

## **Supporting Statement A**

### **APPLICATION TO WITHDRAW TRIBAL FUNDS FROM TRUST STATUS, 25 CFR 1200**

**OMB Control Number 1035-0003**

#### **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.**

In October 1994, Congress enacted 25 U.S.C. Chapter 42, Sub-Chapter 11, *The American Indian Trust Fund Management Reform Act of 1994*, (“Reform Act”) that authorizes Indian tribes to voluntarily withdraw their funds from trust status within the Department of the Interior and manage these funds on their own. The collection of certain information from a tribe by the Office of the Special Trustee for American Indians (OST) is required in order for OST to review and approve a tribe’s application to withdraw its trust funds out of trust status for self-management or investment under the Reform Act. This information collection, codified under 25 Code of Federal Regulations (CFR), Part 1200, regulates the application requirements for the withdrawal of tribal funds from trust status. The Reform 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 Reform Act and its implementing regulations; 25 CFR, Part 1200, 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 Reform Act describe the tribal application process for the withdrawal of funds from trust status. This tribal application for withdrawal is a necessary requirement for the tribes to take their funds out of trust status under the Reform Act. The tribal application provides OST specific information about how a tribe intends to manage its funds once they are withdrawn from trust status. This application process allows OST to assess whether the tribe's proposed management of its funds is reasonable and provides protection against a substantial loss of principal.

OST's actual past use of the information provided by a tribe in its trust fund withdrawal application has been to assess whether the Secretary has sufficient information to approve a tribe's request to withdrawal its trust funds from trust status for self-management. OST conducts this assessment of the tribe's application through the following:

1. Determining a tribe's compliance with the required application contents in 25 CFR, 1200.14, *What must the tribal management plan contain?*
2. Evaluating the contents of the tribe's management plan pursuant to 25 CFR, 1200.16, *What criteria will be used in evaluating the management plan?*), to determine:
  - a. Completeness of the management plan
  - b. Whether the management plan is approved by the appropriate tribal governing body
  - c. Whether the management plan is reasonable
  - d. Whether the private-sector entities/individuals managing the tribe's funds have the experience and capability to manage the funds

- e. Whether the entities have the ability to compensate the tribe if the entities are found liable for failing to comply with the tribe's management plan
- f. Whether the tribe has the experience to manage the investments made by the entities above
- g. Whether the tribe has internal audit and control systems for overseeing and monitoring its investment activities
- h. Whether the tribe's portfolio has adequate protection against substantial loss of principal
- i. An assessment regarding the inherent riskiness of the proposed tribal investments
- j. Assessing the tribe's projected need for income from the proposed investments
- k. Determining the likelihood the management plan will be followed

The Application process requests general information as follows:

Name of Tribe

Date

Address of Tribe

Phone Number

Identification of funds to be withdrawn

Approximate dollar amount of the funds to be withdrawn

Name and title of person submitting the application

Type of fund to be withdrawn

25 CFR, 1200.13 also require a tribe's application to include the following:

1. Proof that the Tribe's membership has been notified
2. Tribal resolution
3. Formal agreement between the Tribe and the investment entity
4. Legal opinion by the tribe's attorney
5. Results of a tribal referendum (if required by the tribe's constitution)
6. If judgment or settlement funds, a copy of the act setting out the use of the funds, and
7. A management plan

These documents are required to enable the Government to review and approve the tribe's plans for the management of the funds, and to ensure that a tribe is aware that once the funds are withdrawn from trust status, the Federal Government has no further liability for the funds. These documents contain 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 Management Plan 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 The Office of Management and Budget (OMB) to provide the tribes with a benefit that was not available prior to enactment of the Reform Act. The information provided to OST is required to obtain a benefit, and the benefit obtained will be the release of funds out of trust status to the tribe for its own management or investment.

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

**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.**

OST's information collection process for trust withdrawal applications is not automated and currently does not use electronic submissions of applications. 25 CFR, 1200.13 cites that "a tribe must submit four copies of its application and attachments listed in this section to Director, Office of External Affairs . . ."

However, information regarding the withdrawal of tribal trust funds from trust status and to request an information packet regarding the application process is available at [https://www.doi.gov/ost/tribal\\_beneficiaries/funds](https://www.doi.gov/ost/tribal_beneficiaries/funds)

Lastly, a tribe may request current information from its OST Fiduciary Trust Officer regarding their trust accounts from OST's automated Trust Funds Accounting System.

**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 entire body of information requested under this collection is not duplicated elsewhere in OST. In addition, no other Federal Agency, including the Bureau of Indian Affairs, is authorized to release funds from trust status; therefore, such information should not be collected elsewhere.

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

The collection of information is required from tribal governments and therefore has no impact on 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.**

Compliance with the Reform Act, which authorizes tribes to manage and invest

their own funds, once out of trust status, would be hindered, if not rendered ineffectual, if this information codified in 25 CFR, 1200 was not collected by OST. OST would not be in compliance with the Reform Act and the governing regulations and tribes would not receive the benefit accorded them under the Reform Act.

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.**

25 CFR, 1200.13 cites that “a tribe must submit four copies of its application and attachments listed in this section to Director, Office of External Affairs . . .” The four copies, their destination specified under 25 CFR, 1200.13, exceed one original and two copies as listed above. There are no other special circumstances that require this 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.**

**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.**

A notice asking for comments on this information collection was published in the Federal Register on November 26, 2018 at 83 FR 60444. No public comments were received in response to this notice.

Since the current OMB 1035-0003 (2016-2019) information collection authorization has been in effect there have been two tribes that have withdrawn a portion, or the entirety, of their trust funds out of trust status for self-management or investment pursuant to 25 CFR, 1200, Subpart B.

San Carlos Apache Tribe and Gila River Indian Community. Gila River declined to provide any feedback on the process; however, here are the responses we received from San Carlos' Water Rights Trust Funds Director:

1. Yes, the information requested was necessary.
2. Yes, once the funds were transferred the funds were immediately reinvested.
3. The timing of the actual response and transfer went quickly.
4. The checklist provided was helpful to ensure the necessary documents were submitted.
5. I would suggest a timeline and possibly a checklist available online so that Tribes can determine whether it is a good option for them.

In light of the reasons described above there is not any significant basis in which to change the 750 hour burden estimate as provided in the 2016-2019 Information Collection renewal process.

**9. Explain any decision to provide any payment or gift to respondents, other than**

**remuneration of contractors or grantees.**

No payments or gifts were provided to the respondent or the Tribe.

**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 been afforded confidentiality with regard to information concerning their tribal 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 written 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 information 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. However, this information collection does pertain to confidential financial information pertaining to tribes' trust fund accounts. This trust fund tribal account information is required because its acquisition enables OST to review and approve trust withdrawal applications necessary for tribes to manage these funds, out of trust status, under the Reform Act. Confidential financial information pertaining to tribes is not shared with anyone outside OST or the Department of the Interior without written permission from the affected tribes. The information collection is only used to enable OST to approve the tribes trust withdrawal applications.

**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.

OST believes that it may receive one application to withdraw tribal funds from trust status each year for this information collection renewal approval period.

Based on information received during the previous renewal cycle, OST believes that it takes approximately 750 hours for a respondent tribe to research, develop and submit a complete and adequate trust withdrawal application package leading to OST approval of a tribe's trust withdrawal application. This results in a total burden of 750 hours (One trust withdrawal application every year x 750 hours per application = 750 hours) for this information collection. This results in an annualized burden of 750 hours. A description of the stages involved in the preparation by a tribe of application package is listed below:

1. Perform general research and coordination with key personnel regarding the application for withdrawal requirements
2. Notify tribal membership of the intent to withdraw the funds
3. Prepare a tribal resolution
4. Develop a formal agreement between the tribe and the investment entity
5. Prepare a legal opinion by the tribal attorney
6. Prepare a tribal referendum
7. Obtain a copy of a settlement act or plan
8. Develop a tribal management plan

The average current hourly wage for an attorney in the private sector (usually it is a tribe's attorney either in-house or by contract that manages the tribe's trust withdrawal application process), taken from the Bureau of Labor Statistics, is \$68.12 ([http://www.bls.gov/oes/current/oes\\_nat.htm#23-0000](http://www.bls.gov/oes/current/oes_nat.htm#23-0000)). This hourly wage is multiplied by a factor of 1.4 to include benefits, yielding a total hourly rate of \$95.37 per hour. (Benefits rate derived from Bureau of Labor Statistics (BLS))

News Release USDL-19-0449, dated March 19, 2019, “Employer Costs for Employee Compensation – December 2018” This sum multiplied by the expected number of hours to complete a trust withdrawal application at 750 hours = \$71,527. The annualized burden dollar equivalent is also \$71,527.

**13. Provide an estimate of the total annual non-hour cost burden to respondents or record keepers 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 are no additional costs to tribal respondents or tribal record keepers, which are not already listed in our response to question 12. The costs we show, such as office supplies, business machine usage, internal communications between tribal staff, tribal subject matter experts and tribal elected officials within a tribe are considered to be part of the usual cost of doing business for a 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.**

To arrive at an annualized cost estimate OST will employ the receipt of one trust withdrawal application every year with each application requiring an average of 312 hours for review and approval. The total cost to OST to review and approve a single trust withdrawal application is expected to be \$34,131.

Listed below are costs and hours for specific OST personnel participating in the application review process. OST added to the overall salary cost, based on 2019 federal GS salaries, a multiplier of 1.6 to account for benefits. For more complex applications, such as those where multiple trust accounts are to be withdrawn simultaneously, additional OST subject matter experts may be needed for review assistance. Such assistance could increase the cost beyond what is reported below:

<u>1. In-Depth review of application by key personnel with primary responsibility</u>	<b>COST</b>	<b>HOURS</b>
Acting Director, Office of External Affairs, GS-14, step 4* \$128,444 per year, or \$62 per hour: 40		\$2480
Program Analyst, Office of External Affairs, GS-14, step 10* \$152,352 per year, or \$73 per hour	\$2336	32
Regional Trust Administrator, SES \$169,292 per year, or \$81 per hour	\$2592	32
Fiduciary Trust Officer, GS-14, step 8 \$133,332 per year, or \$64 per hour 32		\$2048
Solicitor, Department of the Interior, GS-15, step 10* \$166,500 per year, or \$80 per hour: 16		\$1280
Director, Office of Trust Funds Investments, GS-15, Step 2 \$127,627 per year, or \$61 per hour:	\$976	16
Investment Officer, GS-14, step 9 \$132,499 per year, or \$64 per hour	\$1024	16
 <u>2. Review and Meetings between team members assigned to review applications for withdrawal</u>		
Director, Office of External Affairs, GS-14, Step 14* \$128,444 per year, or \$62 per hour: 8		\$496

Program Analyst, Office of External Affairs, GS-14, Step 10* \$152,352 per year, or \$73 per hour 16		\$1168
Regional Trust Administrator, SES \$169,292 per year, or \$81 per hour	\$1296	16
Fiduciary Trust Officer, GS-14, Step 8 \$133,332 per year, or \$64 per hour	\$1024	16
Solicitor, Department of the Interior, GS-15, Step 10* \$166,500 per year, or \$80 per hour: 8		\$640
Director, Office of Trust Funds Investments, GS-15, Step 2 \$127,627 per year, or \$61 per hour: 8		\$488
Investment Officer, GS-14, Step 9 \$132,499 per year, or \$64 per hour	\$1024	16
3. <u>OST Senior Management Review</u>		
Acting Special Trustee, SES* \$192,586 per year, or \$93 per hour	\$930	10
Deputy Special Trustee – Field Operations, SES \$190,109 per year, or \$91 per hour	\$910	10
Acting Director, Office of External Affairs, GS-14, Step 4* \$128,444 per year, or \$62 per hour: 10		\$620
<b>Total Before benefits Multiplier Applied:</b>	<b>\$21,332</b>	<b>312hr</b>
<b>Application of 1.6 multiplier to account for Benefits</b>	<b>\$12,799</b>	
<b>Grand Total:</b>	<b>\$34,131</b>	<b>312hr</b>

\* Position located in Washington, DC

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

There are no program changes or adjustments for this information collection.

**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.

**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 OMB Control number and expiration date will be displayed on the application.

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

There are no exceptions requested to the "Certification for Paperwork Reduction Act Submissions" certification statement.