

(ii) Affiliation with broker dealers, banks, insurance and/or investment companies;

(iii) Research done in house;

(iv) Recent changes in active portfolio managers; and

(v) Any other information necessary to make an adequate evaluation of the proposed plan.

(f) A description of how the plan will ensure that the fund manager will comply with any conditions established in judgment fund plans or settlement acts.

(g) Proof of liability insurance of the investment firm.

(h) Proof of liability insurance that protects against fraud for those Tribal Council members with authority to disburse funds. In many tribes the chairperson, and the comptroller and/or the tribal treasurer, for example, would be the positions having this authority.

(i) A plan for custodianship of investment securities that includes:

(1) Name of persons in the tribe who can direct the custodian;

(2) Name of the custodian;

(3) Copy of intended custodian agreement;

(4) Size of custodian operation;

(5) Disclosure of any security lending provisions; and

(6) Insurance coverage.

(j) A tribal council agreement to provide an annual audit and report on performance of withdrawn funds to the tribal membership. The agreement must include a description of the steps (including audit performance and reporting) the tribe will take to ensure its membership that the tribe is continuing to comply with the terms of the plan submitted and approved pursuant to judgment fund limitations (if any) and/or the terms of the Act.

(k) The proposed date for transfer of funds.

(l) A statement as to whether the tribe chooses to receive the withdrawal as a cash balance transfer, as a transfer of marketable investments that we own for the tribe, or as a combination of the two.

(1) A cash balance transfer may require us to sell bonds, notes, or other investments that we purchased when investing the tribe's monies.

(2) We cannot transfer non-marketable securities to a tribe. We can only purchase and hold them and must sell them back to the U.S. Treasury.

(3) If we sell a tribe's security at a loss (i.e., when market value is less than book value or carrying value) we will first notify the tribe. The tribe must instruct us to proceed with the sale and must agree not to hold us responsible for the loss before we will make the sale.

(4) If the tribe asks us to transfer marketable securities, upon proper instructions from the new tribal custodian, we will order our custodian to physically transfer the proper security to the new custodian on the agreed upon date.

(m) Agreement that judgment award funds will have segregated accounts.

(n) A description of the procedures for amending or revising the plan.

[61 FR 67932, Dec. 26, 1996, as amended at 71 FR 15339, Mar. 28, 2006]

#### § 1200.15 What is the approval process for management plans?

The Secretary will approve or disapprove each management plan, based in part upon our recommendation.

(a) We will determine the completeness of the application, provide for adequate professional review of the application and the management plan, and provide technical assistance as necessary to make an application complete.

(b) We will coordinate with regional directors in confirming authority of tribal governments to make requests.

(c) We will approve or disapprove a request within 90 calendar days of receiving a completed application. This 90-day period does not include time that we spend awaiting a response from the tribe for additional information that we have requested. All determinations will be in writing, and all responses will be by certified mail.

(d) If we find that a plan does not meet the criteria in §1200.16, we will notify the tribe of shortcomings of the request, and allow the tribe to respond before recommending formal disapproval.

(e) Before final approval, we will reach agreement with the tribe on how many days after final approval we will

## § 1200.16

transfer the funds. We will transfer the funds as soon after final approval as the tribe or manager is ready to receive them, unless we need additional time to sell existing instruments.

[61 FR 67932, Dec. 26, 1996, as amended at 71 FR 15339, Mar. 28, 2006]

### **§ 1200.16 What criteria will be used in evaluating the management plan?**

Each plan must be approved by the appropriate tribal governing body, and must be accompanied by a resolution approving the plan. The plan must be reasonable in light of the trust responsibility and the principles of Indian self-determination, and other appropriate factors, including, but not limited to, the factors listed below:

(a) We will evaluate the individuals or entities that will manage the funds to be withdrawn, or that will advise the tribe on investing the funds to be withdrawn in order to determine if they have the capability and experience to manage the funds. Among the elements we will evaluate are: the number of years in business, the performance record for funds management, and the ability to compensate the tribe if the entity is found liable for failing to comply with the tribe's management plan (i.e., its assets, bonding, and insurance).

(b) We will review the tribe's experience in managing investments. We will compare this experience to the complexity of the proposed management plan to determine whether the tribe has the experience to manage its proposed plan or whether it should begin with a less complex approach.

(c) We will evaluate the tribe's internal audit and control systems for overseeing or monitoring its investment activity.

(d) We will evaluate the adequacy of protection against substantial loss of principal. Our determination will include a thorough evaluation of the tribe's investment plan including:

- (1) The goals and objectives;
- (2) The proposed uses of the fund in order to meet business objectives;
- (3) The size and diversity of the investment portfolio (for example, the class of stocks and the mixture of types of investments);

## 25 CFR Ch. VII (4-1-12 Edition)

(4) The financial condition of the tribe;

(5) The inherent riskiness of the proposed investments; and

(6) The tribe's projected need and proposed timeframes to draw down the funds being invested or the income from them.

(e) We will determine the likelihood that the plan will be followed. We will base this determination on the contents of the agreement between the tribe and the fund manager and other appropriate factors.

### **§ 1200.17 What special criteria will be used to evaluate management plans for judgment or settlement funds?**

For judgment or settlement funds, in addition to the criteria in § 1200.16, we will determine if the plan adequately provides for compliance with any conditions, uses of funds, or other requirements established by the appropriate judgment fund plan or settlement act.

### **§ 1200.18 When does the Department's trust responsibility end?**

Our trust responsibility for funds withdrawn under this part ends on the date that the funds are withdrawn. However at the time of withdrawal neither we nor the tribe may be deemed to have accepted the account balance at the time of withdrawal as accurate; or waived any rights regarding the balance and our ability to seek compensation.

### **§ 1200.19 How can the plan be revised?**

Once a tribe has withdrawn its funds, the tribe may revise its plan without our approval. All revisions should conform to the procedures outlined in the approved management plan. The tribe should inform its members of all revisions to a plan through normal tribal procedures before the revisions are implemented.

### **§ 1200.20 How can a tribe withdraw additional funds?**

(a) If a tribe has withdrawn funds under an approved tribal management plan and wishes to withdraw additional funds that will be managed under the same plan, it need not submit a complete new application. The tribe must: