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(a) We will evaluate the individuals or entities that will manage the funds to be withdrawn, or that will advise the tribe on investing the funds to be withdrawn in order to determine if they have the capability and experience to manage the funds.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

(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: