

INTERTRIBAL MONITORING ASSOCIATION on Indian Trust Funds

DEPARTMENT OF INTERIOR REGULATORY INITIATIVE CONSULTATION PROCESS

Portland, Oregon

March 29, 2006

The Department of Interior held the second informal consultation on the Regulatory Initiative to reform all Code of Federal Regulations provisions pertinent to trust administration in Portland, Oregon on March 29, 2006. The consultation again focused on regulations that the Department of Interior has prioritized for implementation by early summer, 2006 including Title 43, Part 4 Department Hearings and Appeals Procedures; Title 25, Part 15 Probate of Indian Estates, Except for Members of the Five Civilized Tribes, New Regulations for Trust Fund Accounting and Appeals, Part 116, Fees for Service, and Unclaimed Moneys/Whereabouts Unknown. In addition, the Department of Interior addressed Title 25, Part 150 changes to Land Titles and Records Documents and Title 25, Part 152 Conveyances of Trust or Restricted Indian Lands; Removal of Trust or Restricted Status.

Michele Singer, Counsel to Associate Deputy Secretary of Interior and numerous DOI staff persons including solicitors and administrative law judges were in attendance to address questions. Approximately 150 people were in attendance including Tribal leaders, Tribal attorneys and individual Indians. Again, DOI utilized facilitators and a court reporter to record all comments. Additionally, DOI provided computers and instructions for participants to enter comments into the record.

DOI provided hardcopies of all the proposed regulations and also the previously circulated "roadmaps" outlining changes and DOI objectives with the changes. DOI provided a general overview of the probate and probate related regulations in the morning and addressed questions and comments from the audience. Unlike, the first consultation, the comments from the audience were more substantive and primarily focused on the probate provisions. Tribal leaders did express concerns with DOI's decision to discontinue will drafting and will holding, the lack of information to Tribes and individual Indians about the upcoming implementation of the American Indian Probate Reform Act on June 20, 2006 and the lack of technical assistance to Tribes in preparation for the AIPRA implementation date.

The substantive comments focused primarily around several issues in the probate and probate related regulations including:

1. Time limitations for preparation of probate files by the Bureau of Indian Affairs to avoid undue delay.

2. The purchase at probate provisions including the option for the purchase of a life estate without the consent of the remaindermen; and the lack of consent for purchase of interests of less than 5% of the total tract.
3. Issues with notice to Tribes and other eligible purchasers of interests available for purchase at probate.
4. Concern with the broad authority of the BIA to dispose of land and tangible assets while the probate is pending and instead that BIA should be required to protect the estate at least for a period of time.
5. Lack of information to Indian Country regarding the 100% spousal life estate provision for intestate succession that drastically revises the current expectation that spouses will fully inherit from a deceased spouse.
6. Concerns with the “without regard to waste” doctrine that allows the life estate holder expanded authority to utilize the life estate and sell the life estate without the consent of the remaindermen.
7. Concerns with the time frames for approval of a Tribal Probate Code; presently, state law may apply, after June 20, 2006, AIPRA provisions will apply, then upon approval of a Tribal Probate Code (likely in one year at the earliest) Tribal law will apply. The changes in law will result in significant confusion and inconsistency in probate cases.

After overwhelming objections from participants regarding the Fees for Services, DOI agreed to eliminate the fee for Tribes and individual Indians but to charge third parties who request services from the BIA. Additionally, DOI representatives indicated that they have worked to incorporate numerous changes based upon the submitted written comments thus far.

DOI also provided an overview of Part 152 Conveyances of Trust or Restricted Indian Lands; Removal of Trust or Restricted Status. While the audience had numerous questions on interpretation, few substantive comments were made due to the focus on probate and probate related regulations.

At the conclusion of the session, Tribes expressed concerns with several provisions in the proposed regulations that were directly taken from AIPRA. Several Tribal leaders proposed that AIPRA be reviewed prior to implementation to address some areas of concern.

Finally, Michele Singer reported that DOI was committed to continuing dialogue on the proposed regulations in Indian Country but would likely not schedule additional meetings until after publication of the draft regulations in the Code of Federal Regulations. Upon publication, the formal 60-day comment period would commence and during that period numerous formal consultation sessions would be scheduled.