

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION:

**“APPLICATION TO WITHDRAW TRIBAL FUNDS
FROM TRUST STATUS, 25 CFR 1200”
OMB Control No. 1035-0003**

Terms of Clearance: None

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

In October 1994, Congress enacted Public Law 103-412, “*The American Indian Trust Fund Management Reform Act of 1994*,” (the “Act”) that authorizes Indian tribes on a voluntary basis to take their funds out of trust status within the Department of Interior to manage such funds on their own. 25 CFR 1200, Subpart B, Section 1200.13, “How does a tribe apply to withdraw funds?” describes the application requirements for the withdrawal of tribal funds from trust status. The Act encompasses all Tribal trust funds, including judgment funds as well as some settlement funds, but excludes Individual Indian Money (IIM) account funds. Both the Act and its implementing regulations state that upon withdrawal of the funds, the Government has no further liability for such funds. Thus, such decisions as the investment and management of the funds become key decisions for tribal applicants. Accompanying their application to withdraw tribal funds from trust status, tribes submit a Tribal Management Plan for managing the trust funds that includes an acknowledgement of the statutory requirements for the protection of

the funds once they are out of trust status.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection. [Be specific. If this collection is a form or a questionnaire, every question needs to be justified.]

The regulations that implement the Act, 25 CFR 1200 Sections describe the application process for the withdrawal of funds. This application for withdrawal is a necessary requirement for the tribes to take their funds out of trust.

The General Information portion of the Application to Withdraw Tribal Funds from Tribal Status Form (Part A, questions 1-9) asks for information needed to identify the tribe submitting the application and the type and amount of funds being withdrawn. Contact information for the tribe, with respect to the application for withdrawal process, is also included in this information.

The Specific Regulatory Requirements in 25 CFR 1200 § 1200.13 portion of the Form (Part B) identifies those attachments, described in Section 1200.13 of the Act's implementing regulations, that must accompany the application for withdrawal of the funds.

These documents are required to enable the Government to review the tribe's plans for the management of the funds, and to ensure that tribes are aware that once the funds are withdrawn from trust status, the Federal Government has no further liability for them. These documents contains the information which will be used by the Government to determine if the Management Plan provided by the tribe is reasonable and provides protection against a substantial loss of principal, to determine whether the investment entity is capable of managing these funds, and to determine whether the tribal governing body has taken the proper legal steps to authorize this action.

More specifically:

- The information provided in the attachments is used by the Government to verify that the Plan is approved by the appropriate tribal governing body.
- The information provided in the plan is also reviewed to ensure that it is

reasonable in light of the trust responsibility and the principles of Indian Self-Determination. Information considered includes the capability and experience of the investment, individuals and/or firm, and the tribal investment goals and strategy for achieving them.

-- In addition, for judgment funds, the plan is reviewed to determine if it adequately provides for compliance with conditions, uses of funds, or other requirements established by the original law or settlement act.

Approval of this information collection is requested from OMB to provide the tribes with a benefit that was not available prior to enactment of the Act. The information provided is required to obtain a benefit, and the benefit obtained will be the release of funds to the tribe for its own management.

Information collected by the Government on applications for withdrawal of trust funds received since OMB approval of information collection 1035-0003 on 08/20/2003 has enabled the tribes submitting the application packages in question to withdraw their funds for their own management.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden [and specifically how this collection meets GPEA requirements.].

The Office of the Special Trustee (OST) is now connected to the Internet. The information regarding how to apply for Withdrawal of Tribal Trust Funds from Trust Status and request the package, including the Application checklist form, is available online at <http://www.doi.gov/ost/information/tribal/funds.html>. However, any tribal fiduciary trust information either sent to or received by OST must be encrypted. OST's preference is to receive hard-copy applications by certified mail.

However, tribes may submit electronic copies of the attachments required by Part B of the form on computer disk, if they choose to do so, and may request current information regarding their trust accounts from the automated OST Trust Funds Accounting System (TFAS).

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2

above.

The information requested under this collection is not duplicated elsewhere. The request for withdrawal may be a one-time event for the respondent. As a result, it may be possible that the information could be collected only once.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

The collection of information does not have a significant impact on a substantial number of small businesses or other small entities.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Implementation of the general Indian Self-Determination policy, and Government compliance with Public Law 103-412, "*The American Indian Trust Fund Management Reform Act of 1994*," which permits tribes to manage and control their own trust funds, would be hindered – if not rendered ineffectual -- if this information were not collected and tribes were not permitted to withdraw their own funds.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
 - * requiring respondents to report information to the agency more often than quarterly;
 - * requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
 - * requiring respondents to submit more than an original and two copies of any document;
 - * requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
 - * in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
 - * requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
 - * that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
 - * requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

There are no special circumstances that require the collection of information to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.5.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice [and in response to the PRA statement associated with the collection over the past three years] and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. [Please list the names, titles, addresses, and phone numbers of persons contacted.]

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years — even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

A notice asking for comments on this information collection was published in the Federal Register on May 20, 2009, at 74 FR 23738. No public comments were received in response to this notice.

Efforts to consult with representatives of those from whom the information is to be obtained are limited by the fact that fewer tribes have availed themselves of the opportunity to withdraw their funds in order to manage them on their own in the past several years than had been anticipated when the information collection was last renewed. See our response to question 15.

A review of the immediate fiscal year (FY09) activity shows that there have been no new applications for withdrawal of trust funds submitted this year. In FY 2007, however, one tribe applied for but later withdrew its application from further review.

Because we do not require respondents to track the time required to prepare their application packages, and because each such package requires such a substantial investment of effort, we believe that we must depend upon good-faith estimates, as our most reliable indications of the amount of effort required to submit such applications.

The following three knowledgeable sources were consulted during the time period of July 30, 2009 through August 4, 2009, and asked to provide an estimate of the time it either did or would take their tribe to compile and submit the required information, or to evaluate the prior experience of the Department that 400 hours was a reasonable estimate:

Cheryl Painter, 300 hours
Acting Chief Financial Officer
Winnebago Tribe of Nebraska
100 Bluss Street, Winnebago, Nebraska 68071
(402) 878-2272

Michael Bowechop, 400 hours
Compliance and Legislative Analyst
Puyallup Tribe
3009 East Portland Avenue
Takoma, Washington 98404
(253) 573-7821

Robert Palmer, 400 hours
Chief Financial Officer
Taos Pueblo
1075 Veteran's Highway
Taos, New Mexico 87571
(575) 741-1732

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents, other than the benefits that they are seeking in submitting the applications, i.e., the ability to manage their own funds.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

In accordance with Departmental policy, Tribes have always been afforded

confidentiality with regard to information concerning their trust fund account matters. The Department of the Interior's policy is that information concerning accounts or applications for the withdrawal of tribal funds from trust status will not be shared with anyone outside OST or the Department of the Interior without permission from the affected Tribe.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

This collection does not include questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, or other such matters relating to individuals that are commonly considered private. It does pertain to confidential financial information pertaining to tribes because its purpose is to enable these tribes to manage their own funds. Confidential financial information pertaining to tribes is not shared with anyone outside OST or the Department of the Interior without permission from the affected tribes. It is used only to enable them to obtain Governmental approval to manage their own funds.

12. Provide estimates of the hour burden of the collection of information. The statement should:
 - * Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
 - * If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
 - * Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.

OST currently estimates that it may receive an average of 2 applications per year to withdraw tribal funds from trust status. (See response to question 15, below.)

Based on information received from three tribes with which OST consulted prior to

submitting this information collection for approval, as discussed in response to question 8, above, we now believe that it takes approximately 400 hours for a responding Tribe to research, develop and submit a complete and adequate application package. (Note: This number is the same as was reported in the previous Paperwork Reduction Act submission for this information collection.)

This results in a total annual burden of 800 hours (2 x 400 hours) for this information collection.

A description of the stages involved in the preparation of the application package is listed below:

1. Perform general research and coordination with key personnel regarding the application for withdrawal requirements, and
2. Notify tribal membership of the intent to withdraw the funds, and
3. Prepare a Tribal Resolution, and
4. Develop a Formal Agreement between the tribe and the investment entity, and
5. Prepare a Legal opinion by the tribal attorney, and
6. Prepare a Tribal Referendum, and
7. Obtain a Copy of Settlement Act or Plan, and
8. Develop a Tribal Management Plan.

The average current hourly wage for the “Property, real estate, and community association manager” category, taken from the Bureau of Labor Statistics, is \$27.05. Source: <http://www.bls.gov/news.release/pdf/ocwage.pdf>). This hourly wage is multiplied by a factor of 1.4 to include benefits, yielding a total hourly rate of \$37.87 per hour. (Benefits rate derived from BLS news release USDL: 08-1802, December 10, 2008, at <http://www.bls.gov/news.release/pdf/ecec.pdf>.) This sum multiplied by the annual expected number of hours at 800 = \$30,296.

13. Provide an estimate of the total annual [non-hour] cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).
 - * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of

capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There are no additional costs to respondents or record keepers, which are not already listed in our response to question 12. The minimal costs we show, such as supplies, machine usage, are considered a customary and usual cost of doing business for the tribe.

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

FOR THE GOVERNMENT: Assuming that there are 2 responses per year, and that each results in an average level of time necessary for review, the total cost to the Government is expected to be \$49,878. See Appendix #1 for a breakdown of specific personnel levels that participate in the review process. To the overall salary cost, a multiplier of 1.5 was applied to account for benefits to achieve this total. Depending on the complexity of the application, the annual cost to the Government to complete each withdrawal application can range from over \$14,000 to upwards of \$34,000. (For more complex applications, an additional, independent review of an investment plan may be performed by an outside contractor, which would increase the cost beyond which that which is reported in Appendix 1.)

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

There are no program changes. There is an adjustment downward due to the decrease in the estimate of annual information collection submissions to the Department, resulting in a shift from 1600 annual total burden hours to the public to 800 total burden hours to the public.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

OST has no plans to publish any of the information collected via this collection of information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The expiration date for OMB approval of the information collection is displayed on the application form.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

There are no exceptions requested to #19, Certification for Paperwork Reduction Act submissions.

Appendix #1

ESTIMATE OF BURDEN FOR GOVERNMENT TO ADHERE TO MANDATES OF PAPERWORK REDUCTION ACT FOR APPLICATIONS TO WITHDRAW TRIBAL FUNDS FROM TRUST STATUS

Please note that benefits have already been factored into hourly costs, in calculating them.

1. In-Depth review of application by key personnel with primary responsibility

	Cost	Hours
Director, Office of External Affairs, GS-15 \$120,000 per year, or \$58 per hour:	2320	40
Management Analyst, Office of External Affairs, GS-14 \$100,000 per year, or \$49 per hour	1568	32
Regional Trust Administrator, SES \$135,000 per year, or \$65 per hour	2080	32
Fiduciary Trust Officer, GS-14 \$100,000 per year, or \$49 per hour	1568	32
Solicitor, Department of the Interior, GS-15 \$120,000 per year, or \$58 per hour:	928	16
Investment Officer, GS-15 \$120,000 per year, or \$58 per hour	928	16

2. Review and Meetings between team members assigned to review applications for withdrawal

Director, Office of External Affairs, GS-15 \$120,000 per year, or \$58 per hour:	464	8
Management Analyst, Office of External Affairs, GS-14 \$100,000 per year, or \$49 per hour	784	16
Regional Trust Administrator, SES \$135,000 per year, or \$65 per hour	1040	16
Fiduciary Trust Officer, GS-14 \$100,000 per year, or \$49 per hour	784	16
Solicitor, Department of the Interior, GS-15 \$120,000 per year, or \$58 per hour:	464	8
Investment Officer, GS-15 \$120,000 per year, or \$58 per hour	928	16

3.

4. OST Senior Management Review

	Cost	Hours
Special Trustee, PAS \$170,000 per year, or \$82 per hour	820	10
Principal Deputy Special Trustee, SES \$145,000 per year, or \$70 per hour	700	10
Deputy Special Trustee – Field Operations, SES \$140,000 per year, or \$67 per hour	670	10
Director, Office of External Affairs, GS-15 \$120,000 per year, or \$58 per hour:	580	10
Total Before benefits Multiplier Applied:	16,626	256hr
Total after Application of 1.5 multiplier to account for Benefits	24,939	
		X 2 tribes / year
Grand Total:	\$49,878	512hr