

INFORMATION PAPER

ARNO-JA
11 March 2014

SUBJECT: Gift Funds

1. Purpose. To address whether funds accepted as gifts to the Army pursuant to 10 U.S.C. § 2601 are subject to legal and regulatory restrictions that are applicable to appropriated funds (APF).
2. Conclusion. Gift funds are the property of the U.S. Government and not subject to the same rules as APF. They are managed under a “trust fund” concept that requires they be used for their intended purpose and in furtherance of the organization's mission.
3. Methodology.
 - a. Although rules and policies that are applicable to APF (e.g., acceptable uses of representation funds, conference policy, etc.) do not apply literally to gift funds, such rules and policies should be used as a frame of reference when evaluating whether a particular use is appropriate.
 - b. APF rules and policies are not binding, however, so an appropriate approval authority can determine to expend gift funds in a manner that would not be permitted for normal APF, to include paying for food for Army personnel. This does not mean they can be used for any purpose. Use must always be consistent with the donor's intent and in furtherance of an official purpose of the organization.
 - c. Proper use of gift funds is a matter to be resolved by the organization benefitting from the gift, in consultation with the G-8 and legal counsel. Local policies should be implemented to require a legal review prior to expenditure of gift funds.
4. Rationale.
 - a. Supplement 1 to Volume 1 of the Treasury Financial Manual (Encl 1) indicates that account 21X8927, Department of the Army General Gift Fund, is a Trust Fund in the Treasury.
 - b. The DoD Financial Management Regulation (FMR), Volume 2A, Chapter 1 (Encl 2), also shows that account 21X8927, Army General Gift Fund, is a Trust Fund.
 - c. The FMR, Volume 12, Chapter 1, paragraphs 010901-010902 (Encl 3), explains that trust funds should be obligated and expended in accordance with the trust agreement (or gift proffer, as accepted) and applicable statute (10 U.S.C. § 2601).

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d. The FMR, Volume 3, Chapter 2, paragraph 020201.A (Encl 4), provides that OMB currently exempts account 21X8927, Department of the Army General Gift Fund, from apportionment. Thus, they are available to the Department as received and accepted.

e. GAO's Principles of Federal Appropriations Law, known commonly as the GAO Red Book, at pages 6-225 through 6-230 (Encl 5), provides legal principles applicable to gift funds. Here are some highlights:

i. The purpose for gift funds depends on the agency's statutory authority and the terms of the gift. Gift funds are accounted for as trust funds.

ii. Gift funds are "public funds" but they may not be subject to all the restrictions applicable to direct appropriations.

iii. When determining propriety of use, look first to the terms of the gift statute. If use is consistent with the statute, the agency has discretion to use the gift funds, but it must use them only in furtherance of authorized agency purposes and only if consistent with the terms of the trust or gift proffer.

iv. The agency cannot use gift funds for purely personal purposes. Furthermore, the agency cannot use gift funds if such use would violate any provision of law.