

January 31, 2023

The Honorable Bryan Newland
Assistant Secretary, Indian Affairs
bryan_newland@ios.doi.gov

The Honorable Shannon Estenoz
Assistant Secretary for Fish and Wildlife and Parks
shannon_estenoz@ios.doi.gov

The Honorable Robert Anderson
Solicitor
robert.anderson@sol.doi.gov

U.S. Department of the Interior
1849 C Street NW
Washington DC 20240

Austin Mudd PhD
Policy Analyst
Office of Management and Budget
Austin.B.Mudd@omb.eop.gov

Subject: Native American Graves Protection and Repatriation Act Proposed Rule, RIN: 1024-AE19

Dear Assistant Secretaries Newland and Estenoz and Solicitor Anderson:

I write to specifically address the four questions highlighted in the preamble to the proposed rule regarding the information collection requirements.

- a. Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

I believe that the collection of information outlined in the proposed regulation is necessary for the proper performance of the Secretary of the Interior's responsibilities under the Native American Graves Protection and Repatriation Act and that the collection of information will have practical utility.

- b. The accuracy of the estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

I have reviewed the estimates of the burden for this collection of information provided by the National Park Service and believe they significantly underestimate the actual costs. The methodology used by the National Park Service identifies many separate information requests, but then systematically underestimates the amount of time each typically takes. There is no indication of what data was relied upon in coming up with these estimates. Similarly, the National Park Service's estimate excludes the burden on Indian Tribes and Native Hawaiian organizations. In order

to obtain the benefit outlined by NAGPRA, that is the repatriation of their ancestral remains and cultural items, Indian Tribes and Native Hawaiian organizations are compelled by the regulations to obtain, maintain, retain, report, or publicly disclose information to third party museums and Federal agencies. The burden to Indian Tribes and Native Hawaiian organizations must be included.

I have previously shared with the National Park Service by own estimates based on actual data from grant proposals prepared by museums and Indian Tribes and approved by the National Park Service to estimate the real burden of complying with NAGPRA, and projected those estimates forward given the conditions outlined by the proposed rule (see attachment). Consulting, revising inventories, and publishing notices of inventory completion is expected to cost museums and Federal agencies a minimum of \$48.4 million over 30 months, and the burden on Indian tribes and Native Hawaiian organizations will be approximately \$43 million over the same period.

In its annual report to Congress for FY2022, the Native American Graves Protection and Repatriation Review Committee has asked that the Government Accountability Office compile data from all Indian tribes, Native Hawaiian organizations, museums, and Federal agencies to get a realistic estimate of the actual costs of implementing the proposed regulations.

Another proposal where the costs are ignored is the proposal in Subpart B to unilaterally transfer all responsibility for complying with the excavation and discovery provisions of the Act on Tribal lands from the Bureau of Indian Affairs to each individual Tribe. Under the current regulations, compliance with the excavation and discovery provisions on Tribal lands is assigned to the Bureau of Indian Affairs and is carried out by a network of Federal employees at the GS-12 level or higher at the agency, regional office, and headquarters office. Transferring these responsibilities from the Bureau of Indian Affairs to individual Tribes means that each Tribe will need to have at least one staff person dedicated to these duties, and some large reservations (particularly those with large numbers of private inholdings within the exterior boundaries of their reservations), will need several additional staff to fulfill these new responsibilities. The loaded rate (salary plus benefits) for one mid-range GS-12 is \$115,000 per year, and there are currently 345 Indian Tribes with Tribal trust lands (or eligible to have Tribal trust lands, i.e. not in Alaska) that under the proposal will be unilaterally required to implement the Subpart B requirements. I estimate that the total cost to for tribes implement this proposal will be nearly \$40 million per year, which will likely need to be distributed based in part on the total amount of land within the exterior boundary of each reservation. Please note that this proposed unilateral shift of responsibility is very different than the voluntary shift of responsibilities under the Indian Self-Determination and Education Assistance Act or the National Historic Preservation Act where Tribes may apply to assume Federal responsibilities fully knowing what resources will be made available. The unilateral transfer of these responsibilities from the Bureau of Indian Affairs to the Tribes proposed in Subpart B should not be implemented until the necessary funding stream has been established, or the transfer is made voluntary.


c. Ways to enhance the quality, utility, and clarity of the information to be collected;

In oral presentations, Park Service officials have consistently downplayed the importance of consultation and the need for accurate reporting that does not appear be consistent with the text of the proposed rule itself.

- d. How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Under the proposed rule, all museums and Federal agencies will be required to complete a new or revised inventory of all human remains and associated funerary objects in their possession or control within 30 months of publication of the final rule. One of the most complex tasks required will be determining geographic territory based on an extensive list of government legal documents, including: treaties sent by the President to the United States Senate for ratification; Acts passed by Congress; Executive Orders; treaties between a foreign or colonial government and an Indian Tribe signed before the establishment of the United States Government or prior to the land becoming incorporated in the United States; other Federal documents or foreign government documents providing information that reasonably shows aboriginal occupation; or intertribal treaties, diplomatic agreements, and bilateral accords between and among Indian Tribes. Reviewing and making determinations based on this plethora of legal documents is not the typical job of museum professionals and is best done by legal professionals of the actual parties involved in the agreements. One way to minimize the burden of the collection of information would be for the Department of the Interior, in consultation with Indian Tribes, to prepare a single online source that will identify which Tribes are geographically affiliated with specific locations. The Department of the Interior is the most logical place for this source to be located because of Secretary's responsibility for both implementing NAGPRA and ensuring the government's trust responsibility to Indian Tribes.

Sincerely,



C. Timothy McKeown PhD
Washington DC

Attachments:

McKeown-Current and future NAGPRA costs

Native American Graves Protection and Repatriation Review Committee-Report to Congress for FY2022

From: C. Timothy McKeown
Sent: Monday, June 27, 2022 12:24 PM
To: Melanie O'Brien
Cc: Francis McManamon; bryan_newland@ios.doi.gov; Shannon_Esteno@ios.doi.gov;
jeffrey_parrillo@ios.doi.gov; austin.b.mudd@omb.eop.gov; sjtisdale@gmail.com
Subject: Current and future NAGPRA costs

Melanie O'Brien
Manager, National NAGPRA Program
National Park Service
1849 C Street NW
Washington DC 20240

Dear Melanie:

I write to follow up on my comments at the most recent meetings of the Native American Graves Protection and Repatriation (NAGPRA or the Act) Review Committee regarding the expected costs for implementing the inventory and notice requirements in the draft proposed revision to 43 CFR 10. I would like to start by repeating that I strongly support the idea of requiring museums and Federal agencies to reassess their inventories and proceed with disposition of the so-called "culturally unidentifiable" human remains, but that we need to be clear that this is not a small undertaking and will require considerable resources from the government to accomplish.

Bottom line, the data-based approach provided below indicates the actual annual burden to museums of complying with sections 3003 and 3004 of the Act is ten times the \$223,304 estimate included in the recent Information Collection Review provided by the Department to the Office of Management and Budget, and that a very conservative estimate of the burden to museums and Federal agencies to comply with the proposed inventory and notice requirements is approximately \$50 million over 30 months, with a total burden to museums and tribes of approximately \$91.5 million over 30 months. Providing a more accurate cost better informs the public and policymakers on the need to fully resources this undertaking.

Data-Based Cost Estimates

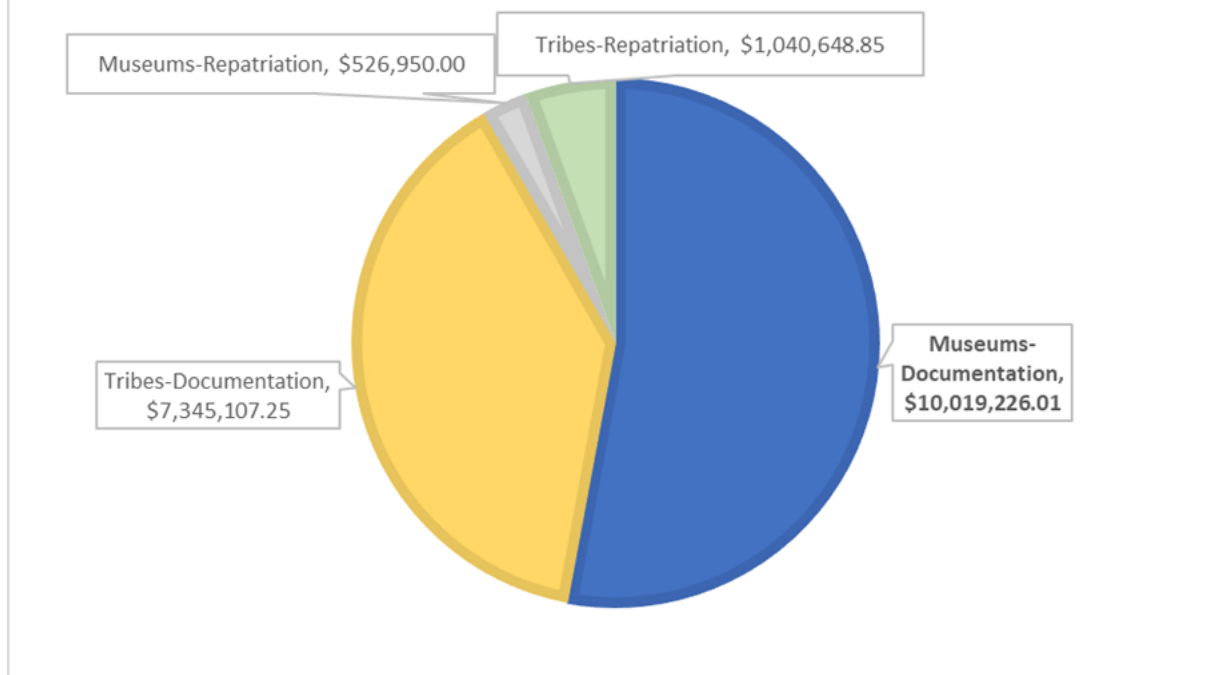
As you are aware, I recently submitted comments on the Notice of Information Collection for the NAGPRA Regulations published in the Federal Register on March 10, 2022. In reviewing the Notice of Information Collection, I noted that the figures used for the annual number of responses appeared to be at least five years old, were not consistent with information posted elsewhere, and did not reflect current activity. Further, the estimated number of burden hours provided grossly underestimated the actual financial burden in preparing these documents. Lastly, the estimated annual burden raises questions about the much larger amount of grant funding being awarded by the Department specifically to complete these tasks. I also note that the Information Collection Review website indicates that no public comments were received. I am thus attaching my original comments here and am copying the Office of Management and Budget so they can correct this oversight.

A more accurate method of calculating the costs of completing the notice and identification process required by NAGPRA relies on data from the grants awarded by the Department. As you know, 25 U.S.C. 3008 (b) authorizes the Secretary to make grants for the specific purpose of assisting museums in conducting the inventories and identification required under sections 3003 and 3004 of the Act. Section 3003 of the Act requires museums and Federal agencies to compile inventories that identify the geographical and cultural affiliation of Native American human remains and funerary objects in their possession or control and provide notice of inventory completion directly to the affiliated Indian tribes and Native Hawaiian organizations as well as to the Secretary for publication in the Federal Register. Section 3004 of the Act requires museums and Federal agencies to provide a written summary of holdings or collections to assist in identifying Native American unassociated funerary objects, sacred objects, objects of cultural patrimony in their possession or control. Regulations promulgated in 1995 added a requirement that museums and Federal agencies provide a notice of intent to repatriate to be published in the Federal Register before repatriating any unassociated funerary object, sacred object, or object of cultural patrimony (43 CFR 10.8 (f)). Completing summaries, inventories, and publishing the appropriate notices are the only activities for which Congress authorized the Secretary to make grants to museums.

The volume of summaries, inventories, and notices produced by museums and Federal agencies have changed over time. The summaries under section 3004 of the Act were required to be completed in 1993. The inventories under section 3003 of the Act were required to be completed in 1995, with a number of museums receiving extensions from the Secretary until 1999. With both the summary and inventory deadlines past, requirements to produce new or revised summaries or inventories were limited to situations in which a museum or Federal agency received a new holding or collection; a new tribe was recognized by the Department of the Interior; an institution with possession or control of Native American cultural items received Federal funds for the first time; or a museum or Federal agency revised a previous notice that had been published in the Federal Register (43 CFR 10.13). Regulations promulgated in 2010 required museums and Federal agencies to transfer control of culturally unidentifiable Native American human remains upon the request of geographically affiliated Indian tribes and Native Hawaiian organizations after publication of a notice of inventory completion (43 CFR 10.11). The requirements for museums and Federal agencies have not changed since 2010.

A comparison of documentation grants awarded to museums between 2011 and 2021 and the number of notices published by each of the museums receiving grants provides a reliable data-based estimate of the actual cost of compliance with the notice and identification provisions of the Act. During that period, 87 museums were awarded documentation grants totaling \$10,019,226.01. This figure does not include grants made to tribes for either documentation/consultation, nor grants made to museums or tribes for purposes of repatriation. This figure represents the amount these 87 museums identified as being needed to conduct the inventories and identification required under sections 3003 and 3004 of the Act, and the estimates were in turn reviewed, approved, and monitored by the Department of the Interior.

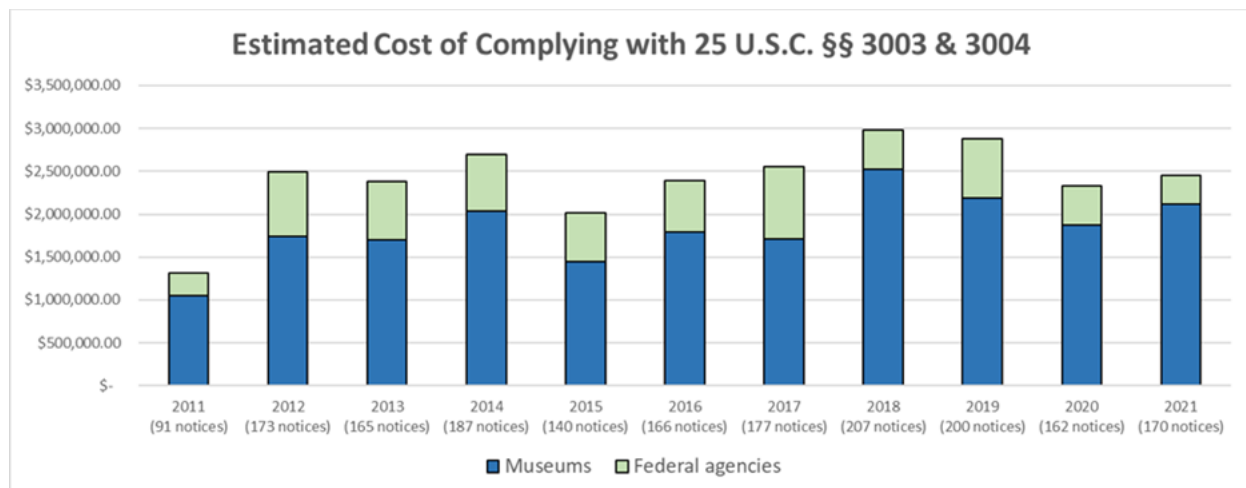
NAGPRA GRANT AWARDS 2011-2021



It should be noted that this figure does not include the cost share or matching expenditures that may be identified by these museums in their applications (the current grant application actually discourages museums from identifying cost share or matching expenditures), nor does it likely include expenditures incurred when, upon request of a tribe, the museum is required to provide all available documentation, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects.

Since 2011, the 87 museums that were awarded documentation grants published 695 notices in the Federal Register (attached). This includes both notices of inventory completion for Native American human remains and associated funerary objects and notices of intent to repatriate for Native American unassociated funerary objects, sacred objects, and object of cultural patrimony. For cost estimate purposes, each notice of inventory completion can be taken as a proxy variable to include the associated consultation and inventory activities required by section 3003 of the Act. Similarly, each notice of intent to repatriate can be taken as a proxy variable to include the associated summary and consultation activities required by section 3004 of the Act. Dividing the 695 published notices published by the 87 museums into the \$10,019,226.01 awarded to them between as grants between 2011 and 2021 results in an estimate of \$14,416.15 per notice.

Using the data-based estimated average cost of \$14,416.15 per notice, it is thus possible to calculate the total yearly costs for museums and Federal agencies for complying with the inventory and identification requirements of sections 3003 and 3004 of the Act.



One hundred and seventy notices were published in 2021, 147 by museums and 23 by Federal agencies. The estimated expenditure by all museums to comply with sections 3003 and 3004 of the Act in 2021 is \$2,119,174.05 and the estimated expenditure by all Federal agencies is \$331,571.45. It should be noted that of the 147 notices published by museums in 2021, 63 (43%) were published by museums that received a documentation grant between 2011 and 2021, thus indicating the importance of adequate grant funding to ensure compliance with sections 3003 and 3004 of the Act.

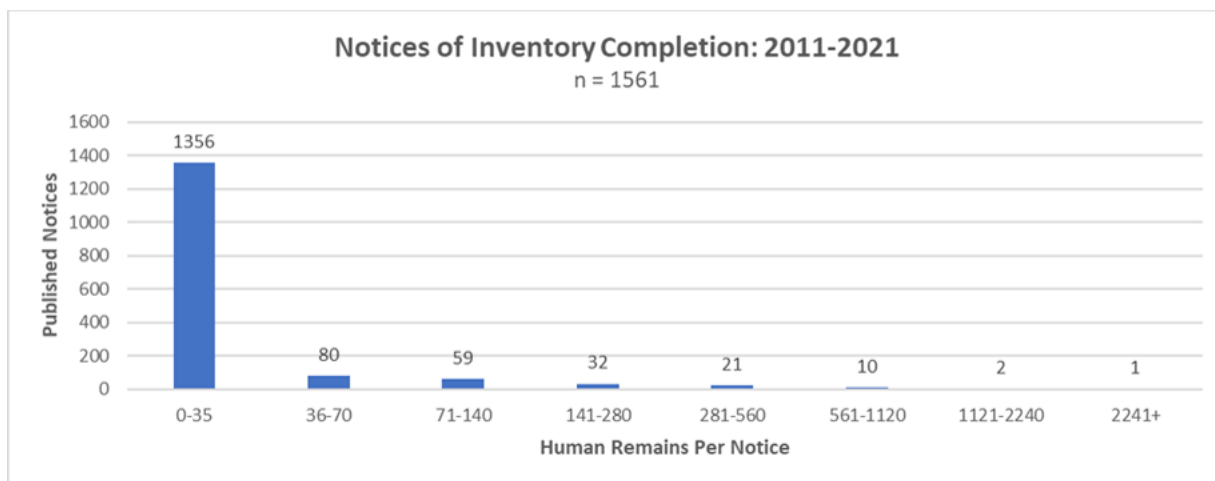
In my comments on the Notice of Information Collection for the Native American Graves Protection and Repatriation Act Regulations I noted that the \$223,304 estimated burden to museums grossly underestimated the actual burden of complying with sections 3003 and 3004 of the Act. Using data-based estimates from the grants awarded to museums to complete these specific tasks shows that a more realistic figures is ten times that amount.

Cost Estimates for the Draft Proposed Regulations

Properly documenting the costs of complying with NAGPRA is not just a paperwork exercise, particularly in light of the Department's proposed revision of the current regulations. The requirements in sections 10.10. (d)(4) and (e) of the proposed rule would mandate museums and Federal agencies to initiate consultation, update inventories to include new information, and submit updated inventories to all consulting parties for human remains and associated funerary objects to both affiliated tribes and to the National Park Service within two years of publication of the final rule; and submit notices of inventory completion for publication in the Federal Register within six months of completing the inventory. This is essentially the same process that museums and Federal agencies have been doing since promulgation of the 43 CFR 10.11 in 2010, with the only difference being that instead of disposition being triggered by a request from an affiliated tribe, the proposed rule would require museums and Federal agencies to complete the entire process in a 30-month period without a tribal request.

Using current figures to assess the implication of this proposal, the addendum to the Review Committee's Report to Congress for FY2020-2021 indicates that as of September 30, 2021, museums and Federal agencies held the remains of 117,576 Native American individuals. Since the criteria for determining cultural or geographic affiliation in the new proposal are essentially the same as those in place since 2010, it is reasonable to assume that the process of determining affiliation will be similar.

Between 2011 and 2022, museums and Federal agencies published 1,561 notices of inventory completion in the Federal Register representing the remains of 46,164 Native American individuals, with each notice accounting for 35 individuals on average.



Applying the average number of human remains listed per notice to the 117,576 Native American human remains currently in museum and Federal agency collections indicates that under the new proposal museums and Federal agencies would be expected to submit 3,359 notices of inventory completion for publication in the Federal Register over a 30-month period and, using the estimated cost of publishing a notice and associated activities derived from the grants awarded to museums between 2011 and 2021, ***those activities are expected to cost museums and Federal agencies a minimum of \$48.4 million over 30 months.***

This estimate is very conservative since it does not include cost share or matching expenditures from museums in preparing summaries, inventories, and notices. Nor does it include costs that would be incurred by Indian tribes and Native Hawaiian organizations during consultation. Nor does it include costs that would be incurred during the repatriation of these Native American human remains. Using grant awards from 2011 to 2021 to estimate the total cost for museums and tribes (excluding the cost share and matching expenditures) yields a cost burden of \$91.4 million over 30 months.

As I have shown, information provided to the Office of Management and Budget grossly underestimates the actual financial burden in preparing summaries, inventories, and notices required under NAGPRA. These inaccuracies have a major impact on the expected cost of new activities proposed by the Department. To reiterate, I am strongly in favor of requiring museums and Federal agencies to carry out the proposed activities but feel we have an obligation to consider these changes with realistic, data-based costs estimates.

Sincerely,

C. Timothy McKeown PhD
Washington DC

Attachments:

- McKeown comments on March 10, 2022 Notice of Information Collection for the Native American Graves Protection and Repatriation Act Regulations (87 FR 13750)
- NAGPRA Grant Recipients and Notices Published, 2011-2021

CC:

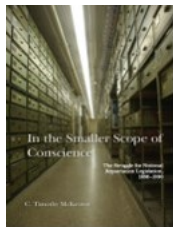
Francis P. McManamon, chair, Native American Graves Protection and Repatriation Review Committee
 Shelby Tisdale, member, Native American Graves Protection and Repatriation Review Committee
 Shannon Estenoz, Assistant Secretary for Fish and Wildlife and Parks
 Bryan Newland, Assistant Secretary for Indian Affairs
 Austin Mudd, Office of Management and Budget
 Jeffrey Parrillo, Department of the Interior

C. Timothy McKeown PhD

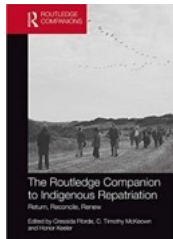
Legal Anthropologist/Repatriation Consigliere

Visiting Faculty, *Cultural Heritage Studies, Central European University*

Adjunct Research Fellow, *Centre of Heritage and Museum Studies, Australian National University*



In the Smaller Scope of Conscience: The Struggle for National Repatriation Legislation, 1986-1990



The Routledge Companion to Indigenous Repatriation: Return, Reconcile, Renew

Museums receiving documentation grants 2011-2022	Grant awarded 2011-2021	NIC published	NIR published	Total Notices
Abbe Museum	\$11,275.00		1	1
Alutiiq Museum and Archaeological Repository	\$56,254.00	2		2
American Museum of Natural History	\$19,912.00	20	7	27
Arizona Museum of Natural History Foundation	\$53,140.00	4		4
Arizona State University	\$81,699.00			
Association for the Preservation of Virginia Antiquities (Preservation Virginia)	\$89,617.30			
Auburn University	\$83,070.00	1		1
Ball State University (Department of Anthropology)	\$268,939.00	3		3
Beloit College (Logan Museum of Anthropology)	\$89,127.00	5	2	7
California State University, Sacramento	\$179,645.00	8	5	13
Catalina Island Museum	\$78,018.50	2	2	4
Children's Museum of Indianapolis	\$84,839.00			
Cincinnati Museum Center	\$330,817.00	1		1
City of Fort Collins (Fort Collins Museum)	\$57,522.00	1		1
City of Phoenix (Pueblo Grande Museum)	\$66,783.00	11	2	13
City of Traverse City	\$79,200.00	2		2
Colgate University (Longyear Museum of Anthropology)	\$89,984.00	3	2	5
College of William & Mary	\$89,882.00			
Dana Adobe Nipomo Amigos	\$43,314.00	1		1
Davis and Elkins College, Inc.	\$11,275.00			
Del Norte County Historical Society	\$51,085.00		1	1
Denver Museum of Nature and Science (Formerly Denver Museum of Natural History)	\$129,676.00	7	9	16
Evanston History Center	\$20,122.00	1		1
Field Museum of Natural History	\$347,642.00	12	17	29
Fort Lewis College (Center of Southwest Studies)	\$89,878.00	4	1	5
Gettysburg Foundation	\$5,147.00	1		1
Gilcrease Museum Management Trust	\$234,457.00	2	7	9
Hamline University with Minnesota Indian Affairs Council	\$90,000.00	19		19
Harvard University (Peabody Museum of Archaeology and Ethnology)	\$180,000.00	30	6	36
High Desert Museum	\$87,047.00			
History Colorado (formerly Colorado Historical Society)	\$53,424.00	33	3	36
Illinois State Museum	\$88,825.00	10		10
La Plata County Historical Society (Animas Museum)	\$38,070.00	3	1	4
Louisiana State University (A&M College)	\$89,258.00			
Marin Museum of the American Indian	\$102,300.00			
Marshall University Research Corporation	\$90,000.00	2	0	2
Michigan Department of Natural Resources (Michigan History Center)	\$89,874.00			
Mississippi Department of Archives and History	\$88,822.00	5	1	6
Mississippi State University	\$80,686.00	1		1
New Mexico State University	\$53,829.00			
Northern Illinois University	\$90,000.00			
Oakland Museum of California	\$77,842.00		2	2
Ohio Historical Society (Ohio History Connection)	\$173,113.00	4	1	5
Oregon State Parks and Recreation Department	\$82,260.00	3		3
Rochester Museum and Science Center	\$222,038.00	4	1	5
San Diego Museum of Man	\$356,224.00			
San Francisco State University	\$87,289.00	7	7	14
San Juan County Museum Association	\$69,932.00			
Sonoma State University (Anthropological Studies Center)	\$49,800.00	1		1
Southern Methodist University	\$87,074.00	19		19
St. Ignace City Municipality (Museum of Ojwa Culture and Marquette Mission Park)	\$265,743.00	3		3
State Center Community College District (Fresno City College)	\$83,814.00	11		11
State Historical Society of Iowa (Iowa Department of Cultural Affairs)	\$4,584.00	2	1	3
State of West Virginia Division of Culture and History	\$41,194.00	1		1
State University of New York, Buffalo	\$120,553.00	2		2
State University of New York, Oswego	\$139,500.00	5	1	6
Texas A&M University (Department of Anthropology)	\$88,993.00	14		14
Trustees of Indiana University	\$131,392.00	24		24
University of Alaska Museum of the North	\$12,300.00	1		1
University of Arizona (Arizona State Museum)	\$248,089.00	17	14	31
University of Arkansas (Arkansas Archeological Survey)	\$122,578.00	21	3	24
University of California (Davis)	\$266,241.00	11	1	12
University of California, San Diego	\$84,818.00	1		1
University of Central Missouri	\$90,000.00		5	5
University of Colorado, Boulder (Colorado Museum of Natural History)	\$255,050.00	7	3	10
University of Denver Museum of Anthropology (Colorado Seminary)	\$196,411.00	12	8	20
University of Florida (Florida Museum of Natural History)	\$90,000.00			
University of Georgia Research Foundation	\$159,993.00	1	1	2
University of Illinois	\$86,996.00	2	1	3
University of Iowa (Office of the State Archaeologist)	\$176,963.00	17		17
University of Maine System (Hudson Museum)	\$87,120.00	5	1	6
University of Missouri System (Museum of Anthropology)	\$174,564.00			
University of Missouri System, St. Louis	\$38,315.00			
University of Montana (Department of Anthropology)	\$89,066.00	3		3
University of New Mexico (Maxwell Museum of Anthropology)	\$179,778.00	3	3	6
University of Northern Colorado	\$86,996.00			
University of Oklahoma (Sam Noble Oklahoma Museum of Natural History)	\$539,995.00	15	1	16
University of Oregon Museum of Natural and Cultural History	\$85,188.00	9	2	11
University of Texas at Austin (Texas Archeological Research Laboratory)	\$90,000.00	4		4
University of Washington (Burke Museum of Natural History and Culture)	\$122,601.00	31	10	41
University of Wisconsin, Madison (Department of Anthropology)	\$27,410.00	18		18
Utah State University	\$50,625.00	1		1
Washington State Parks and Recreation Commission	\$177,008.21	7	3	10
Western New Mexico University Museum	\$90,000.00			
Wisconsin Historical Society (Wisconsin Historical Museum)	\$178,419.00	56	1	57
Yale University (Peabody Museum of Natural History)	\$166,902.00	15	7	22
	\$10,019,226.01	551	144	695
https://www.nps.gov/subjects/nagpra/previously-awarded-grants.htm (accessed 4-29-2022)				

From: Timothy McKeown
Sent: Monday, April 11, 2022 2:55 PM
To: Ponds, Phadrea D
Cc: O'Brien, Melanie A
Subject: Re: [EXTERNAL] OMB Control No: 1024-0144

Much appreciated, Phadrea!

Sent from my iPhone

On Apr 11, 2022, at 2:29 PM, Ponds, Phadrea D <Phadrea_Ponds@nps.gov> wrote:

Thank you for your comment. We have included it as a part of our record.

Phadrea

Phadrea D. Ponds
NPS Information Collection Clearance Officer
NPS Forms Program Manager

Portfolio and Information Management
Information Resources
National Park Service

[202-230-2967](tel:202-230-2967) (cell)

From: Timothy McKeown <smallerscope@msn.com>
Sent: Monday, April 11, 2022 2:26 PM
To: risc@gsa.gov
Cc: Ponds, Phadrea D <Phadrea_Ponds@nps.gov>
Subject: [EXTERNAL] OMB Control No: [1024-0144](#)

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Please note that while the reginfo.gov website says the comment period is closed, the Federal Register notice says that comments will be accepted "on or before April 11, 2022."

C. Timothy McKeown PhD

Consigliere, Independent Repatriation Consultant

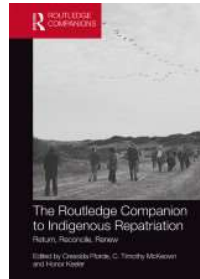
*Senior Adjunct Research Fellow, Centre of Heritage and Museum Studies,
Australian National University*

Visiting Faculty, Cultural Heritage Program, Central European University

*Guest Researcher, Institute for Legal Studies, Centre for Social Sciences,
Hungarian Academy of Sciences*



*In the Smaller Scope of Conscience:
The Struggle for National Repatriation
Legislation, 1986-1990*



*The Routledge Companion to
Indigenous Repatriation,
Return, Reconcile, Renew*

Regulatory Information Service Center (RISC)
General Services Administration
1800 F Street, NW
Washington DC 20405
lsc@gsa.gov

[OMB Control Number: 1024-0144.](#)

I write to comment on the Notice of Information Collection for the Native American Graves Protection and Repatriation Act Regulations published in the Federal Register on March 10, 2022 (87 FR 13750).

In reviewing the submission, I note that the figures used for annual number of responses appear to be at least five years old, are not consistent with information posted elsewhere, and do not reflect current activity. Further, the estimated number of burden hours provided grossly underestimate actual burden in preparing these documents. Lastly, the estimated annual burden raises questions about the much larger amount of funding being awarded by the National Park Service to complete these tasks.

Data Used

Most of the information provided in the submission is identical to that provided in the 2018 submission, and appears to reflect data from 2017. Unfortunately, the data as presented in the submission is inconsistent with that provided by the National NAGPRA Program in its FY2017 Program Report.

While the submission indicates that 313 new or updated summaries or inventories were received, the FY2017 Program Report states that only 97 were received. The FY2018 Program Report states that 101 new or updated summaries or inventories were received. The FY2019 and FY2020 Program Reports no longer provide these data.

Similarly, while the submission indicates that 105 notices were received, the FY2017 Program Report states that 202 were received. The FY2018, FY2019, and FY2020 Program Reports state that 101, 236, and 171 were received respectively.

It is unclear what the factual basis is for the “notify tribes/request information” and “respond to request for information” categories in the submission.

It should be noted that starting in its FY2018 Program Report, the National NAGPRA Program eliminated several categories of data, including the number of summaries and inventories received, which reduce the transparency of the program and have raised suspicions. This trend has been repeatedly critiqued by the Native American Graves Protection and Repatriation Review Committee.

Estimate of Burden Hours

The estimate has unwisely grouped together different required information collection activities with markedly different time burdens.

Museums are required to prepare **summaries** of collections in their possession or control that may include unassociated funerary objects, sacred objects, or objects of cultural patrimony (43 CFR 10.8 (a)). Each summary must include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and

information relevant to identifying lineal descendants, if available, and cultural affiliation (43 CFR 10.8 (b)). Each summary must also include: accession and catalogue entries; information related to the acquisition of unassociated funerary object, sacred object, or object of cultural patrimony, including the name of the person or organization from whom the object was obtained, if known; the date of acquisition; the place each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; the means of acquisition, i.e., gift, purchase, or excavation; a description of each unassociated funerary object, sacred object, or object of cultural patrimony, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such objects, if known; a summary of the evidence used to determine the cultural affiliation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony (43 CFR 10.8 (e)). A copy of the summary must be provided to the Manager, National NAGPRA Program (43 CFR 10.8 (d)(3)). **Even though preparation of the summary involves many steps, the estimate of 100 hours may be reasonable if the museum is only doing an update or only has a small collection in its possession or control since consultation with lineal descendants, Indian tribes, and Native Hawaiian organizations is not required as part of preparing the summary 43 CFR 10.8 (d)(2).**

Inventories of human remains and associated funerary objects are a different matter entirely, being more detailed and requiring consultation with lineal descendants, Indian tribes, and Native Hawaiian organizations. Each inventory must include: accession and catalogue entries, including the accession/catalogue entries of human remains with which funerary objects were associated; information related to the acquisition of each object, including the name of the person or organization from whom the object was obtained, if known, the date of acquisition, the place each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; the means of acquisition, i.e., gift, purchase, or excavation; a description of each set of human remains or associated funerary object, including dimensions, materials, and, if appropriate, photographic documentation; and the antiquity of such human remains or associated funerary objects, if known; a summary of the evidence, including the results of consultation, used to determine the cultural affiliation of the human remains and associated funerary objects (43 CFR 10.9 (c)). Further, each inventory must be completed in consultation with lineal descendants of individuals whose remains and associated funerary objects are likely to be subject to the inventory provisions of these regulations; and Indian tribe officials and traditional religious leaders from whose tribal lands the human remains and associated funerary objects originated, that are, or are likely to be, culturally affiliated with human remains and associated funerary objects; and from whose aboriginal lands the human remains and associated funerary objects originated (43 CFR 10.9 (b)). A copy of the inventory must be sent to the Manager, National NAGPRA Program (43 CFR 10.9 (e)(4)). **The 100 hour estimate to complete an inventory is unrealistically low.**

Similarly, the submission mistakenly combines **notices intent to repatriate** and **notices of inventory completion**, and estimates an hourly burden for each of 10 hours. **As discussed above, preparation of the summary does not require consultation, but the notice of intent to repatriate does, meaning that the hourly burden for preparing one is significantly higher than for preparing a notice of inventory completion.**

Hourly Rate

The submission uses general data from the Bureau of Labor Statistics (BLS) News Release USDL-21-2146, December 16, 2021, Employer Costs for Employee Compensation—September 2021, to calculate the total annual burden. However, the National NAGPRA Program has much more detailed and precise data available to estimate these costs in the form of proposed budgets from museums applying for grants.

Overall Estimate

The submission estimates the annual dollar value of the burden hours at \$223,304, which stands in stark contrast to the amount of grants awarded annually “to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 3003 and 3004 of this title” (25 U.S.C. 3008 (b)).

Consultation/Documentation Grants Awarded to Museums		
Year	Number of grants	Total Amount
2017	12	\$ 878,032.00
2018	12	\$ 913,921.00
2019	11	\$ 742,139.00
2020	15	\$ 1,123,856.00
2021	16	\$ 1,301,401.00

From <https://www.nps.gov/subjects/nagpra/previously-awarded-grants.htm>

If the annual burden to produce summaries, inventories, and notices required by NAGPRA is indeed as low as included in this submission, it raises questions as to what the rest of the grant funding is actually being spent on.

Sincerely,

C. Timothy McKeown PhD
Washington DC
smallerscope@msn.com

cc: Phadrea Ponds, NPS Information Collection Clearance Officer, phadrea_ponds@nps.gov

Display additional information by clicking on the following: ☒ All ☒ Brief and OIRA conclusion
☒ Abstract/Justification ☒ Legal Statutes ☒ Rulemaking ☒ FR Notices/Comments ☒ IC List ☒ Burden ☒ Misc.
☒ Common Form Info. ☒ Certification
[View Information Collection \(IC\) List](#) [View Supporting Statement and Other Documents](#)

Please note that the OMB number and expiration date may not have been determined when this Information Collection Request and associated Information Collection forms were submitted to OMB. The approved OMB number and expiration date may be found by clicking on the Notice of Action link below.

View ICR - OIRA Conclusion

OMB Control No: 1024-0144

Status: Active

Agency/Subagency: DOI/NPS

Title: Native American Graves Protection and Repatriation, 43 CFR 10

Type of Information Collection: Extension without change of a currently approved collection

Type of Review Request: Regular

OIRA Conclusion Action: Approved without change

[Retrieve Notice of Action \(NOA\)](#)

Terms of Clearance:

ICR Reference No: 202202-1024-003

Previous ICR Reference No: [201810-1024-004](#)

Agency Tracking No: 1024-0144 NAGPRA Renewal

Common Form ICR: No

Conclusion Date: 04/11/2022

Date Received in OIRA: 03/10/2022

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	04/30/2025	36 Months From Approved	05/31/2022
Responses	448	0	448
Time Burden (Hours)	4,470	0	4,470
Cost Burden (Dollars)	0	0	0

Abstract: The Native American Graves Protection and Repatriation Act (NAGPRA), enacted in 1990, requires museums to compile information regarding Native American cultural items in their possession or control and provide that information to lineal descendants, Indian tribes, and Native Hawaiian organizations using specific types of documentation (summaries, inventories, and notices). The implementing regulations, first promulgated in 1995, require that each museum provide one copy of each summary and inventory to the Secretary of the Interior, through the National Park Service (NPS). Notices prepared by museums are published in the Federal Register by the NPS. To date, 1,299 museums have provided summaries, inventories, and notices, as applicable, to the NPS. The collection of information requirements in this rule are prepared under the authorities granted in Secs. 5, 6, 7, and 8 of NAGPRA, 25 U.S.C. 3003, 3004, 3005, 3006. Collection of information during the conduct of administrative investigations of allegations of failure to comply under Sec. 9 of NAGPRA, 25 U.S.C. 3007, is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3518 (c)(1)(B)(ii)).

Authorizing Statute(s): US Code: [25 USC 3001-3013](#) Name of Law: The Native American Graves Protection and Repatriation Act of 1990

Citations for New Statutory Requirements: None

Associated Rulemaking Information

RIN: **Stage of Rulemaking:** Not associated with rulemaking **Federal Register Citation:** **Date:**

Federal Register Notices & Comments

60-day Notice: **Federal Register Citation:** [86 FR 62203](#) **Citation Date:** 11/09/2021
30-day Notice: **Federal Register Citation:** [87 FR 13750](#) **Citation Date:** 03/10/2022

Did the Agency receive public comments on this ICR? No

Number of Information Collection (IC) in this ICR: 9

IC Title	Form No.	Form Name
Notify Tribes/Request Information (Private)		
Notify Tribes/Request for Information (Govt)		
Private Museums - New Summary/Inventory		
Private Museums - Notices		
Private Museums - Updated Summary/Inventory Data		
Response for Request for Information (Govt)		
State and Local Governments Museums - Updated Summary/Inventory Data		
State or Local Government Museums - Notices		
State or Local Government Museums - New Summary/Inventory		

ICR Summary of Burden

	Total Approved	Previously Approved	Change Due to New Statute	Change Due to Agency Discretion	Change Due to Adjustment in Estimate	Change Due to Potential Violation of the PRA
Annual Number of Responses	448	448	0	0	0	0
Annual Time Burden (Hours)	4,470	4,470	0	0	0	0
Annual Cost Burden (Dollars)	0	0	0	0	0	0

Burden increases because of Program Change due to Agency Discretion: No

Burden Increase Due to:

Burden decreases because of Program Change due to Agency Discretion: No

Burden Reduction Due to:

Short Statement:

Annual Cost to Federal Government: \$192,977

Does this IC contain surveys, censuses, or employ statistical methods? No

Does this ICR request any personally identifiable information (see [OMB Circular No. A-130](#) for an explanation of this term)? Please consult with your agency's privacy program when making this determination. No

Does this ICR include a form that requires a Privacy Act Statement (see [5 U.S.C. §552a\(e\)\(3\)](#))? Please consult with your agency's privacy program when making this determination. No

Is this ICR related to the Affordable Care Act [Pub. L. 111-148 & 111-152]? No

Is this ICR related to the Dodd-Frank Wall Street Reform and Consumer Protection Act, [Pub. L. 111-203]? No

Is this ICR related to the American Recovery and Reinvestment Act of 2009 (ARRA)? No

Is this ICR related to the Pandemic Response? No

Agency Contact: Phadrea Ponds 970 226-9445 ponds@usgs.gov

Common Form ICR: No

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3).

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- ☒ (a) It is necessary for the proper performance of agency functions;
- ☒ (b) It avoids unnecessary duplication;
- ☒ (c) It reduces burden on small entities;
- ☒ (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- ☒ (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- ☒ (f) It indicates the retention periods for recordkeeping requirements;
- ☒ (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- ☒ (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected.
- ☒ (i) It uses effective and efficient statistical survey methodology (if applicable); and
- ☒ (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item by leaving the box unchecked and explain the reason in the Supporting Statement.

Certification Date: 03/10/2022

