

Bureau of Indian Affairs, Interior

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§ 115.503 May money in an IIM account be withdrawn after the death of an account holder but prior to the end of the probate proceedings?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

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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

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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.

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§ 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.

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§ 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.