§ 89.42 Factors to be considered. The following factors are to be considered in determining whether funds should be paid to provide private legal representation for a tribe.

(a) The merits of the legal position which the tribe asserts. Greater weight will be given to those cases where the tribe’s legal argument is deemed particularly meritorious than to those cases where the tribe’s position, although not entirely without merit, may be relatively weak;

(b) The ability of the tribe to pay all or a part of its legal expenses out of its own funds. A review of the tribe’s financial resources under this subsection will include an examination of the tribe’s total expenditures to determine whether its expenditures for other purposes comport with the asserted importance of the case for which it seeks funds;

(c) Whether the question the tribe seeks to litigate is being litigated in another case by another tribe;

(d) Whether, as a matter of strategy, the issues the tribe seeks to litigate could be more satisfactorily resolved in another forum, in a different factual context, or a different time; and

(e) Whether the issue should be litigated at all in preference to a legislative or other solution.

§ 89.43 Procedures. The information collection requirements contained in this section do not require approval by the Office of Management and Budget under 44 U.S.C. 3051 et seq., because it is anticipated there will be fewer than 10 respondents annually.

(a) A tribe or other organization seeking funds under §89.41 shall submit a written request through the Agency Superintendent and the Area Director, including

(1) A detailed statement describing the nature and scope of the problems for which legal services are sought;