

SUPPORTING STATEMENT
United States Patent and Trademark Office
Pro Bono Survey
OMB CONTROL NUMBER 0651-0082
April 2020

A. JUSTIFICATION

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

The Leahy-Smith America Invents Act (AIA), Public Law 112–29 § 32 (2011) directs the USPTO to work with and support intellectual property law associations across the country in the establishment of pro bono programs designed to assist financially under-resourced independent inventors and small businesses (also referred to as “hubs”). To support this, the USPTO has worked with and supported various non-profit organizations to establish a series of autonomous regional hubs that endeavor to match low-income inventors with volunteer patent practitioners across the United States. The regional hubs comprise law schools, bar associations, innovation/entrepreneurial organizations, and arts-focused lawyer referral services that are strategically located to provide access to patent pro bono services across all fifty states and the District of Columbia. Additionally, the Study of Underrepresented Classes Chasing Engineering and Science Success Act (SUCCESS Act), Public Law 115–273 (2018) directs the Agency to provide recommendations on how to increase the number of women, minorities, and veterans who apply for and obtain patents.

To support the purposes described above, the Pro Bono Survey will continue to collect information regarding the activity of the regional hubs. The USPTO has worked with the Pro Bono Advisory Council (PBAC) to determine what information is necessary to evaluate the effectiveness of each regional pro bono hub’s operations. The PBAC is a well-established group of patent practitioners and thought leaders in intellectual property who have committed to provide support and guidance to the patent pro bono hubs across the country. The data previously gathered, and which continues to be gathered, provides USPTO with valuable information, including the number of inventor inquiries, referral sources, number of pro bono applicants successfully matched with patent practitioners, and types of patent filings. The USPTO, PBAC, and the regional hubs, are responsible for the quarterly collection of this data. The information, at its highest level, will allow the PBAC and the USPTO to determine whether the regional hubs are matching qualified low-income inventors with volunteer patent practitioners and help estimate the total economic benefit derived by low-income inventors in the form of donated legal services. This information also helps the USPTO determine which regional hubs are effectively serving low-income inventors and which hubs may need additional support.

The USPTO is proposing to revise the existing information collection to gather additional information regarding gender, ethnicity, race, and veteran status. Each regional hub will be requesting demographic information from those seeking assistance that will be self-identified by the applicant. This requested standardized demographic information will be a voluntary part of the overall application materials that each independent inventor fills out when seeking pro bono assistance. This voluntary information will be kept confidential by the regional hubs and only aggregate information is shared with the USPTO. This aggregate information will also be used to help determine the extent to which women, minorities, and veterans engage the Patent Pro Bono Program.

Table 1 identifies the statutory and regulatory authorities that allow for the USPTO to support the Patent Pro Bono Program. In support of Program administration, this proposed survey facilitates the USPTO's support and coordination of the regional patent pro bono hubs in the nationwide network and ensures that each regional patent pro bono hub is effectively providing patent pro bono services to its constituents. The survey also helps validate USPTO funding allocations to certain regional hubs via established Memoranda of Agreement (MOA).

Table 1: Authorities for Patent Pro Bono Program

| IC Number | Description | Statute | Other |
|-----------|-------------------------|--------------------------------------------------|-----------------------------------------------------------|
| 1-2 | Patent Pro Bono Program | Pub. L. No. 112-29 § 32; 35 U.S.C. § 2(b)(11) | White House Executive Action dated 20 February 2014 |

2. Indicate how, by whom, and for what purpose the information is to be used.
Except for a new information collection, indicate the actual use the agency has made of the information received from the current information collection.

This information collection will help determine the effectiveness of each individual regional hub in serving low-income inventors and the extent to which low-income women, minorities, and veterans are being served. As discussed, the USPTO has worked with the PBAC to determine what information is necessary to ascertain the effectiveness of each regional pro bono hub and to identify the demographics of those low-income inventors being served. The USPTO, the PBAC, and the regional hubs, are responsible for collecting this information.

Specifically, the information allows the PBAC and the USPTO to ascertain the origination state of pro bono applicants, where applicants are being referred from, the number of applicants who are matched with volunteer practitioners, and the demographics of the applicants. Additionally, the information helps track corporations/law firms agreeing to accept cases, backlog of unmatched applicants, hours donated by regional hub volunteer practitioners, and provisional and non-provisional applications filed, all on a quarterly basis.

The information, at its highest level, allows the PBAC and the USPTO to determine how effectively the regional hubs are matching qualified low-income inventors with volunteer patent practitioners. It also helps successfully establish the total economic benefit derived by low-income inventors in the form of donated legal services, as well as the impact for women, minorities, and veterans. This information is used to promote the regional hubs and the Patent Pro Bono Program to financially under-resourced inventors and patent practitioners.

Table 2 outlines how the items in this information collection are used by the regional hubs, the PBAC, and the USPTO:

Table 2: Needs and Uses for Pro Bono Survey

| IC Number | IC Instrument | Form # | Needs and Uses |
|-----------|------------------------------------|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Pro Bono Survey | PTO 450 | <ul style="list-style-type: none"> Used by regional hub administrators to provide information to the USPTO regarding the current status and effectiveness of their region's pro bono hub. Used by the USPTO and the PBAC to evaluate the effectiveness of each regional pro bono hub to help inform determinations regarding future support for or actions involving those hubs. Used by the USPTO to publish summary metrics about all of the pro bono regional hubs and to publish metrics regarding the performance of individual regional hubs in order to promote the regional hubs individually and collectively. |
| 2 | Client Intake Form (or equivalent) | PTO 451 | <ul style="list-style-type: none"> Used by the regional hubs to collect client information regarding their invention, knowledge of the patent system, financial information, and demographic information about those requesting pro bono assistance. The regional hubs include four demographic questions, sponsored by USPTO, in order to tabulate demographic information about their participants. Individual client information consolidated to bulk client information and used by USPTO to understand the effectiveness of the Patent Pro Bono Program in reaching diverse populations. |

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological information 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 information collection. Also describe any consideration of using information technology to reduce burden.

The information collected through the Pro Bono Survey will only be collected through online survey tools and electronically submitted by regional hub administrators. No paper or other non-electronic methods of submission are envisioned for the survey. Similarly, the Client Intake Form will be mostly collected through online web-forms available on each regional hub's website although regional program could provide other formats to reach their participants.

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.

USPTO collects this information from regional hub administrators on a quarterly basis. It does not duplicate information or collect data that could be found elsewhere; it functions as the source data for regional hub statistics, and may later be used by the hubs at their discretion.

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

Small business entity status is determined by the Small Business Administration. As small non-profits, many of the regional hubs are small entities. However, no specific change in rules, processing, fees, or other factors benefit one categorical entity over another in this information collection. As a result, this Pro Bono Survey, which is an essential part of the Patent Pro Bono Program, places an equally low burden on each regional hub administrator.

Similarly, the USPTO collaborated with the regional hubs that were already capturing demographic data in order to align the demographic information captured in the Pro Bono Survey to the information captured in the regional hub's existing Client Intake Forms, thereby minimizing the impact to these regional hubs. Accordingly, for the regional hubs where demographic information was already being captured in their Client Intake Form, no additional burden is placed on their pro bono applicants. The demographic information will be a voluntary part of the overall application materials that each independent inventor completes, minimizing the burden for those applicants that decide not to provide their demographic information.

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

The USPTO is collecting this information on a quarterly basis in order to determine the effectiveness of each individual regional hub and how best to provide additional support to regional hubs should they need such support. Typically, regional hubs with an MOA invoice on either a monthly or a quarterly basis, so this collection of data aligns with the invoicing schedules, ensuring effective oversight of USPTO funds. Less frequent data collection would reduce the USPTO's ability to support the regional hubs in a timely manner because these emerging hubs have rapidly changing data. Less frequent sharing of information would also reduce the relevancy of the information for publication to stakeholders, such as inventors and patent practitioners, and for outreach in presentations, online discussion, and conferences. In addition, this information is not collected elsewhere.

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 associated with this collection of information.

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 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 information 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 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The 60-Day *Federal Register* Notice published on November 13, 2019 (84 FR 61599). The public comment period ended on January 13, 2020. No public comments were received.

The USPTO has long-standing relationships with the regional hubs from whom the Pro Bono Survey data is collected. Additionally, USPTO has worked with the PBAC to measure the effectiveness of each regional pro bono hub's operations. The PBAC is a well-established group of patent practitioners and thought leaders in intellectual property who have committed to provide support and guidance to patent pro bono hubs across the country. Views expressed by the regional hubs and PBAC are considered in developing proposals for information collection requirements and during the renewal of an information collection.

Consultation with the regional hubs regarding the information collection occurs as needed through quarterly meetings with the regional hub administrators. Some regional hubs have requested homogeneity between the demographic groups they currently identify and the demographic groups requested in the Pro Bono Survey and the Client Intake Form. The USPTO has aligned the demographic groups with that of the regional hubs to further minimize any difficulty in reporting demographic information.

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

This information collection does not involve a payment or gift to any respondent.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the information collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

The MOAs that are in place with each of the regional hubs indicate that only non-confidential information is to be shared, and thus no proprietary information is included in the survey. Aggregate information obtained in this information collection is often made available to the public. Any information retained by the USPTO or the regional hubs will be kept private to the extent permitted by law.

As only aggregate information is provided to USPTO there is no personally identifiable information (PII) or individualized information collected or maintained by USPTO. The regional hubs do collect some PII for their own internal purposes, but the PII is not accessible to the USPTO and is not requested or reported in the Pro Bono Survey.

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.

None of the required information is considered to be of a sensitive nature. Information on race/ethnicity, gender, and veteran status is strictly collected on a voluntary basis. This information used by USPTO to understand the effectiveness of the Patent Pro Bono Program in reaching diverse populations.

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. Instead, this cost should be included under 'Annual Cost to Federal Government'.**

Table 3 calculates the anticipated burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**

The USPTO estimates that this information collection will have 1,048 respondents. The USPTO further estimates that it will receive 1,114 responses to this information collection per year. All responses are submitted electronically. Approximately 22 regional program administrators, responding on behalf of private sector non-profits, will report their metrics once per quarter resulting in 88 responses from regional hubs per year. In addition, an estimated 1026 applicants, from individuals and households, will provide demographic data in their applications directly to the regional hubs as part of their individual applications for pro bono assistance, resulting in 1026 responses from applicants per year.

- **Burden Hour Calculation Factors**

The USPTO estimates that it takes the regional hub administrators approximately 120 minutes (2 hours) to complete the Pro Bono Survey, including time needed to gather the necessary information, enter it into the information collection instrument, and submit it. The USPTO estimates that it will take approximately 1 minute for applicants to answer the demographic questions.

- **Cost Burden Calculation Factors**

The USPTO expects that regional hub administrators will supply the information in this information collection. The rate (\$58.44) for administrators ([BLS 11-0000](#))¹ is based the BLS 2018 National Occupation and Employment and Wage Estimates. With 30% added to account for a fully loaded hourly rate (benefits plus overhead), the rate per hour is \$75.97 (\$58.44 + \$17.53). The USPTO expects that the Client Intake Form will be completed by low-income independent inventors, who assuming no financial dependents, make no more than three times the Federal Poverty Guidelines (\$37,470 annually as of 2019). Accordingly, the estimated rate for independent inventors, assuming a 2080 hour work year is an hourly rate of \$18.01.² Using this hourly rate, the USPTO estimates that the total respondent cost burden for this collection is \$13,676 per year.

| IC Number | Item | Estimated Annual Respondents (b) | Estimated Annual Responses (b) | Estimated Response Time (min) (a) | Estimated Annual Burden Hours ((a x (b) / 60) = (c)) | Rate (\$/hr) (d) | Total Hourly Burden Cost (c) x (d) = (e) |
|-----------|---------------------------------------------------|----------------------------------|--------------------------------|-----------------------------------|------------------------------------------------------|------------------|------------------------------------------|
| 1 | Pro Bono Survey (PTO Form 450) | 22 | 88 | 120 | 176 | \$75.97 | \$13,370 |
| 2 | Client Intake Form (or equivalent) (PTO Form 451) | 1,026 | 1,026 | 1 | 17 | \$18.01 | \$306 |
| | Total | 1,048 | 1,114 | ---- | 193 | ---- | \$13,676 |

Table 3: Burden Hour/Burden Cost to Respondents for Pro Bono Survey

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

- 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. 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 collections 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

¹ <https://www.bls.gov/oes/current/oes110000.htm>

²² <https://aspe.hhs.gov/2019-poverty-guidelines>

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 annualized (non-hour) costs associated with this information collection. 100% of the items in this information collection are submitted electronically or in person, eliminating the need for postage, and there are no other transaction costs (e.g. filing fees) associated with this information collection.

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

The USPTO estimates that it takes a [GS-14, step 10](#)³, 60 minutes (1 hour) to process a single submission from this information collection. The current 2020 hourly rate for a GS-14, step 10, is \$75.57. When 30% is added to account for a fully loaded hourly rate (benefits and overhead), the rate per hour for a GS-14, step 10, is \$98.24 (\$75.57+ \$22.67).

The regional hubs are responsible for the handling of the Client Intake Form data. They report the aggregate data gathered from the Client Intake Form as a part of their Pro Bono Survey responses; therefore, there are no separate government costs associated with the Client Intake Form as the costs are included with the costs of the Pro Bono Survey.

Table 4 calculates the processing hours and costs of this information collection to the Federal Government:

Table 4: Annual Burden Hour/Burden Cost to the Federal Government

| IC Number | Item | Estimated Annual Responses (a) | Estimated Response Time (hour) (b) | Estimated Annual Burden Hours (a) x (b) / 60 = (c) | Rate (\$/hr) (d) | Total Government Burden Cost (c) x (d) = (e) |
|-----------|---------------------------------------------------|--------------------------------|------------------------------------|----------------------------------------------------|------------------|----------------------------------------------|
| 1 | Pro Bono Survey (PTO Form 450) | 88 | 1 | 88 | \$98.24 | \$8,645 |
| 2 | Client Intake Form (or equivalent) (PTO Form 451) | 0 | 0 | 0 | 0 | 0 |

³ https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf

| IC Number | Item | Estimated Annual Responses (a) | Estimated Response Time (hour) (b) | Estimated Annual Burden Hours (a) x (b) / 60 = (c) | Rate (\$/hr) (d) | Total Government Burden Cost (c) x (d) = (e) |
|-----------|-------|--------------------------------|------------------------------------|----------------------------------------------------|------------------|----------------------------------------------|
| | Total | | ---- | 88 | ---- | \$8,645 |

15. Explain the reasons for any program changes or adjustments reported on the burden worksheet

| BURDEN | | | | | | |
|----------------------------|-----------|-----------------------------------|-----------------------------------------|---------------------------------------------|----------------------------------------------|---------------------|
| ICR Summary of Burden: | | | | | | |
| | Requested | Program Change Due to New Statute | Program Change Due to Agency Discretion | Change Due to Adjustment in Agency Estimate | Change Due to Potential Violation of the PRA | Previously Approved |
| Annual Number of Responses | 1,114 | 0 | 1,026 | 8 | 0 | 80 |
| Annual Time Burden (Hr) | 193 | 0 | 17 | 16 | 0 | 160 |
| Annual Cost Burden (\$) | 0 | 0 | 0 | 0 | 0 | 0 |

Changes proposed in this request to OMB

- **Additional item added to information collection:** The burden increased, due to program change, as a new item (Client Intake Form) was added to the information collection to allow for regional hubs to report demographic information about individuals using their patent pro bono program. The addition of this new item resulted in + 1026 responses and + 17 hours of burden.
- **Increase in Respondents Numbers:** Adjustments were also made to the information collection to account for an increased number of regional hubs participating in the patent pro bono program. These adjustments added 8 responses and 16 burden hours.

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.

The USPTO plans to present aggregate summary metrics for the regional hubs using the Pro Bono Survey in order to promote the regional hubs at conferences and forums. The USPTO may also publish metrics for individual regional hubs to promote the hubs individually. The Office of Enrollment and Discipline of the USPTO is responsible for conducting and summarizing the Pro Bono Survey. These quarterly surveys are used as a basis for regional hub performance discussion. This performance discussion will be used to establish criteria to evaluate each hub on its own merits. This data will help the USPTO evaluate the performance of each regional hub as well as the overall performance and health of the Patent Pro Bono Program.

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 documents in this information collection will display the OMB Control Number and the OMB expiration date.

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

This collection of information does not include any exceptions to the certificate statement.