

INDIAN AFFAIRS LOSS COMPENSATION PROGRAM HANDBOOK

25 IAM 5-H



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FOREWORD

This handbook documents the procedures required to implement the Indian Affairs (IA) Loss Compensation Program policy, 25 IAM 5. It supersedes 25 IAM H: Indian Affairs Safety and Risk Management Program Handbook, issued (updated) 10/05/2004, and all policies and procedures related to IA loss compensation that may have been created and/or distributed throughout IA previously.

Although this handbook is intended to primarily assist Tort Claims Officers (TCOs) who administer the IA Loss Compensation Program policy, it may also be informative for IA employees.

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TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION.....	1
CHAPTER 2: FTCA AND TORT CLAIMS.....	1
2.1 TORT CLAIMS SUBMISSIONS.....	1
2.2 ACCIDENT, DAMAGE, OR EVENTS REPORTING	3
2.3 INVESTIGATION PROCEDURES	4
2.4 INVESTIGATION REPORT.....	7
CHAPTER 3: SETTling EMPLOYEE CLAIMS	9
3.1 ALLOWABLE CLAIMS	9
3.2 NON-ALLOWABLE CLAIMS.....	10
3.3 RECOVERY FROM THIRD PARTIES	11
3.4 CLAIM SETTLEMENTS.....	12
REPORTS AND FORMS.....	12

Chapter 1: Introduction

This handbook documents IA's Loss Compensation Program; specifically, the procedures for claims and investigations of all accidents and incidents, and the role of the Federal Tort Claims Act (FTCA) and the Military Personnel and Civilian Employees' Claims Act (MPCECA).

The IA Division of Safety and Risk Management (DSRM) serves as the IA Tort Claims Officer (TCO) as well as the Safety Manager for all IA offices. DSRM must report all accidents/incidents to the IA-Designated Agency Safety and Health Official (DASHO). Additional roles and responsibilities related to this process are documented in the companion policy chapter, 25 IAM 5: Loss Compensation Program.

Chapter 2: FTCA and Tort Claims

Congress enacted the FTCA on August 2, 1946 (P.L. 79-601). The Act stated that the United States (U.S.) government could be sued for its agents' torts in situations where a non-government person would be sued for the same tort.

A tort is a civil wrong that does not arise from a contract relation, where the person who suffers from the wrong has a right of action of damages. It is also defined as a breach of a legal duty not imposed by contract. The word comes from the French word "tort," meaning "wrong."

Under the FTCA, plaintiffs can bring civil lawsuits against the Federal Government for the following reasons:

- For money damages
- For injury to or loss of property
- For personal injury or death

The Federal Government's liability under the FTCA is almost always based on negligence. Negligence is defined as a breach of the legal duty to use reasonable care for the safety of persons and their property.

Under the FTCA, a claim is considered to be "presented" when the appropriate Director or office receives an executed Standard Form (SF)-95: Claim for Damage, Injury, or Death; or a written notification of an incident from a claimant, duly authorized agent, or legal representative. This is received together with a claim for monetary damages in a certain sum; for damage to, or loss of, property; personal injury; or death.

2.1 Tort Claims Submissions

When a TCO receives a tort claim, the first step is to annotate the claim itself to document when and where the claim was received. Immediately upon receipt, the TCO should date stamp the claim. The date stamp and documentation of where the claim was received can become key

pieces of evidence if the claimant fails to file their claim within two years of the date of loss and the Department of the Interior (DOI, or Department) argues that the claim is barred by the FTCA's two-year statute of limitations. The date stamp also informs the Department's Torts Practice Branch (TPB) when the six-month review period started and when the claim determination is due.

The TCO should then forward the original claim form and all the original papers to the TPB using the email address: doitorts@sol.doi.gov no later than 24 hours after receipt. If the claim is not forwarded within this time, a memorandum stating the reason for delay must be submitted.

In order to ensure that the tort claim submission is complete, the TCO should review the claim for specific information, as required by the Departmental Manual (DM) (see 451 DM 1.11).

When a claim for *wrongful death* is submitted, the TCO should review the claim submission and identify whether the following items have been included, if applicable:

- Evidence of death such as death certificate
- Decedent's employment earnings at time of death
- Information concerning survivors, dependents, and degree of support
- Decedent's general physical and mental condition before death
- Itemized bills for medical and burial expenses or itemized receipts of payment for such expenses
- If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

When a claim for *personal injuries* is submitted, the TCO should review the claim submission and identify whether the following items have been included, if applicable:

- Medical records showing nature and extent of injury, treatment, disability, prognosis, period of hospitalization, and diminished earnings
- Itemized bills for medical expenses or itemized receipts of payment
- If future treatment will be needed, a statement from claimant's physician stating expected treatment and related expenses for such treatment
- Where lost earnings are asserted, a written statement from the employer showing actual time lost from employment, the number of hours usually worked per week, the amount of wages or salary which the claimant was earning at the time of the accident, and whether claimant was a full-time or part-time employee.

When a claim for *property damage* is submitted, the TCO should review the claim submission and identify whether the following items have been included, if applicable:

- Proof of property ownership
- A statement of the amount claimed for each item of property
- An itemized receipt of payment for necessary repairs to each item of property; or two estimates of repair if the property has not been repaired
- A statement listing date of purchase, purchase price and salvage value where repair is not economical.

If any of the applicable information is missing from a tort claim submission, the TCO should send a letter via traceable means (certified mail, express delivery, etc.) to the claimant or his/her/their representative requesting the missing information within a reasonable amount of time.

The proper handling of claims by the TCO includes developing and submitting necessary reports, as well as conducting a timely investigation and documenting facts relevant to claims so that the government's, the employee's, and the claimant's interests are equally protected. To this end, the BIA regional TCO and Bureau of Indian Education (BIE) Human Resources (HR) TCO must submit quarterly reports to DSRM indicating the number of tort claims processed during the previous quarter.

Tort claims require in-depth investigation into the potential causes of, and responsibility for, accidents or events. The procedures for this investigation are outlined in sections 2.2 and 2.3 below.

2.2 Accident, Damage, or Events Reporting

An employee must immediately notify their supervisor of any accident, damage, or event involving a private person or private property which may give rise to a claim against the government. The employee should state the facts to the best of their knowledge. Conclusions as to fault responsibility should *not* be stated. The supervisor should immediately notify the appropriate TCO. A SF-91 and SF-94 (if witnessed) must also be completed.

The employee should also file any report required by law. If an employee involved in an accident carries liability insurance which may cover the employee or the government, the employee will report the accident to the insurance company and provide the TCO a copy of the insurance policy together with applicable endorsements and amendments. Copies of all accident reports must be provided to the TCO of the office involved as well.

2.3 Investigation Procedures

A. Investigating Accidents.

All accidents must be investigated to properly evaluate any claims, and the TCO is responsible for the overall investigation of an accident. Once the TCO has completed their investigation and compiled a comprehensive report, they should forward the complete claim to the TPB using the email address: doitorts@sol.doi.gov within 30 calendar days of the accident. More information on investigation reports is found in section 2.4 of this handbook.

1) General

Supervisors and BIA Regional Safety Managers (RSMs) should consult with the TCO to make sure that all appropriate steps have been taken to fully document the case for tort claims purposes. Copies of accident investigation reports by supervisors, Safety Offices, and others should be provided to the TCO upon their completion.

The TCO should complete the following steps while investigating an event:

- Conduct the investigation in a fair and neutral manner, covering all phases of the event. They should create a thorough, accurate, and unbiased factual report of the event so that all claims can be properly evaluated.
- Find and interview all witnesses and secure signed statements of fact related to the event. Witnesses can include drivers and passengers of all vehicles involved, ambulance attendants, tow-truck operators, doctors, police officers, and eyewitnesses. Statements from witnesses should be in writing and signed by the witnesses whenever possible.
- Inspect the property damage and interview injured persons and their representatives personally. If a personal inspection and interview is not conducted, state the reason why.
- Determine the nature, extent, and amount of damage. Gather all related repair bills or estimates, and medical, hospital, and associated bills necessary for the proper settlement of a claim against the government which may arise from the event.
- Obtain reports of the inspection of the government-owned vehicle that were conducted prior to and subsequent to the accident if they seem important to deciding liability.
- Draft and incorporate all pertinent testimony, exhibits, and other evidence taken or considered into one investigative report.

- Provide the proper claim forms to any person who asks about the procedure for making a claim against the government as a result of an accident. Inform said person where the claim should be filed (see 43 Code of Federal Regulations (CFR) 22).

Additionally, the appropriate solicitor (associate, regional, or field) should be notified immediately by email or telephone in the event of death, actual or potential serious personal injury, or substantial property damage (estimated to be in excess of \$1,000). If the notification occurs by telephone, it will later be confirmed in writing and sent by letter or email by close of business the following business day.

2) Car Rentals

All accidents or damage involving a government employee's use of a rental vehicle should be investigated by the RSM/BIE HR TCO whenever possible. The following reports and forms should be submitted as part of the investigation:

- SF-91: Motor Vehicle Accident (Crash) Report
- SF-94: Statement of Witness
- Police Report
- Safety Management Information System Accident Incident Report

It is important that the RSM/BIE HR TCO receive the required reports concerning a rental car accident/incident as soon as possible. The RSM/BIE HR TCO is responsible for determining the following:

- Was the rental car being used for official purposes?
- Was the employee acting with the scope of his employment?
- Was the employee negligent while acting in the scope of his employment?
- Was the accident caused by a third party?
- Is the third party identifiable?

Answers to the above questions must be determined. This can only be done if the properly completed forms are submitted so that the correct method of settlement may be pursued.

Additionally, collision damage waiver and settlement procedures in the event of accidental damage to rental cars while they are being used by government employees are covered as follows:

- The collision damage waiver or collision damage insurance (usually \$100) offered by a rental agency in its commercial rental contracts provides full coverage for property damage to the rental vehicle. This coverage is available at an extra cost and is additional to that insurance which is a part of the rental contract. The cost of the collision damage waiver is not payable by the government or reimbursable to the traveler.
- If the employee is not acting within the scope of their employment, they are personally liable for the damage to the rented vehicle up to the amount of the collision damage waiver.
- If the accident occurred because of the negligence of the employee while acting within the scope of his employment, the claim up to the amount of the collision damage waiver can be presented by the rental agency under the FTCA. However, if the claim of the rental agency arose because of the negligence of a third party (for example, the parked rental car was struck by an unknown vehicle) the claim supported by proper proof is paid by the employing bureau or office out of its funds up to the amount of the collision damage waiver.

B. Investigating Damage to Government Property.

The RSM/BIE HR TCO has the responsibility to investigate all property damage inflicted by a third party in which the government may pursue a claim for damages. See section 2.3 A. 2) above for information on damage to car rentals.

The RSM/BIE HR TCO should be assisted by a member of the Branch of Property Management and a member of the branch most closely associated with the damage. The RSM/BIE HR TCO must gather the following reports during the investigation:

- Police reports
- Fire Department reports
- Property damage report
- Narrative report of findings
- Complete report of damage
- Estimated cost of repairs and/or replacement
- Witness statements
- Photographs
- Cause of damage

Once the TCO has completed their investigation and compiled a comprehensive report, they should forward the complete claim to the TPB using the email address: doitorts@sol.doi.gov within 30 calendar days of the incident. More information on investigation reports is found in section 2.4 of this handbook.

If the accident or event involves substantial property damage, it is important to immediately submit a preliminary report with as much information as possible. The TCO should follow up on the preliminary report in 10 calendar days.

If all of the required information is not immediately available, such as police report, estimated cost of repairs and/or replacement, the investigation report should be submitted promptly without that information. An additional report(s) should be submitted as soon as the required information becomes available.

2.4 Investigation Report

A written report of investigation will be made of each accident or event. The investigative report itself should include the following information whenever possible:

- Date, time, and exact place the accident or event occurred.
- A statement of the conditions of the accident or event. This should include physical facts observed, as well as material statements, admissions, or declarations against the interests of the U.S. by any person involved.
- A statement as to whether the driver is the sole owner of the damaged property and, if not, the name and address of the owner or part owners.
- Names and addresses of employees involved as participants or witnesses.
- Names and addresses of all eyewitnesses, including the driver and the occupants of the vehicle.
- An exact description of government property involved, and the nature and amount of damage.
- A statement as to whether any person involved was cited for violating any federal or state statute, local ordinances, or Department regulation. If so, include a statement describing which statute, ordinance, or regulation was violated and how.
- A statement as to whether a police investigation was made. If available, include a copy of the police report.
- A statement as to whether any arrests were made or charges preferred, and the result of any trial or proceedings. Include the names of all witnesses along with their testimony. When available, secure a copy of the transcript.

- Newspaper accounts, weather reports, plats, and photographs of the site and of the vehicles involved.
- Any other information that seems important, necessary, or useful in determining a claim. Additional information should be numbered consecutively and listed by number in the investigative report.

As stated previously, Once the TCO has completed their investigation and compiled a comprehensive report, they should forward the complete claim to the TPB using the email address: doitorts@sol.doi.gov within 30 calendar days of the incident. If the accident or event involves death, serious personal injury, or substantial property damage, it is important to immediately submit a preliminary report with as much information as possible. The TCO should follow up on the preliminary report in 10 calendar days.

If all of the required information is not immediately available, such as an accident resulting in personal injuries that requires an extended period of hospitalization or medical care, the investigation report should be submitted promptly without that information. An additional report(s) should be submitted as soon as the required information becomes available.

Chapter 3: Settling Employee Claims

This section discusses specific policies for settling claims against the U.S. for damage to, or loss of, personal property of employees of the DOI. The statutory authority for these regulations is contained in the MPCECA of 1964 (as codified in 31 U.S.C. 3721).

Claims against the U.S. arising after August 31, 1964, are settled for damage to, or loss of, personal property of employees of IA. The damage or loss must be during the employee's service, and possession of the property must be reasonable, useful, or proper in the circumstances. The maximum amount allowable on a claim is \$15,000.

The rules stated in 485 DM 7, Incident/Accident Reporting/Serious Accident Investigation, and in 28 U.S.C. 171, Tort Claims Procedure, control the investigation, processing, and settlement of claims under the MPCECA as long as these regulations are not inconsistent with these rules.

3.1 Allowable Claims

Any claim within the scope of the MPCECA, which is not specifically prohibited by these regulations, may be allowed. A claim may be filed by any involved person who was an employee of IA at the time of the incident which resulted in the damage or loss, or by such a person's authorized agent or legal representative(s).

If the employee is dead, the claim may be filed by their: 1) spouse; 2) children; 3) father, or mother, or both; and 4) brothers or sisters, or both. Payments in settlement of claims to survivors will be made in the order in which the individuals are listed above. A claim may not be filed by, or for the benefit of, a subrogee, assignee, conditional vendor, or other third party.

The following are examples of allowable claims:

A. Losses in Government Furnished Housing (GFH) or Other Authorized Places.

Damage to, or loss of, property caused by fire, flood, hurricane, or other serious occurrence, or by theft, while located at the following:

- 1) GFH, wherever situated, which was occupied by the claimant and was assigned to them whether or not a charge was made for the quarters or otherwise provided in kind by the government.
- 2) GFH outside the 50 states and the District of Columbia that was occupied by the claimant but was neither assigned to them nor provided in kind by the government, except when the claimant is an employee who was a local inhabitant at the time of the damage or loss.
- 3) Any warehouse, office, or other place designated by proper authority for the reception or storage of the property.

B. Ownership and Possession of Property. Compensation may be allowed even though the property was not in the possession of the claimant at the time of the damage or loss, provided the claimant was the owner of the property.

C. Transportation Losses. Damage to, or loss of, property resulting from transportation or storage pursuant to orders (e.g., change of station) in connection with travel under orders, or in performance of duty, including property in the custody of:

- 1) a common carrier or any other commercial concern,
- 2) an agent or agency of the government, or
- 3) the claimant, including property in a private or public conveyance in which he or she is traveling.

D. Disaster Losses. Damage to, or loss of, property caused by a marine, rail, aircraft, or other common disaster, provided the claimant was on duty at the time and place of the damage or loss.

E. Public Service Losses. Damage to, or loss of, property used for the benefit of the government at the direction of proper authority.

F. Losses Incident to Extraordinary Risks. Damage to, or loss of, property subjected to extraordinary risks suffered in the performance of duty, such as risks related to enemy action, overseas hostilities, civil disturbance, public disorder, or disaster alleviation, or experienced in efforts to save human life or government property.

G. Money Losses. Losses of money when the following apply:

- 1) Accepted by government personnel with apparent authority to accept it for such purposes as safekeeping, purchase of U.S. bonds, or other authorized disposition.
- 2) Caused by fire, flood, hurricane, or other serious occurrence, or by theft, while located at qualified quarters, or caused by marine, rail, aircraft, or other common disaster. In instances of theft from quarters it must be conclusively shown that reasonable precautions were used to safeguard the money.

3.2 Non-Allowable Claims

Non-allowable claims (not cognizable) are ones that do not meet the basic criteria for being tried or adjudicated. The following are examples of non-allowable claims:

A. General. Any property for which the government has paid a rental fee or other use fee (e.g., an automobile for which the government pays a mileage allowance) to the employee.

B. Contributory Negligence. Any property damaged or lost, in whole or in part, as a result of any negligence or wrongful act of the claimant, or any agent or employee of the claimant acting within the scope of the agency or employment.

- C. At GFH.** Any property damaged or lost while located at GFH within one of the 50 states or the District of Columbia that was occupied by the claimant but was neither assigned to them nor otherwise provided in kind by the government.
- D. Intangible Property.** Any intangible property such as checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, traveler's checks, and bank books.
- E. Government Property.** Any Federal Government property, except that for which the claimant is responsible to a government agency other than IA.
- F. Property for Business.** Any property is to be disposed of by sale or for use in a private business enterprise.
- G. Clothing.** Any clothing or articles being worn, except when involved in a marine, rail, aircraft, or other common disaster, or when subjected to extraordinary risks.
- H. Motor Vehicles.** Any motor vehicle or trailer, except when used for the benefit of the government, or when subjected to extraordinary risks.
- I. Money.** Any money or currency, except as described in section 3.1 G. (above).
- J. Valuable Items.** Small items of substantial value, such as expensive cameras, watches, jewelry, and furs, which, during shipment by ordinary means (e.g., with household goods, or hold baggage), are lost, damage or stolen.
- K. Contractual Coverage.** Any claim or portion of a claim that is recovered or recoverable pursuant to contract, express or implied, including a policy of insurance. Recoverable here means *actually* recoverable, and not that the claim or some part of it technically should be recoverable.
- L. Mysterious Disappearance.** Any property which has mysteriously disappeared. In any claim for missing property, there must be satisfactory evidence that the property was stolen or destroyed.

3.3 Recovery from Third Parties

Whenever compensation for property damaged or lost has been recovered or is recoverable from a carrier, insurer, or other third party, the amount otherwise allowable will be reduced to the extent of the compensation so recovered, or recoverable.

The rules and procedures set forth are provided for the benefit of the claimant in obtaining recovery from a carrier or insurer and thereby receiving the maximum amount of compensation for the loss or damage. Failure of the claimant to comply with the rules and adhere to the required procedures may reduce or preclude payment.

3.4 Claim Settlements

The appropriate solicitor (associate, regional, or field solicitor), or his or her designee, may administratively determine and settle claims for IA.

Any claimant who is dissatisfied with an administrative determination of their claim may ask for reconsideration within six months from the date of the determination. Notice of the determination will be in writing and sent to the claimant, his or her authorized agent, or legal representative by certified or registered mail.

Upon timely filing of a request for reconsideration, the agency will have six months from the date of filing in which to make a final disposition of the claim. Notice of final action on a request for reconsideration will be affected in the same manner as above.

When an administrative determination has been made in favor of the claimant, the signed payment voucher will be forwarded to the appropriate TCO who will in turn assign the appropriate accounting classification information and forward to the Finance Officer.

Reports and Forms

- 1) SF forms mentioned herein are found on the General Services Administration (GSA) Forms Library website here: <https://www.gsa.gov/reference/forms> and on the IA Safety Management System SharePoint site here: <https://doimspp.sharepoint.com/sites/bia-ems/iasafety>
- 2) The Tort Claim Payments and Third Party Recoveries Report and the Property Damage from Accidental Causes Report must be submitted by the RSM and BIE HR TCO to DSRM no later than the 15th day following the end of the Fiscal Year (FY) quarter (this is for reporting on the previous quarter). The report templates can be located on the IA Online Forms webpage here: <https://www.bia.gov/policy-forms/online-forms>