

## **§ 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(a) We will evaluate the individuals or entities that will manage the funds to be withdrawn, or that will advise the tribe on investing the funds to be withdrawn in order to determine if they have the capability and experience to manage the funds.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);

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(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:

(1) Notify us of the additional amount it intends to withdraw and whether the funds to be withdrawn are in kind or cash. (Written notification should be provided to our address in §1200.13);

(2) Send us a tribal resolution approving the new withdrawal and certifying that the funds are being withdrawn subject to the same conditions and that they will be managed under the plan in the original approved application;

(3) Send us a copy of the most recent compliance audit or investment report.

(b) After we finish our review we will release the additional funds, unless the compliance audit or investment report indicates that the tribe is not complying with its management plan. In this case, we will not release the additional funds until the tribe demonstrates that it is complying with the management plan.

**§ 1200.21 How may a tribe appeal denials under this part?**

If we deny a request or do not approve an application within 90 days of a request, the tribe may address any problems that we identify and resubmit a revised request, seek technical assistance, or appeal the denial under 43 CFR part 4.

**Subpart C—Returning Tribal Funds to Trust**

**§ 1200.30 How does a tribe notify the Department if it wishes to return withdrawn funds to Federal trust status?**

If a tribe elects to return some or all of the funds it has withdrawn from Federal trust status pursuant to this Act, it must first notify us in writing at our address in §1200.13. This notification must provide a proposed date for the return of the funds, as well as the amount of funds to be returned, or actual securities to be delivered to the appropriate custodian.

**§ 1200.31 What part of withdrawn funds can be returned to trust?**

A tribe may return all or a portion of the principal which was removed from trust under this Act along with earnings and profits. We will verify the

amount declared for earnings before we accept a return. We will accept any amount less than the original principal amount as a principal amount.

**§ 1200.32 How often can funds be returned?**

Tribes may return all or part of withdrawn funds no more than twice a year, beginning no sooner than six months after date of withdrawal, except with approval of the Secretary.

**§ 1200.33 How can funds be returned?**

Funds may be returned either as cash or securities, which meet the requirements for investments in 25 U.S.C. 162a. Cash can be transferred to the US Treasury by Electronic Funds Transfers (EFT), or the Automated Clearing House (ACH) process. Tribes must coordinate the transfer of ownership in securities with us to ensure proper credit to the tribe. The securities must meet investment restrictions contained in 25 U.S.C. 162a.

**§ 1200.34 Can a tribe withdraw redeposited funds?**

Yes. If a tribe wishes to withdraw redeposited funds from Federal trust status, it must submit a written request to do so, accompanied by a new resolution and any revisions it wishes to make in its original management plan.

**Subpart D—Technical Assistance**

**§ 1200.40 How will the Department provide technical assistance for tribes?**

(a) We will provide direct or contract technical assistance, in accordance with appropriations availability to tribes for developing, implementing, and managing Indian trust fund investment plans. We will ensure that our legal, financial and other expertise is made fully available to advise tribes in developing, implementing, and managing investment plans.

(b) We may award grants to tribes for developing and implementing plans for investing Indian tribal trust funds.

(c) Tribes may also obtain technical assistance on their own.