

**FREQUENTLY ASKED QUESTIONS ON
THE ADVANCE NOTICE OF PROPOSED RULEMAKING (ANPRM) FOR
PROCEDURES FOR REESTABLISHING A GOVERNMENT-TO-GOVERNMENT
RELATIONSHIP WITH THE NATIVE HAWAIIAN COMMUNITY**

JUNE 2014

What is the purpose of the Department of the Interior's advance notice of proposed rulemaking (ANPRM)?

The Secretary of the Interior is considering whether to propose a Federal administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community, to more effectively implement the special political and trust relationship that Congress has established between that community and the United States. The purpose of the ANPRM is to solicit public comments on whether and how the Department of the Interior should facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community.

What is the Department of the Interior seeking public comments on?

We are seeking comments on nineteen specific questions listed at the end of the ANPRM, each of which relates to at least one of these five threshold questions:

- (i) Should the Secretary propose an administrative rule that would facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community?
- (ii) Should the Secretary assist the Native Hawaiian community in reorganizing its government, with which the United States could reestablish a government-to-government relationship?
- (iii) If so, what process should be established for drafting and ratifying a reorganized Native Hawaiian government's constitution or other governing document?
- (iv) Should the Secretary instead rely on the reorganization of a Native Hawaiian government through a process established by the Native Hawaiian community and facilitated by the State of Hawaii, to the extent such a process is consistent with Federal law?
- (v) If so, what conditions should the Secretary establish as prerequisites to Federal acknowledgment of a government-to-government relationship with the reorganized Native Hawaiian government?

Who can submit public comments on this ANPRM?

We are interested in hearing from leaders and members of the Native Hawaiian community and of federally recognized tribes in the continental United States. We also welcome comments and information from the State of Hawaii and its agencies, other government agencies, and other members of the public.

Will there be public meetings or consultations to discuss these questions?

Yes. We will conduct a series of public meetings on the islands of Hawaii, Kauai, Lanai, Maui, Molokai, and Oahu, and a series of in-person consultations with federally recognized tribes in the continental United States. At these meetings and consultations, we will accept both oral and written communications. We strongly encourage Native Hawaiian organizations and federally recognized tribes in the continental United States to hold their own meetings to develop comments on the issues outlined in the ANPRM, and to share the outcomes of those meetings with us.

Why is the Department of the Interior now exploring whether and how to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community?

In recent years, the Department has increasingly heard from Native Hawaiians who assert that their community's opportunities to thrive would be significantly bolstered by reorganizing a sovereign Native Hawaiian government that could engage the United States in a government-to-government relationship, exercise inherent sovereign powers of self-governance and self-determination, and enhance the implementation of programs and services that Congress has created specifically to benefit the Native Hawaiian community.

Does the United States already recognize a special political and trust relationship with the Native Hawaiian community?

Yes. Congress has enacted more than 150 statutes recognizing and implementing a special political and trust relationship with the Native Hawaiian community.

Does the United States currently have a formal government-to-government relationship with the Native Hawaiian community?

No. The United States has not partnered with Native Hawaiians on a government-to-government basis, at least partly because there has been no formal, organized Native Hawaiian government since 1893.

Would a Federal rule to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community alter the fundamental nature of the political and trust relationship established by Congress between the United States and the Native Hawaiian community?

No.

Would a Federal rule authorize compensation for past wrongs?

No.

Would a Federal rule have any direct impact on the status of the Hawaiian home lands?

No.

Is the Department of the Interior currently seeking comments on the contents of a reorganized Native Hawaiian government's constitution or other governing document (if one were adopted), the structure of a Native Hawaiian government, or the powers that could be exercised by a Native Hawaiian government?

No.

Has the Obama Administration previously supported reestablishment of a government-to-government relationship with the Native Hawaiian community?

Yes. For example, in 2010, Secretary of the Interior Salazar and Attorney General Holder sent Congress a letter strongly supporting legislation to reorganize a Native Hawaiian government to which the United States could relate on a government-to-government basis.

Has the State of Hawaii supported the reestablishment of a government-to-government relationship between the United States and the Native Hawaiian community?

Yes. In 2011, the State of Hawaii, in Act 195, expressed its support for reorganizing and federally recognizing a Native Hawaiian government, while also providing for state recognition of the Native Hawaiian people as the only indigenous, aboriginal, maoli people of Hawaii.

Could reorganization of a Native Hawaiian government be facilitated either by the Department of the Interior or by the State of Hawaii?

Yes. A Federal rule promulgated by the Department of the Interior could focus on either (1) a Federal process to assist the Native Hawaiian community in reorganizing a government or (2) reestablishing a government-to-government relationship with a Native Hawaiian government reorganized through a process established by the Native Hawaiian

community and facilitated by the State of Hawaii. Under either option, the reorganization process would have to be consistent with Federal law.

Would a Department of the Interior rule determine who can participate in the reorganization of a Native Hawaiian government, including who would be eligible to assist in drafting a constitution or other governing document, and who would be eligible to vote in a ratification referendum?

The ANPRM seeks input on which individuals, as members of the Native Hawaiian community, should be eligible to participate in the process of reorganizing a sovereign Native Hawaiian government that could reestablish a relationship with the Federal government. The reorganization process would have to be consistent with Federal law.

Would a Department of the Interior rule determine who ultimately would be a member or citizen of a Native Hawaiian government?

The ANPRM does *not* concern the question of how a Native Hawaiian constitution or other governing document should define a set of membership or citizenship criteria. Clearly, a Native Hawaiian government, exercising its sovereign prerogative and operating under its own constitution or other governing document, could define its membership or citizenship criteria without regard to whether any person participated, or had been eligible to participate, in the government's initial reorganization.

How would a Federal rule to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community affect federally recognized tribes in the continental United States and their receipt of programs and services from the Bureau of Indian Affairs (BIA)?

The Department of the Interior does not foresee that a Federal rule to facilitate the reestablishment of a government-to-government relationship with the Native Hawaiian community would alter or affect the programs and services that the United States currently provides to federally recognized tribes in the continental United States. Congress has enacted more than 150 statutes expressly affecting Native Hawaiians, and it is these laws that define the scope of Federal programs and services for Native Hawaiians.

After the Department of the Interior receives public comments on the ANPRM, what would be the next steps in the rulemaking process?

The public comment period for the ANPRM will last 60 days. If the Department ultimately decides to issue a Notice of Proposed Rulemaking (NPRM), there would be another formal comment period and a second round of consultation with the Native Hawaiian community and federally recognized tribes in the continental United States to allow for further input and refinements before publishing a final rule. A final rule could be published within 18 to 24 months after publication of the ANPRM.