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Accounting and Information
Management Division

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January 14, 1994

Mr. Wyman Babby
Acting Deputy Commissioner
of Indian Affairs
Department of the Interior

Dear Mr. Babby:

At the request of the Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, and the Chairman, Subcommittee on Interior and Related Agencies, House Committee on Appropriations, we are reviewing the Bureau of Indian Affairs' (BIA) efforts to reconcile its trust fund accounts and develop a strategic plan for trust fund management improvements. Since our work to date has included a review of BIA's draft policy and procedures on Indian Trust Fund Account Losses, your staff asked us to comment on the September 24, 1993, draft policy and procedures. The purpose of this letter is to provide our detailed comments and suggestions.

OVERVIEW

In January 1992, we reported[1] that BIA's October 1991 draft loss policy was a good start, but that we believed it could be strengthened in three areas. First, the policy did not address the need for systems and procedures to prevent and detect losses, nor did it instruct BIA staff on how to resolve them if they do occur. Second, the policy did not address what constitutes sufficient documentation to establish the existence of a loss. Finally, the policy's definition of losses did not include interest that was earned but not credited to the appropriate account. While the

[1]Letter to the Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, "BIA Reconciliation Monitoring" (GAO/AFMD-92-36R, January 13, 1992).

September 24, 1993, draft policy is an improvement, in terms of definitions and time frames, it does not fully address the above concerns.

Although the draft policy and procedures assigns managerial responsibilities to specified agency officials, it does not articulate the steps to detect, prevent, and resolve losses. We recognize that BIA's current trust fund systems do not provide a mechanism to help BIA identify losses. However, until a new system is available, BIA could implement appropriate management procedures to provide reasonable assurance that losses are prevented, or if they do occur, that the losses are promptly identified and resolved.

One area in which BIA could implement a manual process is accounts receivable. BIA does not currently have an automated accounts receivable system. As a result, it cannot identify partial payments, determine which accounts are uncollected, or determine the total trust fund accounts receivable balance. BIA could instruct field office billing clerks to develop a manual follow-up process using dated files to help track when collections are due. Billing clerks could then use the daily collections activity reports and compare them against the dated files to determine if all payments are being remitted in a timely manner.

With regard to the two remaining concerns, the appropriate sections of the draft policy and procedures could be expanded to (1) explain the documentation necessary to establish a loss and (2) include interest earned but not credited to the appropriate Individual Indian Money (IIM) account. These and other detailed comments on BIA's September 24, 1993, draft policy on Indian Trust Fund Account Losses are discussed below. Our suggestions for minor technical clarifications are presented in the enclosure.

TERMS AND DEFINITIONS

Section 1 of the draft policy sets out general policies and responsibilities and definitions for losses. This section does a better job of defining losses than earlier drafts. However, we are concerned that (1) IIM interest earned is not included as a reimbursable loss, (2) errors, such as failure to invest IIM funds, are considered losses, (3) interest is not owed account holders unless a disbursement is delayed for

30 days or more, and (4) non-reimbursable losses which result from actions beyond BIA's control are not defined.

Reimbursable Trust Fund Losses

Section 1.5 covers Reimbursable Trust Fund Losses. This section states that both principal and/or accrued interest is reimbursable for losses to Tribal and Alaska Native Entity Accounts, but that only the principal is reimbursable for losses to IIM accounts. The policy refers to Comptroller General Decision No. B-243029, dated March 25, 1991, as support for BIA's decision that interest to IIM is not reimbursable. However, this is a misinterpretation of the decision. The decision addresses the government's sovereign immunity from interest liability unless payment of interest is provided for in law. In this regard, 25 U.S.C. 162a states that the government shall invest and pay interest on tribal funds and that it may invest IIM funds. Therefore, the government is required to invest tribal funds and is liable for the lost opportunity to earn interest where tribal funds are not invested.

In the case of IIM accounts, the government is not required to invest IIM funds and, therefore, is not liable for lost opportunity where IIM funds are not invested. However, where IIM funds are invested and interest is earned, that interest belongs to the account holder; BIA is liable for failure to properly credit the interest to the account.[2] BIA recognized, in the last sentence of Section 1.5B in its February 26, 1993, draft of the loss policy, that it should reimburse IIM account holders for the interest that was earned on investments but not credited to their accounts. This provision addressed our earlier comment that BIA had neglected to recognize this obligation. This sentence was deleted from the September 24, 1993, draft. However, we believe the sentence should be restored.

[2]See 68 Comp. Gen. 600, 603 (1989).

Both Interior Solicitor[3] and Comptroller General[4] decisions have supported the position that interest which is earned on IIM funds which were invested should be credited to the IIM account holder.

Definition of Loss

We concur with the definition of loss added to Section 1.6, as follows.

> "Only those losses attributable to Bureau error shall be governed by this part. A loss attributable to Bureau error is defined as 'that amount which, except for an erroneous payment, deposit, and/or disbursement to and/or from a trust fund account holder's account, would have been credited to and/or debited to and/or from the trust fund account holder's account, absent such error by the Bureau.'"

Section 1.6A includes "failure to invest IIM" as an error. Under 25 U.S.C. 162a, BIA is not required to invest IIM and, therefore, this is not a loss that BIA is liable for. BIA is liable only for failure to properly credit interest actually earned on IIM accounts. Therefore, we suggest that BIA revise this section to address "failure to properly credit interest earned on IIM accounts."

We agree with the changes to Section 1.6B, which now reads, "(f)ailure 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." This change is an improvement from the February 26, 1993, draft policy because it more clearly recognizes BIA's responsibility to recover losses due to investments over insured levels.

Section 1.6D defines delay as 30 days or more between the time funds are withdrawn from Treasury and the time they are

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[3]BIA.IA.0339, Opinion Regarding Trust Fund Losses, May 2, 1990.

[4]See footnote 2.

disbursed to the account holder. It is not clear why a 30-day period is needed to issue a check to an account holder or why the account holder would not be owed interest for such a long period. Normal banking procedures take no more than 3 to 5 business days for checks to be issued and received by account holders. Therefore, we suggest that BIA consider reducing the 30-day period.

The rewrite of Section 1.6F, which covers loss of interest due to failure to invest trust funds, is much clearer than the earlier version. However, we suggest that BIA make the language specific to the "failure to invest tribal funds," since BIA is liable for lost opportunity on tribal funds, but not for lost opportunity on IIM funds.

Non-Reimbursable Trust Fund Losses

Section 1.7 states that "Trust fund losses which result from conditions and actions beyond the jurisdiction and/or control of the Bureau of Indian Affairs, provided the Bureau has acted in good faith in the exercise and discharge of its fiduciary duties and obligations as a prudent fiduciary shall be considered to be non-reimbursable." We believe the phrase "as a prudent fiduciary" is redundant and could be eliminated. Further, the policy does not define the conditions beyond BIA's control. As a result, we cannot comment on whether "such conditions and actions" would be reimbursable. We suggest that BIA identify examples of conditions outside its control in the loss policy.

NOTIFICATION AND DOCUMENTATION

Section 2 identifies officials responsible for notification of losses and time frames for notification and calculation of losses. This section, however, does not fully explain the process for (1) identifying errors, losses, or overpayments, (2) notifying the appropriate officials and account holders of losses in a timely manner, (3) documenting the existence and amounts of losses, and (4) resolving losses. Section 1.4B assigns to a Loss Claims Officer the responsibility for gathering documentation of a loss, but neither it nor Section 2 offers any guidance as to the type or quality of documentation that would be needed to establish a loss.

We previously reported[5] that BIA's loss policy did not address the need for systems and procedures to prevent and detect losses or instruct BIA staff on how to resolve errors if they occurred. We also reported that BIA needs a systematic control process to provide reasonable assurance that errors are prevented and to identify and correct losses, if they occur. In addition, we stated that the loss policy did not describe BIA's policies and procedures for providing reasonable assurance that overpayments are prevented and for identifying and resolving overpayments, should they occur.

Absent a systematic process for preventing losses or identifying them, if they occur, it is not clear how the losses would come to the attention of BIA's Area and Agency Office staff unless they were notified by an account holder. As discussed above, until a new trust fund accounting system is in place, BIA could implement appropriate management procedures to provide reasonable assurance that losses are prevented, or if they do occur, that losses are promptly identified and resolved.

Section 2 was revised to cover a "potential loss and overpayment" in addition to a "loss," which is defined as a Bureau "error" in Section 1.6. However, potential loss and overpayment are not defined. In addition, this section does not describe the documentation necessary to establish either the existence or amount of a loss, potential loss, overpayment, or error. The section only indicates that losses will be identified as they come to the attention of Agency and Area Office staff. We suggest that BIA describe the documentation necessary to establish that a loss has occurred and that it define, in addition to loss, potential loss, error, and overpayment in the policy.

Time Frames for Notification and Documentation

Sections 2.2A and 2.2B establish next day time frames for chain of command notifications of losses from Agency Offices to Area Offices and to the Office of Trust Funds Management (OTFM). However, the type of documentation needed for notification is not described. We suggest that BIA identify

[5] See footnote 1.

the types of documentation needed for notification and calculation of losses in the appropriate categories of Section 2.

The time frames set forth in Section 2.3 for various types of accounts and notifications are confusing and inconsistent. For example:

-- Section 2.3 establishes a 30-day period for the cognizant Area Office Director to compute the "Amount of Error and/or Loss/Overpayment" and forward the computation to OTFM.

-- Section 2.3A (1) requires the Area Office Director to notify OTFM within 15 days of losses or overpayments for Tribal and Alaska Native Accounts, which cannot be corrected in the months in which they occurred.

-- Section 2.3A (2) provides no specific time frame for computing or reporting losses on IIM accounts.

-- Section 2.3A (3) states that within 15 working days of the discovery of the loss or potential loss, the cognizant Area Office Director shall forward to OTFM all copies of background materials and documentation supporting the loss calculation.

Section 2.3A (3) suggests that the Area Office Director would forward all documentation used for the loss calculation to OTFM within 15 days, but Section 2.3 allows the Area Office Director 30 days for calculating the amount of the loss. Also, no date is specified for providing documentation for IIM accounts. We suggest that BIA reconsider the stated time frames and also include a time frame for reporting and calculating IIM losses in the policy.

Further, the reason for the difference in time frames in Section 2 for notifying Agency Offices and account holders is not apparent. For example, Section 2.7 allows an Area Office Director 1 working day to notify the relevant Agency Office Superintendent of OTFM's decision, but Section 2.8 allows 15 days for the Area Office Director to provide written notification to the account holder.

In addition, while Section 2.8 lists the type of information, including background information explaining the circumstances concerning how the loss occurred, that is to be provided with notifications to account holders, it is not clear whether actual supporting documentation will be provided, or made available upon request, to the account holder. BIA may want to consider giving an account holder the opportunity to review and comment on BIA's documentation for a loss before making a final decision. If BIA decides to do this, we suggest that BIA revise the loss policy accordingly.

Known Amount of Loss/Error/Overpayment

This section recognized that accrued interest shall be computed for tribal and Alaska Native account losses. Section 2.3A (2) states that no loss of interest on IIM accounts will be recorded as obligations of the United States. As stated above, the language regarding IIM accounts is incorrect. This section should be corrected to state that where IIM funds were invested and interest was earned, the interest is an obligation of the United States to the account holder.

Pending Decisions Due to Ongoing Analysis

Section 2.6B calls for adequate documentation for determining that losses have occurred to be furnished to OTFM within 60 days. However, it is not clear why furnishing this documentation should take 60 days, what constitutes adequate documentation, or when the analysis is to be completed. Further, the time frame of 60 days appears to be inconsistent with Section 2.3, which calls for such documentation to be provided within 30 days.

In addition, this section does not include procedures for account holders to respond to and comment on BIA's decisions, such as determining the existence of a loss, amount of loss, and proposed resolution. As stated above, BIA may want to provide documentation of its calculations to the account holder. This would enable the account holder to review the documentation and provide comments to BIA before it makes a final determination. If BIA concurs with our suggestion regarding provision of documentation on loss calculations to account holders, we suggest this section be revised accordingly.

REIMBURSEMENT

Section 3 addresses procedures for reimbursing account holders for identified losses and the related accounting and budget reporting procedures.

Reimbursement of Verified Loss

Section 3.1 states that "(t)he Bureau shall reimburse loss(es) subject to the availability of funds appropriated by Congress for such purpose." We suggest that BIA revise the text to say "verified" loss(es) to be consistent with the heading. We also suggest that BIA delete the phrase "for such purpose." The current wording might suggest that BIA will not reimburse losses unless it receives a line-item appropriation earmarked for reimbursement of losses. An earmarked appropriation is not necessary; the Bureau's "Operation of Indian Programs" appropriation is available for this purpose.

Section 3.1A describes the accounting procedures to be used for transferring funds from appropriated to trust fund accounts; however, it does not state the purpose of the transfer. We suggest that BIA add language to this section to indicate that the purpose of the transfer is to reimburse account holders for verified losses.

Annual Estimate of Loss Reimbursement

Section 3.2 provides for quarterly and annual reporting to BIA's Office of Management and Administration of estimated losses to be reimbursed. Section 3.2A establishes an April 1 annual due date and an August 1 update on estimated losses. We suggest that for appropriation purposes, an August 1 due date with a November 30 update may be more useful. The November 30 update would coincide with the final general ledger closing and preparation of the final SF-133 Report on Budget Execution. Alternatively, a late January/early February update would coincide with submission of BIA's SF-220, Report on Financial Position, and related financial reports required by Treasury.

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Thank you for the opportunity to comment on BIA's draft policy for Indian Trust Fund Account Losses. Should you have any questions about our comments, please contact Gayle Condon, Assistant Director, Civil Audits, at (202) 512-9577 or Tom Armstrong, Assistant General Counsel, at (202) 512-5644. We appreciate the opportunity to provide input as new trust fund policies and procedures are being developed as well as the continuing cooperation of your staff as we conduct our review.

Sincerely yours,

Jeffrey C. Steinhoff
Director of Planning and
Reporting

MINOR TECHNICAL CLARIFICATIONS

Section 1 of the draft policy does not present the definition of loss before describing the types of losses and whether or not they are reimbursable to account holders. Presenting the definition of loss first will provide a basis for understanding the explanation of types of losses. Therefore, we suggest renumbering Sections 1.6 and 1.5 to present the definition of loss first.

Section 2 is inconsistent in its references to Area Offices and Area Office Directors. For example, Section 2.3A (3) refers to the "cognizant" Area Director, Section 2.8 refers to the "responsible" Area Director, and Section 2.9A refers to the "respective" Area Office. We suggest using "respective" or "cognizant" for consistency.

The first sentence in Section 2.3A (1) should state "the 'lost' (not loss) principal and accrued interest...."

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