

§ 115.419

25 CFR Ch. I (4-1-03 Edition)

approval of an application made under Public Law 97-458. See 25 CFR 1.2.

(b) Tribal per capita funds: Withdrawals may only be made under a BIA approved distribution plan and in accordance with the terms of the tribe's per capita resolution/document.

(c) Other trust funds: Withdrawals may only be made under a minor's BIA-approved distribution plan that is based on a justified unmet need for the minor's health, education, or welfare.

(d) Funds from other federal agencies (e.g., SSA, SSI, VA) received for the benefit of the minor: Withdrawals must be made only under a BIA-approved distribution plan that must be consistent with the disbursing agency's (e.g., SSA, SSI, VA) allowable uses for the funds.

§ 115.419 Who develops a minor's distribution plan?

A social service provider will develop a minor's distribution plan for approval by the BIA after evaluating the needs of the minor in consultation with a custodial parent, a legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or emancipated minor. A minor's distribution plan may only provide for those expenditures outlined in part § 115.417.

§ 115.420 When developing a minor's distribution plan, what information must be considered and included in the evaluation?

When developing a minor's distribution plan, the following information must be considered and included in the evaluation:

(a) Documentation which establishes who has physical custody of the minor (e.g., home visits, school records, medical records, etc.);

(b) A copy of any custodial orders or guardianship orders from a court of competent jurisdiction;

(c) The name(s) of the person and his or her relationship to the minor, if any, who make a request for a disbursement from the minor's account;

(d) An evaluation of other resources, including parental income, that may be available to meet the unmet needs of the minor;

(e) A list of the amounts, purposes, and dates for which disbursements will be made;

(f) The name(s) of the person to whom disbursements may be made, including, as applicable:

(1) A custodial parent;

(2) A legal guardian;

(3) The person who has been recognized by the BIA as having control and custody of the minor;

(4) An emancipated minor; and/or

(5) Any third parties to whom the BIA will make direct payment for goods or services provided to the minor and supported by an invoice or bill of sale;

(g) The date(s) (at least every six months) when the custodial parent, the legal guardian, the person who has been recognized by the BIA as having control and custody of the minor, or the emancipated minor must provide receipts to the BIA to show that expenditures were made in accordance with the approved distribution plan;

(h) Additional requirements and justification for those requirements, as necessary to ensure that any distribution(s) will benefit the minor;

(i) The dates the disbursement plan was developed, approved, and reviewed, and the date for the next scheduled review;

(j) The date(s) the distribution plan was amended and an explanation for any amendment(s) to the distribution plan, when an amendment is necessary;

(k) The signature of the BIA official approving the plan with the certification that the plan is in the best interest of the account holder; and

(l) The signature(s) of the custodial parent, legal guardian, with date(s) signed, certifying that he or she has been consulted and has agreed to the terms of the evaluation and the distribution plan.

§ 115.421 What information will be included in the copy of the minor's distribution plan that will be provided to OTFM?

A minor's distribution plan must contain the following:

(a) A copy of any custodial order or guardianship order from a court of competent jurisdiction;

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(b) A list of the amounts, purposes, and dates for which disbursements will be made;

(c) The name(s) of the person(s) to whom disbursements may be made, including, as applicable:

- (1) A custodial parent;
- (2) A legal guardian;
- (3) The person who has been recognized by the BIA as having control and custody of the minor and the address of that person;
- (4) An emancipated minor; and/or
- (5) Any third parties and the address(es) of the third parties to whom the direct payment will be made for goods or services provided to the minor and supported by an invoice or bill of sale, where applicable;

(d) The date that the disbursement plan was approved and the expiration date of the distribution plan; and

(e) The date and signature of the BIA official approving the plan with a certification that the plan is in the best interest of the account holder.

§ 115.422 As a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor, what are your responsibilities if you receive trust funds from a minor's supervised account?

If you are a custodial parent, the legal guardian, the person who BIA has recognized as having control and custody of the minor, or an emancipated minor who receives funds from a minor's supervised account, you must:

- (a) Consult with the social service provider on the development of an evaluation;
- (b) Sign an acknowledgment that you have reviewed the evaluation;
- (c) Follow the terms of a distribution plan approved by the BIA;
- (d) Follow any applicable court order;
- (e) Provide receipts to the social services provider in accordance with terms of the evaluation for all expenses paid out of the minor's IIM funds;
- (f) Review the statements of performance for the supervised account for discrepancies, if applicable;
- (g) File tax returns on behalf of the account holder, if applicable; and
- (h) Notify the social service provider of any change in circumstances that

impairs your performance of your obligations under this part or inform the social service provider of any information regarding misuse of a minor's trust funds.

§ 115.423 If you are a custodial parent, a legal guardian, or an emancipated minor, may BIA authorize the disbursement of funds from a minor's supervised account without your knowledge?

At the Secretary's discretion, the BIA may authorize the disbursement of funds from a minor's supervised account for the benefit of the minor.

§ 115.424 Who receives a copy of the BIA-approved distribution plan and any amendments to the plan?

The BIA-approved distribution plan will be provided to:

- (a) The custodial parent; or
- (b) A legal guardian; or
- (c) At the Secretary's discretion, in unusual circumstances, to a family member who has been recognized as having control and custody of the minor; or
- (d) An emancipated minor; and
- (e) OTFM.

§ 115.425 What will we do if we find that a distribution plan has not been followed or an individual has acted improperly in regard to his or her duties involving a minor's trust funds?

If we find that a distribution plan has not been followed or that a custodial parent, a legal guardian, or the person who has been recognized by the BIA as having control and custody of the minor has failed to satisfactorily account for expenses or has not used the minor's funds for the primary benefit of the minor, we will:

- (a) Notify the individual; and
- (b) Take action to protect the interests of the minor, which may include:
 - (1) Referring the matter for civil or criminal legal action;
 - (2) Demanding repayment from the individual who has improperly expended trust funds or failed to account for the use of trust funds;
 - (3) Liquidating a bond posted by the legal guardian, where applicable, to recover improperly expended trust funds up to the amount of the bond; or