

U.S. Department of the Interior
Indian Affairs

Request for Input on
Whether & How to Revise:
Probate Regulations
25 CFR 15, 43 CFR 30



Background

- ❖ We are seeking:
 - ❖ Insight on any aspects of the probate regulations that could be improved
 - ❖ LTRO, BIA, or OHA processes
 - ❖ Input on three areas BIA has identified as having the potential to streamline the probate process

Potential Probate Rule Revisions:

1. Increasing Monetary Limit for Funeral Expenses

❖ Current situation

- ❖ **Rule (25 CFR 15.301) establishes monetary limit of \$1,000 for distribution** from a decedent's IIM account funds to pay for funeral expenses when the account has a minimum date of death balance of \$2,500. The BIA will take into consideration total account balance, availability of non-trust funds, and other relevant factors in approving costs that will be paid directly to the service provider.
- ❖ While OHA's probate rules (43 CFR 30.140 *et. seq.*) allow individuals to file a claim against the estate, it may take several years for the probate to be submitted to the OHA by the BIA, processed and finalized, during which time the claim against the estate remains open.

Potential Probate Rule Revisions:

1. Increasing Monetary Limit for Funeral Expenses (cont'd)

❖ **Potential revision under consideration**

- ❖ Increase the distribution limit to \$5,000
- ❖ BIA's process approving funeral expense requests will remain the same (e.g. the decedent's account must still contain a minimum balance of \$2,500, BIA will consider criteria noted above, and service providers will be paid directly).

❖ **Potential alternative:**

- ❖ Raise the maximum distribution to \$5,000, but with the limitation that the total payments could not exceed 40% of the available account balance in order to preserve funds for heirs and other claimants. BIA's criteria for reviewing and approving funeral expense requests will remain the same.

Potential Probate Rule Revisions:

2. Allowing BIA to Make Minor Estate Inventory Corrections

❖ **Current situation**

- ❖ Rule (43 CFR § 30.126) requires a judge to issue a modification order if trust or restricted property belonging to a decedent is omitted from the inventory of an estate

❖ **Potential revision under consideration:**

- ❖ Possibly grant the BIA limited authority to make estate inventory modifications when heirship has already been determined by an OHA order
- ❖ If property interests were to be added:
 - ❖ BIA would notify all interested parties
 - ❖ If interested parties disagree with the modification, they may appeal

Potential Probate Rule Revisions:

2. Allowing BIA to Make Minor Estate Inventory Corrections

- ❖ **Potential revision under consideration would not affect the following situations:**
 - ❖ If property interests were to be removed:
 - ❖ OHA action would be required (as is currently the case)
 - ❖ If the modification would result in property taking a different line of descent (*e.g.* addition of an interest makes it no longer a “highly fractionated interest” subject to AIPRA’s single heir rule):
 - ❖ OHA action would be required to order the correct distribution to the determined heirs (as is currently the case)

Potential Probate Rule Revisions:

3. Clarifying OHA's Authority to Order Distribution of Trust Funds

❖ **Current situation - the rule (43 CFR § 30.254):**

- ❖ Governs how a judge distributes a decedent's trust or restricted property when the decedent died without a valid will and has no heirs
- ❖ Establishes different distributions based on whether 25 U.S.C. 2206(a) applies, **but for estates governed by AIPRA, does not identify trust personalty as a stand-alone category of trust property for distribution** (*e.g.* where there are no land interests in the decedent's estate or within the jurisdiction of any tribe).

❖ **Potential revision under consideration:**

- ❖ Provide clear authority for OHA to order distribution of trust funds when there are either no land interests in a decedent's estate or no land interests within the jurisdiction of any tribe

Potential Probate Rule Revisions:

3. Clarifying OHA's Authority to Order Distribution of Trust Funds

- ❖ **Potential revision under consideration (continued):**
 - ❖ Additionally, where the estate contains trust personalty associated with one tribe but interests in trust lands associated with another, the revision would require OHA to order:
 - ❖ The trust personalty distributed to the tribe with sufficient nexus to the funds, as determined by the judge, and
 - ❖ The land distributed to the tribe with jurisdiction over those interests

Potential Probate Rule Revisions: Other?

- ❖ **Ideas on potential revisions that could help:**
 - ❖ **Streamline probate processes**
 - ❖ **BIA process**
 - ❖ **OHA process**
 - ❖ **LTRO recording process**
 - ❖ **OST process**
 - ❖ **Ensure notice and due process**
 - ❖ **Ensure accuracy**

Next Steps

- ❖ Continue to gather thoughts and ideas on whether and how to revise probate regulations.

- ❖ Consultations

Date	Time (Eastern Time)	Location
Tuesday, July 12, 2016	2:00 pm – 4:00 pm	Call-in Number: (800) 857-7479 Passcode: 6543434
Wednesday, July 13, 2016	2:00 pm – 4:00 pm	Call-in Number: (800) 857-7479 Passcode: 6543434

- ❖ Comments due August 1, 2016
 - ❖ To consultation@bia.gov
 - ❖ (No need to send duplicate hard copy)
- ❖ Depending on comments, proposed rule?

Questions?

- ❖ For further information contact
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