



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

NOV 15 2019

Dear Tribal Leader:

The Indian Affairs officials who serve you strive to base each decision they make on solid reasoning and a complete and factual record; however, when one of those decisions adversely affects you, you may administratively appeal the decision to the next higher official within Indian Affairs. The regulations that establish the process for administrative appeals are located at 25 CFR Part 2. These regulations have not been updated for 30 years and do not reflect the current structure of Indian Affairs.

Today, I share with you a "Discussion Draft" version of revisions to the administrative appeal regulations. These revisions are intended to:

- Clarify how to appeal actions from each Indian Affairs official;
- Clarify timelines and filing deadlines;
- Make the regulations easier to understand and use; and
- Add provisions to address matters not covered in the current regulations, such as appeals of Office of the Special Trustee Statements of Performance.

I invite you to review the Discussion Draft and provide written comments to consultation@bia.gov by February 14, 2020, and/or attend one of the following consultation sessions.

Date	Time	Location
Wednesday, January 22, 2020	1 p.m. – 4 p.m. EST	(877) 918-2309 Passcode 2758156
TBD Week of February 10, 2020	1 p.m. – 4 p.m. EST	Capital Hilton 1001 16th St. NW Washington, DC 20036NCAI Executive Council Session

The full text of the Discussion Draft and updated information on consultation sessions are available at: <https://www.bia.gov/as-ia/raca/regulations-and-other-documents-in-development>.

If you have questions or need additional information, please contact Elizabeth Appel, Office of Regulatory Affairs and Collaborative Action, at (202) 273-4680, or Elizabeth.appel@bia.gov.

Sincerely,

Tara Sweeney
Assistant Secretary – Indian Affairs

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AUTHORITY: 43 U.S.C. 1457; 25 U.S.C. 9; 5 U.S.C. 301.

CROSS REFERENCE:

- For regulations applying to appeals from decisions of the Bureau of Indian Affairs to the Interior Board of Indian Appeals, see 43 CFR part 4.
- For regulations governing the process by which the Bureau conducts Secretarial elections for Tribes wishing to adopt or amend Tribal constitutions, see 25 CFR part 81.
- For regulations governing the process by which a group may become acknowledged as a federally recognized Tribe, see 25 CFR part 83.

Subpart A - Purpose, Definitions, and Limitations of this Part**§ 2.100 What is the purpose of this part?**

If you are adversely affected by certain decisions of an Indian Affairs official, you can challenge (appeal) that decision to a higher authority within the Department by following the procedures in this part. Except as otherwise provided in other applicable laws and regulations, you must exhaust the mechanisms for relief available under this part before you can appeal to a Federal district court pursuant to 5 U.S.C. 704 (the Administrative Procedure Act).

§ 2.101 What terms do I need to know?

Administrative record means all documents that were considered in making the decision that is the subject of the appeal, and all relevant documents that were presented for consideration.

Agency means the Department of the Interior, inclusive of all its offices.

Appeal means: (1) a written request for review of a decision-maker's decision or inaction that is claimed to adversely affect the interested party making the request; or (2) the process you must follow when you seek review of a decision-maker's decision or inaction.

Appellant means the interested party who files an appeal.

AS-IA means the Assistant Secretary - Indian Affairs, Department of the Interior.

BIA means the Bureau of Indian Affairs.

BIE means the Bureau of Indian Education.

Days mean calendar days, unless otherwise provided. Days during which the agency is closed because of a lapse in appropriations do not count as days for purposes of calculating deadlines for actions by Federal officials under this part.

Decision means an agency action that permits, approves, or grants permission, requires compliance, or grants or denies requested relief.

Decision-maker means the Indian Affairs official whose decision or inaction is being appealed.

Effective means that the decision will be implemented by the Department.

Final means that the decision represents the culmination of the decision-making process for the Department and is subject to judicial review under 5 U.S.C. 704. Final decisions are immediately effective unless the decision provides otherwise.

Final agency action means a decision that represents the conclusion of the agency's decision-making and administrative review process.

IBIA means the Interior Board of Indian Appeals.

IEED means the Office of Indian Energy and Economic Development

Indian Affairs means all offices and personnel subject to the authority of the AS-IA.

Interested party means a person or other entity whose legally protected interests would be affected by a decision.

Local Bureau Official ("LBO") means the Superintendent, Field Representative, or other BIA official who serves as the primary point of contact between the Bureau and a Tribe.

Notice of Appeal ("NOA") means the written document informing the reviewing official that a decision is being appealed.

OIG means the Office of Indian Gaming.

OJS means the Office of Justice Services.

OSG means the Office of Self Governance.

OST means the Office of the Special Trustee for American Indians.

Participant means the appellant(s), interested parties who file a response as provided for in § 2.208, and any Tribe that is an interested party.

Person means an individual human being.

Reviewing official means the Indian Affairs official who is authorized to review and issue decisions on appeals filed under this part.

Standing to appeal means satisfying the requirements for invoking a reviewing official's jurisdiction to hear an appeal. See § 2.200.

Statement of Reasons ("SOR") means a written document submitted by the appellant explaining why the decision or inaction being appealed is in error.

Trust Asset means trust lands, natural resources, trust funds, or other assets held by the Federal Government in trust for Indian Tribes and individual Indians.

We, us, and our, mean the officers and employees of Indian Affairs.

You and I mean the appellant.

§ 2.102 What may I appeal under this part?

(a) Subject to the exceptions in this part and other applicable law or regulation, if you meet the criteria in § 2.200, you may appeal any discrete, written decision made by a decision-maker that adversely affects your legally protected interests, including a determination by the decision-maker that he/she lacks either the duty or authority to take the action that you have requested.

(b) You may not separately appeal the issuance of component documents of the administrative record, including, but not limited to, appraisals, reports, studies, investigations, recommendations, or National Environmental Policy Act documents. The adequacy of these types of documents cannot be challenged unless and until a decision is made in reliance upon these documents.

(c) Unless separate regulations in this title require you to follow administrative appeal procedures in accordance with this part or other regulations such as those listed in § 2.103 of this part, you may not appeal an agency's notification to you that it is pursuing or is considering pursuing action against you in Federal district court. Such notifications include, but are not limited to, notices that could lead the agency to pursue actions for money damages against you, such as actions for trespass, ejection, eviction, nuisance, conversion or waste to Indian land under the Federal common law.

(d) You may challenge actions taken by the reviewing official in the course of processing an appeal. The reviewing official will address the challenges in his or her decision.

(e) Final agency actions may not be appealed under this part, except that an official whose

decision would otherwise be final for the Department may provide for further administrative review in the decision document.

(f) You may appeal inaction by Indian Affairs officials by following the procedures in subpart F.

§ 2.103 Are all appeals subject to these part 2 regulations?

No. In some cases, such as actions in Federal district court referenced in § 2.102(c), there is no right to file an administrative appeal under this part. In addition, other regulations govern appeals of administrative decisions regarding certain topics. The following table lists some decision topics that are subject to different appeals regulations, and where to find those regulations.

To appeal a decision related to . . .	Refer to . . .
Access to student records	25 CFR part 43
Acknowledgment as a federally recognized Indian Tribe	25 CFR part 83
Adverse employment decisions against Bureau of Indian Affairs employees	43 CFR part 20
Any decision by a Court of Indian Offenses	25 CFR part 11
Appointment or termination of contract educators	25 CFR part 38
Debts owed by Federal employees	5 CFR part 550
Determination of heirs, approval of wills, and probate proceedings	43 CFR part 4 43 CFR part 30 25 CFR part 16 25 CFR part 17
Indian School Equalization Program student count	25 CFR part 39
Eligibility determinations for adult care assistance, burial assistance, child assistance, disaster, emergency and general assistance, and the Tribal work experience program	25 CFR part 20
Certain adverse enrollment decisions	25 CFR part 62
Freedom of Information Act requests	43 CFR part 2
Grazing permits for trust or restricted lands	25 CFR part 166
Indian Reservation Roads Program funding	25 CFR part 170
Leasing of trust or restricted lands	25 CFR part 162
Matters subject to the Contract Disputes Act	48 CFR part 33 48 CFR part 6101

Privacy Act requests	43 CFR part 2
Restricting an Individual Indian Money account	25 CFR part 115
Secretarial elections	25 CFR part 81
Self-Determination contracts	25 CFR part 900
Self-Governance compacts	25 CFR part 1000
Student rights and due process	25 CFR part 42
Tribally controlled colleges and universities	25 CFR part 41
Departmental quarters	41 CFR part 114

§ 2.104 How will I know what decisions are appealable?

(a) When an Indian Affairs official makes a decision that is subject to an appeal under this part, the official will include the following notice of appeal rights at the end of the decision document:

This decision may be appealed to the [appropriate reviewing official] at [address]. The appeals process begins when you file a notice of appeal, complying with the provisions of 25 CFR 2.205 – 2.207. Your notice of appeal must be postmarked if sent by U.S. mail or received (if hand-delivered or sent by commercial delivery service) to this office within 30 days of the date you receive notice of this decision pursuant to 25 CFR 2.203. Your notice of appeal must include your name, address, and telephone number. It must clearly identify the decision being appealed. If possible, attach a copy of this decision letter. The notice and the envelope in which it is mailed should be clearly labeled, “Notice of Appeal.” Your notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice. You must also send a copy of your appeal to the [reviewing official]. If the reviewing official is the IBIA, you must also send a copy of your appeal to the AS-IA. If the reviewing official is the IBIA, your appeal will be governed by the IBIA’s regulations, at 43 CFR part 4. If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal. Our assistance would consist of serving your filings on the interested parties and allowing access to government records and other documents. It would not include obtaining an attorney for you or acting as your attorney on the merits of the appeal. If no appeal is timely filed, this decision will become effective at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

(b) The absence of notice of appeal rights in a decision does not affect the validity of the decision, but it may affect the deadline for filing an appeal.

§ 2.105 Who will receive notice of appealable decisions?

Except as provided in other, more specific, regulations governing decisions, the decision-maker will mail a copy of all appealable decisions to all known interested parties at the addresses the decision-maker has on record for them.

§ 2.106 How does this part comply with the Paperwork Reduction Act?

The information collected from the public under this part is cleared and covered by OMB Control Number 1076-NEW. Please note that a Federal Agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Subpart B - Appealing Administrative Decisions

§ 2.200 Who has standing to appeal a decision?

You have standing to appeal a decision made by an Indian Affairs official if the official has denied your request, or if you can show, by credible statements of fact, that the appealed decision is likely to harm your legally protected interests.

§ 2.201 Do I need a lawyer to file an appeal?

No. You may represent yourself. If you choose to be represented by someone else, your representative must meet the standards established in 43 CFR part 1, Practices before the Department of the Interior. If you are being represented by another person, your representative must provide documentation of his or her authority to bring suit on your behalf.

§ 2.202 Who decides administrative appeals?

(a) Except where a specific section of this part sets out a different appellate hierarchy, the following table identifies the reviewing officials for appeals under this part:

Decision-Maker	Reviewing Official or IBIA
Agency Superintendent or Field Officer, BIA	Regional Director, BIA

Regional Director, BIA	IBIA
District Commander, OLES	Deputy Director BIA, Office of Justice Services (OJS)
Deputy Director, BIA	Director, BIA
Director, BIA	IBIA
Principal of a Bureau-Operated School	Education Program Administrator
Education Program Administrator	Associate Deputy Director, BIE
Associate Deputy Director, BIE	Director, BIE
President of a Bureau Post-Secondary School	Director, BIE
Director, BIE	AS-IA
OST Deciding Official	Principal Deputy Special Trustee
Director of: OIG; IEED; OSG	Appropriate Deputy Assistant Secretary – Indian Affairs
Deputy Assistant Secretary – Indian Affairs	AS-IA

§ 2.203 How long do I have to file an appeal?

(a) You have 30 days after you receive notice of the decision you are appealing to file a notice of appeal.

(b) You are presumed to have received actual notice of the decision 10 days after the date that the decision was mailed to you, as long as the official mailed the document to the last address the deciding official has on record for you.

(c) If the reviewing official receives proof that you received the document before the expiration of the 10-day period, you are presumed to have received actual notice on the date proved and have 30 days from that date to file an appeal.

§ 2.204 Will the reviewing official grant an extension of time to file a notice of appeal?

No. No extensions of time to file a notice of appeal will be granted.

§ 2.205 How do I file a notice of appeal?

To file a notice of appeal, you must mail (via the U.S. Postal Service), or deliver via

commercial delivery service or hand delivery, the notice of appeal to the reviewing official identified in the decision document's notice of appeal rights, as prescribed in § 2.104.

§ 2.206 What must I include in my notice of appeal?

Your notice of appeal must include:

- (a) Your name, address, and telephone number;
- (b) A copy of the decision being appealed, if possible;
- (c) An explanation of how you satisfy the requirements for standing set out in § 2.200;
- (d) A list of interested parties known to you;
- (e) The date you mailed (via the U.S. Postal Service), requested delivery by (via commercial delivery service) or hand delivered the appeal to the reviewing official;
- (f) A written statement certifying service on each interested party and the decision-maker, showing the name and address of each party served and date of service;
- (g) A written statement of reasons for your appeal, which must:
 - (1) Explain why you believe the decision was wrong;
 - (2) Identify any information or evidence you believe the decision-maker failed to consider and
 - (3) Describe the relief you seek; and
- (h) All documentation you believe supports your arguments.

§ 2.207 Do I have to send the notice of appeal to anyone other than the reviewing official?

(a) Yes. You must provide copies of your notice of appeal to the decision-maker and all interested parties known to you. If you are an individual Indian and are not represented by an attorney, you may request that we make the copies for you and mail your appeal documents to all interested parties.

(b) If you are appealing to the IBIA, you must comply with IBIA's regulations, set out at 43

CFR part 4. You must send a copy of your notice of appeal to the AS-IA at the same time you send the appeal to the IBIA.

§ 2.208 Who may file a response to the notice of appeal?

Any interested party may file a response to the notice of appeal, thereby becoming a participant

§ 2.209 How long do interested parties have to file a response?

An interested party has 30 days after receiving a copy of the notice of appeal to file a response.

§ 2.210 May the reviewing official grant an extension of time to file a response?

(a) Yes. The reviewing official may grant a request for a reasonable extension of time to file a response if the request for extension:

- (1) Is in writing;
- (2) Explains why additional time is needed;
- (3) Specifies how much additional time is requested; and
- (4) Is filed within the time otherwise allowed for filing the response.

(b) For good cause, the reviewing official may extend the time to file a response on her/his own initiative.

§ 2.211 What must a response include?

- (a) The response must:
- (1) Identify the interested party,
 - (2) State when the interested party received the notice of appeal,
 - (3) Explain the interested party's legally protected interest affected by the decision being appealed, and

(4) Explain why the interested party believes the arguments made in the appellant's statement of reasons are right or wrong.

(b) The response may also include statements and documents supporting the interested party's position.

§ 2.212 How does an interested party file a response?

To file a response, the interested party must mail (via the U.S. Postal Service or commercial delivery service) or hand deliver the response to the reviewing official, the decision-maker, the appellant, and other interested parties within the time period specified in § 2.209.

§ 2.213 May I file additional briefings?

(a) Yes. You may file a reply to an interested party's response within 21 days of receiving a copy of the response brief. You must send a copy of your response to the deciding official and all interested parties.

(b) You may file a supplemental brief after receiving the administrative record prepared by the reviewing official.

(c) You may ask the reviewing official for permission to file additional briefing. The reviewing official's decision on whether to grant your request is entirely discretionary.

§ 2.214 How are deadlines for filing documents calculated?

(a) To determine whether a document has been filed on time, the reviewing official will calculate the amount of time from when the interested party had notice of the triggering event (i.e., the decision being appealed or the filing of an appeal) to when the interested party mailed (via the U.S. Postal Service or commercial delivery service) or hand delivered the documents (i.e., appeal or response).

(b) The reviewing official need not have actually received the document prior to the deadline as long as the document was mailed, or delivered, to the office of the reviewing official by the deadline.

§ 2.215 What if a deadline for filing a document falls on a weekend or Federal holiday?

If a deadline falls on a weekend or on a Federal holiday, the document must be mailed (via the U.S Postal Service or commercial delivery service) or hand delivered by the next Federal workday.

§ 2.216 What role does the decision-maker have in the appeal process?

(a) The decision-maker is responsible for:

(1) Compiling the administrative record;

(2) Sending the administrative record to the reviewing official within 20 days of the decision-maker's receipt of the notice of appeal; and

(3) Making available the administrative record for review in the decision-maker's office, to the extent consistent with law.

(b) If a deciding official believes that a compacting or contracting Tribe possesses Federal records (not Tribal records – 25 U.S.C. 5329(b)) that are relevant to the analysis of the appeal, the deciding official may request that the Tribe produce the documents. The Tribe must provide those documents to the deciding official within two weeks of the deciding official's request.

§ 2.217 Do I have to keep my address current?

Every interested party who files a document in connection with an appeal must include his or her address. If that party's address changes, the party must promptly report the new address to the official with whom the previous address was filed. The most current address on file with the official is considered the proper address for the purposes of this part. Any interested party, including successors in interest, who fails to keep his or her current address on file with the relevant office may not object to lack of notice or service attributable to such failure.

Subpart C – Effectiveness and Finality of Decisions

§ 2.300 When is a decision effective?

(a) Decisions, including decisions by reviewing officials, that are subject to administrative appeal, become effective as follows.

(1) If no appeal is filed before the expiration of the appeal period, the decision becomes effective when the appeal period provided for in this part expires. Failure to file a timely appeal

constitutes failure to exhaust administrative remedies. In such circumstances, the decision never becomes a “final agency action” subject to judicial review under 5 U.S.C. 704.

(2) As provided in § 2.501, a reviewing official may make parts of an appealed decision effective.

(b) Decisions that are final for the Department are immediately effective unless the decision provides otherwise.

§ 2.301 When is a decision final?

(a) Agency decisions that are not subject to administrative appeal are final when issued.

(b) Agency decisions that are subject to further administrative appeal and for which an appeal is timely filed may be made immediately final by the reviewing official based on public safety, protection of trust resources, or other public exigency.

(1) The decision-maker whose decision has been appealed may ask the reviewing official to make the appealed decision immediately final or the reviewing official may make the appealed decision immediately final on his or her own initiative.

(2) A reviewing official’s decision to make an appealed decision immediately final must fully explain why public safety, protection of trust resources, or other public exigency justifies making the decision immediately final and will state that the decision is final for the Department and not subject to any further administrative appeal.

Subpart D - Appeal Bonds

§ 2.400 When may the reviewing official require an appeal bond?

(a) Any interested party who may suffer a financial loss involving an Indian Trust Asset as a result of an appeal may ask the reviewing official to require the appellant to post an appeal bond.

(b) The reviewing official may decide on his or her own initiative to require an appeal bond in accordance with this subpart.

§ 2.401 How will the reviewing official determine whether to require an appeal bond?

The reviewing official will require an appeal bond if the party requesting the appeal bond can demonstrate that the delay caused by the appeal may result in a measurable and substantial financial loss or damage to Indian Trust Assets. The amount of the appeal bond will be commensurate with the estimated financial loss or damage to Indian Trust Assets.

§ 2.402 What form of appeal bond will the reviewing official accept?

The reviewing official will only accept an appeal bond that has a market value at least equal to the total bond amount in one, or a combination of, the following forms:

(a) Negotiable U.S. Treasury securities, accompanied by a statement granting the AS-IA full authority to sell such securities and direct the proceeds to the party who was harmed by the appellant's unsuccessful appeal.

(b) Certificates of deposit that indicate on their face that AS-IA approval is required prior to redemption by any party.

(c) An irrevocable letter of credit issued by a federally insured financial institution and made payable to the AS-IA. The letter of credit must have an initial expiration date of not less than two years from the date of issuance and be automatically renewable for at least one year.

(d) A surety bond issued by a company approved by the U.S. Department of the Treasury.

§ 2.403 May I appeal the decision to require an appeal bond?

No. The reviewing official's decision to require an appeal bond is a final agency action.

Subpart E - Deciding Appeals

§ 2.500 May an appeal be consolidated with other appeals?

Yes. The reviewing official may, either in his or her own discretion or upon request by a participant, consolidate identical or similar appeals filed by you and others or consolidate multiple appeals that you file that also contain identical or similar issues.

§ 2.501 May an appealed decision be partially implemented?

Yes. The reviewing official should identify any parts of a decision-maker's decision that are not under appeal, to allow the decision-maker to implement those parts of the decision

unaffected by the appeal.

§ 2.502 May I withdraw my appeal once it has been filed?

Yes. You may withdraw your appeal at any time before the reviewing official issues a decision. To withdraw an appeal, you should write to the reviewing official and all participants stating that you want to withdraw your appeal. If you withdraw your appeal it will be dismissed by the reviewing official. While the dismissal of a withdrawn appeal is without prejudice, the appeals time frames set out in this part will be unaffected by a withdrawn appeal. Therefore, any refiling of a withdrawn appeal must be within the original 30-day filing deadline

§ 2.503 May an appeal be dismissed without a decision on the merits?

Yes, the reviewing official may dismiss an appeal without a decision on the merits when:

- (a) You are late in filing your appeal;
- (b) You lack standing because you do not meet the requirements of § 2.200 for bringing an appeal;
- (c) You have withdrawn the appeal;
- (d) You have failed to pay a required appeal bond;
- (e) The reviewing official lacks the authority or duty to grant the requested relief;
- (f) If you are represented and your representative does not meet the standards established in 43 CFR part 1 related to eligibility to practice before the Department, and you have failed to substitute yourself or an eligible representative after being given an opportunity to do so; or
- (g) The reviewing official determines there are other circumstances that warrant a dismissal and explains those circumstances in the dismissal order.

§ 2.504 What information will the reviewing official consider?

- (a) The reviewing official will consider:
 - (1) The administrative record;
 - (2) All relevant documents submitted by the decision-maker and participants that were

filed in accordance with applicable deadlines; and

(3) Laws, regulations, Secretarial Orders, Solicitor's Opinions, policies, implementing guidance, and prior judicial and administrative decisions that are relevant to the appeal.

(b) If the reviewing official considers factual material that was not included in the administrative record, the reviewing official will:

(1) Provide a copy of that information to all participants; and

(2) Establish a schedule for participants to review and comment on the material.

§ 2.505 When will the reviewing official issue a decision on an appeal?

(a) The reviewing official will issue a written decision, including the basis for the decision, within ninety (90) days after the latest of:

(1) The filing of the NOA;

(2) The filing of any responses, replies, or supplemental briefs under 2.209 and 2.213; or

(3) The filing of any comments on additional material under § 2.504(b).

(b) A reviewing official may, for good cause and with notice to participants, extend the deadline for the official's decision one time by 90 days.

§ 2.506 How does the reviewing official notify the participants of a decision?

The reviewing official will send the decision to the decision-maker to the participants.

§ 2.507 How do I appeal a reviewing official's decision?

(a) To appeal a reviewing official's decision, you must file your appeal in accordance with the instructions for appeal contained in the decision.

(b) The decision will include instructions that briefly describe how to appeal the decision, to whom the appeal should be directed, the deadline for filing an appeal, and refer participants to the regulations governing the appeal.

(c) Except where a specific section of this part sets out a different appellate hierarchy, the

following chart indicates the officer to whom subsequent appeals should be addressed.

Reviewing Official (or IBIA) whose decision is being appealed	Official to whom the appeal is addressed
Regional Director	IBIA
Principal of a Bureau operated school	Education Program Administrator
Education Program Administrator	Associate Deputy Director, Bureau of Indian Education
Associate Deputy Director, BIE	Director, BIE
President of a Bureau operated post-secondary school	Director, BIE
Deputy Director BIA, Office of Justice Services (OJS)	IBIA
Director, BIE	AS-IA
Principal Deputy Special Trustee	AS-IA
Deputy Assistant Secretary – Indian Affairs	AS-IA
AS-IA	(Decision is final for the Department).
IBIA	(Decision is final for the Department).

§ 2.508 May the AS-IA take jurisdiction over an appeal to the IBIA?

Yes. The AS-IA has 30 days from the date on which the IBIA received a copy of your Notice of Appeal to take jurisdiction from the IBIA. If the AS-IA does not provide written notification to the IBIA within the 30-day period, the IBIA will docket your appeal pursuant to its regulations (43 CFR 4.336).

§ 2.509 May I ask the AS-IA to take jurisdiction over my appeal?

No. The AS-IA will not consider requests to take jurisdiction over an appeal.

§ 2.510 How will the AS-IA handle my appeal?

If the AS-IA takes jurisdiction over your appeal, or if an appeal is made to AS-IA in accordance with the table in § 2.507, he/she will advise the participants, in writing, of the procedures for the appeal, including deadlines for participants to file briefs and for the reviewing official to file the administrative record. The AS-IA may issue a decision on your appeal or

assign the appeal to a Deputy Assistant Secretary for a decision. Decisions of the AS-IA, or a Deputy Assistant Secretary under this section, are final for the Department.

§ 2.511 May the Secretary decide an appeal?

Yes. Nothing in this part 2 will be construed as affecting the Secretary's authority to take jurisdiction over an appeal as set out in 43 CFR 4.5.

§ 2.512 May the Director of the Office of Hearings and Appeals take jurisdiction over a matter?

Yes. Nothing in this part 2 will be construed as affecting the authority vested in the Director of the Office of Hearings and Appeals by 43 CFR 4.5(b).

Subpart F – Appealing Inaction of an Agency Official

§ 2.600 May I compel an agency official to take action?

(a) Yes. If a decision-maker fails to take action on your written request for a decision that you believe the decision-maker is required to make, you may make the decision-maker's inaction the subject of appeal.

(b) Before filing an appeal with the next official in the decision-maker's chain of command, you must:

(1) Send a written request to the decision-maker that he/she take the action originally asked of him or her;

(2) Identify the statute, regulation, or other source of law that you believe requires the decision-maker to render the decision being requested;

(3) Describe the interest adversely affected by the decision-maker's inaction, including a description of the loss, impairment or impediment of such interest caused by the inaction;

(4) State that, unless the decision-maker either makes a decision on the merits of the written request within 15 days of receipt of such request by the official, or establishes a date by which a decision will be made, you will appeal the decision-maker's inaction in accordance with this subpart.

(c) You must include a copy of your original request to the decision-maker, or other documentation establishing the date and nature of the original request.

§ 2.601 When must a decision-maker respond to a request to act?

A decision-maker receiving a request as specified in § 2.600 has 15 days from receiving the request to issue a written response. Such response may be a decision, some other procedural order that will further the decision-making process, or a written notice of the date by which the decision will be issued. If the decision-maker identifies a later date by which the decision will be issued, such date may not be more than 60 days from the date of the request.

§ 2.602 What may I do if the decision-maker fails to respond?

If the decision-maker does not meet the response deadlines established in § 2.601, you may appeal the decision-maker's inaction to the next official in the decision-maker's chain of command. For purposes of this subpart:

(a) BIA's chain of command is as follows:

(1) Local Bureau Official;

(2) Regional Director (find addresses at-

https://www.indianaffairs.gov/region-by-state?field_states_served_tid=All%20);

(3) Director, Bureau of Indian Affairs (1849 C Street, NW, MS 4660, Washington, DC 20240);

(4) Assistant Secretary – Indian Affairs (1849 C Street, NW, MS 4660, Washington, DC 20240).

(b) BIE's chain of command is as follows:

(1) Principal of Bureau operated school;

(2) Education Program Administrator;

(3) Associate Deputy Director, BIE;

(4) Director, BIE.

(c) The Office of Justice Service's chain of command is as follows:

- (1) Deputy Director BIA, Office of Justice Services;
- (2) Director, BIA.

§ 2.603 How do I submit an appeal of inaction?

You may appeal the inaction of a decision-maker by sending a written "appeal from inaction of an official" to the next official in the decision-maker's chain of command. You must enclose a copy of the original request for decision to which the decision-maker has not responded and a copy of the request for decision that you sent to the decision-maker pursuant to § 2.600 above.

§ 2.604 What will the next official in the decision-maker's chain of command do in response to my appeal?

An official who receives an appeal from the inaction of a decision-maker will, within ten (10) days of receiving the appeal, formally direct the decision-maker to issue a decision on the matter within fifteen (15) days of the decision-maker's receipt of the official direction. The official will send you a copy of his/her instructions to the decision-maker.

§ 2.605 May I appeal continued inaction?

Yes. If the official fails to timely direct the decision-maker to render a decision, or if the decision-maker fails to render a decision within the time frame identified by the official pursuant to § 2.602, above, you may appeal the continued inaction by agency officials to the next officer in the chain of command. Your appeal must be submitted as provided for in §§ 2.603 – 2.604, above. The official will respond as provided for in § 2.604.

§ 2.606 May I appeal inaction by a reviewing official?

(a) Yes. If you have appealed a decision-maker's decision, you may appeal inaction by the reviewing official as provided for in this subsection if --

- (1) Your appeal is before an Indian Affairs official whose decisions are subject to appeal under this part, and
- (2) The reviewing official has issued a briefing schedule that includes a decision date; and

(3) The reviewing official has not issued a decision by the date indicated.

(b) Inaction by the IBIA or by the AS-IA is not subject to appeal under this part.

§ 2.607 What happens if no official responds to my requests under this subpart?

If you exhaust all the provisions of this subpart F without obtaining a decision by a Department official, the Department's inaction becomes a "final agency action" open to review by Federal district court pursuant to 5 U.S.C. 704.

Subpart G: Special Rules Regarding Recognition of Tribal Government or Representative

§ 2.700 May a local Bureau official's recognition of a Tribal government or representative be appealed?

Yes. A decision by the LBO to recognize a Tribal government or representative may be appealed to the reviewing official as provided in subpart B of this part. When the LBO is a Regional Director, the reviewing official is the Director of the Bureau of Indian Affairs.

§ 2.701 When will the reviewing official decide a Tribal government or representative recognition appeal?

The reviewing official will issue a written decision, including the basis for the decision, within forty-five (45) days after the latest of the filing of a response (§ 2.209), the filing of additional briefings (§ 2.213), or the submission of comments on additional material considered by the reviewing official (§ 2.504(b)).

§ 2.702 May the decision deadline be extended?

Yes. A reviewing official may, for good cause and with notice to the interested parties, extend the deadline for the official's decision one time, for no more than an additional 45 days.

§ 2.703 Will any other official be notified of the appeal?

Yes. No later than the date by which the LBO must transfer the administrative record to the reviewing official, as provided in § 2.215, the LBO will transmit the appellant's Notice of Appeal to the AS-IA.

§ 2.704 May AS-IA take jurisdiction over the appeal?

Yes. AS-IA may take jurisdiction over the appeal any time before the reviewing official issues a final decision.

§ 2.705 May I ask AS-IA to take jurisdiction over the appeal?

No. The AS-IA will not consider any request to take jurisdiction over the appeal.

§ 2.706 May the reviewing official's decision on a Tribal government or representative recognition be appealed?

No. Notwithstanding any other provision in this Part 2, the reviewing official's decision is final for the Department and therefore is not appealable to the IBIA. The reviewing official's determinations are effective immediately unless the reviewing official provides otherwise in the decision.

Subpart H – Appeals of Office of the Special Trustee for American Indians Statements of Performance

§ 2.800 What is the purpose of this subpart H?

(a) The purpose of this subpart H is to allow an account holder to dispute the accuracy the account balance contained within a Statement of Performance and to provide the Department an opportunity to consider the account holder's allegations.

(b) The appeals process in subpart H is summarized as follows, with underlined terms defined in § 2.801:

(1) Account holders receive a Statement of Performance at least each quarter. Account Holders may receive Statement of Performance annually based upon activity.

(2) An account holder may submit an Objection to the Statement of Performance ("Objection") to the deciding official.

(3) The deciding official will render a Decision on the Objection to the Statement of Performance ("Decision").

(4) An account holder may submit an Appeal of the Decision on the Objection to the Statement of Performance ("Appeal") to the Principal Deputy Special Trustee.

(5) The Principal Deputy Special Trustee will render the OST's ruling on the account holder's appeal.

(6) An account holder may appeal the OST's ruling to the AS-IA.

(7) The AS-IA will render a final agency decision on the account holder's appeal.

§ 2.801 What terms do I need to know for this subpart?

Account holder means a Tribe or a person who owns the funds in a Tribal or Individual Indian Money (IIM) account that is maintained by the Secretary.

Appeal of the Decision on the Objection to the Statement of Performance ("Appeal") means your appeal of the deciding official's decision.

Basis of Objection to the Statement of Performance means the documentation you submit supporting your Objection to the Statement of Performance.

Deciding official means the Director, Office of Historical Trust Accounting within the Office of the Special Trustee for American Indians who reviews your objection to the statement of performance.

Decision on the Objection to the Statement of Performance ("Decision") means the Deciding Official's decision on your Objection to the Statement of Performance.

Objection to the Statement of Performance ("Objection") means the document you submit to the Deciding Official, alleging errors in your Statement of Performance.

OST's Ruling means the ruling issued by Principal Deputy Special Trustee on your Appeal of the Deciding Official's Decision.

Reviewing official means the Principal Deputy Special Trustee.

Statement of Performance means the document that is issued to each account holder that identifies: (1) the source, type, and status of the funds; (2) the beginning balance; (3) the gains and losses; (4) receipts and disbursements; and (5) the ending balance.

OST means the Office of the Special Trustee for American Indians.

§ 2.802 What must I do if I want to challenge the accuracy of a Statement of Performance?

If you want to challenge the accuracy of a Statement of Performance, you must submit an Objection to the Statement of Performance within 60 calendar days of statement date.

§ 2.803 Is every account holder allowed to challenge the accuracy of a Statement of Performance?

No. If you are a Tribe and you entered into a settlement with the United States that contains language concerning your ability to challenge a Statement of Performance, the language of the settlement controls.

§ 2.804 Does my challenge of the Statement of Performance through this process include the ability to challenge the underlying lease that was issued by a different agency within the Department of the Interior?

No. This subpart is solely for the purpose of challenging the accuracy of the funds that were deposited into your trust account. If you want to challenge the underlying lease that generated the proceeds deposited into you trust account, you must contact the particular agency responsible for the lease.

§ 2.805 Does my challenge of the Statement of Performance through this process include the ability to challenge the investment rate of return or type of investment?

No. This subpart if solely for the purpose of challenging the funds that were deposited into your trust account.

§ 2.806 What must my Objection to the Statement of Performance contain?

Your Objection to the Statement of Performance must be in writing and contain all of the following:

- (a) Your name, address, and telephone number;
- (b) The statement date of the specific Statement of Performance that you are challenging;
- (c) A copy of the Statement of Performance being challenged; and
- (d) The Basis of Objection.

§ 2.807 What must my Basis of Objection contain?

Your Basis of Objection must be in writing and contain:

- (a) A statement that details all of the errors or omissions that you believe exist in the Statement of Performance, with as much explanatory detail as possible;
- (b) A statement describing the corrective action that you believe OST should take; and
- (c) All information that you believe relates to the error(s) or omission(s) in the specific Statement of Performance.

§ 2.808 To whom must I submit my Objection to the Statement of Performance?

You must submit your Objection to the Statement of Performance to the deciding official at:

U.S. Department of the Interior
Office of the Special Trustee for American Indians
Attn: Director, Office of Historical Trust Accounting
1849 C Street, NW
Washington, DC 20240

§ 2.809 When must I submit my Objection to the Statement of Performance?

You must submit your Objection to the Statement of Performance within 60 calendar days of the statement date on the Statement of Performance.

§ 2.810 Will the deciding official acknowledge receipt of my Objection to the Statement of Performance?

Yes, the deciding official will provide an acknowledgement of receipt of your Objection to the Statement of Performance within 10 calendar days of receipt in the form of a letter that will be mailed to your address as provided in your Objection.

§ 2.811 May I request an extension of time to submit my Objection to the Statement of Performance?

Yes. Within 60 calendar days of the statement date on your Statement of Performance, you may request an extension of time from the Deciding Official to submit your Objection to the

Statement of Performance. The deciding official may grant one 30-day extension of time in which to submit your Objection to the Statement of Performance.

§ 2.812 May I appeal the denial of my request for an extension of time?

No, the denial of an extension of time to submit the Objection to the Statement of Performance is not appealable.

§ 2.813 If I fail to submit either an Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines, what is the consequence?

If you fail to submit either the Objection to the Statement of Performance or the Basis of Objection within the applicable deadlines:

(a) The Statement of Performance at issue will be deemed accurate and complete for all purposes;

(b) You will have waived your right to invoke the remainder of the review and appeals process as to that Statement of Performance;

(c) You will have failed to exhaust the administrative remedies available within the Department; and

(d) The Statement of Performance will be effective.

§ 2.814 How long will the deciding official have to issue a Decision on my Objection to the Statement of Performance?

The deciding official will have 30 calendar days from the date of receipt of your Basis of Objection to the Statement of Performance to issue a Decision on your Objection to the Statement of Performance. If your Basis of Objection is not received when you submit your Objection to the Statement of Performance and an extension of time was not asked for and granted, the deciding official will dismiss your Objection to the Statement of Performance.

§ 2.815 What information will the Decision on my Objection to the Statement of Performance contain?

The Decision on your Objection to the Statement of Performance will contain an explanation as to whether the deciding official agrees or disagrees with your Objection to the Statement of

Performance. If the deciding official agrees with your Objection to the Statement of Performance, a correction will be made and reflected in your current Statement of Performance will be issued. If the deciding official disagrees with your Objection to the Statement of Performance, the Decision will provide information about your right to appeal the Decision.

§ 2.816 May I appeal the Decision on my Objection to the Statement of Performance?

Yes, the Decision issued by the deciding official is appealable to the reviewing official, who is the Principal Deputy Special Trustee.

§ 2.817 What must my Appeal of the Decision on the Objection to the Statement of Performance contain?

Your Appeal must be in writing and contain:

- (a) Your name, address, and telephone number;
 - (b) The statement date of the specific Statement of Performance that you are appealing;
 - (c) The date of the Decision that you are appealing;
 - (d) A statement that describes the reasons why the Decision was incorrect;
 - (e) A description of the corrective action that you believe the reviewing official should take;
- and
- (f) A copy of the decision being appealed.

§ 2.818 To whom would I submit my Appeal of a Decision on my Objection to the Statement of Performance?

Your Appeal must be submitted to reviewing official at:

U.S. Department of the Interior
Office of the Special Trustee for American Indians
Attn: Principal Deputy Special Trustee
1849 C Street, Washington, DC 20240

§ 2.819 When must my Appeal be filed?

You must file your Appeal within 30 calendar days of the date that the deciding official issued the Decision.

§ 2.820 May I submit any other documents in support of my Appeal?

No. You may not submit any other documents in support of your Appeal. The reviewing Official may only consider the documents that were reviewed by the deciding official.

§ 2.821 May I request an extension of time to submit my Appeal?

No. You must submit the Appeal within 30 calendar days of the issuance of the Decision. The reviewing official will not grant an extension of time to submit your appeal of a Decision.

§ 2.822 What happens if I do not submit my Appeal within the 30-day deadline?

If you fail to submit your Appeal within the 30-day deadline:

- (a) The deciding official's Decision will be effective;
- (b) The Statement of Performance at issue will be deemed accurate and complete for all purposes;
- (c) You will have waived your right to invoke the remainder of the review and appeals process as to that same Statement of Performance; and
- (d) You will have failed to exhaust the administrative remedies available within the Department.

§ 2.823 When will the reviewing official issue the OST's ruling?

The reviewing official will issue the OST's ruling within 30 calendar days of receipt of your Appeal of a Decision on your Objection to the Statement of Performance. The ruling will provide information about your right to further appeal.

§ 2.824 May I appeal the OST's ruling?

Yes. The OST's ruling may be appealed to AS-IA. The procedures, requirements, and deadlines set out in §§ 2.816 through 2.821 apply to appeals to AS-IA under this subpart. Send your appeal to:

U.S. Department of the Interior
Office of the Assistant Secretary-Indian Affairs
MS 4141
1849 C Street, Washington, D.C. 20240

§ 2.825 When does the Statement of Performance or a Decision become final and effective?

(a) Statements of Performance, and decisions rendered by Department officials under this subpart, are effective when the deadline for submitting an Objection to the Statement of Performance or an Appeal has expired and the account holder has not submitted an Objection to the Statement of Performance or an Appeal.

(b) A decision rendered by the AS-IA is final for the Department.

Subpart I – Alternative Dispute Resolution

§ 2.900 Is there a procedure other than a formal appeal for resolving disputes?

Yes. We strongly encourage parties to work together to reach a consensual resolution of disputes whenever possible. Use of an alternative approach to dispute resolution can save time and money, produce more durable and creative solutions, and foster improved relationships. It may be appropriate and beneficial to consider the use of alternative dispute resolution (ADR) processes and techniques at any stage in a dispute. The parties may request information from the Bureau on the use of an ADR process.

§ 2.901 How do I request alternative dispute resolution?

If you are interested in pursuing alternative dispute resolution, you may contact the Reviewing Official to make a request to use ADR for a particular issue or dispute.

§ 2.902 When do I initiate alternative dispute resolution?

We will consider a request to use alternative dispute resolution at any time. If you file a notice of appeal, you may request the opportunity to use a consensual form of dispute resolution.

§ 2.903 What will Indian Affairs do if I request alternative dispute resolution?

If all interested parties concur, the reviewing official may discontinue consideration of the appeal while the parties pursue ADR. Where the parties agree to use ADR, Indian Affairs and other interested parties may seek assistance from the Department of the Interior's Office of Collaborative Action and Dispute Resolution (CADR). CADR can assist in planning and

facilitating an effective collaboration or dispute resolution process. Parties are encouraged to consider best practices for engagement, including but not limited to, the use of neutral facilitation and other collaborative problem-solving approaches to promote effective dialogue and conflict resolution.