

INDIAN AFFAIRS MANUAL

Part 70

Human Services

Chapter 5

Supervised Individual Indian Money (IIM) Accounts

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- 1.1 Purpose.** This chapter establishes Indian Affairs (IA) policy and procedures for the Office of Indian Services (OIS) Division of Human Services' (DHS) management of supervised Individual Indian Money (IIM) accounts.
- 1.2 Scope.** This policy applies to all Tribes and agencies providing case management services to supervised IIM account holders.
- 1.3 Policy.** It is the policy of IA to manage IIM accounts for minors, adults in need of financial assistance, adults under a legal disability, and adults determined to be non-compos mentis by a court of competent jurisdiction. These funds may be disbursed to individual account holders, a legal guardian, or custodian under such conditions as the Secretary of the Department of the Interior or his/her authorized representative may designate. The Secretary has designated IA as its representative for these actions. Specifically, the OIS DHS and the Office of the Special Trustee (OST) have been assigned specific roles and responsibilities to carry out this function.
- 1.4 Authority.**

A. Statutes and Regulations.

- 1) 25 CFR Part 2, Appeals From Administrative Actions
- 2) 25 CFR Part 20, Financial Assistance and Social Services Programs
- 3) 25 CFR Part 87.10, Per Capita Payment Aspects of Plans and Protection of Funds Accruing to Minors, Legal Incompetents and Deceased Beneficiaries
- 4) 25 CFR Part 115, Trust Funds for Tribes and Individual Indians
- 5) 25 CFR Part 117, Deposit and Expenditure of Individual Funds of Members of the Osage Tribe of Indians Who Do Not Have Certificates of Competency
- 6) 43 CFR 2, Subpart H, Legal Process: Testimony by Employees and Production of Records

B. Guidance and Handbooks.

- 1) OST Service Center (Tracking System) for Bureau of Indian Affairs (BIA) Social Services Offices Guidelines, V.11, February 2, 2012

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- 2) Interagency Procedures Handbook between the BIA and the OST for American Indians, July 8, 2002
- 3) Policy Memorandum Compilation: KPMG Audit, Sept. 10, 2004-Section 4 Audit Findings: Supervised Accounts, January 28, 2005
- 4) Financial Assistance and Social Services Case Management System (FASS-CMS) End User Manual, November 15, 2012, Version 3.0
- 5) BIA Memorandum, *Responsibilities Related to the Management of Individual Indian Monies (IIM) Accounts and Account Holders*, September 28, 2011
- 6) Deputy Bureau Director, OIS Memorandum, *Letter of Administrative Restriction for Individual Indian Money (IIM) Accounts*, October 4, 2010

1.5 Responsibilities.

- A. **Deputy Bureau Director and Associate Deputy Bureau Director, OIS, BIA** are responsible for ensuring that IA processes and resources are in place to facilitate the provision of IIM case management services to eligible Indians.
- B. **Chief, DHS, OIS** is responsible for program oversight and the development of IA processes and procedures for the supervision of IIM accounts. This includes coordination of programming with other federal agencies.
- C. **Central Office DHS staff** is responsible for providing policy oversight, technical assistance, and training on supervised IIM procedures. They also assist in the development of supervised IIM program standards, completing A-123 reviews, and responding to inquiries concerning supervised IIM account holders.
- D. **Regional Directors (RDs)** are responsible for the administration, monitoring, and oversight of supervised IIM programs by the Tribe/agency. They are the Officer in Charge (OIC) for supervised IIM accounts handled by the region. Their duties include: issuing notices to restrict accounts, such as Kennerly letters, administrative restriction letters, and Code 19 letters; and reviewing and approving assessments, distribution plans, and corrective action plans as needed.
- E. **Regional Division of Human Services** is responsible for oversight of Tribal/agency programs and off reservation IIM account holders residing within their region. This includes providing technical assistance and training to Tribes and agencies, conducting annual reviews of Tribe/agency programs, and conducting an annual review of active supervised IIM accounts within the region. Related responsibilities include: case management; coordination with the court, court appointed guardians, and

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representative payees; conducting a six month case review; working with other resources and state and federal agencies; collecting receipts and verifying disbursements; conducting home visits; and maintaining case work records.

- F. **BIA Agency Bureau Line Officers (BLO)** are agency superintendents responsible for the administration and management of the agency Human Services staff. Their duties include: issuing notices to restrict accounts, such as Kennerly letters, administrative restriction letters, and Code 19 letters; and reviewing and approving assessments, distribution plans, and corrective action plans as needed.
- G. **BIA Agency Human Services staff** is responsible for the provision of services or the direct administration, monitoring, and oversight of supervised IIM programs at the Tribe/agency. Services are provided by BIA staff or through a contract with the Tribe. Per 25 CFR Part 20 and Part 115, assistance includes completing an application, assessment, and evaluation of unmet needs, which may lead to the development of a distribution plan. Other activities include: case management; coordination with the court, court appointed guardians, and representative payees; working with other resources and agencies/programs; conducting a six month review; collecting receipts and verifying disbursements; conducting home visits; and maintaining case work records.
- H. **Tribal Human Services staff** authorized under an Indian Self-Determination and Education Assistance Act (ISDEAA) contract or self-governance funding agreement to carry out the duties previously administered by the Secretary of the Interior under 25 CFR Parts 20 and 115, is responsible for managing and administering trust assets for the exclusive benefit of Tribal and individual Indian beneficiaries. Per 25 CFR Part 20 and Part 115, assistance includes: completing an application, assessment, and evaluation of unmet needs, which may lead to the development of a distribution plan; case management; coordination with the court, court appointed guardians, and representative payees; working with other resources and agencies/programs; conducting a six month review; collecting receipts and verifying disbursements; conducting home visits; and maintaining case work records. In summary, Tribal Human Services staff is responsible for the provision of services or the direct administration, monitoring, and oversight of supervised IIM programs at the Tribe/agency. The Agency Superintendent or OIC/BLO remains responsible for approving all disbursements from supervised IIM accounts. The Central Office must review and recommend either approval or disapproval of all major purchases. In addition, the Central Office may need to approve disbursements where there is a potential conflict of interest at the tribe/agency or the regional office levels.

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1.6 Standards, Requirements and Procedures. The following explanation of services is in accordance with 25 CFR Part 20.403 and Part 115 where the service population includes IIM account holders.

- 1) The RDs will identify Tribes (contracted and compacted) having supervised IIM accounts in their respective regions. 25 CFR Parts 20 and 115, BIA and OST Interagency Procedures Handbook, IAM reference materials, and BIA IIM policy memoranda are to be used in order to administer supervised IIM accounts and ensure that prompt payments are made to account holders. All contracted and compacted Tribes which manage supervised IIM accounts should be included in training sessions at the agency and regional levels.
- 2) 25 CFR Part 115 does not include a specific subpart which addresses adult supervised IIM accounts. 25 CFR 115 Subpart A contains definitions to assist in determining the status of an account holder. 25 CFR 115 Subpart B does contain provisions concerning restrictions of IIM accounts. 25 CFR 115 Subpart C will also apply to adult supervised IIM accounts.
- 3) Tribal courts should be informed of the provisions contained within 25 CFR Part 115 for compliance with appropriate regulations. The courts should be instructed through memoranda, training sessions, technical assistance, and other guidance from their respective regions on the procedures for handling IIM supervised accounts and the role of BIA as trustee for IIM account holders.
- 4) A social services assessment is conducted upon the request of the adult or other interested party to evaluate the account holder's circumstances, abilities, and need for assistance to manage his/her financial affairs.
- 5) The social services assessment must be completed in person at the account holder's place of residence with the account holder and representative. The assessment must contain information and documentation to support the need for assistance. The summary of findings and proposed services to meet the identified needs of the account holder are presented in the assessment.

If there is an emergency situation, an Administrative Restriction (AR) letter is sent from the BLO to the account holder, with a copy to the OST home agency. The assessment must be completed within 5 business days and include face to face contact with the client by the servicing agency. If there is not an emergency situation, the assessment can be scheduled in 30 days. See Attachment 1 for an example of an Administrative Restriction letter.

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- 6) The Administrative Restriction (AR) letter places a hold on the IIM account for up to 90 days or until an assessment is complete and the appropriate account restriction status can be assigned. The account holder will not have unrestricted access to the account funds while the AR is in effect.
- 7) BIA restrictions through supervision are determined through an administrative process and based on a finding by a licensed mental health or medical professional, judgment by a court of competent jurisdiction, or the determination of another federal agency (25 CFR 115.601).
- 8) A recommendation for IIM account restriction through supervision is based upon an assessment completed by an account holder's servicing agency or region, which is then forwarded to the OIC at the account holder's home agency for review and a decision. Staff should follow the out-of-region procedures for completing this process when an account holder resides outside of the worker's region and service area. Both the assessment document and the out-of-region procedures are located on the website of the OIS DHS 'Individual Indian Money (IIM) Accounts' here:
<http://www.bia.gov/WhoWeAre/BIA/OIS/HumanServices/IIM/index.htm>
- 9) Only the OIC at the account holder's home agency should make the decision to restrict and supervise an IIM account. The Notice of Intent to Restrict an IIM Account (Kennerly Letter) is issued by the home agency and sent to the account holder (or responsible person) by United States certified mail or personal delivery. The Kennerly Letter process and appeal procedures are detailed in 25 CFR 115, Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account. See Attachments 2 and 3 for Kennerly Letter examples; determining which one to send depends on the specific situation being addressed.
- 10) When the account is restricted through supervision, a disbursement plan may be developed to address the client's unmet needs or request.
- 11) If a disbursement is made, receipts are collected and the case is reviewed at least every 6 months or as needed. Receipts and an itemized list may not be required for an adult's monthly allowance of up to \$300.
- 12) Social services staff managing a supervised IIM account must not be appointed as guardians for account holders. In certain limited circumstances, a BIA Superintendent may need to be appointed as the guardian for an IIM account holder. A BIA Superintendent who is asked to take on this responsibility must have permission from the Director, BIA. The social services staff member, Superintendent, and RD should work together to create a memo, signed by all three parties, documenting why the Superintendent should be appointed to this role. This memo should be submitted to the

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BIA Director (through Central Office). Upon review of the memo, the BIA Director must provide approval or disapproval in writing. Absent explicit authority and approval from the BIA Director, a BIA Superintendent may not serve in this role.

Workers, supervisors, or OIC shall not work with IIM clients and/or guardians they are related to or with whom they have a close personal relationship. This is a conflict of interest.

- 13) No BIA employee, contractor employee, BIA social services employee, or Tribal social services employee may be named 'payee' for IIM funds of an account holder.
- 14) Requests for withdrawal of large amounts, such as requests for the purchase of a house, vehicle, family vacation, gifts to others, and withdrawal of the entire account balance require a review by the Central Office Administrative IIM Team. A recommendation regarding the request will be issued by the RD within 10 working days, and a complete package of information (i.e., fully developed assessment, distribution plan, and all supporting documents) will be forwarded to the Central Office. The Central Office Administrative IIM Team should consist of the IIM Specialist, an Office of the Solicitor representative, and the Director, OIS. The Team must issue a final recommendation within 30 days of receipt of the completed package from the RD.
- 15) All regional records, including court orders, receipts, and historical account documents will be maintained in the social services or Superintendent's office in locked cabinets which follow Indian Affairs Records Management procedures for safeguarding all active and inactive trust records. This includes all hard copies, electronic records, and all OST Service Manager and FASS-CMS files. Each file should contain a current photo of the account holder. A request for a disbursement should be signed and dated by the account holder or guardian as appropriate (25 CFR 115.410-411).
- 16) The BIA will not recognize court orders for guardianship for the purpose of accessing a supervised IIM account in which a guardian is appointed for the person only. When there is a question regarding the appropriateness of a court order for guardianship, in relationship to accessing a supervised IIM account, the guardianship order must be forwarded to the Office of the Solicitor, Division of Indian Affairs, Branch of Trust Services with copies to the designated personnel at Central Office for review and guidance. Central Office should respond within 10 days from receipt of the document.
- 17) Funds must be accepted from another federal agency pursuant to 25 USC §14b, and may only be disbursed in accordance with federal regulations as explained in 25 CFR 115, et seq.

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- 18) Supplemental Security Income (SSI) payments are made monthly for the basic needs of the account holder and should routinely be paid out to meet identified and approved needs during the month as part of an approved distribution plan. The office managing restricted and supervised IIM funds must budget the use of these funds to make sure that all essential monthly needs are met and are reasonable for the account holder. When a monthly budget is developed for the account holder and the initial distribution plan is approved, these disbursements will be processed according to the approved or modified plan. Receipts are to be collected as required by 25 CFR Part 115. If payment is made to a third party vendor, a statement or invoice showing payment was made is sufficient.
- 19) Disbursements of per capita judgment funds belonging to supervised account holders must be for the health and welfare needs of the individual and any additional requirements specified in the judgment. Withdrawals may only be made upon BIA OIC/BLO approval of an application made under P.L. 97-458, 25 CFR 115.418. The BIA OIC/BLO must separately certify each disbursement of per capita judgment funds belonging to minors or non-compos mentis adults (adults in need of financial assistance) as being in strict conformance with the approved use and distribution plan governing the judgment award. The guardian will be required to account fully for each such disbursement separately from other disbursements from the non-judgment supervised account.
- 20) Disbursement of Tribal per capita funds belonging to supervised account holders may only be made under a BIA approved distribution plan and in accordance with the terms of the Tribe's per capita resolution/document. See Attachment 4 for an example of a Tribal resolution.
- 21) The OIC will terminate supervision of:
 - A. **A minor's non-judgment account** when the minor reaches the age of majority as established by the state in which the minor lives.
 - B. **A minor's judgment per capita account** as specified in the judgment award use and distribution plan.
- 22) Once a minor has reached the age of majority, or fulfilled the requirements of the judgment award use and distribution plan, the BIA may not administratively decide to continue supervising the account. If conditions are deemed to warrant continued supervision, it is necessary that the same process be followed as is required to supervise the account of an adult, including a court decision and extension of all appeal rights to the account holder. Such process may be initiated prior to the time that the minor reaches the age of majority in order to prevent a break in supervision.

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- 23) The OIC may terminate supervision of an account based upon the assessment and recommendation of the Human Services worker:
 - A. An adult's account when a court of competent jurisdiction or a duly authorized administrative agency determines that the adult is no longer under a legal disability, or in need of financial management assistance.
 - B. Non compos mentis adults upon receipt of a court order.
- 24) Cases will be monitored by the assigned Human Services worker at least every six months in accordance with 25 CFR 20.403(b)(2)(iv). All cases will be reviewed annually by a BIA worker with a Master's Degree in Social Work, who is not the servicing worker (25 CFR 115. 427).
- 25) All disbursements must be supported by receipts that document the expenditure of funds. Failure of the client and/or guardian to provide receipts may result in an immediate modification of the distribution plan. A modification may include (but is not limited to) suspension of the individual's authority to receive further disbursements (up to 60 days) or a decision to arrange for and require third party payments for future disbursements. Human Services may also work with the account holder or responsible party to provide alternative documentation for the expenditures in question. If there is any indication of misuse of funds it should be referred to law enforcement for criminal investigation.
- 26) Disbursement requests from a supervised IIM account, including periodic allowances, must be supported by an itemized list or invoice/bill. The itemized list can be based on an estimate, which in turn is based on past experience or previously submitted receipts. The exception to this requirement is a request for a monthly allowance up to \$300 for adult supervised account holders for which an itemized list and receipts may not be required. The exception should be noted in the IIM case record. The allowance must also be considered in the assessment as to whether it would impact the account holder's eligibility for other resources and/or funds that may be available. All disbursements must be for the direct benefit of the account holder.
- 27) Third party payments from supervised IIM accounts are to be used for all medical or health related services, rent, rental deposits, utilities, telephone, cable TV, household repairs, air travel, household furniture, appliances, nursing care, foster care, and any other high cost items made on behalf of the account holder (i.e., wheelchair, computers). When disbursement requests are medical or health related, the social services assessment and evaluation must include documentation that the medical or health related items are not available through the Indian Health Services (IHS) or a private family insurance policy. Third party payment means funds are sent to the vendor or service provider directly from the IIM account. Prior verification should be

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completed to ensure the vendor will accept a third party payment before recommending this method of disbursement on the distribution plan. The social worker should work with the vendor by telephone to ensure they are aware that the account holder's funds are managed by the BIA and that the vendor will honor third party payments received on behalf of the account holder.

- 28) If a guardian is non-responsive to requests from the Human Services worker to schedule an assessment or address the needs of the account holder, the BIA Superintendent shall notify the court of the guardian's failure to carry out his/her responsibilities and petition a court of competent jurisdiction for the appointment of, or change in, a legal guardian (20 CFR 20.403(b)(2)(vi)).
- 29) If an IIM account is restricted administratively and the family or guardian is unresponsive to the social worker's repeated requests (at least three documented attempts) to conduct an assessment, the BIA home agency will issue the Notification of Administrative Restriction-Individual Indian Monies Account for Non-Responsiveness (Code 19NR) to the account holder (or responsible person) by United States certified mail or personal delivery. BIA will notify OST to change the code to identify the account as a Code 19NR. All future disbursement requests or inquiries will be referred to BIA Human Services. BIA will inform OST of the circumstances preventing an assessment of the client and work together to overcome the barriers identified. See attachment 4 for an example of a Code 19NR Administrative Restriction letter.
- 30) If the caseworker has reason to believe a guardian is misusing a supervised account holder's funds, the worker must develop a report and submit it to the OIC. The OIC will determine if there is sufficient information to petition for the removal of the guardian, and if further action should be taken for recovery of the account holder's funds (25 CFR 115.425).
- 31) An application must be completed at the time of the assessment/home visit. The Kennerly letter or a letter of notification concerning a disbursement starts the timeline for the appeal process, which must be specified in the letter. The Kennerly appeal process is specified in 25 CFR 115 Subpart E. A copy of this Subpart of the regulations should be included with the decision letter.
- 32) The child's immediate needs are the responsibility of his/her parents/guardians. Requests for minors must be considered in the context of their health and welfare needs, and based on their available resources. Requests for funds to use for cultural and traditional events must be considered on a case by case basis.

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- 33) There is no specific authority to pay or reimburse guardianship fees, expenses, or legal fees related to the appointment of guardians. Requests for these types of payments will be considered on a case by case basis. These requests should only be approved only after all other resources have been considered.

1.7 Definitions. Other definitions applicable to this section are included in 25 CFR 115.002.

- A. Adult in Need of Financial 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.
- B. BIA OIC/BLO** means the Officer in Charge or Bureau Line Officer who provides program oversight at regional and agency offices. They are the approving official for disbursements from supervised IIM accounts.
- C. Case file** means a written record and/or electronic documentation. This includes an enrollment document, an application including identifying client information, applicable court orders, an assessment/evaluation of needs, a case plan, case notes/narrative, case file reviews/corrective actions, and distribution documentation (including receipts) if applicable. BIA documentation must be entered into the Financial Assistance and Social Services Case Management System (FASS-CMS).
- D. Code 19NR** means the non-responsive administrative restriction used when a Human Services worker has documented three unsuccessful attempted contacts with the guardian, conservator, representative payee or client. The Human Services worker must make an annual attempt to contact the account holder and the guardian.
- E. Conflict of Interest** means Human Services workers, supervisors, or OICs must not work with IIM clients and/or guardians *they are related to or with whom they have/had a close personal relationship*. As stated in 18 U.S.C. § 208, “...prohibits a Government employee from participating personally and substantially, on behalf of the Federal Government, in any particular matter in which he or she has a financial interest.”
- F. Distribution plan** means a written plan for expenditures for a supervised IIM account, including payees, amounts of payments and frequency of payments, recommended by the Human Services worker and authorized by the OIC/BLO.

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- G. Emancipated Minor** means a person less than 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.
- H. FASS-CMS** is the database system utilized for case management and payment of welfare assistance.
- I. Fiduciary Trust Officer (FTO)** means the FTO, along with field operations personnel, serves as the primary point of contact for Tribal, individual Indian, and Alaskan Native beneficiaries seeking information and services regarding their trust assets.
- J. 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 25 CFR 115.106.
- K. Home Agency** means the agency where the account holder is enrolled or the account originated.
- L. Human Services worker** is the social worker, social service representative, caseworker or tribal social service worker.
- M. Individual Indian Money (IIM) account** means an interest bearing account for trust funds held by the Secretary of the Interior that belongs 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.
- N. 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.
- O. Minor** means an individual who is not an adult as defined in 25 CFR 115.002.
- P. Non-compos Mentis** is 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.
- Q. Power of Attorney** is an instrument authorizing a person to act as the agent of another. The power may be general or specific.

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- R. Secretary** means the Secretary of the Interior or an authorized representative; it also means a Tribe or Tribal organization if that entity is administering programs, functions, services or activities, previously administered by the Secretary of the Interior, but now authorized under an ISDEAA Title I self-determination contract (pursuant to 25 U.S.C. §450f) or a Title IV self-governance funding agreement (pursuant to 25 U.S.C. §558cc).
- S. Servicing Agency** means the agency geographically closest to where the account holder resides.
- T. Social Services Assessment** means the documentation explained in detail in 25 CFR 20.404.
- U. The Kennerly Letter** is the notification to the account holder that a decision has been made by the OIC to supervise the IIM account. This ensures due process, including notification of the right to appeal the decision.
- V. The Kennerly Process** is the notification that must be provided to the account holder *prior* to the placement of a restriction on an IIM account or the involuntary disbursement of funds. Account holders cannot waive notification of a decision to restrict an IIM account.
- 1.8 Reports and Forms.** There are two Office of Management and Budget (OMB)-approved forms that apply to this area, including OMB 1076-0017, The Application for Financial Assistance, and OMB 1076-0154, Individual Indian Monies (IIM) Change of Address Request. Additionally:
- A.** The Assessment and Distribution Plan are required for all Supervised IIM disbursements. BIA Human Social Service programs utilizing FASS-CMS have access to an assessment and distribution plan through the system.
 - B.** Government Performance and Results Act (GPRA) reporting identifies both the number of active supervised IIM cases and the IIM cases reviewed on an annual basis. This reporting is submitted quarterly to the Central Office.
 - C.** The Financial Assistance and Social Service Report (FASSR) identifies information on the number of clients served annually, including Supervised IIM account holders. See 70 IAM 3 for more information on this report.

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- D.** If this is a contracted or compacted program, the requirements specified in this section must be included in the scope of work or program description, and the required ISDEAA reporting requirements also apply.

Approval



Weldon Loudermilk
Director, Bureau of Indian Affairs

1-23-17

Date

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Attachment 1 – Administrative Restriction Letter Sample



United States Department of the Interior Bureau of Indian Affairs

[Address]



In Reply Refer To:
Human Services

ADDRESS

Re: Notice of intent to Administratively Supervise Your Individual Indian Money Account
Pending an Assessment and Evaluation by Social Services

Dear Mr./Ms.:

It has recently come to the attention of this office that you have an Individual Indian Money (IIM) Account and certain circumstances may exist requiring this office to provide protective services to you as defined under federal regulations at 25 CFR 20.

This letter is to inform you that within 30 days from the date of this letter, the social services staff from our office will contact you to schedule a meeting with you and your family members and/or other interested parties to:

- 1) Complete an assessment to evaluate your circumstances and abilities, and the extent to which you may need assistance in managing your financial affairs, see 25 CFR 20.403(b); and
- 2) The assessment will cover various aspects of your life and daily existence, including but not limited to: identifying certain documents regarding your living situation, those current resources available to you, any benefits received, a description of the household composition, those special circumstances that support providing assistance to you in the management of your trust income, and other information deemed necessary to complete the agency's assessment, see 25 CFR 20.404.

At the conclusion of the assessment and evaluation of your circumstances, the social services staff will make a recommendation to the Superintendent within 30 days to either supervise your account, or to allow your account to be coded as unrestricted. If circumstances do not support a recommendation to supervise your account, the account will be coded as unrestricted (i.e. your account does not require intervention on our part to protect your interests) and you will have

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immediate access to your IIM account. If the Superintendent determines that the account should be supervised, we will send you a "Notice of Intent to Supervise your Individual Indian Money Account." That Notice will contain information regarding supervision of your account and provide you an opportunity to request a hearing to dispute the determination to supervise your account. At the time of the recommendation (to either supervise or remove the restriction from your account), the administrative restriction and hold will be released and the appropriate coding will be applied to the account.

In order to protect you and the balance of your IIM account, this office is requesting that the Office of the Special Trustee for American Indians immediately code your IIM account as having an administrative restriction pending our review of your circumstances as detailed in the regulations. If our office does not take action to begin the process of scheduling a meeting for an assessment and evaluation within 30 days of the date of this notice, the administrative restriction will be removed.

If you have any questions, please contact _____, IIM Social Worker at (____) ____-____ or the _____ Region Human Services main number at (____) ____-____.

Sincerely,

[Superintendent]

cc: Human Services, _____ Region
Fiduciary Trust Officer, _____ Field Office

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Attachment 2 – Kennerly Letter Sample 1



United States Department of the Interior Bureau of Indian Affairs

Enter Agency and address



In Reply Refer To:
Human Services

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Address

Dear Ms./Mr. _____:

A decision has been made to restrict your account through supervision due to inability to manage or administer property and financial affairs as determined by a) a licensed medical professional/licensed mental health professional or b) by an order or judgment of a court of competent jurisdiction. An assessment recommends the account be supervised as Adult in Need of Assistance. Pursuant to 25 CFR Part 115, §115.104, the funds of an Adult in Need of Assistance 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. This restriction will require an approved distribution plan before the release of funds from your account.

A restriction will be placed on your Individual Indian Money (IIM) account number xxxUxxxxxx and any future accounts established, effective five (5) days after the date of this Notice was sent to you by United States certified mail to your address of record or one (1) day after the personal delivery of this Notice (see the enclosed copy of the 25 CFR Part 115, Subpart E – IIM Accounts: Hearing Process for Restricting an IIM Account).

You have the right to request a Hearing to challenge this decision. Should you decide to request a hearing, your written request must be received within forty (40) days of the date this Notice was mailed or personally delivered to you and a fair hearing will be scheduled for you. Address your request to: [Officer in Charge, Enter Agency Address](#). At your hearing you have rights as listed at 25 CFR Part 115.606 through 115.616 (copy enclosed) that include the right: (i) to

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present testimony and/or evidence; (ii) to present witnesses; (iii) to question opposing witnesses, and; (iv) to be represented by an attorney or other representatives at your own expense.

Should you need assistance in requesting a hearing, you may contact the Human Services Office at telephone number [office phone number](#).

Sincerely,
[\(Officer in Charge\)](#)

Enclosure: 25 CFR Parts 115.606 – 115.616

Cc: FTO, OST, [enter agency](#)

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25 CFR Parts 115.606 through 115.616

§ 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

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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:

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Replaces # 16-1, Issued: 1/13/16

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- (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.

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Attachment 3 – Kennerly Letter Sample 2



United States Department of the Interior
Bureau of Indian Affairs
_____ Agency
Address



In Reply Refer To:
Human Services

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Address

Notice of Intent to Supervise Your Individual Indian Money (IIM) Account

Dear Ms./Mr. _____ :

This letter is to inform you that in accordance with 25 CFR §115.102 and Subpart E, the Bureau of Indian Affairs will be restricting your IIM account. The determination to restrict your account through supervision as an Adult in Need of Financial Assistance is due to this agency receiving information from another federal agency that you are under a legal disability, and that agency has appointed a representative payee to receive federal benefits on your behalf. Pursuant to 25 CFR Part 115, 115.102, the funds of adult under legal disability may be disbursed for his benefit for such purposes deem to be in 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. This restriction will require an approved distribution plan before the release of funds from your account.

A restriction will be placed on your Individual Indian Money (IIM) account numbers xxxNxxxxxxx, xxxXxxxxxxx, xxxXxxxxxxx and any future accounts established for you, effective five (5) days after the date this Notice was sent to you by United States certified mail to your address of record or one (1) day after the personal delivery of this Notice (see the enclosed copy of the 25 CFR Part 115, Subpart E – IIM Accounts: Hearing Process for Restricting an IIM Account).

You have the right to request a Hearing to challenge this decision. Should you decide to request a hearing, your written request must be received within forty (40) days of the date this Notice was mailed or personally delivered to you and a fair hearing will be scheduled for you. Address your request to: Superintendent, _____ Agency, Bureau of Indian Affairs, Post Office _____, _____, _____. At your hearing you have rights as listed at 25 CFR Part 115.606 through

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115.616 (copy enclosed) that include the right: (i) to present testimony and/or evidence; (ii) to present witnesses; (iii) to question opposing witnesses, and; (iv) to be represented by an attorney or other representatives at your own expense.

Should you need assistance in requesting a hearing, you may contact the _____ Services Office at (xxx) xxx-xxxx.

Sincerely,

Superintendent

Enclosures

Cc: Public Guardian and Conservator
FTO, OST _____ Agency

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25 CFR Parts 115.606 through 115.616

§ 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.

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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?

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§ 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;

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Replaces # 16-1, Issued: 1/13/16

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- (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.

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Attachment 4 – Tribal Resolution Example

SAMPLE DRAFT RESOLUTION

X TRIBE

Resolution No. _____

WHEREAS, The [tribe] based on its inherent authority as a sovereign nation and based upon the [treaty] has the power and authority to make its own laws and to be governed by them; and

WHEREAS, The [tribal council] is the duly constituted governing body of the [tribe] pursuant to its Constitution and By-laws; and

WHEREAS, The [tribal office] was established for the sole purpose of maintaining and updating data as well as adding to the Membership Roll, all new enrollees approved by the Enrollment Committee and the [tribal council]; and

WHEREAS, The [tribal council] authorized the Per Capita Office to disburse per capita payments during the months of April, August, and December of every year; and

WHEREAS, The [tribal council] must submit a final Membership Roll of all enrolled members in a timely manner after the established cut-off dates before funds can be authorized; and

WHEREAS, The [tribal council] recognizes that it has a duty to protect those members of the Tribe who may be at risk including minors and adults who are in need of assistance or determined by a court of competent jurisdiction to be non-compos mentis; and

WHEREAS, The [tribal council] recognizes that some of its membership may be experiencing changes in living arrangements; and

WHEREAS, The [tribal council] would like to protect individual Tribal members from risky behaviors including, but not limited to, financial exploitation; and

WHEREAS, The [tribal council] hereby authorizes per capita funds to be deposited into Individual Indian Money (IIM) accounts for minors who have been placed into the custody and control of the [tribal] court system and placed in foster care; and

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WHEREAS, The [tribal council] hereby authorizes per capita funds to be deposited into IIM accounts for adults in need of financial assistance or who have been determined to be non-compos mentis by a court of competent jurisdiction; and

WHEREAS, The [tribal council] desires to set forth its policy concerning disbursements, pursuant to 25 C.F.R. §§115.100 – 115.1001, from supervised Individual Indian Money (IIM) accounts for adults and minors who are in out of home placements, including children in foster care placements; and

WHEREAS, The [tribal council] desires for tribal members to be able to access their per capita funds that have been deposited into their IIM account under certain limited circumstances where there is a demonstrated need;

NOW, THEREFORE, BE IT RESOLVED, the [tribal Council] directs that [a percentage or in whole or in part or a onetime] per capita payments may be paid to foster parents in whole or in part if there is a determination of need for health, education, or welfare, and the social workers have determined that it is in the child's best interest and the distribution will be made pursuant to the regulations at 25 CFR part 20 and 25 CFR part 115; and

THEREFORE, BE IT FURTHER RESOLVED, the [tribal council] directs that [a percentage or in whole or in part or a onetime] per capita payments may be paid to the guardian of an adult who has been determined to be non-compos mentis or an adult in need of assistance if there is a determination of need for health, education, or welfare, and the social workers have determined that it is in the individual's best interest and the distribution will be made pursuant to the regulations at 25 CFR part 20 and 25 CFR part 115;

BE IT FURTHER RESOLVED, that the Chairman or Co-Chairman, as the case may be, is authorized to sign this resolution on behalf of the [tribal council].

PASSED, ADOPTED AND APPROVED by the [tribal council] on the _____ day of _____, 20__.