

1Supporting Statement A

Federal Acknowledgment as an Indian Tribe, 25 CFR 83

OMB Control Number 1076-0104

REVISION

Terms of Clearance: On June 12, 2014, OMB filed a notice of action on the information collection request submitted with the proposed rule. The notice of action stated that, prior to publication of the final rule, the agency must submit to OMB a summary of all comments related to the information collection contained in the proposed rule and the agency response. The summary and response are in item #8.

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 the 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 Department is revising the Part 83 regulations in response to input that the process needs to be more timely, efficient, transparent, and flexible. The revisions make changes to both the process and criteria by which petitions for Federal Acknowledgment are reviewed, including changes to information collection requirements and burdens.

The Office of Federal Acknowledgment (OFA) within the Office of the Assistant Secretary - Indian Affairs of the Department (AS-IA) implements 25 CFR 83. OFA processes the petition, and the AS-IA has the ultimate decision-making authority whether to acknowledge tribal existence and establish a government-to-government relationship or to deny acknowledging a petitioning group as a federally recognized 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 criteria that the petitioner must meet. The collection of this information is necessary in order for the Department to conduct these reviews, verifications, and evaluations.

Under the new rule, OFA issues the proposed finding, 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. AS-IA issues the final determination.

The authority for acknowledging Indian tribes rests with the Secretary's general authority to deal with Indian Affairs and the Secretary's specific authority to adopt regulations governing Indian Affairs (43 U.S.C. 1457 and 25 U.S.C. 2 & 9).

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 qualifications necessary to be acknowledged as an Indian tribe and to establish a government-to-government relationship with the United States. The OFA professional experts (including anthropologists, genealogists, and historians) use the information to prepare an evaluation of a petitioner under the regulations and issue a proposed finding. If the proposed finding is negative, the petitioner would have the option of seeking a hearing before an administrative law judge (ALJ) within the Office of Hearings and Appeals. The ALJ would review the record, and any input received during the course of a hearing, and issue a recommended decision to the AS-IA. The AS-IA reviews the proposed finding and other input, including any recommended decision by the ALJ, and then issues a final determination.

Petitioners requesting acknowledgment as an Indian tribe must address criteria which are stated in 25 CFR § 83.11, with certain exceptions explained below.

- **83.11(a)** in the current rule requires the petitioner to provide evidence that parties external to it identified it as an Indian tribe from 1900 to the present (and has been applied to require such identifications at 10-year intervals). The new rule retains this requirement, but allows for evidence that the petitioner identified itself as an Indian entity throughout history.
- **83.11(b)** requires the petitioner to demonstrate that the entity has been a distinct community from 1900 to the present. This section provides examples of evidence that may support the criterion. The new rule eliminates the requirement for the petitioner to provide evidence from first sustained contact (the period of earliest continuous non-Indian settlement or governmental presence in the local area) to 1900 in most cases, significantly reducing the documentary burden.
- **83.11(c)** requires the petitioner to demonstrate that it has maintained political autonomy from 1900 to the present. This section provides examples of evidence that may support the criterion. The new rule eliminates the requirement for the petitioner to provide evidence from first sustained contact to 1900 in most cases, significantly reducing the documentary burden.
- **83.11(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 83.11 (c) and 83.11 (e).
- **83.11(e)** requires the petitioner to demonstrate tribal ancestry of the group. It defines a variety of alternative forms of evidence that can be used. 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.
- **83.11(f)** requires the petitioner to demonstrate that it not principally composed of 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.
- **83.11(g)** requires the petitioner to demonstrate that it and its members are not the subject of legislation that forbids the acknowledgment of a Federal relationship. This information is used to determine whether there is a legal prohibition that prevents acknowledgment of a petitioning group through the administrative process. The new rule shifts the burden of providing this information from the petitioner to the Department, relieving an unnecessary public burden.

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 or she 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. 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 petitioner 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 tribal entities are inherently poorly known and little-studied; hence, there are usually few ready-made sources to build upon.

Where studies or judicial proceedings already exist that can provide part of the required information, petitioners utilize them in preparing petitions. Petitioners are aware of research efforts by others in the same area and sometimes may be able to utilize documents that pertain to the history of more than one tribal entity. During technical assistance letters and meetings, the OFA staff directs the petitioner to such 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. The new revisions minimize burden by reducing the time period for which certain criteria must be shown and allowing additional types of evidence for the criteria.

With regard to showing descent (criterion (e)), smaller petitioners have a somewhat smaller burden than larger ones that are otherwise similar in historical character because the smaller the number of members, the smaller the amount of genealogical information it is necessary to collect. However, the Department minimizes this burden to the extent it can by allowing the petitioner to link a later membership list of a historical tribe back to a historical list, and prove generation-by-generation descent from the later membership list.

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 per petitioner and as such cannot be collected less frequently. The Secretary has the responsibility and the authority to determine which unrecognized tribes should be acknowledged as federally recognized 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 petitioners, or by individual members who are unlikely to give full access to their personal family information to government researchers. Even if full access were given, it would commonly require significant travel expenses since the unrecognized entities 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 petitioner, together with the petitioner's members.

Finally, the compilation of the membership list and the genealogical information used by the petitioner to determine eligibility for membership is a central function of the petitioner's own organization. It is information that is, by and large, already compiled by the petitioners and involves sources which are only available to the petitioner 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.**

Comment was taken on this information collection in the proposed rule, as part of the proposed rule, in compliance with OMB regulations. See 79 FR 30766 (May 29, 2014).

We received one submission specifically on the information collections associated with this rule from the Towns of Colchester, Cornwall, Ledyard, North Stonington, Preston, and Roxbury, Connecticut. This submission includes the following comments, which we have responded to here.

Comment 1: The estimate only considers the annual burden hours for petitioners in collecting information to meet the mandatory criteria in preparing a documented petition and responding to a Technical Assistance (TA) review, and fails to consider the burden hours on petitioners for later stages of the process.

Response 1: The commenter is correct that the estimate only covers the burden hours for petitioners in collecting the information to develop and submit the documented petition. Once the documented petition is submitted, the Department opens an administrative case file for the petitioner, and all subsequent information collections are covered by the exemption in 5 CFR §

1320.4(c). The comment alerted the Department to the fact that it had previously included the burden for responding to a TA review; because the TA review occurs following the opening of the administrative case file, this too is covered by the regulatory exemption. As such, the Department has removed this burden estimate. No change is necessary in response to this comment.

Comment 2: The estimate fails to include burden hours for previously denied petitioners that must submit new arguments and evidence in order to request permission from an Office of Hearings and Appeals (OHA) judge to re-petition.

Response 2: The proposed rule contained a provision that allowed previously denied petitioners to seek the opportunity to re-petition. The final rule deletes this provision. This comment is no longer applicable. No change is necessary in response to this comment.

Comment 3: The estimate fails to consider the burden hours on other respondents in the Federal Acknowledgment process, such as State governments, federally recognized tribes, and other petitioners that may submit information in support of or opposition to a petition.

Response 3: The estimate does not consider the burden hours on those who may submit information in support of or in opposition to a petition because such information is voluntarily submitted on after the administrative case file is opened, and is therefore covered by the exemption in 5 CFR § 1320.4(c). No change is necessary in response to this comment.

Comment 4: The preamble to the proposed rule fails to describe the methodology used to arrive at the projections. The estimate is not based on any broad or accurate statistical data because there is no requirement or mechanism in place for petitioners to report annual burden hours.

Response 4: This supporting statement describes the methodology used to arrive at the projections. The supporting statement submitted in conjunction with the proposed rule described the methodology for arriving at the proposed projections, and was available upon request or at www.reginfo.gov. The comment is correct that there is no requirement or mechanism in place for petitioners to report annual burden hours—the Department examined Congressional testimony and reached out to petitioners for help in developing its estimates. No change is necessary in response to this comment.

Comment 5: Most petitioners have a team of individuals working on their petitions, including group leaders and members, legal counsel, and professional researchers (such as anthropologists, historians, and genealogists). If each of these spent a quarter of their time working on a documented petition, the team would have an average of 4,160 annual burden hours. An actual case, including all the information provided throughout the process, including the stages that the Department is not including in its estimate, the team spent approximately 10,000 hours total. This strongly suggests the Department underestimated the annual burden hours with its estimate of 2,075.

Response 5: The burden hour estimate includes only the time that the petitioner itself expended

in preparing the documented petition; the time that all professionals the petitioner had to hire to prepare the petition is accounted for as non-hour cost burden. In our development of the non-hour cost burden, we reached out to several petitioners (one of whom indicated the total hours reached 12,000 total). No change is necessary in response to this comment.

Comment 6: Provisions of the proposed rule will slow down the acknowledgment process by: incentivizing more documented petitions; allowing denied petitioners to re-petition; requiring OFA time to redact petition narratives; providing more extensive technical assistance to petitioners; allowing petitioners to withdraw from the review process; requiring appeals to OHA rather than IBIA; and requiring appeals of a final determination to go to Federal district court.

Response 6: Overall, this comment is not directly related to the Paperwork Reduction Act burdens; however, the Department disagrees with the assertions that the rule will slow down the acknowledgment process for the reasons stated in the preamble.

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 Department solicited input on a discussion draft of the rule, including several provisions that would reduce documentary burden. Input from past and potential petitioners was strongly supportive of these and any changes that could relieve information collection burdens on petitioners.

In preparing this supporting statement revision, the Department reached out to several former and current petitioners to discuss the burden requirements. The following petitioners and former petitioners provided input:

- Loreppa Parkey, Burt Lake Band of Ottawa and Chippewa – Petitioner #101 (former, denied acknowledgment)
 - Worked on petition for approximately 30 years
 - Criterion (e) requirements took 400 hours in contracted services each year
- Kevin Brown, Pamunkey Indian Tribe – Petitioner #323 (current, received a positive proposed finding)
 - The tribe has about 200 members
 - Worked on the petition for approximately 25 years
 - During that time, the tribe spent:

- Hundreds of billable hours for attorneys (\$300/hr) each year; in 2001 for example 800 billable hours were spent on attorneys and another 100 hours on law clerks.
 - Hundreds of hours for historians and anthropologists (charging about \$100/hr) each year
 - Hundreds or thousands of hours for genealogists (a little less than \$100/hr) each year
 - Criterion (e) takes about 50% of the time
- Gary Pierce, Salinan Tribe of Monterey and San Luis Obispo Counties – Petitioner # 139 (current petitioner)
 - About 400 members
 - Work started 18 years ago but was intensive for a 6-8 year period
 - 2 genealogists for 2 years at \$65/hr
 - 3 full time staff (\$25/hr)
 - Legal fees
 - The total cost of the application ranged from \$800,000 to \$1 million, not including the value of a great deal of volunteer work provided by tribal members, and not adjusting for inflation of these historical costs.
- Louise Lampman, St. Francis/Sokoki Band of Abenakis of Vermont – Petitioner #68 (former, denied acknowledgment)
 - About 400 members
 - At least 3 genealogists working full time for 2-3 years
 - 2 attorneys (not full time), one for 10 years, one for 7 years
 - Anthropologists and historians
 - Volunteer work by community members
 - Total cost of over \$1 million, not including the value of thousands of hours of volunteer time or adjusting for inflation

We used this input to refine our estimates of burden hours and also to estimate non-hour cost burden, which previously had been reported as \$0.

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.

Records provided to the OFA are available for review by the public and interested parties to acknowledgment decisions and will be posted on the Internet for transparency; however, the Department will not post genealogical materials and, if the petitioner provides a version with

redactions of confidential information, the Department will post only the redacted version for public viewing. Many of the petition materials that are provided are, 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 originated. Verification of that ancestry is essential to the basic goal of the acknowledgment criteria to establish that the petitioner descends from a historical Indian tribe. 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 with 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 a number of factors, including but not limited to: 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 historical documentation.

The average burden hours for the petitioning group to prepare a petition are 1,436 hours.¹ The Department estimates that, in any given year, approximately 10 petitioners are actively working on preparation of a petition. For 10 groups, this would be **14,360 hours** per year or the amount equivalent to **\$433,099** in burden hour cost per year. These annual burden hours are broken down as follows:

Current IC §	New IC §	Description of Requirement	Respondents	Burden hours per response	Annual burden hours	Salary cost (multiplied by \$30.16)*
83.7 (a) - (d) 83.7 (f) - (g); 83.7 (e)	83.21 (referring to 83.11 (a) - (d) 83.11 (f) - (g)); 83.21 (referring to 83.11 (e))	Conduct the anthropological and historical research relating to the criteria (a)-(d) and (f)-(g); Conduct the genealogical work to demonstrate tribal descent for criterion (e)	10	1,221	12,210	\$ 368,254
83.7 (e)	83.21	Provide past membership rolls and complete a membership roll of about 333** members (BIA Form 8306)	10	38	380	\$ 11,461
83.7 (e)	83.21 (referring to 83.11 (e))	Complete Individual History Chart (BIA Form 8304). On average, it takes 2 minutes per chart X 333** charts.	10	11	110	\$ 3,318
83.7 (e)	83.21 (referring to 83.11 (e))	Complete the Ancestry Chart (BIA Form 8305). On average, it takes about 30 minutes per chart X 333** charts.	10	166	1,660	\$ 50,066

¹ This does not address contracted services, such as genealogists retained on a contract basis. Contracted services are addressed in no. 13.

83.10(b)	83.27	Technical assistance (covered by exemption)^	0	0	0	0
	Total		10	1,436	14,360	\$ 433,099

*To obtain the hourly rate for tribal government employees, we used \$21.54, the wages and salaries figure for all workers from BLS Release USDL 13-2349, *Employer Costs for Employee Compensation—December 2013*, 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 13-2349, to obtain a total rate of **\$30.16**. See <http://www.bls.gov/news.release/pdf/ecec.pdf>.

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

^Note: The burden hours include only the time it takes to prepare the documented petition prior to submission to the Department. Once the petitioner submits a petition, the Department opens an administrative case file for the petitioner and there may be back-and-forth communications between the Department and petitioner that result in the petitioner providing additional information (e.g., in response to the Department’s technical assistance review identifying evidentiary gaps in the petition, as required by § 83.27). In addition, members of the public may wish to submit comments and evidence regarding the petition once a case file is opened, because the Department announces its receipt of the petition and the opportunities for members of the public to weigh in. Any such additional information is not covered by this estimate of burden hours because it occurs after an administrative case file has been opened. See 5 CFR 1320.4(c).

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.**

Input provided on the burden hours in response to outreach under number 8 of this supporting statement indicate that petitioners routinely purchase outside expert services to assist in preparation of their petitions:

- Burt Lake Band of Ottawa and Chippewa – Petitioner #101 (former, denied acknowledgment), which has approximately 300 members according to the final determination, stated that criterion (e) took 400 hours in contracted services a year, and that it took about 30 years to prepare the petition (12,000 hours). This petitioner stated that it took “several million dollars” to prepare the petition and other input stated that meeting the requirements for criterion (e) is about half of the burden. Based on this input, we doubled the estimate the total non-hour cost to be **\$1,205,520.***
- Pamunkey Indian Tribe – Petitioner #323 (current, received a positive proposed finding) , which has approximately 200 members, looked at an invoice for the year 2001 alone in which there were 800 billable hours for attorneys alone (at \$300 / hour at that time), and another 100 hour for law clerks; there were hundreds of other hours for historians, for genealogists, anthropologists, etc. which billed for about \$100 per hour (or a bit less), that the criteria took looked at an invoice for year 2001 as an example and stated that there were approximately 800 billable hours for attorneys each year, 100 hours for law clerks, and hundreds of hours for historians, anthropologists and genealogists. Based on this input, we estimate \$350,000 each year in contracted services:
 - o \$240,000 – 800 billable hours for attorneys (\$300/hr)
 - o \$10,000 – 100 hours for law clerks (at an estimated \$100/hr)
 - o \$50,000 – Hundreds of hours (estimate 500 hours) for historians and anthropologists (\$100/hr)
 - o \$50,000 – Hundreds of hours (estimate 500 hours) for genealogists
 Pamunkey further indicated that it took about 25 years to prepare the petition and that the total cost was “several million.” Assuming 2001 is representative of each of the 25 years, we estimate the total non-hour cost to be **\$8,750,000.**
- Salinan Tribe of Monterey and San Luis Obispo Counties – Petitioner # 139 (current petitioner), which has approximately 400 members, stated that two outside genealogists, three full time staff, and attorneys are required to prepare the documented petition and that it expended approximately **\$800,000 to \$1,000,000** in preparing the petition.
- St. Francis/Sokoki Band of Abenakis of Vermont – Petitioner #68 (former, denied acknowledgment), which has approximately 400 members, stated that contracts were necessary for three or more genealogists, attorneys, anthropologists, and historians and

that they expended “well over” **\$1,000,000** to prepare the petition.

While petitioners prepare their petitions over several years, the annual non-hour cost is counted as of the year the petition is submitted, and includes all costs incurred in all prior years preparing the petition. The estimates for the cost of contracted services vary, with most of these example estimates in the \$1 million range, and one at almost \$9 million. For this reason, we are taking the average – \$2,963,880— as a representative cost for contacted services.

In addition, respondents may incur significant copying costs. One respondent estimated that such costs totaled \$30,000. Together, the annual non-hour cost burden is estimated at \$2,993,880, or rounded up, \$3,000,000 per petitioner. However, we estimate that changes the rule revisions will make to the process will decrease the necessity for approximately 30% of these costs. This estimate is based on the reductions of evidence needed for certain criteria (see explanation of hour cost burden in number 15, below) plus revisions that would obviate the need to research the historical tribe roll prior to a roll prepared by a Secretary or 1900. As such, we estimate the non-hour cost burden will be approximately **\$2,100,000** or \$21,000,000 total.

*To obtain the hourly rate for contracted experts, we used \$35.88, the wages and salaries figure for Management, profession, and related workers from BLS Release USDL 13-2349, *Employer Costs for Employee Compensation—December 2013*, Table 2, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by occupational and industry group*. To account for benefits, we then multiplied this rate by 1.4 in accordance with BLS Release USDL 13-2349, to obtain a total rate of **\$50.23**. See <http://www.bls.gov/news.release/pdf/ecec.pdf>.

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 2013). This annual cost is primarily salary, contract, 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.

Non-hour Cost Burden:

Based on testimony by petitioners before Congress and input received on the discussion draft of the rule that the process is burdensome, the Department reached out to several former and current petitioners for specific input on the burden hours and non-hour costs. Based on this input, respondents routinely acquire the expert services of genealogists, historians, anthropologists, and attorneys to assist in preparation of their petitions. Prior estimates of non-hour cost did not account for these contracted services. For this reason, we first adjusted the non-hour cost estimates to reflect this input.

Hour Cost Burden:

With regard to hour burden, which reflects time spent by the respondents themselves to research, collect, and provide information for the petition, we made appropriate adjustments to reflect the decreases in burden that will result from program changes associated with revising the Federal Acknowledgment regulations. Based on input provided by past and present petitioners the time it takes to prepare the documented petition for each of the criteria can be distributed as follows:

(a) 12.25 % ; (b) 12.25 % ; (c) 12.25 % ; (d) 12.25 %; (e) 50 %; (f) 0.5 %; and (g) 0.5 %.

In the past, we had estimated that it takes 2,075 hours total to prepare a response, including 1,720 hours to provide information for each of the criteria and 355 to provide forms and respond to technical assistance.

The 1,720 hours could be broken down into the following number of hours per criterion:

(a) 210.7 hours; (b) 210.7 hours; (c) 210.7 hours; (d) 210.7 hours; (e) 860 hours; (f) 8.6 hours; (g) 8.6 hours

The new rule’s revisions to these criteria reduce the hour burden from 1,720 to 1,221, as explained in the following table.

Criterion	Original burden estimate (hours) for criterion	Changes (hours) for criterion	New burden estimate (hours) for criterion	Reasoning
(a) (including letter of intent submission)	210.7	-53	157.7	The elimination of the letter of intent will result in an additional 1 hour reduction on average, resulting in a burden of 209.7. In addition, the final rule’s revision to criterion (a) will reduce the burden of collecting required evidence by approximately ¼ because the final rule now allows an additional type of evidence—contemporaneous identifications by the petitioner itself—rather than just external identifications. This will result in a reduction of approximately 52 hours, which in total with the elimination of the letter of intent will result in a reduction of approximately 53 hours.
(b)	210.7	-132.7	78	The elimination of the need to research and produce documentation before 1900 for criteria (b) and (c) will result in an approximate reduction of 78 hours each (assuming proof was required back to 1800, or 214 years, on average, now requiring only 114 years, resulting in a reduction

				of 53% for each of (b) and (c)). In addition, because information from 1900 forward is less onerous to find than older information, we have added an additional 10% reduction, for a total reduction of 63% (or 132.7 hours).
(c)	210.7	-132.7	78	(See above reasoning for (b)).
(d)	210.7	0	210.7	There is no change to the burden for (d).
(e)	860	-172	688	Revisions to criteria (e) specify that the Department will rely on a Federal roll or, in the absence of such a roll, on other reliable evidence available in the historic period (as late as 1900). This clarification may reduce the need to collect information stretching far back through the 1800's or even 1700's. Much of this reduction is accounted for in non-hour cost (see above), but we also estimate a reduction in hour burden here, because while the petitioner will still have to provide information on each of its members, the volume of ancestral evidence the petitioner produces or reviews from the genealogist or other expert may be lower. We estimate an average reduction of 20% (or 172 hours), based on the fact that it may be possible to rely on evidence as late as 1900 and such evidence is less onerous to find than older evidence.
(f)	8.6	0	8.6	There is no change to the burden for (f).
(g)	8.6	-8.6	0	The new rule eliminates the requirement to show (g).
Total	1720	-499	1,221	(Rounded)

In addition, the burden of responding to technical assistance review has been removed because this burden occurs after the administrative case file has been opened, resulting in an additional decrease of 140 burden hours per respondent.

Together, the overall result of the new rule is a net decrease of 639 burden hours (499 + 140) per respondent (**a net decrease of 6,390 hours total**) and a decrease in salary cost of \$192,722. The adjustments and program change are shown in the table below.

Current IC §	New IC §	Description of Requirement	Respondents	Current Annual Burden hours	Current Annual Burden Hours	New Burden hours per response	New Annual burden hours	Changes in Annual Burden Hours	New Salary cost (multiplied by \$30.16)*	Changes in Salary Cost
83.7 (a) - (d) 83.7 (f) - (g); 83.7 (e)	83.21 (referring to 83.11 (a) - (d) 83.11 (f) - (g)); 83.21 (referring to 83.11 (e))	Conduct the anthropological and historical research relating to the criteria (a)-(d) and (f)-(g); Conduct the genealogical work to demonstrate tribal descent for criterion (e)	10	1,720	17,200	1,221	12,210	- 4,990	\$ 368,254	- \$150,498
83.7 (e)	83.21	Provide past membership rolls and complete a membership roll of about 333** members (BIA Form 8306)	10	38	380	38	380	0	\$ 11,461	\$ 0
83.7 (e)	83.21 (referring to 83.11 (e))	Complete Individual History Chart (BIA Form 8304). On average, it takes 2 minutes per chart X 333** charts.	10	11	110	11	110	0	\$ 3,318	\$ 0
83.7 (e)	83.21 (referring to 83.11 (e))	Complete the Ancestry Chart (BIA Form 8305). On average, it takes about 30 minutes per chart X 333** charts.	10	166	1,660	166	1,660	0	\$ 50,066	\$ 0
83.10(b)	83.27	Technical assistance (covered by exemption)^	0	140	1,400	0	0	-1,400	0	- \$ 42,224
	Total		10	2,075	20,750	1,436	14,360	-6,390	\$ 433,099	- \$ 192,722

*To obtain the hourly rate for tribal government employees, we used \$21.54, the wages and salaries figure for all workers from BLS Release USDL 13-2349, *Employer Costs for Employee Compensation—December 2013*, 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 13-2349, to obtain a total rate of **\$30.16**. See <http://www.bls.gov/news.release/pdf/ecec.pdf>.

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

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.