

1 Supporting Statement A

Federal Acknowledgment as an Indian Tribe, 25 CFR 83

OMB Control Number 1076-0104

ICR Reference No. 202411-1076-001: associated with Final Rule, RIN 1076-AF67

Terms of Clearance: *ICR Reference No: 202310-1076-001, Proposed Rule. Conclusion Date: 10/27/2024.* In accordance with 5 CFR 1320, OMB is filing comment and withholding approval at this time. The agency shall examine public comment in response to the proposed rulemaking and include in the supporting statement of the next ICR--to be submitted to OMB at the final rule stage--a description of how the agency has responded to any public comments on the ICR, including comments on maximizing the practical utility of the collection and minimizing the burden.

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 574 federally acknowledged Indian Tribes (88 FR 54654). 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 in 2015 (2015 regulations), and they became final and effective on July 31, 2015. Since 1994, the regulations governing the Federal acknowledgment process, located at 25 CFR part 83 (Part 83), have included an express prohibition on re-petitioning (ban). When the Department promulgated the 2015 regulations, the Department decided to retain the ban; however, two Federal district courts held that the Department's stated reasons for doing so, as articulated in the final rule updating the regulations, were arbitrary and capricious under the Administrative Procedure Act. The courts remanded the ban to the Department for further consideration. After initially proposing to maintain the ban in 2022, the Department is now proposing to create a limited exception to the ban, through implementation of a re-petition authorization process, and is revising this information collection accordingly.

To petition for Federal acknowledgment, a group must submit a "documented petition" as required under the 2015 regulations. To request to re-petition, a previously denied petitioner would have to submit a "re-petition request" plausibly alleging that the outcome of the previous, negative final determination would

change to positive on reconsideration based on one or both of the following: (1) a change in Part 83 (from a previous version to the current version; and/or (2) new evidence. Under that standard, a petitioner's allegations regarding changes and/or new evidence would have to address the deficiencies that, according to the Department, prevented the petitioner from satisfying all seven mandatory criteria. Otherwise, even if the allegations were taken as true, they would not change the previous, negative outcome and, therefore, would not justify reconsideration.

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 documented petitions and would also process re-petition requests. The AS-IA has the ultimate decision-making authority whether to acknowledge continuous tribal existence and establish a government-to-government relationship or to deny acknowledging a petitioning group as a federally recognized Indian tribe. Similarly, the AS-IA would have ultimate decision-making authority whether to permit the petitioner to proceed with a new documented petition through the Federal acknowledgment process.

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 for the Department to conduct reviews, verifications, and evaluations of petitions, as well as re-petition requests.

Pursuant to the Federal acknowledgment process, OFA issues a 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 research for the Department. AS-IA issues the final determination. Pursuant to the proposed re-petition authorization process, AS-IA (and OFA within the Office of the AS-IA) would consult with petitioners and third parties, maintain re-petition requests and administrative correspondence files, and conduct research for the Department. AS-IA would issue the decision granting or denying authorization to re-petition.

The authority for acknowledging Indian Tribes, as well as allowing re-petitioning for Federal acknowledgment, 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).

Because so few petitions are received each year, and because the Department has never provided a regulatory path allowing re-petitioning, we rely on the following historical outreach to inform the information collection estimates.

- 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. Additionally, the information would be used to determine whether a previously unsuccessful petitioning group can plausibly allege one or both of

the following: (1) a change from a previous version of the part 54 or part 83 regulations to the current version of the regulations would, if applied on reconsideration, change the outcome of the previous, negative final determination to positive; and/or (2) new evidence (i.e., evidence not previously submitted by the petitioner or otherwise considered by the Department) would, if considered on reconsideration, change the outcome of the previous, negative final determination to positive.

The OFA professional experts (including anthropologists, genealogists, and historians) use the information to prepare an evaluation of a petitioner under the regulations and, in the review of a documented petition, issue a proposed finding. If the proposed finding is negative, the petitioner has the option of seeking a hearing before an administrative law judge (ALJ) within the Office of Hearings and Appeals. The ALJ reviews the record, and any input received during the course of a hearing, and issues 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.

In the review of a re-petition request, AS-IA would consider the re-petition request and evidence submitted by the petitioner, as well as any comments and evidence on the request received during a comment period and the petitioner's responses to the comments and evidence received during a response period. AS-IA then would issue a decision granting or denying authorization to re-petition.

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

- **83.11(a)** requires that the petitioner be identified as an Indian Tribe from 1900 to the present. The 2015 regulations allow for evidence that the petitioner identified itself as an Indian entity.
- **83.11(b)** requires the petitioner to demonstrate that the entity has been a distinct community from 1900 to the present. This section provides examples of evidence that may support the criterion.
- **83.11(c)** requires the petitioner to demonstrate that it has maintained political authority from 1900 to the present. This section provides examples of evidence that may support the criterion.
- **83.11(d)** requires the petitioner to provide important information concerning how the group defines membership and the basic rules by which the group is governed.
- **83.11(e)** requires the petitioner to demonstrate descent from a historical Indian Tribe. It provides a variety of 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 acknowledgment. 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 may assist in determining whether criterion (b) of the regulations has been met. Criterion (b) requires that the petitioner

demonstrate that it comprises a distinct community. The information on this form is also used to assist in determining descendancy from a historical Indian Tribe, which is required under criterion (e) of the regulations.

- *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.
- Gender of children, parents, siblings: Necessary for genealogical practices and software to track biological descendancy through maternal and paternal lines, which necessarily require indication of gender.

- 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 a historical Indian Tribe, as required by criterion (e) of Part 83. 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 a historical Indian Tribe, as required by the regulations at 25 CFR 83.11(e).

- 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 a historical Indian Tribe for criterion (e). It is also helpful for other criteria, for example, 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 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.
- Gender and birthplace of each member as well as name, birthplace, 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.

- **83.11(f)** requires the petitioner to demonstrate that it not principally composed of members of any federally recognized Indian tribe.

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).

The proposed re-petition authorization process is responsive to two Federal district court decisions holding that the Department did not adequately explain its reasons for prohibiting re-petitioning, in violation of the Administrative Procedure Act. After initially proposing to maintain the ban based on revised justifications, see 87 FR 24908 (Apr. 27, 2022), the Department is now proposing to create a limited exception to the ban, in the interest of fairness to unsuccessful petitioners. The proposed rule accounts for one court's observation that some of the changes in the 2015 regulations constitute "significant revisions that could prove dispositive for some re-petitioners." *Chinook Indian Nation v. Bernhardt*, No. 3:17-cv-05668-RBL, 2020 WL 128563, at *8 (W.D. Wash. Jan. 10, 2020).

ICR Ref Nos. 202310-1076-001 and 202411-1076-001: Proposed Revision to OMB Control Number 1076-0104

The following information is gathered by petitioners under the "Subpart D -- Re-Petition Authorization Process." See proposed rule RIN 1076-AF67 published July 12, 2024 (89 FR 57097) and final rule RIN 1076-AF67 published January 15, 2025 (90 FR 3627).

- **83.50** To initiate the re-petitioning process, the petitioner must submit the following, in any legible electronic or hardcopy form, to OFA:
 - (1) A certification, signed and dated by the petitioner's governing body, stating that the submission is the petitioner's official request for re-petitioning;
 - (2) A concise written narrative, with citations to supporting documentation, thoroughly explaining how the petitioner meets the conditions of §§ 83.47 through 83.49; and
 - (3) Supporting documentation cited in the written narrative and containing specific, detailed evidence that the petitioner meets the conditions of §§ 83.47 through 83.49.

(b) If the re-petition request contains any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the petitioner must provide a redacted version, an unredacted version of the relevant pages, and an explanation of the legal basis for withholding such information from public release. The Department will not publicly release information that is protectable under Federal law, but may release redacted information if not protectable under Federal law.
- **83.51** OFA receives a re-petition request that satisfies § 83.50, it will do all of the following:
 - (a) Within 30 days of receipt, acknowledge receipt in writing to the petitioner.
 - (b) Within 60 days of receipt:
 - (1) Publish notice of receipt of the re-petition request in the Federal Register and publish the following on the OFA Web site:
 - (i) The narrative portion of the re-petition request, as submitted by the petitioner (with any redactions appropriate under § 83.50(b));
 - (ii) Other portions of the re-petition request, to the extent feasible and allowable under Federal law, except documentation and information protectable from disclosure under Federal law, as identified by the petitioner under § 83.50(b) or by the Department;

- (iii) The name, location, and mailing address of the petitioner and other information to identify the entity;
 - (iv) The date of receipt;
 - (v) The opportunity for individuals and entities to submit comments and evidence supporting or opposing the petitioner's request for re-petitioning within 90 days of publication of notice of the request; and
 - (vi) The opportunity for individuals and entities to request to be kept informed of general actions regarding a specific petitioner.
- (2) Notify, in writing, the parties entitled to notification of a documented petition under § 83.22(d) and any third parties that participated as a party in an administrative reconsideration or Federal Court appeal concerning the petitioner.

- **83.52** Publication of notice of the request will be followed by a 90-day comment period. During this comment period, any individual or entity may submit the following to OFA to rebut or support the request:
 - (1) Comments, with citations to and explanations of supporting evidence; and
 - (2) Evidence cited and explained in the comments.

(b) Any individual or entity that submits comments and evidence to OFA must provide the petitioner with a copy of their submission.
- **83.55** In any review, AS-IA will consider the re-petition request and evidence submitted by the petitioner, any comments and evidence on the request received during the comment period, and petitioners' responses to comments and evidence received during the response period.
 - (b) AS-IA may also:
 - (1) Initiate and consider other research for any purpose relative to analyzing the re-petition request; and
 - (2) Request and consider timely submitted additional explanations and information from commenting parties to support or supplement their comments on the re-petition request and from the petitioner to support or supplement their responses to comments.
 - (c) OFA will provide the petitioner and those listed in § 83.51(b)(2) with the additional material obtained in paragraph (b) of this section, and provide the petitioner and those listed in § 83.51(b)(2) with a 60-day opportunity to respond to the additional material. The additional material and any response by the petitioner and those listed in § 83.51(b)(2) will become part of the record.
- **83.60** In addition to publishing notice of AS-IA's decision in the Federal Register, OFA will:
 - (a) Provide copies of the decision to the petitioner and those listed in § 83.51(b)(2); and
 - (b) Publish the decision on the OFA Website.

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.

Section 83.20 provides 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 (83 FR 33825). This information is also included on the OFA home page at: <https://www.bia.gov/as-ia/ofa>. Similarly, proposed § 83.50 provides directions to prospective re-petitioners to submit their re-petition requests “in any legible electronic or hardcopy form” to OFA at OFA’s mailing address in § 83.20.

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. The same assistance and convenience would be afforded to prospective re-petitioners. There are no legal obstacles to reducing the burden through means of information technology. OFA provides electronically fillable MS-Word versions of its optional template forms 8304 (*Individual History Chart*), 8305 (*Ancestry Chart*), and 8306 (*Membership List*), to further assist in electronic submission (<https://www.bia.gov/as-ia/ofa/sample-formats-petitioner-submissions>).

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.

Where studies or judicial proceedings already exist that can provide part of the required information, petitioners utilize them in preparing petitions, and prospective re-petitioners could do the same in preparing re-petition requests. 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.

- In 2015, OFA revised the collection to minimize burden by reducing the time period for which certain criteria must be shown.
- With regard to showing descent (criterion (e)), smaller petitioners have a somewhat smaller burden than larger ones because the smaller the number of members, the smaller the amount of genealogical information it is necessary to collect.

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

ICR Ref Nos. 202310-1076-001 and 202411-1076-001: Proposed Revision to OMB Control Number 1076-0104

Rulemaking (RIN 1076-AF67) allows a conditional, time-limited opportunity for previously denied petitioners to re-petition for Federal acknowledgment as an Indian Tribe.

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.

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 request for public comments was published July 12, (89 FR 57097) in proposed rule 1076-AF67 for submission to OIRA via <https://www.reginfo.gov/public/do/PRAMain>. No comments were received.

2023-2024 Rulemaking

No changes were made to the IC at the Final rule stage of the rulemaking.

2015 Rulemaking

The Part 83 regulations were 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 1900 to the present, rather than beginning at the period of first sustained contact with non-Indians).

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.

Because so few petitions are received each year and they may vary widely, and because the Department has not yet received any re-petition requests under the new proposed rule, we rely on historical outreach to inform how the estimates were developed. Input provided in 2014-2015 outreach 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)
 - 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 (never submitted a complete documented petition)
 - About 400 members
 - Work started 18 years ago but was intensive for a 6-8 year period
 - 2 genealogists for 2 years at \$65/hr
 - 3 full time staff (\$25/hr)
 - Legal fees
 - The total cost of the application ranged from \$800,000 to \$1 million, not including the value of a great deal of volunteer work provided by tribal members, and not adjusting for inflation of these historical costs.
 - **St. Francis/Sokoki Band of Abenakis of Vermont** – Petitioner #68 (former, denied acknowledgment)
 - About 400 members
 - At least 3 genealogists working full time for 2-3 years
 - 2 attorneys (not full time), one for 10 years, one for 7 years
 - Anthropologists and historians
 - Volunteer work by community members
 - Total cost of over \$1 million, not including the value of thousands of hours of volunteer time or adjusting for inflation

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 generally 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> for transparency; however, the Department generally will not post genealogical materials, and if there is any information that is protectable under Federal law such as the Privacy Act and Freedom of Information Act, the Department will post only a 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 *Tribal Enrollment Reporting and Payment System, Interior/BIA-7*. 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 (which a prospective re-petitioner might update in a re-petition request). These materials are necessary to establish that the members of the group descend from a historical Indian tribe (or from historical Indian tribes that combined and functioned as a single autonomous political entity). See 25 CFR 83.11(e).. Verification of that descent is essential to the goal of the acknowledgment criteria to establish that the petitioner is a continuously existing 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.**

We estimate total annual burden hours as **2,136**.

The burden hours on petitioning groups differ significantly from group to group, and the burden hours on groups seeking to re-petition would similarly 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 group are 1,436 hours to prepare a petition and 700 hours to prepare a re-petition request. To obtain the hourly rate, the BIA used \$43.26, the wages and salaries figure for civilian workers from BLS Release USDL-23-1971, Employer Costs for Employee Compensation—June

2023, 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.

These annual burden hours are broken down as follows:

CFR Citations	Description of Requirement	Respondents	Burden hours per response	Annual burden hours	Wage rate	Burden Est.
83.21	Compile documented petition	1	1,436	1436	\$43.26	\$62,121
83.50 (proposed)	ICR Revision: Compile re-petition request	1	700	700	\$43.26	\$30,282
TOTAL		2	2,136	2,136		\$92,403

13. Provide an estimate of the total annual non-hour cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected in item 12.)

- * The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information (including filing fees paid for form processing). Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- * If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- * Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

Activity	Cost
Compile documented petition	\$2,100,000

ICR Revision: Compile re-petition request	\$1,050,000
TOTAL	\$3,150,000

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; that would likely be the case for prospective re-petitioners preparing re-petition requests as well. 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 \$1,556,696.*
 - *To obtain the hourly rate for contracted experts, we used \$62.77, the wages and salaries figure for Management, profession, and related workers from BLS Release USDL-21-1647, Employer Costs for Employee Compensation— June 2021, 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.
- 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 hours 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:
 - \$240,000 – 800 billable hours for attorneys (\$300/hr)
 - \$10,000 – 100 hours for law clerks (at an estimated \$100/hr)
 - \$50,000 – Hundreds of hours (estimate 500 hours) for historians and anthropologists (\$100/hr)
 - \$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 (never submitted a complete documented petition), 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 – \$3,051,674 – 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 \$3,081,674 rounded to \$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.

We reached out to potential petitioners in 2020 for input on these updates; and received a response from a petitioning group called the Fernandeno Tataviam Band of Mission Indians, which 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 Part 83 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.

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 \$778,801.

- This annual cost is primarily salary, contract, and office expenses.
- The anthropologists, genealogists, historians (average GS 13/Step 4) at \$ 90.08/hour (\$56.30 x 1.6), and management (GS 15/Step 6) at \$ 132.82/hour (\$83.01 x 1.6) 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/22Tables/html/DCB_h.aspx with a 1.6 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 83.11 (d) - (g)	1	3,000 hours	\$90.08	333 hours	\$132.82	\$314,469

Phase II Review 83.11 (a) – (c)		3,000 hours	\$90.08	333 hours	\$132.82	\$314,469
Re-petition Request	1	1,500 hours	\$90.08	111 hours	\$132.82	\$149,863
TOTAL	2	7,500		777		\$778,801

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

All proposed ICR revisions are associated with rulemaking RIN 1076-AF67, 25 CFR Part 83.

- **Proposed Rule:** ICR Reference No. 202310-1076-001.
- **Final Rule:** ICR Reference No. 202411-1076-001.

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 consist of detailed evaluations under the criteria in § 83.11. A summary of an evaluation is published in the Federal Register. Additionally, the decision documents relating to acknowledged or denied petitions (listed below) are placed on the Internet at:
<https://www.bia.gov/as-ia/ofa>.

Petitions Acknowledged Through 25 CFR Part 83

Petition Number	Petitioning Group Name	State	Date Decision Effective
323	<u>Petition #323: Pamunkey Indian Tribe, VA</u>	VA	01/28/16
004	<u>Petition #004: Shinnecock Indian Nation, NY</u>	NY	10/01/10
015	<u>Petition #015: Mashpee Wampanoag, MA</u>	MA	02/15/07
016	<u>Petition #016: Cowlitz Tribe of Indians, WA</u>	WA	01/04/02
020	<u>Petition #020: Snoqualmie Indian Tribe, WA</u>	WA	10/06/99
009A	<u>Petition #009A: Match-E-Be-Nash-She-Wish Band of Pottawatomie Indians of MI</u>	MI	08/23/99
014	<u>Petition #014: Samish Indian Tribe, WA</u>	WA	04/26/96
009	<u>Petition #009: Huron Potawatomi Inc., MI</u>	MI	03/17/96
045	<u>Petition #045: Jena Band of Choctaws, LA</u>	LA	08/29/95
038	<u>Petition #038: Mohegan Indian Tribe, CT</u>	CT	05/14/94
071	<u>Petition #071: San Juan Southern Paiute Tribe, AZ</u>	AZ	03/28/90
076	<u>Petition #076: Wampanoag Tribal Council of Gay Head, MA</u>	MA	04/11/87
013	<u>Petition #013: Poarch Band of Creeks, AL</u>	AL	08/10/84
059	<u>Petition #059: Narragansett Indian Tribe, RI</u>	RI	04/11/83
051	<u>Petition #051: Death Valley Timbi Sha Shoshone Band, CA</u>	CA	01/03/83

Petition Number	Petitioning Group Name	State	Date Decision Effective
001	<u>Petition #001: Tunica-Biloxi Indian Tribe, LA</u>	LA	09/25/81
019	<u>Petition #019: Jamestown Clallam Tribe, WA</u>	WA	02/10/81
003	<u>Petition #003: Grand Traverse Band of Ottawa & Chippewa, MI</u>	MI	08/02/80

Petitions Resolved through Congressional Action

Petition Number	Petitioning Group Name	State	Date Decision Effective
031	<u>Petition #031: Little Shell Tribe of Chippewa Indians of MT</u>	MT	12/20/19

Petitions Denied Through 25 CFR Part 83

Petition Number	Petitioning Group Name	State	Date Decision Effective
025	<u>Petition #025: Duwamish Indian Tribe, WA</u>	WA	07/19/19
041	<u>Petition #041: Georgia Tribe of Eastern Cherokees, Inc. (aka Dahlonga, Cane Break Band), GA</u>	GA	03/14/18
085	<u>Petition #085: Tolowa Nation, CA</u>	CA	02/18/16
288	<u>Petition #288: Choctaw Nation of Florida</u>	FL	07/11/13
067	<u>Petitioner #067: Brothertown Indian Nation</u>	WI	12/11/12
227	<u>Petition #227: Central Band of Cherokee of Lawrenceburg, TN</u>	TN	07/24/12
084B	<u>Petition #084B: Juaneno Band of Mission Indians, CA</u>	CA	06/20/11
011	<u>Petition #011: Steilacoom Tribe, WA</u>	WA	06/17/08
069B	<u>Petition #069B: Webster/Dudley Band of Chaubunagungamaug Nipmuck Indians, MA</u>	MA	01/28/08
069A	<u>Petition #069A: Nipmuc Nation, Hassanamisco Band, MA</u>	MA	01/28/08
068	<u>Petition #068: St. Francis/Sokoki Band of Abenakis of Vermont, VT</u>	VT	10/01/07
101	<u>Petition #101: Burt Lake Band of Ottawa and Chippewa Indians, Inc., MI</u>	MI	01/03/07
079	<u>Petition #079: Schaghticoke Tribal Nation, CT</u>	CT	10/14/05
113	<u>Petition #113: Paucatuck Eastern Pequot Indians of Connecticut, CT</u>	CT	10/14/05
035	<u>Petition #035: Eastern Pequot Indians of Connecticut, CT</u>	CT	10/14/05
081	<u>Petition #081: Golden Hill Paugussett Tribe, CT</u>	CT	03/18/05
012	<u>Petition #012: Snohomish Tribe of Indians, WA</u>	WA	03/05/04
111	<u>Petition #111: Muwekma Ohlone Tribe of San Francisco Bay, CA</u>	CA	12/16/02
057	<u>Petition #057: Chinook Indian Tribe/Chinook Nation, WA</u>	WA	07/05/02
121	<u>Petition #121: Yuchi Tribal Organization, OK</u>	OK	03/21/00
086	<u>Petition #086: MOWA Band of Choctaw, AL</u>	AL	11/26/99
058	<u>Petition #058: Ramapough Mountain Indians, Inc., NJ</u>	NJ	01/07/98
066	<u>Petition #066: Miami Nation of Indians of IN, Inc., IN</u>	IN	08/17/92

Petition Number	Petitioning Group Name	State	Date Decision Effective
087	<u>Petition #087: MaChis Lower AL Creek Indian Tribe, AL</u>	AL	08/22/88
052	<u>Petition #052: Tchinouk Indians, OR</u>	OR	03/17/86
029	<u>Petition #029: Southeastern Cherokee Confederacy (SECC), GA</u>	GA	11/25/85
029A	<u>Petition #029A: Northwest Cherokee Wolf Band, SECC, OR</u>	OR	11/25/85
029B	<u>Petition #029B: Red Clay Inter tribal Indian Band, SECC, TN</u>	TN	11/25/85
070	<u>Petition #070: United Lumbee Nation of NC and America, CA</u>	CA	07/02/85
070A	<u>Petition #070A: Kaweah Indian Nation, CA</u>	CA	06/10/85
007	<u>Petition #007: Principal Creek Indian Nation, AL</u>	AL	06/10/85
026	<u>Petition #026: Munsee Thames River Delaware, CO</u>	CO	01/03/83
010	<u>Petition #010: Creeks East of the Mississippi, FL</u>	FL	12/21/81
008	<u>Petition #008: Lower Muskogee Creek Tribe-East of the Mississippi, GA</u>	GA	12/21/81

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 petitioners 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.