

Supporting Statement A

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 completed Supporting Statement A must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified below. If an item is not applicable, provide a brief explanation. When the question “Does this ICR contain surveys, censuses, or employ statistical methods?” is checked "Yes," then a Supporting Statement B must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

Specific Instructions

Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.**

A State court must supply specific information to the Bureau of Indian Affairs (BIA) 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, 25 CFR 23.13(a). This information is necessary for the BIA to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the BIA in accordance with the Indian Child Welfare Act, Public Law 95-608, 92 Stat. 3069, 25 U.S.C. 1912(b), and 25 CFR 23.13.

- 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 ensure that payments are being made to the appointed State court counsel as provided in the Indian Child

Welfare Act (ICWA). 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 ICWA
(e) Copy of petition or complaint	(e) To determine if this custody proceeding is covered by ICWA
(f) Certification by the court that State law does not provide for appointment of counsel in such proceedings	(f) To determine if State law provides 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, as required by 25 CFR 23.13(d) (1)
(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.

Respondents may submit information electronically using e-mail, by fax, and by regular mail. 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 collection of this information and the information will be collected only if no 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.

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

Collection of the information will impact small businesses or other small entities that serve as appointed counsel for indigent clients, but the information collection is likely to benefit such small businesses or other small entities, if the BIA is able to offer payment to their clients for appointed counsel. 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. Some States do not provide resources for payment of counsel to parents in involuntary Indian child custody cases. In these States, parents without attorneys could be at risk of having their rights violated under the Indian Child Welfare Act and under basic due process protections. Without these protections, children could be arbitrarily removed from their homes and irreparable harm could be done. To ensure that attorneys in these States have incentives to accept these types of cases, it is important to have a process by which information is collected in order for the BIA to determine when reimbursement of attorneys' fees is appropriate.

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 60-day notice for public comments was published in the Federal Register on March 23, 2016 (81 FR 15554). There were no comments received in response to this Federal Register notice.

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.

Most States pay attorneys' fees for parents in ICWA cases, so that attorneys do not need to apply to BIA for them to be paid. Even in the few instances where the attorney fees are not paid by the State, most attorneys do not apply to BIA because the BIA has not recently had funds to provide

reimbursement.

The following individuals responded:

Daniel V. Transier
Law Office of Daniel V. Transier
664 West Veterans Parkway, Suite D
Yorkville, Illinois 60560
630-553-6006

Beth Padilla, Esq,
Padilla Law, P.C.
P.O. Box 2835
Durango, CO 91302
(970) 764-4547

Mr. Transier provided comments based on his personal experience as an attorney in Illinois. Mr. Transier stated that the instructions on how to apply for reimbursement of attorneys' fees in ICWA cases that were provided by regulation (25 CFR 23.13) were clear and easy to understand. He stated that it took him about 1.5 hours to put the needed information together and prepare the request for submission to the State court who forwarded it to the BIA Regional Director. He expressed frustration with the provision that allows the BIA Regional Director to deny payment if funds are not available for that particular fiscal year. Mr. Transier said that his recent request for payment was denied and he did not bother to go through the appeal process which would have necessitated him submitting an appeal to the Assistant Secretary.

Ms. Padilla provided comments based on her experience as an attorney in Colorado. She thought that the process for applying for reimbursement of attorneys' fees in ICWA cases from the BIA was confusing. She forwarded paperwork from the District Court in Colorado outlining her appointment and then later learned that she had not applied correctly. She did not give an estimate for how long it took her for her initial application. She appealed the subsequent denial of payment and then was forced to travel four hours to federal court in Albuquerque to litigate the appeal, which she lost. She stated that she enjoyed working with her client and with the Tribe, but would not take such a case again.

In order to make the process for applying for attorneys' fees less confusing, the BIA regional offices will make sure that the staff person answering the phone knows to refer the caller to the regulation (25 CFR 23.13), which has clear instructions for the process. The BIA will also reference this regulation and instructions on its website.

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 for 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.

There is no assurance of confidentiality provided to respondents in connection with the information collection requirements.

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.**
- * 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.**

On average two 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 6 hours per year (2 respondents x 3 hours) or the amount equivalent to \$325 per year.

We estimate the salary for the respondents compiling the information to be \$54.16 per hour, which includes the benefit multiplier¹.

$$6 \text{ hours} \times \$54.16 \text{ per hour} = \$325 \text{ per year}$$

¹We used the Bureau of Labor Statistics, EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—December 2015 (released March 10, 2016), USDL 16-0463, Table 3, *Employer costs per hour worked for employee compensation and costs as a percent of total compensation: State and local government workers, by major occupational and industry group, December 2015, Management, professional, and related*, available at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

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.**

There is no non-hour cost burden associated with this information collection.

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.

BIA receives an average of two 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 to process both requests. At a salary of \$37.20/hour (GS-9, Step 5 Washington, DC, salary of \$23.25/hour, multiplied by 1.6 to account for benefits*), this results in a salary cost of \$297.60.
- The secretary would require 4 hours of time to process both requests. At a salary of \$21.66/hour (GS-5, Step 1 Washington, DC, salary of \$13.54/hour, multiplied by 1.6 to account for benefits*), this results in a salary cost of \$86.66.

The total annual cost to the Federal government would therefore be \$384.26.

*We have used the General Services Administration's Salary Table for 2016, available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/16Tables/html/GS_h.aspx. The multiplier of 1.6 is derived from the Bureau of Labor Statistics, Employer Costs for Employee Compensation – December 2015 at <http://www.bls.gov/news.release/pdf/ecec.pdf>.

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

Again, in the few instances where the attorney fees are not paid by the State, most attorneys do not apply to BIA because the BIA has not recently had funds to provide reimbursement. Therefore, the number of respondents declined since this information collection was last approved.

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.

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.

No form is used; the CFR lists information required to assume jurisdiction. 25 CFR 23.4 cites the OMB Control Number for this information collection.

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

There are no exceptions.