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Indians

Revised as of April 1, 1974



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OF GENERAL APPLICABILITY
AND FUTURE EFFECT
AS OF APRIL 1, 1974**

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Upon this written acknowledgment of the petition, the local Bureau official shall publicly post at the local Bureau unit serving the tribe the matter proposed in the petition, which shall remain posted for a period of thirty (30) days.

§ 53.7 Challenges.

Once an official filing has been made, the local Bureau official shall have copies made of the petition and its signatures, and shall keep these copies at the agency or field office for fifteen (15) days, during which time they shall be available for examination by authorized voters of the tribe upon request. During this 15-day period challenges of signatures may be filed with the local Bureau official. Challenges will be considered on the following grounds: (a) Forgery of signatures; (b) lack of proper qualifications of a signer. No challenge will be considered which is not accompanied by supporting evidence in writing. In event an individual's name appears on a petition more than once, all but one of the names shall be stricken.

§ 53.8 Action on the petition.

Within thirty (30) days after the official filing date, the local Bureau official shall forward to the Commissioner through the Area Director, or directly to the Commissioner in the case of a tribe not under the administrative jurisdiction of an Area Director, the original of the petition and its accompanying signatures, together with his recommendations concerning challenges, and his conclusions concerning (a) the validity of the signatures; (b) the adequacy of the number of signatures; (c) the propriety of the petitioning procedure. The Commissioner shall within forty-five (45) days after the official filing date, decide each challenge and the sufficiency of the petition and announce whether an election shall be called. In the event he decides that the petitioning action for any reason is insufficient for the calling of an election, he shall inform the spokesman for the petitioners and the governing body of the tribe of that fact and the basis of his decision; in the event he decides that the petitioning action does warrant the calling of an election, he shall so inform the spokesman for the petitioners and the governing body of the tribe concerned. His decision in such matters shall be final. The procedures for conducting the election, as well as the date for the election, will be deter-

mined in accordance with pertinent directives.

PART 60—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

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AUTHORITY: 5 U.S.C. 301; 87 Stat. 466, 467, 468.

SOURCE: 39 FR 1835, Jan. 15, 1974, unless otherwise noted.

§ 60.1 Definitions.

As used in this Part 60, terms shall have the meanings set forth in this section.

(a) "Act" means the Act of October 19, 1973 (P.L. 93-134; 87 Stat. 466, 467, 468).

(b) "Secretary" means the Secretary of the Interior or his authorized representative.

(c) "Commissioner" means the Commissioner of Indian Affairs or his authorized representative.

(d) "Area Director" means the Area Director or his equivalent of any one of the Area Offices of the Bureau of Indian Affairs or his authorized representative.

(e) "Superintendent" means the Superintendent or Officer in Charge of any one of the Agency Offices or other local offices of the Bureau of Indian Affairs or his authorized representative.

(f) "Congressional Committees" means the Committees on Interior and Insular Affairs of the Senate and House of Representatives of the United States.

(g) "Indian tribe or group" means any Indian tribe, nation, band, pueblo, community or identifiable group of Indians, or Alaska Native entity.

(h) "Tribal governing body" means, as recognized by the Secretary, the governing body of a formally organized or

recognized tribe or group; the governing body of any informally organized tribe or group, the governing body of a formally organized Alaska Native entity or recognized tribe in Oklahoma, and for the purposes of the Act the recognized spokesmen or representatives of any descendant group.

(i) "Plan" means the document submitted by the Secretary, together with all pertinent records, for the use or distribution of judgment funds, to the Congressional Committees.

(j) "Enrollment" means that aspect of a plan which pertains to making or bringing current a roll of members of an organized, reservation-based tribe with membership criteria approved or accepted by the Secretary, a roll of members of an organized or recognized entity in Oklahoma, or Alaska or elsewhere, or a roll prepared for the purpose of making per capita payments for judgments awarded by the Indian Claims Commission or United States Court of Claims; or which pertains to using an historical roll or records of names, including tribal rolls closed and made final, for research or other purposes.

(k) "Program" means that aspect of a plan which pertains to using part or all of the judgment funds for tribal social and economic development projects.

(l) "Per capita payment" means that aspect of a plan which pertains to the individualization of the judgment funds in the form of shares to tribal members or to individual descendants.

(m) "Use or distribution" means any utilization or disposition of the judgment funds, including programing, per capita payments, or a combination thereof.

(n) "Individual beneficiary" means a tribal member or any individual descendant, found by the Secretary to be eligible to participate in a plan, who was born on or prior to, and is living on, the approval date of the plan.

(o) "Approval date" means the date that a plan is approved by the Congress. Except for a plan disapproved by either House, the approval date of a plan shall be the sixtieth (60) day after formal submittal of a plan by the Secretary to the Congressional Committees, excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three (3) calendar days to a day certain. In the event a proposed plan is disapproved by either House, or in the event the Secretary is unable to submit a plan

and therefore proposes legislation, the approval date shall be the date of the enabling legislation for the disposition of the judgment funds.

(p) "Minor" is an individual beneficiary who is eligible to participate in a per capita payment and who has not reached the age of eighteen (18) years.

(q) "Legal incompetent" is an individual beneficiary eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal courts.

(r) "Attorney fees and litigation expenses" means all fees and expenses incurred in litigating and processing tribal claims before the Indian Claims Commission or the United States Court of Claims.

§ 60.2 Purpose.

The regulations in this part govern the preparation of proposed plans for the use or distribution, pursuant to the Act, of all judgment funds awarded from the date of the Act to Indian tribes and groups by the Indian Claims Commission or the United States Court of Claims, excepting any tribe or group whose trust relationship with the Federal Government has been terminated and for which there exists legislation authorizing the disposition of its judgment funds; and of all funds deriving from judgments entered prior to the date of the Act for which there has been no enabling legislation.

§ 60.3 Time limits.

(a) The Secretary shall cause to begin as early as possible the necessary research to determine the identity of the ultimate or present day beneficiaries of judgments. Such research shall be done under the direction of the Commissioner of Indian Affairs. The affected tribes or groups shall be encouraged to submit pertinent data. All pertinent data, including cultural, political and historical material, and records, including membership, census and other rolls shall be considered. If more than one entity is determined to be eligible to participate in the use or distribution of the funds, the results of the research shall include a proposed formula for the division or apportionment of the judgment funds among or between the involved entities.

(b) The results of all research shall be provided to the governing bodies of all affected tribes and groups. The Area Di-

rector shall assist the affected tribe or group in arranging for preliminary sessions or meetings of the tribal governing body, or public meetings. The Area Director shall make a presentation of the results of the research and shall arrange for expertise of the Bureau of Indian Affairs to be available at these meetings to assist the tribe or group in developing a use or distribution proposal, bearing in mind that under the Act not less than twenty (20) per centum of the judgment funds, including investment income thereon, is to be used for tribal programs unless the Secretary determines that the particular circumstances of the affected Indian tribe clearly warrant otherwise.

§ 60.4 Conduct of hearings of record.

(a) As soon as appropriate after the tribal meetings have been held and the Commissioner has reviewed the tribal proposal(s), the Area Director, or such other official of the Department of the Interior as he shall designate to act for him, shall hold a hearing of record to receive testimony on the tribal proposal(s).

(b) The hearing shall be held after appropriate public notice beginning at least twenty (20) days prior to the date of such hearing, and after consultation with the governing body of the tribe or group regarding the date and location of the hearing, to obtain the testimony of members of the governing body and other representatives, spokesmen or members of the tribe or group on the proposal(s).

(c) All testimony at the hearing shall be transcribed and a transcript thereof shall be furnished to the Commissioner and the tribal governing body immediately subsequent to the hearing. Particular care shall be taken to insure that minority views are given full opportunity for expression either during the hearing or in the form of written communications by the date of the hearing.

(d) Whenever two or more tribes or groups are involved in the use or distribution of the judgment funds, including situations in which two or more Area Offices are concerned, every effort shall be made by the Area Director or Directors to arrange for a single hearing to be conducted at a time and location as convenient to the involved tribes and groups as possible. Should the tribes and groups not reach agreement on such time or place, or on the number of entities to be represented at the hear-

ing, the Commissioner, after considering the views of the affected tribes and groups, shall within twenty (20) days of receipt of such advice by the Area Director, designate a location and date for such hearing and invite the participation of all entities he considers to be involved and the Commissioner's decision shall be final.

§ 60.5 Submittal of proposed plan by Secretary.

Subsequent to the hearing of record, the Commissioner shall prepare all pertinent materials for the review of the Secretary. Pertinent materials shall include:

(a) the tribal use or distribution proposal or any alternate proposals;

(b) a copy of the transcript of the hearing of record;

(c) a statement on the hearing of record and other evidence reflecting the extent to which such proposal(s) meets the desires of the affected tribe or group, including minority views;

(d) copies of all pertinent resolutions and other communications or documents received from the affected tribe or group, including minorities;

(e) a copy of the tribal constitution and bylaws, or other organizational document, if any; a copy of the tribal enrollment ordinance, if any; and a statement as to the availability or status of the membership roll of the affected tribe or group;

(f) a statement reflecting the nature and results of the investment of the judgment funds as of thirty (30) days of the submittal of the proposed plan, including a statement concerning attorney fees and litigation expenses;

(g) a statement justifying any compromise proposal developed by the Commissioner in the event of the absence of agreement among any and all entities on the division or apportionment of the funds, should two or more entities be involved;

(h) and a statement regarding the feasibility of the proposed plan, including a timetable prepared in cooperation with the tribal governing body, for the implementation of programing and roll preparation.

Within one hundred and eighty (180) days of the appropriation of the judgment funds the Secretary shall submit a proposed plan, together with the pertinent materials described above, simultaneously to each of the Chairmen of

the Congressional Committees, at the same time sending copies of the proposed plan and materials to the governing body of the affected tribe or group. The one hundred and eighty (180) day period shall begin on the date of the Act with respect to all judgments for which funds have been appropriated and for which enabling legislation has not been enacted.

§ 60.6 Extension of period for submitting plans.

An extension of the one hundred and eighty (180) day period, not to exceed ninety (90) days, may be requested by the Secretary or by the governing body of any affected tribe or group submitting such request to both Congressional Committees through the Secretary, and any such request shall be subject to the approval of both Congressional Committees.

§ 60.7 Submittal of proposed legislation by Secretary.

(a) Within thirty (30) calendar days after the date of a resolution by either House disapproving a plan, the Secretary shall simultaneously submit proposed legislation authorizing the use or distribution of the funds, together with a report thereon, to the Chairmen of both Congressional Committees, at the same time sending copies of the proposed legislation to the governing body of the affected tribe or group. Such proposed legislation shall be developed on the basis of further consultation with the affected tribe or group.

(b) In any instance in which the Secretary determines that circumstances are not conducive to the preparation and submission of a plan, he shall, after appropriate consultation with the affected tribe or group, submit proposed legislation within the 180-day period to both Congressional Committee simultaneously.

§ 60.8 Enrollment aspects of plans.

An approved plan that includes provisions for enrollment requiring formal adoption of enrollment rules and regulations shall be implemented through the publication of such rules and regulations in the FEDERAL REGISTER. Persons not members of organized or recognized tribes and who are not citizens of the United States shall not, unless otherwise provided by Congress, be eligible to participate in the use or distribution of

judgment funds, excepting heirs or legatees of deceased individual beneficiaries.

§ 60.9 Programing aspects of plans.

In assessing any tribal programing proposal the Secretary shall consider all pertinent factors, including the following: the percentage of tribal members residing on or near the subject reservation, including former reservation areas in Oklahoma, or Alaska Native villages; the formal educational level and the general level of social and economic adjustment of such reservation residents; the nature of recent programing affecting the subject tribe or group and particularly the reservation residents; the needs and aspirations of any local Indian communities or districts within the reservation and the nature of organization of such local entities; the feasibility of the participation of tribal members not in residence on the reservation; the availability of funds for programing purposes derived from sources other than the subject judgment; and all other pertinent social and economic data developed to support any proposed program.

§ 60.10 Per capita payment aspects of plans and protection of funds accruing to minors and legal incompetents.

(a) Per capita payments shall be made in accordance with conditions to be prescribed in the plan. The shares of deceased individual beneficiaries, enhanced by investment earnings, shall be held in special accounts until paid to the decedents' heirs or beneficiaries as provided in the plan.

(b) Protection of the shares of minors and legal incompetents shall be part of approved plans containing per capita payment aspects. The Commissioner shall insure the protection of such shares, whether they be handled individually or collectively. As in the case of the per capita shares of deceased beneficiaries, investment income on the per capita shares of minors and incompetents shall accrue to those shares and shall be the property of such minors and incompetents. Per capita shares and investment income accruing on the per capita shares of deceased individual beneficiaries, minor and incompetents, as well as the principal thereof, shall not be subject to State and Federal income taxes and shall not be considered as income or resources under the Social Security Act, as amended.

(c) All per capita shares or portions thereof which are not paid but which

remain unclaimed with the Federal Government shall be maintained separately and be enhanced by investment, and shall be subject to the provisions of the Act of September 22, 1961 (75 Stat. 584). No per capita share or a portion thereof shall be transferred to the U.S. Treasury as "Monies Belonging to Individuals Whose Whereabouts are Unknown."

§ 60.11 Investment of judgment funds.

As soon as possible after the appropriation of judgment funds and pending approval of a plan or the enactment of legislation authorizing the use or distribution of the funds, the Commissioner shall invest such funds pursuant to 25 U.S.C. 162a. Investments of judgment funds and of investment income therefrom will continue to be made by the Commissioner after the approval of a plan or enactment of use or distribution legislation to the extent funds remain available for investment under such plan or legislation, and provided that thereafter investments of judgment funds made available for tribal use are not undertaken by the tribe pursuant to authorizing law. Invested judgment funds, including investment income therefrom, shall be withdrawn from investment only as currently needed under approved plans or legislation authorizing the use or distribution of such funds.

§ 60.12 Insuring the proper performance of approved plans.

A timetable prepared in cooperation with the tribal governing body shall be included in the plan submitted by the Secretary for the implementation of all programing and enrollment aspects of a plan. At any time within one calendar year after the approval date of a plan, the Area Director shall report to the Commissioner on the status of the implementation of the plan, including all enrollment and programing aspects, and thenceforth shall report to the Commissioner on an annual basis regarding any remaining or unfulfilled aspects of a plan. The Area Director shall include in his first and all subsequent annual reports a statement regarding the maintenance of the timetable, a full accounting of any per capita distribution, and the expenditure of all programing funds. The Commissioner shall report the deficient performance of any aspect of a plan to the Secretary, together with the corrective measures he has taken or intends to take.

PART 71—RECOGNITION OF ATTORNEYS AND AGENTS TO REPRESENT CLAIMANTS

Sec.

- 71.1 Employment of attorneys.
71.2 Employment by tribes or individual claimants.

AUTHORITY: The provisions of this Part 71 issued under 5 U.S.C. 301.

CROSS REFERENCES: For law and order regulations on Indian reservations, see Part 11 of this chapter. For probate procedure, see Part 15 of this chapter. For regulations governing the admission of attorneys to practice before the Department of the Interior and the offices and bureaus thereof, see 43 CFR Part 1. For regulations governing the execution of attorney contracts with Indians, see Part 72 of this subchapter.

§ 71.1 Employment of attorneys.

(a) Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, may employ legal counsel. The choice of counsel and the fixing of fees are subject under 25 U.S.C. 476 to the approval of the Secretary of the Interior or his authorized representative.

(b) Attorneys may be employed by Indian tribes not organized under the Act of June 18, 1934, under contracts subject to approval under 25 U.S.C. 81 and the Reorganization Plan No. 3 of 1950, 5 U.S.C. 481, note, by the Secretary of the Interior or his authorized representative.

(c) Any action of the authorized representative of the Secretary of the Interior which approves, disapproves or conditionally approves a contract pursuant to paragraph (a) or (b) of this section shall be final.

(d) Practice of such attorneys before the Bureau of Indian Affairs and the Department of the Interior is subject to the requirements of 43 CFR 1.1-1.7. [27 F.R. 11548, Nov. 24, 1962]

§ 71.2 Employment by tribes or individual claimants.

All such attorneys or agents seeking approval of their employment by Indian tribes or desiring to represent individual claimants before the Indian Bureau shall be required to comply fully with the regulations of the Department promulgated September 27, 1917, governing admission to practice, and to take the oath of allegiance and to support the Constitution

of the United States, as required by section 3478 of the United States Revised Statutes (31 U.S.C. 204). [27 F.R. 10538, Dec. 24, 1957]

PART 72—ATTORNEY CONTRACTS WITH INDIAN TRIBES

TRIBES ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

Sec.

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72.13 Limitation of authority.
72.14 Employment by tribal business committee.
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72.18 Tentative form of contract.
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72.20 Report of superintendent.
72.21 Copies of approved contracts.
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72.24 Fees and expenses.
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FIVE CIVILIZED TRIBES

- 72.30 Contents and approval of contracts.
72.31 Negotiation of contract.
72.32 Notice from the principal officer.
72.33 Notice from attorney.
72.34 Tentative form of contract.
72.35 Execution in quintuplet.

CROSS REFERENCE: For recognition of attorneys and agents to represent claimants, see Part 71 of this subchapter.

TRIBES ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

AUTHORITY: §§ 72.1 to 72.6 issued under sec. 16, 48 Stat. 987; 5 U.S.C. 301; 25 U.S.C. 476.

§ 72.1 Contracts with organized tribes.

(a) Negotiation and execution of tribal attorney contracts with Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, shall be in accordance with the

provisions of the approved constitution or charter of the respective tribes.

(b) The Secretary of the Interior or his authorized representative is authorized to approve pursuant to 25 U.S.C. 476 the selection of counsel and the amount of fees and expenses to be paid under any such contract. [27 F.R. 11548, Nov. 24, 1962]

§ 72.2 Admission to practice.

Attorneys employed by tribes organized under the Indian Reorganization Act shall be required to be admitted to practice before the Interior Department and the bureaus thereof, under the provisions of the act of July 4, 1884 (23 Stat. 101; 5 U.S.C. 493).

[22 F.R. 10538, Dec. 24, 1957]

CROSS REFERENCE: For rules and regulations governing admission to practice before the Interior Department and the bureaus thereof, see 43 CFR Part 1.

§ 72.3 Tentative form of contract.

A tribal council or representative body having authority to employ legal counsel in behalf of an organized tribe, may, if it desires, obtain a tentative form of contract by written request directed to the office of any area director or agency superintendent, or to the Commissioner of Indian Affairs. Requests for forms should include a statement of the scope of the intended employment; that is, whether an attorney is desired for investigation and prosecution of tribal claims against the United States, or as a general legal counsel in connection with the ordinary business of the tribe, or specific problems on which legal advice is desired, or specific matters requiring representation in court or before committees of Congress and the departments of the Government. The period for which an attorney is desired should be stated.

[27 F.R. 11549, Nov. 24, 1962]

§ 72.4 Report of Superintendent.

Contracts executed by organized tribes should be transmitted to the Area Director by the Superintendent, with a report based upon references and independent inquiry concerning the qualifications of the attorney and his ability to perform the services required by the contract, and including the superintendent's recommendation with reference to approval of the contract.

[27 F.R. 11549, Nov. 24, 1962]