T-808

OFFICE OF TRUST FUNDS MANAGEMENT
Indian Trust Fund Account Losses
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1. General

1.1 Policy. It shall be the policy of the Bureau of Indian Affairs (BIA) to:

A. Provide timely notification to tribal, Alaska Native entities, and individual Indian trust funds account holders of all account losses attributable to the BIA error.

B. Ensure reimbursement of all losses in principal, earned interest, and/or accrued interest, if applicable. Reimbursement shall be made to trust fund account holders within a reasonable time frame. Payment shall be consistent with the law and subject to the availability of funds appropriated by Congress or from available Operation of Indian Programs' (OIP) funds (as outlined in Comptroller General Decision B-243029, for the purpose of loss(es) reimbursement).

C. Provide full accounting management of all trust fund accounts in accordance with: generally accepted accounting principles and policies, procedures, guidelines, and practices established by the General Accounting Office (GAO); the Office of Management and Budget (OMB); U.S. Treasury Financial Management Services Manuals (TFMS); the Department of the Interior; and the Bureau of Indian Affairs Manual in Part 42 BIAM and its supplements. No other procedures shall be used.

1.2 Authority. 25 USC 162a; 25 CFR 87; 25 CFR 114; 25 CFR 115; and Comptroller General Decision Number B-243029, dated March 25, 1991.

1.3 Scope. This policy shall apply to all BIA organizational levels.

1.4 Responsibility. The Assistant Secretary - Indian Affairs has the overall responsibility for the BIA program concerning the trust funds loss policy. It shall be the responsibility of the following BIA line and staff officials providing trust funds accounting support to execute this policy.

A. Deputy Commissioner. The Deputy Commissioner of Indian Affairs is responsible for providing operations support and services to implement the BIA trust funds management program; providing overall guidance and direction to the trust funds management program.

B. Director, Office of Trust Funds Management. The Director, Office of Trust Funds Management, is responsible for implementing, operating, and administering the BIA trust funds loss policy; for providing technical guidance and maintaining a liaison with area and agency officials on loss policy issues; for developing systems within OTFM to pro-actively prevent and detect loss(es); for coordinating efforts to resolve loss issues at the local level to eliminate higher level claims or court issues; for pursuing whatever applicable legal remedies are available for restoring loss(es) suffered by account holders and for preparing, with legal counsel, determinations on whether or not to reimburse account holders for loss(es). The director is also responsible for designating a loss claims officer to coordinate, gather data and prepare written documentation and reports for all identified trust funds loss(es) or reported potential and suspected losses.

C. Area Director. The area director is responsible for working jointly with OTFM in coordinating, supervising, directing, reporting, and operating area programs to assure observance and compliance with the Bureau trust funds loss policy.

(1) Area Trust Accountant. The area trust accountant or designated area official is responsible for coordinating the gathering of data, reporting and maintaining a liaison between the agencies, the account holder(s), and OTFM in administering the provisions of the Bureau trust funds loss policy.

D. Agency Superintendent or Officer in Charge. The agency superintendent or officer in charge is responsible for working closely with respective area officials and OTFM in the implementation and daily operations of the local procedures to assure compliance with the Bureau trust funds loss policy in preventing, detecting, and resolving trust funds loss(es) in a timely manner.

E. Director, Office of Management and Administration. The Director, Office of Management and Administration shall provide administrative support required by this manual part to assist the Director, Office of Trust Funds Management in the execution of the Bureau trust funds loss policy. This includes, but is not limited to: budget formulation and presentation; accounting management; directives management; forms and reports management; and records management, maintenance, and disposition.

1.5 Definition of Loss(es). Only those losses attributable to Bureau error shall be governed by this part. A loss attributable to Bureau error, either by accountable officer(s) or computer systems failure(s), is defined as "that amount which but for an

erroneous payment, deposit, and/or disbursement to and/or from a trust fund account holder's account would have been credited and/or debited to and/or from the trust fund account holders account, absent such error by the Bureau." Loss(es) may result from any one of the following:

A. Unless precluded by any other law, failure to deposit and/or invest tribal and individual Indian monies within 24 hours of receipt or by the next work day in a designated Federal depository after receipt by a designated collection official at the agency, area office, or central office, or upon notification of an appropriation of claims and awards trust funds which are to be invested by statute and/or upon instruction by the tribe(s). Where there is no designated Federal depository at an agency location, the field collections shall be transmitted to the depositing collection officer at the area office within 24 hours, or by the next working day.

B. Failure to fully recover funds which were invested beyond the scope of statutory authority or without full collateral or insured principal and interest as mandated by 25 U.S.C. 162a.

C. Actual or potential loss(es) and/or overpayments attributed to inaccurate financial records, poor accounting practices, mathematical computation errors, mis-posting, or erroneous data entry and/or inadequate management controls resulting in failure to record income or interest earnings properly to the credit of an account owner.

(1) Actual or Potential Loss(es). Actual or potential loss(es) may occur if trust funds are erroneously posted and disbursed from an account and the time required to recover an erroneous payment, as well as the delay in making the correcting accounting entries, results in the potential loss of principal and/or interest.

(2) Overpayments. An overpayment attributable to Bureau error, either by an accountable officer(s) or computer systems failure(s), is defined as "that amount which but for an erroneous payment, deposit, and/or disbursement to and/or from a trust fund account holder's account would not have been credited and/or debited to and/or from the trust fund account holders account, absent such error by the Bureau." Overpayments generally occur as a result of either a mathematical calculation error, mis-posting to an account, or correction to an estate distribution wherein a probate has been reopened and additional heirs have been added to an estate distribution.

D. Loss of interest caused by a delay of 30 days or more to process cancellation and reissuance of a check(s) recovered by the U.S. Treasury which were returned undelivered or lost in transit and upon notification by the U.S Treasury of receipt of an uncashed undelivered check.

E. Loss of interest caused by failure to invest tribal trust funds in statutory or otherwise authorized investment instruments resulting in lost opportunity to earn interest.

F. Loss of interest caused by failure to invest tribal trust funds in statutory or authorized investment instruments offering a higher rate of interest than what was actually invested resulting in an underinvestment.

1.6 Reimbursable Trust Funds Losses. Reimbursable trust funds losses are distinguished herein in accordance with the extent to which the Bureau, if required, is to make restitution to account holders. The types of restitution are based on 25 U.S.C. 162a and Comptroller General Decision Number B-243029, dated March 25, 1991.

A. Tribal Trust Funds Account Loss(es). Both principal and earned interest including accrued interest, where applicable, is reimbursable for loss(es) to these accounts.

B. Individual Indian Monies (IIM) Account Loss(es). Only the principal is reimbursable for losses to IIM accounts, except in those cases where the BIA has made investments which do not comply with 25 U.S.C. 162a, either as to type of investment or deposit, or as to the collateral or FDIC insurance threshold limitations. Principal and interest earned, but not received or distributed to IIM account owners prior to an institution failure or loss, is reimbursable.

C. Other Trust Funds Account Loss(es). Alaska Native Escrow, Power & Irrigation and Contributed Funds, Water Rights Settlements and other types of special trust funds established under specific legislation and invested under the authority of 25 U.S.C. 162a are handled in the same manner as tribal funds. Both principal and earned interest including accrued interest, where applicable, is reimbursable for loss(es) to these accounts.

1.7 Non-Reimbursable Trust Funds Loss(es). Trust fund loss(es) shall be considered non-reimbursable which result from conditions and actions beyond the jurisdiction and/or control of the BIA, provided there is no evidence that the loss resulted from fraud or criminal abuse on the part of the Bureau, its directors, or employees, and provided the Bureau has acted in good faith in the exercise and discharge of its fiduciary duties and obligations. Examples are (1) bank closures or mergers where investments are terminated and funds are in transit for return to OTFM for reinvestment; (2) investments "held to maturity" wherein bond prices decline sharply resulting in a price depreciation, or (3) early withdrawal of an investment by a tribe to make a per capita or other expenditure resulting in a penalty or loss of interest, etc.

2. Identification and Notification

2.1 Identification and Notification Procedures. Upon determination of an actual or potential loss, error, or overpayment of funds to an account held in trust by the BIA, the procedures outlined in this manual part shall be followed.

2.2 Identification of a Loss. In the absence of an automated accounts receivable system, each office effecting collections and disbursements transactions for trust account holders shall develop and provide for the continued monitoring and oversight of accounts to assure compliance with internal control procedures to minimize risk and potential loss(es) to trust funds. This may be effected by implementation of a manual follow-up process, using dated files to track when collections are due and to establish and implement verification procedures to assure that payments are remitted in a timely manner.

A. A review of all trust funds account activity source documents is to be conducted daily to verify accounting information and to detect any differences, improprieties, or potential errors and variances in data entry, mathematical computations, erroneous postings, etc. This process may be accomplished by a comparison of daily collection activity reports to dated files by the field office billing clerks to determine if all payments are being remitted in a timely manner.

B. The Automated Daily Reconciliation (ADR) report, where available at each area office, and the manual reconciliation reports and the monthly reconciliation reports on IIM and tribal trust accounts should be reviewed on a regular basis.

C. If source documents do not reconcile with the daily reviews or automated monthly reports, variances or difference must be researched and corrective actions taken before month-end reports are run to correct the accounting for the next reporting period. When any corrections or adjustments are made, account owners must be notified and given an explanation and an opportunity to clarify any items which do not agree with their records. See Sec. 2.10 on notification to account holders.

2.3 Documentation of Actual or Potential Loss(es), Error or Overpayment. In conducting reviews as described in Sec. 2.2 or if notified by an account holder or by any other means, an individual or office at any level of the Bureau detects, discovers, or receives information which reflects a variance, difference, error, or possible impropriety which may lead to or result in actual or potential loss(es) or overpayment, immediate action must be taken to document the circumstances to establish whether a loss or overpayment has occurred or a potential loss(es) exists. Nothing contained in this paragraph shall require an office to obtain or maintain records required by this section in any given manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. The documentation should include, but not be limited to, the following:

A. A written statement providing all facts sufficient to determine whether loss(es) or overpayment have occurred.

B. Copies of account holder ledgers, reconciliation reports, journal vouchers, and related distribution/transfer instruments which reflect the debits and credits pertaining to transactions.

C. Specific dates, amounts due, amounts received, amounts posted, and supporting lease contacts, deposit records, bills for collection, field receipts, and related information.

D. Correspondence, witness statements, computations and any other pertinent records.

2.4 Initial Notification of Loss(es), Error, or Overpayment.

A. Agency. Upon discovery or detection of actual or potential trust funds loss(es) or overpayment at an agency, the agency superintendent or officer in charge shall notify the area director and the Loss Claims Officer, Office of Trust Funds Management on the same working day, but no later than the close of business on the following working day, by telephone and/or telefax. A written memorandum with documentation as described in Sec. 2.3 of the discovery, shall be sent to the area director with copies forwarded to OTFM no later than 10 working days following the date of initial notification. A surname copy of the notification and documentation shall be filed in the account holder case file at the office of record.

B. Area Office. Upon discovery or detection of an actual or potential trust funds account loss(es) or overpayment, the area director or designated responsible official shall notify the Loss Claims Officer, OTFM, by telephone, followed by a telefax, as soon as possible, but no later than the following working day. The area office shall prepare and submit written notification and documentation of an actual or potential trust funds account loss(es) or overpayment as prescribed in Sec. 2.3 to OTFM no later than 15 days following the date of initial notification. A surname copy of the notification and documentation shall be placed in the account holder's case file at the office of record.

2.5 Computing the Amount of Loss(es), Error or Overpayment. The area director or designated responsible area office official, in cooperation with the Office of Trust Funds Management will consult on the method of computation, and shall compute the estimated amount of loss(es) and/or overpayment. This information shall be included in the documentation described in Sec. 2.4. Copies of the computations shall be placed in the case file in the office of record.

A. Known Amount of Loss(es), Error or Overpayment.

(1) Tribal Trust Funds Loss(es). Lost principal, earned interest, and accrued interest, if applicable, shall be computed for these accounts.

(2) IIM Accounts. A loss or overpayment of principal that an IIM account has sustained shall be computed and reported with the date(s) of loss or overpayment. The principal and interest is an obligation of the U.S. to the account holder, where IIM funds were invested and interest was earned.

(3) Other Trust Funds Account Loss(es). Lost principal, earned interest, and accrued interest, if applicable, shall be computed for these accounts. OTFM shall be responsible for reporting and correcting a loss or overpayment for these accounts.

B. Unknown Amount of Loss(es), Error or Overpayment. When it is apparent that actual loss(es) or overpayment have occurred because of BIA or other government agency error(s) in managing the trust funds account, but the exact extent of the loss or overpayment is yet undetermined, the area director or designated responsible official shall report the loss(es) or overpayment to the Loss Claims Officer, OTFM, within the same working day, but no later than the following working day. Within 15 days of the initial date of discovery of the error, the

following shall be provided by the area office: (1) a written notice of the basic facts, including the account holder's name, account number, estimated amount in error, the type of transaction involved, and related information detailing the matter; (2) a status report of the actions required to gather the relevant documentation; and (3) the projected time frames for completion of the investigation. Under no circumstances shall the time frame for submitting all written documentation for OTFM determination of any loss or overpayment exceed a total of 30 days from the date of initial report of suspected error in a trust fund account.

2.6 Signatory Authority for Initial Notification. All written reports of trust funds account loss(es), errors, and/or overpayments shall be prepared and signed by the area director having jurisdiction over the account. If an agency is involved, the report shall have an attached copy of a memorandum from the agency superintendent documenting the date of error identification; the type of error and loss or overpayment amount, if known; and the account involved.

2.7 Reporting Address. All status reports, documentation, computations, and other background materials related to reports of trust fund account loss(es), error and/or overpayment shall be forwarded by the area director to the Director, Office of Trust Funds Management, Attention: Loss Claims Officer, 505 Marquette N.W., Suite 700, Albuquerque, New Mexico 87102.

2.8 Office of Trust Funds Management Review and Decision. Within 15 days of receipt of documentation, OTFM shall complete an inventory, perform research, verify the adequacy and timeliness of documentation, and review and report its findings to the area director. A written decision/finding of OTFM concurrence or nonconcurrence with the initial determination of actual loss(es), error, or overpayment shall be provided to the reporting area office once the necessary documentation and computations have been received by OTFM within the time frames prescribed herein.

A. OTFM Decisions on Area Office Findings of Error. If concurring with the area office finding(s), OTFM shall provide the area director with instructions regarding the proper accounting treatment and disposition of the reported loss(es), error or overpayment. When applicable, the area director shall forward copies of OTFM decisions to any agency offices involved in the corrective action process. If OTFM determines the computed amounts are incorrect, or that there is no loss(es), error, or overpayment to the trust fund account, OTFM shall forward a written explanation of its findings to the area director and provide corrective action instructions regarding the accounting treatment and disposition of the transaction.

B. Pending Decisions Due to On-Going Analysis. An OTFM pending decision shall not be unduly delayed by fact finding and data analysis. Adequate background information, documentation, and other data sufficient to determine whether a loss/overpayment or error has occurred, as stipulated in Section 2.3, shall be submitted to OTFM no later than 15 days from the date of initial identification of suspected error. See Sec. 2.3, Documentation of Actual or Potential Loss(es), Error or Overpayment.

2.9 Agency Notification. If applicable, the area director shall notify the relevant agency superintendent in writing of the OTFM decision upon receipt of the decision.

2.10 Written Notification to Holder of Trust Fund Account. Within 15 days of receipt of the OTFM decision of concurrence with the findings of trust fund account loss or overpayment, the responsible area director shall notify the account holder in writing (Certified Mail, Return Receipt Requested) with a copy to the agency superintendent. The notification shall include:

(a) The amount of loss or overpayment (if known).

(b) All relevant background information explaining the circumstances and facts concerning how the loss/overpayment occurred.

(c) Current action taken.

(d) Anticipated future actions to reimburse the loss or recover the overpayment.

(e) Right to access and review of documentation and computations contained in the account holders case file.

(f) Appeal rights and procedures.

2.11 Recordkeeping. All correspondence, memoranda, decisions, and other background materials and documentation relative to any identified loss(es), errors, and/or overpayments shall be filed in the case file at the office of record to provide historical data and documentation of the loss(es), error, and/or overpayment from the initial identification of the error to the final resolution. The designated OTFM Loss Claims Officer shall retain a written record of findings for reference or further reporting to the Deputy Commissioner of Indian Affairs. Any open case files shall be reviewed on an annual basis by OTFM.

A. Tribal Trust Funds Accounts. A case file shall be created for each identified tribal trust funds account for which a suspected loss, error, or overpayment is identified. This case file shall constitute the historical file documenting the error incurred and all Bureau action related to disposition of the matter. This file shall contain all background materials, computations, surname copies of reporting memoranda, copies of final OTFM decisions, and area office and agency corrective actions taken, including notifications to account holders and evidence of reimbursement to the account. Case files shall be maintained at the respective area office. Copies may be maintained at the agency, if appropriate, containing duplicate materials needed to resolve the identified error.

B. IIM Accounts. All documentation related to loss(es) or overpayments shall be filed in the existing IIM account case file related to the individual IIM account holder. This case file shall be maintained by the office of record and shall be considered the official record copy. The designated OTFM Loss Claims Officer shall retain a written record of findings for reference or further reporting to the Deputy Commissioner of Indian Affairs. On an annual basis, OTFM shall review the case files for proper maintenance.

C. Other Trust Funds Accounts. A case file shall be created for each identified trust funds account, other than tribal and IIM, for which loss(es), error, or overpayment have occurred. All documentation related to loss(es) or overpayments shall be filed in the case file and maintained by OTFM. The designated OTFM Loss Claims Officer shall retain a written record of findings for reference or further reporting to the Deputy Commissioner of Indian Affairs. On an annual basis, OTFM shall review the case files for proper maintenance.

3. Reimbursement

3.1 Reimbursement of Verified Loss(es). The Bureau shall reimburse verified loss(es) subject to the availability of funds appropriated by Congress. The relevant area accounting office shall prepare quarterly status reports and a plan of corrective actions for restoring loss(es), as defined in this manual part, to the appropriate trust fund account(s).

A. Accounting Procedures. The Department of the Treasury Form, SF-1081, Voucher and Schedule of Withdrawals and Credits, shall be used to transfer funds between administrative (e.g. appropriated funds) and trust accounts to reimburse account holders for verified losses. Amounts charged to the appropriate administration account will be determined by the accountable Bureau officer preparing the SF-1081. In preparing the SF-1081, the Customer Agency will be the Bureau of Indian Affairs, Division of Accounting Management (DAM). The billing office will be the Bureau of Indian Affairs, Office of Trust Funds Management. The Appropriation, Fund, or Receipt Symbol block should contain the appropriate Treasury Fund Symbols and full and complete accounting data for the transaction.

B. Coordination With Financial Management. SF-1081 transfers between administrative and trust accounts shall be transacted through the Bureau's Administrative Accounting System, the Federal Finance System (FFS), for the purpose of reimbursing account holders for verified losses. The SF-1081 shall be forwarded to the Division of Accounting Management, Central Office West, Attention: Branch of Operations, Billing Section. On the same day that DAM has accomplished the SF-1081 transaction, a copy will be telefaxed to OTFM, Division of Trust Funds Accounting, which is responsible for posting the receipt of the transferred funds to OTFM's Trust Funds Management System (TFMS). The purpose of the transfer, to reimburse account holders for verified losses, will be stated on the SF-1081.

3.2 Annual Estimate of Loss(es) Reimbursement. The Office of Trust Funds Management shall prepare a quarterly and annual Estimate of Loss(es) Reimbursement requirements and shall forward this estimate to the Director, Office of Management and Administration. The estimate shall be comprised of monthly reports required in Section 4.1, Trust Funds Loss(es)/Overpayments Reporting Requirements.

A. Due Date. The annual estimate shall be forwarded in time to be received no later than August 1. The annual estimate shall be accompanied with a detail and description of types of losses and justification for reimbursement. An update of this estimate shall be provided to the same addressees to be received no later than November 30 of each year.

B. Required Use for Annual Budget. The Director, Office of Management and Administration shall ensure that the Loss(es) Reimbursement Estimate is taken into consideration by Financial Management in preparing the BIA Budget.

4. Reporting

4.1 Trust Funds Loss(es)/Overpayments Reporting Requirements.

A. Monthly Reports. Monthly reports shall be provided by the area office directors, to the Director, Office of Trust Funds Management. These monthly reports shall indicate trust fund losses and overpayments as they occur. Monthly updates shall be provided on the first working day of each month. The OTFM compilation of all Monthly reports shall be submitted quarterly.

B. Quarterly Report of Verified Trust Funds Loss(es). The Director, Office of Trust Funds Management shall submit a quarterly narrative Annual Report of Verified Trust Funds Losses for the current Fiscal Year. This report shall be in memorandum form and shall be used in developing and performing periodic evaluations to ensure that the policy is effectively and efficiently being implemented and in accordance with the CFO reporting requirements. OTFM shall allow enough lead time to assure its arrival no later than the last work day of each quarterly month.

C. Annual Report of Verified Trust Funds Loss(es). The Director, Office of Trust Funds Management shall submit a narrative Annual Report of Verified Trust Funds Losses for the Current Fiscal Year. This report shall be in memorandum form and shall be used in developing and performing periodic evaluations to ensure that the policy is effectively and efficiently being implemented in accordance with the CFO reporting requirements. OTFM shall allow enough lead time to assure its arrival no later than August 1 of each year.

D. Requirements.

(1) Due Dates. The quarterly report shall be submitted to the Deputy Commissioner of Indian Affairs through the Bureau of Indian Affairs Forms and Reports Officer, Division of Management Support, Branch of Directives and Regulatory Management, no later than 15th of each quarterly month. The annual report shall be forwarded to the Deputy Commissioner of Indian Affairs through the Bureau of Indian Affairs Forms and Reports Officer, no later than August 1 of each year.

(2) Report Control Number. The quarterly and annual narrative reports shall be in memorandum format and shall be clearly marked with their assigned report number. The Number BIA-91-(85-01) is assigned to the quarterly report. The Number BIA-91-(85-02) is assigned to the annual report. No other form, format, or report is authorized without notification of change through revision and reissuance of this manual part.

(3) Reporting Control Procedures. These reports shall be recorded and controlled through regulations and guidelines established by the General Services Administration (GSA), the Department of Interior (DOI), and the BIA.

(a) Recording of Report. The Bureau of Indian Affairs Forms and Reports Officer in the Branch of Directives and Regulatory Management shall review these reports for proper format and adherence to report approval requirements established by GSA, DOI, and the BIA for proper recording and timeliness.

(b) Surname and Routing. The BIA Forms and Reports Officer shall surname and forward these reports to the Deputy Commissioner of Indian Affairs through the BCCO to be received by the Deputy Commissioner of Indian Affairs no later than the close of business on the last day of each quarterly month for the quarterly reports; and no later than August 1 of each year for the annual reports.

E. Recordkeeping Requirements. Financial reporting records are retained by the National Archives and Records Administration (NARA) and shall not be destroyed until permission is granted by that agency through a revision of the BIA Records and Files Disposition Schedule and its issuance through the Bureau of Indian Affairs Manual (BIAM). The retention value of these records shall be considered as permanent until further instructions are issued by the BIA Records Officer through this manual part and through the BIA Records and Files Disposition Schedule.