

code of federal regulations

Indians

25

Revised as of April 1, 1999

**CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT**

AS OF APRIL 1, 1999

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register



managing his/her affairs pursuant to 25 CFR 115.9 may be signed by his/her authorized representative.

(d) *Distribution.* (1) After the expiration of the deadline established in paragraph (b) of this section, funds of individual beneficiaries who have completed the acceptance forms will be transferred from the IMPL Escrow Account into each beneficiary's IIM account. Funds derived from beneficiary estate accounts for which the heirs have been determined will be transferred into the heirs' accounts. Funds derived from beneficiary estate accounts for which the heirs have not been determined will be transferred into the estate account.

(2) Interest accrued for any period after October 1, 1982 will be credited to the beneficiary accounts on the same percentage basis as the original share.

(3) After the expiration of the deadline established in paragraph (b) of this section, funds of a tribal beneficiary and interest earned thereon since October 1, 1982, will be transferred into the appropriate tribal treasury account.

(4) Not more than ten percent (10%) of the funds which may be transferred to a trust account for any tribe, or to an IIM account for an individual, may be utilized by the beneficiary to pay for legal or other representation relating to claims for such funds.

(5) Not more than two percent (2%) of the funds which may be transferred to a trust account for any tribe, or to an IIM account for an individual, may be utilized by the BIA to reimburse the BIA for administrative expenses incurred in determining ownership of the funds.

(e) *Appeals.* (1) Any potential beneficiary or claimant may appeal any decision made or action taken by a Superintendent under this section. Such appeal shall be made in writing and submitted as provided in 25 CFR part 2.

(2) As provided in part 2, the appeal must be received within 30 days after receipt of the written notice advising the potential beneficiary of his/her share of the IMPL Escrow Account or advising the claimant that no share has been determined for him/her. No appeals will be accepted under this section after September 30, 1985.

(f) *Distribution of residual funds.* (1) After final administrative determination of ownership, including final determination of all appeals, and the completion of all appropriate fund transfers, but not later than October 1, 1985, any funds remaining in an agency IMPL Escrow Account may be expended subject to the approval of the Secretary for any purpose authorized under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), and requested by the governing body(s) of the tribe(s) at the location(s) where such agency IMPL Escrow Account is maintained. This authority to expend the escrow account funds ends September 30, 1987.

(2) The unobligated balances of all IMPL Escrow Accounts as of the close of business on September 30, 1987, shall be deposited into miscellaneous receipts of the U.S. Treasury.

PART 115—INDIVIDUAL INDIAN MONEY ACCOUNTS

Sec.

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AUTHORITY: R.S. 441, as amended, R.S. 463, R.S. 465; 5 U.S.C. 301; 25 U.S.C. 2, 9; 43 U.S.C. 1457.

SOURCE: 23 FR 7942, Oct. 15, 1958, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 115.1 Definitions.

As used in this part:

(a) The term *individual Indian money accounts* means those accounts under the control of the Secretary of the Interior or his authorized representative belonging to individuals.

(b) The term *minor* means an individual who has not reached his majority as defined by the laws of the State of his domicile.

§ 115.2 Osage Agency.

The provisions of this part do not apply to funds the deposit or expenditure of which is subject to the provisions of part 117 of this subchapter.

§ 115.3 Individual accounts.

Except as otherwise provided in this part, adults shall have the right to withdraw funds from their accounts. Upon their application, or an application made in their behalf by the Secretary or his authorized representative, their funds shall be disbursed to them. All such disbursements will be made at such convenient times and places as the Secretary or his authorized representatives may designate.

§ 115.4 Minors.

(a) Funds, other than a per capita share of judgment funds which exceeds \$100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor may be disbursed in such amounts deemed necessary in the best interest of the minor for the minor's support, health, education, or welfare to parents, legal guardians, fiduciaries, or to persons having the control and custody of the minor under plans approved by the Secretary, or the minor directly, upon such conditions as the Secretary may prescribe. The Secretary will require modification of an approved plan whenever deemed in the best interest of the minor.

(b) A per capita share of judgment funds which exceeds \$100 in total amount at the time actual payment is made, including the investment income accruing thereto, of a minor shall not be disbursed until the minor reaches 18 years of age. At that time, unless the minor is under legal disability, the minor shall be entitled to withdraw his judgment funds and accrued investment income as provided in § 115.3. If the minor is under legal disability upon reaching his majority, his judgment funds and accrued investment in-

come thereon shall be handled pursuant to § 115.5.

[41 FR 48736, Nov. 5, 1976. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 115.5 Adults under legal disability.

The funds of an adult who is non compos mentis or under other legal disability may be disbursed for his benefit for such purposes deemed to be for his best interest and welfare, or the funds may be disbursed to a legal guardian or curator under such conditions as the Secretary or his authorized representative may prescribe.

§ 115.6 Voluntary deposits.

As a general rule, voluntary deposits shall not be accepted. Indians who require banking service shall be encouraged to utilize commercial facilities. If in any case it is determined that an exception to this prohibition should be made to avoid a substantial hardship, the facts in the case shall be considered by the Secretary or his authorized representative and an exception will be allowed or denied.

§ 115.7 Payments by other Federal agencies.

Moneys received from the Veterans Administration or other Government agency pursuant to the act of February 25, 1933 (47 Stat. 907; 25 U.S.C. 14), may be accepted and administered for the benefit of adult Indians under legal disability or minors for whom no legal guardian or fiduciary has been appointed.

§ 115.8 Purchase orders.

Purchase orders may be issued only in emergencies upon the request of any account holder. The Secretary or his authorized representative may act in emergencies on behalf of an account holder who is unable to make a request because of illness or incapacity or, to meet expenses of last illness or funeral.

§ 115.9 Restrictions.

Funds of individuals may be applied by the Secretary or his authorized representative against delinquent claims of indebtedness to the United States or any of its agencies or to the tribe of

which the individual is a member, unless such payments are prohibited by acts of Congress, and against money judgments rendered by courts of Indian offenses or under any tribal law and order code. Funds derived from the sale of capital assets which by agreement approved prior to such sale by the Secretary or his authorized representative are to be expended for specific purposes, and funds obligated under contractual arrangements approved in advance by the Secretary or his authorized representative or subject to deductions specifically authorized or directed by acts of Congress, shall be disbursed only in accordance with the agreements (including any subsequently approved modifications thereof) or acts of Congress. The funds of an adult whom the Secretary or his authorized representative finds to be in need of assistance in managing his affairs, even though such adult is not non compos mentis or under other legal disability, may be disbursed to the adult, within his best interest, under approved plans. Such finding and the basis for such finding shall be recorded and filed with the records of the account.

CROSS REFERENCE: For rules governing the payment of judgments from individual Indian money accounts, see § 11.208 of this chapter.

§ 115.10 Procedures relative to restrictions.

(a) If under § 115.9 an individual's access to funds in the individual's Indian money account is limited, or it is proposed to pay creditors, including creditors with judgments from Courts of Indian Offenses, for which preliminary procedures are prescribed in 25 CFR 11.26, the individual must be notified in writing as follows:

(1) The notice must be given to the individual affected at the commencement of the restriction or at least 40 days prior to involuntary distribution of funds from the account.

(2) The notice must state the reasons giving rise to the restriction or proposed payment.

(3) The notice shall inform the individual of the right to a hearing and that a request for a hearing must be in writing, received by the Secretary, or

an authorized representative, within 30 days of receiving the notice of proposed action.

(4) The notice of proposed action shall be sent by Certified Mail-Return Receipt Requested. The date appearing on the returned receipt shall constitute the beginning of the restriction period.

(5) The notice shall state that a copy of the rights listed in paragraph (c) of this section are transmitted along with the notice.

(6) The notice shall advise that if the individual wishes to have the delinquent claim or money judgment paid without delay and without a hearing the individual can so request by signing a form furnished for that purpose with the notice.

(b) If the individual fails to request a hearing, the individual is deemed to consent to the continued limitation on and/or disbursement of funds from the IIM Account in accordance with the terms of the notice. Notwithstanding the continuance of a restriction on an account, if the amount of funds available in the account exceeds the amount of the restriction or the amount of the claim such unrestricted funds in excess of the amount of the restriction or claim shall be available for the account holder's use.

(c) The Secretary, or an authorized representative, shall conduct a hearing, if no requested as specified above, to determine whether to continue to restrict the Individual Indian Money Account, and/or allow payment of delinquent claims and judgments of tribal courts and courts of Indian offenses from such accounts. The following are requirements for such a fair hearing:

(1) The hearing shall be held within 10 working days of the Secretary's or an authorized representative's receipt of the request for a hearing.

(2) The individual must be given the opportunity to be heard. This includes the right to hear the case against the individual; to present testimony, to present witnesses, and to question and rebut opposing witnesses. This includes the right to orally present arguments and evidence. The account holder may be heard on why a judgment of a tribal court or court of Indian offenses should not be paid from his or her Individual Indian Money account, but he or she

may not relitigate the facts established by that court.

(3) If the individual desires an attorney or other representative, one may be retained at the individual's own expense.

(4) The decision to uphold or overturn the proposed action, must be made by the Secretary, or an authorized representative, and must be based on information presented or referred to at the hearing. The decision of an authorized representative of the Secretary may be appealed as provided in §115.14.

(5) The Secretary, or an authorized representative, shall make provisions for recording the hearing and shall preserve the record for the duration of the appeal period. Tape recording the hearing is sufficient.

(6) The Secretary, or an authorized representative, will advise all parties concerned, in writing, of a decision within 10 working days after completion of the hearing.

(d) No money except as provided in subsection (b) of this section, shall be paid from an Individual Indian Money Account or applied against a delinquent claim or judgment of a tribal court or court of Indian offenses until the decision on the claim has become final in accordance with the appeal procedures provided for in §115.14.

[51 FR 2874, Jan. 22, 1986]

§115.11 Funds of deceased Indians other than the Five Civilized Tribes.

Funds of a deceased Indian other than those of the Five Civilized Tribes may be disbursed

(a) For the payment of obligations previously authorized, including authorized expenses of last illness;

(b) For authorized funeral expenses;

(c) For support of dependent members of the family of decedent in such amounts deemed necessary to avoid hardship and consistent with the value of the estate and the interest of probable heirs;

(d) For necessary expenses to conserve the estate pending the completion of probate proceedings; and

(e) For probate fees and claims allowed pursuant to part 15 of this chapter.

[23 FR 7942, Oct. 15, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982, and further redesignated at 51 FR 2874, Jan. 22, 1986]

§115.12 Funds of deceased Indians of the Five Civilized Tribes.

Funds of a deceased Indian of the Five Civilized Tribes may be disbursed to pay ad valorem and personal property taxes, Federal and State estate and income taxes, obligations approved by the Secretary of his authorized representative prior to death of decedent, expenses of last sickness and burial and claims found to be just and reasonable which are not barred by the statute of limitations, costs of determining heirs to restricted property by the State courts, and claims allowed pursuant to part 16 of this chapter.

[23 FR 7942, Oct. 15, 1958. Redesignated at 47 FR 13327, Mar. 30, 1982, and further redesignated at 51 FR 2874, Jan. 22, 1986]

§115.13 Assets of members of the Agua Caliente Band of Mission Indians.

(a) The provisions of this section apply to money or other property, except real property, held by the United States in trust for such Indians, which may be used, advanced, expended, exchanged, deposited, disposed of, invested, and reinvested by the Director, Palm Springs Office, in accordance with the Act of October 17, 1968 (Pub. L. 90-597). The management or disposition of real property is covered in other parts of this chapter.

(b) Investments made by the Director, Palm Springs Office, under the Act of October 17, 1968, supra, shall be of such a nature as will afford reasonable protection of the assets of the individual Indian involved. The Director is authorized to enter into contracts for the management of the assets (except real property) of individual Indians. The consent of the individual Indian concerned must be obtained prior to the taking of actions affecting his assets, unless the Director determines, under the provisions of section (e) of the Act, that consent is not required.

(c) The Director may, consistent with normal business practices, establish appropriate fees for reports he requires

from guardians, conservators, or other fiduciaries appointed under State law for members of the Band.

[33 FR 16636, Nov. 15, 1968. Redesignated at 47 FR 13327, Mar. 30, 1982, and further redesignated at 51 FR 2874, Jan. 22, 1986]

§ 115.14 Appeals.

Appeals from an action taken by an official of the Bureau of Indian Affairs may be taken pursuant to 25 CFR part 2, subject to the terms of § 115.10(c)(2).

[51 FR 2874, Jan. 22, 1986]

§ 115.15 Information collection.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et. seq.*

[51 FR 2875, Jan. 22, 1986]

PART 116—CREATION OF TRUSTS FOR RESTRICTED PROPERTY OF INDIANS, FIVE CIVILIZED TRIBES, OKLAHOMA

Sec.

- 116.1 Application for trust.
- 116.2 Obligations of trust company.
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AUTHORITY: Sec. 7, 47 Stat. 778.

SOURCE: 22 FR 10552, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 116.1 Application for trust.

Indians desiring to establish trust estates under the provisions of the said act must make written application therefor to the Secretary of the Interior through the superintendent or other official in charge of the Five Civilized Tribes Agency, Muskogee, Oklahoma. The application shall designate the trustee, the beneficiary or beneficiaries and the manner in which it is desired the corpus of the estate shall be

distributed upon the termination of the trust. A form of application will, upon request, be furnished by the said superintendent and should be filled out and executed in the presence of the field clerk or, in the office of the superintendent and duly attested by the field clerk or some other Government employee. The information required by the form of application and such other information as may be requested concerning the Indian and his affairs shall be carefully considered by the superintendent who will affix his recommendation to the application and forward it to the Secretary of the Interior with his report, which report shall contain full advice with respect to the education and business qualifications of the applicant, his ability to read, write and understand the English language, his reputation for industry and thrift and what experience, if any, he has had in a business way.

§ 116.2 Obligations of trust company.

The form of proposed trust agreement shall be executed by the trust company or banking institution selected as trustee, and shall be signed by and submitted with the application of the Indian, together with a statement in writing by said trust company or banking institution similar in form to that prescribed by the Comptroller of the Currency (or by the State banking department), showing fully the conditions of said trust company or banking institutions on a day not more than 1 month prior to the date of the application for the creation of the trust. The agreement must also be accompanied by a written certificate duly executed by the trustee to the effect that it has not paid or promised to pay any person other than an officer or employee on its regular payroll any fee, charge, commission or remuneration for any service or influence in securing or attempting to secure for it the trusteeship in that or in other trusts to which the regulations in this part apply.

§ 116.3 Secretarial approval discretionary.

No such trust agreement will be favorably considered unless in the judgment of the Secretary of the Interior