit within a broad definition of the term “reservation,” as used in this program.<sup>1</sup> Such an interpretation is consistent with language in the statute that recognizes “tribal service areas,” in addition to “reservations,” (see section 101(a)(11)(F) of the Act discussed below), and the purposes of the program – to promote the provision of culturally relevant VR services to American Indians with disabilities by the tribes themselves.

In the context of this program, it has been the Department’s long-standing interpretation of the definition of “reservation” to include a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services. Such areas are identified by the State and recognized by the U.S. government in the Census data as “State designated tribal statistical areas” (SDTSAs), and identified in the tribe’s application for the AIVRS program as a “tribal service area.”

Also included in the tribe’s application is an assurance that the tribe has established or will establish a cooperative agreement with the state VR agency that includes the required strategies for collaboration and coordination of services. The cooperative agreement is also required by Section 101(a)(11)(F) of the Act, which requires the State to enter into a formal cooperative agreement with each AIVRS grantee to ensure collaboration and coordination in providing VR services to American Indians with disabilities in the State. Section 101(a)(11)(F) specifically mentions “tribal service area” in addition to “reservation” when it mandates that the agreement include procedures for ensuring that American Indians with disabilities who “are living near a reservation or tribal service area” are provided VR services. Thus, the specific language of this provision of the statute clearly validates the Department’s interpretation that tribes that are located in defined tribal service areas, in addition to those tribes located on state reservations, meet the eligibility requirements of the AIVRS program. GAO unfortunately ignores this language when reaching its alternative interpretation and thus, mischaracterizes the Department’s use of the tribal cooperative agreement for determining eligibility.

In addition, contrary to GAO’s opinion, the Department believes the legislative history is consistent with, and not “at odds with,” the Department’s interpretation. The Department

<sup>1</sup> An influential commentary on Indian Law states that “[s]ince the decision of the Supreme Court in *United States v. McGowan* [302 U.S. 535 (1938)], it has been clear that there is no magic in the word ‘reservation’ and that . . . [t]he determination of this question [what is the meaning of the term ‘reservation’] requires an ascertainment of the purpose underlying the particular legislation. . . .” United States Department of the Interior, *Federal Indian Law*, 609-610 (Association on American Indian Affairs and Oceana Publications, 3<sup>rd</sup> ed. 1972). The purpose of the AIVRS program statute to increase the number of tribes that administer their own VR programs supports the Department’s interpretation of the term “reservation” in this program.

Ms. Anu K. Mittal – Page 3

has reasonably interpreted the definition of the term “reservation,” consistent with all of the provisions of the statute. The amendment that was offered by Senator Bartlett (that included a definition of “reservation” for the AIVRS program), discussed in the Congressional Record at 124 Cong. Rec S15562 (daily ed. Sept. 20, 1978), and cited by GAO on page 25 of the report, specifically noted that there were other Indian lands that would be the equivalent of a reservation, such as public domain Indian allotments, former Indian reservations in Oklahoma, and land held by incorporated native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act. In the statutory definition of a reservation, Congress chose to leave open the possibility that other Indian lands could be deemed the equivalent of a reservation as well. It left to the Department the discretion to reasonably interpret the definition of a reservation and the eligibility for the program. While GAO states that the legislative history does not suggest that the “Department had the authority to consider other categories of land to be reservations,” the legislative history does not preclude this interpretation of the statute either. The Department’s alternative legal view is a reasonable interpretation of the definition of the term “reservation,” that is consistent with all of the provisions of the statute.

The Department has consistently interpreted a “reservation” and the eligibility requirements of the AIVRS program in accordance with the purpose and language of the statute, to permit tribes to provide VR services to American Indians with disabilities within their tribal service area. However, contrary to GAO’s assertion, we do not “conflate” the eligibility requirement that a tribe have a “reservation” with the scope of the program the tribe can administer under the AIVRS program expressed by the “tribal service area.” The Department has defined a reservation to include a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services, as identified by the State and recognized by the U.S. Census Bureau. An SDTSA may have been identified in a tribe’s application for the AIVRS program as a “tribal service area,” but the Department recognizes an SDTSA as meeting the requirement of a “reservation.”

This broader interpretation of a “reservation” for eligibility purposes in the AIVRS program is supported by Congress’ amendments to the program in 1998. In that year, Congress added the ability of eligible grantees to serve American Indians with disabilities living “near” the reservation as well as “on” the reservation. In addition, in 1998, Congress also added the specific requirement, at Section 101(a)(11)(F) of the Act, that the State enter into a formal cooperative agreement with each AIVRS grantee to ensure collaboration and coordination in providing VR services to American Indians with disabilities in the State, using the term “tribal service area” as well as “reservation” when referring to AIVRS grantees.

Thus, although the Department recognizes that GAO may disagree legally with how the Department has interpreted the term “reservation” in the AIVRS program, the Department’s interpretation is reasonable and legally supportable. If GAO retains this finding, at a minimum, the Department requests that GAO’s finding be modified to indicate that GAO questions the eligibility of certain non-federally recognized tribes

Ms. Anu K. Mittal – Page 4

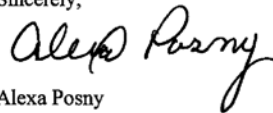
because, in GAO’s opinion, the Department’s interpretation of the term “reservation,” and, in turn, how the Department determines eligibility for the program based on that interpretation, is at odds with the statute and legislative history. The title of the finding could read, “Education Funded Non-Federally Recognized Tribes under Its American Indian Vocational Rehabilitation Services Program that GAO Concluded Are Not Eligible.” GAO should recast its discussion in the finding in terms such as, “under GAO’s alternate view, the Department funded certain grantees that could be considered as ‘ineligible’.”

**Recommendation** – *To ensure that grants under the American Indian Vocational Rehabilitation Services Program are made consistent with applicable law, we recommend that the Secretary of Education review the department’s practices with respect to eligibility requirements and take the appropriate corrective action with respect to grants made to tribes that do not have federal or state reservations.*

The Department requests that GAO delete the term “corrective” from its recommendation that the Secretary review the Department’s practices with respect to eligibility requirements for the AIVRS program. Use of the term “corrective” action presupposes the outcome of such a review, casts doubt upon the validity of the existing AIVRS program grants, and could potentially compromise the delivery of VR services to American Indians with disabilities under those grants. In spite of the disagreement over the legal interpretation of the statute, and as part of our commitment to excellence and continuous improvement, the Department previously committed, consistent with key elements of GAO’s recommendation, to review our practices for determining eligibility for the AIVRS program, and to take appropriate action if helpful, such as clarifying its interpretation. The Department reiterates this commitment here.

Thank you for the opportunity to comment on this report. We also are including technical comments with this response.

Sincerely,



Alexa Posny



# Appendix VII: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

OFFICE OF THE SECRETARY

Assistant Secretary for Legislation  
Washington, DC 20201

**MAR 23 2012**

Anu K. Mittal  
Director, Natural Resources and Environment  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Ms. Mittal:

Attached are comments on the U.S. Government Accountability Office's (GAO) draft report entitled, "Issues: Federal Funding for Non-Federally Recognized Tribes" (GAO-12-348).

The Department appreciates the opportunity to review this report before its publication.

Sincerely,

A handwritten signature in black ink that reads "Jim R. Esquea".

Jim R. Esquea  
Assistant Secretary for Legislation

Attachment

**GENERAL COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) ON THE GOVERNMENT ACCOUNTABILITY OFFICE'S (GAO) DRAFT REPORT ENTITLED, "INDIAN ISSUES: FEDERAL FUNDING FOR NON-FEDERALLY RECOGNIZED TRIBES" (GAO-12-348)**

HHS appreciates the opportunity to provide comments on this GAO draft report.

**GAO Recommendations**

To ensure the proper award and oversight of grants by the Department of Health and Human Services, we recommend that the Secretary of Health and Human Services takes the following two actions.

- Investigate whether the Nanticoke Leni-Lenape Indians of New Jersey and the Powhatan Renape Nation met the statutory eligibility requirements for the grants they were awarded and whether their application misrepresented their eligibility and take appropriate action as necessary. In doing so the agency should consult with the state of New Jersey to determine whether the state has officially or formally recognized the tribes and treats them as state recognized.
- Continue to pursue the Accohannock Indian Tribe's failure to comply with the Single Audit Act and take appropriate action as necessary.

**HHS Comments**

HHS and The Administration for Children and Families (ACF) is committed to ensuring that eligible tribes receive Federal grants and that these grantees fulfill their financial reporting requirement.

**Regarding the Nanticoke Leni-Lenape Indian issue:**

As recommended by GAO, ACF plans to work with the New Jersey State Community Services Block Grant (CSBG) office and Low-Income Home Energy Assistance Program (LIHEAP) office, as well as the two New Jersey tribes – Nanticoke Leni-Lenape Indians and Powhatan Renape Nation – to review the tribes' eligibility. Following the investigation, ACF will determine and execute appropriate actions.

ACF recognizes that there is confusion about whether New Jersey has recognized certain tribes. As noted in the report, the U.S. Census lists the Nanticoke Leni-Lenape Indians and Powhatan Renape Nation as State-recognized tribes. The National Conference of State Legislatures (<http://www.ncsl.org/issues-research/tribal/list-of-federal-and-state-recognized-tribes.aspx#s-nj>) also lists these two New Jersey tribes as having State recognition.

ACF notes that at no time was information provided to ACF by New Jersey, the Nanticoke Leni-Lenape Indians of New Jersey, the Powhatan Renape Nation, or any other Federal or State entity, that would call into question the eligibility of the two tribes. Additionally, routine

communication between ACF and the New Jersey Department of Community Affairs (the New Jersey CSBG Lead State agency) during fiscal years 2007 through 2010 did not yield any information that would lead ACF to question the Nanticoke Lenni-Lenape Tribe's eligibility for funding.

ACF plans to strengthen review processes in cases in which a tribe's eligibility is dependent on State recognition. ACF will confirm with the State LIHEAP office and/or the CSBG office that a tribe is officially and formally recognized by the State before funding is awarded.

Regarding the Accohannock Indian Tribe's failure to comply with the Single Audit Act:

As noted in the draft GAO report, ACF sent a Delinquent Audit Letter on February 7, 2012, to the Accohannock Indian Tribe, Inc. After receiving no response to the letter, a follow-up Delinquent Audit Letter, dated February 24, 2012, was remitted to the tribe in order to obtain a copy of its FY 2009 Audit Report.

ACF has determined that the grantee did not budget for audit expenditures, so we are unable to take a program disallowance against said expenditures. Since the audit was not conducted by the grantee, we will notify them after a 30-day period - which began February 24, 2012, the date of the second letter - that they are ineligible for ACF funding until this matter is resolved. ACF will notify HHS that this former grantee is delinquent in their audit submission so that other HHS operational divisions may be notified of their status.

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# Appendix VIII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Anu K. Mittal at (202) 512-3841 or [mittala@gao.gov](mailto:mittala@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Jeffery D. Malcolm (Assistant Director), Mariana Calderón, Colleen Candrl, Jennifer Cheung, Ellen W. Chu, Pamela Davidson, Emily Hanawalt, Catherine Hurley, Ben Shouse, and Jeanette M. Soares made key contributions to this report.

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