

INDIAN AFFAIRS MANUAL

- 1.1 Purpose.** This chapter establishes Bureau of Indian Affairs (BIA) policy and procedures for the Office of Indian Services (OIS) Division of Human Services' (DHS) management of supervised Individual Indian Money (IIM) accounts.

An IIM account is an interest bearing account for trust funds held by the Secretary of the Department of the Interior (DOI) that belongs to a person who has an interest in trust assets. There are three types of IIM accounts: unrestricted, restricted, and estate accounts. Supervised IIM accounts are a type of restricted account under the control and management of the Secretary, which requires disbursements to be approved by the BIA. The funds from these IIM accounts may be disbursed to individual account holders, a legal guardian, or a custodian under such conditions as the Secretary or his/her authorized representative may designate. The Secretary has designated Indian Affairs (IA) as its representative for these actions. Specifically, the BIA OIS DHS and the Office of the Special Trustee for American Indians (OST) have been assigned specific roles and responsibilities to carry out this function.

- 1.2 Scope.** This policy applies to all BIA Agencies that provide case management services to supervised IIM account holders, as well as to Tribes that are authorized under an Indian Self-Determination and Education Assistance Act (ISDEAA) contract or self-governance funding agreement to provide such services.
- 1.3 Policy.** It is the policy of IA to supervise IIM accounts for minors, emancipated 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.

1.4 Authority.

A. Statutes and Regulations.

- 1) 25 CFR 2, Appeals From Administrative Actions
- 2) 25 CFR 20, Financial Assistance and Social Services Programs
- 3) 25 CFR 87.10, Per Capita Payment Aspects of Plans and Protection of Funds Accruing to Minors, Legal Incompetents and Deceased Beneficiaries
- 4) 25 CFR 115, Trust Funds for Tribes and Individual Indians
- 5) 25 CFR 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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- 6) 43 CFR 2, Subpart H, Legal Process: Testimony by Employees and Production of Records

B. Guidance and Handbooks.

- 1) OST's Service Manager for BIA Social Services Offices Guidelines, V.4, February 2017
- 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) Director, BIA Memorandum, Letter of Administrative Restriction for Individual Indian Money (IIM) Accounts, March 17, 2016
- 7) Director, BIA Memorandum, Notification of Administrative Restriction - Individual Indian Monies Account for Non-Responsiveness (Code 19NR), April 26, 2016

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. Staff also assist in the development of supervised IIM program standards; completing Office of Management and Budget (OMB) A-123 reviews; providing a review and recommendation to approve/disapprove all major purchases from supervised IIM accounts; approving

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disbursements where there is a potential conflict of interest at the Tribe/Agency or the regional office; 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) or Bureau Line Officer (BLO) for supervised IIM accounts handled by the region. Their duties include: issuing notices to restrict accounts, such as Kennerly Letters, Administrative Restriction (AR) letters, and Code 19 letters; and reviewing and approving assessments, distribution plans, and corrective action plans as needed.
- E. **Regional DHS staff** 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 BIA 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 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 Superintendents** are responsible for the administration and management of the BIA Agency Human Services staff. They are the OIC or BLO for supervised IIM accounts handled by the Agency. Their duties include: issuing notices to restrict accounts, such as Kennerly Letters, AR letters, and Code 19 letters; and approving social services assessment and evaluations, 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 help with completing an Application for Financial Assistance and Social Services form and a Social Services Assessment and Evaluation form, which may also 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 ISDEAA contract or self-governance funding agreement to carry out the duties previously administered by the

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Secretary 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 help with completing an Application for Financial Assistance and Social Services form and a

Social Services Assessment and Evaluation form, which may also 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.

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. However, the Agency Superintendent remains responsible for **approving** all distribution plans 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.

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.

A. Standards and Requirements.

- 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 that manage supervised IIM accounts should be included in training sessions at the BIA Agency and regional levels.
- 2) 25 CFR Part 115 does not include a specific subpart that 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

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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) Guardianship orders for all account holders (including guardian appointments and/or changes) must be forwarded for review and guidance to the Office of the Solicitor, with copies to the designated personnel at Central Office, prior to granting access to a supervised IIM account. Central Office must respond within 15 days from the receipt of the guardianship order. **The BIA will not recognize a guardianship order for access to an IIM account if the order is for the person only.**
- 5) Social Service providers 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 a guardian and/or representative payee for an IIM account holder. A BIA Superintendent who is asked to take on either role must have prior approval from the BIA Director. The Social Service providers, Superintendent, and RD should work together to create a memo, signed by all three parties, documenting why the Superintendent should be appointed to the role. This memo should be submitted to the BIA Director (through Central Office). Upon review of the memo, the BIA Director will provide written approval or disapproval. Absent explicit authority and approval from the BIA Director, a BIA Superintendent may not serve in this role. **Social Service providers, supervisors, or OICs/BLOs must 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.**
- 6) 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 be approved only after all other resources have been considered.
- 7) The BIA Superintendent must notify the court of a 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)) if a guardian is non-responsive to requests from the Social Service provider to schedule an assessment or to address the needs of the account holder.
- 8) If the Social Service provider has reason to believe a guardian is misusing a supervised account holder's funds, the provider 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).

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- 9) 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.
- 10) A minor's immediate needs are the responsibility of his/her parents/guardians. Disbursement requests on behalf of minors must be considered in the context of their health, education, and welfare needs, and be based on their available resources.
- 11) Funds requested for cultural and traditional events must be considered on a case by case basis.
- 12) 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 for Financial Assistance and Social Services 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.
- 13) 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.
- 14) Funds must be accepted from another federal agency pursuant to 25 USC §14b, and are disbursed only in accordance with federal regulations as explained in 25 CFR 115, et seq. Examples include Social Security, Supplemental Security Income (SSI), and Veteran's Affairs (VA) benefit payments.
- 15) 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.

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- 16) The OIC will terminate supervision of an IIM account based upon the assessment and recommendation of the Social Service provider:
 - A. When a court of competent jurisdiction or a duly authorized administrative agency determines that an adult is no longer under a legal disability, or in need of financial management assistance.
 - B. When the social services program is in receipt of a new order from a court of competent jurisdiction for a non compos mentis adult.
 - C. When a minor reaches the age of majority as established by the state in which the minor lives for non-judgment accounts.
 - D. As determined by criteria stipulated in the Judgment Award use and distribution plan for a minor's judgment per capita account.
- 17) 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 a process may be initiated prior to the time that the minor reaches the age of majority in order to prevent a break in supervision.
- 18) Active IIM accounts will be monitored by the assigned Social Service provider at least every six months in accordance with 25 CFR 20.403(b)(2)(iv). A BIA social worker with a Master's Degree in Social Work, who is not the servicing worker, will review all active cases annually (25 CFR 115. 427).
- 19) All BIA and Tribal records, including court orders, receipts, and historical account documents will be maintained in the BIA Social Services or Superintendent's office in locked cabinets which follow IA 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.

B. Procedures.

- 1) A Social Service provider and account holder (or their representative) must complete an Application for Financial Assistance and Social Services form upon a request for BIA services.

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- 2) A social services assessment as required by 25 CFR 20.404 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. The Social Services Assessment and Evaluation form - Part 1 is used for this purpose.

If there is an emergency situation where an IIM account holder lacks basic needs, is at immediate risk for exploitation, or is in a situation which may require immediate protective services on behalf of the IIM account holder, then the Social Service provider will take no longer than three (3) working days to make an appointment with the client and/or make a home visit to begin the assessment and evaluation process.

A social services assessment must be completed in person at the account holder's place of residence with the account holder and/or 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.

- 3) If it is necessary to safeguard an IIM account until a Social Services Assessment and Evaluation form - Part 1 is completed, the Notice of Intent to Administratively Supervise Your Individual Indian Money Account Pending an Assessment and Evaluation by Social Services (Code 19) letter should be used to place 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 BIA home Agency will issue the Code 19 letter to the account holder (or responsible person) by United States certified mail or personal delivery. The account holder will not have unrestricted access to the account funds while the Code 19 letter is in effect. The BIA home Agency will notify OST to change the code to identify the account as a Code 19. All future disbursement requests or inquiries will be referred to BIA Human Services. BIA will work with OST to track the progress of assessment completion. See Attachment 1 for an example of a Code 19 letter.
- 4) If a IIM account is restricted administratively and the family or guardian remains unresponsive to the Social Service provider'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 representative by United States certified mail or personal delivery. The BIA home Agency 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 the appropriate Social Service program. BIA will inform OST of the circumstances preventing an assessment of the client and work together to overcome the barriers identified. See Attachment 2 for an example of a Code 19NR AR letter.

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BIA supervision of an IIM account restriction occurs when a Social Services Assessment and Evaluation – Part 1 is completed as part of an administrative process that is based on findings 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), and concludes there is a need for account supervision. The recommendation is then forwarded to the OIC at the account holder's BIA home Agency for review and approval. Only the OIC at the account holder's home Agency has the authority to make a decision to restrict and supervise an IIM account. Social

Service providers should follow the Assessment Request: Outside of Service Area protocol for completing this process when an account holder resides outside of the provider's region and service area.

If the OIC determines the IIM account should be restricted through supervision, a Notice of Intent to Restrict an IIM Account letter (i.e., Kennerly Letter) is issued by the BIA home Agency and sent to the account holder or representative by United States certified mail or personal delivery. See Attachment 3 for a Kennerly Letter example. 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 Letter process and appeal procedures are detailed in 25 CFR 115, Subpart E—IIM Accounts: Hearing Process for Restricting an IIM Account. A copy of this Subpart of the regulations should be included with the decision letter. See Attachment 3 for Subpart E.

- 5) A disbursement request from the account holder and/or representative will initiate the evaluation portion of the process, using the Social Services Assessment and Evaluation form - Part 2. A request for a disbursement should be signed and dated by the account holder or guardian as appropriate (25 CFR 115.410-411).

A Social Service provider must complete an evaluation of the client's unmet needs with the account holder and/or representative, to include the information noted in 25 CFR 115.420. A distribution plan may be developed based on unmet needs justified by information in the Social Services Assessment and Evaluation form - Part 2.

- 6) 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 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.

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If a disbursement is made, receipts are required to be submitted by the account holder and/or representative to the Social Services provider. The exception to this requirement is a request for a monthly allowance up to \$300 for adult supervised account holders for which receipts may not be required. The exception should be justified and noted in the IIM case record.

Failure of the client and/or guardian to provide required 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. Social Service providers 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.

- 7) 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). Third party payment means that funds are sent to the vendor or service provider directly from the IIM account. Prior verification should be completed to ensure the vendor will accept a third party payment before recommending this method of disbursement on the distribution plan. The Social Service provider 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.

When disbursement requests are medical or health related specifically, the Social Services Assessment and Evaluation form 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.

- 8) Requests for the withdrawal of large amounts, such as the purchase of a house, vehicle, vacations, gift(s), and/or the withdrawal of the entire account balance requires a review by the IIM Central Office Administrative Team (COAT). The IIM COAT consists of the IIM Specialist, an Office of the Solicitor representative, and the Chief, Division of Human Services. A memorandum concurring with the approved request and requesting the administrative review will be issued by the RD within 10 working days. A complete package of information (i.e., fully developed assessment, distribution plan, and all supporting documents) should be forwarded to Central Office with the memorandum from the RD. The IIM COAT will issue a final recommendation within 30 days from receipt of the complete package.

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See section 1.8 for more information on form(s) related to this process.

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 BIA Agency offices. They are the approving official for distribution plans 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 FASS-CMS.

D. Code 19 means the administrative restriction used to safeguard an IIM account until a Social Services Assessment and Evaluation form – Part 1 has been completed.

E. Code 19NR means the non-responsive administrative restriction used when a Social Service provider has documented three unsuccessful attempted contacts with the guardian, conservator, representative payee, or client. The Social Service provider must make an annual attempt to contact the account holder and the guardian.

F. Conflict of interest means Social Service providers, 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.”

G. Distribution plan means a written plan for expenditures for a supervised IIM account, including payees, amounts of payments, and frequency of payments, as recommended by the Social Service provider and authorized by the OIC/BLO.

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

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- I. 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.
- J. Financial Assistance and Social Services Case Management System (FASS-CMS)** is the database system utilized for case management and payment of welfare assistance.
- K. Fiduciary Trust Officer (FTO)** means the FTO, along with field operations personnel, who serves as the primary point of contact for Tribal, individual Indian, and Alaskan Native beneficiaries seeking information and services regarding their trust assets.
- L. 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.
- M. Home Agency** means the BIA Agency where the account holder is enrolled or the account originated.
- N. 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.
- O. 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.
- P. 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.
- Q. 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.
- R. Minor** means an individual who is not an adult as defined in 25 CFR 115.002.

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- S. 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.
- T. Power of Attorney** is an instrument authorizing a person to act as the agent of another. The power may be general or specific.
- U. 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).
- V. Servicing Agency** means the agency geographically closest to where the account holder resides.
- W. Social services assessment and evaluation** means the documentation explained in detail in 25 CFR 20.404 and 25 CFR 115.420.
- X. Social Service provider** means any BIA or Tribal staff providing Social Services. Also referred to as Human Services staff.
- Y. 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.
- Z. Unrestricted account** means an IIM account in which an Indian account holder may determine the timing and amount of disbursements from the account.

1.8 Reports and Forms.

- 1) There is an OMB-approved form that applies to this area: Application for Financial Assistance and Social Services (OMB 1076-0017). It can be found online here: <https://www.bia.gov/policy-forms/online-forms> (click on the tab labeled “IA Paperwork Reduction Act (PRA) Forms”).
- 2) The IIM Social Services Assessment and Evaluation form, the Assessment Request: Outside of Service Area Protocol, the Six-Month Case File Review Form, the IIM Major Purchase Request Worksheet, and the IIM Distribution Plan form are found online here: <https://www.bia.gov/policy-forms/online-forms> (click on the tab labeled “Indian Affairs Specific Forms and Guidance”).

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- 3) BIA Human Social Service programs utilizing FASS-CMS also have access to the IIM Social Services Assessment and Evaluation form and the IIM Distribution Plan through the system.
- 4) 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.
- 5) 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.
- 6) 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



6-17-19

Darryl LaCounte

Date

Director, Bureau of Indian Affairs

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Attachment 1 – Administrative Restriction (AR) Letter Sample



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

[AGENCY NAME]

[ADDRESS]

[Name of Account Holder]

[Insert Address]

Subject: Notice of Intent to Administratively Supervise Your Individual Indian Money (IIM) Account(s) Pending an Assessment and Evaluation by Social Services.

Dear [First Name of Account Holder],

It has recently come to the attention of this office that you have one or more Individual Indian Money (IIM) Account(s) and certain circumstances may exist requiring this office to provide protective services to you as defined under federal regulations at 25 C.F.R. Part 20. In order to protect your trust assets, this office has instructed the Office of the Special Trustee for American Indians (OST) to place an immediate administrative restriction on all existing and future IIM account(s) assigned to you. Access to your IIM account(s) will be restricted pending completion of an assessment and evaluation as outlined below. This notification is in compliance with authority provided in the Indian Affairs Manual Part 70, Chapter 5 and 25 C.F.R. Part 20 and Part 115.

Within 20 days from the date of this letter, our office will contact you to schedule an assessment to evaluate the extent to which you may need assistance with your financial affairs, see 25 C.F.R. §20.403(b). The assessment will review various aspects of your life including but not limited to: identifying certain documents regarding your living situation, current resources available to you, household composition, special circumstances, and any other information deemed necessary to complete the assessment, see 25 C.F.R. §20.404. We will meet with you, your family members, and any other interested parties you may wish to include.

Upon completion of the assessment and evaluation, the Social Service provider will recommend whether or not to restrict your IIM account(s). If the Superintendent decides your account does not require further services to safeguard your trust assets, the administrative restriction will be removed and you will have unrestricted access to your IIM account. If the Superintendent decides that you do require further services to safeguard your trust assets, BIA will send you a “Notice of Intent to Supervise Your Individual Indian Money Account” which will contain

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Attachment 1 continued

information regarding the Bureau's intent to supervise your IIM account and an opportunity for you to request a hearing to challenge the Bureau's decision to supervise your IIM account(s).

If our office does not complete the assessment and evaluation within 90 days from the date of this notice, the administrative restriction will be removed and you will have immediate and unrestricted access to your IIM account(s).

Should circumstances warrant emergency access to your IIM funds prior to a final account decision, an emergency request for disbursement should be made to the Superintendent.

If you do not agree with the proposed administrative supervision of the IIM account(s), you have the right to a fair hearing as provided for in 25 C.F.R. §115.607 (enclosed). Your request for a hearing must be in writing and received by the Superintendent within 40 days of the mail notice date. You may use the enclosed *Request for a Hearing form* and mail it to the address on the letterhead. The Superintendent will conduct a fair hearing within 10 days of receipt of your request for a hearing.

If you have any questions, please contact [*insert social worker name and title*], [*insert phone number*] or via email [*insert email address*].

Sincerely,

[Superintendent]

Enclosures

Cc: Office of the Special Trustee for American Indians, Fiduciary Trust Officer
Branch of Human Services

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Attachment 2 – Code 19 Non-Responsiveness AR Letter Sample



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

[AGENCY NAME]

[ADDRESS]

[Name of Account Holder]

[Insert Address]

Subject: Notification of Administrative Restriction- Individual Indian Monies (IIM) Account(s) for Non-Responsiveness (Code 19NR).

Dear [First Name of Account Holder],

The Bureau of Indian Affairs (BIA) received a request to conduct a social services assessment to determine if you require assistance managing your Individual Indian Money (IIM) account(s). Federal regulations (25 Code of Federal Regulations (CFR) Part 20 et seq.) require you to work with the Branch of Social Services to complete this assessment. The assessment will review various aspects of your life including but not limited to: identifying certain documents regarding your living situation, current resources available to you, household composition, special circumstances, and any other information deemed necessary to complete the assessment.

Social services made repeated attempts to contact you on: *[list out attempts here]*, to complete this assessment; however, each time we were unsuccessful. In order to safeguard your IIM account(s), BIA has notified the Office of Special Trustee for American Indians (OST) to restrict all existing and future IIM account(s) assigned to you as Code 19NR. The Code 19NR restriction prohibits you or anyone else from accessing the funds in your IIM account(s). BIA will remove the restriction when efforts to contact you have been successful and the social services assessment is complete. Each year, Social Services staff will make a minimum of three additional attempts to contact you prior to recommending retention of the Code 19NR restriction.

This notification is in compliance with authority provided in the Indian Affairs Manual Part 70, Chapter 5 and 25 C.F.R. Part 20 and Part 115. You have a right to request a hearing challenging this decision. Should you decide to request a hearing, your written request must be received within 40 days of the date this notice was mailed or personally delivered to you. Address your request to: Superintendent, Agency, Bureau of Indian Affairs, Address, City, State and Zip Code. The Superintendent will hold a hearing within 10 days from the receipt of the request (25 C.F.R. §115.600 et seq.).

Release #19-15, Issued: 6/17/19

Replaces #17-06, Issued: 1/23/17

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To request a hearing -

You may use the form enclosed with this letter or you may write us a separate letter. We must hear from you within 40 days from the day that you receive this notice.

If you request a hearing -

We will hold the hearing within **10 working days** from the day that we receive your request for a hearing.

At the hearing -

You are assured of a fair hearing. You may speak on your own behalf; you may call witnesses to speak for you, and you may question anyone else who testifies that the funds in your IIM account should not be returned to the community's account. If you wish, you may hire an attorney, **at your own expense**, to represent you at the hearing. We will record the hearing.

After the hearing -

We will notify you of our decision, in writing, **within 10 working days of the hearing**.

We mailed this notice United States certified mail with delivery confirmation. You are encouraged to contact our office as soon as possible to complete the required assessment.

If you have any questions, please contact [*insert social worker name and title*], [*insert phone number*] or via email [*insert email address*].

Sincerely,

Superintendent

Enclosures

cc: Office of Special Trustee, Fiduciary Trust Officer (via email)
Branch of Social Services (via email)

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Attachment 2 continued

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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- (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



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

[AGENCY NAME]

[ADDRESS]

IN REPLY REFER TO:

Human Services – MS 330

CERTIFIED MAIL – RETURN RECEIPT REQUEST

[Name of Account Holder]

[Insert Address]

Subject: Notice of Intent to Supervise an Individual Indian Monies (IIM) Account.

Dear **[First Name of Account Holder]**,

This letter is to inform you that in accordance with 25 CFR §115.102 and Subpart E, the Bureau of Indian Affairs (BIA) will restrict and supervise all existing and future Individual Indian Monies (IIM) Account(s) assigned to [Insert Account Name] because the account holder is found to be: (check one)

- Adult In Need of Assistance** (select at least one of the following reasons):
 - We have determined through an administrative process (IIM assessment) 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.
 - We received an order 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.
 - We received information from another **federal agency** that you are under a **legal**

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disability and that the agency has appointed a representative payee to receive federal benefits on your behalf.

- Adult Non Compos Mentis:** We received an order from a court of competent jurisdiction that you are non compos mentis.

An IIM evaluation and distribution plan will be prepared in consultation with the account holder and/or legal guardian when a request for funds is made. Disbursements from the account(s) will be coordinated carefully with the account holder and/or legal guardian by the [*Insert Servicing Program Name*]. No funds may be withdrawn from the IIM account(s) without first consulting the [*Insert Servicing Program Name*] and obtaining approval from the Superintendent. The IIM account will be reviewed every six months to determine if continued supervision is warranted. This process will ensure that IIM funds are used in the best interest of the account holder.

If you do not agree with the proposed supervision of the IIM account(s), you have the right to a fair hearing as provided for in 25 CFR 115.607 (enclosed). Your request for a hearing must be in writing and received by the Superintendent within 40 days of the mail notice date. You may use the enclosed *Request for a Hearing form* (enclosed) and mail it to the address on the letterhead. The Superintendent will conduct a fair hearing within ten days of receipt of your request for a hearing. Enclosed are the requirements for a fair hearing.

The IIM account(s) will be restricted five days after the mail notice date of this correspondence (i.e., postmark by certified mail). If you have any questions, please contact [*insert social worker name and title*], [*insert phone number*] or via email [*insert email address*].

Sincerely,

Superintendent

Enclosures:

Copy of 25 CFR, Part 115, Subpart E
Request for a Hearing

cc: FTO, OST, Enter Agency
bcc: Human Services – MS 330

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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.

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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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- (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__.