

Supporting Statement for Paperwork Reduction Act Submissions

Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, 25 CFR 23.13 OMB Control Number 1076-0111

Terms of Clearance: None

General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, 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 in Section A below. If an item is not applicable, provide a brief explanation. When employing statistical methods, Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

A. Justification

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

The attached regulation, 25 CFR 23.13(a), specifies what information a State court must supply when it appoints counsel for an indigent Indian party in an involuntary Indian child custody proceeding when the appointment of counsel is not authorized under State law. This information is necessary to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the Bureau of Indian Affairs (BIA) in accordance with the Indian Child Welfare Act, Public Law 95-608, 92 Stat. 3069, 25 U.S.C. 1918. A copy of the relevant law and regulation are attached.

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.]

This information is used by BIA to determine the following: (a) if an individual Indian involved in an Indian child custody proceeding is eligible for payment of appointed counsel's attorney fees, (b) the name of the attorney, and (c) the attorney's actual voucher certified by the court for the work completed on a pre-approved case. This information is necessary to approve that payments are being made to the appointed State court counsel as required in P. L. 95-608. The reasons for the collection are listed in the following table:

Information Collected	Reason for Collection
(a) Name, address and telephone number of attorney appointed;	(a) To identify attorney appointed as counsel and method of contact;

(b) Name and address of client for whom counsel is appointed;	(b) To identify indigent party in an Indian child custody proceeding for whom counsel is appointed;
(c) Applicant's relationship to child;	(c) To determine if the person is eligible for payment of attorney fees as specified in Public Law 95-608;
(d) Name of Indian child's tribe;	(d) To determine if the child is a member of a federally recognized tribe and is covered by the Indian Child Welfare Act (ICWA);
(e) Copy of petition or complaint;	(e) To determine if this custody proceeding is covered by the ICWA;
(f) Certification by the court that State law does not provide for appointment of counsel in such proceedings;	(f) To determine if other State laws provide for such appointment of counsel and to prevent duplication of effort;
(g) Certification by the court that the Indian client is indigent;	(g) To determine if the client has resources to pay for counsel;
(h) The amount of payments due counsel utilizing the same procedures used to determine expenses in juvenile delinquency proceedings;	(h) To determine if the amount of payment due appointed counsel is based on State court standards in juvenile delinquency proceedings;
(i) Approved vouchers with court certification that the amount requested is reasonable considering the work and the criteria used for determining fees and expenses for juvenile delinquency proceedings.	(i) To determine the amount of payment considered reasonable in accordance with State standards for a particular case.

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].

Paper copies will continue to be made available to requesters. Tribes can request and obtain paper copies through commercial mail or by facsimile. In addition, because the BIA is now reconnected to the internet, respondents can now submit information electronically to the BIA through email. Communication between tribal entities and the Bureau is feasible more now than ever with the reconnection to the internet. Not only has it increased our ability to communicate more effectively, it is also cost-effective to allow electronic submission using email technology. Because there is no specified format for the information, no fillable form is available on-line.

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.

There is no duplication of effort regarding this information and the information will only be used if no other State resources are available to pay attorney costs in Indian child custody proceedings. The information requested specifically identifies eligibility and standards for payment on a case-by-case basis, as certified by the court. Since circumstances vary with each situation in which payment of appointed counsel fees are requested, there is no available information which can be used in lieu of that supplied on each individual case situation.

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

There has been no attempt to reduce the impact on small businesses or other small entities because tribes are not considered to be small businesses or entities. Only minimum information is required for determining eligibility for services under 25 CFR 23.13.

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.

If this information is not collected, reimbursement requests cannot be considered.

The information collection requirement involves minimum information necessary to verify an individual Indian's eligibility for payment of these fees and a State court's certification of the appointed attorney and the amount of payment. The information cannot be collected less frequently, because doing so would delay pending payment of potentially pre-approved attorney fees.

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 Federal Notice requesting comments on the proposed renewal of this information collection was published seeking comments for a 60-day period beginning October 30, 2009 through February 28, 2010 (74 FR 56208). No responses were received during this time.

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. [Please list here the names, titles, addresses, and phone numbers of persons contacted. One or two should be sufficient.]

Most, if not all, of the respondents are from the California region; therefore, BIA focused on contacting persons in the California region who have experience responding to this collection to request their input on burden estimates and their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure, and data elements. The following two individuals responded:

Maureen H. Geary, Attorney at Law
Maier Pfeffer Kim & Geary LLP
37 Old Courthouse Square, Suite 209
Santa Rosa, CA 95404
707-544-3357

Ann Gilmour, Attorney
Center for Families, Children & the Courts
Judicial Council of California - Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102-3688
415-865-4207

Ms. Ann Gilmour, an attorney with the Judicial Council of California - Administrative Office of the Courts, provided comments suggesting the adoption of a form for the submission of information. Maureen Geary, an attorney who worked for 18 years in the California Indian Legal Services (CILS) and is now in private practice, provided comments stating that State courts generally are not aware of the requirement in 25 CFR 23.13 to send BIA notice when the appointment occurs, and that payment has been denied on this basis in the past. Both commenters also commented on difficulties with actually obtaining payment, which go to programmatic funding issues that are the current subject of BIA discussion. BIA has not made any changes to the information collection burden estimates or format as a result of these comments; however, BIA is investigating the possibility of establishing a form as it reviews the programmatic funding issues. If, at some point in the future, BIA establishes a form for this information collection, it will seek the appropriate OMB approval.

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, only payments to court-appointed attorneys in the amounts certified by the State court.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

This is not applicable.

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.

There are no questions of a sensitive nature included in the information collected. The information collected serves to ensure that no other State resources are available to pay attorney costs in Indian child custody proceedings.

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 in Item 13 of OMB Form 83-I.**
- * **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 in Item 13.**

On average four respondents per year request reimbursement of payments for State appointed attorney fees with the BIA. We estimate the annualized cost would include two hours for reporting and one hour for record keeping for each request for payment of State appointed counsel, which is based on our conversations with field personnel. This results in a total hour burden of 12 hours per year (4 respondents x 3 hours).

We estimate the salary for the State court personnel compiling the information to be \$48.80 per hour. This estimate is based on the Bureau of Labor Statistics' Employer Costs for Employee Compensation – September 2009, Table 4, State and Local Government Workers, for the category of Management, Professional, and Related staff at www.bls.gov/news.release/pdf/ecec.pdf. Including a multiplier of 1.5 for benefits results in a total salary of \$73.20 per hour. The multiplier of 1.5 is derived from the Bureau of Labor Statistics, Employer Costs for Employee Compensation – September 2009 at www.bls.gov/news.release/pdf/ecec.pdf. With a total hour burden of 12 hours, this results in a total salary cost to tribal respondents of approximately \$878 per year.

$$12 \text{ hours} \times \$73.20 \text{ per hour} = \$878 \text{ per year}$$

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 shown in Items

12 and 14).

- * **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]. 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.**

The estimated total annual burden cost to respondents or record keepers for capital and start up costs components (annualized over its expected useful life) for this information collection is zero. The information collection will not require the purchase of any capital equipment nor create any start-up costs. Computers and software used to complete this information are part of the respondents' customary and usual business practices, and therefore is not included in the estimate. In addition, the information collection will not create costs associated with generating, maintaining, and disclosing, or providing information that is not already identified in Item 12 of this supporting document.

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. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

BIA receives an average of four requests for payment of State appointed counsel each year. The annualized cost to the Federal Government remains very limited. This would include staff time of one social worker and one secretary.

- The social worker would require 8 hours of time. At a salary of \$45.23/hour (GS-9, Step 5 Washington, DC, salary of \$30.15/hour, multiplied by 1.5 to account for benefits), this results in a salary cost of \$361.84.
- The secretary would require 4 hours of time. At a salary of \$23.91/hour (GS-5, Step 1 Washington, DC, salary of \$15.94/hour, multiplied by 1.5 to account for benefits), this results in a salary cost of \$95.64.

The total annual cost to the Federal government would therefore be \$457.48. See the Salary Table 2009-DCB

Incorporating the 2.9% General Schedule Increase, http://www.opm.gov/oca/09tables/pdf/dcb_h.pdf. The multiplier of 1.5 is derived from the Bureau of Labor Statistics, Employer Costs for Employee Compensation – September 2009 at www.bls.gov/news.release/pdf/ecec.pdf.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

The following table shows the change from currently approved to requested hours.

	Requested	Previously Approved
Annual No. of Responses	4	1
Annual Time Burden	12	9

The BIA has adjusted its estimate of responses to account for more than one respondent per year and has adjusted its estimate of burden hours to better account for both the reporting and the recordkeeping and reporting burdens associated with this collection.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There are no plans to publish the results of this collection of information. However, a summary may be used for budget justification. The Bureau intends to display the expiration date.

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 Bureau is not requesting exceptions to the certification statement in item 19 or Form OMB 83-1. The CFR lists information required to assume jurisdiction. 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 certification statement identified in 5 CFR 1320.9 (hourly and cost burden) and 5 CFR 1320.8(b)(3) (the questions we ask commenters to address).

There are no exceptions.