

**Native American Graves Protection
and Repatriation Review Committee**

Report to Congress

Annual Report for 2010

Summary of 2010 Report to Congress

Highlights of the NAGPRA Review Committee Report to Congress for 2010 are:

41st Meeting of the Review Committee – Telephonic meeting, May 14, 2010

- Comments were made on the Final rule for disposition of Culturally Unidentifiable Native American human remains. The Committee was pleased with the rule as:
 - o It formalized the process utilized by the Committee on a case-by-case basis
 - o Museums and agencies working through the NAGPRA process should have limited additional work to complete the new portion of the process
 - o The Committee recommended a 275-day rule for completion of the process once consultation was initiated under 10.11(b)(1)(i) of the new rule
 - o The Committee recommended mandatory disposition of funerary objects

42nd Meeting of the Review Committee – Telephonic meeting, June 11, 2010

- The Committee considered the matter of disposition of culturally unidentifiable Native American human remains in an agreement proposed by the Tennessee Division of Archaeology under the pre-10.11 process. A disposition notice was recommended
- Outgoing Review Committee Chair Dan Monroe presented a letter of critique of the National NAGPRA Program, requesting more communication and training products, as well as a minimum of two in-person meetings each year.

43rd Meeting of the Review Committee – Washington, DC, November 17-19, 2010

- The meeting was preceded by a 20th Anniversary Celebration of NAGPRA
- There were two disputes heard: 1. Between Sealaska Corporation with Wrangell Cooperative Association and the Alaska State Museum, and 2. Between Hoonah Indian Association and Huna Totem Corporation and the University of Pennsylvania Museum of Archaeology and Anthropology. Both matters involved claims of items for which there were recommendations that they be repatriated as cultural patrimony.
- The GAO reported on their efforts and responded to questions by the Committee.
- The Committee heard statements of success stories and barriers to repatriation.

- The Committee received research reports on a study of large museum NAGPRA compliance and Review Committee decision-making, as well as the State Burial Laws Project in partnership with the American University Washington College of Law

Progress Made in Implementing NAGPRA, noted by the Review Committee in 2010

-Last year 152 NAGPRA notices were published bringing the total in notices to 40,303 human remains, over 1 million associated funerary objects, 146,215 unassociated funerary objects, and 6774 sacred objects and objects of cultural patrimony. There have been 9882 individuals repatriated to tribes as reported by Federal agencies and museums, including 668,605 associated funerary objects.

Barriers Encountered in Implementing NAGPRA, noted by the Review Committee in 2010

- Budget constraints and financial capacity in tribes was the major hurdle to NAGPRA
- There are substantial Federal collections in non-Federal repositories to be resolved
- The GAO comments on the Review Committee may have damaged its credibility

Recommendations

1. Increased funding in the NAGPRA budget: increase grants to \$4.2 million
2. Increase civil penalties
3. Make the authority of the Review Committee binding
4. Amend the definition of "Native American" to include the "is or was," provision
5. Create further legislation to protect Native American burials
6. Initiate a GAO study of museum compliance
7. Open hearings on the progress made and barriers encountered
8. Implement a mandatory disclosure policy for museums holding Federal agency collections

NAGPRA: An Overview

Passage of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) marked a watershed in the long and often troubled relationship between Native Americans and many universities, museums, and Federal agencies. NAGPRA legislation includes 3 primary roles: 1) it provides for the disposition of Native American cultural items -- human remains, funerary objects, sacred objects, and objects of cultural patrimony -- removed from Federal or tribal lands to lineal descendants or Indian tribes or Native Hawaiian organizations based on geographic or cultural affiliation; 2) it prohibits trafficking of Native American cultural items; and 3) it provides for the repatriation of Native American cultural items in museum and Federal agency collections to Indian tribes or Native Hawaiian organizations.

NAGPRA directs the Secretary of the Interior to establish and maintain the Native American Graves Protection and Repatriation Review Committee to monitor and review the requirements of the Act. The Review Committee operates in accordance with the Federal Advisory Committee Act and a charter issued by the Secretary of the Interior. The Committee's actions and findings are advisory, although they may be admissible in court proceedings.

This report is prepared and submitted to Congress, as required by NAGPRA, to identify progress made and barriers encountered in implementing the requirements of the Act.

Review Committee Activity Summary

Review Committee Meetings

Due to budgetary constraints, the Review Committee was only able to hold one in-person meeting in 2010, on November 17-19, in Washington, D.C. The Committee also convened twice telephonically, on May 14, 2010 and June 11, 2010. The nature of the work carried out by the Committee makes it critical that

we meet face-to-face, so that we can engage directly with representatives from museums, Federal agencies, tribes, and Native Hawaiian organizations. Effectively fulfilling our responsibilities requires that we have at least two in-person meetings each year, and we recommend that further funding be set aside for the National NAGPRA Program to ensure such is the case in future years.

Telephonic meeting on May 14, 2010

The Review Committee convened telephonically, elected Rosita Worl as chair, and spent the bulk of the meeting discussing the newly published Final Rule, codified at 43 CFR 10.11, relating to the disposition of culturally unidentifiable human remains. The Committee prepared comments about the Final Rule and submitted them on May 14, 2010. Our comments are summarized below.

Comments on 43 CFR 10.11

The Review Committee was very pleased that the final rule for the disposition of culturally unidentifiable human remains was published in March 2010. This rule has been long anticipated by many tribes as well as museums and Federal agencies, as it puts regulations in place that provide a legal process for handling the large number (~125,000) of human remains in the CUI database. A draft of Review Committee comments on 10.11 was prepared by a subcommittee and then shared with the full committee prior to our May 14, 2010 telephonic meeting. The draft comments were carefully discussed by the Review Committee during the telephonic meeting and, after several minor changes, were formally submitted to the National NAGPRA Program.

The Committee feels that several points require further clarity to greatly improve the rule. The primary points of the Review Committee's comments are summarized here. We felt that:

- After an extensive 10-year process of consultation and comment, the statutory process had been followed, and the resultant rule is fully within the statutory authority of the Department of the Interior (DOI).

- Museums and Federal agencies that have complied with NAGPRA to date, and have developed the culturally unidentifiable inventory in consultation with tribes, as required by law, will have very limited new work to do in order to comply with 43 CFR 10.11.
- 43 CFR 10.11 formalizes a process similar to that which the Review Committee has seen work so successfully in the cases on record.

The Review Committee strongly supports 43 CFR 10.11, but we found the following two points to be areas of concern: 1) there is no timeframe within which a museum or Federal agency must offer to transfer control of human remains, and 2) the regulation lacks provisions regarding associated funerary objects.

To address these concerns, the Review Committee made the following comments and recommendations:

- 1) Adding a timeframe of 365 days to the Final Rule that would require museums and Federal agencies to initiate consultation within 90 days (under 10.11 (b)(1)(i)), and would provide them with an additional 275 days to finish the consultation and prepare the notice of inventory completion.
- 2) We encourage museums and Federal agencies to acknowledge and respect the importance of keeping human remains and associated funerary objects (AFOs) together, and urge those institutions to include associated funerary objects with all dispositions of human remains. Furthermore, we recommend an amendment requiring museums and Federal agencies to include AFOs in the disposition of any culturally unidentifiable human remains.

Telephonic Meeting on June 11, 2010

- The Review Committee convened telephonically, and responded to a request by the Tennessee Division of Archaeology, per an agreement with the “aboriginal land” tribes, for the disposition through reburial of 21 culturally unidentifiable Native American human remains and 17 associated funerary objects found in Williamson County, TN and removed from the aboriginal land of three tribes -- Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and United

Keetoowah Band of Cherokee Indians in Oklahoma. This request was originally heard by the Review Committee at its meeting in De Pere, WI, on May 15-16, 2008. At that time, the Review Committee deferred a recommendation on the request pending additional consultation with the Muscogee (Creek) Nation, Oklahoma. At our June 2011 meeting, the Review Committee approved the request, with a vote of 6 in favor and 1 abstention. Committee member Mervin Wright, Jr. abstained from the vote out of concern that the issue of determining aboriginal lands by the Indian Land Claims Commission maps can be problematic.

- The outgoing Review Committee Chair, Dan Monroe, presented the Committee with a statement of issues that he felt needed to be addressed to improve the National NAGPRA Program. Committee Chair Rosita Worl summarized his concerns into four points that include: 1. The National NAGPRA Program needs to implement a constituent-driven evaluation system to improve written communications (to be less legalistic). 2. The National NAGPRA Program needs to develop a written outline of the decision-making process for federally recognized tribes and Native Hawaiian organizations, museums, scientific organizations and Federal agencies. 3. The National NAGPRA Program needs to increase communication to the Review Committee members between meetings. 4. The National NAGPRA Program needs to coordinate a minimum of two face-to-face meetings of the Review Committee per year. In response, the National NAGPRA Program Manager, Sherry Hutt, indicated that she was pleased to work with the Committee to facilitate these requests. In fact, since that time the National NAGPRA Program has increased communication with the Review Committee, and now provides quarterly memos that explain happenings in a concise way. The Review Committee has found these reports to be very useful, and thanks the National NAGPRA Program for its efforts at being more communicative.

- The Review Committee was very pleased to learn that the National NAGPRA Program had placed Ms. Sally Butts, at the time a third-year student at the University of Idaho College of Law, as an intern. At the request of the Review Committee, Ms. Butts was tasked with completing an analysis of all the Review Committee's recommendations in disputes and findings of fact to date. The Committee received a draft report of Ms. Butts' research at the November 2010 meeting in Washington, DC. Her final report will provide very useful information that can assist the Review Committee in understanding whether and how its recommendations are being followed, and identifying when and why its recommendations are not followed. A summary of Ms. Butts' findings is detailed below in the summary of the Washington, DC meeting.

In-person Meeting on November 17-19, 2010, in Washington, DC

- The Review Committee heard two disputes at the November 2010 meeting: 1) between Sealaska Corporation & Wrangell Cooperative Association, and Alaska State Museums over the repatriation of one object, the Leader of All Ravens Hat (Hat); and 2) between Hoonah Indian Association & Huna Totem Corporation, and the University of Pennsylvania Museum of Archaeology and Anthropology over the repatriation of 50 objects, referred to as the Snail House Collection. In the first dispute the Review Committee determined that Alaska State Museums does not have the right of possession of the Leader of all Ravens Hat. In the second dispute, the Review Committee determined that all objects in the Snail House collection are both "objects of cultural patrimony" and "sacred objects," and that the University of Pennsylvania Museum does not have the right of possession to these objects.
- The Review Committee received a presentation from the Government Accountability Office on the GAO's report on NAGPRA (*Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act*) (No. GAO-

10-768)(July 2010)). A summary of the Review Committee's comments on the GAO report is in a later section of this report.

- The Review Committee had previously asked to receive input from those involved in NAGPRA compliance work about the barriers that they are encountering in successfully implementing the law. At this meeting, we heard from representatives from the Bay Mills Indian Community (Michigan), the Native American Repatriation Summit, and the Columbia Plateau Inter-Tribal Repatriation Group about the barriers they are experiencing. We would like Congress to know how essential it is to the Review Committee to hear about these challenges and successes – it's a critical part of our understanding of what is needed to implement NAGPRA and reach the goal of full compliance with the law.

To assist us in this endeavor, the Review Committee has asked the National NAGPRA Program to compile a list of those who have come forward to share their concerns and the barriers they've encountered, and to include in that list representative statements or summaries of the points raised. This will be a tremendous resource for the Review Committee as we move forward and try to better understand where improvements are needed.

- The Committee had a substantive discussion about the dispute process, which led to the formation of a subcommittee that will encourage input from museums, Federal agencies, and tribes to develop more specific dispute procedure guidelines to be followed during disputes heard by the Review Committee.
- The Committee heard three reports of ongoing research projects related to NAGPRA that the National NAGPRA Program has undertaken and is supervising. These include 1) the web-based State Burial Law Project, co-sponsored with American University/Washington College of Law, that provides detailed state-by-state information gathered by WCL students

about current burial laws and grave protections (<http://www.wcl.american.edu/burial/>); 2) at the Review Committee's request, research on the status of NAGPRA compliance among museums with the largest collections of Native American human remains; and 3) also at the Review Committee's request, a study of the Review Committee's decision-making under 25 U.S.C. 3006(c)(3), (4), & (5).

The usefulness of the work these students are undertaking cannot be overstated, and the Committee wants to acknowledge the important data that such projects provide. The Committee would like to thank the National NAGPRA Program for its stated commitment to working with future interns on similar projects.

GAO Report

The Review Committee was pleased to have the final GAO report on NAGPRA compliance released in July 2010, and to receive a presentation about the report from the GAO at the November meeting in Washington, DC. The Committee repeatedly voiced the need for such a study, and was very grateful to have this attention given to the critical issues of NAGPRA compliance. The GAO report raised several very important issues regarding the lack of compliance with NAGPRA by key Federal agencies. The Committee feels it's important to understand the barriers that Federal agencies are facing in reaching full compliance with the law, and that it's critical for those agencies to have a plan in place to work toward full compliance. The GAO's recommendation that Federal agencies report to Congress on the actions they plan to take to be in compliance with the law is an important first step; and we look forward to seeing these agencies engage actively, and in a timely manner, in NAGPRA compliance.

The Review Committee was pleased to see the GAO report highlight another point that we've consistently raised in our reports to Congress from 2002-2009: a recommendation to amend the definition of "Native American" to add the words "or was" so that the definition would read: "Native American

means of, or relating to, a tribe, people or culture that is, *or was*, indigenous to the United States.” The Review Committee continues to feel that such an amendment is necessary and, as stated in our recommendations section below, we recommend that the legislation that has been introduced in previous Congresses be enacted.

In noting some of the very useful information that came out of this report, the Review Committee has also raised the possibility of requesting a future GAO study focused on museum compliance with NAGPRA. Since the goal is to reach full compliance with the law, it would be very helpful to understand the status of NAGPRA compliance by museums now that 20 years have passed since the law’s enactment.

In its report, the GAO made claims about an “appearance of bias” by the Review Committee toward tribal interests. We take exception to this assertion for several reasons. When those presenting the GAO report to the Committee were questioned about this issue at the November Review Committee meeting in Washington DC, they explained that they had, in fact, been made aware of a wide range of opinions that various constituents had about the Review Committee. We are concerned that the GAO did not provide either quantitative or qualitative data to support these conclusions. Even a very cursory review of the public comments at Review Committee meetings over the past two decades will reveal a wide range of opinions on this point. Actually, there is overwhelming evidence in the record to support the opposite conjecture - that many constituents feel the Review Committee is overwhelmingly controlled by, and biased toward, museum and scientific interests. The GAO report made no attempt to quantify or substantiate its claims about the perceived bias of the Review Committee toward tribes, yet they chose to include those claims in their report. We find this part of the report troubling, and are concerned about the damage it may have done to the Review Committee.

The Review Committee also noted two very important points that, although mentioned in the GAO report, were given very limited space. First is that recommendations of the Review Committee are non-binding. Recently several of our constituencies have mentioned this same point. In recounting their barriers to successfully implementing NAGPRA, the Western Apache NAGPRA Working Group referred to the Review Committee as a “paper tiger”, citing the non-binding nature of the Committee’s findings of fact and recommendations. More recently, in public consultation regarding possible amendments to NAGPRA, this same point was raised by the Alaska State Museums. The low numbers of Review Committee recommendations that have been implemented (a point raised by the GAO report) further highlights the need for greater discussion of this point. It begs the question of whether there would be a much higher implementation rate of Review Committee recommendations (and lower incidence of the need for further court proceedings in the case of disputes) if Review Committee’s recommendations were binding.

The Review Committee looks forward to seeing the full implementation of the five recommendations offered in the GAO report.

Progress Made

Figure 1 provides details of the summaries, inventories, and notices that have been received or published, including cumulative data for the entire length of the NAGPRA program and for 2010 specifically.

Type of Summary, Inventory, or Notice	2010	Cumulative Total
Summaries received	3	1,555
Inventories received	16	1,319 (from 1,521 institutions)
Notices of Inventory Completion	109	1,404 (accounting for 40,303 human remains and 1,007,894 associated funerary objects)
Notices of Intent to Repatriate	43	520 (accounting for 146,215 unassociated funerary objects, 4,314 sacred objects, 958 objects of cultural patrimony, 1,210 objects both sacred and patrimony, and 292 undesignated)
Notices of Intended Disposition	21	105 (reported for 966 MNI; 1416 associated funerary objects, 64 unassociated funerary objects, and 3 objects of cultural patrimony)
Notice processing	140 (received) 152 (published)	

Figure 1. Overview of NAGPRA Summaries, Inventories, and Notices

This is the first time that we are able to report data on the number of repatriations (Figure 2). The GAO report recommended that National NAGPRA begin collecting such data and the Review Committee is very pleased to see that so soon after the GAO report was released, we already have some preliminary data on the number of repatriations that have taken place. This data is now also available in the inventory database on the National NAGPRA Program's website (www.nps.gov/nagpra; then click on "Online Databases").

Repatriations	
Human Remains	Associated Funerary Objects
<p>9882</p> <p>Minimum number of individuals</p>	<p>668,605</p> <p>(including museums and Federal agencies)</p>

Figure 2. Total Repatriations¹

The Review Committee is also pleased to note several other important ways in which progress was made in 2010. Here we highlight the most notable areas of progress:

- The National NAGPRA Program has increased its communication with the Review Committee in both quality and quantity. The Committee now receives regular quarterly reports from the National NAGPRA Program. These provide updates on important topics, highlight NAGPRA-related activities, and note upcoming NAGPRA-related events. The need for increased communication and the use of plain language (rather than legalistic language) with the Review Committee was raised by outgoing Committee Chair Dan Monroe. The Committee both appreciates the efforts of the National NAGPRA Program and finds the increased communication to be a great asset to our work.
- During the May 2010 telephonic meeting, the Review Committee noted the need to hear from museums, Federal agencies, and tribes regarding the barriers they are encountering in implementing NAGPRA, and we issued a call for those involved in NAGPRA work to come forward and report to the Committee

¹ These numbers derive from voluntary reporting obtained from submissions of museums and federal agencies and transfer of control letters in support of repatriation grants. More formal submissions of repatriation data will be provided beginning in FY 2011.

on the barriers they've faced. The Committee felt it was important to hear directly from those involved in the day-to-day work of NAGPRA implementation, so that we could better understand and address the challenges being faced. During the June 2010 telephonic meeting and the November 2010 meeting in Washington, DC, the Committee heard from several groups (including those representing tribes, museums, and Federal agencies) on this topic. The Review Committee would like to acknowledge and sincerely thank those who have come forward to share their successes and their failures thus far, and we hope to hear, in even greater detail, from others at future meetings. This type of engagement with tribes, museums, and Federal agencies helps us, as a Committee, to understand where the barriers to NAGPRA implementation lay, so that we can take positive and proactive steps to achieve full compliance with the law. At the November meeting in Washington, DC, the Review Committee requested that the National NAGPRA Program prepare a summary of the comments offered thus far because we feel such documentation is a useful step in facilitating the implementation of the law.

While the Review Committee has found these reports from tribes, museums, and Federal agencies to be very helpful, an important concern remains. Some tribal representatives have noted that, for cultural reasons, tribes are not always comfortable coming forward to present problematic issues or concerns to the Review Committee. Some have voiced a concern that talking about the challenges they face will hinder repatriation, particularly if they present problems they face with specific institutions that maintain control over large collections of human remains. As museums and Federal agencies make the determinations about cultural affiliation, this concern appears to have kept at least some tribes from voicing their experiences openly. The Review Committee sees this as a serious problem, and feels we need to explore ways to address this concern.

Barriers Encountered

- Budget constraints remain a very significant concern for those doing NAGPRA-related work. This issue has consistently been raised by the Review

Committee in our annual reports to Congress; and in March, 2010, the Society for American Archaeology also voiced their concern about the need for increased NAGPRA funding in a written statement read to the House Appropriations Committee's Subcommittee on Interior, Environment and Related Agencies. We recognize that these are very challenging budgetary times; however, for this law to be effective, the National NAGPRA Program requires a funding increase. This need is particularly acute now, as tribes, museums, and Federal agencies work to comply with the recently-promulgated Final Rule 10.11 on the disposition of culturally unidentifiable human remains. Several years of increased funds to the National NAGPRA Program would enable the Program to publish more notices of inventory completion in the Federal Register and, thus, would have a substantial impact on the disposition of human remains under the 10.11 Rule. As two recent GAO reports -- on NAGPRA compliance in Federal agencies and the Smithsonian's repatriation efforts -- indicate, more than 20 years after passage of NAGPRA and the NMAI Act, we are still in a position where a substantial amount of work remains to ensure that the intent of Congress is followed and that repatriation laws are being fully implemented. Reaching compliance within the next 20 years requires increased NAGPRA funding for grants to tribes, museums, and Federal agencies; further training programs on how to effectively comply with the law; and a funding level that ensures at least 2 annual in-person Review Committee meetings.

- The Review Committee has heard from Indian tribes that one very significant barrier is that many tribes simply lack the financial capacity to handle NAGPRA implementation. Likewise, museums often lack staff to do NAGPRA compliance work, and must rely on staff who have other full time responsibilities, and are not able to set aside the time needed to become familiar with NAGPRA requirements and perform ongoing NAGPRA tasks. Issues of staff, training, and funding are particularly evident at universities, as many of these institutions have cut, or are in the process of cutting, their budgets.
- An issue not focused on in the GAO report, but one that is critical for Federal agencies, relates to the substantive number of Federal collections that

are NOT held in Federal repositories. NAGPRA says that Federal agencies and institutions receiving Federal funds, and which possess or control human remains and associated funerary objects, are required to list them in an inventory. An institution, though, is NOT required to notify a Federal agency that human remains and funerary objects in the institution's custody are, in fact, under the control of the Federal agency. Some institutions having custody of Federal collections did not list certain human remains and funerary objects in an inventory because they assumed that the Federal agency having control did so. The Review Committee is thus concerned that there may be large numbers of human remains and associated funerary objects that are not currently in inventories at all. This concern needs to be addressed, perhaps by encouraging discussion between Federal agencies and those institutions having custody of their collections. For Federal collections that are not in Federal repositories, but are in the custody of other institutions, there is a critical need to know both the number of items in those collections and the institutions that are holding them.

- The Review Committee is concerned about damage the GAO report may have caused to the integrity of this Committee in the statements they put forward in their recent report about NAGPRA (*Native American Graves Protection and Repatriation Act: After Almost 20 Years, Key Federal Agencies Still Have Not Fully Complied with the Act* (No. GAO-10-768)(July 2010)). The GAO spent considerable time in the report discussing the "perceived bias" of the Review Committee toward tribal interests. Yet when those presenting the GAO report to the Committee were questioned about this point at the November 2010 Review Committee meeting in Washington, DC, they explained that, in fact, they'd been made aware of a wide range of opinions that various constituents had about the Review Committee. The GAO did not discuss other viewpoints that they'd uncovered in their investigations, nor did they provide any quantitative or qualitative data to support their statements on this point. Even a very cursory review of the public comments at Review Committee meetings over the past two decades would reveal a wide range of opinions on this point. In fact, the record provides overwhelming evidence to support the opposite position, namely that

the Review Committee is overwhelmingly controlled by, and biased toward, museum and scientific interests. The Review Committee is concerned that such statements made without supporting data in a report that also ignored a wide range of directly contradictory viewpoints is damaging to the NAGPRA compliance process, and will serve to alienate some of NAGPRA's constituents.

Recommendations

Recommendation 1: FUNDING INCREASE. As we reflect on the past 20 years since NAGPRA was enacted, two primary points immediately stand out: funding and compliance. There is no doubt that these two points have a direct interrelationship. NAGPRA is a vitally important piece of legislation. But if the wisdom and foresight that Congress had in enacting this law are to be realized, the funds must be available to do the important work that the law requires of tribes, museums, and Federal agencies to be in full compliance. The NAGPRA budget has not been increased for 20 years, yet we are able to look to the positive statistics reported above and see real progress. The Review Committee is certain that further, dramatic progress could be made if greater funding was made available.

The timing for a funding increase is particularly acute in 2010 because, after 10 years of consultation, the Final Rule for the disposition of culturally unidentifiable human remains (43 CFR 10.11) has been implemented. This Rule covers a significant number of the human remains in collections that have been reported (a staggering ~125,000 individuals have been determined to be "culturally unidentifiable", more than double the number of culturally affiliated individuals that have been repatriated during the 20 years since NAGPRA's enactment). The next several years will be a very active period for the NAGPRA compliance process under the new Rule, as museums and Federal agencies work in close cooperation with tribes to implement the Final Rule and transfer to the tribes a very substantial number of individuals. With proper funding, we can anticipate seeing great progress toward full compliance in a very short time. With

these concerns in mind, the Review Committee makes the following budget related recommendations:

- Increase the National NAGPRA Program's budget to the amount of \$4.2 million, with direct allocations for NAGPRA grants to Indian tribes, Native Hawaiian organizations, and museums.
- Appropriate \$350,000 to support three contractor positions to help manage the publication of Federal Register notices and to fund a **full-time** civil enforcement investigator position.

Recommendation 2: DEVELOP COMPLIANCE MECHANISMS FOR FEDERAL AGENCIES. As the GAO report so clearly demonstrated, there are key Federal agencies that have still not complied with the law. We recognize that there is a range of reasons why Federal agencies are not in compliance, some of which relate to staffing and funding shortages. The Committee recommends that there be the development of a mechanism for Federal agencies to come into compliance. We envision that this recommendation would work in connection with our recommendation for increased funding for grants to tribes to work with Federal agencies to achieve compliance.

Recommendation 3: BINDING AUTHORITY OF REVIEW COMMITTEE. As discussed above in the section on barriers to success, the Review Committee has received comments from both museums and tribes about the lack of binding authority given to the Review Committee. To address this, the Committee recommends that Congress consider giving Review Committee recommendations binding authority, in cases where those recommendations are approved by the Department of the Interior.

Recommendation 4: CHANGING THE DEFINITION OF NATIVE AMERICAN. The Review Committee recommends strongly that Congress amend the definition of "Native American" at 25 U.S.C. 3001 (9) by adding the words "or

was" so that it reads: "'Native American' means of, or relating to, a tribe, people, or culture that is, or was, indigenous to the United States."

Recommendation 5: FURTHER LEGISLATION TO PROTECT NATIVE AMERICAN BURIALS. NAGPRA is concerned with, among other things, the protection and repatriation of Native American human remains. Currently, the issue of "protection" is covered in Section 4 of the Act, the criminal section (codified at 18 U.S.C. 1170). The Review Committee feels that there needs to be more comprehensive protection of burials, and that such protection should be equal to the protections given to non-Native American burials. Such protection is not currently covered in the NAGPRA legislation, but is an important part of what needs to be accomplished in years to come. The Committee recommends that Congress consider legislative means through which such protections can be accomplished, starting with a comprehensive study of the current state-by-state burial laws.

Recommendation 6: FUTURE GAO STUDY ON MUSEUM COMPLIANCE. As highlighted in our summary comments above, related to the GAO report on NAGPRA, the Review Committee found many of the points highlighted in the Report to be helpful – particularly the recommendations offered in the report to ensure that Federal agencies, some of whom are still out of compliance 20 years after the enactment of this law, take active steps toward compliance. We recommend that the GAO undertake a similar study of museum compliance.

Recommendation 7: OPEN HEARINGS TO DETERMINE PROGRESS MADE AND BARRIERS ENCOUNTERED. The Review Committee acknowledges that there are barriers encountered by tribes, museums, and Federal agencies with regard to NAGPRA. We are aware of some of these (as outlined above), but we feel that it is most productive to hear from these groups themselves about the barriers they've encountered. Tribes, museums and Federal agencies who have been actively involved "on-the-ground" in working with NAGPRA are the ones best equipped to offer details of how the law is working, the progress made, and the barriers encountered. For this reason, the Review Committee recommends that Congress hold open hearings related to NAGPRA, in which representatives

who represent a wide range of the communities involved in NAGPRA are invited to testify and share their views and experiences. This will provide a rich and invaluable resource that can guide any future improvements to NAGPRA.

Recommendation 8: IMPLEMENT MANDATORY DISCLOSURE POLICY.

Institutions having custody of Federal collections containing human remains and cultural items must disclose these holdings to the appropriate Federal agencies having control over the collections to ensure that there is full reporting of these collections.