

Bureau of Indian Affairs

ANSWERS TO

FREQUENTLY ASKED QUESTIONS

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Who is an Indian?

No single Federal or tribal criterion establishes a person's identity as an Indian. Government agencies use differing criteria to determine who is an Indian eligible to participate in their programs. Tribes also have varying eligibility criteria for membership. To determine what the criteria might be for agencies or Tribes, you must contact each entity directly.

To be eligible for Bureau of Indian Affairs services, an Indian must (1) be a member of a Tribe recognized by the Federal Government, (2) one-half or more Indian blood of tribes indigenous to the United States (25 USC 479) ; or (3) must, for some purposes, be of one-fourth or more Indian ancestry. By legislative and administrative decision, the Aleuts, Eskimos and Indians of Alaska are eligible for BIA services. Most of the BIA's services and programs, however, are limited to Indians living on or near Indian reservations.

The Bureau of the Census counts anyone an Indian who declares himself or herself to be an Indian. In 1990 the Census figures showed there were 1,959,234 American Indians and Alaska Natives living in the United States (1,878,285 American Indians, 57,152 Eskimos, and 23,797 Aleuts). This is a 37.9 percent increase over the 1980 recorded total of 1,420,000. The increase is attributed to improved census taking and more self- identification during the 1990 count.

The BIA's 1993 estimate is that about 1.2 million of this total population live on or adjacent to Federal Indian reservations. This is the segment of the U.S. Indian and Alaska Native population served by the BIA through formal, on-going relations.

What is an Indian Tribe?

Originally, an Indian Tribe was a body of people bound together by blood ties who were socially, politically, and religiously organized, who lived together in a defined territory and who spoke a common language or dialect. The establishment of the reservation system created some new tribal groupings when two or three tribes were placed on one reservation, or when members of one tribe were spread over two or three reservations.

What is a Federally recognized tribe?

There are more than 550 Federally recognized Tribes in the United States, including 223 village groups

in Alaska. "Federally recognized" means these tribes and groups have a special, legal relationship with the U.S. government. This relationship is referred to as a government-to-government relationship. Members of Federally recognized Tribes who do not reside on their reservations have limited relations with the BIA and IHS, since BIA and IHS programs are primarily administered for members of Federally recognized tribes who live on or near reservations.

A number of Indian Tribes and groups in the U.S. do not have a Federally recognized status, although some are State recognized. This means they have no relations with the BIA or the programs it operates. A special program of the BIA, however, works with those groups seeking Federal recognition status. Of the 150 petitions for Federal recognition received by the BIA since 1978, 12 have received acknowledgment through the BIA process, two groups had their status clarified by the Department of the Interior through other means, and seven were restored or recognized by Congress.

How does an Indian become a member of a Tribe?

A Tribe sets up its own membership criteria, although the U.S. Congress can also establish tribal membership criteria. Becoming a member of a particular Tribe requires meeting its membership rules, including adoption. Except for adoption, the amount of blood quantum needed varies, with some Tribes requiring only proof of descent from an Indian ancestor, while others may require as much as one-half.

What is a reservation?

In the U.S. there are only two kinds of reserved lands that are well-known: military and Indian. An Indian reservation is land a Tribe reserved for itself when it relinquished its other land areas to the U.S. through treaties. More recently, Congressional acts, Executive Orders and administrative acts have created reservations. Today some reservations have non-Indian residents and land owners living within the boundaries of reservations.

There are approximately 275 Indian land areas in the U.S. administered as Indian reservations (reservations, pueblos, rancherias, communities, etc.). The largest is the Navajo Reservation of some 16-million acres of land in Arizona, New Mexico, and Utah. Many of the smaller reservations are less than 1,000 acres with the smallest less than 100 acres. On each reservation, the local governing authority is the tribal government.

Approximately 56.2-million acres of land are held in trust by the United States for various Indian Tribes and individuals. Much of this is reservation land; however, not all reservation land is trust land. On behalf of the United States, the Secretary of the Interior serves as trustee for such lands with many routine trustee responsibilities delegated to BIA officials.

The States in which reservations are located have limited powers over them, and only as provided by Federal law. On some reservations, however, a high percentage of the land is owned and occupied by non-Indians. Some 140 reservations have entirely tribally owned land.

Do all Indians live on reservations?

No. Indians can and do live anywhere in the United States that they wish. Many leave their home reservations for educational and employment purposes. Over half of the total U.S. Indian and Alaska Native population now lives away from reservations. Most return home often to participate in family and tribal life and sometimes to retire.

Are Indians required to stay on reservations?

No. Indians are free to move about like all other Americans. Contrary to popular belief, Indians are not required to acquire passports to leave or enter reservations.

Do Indians have the right to own land?

Yes. As U.S. citizens, Indians can buy and hold title to land purchased with their own funds. Nearly all lands of Indian Tribes, however, are held in trust for them by the United States. There is no general law that permits a tribe to sell its land. Individual Indians also own trust land, which they can sell, but only upon the approval of the Secretary of the Interior or his representative. If an Indian wants to extinguish the trust title to his land and hold title like any other citizen (with all the attendant responsibilities such as paying taxes), he can do so if the Secretary of the Interior or his authorized representative determines that he is able to manage his own affairs. This is a protection for the individual.

What does tribal sovereignty mean to Indians?

When Indian Tribes first encountered Europeans, they were dealt with because of their strength in numbers and were treated as sovereign governments with whom treaties were made. When tribes gave up their lands to the U.S., they retained certain sovereignty over the lands they kept. While such sovereignty is limited today, it is nevertheless jealously guarded by the tribes against encroachments by other sovereign entities such as States. Tribes enjoy a direct government-to-government relationship with the U.S. government wherein no decisions about their lands and people are made without their consent.

Are Indians wards of the government?

No. The Federal Government is a trustee of Indian property, it is not a guardian of individual Indians. The Secretary of the Interior is authorized by law, in many instances, to protect the interests of minors and incompetents, but this protection does not confer a guardian-ward relationship.

Do Indians get payments from the government?

No individual is automatically paid for being an Indian. The Federal Government may pay a Tribe or an individual in compensation for damages for losses resulting from treaty violations, for encroachments on Indian lands, or for other past or present wrongs. A Tribe or an individual may also receive a government check for payment of income from their lands and resources. This occurs because their resources are held in trust by the Secretary of the Interior and payment for their use has been collected from users by the Federal Government in their behalf. Fees collected from oil or grazing leases are an example of this situation.

Are Indians entitled to a free college education?

No. An individual does not automatically receive funding because of Indian ancestry. The Indian higher education program provides financial aid to eligible students, based on demonstrated financial need, who have plans to attend an accredited institution of higher education. A student must obtain an application packet and other financial aid information from their tribe, home BIA Agency, or Area Office of Indian Education Programs. The Higher Education Grant Program is available to an individual who is a member of a federally Recognized Indian tribe.

Are Indians U.S. citizens?

Yes. Before the U.S. Congress extended American citizenship in 1924 to all Indians born in the territorial limits of the United States, citizenship had been conferred upon approximately two-thirds of the Indian population through treaty agreements, statutes, naturalization proceedings, and by "service in the Armed Forces with an honorable discharge" in World War I. Indians also are members of their respective Tribes and thus have dual citizenship.

Can Indians Vote?

Yes. Indians have the same right to vote as other U.S. citizens. In 1948, the Arizona Supreme Court declared as unconstitutional disenfranchising interpretation of the State constitution. Thus Indians were permitted to vote as in most other States. A 1953 Utah State law stated that persons living on Indian reservations were not residents of the State and could not vote. That law was subsequently repealed. In 1954, Indians in Maine who were not then Federally recognized were given the right to vote, and in 1962, New Mexico extended the right to vote to Indians. Indians also vote in State and local elections and in their affiliated tribal elections. Each tribe, however, determines which of its members are eligible to vote in its elections. This qualification to do so is not related to the individual Indian's right to vote in national, State or local (non-Indian) elections.

Do Indians have the right to hold Federal, State and local government offices?

Yes. Indians have the same rights as other citizens to hold public office. Indian men and women have held elective and appointive offices at all levels of government. Charles Curtis, a Kaw Indian from Kansas, served as Vice President of the United States under President Herbert Hoover.

Indians have been elected to the U.S. Congress from time to time for more than 80 years. Ben Reifel, a Sioux Indian from South Dakota, served five terms in the U.S. House of Representatives. Ben Nighthorse Campbell, a member of the Northern Cheyenne Tribe of Montana, was elected to the U.S. House of Representatives in 1986 from the Third District of Colorado, and is currently serving in the United States Senate. He is the only American Indian currently serving in Congress. Other Indians who have served in the U.S. Congress include- -

U.S. Senate:

Hiram R. Revels, Lumbee from Mississippi, 1870-1871

Mathew Stanley Quay, Abenaki or Delaware from Pennsylvania, 1887-1899 and 1901-1904

Charles Curtis, Kaw from Kansas, 1907-1912 and 1915-1929 (Vice-President from 1929-1933)

Robert L. Owens, Cherokee from Oklahoma, 1907-1925

U.S. House of Representatives:

Charles Curtis, Kaw from Kansas, 1893-1907

Charles D. Carter, Choctaw from Oklahoma, 1907-1927

W.W. Hastings, Cherokee from Oklahoma, 1915-1921 and 1923-1935

Will Rogers, Jr., Cherokee from California, 1943-1944

William G. Stigler, Choctaw from Oklahoma, 1944-1952

Benjamin Reifel, Rosebud Sioux from South Dakota, 1961-1971

Clem Rogers McSpadden, Cherokee from Oklahoma, 1972-1975

Indians also served in and now hold office in a number of State legislatures. Others currently hold or have held elected or appointive positions in State judiciary systems and in county and city governments including local school boards. Larry Echo Hawk, an enrolled member of the Pawnee Tribe, served as attorney general of Idaho from 1992 to 1994.

Do Indians pay taxes?

Yes. They pay the same taxes as other citizens with the following exceptions:

- Federal income taxes are not levied on income from trust lands held for them by the United States;
- State income taxes are not paid on income earned on a Indian reservation;
- State sales taxes are not paid by Indians on transactions made on an Indian reservation; and
- Local property taxes are not paid on reservation or trust land.

Do laws that apply to non-Indians also apply to Indians?

Yes. As U.S. citizens, Indians are generally subject to Federal, State, and local laws. On Indian reservations, however, only Federal and tribal laws apply to members of the Tribe unless the Congress provides otherwise. In Federal law, the Assimilative Crimes Act makes any violation of State criminal law a Federal offense on reservations. Most Tribes now maintain tribal court systems and facilities to detain tribal members convicted of certain offenses within the boundaries of the reservation.

How is Indian gaming regulated?

Indian land is not under State law unless a Federal law places it under State law. The Supreme Court held that even if a tribe is under State law the State gaming regulations do not apply on Indian trust land.

In 1988 Congress passed the *Indian Gaming Regulatory Act*. This law allows traditional Indian gaming as well as bingo, pull tabs, lotto, punch boards, tip jars, and certain card games on tribal land. However, it requires a Tribal/State compact for other forms of gaming such as cards or slot machines. Today there are about 145 Tribal-State gaming compacts. Nearly 130 tribes in 24 states are involved in some kind of gaming.

The National Indian Gaming Commission was established by Congress to develop regulations for Indian gaming. For more information contact the National Indian Gaming Commission, 9th., Floor, 1441 L Street, NW, Washington, DC 20005, (202) 632-7003.

Does the United States still make treaties with Indians?

No. Congress ended treaty-making with Indian tribes in 1871. Since then, relations with Indian groups are by Congressional acts, Executive Orders, and Executive Agreements. Between 1778, when the first treaty was made with the Delawares, to 1871, when Congress ended the treaty making period, the U.S. Senate ratified 370 Indian treaties. At least 45 others were negotiated with tribes but were never ratified by the Senate.

The treaties that were made often contain obsolete commitments which have either been fulfilled or superseded by Congressional legislation. The provision of education, health, welfare, and other services by the government to tribes often has extended beyond treaty requirements. A number of large Indian groups have no treaties, yet share in the many services for Indians provided by the Federal Government.

The specifics of particular treaties signed by government negotiators with Indians are contained in one volume (Vol. II) of the publication, "Indian Affairs, Laws and Treaties," compiled, annotated and edited by Charles Kappler. Published by the Government Printing Office in 1904, it is now out of print, but can be found in most large law libraries. More recently the treaty volume has been published privately under the title, "Indian Treaties, 1778-1883."

Originals of all the treaties are maintained by the National Archives and Records Service of the General

Services Administration. A duplicate of a treaty is available upon request for a fee. The agency will also answer questions about specific Indian treaties. Write to: Diplomatic Branch, National Archives and Records Services, Washington, DC 20408.

How do Indian tribes govern themselves?

Most tribal governments are organized democratically, that is, with an elected leadership. The governing body is generally referred to as a "council" and comprised of persons elected by vote of the eligible adult tribal members. The presiding official is the "chairman," although some tribes use other titles such as "principal chief," "president" or "governor." An elected tribal council, recognized as such by the Secretary of the Interior, has authority to speak and act for the tribe and to represent it in negotiations with Federal State, and local governments.

Tribal governments generally define conditions of membership, regulate domestic relations of members, prescribe rules of inheritance for reservation property not in trust status, levy taxes, regulate property under tribal jurisdiction, control conduct of members by tribal ordinances, and administer justice.

Many tribes are organized under the Indian Reorganization Act (IRA) of 1934, including a number of Alaska Native villages, which adopted formal governing documents (Constitutions) under the provisions of a 1936 amendment to the IRA. The passage in 1971 of the Alaska Native Claims Settlement Act, however, provided for the creation of village and regional corporations under State law to manage the money and lands granted by the Act. The Oklahoma Indian Welfare Act of 1936 provided for the organization of Indian tribes within the State of Oklahoma. Some tribes do not operate under any of these acts, but are nevertheless organized under documents approved of governments. Prior to reorganization, the tribes maintained their own, often highly developed, systems of self-government.

Do Indians have special rights different from other citizens?

Any special rights that Indian tribes or members of those tribes have are generally based on treaties or other agreements between the United States and tribes. The heavy price Indians paid to retain certain "sovereign" rights was to relinquish much of their land to the United States. The inherent rights they did not relinquish are protected by U.S. law. Among those may be hunting and fishing rights and access to religious sites.

Did all Indians speak one language?

At the end of the 15th century, more than 300 languages were spoken by the native population of what is now the United States. Some were linked by "linguistic stocks" which meant that widely scattered tribal groups had some similarities in their languages. Today, some 250 tribal languages are still spoken, some by only a few individuals and others by many. Most Indians now use English as their main language for communicating with non-tribal members. For many, it is a second language.

Do Indians serve in the Armed Forces?

Yes. Indians have the same obligations for military service as other U.S. citizens. They have fought in all American wars since the Revolution. In the Civil War, they served on both sides. Eli S. Parker, Seneca from New York, was at Appomattox as aide to Gen. Ulysses S. Grant when Lee surrendered, and the unit of Confederate Brigadier General Stand Watie (Cherokee) was the last to surrender. It was not until World War I that Indians' demonstrated patriotism (6,000 of the more than 8,000 who served were volunteers) moved Congress to pass the Indian Citizenship Act of 1924. In World War II, 25,000 Indian men and women, mainly enlisted Army personnel, fought on all fronts in Europe and Asia, winning (according to an incomplete count) 71 Air Medals, 51 Silver Stars, 47 Bronze Stars, 34 Distinguished Flying Crosses, and two Congressional Medals of Honor. The most famous Indian exploit of World War II was the use by Navajo Marines of their language as a battlefield code, the only such code which the enemy could not break. In the Korean conflict, there was one Indian Congressional Medal of Honor winner. In the Vietnam War, 41,500 Indians served in the military forces. In 1990, prior to Operation Desert Storm, some 24,000 Indian men and women were in the military. Approximately 3,000 served in the Persian Gulf with three among those killed in action. One out of every four Indian males is a military veteran and 45 to 47 percent of tribal leaders today are military veterans.

How does one trace Indian ancestry and become a member of a tribe?

The first step in tracing Indian ancestry is basic genealogical research if one does not already have specific family information and documents that identify tribal ties. Some information to obtain is:

names of ancestors;

dates of birth;

marriages and death;

places where they lived;

their brothers and sisters, if any, and, most importantly, tribal affiliations.

Among family documents to check are bibles, wills, and other such papers. The next step is to determine whether your ancestors are on an official tribal roll or census. For this there are several sources: The National Archives and Records Administration, Natural Resources Branch, Civil Archives Division, 8th and Pennsylvania Ave., NW, Washington, D.C. 20408.

The BIA maintains a directory of Tribal offices. When you know to which tribe you may be a member, contact the BIA, Branch of Tribal Enrollment, 1849 C St. NW, Washington, D.C. 20240 to get the address and phone number of the tribal membership office. Contact the tribe to see if they have records of your ancestors. The key in determining Indian ancestry is identification of a specific tribal affiliation. Becoming a member of a tribe is determined by the enrollment criteria of the tribe from which Indian blood may be derived, and this varies with each tribe. Generally, if linkage to an identified tribal member is far removed, one would not qualify for membership, but it is the tribe, not the BIA, which makes that determination.

Why are Indians sometimes referred to as Native Americans?

The term, "Native American," came into usage in the 1960's to denote the groups served by the Bureau of Indian Affairs: American Indians and Alaska Native (Indians, Eskimos and Aleuts of Alaska). Later the term also included Native Hawaiians and Pacific Islanders in some Federal programs. It, therefore, came into disfavor among some Indian groups. The preferred term is American Indian.

The Eskimos and Aleuts in Alaska are two culturally distinct groups and are sensitive about being included under the "Indian" designation. They prefer, "Alaska Native."

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