

# **1Supporting Statement A**

## **Documented Petitions for Federal Acknowledgment as an Indian Tribe**

**OMB Control Number 1076-0104**

**Terms of Clearance:** None.

### **General Instructions**

**A completed Supporting Statement A 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 below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.**

### **Specific Instructions**

#### **Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

The U.S. Government has a government-to-government relationship with Federally acknowledged Indian tribes. Currently, there are 566 Federally acknowledged Indian tribes. These tribes have been acknowledged by treaty, by Congress, or administratively by Executive Branch, specifically the U.S. Department of the Interior (Department). Beginning in the early 1970's, the Department received an increasing number of requests for acknowledgment. In 1978, the Department established the present administrative process for an Indian group to be acknowledged as an Indian tribe (25 CFR 83, *Procedures for Establishing that an American Indian Group Exists as an Indian Tribe*). The acknowledgment process established by these regulations is the Department's administrative process by which petitioning groups that meet the criteria are given Federal "acknowledgment" as Indian tribes and by which they become eligible to receive services provided to members of Indian tribes.

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary - Indian Affairs of the Department implements 25 CFR 83. OFA makes recommendations to the Assistant Secretary – Indian Affairs (AS-IA). The AS-IA has the authority to make the decision whether to acknowledge tribal existence and establish a government-to-government relationship

or to deny acknowledging a petitioning group as an Indian tribe.

By applying anthropological, genealogical, and historical research methods, OFA reviews, verifies, and evaluates groups' petitions for Federal acknowledgment as Indian tribes. The petitions contain information and evidence that pertain to the mandatory criteria that the petitioner must meet. The collection of this information is necessary in order for the Department to make these reviews, verifications, and evaluations.

OFA makes recommendations for proposed findings and final determinations to the AS-IA, consults with petitioners and third parties, provides copies of 25 CFR 83 and its guidelines, prepares technical assistance review letters, maintains petitions and administrative correspondence files, and conducts special research projects for the Department.

At present, the regulations provide a multi-phased process with a minimum of 25 months' review and due process per petitioner. With extensions, appeals, litigation, Freedom of Information Act requests, and other administrative duties, the process often can take longer.

The authority for acknowledging Indian tribes rests with the Secretary's general authority to deal with Indian affairs and his specific authority to adopt regulations governing Indian affairs (43 U.S.C. 1457 and 25 U.S.C. 2 & 9). Court decisions to at least the early 1900s have defined an Indian tribe on essentially the same grounds as those in the acknowledgment regulations.

**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 information gathered by petitioners under these regulations is used by the AS-IA to establish whether a petitioning group has the characteristics necessary to be acknowledged as an Indian tribe and to establish a government-to-government relationship with the United States. The OFA professional experts use the information to prepare an evaluation of a petitioner under the regulations and to recommend a decision for the AS-IA. OFA's professional staff, including anthropologists, genealogists, and historians, prepare the recommendations for the AS-IA. Petitioners requesting acknowledgment as an Indian tribe must address seven criteria which are stated in 25 CFR § 83.7.

- **83.7(a)** requires the petitioner to provide evidence of the continuous Indian identification of the group by non-members; this prevents self-identification. A variety of sources may be used, such as the Federal government, States, scholars, and other Indian tribes.
- **83.7(b)** requires the petitioner to demonstrate that the petitioning group has maintained significant social relationships among its members and has remained socially distinct from non-Indians.

**83.7(c)** requires the petitioner to demonstrate that it has maintained some significant

degree of political influence among the members.

- **83.7(d)** requires the petitioner to provide important technical information concerning how the group defines membership and the basic rules by which the group is governed. This information is essential to the evaluations made under criteria found in 83.7 (c) and 83.7 (e).
- **83.7(e)** requires the petitioner to demonstrate tribal ancestry of the group. It defines a variety of alternative evidence that can be used. Verification of ancestry is essential to the goal of acknowledgment criteria used to establish continuity of the group as a distinct body of people since first contact with Europeans. BIA forms 8304 (Individual History Chart), 8305 (Ancestry Chart) and 8306 (Membership Roll) are optional in providing a complete list of members of the group seeking recognition. Groups may submit the information on their own forms, and routinely do so.
- **83.7(f)** requires the petitioner to demonstrate that its members are not predominately members of an already recognized tribe. This requirement helps support the validity that the petitioner is a distinct group and avoids the potential of dividing already recognized Indian tribes.
- **83.7(g)** requires the petitioner to demonstrate it and its members are not subject of legislation which forbids the acknowledgment of a Federal relationship. This information is used to determine whether there is a legal prohibition which prevents acknowledgment of a petitioning group through the administrative process.

It has been long established that “[i]n reference to all matters of [tribal status] , it is the rule of this court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs. “ *United States v. Holliday*, 70 U.S. 407, 419 (1865). In order to carry out his treaty and statutory obligations to Indian tribes, the Secretary must be able to acknowledge to whom he owes those obligations. The current acknowledgment process was developed in response to the Department’s need to have a fair, open and uniform process for determining claims of entitlement to tribal treaty and statutory benefits. The Department, in establishing the current process, considered that an administrative determination rather than a judicial one provided the best forum to resolve the complex technical issues that arise in making an acknowledgment determination. The Federal courts have affirmed the preference for an administrative process. *James v. U.S. Dept. of Health and Human Services*, 824 F.2d 1132, 1138 (D.C. Cir. 1987). While Congress, from time to time, has legislatively recognized Indian tribes, there is no expectation that Congress will grant recognition to all of the numerous groups currently seeking it.

- 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.**

Petitioners are given technical assistance in the use of computers to organize and prepare membership lists and related genealogical information; therefore, petitioners may submit this portion of their petition electronically via email or on a compact disc or thumb drive. Most of the information necessary for a petition, however, is in the group's files or in archives, or must be collected by interview. Thus, it is not collected or organized as part of any technological information system. There are no legal obstacles to reducing the burden through means of information technology.

**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.**

Each information collection is unique to the group involved. No similar information collection is made by the Federal government. The OFA, in giving technical assistance, attempts to make petitioners aware of existing sources and scholars who may have done work which can be adapted in part to the preparation of a petition. However, unrecognized groups are inherently poorly known and little-studied; hence, there are usually few ready-made sources to build upon. Because petitioning groups have not been served by the Federal government as recognized Indian tribes; consequently, data has not been collected on them frequently.

Where scholarly or other studies or judicial proceedings already exist which can provide part of the required information, petitioners incorporate them into petitions or utilize them in preparing petitions. Groups are aware of research efforts by other groups in the same area and sometimes may be able to utilize documents that pertain to the history of more than one group. During technical assistance letters and meetings, the OFA staff directs the petitioner to sources.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Some of the petitioning groups are small entities, but because of the unique and perpetual nature of the Federal-tribal relationship, this information collection cannot be reduced and still allow determinations to be made on the best available data. Efforts are made to minimize the burden on all petitioning groups. Smaller petitioners have a somewhat smaller burden than larger ones that are otherwise similar in historical character. This lesser burden is because the smaller the number of members, the smaller the amount of genealogical information it is necessary to collect.

**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.**

OFA's collection is a one-time only collection of data and as such cannot be collected less

frequently. The courts have determined that the Federal government has a responsibility to all Indian tribes that can demonstrate continuous tribal existence, whether presently recognized or not. Consequently, the Secretary has the responsibility and the authority to determine which unrecognized groups continue to exist as Indian tribes. If the information is not collected, the Department cannot carry out its responsibility to provide treaty and statutory benefits and protections to Indian tribes.

Petitioning groups are able to obtain most of the information more easily than OFA staff, at less expense and time. Important portions of the information could not be reasonably obtained at all by government researchers. While many documentary sources are public ones, key documentary sources for petitions are held by the petitioning group, or by individual members who are unlikely to give full access to government researchers. Even if full access were given, it would commonly require significant travel expenses since the unrecognized groups are typically not close to any existing Indian Affairs agency. Moreover, petitions also require careful field investigation to gather oral history and testimony and to determine the social and political character of the present membership. Because many sensitive issues are involved in conducting such field research, it is best carried out by researchers working for the group, together with the group members.

Finally, the compilation of the membership list and the genealogical information used by the group to determine eligibility for membership is a central function of the government of the group. It is information which is by and large already compiled by groups and involves sources which are only available to the petitioning group itself.

**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 would cause an information collection to be conducted in any manner listed above.

- 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.**

A 60-day notice for public comments was published in the Federal Register on June 25, 2014 (79 FR 36092). No comments were received in response to this notice.

**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.**

**Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.**

The Office of the Assistant Secretary - Indian Affairs held listening sessions in July and August 2013 and consultations sessions (with Federally recognized tribes and the general public) in July and August 2014 to receive feedback on the ways to improve the Department's process for acknowledging an Indian tribe, as set forth in 25 CFR part 83. The Assistant Secretary is currently in the process of revising the regulations governing the process of acknowledging an Indian tribe. This request for extension does not include the suggestions and feedback, but instead will allow current or potential petitioners to continue to submit information required under the current regulations.

- 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.

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

All records provided to the OFA are available for review by the public and interested parties to acknowledgment decisions on the same basis as other records of the Department. Many of the

materials that are provided are, however, genealogical materials that are, in part or in whole, protected in the Privacy Act (5 USC 522a) System of Records BIA – 7, Tribal Rolls. Other genealogical materials whose release would constitute an unwarranted invasion of privacy are withheld under Exemption 6 of the Freedom of Information Act unless a requestor can clearly establish a public interest in access to these records which outweighs the degree of invasion of privacy involved. Withholding genealogical materials is consistent with well-established Departmental policies that tribal rolls and related privacy materials should not be released unless there are legal or other compelling grounds to do so.

**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.**

The only materials of a sensitive nature are the genealogical portions and membership lists of the petition. These materials are necessary to establish that the members of the group are of Indian ancestry and that that ancestry is derived from the historic tribe from which the petitioning group is claiming to have evolved. Verification of that ancestry is essential to the basic goal of the acknowledgment criteria to establish that the petitioners have existed as an Indian tribe since first contact with Europeans. The criteria also require that the list of members be complete in order to give the Department a clear definition of who is being acknowledged. The ancestry of the tribe cannot be adequately verified without a complete membership list. The list of members submitted with the petition normally becomes the group's base tribal roll if it is acknowledged. Petitioners are given detailed explanations of the acknowledgment criteria and the rationale for their use. Members of the group provide the information to the group on a voluntary basis, in the process of applying for membership that would provide them benefits.

**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.**
- \* 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.**

The burden on petitioning groups is only a one-time occurrence, but it has a perpetual effect on the Federal government and on the respondent petitioning group. Acknowledgment establishes a permanent government-to-government relationship. The burden hours differ significantly from group to group. The differences result from differences in the size of the group’s membership, the amount of information that may already have been collected by the group or by scholars for other purposes, the length of the group’s history since first sustained contact and the difficulty in locating documentation.

The average burden hours to prepare a petition are 2,075 hours. For 10 groups, this would be **20,750 hours** per year or the amount equivalent to **\$637,855** per year. These annual burden hours are broken down as follows:

	<b>Respondents</b>	<b>Burden hours per response</b>	<b>Annual burden hours</b>	<b>Salary cost (multiplied by \$30.74)*</b>
Conduct the anthropological and historical research relating to the criteria listed in 83.7 (a) - (d) and 83.7 (f) - (g)	10	1,720	17,200	\$ 528,728
Conduct the genealogical work to demonstrate tribal descent (83.7 (e))				
Complete a membership roll of about 1000 members (BIA Form 8306)	10	38	380	\$ 11,681.20
Complete Individual History Chart (BIA Form 8304). On average, it takes 2 minutes per chart X 333** charts.	10	11	110	\$ 3,381.40
Complete the Ancestry Chart (BIA Form 8305). On average, it takes about 30 minutes per chart X 333** charts.	10	166	1,660	\$ 51,028.40
Respond to the technical assistance letter which may require revising or adding to the above existing forms and overall petition.	10	140	1,400	\$ 43,036
<b>Total</b>	<b>10</b>		<b>20,750</b>	<b>\$ 637,855</b>

\*To obtain the hourly rate for tribal government employees, we used \$21.96, the wages and salaries figure for all workers from BLS Release USDL 14-1075, *Employer Costs for Employee Compensation—March 2014*, Table 1, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group*. To account for benefits, we then multiplied this rate by 1.4 in accordance with BLS Release USDL 14-1075, to obtain a total rate of **\$30.74**. See <http://www.bls.gov/news.release/pdf/ecec.pdf>.



\*\* Each tribe that submits a petition has an average of 333 members.

**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 already reflected in item 12.)**

- \* 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 for form processing). 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 is no non-hour cost burden associated with this information collection.

**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.**

The annual cost of the program in the OFA is approximately \$2.1 million (FY 2014). This annual cost is primarily salary and office expenses. The anthropologists, genealogists, historians, and management of the OFA review, analyze, and evaluate the evidence and data provided by the petitioners.

**15. Explain the reasons for any program changes or adjustments in hour or cost burden.**

There are no program changes or adjustments in hour or cost burden.

**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.**

Acknowledgment decisions (proposed, final, and reconsidered final), consist of detailed evaluations under the criteria established in the regulations. A summary of the evaluation is published in the Federal Register. No other publication is made. Copies of the evaluations are available to the public upon request and are distributed widely within the government and to scholars and interested state, local and tribal governments. These decision documents are also placed on the Internet.

**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.**

We will display the OMB Control Number and the expiration date on all forms. Any communications with the tribes with regard to this collection will cite the OMB Control Number and expiration date.

**18. Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."**

There are no exceptions.