

GENERAL RECORDS SCHEDULE 6

ITEM
NO. DESCRIPTION OF RECORDS

1. Accountable Officers' Files

- a. Original or ribbon copy of accountable officers' accounts maintained in the agency for site audit by GAO auditors, consisting of statements of transactions, statements of accountability, collection schedules, collection vouchers, disbursement schedules, disbursement vouchers, and all other schedules and vouchers or documents used as schedules or vouchers, exclusive of freight records and payaroll records. If an agency is operating under an integrated accounting system approved by GAO, certian required documents supporting vouchers and/or schedules are included in the site audit records. These records document only the basic financial transaction, money received and money paid out or deposited in the course of operation of the agency. All copies except the certified payment or collection copy, usually the original or ribbon copy, and all additional or supporting documentation not involved in an integrated system are covered by succeeding items in this schedule.

Site audit records include, but are not limited to, the Standard Forms and Optional Forms listed below. Also included are equivalent agency forms which document the basic financial transaction as described above.

- SF 215, Deposit Ticket
- SF 224, Statement of Transactions
- SF 1034, Public Voucher for Purchases Other Than Personal
- SF 1036, Statement of Certificate and Award
- SF 1047, Public Voucher for Refunds
- SF 1069, Voucher for Allowance at Foreign Posts of Duty
- SF 1080, Voucher for Transfer Between Appropriations and/
or Funds
- SF 1081, Voucher and Schedule of Withdrawals and Credits
- SF 1096, Schedule of Voucher Deductions
- SF 1097, Voucher and Schedule to Effect Correction of
Errors
- SF 1098, Schedule of Cancelled Checks
- SF 1113, Public Voucher for Transportation Charges
- OF 1114, Bill of Collection
- OF 1114A, Official Receipt
- OF 1114B, Collection Voucher
- SF 1129, Reimbursement Voucher
- SF 1143, Advertising Order
- SF 1145, Voucher for Payment Under Federal Tort Claims
Act
- SF 1154, Public Voucher for Unpaid Compensation Due a
Deceased Civilian Employee

SF 1156, Public Voucher for Fees and Mileage
SF 1166, Voucher and Schedule of Payments
SF 1185, Schedule of Undeliverable Checks for Credit to
Government Agencies
SF 1218, Statement of Accountability (Foreign Service)
Account)
SF 1219, Statement of Accountability
SF 1220, Statement of Transactions According to
Appropriation Funds and Receipt Accounts
SF 1221, Statement of Transactions According to
Appropriation, Funds and Receipt Accounts
(Foreign Service Account)

- (1) Accounts and supporting documents pertaining to
American Indians.

Disposition not authorized.

- (2) All other records described under 1.a. above.

Destroy 6 years and 3 months after period covered by
account.

ATTACHMENT

The following is a detailed explanation of the history of the Indian record exclusion from the General Accounting Office's (GAO) schedules authorizing destruction of accountable officers' records after passage of a specified period of time and an ~~explanation of why these records should be retained indefinitely.~~

It is fairly clear that the omission of the exemption for Indian Records from item 2 of the GAO Records Retention and Disposal Schedule No. 1 was through inadvertence rather than by design. The disposal schedules set forth in the February 27, 1979, Supplement to GAO-OM Ord. No. 0413.1 are merely a compilation of otherwise approved schedules and are based upon--

- (1) the General Records Schedules (GRS) which since October 10, 1978, have been mandatory upon Federal agencies (including GAO) and cover records of form and character common to several agencies,^{1/} or
- (2) Requests for Records Disposition Authority (SF 115) submitted by this Office to General Services Administration (GSA) for approval for disposition of records in the custody of GAO. Approval of the SF 115 by GSA is also mandatory upon GAO.^{2/}

The law provides that where there is a difference between authorizations set forth in the GRS and approved SF 115s submitted by agencies, the shorter retention period governs.^{3/} However, the law also provides that GSA may authorize longer retention periods by agencies upon the submission of evidence showing the need to retain the record.^{4/}

Item 1a relating to accountable officers' files was first included by the General Services Administration in GRS 6 on April 8, 1977. This item authorized destruction after 6 years and 3 months of:

"Original or ribbon copy of accountable officers' accounts maintained in the agency for site audit by GAO auditors, consisting of statements of

^{1/} 44 U.S.C. § 3303a (b) and (d) 1982.

^{2/} Ibid.

^{3/} 44 U.S.C. § 3303a (b) 1982.

^{4/} 44 U.S.C. § 2909 1982.

transactions, statements of accountability, collection schedules, collection vouchers, disbursement schedules, disbursement vouchers, and all other schedules and vouchers or documents used as schedules or vouchers, exclusive of freight records and payroll records. * * *

~~No exemption for Indian records appeared anywhere in item 1a of this or any subsequent version of GRS 6.~~

Item 2 of GAO Records Retention and Disposal Schedule No. 1 set forth in the Supp. to GAO-OM Ord. No. 0413.1 cites as its disposal authority, SF 115 Job. No. NCI-217-78-3, submitted by this Office and approved by GSA on March 31, 1978. Item No. 1 of this SF 115 authorized destruction after 6 years and 3 months of records created after Fiscal Year 1975. These records are described as:

"Settled accounts of accountable officers, consisting of the following records, or their equivalents: statements of accountability; statements of transactions; related vouchers and schedules; and supporting papers. EXCLUDING: * * * accounts pertaining to Indians; * * *."

Thus, item 2 of the SF 115 submitted by this Office and approved by GSA clearly excluded Indian Records from destruction after the prescribed period and impressed a longer retention period upon accountable officer's accounts relating to Indians than that prescribed by item 1a of GRS 6. Consequently, under 44 U.S.C. § 2909 and 3303a(b), the longer retention period governs.^{5/} Thus, based upon the approved SF 115, the exemption for Indian accounts should have been included in our Supplement when it was issued in February of 1979.

However, whether the exclusion for Indian accounts should have been included in the SF 115 or whether any date provides a cutoff for the permanent retention of these records is less clear. Thus, in order to answer these as well as the other questions raised by the GSA inquiry requires us to review the history of the exemption for Indian accounts from its inception.

^{5/} The exemption for Indian records has been included in every request for disposal of accountable officer records approved since 1952 by GSA and the Congress (until 1972 when the law was amended to discontinue the practice of congressional approval) when the first request was submitted by this Office.

ORIGIN OF INDIAN RECORDS EXEMPTION

Prior to 1952, this Office had in its possession, with certain minor exceptions, all original accounts of accountable officers as well as many other fiscal records, including ~~claims. In order to address the problems posed by our storing these records indefinitely a special study committee (Committee) was created within this Office to explore possible solutions including disposal~~ in accordance with the provisions of the Records Disposal Act of 1943, as amended (now codified to 44 U.S.C. Ch. 33).

On March 2, 1951, the Committee filed its report setting forth its findings and submitted recommendations for the establishment of a records management program. Copies of the report were provided to the heads of divisions or offices by memorandum dated March 14, 1951, requesting their views and advising that a meeting would be held at a later date to discuss the recommendations. This meeting was held on August 15, 1951, when the recommendations were almost unanimously approved. The Executive Officer of GAO then by memorandum dated October 31, 1951, to the Comptroller General, detailed the Committee's recommendations, the responses thereto provided by the heads of divisions or offices and the points raised in the discussions held on August 15, 1951.

The Comptroller General then reported these findings to the Speaker of the House of Representatives and the President of the Senate by letter, A-19816, dated April 21, 1952, indicating that he would in the near future be submitting proposed records disposal schedules for GSA and Congressional approval to implement these findings. A copy of this letter was on May 12, 1952, provided to the Joint Committee on the Disposition of Executive Papers.

Thereafter, the Comptroller General in a letter dated June 23, 1952, A-19816, transmitted copies of a disposal list and schedule to the Administrator of General Services and to the individual members of the Joint Committee on Disposition of Executive Papers for approval of the proposed standards. Both the Administrator and the Committee on the Disposition of Executive Papers concurred, and the Requests for Authority to Dispose of Records, Job. Nos. II-NNA-224 and II-NNA-225 were approved by House Report No. 2741, 82nd Cong., 2d Sess. (July 3, 1952).

The records as described in Request Job. No. II-NNA-224, Item No. 1 are:

"All settled fiscal accounts of accountable officers of the United States Government, together with all vouchers, schedules, and other supporting documents for the period subsequent to September 1, 1939, except civilian and military payrolls and other payroll records (other than skeletonized payrolls), vouchers and supporting documents covering freight and passenger transportation charges, and all accounts and supporting documents pertaining to the Indian Service, whether rendered separately or as a component of some other account. Originals--sole record copies--to be retained for 12 years after the period of the account." Emphasis supplied.^{6/}

While we have been unable to locate a copy of the March 2, 1951, Committee report which apparently sets forth legal analysis of the authority of this Office to dispose of the records in question, we are able to glean from the Executive Officer's memorandum to the Comptroller General, A-19816 file, dated October 31, 1951, and the Comptroller General's letter of April 21, 1952, that the exemption for Indian Service records set forth in item 1 or Request II-NNA-224 quoted above was intended to permit the separate maintenance of these records indefinitely until the work of the Indian Claims Commission was completed, at which time a request for their disposal would be submitted.

^{6/} Item 4 of the same request read:

"All files of settled claims by or against the United States for the period subsequent to September 8, 1939 (the declaration of the National Emergency), in which there has been no activity during the 12 years prior to disposal, with the exception of claims pertaining to Indians and to freight and passenger transportation charges. Original--Sole record copies--To be retained for 12 years after the dates of settlement." Emphasis supplied.

It is important for us to note here that Items Nos. 1 and 4 provide the basis for the exception of Indian records destruction when included in subsequent schedules submitted by this Office for approval and thus the same reason for the exclusion applies to all these schedules. See Item No. 1 of GAO Records Retention and Disposal Schedule No. 2 and Item No. 3 of GAO Records Retention and Disposal Schedule No. 3.

Furthermore, it is also clear that the exemption was intended to apply not just to the Bureau of Indian Affairs' (BIA) accounts, but any accounts of any agency involving American Indians.

~~Concerning this reference to the work of the Indian Claims Commission, we note that prior to 1946, Indian Tribes were legally barred from bringing actions against the United States in the United States Claims Court (then known as the Court of Claims). 28 U.S.C. § 259 (1940). Thus, in order for Indian Tribes to have their claims against the United States adjudicated, it was necessary for the Congress to enact a law conferring upon the Court special jurisdiction to hear their claims.~~

Once the Department of Justice received a copy of the petition filed in the Court by the Indian Tribe, Justice would request from this Office a complete report containing all available information on the subject matter of the claim. This Office being in possession of in many instances the only set of fiscal records recording the relationship between the United States and the Indian Tribes, would search the records as far back as they went and would prepare the necessary financial statements in connection with these claims. In some instances these statements showed the entire fiscal relations between the Indian Tribes and the United States. These reports and statements were then used to support possible offsets against the claims of the Indian Tribe. Since special jurisdictional statutes could be enacted at any time to authorize the Court to hear claims going back over a hundred years or more, permanent retention of these records was in order.^{7/}

In 1946, however, the Congress moved towards correcting this inequity by establishing the Indian Claims Commission to hear all claims by Indian Tribes against the United States which accrued on or before August 13, 1946, and which were presented

^{7/} See H.R. Rep. No. 1466, 79th Cong., 1st Sess., 7, 15 (1945) and S. Rep. No. 1715, 79th Cong., 2d Sess., 3 (1946) both accompanying the bill establishing the Indian Claims Commission. See also memorandum from the General Counsel to the Assistant Director of the Accounting and Auditing Policy Staff, dated September 20, 1960, filed B-113634, recounting the history and the duties of the Indian Tribal Branch within GAO. See further the Annual Report of the Comptroller General of the United States for 1928, 66-67, 110; and, A-29148, January 23, 1930.

to the Commission on or before August 13, 1951. 25 U.S.C. §§ 70a and 70k (1946).^{8/} Additionally, the Congress conferred upon the Court jurisdiction to hear claims by Indian Tribes against the United States accruing after August 13, 1946. 28 U.S.C. § 1505. There is a 6-year statute of limitations for ~~presenting claims against the United States in the Court.~~ ~~28 U.S.C. § 2501. See also 28 U.S.C. § 2401.~~

As was the case with claims presented under special jurisdictional statutes, this Office continued to furnish reports to the Department of Justice after researching the records for the purpose of setoff or counterclaims, 25 U.S.C. §§ 70a and 70m (1946), until the Indian Tribal Branch of this Office, together with the records personnel, property and appropriations pertaining thereto were transferred from this Office to NARS in 1965. B-113634, February 25, 1972.

At the time the Committee was considering the establishment of standards for disposition of the accountable officers' fiscal account records, the time for filing claims with the Commission had yet to expire. In fact, the Executive Officer's memorandum of October 31, 1951, indicates that at the time of the Committee's review the Congress was considering extending the deadline for filing claims.

Consequently, now that the work of the Indian Claims Commission is completed and any remaining claims are before the Court (and related records are precluded from destruction until after all claims are settled), unless there exists some independent reason requiring the permanent retention of these records, they should be subjected to the same disposal standards as are accountable officers' accounts generally.

The Supreme Court has recently affirmed a Court of Claims decision holding that various statutes relating to Indians create duties in the United States as trustee of property held by the Government and managed for the benefit of Indians, which if breached, provide the basis for suits for money damages

^{8/} While it was initially envisioned that the Commission would complete its work and terminate its operations no later than 10 years after its first meeting, 25 U.S.C. § 70v (1946), this proved to be an overly optimistic and unrealistic expectation and the Congress on more than one occasion found it necessary to extend the Commission's termination date until ultimately, September 30, 1978. 25 U.S.C. § 70v (1976). Upon that date, any unresolved claims were transferred to the Court for its decision.

against the Government. United States v. Mitchell, 51 U.S.L.W. 4999 (1983). As a general rule, statutes of limitations have been held not to run against beneficiaries of trusts (including trusts administered by the Government) unless there is a breach of some duty owed by the trustee to a beneficiary or a repudiation. See United States v. Taylor, 104 U.S. 216 (1881); United States v. Wardell, 132 U.S. 48 (1898); Nelson v. United States, 35 Ct. Cl. 427 (1900); Wayne Adm'r v. United States, 26 Ct. Cl. 274 (1891); B-142673-O.M., June 30, 1960; B-126384-O.M., June 5, 1956; A-51705, November 12, 1949; and, Bogert, Trusts and Trustees, Sec. 951 (2d Ed. Rev. 1983). When a breach occurs, the statute of limitations begins to run from the date the beneficiary knew or by the exercise of reasonable skill and diligence, could have learned of it. Bogert, Trusts and Trustees, Sec. 951 (2d Ed. Rev. 1983); Dalton v. Lawrence National Bank, 219 P.2d 719, 728-729 (Kan. 1950); and Chisholm v. House, 183 F.2d 698 (10 Cir., 1950).

While the doctrine of laches may bar an action by a beneficiary against a trustee where he has unreasonably and unjustifiably delayed in pursuing his judicial remedies against the trustee, invoking the doctrine is discretionary with the court in exercising its equity jurisdiction and not predicated upon the passage of any specific period of time. See Carasco, Jr. v. United States, 215 Ct. Cl. 19 (1977) and Bogert, Trusts and Trustees, Secs. 948-949 (2d Ed. Rev. 1983).

A trustee is under a duty to the beneficiary to keep and render clear and accurate accounts with respect to the administration of the trust. The trustee is also required to provide the beneficiary and to give him upon his request at reasonable times complete and accurate information as to the nature and amount of trust property and to permit the beneficiary or his authorized representative an opportunity to inspect the accounts and vouchers and other documents relating to the trust. Navajo Tribe of Indians v. United States, 624 F.2d 981, 989 (Ct. Cl., 1950); Restatement, Second, Trusts Secs. 172-173; and Bogert, Trusts and Trustees Secs. 961 and 962 (2d Ed., Rev. 1983). Loss or absence of records does not absolve a fiduciary of the obligation to render a full account and the trustee bears the burden of proving what the absent records would show. Zelch v. Ahlemeyer, 592 S.W. 2d 482, 485 (Mo. App. 1980). In effect, this means that any expenditure which could not be supported by proper records would be disallowed and the trustee held liable. Furthermore, the obligation of the trustee to account is a continuing duty and the beneficiary's right to demand an accounting runs with that duty and may be asserted so long as that duty remains unperformed. Estate of Schneider, 156 Cal. Rptr. 838 (Cal. App., 1979).

The importance of an accounting from the Government's standpoint is that it serves to bind all parties subject to the jurisdiction of the court on all matters before the court absent fraud, omission, or concealment. Sloan v. Silberstein, 141 N.W. 2d 332 (Mich. App., 1966); In re Estate of Gray, 156 N.W. 2d 594 (Mich. App., 1967). Thus, the rendering of accounts when proper serves to fix a date for running of the statute of limitations or sustaining the defense of laches for claims based upon matters set forth in the accounts.

However, failure to render accounts serves to toll or prevent the statute of limitations from running against beneficiaries (including Indians) on claims for mismanagement of trust property by the trustee (including the Government). See Manchester Band of Pomo Indians, Inc. v. United States, 363 F. Supp. 1238 (N.D. Cal., 1973) holding that 28 U.S.C. § 2401 did not serve to bar an action commenced against the Government for mismanagement of trust property for period extending back beyond 6 years from that of commencement of the action since the Government failed to render accounts to Indians.^{9/} We cannot say whether courts will find that there has been a proper rendering of accounts by the Government which will commence the running of an applicable statute of limitations or support the invoking of the doctrine of laches in actions brought against it by Indians or Tribes for trust mismanagement. This alone is sufficient to warrant permanent retention of these accounts.

However, we are also unaware of whether these records are useful for the resolution of claims brought by the United States through the Department of the Interior on behalf of Indian Tribes against third parties. Under 28 U.S.C. § 2415(a) and (b) the time for presenting and resolving claims which accrued prior to July 18, 1966, has yet to expire. For claims accruing on or after this date, a maximum 6-year limitation applies in most cases. Thus, we recommend continued permanent retention of accountable officers' accounts relating to Indians regardless of which agency they are maintained by, since it is unclear to us that they would not be necessary to defend the Government in claims involving trust management or in prosecuting claims against third parties on behalf of Indians.

^{9/} The Claims Court has yet to rule specifically on whether the Government's failure to properly account tolls or otherwise prevents the running of the 6-year limitation imposed by 28 U.S.C. § 2501 on bringing claims against the Government in that court for trust mismanagement.