

INDIAN AFFAIRS MANUAL

Part: 101

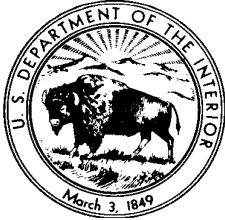
Individual Indian Money Accounts

Chapter: 4

Appeals Process

Page 1

- 4.1 Purpose.** This chapter describes the process that must be followed if a decision is made to supervise the IIM account of an adult Indian or to place an involuntary encumbrance on an account.
- 4.2 Notification to an Account Holder Whose Address is Known.** An account holder must be notified that the BIA intends to restrict access to the individual's funds and give the account holder an opportunity to appeal that decision. The notification will be:
- a. **Sent to the account holder's address Certified Mail, Return Receipt Requested, or**
 - b. **Hand-delivered to the account holder, or**
 - c. **Sent by first-class mail to the account holder in care of the warden if the account holder is in prison.**
- 4.3 Notification Letter.** To ensure that account holders are fully advised of their rights, the form and content of the notification letters is to be strictly followed.
- A. **Body of the Letter.** Illustration 1 is used for a Notice of Intent to Supervise an IIM Account and Illustration 2 is used for a Notice of Intent to Encumber and IIM account
 - B. **Enclosures.** Each notification letter must include the following enclosures:
 - (1) Title 25 CFR 115.10 (Appendix A);
 - (2) Request for a Hearing (Illustration 3);
 - (3) Waiver of Right to a Hearing (Illustration 4); and
 - (4) A stamped or franked return envelope.
- 4.4 Notification to an Account Holder Whose Address is Unknown or if the Mail is Returned as Undeliverable.** If the Bureau proposes to place an involuntary encumbrance on the account of an individual for whom a current address is unavailable, a notice must be published in the tribal newspaper and in the local newspaper serving the area of the account holder's last known mailing address. The public notice must be published once a week for four consecutive weeks. Illustration 5 identifies the information that must be included in the public notice.
- 4.5 Effective Date of a Hold on an Account.** The Officer-in-Charge is responsible for notifying OTFM to place a restriction on an IIM account that is proposed for supervision or to be involuntarily encumbered:
- A. **One day following personal delivery of the notification letter;**
 - B. **Five days after mailing the notification letter; or**
 - C. **Five days after the final newspaper publication of the public notice.**



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

Date

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
or
HAND DELIVERED AND ACKNOWLEDGED

NOTICE OF INTENT TO SUPERVISE YOUR INDIVIDUAL INDIAN MONEY ACCOUNT

Dear [Name of Account Holder]:

This is to inform you that this office has approved a request to supervise your IIM account, [account number], because you have been found to be:

- _____ In need of financial management assistance;
- _____ Under a legal disability that makes you unable to manage your financial affairs; or
- _____ *Non-compos mentis* (of unsound mind).

If we supervise your account, we will prepare a spending plan in consultation with a guardian who will be appointed to act in your best interests and we will send you a copy of the plan. No money can be withdrawn from your IIM account without our approval. We will review your case every six months to see if continued supervision is needed and to ensure that the money spent from your IIM account was used for your benefit.

- You can challenge this decision –** If you believe that you are capable of managing your own financial affairs, you may request a hearing.
- 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 **30 days** from the day that you receive this notice.
- If you request a hearing –** We will hold it within **10 working days** from the day that we receive your request.
- At the 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 your account should be supervised. If you wish, you may hire an attorney, **at your own expense**, to represent you at the hearing.
- After the hearing –** We will notify you of our decision, in writing, within **10 working days**.

If you believe that you do need BIA's help in managing your IIM account and do not want to request a hearing, you may sign the **Waiver of Right to a Hearing** and return it to us. This will allow us to begin supervision without waiting for the time allowed for you to appeal our decision. You may use the enclosed stamped, addressed envelope to send us either the **Request for a Hearing** or the **Waiver of Right to a Hearing**.

If you have any questions regarding this notice, you may call: [Name of contact] at [telephone number].

Sincerely,

Officer-in-Charge

Enclosures: Copy of 25 CFR 115.10
Request for a Hearing
Waiver of Right to a Hearing
Return Envelope

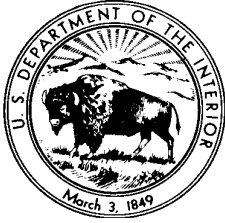
[If the notice is hand-delivered, add the section below and take the original letter and one copy. Ask the account holder to date and sign the copy. Take the signed copy back to the office.]

ACKNOWLEDGMENT

I have received a notice from the Bureau of Indian Affairs stating that my Individual Indian Money Account will be supervised by the BIA. I have the right to appeal this decision.

Signature of Account Holder

Date



United States Department of the Interior
 BUREAU OF INDIAN AFFAIRS

Date _____

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
 or
HAND DELIVERED AND ACKNOWLEDGED

NOTICE OF INTENT TO ENCUMBER YOUR INDIVIDUAL INDIAN MONEY ACCOUNT

Dear [Name of Account Holder]:

This is to inform you that this office has approved a request to restrict your access to funds that are now in your IIM account [account number] and/or funds that will be deposited in your IIM account. The restriction will continue until such time as the following judgment/indebtedness has been paid or otherwise resolved.

Name of Court: _____

Date of Court Order: _____

Purpose	Amount	Frequency					
		Once Only	Weekly	Monthly	Quarterly	Twice a Year	Once a Year
Child Support							
Alimony							
Indebtedness							
Administrative Overpayment							
Other (Specify)							

You can challenge this decision –

If you believe that your IIM funds should not be used for the purpose identified above, you may request a hearing.

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 **30 days** from the day that you receive this notice.

If you request a hearing –

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

At the 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 money in your IIM account should be used to pay the court order/demand/judgment. If you wish, you may hire an attorney, **at your own expense**, to represent you at the hearing. **You may not contest the basis for the original court decision/order.**

After the hearing –

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

If you do not object to the use of your IIM funds for the purpose stated and do not want to request a hearing, you may sign the **Waiver of Right to a Hearing** and return it to us. This will allow us to initiate payment actions without waiting for the time allowed for you to appeal our decision. You may use the enclosed stamped, addressed envelope to send us either the **Request for a Hearing** or the **Waiver of Right to a Hearing**.

If we do not hear from you within the time allowed, an encumbrance will be placed on your account and funds in your IIM account now and in the future will be used to pay the indebtedness/claim in the amount indicated.

If you have any questions regarding this notice, you may call: [Name of contact] at [telephone number].

Sincerely,

Officer-in-Charge

Enclosures: Copy of the Court Order (if applicable)
Copy of 25 CFR 115.10
Request for a Hearing
Waiver of Right to a Hearing
Return Envelope

[If the notice is hand-delivered, add the section below and take the original letter and one copy. Ask the account holder to date and sign the copy. Take the signed copy back to the office.]

ACKNOWLEDGMENT

I have received a notice from the Bureau of Indian Affairs stating that funds from my Individual Indian Money Account will be used to satisfy a court ordered payment. I have the right to appeal this decision.

Signature of Account Holder

Date

REQUEST FOR A HEARING ON CHANGING THE STATUS OF AN IIM ACCOUNT

A. Notice of Appeal

The Bureau of Indian Affairs sent me –

___ A **Notice of Intent to Supervise** my Individual Indian Money Account; or

___ A **Notice of Intent to Encumber** my Individual Indian Money Account.

I hereby appeal this decision and request that I be provided a hearing before this decision becomes final.

B. Account Holder Information

Name (please print): _____

Signature: _____

Date Signed: _____

Mailing Address *if different* than that shown on the Notice from BIA:

C. Attorney

Name: _____ Telephone: _____

Street Address: _____

City, State, Zip Code: _____

INSTRUCTIONS

General: This form may be used to notify BIA that you want to appeal a decision made by the BIA to place a restriction on your IIM account. You may write a letter if you prefer, but we must hear from you within 30 days of the date that you received the notice or you will not be allowed to appeal the decision.

Part A: Check the type of Notice that BIA sent.

Part B: Print your name in the space provided. Write your signature on the line below. Print the date that you sign this form. If your mailing address is different than the address on the Notice from the BIA, please provide your current address.

Part C: If you have hired an attorney to represent you, please provide his/her name, mailing address, and phone number. You do not have to be represented by an attorney. You may be represented by an attorney even if this section of the form is left blank.

Mail the Form: We suggest that you make a copy of the form, if possible, for your records. Use the envelope that was included with the Notice to mail the form to BIA. If you no longer have the envelope, mail the completed form to:

[Insert mailing address]

Include the words "**Notice of Appeal**" on the envelope.

WAIVER OF RIGHT TO A HEARING ON CHANGING THE STATUS OF AN IIM ACCOUNT

A. Waiver of Rights

The Bureau of Indian Affairs sent me –

___ A **Notice of Intent to Supervise** my Individual Indian Money Account; or

___ A **Notice of Intent to Encumber** my Individual Indian Money Account.

I have no objection to this decision and hereby waive my right to a hearing.

B. Account Holder Information

Name (please print): _____

Signature: _____

Date Signed: _____

Mailing Address *if different* than that shown on the Notice from BIA:

INSTRUCTIONS

General: This form may be used to notify BIA that you do not wish to appeal the BIA decision to restrict your access to money in your IIM account. If you send us the form, the restriction will become effective the day after we receive the waiver from you. If you don't complete the form and don't appeal the BIA decision, the restriction will become effective 30 days from the date that you received the Notice from BIA.

Mail the Form: We suggest that you make a copy of the form, if possible, for your records. Use the envelope that was included with the Notice to mail the form to BIA. If you no longer have the envelope, mail the completed form to:

[Insert mailing address]

Part A: Check the type of Notice that BIA sent.

Part B: Print your name in the space provided. Write your signature on the line below. Print the date that you sign this form. If your mailing address is different than the address on the Notice from the BIA, please provide your current address.

**PUBLICATION OF NOTICE TO AN ACCOUNT HOLDER
WHOSE WHEREABOUTS ARE UNKNOWN**

Legal Notice

Notice is hereby given that the Bureau of Indian Affairs, United States Department of the Interior, has made a decision to restrict funds held in an Individual Indian Money account belonging to **Name of the Account Holder** to pay a legal judgment or claim against the account holder. The current whereabouts of **Name of the Account Holder** are unknown. The last available mailing address was **Last Mailing Address**. Anyone having information on the current location of the account holder is asked to contact the BIA at the address below.

This notice will be published once a week for four consecutive weeks beginning on **date of first publication** and ending on **date four weeks later**. The account restriction will be imposed 5 days following the final publication of this notice. The account holder has a right to appeal this action. Such appeal must be in writing and must be received by the BIA at the address below no later than 30 days following the final publication date of this notice. For further information contact **Name, telephone number and mailing address of agency contact**.

CODE OF FEDERAL REGULATIONS: TITLE 25--INDIANS

CHAPTER I--BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

PART 115--INDIVIDUAL INDIAN MONEY ACCOUNTS

Sec. 115.10 Procedures relative to restrictions.

(a) If under Sec. 115.9 an individual's access to funds in the individual's Indian money account is limited, or it is proposed to pay creditors, including creditors with judgments from Courts of Indian Offenses, for which preliminary procedures are prescribed in 25 CFR 11.26, the individual must be notified in writing as follows:

- (1) The notice must be given to the individual affected at the commencement of the restriction or at least 40 days prior to involuntary distribution of funds from the account.
- (2) The notice must state the reasons giving rise to the restriction or proposed payment.
- (3) The notice shall inform the individual of the right to a hearing and that a request for a hearing must be in writing, received by the Secretary, or an authorized representative, within 30 days of receiving the notice of proposed action.
- (4) The notice of proposed action shall be sent by Certified Mail-Return Receipt Requested. The date appearing on the returned receipt shall constitute the beginning of the restriction period.
- (5) The notice shall state that a copy of the rights listed in paragraph (c) of this section are transmitted along with the notice.
- (6) The notice shall advise that if the individual wishes to have the delinquent claim or money judgment paid without delay and without a hearing the individual can so request by signing a form furnished for that purpose with the notice.

(b) If the individual fails to request a hearing, the individual is deemed to consent to the continued limitation on and/or disbursement of funds from the IIM Account in accordance with the terms of the notice. Notwithstanding the continuance of a restriction on an account, if the amount of funds available in the account exceeds the amount of the restriction or the amount of the claim such unrestricted funds in excess of the amount of the restriction or claim shall be available for the account holder's use.

(c) The Secretary, or an authorized representative, shall conduct a hearing, if so requested as specified above, to determine whether to continue to restrict the Individual Indian Money Account, and/or allow payment of delinquent claims and judgments of tribal courts and courts of Indian offenses from such accounts. The following are requirements for such a fair hearing:

- (1) The hearing shall be held within **10** working days of the Secretary's or an authorized representative's receipt of the request for a hearing.
- (2) The individual must be given the opportunity to be heard. This includes the right to hear the case against the individual; to present testimony, to present witnesses, and to question and rebut opposing witnesses. This includes the right to orally present arguments and evidence. The account holder may be heard on why a judgment of a tribal court or court of Indian offenses should not be paid from his or her Individual Indian Money account, but he or she may not relitigate the facts established by that court.
 - (3) If the individual desires an attorney or other representative, one may be retained at the individual's own expense.

- (4) The decision to uphold or overturn the proposed action, must be made by the Secretary, or an authorized representative, and must be based on information presented or referred to at the hearing. The decision of an authorized representative of the Secretary may be appealed as provided in Sec. 115.14.
- (5) The Secretary, or an authorized representative, shall make provisions for recording the hearing and shall preserve the record for the duration of the appeal period. Tape recording the hearing is sufficient.
- (6) The Secretary, or an authorized representative, will advise all parties concerned, in writing, of a decision with-in **10** working days after completion of the hearing.

(d) No money except as provided in subsection (b) of this section, shall be paid from an Individual Indian Money Account or applied against a delinquent claim or judgment of a tribal court or court of Indian offenses until the decision on the claim has become final in accordance with the appeal procedures provided for in Sec. 115.14.

Sec. 115.14 Appeals.

Appeals from an action taken by an official of the Bureau of Indian Affairs may be taken pursuant to 25 CFR part 2, subject to the terms of § 115.10(c)(2).

[51 FR 2874, Jan. 22, 1986]