

B-253582

December 13, 1993

Ms. Elizabeth E. Smedley  
Acting Chief Financial Officer  
Department of Energy  
Washington, D.C. 20585

Dear Ms. Smedley:

This responds to your letter of May 24, 1993, in which you asked that we relieve Mr. Billy B. Samples' estate of liability for a loss incurred by Mr. Samples in 1987 of \$2,895.30. Mr. Samples, who died in February 1993, was an imprest fund cashier at the Department of Energy's Morgantown Energy Technology Center (METC) until his retirement on disability on June 3, 1988. On October 21, 1987, METC discovered a shortage of \$6,369.20 in the imprest fund. While Mr. Samples denied any culpability for the loss, he was held liable as the accountable officer for the fund. Prior to his retirement, Mr. Samples agreed to a "no contest" admission of liability, and agreed to repay the amount of the shortage. Mr. Samples paid this debt from his monthly retirement checks until his death on February 7, 1993, leaving a balance of \$2,895.30.

You request, for humanitarian reasons, that we waive Mr. Samples' estate of liability for the remainder of this debt. You point out that Mr. Samples' wife died shortly after his retirement and that he is survived by a teenage son. As you know, "waiver" of a debt is a forgiveness of the debt and relieves the debtor from having to repay it. It has been defined as "an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1938); 43 Comp. Gen. 311, 314 (1963); B-195188, June 17, 1981. Since waiver amounts to the giving away of government rights or property, it requires statutory authority, and absent a clear statutory basis, no federal agency is authorized to waive a debt claim owing to the United States. See B-201504, April 27, 1981. Since there is no statutory authority for the waiver of Mr. Samples' debt, the liability cannot be waived. (For an example of a statutory waiver authority, see 5 U.S.C. § 5584 pertaining to claims for overpayment of pay and allowances.)

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Nonetheless, the head of an agency may terminate collection activity pertaining to a debt under the authority provided in 31 U.S.C. § 3530 and the relevant termination standards outlined in 4 C.F.R. § 104.3. These standards include (1) the inability to collect any substantial amount; (2) the inability to locate the debtor; and (3) collection costs exceeding potential recovery. See B-241725, Feb. 19, 1991; B-235405, March 19, 1990. If you have any questions, please feel free to call me or Andrea Levine of my staff at (202) 512-5644.

Sincerely yours,

Gary L. Kepplinger  
Associate General Counsel