

Harvard Law School

Briefing Papers on Federal Budget Policy

Briefing Paper No. 60

Budgeting for Gift Accounts and Revolving Funds

May 6, 2016

Brooke Stanley

Amy Hinz

Prepared under the Supervision of Professor Howell E.
Jackson Federal Budget Policy – Spring 2016

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I. INTRODUCTION

The budget of the United States government is a measure of the level of economic activity the government partakes in with the public. Typically, the budget is viewed as the amount of money the federal government expends on an annual basis, and reflects federal spending priorities and policy choices. The President's budget provides tremendous detail regarding the factors behind totals for each expenditure account. Yet surprisingly, there is a substantial amount of activity that occurs each year that the budget fails to transparently and meaningfully capture in its totals—that is, the total volume of transactions flowing through gift accounts and revolving funds.

Gift accounts and revolving funds provide mechanisms by which federal agencies may receive funds primarily for discretionary spending. In most instances, however, Congress does not directly appropriate the funds for these accounts; rather, funds are considered to be appropriated but come from either public sources or other government agencies that receive directly appropriated funds. To avoid double-counting, gift and revolving fund budget totals are reported net of these received amounts. However, significant funds are expended through the use of revolving funds, and many gift accounts receive significant portions of their annual budgets from public contributions. Consequently, the budget's bottom line fails to reflect the total volume of funding flowing through federal expenditure account coffers.

In an endeavor to provide more transparency on this matter, this paper seeks to survey the applicable budget and appropriations framework that govern gift accounts and revolving funds, and to provide a manner for conceptualizing the level of activity flowing through revolving funds. The paper begins by briefly examining gift accounts and the conditions under which a federal agency may accept a gift, donation, or other contribution and keep the funds or value of

the donated property for its own purposes. It provides examples of gray areas—including statutory restrictions and conditional gifts—that pose challenges to gift authority. The paper then turns to a discussion of revolving funds, beginning with the various types of funds and manners in which Congress establishes them; the paper provides examples along the way, both of each type and of the varying degrees of legislative clarity Congress uses (or does not use) to establish revolving funds.

The paper briefly surveys the appropriations laws concerning the use of funding, including requirements for recording obligations and expenditures for these funds, and for reporting amounts received and spent for the budget. Using data from the President’s budget for fiscal year 2017, the paper then provides a rough means for conceptualizing the transaction volume at play as well as how much the funds comprise of net outlays and budget authority, both for revolving funds generally and for the budget as a whole. This is followed by a discussion of why such an examination is not foolproof but is the only means publicly available at present, before discussing both benefits and troubling characteristics of revolving fund budgeting. Having thus delved into the fiscal framework for the accounts, as well as difficulties and causes for concern, the paper concludes with prospective avenues for further research and reform.

II. GIFT ACCOUNTS

A. What is a gift?

To understand gift accounts, it is first important to understand precisely what gifts are. Gifts are defined as “gratuitous conveyances or transfers of ownership in property without any

consideration.”¹ To be characterized as a gift for the purposes of federal appropriations law, the transaction must satisfy three elements: donative intent; delivery; and acceptance.² Gifts may be monetary or real or personal property, and may be given *inter vivos* or through a testamentary transfer. Because gifts result from donative intent, they are difficult to anticipate in advance, unless the gift is one made on a recurring basis. For this reason, gift accounts may or may not include any estimated amount of gifts to be received from the public for a given fiscal year.

B. Authority to and Restrictions on Accepting Gifts

It has long been held that the United States may receive and accept gifts.³ Perhaps the more interesting question, then, is whether a federal agency may receive and accept gifts. The answer is a qualified yes. Federal agencies may only receive gifts for their own use when granted statutory authority to do so.⁴ Absent such statutory authority, an agency that receives and accepts gifts for its own use improperly augments its appropriations; any such augmentation is subject to Miscellaneous Receipts Statute⁵ and must instead be deposited in the Treasury.⁶

To illustrate, consider the Department of Commerce’s gift account. Its organic statute provides as follows:

The Secretary of Commerce is hereby authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or

¹ Advisory Commission on Intergovernmental Relations: Use and Final Disposition of State Government Contributions, B-274855, 1997 WL 24233 at *3 (Comp. Gen. Jan. 23, 1997).

² *Id.*; see also U.S. GOV’T ACCOUNTABILITY OFFICE, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 6-223 (2015).

³ See, e.g., *United States v. Burnison*, 339 U.S. 87, 90 (1950) (“We have no doubt that the receipt of gifts, testamentary and nontestamentary, is within the ambit of federal powers. Uninterrupted usage from the foundation of the Government has sanctioned it”). *Burnison* also affirmed the long-standing proposition that a state may properly prohibit testamentary gifts to the United States without violating the Supremacy Clause of the Constitution, as the Supreme Court originally held in *United States v. Fox*, 94 U.S. 315 (1876).

⁴ PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 6-222 and cited cases.

⁵ 31 U.S.C. § 3302(b) (2012).

⁶ PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 6-223.

facilitating the work of the Department of Commerce. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary of Commerce. Property accepted pursuant to this provision, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.⁷

The statute clearly outlines the scope of authority for accepting gifts, establishes a separate fund, provides that funds may be used upon direction from the Secretary of Commerce, and includes a clear reminder that the Department must use gifts in accordance with the terms under which they are given.

C. Special Challenges Pertaining to Gift Accounts

Even if a federal agency has statutory authority to receive and accept gifts, however, additional authority may be required where accepting a gift would cause the agency to incur substantial future expenses beyond the gifted funds; this typically occurs in conjunction with conditional gifts,⁸ though some authorizing statutes expressly provide that the agency may accept such conditional gifts.⁹

For example, in 2010, the Denali Commission requested GAO's review of a grant it had received from the state of Alaska in 2007.¹⁰ The Commission had statutory authority to accept gifts; the grant was provided for construction of certain parts of a training facility.¹¹ Ostensibly, the work would accord with the Commission's purpose of providing economic development

⁷ 15 U.S.C. § 1522 (2012).

⁸ See PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 6-229.

⁹ See, e.g., 20 U.S.C. § 959 (2012). This statute authorizes the Chairpersons of the National Endowments for the Arts and for the Humanities to receive money and other donations, given "with or without ... condition[s] or restriction[s], including a condition that the Chairperson use other funds of that Endowment for the purposes of the gift," subject to the recommendation of the Endowment's National Council. *Id.*

¹⁰ Denali Commission-Authority to Receive State Grants, B-319246, 2010 WL 3507303 (Comp. Gen. Sept. 1, 2010).

¹¹ See Denali Commission Act of 1998, Pub. L. No. 105-277, §§ 301-309, 112 Stat. 2681-637 to 2681-641 (1998).

services in the state of Alaska.¹² However, the grant was awarded on condition that it be awarded to a specific entity, and that the Commission monitor that entity during the ensuing construction.¹³ The GAO found that the condition should have precluded the Commission from accepting the gift; although the Commission had statutory gift authority, it lacked express authority to accept conditional gifts.¹⁴

Gifts received are still subject to the purposes for which the funding or property is given, subject to the purposes for which the agency is authorized to expend appropriated funds. Although the funds do not go through the typical appropriation process, the funds are still considered to be appropriated funds for spending purposes. Frequently, the statute authorizing acceptance of gifts will explicitly provide that such funds or the proceeds from the sale of donated property are considered appropriated.¹⁵ Gifts may also be used to augment not-to-exceed limitations on earmarked appropriations, provided the funds are given for the same purpose as that attached to the earmarked funds.¹⁶ This notwithstanding, if after granting gift authority to a federal entity, Congress later restricts that entity's purposes, new and existing unexpended gifts may only be used for the entity's newly restricted purposes.¹⁷

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *See, e.g.*, 10 U.S.C. § 2608 (2012); Price Administrator, Office of Price Administration, B-52501 (Comp. Gen. Nov. 9, 1945).

¹⁶ 10 U.S.C. § 2608 (2012).

¹⁷ *See, e.g.*, Advisory Commission on Intergovernmental Relations: Use and Final Disposition of State Government Contributions, B-274855, 1997 WL 24233 (Comp. Gen. Jan. 23, 1997) (explaining that where Congress had limited the Advisory Commission on Intergovernmental Relations' purposes to performing a study under a contract award, unexpended gifts and contributions could no longer be used for any purpose, but rather, could only be used in preparation for the award of that contract, the full performance of which would then end the Commission's existence).

But there are uncertain instances where an agency with existing gift authority would be prudent to request a Comptroller General opinion before accepting a gift. For example, the GAO recently examined whether prohibitions and other limitations on appropriated funds applied to related gift funds. In a February 19, 2016 letter, the GAO responded to the Senate Commission on Art regarding whether costs associated with accepting donated portraits could be paid from appropriated funds where the appropriated funds could not be used to pay for the painting of a portrait.¹⁸ The costs incurred in accepting the portrait included costs to meet with the artist, establish painting guidelines, and other costs commensurate with ensuring the portraits would be of a similar quality and style to those already owned by the Commission.¹⁹

The GAO's decision was a matter of statutory interpretation; concluding that the appropriations bill prohibition on using appropriated funds to pay for the painting of a portrait was limited to costs for directly commissioning the portrait. The GAO reiterated its earlier decisions concluding that an agency may expend appropriated funds to carry out expressly authorized purposes, and to expend funds to exercise gift acceptance authority.²⁰ Since the Senate Commission had statutory authority to receive gifts, it could permissibly expend funds for costs related to accepting a donated, commissioned portrait.²¹ Consequently, care must be taken when determining whether a gift may properly be put toward a specific purpose, and in particularly tricky situations, it is best to carefully examine the statutory authority granted and perhaps to obtain an opinion from GAO prior to accepting a gift.

¹⁸ The Honorable Shelley Moore Capito Chairman Subcomm. on the Legislative Branch Comm. on Appropriations, B-327671, 2016 WL 683247 (Comp. Gen. Feb. 19, 2016).

¹⁹ *Id.* at *2.

²⁰ *Id.* at *3.

²¹ *Id.*

III. REVOLVING FUNDS

Like gift accounts, revolving funds are another type of governmental account that may permissibly receive funds from sources other than direct appropriations. Most Treasury accounts are established as either receipt or expenditure accounts; revolving funds are classified as expenditure accounts, though they have characteristics of each type of account in that they may both receive funds and expend them—a feature designed to render the funds self-sustaining, breaking even over time.²²

A. Types of Revolving Funds

There are three types of revolving funds: public enterprise revolving funds; trust revolving funds; and intragovernmental revolving funds.

i. Public Enterprise Revolving Funds

Public enterprise revolving funds are those whose receipts generally come from non-governmental entities. The Department of Defense defines public enterprise revolving funds as “expenditure accounts authorized by Congress to be credited with collections, primarily from the public, that are generated by, and earmarked to finance, a continuing cycle of business-type operations.”²³ Examples include the Pentagon Reservation Maintenance Revolving Fund, which collects fees from entities utilizing space, facilities, and services at the Pentagon Reservation to finance costs (including maintenance and construction) for such facilities and services,²⁴ and the National Credit Union Administration’s operating fund.²⁵

²² PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 12-102–03.

²³ 2B Dep’t of Defense Fin. Mgmt. Reg., DoD 7000.14-R 10-2 (2014), http://comptroller.defense.gov/Portals/45/documents/fmr/Combined_Volume1-16.pdf.

²⁴ 10 U.S.C. § 2674 (2012).

²⁵ 12 U.S.C. § 1755 (2012).

ii. Trust Revolving Funds

Trust revolving funds are those revolving funds that are used for specific purposes or programs as designated by statute, administered by the government in a fiduciary capacity;²⁶ these are frequently designated only as trust funds, but include statutory language detailing the revolving aspects of the fund. An example of a trust revolving fund is the Veterans Special Life Insurance Fund, administered by the Department of Veterans Affairs. The fund is codified at 38 U.S.C. § 1923(a), which provides in pertinent part:

. . . [A]ll premiums and other collections on such insurance and any total disability provisions added thereto shall be credited to a revolving fund in the Treasury of the United States, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance and any total disability provisions added thereto, including payments of dividends and refunds of unearned premiums, and for the reimbursement of administrative costs under subsection (d).

The primary difference between public enterprise revolving funds and trust revolving funds is that the former involve more business-like, fee-for-service operations, whereas the latter entails government management of public funds in a fiduciary capacity. Another key difference relates to outlay totals, as discussed *infra*.

iii. Intragovernmental Revolving Funds

Intragovernmental revolving funds are those that receive funds primarily from governmental entities.²⁷ These types of revolving funds are typically classified as either franchise

²⁶ U.S. GOV'T ACCOUNTABILITY OFFICE, PAD-77-25, REVOLVING FUNDS: FULL DISCLOSURE NEEDED FOR BETTER CONGRESSIONAL CONTROL i (1977).

²⁷ Intragovernmental revolving funds are distinguishable from funds that receive payments for orders placed through the Economy Act, 31 U.S.C. § 1535 (2012). The Economy Act permits agencies to order supplies and services directly from other federal agencies, and authorizes the performing agency to receive payment for those supplies or services, provided certain requirements are met. *See id.* Economy Act purchases require the purchasing agency to render a determination that requisite funding amounts are available, that the purchase is in the best interest of the U.S. government, that the fulfilling agency will be able to provide or obtain the ordered goods or services, and the goods or services cannot be provided by contracting directly

funds or working capital funds. Franchise funds are intragovernmental revolving funds established to provide common administrative services to other federal agencies; they are explicitly authorized charge an amount sufficient to establish an operating reserve, and to retain up to 4% of their annual income to provide for capital expenditures and financial management improvement.²⁸ Working capital funds, on the other hand, charge a percentage of the order to cover costs such as administrative overhead.

There are five common aspects of the statutes that establish intragovernmental revolving funds: first, the statute will specify that receipts earned are available without fiscal year limitation; second, the statute will specify the services to be performed by the fund; third, the statute will also require payment for services performed by the fund; fourth, the statute may require that the fund disclose budget information prior to determining service fees; and fifth, the statute typically limits the amount of excess funding that may be retained by the fund, with the remainder to be deposited with the Treasury.

B. Establishing Revolving Funds

Like gift accounts, revolving funds may only be established through explicit legislative authority. It is perhaps a bit of a misnomer to call it “explicit” authority, since Congress need not call it a revolving fund, nor need it create the fund through separate legislation. Rather, all that

with a commercial entity as cheaply or conveniently as they can by the fulfilling agency. *See id.* at (a); *see also* FAR 17.502 (2016) (providing procedures for interagency purchases under the Economy Act). Likewise, placing an order under the Economy Act creates a binding obligation with respect to appropriated funds. 31 U.S.C. § 1535(d) (2012). The fulfilling agency is required to achieve full cost recovery of both direct and indirect costs, but is not allowed to receive a profit. FAR 17.502(d) (2016). However, to the extent the performing agency has not performed its duties under the Economy Act order, the ordering agency is required to deobligate any appropriated funds at the end of the fiscal year. 31 U.S.C. § 1535(d) (2012).

²⁸ *See generally* U.S. GOV’T ACCOUNTABILITY OFFICE, FREQUENTLY ASKED QUESTIONS REGARDING INTERAGENCY TRANSACTIONS, Appropriations Law Forum (2005), <http://www.gao.gov/special.pubs/appforum2005/transactions.pdf>; U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-03-1069, BUDGET ISSUES: FRANCHISE FUND PILOT REVIEW (2003).

Congress needs to do is clearly convey its intent to create the fund. For example, a statement that “there is to be established a revolving fund” will do the trick, but legislative authority to merely reimburse an appropriation is insufficient.

If the statute does not specify that the fund is to be a revolving fund, then a revolving fund is only established when the following three conditions are met: first, Congress must specify the receipts or collections which the agency is authorized to credit to the fund; second, it must define the purpose(s) for which the funds may be expended; lastly, it must provide authority for the agency to use these receipts for these purposes *without fiscal year limitation*.²⁹ This triad of requirements establishes the fund in a manner designed to be self-sustaining, as distinguished from an ordinary expenditure account that requires annual replenishment through the appropriations process because unused funds expire.³⁰

For example, the Government Publishing Office Business Operations Revolving Fund, established in 1953 and codified at 44 U.S.C. § 309, provides as follows:

(a)The revolving fund of \$1,000,000 established July 1, 1953, is available without fiscal year limitation for-
the operation and maintenance of the Government Publishing Office (except for those programs of the Superintendent of Documents which are funded by specific appropriations), including rental of buildings; attendance at meetings, maintenance and operation of the emergency room; uniforms or uniform allowances; boots, coats, and gloves; repairs and minor alterations to buildings; and expenses authorized in writing by the Joint Committee on Printing for inspection of Government printing activities.

In addition, the Director of the Government Publishing Office shall provide capital for the fund by capitalizing, at fair and reasonable values . . . the current inventories, plant, and building appurtenances, except building structures and land, equipment, and other assets of the Government Publishing Office.

²⁹ PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 12-90. Further, because revolving funds are creatures of statute, they likewise can only be terminated by statute; this may be accomplished through either a built-in termination mechanism, or through separate statute. *See id.* at 12-92.

³⁰ As we will see *infra*, revolving funds don’t always succeed at being self-sustaining; in such instances, Congress may intervene.

(b) The fund shall be-

(1) reimbursed for the cost of all services and supplies furnished, including those furnished other appropriations of the Government Publishing Office, at rates which include charges for overhead and related expenses, depreciation of plant and building appurtenances, except building structures and land, and equipment, and accrued leave; and

(2) credited with all receipts including sales of Government publications, waste, condemned, and surplus property and with payments received for losses or damage to property.

(c) An adequate system of accounts for the fund shall be maintained on the accrual method, and financial reports prepared on the basis of the accounts. The Director of the Government Publishing Office shall prepare and submit an annual business-type budget program for the operations under this fund. The program shall be considered and enacted as prescribed . . .

The statute clearly delineates the express (and detailed) purposes for which the funds may be used, provides that the funds are provided without fiscal year limitation, and provides that the GPO shall capitalize certain amounts, charge at rates that include overhead, and credit receipts for certain sales.

An example of a revolving fund established without explicit reference to a revolving fund is the National Credit Union Administration operating fund, which provides that the Administration may collect operating fees from member credit unions, such charges to be determined by considering the Administration's operating expenses.³¹ Fees are to be expended only to defray operating expenses and for the examination and supervision of federal credit unions.³² Any excess funds not needed for current operations may, at the request of the

³¹ See 12 U.S.C. § 1755 (2012).

³² See *id.*

Administration's Board, be invested in interest bearing securities to cover later operating expenses.³³

In a matter of more recent interest, the District of Columbia's budget autonomy movement gave the District Court for the District of Columbia an opportunity to examine the District of Columbia Home Rule Act of 1973³⁴ and whether it established a revolving fund for the District's operations.³⁵ The Act provides that the mayor will prepare an annual budget detailing the District government's financial condition and "the agencies and purposes for which funds are being requested;" the budget is to be "prepared on the assumption that proposed expenditures from financial transactions undertaken on either an obligation or cash outlay basis . . . shall not exceed estimated resources from existing sources and proposed resources."³⁶ The Act further provides that the District's Council is to hold a public hearing and adopt the budget, and once adopted, the Mayor is to submit the budget to the President for transmission to Congress.³⁷ Importantly, with certain exceptions, the Act stipulates that "no amount may be obligated or expended by any officer or employee of the District of Columbia government unless such amount has been approved by Act of Congress, and then only according to such Act."³⁸ Section 603(e) of the Act provides that nothing contained in the Act shall affect the applicability of the Anti-Deficiency Act.³⁹

³³ *See id.*

³⁴ District of Columbia Self-Government and Governmental Reorganization Act, Pub.L. No. 93-198, 87 Stat. 774 (1973) (codified as amended at D.C. Code §1-201.01 *et seq.*).

³⁵ Council of the Dist. of Columbia v. Gray, 42 F.Supp.3d 134 (D.D.C. 2014) *vacated as moot*, 2015 WL 3450417 (2015) (per curiam).

³⁶ D.C. Code § 47-301 (2001).

³⁷ *Id.* at § 47-304.

³⁸ *Id.*

³⁹ *Id.* at § 47-313.

Because the Act ties the District's budget to congressional appropriations requirements, the local governmental functions are subject to the risk of federal government shutdowns and the routine use of continuing resolutions, thereby increasing budgetary uncertainty. In an endeavor to take control of its budget, and remove it from the grasp of appropriations risk, the Council of the District of Columbia enacted the Local Budget Autonomy Act of 2012,⁴⁰ then-mayor Vincent Gray signed the legislation, and the District's voters ratified the bill in an April 2013 referendum. However, Mayor Gray and the District's Chief Financial Officer refused to follow the Autonomy Act's provisions, which purported to permit spending absent congressional appropriations. The Council brought suit against the two officials, arguing first that the Home Rule Act granted budget autonomy, and alternatively, that the District's general fund was a permanent appropriation that thereby satisfied the requirements of the Anti-Deficiency Act- in essence, that the fund was a revolving fund.

The court was not persuaded, easily dismissing the revolving fund argument by first surveying what Congress must do to establish such a fund, then saying it did not do so in the District's case. Although the District could permissibly "collect and deposit local revenues, [Congress] did *not* give the District the ability to obligate or expend those funds."⁴¹ Thus, neither the second characteristic- authority to obligate and expend funds- nor the third characteristic- authority to use receipts without fiscal year limitation- were met. Rather, the plain text of the Home Rule Act indicated that "Congress [clearly] intended the D.C. general fund to be appropriated."⁴²

⁴⁰ Local Budget Autonomy Act of 2012, D.C. Law 19-321, 60 D.C. Reg. 1724 (2012).

⁴¹ 42 F.Supp.3d at 152.

⁴² *Id.* at 153.

Thus, language akin to that in the GPO Business Operations Revolving Fund charter will clearly establish a revolving fund, as will that in the National Credit Union Administration's operating fund, whereas language akin to that in the D.C. Home Rule Act clearly will *not*.

C. Receiving Funds

Once Congress has established a clear intent to establish a revolving fund, however, the fund of course requires an initial appropriation to support its activities, at least for the first year. As detailed above, this initial appropriation is both permanent and indefinite, and most frequently comes from the legislation authorizing the fund. This first inflow of working capital is called the corpus.⁴³

To sustain operations long term, revolving funds typically operate on a fee-for-service basis. Funds received from sources other than the corpus are operational funds. Operational funds are provided either as advance payments—those made prior to expending money from the revolving fund— or as reimbursements—to provide post-service payments—but must be provided in the manner permitted in the authorizing statute.⁴⁴ If the statute authorizes payment by reimbursement, but does not address advance payments, then the latter are not authorized.⁴⁵

It is important to note that if advance payments are permitted under the statute, the funds are not “earned” by the revolving fund agency until the agency performs its obligations; consequently, advance payments retain their fiscal year limitations until earned.⁴⁶ And, unlike other agencies that receive funding that would otherwise augment their appropriations, if a purchasing agency provides an *advance* payment in an amount that exceeds the expected cost of

⁴³ PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 12-92.

⁴⁴ *Id.* at 12-94.

⁴⁵ *Id.*

⁴⁶ *Id.* at 12-88 (citing Implementation of the Library of Congress FEDLINK Revolving Fund, B-288142, 2001 WL 1029307 (Comp. Gen. Sept. 6, 2001) (addressing advance payments made to the Library of Congress revolving fund)).

the order and any administrative fee, the excess funds are not automatically subject to the Miscellaneous Receipts Statute,⁴⁷ which requires that such funds be deposited with the Treasury. Congress may, however, provide in the organic statute that excess funds (remaining *after* the revolving fund has been fully reimbursed, administrative expenses have been paid, and operating losses have been restored) be deposited with the Treasury. And frequently, Congress authorizes advance payments where a fund may plausibly experience a funding shortfall—that is, where the corpus is insufficient to cover the cost of services requested from the revolving fund, and where the absence of advance payments may result in an undue delay in payment of vendors.⁴⁸ These provisions are specifically designed to ensure the fund breaks even not only on a transaction basis, but also on a net basis in the long-term.

Subject to these statutory limitations Congress imposes, revolving funds enjoy relative latitude in receiving funds. However, this latitude is not unlimited. When Congress dictates the sources of funds that comprise the revolving fund’s permanent working capital, there may not be additional sources that serve to increase the working capital in the absence of specific statutory authority to do so.⁴⁹ Further, retaining funds in excess of the cost of an order and any authorized percentage or reserve is prohibited.

⁴⁷ This differs from the requirements governing interagency purchases through the Economy Act. *See supra* note 27. Whereas performing agencies are, under the Economy Act, required to return unobligated, expired funds and instead use current-year appropriations, unobligated amounts remaining with intragovernmental revolving funds remain available for payment until work is completed. *See* FREQUENTLY ASKED QUESTIONS REGARDING INTERAGENCY TRANSACTIONS, *supra* note 28.

⁴⁸ *See, e.g.,* In re Definition of ‘Impairment’ in 15 U.S.C. 278B(f), 58 Comp. Gen. 9 (1978).

⁴⁹ *See id.*

To demonstrate how these requirements function in practice, consider the working capital fund Congress established for the National Bureau of Standards,⁵⁰ a part of the Commerce Department. The organic statute provided authority to accept advances and reimbursements for services provided by the Bureau.⁵¹ A provision in the organic statute required that any excess funds be deposited in the Treasury, except that the excess funds were to be reduced by amounts needed for “prior impairments.”⁵² The Bureau requested a determination from the GAO regarding whether such impairments included replacement equipment costs that were higher than original equipment costs due to inflation.⁵³ The GAO determined that such costs would not be incurred for services rendered, nor would they qualify as operating losses; rather, they were merely potential expenditures which should have been included in reimbursement costs—costs for which the statute expressly authorized the Bureau to include as a reserve amount in the reimbursement costs.⁵⁴ Consequently, any funds in excess of the reimbursements were required to be deposited with the Treasury as miscellaneous receipts.⁵⁵

Notwithstanding the limitations that may be incorporated in a revolving fund’s organic statute, on occasion, Congress imposes additional restrictions on revolving funds. For example, the Fiscal 2015 Department of Defense appropriations bill provided, “During the current fiscal year, cash balances in working capital funds of the Department of Defense established pursuant

⁵⁰ From 1901-1988, the National Institute of Standards and Technology (NIST) was known as the National Bureau of Standards.

⁵¹ 15 U.S.C. § 278B (2012).

⁵² *Id.*

⁵³ *See* 58 Comp. Gen. at 10.

⁵⁴ *See id.* at 12, 14.

⁵⁵ *See id.* at 14. Additionally, at least until 1964, the National Bureau of Standards was also granted gift authority, but was not permitted to accept conditional gifts. The Bureau was permitted to receive gifts made for specific, ongoing investigations, developments, or types of research; new endeavors would not, however, be initiated as a result of the receipt of any conditional gift. *See* The Honorable Robert P. Griffin House of Representatives, B-149711, (Comp. Gen. Aug. 20, 1963), www.gao.gov/assets/170/168134.pdf.

to [10 U.S.C. 2208] may be maintained only in such amounts as are necessary at any time for cash disbursements to be made from such funds . . .”⁵⁶ Hence, while the general rule is that the funds should break even over time, Congress sometimes imposes shorter time periods for which the fund may retain excesses.

Despite being designed to break even, revolving funds do not always succeed at obtaining sufficient receipts to render themselves self-sustaining. In some instances, this is because Congress establishes revolving funds for which initial appropriations remain available until exhausted, at which point the fund is replenished by additional, new funds from specific sources.⁵⁷ On other occasions, the deficiency results from insufficient receipts from authorized sources. In these cases, Congress may intervene and appropriate supplemental funds, may do so simply because it desires to increase the fund’s available capital (particularly if the fund is not authorized to receive advance payments), or may appropriate such that a fund may access Treasury funds until it receives sufficient receipts from other sources.⁵⁸ For example, the Department of Housing and Urban Development conducts mobile home inspections on a fee for service basis, the receipts and outlays for which flow through the Manufactured Housing Fees Trust Fund,⁵⁹ a trust revolving fund. The fees are set by agency regulations promulgated through the rulemaking procedures under the Administrative Procedures Act.⁶⁰ As a result, if fees

⁵⁶ Consolidated and Further Continuing Appropriations Act, 2015, Pub.L. No. 113-235 § 8008, 128 Stat. 2252 (2014).

⁵⁷ Puerto Rico Reconstruction Administration Revolving Fund, 23 Comp. Gen. 986 (1944).

⁵⁸ See PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 12-96–97 (stating “If a fund is falling behind its goal of self-sufficiency, or if there has been a significant impairment of capital, or if Congress wishes to increase the fund’s capital, Congress can enact additional appropriations”).

⁵⁹ 42 U.S.C. § 5419 (2012).

⁶⁰ See, e.g., U.S. DEP’T OF HOUSING AND URBAN DEVELOPMENT, MANUFACTURED HOUSING STANDARDS PROGRAM, 2015 SUMMARY STATEMENT AND INITIATIVES DD-1–DD-2, available at

received are insufficient to cover the costs of inspections and other related costs, HUD must go through the time-intensive rule-making process required by the Administrative Procedures Act before it may increase the fees.⁶¹ To counteract this difficulty, the 2015 appropriations bill providing that the budgeted amount should come from the trust fund, but may come from the general fund until receipts come in:

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974 . . . up to \$10,000,000, to remain available until expended, of which \$10,000,000 is to be derived from the Manufactured Housing Fees Trust Fund: *Provided*, That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund . . . *Provided further*, That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2015 so as to result in a final fiscal year 2015 appropriation from the general fund estimated at zero, and fees . . . shall be modified as necessary to ensure such a final fiscal year 2015 appropriation.⁶²

Congress has thus intervened to appropriate funds in such a manner as to ensure that HUD can conduct inspections as needed, without worrying about insufficient fee receipts in the interim.

D. Obligation and Outlay of Funds

Generally, federal agencies expend funds they receive through incurring obligations and outlays, but revolving funds and their customer agencies add a layer of complexity to this process. An obligation is a “binding agreement that will result in outlays, immediately or in the future.”⁶³ Outlays are expenditures of funds. At least with respect to intragovernmental revolving funds, the funds provided on behalf of a customer agency to a revolving fund are not considered outlays; rather, the outlay occurs when the revolving fund enters into an agreement with a third

https://portal.hud.gov/hudportal/documents/huddoc?id=fy15cj_manuf_hsnng.pdf; *see also* 42 U.S.C. § 5419(d) (2012).

⁶¹ *See* 2015 SUMMARY STATEMENT AND INITIATIVES, *supra* note 60.

⁶² Consolidated and Further Continuing Appropriations Act, 2015, Pub.L. No. 113-235, 128 Stat. 2744 (2014).

⁶³ OFFICE OF MGMT. AND BUDGET, CIRCULAR A-11 § 20, at 8 (2015).

party that necessitates the spending of the funds. Customer agencies' funds, as well as funds received from the public for public enterprise revolving funds, are still considered appropriated funds, however. Thus, even though revolving funds have a corpus without fiscal year restrictions, they still may only incur obligations and make outlays subject to general limitations on expending appropriated funds, including limitations for purpose, time, and amount.

i. Purpose

Similar to the manner in which agencies may receive and expend gifts for the purposes authorized in the account's organic statute, revolving funds may only receive and expend funds that satisfy the statutory purpose requirement. That is, appropriated funds may only be provided to revolving funds for the purposes for which the revolving fund was established, and revolving fund agencies may apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law.⁶⁴ For example, an agency could not provide funds appropriated for research and development activities to a revolving fund that will use the funds to contract for operation and maintenance services; likewise, an agency could not provide research and development funding to a revolving fund that does not have authority to perform or contract for research and development activities.

Where it is uncertain whether a use of funds would satisfy the fund's statutory purposes, agencies are to apply the "necessary expense" rule; that is, "a revolving fund is available for expenditures which are directly related to, and which materially contribute to accomplishing an authorized purpose of, the fund and which are not otherwise specifically provided for or prohibited."⁶⁵

⁶⁴ 31 U.S.C. § 1301(a) (2012).

⁶⁵ PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 2, at 12-109–110.

ii. Time

Even if the proposed expenditure satisfies the purpose requirements, it still must satisfy timing requirements in order to avoid Anti-Deficiency Act violations. This is because, although a revolving fund's corpus lacks fiscal year restrictions, the same is not generally true for customer agency funds. Consequently, revolving funds must account for the time restrictions governing appropriated funds. Even though outlays consist of "no year money," they may only be made for goods and services that are bona fide needs of the customer agency, made within the appropriation's availability period.⁶⁶ The standard exceptions for long-lead time procurements and stockpiling apply, just as they do to normal appropriated expenditures.⁶⁷

iii. Amount

Revolving funds also must comply with amount restrictions imposed by the Anti-Deficiency Act.⁶⁸ That is, revolving funds may not expend more funding than is available. However, it is important to note that a revolving fund "will not necessarily violate [the Anti-Deficiency Act] if it incurs obligations, costs, or expenditures that exceed the amount of a single reimbursable order. However, [it] may not exceed its own total obligation authority, or the total obligation authority of the ordering activity."⁶⁹ It is important to note that the Anti-Deficiency Act also applies to apportioned amounts: per OMB Circular A-11, "the incurring of obligations

⁶⁶ 31 U.S.C. § 1341(a)(1)(B) (2012); 31 U.S.C. § 1502(a) (2012) ("The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with [31 U.S.C. §1501]. However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law."); 31 U.S.C. §1552 (2012) (explaining the procedure for cancelling funds after the applicable expiration period); *see also* DEP'T OF THE ARMY, JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL, 2014 FISCAL LAW DESKBOOK 7-21 (2014).

⁶⁷ *See, e.g.*, 2014 FISCAL LAW DESKBOOK, *supra* note 66, at 3-37.

⁶⁸ 31 U.S.C. §1517 (2012); 31 U.S.C. §1341(a)(1)(A) (2012).

⁶⁹ 2014 FISCAL LAW DESKBOOK, *supra* note 66, at 7-22

in excess of apportioned budgetary resources in a revolving fund is a violation of the Anti-Deficiency Act, whether or not a fund has unapportioned budgetary resources or non-budgetary assets greater than the amount apportioned.”⁷⁰

E. Budget Recordation and Reporting

As the discussion of appropriations laws and other requirements governing revolving funds has shown, there are a number of unique and complicated requirements pertaining to revolving funds. As can thus be expected, some seeming abnormalities arise regarding budgetary requirements.

To begin, OMB Circular A-11 provides guidance to agencies in preparing their annual budget submissions. Generally speaking, the budget totals are intended to reflect the total level of transactions with the *public*.⁷¹ Because revolving funds may but do not necessarily transact with the public, they and their customer agencies encounter obstacles in reporting total funding flows; for example, if both parties to the transaction were to include the amount involved in outlays, it would be double counted in the budget. To account for this, OMB Circular A-11 requires that federal agencies, including those with revolving funds, deduct offsetting amounts—including amounts received from federal sources—from gross outlays and gross budget authority to prevent double counting; offsetting amounts are either collections (credited to expenditure accounts) or receipts (credited to receipt accounts).⁷² Intragovernmental revolving funds classify offsetting amounts as offsetting collections.⁷³ Even though the public is frequently involved in transferring funds to public enterprise revolving funds, such as through fee collections, the

⁷⁰ OFFICE OF MGMT. AND BUDGET, CIRCULAR A-11, § 145, at 4.

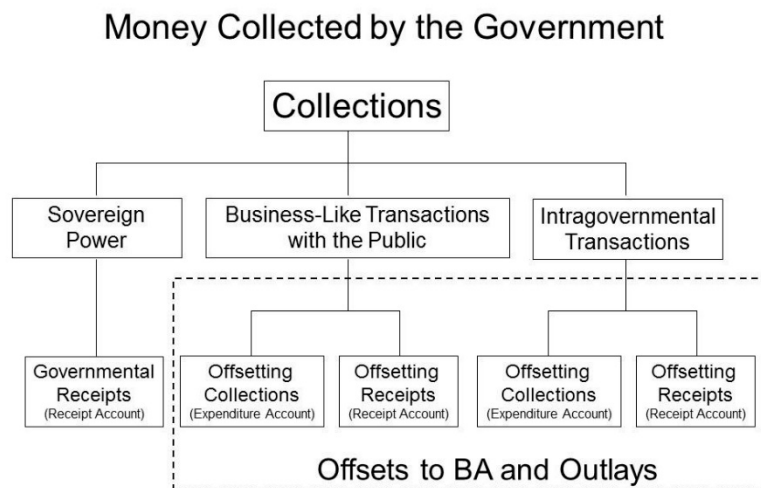
⁷¹ *Id.* at § 20, 29.

⁷² *Id.*

⁷³ *Id.* Intragovernmental transfers are further broken down into interfund receipts (which involve Federal fund–trust fund transactions) and intrafund receipts (which involve federal fund–federal fund transactions and trust fund–trust fund transactions).

monies paid into the fund are considered offsetting collections, since the public enterprise fund is classified as an expenditure account. The budget therefore is designed to reflect net outlays *of* the government *with* the public.⁷⁴

Because revolving funds receive collections into the same account from which they will be spent, the offsetting collections automatically reduce the level of net outlays and budget authority at the expenditure account level, in the balance sheet sense. To account for this, and to provide sufficient rationale for the net amounts requested, the President's budget submission includes detail regarding gross outlays, gross budget authority, and offsetting collections, such that Congress can in some sense compare the volume of offsetting collections with the level of net outlays to extrapolate the funding flow through revolving funds, but only do so on the individual expenditure account level. Agency totals likewise only reflect the net outlays.⁷⁵ The following graphic, from OMB Circular A-11, provides a helpful summary:



Source: OFFICE OF MGMT. AND BUDGET, CIRCULAR A-11, § 20, at 28.

⁷⁴ *See id.*

⁷⁵ *Id.* at § 20, 30.

Despite a uniform recordation process for offsetting collections, it is notoriously difficult to attempt to calculate the gross outlays that flow through revolving funds, even at a high-level view. OMB provides supplemental budgetary data by fund group (that is, Federal or trust), and provides a helpful explanation as follows:

First, income and outgo for each fund group exclude all transactions that occur between funds within the same fund group. These intrafund transactions constitute outgo and income for the individual funds that make and collect the payments, but they are offsetting within the fund group as a whole. The totals for each fund group measure only the group's transactions with the public and the other fund group. Second, outgo is calculated net of the collections from Federal sources that are credited to expenditure accounts (which . . . are referred to as offsetting collections); the spending that is financed by these collections is included in outgo and the collections from Federal sources are subsequently subtracted from outgo. Although it would be conceptually correct to add interfund offsetting collections from Federal sources to income for a particular fund, this cannot be done at the present time because the budget data do not provide this type of detail. As a result, both interfund and intrafund offsetting collections from Federal sources are offset against outgo . . . and are not shown separately.⁷⁶

This difficulty is further compounded by the fact that the different revolving funds aren't coherently classified into a particular fund group: although intragovernmental and public enterprise revolving funds are generally considered Federal funds, trust revolving funds may be classified as either Federal funds or trust funds- the choice frequently being arbitrary.⁷⁷ Further, although the President's budget does include actual and estimated gross offsetting collections for both federal and trust funds, such figures do not consist exclusively of revolving fund offsetting collections; rather, they simply include all offsetting sums credited to expenditure accounts.⁷⁸

⁷⁶ OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET FOR THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, ANALYTICAL PERSPECTIVES 383 (2016).

⁷⁷ *Id.* at 381 ("There is no substantive difference between special funds in the Federal funds group and trust funds, or between revolving funds in the Federal funds group and trust revolving funds. Whether a particular fund is designated in law as a trust fund is, in many cases, arbitrary.")

⁷⁸ *See id.* at 381–82.

Hence, data indicating the total, transactional offsetting collections for revolving funds as a whole are simply not readily available.

To more concretely demonstrate the difficulty of attempting to estimate the total funds involved in revolving fund transactions on an individual account basis, keep in mind that offsetting collections may include more than just the amounts received from business-like transactions. For example, consider the Army Working Capital Fund. The President's fiscal year 2017 budget request details the fund's financials as follows:

	2015 actual*	2016 est.*	2017 est.*
Obligations by Program Activity			
Industrial Operations	225	145	--
Supply Management	26	50	56
Total Direct Obligations	251	195	56
Industrial Operations	5,138	4,658	4,103
Supply Management	5,346	4,693	4,332
Subtotal, Operations Programs	10,484	9,351	8,435
Industrial	82	84	89
Supply Management	46	44	15
Subtotal, Capital Programs	128	129	104
Total reimbursable obligations	10,612	9,480	8,539
Total new obligations	10,863	9,675	8,595
Budgetary Resources			
Unobligated balance:			
Unobligated balance brought forward, Oct. 1	2,784	2,523	3,222
Discretionary unobligated balance brought forward, Oct. 1	2,784	--	--
Unobligated balance transfer to other accounts (097-9999)	-555	--	--
Recoveries of prior year unpaid obligations	1,154	--	--
Unobligated balance of contract authority withdrawn	-671	--	--
Unobligated balance (total)	2,712	2,523	3,222
Budget authority			
Appropriations, discretionary:			
Appropriation	1,741	1,826	1,371
Appropriations transferred to other accounts (097-9999)	-1,502	-1,631	-1,315
Appropriation, discretionary (total)	239	195	56
Contract authority, mandatory			
Contract authority:	5,497	--	--
Spending authority from offsetting collections, discretionary:			
Collected	8,132	10,179	8,871
Change in uncollected payments, Federal sources	1,654	--	--
Spending authority from offsetting collections, discretionary (total)	9,786	10,179	8,871
Spending authority from offsetting collections, mandatory:			
Spending authority from offsetting collections applied to liquidate contract authority	-4,848	--	--
Budget authority (total)	10,674	10,374	8,927
Total budgetary resources available	13,386	12,897	12,149
Memorandum (non-add) entries			
Unexpired unobligated balance, end of year	2,523	3,222	3,554
Unpaid obligations			
Unpaid obligations, brought forward, Oct. 1	7,143	9,011	8,041
Obligations incurred, unexpired accounts	10,863	9,675	8,595
Outlays (gross)	-7,841	-10,645	-9,192
Recoveries of prior year unpaid obligations, unexpired	-1,154	--	--
Unpaid obligations, end of year	9,011	8,041	7,444
Uncollected payments			
Uncollected payments, Fed sources, brought forward, Oct. 1	-7,016	-8,670	-8,670
Change in uncollected payments, Fed sources, unexpired	-1,654	--	--
Uncollected payments, Fed sources, end of year	-8,670	-8,670	-8,670
Memorandum (non-add) entries			
Obligated balance, start of year	127	341	-629
Obligated balance, end of year	341	-629	-1,226
Change in obligated balance			
Discretionary			
Budget authority, gross	10,025	10,374	8,927
Outlays, gross			
Outlays from new discretionary authority	6,006	4,747	3,153
Outlays from discretionary balances	1,835	5,898	6,039
Outlays, gross (total)	7,841	10,645	9,192
Offsets against gross budget authority and outlays			
Offsetting collections (collected) from:			
Federal sources	-4,483	-9,692	-8,534
Non-federal sources	-3,649	-487	-337
Offsets against gross budget authority and outlays (total)	-8,132	-10,179	-8,871
Additional offsets against gross budget authority only:			
Change in uncollected payments, Federal sources, unexpired	-1,654	--	--
Budget authority, net (discretionary)	239	195	56
Outlays, net (discretionary)	-291	466	321
Mandatory:			
Budget authority, gross	649	--	--
Budget authority, net (total)	888	195	56
Outlays, net (total)	-291	466	321
Budget authority and outlays, net			

*All numbers in millions of dollars.

Source: OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET FOR THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, APPENDIX 299 (2016).

The table reports gross outlays for 2015 as \$7.8 billion, but offsetting collections come in at approximately \$8.1 billion. As a result, the net outlays amount to only \$291 million. As previously discussed, the majority of offsetting collections come from other federal accounts, and failure to account for these collections through netting in the bottom line would result in double counting (recall that ordering agencies report amounts paid to revolving funds in their budgets as well, since they are the ones receiving the appropriated funds). However, there is no information readily available to discern what portion of the \$7.8 billion is related specifically to business-like transactions with other federal entities. Thus, while the budget accurately reports the net effect revolving funds have on the budget, it fails to consolidate in any meaningful way the total transaction volume for this working capital fund.⁷⁹ Rather, the only meaningful deduction is that business-like transactions undertaken in accordance with the fund's organic statute amount to some figure less than or equal to \$7.8 billion. So, while one can use this method to get some rough order of magnitude estimate, on the individual expenditure account level, it will not be accurate.

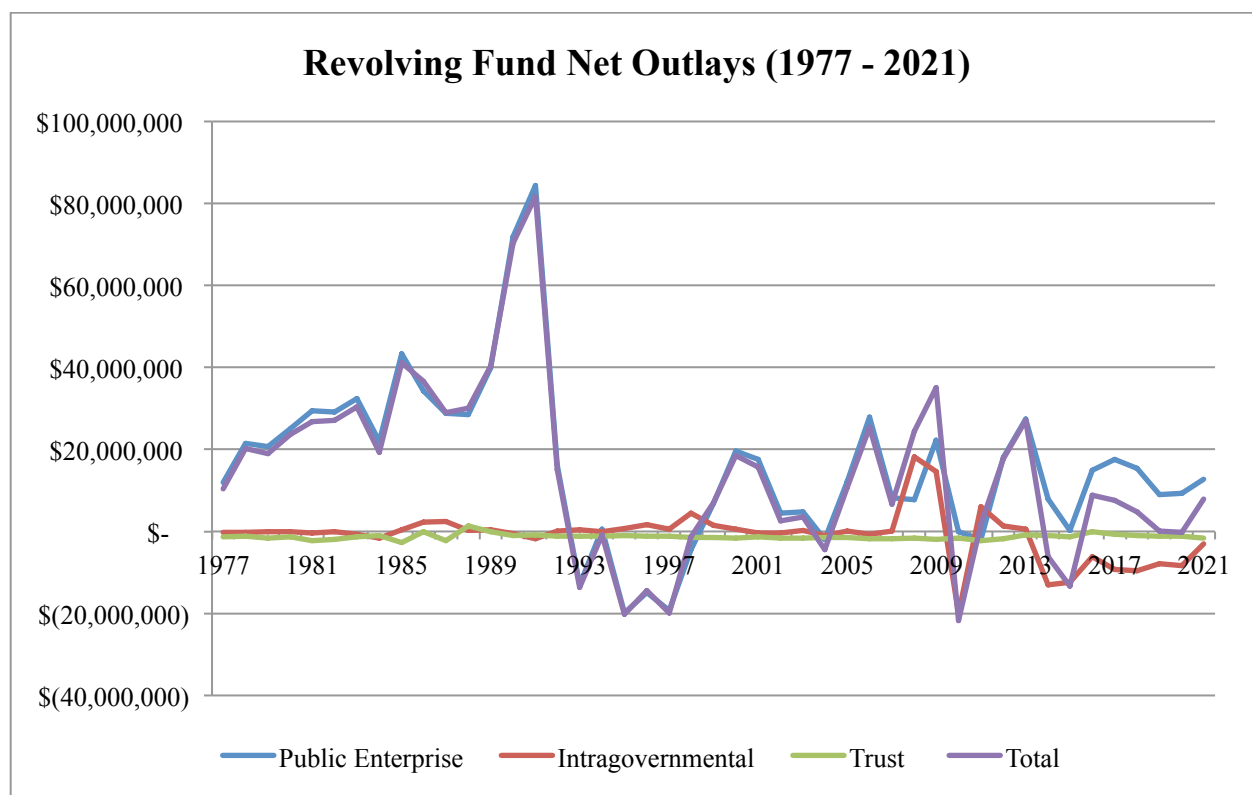
In spite of this difficulty, this paper attempts to provide a picture of revolving fund transactions and trends over time; because of the accuracy concerns noted above, it does so using net outlay figures provided by OMB for funds given Treasury Account Symbols (TASs) pertaining to revolving funds as denoted in the following table:

⁷⁹ Agency budget requests tend to do the same, though the flow of offsetting collections and outlays is frequently reported on a more itemized basis. *See, e.g.*, DEP'T OF THE ARMY, ARMY WORKING CAPITAL FUND FISCAL YEAR 2017 BUDGET ESTIMATES 8 (2016), available at <http://asafm.army.mil/Documents/OfficeDocuments/Budget/budgetmaterials/fy17/awcf.pdf>. These budget requests also tend to provide a clearer picture of the way in which revolving funds are designed to break even over time. *See id.* at 8–16.

Revolving Fund Type (Treasury Account Symbol)	Purpose of Account	Receipt Accounts and Expenditure Accounts Linked?	Are these Funds included in the budget?
Public Enterprise Revolving Funds (4000-4499)	Record offsetting collections earmarked by law for a specific purpose and associated budget authority, obligations, and outlays for a business-like activity conducted primarily with the public	N/A – Collections Credited to expenditure account	Yes.*
Intragovernmental Revolving Funds (including Working Capital Funds) (4500-4999)	Record offsetting collections earmarked by law for a specific purpose and associated budget authority, obligations, and outlays for a business-like activity conducted primarily within the government.	N/A – Collections Credited to expenditure account	Yes.
Trust Revolving Funds (8400-8499)	Record offsetting collections earmarked by law for a specific purpose and associated budget authority, obligations, and outlays for a business-like activity conducted primarily with the public.	N/A – Collections Credited to expenditure account	Yes.

*By law, budget authority and net outlays of the Postal Service Fund (a revolving fund) are excluded from the on-budget totals. The budget instead includes these amounts as off-budget and adds them to budget totals to show totals for the federal government. *Source:* OFFICE OF MGMT. AND BUDGET, CIRCULAR A-11, § 20, at 40–41.

To provide some sense of revolving fund activity levels, the following charts track net outlays for each of the three types of revolving funds, as well as the funds as a whole, for the period 1977 through 2021. Amounts for 2016–2021 are estimates only. All dollars are in millions of FY 2009 dollars.



Data Source: OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET FOR THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, HISTORICAL TABLE 3.2 (2016).

The sharp decline in the early 1990s is not actually as sharp as it seems; rather, it is likely caused by a combination of factors, only one of which is clearly discernible. First, certain federal loan financing and liquidating accounts are grouped with public enterprise revolving funds and assigned TASs for that group. However, the Federal Credit Reform Act of 1990 reformed the budgetary treatment of credit programs involving these funds beginning in 1992: previously, they reported transactions on a cash basis, which would necessarily result in higher up front outlays; under FCRA, they instead report the subsidy cost of loans—amounts flowing to and from the government over the life of the loan—on an accrued, net present value basis, less

administrative costs.⁸⁰ In addition, since FCRA, the program accounts, which receive annual appropriations to cover loan subsidy costs and administrative expenses, are not always established using revolving fund TASs, while the financing accounts related to the same programs *are* typically established as public enterprise revolving funds within that TAS group.⁸¹ Unfortunately, “it is impossible to convert the pre-1992 loans to a credit reform basis.”⁸² While this change likely accounts for much of the decline, another probable contributing factor is high deficit spending that peaked in 1992 before declining in tandem with a recession.⁸³

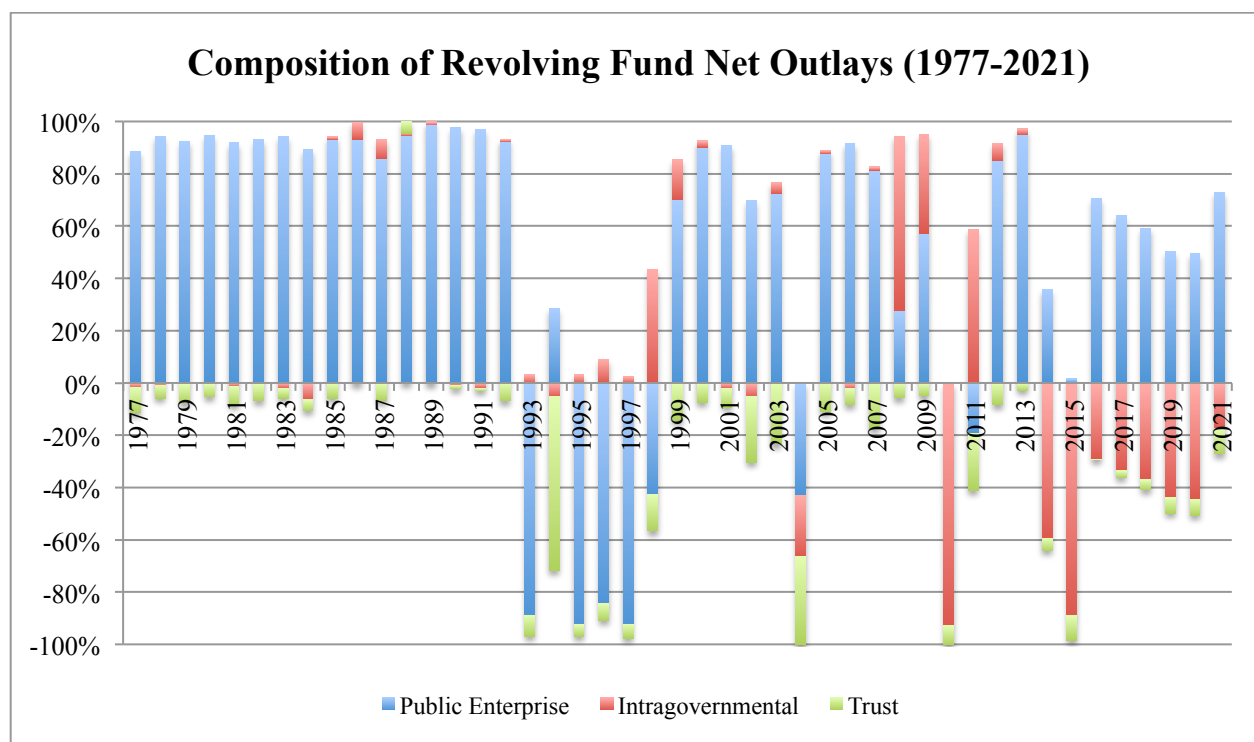
Similarly, the following chart tracks the percentage of net outlays comprised by each type of revolving fund. As in the preceding chart, in many instances, net outlays for a particular type of revolving fund are negative because offsetting collections exceed obligations.

⁸⁰ JAMES M. BICKLEY, CONG. RESEARCH SERV., R42632, BUDGETARY TREATMENT OF FEDERAL CREDIT (DIRECT LOANS AND LOAN GUARANTEES): CONCEPT, HISTORY, AND ISSUES FOR THE 112TH CONGRESS 5–6 (2012).

⁸¹ 1 BUREAU OF THE FISCAL SERVICE, U.S. DEP’T OF TREASURY, TREASURY FINANCIAL MANUAL, §§ 4620.20–4620.30 (2016).

⁸² OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET FOR THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, INTRODUCTION TO THE HISTORICAL TABLES 2 (2016).

⁸³ *See id.* at 5, 8.

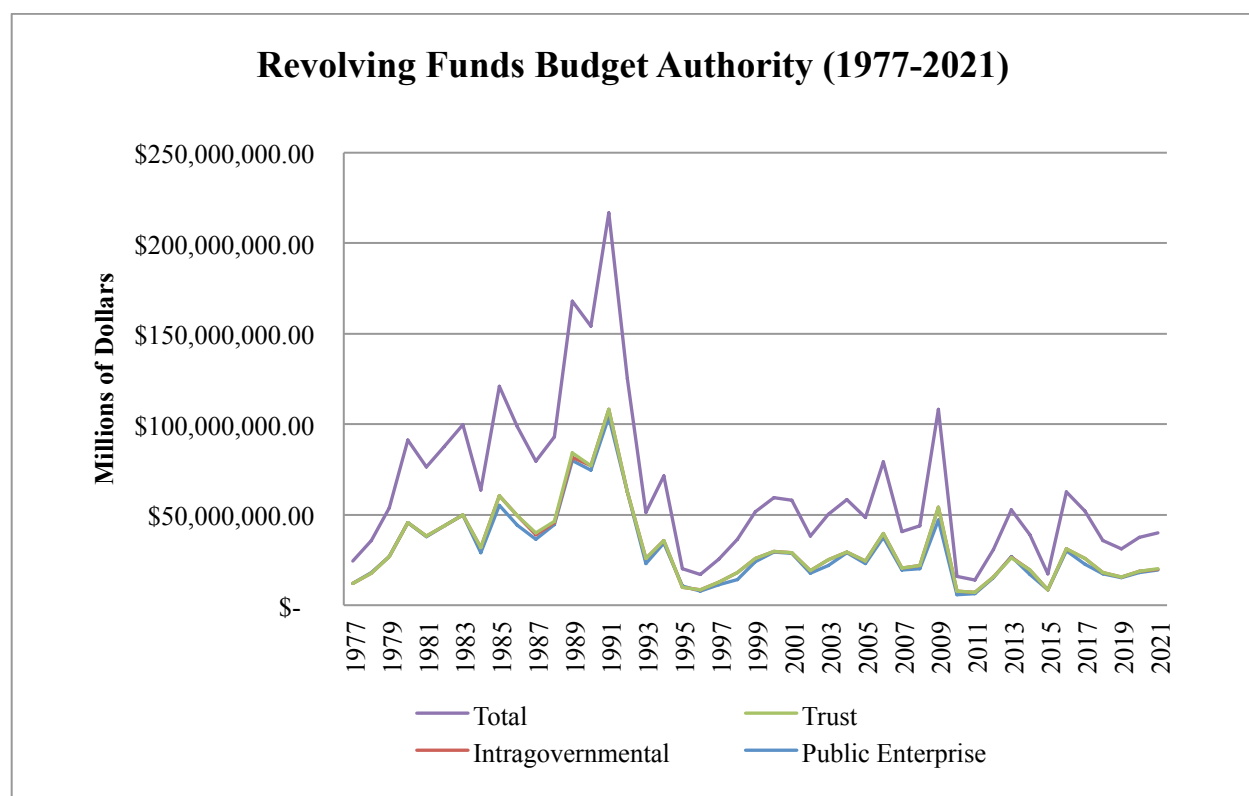


Data Source: OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET FOR THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, HISTORICAL TABLE 3.2 (2016).

This chart demonstrates that, in most years, public enterprise revolving funds account for a majority of the revolving fund activity, as measured by net outlays. Overall, the trends follow those outlined above. The 1977–mid-1990s period sees very little net activity from intragovernmental revolving funds, though they account for more significant effects on the net outlays in more recent years. There is a slightly cyclical nature to the intragovernmental revolving funds, perhaps because these are the funds most closely designed for a business-like operations cycle and are designed to break even over specified periods.

Because the data are comprised of *net* outlays, it is helpful to also consider budget authority information for the same period. Recall that outlays are funding expenditures, whereas budget authority is the “authority provided by federal law to enter into financial obligations that

will result in immediate or future outlays involving federal government funds.”⁸⁴ Budget authority includes not only the authority to obligate and expend offsetting collections, but also appropriations, borrowing authority, and contract authority.⁸⁵ Hence, if a revolving fund expects to incur obligations that exceed its offsetting collections, its total amount of budgetary authority will generally include any offsetting collections as well as supplemental appropriations, and will be higher than the anticipated net outlays. The following table shows net budget authority, both by type of revolving fund and in the aggregate:

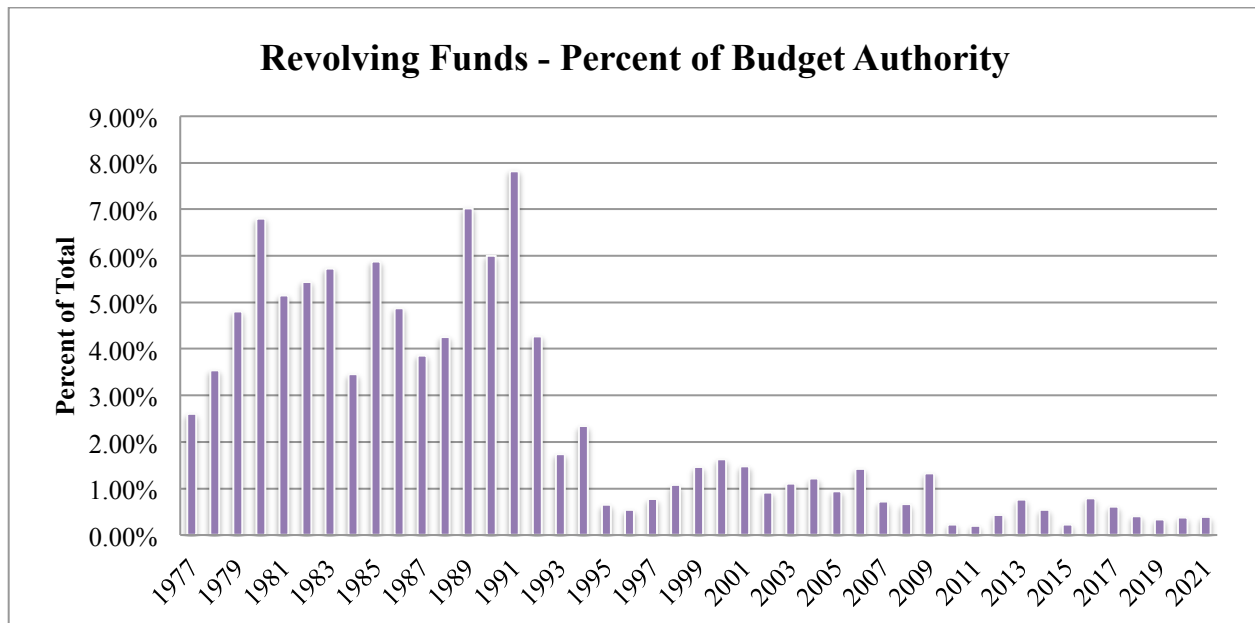


Data Source: OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET FOR THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, HISTORICAL TABLE 5.1 (2016).

⁸⁴ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-734SP, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET 20 (2005).

⁸⁵ *Id.*

Lastly, to provide perspective for comparing revolving funds activity to budget activity as a whole, the following chart presents revolving fund budget authority as a percentage of total budget authority for the applicable fiscal year.



Collectively, these charts seem to suggest that the amount of the budget comprised by revolving funds may not be directly correlated with the total budget amount; rather, revolving funds have accounted for a smaller percentage of the net budget authority over the past twenty or so years compared to earlier periods, even while net outlays in absolute dollars have decreased. Part of this change likely results from the aforementioned FCRA changes; additional differences likely arise from the Budget Enforcement Act of 1990 and its changes to the manner in which budget authority is recorded,⁸⁶ as well as sequestration. Additional research into specific accounts would likely be the most fruitful avenue for additional research. However, because the 1977 to 1992 period includes the credit accounts that formerly reported outlays on a cash basis, it is difficult to draw appropriate inferences relative to that specific period; excluding all credit accounts would

⁸⁶ See INTRODUCTION TO THE HISTORICAL TABLES, *supra* note 82, at 15.

be mistaken, however, since certain credit financing and liquidating accounts are, in fact, public enterprise revolving funds.

However, as discussed *infra*, drawing conclusions based on trends in net outlays can be misleading, and even dangerous. Instead, this paper seeks simply to provide a picture of how net outlays have changed over time, identify possible factors that would impact not only these changes but also gross outlays, and consider avenues for further investigation.

F. Impact on Budget Deficit

Given the tremendous amount of dollars at play in revolving funds (even on a net basis), a common question regarding budgetary outlay totals is whether these figures are factored into the federal budget deficit or surplus. Unsurprisingly, the answer is “it depends.” OMB reports that “there are two sources of offsetting receipts and offsetting collections: from the public and from other budget accounts . . . Regardless of how it is recorded (as governmental receipts, offsetting receipts, or offsetting collections), money collected from the public reduces the deficit or increases the surplus. In contrast, intragovernmental collections from other budget accounts exactly offset the payments made by these accounts, with no net impact on the deficit or surplus.”⁸⁷ Thus, public enterprise revolving funds with negative net outlays—i.e., a surplus—will almost certainly reduce the deficit, and those with positive net outlays will increase it. As for intragovernmental and trust revolving funds, to the extent these funds receive offsetting amounts from the public, those amounts would reduce any deficit and increase any surplus, but amounts received from federal entities will not do the same.

⁸⁷ OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, BUDGET FOR THE UNITED STATES GOVERNMENT, FISCAL YEAR 2017, ANALYTICAL PERSPECTIVES 211 (2016).

G. Key Considerations Regarding Revolving Funds

i. Transparency, Net-Basis Reporting

Despite the lack of transparency surrounding revolving fund activity volumes, these funds are actually intended to provide better transparency regarding the actual cash flows of the fund, they're frequently lauded for their ability to provide better budget insight and flexibility.⁸⁸ A 1970 GAO report prefaces a survey of revolving funds with the notion that they have "certain advantages, such as the flexibility to more readily meet unforeseen conditions and the systematic disclosure of the relationship between revenue and expense."⁸⁹ Indeed, Congress has explicitly recognized this a primary reason for establishing revolving funds.⁹⁰

However, as discussed above, revolving fund budget requests and the President's budget both report revolving funds on a net basis—that is, the sum of carryover funding and offsetting receipts, less gross outlays. As a result, it's difficult to understand the actual volume of capital flowing through revolving funds. This is not a revolutionary observation; the GAO has recognized the net reporting basis as a transparency problem for several decades.⁹¹ GAO recommended in the late 1970s that certain revolving funds, particularly public enterprise revolving funds, be reported on the basis of gross outlays, since gross outlays often exceeded receipts by significant amounts,⁹² as shown in the following chart:

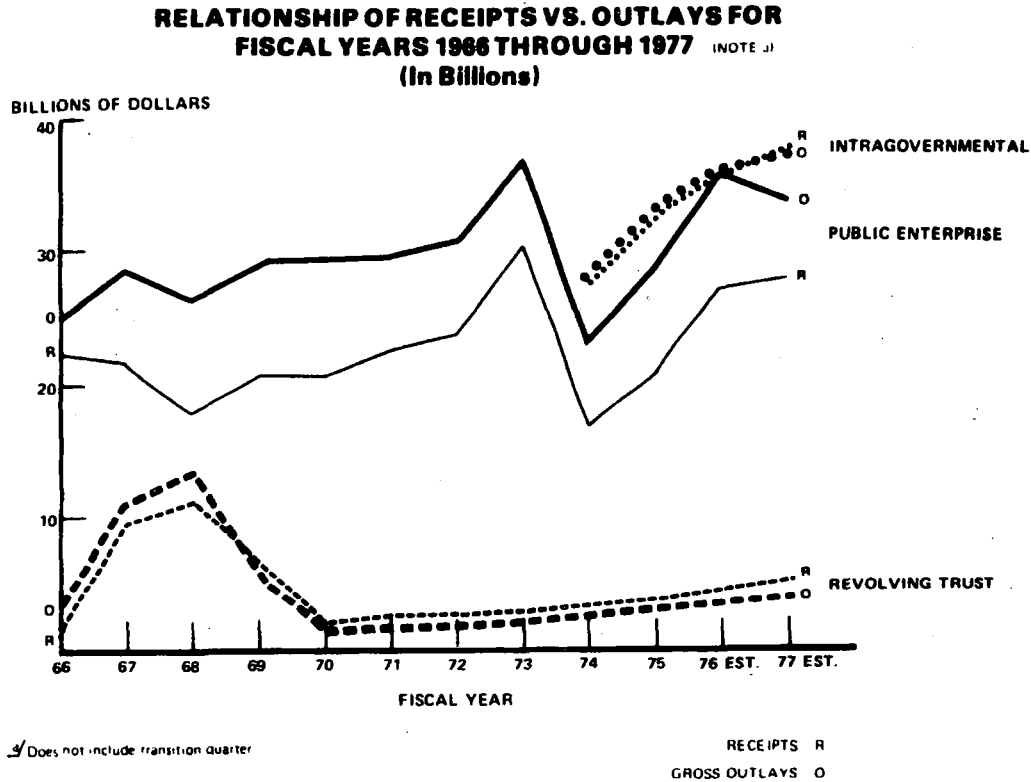
⁸⁸ U.S. GOV'T ACCOUNTABILITY OFFICE, PAD-77-25, REVOLVING FUNDS: FULL DISCLOSURE NEEDED FOR BETTER CONGRESSIONAL CONTROL i (1977).

⁸⁹ U.S. GOV'T ACCOUNTABILITY OFFICE, B-140389, FINANCING AGENCY PROGRAMS OTHER THAN BY DIRECT APPROPRIATION – REVOLVING FUNDS 1 (1970).

⁹⁰ *See, e.g.*, 10 U.S.C. § 2208 (authorizing the Secretary of Defense to require establishment of working capital funds "to control and account more effectively for the cost of programs and work performed in the Department of Defense").

⁹¹ *See* PAD-77-25, *supra* note 88, at ii.

⁹² *Id.* at iv.



Source: U.S. GOV'T ACCOUNTABILITY OFFICE, PAD-77-25, at 26.

Public enterprise revolving fund gross outlays peak in 1973, at approximately \$36.4 billion, with receipts for the period totaling \$30.2 billion, for a net of \$6.2 billion;⁹³ however, the same year would *not* represent a peak if charted on the net basis used in the budget. Rather, net outlays would reflect a peak in 1968, where gross outlays exceeded receipts by \$8.6 billion. Ironically, this is in a year where, for the period examined in the report, both gross outlays and receipts were at one of their lowest levels—only 1974 saw lower gross outlays.⁹⁴ The discrepancy between net and gross outlays, coupled with potentially misleading trends in net outlays, no doubt continues today, given that revolving fund budgets are still reported on a net basis.

GAO's recommendation that public enterprise funds be reported on the basis of gross outlays came after the Congressional Budget Act of 1974 was enacted, giving Congress a more

⁹³ *Id.* at 28.

⁹⁴ *See id.*

hands-on role in the budget. In the time since, it appears that the procedures promulgated through OMB Circular A-11, which provide for reporting offsetting collections, have at least made progress toward creating greater visibility of the differences between gross and net outlays on the expenditure account level. However, there exists no central data repository for gross offsetting collections or gross outlays; the last relatively complete study of this scale was included in GAO's 1977 report—nearly 40 years ago.

ii. Economies of Scale

Revolving funds, particularly intragovernmental revolving funds, also provide opportunities for the government to take advantage of economies of scale in order to obtain cost savings. For example, the Census Bureau has developed comprehensive survey infrastructure and address lists that would be cost-prohibitive for other agencies to replicate; however, other agencies can hire Census, on a reimbursable basis through its working capital fund, to perform surveys as needed and thereby take advantage of economies of scale.⁹⁵ In some cases, and particularly within the Department of Defense, agencies will even be given exclusive authority to contract for certain supplies and services, such that other agencies will have to utilize revolving fund services provided by the agency with the requisite authority.⁹⁶ The idea is that the designated agency will have already acquired industry and pricing expertise, familiarity with applicable legal and regulatory requirements, and have strategic sourcing capabilities that enable it to obtain the needed supplies and services more efficiently and cheaply than the requiring

⁹⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-56, INTRAGOVERNMENTAL REVOLVING FUNDS: COMMERCE DEPARTMENTAL AND CENSUS WORKING CAPITAL FUNDS SHOULD BETTER REFLECT KEY OPERATING PRINCIPLES 3 (2011)

⁹⁶ See, e.g., Navy and Marine Corps Acquisition Regulation Supplement 5201.601-90(c)(4) (2013) (designating Military Sealift Command as the sole agency responsible for awarding certain ship operation, maintenance, and support contracts, among other things).

agency could.⁹⁷ Indeed, revolving funds are supposed to save money and time. Certain inefficiencies can arise, however, as discussed in the following section.

iii. Compliance with the Anti-Deficiency Act and Overspending

This paper has considered the requirements of the Anti-Deficiency Act as they relate to revolving funds. However, the unique aspect of working with both appropriated funds and no-year appropriations through the corpus enables agency failure to track outlays in a manner that best comports with ADA requirements. For example, the Commerce Department does not have a mechanism for tracking the availability period of funding advanced to either of its two working capital funds, and Census tracks the availability of customer funds through performance period, rather than the availability period of the appropriations.⁹⁸ As a result, the revolving funds easily risk violating the timing requirements for appropriations' applicable obligation periods; although the revolving fund is not by law responsible for such an oversight,⁹⁹ the consequence for doing so is that the ordering agency will have to provide current year appropriations to avoid a violation.¹⁰⁰

Partly as a result of this financial risk, in 2005 the Department of Defense entered into interagency agreements with both the GSA and the Department of the Interior, both of which provide services to DoD through revolving funds. For starters, the agreements contemplated

⁹⁷ This rationale is much like that given for the Economy Act.

⁹⁸ GAO-12-56, *supra* note 95, at 12–13 (2011).

⁹⁹ Ordering agencies are responsible for complying with the Anti-Deficiency Act, even if they aren't directly obligating funds. *See* U.S. Capitol Police, B-319349, 2010 WL 2310440 (Comp. Gen. June 4, 2010). However, revolving funds do share some of the responsibility for ensuring obligations comply with the applicable obligation periods. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-41, INTRAGOVERNMENTAL REVOLVING FUNDS: NIST'S INTERAGENCY AGREEMENTS AND WORKLOAD REQUIRE MANAGEMENT ATTENTION 11 (2010); *see also* Library of Congress-Obligation of Guaranteed Minimums for Indefinite-Delivery, Indefinite-Quantity Contracts Under the FEDLINK Program, B-318046, 2009 WL 1978719 (Comp. Gen. July 7, 2009).

¹⁰⁰ GAO-11-41, *supra* note 99, at 11.

deobligation procedures and strict interagency agreement requirements akin to those under the Economy Act.¹⁰¹ Federal agencies could and still can purchase supplies and services using various of the GSA-administered Federal Supply Schedules with relative ease, under streamlined procedures promulgated under Part 8 of the Federal Acquisition Regulations. At the time, however, “guidance on the use the GSA Information Technology Fund was widely misunderstood” and the Department likely violated the Anti-Deficiency Act in 38 of 75 previous purchases reviewed by the Inspector General, as the Department “either did not have a bona fide need for the requirement in the year of the appropriation or did not use the correct appropriation to fund the requirement.”¹⁰² These are clear violations of the purpose and time requirements.¹⁰³

Yet DoD is not alone in its troubles with revolving funds. OMB maintains a human resources revolving fund, through which it mandates certain purchases, like background investigation services, be made. Such mandates have resulting in overspending on the parts of several customer agencies, partly as a result of mandated spending, and partly as a result of less than competitive pricing, heavy reliance on extensive contractor networks, and improper contract awards on the part of OMB officials.¹⁰⁴ In these instances, it appears the efficiencies and cost savings revolving funds are designed to achieve have instead become confounded alongside the ease with which agencies can place orders.

From this handful of examples, it is clear that revolving funds can be useful in achieving efficiencies, but without due care and regard paid to the fiscal restraints on the funds, efficiencies

¹⁰¹ *See supra* note 27.

¹⁰² DOD OFFICE OF INSPECTOR GENERAL, D-2005-096, ACQUISITION: DOD PURCHASES MADE THROUGH THE GENERAL SERVICES ADMINISTRATION 5 (2005).

¹⁰³ *See supra* notes 64–67 and accompanying text.

¹⁰⁴ *Hearing Before the Subcomm. on Fed. Workforce U.S. Postal Service and the Census of the H. Comm. on Oversight and Gov’t Reform*, 113th Cong. (2013) (statements of Stephen Lynch and Eleanor Norton, Members, Subcomm. on Fed. Workforce U.S. Postal Service and the Census), <https://www.gpo.gov/fdsys/pkg/CHRG-113hhrg81524/html/CHRG-113hhrg81524.htm>.

can actually beget *inefficiencies*, waste, fraud, and abuse. Coupled with the transparency concerns discussed *supra*, these examples highlight the potential for large-scale fiscal law violations. Revolving fund activities will need solid financial systems in place to properly account for funds, including their availability periods and authorized purposes; ideally, the systems will also facilitate data gathering and reporting on offsetting collections and gross outlays in a manner that will increase transaction volume transparency. The data are, undoubtedly, available in some form already, but specific reporting format requirements would streamline the aggregation process (which is impossible and inaccurate at present) and make it easier to provide the data to Congress or other interested entities.

IV. CONCLUSION

Gift accounts provide a means through which the government may accept donations of money and property to further both the donor's and the government's purposes, within certain bounds. Similarly, revolving funds provide mechanisms through which the government can obtain needed supplies and services on a more efficient basis, without being subject to the annual appropriations process. This paper is not intended to be a comprehensive primer on the two; rather, it is intended to illustrate the fiscal and budgetary framework governing the two, and to highlight certain advantages, disadvantages, and other difficulties that arise from their use. Clearly, the budgetary and appropriations requirements governing the use of each are not without complexity, and as discussed herein, many problems arise. In particular, although agencies are required to report information regarding offsetting collections, it remains impossible to grasp the overall scope of funding that flows through these accounts, and using offsetting collections as a proxy for such scope is misleading. In addition, examining net outlay and budget authority trends

is only useful for drawing certain limited inferences, such as changes resulting from regulatory changes like the Federal Credit Reform Act of 1990.

Problems in administration of the funds further complicate these funds' use. However, the funds do provide a flexible means for delivering resources to the government, and for obtaining economies of scale. In a constrained fiscal environment, it is possible their use will increase, compared to the seeming decreases of the past couple decades, while the budgetary obstacles to transparency provide verdant ground for potential waste, fraud, and abuse. Improved, uniform reporting requirements for particular offsetting collections would enable OMB or Treasury to compile data in a manner that would enable study of revolving fund transaction volumes, while improved budget management requirements would enable agencies to avoid Anti-Deficiency Act violations, each reform thereby enhancing the transparency features the funds are supposed to have. It is only with more accessible data that a clearer picture of these funds can truly be given.

GLOSSARY

All definitions from U.S. Gov't Accountability Office, GAO-05-734SP, *A Glossary of Terms Used in the Federal Budget* (2005).

Apportionment: The action by which the Office of Management and Budget (OMB) distributes amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account. An apportionment divides amounts available for obligation by specific time periods (usually quarters), activities, projects, objects, or a combination thereof. The amounts so apportioned limit the amount of obligations that may be incurred. An apportionment may be further subdivided by an agency into allotments, suballotments, and allocations. In apportioning any account, some funds may be reserved to provide for contingencies or to effect savings made possible pursuant to the Anti-Deficiency Act.

Appropriation act: A statute, under the jurisdiction of the House and Senate Committees on Appropriations, that generally provides legal authority for federal agencies to incur obligations and to make payments out of the Treasury for specified purposes. An appropriation act fulfills the requirement of Article I, Section 9, of the U.S. Constitution, which provides that “no money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” Under the rules of both houses, an appropriation act should follow enactment of authorizing legislation.

Expenditure account: Accounts used by the federal government to record outlays primarily for budgeting or management information purposes but also for accounting purposes.

Federal fund: Budgetary accounts composed of moneys collected and spent by the federal government other than those designated as trust funds. Federal fund accounts include general, special, public enterprise, and intragovernmental fund accounts.

Intragovernmental revolving fund: An appropriation account authorized to be credited with collections from other federal agencies' accounts that are earmarked to finance a continuing cycle of business-type operations, including working capital funds, industrial funds, stock funds, and supply funds. According to the Office of Management and Budget (OMB), collections of intragovernmental revolving fund accounts are derived primarily from within the government. For example, the franchise fund operations within several agencies provide common administrative services to federal agencies on a fee-for-service basis.

Obligation: A definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States. Payment may be made immediately or in the future. An

agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases a service, or takes other actions that require the government to make payments to the public or from one government account to another. The standards for the proper reporting of obligations are found in section 1501(a) of title 31 of the United States Code. See also OMB Circular No. A-11.

Outlay: The issuance of checks, disbursement of cash, or electronic transfer of funds made to liquidate a federal obligation. Outlays also occur when interest on the Treasury debt held by the public accrues and when the government issues bonds, notes, debentures, monetary credits, or other cash-equivalent instruments in order to liquidate obligations. Also, under credit reform, the credit subsidy cost is recorded as an outlay when a direct or guaranteed loan is disbursed. An outlay is not recorded for repayment of debt principal, disbursements to the public by federal credit programs for direct loan obligations and loan guarantee commitments made in fiscal year 1992 or later, disbursements from deposit funds, and refunds of receipts that result from overpayments.

Public enterprise revolving fund: A type of revolving fund that conducts cycles of businesslike operations, mainly with the public, in which it charges for the sale of products or services and uses the proceeds to finance its spending, usually without requirement for annual appropriations. Most government corporations are financed by public enterprise funds.

Receipt account: Accounts used by the federal government to record income primarily for budgeting or management information purposes but also for accounting purposes.

Revolving Fund: A fund established by Congress to finance a cycle of businesslike operations through amounts received by the fund. A revolving fund charges for the sale of products or services and uses the proceeds to finance its spending, usually on a self-sustaining basis. Instead of recording the collections in receipt accounts, the budget records the collections and the outlays of revolving funds in the same account. A revolving fund is a form of permanent appropriation.

Trust fund: Accounts designated as “trust funds” by law, regardless of any other meaning of the term “trust fund.” A trust fund account is usually either a receipt, an expenditure, or a revolving fund account.

Trust revolving fund: an appropriation account authorized to be credited with collections and used, without further appropriation action, to carry out a cycle of business-type operations in accordance with statute.

Working capital fund: A type of intragovernmental revolving fund that operates as a self-supporting entity that conducts a regular cycle of businesslike activities. These funds function entirely from the fees charged for the services they provide consistent with their statutory authority.