25
Indians
Revised as of April 1, 1974

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Title 25—Indians

Upon this written acknowledgment of the petition, the local Bureau official shall publicly call at the local Bureau unit serving the tribe the matter properly presented 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 accompaniments, 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 all 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 the petition shall be called. In the event he deems 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 deems 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. His decision in such matters shall be final. The process for conducting the election, as well as the date for the election, will be determined in accordance with pertinent directives.

PART 60—USE OR DISTRIBUTION OF INDIAN JUDGMENT FUNDS

§ 60.1 Definitions.

(2) Minor. The word "minor" means any person under the legal age of majority as determined by the laws of the tribe or the State. A minor shall be represented by a guardian or other person in a position to act for a minor in the tribal courts.

(4) "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, to Indian individual beneficiaries and to Indian organizations.

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The Secretary shall cause to begin as early as possible the necessary research to determine the ultimate or present day beneficiaries of the judgment. Such research shall be made 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 research shall include a proposed formula for the division of apportionment of the judgment funds among or between the involved entities.

(a) The results of all research shall be provided to the governing bodies of all affected tribes and groups. The Area Di-
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§ 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 as he shall designate for this purpose, shall hold a hearing of record to receive testimony on the tribal proposal(s).

(b) The hearing shall be held after a reasonable period of time beginning at least twenty (20) days prior to the date of such hearing, and after consultation with the tribal governing body of any affected 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 sent to the Commissioner and the tribal governing body immediately subsequent to the hearing. Particular care shall be taken to be sure that minority views are given full opportunity for expression 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 or 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 hearing, the Commissioner, after considering the views of the affected tribes and groups, shall determine within twenty (20) days of receipt of such advice by the Area Director, designate a location and date for such hearing and shall 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 minority views.

(e) a copy of the tribal constitution and bylaws, or other organizational document, of the tribe or group regarding the date and location of the hearing, to obtain the testimony of members 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 reasons for the investment of the judgment funds as of thirty (30) days of the submittal of the proposed plan, including any conversion of attorney fees and litigation expenses;

(g) a statement justifying any compulsory purchases made 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) a statement regarding the feasibility of the proposed plan, including a timetable prepared in cooperation with the tribal governing body, for the implementation of programming 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 on which the report, referred to in § 60.6, respecting 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 may be granted by the Secretary or by the governing body of any affected tribe or group submitting such request to the Secretary, and any such request shall be subject to the approval of the Secretary.

§ 60.7 Submittal of proposed legislation by Secretary.

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

In assessing any tribal programming proposal the Secretary shall consider all pertinent factors, including the following: the percentage being represented 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 reservations; and the nature of recent programming affecting the subject tribe or group and particularly the reservation resident; 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 programming 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 provisions for enrollment of minors and legal incompetents.

(a) Per capita payments shall be made in accordance with conditions to be prescribed in the plan. The payment to the beneficiaries, enhanced by investment earnings, shall be held in special accounts to be administered by the decedents’ heirs or beneficiaries as prescribed 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 Secretary shall insures 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, 1921 (75 Stat. 584). No per capita share or a portion thereof shall be transferred to the U.S. Treasury as "Moines 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 such plan or legislation.

§ 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 programming and enrollment aspects of a plan. At any time within the same 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 programming aspects, and thenceforth shall report to the Commissioner on an annual basis regarding any remaining or unfilled 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 programming 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 Reference: For rules and regulations governing the use or distribution of such funds, see 43 C.F.R. Part 1.

§ 71.1 Employment of attorneys.

(a) Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 584; 25 U.S.C. 461-479), as amended, may employ counsel. The choice of counsel and the fixing of fees are subject under 25 U.S.C. 478 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 was approved, disapproved or conditionally approved by contract pursuant to paragraph (a) or (b) of this section shall be final.

(d) Practice before attorneys before the Bureau of Indian Affairs and the Department of the Interior is subject to the requirements of 43 C.F.R. 11.1-17.

§ 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 Bureau of Indian Affairs, must be approved pursuant to the regulations of the Department promulgated September 27, 1977, governing admission to practice, and they must have the requisite knowledge and learning to support the Constitution of the United States, as required by section 3478 of the United States Revised Statutes (31 U.S.C. 204).

(b) The Secretary of the Interior or his authorized representative is authorized to approve pursuant to 25 U.S.C. 478 the selection of counsel, and the amount of fees and expenses to be paid under any such contract.

§ 72.2 Admission to practice.


Cross Reference: For rules and regulations governing admission to practice before the Interior Department and the bureau thereof, see 43 C.F.R. 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, 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 commissions of Congress, or departments of the Government. The period for which an attorney is desired should be stated.

§ 72.4 Report of Superintendent.

Contracts executed by or on behalf of the Interior Department 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.

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