NIH Policy Manual

1135 - Gifts Administration

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Transmittal Notice

1. **Explanation of Material Transmitted:** The material transmitted contains policies and procedures to be followed when accepting gifts. This material includes updated guidance regarding gift terms and conditions to be considered when accepting gifts, applying for grants, and returning unused gift funds to the donor. In addition, the information in the chapter has been restructured.
2. **Filing Instructions:**

Remove: NIH Manual 1135 dated 09/20/2005.
Insert: NIH Manual 1135 dated 10/05/2011.

PLEASE NOTE: For information on:

- Content of this chapter contact the issuing office listed above.
- The NIH Policy Manual, contact the Division of Compliance Management, OMA, on (301) 496-2832 or enter this URL: https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx.

A. Purpose

This chapter establishes policy and procedures concerning the acceptance, acknowledgment, and administration of gifts (including bequests, devises of real property, legacies, grants, and donations from living donors) to the National Institutes of Health (NIH) or to support its activities or components. This manual chapter applies to the receipt of gifts, both monetary and non-monetary that are accepted under the authority established in Sections 231, 405(b)(1)(H), and 497 of the Public Health Service (PHS) Act, as amended (42 U.S.C. §§238, 284(b)(1)(H), and 289f)

This chapter does not govern interagency agreements (IAAs) accepted under the gift authority. These transactions are governed by NIH Manual Chapter 1165, "Agency Agreements." Also, there are exceptional circumstances when an employee, with agency approval, may accept a gift on behalf of the agency from a foreign government or international organization. The guidelines for such acceptance, which fall under the Foreign Gifts and Decorations Act (5 U.S.C. 7342) are not covered in this manual chapter. For additional information, please confer with your Institute or Center (IC) Deputy Ethics

Counselor.

B. Background

This information is intended to enable the NIH to take full advantage of its statutory and delegated authorities to accept gifts while preserving public trust by maintaining the objectivity of the NIH in carrying out its activities. Compliance will enable NIH management to efficiently control the acquisition and use of such resources and ensure NIH complies with appropriations laws and maintains the integrity of its operations.

The NIH is authorized to receive gifts to supplement appropriated funds to support its research efforts under: 1) the statutory authority for the acceptance of conditional and unconditional gifts, including grants as conditional gifts; 2) the Stevenson-Wydler Technology Innovation Act of 1980, as amended, for the acceptance of funds pursuant to a Cooperative Research and Development Agreement; 3) the Federal Technology Transfer Act of 1986, as amended, for the acceptance of royalties resulting from government inventions; and 4) the statutory authority for the Foundation for the National Institutes of Health (FNIH) to transfer funds to the NIH. This manual chapter establishes policy only for the statutory authority for the acceptance of conditional and unconditional gifts, including grants as conditional gifts.

The NIH is authorized to accept both gifts and transfers of funds from the FNIH. Gifts from the FNIH are authorized pursuant to Sections 231, 405(b)(1)(H), and 497 of the PHS Act, are governed by this policy, and must fulfill all the requirements of this policy. Transfers of funds from the FNIH are authorized by section 499(j)(10) of the PHS Act (42 USC 290(j)(10)) and governed by the policy on Public Private Partnerships, NIH Manual Chapter 1167, "Public–Private Partnerships." Transfers from the FNIH do not need to comply with the requirements of this gift policy. Similarly, there are various authorities under which other federal agencies may transfer funds to NIH. Although NIH generally accepts these interagency transfers under its gift authority, such interagency transfers do not need to comply with the requirements of this gift policy.

C. Policy

Gifts are categorized as unconditional or conditional. A gift will be considered unconditional if it is made to the NIH, an IC, or any other constituent part of the NIH for the benefit of all or any of these organizations, or for the carrying out of any of their functions, without further specification as to its purpose or manner of use. A gift will also be considered unconditional if it is limited to one or more of the general purposes of any part of the PHS Act administered by the NIH or to one or more of the general purposes of any institute, agency, or component established pursuant to Title IV of the PHS Act. Examples of gifts considered unconditional include gifts limited by donors for the following purposes: "the National Institutes of Health," "the National Cancer Institute," "cancer research," without further specification.

A gift will be considered conditional if the donor restricts its purpose, or imposes conditions,

to support a specific research study, project, or conference; to support activities of an NIH employee identified by organizational affiliation; to support specifically identified functions, such as observances, ceremonies, particular public information or health promotion campaigns, community outreach activities; or purchase of specific items or types of equipment, or other specific uses.

Examples of purposes that would be considered conditional include a gift to the NIH: 1) to support a specific activity conducted by, e.g., the "Office of Research on Women's Health"; 2) to support an identified research project performed by a specific IC laboratory or extramural grant or contract; 3) to support certain categories of expenditure, such as personnel, equipment, or supplies; or 4) under a grant mechanism that imposes specific terms and conditions on NIH in the expenditure of the gift. Gifts to support activities of individual employees may be accepted only if the principal beneficiary of the gift is the NIH rather than the employee, and the gift is given in such a form that the money can be used even if the employee leaves NIH.

Under Section 231 of the PHS Act, gifts may not be accepted that are conditioned upon any expenditure that cannot be met from the gift itself or from the income of the gift. In addition, neither the gift nor any conditions associated with it should exert influence over NIH program priorities. Accordingly, the NIH may accept a gift to support a mission-related priority if it is already conducting the activity or is prepared to conduct the activity even without the gift. However, the NIH is precluded from accepting a gift to support an activity that would not be conducted but for the gift and thereby reorders the programmatic priorities of the agency and diverts the use of appropriated dollars from activities with higher priorities.

EXAMPLE: An IC would like to engage in a high priority, but very expensive multi-year clinical trial but does not have adequate appropriated funds. Fortunately, a donor has offered to fund the trial. In this scenario, an IC is legally permitted to accept the gift provided that there is no condition on the government to expend appropriated funds towards the clinical trial. In the event the donor ceases to fund what is presumably a multi-year trial, the IC should be prepared to complete the trial with appropriated dollars, because the IC has established the trial as a program priority.

When making a determination whether or not to accept a gift, the IC must consider the identity of the immediate donor of the gift to the agency, and may consider the identity of any entity that may have funded the donor. For example, if a gift comes to the agency from a private foundation (for instance, FNIH), it is not necessary to determine if another entity (for instance, a tobacco company) is the original source of the foundation’s money. If, however, the agency knows that the foundation’s source of funds is from an entity or individual with whom the agency does not want to be affiliated, then the agency, as a discretionary matter, may chose to decline the gift even though the immediate donor poses no concerns. In another example, an NIH grantee making a gift to the agency would still be considered a prohibited source even if the grantee were making a subaward of funds from a private foundation that is not a prohibited source.

When making a determination whether or not to accept a gift, the IC must also consider the terms and conditions of the gift, which must be consistent with applicable law and policy. Although not exhaustive, below are some common terms that often appear in grants and other forms of gifts that have been categorized into acceptable, unacceptable, and requiring careful consideration.

Terms that are generally acceptable include:

- A grant directed to support a specific institute, lab or project.
- Agreement to collaborate with other scientific institutions.
- Provision of financial reports to the donor at appropriate intervals.
- Scientific reports to the donor that the IC is also prepared to publicly share.
- Participation by the donor in public scientific meetings or conferences.
- Audits by the donor, as arranged between the parties.

Terms that are generally not acceptable because they are prohibited by other laws or are contrary to NIH policy include:

- Any options, promises, assignment or licensing of government-owned intellectual property, including an agreement to share intellectual property equally, to the donor.
- Any sharing of royalties from the licensing of government intellectual property or any reimbursement of grant or gift funds in the event that the government receives royalties from licensing.
- Any agreement that the government indemnify the donor for liability.
- Any warranty to the donor by the government.
- Agreement by the government to obtain specific or general liability insurance policies.
- Any term that might enable the donor to limit or restrict the NIH's ability to publish research results.
- Any delegation of NIH's inherently governmental responsibilities or decision-making.
- Participation in peer review or otherwise exerting real or potential influence in grant or contract decision-making.
- Donor naming or co-branding an NIH program or grant.

Grant terms that are not illegal but should be carefully considered as to whether the interests of the IC are served by accepting an award with such conditions include:

- Access to data, results or specimens in advance of what NIH would normally release to any other member of the public. (For example, disclosure of data to a collaborator, absent a confidentiality agreement, could be considered a public disclosure under Freedom of Information Act (FOIA) or patent law.)
- Participation in steering committees unless the donor has bona fide expertise that would justify participation absent the gift.

In evaluating terms and conditions, a gift with terms or conditions that undermine the integrity of the NIH's scientific/administrative review process or research mission should be

declined. If in doubt about any terms of an award, please consult with the Office of the General Counsel (OGC).

Receipt and Administration of Gifts:

Under federal law, funds received by or for the United States or its agencies, including gifts, must be deposited in and administered through government accounts and may not be deposited with or otherwise administered by other persons or organizations. An outside organization, such as a foundation whose mission is solely or in part to support NIH activities, may not serve as a financial intermediary for a third party in the donation of funds, equipment, supplies, or other resources to be used in support of NIH activities or employees in the performance of their official duties, such as intramural research, unless authorized by law. Currently, the only authorized financial intermediary for a third party donation of funds is the FNIH which operates under explicit statutory authority to solicit, accept, invest, and manage third party donations to support the NIH in its mission. Except for FNIH-administered gifts, the statutory gift acceptance authority of the NIH provides an adequate basis for accepting all donations, if otherwise proper, directly from the donors, while allowing NIH managers to control their administration. In the use of gift acceptance authority, employees and managers must determine whether acceptance of a gift would compromise or appear to compromise the integrity of the NIH or any of its employees. Authority to accept gifts is set forth in Delegation of Authority, Finance No. 5, "Accept Gifts Under Section 231 of the PHS Act," unless exceptions or waivers have been otherwise granted under a specific separate statutory authority.

Solicitation Prohibited:

NIH policy prohibits employees, either directly or through another party, from requesting or suggesting donations to the NIH or to any of its components, of funds or other resources intended to support activities. The Comptroller General has determined that application for grant funds does not constitute gift solicitation. Comptroller General Decision B-255474 (April 3, 1995).

When an outside organization or individual expresses an unsolicited interest in supporting NIH activities, an employee may provide information on the authority of the NIH to accept gifts and the procedures for offering and accepting gifts. The Information Fact Sheet on Donations to the NIH may be sent to potential donors (see Appendix 4). The policy against solicitation of gifts precludes the solicitation of funds and other in-kind gifts, but does not preclude NIH employees from seeking and engaging in collaborative activities, such as co-sponsored conferences, Cooperative Research and Development Agreements, grants, or public private partnerships.

1. **Gift Acceptance Requirements**

    a. **Monetary Gifts**

        The NIH has a preference for monetary gifts when feasible. Thus, for a bequest or legacy that comprises all or part of a general estate (for example, a bequest of

1/3 of the rest, residue, and remainder of an estate), the NIH will request the executor to liquidate the assets and make distribution in cash, as authorized by the applicable law.

Gifts from a Private Entity valued at over $5,000 require completion of the "Gift Acceptance Checklist" by the NIH official authorized to accept the gift. If a gift is less than $5,000, the IC delegated official should still examine the circumstances surrounding the donation and give careful consideration to whether an evaluation might nevertheless be warranted. If so, the Gift Acceptance Checklist should be completed. In addition, when in doubt as to whether a donor is a prohibited source, the OGC should be consulted.

Scenario 1: If the IC determines that the donor is not a Prohibited Source and presents no potential for a conflict of interest, acceptance of the gift is authorized. The completed and signed Gift Acceptance Checklist shall be maintained in the IC's official files.

Scenario 2: If the IC determines that the donor is a Prohibited Source and an actual or apparent conflict of interest may exist, and the IC still wishes to accept the gift, the completed and signed Gift Acceptance Checklist along with the reasons for accepting the gift and plans to manage it must be presented by the IC to the Deputy Director for Management (DDM), NIH for the DDM's information.

(1) **Gifts for the Benefit of Patients**
Gifts to the Clinical Center (CC) Patient Emergency Fund or otherwise intended solely for the benefit of patients in the Clinical Center will be transmitted to the Social Work Department, for acceptance and administration as authorized under the Hospital and Station Management Regulations (42 CFR Part 35, Subpart E).

(2) **Grants**
A grant is generally a form of conditional gift to support research or training at NIH. The NIH has the legal authority both to apply for grants, see Comp. Gen B-255474 (April 3, 1995)* and to accept grants subject to various legal and policy limitations, as described in this and other Manual Chapters.

* NOTE: For additional information on employee participation on grant applications and contract proposals, see NIH Manual 54204/6003-1 "NIH Intramural Research Scientists as Principal Investigators on Grant Applications and Contract Proposals."

b. **Nonmonetary Gifts** It is the policy of the NIH to accept nonmonetary gifts, except real property, when they can be of use to NIH, subject to the same limitations outlined above in Section a. However, non-monetary gifts may not be accepted if the total costs associated with acceptance are expected to exceed the

cost of purchasing a similar item and the cost of normal care. Any valuation of gifts is the responsibility of the donor. Normally, the NIH will accept the valuation placed on a tendered gift by the donor unless the value is clearly unreasonable. Although determination of any tax consequences is a matter between the donor and the Internal Revenue Service, it is noted that under sections 170, 2055, and 2522 of the Internal Revenue Code of 1986, as amended, donations to the United States for exclusively public purposes are deductible for income, gift, and estate tax purposes.

Section 231(d) of the PHS Act authorizes the NIH to accept gifts that may result in the lease or hire of property to other entities. Any income from lease or hire is to be transferred within 24 hours of receipt to the NIH Office of Financial Management (OFM) for deposit. These funds will be available for expenditure toward the operation of the NIH or the performance of those functions within the scope of the purpose designated by the donor. Similarly, proceeds from the liquidation of personal property under section 231(b) are to be transferred to OFM within 24 hours after receipt for deposit with the Treasury.

Title to all personal property accepted under the gift acceptance authority vests in the Government.

c. **Gifts of Real Property** Under the authority in section 231 of the PHS Act, acceptance of gifts of real property is reserved to the Assistant Secretary for Administration and Management, Department of Health and Human Services (HHS)

2. **Expenditure of Gift Funds**

The statutory authority for the NIH to accept gifts allows substantial discretion in their expenditure. Gift funds are available for expenditure for the same purposes and in the same manner as regularly appropriated funds and are subject to the same controls and audit as other funds. Most gift funds are "no year" monies and, as such, are available until expended within any restrictions or limitations imposed by donors.

a. **Official Entertainment**
Gift funds may be expended for official entertainment purposes, so long as this is consistent with the purposes of the gift and NIH policy on entertainment. See NIH Manual 1160-1, "Entertainment." NIH policy is that expenditures of gift funds for official entertainment are to be managed in the same way as expenditures of appropriated funds.

b. **Other Than Entertainment Expenses (e.g., Station Support Purchases)**
Gift funds may be expended for other than official entertainment purposes consistent with any restrictions imposed by the donor. NIH policy is that expenditures of gift funds for personal services, station support, including purchases of property, lab equipment, supplies, and other items, or for support of extramural grants and contract awards, are managed in the same way as expenditures of appropriated funds.

c. **Official Travel**
Gift funds may be used to pay for necessary travel expenses, under the same regulations and procedures as for travel supported by appropriated funds for attendance at official receptions, award ceremonies, conferences, and similar events.

d. **Personnel Support**
A grant may be used for stipend support for a nonemployee (such as an Intramural Research Training Awards (IRTA), Cancer Research Training Awards (CRTA), or fellow) and /or to support the salary and other benefits of a new employee, full or part-time, provided that the term of the appointment is limited to the amount of support provided, the grant funding has been received in full, and it is made clear to the individual that there will be no extension of the employment period. For example, if a post doc was awarded a fellowship grant and the terms of the grant were for support for 3 years, then the post doc could be hired under a time limited appointment of 3 years only provided the grant funds would cover the post doc's salary and other benefits and the funds had been received to cover the entire cost for the period of appointment. If the grant was provided in one-year installments, the time-limited appointment should be for one year and then renewed. Grants cannot be used to support or supplement salaries of current employees.

3. **Limitations - Gifts That May Not be Accepted**
In addition to limitations stated elsewhere in this Chapter:

a. Gifts may not be accepted if conditions imposed by the Donor are illegal, contrary to public policy, burdensome, unreasonable to administer, contrary to generally-accepted public standards or would create a conflict of interest or an appearance of a conflict of interest to a reasonable person, which conflict cannot be resolved satisfactorily by an ethics official.
b. Gifts may not be accepted if tendered for the purpose of securing an endorsement. Donors that are commercial organizations will be advised in the Acceptance Letter that the acceptance of a gift does not constitute an endorsement.
c. Conditional gifts of real property may not be accepted by NIH officials (see Section C.1.b).
d. Gifts for the purpose of supporting or supplementing a current permanent employee's salary may not be accepted.

4. **Investment of Gift Fund Monies**
The appropriate delegated IC official will determine at least annually if excess funds will not be used within a twelve-month period, usually the fiscal year (FY). If it is determined that there are excess funds and the amount of these funds is $50,000 or more, the official will request that the General Ledger Branch, OFM, invest the excess funds in interest bearing obligations of the United States or as otherwise authorized by law. Gift funds that are invested and income from these investments retain the same limitations as the original gifts.

5. **Disposition of Prohibited Gifts**
   The NIH may authorize disposition or return of prohibited gifts at government expense. Written notification shall accompany all gift returns. Employees may use penalty mail for the limited purpose of forwarding reimbursements to donors. If a gift cannot be accepted, some possible alternatives are:

   a. Return tangible items to the donor.
   b. Subject to requisition approval as a legally permissible use of appropriated funds, pay the donor market value (retail cost of an item or service of like quality; and where a ticket or an invitation to an event, the printed face value of the ticket or the amount suggested as a contribution or donation to gain entrance).
   c. In the event a perishable item is received, it may be destroyed, shared within the office, or donated, subject to approval of a supervisor or department head.
   d. Monetary gifts shall be forwarded to the OFM Travel, Fellowship Pay and Cashier Section for safe-keeping (holding) pending clearance and final disposition.

6. **Waivers**
   The granting of requests for exceptions to this policy shall be administered and approved by the office of the DDM. Waiver requests should include a complete description of the policy to be waived, a justification for the waiver, any cost(s) or other ramifications if the waiver is not granted, other alternatives considered, the time frame(s) in which a decision must be made, and approval of the appropriate delegated official. The Gift Acceptance Checklist in Appendix 2 should be consulted as a reference when preparing a request.
7. **Wills and Trusts**
   Copies of wills and trusts naming the NIH or an IC as beneficiary and letters of transmittal must be retained by the relevant IC. The receiving IC will be responsible for acknowledging receipt of the will or trust promptly and notifying OFM, General Ledger Branch, when the estate has been settled. Once such an action has occurred, the same guidelines that are used for any other monetary gift are to be applied. Since any interest NIH might receive may be contingent or subject to prior interests, or could be revoked during the life of the person making the bequest, no entry will be made in the accounts until the estate is settled. Proceeds from either wills or trusts, either revocable or irrevocable, will not be entered in the accounts until realized. OGC is available to assist with wills and trusts.

D. References

1. Comptroller General of the United States, Decisions B-198730 (December 10, 1986), B-255474 (April 3, 1995), and B-303689 (September 30, 2005).
2. 41 CFR Part 101- 49, as amended.
3. Sections 231, 405(b)(1)(H), and 497 of the Public Health Service (PHS) Act, as amended (42 U.S.C. §§ 238, 284(b)(1)(H), and 289f) (gift acceptance statutes).
4. Section 499 of the Public Health Service (PHS) Act, as amended (42 U.S.C. § 290b) (establishment and duties of the Foundation for the National Institutes of Health

(FNIH)).
5. Treasury Financial Manual, Volume 1, Part 5 - Deposit Regulations, Section 4015 - Frequency of Deposits, as amended .
6. Memorandum from the Assistant Secretary for Health to PHS Agency Heads, "Delegation of Authority To Accept Gifts Under Title XXI of the Public Health Service Act (PHS), Miscellaneous" (July 10, 1995).
7. Delegations of Authority, Finance #5, "Accept Gifts Under Section 231 of the PHS Act."
8. Delegations of Authority, Finance #6, "Memorials and other Acknowledgments."
9. Delegations of Authority, Program: General #26, "PHS Act, Title XXI."
10. NIH Manual 1160-1, "Entertainment."
11. NIH Manual 2400-01, "Introduction to Government Ethics at the NIH."
12. NIH Manual 2400-10, "Gifts to Individual Employees From Outside Sources."
13. NIH Manual 26101-25-2, "Personal Property Management Guide."
14. NIH Manual 1743, "Keeping and Destroying Records."
15. NIH Manual 54204/6003-1, "NIH Intramural Research Scientists as Principal Investigators on Grant Applications and Contract Proposals."
16. NIH Manual 1165, "Agency Agreements."

E. Definitions and Acronyms

1. **Definitions**

Conditional gift - a gift in which the donor imposes some condition or restriction on its use or as a condition to be met in order to obtain it.

Gift(s) – a voluntarily transfer by one person or entity to another without compensation. The words "gift" and "donation" are used interchangeably throughout this manual chapter.

Grant – a form of conditional gift, typically to support a particular research activity or program.

IC - an NIH research institute, research center, or the National Library of Medicine.

Personal property - a tangible item that is not real property, including artwork, furniture, equipment, office machines, vehicles, materials, and supplies. It excludes financial instruments such as money, stocks, and bonds.

Private Entity – A private organization, individual, foundation, company, enterprise, charitable trust, society, or similar donor.

Prohibited source – a prohibited source means an entity that:

a. is seeking official action by the NIH;
b. is doing or seeking to do business with the NIH;
c. is conducting activities regulated by the NIH;

d. has interests that may be substantially affected by the NIH; or
e. is an organization a majority of whose members are described in (a) – (d) above.

Unconditional gift - a gift in which the donor imposes no condition or restriction on its use and no conditions to be met in order to obtain it.

2. **Acronyms**

API = Application Program Interface
CAN = Common Account Number
CC = Clinical Center
CFO = Chief Financial Officer
CFR = Code of Federal Regulations
CRADA = Cooperative Research and Development Agreement
CRTA = Cancer Research Training Awards
DDER = Deputy Director for Extramural Research
DDIR = Deputy Director for Intramural Research
DDM = Deputy Director for Management, NIH
HHS = Department of Health and Human Services
FNIH = Foundation for the National Institutes of Health
FTTA = Federal Technology Transfer Act
FY = Fiscal Year
IC = Institute or Center
IRTA = Intramural Research Training Awards
NCI = National Cancer Institute
NIH = National Institutes of Health
OD = Office of Director, NIH
OFM = Office of Financial Management, NIH
OGC = Office of the General Counsel
OLAO/DLS/PAB = Office of Logistics and Acquisition Operations/Division of Logistic Services/Property Administration Branch
PHS = Public Health Service
PPMS = Personal Property Management System
Secretary = Secretary of Health and Human Services
U.S.C. = United States Code

F. Responsibilities

NIH officials are authorized by law and through the delegation of that authority (Delegations of Authority, Finance #5, "Accept Gifts Under Section 231 of the PHS Act"), to accept gifts within their respective areas of responsibility. In making decisions on acceptance of each gift, as outlined in Section C above, NIH authorized officials shall use "The Gift Transmittal Form" at Appendix 1 and "Gift Acceptance Checklist" at Appendix 2, as appropriate. When applicable, the Gift Acceptance Checklist must be properly completed and signed by all appropriate officials and maintained in the IC's official files.

Taking into account the limitations placed on the use of gift funds, the Deputy Director for Management, NIH, and the IC Directors/Deputy Directors (and, within the OD, the DDIR and DDER) have primary responsibility for approving gift fund expenditures and determining whether a particular expenditure will further NIH objectives consistent with the purposes of the gift and in accordance with existing policy. Stated conversely, the burden rests with the above-delegated officials to assure that gift fund expenditures are made to carry out NIH purposes, consistent with the purposes of the gift and in accordance with policy.

1. **Office of the Director, NIH**

   The Office of the Director, NIH transmits gifts it receives for specific ICs or their programs to the appropriate IC for action.

   a. The Deputy Director for Management, NIH is responsible for administering and managing all gift fund activities. For monetary gifts of $2 million or less, this authority has been re-delegated to the IC Directors/Deputy Directors.
   b. For any donation in excess of $100,000, the DDM/NIH, the DDIR, and the DDER will receive a copy of the approved Acceptance Letter for informational purposes. For gifts with a value of more than $2 million, the Acceptance Letter must contain the signatory approval of the DDM, before the gift can be accepted.

2. **Institutes and Centers**

   a. IC Directors/Deputy Directors are responsible for accepting gifts within their statutory or delegated authority (gifts valued at not more than $2 million), approving expenditures from gift funds, and approving the amount of funds for investment via OFM.
   b. IC Executive Officers or Budget Officers are responsible for transmitting monies, copies of donor letters, Acceptance Letters, and the Gift Acceptance Checklist (if applicable) to the OFM; and for establishing the required Common Account Numbers (CAN)/Accounting Classification Structure and the issuing of allowances related to the gift funds. IC staff must ensure that the approved Acceptance Letter also includes a certification statement that the Letter has been sent for informational purposes to the DDM/NIH, DDIR, and DDER when the gift exceeds $100,000. Officials must adhere to proper fund control procedures to ensure that conditional gift fund expenditures do not exceed operating budget levels. Budget Officers must submit to the Assistant Director for Finance/OFM a request to invest funds available in excess of those projected to be obligated under their plan or as necessary during the year.
   c. IC Property Accountability Officers are responsible for consulting with the NIH Property Accountability Officer, Office of Logistics and Acquisition Operations/Division of Logistic Services (DLS)/Property Administration Branch (PAB) when outside organizations propose gifts of personal property to see that the property management requirements are met and that information on gifts is provided for in the NIH Personal Property Management System (PPMS). (See NIH Manual 26101-25-2, "Personal Property Management Guide.") This will

permit the PAB to create a basic record of the accountable item. The notification must include:

1) A description of the item, including the manufacturer and model number and its estimated value; and
2) Accountable IC area that will be receiving the item (custodial location code).

Upon receipt of donated property, the IC Property Accountability Officer must submit to the NIH Property Management Officer and the IC Property Custodial Officer a copy of the document accepting the gift. The IC Property Custodial Officer and the IC Property Accountability Officer must then contact the NIH Property Accountability Officer in the PAB to determine the appropriate data elements and method for recording the transaction in the NIH PPMS. The required data elements for an item are:

1) Estimated value;
2) Manufacturer's serial number;
3) Month and year item received;
4) Physical location where it will be maintained (building and room number); and
5) NIH decal number assigned to the item.

3. **Office of the General Counsel**

   Within the HHS Office of the General Counsel, the NIH Branch provides guidance on legal issues related to the acceptance and administration of gifts, including gift conditions, use of gift funds, and statutory authorities; and negotiates with donors or donors' estates as requested by NIH and ICs. The Ethics Division of OGC handles issues of ethics.

4. **Budget Offices**

   Gift funds shall be controlled at the operating budget level. The Central Services Budget and Accounting Branch (CSBAB), OFM, will issue an Advice of Allotment reflecting the availability of funds for each IC. The IC Budget office will engage in an automated process Application Program Interface (API) to upload the gift fund data into the accounting system, i.e., an allowance and operating budget. Gifts must be used for the purpose for which they were offered and accepted. To ensure that this is done, a separate operating budget must be established for each of the two major categories of gifts, i.e., conditional and unconditional. For conditional gifts, a more definitive operating budget must be established that identifies a gift’s unique set of conditions.

5. **Office of Logistics and Acquisition Operations (OLAO)/ Division of Logistic Services (DLS)/Property Administration Branch (PAB)**

The Director, OLAO through the PAB, will assure compliance with the limitation that "Offers of personal property may not be accepted if the total costs associated with acceptance are expected to exceed the cost of purchasing a similar item and the cost of normal care and maintenance." (Delegations of Authority, Finance #5, Citation 3 (01/02/01) and Program: General #26 "PHS Act, Title XXI")

a. Personal property received as a gift will be added to the NIH Personal Property records. The same degree of custody and control will be exercised over such property as is required for all other Government-owned personal property.
b. As with other forms of personal property, the PAB will notify OFM of changes in the status of personal property that should be reflected in the General Ledger.

6. **Office of Financial Management**

The Assistant Director for Finance, OFM Branch/Office responsibilities:

a. The Cashiers Office will serve as the central collection point for all monetary gifts and requisite documentation (see Appendix 5 Standard Operating Procedures). Documentation in the form of a deposit ticket is to be forwarded to the General Ledger Branch (GLB) for recording purposes;
b. The GLB will:

1) Track all monetary gifts; notify the IC through the monthly fund control process that a deposit(s) in the applicable gift fund account has taken place.
2) Authorize investments requested by ICs and communicate with the Department of the Treasury when to buy and sell all investment orders;

c. CSBAB is responsible for the issuance of Advice of Allotments and preparing status reports on a periodic basis.
d. Division of Policy and Quality is responsible for conducting periodic reviews on financial aspects of gift funds administration.

G. Procedures

Detailed procedures for gifts processing are found in Appendix 5.

1. Monetary Gifts-will be processed through the Cashiers Office.
2. Nonmonetary Gifts-generally, responsibility for administration of nonmonetary gifts rests with the PAB; therefore, that office must be advised of the proposed acceptance of all nonmonetary gifts.

H. Records Retention and Disposal

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual 1743, "Keeping and Destroying Records," Appendix 1,

NIH Records Control Schedule, Section 1900 - Accounting, F. Gift Administration (All that apply).

NIH e-mail messages, including attachments that are created on the NIH computer systems or transmitted over the NIH networks that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Liaison for additional information.

All e-mail messages are considered Government property, and if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, the NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to the Congressional Oversight Committees, if requested, and are subject to the Freedom of Information Act requests. Back-up files are subject to the same requests as the original messages.

I. Internal Controls

1. **Office Responsible for Reviewing Internal Controls:**

   OFM will be responsible for reviewing Internal Controls.

2. **Frequency of Review:**

   Internal Control Reviews will occur at a minimum every three years. Control Reviews may occur more frequently if gift transactions are selected as part of the A-123 review process.

3. **Method of Review:**

   OFM will conduct Internal Control Reviews as part of the A-123 process or will conduct separate Reviews at least every three years if no controls were tested as part of the A-123 process.

4. **Review Reports are sent to:**

   Results will be reported through the A-123 governance structure; to the Deputy Director for Management through the Deputy Chief Financial Officer.

Appendix 1: Gift Transmittal Form

The Gift Transmittal Form can be filled out or printed from the NIH Forms Website at: https://oma.od.nih.gov/Lists/DMSFormsList/Attachments/295/NIH-2914_05-15-2022.pdf

Please note that you will need Adobe to view this form. If you do not have it, you can download Adobe Reader for free at: http://get.adobe.com/reader/

Appendix 2: Gift Acceptance Checklist

The Gift Acceptance Checklist can be filled out or printed from the NIH Forms Website at: https://oma.od.nih.gov/Lists/DMSFormsList/Attachments/296/NIH-2914-1_05-11-2022.pdf

Please note that you will need Adobe to view this form. If you do not have it, you can download Adobe Reader for free at: http://get.adobe.com/reader/

Appendix 3: Sample Letters of Acceptance for Conditional and Unconditional Gifts (use IC letterhead if an IC Director is the signature authority)

Marshall Dillon, Ph.D.
President Acme Laboratories
1234 56th Avenue
Metropolis, VA 23456

Dear Dr. Dillon:

On behalf of the National Institutes of Health, and by the authority delegated to me under Section 231 of the Public Health Service Act, as amended (42 U.S.C. § 238), I am pleased to accept Acme Laboratories' gift of $100,000. In accordance with your wishes, the funds will be deposited in the [Name of IC or OD component] Conditional Gift Fund Account and will be used by [Name of IC or OD component] solely to support [Name of specific project and/or researcher]. Please be advised that there are no conditions imposed as part of this Gift Agreement that constitute an obligation on the part of the NIH to expend appropriated dollars in furtherance of the above named purpose.

In the event that any unobligated excess funds remain in the account after completion of the project, or if completion of the project becomes impossible, the IC will notify you and will (1) deposit the excess funds in the [Name of IC or OD component] Unconditional Gift Fund to be available to support other activities of the [Name of IC, OD component or NIH]; or, (2) return the excess funds to you.

Support from organizations such as yours makes it possible for the National Institutes of Health to work toward understanding, preventing, and eradicating disease. We deeply appreciate your help.

Sincerely yours,

IC Director: _____ Date: _____

SAMPLE LETTER OF ACCEPTANCE FOR UNCONDITIONAL GIFTS

Marshall Dillon, Ph.D.
President Acme Laboratories

1234 56th Avenue
Metropolis, VA 23456

Dear Dr. Dillon:

On behalf of the National Institutes of Health, and by the authority vested in me under Section 405(b)(1)(H) of the Public Health Service Act, as amended (or, if applicable, delegated to me under section 231 of the Public Health Service Act, as amended), I am pleased to accept Acme Laboratories' donation of $100,000, to the [Name of IC or OD component]. In accordance with the mission of NIH, the gift will be used to carry out the mission of [Name of IC or OD component] to support [purpose, e.g. cancer research].

Support from organizations such as yours makes it possible for the National Institutes of Health to work toward understanding, preventing, and eradicating disease. We deeply appreciate your help.

Sincerely yours,

IC Director: _____ Date: _____

Appendix 4: Information Fact Sheet on Donations to NIH

Except for applications for grants from private nongovernment sources, such as Foundations, as authorized by the Comptroller General in the Decision B-255474 (April 3, 1995), employees are not authorized to request or suggest donations to the NIH. When an outside organization or private individual expresses an unsolicited interest in supporting NIH activities, the employee may provide information on the authority of NIH to accept gifts. Below is a suggested information fact sheet regarding that authority.

INFORMATION FACT SHEET ON DONATIONS TO THE NATIONAL INSTITUTES OF HEALTH

The National Institutes of Health (NIH) may accept gifts and bequests of money or personal property for the purpose of carrying out its activities pursuant to sections 231 and 405 of the Public Health Service Act, as amended. Gifts must be entirely voluntary. Gifts may be unconditional, for example, "to the National Institutes of Health" or "to the Fogarty International Center to promote international health"; or conditional, for example, "to the NIH Office of Research on Women's Health to support [Name of a particular study or project.]" For bequests, it is advisable to include a reference to the location, i.e., "located in Bethesda, Maryland." NIH is not a private, charitable organization, but, as an agency of the United States, gifts made to NIH as a whole or to any of its research institutes or other components without limitation or for any of their public purposes are tax deductible as charitable contributions under section 170(c) of the Internal Revenue Code of 1986, as amended [Name of Internal Revenue Code]. Potential donors should, however, consult with their tax advisors.

The decision whether or not to accept any gift is a discretionary administrative decision based upon program needs and public policy considerations. Most gifts are accepted when they will

be beneficial to NIH, as long as any conditions of the gift are not illegal, contrary to public policy, or burdensome, and the gift will not create a real or apparent conflict of interest, as could occur when a gift is offered by an organization with which NIH has financial dealings. For additional information on receipt and acceptance of gifts, please contact the administrative office of the particular NIH institute or other component that is the intended recipient of the gift (the NIH operator at (301) 496-4000 can provide the appropriate telephone number), the NIH Deputy Director for Management at (301) 496-3271, or the NIH Legal Advisor at (301) 496-6043.

Additionally, Congress established the Foundation for the National Institutes of Health to solicit, accept, invest, and manage gifts to support the mission of the NIH. The Foundation for the NIH is a tax exempt nonprofit corporation under section 501(c)(3) of the Internal Revenue Code, and gifts to the Foundation for the NIH are tax deductible. For further information, please contact the Foundation at (301) 402-5311 or www.fnih.org.

Appendix 5: Standard Operating Procedures

1. Monetary Gifts

    a. Cash and Checks - one time

    Step 1: Once an IC receives a donor's check, cash, or similar instrument, within two business days, the IC must send the instrument along with a copy of the Gift Transmittal Form (see Appendix 1) and the donor's letter (if applicable) to the OFM Cashiers Office.

    Step 2: Within twenty business days after receipt of a monetary gift, the recipient IC must determine whether to accept the gift and must notify the donor of the decision. This time frame may be extended in cases where the decision whether or not to accept a gift is still under review or negotiation. When an extension is required, consultation with OGC is encouraged.

    Step 3: Once an IC has determined that acceptance of a gift is appropriate, it must forward a copy of the Acceptance Letter (see Appendix 3) along with a copy of the Gift Acceptance Checklist (see Appendix 2), if applicable, to the OFM Cashiers Office.

    b. Wire Transfer Donations

    Once a recipient IC becomes aware that a donor plans to send a wire transfer donation, the recipient IC should prepare an Acceptance Letter in the most expeditious manner. A copy of the completed and signed Acceptance Letter, along with the Gift Transmittal Form, Donor's Letter, and Gift Acceptance Checklist (if applicable) are to be faxed to the GLB.

    If a wire donation is received by GLB staff but they do not receive a copy of the corresponding backup documentation within 5 working days, GLB will notify the

IC by email. If GLB does not receive a copy of the backup documentation within 10 working days the wired funds may be sent back to the donor.

c. Donations/Pledges to be given Incrementally

Scenario 1: Should an IC receive a donation or pledge that is to be submitted to the NIH in increments over a period of one fiscal year and should the total value of the gift be for an amount that is $5,000 or greater, the IC is required to: 1) Complete the Gift Acceptance Checklist; and 2) Submit a copy of the Acceptance Letter, Gift Transmittal Form, Donor's Letter, and Gift Acceptance Checklist to the OFM Cashiers Office, for the initial donation received. For all subsequent donation/pledge receipts, an IC is to submit a copy of ONLY the Gift Transmittal Form.

Scenario 2: If the total value of the gift being donated in increments is less than $5,000, the IC is to submit a copy of the Acceptance Letter, Gift Transmittal Form, Donor's Letter, and Gift Acceptance Checklist (if applicable) to the OFM Cashiers Office, for the initial donation; and ONLY a copy of the Gift Transmittal Form for subsequent donation/pledge receipts.

The Acceptance Letter should state that the gift is being deposited to the "component's appropriate gift fund account," the purpose for which the funds will be used (reference to a "Breast Cancer Gift Fund" or an "Emphysema Gift Fund," for example, is technically incorrect and, therefore, should not be used), and, if it is a conditional gift, a statement acknowledging the donor's wishes regarding the disposition of unobligated funds. Unobligated funds are either transferred to the component's unconditional gift fund account for the support of any other objectives of the recipient component or returned to the donor. The OFM Cashiers Office will then deposit the money. Gift checks more than 90 calendar days old will not be accepted by OFM for deposit and will be returned by the IC to the donor for reissuance.

Acceptance Letters must be signed by an authorized official, and must state the purpose for which the gift will be used. Copies of the Acceptance Letter must be forwarded to the OFM, DDM, DDIR, and DDER, as outlined above in Section F. If a gift is not accepted or the donor refuses to accept NIH terms, any uncashed checks tendered by the donor must be promptly returned to the donor. If the donor's check has already been cashed, OFM will draw a refund check from the Treasury and send it to the donor.

In the case of conditional monetary gifts, if it is determined at any time after acceptance that the condition(s) cannot be met, or if residual funds exist, the IC will deal with the funds in accordance with the wishes of the donor that were arranged during gift acceptance. If the disposition of unobligated funds was not negotiated during gift acceptance the IC will contact the donor to find out the donor's wishes.

d. The OGC and the Executive Secretariat are available to assist in reviewing an Acceptance Letter.

2. Nonmonetary Gifts

a. Within twenty workdays after the offer of a nonmonetary gift, the recipient IC must determine whether to accept the gift and must notify the donor. Normally, for gifts other than money, the donor should be thanked and advised that the donation will be considered and that the donor will be advised later regarding the ability of the IC to accept it. This time frame may be extended in cases where the decision on whether to accept a gift is still under review or negotiation. When an extension is required, consultation with OGC is encouraged.
b. Generally, responsibility for the administration of nonmonetary gifts rests with the Property Administration Branch; therefore, that office must be advised of the proposed acceptance of all nonmonetary gifts