

# **1Supporting Statement A**

## **Federal Acknowledgment as an Indian Tribe, 25 CFR 82 & 83**

### **OMB Control Number 1076-0104**

#### **Revision**

**Terms of Clearance:** The October 12, 2018 Notice of Action stated: In accordance with 5 CFR 1320, the information collection is approved for three years. Since a 2015 regulatory change has potentially reduced burden on petitioners, when the Agency submits a request for renewal, it must include evidence of consultation with any new petitioners to ensure the supporting statement's accuracy on availability of data, frequency of collection, clarity of instructions, accuracy of burden estimate, relevance of data elements, and similar PRA matters.

Nobody has successfully petitioned under the 2015 regulations to date; however, the response to Question 8 provides the results of our consultation with potential petitioners on the information collection.

#### **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 573 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 Federal Acknowledgment of Indian Tribes*). 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 revised the Part 83 regulations which became final and effective on July 31, 2015 (2015 regulations). To begin the process, a group must submit a "documented petition" as required under the 2015 regulations.

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 documented 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 regulations, 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, 25 U.S.C. 2, and 25 U.S.C. 9).

This revision accounts for updates to regulations that address Federal acknowledgment of Alaska Tribes under the "Alaska IRA." In 1936, Congress authorized certain Alaska Native groups having "a common bond of occupation, or association, or residence within a well-defined neighborhood, community, or rural district" to organize under the Indian Reorganization Act (IRA). The Department had never promulgated regulations implementing the Alaska IRA's organization provision. Rather, the Department has evaluated Alaska IRA petitions on a case-

by-case basis. The new regulation addressing recognition of Tribes under the Alaska IRA (25 CFR Part 82) tracks the current federal acknowledgment regulations codified in 25 CFR Part 83 (Part 83), with minor modifications relevant to the Alaska IRA criteria for acknowledgment.

**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 § 82.11 and 83.11, with certain exceptions explained below.

- **82.11(a) and 83.11(a)** requires the petitioner to provide evidence that it has been identified as an Alaska Native entity on a substantially continuous basis since May 1, 1936 (§ 82.11(a)) or 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) (§ 83.11(a)). The 2015 regulations allow for evidence that the petitioner identified itself as an Indian entity throughout history.
- **82.11(b) and 83.11(b)** requires the petitioner to demonstrate that the entity has been a distinct community from 1936 to the present (§ 82.11(b)) or 1900 to the present (§ 83.11(b)). This section provides examples of evidence that may support the criterion.
- **82.11(c) and 83.11(c)** requires the petitioner to demonstrate that it has maintained political autonomy from 1936 to the present (§ 82.11(c)) or 1900 to the present (§ 83.11(c)). This section provides examples of evidence that may support the criterion.
- **82.11(d) and 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 (c) and (e).
- **82.11(e) and 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. Each of these forms is provided as an optional template to assist petitioners in understanding the information that is required. Most petitioners choose to submit this information in their own formats, often in Excel spreadsheets or using family tree software. Petitioners may choose to use none, all, or only one or two of these forms. With this revision, OFA has added “Optional Template” at the title of each form to clarify that these formats are not required. The data elements on these forms are described below.

o 8304 (Individual History Chart)

- *Use of Form:* OFA uses information on this optional form to identify each member’s immediate family, which assists in determining whether criterion (b) of the regulations has been met. Criterion (b) requires that the petitioner demonstrate that it comprises a distinct community by including first-degree relatives in calculating participation in community activities. The information on this form is also used to assist in determining descendency from a historical Indian Tribe or Alaska IRA-eligible entity, which is criterion (e) of the regulations. *See* 25 CFR 82.11(a), (b), and (e) and 83.11(a), (b), and (e).
- *Need for Data Elements:*
  - Names of spouse, children, parents, siblings: Necessary to identify who is part of a family unit and how the family unit interrelates to other family units, if at all, within the petitioning group.
  - Sex of children, parents, siblings: Necessary for genealogical practices and software to track biological descendency through maternal and paternal lines, which necessarily require indication of sex.

o 8305 (Ancestry Chart)

- *Use of Form:* OFA uses information on this optional form to identify the member’s ancestors so that OFA genealogists can verify that ancestry traces back to members of a historical Indian Tribe, as required by criterion (e) of Part 83 of the regulations or back to members of an Alaska IRA-eligible entity that existed on May 1, 1936, as required by criterion (e) of Part 82 of the regulations. Members need only provide information related to the branch (maternal or paternal) through which they claim descent from members of the historical Indian Tribe.
- *Need for Data Elements:*
  - Names, dates and places of birth, dates and places of marriage, and dates and places of death are necessary for genealogists to sufficiently identify individuals and their biological and familial relationships. This information is especially useful to distinguish individuals in the past who have the same or similar names. This information is needed for OFA genealogists to verify that ancestry

traces back to members of an Alaska IRA-eligible entity that existed on May 1, 1936, or of a historical Indian tribe, as required by the regulations at 25 CFR 82.11(e) and 83.11(e), respectively.

o 8306 (Membership List)

- *Use of Form:* OFA uses information on this optional form to establish who members of the petitioning group are, so that it is clear whose ancestry needs to trace back to members of the historical Indian Tribe for criterion (e), but also for other criteria, to determine what proportion of members are participating in as a distinct community under criterion (b) and are subject to the petitioner’s political authority under criterion (c).
- *Need for Data Elements:*
  - Name, address, and birth date of each member are required by 25 CFR 82.21 and 83.21 and allows OFA to sufficiently identify each individual and verify identities by the combination of name and birthdate, and to show that the petitioning group maintains current contact information for each individual.
  - Sex and birth place of each member as well as name, birth place, and birth date of parents are included in a shaded portion as optional on this form because while this information may not be necessary to identify the individual member, this information can assist OFA in cross-referencing with other information (such as genealogical information) to confirm identities.
- **82.11(f) and 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.

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).

**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.**

Sections 82.30 and 83.20 provide directions to petitions to submit their documented petitions to: Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attention: Office of Federal Acknowledgment, Mail Stop 4071 MIB, 1849 C Street NW, Washington, DC 20240. This information is also included on the OFA home page at: <https://www.bia.gov/as-ia/ofa>. 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. In addition, OFA is working on developing electronically fillable versions of its optional template forms 8304 (Individual History Chart), 8305 (Ancestry Chart), and 8306 (Membership List), to further assist in electronic submission.

**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. 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.**

A 60-day request for public comments was published in the proposed rule at 85 FR 37 (January 2, 2020). An additional request for comments was requested at 85 FR 26902 (May 6, 2020). Interior did not receive any responses on the information collection.

**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.**

Because the Part 82 regulations are new, there are no petitioners to consult on the information collection; but the Department solicited comments as part of the rulemaking process for the proposed Part 82. *See* 85 FR 37 (January 2, 2020); 85 FR 26903 (May 6, 2020). No responses to the request for comment on the information collection was received.

The Part 83 regulations were also recently revised in 2015 and as a result of input received during the rulemaking process, the final rule included several changes to the criteria for Federal acknowledgment that were aimed at reducing the burden on petitioners (establishing that petitioners need to prove criteria (b) and (c) only from 1934 to the present, rather than beginning



at the period of first sustained contact with non-Indians). OFA has not received any new documented petitions (i.e., complete petitions) thus far under the 2015 regulations; however, OFA is aware of two petitioners that are preparing documented petitions under the 2015 regulations.

### **Potential Petitioners**

- Schaghticoke Indian Tribe has attempted to petition under the 2015 regulations, but OFA determined their documented petition was incomplete. A representative of the Schaghticoke Indian Tribe provided input stating that access to information was timely, and stated the following:
  - Schaghticoke has so far spent at least 2,500 hours gathering and compiling documents.
    - *Response:* The Schaghticoke's estimate of 2,500 hours is approximately 1,000 hours more than our estimate, but Schaghticoke claims it has been pulling its petition together since approximately 2004, when OFA denied the petition of what they refer to as a splinter group. Given this unique circumstance and the fact that the other group who responded with input estimated a number of hours less than our estimate, we determined that an increase to our estimate is not appropriate at this point.
  - Schaghticoke's main concern was that they have had to resubmit the entire documented petition each time OFA discovered an item of information was missing, rather than OFA allowing them to supplement the petition.
    - *Response:* OFA has been advised by legal counsel that once a petition is submitted, it becomes a Federal record, and cannot be returned to the petitioner. OFA does not allow petitioners to submit their petitions in a piecemeal fashion because the requirement for OFA to receive a single, complete petition is required to treat all petitioners fairly and require everyone to meet the same expectation of submitting a single documented petition, with a certification, signed and dated by the petitioner's governing body, stating that it is the petitioner's official documented petition, as required by § 83.21. Section 83.21 of the regulations requires that a petitioner submit "[a] concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets each of the criteria in § 83.11, except the Congressional Termination Criterion (§ 83.11 (g)), " along with "[s]upporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets each of the criteria in § 83.11." For a submission to qualify as a "documented petition" under the regulations, the submission must contain all of these elements. If petitioners instead were to submit their materials in piecemeal fashion, the "concise written narrative," which is a key document for the evaluation, falls out of sync with the new materials and claims being submitted. The new, piecemeal submissions are sometimes different, mutually exclusive, or contradictory. It can

become unclear to OFA's researchers which claim or evidentiary documents should be evaluated for a finding.

- Fernandeno Tataviam Band of Mission Indians had petitioned under the 1994 version of the regulations and elected to withdraw the petition to prepare a petition under the new 2015 version of the regulations. A representative of the petitioner provided input on the information collection, which is summarized as follows:
  - Availability of data required for a petition: While the 2015 regulations eliminated the need for some data before 1934 and 1900, the documenting of a centralized tribal government before 1900 and the extraction of a tribal roll from sometime in the pre-1900 period is a major and necessary step in the present acknowledgement process. Documenting a centralized tribal government requires primary research sources and interpretations by individuals witnessing directly during the historical period. Many of the source materials are observations by non-Indian witnesses who very often have limited grasp of the history or government of a particular tribe. Many anthropologists and historians have written and analyzed social and political order in southern California utilizing primary data. The data before 1934 is often scarce. If OFA broadened its interpretation of centralized tribal governments to better address the diversity of Indian social and political organizations, then the availability of data would expand.
    - *Response:* The need to establish the historical Indian tribe from which the petitioner and petitioner's members descend is a central part of the acknowledgment process to establish that a sovereign body is being acknowledged. Unfortunately, OFA is unable to loosen the requirements to address a scarcity of data, as this data is necessarily integral to the solemn act of acknowledging a sovereign Tribe.
  - Clarity of instructions or formats for the data requested: The instructions as now written can be challenging to follow. More in-person discussion between OFA staff members and tribal positions may have been helpful to avoid misunderstandings. Additional informal technical assistance may have benefited the Tribe's understanding of what constituted acceptable evidence and fostered a better understanding of terms and concepts.
    - *Response:* The instructions as written were established by regulation, and technical assistance is provided by regulation. OFA is unable to provide an informal back-and-forth as to what individual items of evidence may be sufficient because each item of evidence is interrelated to other items of evidence in the petition and OFA ultimately must review the petition as a whole.
  - Data elements required for a petition: Obtaining data, particularly primary source data can be particularly challenging. Some repositories, such as those that are privately owned, as is the case with many California mission records, can be inaccessible. For example, the Tribe attempted to access records at the Archdiocese of Los Angeles Archival Center that the Mission San Fernando and failed for many years so the Tribe moved to other mission sources. Other repositories were closed for several years as well. In many instances, the record remains sparse and non-specific.

- *Response:* The data elements are established by regulation and, as noted above, OFA is unable to loosen the requirements to address a lack of data availability, as this data is necessarily integral to the solemn act of acknowledging a sovereign Tribe.
- Burden hours: Contractual personnel worked about 910 hours on Acknowledgment in any given year. Tribal leadership and staff have worked about 450 hours on Acknowledgment any given year. Average total: 1,360 hours per year.
  - *Response:* This estimate is in line with our original estimated average annual burden estimate of 1,516 hours, which we increased to account for two work-weeks of technical assistance based on the group’s request that additional technical assistance be provided.

During the drafting of the 2015 Part 83 regulations, the Department solicited input on the rule, including several provisions that would reduce documentary burden. Input was strongly supportive of these and any changes that could relieve information collection burdens on petitioners.

### **Historical Input from Past Petitioners**

The following former petitioners provided input in 2014 and 2015 when the Part 83 regulations were being revised. Because so few petitions are received each year and they may vary widely, we rely on this historical outreach to inform how the estimates were developed:

- 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
- Pamunkey Indian Tribe – Petitioner #323 (former, received positive final determination)
  - 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
- Salinan Tribe of Monterey and San Luis Obispo Counties – Petitioner # 139 (former, never submitted a complete petition under previous regulations)

- o About 400 members
  - o Work started 18 years ago but was intensive for a 6-8 year period
  - o 2 genealogists for 2 years at \$65/hr
  - o 3 full time staff (\$25/hr)
  - o Legal fees
  - o 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.
- St. Francis/Sokoki Band of Abenakis of Vermont – Petitioner #68 (former, denied acknowledgment)
    - o About 400 members
    - o At least 3 genealogists working full time for 2-3 years
    - o 2 attorneys (not full time), one for 10 years, one for 7 years
    - o Anthropologists and historians
    - o Volunteer work by community members
    - o Total cost of over \$1 million, not including the value of thousands of hours of volunteer time or adjusting for inflation

### **Conclusion**

Using the base input from past petitioners, adjusted based on changes to the regulations in 2015, and taking into account input in 2020 from potential petitioners, we determined our estimates of burden hours and non-hour cost burden.

### **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 at <https://www.bia.gov/as-ia/ofa/opportunities-for-comment> 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 U.S.C. 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 1,516 hours.<sup>1</sup> The Department estimates that approximately one petitioner is actively working on preparation of a petition, totaling **1,516 hours** per year or the amount equivalent to **\$55,501** in burden hour cost per year. These annual burden hours are broken down as follows:

| <b>CFR Citations</b>                   | <b>Description of Requirement</b>   | <b>Respondents</b> | <b>Burden hours per response</b> | <b>Annual burden hours</b> | <b>Salary cost*</b> |
|--|---|--------------------|----------------------------------|----------------------------|---------------------|
| 82.11(a)-(d), (f)<br>83.11(a)-(d), (f) | Conduct the anthropological and historical research relating to the criteria (a)-(d) and (f); Conduct the genealogical work to demonstrate tribal descent for criterion (e) | 1                  | 1,221                            | 1,221                      | \$44,701            |
| 82.11<br>83.11                         | Provide past membership rolls and complete a membership roll of about 333** members (BIA Form 8306)   | 1                  | 38                               | 38                         | \$1,391             |
| 82.11 (e)<br>83.11 (e)                 | Complete Individual History Chart (BIA Form 8304). On average, it takes 2 minutes per chart X 333** charts.   | 1                  | 11                               | 11                         | \$403               |
| 82.11 (e)<br>83.11 (e)                 | Complete the Ancestry Chart (BIA Form 8305). On average, it takes about 30 minutes per chart X 333** charts.  | 1                  | 166                              | 166                        | \$6,077             |
| 82.11<br>83.11                         | Technical assistance  | 1                  | 80                               | 80                         | \$2,929             |
| <b>Total</b>                           |   | <b>1</b>           | <b>1,516</b>                     | <b>1,516</b>               | <b>\$55,501</b>     |

\* To obtain the hourly rate, the BIA used \$36.61, the wages and salaries figure for civilian workers from BLS Release USDL-19-1649, Employer Costs for Employee Compensation—June 2019, 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, at <https://www.bls.gov/news.release/pdf/ecec.pdf>. This wage includes a multiplier for benefits.

\*\* 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.)**

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

- \* **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 in 2014 and 2015 on the burden hours in response to outreach under number 8 of this supporting statement indicated that petitioners routinely purchase outside expert services to assist in preparation of their petitions and provide the foundation for the estimates. The Department obtained updated input in 2020 that confirms that the Department's estimates continue to be accurate.

- 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 \$1,448,880.\*
- Pamunkey Indian Tribe – Petitioner #323 (former, received positive final determination), 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). OFA 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 (former, never submitted a complete petition under previous regulations), 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 took the average – \$2,963,880— as a representative cost for contracted services plus approximately \$30,000 in copying costs. Together, the annual non-hour cost burden under the pre-2015 regulations was estimated at \$2,993,880, or rounded up, \$3,000,000 per petitioner. We estimated that the 2015 rule revisions decreased the necessity for approximately 30% of these costs. This estimate is based on the reductions of evidence needed for certain criteria plus revisions that would obviate the need to research the historical tribe roll prior to a roll prepared by a Secretary of the Interior or a roll prepared prior to 1900. As such, we estimated the non-hour cost burden will be approximately **\$2,100,000** per response.

We reached out to potential petitioners in 2020 for input on these updates, and received a response from Fernandeno Tataviam Band of Mission Indians, who stated that they have spent about \$2.2 million in Acknowledgement expenses since they submitted their letter of intent in 1994 under the prior version of the regulations, not including in-kind and/or pro bono contributions to the Tribe by various community members, students, professionals, and committed volunteers. The group’s estimate of \$2.2M is roughly equivalent to our estimate of \$2.1 million per response. While this is slightly higher than our estimate of \$2.1 million per response and does not include in-kind and pro-bono contributions, this particular group began



compiling its petition under the pre-2015 regulations and therefore includes information beyond what is required under the new 2015 regulations. Any adjustments up, to account for in-kind and pro-bono contributions, would be offset by adjustments down to account for the decreased documentation requirements required as of 2015.

\*To obtain the hourly rate for contracted experts, we used \$60.37, the wages and salaries figure for Management, profession, and related workers from BLS Release USDL-18-0944, Employer Costs for Employee Compensation—March 2018, 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, at <https://www.bls.gov/news.release/pdf/ecec.pdf>. This wage includes a multiplier for benefits.

**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 \$423,314. This annual cost is primarily salary, contract, and office expenses. The anthropologists, genealogists, historians (average GS 13/Step 4) at \$60.63/hour (\$40.42 x 1.5), and management (GS 15/Step 6) at \$89.39/hour (\$59.59 x 1.5) of the OFA review, analyze, and evaluate the evidence and data provided by the petitioners. All of the federal government employee salary information was obtained from [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/GS\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/GS_h.pdf) with a 1.5 benefits multiplier.

| CFR Citation  | Total Number of Responses Processed | Time to Process Responses (GS 13/Step 4) | Time to Process Responses (GS 15/Step 6) | Salary Total     |
|---|-------------------------------------|--|--|------------------|
| Phase I Review<br>82.11 (d) - (g)<br>83.11 (d) - (g)  | 1                                   | 3,000 hours<br>\$181,890                 | 333 hours<br>\$29,767                    | \$211,657        |
| Phase II Review<br>82.11 (a) - (c)<br>83.11 (a) - (c) | 1                                   | 3,000 hours<br>\$181,890                 | 333 hours each<br>\$29,767               | \$211,657        |
| <b>Total</b>  | <b>1</b>                            | <b>6,000 hours<br/>\$363,780</b>         | <b>333 hours<br/>\$59,534</b>            | <b>\$423,314</b> |

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

An increase of 80 hours was made to adjust for technical assistance that occurs after the petition is submitted.

**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 at: <https://www.bia.gov/as-ia/ofa/decided-cases>.

**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.