

Part 116 - Trust Fund Accounting and Appeals

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Subpart A – General Provisions: Purposes and Definitions

116.001 What are the purposes of this part?

This part sets forth the rules and procedures the Department has established to provide individual Indians and tribes with the account statements required by law. This part also sets forth the rules and procedures the Department has established to address accounting or funds-related claims. These rules set forth the Department's chosen approach for providing account statements, for setting priorities in the allocation of its limited resources, and for seeking to encourage and expedite settlements of accounting or funds-related claims regarding tribal accounts. Any accounting or funds-related claims must be presented to the Department using the procedures in this part to permit them to be addressed administratively before any claim may be brought in litigation.

116.002 What definitions do I need to know?

As used in this part:

Accepting tribe(s) means a tribe that accepted the reconciliation report by providing an attestation required by Section 304(2)(A) of the Trust Reform Act or a tribe that has otherwise accepted tribal account balances prior to the effective date of this rule through a settlement, administrative action, or judgment.

Account holder means a tribe or a person who owns the funds in a tribal or IIM account that is maintained by the Secretary.

Account statement means a written statement provided by the Department to an account holder concerning the account holder's trust funds. Unless otherwise specified, the use of *account statement* in this part includes statements of performance issued by OST and historical statements of account issued by OHTA.

Accounting or funds-related claims means any material errors in the management and accounting of trust funds from the point of their collection (or coming due for collection) through disbursement, which include, but are not limited to, any asserted claims relating to collection of the appropriate amounts under lease, permit or sale agreements or other contracts, proper recording of transactions, timely collection of revenues, proper posting or accrual of interest earned, adequate yield on investments, undocumented changes in fund balance, delays in the posting or accrual of interest, and proper disbursements.

Accounting Standards Manual means the manual, which may be amended from time to time, that OHTA first released on July 2, 2002, to describe, among other things, the key documents to be used to reconcile trust fund transactions.

Administrative record means the written documents and evidence that support, explain, provide reasons for, or were considered in issuing an account statement or making the decision that is the subject of objection, review, or appeal, but shall not include deliberative process and other privileged materials.

Assurance means a reasonable level of confidence in the balance reconciled, reached as a result of reconciliation as documented in the administrative record.

Balance reconciled means an accurate and reliable balance of a tribal trust account, established by mutual agreement between the Department and a tribe or as stated in a historical statement of account.

BIA means the Bureau of Indian Affairs, Department of the Interior, or its authorized representative.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a Federal holiday, the period must carry over to the next business day unless otherwise prohibited by law.

Decision maker means either (a) OHTA's Tribal Branch Chief, or his or her designee, for actions taken under subpart B of this part, (b) OHTA's IIM Branch Chief, or his or her designee, for actions taken under subpart C of this part, or (c) OST's Deputy Special Trustee - Trust Services, or his or her designee, for actions taken under subpart D of this part.

DOI or Department means the Department of the Interior.

Executive Director means the Executive Director of OHTA.

General ledger means the paper or electronic systems used by the Department, including its offices and bureaus, to account for cash, investments, and account balances for tribal accounts and Individual Indian Money accounts.

Individual Indian Money (IIM) account(s) means an interest-bearing account for trust funds held by the Secretary 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, as defined in Part 115 of this Title.

IBIA means the Interior Board of Indian Appeals, Department of the Interior, or its authorized representative.

ICCA means the Indian Claims Commission Act, Pub. L. No. 79-726, 60 Stat. 1049.

Judgment accounts means tribal trust accounts held by the Secretary under the terms of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. § 1401 et seq.) or an Act of Congress or court order providing for Secretarial management of funds paid to tribes in compensation for and satisfaction of legal claims or judgments.

Litigating tribe means a tribe with litigation pending against the United States and/or executive branch officials, including the Department, in Federal District Court or the Court of Federal Claims that involves accounting or funds-related claims.

Negotiated Settlement Encouragement Act means Public Law No. 107-153, 116 Stat. 79, March 19, 2002 (An Act to Encourage the Negotiated Settlement of Tribal Claims).

OHTA means the Office of Historical Trust Accounting, Department of the Interior, or its authorized representative.

OST means the Office of the Special Trustee for American Indians, Department of the Interior, or its authorized representative.

Reconciliation means the process OHTA employs to achieve assurance that an OHTA account statement is full and complete and that the ending balance is accurate. Reconciliation may encompass an array of audit procedures (i.e., tests) or other analysis, depending on the circumstances, including the following:

- (a) Comparison of source documents with the general ledger in accordance with the Accounting Standards Manual;
- (b) Comparison of data in one report, record, or system to that in another report, record, or system;
- (c) Determination of whether payments contemplated by a written lease or sale agreement equal the amounts that were actually collected and posted to an account;
- (d) Consideration of system integrity, reliability, controls, and procedures for justifiable reliance on the data;
- (e) Consideration of claims made or comments or documents received from account holders; and/or
- (f) Other analytical, statistical, or forensic procedures and analyses.

Reconciliation project means the multi-year efforts of the Department to reconcile tribal trust accounts pursuant to certain agreed-upon procedures as described in the resulting reconciliation reports.

Reconciliation report means the reports and other information the Department provided to tribes in connection with the reconciliation project, including the fiscal year 1972-1992 agreed-upon procedures report, fiscal year 1972-1995 account statements, images of fiscal year 1972-1992 supporting documents, and, with respect to some tribes, supplemented by reports dated April 23, 1996, July 15, 1997, and October 31, 1997.

Reviewing official means the Executive Director, or his designee, for review of actions

taken under subparts B and C of this part, or the Principal Deputy Special Trustee of OST, or his designee, for review of actions taken under subpart D of this part.

Secretary means the Secretary of the Department of the Interior.

Treasury means the United States Department of the Treasury.

Tribe or Indian tribe means any Indian tribe, nation, band, pueblo, rancheria, colony, or community, including any Alaska Native Village or regional or village corporation as defined or established under the Alaska Native Claims Settlement Act which is federally recognized by the United States government for special programs and services provided by the Secretary to Indians because of their status as Indians. Tribe also means two or more tribes joined for any purpose, the joint assets of which include funds held in trust by the Secretary.

Tribal account or tribal trust account generally means a trust fund account for a federally recognized tribe that is maintained and held in trust by the Secretary or for such other tribe which does not meet the definition of tribe under this rule but for which Congress has directed that an account for trust funds be created.

Trust account means a tribal trust account, an IIM account, or a special deposit account for trust funds maintained by the Secretary.

Trust assets means trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians.

Trust funds means money derived from the sale or use of trust lands, restricted fee lands, or trust resources, and any other money that the Secretary must accept into trust.

Trust funds accounting system means the system that the Department has utilized since 1996 for tribal trust accounts and since 2000 for IIM accounts to account for and report on receipts, investments, and disbursements of trust funds.

Trust land(s) means any tract or interest therein, that the United States holds in trust status for the benefit of a tribe or an individual Indian.

Trust Reform Act means the American Indian Trust Fund Management Reform Act of 1994, Pub. L. No. 103-412, 108 Stat. 4239, 25 U.S.C. 4001 et seq.

Trust resources means any element or matter directly derived from Indian trust property.

We, us, or our refers to the officers and employees of the Department.

You or your refers to an account holder.

Subpart B – Historical Accountings: Tribal Accounts

116.101 What is the purpose of this subpart?

This subpart respects tribal sovereignty by providing tribes the opportunity to engage in government-to-government negotiations to settle accounting or funds-related claims. In particular, this subpart describes the procedures OHTA will use upon request of a tribe to discuss the tribal account information provided previously to the tribe, to explain the options for providing additional information to tribes concerning tribal accounts, and, where possible, to resolve accounting or funds-related claims by mutual agreement.

116.102 What are the overall steps for providing historical accountings of tribal accounts?

First, at an initial consultation, OHTA will discuss with the tribes the reconciliation report as well as the options tribes may select under this rule. After the initial consultation and after OHTA receives resolutions from tribes identifying each tribe's preferred option, OHTA will publish a notice in the Federal Register that establishes the initial priorities for the work it will perform for tribes given the funds Congress makes available and the other factors articulated in this subpart. In general, OHTA will give first priority to tribes that request the expedited settlement proposal, second priority to tribes that request a negotiated tribal accounting plan, and last priority to tribes that will receive a historical statement of account. Thereafter, OHTA will publish similar periodic Federal Register notices establishing updated priorities and anticipated schedules for the completion of this work.

116.103 What time periods will be covered by the three options provided for in this subpart?

- (a) For accepting tribes, the starting date of an expedited settlement proposal, a negotiated tribal accounting plan, and a historical statement of account will begin with the effective date of the acceptance; for all other tribes, the starting date will be the date the account was opened, or the ICCA jurisdictional date of August 13, 1946, whichever date is later.
- (b) The ending date for an expedited settlement proposal will be the date on which the expedited settlement proposal is accepted by a tribe. The ending date for a negotiated tribal accounting plan will be established by mutual agreement of the tribe and the Department. The ending date of a historical statement of account will be the date on which the tribal account was closed, if closed before December

31, 2000, or December 31, 2000, if the tribal account was open on December 31, 2000.

116.104 How will OHTA prioritize and schedule the activities contemplated under this subpart?

To determine the priority and schedule for conducting initial consultations, establishing and performing negotiated tribal accounting plans, and issuing historical statements of account, OHTA will consider factors including, but not limited to:

- (a) The order in which requests are received;
- (b) Whether the tribe is an accepting tribe;
- (c) Whether the tribe is a litigating tribe and the date when the tribe first commenced suit;
- (d) Whether the tribe has requested an initial consultation and whether the tribe has indicated an intention to request an expedited settlement proposal, establish a plan for a negotiated tribal accounting plan, or receive a historical statement of account;
- (e) Whether the tribe or its trust accounts were encompassed within the special reconciliation project procedures that were performed with respect to a limited number of tribes;
- (f) The total dollar throughput flowing through the tribe's trust account; and
- (g) The total dollar amount of unreconciled transactions.

116.105 What protections apply to certain communications made pursuant to this subpart?

Statements made and documents produced by the United States or any of its agents or officers, including the Department, by a tribe, or by any other party in an initial consultation, an expedited settlement proceeding, or a negotiated tribal accounting proceeding will be deemed confidential settlement communications and will be inadmissible in any judicial, administrative, or other legal proceeding.

INITIAL CONSULTATION

116.106 What are the purposes of the initial consultation?

The purposes are to review and discuss with tribes the reconciliation report, subsequent reconciliation efforts, and the options that tribes may select as set forth in this subpart.

116.107 What will the initial consultation cover?

OHTA will consult with each tribe to discuss the reconciliation project, including the results achieved and how to utilize the supporting documents and other information provided to the tribes as part of the reconciliation report. OHTA also will explain the additional reconciliation efforts completed after the reconciliation project and explain the options that tribe may elect to pursue under this subpart. Each tribe may:

- (a) Request an expedited settlement proposal for settling accounting or funds-related claims pursuant to sections 116.111 - 116.118 of this subpart;
- (b) Request a negotiated tribal accounting plan pursuant to sections 116.119 - 116.125 of this subpart; or
- (c) Request a historical statement of account pursuant to sections 116.126 - 116.135 of this subpart.

116.108 How does the initial consultation begin?

Within 60 days after the effective date of this rule, tribes must submit a letter to OHTA requesting the initial consultation and setting forth the preferred time, place, and location for the initial consultation. The tribe must provide the name, title, and address of a person that OHTA may contact to schedule the initial consultation.

116.109 Where will the initial consultation take place?

OHTA will try to accommodate requests of the tribe to hold the initial consultation at a particular location requested by the tribe.

116.110 What if the tribe does not request an initial consultation?

- (a) If the tribe fails to request an initial consultation, the tribe cannot receive an expedited settlement proposal or establish a negotiated tribal accounting plan. If the tribe fails to request an initial consultation, the tribe will receive a historical statement of account unless the tribe is an accepting tribe.

- (b) If a tribe fails to request an initial consultation and is an accepting tribe, such accepting tribe shall be deemed to have accepted its balances as stated either in the tribe's reconciliation report or in the tribe's most recent account statement provided by the Department, whichever occurred last.

EXPEDITED SETTLEMENT PROPOSAL

116.111 What is an expedited settlement proposal?

The expedited settlement proposal is a means to resolve accounting or funds-related claims in a quick and comprehensive fashion. The proposals will feature monetary incentives for tribes that accept the proposal.

116.112 How does a tribe request an expedited settlement proposal?

Tribes that elect to receive an expedited settlement proposal must submit a written resolution to OHTA requesting the proposal. Tribes must submit a resolution requesting an expedited settlement offer within 60 days after participating in the initial consultation. The tribe's resolution must include the following information:

- (a) The name, title, address, and telephone number of a person that is authorized to receive the expedited settlement proposal;
- (b) A statement that the initial consultation was completed; and
- (c) Confirmation by the tribe's accountant, treasurer, or other authorized financial official or advisor that he or she has reviewed the reconciliation report.

116.113 What will OHTA do after it receives the tribal resolution requesting an expedited settlement proposal?

OHTA will first advise the tribe whether the resolution contains all the information required by section 116.112 or whether further information is needed. Once the tribe has provided all the information required by section 116.112, OHTA will develop an expedited settlement proposal for delivery to the tribe.

116.114 What are the factors OHTA will use to develop an expedited settlement proposal?

Each expedited settlement proposal will be based on the likelihood that the account balance of a tribe is understated as a result of accounting or funds-related claims. In determining

the likelihood that an account balance is understated, OHTA will utilize the results of the reconciliation project and the tribe's reconciliation report to consider:

- (a) The dollar value of the unreconciled receipt, disbursement, and transfer transactions in the tribe's accounts;
- (b) The generic likelihood that a loss may have occurred for each category of transaction in the tribe's accounts;
- (c) The actual rate of error for each category of transactions for the tribe's accounts based on the reconciliation report;
- (d) The level of activity in the tribe's accounts;
- (e) The resource savings to the United States in reaching a settlement without the costs associated with additional government-to-government negotiations and with performing additional reconciliation or accounting work;
- (f) In the event litigation has not been filed by a tribe, the resource savings to the United States in settling accounting or funds-related claims without the costs associated with litigation;
- (g) Application of netting, forgiveness, and interest policies; and
- (h) Such other factors that OHTA determines are appropriate in providing incentives to a tribe to accept an expedited settlement proposal.

116.115 What are the required provisions and conditions of each expedited settlement proposal?

- (a) Each expedited settlement proposal shall contain the following provisions and conditions, which shall become binding upon acceptance of the proposal:
 - (1) the tribe agrees to and accepts, as valid and correct in all respects, its tribal account balances as most recently stated in either a tribe's reconciliation report or its most recent account statement thereafter;
 - (2) the tribe compromises, releases, and waives all accounting and funds-related claims which it has or could have raised for acts or omissions occurring at any time from the ICCA jurisdictional date of August 13, 1946, to the date of acceptance, together with any additional claims that

the parties agree to resolve through the expedited settlement process;

- (3) the tribe shall dismiss, with prejudice, any pending litigation concerning accounting and funds-related claims, and covenant not to assert the applicability of the Act of Nov. 5, 1990, Pub. L. No. 101-512, 104 Stat. 1915, 1929; Act of Nov. 13, 1991, Pub. L. No. 102-154, 105 Stat. 990, 1004; Act of Oct. 5, 1992, Pub. L. No. 102-381, 106 Stat. 1374, 1389; Act of Nov. 11, 1993, Pub. L. No. 103-138, 107 Stat. 1379, 1391; Act of Sept. 30, 1994, Pub. L. No. 103-332, 108 Stat. 2499, 2511; Act of April 26, 1996, Pub. L. No. 104-134, 110 Stat. 1321; Act of September 30, 1996, Pub. L. No. 104-208, 110 Stat. 3009; Act of November 14, 1997, Pub. L. No. 105-83, 11 Stat. 1543; Act of October 11, 2000, Pub. L. No. 106-291, 114 Stat. 922; Act of Nov. 5, 2001, Pub. L. No. 107-63, 115 Stat. 435; Act of Feb. 20, 2003, Pub. L. No. 108-7, 117 Stat. 236; Act of Nov. 10, 2003, Pub. L. No. 108-108, 117 Stat. 1263; Act of Dec. 8, 2004, Pub. L. No. 108-447, 118 Stat. 2809; The Consolidated Appropriations Act of 2005, Pub. L. No. 108-447, 118 Stat. 2809; or any similar legislation concerning losses to or mismanagement of trust funds;
 - (4) the tribe shall agree that the settlement funds, if any, will not be taken into trust or held in a trust account and will be distributed according to requirements or restrictions as to the use of any such settlement funds; and
 - (5) the tribe agrees to execute and return all documents necessary to confirm its acceptance of the expedited settlement proposal to OHTA, for receipt by OHTA within 45 calendar days of the date of the tribe's acceptance.
- (b) The expedited proposals shall be in writing and shall be sent to each tribe by registered mail, return receipt requested (or the equivalent thereof).

116.116 What will OHTA do to explain the basis of the expedited settlement proposal?

OHTA will meet with each tribe, either individually or in groups, to explain the basis of its expedited settlement proposal(s) and to describe the time requirements for the tribe's response. OHTA shall use its best efforts to complete such meetings within 45 calendar days of the date the proposals are initially made.

116.117 How should the tribe respond to the expedited settlement proposal?

Each tribe must respond to the proposal within 60 days after completion of the expedited

settlement proposal meeting by submitting to OHTA a tribal resolution either accepting or rejecting the expedited settlement proposal. If the tribe rejects the expedited settlement proposal, the tribal resolution also must request either a negotiated accounting plan or a historical statement of account.

116.118 What happens if a tribe accepts the expedited settlement proposal?

The Department will use its best efforts to secure monies from appropriated funds or other sources to fund payment of the expedited settlement.

116.119 What happens if a tribe fails to respond to or rejects the expedited settlement proposal without selecting an alternative approach?

- (a) All expedited settlement proposals shall be deemed to have been withdrawn if a tribe fails, within the 60-day period set forth in section 116.116, to either submit a resolution to OHTA accepting or rejecting the expedited settlement proposal.
- (b) If a tribe fails to respond to the expedited settlement proposal, or if it rejects the expedited settlement proposal without requesting either a negotiated tribal accounting plan or a historical statement of account, within the 60-day period, the tribe will receive a historical statement of account unless the tribe is an accepting tribe.
- (c) If a tribe fails to respond to or reject an expedited settlement proposal without requesting a negotiated tribal accounting plan or a historical statement of account within the 60-day period and is an accepting tribe, such accepting tribe shall be deemed to have accepted its balances as stated either in the tribe's reconciliation report or in the tribe's most recent account statement provided by the Department, whichever occurred last.

NEGOTIATED TRIBAL ACCOUNTING PLAN

116.120 What are the key features of a negotiated tribal accounting plan?

OHTA and a tribe may establish a negotiated tribal accounting plan, through a negotiated process, that may include analyses of issues of concern to a tribe that would not be part of the historical statement of account. If a negotiated tribal accounting plan cannot be mutually established, OHTA will provide a historical statement of account pursuant to the procedures set forth below. If a negotiated tribal accounting plan is established and performed, the tribe and the Department will attempt to cooperatively settle all trust fund mismanagement issues utilizing the results of the accounting conducted in accordance with the negotiated tribal accounting plan and

such other information that the parties deem appropriate. If a negotiated tribal accounting plan is established, but the tribe believes that the plan has not been implemented, the tribe may seek administrative review and appeal in accordance with subpart E of this rule.

116.121 How does a tribe initiate the process for establishing a negotiated tribal accounting plan?

Each tribe must submit to OHTA a tribal resolution indicating its commitment to negotiate such an accounting plan. The resolution also must include all of the following information:

- (a) A statement that the initial consultation has been completed;
- (b) A statement by the tribe's accountant, treasurer, or other authorized financial official or advisor that he or she has reviewed the reconciliation report;
- (c) A description of the issues that the tribe would like OHTA to consider, including the legal basis for those issues and a description of the accounts and revenue streams involved; and
- (d) Agreement that the tribe will dismiss or stay any pending litigation concerning accounting or funds-related claims while the tribe and the Department seek to establish a negotiated tribal accounting plan.

116.122 What will OHTA do after it receives the tribal resolution requesting to initiate the process to establish a negotiated tribal accounting plan?

OHTA will first advise the tribe whether the resolution contains all the information required by section 116.120 or whether further information is needed. Once the tribe has provided all the information required by section 116.120, OHTA will provide the tribe with a proposed schedule for negotiations.

116.123 What elements must be included in a negotiated tribal accounting plan?

- (a) A negotiated tribal accounting plan must be mutually acceptable to the tribe and the Department. The elements of a negotiated tribal accounting plan may vary, depending in part on the specific interests or concerns of each tribe. However, a negotiated tribal accounting plan must identify and describe the following minimum elements:
 - (1) list of accounts to be considered;

- (2) list of issues to be considered for each of the accounts, including a specification of any accounting or funds-related claims;
 - (3) description of how sampling, auditing, or other testing methods will be applied;
 - (4) necessary document collection and imaging efforts, whether in the custody of the Department, tribes, or outside sources, including plans or approaches to be utilized in the event that documents or other information are not located concerning particular transactions or events;
 - (5) schedule and list of deliverables;
 - (6) sequence of tasks and activities;
 - (7) estimated cost and time frames for completion of tasks and activities;
 - (8) format and nature of any reports, statements, or analysis to be completed or delivered; and
 - (9) procedures for modifying the above components.
- (b) A negotiated tribal accounting plan might also encompass one or more of the following additional elements:
- (1) ways and means to fund accounting or funds-related claims that may result from performing the negotiated tribal accounting plan as specifically agreed to by the Department and a tribe;
 - (2) description of analyses to be performed that would not otherwise be provided in connection with a historical statement of account;
 - (3) specific trust assets that have produced income received in trust by the Department;
 - (4) statement of agreement that certain conclusions derived from documents, information, or results will be utilized to inform any settlement or subsequent work which may be performed; and/or
 - (5) Other reconciliation or accounting tasks as agreed to by the Department

and a tribe.

116.124 What is the process for establishing a negotiated tribal accounting plan?

There generally will be three phases to establishing and performing a negotiated tribal accounting.

- (a) In the first phase, the tribe and OHTA will collaboratively develop a list of issues and perform initial fact finding and document collection.
- (b) In the second phase, the tribe and OHTA will meet to narrow and define the issues and establish a negotiated tribal accounting plan that shall include the information required in section 116.122 of this subpart and documentation that the tribe waives and releases any right to receive additional reconciliation or accounting work pursuant to this part or in court.
- (c) In the third phase, OHTA will perform the work identified in the negotiated accounting plan and provide the tribe with the agreed-upon deliverables.

116.125 What happens after a negotiated tribal accounting plan is performed?

- (a) After performing the work identified in the negotiated accounting plan, OHTA will meet with the tribe to present and explain the draft deliverable(s). A tribe may submit written comments to OHTA on the draft deliverable(s) within 30 days after the meeting. OHTA will consider any comments received and issue a final report to the tribe.
- (b) Within 90 days after the date of the final report, the Department and the tribe will exchange written settlement proposals and legal position papers on any outstanding issues that may affect settlement of accounting or funds-related claims. If the Department and the tribe are unable to settle all accounting or funds-related claims through cooperative negotiation within 180 days after the exchange of the written settlement proposals and legal position papers, the negotiation period shall terminate unless extended by the parties.

116.126 What happens if a tribe believes that OHTA failed to perform the negotiated accounting plan?

- (a) The tribe must file a timely written objection with the decision maker in accordance with the appeals processes set forth in subpart E of this rule.

HISTORICAL STATEMENT OF ACCOUNT

116.127 Under what circumstances will a tribe receive a historical statement of account?

- (a) In the event that a tribe and the Department do not agree upon an expedited settlement proposal or a negotiated tribal accounting for that tribe, OHTA will provide that tribe with a historical statement of account. Tribes that fail to respond to the Department will receive a historical statement of account unless the tribe is an accepting tribe.
- (b) If a tribe fails to respond to the Department and is an accepting tribe, such accepting tribe shall be deemed to have accepted its balances as stated either in the reconciliation report or in the last account statement provided by the Department, whichever occurred last.

116.128 What will be provided as part of a historical statement of account?

The historical statement of account will constitute a written statement of historical transactions derived primarily from the general ledger. The historical statement of account will include, as appropriate, the following information:

- (a) The source, type, and status of the funds;
- (b) The beginning balance;
- (c) The gains and losses;
- (d) Receipts and disbursements;
- (e) The ending balance; and
- (f) A brief description of the methodology used to prepare the statement, including the results of any reconciliation performed.

116.129 What information will be excluded from the historical statement of account?

We will not account for or report to an account holder those funds the account holder received historically through direct pay. Under the Trust Reform Act, we are responsible only for accounting for and reporting those trust funds received into, and maintained by, the Department's trust funds management systems.

116.130 Which transactions in tribal accounts will be subject to reconciliation procedures?

All transactions over a certain dollar amount will be reconciled with supporting documents while only a random sample of the transactions falling under such amount will be reconciled with supporting documents.

116.131 What standards will OHTA use to reconcile transactions?

OHTA will reconcile selected transactions in accordance with the Accounting Standards Manual.

116.132 How does a tribe initiate the process for receiving a historical statement of account?

Each tribe must submit to OHTA a tribal resolution requesting a historical statement of account. The resolution also must include all of the following information:

- (a) The name, title, address, and telephone number of a person that is authorized to receive the expedited settlement proposal;
- (b) A statement that the initial consultation has been completed; and
- (c) A statement by the tribe's accountant, treasurer, or other authorized financial official or advisor that he or she has reviewed the reconciliation report.

116.133 Will a tribe receive a historical statement of account if it fails to request such an accounting?

- (a) A tribe will receive a historical statement of account in the following instances, even though the tribe fails to request a historical statement of account:
 - (1) the tribe fails to request and participate in the initial consultation;
 - (2) the tribe participates in the initial consultation but later fails to request an expedited settlement offer or a negotiated accounting; or
 - (3) the tribe properly requests an expedited settlement offer but no expedited settlement agreement is reached between the tribe and OHTA, and the tribe fails to request a negotiated or historical statement of account.

- (b) Accepting tribes will not receive a standard statement of account if the accepting tribe:
 - (1) fails to request or participate in the initial consultation;
 - (2) requests and participates in the initial consultation but later fails to request either an expedited settlement offer, negotiated accounting, or a historical statement of account; or
 - (3) properly requests an expedited settlement offer but no expedited settlement agreement is reached between the accepting tribe and the Department, and the accepting tribe fails to request a negotiated or historical statement of account.
- (c) The Department may allow tribes that are scheduled to receive historical statements of account to request at a later time a negotiated accounting or the expedited settlement proposal. The Department will issue guidelines to govern such requests.

116.134 How long will it take to receive a historical statement of account?

The time within which OHTA will complete accounting work for tribes will be established in periodic notices published in the Federal Register in accordance with the factors established in section 116.104 of this part.

116.135 What happens after the tribe receives a historical statement of account?

- (a) OHTA will provide the historical statement of account to the tribe. OHTA will schedule a meeting to present and explain the statement to the tribe within 90 days after delivery of the statement.
- (b) A tribe may submit written comments to OHTA on the statement within 60 days after the meeting.
- (c) OHTA will consider the comments received and issue a revised statement to the tribe to the extent necessary.
- (d) If OHTA issues one or more revised statements, the tribe may submit written comments to OHTA within 30 days after the date of the revised statement(s), and OHTA will consider the comments and issue an amended statement to the tribe to

the extent necessary.

- (e) If OHTA declines to issue a revised statement, the tribe must then file a written objection with the decision maker as required by the administrative appeal procedures set forth in subpart E of this rule.

Subpart C - Historical Accountings: IIM Accounts

116.201 What is the purpose of this subpart?

This subpart describes the process OHTA will use to provide individual account holders with historical statements of account for land-based accounts and judgment and per capita accounts.

116.202 Which IIM accounts are covered by this subpart?

The only land-based and judgment and per capita IIM accounts that are covered by this subpart are:

- (a) Those accounts that were open on or after June 24, 1938, and that were still open on October 25, 1994; and
- (b) Those accounts that were open after October 25, 1994, but not accounts opened after December 31, 2000.

116.203 What standards will OHTA use to reconcile transactions?

OHTA will reconcile selected transactions in accordance with the Accounting Standards Manual.

LAND-BASED ACCOUNTS

116.204 What will a land-based historical statement of account include?

A land-based historical statement of account will include a written statement of historical transactions derived primarily from the general ledger. The statement will include, as appropriate, the following information:

- (a) The source, type, and status of the funds;
- (b) The beginning balance;

- (c) The gains and losses;
- (d) Receipts and disbursements;
- (e) The ending balance; and
- (f) A brief description of the methodology used to prepare the statement, including the results of any reconciliation performed.

116.205 What information will be excluded from the land-based historical statement of account?

We will not account for or report to an account holder those funds the account holder received historically through direct pay. Under the Trust Reform Act, we are responsible only for accounting for and reporting those trust funds received into, and maintained by, the Department's trust funds management systems.

116.206 Which transactions in land-based accounts will be subject to reconciliation procedures?

All transactions over a certain dollar amount will be reconciled with supporting documents, while only a random sample of the transactions falling under such amount will be reconciled with supporting documents.

JUDGMENT AND PER CAPITA ACCOUNTS

116.207 What will a judgment and per capita historical statement of account include?

Judgment and per capita historical statements of account will include a written statement of historical transactions, derived primarily from the general ledger. These statements will include, as appropriate, the following information:

- (a) The source, type, and status of the funds;
- (b) The beginning balance;
- (c) The gains and losses;
- (d) Receipts and disbursements;

- (e) The ending balance; and
- (f) A brief description of the methodology used to prepare the statement, including any reconciliation performed.

116.208 What information will be excluded from the judgment and per capita historical statement of account?

We will not account for or report to an account holder those funds the account holder received historically through direct pay. Under the Trust Reform Act, we are responsible only for accounting for and reporting those trust funds received into, and maintained by, the Department's trust funds management systems.

116.209 Which transactions in judgment and per capita accounts will be subject to reconciliation procedures?

All transactions within the covered judgment and per capita accounts will be reconciled with supporting documentation in accordance with the Accounting Standards Manual.

Subpart D - Statements of Performance: Tribal Accounts and IIM Accounts

116.301 What information will be provided in a statement of performance for IIM and tribal accounts?

For the period concerned, an OST account statement will identify:

- (a) The source, type, and status of the trust funds deposited and held in a trust account;
- (b) The beginning balance;
- (c) The gains and losses;
- (d) Receipts and disbursements; and
- (e) The ending account balance of the statement.

116.302 How often will an account holder receive information about its trust account(s)?

OST is required to provide each account holder with a statement of performance quarterly, within or no later than 20 business days after the close of every quarterly statement period. A tribe may request to receive information about its trust account(s) more frequently pursuant to 25 CFR, part 115, subpart G.

116.303 Who provides an address of record for an account?

- (a) The procedures for providing addresses of record for supervised accounts are provided in Part 115 of this Title.
- (b) For all other accounts, the account holder must provide at all times a current address to the Department, and this address will be the address of record for the account. In the event that your address is to change, you must inform the Department of your new address and its effective date in advance of the change.

116.304 How is an address of record changed for IIM accounts that are covered by this subpart?

- (a) To change an address of record for such IIM accounts, you may inform the Department of your current or new address by contacting the trust beneficiary call

center at (888) 678-6836 with the account holder's name and new address. In addition, when requesting a change of an address of record, the following information must be provided to identify the account:

- (1) the account number;
 - (2) the account holder's date of birth;
 - (3) the account holder's tribal enrollment number; and
 - (4) the account holder's social security number.
- (b) The account holder may be asked to submit additional information to OST in writing.

116.305 How is an address of record changed for tribal accounts that are covered by this subpart?

- (a) To change an address of record for tribal accounts, the tribe must submit a written resolution to the Department that contains the following information:
- (1) the tribe's name;
 - (2) the tribe's account number(s);
 - (3) the name and title of the person(s) authorized to receive statements;
 - (4) the new address(es) where the statements are to be sent; and
 - (5) the signature(s) and/or attestation required by the constitution, bylaws, or other governing documents of the tribe.

116.306 Will we account for or report to an account holder those funds the account holder receives through direct payment?

No, under the Trust Reform Act we are only responsible for accounting for and reporting those monies received into, and maintained by, the Department's trust funds management systems.

Subpart E - Appeals

116.401 What are the steps to challenge an account statement?

Generally, the process begins when an account holder submits a written objection to the Department that describes the reasons why the account holder believes that an OHTA or OST account statement is wrong. The following chart summarizes the process, which is explained in more detail in the sections below.

If an account holder . . .	the account holder must . . .	Deadline	Section(s)
disagrees with an account statement issued by the Department . . .	submit a written objection to the decision maker within . . .	90 days of the issuance date of account statements issued after the effective date of this rule, or 180 days after the effective date of this rule for account statements issued between January 1, 2001, and the effective date of this rule	116.404 - 116.410
needs additional time to submit supporting documents to the decision maker . . .	submit a request for a 90-day extension along with your written objection within . . .	the applicable objection deadline, which depends on the date of the account statement	116.405(d)
disagrees with the decision of the decision maker. . .	file a written request for review with the reviewing official within . . .	45 days of the date of the issuance date of the decision maker's decision	116.411 - 116.417
disagrees with the decision of the reviewing official . . .	file a written notice of appeal with the IBIA within . . .	45 days of the issuance date of the reviewing official's decision	116.418 - 116.420 and Part 4 of Title 43, CFR

116.402 Does an account holder need a lawyer to seek the administrative relief made available under this subpart?

No. You may represent yourself. If you choose to be represented by someone else at

your expense, including a lawyer, the representative must meet the standards established in 43 CFR Part 1 – Practices before the Department of the Interior.

116.403 Are there any decisions that are not administratively appealable under this subpart?

Yes. An account holder cannot separately appeal documents that do not constitute final agency action and are not subject to administrative appeal or judicial review, including:

- (a) An expedited settlement proposal or a negotiated tribal accounting plan; and
- (b) Documents such as reports, studies, investigations, and recommendations or interim actions that support or further the expedited settlement proposal, the negotiated tribal accounting plan, or an account statement.

WRITTEN OBJECTION

116.404 What must account holders do if they have any questions or concerns about the accuracy or completeness of any account statement?

You must submit a timely written objection to the Department within the applicable objection deadline:

- (a) If you have any questions or concerns about the accuracy or completeness of any OST account statement you receive from the Department that is dated January 1, 2001, through the effective date of this rule, you must submit a written objection to the address specified below within 180 days of the effective date of this rule.
- (b) If you have any questions or concerns about the accuracy or completeness of any account statement you receive from the Department dated after the effective date of this rule, you must submit a written objection to the address specified below within 90 days of the issuance date printed on the statement.
- (c) In order to avoid premature objections, an account holder need not submit a written objection to an OST account statement if the following conditions apply:
 - (1) the only question or concern the account holder has relates to the beginning balance stated on an OST account statement issued before January 1, 2001; and
 - (2) the account holder has not yet received an OHTA account statement relative to the trust account covered by the OST account statement.

116.405 What information must an account holder provide in a written objection?

Your written objection must include:

- (a) Your name, address, and telephone number;
- (b) A statement that describes all the errors or omissions (including any accounting or funds-related claims) that the account holder believes to exist as to that account statement, with as much explanatory detail as possible;
- (c) A statement describing the action that OST or OHTA should take; and
- (d) All supporting documents, arguments, or any other supporting information that the account holder believes relates to any error(s) or omission(s) in the account statement, or a request for an additional 90 days within which to submit such supporting information that the account holder cannot provide within the applicable objection deadline.

116.406 Where must the account holder submit the written objection and all supporting documentation?

The written objection and all supporting information must be submitted to the following address:

[U.S. Department of the Interior]

116.407 May the account holder ask for more time to submit a written objection?

No. You must submit a written objection within the applicable objection deadline. The Department will not grant any extension of time for you to submit a written objection.

116.408 What happens if the account holder fails to submit a written objection within the applicable objection deadline?

If you fail to advise the Department of any questions or concerns you have regarding each account statement, by submitting a written objection within the applicable objection deadline, there are the following important consequences:

- (a) The account statement at issue will be conclusively deemed accurate and complete for all purposes;
- (b) You will have abandoned all your rights to invoke the remainder of the review and appeals process as to that same account statement, which means that you will not be able to seek any other review, appeal, or administrative relief within the Department as to any accounting or funds-related claims; and

- (c) You will have failed to exhaust your administrative remedies, which is a prerequisite to challenging the Department's decision in court.

116.409 What will the Department do after it receives a timely written objection from the account holder?

The Department will acknowledge receipt of your written objection by sending you a written acknowledgment. The Department's acknowledgment also will include a response to your request, if made, for an extension of time to provide supporting information. After reviewing the written objection, the decision maker will:

- (a) Request additional information from the account holder;
- (b) Provide the account holder with a revised account statement; and/or
- (c) Explain why the original account statement was correct and then explain the account holder's right to appeal that determination to the reviewing official.

116.410 How long will it take before the decision maker responds to the account holder after the decision maker acknowledges receipt of a written objection?

It is impossible to determine how long each review will take, in part because each account holder's questions and concerns may differ and because certain account holders may request additional time to submit supporting documents. The decision maker will provide you with a status update if the decision maker has not provided the account holder with the decision maker's response within 120 days after the date of the Department's acknowledgment or the date that you last provided supporting information to the Department, whichever is later.

REQUEST FOR REVIEW

116.411 What must an account holder do if the account holder disagrees with the decision maker's response?

You must submit a written request for review within 45 days of the date of the decision maker's written response to you.

116.412 What information must an account holder provide in a written request for review?

Your written request for review must include:

- (a) Your name, address, and telephone number;
- (b) A statement that describes the reasons why you believe the action taken by the

decision maker was incorrect; and

- (c) A description of the action that the reviewing official should take.

If you would like to raise issues that you failed to present to the decision maker, your written request for review also must include the information required by section 116.413.

116.413 May an account holder ask the reviewing official to consider new facts or issues that were not presented to the decision maker?

- (a) Generally no. An account holder cannot raise new facts or issues before the reviewing official. Unless the account holder has new or different supporting materials that the account holder was unable to submit to the decision maker for good cause shown, the reviewing official will evaluate the request for review based only on the entire record that was available to the decision maker, and his or her review will be limited to the facts and issues that the account holder presented to the decision maker.
- (b) If the account holder has new or different supporting materials and believes that an exception should be made, the account holder must raise all such new facts and issues in the account holder's written request for review with an explanation of good cause for failing to present them to the decision maker.
- (c) No later than 60 days after receipt of the written request for review, the reviewing official will notify the account holder whether the request to submit new issues has been approved and will provide the deadline by which supporting materials for each such new issue are to be submitted to that official to the extent approved.

116.414 Where must the account holder submit the written request for review and all other communications with the Department concerning the written request for review?

The written request for review and all other related communications must be submitted to the following address:

[U.S. Department of the Interior]

116.415 May the account holder ask for more time to submit a written request for review?

No. You must submit a written request for review within 45 days of the decision maker's decision. The Department will not grant any extension of time for you to submit a written request for review.

116.416 What happens if the account holder does not submit a written request for review within the 45-day deadline?

If you fail to submit a written request for review within the 45-day deadline, there are the following important consequences:

- (a) The decision maker's decision will be final for the Department;
- (b) The account statement at issue will be conclusively deemed accurate and complete for all purposes;
- (c) You will have abandoned all your rights to invoke the remainder of the appeals process as to that same account statement, which means that you will not be able to seek any other review, appeal, or administrative relief within the Department as to any accounting or funds-related claims; and
- (d) You will have failed to exhaust your administrative remedies, which is a prerequisite to challenging the Department's decision in court.

116.417 How long will it take before the reviewing official responds to your written request for review?

Within 60 days after receiving your written request for review, the reviewing official will:

- (a) Advise the account holder that additional time and/or information is needed, or
- (b) Affirm, modify, or reverse the decision maker's decision.

NOTICE OF APPEAL

116.418 What must an account holder do if the account holder disagrees with the reviewing official's decision?

- (a) You must file a written notice of appeal with the IBIA pursuant to Part 4 of 43 CFR within 45 days of the issuance date of the reviewing official's decision.
- (b) Subject to the provisions of this subpart, the provisions of 43 CFR Part 4 shall apply to all such appeals taken from BIA, OST or OHTA decisions concerning an account statement. References to the Bureau of Indian Affairs in 43 CFR Part 4 (including, but not limited to, those found in sections 4.311, 4.312, 4.314, 4.318, 4.322, 4.333, 4.335, 4.338 and 4.340) shall be deemed references to OST and/or OHTA, as applicable, for the purpose of appealing the reviewing official's decision to the IBIA.

116.419 What matters may IBIA consider in such an account holder's appeal?

IBIA generally will consider only the issues raised before the reviewing official and only such documents and other factual materials that were presented to that official by the time required. In its discretion, IBIA also may consider new information when exercising the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

116.420 When does an account statement or decision under this subpart become final and effective?

- (a) No account statement or decision related thereto, including decisions relating to priority or sequence of accountings, shall be considered a final agency action of the Department that is subject to judicial review under 5 U.S.C. 705 while the account holder still may submit a written objection, request for review, or notice of appeal regarding the matter to a superior authority in the Department.
- (b) Decisions made by officials of OHTA and OST shall be effective when the time for submitting or filing a written objection, request for review, and/or notice of appeal has expired and the account holder has not submitted or filed a written objection, request for review, or notice of appeal, as applicable.
- (c) If the account holder properly files a notice of appeal with IBIA, and IBIA issues a decision on the appeal, the decision of IBIA will be final for the Department and will constitute a final agency action within the meaning of the Administrative Procedure Act, 5 U.S.C. section 552 et seq.
- (d) The administrative review provisions of this subpart are binding, and administrative review is required before any action under this part may be subject to judicial review. Failure to seek administrative review shall be a waiver of any right to judicial review.