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October 24, 2014

SENT VIA EMAIL

Desk Officer
for the Department of the Interior
Office of Management and Budget
Email: OIRA_Submission@omb.eop.gov
Facsimile: (202) 395-5806

Re: ***Comments on Information Collection, 79 F.R. 57969 (September 26, 2014)***

Desk Officer:

We write to you in our capacity as legal counsel for the Aleutian Pribilof Islands Association, Maniilaq Association, Jamestown S'Klallam Tribe, and the Metlakatla Indian Community (Tribes). The purpose of this letter is to provide the Tribes' response to the September 26, 2014 notice by the Bureau of Indian Affairs (BIA) that revised 477 reporting forms have been submitted to the Office of Management and Budget (OMB) for approval. See 79 Fed. Reg. 57969 (Sep. 26, 2014). The notice provides information about where to find the proposed forms and requests that additional comments on the forms be provided to OMB by October 27, 2014.

We understand that the BIA has advised a 477 Work Group Co-Chair that the BIA intends to withdraw the September 26 notice and republish a new notice in the future. However, pending official notice of that in the Federal Register, we file the following comments to preserve the Tribes' objections.

The notice of draft forms subject to comment was published on February 21, 2014. See 79 Fed. Reg. 9915 (Feb. 21, 2014). On behalf of the Tribes, we provided comments on the proposed forms by letter dated April 15, 2014.¹ The BIA proposes changes to forms used for reporting the expenditure of funds in approved 477 Plans implemented by tribes and tribal organizations pursuant to the tribal employment and training program established by P.L. 102-477 ("477 Program" or "477 Act").² The 477 Act authorizes tribes and tribal organizations to combine employment and training-related federal funds from various agencies into a single 477 Plan approved by the Secretary of the Interior with a single budget and a single reporting system.

¹ See Notice for Revision of Agency Information Collection for Reporting Systems for Public Law 102-477 Demonstration Project, 79 Fed. Reg. 8985 (Feb. 14, 2014), notice modified at 79 Fed. Reg. 9915 (Feb. 21, 2014).

² See The Indian Employment, Training, and Related Services Demonstration Act, 25 U.S.C. §§ 3401-3417, as amended by Public Law 106-568, the Omnibus Indian Advancement Act of 2000.

The Tribes objected to the February 2014 notice on the grounds that the proposed forms are inadequate, incomplete and impose reporting requirements that are contrary to the provisions of the 477Act. In its September 26 notice, the BIA has responded to some but not all of the comments submitted in response to the original notice. The Tribes continue their objection to the BIA's attempt to impose the proposed reporting requirements for the reason that they are contrary to the provisions of the 477Act. The Tribes also object to the manner and content of the recent notice as defective, and request that the notice be republished, or that the comment period be extended, for the reasons outlined below.

The Tribes object to the form and content of the September 26 notice, which is defective for the following reasons.

First, the notice does not provide sufficient or correct information regarding the proposed new forms, and does not provide access to all information necessary for the 477 Tribes to be able to respond to the notice. The notice states that the information collection documents can be reviewed online at reginfo.gov by following instructions to review Department of the Interior collections. However, there are no clear directions or instructions at that site to enable easy access to the documents proposed for approval, or to documents necessary for full review. For example, representatives of the 477 Tribal Work Group obtained access to the extensive background ICR Documents, including the Supporting Statement and complete copies of submitted comments, on October 23, 2014, too late for meaningful review. All relevant documents should be provided in a manner that will afford ready, usable access.

Second, the forms apparently include documents that are obsolete and will not be part of the information collection package proposed for reporting. Version 1 of the Statistical Report, identified as 1076-0135 that is referenced on the website, is not the appropriate form. It was in use prior to 1999, and was revised at that time to include three categories of participants: adults, youth, and cash assistance. There have been additional changes made since then. Moreover, the response to the tribal comments indicates that the "new" revised financial form will replace SF-425. This is an incorrect reference. The 477 reporting forms that are in use currently include SF269a (aka IA7703), not SF-425.

Third, not all relevant documents are provided for review. The proposed 477 Financial Report Form and Instructions, on line 14 of "Tribe Instructions," states the following with regard to Transactions 8b-f : "Refer to cost category definitions to determine appropriate placement of expenditure per category (see attached)." However, the cost category documents are not attached and are not included in the ICR Documents. The cost category documents are necessary for evaluation of the forms and must be part of the public documents included in the official ICR Documents.

The Tribes also object to approval of the forms on the grounds that the BIA has not provided an accurate statement of the methodology and assumptions used to calculate the potential time and dollar burden on the Tribes to comply with the new reporting requirements. In particular the BIA has not accounted for the Tribes' differing data systems or the ability of Tribes to satisfy electronic filing requirements.

The Tribes also object to approval of the forms on the grounds that the BIA has not responded adequately to comments on the proposed action submitted in response to the February 21, 2014 notice. The BIA has documented a few minor technical changes in the proposed forms but did not respond to substantive comments included in our April 15, 2014 letter. Specifically, the BIA: did not address objections regarding the failure of the proposed reporting system to resolve fund transfer and reporting issues; did not explain the reason for the collection of information required by the new reporting forms or the purpose served under the 477 Act by the change in information collection; and did not describe the methodology and assumptions used to calculate the potential burden imposed on tribes by the new reporting requirements.

The BIA also did not address our objection that the notice does not resolve the status of OMB Circular A-133, and how that will be replaced for auditing purposes under the new forms. We assume the current moratorium on use of A-133 with regard to reporting under existing forms will continue until 2017. However, the tribes cannot properly evaluate the terms of the new forms or how they will be used without knowing how A-133 will be replaced. If the notice is withdrawn and republished, the notice should include documentation that the moratorium will continue and provide opportunity for 477 tribes to review any new auditing document and that the new forms will not become effective until the auditing document is completed. In sum, the BIA should be required to respond meaningfully to all comments on the proposed forms before the forms are approved by OMB.

Finally, the short time of 30 days provided for review and comment is not adequate to address concerns raised by the forms. The DOI took nearly six months to respond to comments, and has revised the forms in light of the comments. The 477 tribes need additional time to respond to the new proposed forms. In view of the errors in the September 26 notice regarding the specific forms which will be used, the misinformation and difficulty in locating the approved forms currently in use at reginfo.gov, and the BIA's failure to provide timely access to the complete comments and proposed responses, the Tribes request that the notice be republished with adequate documentation and that it provide additional time for 477 tribes to access the data and respond with appropriate comments before OMB approves the forms.

The September 26 notice provides that the forms will be transitioned into use during a period up to 2017. Under these circumstances, the additional time necessary to republish the notice with appropriate documents and provide opportunity to comment is warranted. OMB should not approve the forms until such time as the BIA complies with all requirements necessary for approval of collection of information.

For more information about the issues discussed above, please contact Geoff Strommer by email at gstrommer@hobbsstraus.com or by phone at (503) 242-1745, or Vernon Peterson by email at vpeterson@hobbsstraus.com or by phone at (503) 320-0145.

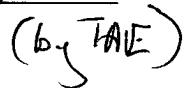
Desk Officer for the Department of the Interior

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Sincerely,
HOBBS, STRAUS, DEAN & WALKER, LLP

By:


Geoff Strommer


cc:

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