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Indians

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the superintendent as soon as they are completed and filed with him. Applications from those who are blind, decrepit, etc., must be made special and forwarded to the Bureau of Indian Affairs, Washington, D.C., as soon as possible.

§ 112.5 Basis of distribution; pro rata shares.

In estimating the pro rata share of an individual, the last annuity payroll prior to July 1, or January 1 of each year will be taken as a basis of distribution. Where no payment has been made within 1 year, the last census, if taken within the year, will be the basis. If no census has been taken or payment made within a year, the last available record—either census or annuity roll will be used.

§ 112.6 Disposition of pro rata share in event of applicant's death.

In the event of the death of an applicant prior to the approval of his application by the Secretary of the Interior, the share to which he would have been entitled, if living, will revert to the tribe. In case of the death of an applicant after approval of his application and the signing by the Secretary of the Interior of an order for the segregation of his share, but before payment is made, his share will descend to his legal heirs and should be deposited to the credit of the estate pending formal determination thereof.

CROSS REFERENCE: For regulations pertaining to the determinations of heirs and approval of wills, see part 15 and §§ 11.30 through 11.32C of this chapter.

§ 112.7 Pro rata shares of minors.

The shares of minors will not be withdrawn except when necessary for their own benefit. The application should be signed by the parent or guardian and transmitted to the Bureau by the superintendent with his recommendation as in other cases and a full explanation of the circumstances which justify the withdrawal. Such shares will be deposited to the credit of the minors subject to expenditure under the individual Indian money regulations. The term "minor," as used in this section, shall be interpreted in conformity with the State law.

CROSS REFERENCE: For individual Indian money regulations, see part 115 of this chapter.

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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; 25 U.S.C. 9; 43 U.S.C. 1457; 25 U.S.C. 4001; 25 U.S.C. 161(a); 25 U.S.C. 162a; 25 U.S.C. 164; Pub. L. 87-283; Pub. L. 97-100; Pub. L. 97-257; Pub. L. 103-412; Pub. L. 97-458; 44 U.S.C. 3101 *et seq.*

SOURCE: 66 FR 7094, Jan. 22, 2001, unless otherwise noted.

Subpart A—Purpose, Definitions, and Public Information

§115.001 What is the purpose of this part?

This part sets forth guidelines for the Secretary of the Interior, including any tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. §450f) or a Self-Governance compact (pursuant to 25 U.S.C. §558cc), to carry out the trust duties owed to tribes and individual Indians to manage and administer trust assets for the exclusive benefit of tribal and individual Indian beneficiaries pursuant to federal law, including the American Indian Trust Fund Management Reform Act of 1994, Public Law 103-412, 108 Stat. 4239, 25 U.S.C. §4001 (Trust Reform Act).

§115.002 What definitions do I need to know?

As used in this part:

Account holder means a tribe or a person who owns the funds in a tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

Account means a record of trust funds that is maintained by the Secretary for the benefit of a tribe or a person.

Administratively restricted account means an IIM account that is placed on temporary hold by OTFM where an account holder's current address of record is unknown or where more documentation is needed to make a distribution from an account.

Adult means an individual who has reached 18 years of age, except when the individual's tribe has determined the age for adulthood to be older than 18 for access to tribal trust fund per capita proceeds.

Adult in need of assistance means an individual who has been determined to be "incapable of managing or administering his or her property, including his or her financial affairs" either (a) through a BIA administrative process that is based on a finding by a licensed medical professional or licensed mental health professional, or (b) by an order or judgment of a court of competent jurisdiction.

BIA means the Bureau of Indian Affairs, Department of the Interior, or its authorized representative.

Bond means security for the performance of certain obligations or a guaranty of such performance as furnished by a third-party surety. As used in this part, bonds may include cash bonds, performance bonds, and surety bonds.

Court of competent jurisdiction means a federal or tribal court with jurisdiction; however, if there is no tribal court with jurisdiction, then a state court with jurisdiction.

Day means a calendar day unless otherwise specified.

Department means the Department of the Interior or its authorized representative.

Deposits mean receiving funds, ordinarily through a Federal Reserve Bank, for credit to a trust fund account.

Emancipated minor means a person under 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

Encumber or encumbrance means to attach trust assets held by the Secretary with a claim, lien, or charge

that has been approved by the Secretary.

Encumbered account means a trust fund account where some portion of the proceeds are obligated to another party.

Estate account means an account for a deceased IIM account holder.

FOIA means the Freedom of Information Act, 5 U.S.C. § 552.

Guardian means a person who is legally responsible for the care and management of an individual and his or her estate. This definition includes, but is not limited to, conservator or guardian of the property. However, this definition does not apply to property subject to § 115.106 of this part.

Individual Indian Money (IIM) accounts means an interest bearing account for trust funds held by the Secretary that belong to a person who has an interest in trust assets. These accounts are under the control and management of the Secretary. There are three types of IIM accounts: unrestricted, restricted, and estate accounts.

Legal disability means the lack of legal capability to perform an act which includes the ability to manage or administer his or her financial affairs as determined by a court of competent jurisdiction or another federal agency where the federal agency has determined that the adult requires a representative payee and there is no legal guardian to receive federal benefits on his or her behalf.

MSW means a Master of Social Work degree from an accredited college or university.

Minor means an individual who is not an adult as defined in this part.

Non-compos mentis means a person who has been determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

OST means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

OTFM means the Office of Trust Funds Management, within the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Privacy Act means the Federal Privacy Act, 5 U.S.C. § 552a.

Restricted fee land(s) means land the title to which is held by an individual Indian or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary because of limitations contained in the conveyance instrument pursuant to federal law.

Secretary means the Secretary of the Interior or an authorized representative; it also means a tribe or tribal organization if that entity is administering specific programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under a Self-Determination Act contract (pursuant to 25 U.S.C. § 450f) or a Self-Governance compact (pursuant to 25 U.S.C. § 558cc).

Special deposit account means a temporary account for the deposit of trust funds that cannot immediately be credited to the rightful account holders.

Supervised account means a restricted IIM account, from which all disbursements must be approved by the BIA, that is maintained for minors, emancipated minors, adults who are in need of assistance, adults who under legal disability, or adults who are non-compos mentis.

Tribal account or tribal trust account generally means a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary.

Tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the United States government for special programs and services provided by the Secretary to Indians because of their status as Indians. Tribe also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

Trust account means a tribal account, an IIM account, or a special deposit account for trust funds maintained by the Secretary.

Trust assets mean trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians.

Trust funds means money derived from the sale or use of trust lands, restricted fee lands, or trust resources and any other money that the Secretary must accept into trust.

Trust land(s) means any tract or interest therein, that the United States holds in trust status for the benefit of a tribe or an individual Indian.

Trust Reform Act means the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 108 Stat. 4239, 25 U.S.C. § 4001.

Trust resources means any element or matter directly derived from Indian trust property.

Unrestricted account means an IIM account in which an Indian account holder may determine the timing and amount of disbursements from the account.

Voluntary hold means a request by an individual Indian with an unrestricted IIM account to keep his or her trust funds in a trust account instead of having the trust funds automatically disbursed.

We or Us or Our means the Secretary as defined in this part.

You or Your means an IIM account holder.

Subpart B—IIM Accounts

§ 115.100 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.

§ 115.101 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.

§ 115.102 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.

§ 115.103 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.

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

§ 115.105 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 or 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.

§ 115.106 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.

§ 115.107 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 subpart E.

Subpart C—IIM Accounts: Minors

§ 115.400 Will a minor's IIM account always be supervised?

Yes, all IIM accounts established by BIA for minors will be supervised by the BIA.

§ 115.401 What is a minor's supervised account?

A minor's supervised account is a restricted IIM account from which all disbursements must be made pursuant to a distribution plan approved by the BIA that is established for:

- (a) A minor, or
- (b) An emancipated minor.

§ 115.402 Will a minor have access to information about his or her account?

A minor will not have access to information about his or her IIM account without approval of the custodial parent(s) or legal guardian. However, an emancipated minor will have access to information about his or her IIM account.

§ 115.403 Who will receive information regarding a minor's supervised account?

(a) The parent(s) with legal custody of the minor or the minor's legal guardian will receive a minor's statement of performance at the address of record for the minor's supervised account.

(b) An emancipated minor will receive his or her statement of performance at the address of record for the minor's supervised account.

§ 115.404 What information will be provided in a minor's statement of performance?

A minor's statement of performance will identify the source, type, and status of the funds deposited and held in the account; the beginning balance; the gains and losses; receipts and disbursements, if any; and the ending balance

of the quarterly statement period for the minor's supervised account.

§ 115.405 How frequently will a minor's statement of performance be mailed?

We will mail a minor's statement of performance to the address of record quarterly, within and no later than 20 business days after the close of the quarterly statement period.

§ 115.406 Who provides an address of record for a minor's supervised account?

(a) The custodial parent or the legal guardian must provide an address to the BIA and this address will be the address of record for the minor's supervised account. Where applicable, a parent or legal guardian must provide a copy of the custodial order or guardianship order from a court of competent jurisdiction when providing the address of record for the minor's supervised IIM account.

(b) The emancipated minor must provide his or her address of record to the BIA.

(c) Upon receipt of the change of address of record from the parent or legal guardian, the BIA must provide the change of the address of record to the OTFM.

§ 115.407 How is an address of record for a minor's supervised account changed?

(a) To change an address of record for a minor's supervised IIM account, a custodial parent(s), legal guardian, or emancipated minor must provide BIA with the following information:

- (1) The minor's or emancipated minor's name;
- (2) The name of the custodial parent(s) or legal guardian, if applicable;
- (3) A custody order from a court of competent jurisdiction or a copy of a guardianship, if applicable;
- (4) The new address of the custodial parent(s), legal guardian, or emancipated minor; and
- (5) The signature, mark or thumb print of a custodial parent, legal guardian, or emancipated minor that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

(b) When requesting a change of an address of record, the following information will further assist us to identify the minor's account:

- (1) The minor's or emancipated minor's IIM account number;
- (2) The minor's or emancipated minor's date of birth;
- (3) The minor's or emancipated minor's tribal enrollment number; and
- (4) The minor's or emancipated minor's social security number.

§ 115.408 May a minor's supervised account have more than one address on file with the BIA?

Yes, a minor's supervised account may have more than one address on file with the BIA. We request that the parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor, notify us of the following addresses for the minor:

- (a) The minor's residence;
- (b) The address of record where the statement of performance will be mailed;
- (c) The address where disbursement checks will be mailed or financial institution information for direct deposits of trust funds as authorized under an approved distribution plan.

§ 115.409 How is an address for a minor's residence changed?

(a) To change an address for a minor's residence, the custodial parent, legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor must provide BIA with the following information:

- (1) The minor's name;
- (2) The name of the custodial parent(s) or legal guardian;
- (3) A copy of a custodial order from a court of competent jurisdiction or a guardianship order, where applicable;
- (4) The new address of the minor's residence; and
- (5) The signature, mark or thumb print of the individual who is providing the updated address for the minor's residence that has been notarized by a notary public and/or witnessed by a DOI employee who has been shown verifiable photo identification. See § 115.410

(b) When requesting a change of an address for a minor's residence, the following information will further assist us to identify the minor's account:

- (1) The minor's IIM account number;
- (2) The minor's date of birth;
- (3) The minor's tribal enrollment number (if known); and
- (4) The minor's social security number (where known).

§ 115.410 What types of identification will the BIA or OTFM accept as "verifiable photo identification"?

BIA or OTFM will accept the following forms of identification as "verifiable photo identification":

- (a) A valid driver's license;
- (b) A government-issued photo identification card, such as a passport, security badge, etc.; or
- (c) A tribal photo identification card.

§ 115.411 What if the individual making a request regarding a minor's supervised account does not have any verifiable photo identification?

If the individual making a request regarding a minor's supervised account does not have any verifiable photo identification, the individual may make a request in person at the BIA and we will talk with the individual and review information in the minor's file to see if we can attest to the individual's identity. If we cannot establish the identity of the individual, we will not accept the request.

§ 115.412 Will child support payments be accepted for deposit into a minor's supervised account?

The Secretary will not accept child support payments for deposit into a minor's supervised account.

§ 115.413 Who may receive funds from a minor's supervised account?

A custodial parent, a legal guardian, a person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor may be eligible to withdraw funds from a minor's supervised account if there is an authorized disbursement request that is based upon the terms of a BIA-approved distribution plan.

§ 115.414 What is an authorized disbursement request?

An authorized disbursement request is the form or letter that must be approved by the BIA that specifies the funds to be disbursed from an IIM account. The authorized disbursement request may not be issued to disburse funds from a minor's supervised account unless an approved distribution plan exists, the amount to be disbursed is in conformity with the distribution plan and the disbursement will be made to an individual or third party specified in the plan.

§ 115.415 How will an authorized disbursement from a minor's supervised account be sent?

OTFM will make an authorized disbursement based on the approved distribution plan from a minor's supervised account by:

- (a) Making a direct deposit to a specified account at a financial institution (a direct deposit into the specified account will eliminate lost, stolen or damaged checks and will also eliminate delays associated with mailing the check);
- (b) Mailing a check to the address of record or to a specified disbursement address; or
- (c) Mailing a check to a specified third party's address.

§ 115.416 Will the United States post office forward mail regarding a minor's supervised account to a forwarding address left with the United States post office?

(a) Federal law does not allow the United States post office to forward checks that are issued by the federal government. Therefore, a check from a minor's supervised account will not be forwarded to an address left with the United States post office. The new address of record must be provided directly to BIA.

(b) Where a forwarding address has been provided to the United States post office, the United States post office will forward a statement of performance and general correspondence regarding a minor's supervised account that is mailed to the minor's address of

record for a limited time period. However, it is the responsibility of a custodial parent, legal guardian, or emancipated minor to give BIA the new address of record for the minor's supervised account.

§ 115.417 What portion of funds in a minor's supervised account may be withdrawn under a distribution plan?

Trust money in a minor's supervised account will not be distributed without a review of other resources that may be available to meet the needs of the minor. Any trust funds of a minor that are distributed must be used for the direct benefit of the minor and in accordance with any additional limitations (e.g., statutory, court order, tribal resolution, etc.) placed on the use of specific trust funds. Allowable uses may include health, education, or welfare when based upon a justified unmet need. The BIA will require receipts for expenditures of funds disbursed from a minor's account to a custodial parent, legal guardian, person who has been recognized by the BIA as having control and custody of the minor, or an emancipated minor.

§ 115.418 What types of trust funds may a minor have?

A minor may have one or more of the following types of trust funds:

(a) Judgment per capita funds: Withdrawals may only be made upon BIA approval of an application made under Public Law 97-458. See 25 CFR 1.2.

(b) Tribal per capita funds: Withdrawals may only be made under a BIA approved distribution plan and in accordance with the terms of the tribe's per capita resolution/document.

(c) Other trust funds: Withdrawals may only be made under a minor's BIA-approved distribution plan that is based on a justified unmet need for the minor's health, education, or welfare.

(d) Funds from other federal agencies (e.g., SSA, SSI, VA) received for the benefit of the minor: Withdrawals must be made only under a BIA-approved distribution plan that must be consistent with the disbursing agency's (e.g., SSA, SSI, VA) allowable uses for the funds.

§ 115.419 Who develops a minor's distribution plan?

A social service provider will develop a minor's distribution plan for approval by the BIA after evaluating the needs of the minor in consultation with a custodial parent, a legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or emancipated minor. A minor's distribution plan may only provide for those expenditures outlined in part § 115.417.

§ 115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?

When developing a minor's distribution plan, the following information must be considered and included in the evaluation:

(a) Documentation which establishes who has physical custody of the minor (e.g., home visits, school records, medical records, etc.);

(b) A copy of any custodial orders or guardianship orders from a court of competent jurisdiction;

(c) The name(s) of the person and his or her relationship to the minor, if any, who make a request for a disbursement from the minor's account;

(d) An evaluation of other resources, including parental income, that may be available to meet the unmet needs of the minor;

(e) A list of the amounts, purposes, and dates for which disbursements will be made;

(f) The name(s) of the person to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor;

(4) An emancipated minor; and/or

(5) Any third parties to whom the BIA will make direct payment for goods or services provided to the minor and supported by an invoice or bill of sale;

(g) The date(s) (at least every six months) when the custodial parent, the legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or

the emancipated minor must provide receipts to the BIA to show that expenditures were made in accordance with the approved distribution plan;

(h) Additional requirements and justification for those requirements, as necessary to ensure that any distribution(s) will benefit the minor;

(i) The dates the disbursement plan was developed, approved, and reviewed, and the date for the next scheduled review;

(j) The date(s) the distribution plan was amended and an explanation for any amendment(s) to the distribution plan, when an amendment is necessary;

(k) The signature of the BIA official approving the plan with the certification that the plan is in the best interest of the account holder; and

(l) The signature(s) of the custodial parent, legal guardian, with date(s) signed, certifying that he or she has been consulted and has agreed to the terms of the evaluation and the distribution plan.

§ 115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?

A minor's distribution plan must contain the following:

(a) A copy of any custodial order or guardianship order from a court of competent jurisdiction;

(b) A list of the amounts, purposes, and dates for which disbursements will be made;

(c) The name(s) of the person(s) to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor and the address of that person;

(4) An emancipated minor; and/or

(5) Any third parties and the address(es) of the third parties to whom the direct payment will be made for goods or services provided to the minor and supported by an invoice or bill of sale, where applicable;

(d) The date that the disbursement plan was approved and the expiration date of the distribution plan; and

(e) The date and signature of the BIA official approving the plan with a cer-

tification that the plan is in the best interest of the account holder.

§ 115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?

If you are a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor who receives funds from a minor's supervised account, you must:

(a) Consult with the social service provider on the development of an evaluation;

(b) Sign an acknowledgment that you have reviewed the evaluation;

(c) Follow the terms of a distribution plan approved by the BIA;

(d) Follow any applicable court order;

(e) Provide receipts to the social services provider in accordance with terms of the evaluation for all expenses paid out of the minor's IIM funds;

(f) Review the statements of performance for the supervised account for discrepancies, if applicable;

(g) File tax returns on behalf of the account holder, if applicable; and

(h) Notify the social service provider of any change in circumstances that impairs your performance of your obligations under this part or inform the social service provider of any information regarding misuse of a minor's trust funds.

§ 115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?

At the Secretary's discretion, the BIA may authorize the disbursement of funds from a minor's supervised account for the benefit of the minor.

§ 115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?

The BIA-approved distribution plan will be provided to:

(a) The custodial parent; or

(b) A legal guardian; or

(c) At the Secretary's discretion, in unusual circumstances, to a family member who has been recognized as having control and custody of the minor; or

- (d) An emancipated minor; and
(e) OTFM.

§ 115.425 What will we do if we find that a distribution plan has not been followed or an individual has acted improperly in regard to his or her duties involving a minor's trust funds?

If we find that a distribution plan has not been followed or that a custodial parent, a legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor has failed to satisfactorily account for expenses or has not used the minor's funds for the primary benefit of the minor, we will:

- (a) Notify the individual; and
(b) Take action to protect the interests of the minor, which may include:
(1) Referring the matter for civil or criminal legal action;
(2) Demanding repayment from the individual who has improperly expended trust funds or failed to account for the use of trust funds;
(3) Liquidating a bond posted by the legal guardian, where applicable, to recover improperly expended trust funds up to the amount of the bond; or
(4) Immediately modifying the distribution plan for up to sixty days, including suspending the authority of the individual to receive further disbursements.

§ 115.426 What is the BIA's responsibility regarding the management of a minor's supervised account?

The BIA's responsibility in regard to the management of a minor's supervised account is to:

- (a) Review and approve the evaluation and the distribution plan;
(b) Authorize OTFM to disburse IIM funds in accordance with an approved distribution plan; and
(c) Conduct annual reviews of case records for minors' supervised accounts to ensure that the social service providers have managed the accounts in

accordance with the approved evaluation and distribution plan.

§ 115.427 What is the BIA's annual review process for a minor's supervised account?

A BIA social worker with an MSW will conduct an annual review of minors' supervised accounts by:

- (a) Verifying that all receipts for disbursements made under a distribution plan were collected in accordance with the terms specified in the evaluation;
(b) Reviewing the receipts for disbursements made from a minor's supervised account to ensure that all expenditures were made in accordance with the distribution plan;
(c) Reviewing all case worker reports and notes;
(d) Reviewing account records to insure that withdrawals and payments were made in accordance with the distribution plan;
(e) Verifying current addresses, including the address of record, the address of the minor's residence, and the disbursement address; and
(f) Deciding whether the distribution plan needs to be modified.

§ 115.428 Will you automatically receive all of your trust funds when you reach the age of 18?

No, we will not automatically send your trust funds to you when you reach the age of 18.

§ 115.429 What do you need to do when you reach 18 years of age to access your trust funds?

You must contact OTFM to request withdrawal of any or all of your trust funds that may be available to you. OTFM may require certain information from you to verify your identity, etc. prior to the release of your trust funds. All signatures must be notarized by a notary public or witnessed by a DOI employee. In addition, if you choose to have a check mailed to you, you must provide us with your address of record. If you choose to have your trust funds electronically transferred to you, you must provide your financial institution account information to OTFM.

§ 115.430 Will your account lose its supervised status when you reach the age of 18?

Your account will no longer be supervised when you reach the age of 18 unless statutory language or a tribal resolution specifies an age other than 18 years of age for access to specific trust funds. However, if a court of competent jurisdiction has found you to be non-compos mentis, under legal disability, or the BIA has determined you to be an adult in need of assistance, your account will remain supervised and you will be notified in accordance with subpart E.

§ 115.431 If you are an emancipated minor may you withdraw trust funds from your account?

If you are an emancipated minor, you may have access to some or all of your trust funds as follows:

(a) For judgment per capita funds: you may not make withdrawals from your account until you have reached the age specified in the judgment. Exceptions are only granted upon the approval of an application made under Public Law 97-458. See 25 CFR 1.2.

(b) Tribal per capita funds: access to these funds will be determined by tribal resolution.

(c) Other trust funds: You may be able to have supervised access to some or all of your funds, but the BIA must approve all requests for withdrawals from your account. You must work with the BIA to develop a distribution plan to access the funds in your account. In no instance will the BIA allow an emancipated minor to make unsupervised withdrawals.

(d) For funds from other federal agencies (e.g., SSA, SSI, VA), you may be able to receive funds directly, but you must contact and make arrangements with the other federal agency. Direct receipt of funds from another federal agency will not change the supervised status of an emancipated minor's trust account.

Subpart D—IIM Accounts: Estate Accounts

§ 115.500 When is an estate account established?

An estate account is established when we receive notice of an account holder's death.

§ 115.501 How long will an estate account remain open?

An estate account will remain open until the funds have been distributed in accordance with the distribution and/or probate order.

§ 115.502 Who inherits the money in an IIM account when an account holder dies?

At the end of all probate procedures, funds remaining in a decedent's estate account will be distributed from the decedent's estate account and paid directly to or deposited into an IIM account of the decedent's heirs, beneficiaries, or other persons or entities entitled by law to receive the funds, where applicable. See 25 CFR part 15.

§ 115.503 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?

(a) If you are responsible for making the funeral arrangements of a decedent who had an IIM account and you have an immediate need for emergency assistance to pay for funeral arrangements prior to burial, you may make a request to the BIA for up to \$1,000 from the decedent's IIM account if the decedent's IIM account has more than \$2,500 in the account at the date of death.

(b) You must apply for this assistance and submit to the BIA an original itemized estimate of the cost of the service to be rendered and the identification of the service provider.

(c) We may approve reasonable costs up to \$1,000 that are necessary for the burial services.

(d) We will make payments directly to the providers of the service(s).

§ 115.504 If you have a life estate interest in income-producing trust assets, how will you receive the income?

If you have a life estate interest in income-producing trust assets, which is earning income, OTFM will open an IIM-life estate account for you and funds will be distributed after BIA has certified ownership of the trust funds.

Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account

§ 115.600 If BIA decides to restrict your IIM account under § 115.102 or § 115.104, what procedures must the BIA follow?

If under § 115.102 or § 115.104, the BIA has decided to limit your access to your IIM account (i.e., decided to supervise the IIM account), or if the BIA has decided to pay creditors with funds from your IIM account, including creditors with judgments from Courts of Indian Offenses for which preliminary procedures are prescribed in 25 CFR 11.208, the BIA must notify you or your guardian, as applicable, to provide you or your guardian, as applicable, with an opportunity to challenge the BIA's decision to restrict your IIM account as specified in subpart E.

§ 115.601 Under what circumstances may the BIA restrict your IIM account through supervision or an encumbrance?

(a) The BIA may restrict your IIM account through supervision if the BIA:

(1) Receives an order from a court of competent jurisdiction that you are non-compos mentis; or

(2) Receives an order or judgment from a court of competent jurisdiction that you are an adult in need of assistance because you are "incapable of managing or administering property, including your financial affairs;" or

(3) Determines through an administrative process that you are an adult in need of assistance based on a finding by a licensed medical or mental health professional that you are "incapable of managing or administering property, including your financial affairs;" or

(4) Receives information from another federal agency that you are under a legal disability and that the agency has appointed a representative payee to receive federal benefits on your behalf.

(b) The BIA may restrict your IIM account through an encumbrance if the BIA:

(1) Receives an order from a court of competent jurisdiction awarding child support from your IIM account; or

(2) Receives from a third party:

(i) A copy of the original contract between you and the third party in which you used your IIM funds as security/collateral for the transaction;

(ii) A copy of the document showing that the BIA approved in advance the use of your IIM funds as security/collateral for the contract;

(iii) Proof of your default on the contract according to the terms of the contract; and

(iv) A copy of the original assignment of IIM income as security/collateral for the contract that is signed and dated by you and is notarized;

(3) Receives a money judgment from a Court of Indian Offenses pursuant to 25 CFR 11.208 or under any tribal law and order code;

(4) Is provided documentation showing that BIA or OTFM caused an administrative error which resulted in a deposit into your IIM account, or a disbursement to you, or to a third party on your behalf; or

(5) Is provided with proof of debts owed to the United States pursuant to § 115.104 of this part.

§ 115.602 How will the BIA notify you or your guardian, as applicable, of its decision to restrict your IIM account?

The BIA will notify you or your guardian, as applicable, of its decision to restrict your IIM account by:

(a) United States certified mail to your address of record;

(b) Personal delivery to you or your guardian, as applicable, or to your address of record;

(c) Publication for four consecutive weeks in your tribal newspaper if your whereabouts are unknown and in the local newspaper serving your last known address of record; or

(d) United States certified mail to you in care of the warden, if you are incarcerated. The BIA may send a copy of the notification to your attorney, if known.

§ 115.603 What happens if BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason?

If BIA's notice of its decision to place a restriction on your IIM account that is sent by United States certified mail is returned to the BIA as undeliverable for any reason, the BIA will remove the restriction on your account, which was placed five days after the notice was mailed, and will publish a notice in accordance with § 115.602(c) and § 115.605(b).

§ 115.604 When will BIA authorize OTFM to place a restriction on your IIM account?

BIA will authorize OTFM to place a restriction on your IIM account after providing OTFM with supporting documentation (i.e., receipts, notice of publication, etc.) of the following:

(a) Five (5) days after the date BIA mails you or your guardian, as applicable, notice of its decision to restrict your account by United States certified mail to your address of record;

(b) One (1) day after BIA has made personal delivery to you or your guardian, as applicable, or to your address of record of its notice of the BIA's decision to restrict your account; or

(c) Five (5) days after the fourth publication of the public notice of BIA's decision to restrict your account.

§ 115.605 What information will the BIA include in its notice of the decision to restrict your IIM account?

(a) When the BIA provides notice of its decision to restrict your IIM account by certified mail or personal delivery to you or your guardian, as applicable, the notice must contain:

- (1) The name on the IIM account;
- (2) The reason for the restriction;
- (3) The amount to be encumbered, if applicable;

(4) A statement that your IIM account will be restricted 5 days after the date the notice was sent United States

certified mail to your address of record;

(5) An explanation that you have 40 days from the date the notice was sent United States certified mail to request a hearing to challenge BIA's decision to restrict your IIM account;

(6) An explanation of how to request a hearing;

(7) A statement that the BIA will conduct the hearing and that you are assured a fair hearing;

(8) A copy of the fair hearing guidelines;

(9) A statement that you may contact the BIA to authorize immediate payment from your IIM account to pay the claim, if applicable;

(10) The address and phone number of the BIA office that made the decision to restrict your IIM account and provided the notice; and

(11) Other information as may be determined appropriate by the BIA.

(b) When the BIA provides public notice of its decision to restrict your account, the only information the public notice will include is:

- (1) The name on the account;
- (2) The date of first publication of the public notice;

(3) A statement that the BIA has decided to place a restriction on your IIM account;

(4) A statement that the public notice will be published once a week for four consecutive weeks;

(5) A statement that the BIA will place a restriction on your account five (5) days after the date of the fourth publication of the public notice;

(6) A statement that your opportunity to request a hearing to challenge BIA's decision to restrict your account will expire 30 days after the date of the fourth publication of the public notice; and

(7) An address and telephone number of the BIA office publishing the notice to request further information and instructions on how to request a hearing.

§ 115.606 What happens if you do not request a hearing to challenge BIA's decision to restrict your IIM account during the allotted time period?

If you or your guardian, as applicable, do not request a hearing to challenge BIA's decision to restrict your

IIM account during the allotted time period, BIA's decision to restrict your IIM account will become final. BIA will follow the procedures outlined in § 115.616 through § 115.618, and § 115.620, as applicable.

§ 115.607 How do you request a hearing to challenge the BIA's decision to restrict your IIM account?

You or your guardian, as applicable, must request a hearing to challenge the BIA's decision to restrict your IIM account from the BIA office that made the decision and notified you of the restriction. Your request must:

- (a) Be in writing;
- (b) Specifically request a hearing to challenge the restriction; and
- (c) Be hand delivered to the BIA office or postmarked within:
 - (i) 40 days of the date that BIA's notice was sent United States certified mail or personally delivered to the address of record, or
 - (ii) 30 days of the date of the final publication of the public notice.

§ 115.608 If you request a hearing to challenge BIA's decision to restrict your IIM account, when will BIA conduct the hearing?

BIA will conduct a hearing within ten (10) working days from its receipt of a written request from you or your guardian, as applicable, for a hearing to challenge the decision to restrict your IIM account.

§ 115.609 Will you be allowed to present testimony and/or evidence at the hearing?

Yes, you or your guardian, as applicable, will be provided the opportunity to present testimony and/or evidence as to the reasons the BIA should not restrict your IIM account, including information showing how an encumbrance may create an undue financial hardship, if applicable. You may not challenge a court order or judgment in this proceeding. However, if you have appealed an order or judgment from a court of competent jurisdiction, you or your guardian, as applicable, may present evidence of your appeal and the BIA hearing will be postponed until there is a final order from the court. The restriction on your IIM account

will remain in place until after the hearing is concluded.

§ 115.610 Will you be allowed to present witnesses during a hearing?

Yes, you or your guardian, as applicable, may present witnesses during a hearing. You are responsible for any and all expenses which may be associated with presenting witnesses.

§ 115.611 Will you be allowed to question opposing witnesses during a hearing?

Yes, you or your guardian, as applicable, may question all opposing witnesses testifying during your hearing. You may also present witnesses to challenge opposing witness testimony.

§ 115.612 May you be represented by an attorney during your hearing?

Yes, you may have an attorney or other person represent you during your hearing. However, you are responsible for any and all expenses associated with having an attorney or other person represent you.

§ 115.613 Will the BIA record the hearing?

Yes, the BIA will record the hearing.

§ 115.614 Why is the BIA hearing recorded?

The BIA hearing will be recorded so that it will be available for review if the hearing process is appealed under § 115.107. The BIA hearing record must be preserved as a trust record.

§ 115.615 How long after the hearing will BIA make its final decision?

BIA will make its final decision within 10 business days of the end of the hearing.

§ 115.616 What information will be included in BIA's final decision?

BIA's final written decision to the parties involved in the proceeding will include:

- (a) BIA's decision to remove or retain the restriction on the IIM account;
- (b) A detailed justification for the supervision or encumbrance of the IIM account, where applicable;
- (c) The amount(s) to be paid, the name and address of a third party to

whom payment will be made, and the time period for repayment established under 617(a) of this part, where applicable;

(d) Any provision to allow for distributions to the account holder because of an undue financial hardship created by the encumbrance, if applicable; and

(e) Any other information the hearing officer deems necessary.

§115.617 What happens when the BIA decides to supervise or encumber your IIM account after your hearing?

BIA will provide OTFM with a copy of the distribution plan, after the BIA decides to:

(a) Supervise your IIM account. BIA social services staff will consult with you and/or your guardian to develop a distribution plan. Upon BIA approval, the distribution plan will be valid for one year.

(b) Encumber your IIM account. BIA will review your account balance and your future IIM income to develop a distribution plan that establishes the amount(s) to be paid and the dates payment(s) will be made to the specified party. Payments may need to be made over the course of one or more years if the amount owed to the specified party is greater than your current IIM account balance.

§115.618 What happens if at the conclusion of the notice and hearing process we decide to encumber your IIM account because of an administrative error which resulted in funds that you do not own being deposited in your account or distributed to you or to a third party on your behalf?

If we decide at the conclusion of the notice and hearing process to encumber your account because of an administrative error which resulted in funds that you do not own being deposited into your IIM account or distributed to you or to a third party on your behalf, we will consult with you or your guardian,

as applicable, to determine how the funds will be re-paid.

§115.619 If the BIA decides that the restriction on your IIM account will be continued after your hearing, do you have the right to appeal that decision?

Yes, if the BIA decides after your hearing to continue the restriction on your IIM account, you or your guardian, as applicable, have the right to appeal the decision under the procedures proscribed in §115.107.

§115.620 If you decide to appeal the BIA's final decision pursuant to §115.107, will the BIA restrict your IIM account during the appeal?

Yes, if under §115.107 you or your guardian, as applicable, decide to appeal the BIA's final decision to:

(a) Supervise your IIM account, your IIM account will remain restricted during the appeal period.

(b) Encumber your IIM account, your IIM account will remain restricted up to the amount at issue during the appeal period. If your account balance is greater than the amount encumbered, those funds will be available to you upon request to and by approval of the Secretary.

**Subpart F—Trust Fund Accounts:
General Information**

§115.700 Why is money held in trust for tribes and individual Indians?

Congress has passed a number of laws that require the Secretary to establish and administer trust fund accounts for Indian tribes and certain individual Indians who have an interest(s) in trust lands, trust resources, or trust assets.

§115.701 What types of accounts are maintained for Indian trust funds?

Indian trust funds are deposited in tribal accounts, Individual Indian Money (IIM) accounts, and special deposit accounts. The illustration below provides information on each of these trust accounts.

| Types of Trust Fund Accounts | | Descriptions | |
|--|---------------------------|---|--|
| Individual Indian Money (IIM) Accounts | Unrestricted IIM accounts | There are no restrictions on these accounts. Funds may be left on deposit, or paid to the account holder based upon instructions by the account holder. | |
| | Restricted IIM accounts: | Administratively Restricted | A temporary hold is placed on an account by OTFM where an address of record for an account holder is unknown or where more documentation is needed to make a distribution from an account. |
| | | Supervised | A restriction is placed on the account by the BIA and funds from these accounts may only be withdrawn under a BIA approved distribution plan. The following account holders will have supervised accounts: <ul style="list-style-type: none"> • minors, • emancipated minors, • adults who are non-compos mentis, • adults in need of assistance; and/or • adults under legal disability as defined in this part. |
| | | Encumbered | A restriction is placed on the account by the BIA until money owed from an the account is paid to a specified party. The account holder may withdraw any money available in the account that is above the amount owed to specified parties. |
| | IIM Estate accounts | An account for a deceased IIM account holder. | |
| Tribal Accounts | | Generally, an account for a federally recognized tribe. | |
| Special Deposit Accounts | | An account for the temporary deposit of trust funds that cannot be distributed immediately to its rightful owners. | |

[66 FR 7094, Jan. 22, 2001, as amended at 66 FR 8768, Feb. 2, 2001]

§ 115.702 What specific sources of money will be accepted for deposit into a trust account?

We must accept proceed on behalf of tribes or individuals from the following sources:

| SOURCES | TRUST ACCOUNTS | | | | |
|--|----------------|-------------------------------|-----------------------------|------------|------------|
| | Tribal | Individual Indian Money (IIM) | | | |
| | | Unrestricted IIM Accounts | Restricted IIM Accounts | | |
| | | | Administratively restricted | Supervised | Encumbered |
| Payments from the United States as a Result of — | | | | | |
| Federal laws requiring funds to be deposited in trust accounts. | ✓ | ✓ | ✓ | ✓ | ✓ |
| Settlement of a claim related to trust assets that requires the funds to be deposited in trust accounts | ✓ | ✓ | ✓ | ✓ | ✓ |
| A final order from a United States court for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts | ✓ | ✓ | ✓ | ✓ | ✓ |
| Unobligated or unspent forestry funds specifically appropriated for the benefit of such Indian tribe | ✓ | | | | |
| Designation of the BIA as the representative payee (by another federal agency) to receive certain Federal assistance payments, such as VA benefits, Social Security, or Supplemental Security Income, on behalf of an individual Indian because there is no legal guardian for that individual | | | ✓ | ✓ | |
| Payments resulting from — | | | | | |
| Money directly derived from the title conveyance (e.g. sale, probate, condemnation) or use of trust lands or restricted fee lands or trust resources, including any late payment penalties, when paid directly to the Secretary on behalf of the account holder | ✓ | ✓ | ✓ | ✓ | ✓ |
| Penalties for trespass on trust lands or restricted fee lands | ✓ | ✓ | ✓ | ✓ | ✓ |

| | | | | | |
|---|---|---|---|---|---|
| Default or breach of the terms of a contract for the sale or use of trust lands, restricted fee lands, or trust resources arising from cash performance or surety bonds, or other source(s) | ✓ | ✓ | ✓ | ✓ | ✓ |
| A final order from a court of competent jurisdiction for a cause of action directly related to trust assets requiring funds to be deposited in trust accounts | ✓ | ✓ | ✓ | ✓ | ✓ |
| Deposits from an Indian Tribe — | | | | | |
| Redeposit of tribal trust funds previously withdrawn under an investment plan submitted and approved pursuant to the American Indian Trust Fund Management Reform Act of 1994, Pub. L. 103-412, 108 Stat. 4239, 25 U.S.C. § 4001 (Trust Reform Act) | ✓ | | | | |
| Where a tribe under 25 U.S.C. 450f et seq. has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual | ✓ | ✓ | ✓ | ✓ | ✓ |
| Legislative settlement funds or judgment funds withdrawn, but not spent, for a specific project. Documentation showing source of funds is required. | ✓ | | | | |
| Deposits from other sources — | | | | | |
| Interest earned on trust fund deposits | ✓ | ✓ | ✓ | ✓ | ✓ |
| Disbursements of tribal trust funds held by OTFM to tribal members as per capita payments | ✓ | | | ✓ | |
| As permitted by law (25 U.S.C. § 3109) to be deposited into an Indian forest land assistance account | ✓ | | | | |

| | | | | | |
|---|---|---|---|--|---|
| Funds derived directly from trust lands, restricted fee lands, or trust resources that are presented to the Secretary, on behalf of the tribe or individual Indian owner(s) of the trust asset, by the payor after being mailed to the owner(s) as required by contract (i.e., direct pay) and returned by mail to the payor as undeliverable | ✓ | ✓ | ✓ | | ✓ |
|---|---|---|---|--|---|

[66 FR 7094, Jan. 22, 2001. Redesignated at 66 FR 8768, Feb. 2, 2001.]

§ 115.703 May we accept for deposit into a trust account money not specified in § 115.702?

No, we will not accept funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

§ 115.704 May we accept for deposit into a trust account retirement checks/payments or pension fund checks/payments even though those funds are not specified in § 115.702?

No, we will not accept retirement checks/payments or pension fund checks/payments or any funds from sources that are not identified in the table in § 115.702 for deposit into a trust account.

§ 115.705 May we accept for deposit into a trust account money awarded or assessed by a court of competent jurisdiction?

We will accept money awarded or assessed by a court of competent jurisdiction for a cause of action directly related to trust assets to be deposited into a trust account. Other funds awarded by a court of competent jurisdiction may not be deposited into a trust account.

§ 115.706 When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust assets, what documentation is required to deposit the trust funds into a trust account?

When funds are awarded or assessed by a court of competent jurisdiction in a cause of action involving trust as-

sets, we must receive the funds awarded as stipulated in the court order and a copy of the court's order.

§ 115.707 Will the Secretary accept administrative fees for deposit into a trust account?

No. The Secretary will not accept administrative fees for deposit into a trust account because administrative fees are not trust funds. However, administrative fees may be deposited into a non-interest bearing, non-trust account with the BIA.

§ 115.708 How quickly will trust funds received by the Secretary on behalf of tribes or individual Indians be deposited into a trust account?

Trust funds received by the Secretary on behalf of a tribe or individual Indians will be deposited into a trust account within twenty-four hours, or no later than the close of business on the next business day following the receipt of funds at a location with a designated federal depository.

§ 115.709 Will an annual audit be conducted on trust funds?

Yes, in accordance with the Trust Reform Act an annual audit will be conducted on trust funds. Each tribe and IIM account holder will be notified when the Secretary has conducted an annual audit on a fiscal year basis of all the trust funds held by the United States for the benefit of tribes and individual Indians. This notice will be provided in the first quarterly statement of performance following the publication of the audit.

INVESTMENTS AND INTERESTS

§ 115.710 Does money in a trust account earn interest?

Yes, all money deposited in a trust account is invested and earns interest or yield returns, or both.

§ 115.711 How is money in a trust account invested?

OTFM manages trust fund investments and its investment decisions are governed by federal statute. See 25 U.S.C. §§ 161(a) and 162a.

§ 115.712 What is the interest rate earned on money in a trust account?

The rate of interest on a trust account changes based on how the money is invested and how those investments perform.

§ 115.713 When does money in a trust account start earning interest?

Funds must remain on deposit at least one business day before interest is earned. Interest earnings of less than one cent are not credited to any account.

Subpart G—Tribal Accounts**§ 115.800 When does OTFM open a tribal account?**

A tribal account is opened when OTFM receives income from the sources described in § 115.702.

§ 115.801 How often will a tribe receive information about its trust account(s)?

The OTFM is required to provide each tribe with a statement of performance quarterly, within or no later than 20 business days after the close of every quarterly statement period.

§ 115.802 May a tribe make a request to OTFM to receive information about its trust account more frequently?

Yes, a tribe may contact OTFM at any time to:

- (a) Request information about account transactions and balances;
- (b) Make arrangements to access account information electronically; or
- (c) Receive a monthly statement.

§ 115.803 What information will be provided in a statement of performance?

The statement of performance will identify the source, type, and status of the trust funds deposited and held in a trust account; the beginning balance; the gains and losses; receipts and disbursements; and the ending account balance of the quarterly statement period.

§ 115.804 Will we account to a tribe for those trust funds the tribe receives through direct pay?

No, under the Trust Reform Act we are only responsible for accounting for those trust funds received into, and maintained by, the Department's trust funds management system.

§ 115.805 If a tribe is paid directly under a contract for the sale or use of trust assets, will we accept those trust funds for deposit into a tribal trust account?

If a contract for the sale or use of trust assets specifies that payments are to be made directly to a tribe, we will not accept these trust funds into a tribal trust account. Where a tribe under 25 U.S.C. 450f *et seq.* has contracted or compacted with the federal government to operate a federal program and the tribe, operating the federal program on behalf of the Secretary, receives trust funds for the sale or use of trust assets pursuant to a contract that specifies that payments are to be made to the Secretary on behalf of a tribe or an individual [the owner of the trust assets], the tribe must follow § 115.708 for the deposit of the trust funds into the trust account.

§ 115.806 How will the BIA assist in the administration of tribal judgment fund accounts?

(a) If the tribe requests assistance or if Congress directs the Secretary to provide assistance, BIA will provide technical assistance on developing a judgment use and distribution plan to a tribe.

(b) BIA will review all tribal requests for distribution of tribal judgment funds to ensure that each request complies with any requirements associated with the use of that money found in

statutory language, congressional directives, court orders, court-approved settlements, settlement agreements, use and distribution plans, or bond or loan payments.

INVESTING AND MANAGING TRIBAL
TRUST FUNDS

§ 115.807 Will OTFM consult with tribes about investments of tribal trust funds?

Upon the request of a tribe, OTFM will consult with the tribe annually to develop investment strategies to accommodate the cash flow needs of the tribe.

§ 115.808 Could trust fund investments made by OTFM lose money?

The value of trust fund investments made by OTFM will vary depending on the type of investment and, including but not limited to, the following:

- (a) Current interest rates;
- (b) Whether the security/investment is held to its maturity; and
- (c) Original purchase price.

However, as long as the purchase price of the security/investment is made at or below face value and the security/investment is held until maturity or payoff, the security/investment will not lose principal invested funds.

§ 115.809 May a tribe recommend to OTFM how to invest the tribe's trust funds?

Tribes may recommend certain investments to OTFM, but the recommendations must be in accordance with the statutory requirements set forth in 25 U.S.C. §§ 161a and 162a. The OTFM will make the final investment decision based on prudent investment practices.

§ 115.810 May a tribe directly invest and manage its trust funds?

A tribe may apply to withdraw its trust funds from OTFM for investment and management by the tribe. The tribe's request to withdraw funds must be in accordance with the requirements of the Trust Reform Act and 25 CFR part 1200, subpart B, unless otherwise specified by statutory language or the controlling document which governs the use of the trust funds.

§ 115.811 Under what conditions may a tribe redeposit funds with OTFM that were previously withdrawn under the Trust Reform Act?

Tribal trust funds withdrawn under the Trust Reform Act may be returned to OTFM under the following conditions:

- (a) A tribe must make a written request to OTFM to redeposit all or part of the withdrawn trust funds;
- (b) No tribal trust funds may be redeposited to a tribal trust account during the first six months after being withdrawn, except with the approval of the Secretary;
- (c) Tribal trust funds may only be returned to OTFM a maximum of twice a year, except with the approval of the Secretary; and
- (d) A tribe must return withdrawn trust funds in accordance with the requirements of the Trust Reform Act in 25 CFR, part 1200, subpart C.

§ 115.812 Is a tribe responsible for its expenditures of trust funds that are not made in compliance with statutory language or other federal law?

If a tribe's use of trust funds is limited by statutory language or other federal law(s) and a tribe uses those trust funds in direct violation of those laws, absent an approved modification which allows for the expenditures, we will require the tribe to reimburse its trust fund account.

§ 115.813 Is there a limit to the amount of trust funds OTFM will disburse from a tribal trust account?

OTFM will only disburse the available balance of the trust funds in a tribal trust account in accordance with a use and distribution plan, if applicable, and will not overdraw a tribal trust account. If a tribe's trust funds are invested in securities that have not matured, OTFM will only sell the asset to make cash available to the tribe if:

- (a) There are no restrictions against the sale, and
- (b) A tribe provides OTFM with a tribal resolution stating that:
 - (1) The security must be sold;
 - (2) The tribe acknowledges that they may incur a penalty when the security is sold; and

(3) The tribe acknowledges that the security may lose value if it is sold prior to maturity.

§ 115.814 If a tribe withdraws money from its trust account for a particular purpose or project, may the tribe redeposit any money that was not used for its intended purpose?

A tribe may redeposit funds not used for a particular purpose or project if:

(a) The funds were withdrawn in accordance with:

- (1) The terms of Trust Reform Act;
- (2) The terms of the legislative settlement; or
- (3) The terms of a judgment use and distribution plan; and

(b) The tribe can provide documentation showing the source of the funds to be redeposited.

WITHDRAWING TRIBAL TRUST FUNDS

§ 115.815 How does a tribe request trust funds from a tribal trust account?

To request trust funds from a tribal trust account, a tribe may:

(a) Make a written request to the BIA or the OTFM that is signed by the proper authorizing official(s), list the amount of trust funds to be withdrawn, provide any additional documentation or information required by law to withdraw certain trust funds, and must include a tribal resolution approving the withdrawal of the specified amount of trust funds; or

(b) Contact the OTFM to withdraw funds in accordance with the Trust Reform Act and 25 CFR part 1200.

§ 115.816 May a tribe's request for a withdrawal of trust funds from its trust account be delayed or denied?

(a) Action on a tribe's request for a withdrawal of trust funds may be delayed or denied if:

- (1) The tribe did not submit all the necessary documentation;
- (2) The tribe's request is not signed by the proper authorizing official(s);
- (3) OTFM does not have documentation from the tribe certifying its recognized, authorizing officials;
- (4) The tribe's request is in conflict with statutory language or the control-

ling document governing the use of the trust funds; or

(5) The BIA or OTFM requires clarification regarding the tribe's request.

(b) If action on a tribe's request to withdraw trust funds will be delayed or denied, the BIA or the OTFM will:

(1) Notify the tribe within ten (10) working days of the date of a request made under § 115.815(a);

(2) Notify the tribe under the time frames established in 25 CFR part 1200 for requests made under the Trust Reform Act; and

(3) Provide technical assistance to the tribe to address any problems.

§ 115.817 How does OTFM disburse money to a tribe?

Upon receipt of all necessary documentation, OTFM will process the request for disbursement and send the tribe the requested amount of trust funds within one business day. Whenever possible, trust funds will be disbursed electronically to an account in a financial institution designated by the tribe. If there are circumstances that preclude electronic payments, OTFM will mail a check.

UNCLAIMED PER CAPITA FUNDS

§ 115.818 What happens if an Indian adult does not cash his or her per capita check?

(a) If an Indian adult does not cash his or her per capita check within twelve (12) months of the date the check was issued, the check will be canceled and the trust funds will be deposited into a "returned per capita account" where the funds will be maintained until we receive a request for disbursement by the Indian adult or for disposition by a tribe pursuant to § 115.820.

(b) If an Indian adult's per capita check is returned to us as undeliverable, the trust funds will be immediately deposited into a "returned per capita account" where the funds will be maintained until we receive a request for disbursement by the individual or for disposition by a tribe pursuant to § 115.820.

§115.819 What steps will be taken to locate an individual whose per capita check is returned as undeliverable or not cashed within twelve (12) months of issuance?

The OTFM will notify a tribe of the names of the individuals whose per capita checks were returned as undeliverable or not cashed within twelve (12) months of issuance and will take reasonable action, including utilizing electronic search tools, to locate the individual entitled to receive the per capita funds.

§115.820 May OTFM transfer money in a returned per capita account to a tribal account?

Funds in a returned per capita account will not automatically be returned to a tribe. However, a tribe may apply under 25 U.S.C. 164 and Public Law 87-283, 75 Stat. 584 (1961), to have the unclaimed per capita funds transferred to its account for the tribe's use after six years have passed from the date of distribution.

Subpart H—Special Deposit Accounts

§115.900 Who receives the interest earned on trust funds in a special deposit account?

Generally, any interest earned on trust funds in a special deposit account will follow the principal (i.e., the tribe or individual who owns the trust funds in the special deposit account will receive the interest earned).

§115.901 When will the trust funds in a special deposit account be credited or paid out to the owner of the funds?

OTFM will disburse the trust funds from a special deposit account and deposit the trust funds in the owner's trust account following the BIA certification of the ownership of the funds and OTFM's receipt of such certification.

§115.902 May administrative or land conveyance fees paid as federal reimbursements be deposited in a special deposit account?

No, administrative or land conveyance fees paid as federal reimbursements may not be deposited with

OTFM, which includes special deposit accounts. These fees must be deposited in the Federal Financial System.

§115.903 May cash bonds (e.g., performance bonds, appeal bonds, etc.) be deposited into a special deposit account?

No, cash bonds may not be deposited with OTFM, which includes the special deposit accounts at OTFM. Cash bonds held by the Secretary are to be deposited in non-interest bearing accounts until the term of the bonds expire.

§115.904 Where earnest money is paid prior to Secretarial approval of a conveyance or contract instrument involving trust assets, may the BIA deposit that earnest money into a special deposit account?

No, any money received prior to Secretarial approval of conveyance or contract instrument involving trust assets must be deposited into a non-interest bearing, non-trust account. After the Secretary approves the conveyance or contract instrument involving trust assets, the money designated by the conveyance or contract instrument will be deposited into a trust fund account.

Subpart I—Records

§115.1000 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a federal trust function under this part, including the operation of a trust program pursuant to 25 U.S.C. 450f *et seq.*; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§115.1001 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that have

records identified in § 115.1000(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 115.1000(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, the tribe or tribal organization may be prevented from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

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.
- 116.3 Secretarial approval discretionary.
- 116.4 Contents trust agreement.
- 116.5 Eligibility of appraisers.
- 116.6 Aiding Indians in formulating trust agreements.
- 116.7 Trust duration.
- 116.8 Trustee's security.
- 116.9 Trustee's compensation.
- 116.10 Necessary forms.
- 116.11 Limit restricted property in trust.
- 116.12 Amendments.

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 Civ-

ilized 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.