



# Code of Federal Regulations

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**25**

Revised as of April 1, 2002

## **Indians**

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Containing a codification of documents  
of general applicability and future effect

As of April 1, 2002

*With Ancillaries*

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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**

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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 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.

### §116.3 Secretarial approval discretionary.

No such trust agreement will be favorably considered unless in the judgment of the Secretary of the Interior the trustee therein named is deemed by him to be on a sound financial basis and otherwise sufficiently qualified to justify approval of such trust.

### §116.4 Contents trust agreement.

In addition to the subject matter of the trust, its object and beneficiaries, duties of trustee, etc., the form of trust agreement shall contain provisions to the following general effect:

(a) That such of the current income from the corpus of the estate as may be payable to the Indians of the Five Civilized Tribes of one-half or more Indian blood shall be remitted by the trustee to the Secretary of the Interior or such other official as he may designate for appropriate disposition.

(b) That the trusts declared and each of them shall be irrevocable except with the approval of the Secretary of the Interior, but, subject to his approval, the beneficiaries named in any approved trust may be redesignated by the maker without in any manner otherwise impairing or altering any of the provisions thereof, particularly the duration of the trust or the compensation to be paid to the trustee.

(c) That neither the corpus of the trust estate nor the income derived therefrom is, during the restriction period provided by law, subject to alienation or incumbrance, or to the satisfaction of any debt or other liability of any beneficiary of such trust during the said restricted period.

(d) That if the trust be annulled, canceled or set aside by order of any court or otherwise, the principal of the trust with all accrued and unpaid interest shall be returned to the Secretary of the Interior as restricted individual property.

(e) That the trustee shall render an annual accounting to the Secretary of the Interior and to the beneficiary or beneficiaries to whom the income from any such trust for the preceding year or any part thereof was due and payable, such annual accounting to be submitted within 30 days following the ending of each annual period of the

trust, and the trustee shall render accounting to the Secretary of the Interior at any other time on written request by the Secretary of the Interior, within 30 days from such request.

(f) That except as to U.S. Government bonds and other securities fully guaranteed by the Federal Government in which such funds in the hands of the trustee may be invested without limitations, the following limitations are prescribed on the right of the trustee to invest or reinvest any part of the corpus or income from the trust:

(1) Not more than 30 percent of the estate may be invested in securities exclusive of all other limitations contained in this part, which appear on the current list of legal investments for savings banks prepared by the superintendent of banks of the State of New York, except that this authorization shall not include the purchase of public utility securities or railroad securities which do not represent obligations of operating companies, or the purchase of stocks: *Provided, however,* That in the purchase of such securities not more than 20 percent may be invested in general obligations issued by States or by any political subdivisions thereof, and not more than 10 percent may be invested in public utilities and in railroad securities, or in either of them;

(2) Not more than 15 percent of the trust estate may be invested in Federal land bank bonds issued under the provisions of the act of July 17, 1916 (39 Stat. 360) as amended;

(3) Not more than 40 percent of the trust estate may be invested in total loans secured on first deeds of trust or first mortgages on improved city or farm real estate situated in the States designated in the trust agreements, but no such loans shall exceed 50 percent of the value of the real estate and improvements appraised not more than 30 days prior to such investments by one or more appraisers selected with the approval of the Secretary of the Interior;

(4) No part of the trust fund shall be invested in the purchase of real estate or stocks for the trust except to protect the trust estate in foreclosure or other proceedings;

(5) No part of the trust estate shall be invested in any kind of foreign securities, loans, or other properties, private or public.

#### §116.5 Eligibility of appraisers.

Hereafter no person who is interested directly or indirectly, whether through intimate personal, financial or business connections, in any trust company or banking institution designated as trustee under an approved trust agreement involving restricted Indian property, or who is an officer, director, or employee of such trust company or banking institution, shall act as an appraiser of real estate in connection with the making of loans from the trust estate to be secured by first deeds of trust or first mortgages. Nor shall any person having an interest in obtaining such a loan, either personally or as an officer, director or employee of any company, association or partnership seeking such a loan, act as an appraiser. An investigation into the qualifications of all persons selected as appraisers will be made for the purpose of determining that the persons selected are both competent and disinterested.

#### §116.6 Aiding Indians in formulating trust agreements.

In the formulation of the trust agreement and the provisions thereof the superintendent for the Five Civilized Tribes Agency and the other employees under his supervision will upon request assist the Indian to the fullest possible extent to the end that he may understand fully the meaning and the intent of the agreement and make the most satisfactory provision for the formation and consummation of the trust agreement.

#### §116.7 Trust duration.

Under the terms of the statute no trust shall be established to continue for a period of more than 21 years after the death of the last surviving beneficiary named in the trust agreement.

#### §116.8 Trustee's security.

To secure the faithful performance of the duties imposed by the trust agreement the trustee shall, as required by section 7 of the act (47 Stat. 778), de-

posit securities of the United States or furnish an acceptable corporate surety bond in an amount equal to the value of the trust as fixed and determined by the Secretary of the Interior. Appraisers will be appointed by the Secretary for the purpose of fixing the value of the trust and of revising such value from time to time as the judgment of the Secretary may dictate. Additional or substitute security may be required at any time when deemed necessary for the protection of the trust estate and the interest of the Indians. Trustees pledging United States bonds or notes as security shall execute on forms<sup>1</sup> prescribed by the Secretary an appropriate resolution and power of attorney authorizing the sale, assignment or transfer of the collateral. Only those corporate sureties who hold certificates of authority from the Secretary of the Treasury to write bonds on which the United States is obligee are acceptable as sureties. The cost to the trustee, if any, of furnishing the required bond, will be regarded as a necessary part of the cost of administering the trust and as such deductible from the gross income accruing therefrom.

#### §116.9 Trustee's compensation.

As compensation for administering the trust the trustee will be permitted to receive annually not to exceed 5 percent of the gross annual income from such trust estate, and as further compensation will also be permitted to receive not to exceed an amount equal to 1 percent of the corpus of the trust estate, to be paid out of the income first accruing therefrom, and not to exceed an amount equal to 2 percent of the corpus of the estate at the time of final distribution based upon the last valuation made by the Secretary of the Interior prior to such distribution. By final distribution is meant any distribution to a beneficiary of any part of the corpus of the trust estate at any time under the terms of the trust. All fees are to be based on the size of the trust and the nature of the duties to be performed thereunder. The foregoing percentage of fees are maximum and

<sup>1</sup>Forms may be obtained from the superintendent of the Five Civilized Tribes Agency, Muskogee, Oklahoma.

alternative, that is, within such maximum limitations any one or more of said fees may or may not be allowed within the discretion of the Secretary of the Interior.

**§116.10 Necessary forms.**

In addition to the form of application by the Indians under the act of January 27, 1933 (47 Stat. 777), there are skeleton forms of trust agreement and bond which forms are subject to such changes as may be necessary to meet the requirements of each particular case.

**§116.11 Limit restricted property in trust.**

Not more than three million dollars aggregate value of restricted Indian property shall be placed in trust pursuant to the regulations in this part with any one trustee, trust company or other banking institution authorized by law to act as a fiduciary.

**§116.12 Amendments.**

The regulations in this part may be changed, amended, added to, and any part thereof eliminated at any time by the Secretary of the Interior.

**PART 117—DEPOSIT AND EXPENDITURE OF INDIVIDUAL FUNDS OF MEMBERS OF THE OSAGE TRIBE OF INDIANS WHO DO NOT HAVE CERTIFICATES OF COMPETENCY**

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- 117.35 Appeals.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 22 FR 10554, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

**§117.1 Definitions.**

When used in the regulations in this part the following words or terms shall have the meaning shown below:

(a) *Secretary* means the Secretary of the Interior or his authorized representative.

(b) *Commissioner* means the Commissioner of Indian Affairs or his authorized representative.

(c) *Superintendent* means the superintendent of the Osage Agency.

(d) *Quarterly payment* means the payment of not to exceed \$1,000 which is made each fiscal quarter to or on behalf of an adult Indian, from the following sources:

(1) The pro rata distribution of tribal mineral income and other tribal revenues.

(2) The interest on segregated trust funds.

(3) Surplus funds in addition to the income from the foregoing sources in the amount necessary to aggregate \$1,000 when the income from those sources is less than \$1,000 and the Indian has a balance of accumulated surplus funds in excess of \$10,000.