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25 CFR Ch. I (4-1-06 Edition)

Bureau of Indian Affairs has assured confidentiality to obtain the information necessary to determine the eligibility for enrollment of the individual or has the statutory obligation to maintain the confidentiality of the information, the confidential information may not be released to the Tribal Committee, but the Director or Superintendent shall certify as to the eligibility for enrollment of the individual to the Tribal Committee.

(b) The Tribal Committee shall review all applications and make its recommendations or determinations in writing stating the reasons for acceptance or rejection for enrollment.

(c) The Tribal Committee shall return the applications to the Director or Superintendent with its recommendations or determinations and any additional evidence used in determining eligibility for enrollment within 30 days of receipt of the applications by the Tribal Committee. The Director or Superintendent may grant the Tribal Committee additional time, upon request, for its review.

(d) Acceptance of an individual for enrollment by the Tribal Committee does not insure the individual's eligibility to share in the distribution of the judgment funds.

§61.11 Action by the Director or Superintendent.

(a) The Director or Superintendent shall consider each application, all documentation, and when applicable, tribal recommendations or determinations.

(b) The Director or Superintendent, when tribal recommendations or determinations are applicable, shall accept the recommendations or determinations of the Tribal Committee unless clearly erroneous.

(1) If the Director or Superintendent does not accept the tribal recommendation or determination, the Tribal Committee shall be notified in writing, by certified mail, return receipt requested, or by personal delivery, of the action and the reasons therefor.

(2) The Tribal Committee may appeal the decision of the Director or Superintendent not to accept the tribal recommendation or determination. Such appeal must be in writing and must be

filed pursuant to part 62 of this chapter.

(3) Unless otherwise specified by law or in a tribal governing document, the determination of the Director or Superintendent shall only affect the individual's eligibility to share in the distribution of judgment funds.

(c) The Director or Superintendent, upon determining an individual's eligibility, shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of the decision. If an individual files applications on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person involved. Where an individual is represented by a sponsor, notification of the sponsor of eligibility or adverse action shall be considered to be notification of the individual.

(1) If the Director or Superintendent determines that the individual is eligible, the name of the individual shall be placed on the roll.

(2) If the Director or Superintendent determines that the individual is not eligible, he/she shall notify the individual's parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for the adverse action and the right to appeal to the Secretary. If correspondence is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed" the Director or Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Director or Superintendent. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was remailed. Certified or registered notices returned for any reason other than "Unclaimed" need not be remailed.

(d) Except as provided in paragraph (c)(2) of this section, a notice of adverse action is considered to have been

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made and computation of the appeal period shall begin on the earliest of the following dates:

- (1) Of delivery indicated on the return receipt;
- (2) Of acknowledgment of receipt;
- (3) Of personal delivery; or
- (4) Of the return by the post office of an undelivered certified or registered letter.

(e) In all cases where an applicant is represented by an attorney, the attorney shall be recognized as fully controlling the application on behalf of the applicant and service on the attorney of any document relating to the application shall be considered to be service on the applicant. Where an applicant is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(f) To avoid hardship or gross injustice, the Director or Superintendent may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.

§ 61.12 Appeals.

Appeals from or on behalf of tribal members or applicants who have been denied enrollment must be in writing and must be filed pursuant to part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal. A copy of part 62 of this chapter shall be furnished with each notice of adverse action.

§ 61.13 Decision of the Assistant Secretary on appeals.

The decision of the Assistant Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable. The name of any person whose appeal has been sustained will be added to the roll. Unless otherwise specified by law or in a tribal governing document, the determination of the Assistant Secretary shall only affect the individual's eligibility to share in the distribution of the judgment funds.

§ 61.14 Preparation, certification and approval of the roll.

(a) The staff officer shall prepare a minimum of five copies of the roll of those persons determined to be eligible for enrollment. The roll shall contain for each person a roll number, name, address, sex, date of birth, date of death, when applicable, and when required by law, degree of Indian blood, and, in the remarks column, when applicable, the basic roll number, date of the basic roll, name and relationship of ancestor on the basic roll through whom eligibility was established.

(b) A certificate shall be attached to the roll by the staff officer or Superintendent certifying that to the best of his/her knowledge and belief the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Director shall approve the roll.

§ 61.15 Special instructions.

To facilitate the work of the Director or Superintendent, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this part 61.

PART 62—ENROLLMENT APPEALS

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AUTHORITY: 5 U.S.C. 301, 25 U.S.C. 2 and 9.

SOURCE: 52 FR 30160, Aug. 13, 1987, unless otherwise noted.

§ 62.1 Definitions.

As used in these regulations:

Assistant Secretary means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.