

INDIAN AFFAIRS MANUAL

Part: 101
Chapter: 2

Individual Indian Money Accounts
Supervised Accounts

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2.1 Purpose. This chapter provides guidance on the management of Supervised IIM accounts.

2.2 Definitions.

- a. **Adult in need of financial management assistance** means an individual who is adjudicated by a court of competent jurisdiction to be in need of financial management assistance, as determined by a psychological or medical assessment that deems the individual incapable of administering or managing property or money and incapable of performing day-to-day living activities.
- B. **Case file** means a detailed written record that includes information on the reasons for account supervision, applicable court orders, the approved distribution plan, and the results of administrative reviews of case. Illustration 1 provides a check list of items that must be included in case files.
- C. **Case worker** means a social services staff member of other bureau employee who is assigned responsibility for protecting the interests of the owner of a supervised account.
- D. **Distribution plan** means a detailed written record of proposed expenditures from a supervised IIM account, including payees, amounts of payments, and frequency of payments. Illustration 2 provides the outline for information required to be included in distribution plans.
- E. **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, custodian, curator, or guardian of the property.
- F. **Legal disability** means a condition of incapacity caused by physical or mental defect or infirmity that prevents or inhibits an individual from functioning or otherwise transacting ordinary business as determined by a court of competent jurisdiction or by another administrative process.
- G. **Minor** means an individual who has not reached his majority as defined by the laws of the State of his domicile.
- H. **Non-compos mentis** means an individual who has been found by a court of competent jurisdiction, based on established criteria that includes a psychological or medical evaluation, to be of unsound mind or incapable of transacting or conducting business and managing his or her own affairs.
- I. **Power of Attorney** means an instrument authorizing another person to act as agent or attorney. The power may be general or specific.

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- J. Social Services Assessment** means a written evaluation of an account holder's circumstances and abilities that identifies the extent to which an account holder needs assistance in managing his or her affairs. Refer to Illustration 3.

2.3 Responsibilities.

- A. Deputy Commissioner of Indian Affairs** issues timely decisions on requests to appoint a Bureau employee as guardian for an individual whose account is subject to supervision.

B. Director, Office of Tribal Services:

- (1) Ensures guidance on the management of supervised accounts is complete and up-to-date;
- (2) Conducts compliance reviews of field locations with responsibilities for supervised accounts; and
- (3) Makes recommendations to the Deputy Commissioner on requests to appoint Bureau employees as guardians.

C. Regional Directors:

- (1) Review requests to appoint Bureau employees as guardians and forward appropriate requests to the Deputy Commissioner for approval, through the Director, Office of Tribal Services;
- (2) Ensure that supervised accounts are reviewed at least twice a year to determine compliance with the distribution plans and to determine if supervision is still warranted; and
- (3) Arrange for social services staff review and oversight of supervised accounts for those agencies, subagencies or field stations that lack social services personnel.

D. Officers-in-Charge:

- (1) Render decisions on requests to supervise IIM accounts of adults who are determined to be *non-compos mentis*, under legal disability or in need of financial management assistance;
- (2) Authorize the establishment of supervised accounts for eligible minors;
- (3) Assign social services staff to monitor supervised accounts. In the absence of social services staff, assign employees well-suited for the responsibility and notify the Regional Director of the need for social services review and oversight;
- (4) Render decisions on proposed disbursement plans;
- (5) Render decisions on actual disbursement requests;
- (6) Ensure that supervised accounts are reviewed every six months;

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- (7) Take action to recover any funds disbursed to guardians that lack proper supporting documentation;
- (8) Seek modification of judicial orders or administrative determinations when supervision is no longer deemed necessary;
- (9) Appear before courts of competent jurisdiction for the limited purposes of seeking clarification of a judicial order that seems to conflict with or be contrary to:
 - (a) Federal laws or regulations;
 - (b) another court order;
 - (c) an administrative order; or
 - (d) current circumstances that no longer support the original decision to supervise an account; and
- (10) Authorize OTFM to make appropriate changes in account coding from restricted or unrestricted status.

E. Case Workers:

- (1) Maintain current and complete case files on each account that they supervise;
- (2) Prepare social services assessments;
- (3) Prepare and maintain current disbursement plans for supervised accounts;
- (4) Review case files every six months;
- (5) Upon a request from a court of competent jurisdiction, provide relevant factual information to the court regarding the circumstances and affairs of individuals whose accounts are supervised; and
- (6) Ensure that all aspects of case management reflect the best interests of the account holder.

F. Bureau Employees Appointed as Guardians.

- (1) Request only those payments authorized in the approved disbursement plan;
- (2) Notify the case worker if changes are needed in the distribution plan;
- (3) Arrange for a qualified tax preparer to file applicable state and Federal tax returns;
- (4) Maintain receipts for all expenditures made on behalf of the account holder or for the benefit of the account holder;
- (5) Provide a semi-annual report to the case worker that includes a complete explanation of the use of all funds disbursed from the account and any other information that is relevant to the proper management of the account holder's financial affairs; and
- (6) Together with the case worker, continue to seek a qualified person who is not a Bureau employee to serve as guardian.

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2.4 Preliminary Assessment Required for Legal Disability Determinations. In many instances, adults with a legal disability do not require the additional protection afforded by Bureau supervision of their IIM account. Any recommendations to supervise the account of an adult with a legal disability must include documentation that clearly demonstrates how the legal disability impairs the individual's ability to manage his or her financial affairs. In addition to the court order or administrative agency determination that the adult has a legal disability, it is necessary that a physician, mental health specialist, or clinical social worker certify that the legal disability renders the individual incapable of independently managing his or her financial affairs.

2.5 Social Services Assessment. A social services assessment must be completed before a decision is made to supervise the account of any adult. The assessment may be completed either before or after court proceedings.

- A. Upon the request of the account holder or other interested party, a social services assessment will be conducted to determine whether the Bureau should petition a court of competent jurisdiction to appoint a guardian.
- B. If the court proceedings were held without Bureau input, a social services assessment will be completed following a finding that an adult is *non-compos mentis* or in need of financial management assistance.
- C. A full social services assessment will be made for adults under legal disability only if the preliminary assessment demonstrates that the legal disability renders the individual incapable of managing his or her financial affairs.

2.6 Establishment of Supervised Accounts.

A. **Minors.** All accounts for eligible minors will be established as supervised accounts.

B. **Adults.** Following review of the social services assessment and considering the recommendations of social services personnel, the Officer-In Charge may agree to supervise the account of an adult who is under legal disability, *non-compos mentis*, or in need of financial management assistance only if a court of competent jurisdiction has appointed a guardian.

2.7 Notification to Account Holder. If the Officer-in-Charge determines that the Bureau will supervise an adult's account, the account holder must be notified. The notification process is described in Chapter 4 of this Part.

2.8 Effective Date of Supervision. The effective date of supervision of accounts of adult Indians will vary depending upon the method used to notify the account holder. Refer to Chapter 4 of this Part.

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- 2.9 Notification to OTFM.** The Officer-in-Charge must send OTFM the documentation identified in Illustration 4 for each supervised account.
- 2.10 Limitations During Appeal Process.** No disbursements will be made to a third party on behalf of the account holder without the consent of the account holder until all appeal rights have been exhausted.
- 2.11 Guardians.** A court of competent jurisdiction must appoint a guardian for each adult whose account is to be supervised and for a minor in the absence of a custodial parent. Unless there are unusual circumstances, the order of priority in appointing guardians is: a member of the immediate family; a member of the extended family; an unrelated member of the same tribe; an individual identified by the tribe who does not meet the foregoing criteria; an entity designated by the tribe.
- If the court has failed to appoint a guardian, the case worker, following the priority for appointment of guardians, will try to identify a competent, capable individual who will petition the court to be appointed guardian.
- If no suitable guardian petitions the court, the case worker will identify a suitable guardian and petition the court to have that individual appointed.
- 2.12 Bureau Employees as Guardians.** If the family, the tribe, and the case worker have been unable to find a suitable guardian, the Officer-in-Charge may request that the Deputy Commissioner allow a Bureau employee to be considered for appointment as guardian. Any employee who is nominated to serve as a guardian must have an up-to-date security clearance for a High Risk Public Trust position. The information identified in Illustration 5 must accompany the request to the Deputy Commissioner.
- 2.13 Interim Actions Pending Appointment of a Guardian.** If there is a substantial delay between the time that a determination is made that an adult is under legal disability, *non-compos mentis*, or in need of financial assistance and the naming of a court-appointed guardian, the Officer-in-Charge may:
- A. Accept funds from another Federal agency**, such as the Department of Veterans Affairs or the Social Security Administration, for deposit into the adult's IIM account; and
 - B. Refuse to Acknowledge** any power of attorney signed by the account holder that affects the account holder's IIM funds.
- 2.14 Preparation of a Distribution Plan.** A 12-month distribution plan must be prepared for each supervised account belonging to an adult and for a minor if the minor's account

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contains funds other than per capita payments arising from a claims or judgment award. The case worker, in consultation with the guardian, will develop a plan, as outlined in Illustration 2, and submit the plan to the Officer-in-Charge for approval.

- 2.15 The Approved Distribution Plan** will be maintained in the case file. Copies of the plan will be sent to the adult account holder, the custodial parent of a minor, the guardian, and to the Office of Trust Funds Management.
- 2.16 Disbursements of Per Capita Judgment Funds Belonging to a Minors and Non-Compos Mentis Adults** are subject to a higher standard of scrutiny than the “best interests” of the adult or “the minor’s best interest and necessary for the health, education, and welfare of the minor.”

Any expenditure of these funds shall be limited to urgent needs arising from extenuating circumstances and shall accord with the general principles governing administration of trust funds of minors and legal incompetents, including a requirement for strict accounting for expenditures. [Public Law 97-548, Section (2)(a)]

The Officer-in-Charge must separately certify each disbursement of per capita judgment funds belonging to minors or non-compos mentis adults as being in strict conformance with the approved use and distribution plan governing the judgment award, and the guardian will be required to fully account for each such disbursement separately from other disbursements from the non-judgment supervised account.

- 2.17 Case Monitoring and Review.** The case worker will monitor assigned cases on an on-going basis. At intervals no greater than six months, the case worker will prepare a written report for the case file that includes the reconciliation results of account disbursements against the approved plan, an assessment of the current physical or mental disability of the account holder that led to supervision, the guardian’s compliance with all requirements placed on him or her, and any other information that is relevant to proper case management.
- 2.18 Failure of the Guardian to Account for Funds.** If the guardian fails to submit the required documentation to the case worker within the time allotted, the case worker will notify the guardian that all missing documentation must be submitted within 14 days. If the required documentation is not provided within that time, the case worker shall immediately prepare an amended disbursement plan to terminate all payments that are made directly to the guardian and present the revised plan to the Officer-in-Charge for action.
- 2.19 Terminating Guardianship for Cause.** If the case worker has reason to believe that the guardian is misusing account holder’s funds, or acting in other ways that are not in the best

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interests of the account holder, the case worker will provide a written report to the Officer-in-Charge. The Officer-in-Charge will review this report and other relevant information to determine if the Bureau should petition the court for removal of the guardian and to determine if action should be taken the guardian to recover misapplied funds. The Officer-in-Charge should also refer the case for criminal investigation.

2.20 Terminating Supervision. The Officer-in-Charge 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 judgement per capita account** as specified in the judgment award use and distribution plan;
- C. 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, *non-compos mentis*, or in need of financial management assistance.

2.21 Requirement for Supervision Determination. Once a minor has reached the age of majority or fulfilled the requirements of the judgment award use and distribution plan, the Bureau 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.

Case File: Supervised IIM Account

Name: _____ SSN: ____ - ____ IIM Account(s): _____

Date of Birth: ____ / ____ / ____ Telephone: (____) ____ - ____ E-Mail: _____

Mailing Address: _____

Location of Residence (if different than mailing address): _____

Reason for Supervision: ____ Minor; ____ Non-Compos Mentis; ____ Legal Disability; ____ Financial Mgmt. Assistance

Guardian's Name: _____ SSN: ____ - ____

Date of Birth: ____ / ____ / ____ Telephone: (____) ____ - ____ E-Mail: _____

Mailing Address: _____

Guardian's Bond Required: __ Yes; __ No Amount of Bond: \$ _____ Secured by: _____

The following documents are to be included with the Case File:

1. ____ Copy of Birth Certificate (Minors only).
2. ____ Copy of Court Order for Adults who are non-compos mentis, under legal disability; or in need of financial management assistance.
3. ____ Copy of Court Order appointing guardian (if separate from Court Order included under #2.).
4. ____ Copy of Guardian's bond, if applicable.
5. ____ Copy of social services assessment.
6. ____ Copy of Superintendent's decision to supervise the account, including any supporting documentation.
7. ____ Copy of Approved Disbursement Plan(s), receipts and reconciliation reports.
8. ____ IIM account statements.
9. ____ Copy of semi-annual case reviews.
10. ____ Copy of Court Order terminating supervision, if applicable.

Use the following space to record the dates of the most recent semi-annual case reviews and updates to the Disbursement Plan. [CR= Case Review; DP=Disbursement Plan Review/Update]

Date													
CR	DP												

Distribution Plan for a Supervised IIM Account

1. Account Holder: _____ 2. IIM Account Number: _____

3. For the 12-month period, beginning on _____ and ending on _____.

4. **Summary:**

Current Account Balance: \$ _____
 Estimated Annual IIM Income: + _____
 Estimated Annual Payments: - _____
 Estimated Account Balance, end of 12-month period: \$ _____

5. Payee	6. EFT or Check	7. How Often	8. Bank Routing for EFT/ Address for Check	9. Amount	10. Purpose
			----- -----		
			----- -----		
			----- -----		

11. Recommended for Approval: _____ Date: _____
 BIA Case Worker

12. Guardian's Acknowledgment: I have read the disbursement plan that has been prepared by the Bureau of Indian Affairs for the account holder identified above. As guardian for the account holder, I agree to follow the plan and to provide the Bureau of Indian Affairs a full report every six months on the use of funds from this account.
 _____ Date: _____
 Guardian

13. This plan is approved. The proposed expenditures are deemed to be in the best interests of the account holder
 _____ Date: _____
 Officer-in-Charge

INSTRUCTIONS

General: A disbursement plan must be prepared for each supervised account. The plans may not exceed 12-months, and a new plan must be prepared, approved and submitted to OTFM at least 30 days prior to the expiration of the current plan.

1. Enter the Account Holder's name.
2. Enter the IIM Account Number. If the account holder has more than one account, a separate plan must be prepared for each account.
3. Enter the date that the plan is to become effective and the proposed ending date.
4. Enter the current IIM account balance and the estimated annual IIM income. After completing the disbursement schedule, calculate the total payments for the 12-month period, and subtract that amount, leaving an estimated account balance at the end of the year.
5. Enter the name of the person or business to be paid.
Note. Payment may not be made directly to an account holder who is a minor or to an adult who is non-compos mentis.

6. Indicate payment method: Electronic Funds Transfer (EFT) or printed check.
7. Enter weekly (W); monthly (M); quarterly (Q), or annually (A).
8. Enter the full mailing address for a check payment; enter the financial institution name, address, bank routing identification number, and payee account number for an EFT payment.
9. Enter the payment amount.
10. Explain the purpose of the payment. [Add as many lines to the table as required to identify all payees.]
11. Signature of the BIA employee preparing the plan.
12. Signature of the guardian certifying agreement to the terms of the plan.
13. Signature of the Officer-in-Charge.

Distribution: The original of the approved plan is put in the case file; copies are sent to the guardian, the account holder, and to the Office of Trust Funds Management.

Social Services Assessment

[Note: This is an optional form. The information identified on the form, however, must be included in all assessments that are conducted to determine if the Bureau of Indian Affairs should supervise the IIM account(s) of an adult Indian.]

Name of Individual Whose IIM Account is Proposed to be Supervised: _____

Mailing Address: _____ Phone: _____

Location of Residence (if different than mailing address): _____

Date of Birth: _____ Sex: ___ M; ___ F SSN: _____ CDIB: _____

Assessment Conducted:

___ At the request of a relative or other interested party, namely, _____; or
___ Following a court order or a determination by a duly authorized administrative agency that the adult is:
___ *non-compos mentis*; ___ under legal disability; ___ in need of financial management assistance.

Preliminary Assessment for Adults Under Legal Disability

Specific Nature of the Disability: _____

Disability Determination Made by _____ on _____.
(Name of Administrative Agency or Court) (Date)

Independent Examination Conducted by: ___ Physician; ___ Clinical Social Worker; ___ Mental Health Specialist

Case Worker Determination: The independent examination ___ **supports** ___ **does not support** a finding that the legal disability makes the adult incapable of managing his or her financial affairs. [Attach a copy of the examination findings and provide an explanation below.]

___ Supervision is not recommended;

___ Supervision may be required; conduct a full assessment.

Case Worker Signature and Date

Signature of Social Services MSW and Date

D. Financial Information: List any bank accounts (other than IIM), credit card accounts, or loans that are in the Account Holder's name or in a joint account:

Name of Bank/ Credit Card/Lender	Type of Account (Savings, Checking, Credit Card, Car Loan Mortgage, etc.)	Account Balance

E. Income: List all sources of income or support payments received by the Account Holder. Include trust income from per capita payments and leases, income from employment, income from General Assistance, Social Security, TANF, Supplemental Security Income, pensions, annuities; and non-trust tribal per capita payments.

Source of Income	Amount	Frequency

F. Narrative Report: Attach on a separate sheet(s) of paper a discussion of the circumstances that either support or do not support a recommendation that the account be supervised. Factors to be consider include, but are not limited to: age, developmental disability, chronic alcoholism or substance abuse, lack of family assistance or social support systems, self-neglect, financial exploitation, physical abuse or neglect, senility, dementia. Include relevant supporting documentation.

G. Recommendation: Based on the social services assessment, I **Recommend** (or) **Do not recommend** that the BIA supervise the IIM account of: _____.

 Case Worker Signature and Date

 Social Services MSW and Date

H. Determination: Upon review of the social services assessment and supporting documentation, and considering the recommendations of the case worker and social services staff, it is my determination that the Bureau of Indian Affairs **Will** (or) **Will not** supervise the IIM account(s) of the above named individual.

 Officer-in-Charge and Date



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

INITIAL NOTIFICATION TO OTFM

Memorandum

To: Office of Trust Funds Management
From: Officer-in-Charge
Subject: Proposed Supervision of an IIM Account

On (date), I approved a recommendation to supervise the following IIM Account(s):

Name of Account Holder: _____
IIM Account Number(s): _____
Reason for Supervision: ___ *Non-Compos Mentis*; ___ Under Legal Disability;
___ In Need of Financial Management Assistance

The account holder was provided a notice of appeal rights by certified mail on (date). A copy of the letter is attached. Please place a hold on this account pending a final agency decision.

Attachment



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

FINAL NOTIFICATION TO OTFM

Memorandum

To: Office of Trust Funds Management
From: Officer-in-Charge
Subject: Supervision of an IIM Account

On (date of initial notification letter), I notified you that the BIA proposed supervising the following IIM Account(s):

Name of Account Holder: _____
IIM Account Number(s): _____
Reason for Supervision: *Non-Compos Mentis*; Under Legal Disability;
 In Need of Financial Management Assistance

Final Agency Action

- A. The account holder did not appeal the decision to supervise the account. A copy of the approved disbursement plan is attached.
- B. The account holder appealed the decision to supervise the account; however, the decision to supervise was upheld. A copy of the approved disbursement plan is attached.
- C. The account holder appealed the decision to supervise and the appeal was successful. Please remove the hold on the account.

Attachment



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Memorandum

To: Deputy Commissioner of Indian Affairs
From: Officer-in-Charge
Subject: Request to Appoint a Bureau Employee as a Guardian

This is to request that [Name of BIA employee, Position Title, Grade] be approved to act as a guardian for [Name of account holder]. Attached is a copy of the Social Services Assessment that was conducted and a description of the efforts that have been made to identify a suitable guardian who is not a Bureau Employee.

Certification by Security Officer

The background investigation required for high risk public trust positions was completed on the above-named employee and a positive suitability determination was made on [date of suitability determination].

_____ Date: _____
Security Officer

Action by Deputy Commissioner

This request is ___ **Approved** ___ **Not Approved**.

_____ Date: _____
Deputy Commissioner of Indian Affairs

Instructions: The requesting official is responsible for obtaining the certification from the Security Officer before the request is forwarded to the Deputy Commissioner.