

# A Formal Guide to Commander's Informal Funds: Background, Set-Up, and Best Practices

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*There is no better way to inculcate ethics in organizations than through the education of their leaders. Even their minor decisions are closely observed and treated as precedent, reverberating down the chain of command. In military organizations in particular, the more senior the commander, the wider the influence exerted and its resulting perversion, should the influence be flawed.<sup>1</sup>*

## I. Introduction

Imagine the following hypothetical situation: As a new administrative law attorney, you are reviewing an Army Regulation (AR) 15-6 investigation involving the mismanagement of a battalion informal fund (IF). The First Infantry Battalion (1st IN BN) recently held their annual unofficial dining-out function at an off-post location. This event was primarily funded via direct ticket sales to members of the unit. Although ticket sales were sufficient to pay for each attendee's catered meal, there was not enough money left to pay for the venue rental. To make up the difference, the battalion commander decided to expend all money in the 1st IN BN IF, with any outstanding balance coming from the commander's own personal funds. After completely exhausting the IF, the commander paid the remaining amount using personal funds totaling \$1,000. Several weeks later, the battalion sent Soldiers to work at a Morale, Welfare, and Recreation (MWR) event during official duty time to raise money for the exhausted IF and to reimburse the commander for his \$1,000 out-of-pocket expenditure. The battalion commander allegedly encouraged his Soldiers to volunteer to work at the MWR event in order to "build-up the unit activity fund for future events." Furthermore, he promised a four-day pass for the squad that worked the most hours. Through their volunteer efforts, battalion members managed to raise more than enough money to reimburse the commander and to reestablish the depleted IF.

Does anything in the above hypothetical give you cause for concern? It should. Not only did the fundraiser possibly

violate the Joint Ethics Regulation (JER) prohibition on receiving "a salary supplement for the performance of DoD duties,"<sup>2</sup> it also had the appearance of personally enriching the battalion commander. Moreover, the four-day pass promise was a prohibited inducement to volunteer.<sup>3</sup> Among other things, this investigation discovered that the battalion had no IF standard operating procedure (SOP) and poor accounting overall. The investigation determined that the battalion commander violated the JER and improperly benefitted personally from this incident. You found the investigation legally sufficient, and subsequently discovered that the appointing authority directed a permanently-filed letter of reprimand for this commander. When the dust settled, you resolved to reflect on what the unit could have done differently—could the commander have avoided this negative outcome and could a judge advocate have helped in some way?

Informal funds are activities of a limited scope, funded by military members and civilian employees, designed to support unofficial activities for those personnel.<sup>4</sup> These funds are ideal to support unofficial activities or events that do not qualify for appropriated funds.<sup>5</sup> They also present a consistent management challenge across the Army.<sup>6</sup> This article will examine how a few critical control measures enable the efficient and ethical operation of commander's informal funds. With some controls in place, the entire hypothetical 1st Infantry saga could have been avoided. This article attempts to serve as a formal guide to informal funds, including explanations of the policy framework for IFs, tips for set-up, and best practices for smooth operation. Part II

of the Army para. 1-10e. (7 Jun. 2010) [hereinafter AR 600-29].

<sup>4</sup> U.S. Dep't of Def., Instr. 1000.15, Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations para. 14 (24 Oct. 2008) [hereinafter DoDI 1000.15].

<sup>5</sup> Commander's informal funds (IFs) are not unit funds, and should not be used to augment official events funded through appropriated funds. 31 U.S.C. § 1341(a)(1)(A) (2016). Additionally, family readiness group (FRG) IFs are separate and distinct from commander's IFs, and augmenting commander's IFs with FRG IFs is not authorized. U.S. DEP'T OF ARMY, REG. 608-1, ARMY COMMUNITY SERVICE para. J-7a (22 Dec. 2016) [hereinafter AR 608-1]. The language used in paragraph J-7a is "the unit's informal funds (the unit's cup and flower funds)." *Id.* However, this article recommends using the term *commander's informal fund*. The term *commander's informal fund* better distinguishes between the unit's appropriated funds and unofficial IFs, than does the term *unit informal funds*.

<sup>6</sup> This assertion is based on the author's professional experiences as an administrative law attorney for the First Armored Division and the Military and Civil Law Division, USAREUR.

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<sup>1</sup> A. Edward Major, *Ethics Education of Military Leaders*, MILITARY REV., Mar.-Apr. 2014, at 55, 56.

<sup>2</sup> U.S. Dep't of Def., 5500.7-R, Joint Ethics Regulation (JER) para. 3-205 (30 Aug. 1993) [hereinafter JER]. See also U.S. Dep't of Def. Standards of Conduct Off. (SOCO), Encyclopedia of Ethical Failure 127 (Sept. 2016).

<sup>3</sup> U.S. Dep't of Army, Reg. 600-29, Fund-Raising Within the Department

covers the background and history of IFs. Part III discusses IF policy in depth, including Department of Defense (DoD) guidance, a comparison of sister service policies, and a more comprehensive exposition of Army IF guidance. Part IV consists of best practices for commanders and judge advocates to deliver efficient and ethical management. Finally, Appendix A is a sample battalion-level IF SOP.

## II. Background

This section describes the history of IFs and, more specifically, of fundraising in the federal workplace, since the two histories are so intertwined. In order to properly contextualize IFs, it is important to understand how they came to exist.

### A. Fundraising

#### 1. Fundraising in the Federal Workplace

The history of fundraising in the federal workplace is a history of incrementally increasing oversight over the course of the last 70 years. Prior to the administration of President Dwight Eisenhower, there was no substantial executive guidance covering fundraising in the federal workplace.<sup>7</sup> The current Combined Federal Campaign (CFC) describes this period prior to the 1950s as “an uncontrolled free-for-all”<sup>8</sup> for “on-the-job fundraising in the federal workplace.”<sup>9</sup> This overly permissive environment led President Eisenhower to

<sup>7</sup> *Early Years*, CFC TODAY, <https://cfcoday.org/content/early-years> (last visited May 25, 2017).

<sup>8</sup> *Id.* (“Prior to the 1950’s, on-the-job fundraising in the federal workplace was an uncontrolled free-for-all. Agencies, charities, and employees were all ill-used and dissatisfied. Some of the problems cited were: Quotas for agencies and individuals were freely established and supervisors applied pressure to employees.”).

<sup>9</sup> *Id.*

<sup>10</sup> *President’s Committee on Fundraising*, CFC TODAY, <https://cfcoday.org/content/presidents-committee-fundraising> (last visited May 25, 2017).

<sup>11</sup> Exec. Order No. 10,728, 22 Fed. Reg. 7219 (Sept. 6, 1957) [hereinafter EO 10728] (establishing the president’s committee on fund-raising within the federal service).

SEC. 7. This order shall not apply to solicitations conducted by organizations composed of civilian employees or members of the armed forces among their own members for organizational support or for benefit or welfare funds for their members. Such solicitations shall be conducted under policies and procedures approved by the head of the department or agency concerned.

*Id.*

<sup>12</sup> See U.S. DEP’T. OF DEF., STANDARDS OF CONDUCT OFF., ETHICS COUNSELOR’S DESKBOOK sec. V, para. E2b (Oct. 2015), [http://ogc.osd.mil/defense\\_ethics/resource\\_library/deskbook/fundraising.pdf](http://ogc.osd.mil/defense_ethics/resource_library/deskbook/fundraising.pdf) [hereinafter ECD]. (“NOTE: Organizations composed of civilian employees and armed forces members have been recognized by Presidential Executive Orders dating back to 1957. See e.g., Section 7 of Executive

commission his administration to develop “a uniform policy and program for fundraising within the federal service.”<sup>10</sup> In a precursor to what would eventually become the CFC, Eisenhower issued Executive Order (EO) 10728, which established a formal committee and procedures for fundraising within the federal service.<sup>11</sup> Importantly, EO 10728 included an exception to the new standard fundraising policy for “solicitations conducted by organizations composed of civilian employees<sup>12</sup> or members of the armed forces among their own members for organizational support or for the benefit or welfare funds for their members.”<sup>13</sup> This exception, and its perpetuation through subsequent EOs, still forms the basis of executive authority for certain DoD fundraising today, including commander’s IFs.<sup>14</sup> In addition, federal departments, including the DoD, have the regulatory authority to “establish policies and procedures applicable to [these types of internal] solicitations”<sup>15</sup> without running afoul of the CFC. Finally, the *Standards of Ethical Conduct for Employees of the Executive Branch* contains additional ethical guidance regarding fundraising in the Federal workplace.<sup>16</sup>

#### 2. Informal Fund Fundraising

Informal fund policy covers both funds donated directly by members served by the fund and funds raised through sanctioned fundraising events.<sup>17</sup> While it is possible for an IF to include only funds donated directly from participating members (as in the case of some office coffee funds), most

Order No. 10728 (1957); Section 3 of Executive Order No. 10927 (1961); Section 7 of Executive Order No. 12353 (1983) Cannot include contractors.”).

<sup>13</sup> EO 10728, *supra* note 11, sec. 7.

<sup>14</sup> EO 10728, *supra* note 11; Exec. Order No. 10,927, 26 Fed. Reg. 2383 (Mar. 18, 1961) (abolishing the president’s committee on fund-raising within the federal service and providing for the conduct of fund-raising activities); Exec. Order No. 12,353, 47 Fed. Reg. 12,785 (Mar. 23, 1982) (charitable fund-raising); Exec. Order No. 12,404, 48 Fed. Reg. 6685 (Feb. 10, 1983) (charitable fund-raising).

<sup>15</sup> Scope of the Combined Federal Campaign, 5 C.F.R. § 950.102 (2012) [hereinafter CFC Scope].

<sup>16</sup> Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.808 (2017) [hereinafter Standards of Ethical Conduct]. Interestingly, the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Ethical Conduct) only defines fundraising as “raising of funds for a nonprofit organization,” which generally does not apply to IF activities. *Id.*

<sup>17</sup> This distinction is not obvious in the text of Army Regulation (AR) 600-20, paragraph 4-20. U.S. DEP’T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 4-20 (6 Nov. 2014) [hereinafter AR 600-20]. However, at least some of the IF examples (office coffee, cup and flower, and annual picnic funds) will include donated funds by their nature (i.e. units do not typically hold events as a means to raise “office coffee funds”). Regarding fundraising events, AR 600-20 paragraph 4-20d permits “[f]und-raising solicitations conducted by organizations composed of civilian employees or members of the Uniformed Services among their own members for organizational support.” *Id.*

IFs will also involve a degree of fundraising. This article assumes that all IFs involve fundraising to some degree, though in practice, not all IFs hold fundraisers.<sup>18</sup> This distinction is important because if an IF involves fundraising, there are more complicated regulatory requirements.<sup>19</sup> “Fundraising is complicated because no comprehensive fundraising regulation exists. Instead, it is governed by independent, overlapping, and unrelated regulations.”<sup>20</sup> Because fundraising is expansive, this article attempts to consolidate this guidance only as applied to IFs.

### B. Limited Informal Fund Guidance

There is limited guidance in Army regulations regarding IFs.<sup>21</sup> The current entirety of Army-specific guidance is found in AR 600-20, which contains only one applicable paragraph.<sup>22</sup> Based on this limited framework, commanders have broad discretion to authorize IFs in accordance with Army command policy.<sup>23</sup> While this discretion may enable some flexibility in the exercise of good judgment, it also leaves much to be desired in the area of pragmatic guidance. There is not even a requirement for IFs to be established in writing. Because of the lack of guidance in this area and the potential consequences of mismanagement, local policy is both valuable and advisable.<sup>24</sup>

### III. Informal Fund Policies

In keeping with historical precedent, the DoD maintains limited guidance regarding IFs, leaving each of the DoD uniformed services broad discretion to establish service-specific IF policies.<sup>25</sup> Comparing the respective guidance of

each of the uniformed services shows differences in the approach of each service regarding IF policy. Such comparisons inform where Army IF policy stands in relation to the other services, and promotes best practices for IF management from all available sources.

#### A. Specific DoD Guidance

Current DoD policy for IFs is summed up succinctly in Department of Defense Instruction (DoDI) 1000.15, paragraph 14:

Certain unofficial activities conducted on DoD installations do not need formal authorization because of the limited scope of their activities. Examples are office coffee funds, flower funds, and similar small, informal activities and funds. The DoD Components shall establish the basis upon which such informal activities and funds shall operate . . . .<sup>26</sup>

The JER further explains that endorsement by DoD employees of fundraising (or membership drives) for such informal activities does not violate the general prohibition on endorsement.<sup>27</sup> However, “any support other than endorsement must be authorized in accordance with paragraph 3-211.b. of the JER,”<sup>28</sup> which requires the same analysis as any other limited DoD support to non-federal entity (NFE) events. Nevertheless, as long as a fundraiser does not use government resources, such events are explicitly permitted to occur outside of the federal workplace.<sup>29</sup> While the federal workplace is normally the physical location where

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<sup>18</sup> One example is a small donations-only office coffee/refreshment fund. It is also true that not every IF may benefit from a formal standard operating procedure (SOP) and substantial oversight (IFs are intended to be *informal* after all.) Although participants still must follow the JER and AR 600-20 guidance, such a fund is unlikely to benefit from a formal SOP. Additionally, informal funds are within a commander’s purview to manage at the unit level, therefore these funds should not operate without command approval.

<sup>19</sup> Part III.C.5. *infra* discusses fundraising regulatory guidance in greater detail. Part IV further describes why the originator of an IF should decide upfront whether the fund will involve both member donations and fundraising.

<sup>20</sup> ECD, *supra* note 12, sec. III, para. A. at 5. The February 2000 issue of *The Army Lawyer* includes an article with short descriptions of the multiple resources containing applicable Federal, Department of Defense (DoD), and Army rules; however, some of these resources are outdated since the article is over sixteen years old. Teresa A. Smith, *Everything You Always Wanted to Know About Official Support to Non-Federal Entity Fundraisers*, Army Law., Feb. 2000.

<sup>21</sup> AR 600-20, *supra* note 17, para. 4-20.

<sup>22</sup> *Id.* The basic elements from this guidance are: fund expenses must be related to the fund purpose; there must be one accountable individual per fund; the fund operation must be consistent with the Army Values and the JER; and there is a limited ability to fundraise during the Combined Federal Campaign. *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Importantly, no policy restricts a commander’s ability to establish additional procedures for IFs at the local level. Local policy is neither required nor prohibited by DoD or Army regulations, so there is an array of local installation guidance in this area. See *infra* Part III.C.6 for a discussion of this guidance.

<sup>25</sup> DoDI 1000.15, *supra* note 4.

<sup>26</sup> *Id.* Note: The original concludes with the words “at Enclosure 3.” This does not make contextual sense, since Enclosure 3 is unrelated to informal funds.

<sup>27</sup> JER, *supra* note 2, para 3-210a(6), at 34 (“DoD employees shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of subsection 3-211 of this Regulation . . . . (6) Other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents when approved by the head of the DoD Component command or organization after consultation with the DAEO or designee.”).

<sup>28</sup> ECD, *supra* note 12, sec. V, para. E.3, at 19.

<sup>29</sup> JER, *supra* note 2, para. 3-211b, at 36 (“OPM has no objection to support of events that do not fundraise on the Federal Government workplace (which is determined by the head of the DoD Component command or organization.)”).

employees conduct their duties, heads of DoD components have the discretion to designate areas on a DoD installation as outside of the workplace.<sup>30</sup> Essentially, this means that a commander may authorize an IF fundraiser within an area on the installation, whether or not the event would otherwise qualify for logistical support, as long as the area is not the workplace.

## B. Service Policy Comparison

Each of the uniformed DoD services draws from the same basic federal and departmental guidance pertaining to fundraising within and among members of subordinate organizations. However, minor differences exist in the implementation of this guidance by the respective services. These differences are instructive in order to clarify DoD intent and to model pragmatic management across the respective services. Thus, a brief examination of guidance from each service warrants attention as a learning tool.

The U.S. Navy (USN) relies almost entirely on the fundraising provisions within the JER and other DoD-wide policy without separate service-level implementing guidance.<sup>31</sup> However, the Navy Installations Command issued fundraising guidance that applies on board all USN installations, which consequently applies throughout the service worldwide.<sup>32</sup> Additionally, each subordinate Navy command or installation is not precluded from establishing local policy, and in some cases, have done so.<sup>33</sup>

United States Marine Corps (USMC) policy is comparable to U.S. Army policy, though there are some significant differences.<sup>34</sup> The most instructive portion of the USMC guidance relates to defining terms and boundaries:

Examples [of certain unofficial activities] are office coffee funds and plaque funds. These funds are often improperly referred to as ‘unit funds,’ however, these funds are not Government money and do not belong to a unit or the Marine Corps. The money in informal funds belongs to the members of the fund in their personal private capacity. No one may be required to donate to an informal fund.<sup>35</sup>

Interestingly, USMC policy also specifically authorizes “office coffee/soda messes . . . to generate money for an informal fund,”<sup>36</sup> but such messes are not authorized to sell food or other items.<sup>37</sup> Finally, USMC policy is currently the only service policy which includes both an IF monetary cap and an approval process for exceeding the cap.<sup>38</sup> The Army previously had a similar monetary cap, which no longer remains in effect and which was never formally codified into the IF guidance of AR 600-20.<sup>39</sup>

United States Coast Guard (USCG) policy also captures the basic DoD guidance, with some unique distinguishing features.<sup>40</sup> United States Coast Guard policy explicitly permits solicitation for these funds within the federal workplace.<sup>41</sup> Because USCG policy does not differentiate

<sup>30</sup> ECD, *supra* note 12, sec. V, para. D, at 17-18.

<sup>31</sup> E-mail from Commander Jason Ayeroff, Student, 65th Judge Advocate Officer Graduate Course, The Judge Advocate Gen.’s Legal Ctr. & Sch., to author (Nov. 3, 2016, 2:43 EST) (on file with author). The Navy informally refers to this type of fundraising within the Navy as “By Our Own - For Our Own” (or BOO-FOO for short). See U.S. DEP’T OF NAVY, COMMANDER, NAVY INSTALLATIONS COMMAND (CNIC) INSTR. 11000.1, NON-FEDERAL ENTITIES ON BOARD NAVY INSTALLATIONS enclosure 1, at 13 (5 July 2012), <https://cnic.navy.mil/content/dam/cnic/hq/pdfs/Instructions/11000Series/CNICINST%2011000.1.pdf>, [hereinafter CNIC INSTRUCTION].

<sup>32</sup> CNIC INSTRUCTION, *supra* note 31, at 1. Interestingly, this installation command policy also requires consultation with an ethics official prior to DoD personnel endorsing BOO-FOO fundraising efforts. *Id.* Enclosure 1, at 13 (“DoD personnel may endorse fundraising efforts of organizations composed primarily of DoD members or their dependents when: (1) those organizations are fundraising among their own members; (2) the fundraising benefits the welfare funds of the group’s own members or their dependents; and (3) the fundraising has been approved by the CO after consultation with the appropriate ethics official.”).

<sup>33</sup> See, e.g., U.S. DEP’T OF NAVY, NAVAL SUPPORT ACTIVITY (NSA) MONTEREY INSTR. 11000.2A, NON-FEDERAL ENTITIES ON BOARD NSA MONTEREY (30 Jan. 2015), <https://my.nps.edu/documents/103424743/106376526/NSAMINST+11000.2A+Non+Federal+Entities+on+Board+NSA+Monterey.pdf/>.

<sup>34</sup> U.S. Marine Corps, Order 5760.4C, Procedures and Support for Non-Federal Entities to Operate on Marine Corps Installations and Informal Funds subsec. 4.a.(2)(b) (18 Mar. 2010) [hereinafter MCO 5760.4C].

<sup>35</sup> *Id.* subsec. 4.a.(2)(b)(1).

<sup>36</sup> *Id.* subsec. 4.a.(2)(b)(2).

<sup>37</sup> *Id.* Note that this article does not address potential prohibitions on fundraisers that compete with authorized commercial activities, such as the Army and Air Force Exchange Service (AAFES) or Navy Exchange (NEX), nor does it address regulations that may restrict fundraisers involving food service.

<sup>38</sup> *Id.* subsec. 4.a.(2)(b)(3) (“An informal fund that generates more than \$350 per month or has more than \$1000 in the fund must have written authorization from the installation commander to operate aboard the installation.”).

<sup>39</sup> *Smith, supra* note 20, at 6 n.39. Also, this should not be confused with the current annual income cap of \$10,000 for informal funds belonging to FRGs. AR 608-1, *supra* note 5, para. J-7e.

<sup>40</sup> U.S. COAST GUARD, COMMANDANT INSTR. M5370.8B, STANDARDS OF ETHICAL CONDUCT art. 2.I.4.h (1 Mar 2002), [https://media.defense.gov/2017/Mar/16/2001717683/-1/-1/0/CIM\\_5370\\_8B.PDF](https://media.defense.gov/2017/Mar/16/2001717683/-1/-1/0/CIM_5370_8B.PDF), [hereinafter COMDTINST M5370.8B] (“The restrictions on fundraising in the Federal Workplace do not apply to organizations composed primarily of Coast Guard employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents. These organizations include but are not limited to the Chief Petty Officers Association, the Coast Guard Officers Association, The Coast Guard Academy Alumni Association, and the Coast Guard Spouses Club.”).

<sup>41</sup> *Id.* (“Solicitations by these organizations in the Federal workplace shall be conducted in accordance with the following procedures: . . . Fundraising shall be conducted in a personal capacity. However, the restrictions above limiting personal solicitation to off-duty and out of uniform do not apply to these solicitations.”).

between funds *solicited* from members of the unit (member-donated funds) and funds *raised by a specific event* (bake sale, car wash, etc.), it is unclear whether this guidance unambiguously follows the JER; the JER only sanctions informal fundraising events held outside of the federal workplace.<sup>42</sup> Furthermore, USCG policy explicitly permits limited solicitation of these funds while on duty and in uniform.<sup>43</sup> This permission for merely collecting donated money from fund members while on duty and in uniform may be implied in the other services,<sup>44</sup> but it is not explicitly stated in other service policies.

The U.S. Air Force (USAF) presents perhaps the most confusing guidance in this area, primarily in the form of one paragraph in the Air Force Instruction (AFI) pertaining to Private Organizations (POs),<sup>45</sup> and two footnotes in the general AFI on fundraising.<sup>46</sup> Air Force Instruction 134-223, *Private Organizations Program*, paragraph 2.2 states:

Small unofficial activities (like coffee funds, flower funds, sunshine funds, and other small operations) are generally not considered POs. However, if their current assets (which include cash, inventories, receivables, and investments) exceed a monthly average of \$1,000 over a 3-month period, the activity/organization must become a PO, discontinue on-base operations, or reduce its current assets below the \$1,000 threshold.<sup>47</sup>

United States Air Force policy further specifies within the general fundraising AFI that an installation commander may authorize solicitations “for a local internal program at the

workplace”<sup>48</sup> aimed exclusively at Air Force members. Paradoxically, an installation commander may also authorize solicitations for “local internal programs *away* from the workplace,”<sup>49</sup> including “special events or benefits conducted by private, social, or professional organizations associated with the installation and composed primarily of DoD employees. To be eligible for official support and endorsement, the fundraising must be conducted by DoD employees, among DoD employees, for the benefit of DoD employees.”<sup>50</sup> This guidance is confusing because it appears to draw an arbitrary distinction between the internal fundraising activities of Air Force members at the workplace, and special events or benefits conducted by “organizations associated with the installation and composed primarily of DoD employees”<sup>51</sup> held away from the workplace. One possible explanation is that the intent of this distinction is to address the difference between collecting money for an office coffee fund during the duty day (likely authorized), and holding a full-blown fundraiser at the workplace during the duty day (likely unauthorized). Whether that was the intent, however, is unclear.

Regardless of their differences, certain aspects of the respective service policies may still be useful to effective operation of IFs in the Army.<sup>52</sup> While the balance of this article will focus primarily on Army policy and best practices, the issues presented are similar enough that the other services may also find some benefit.

### C. Army Policy

Army IF policy is contained succinctly in one paragraph in AR 600-20,<sup>53</sup> which is laid out in two short sections below.

<sup>42</sup> JER, *supra* note 2, para. 3-211b, at 36. In accordance with this paragraph, an IF fundraising event is only eligible for limited logistical support if the event qualifies under the same analysis for any other DoD-supported NFE event in paragraph 3-211a, subsections (1) through (6). The Army explicitly states that IFs should not be involved in on-the-job fundraising. AR 600-29, *supra* note 3, para. 1-7c.

<sup>43</sup> COMDTINST M5370.8B, *supra* note 40 (“Any fundraising during business hours should be limited to incidental amounts of time (such as responding to email inquiries, accepting donations delivered in person by a member of the organization, or holding a brief meeting during a meal or coffee break).”).

<sup>44</sup> Since the time required to collect monetary contributions from other fund members is incidental, it is reasonable that members are permitted to do so in uniform while on duty, as opposed to *fundraising* under the same circumstances, which requires more than incidental time and is therefore more problematic.

<sup>45</sup> U.S. DEP’T OF AIR FORCE, INSTR. 34-223, PRIVATE ORGANIZATIONS PROGRAM para. 2.2. (C1, 30 Nov. 2010), [http://static.e-publishing.af.mil/production/1/af\\_a1/publication/afi34-223/afi34-223.pdf](http://static.e-publishing.af.mil/production/1/af_a1/publication/afi34-223/afi34-223.pdf) [hereinafter AFI 34-223].

<sup>46</sup> U.S. DEP’T OF AIR FORCE, INSTR. 36-3101, FUNDRAISING WITHIN THE AIR FORCE 14 tbl.1, nn.2 & 4, (12 July 2002), [http://static.e-publishing.af.mil/production/1/af\\_a1/publication/afi36-3101/afi36-3101.pdf](http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3101/afi36-3101.pdf) [hereinafter AFI 36-3101].

<sup>47</sup> AFI 34-223, *supra* note 45, para. 2.2. It is unclear from where this

\$1,000 figure is derived or whether this amount is arbitrary. The Army regulation on private organizations (POs) specifically does not apply to informal funds and does not include any similar provision for an IF (with funds exceeding a certain amount) to become a PO. U.S. DEP’T OF ARMY, REG. 210-22, PRIVATE ORGANIZATIONS ON DEPARTMENT OF THE ARMY INSTALLATIONS para. 1-1(b)(2)(r) (22 Oct. 2001) [hereinafter AR 210-22].

<sup>48</sup> AFI 36-3101, *supra* note 46.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> For example, the precedent in other services for a monetary cap on informal funds, raises the question of whether the Army should return to a monetary cap. MCO 5760.4C, *supra* note 34, subsec. 4.a.(2)(b)(3).

<sup>53</sup> AR 600-20, *supra* note 17, para 4-20. Few additional Army regulations make reference to IFs. The regulations referencing IFs generally do so only to state that they do not apply to IFs. For example, AR 210-22, AR 215-1, and AR 608-1 (appendix J-7) all fall into this category. AR 210-22, *supra* note 47, para 1-1b(2)(r); U.S. DEP’T OF ARMY, REG. 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES para. 1-6b(18) (24 Sept. 2010); AR 608-1, *supra* note 5, para. J-7a(1). However, AR 600-29, *Fund-Raising Within the Department of the Army*, creates fundraising restrictions which do apply to IFs. AR 600-29, *supra* note 3. Part III.C.5. *infra* discusses these restrictions.

The first portion, including the first three sub-paragraphs, contains the following guidance:

Commanders may authorize informal funds. Examples of informal funds are office coffee, cup and flower, and annual picnic funds. These funds are subject to the following guidelines:

- a. Use is limited to expenses consistent with the purpose and function of the fund.
- b. Only one individual is to be responsible for fund custody, accounting, and documentation. Annually, this individual's supervisor is advised of the fund's financial status.
- c. Operation of the fund will be consistent with Army values and DoD 5500.7-R.<sup>54</sup>

Although concise, each subparagraph contains substantive guidance, which should be analyzed separately in order to fully comprehend the intent and implications of each part.

### 1. Fund Purpose (Paragraph 4-20a)

The regulation allows commanders to authorize IFs but does not actually define this term; it merely provides examples.<sup>55</sup> In addition to the examples listed, funds raised to pay for a specific event such as a military ball, hail and farewell, or other gathering of military members, are regulated by IF rules and Army fundraising guidelines.<sup>56</sup> This raises questions of how broad the purpose of a fund should be. One approach is to narrowly limit the fund to a very specific purpose, such as a cup and flower fund, or a very specific event, such as an annual unit organizational day. A benefit to this approach is that limiting expenses to the fund's purpose is somewhat easier, which also simplifies accounting. A major shortcoming of this approach is that many organizations would then have numerous IFs for various events or purposes, resulting in confusion and inefficiencies. Creating separate funds for each regular event put on by an organization is not categorically ill-advised, but also not a solution in many cases. However, there are good reasons to create separate funds. A major annual unofficial event, such

as a military ball, is an example where a separate fund may be beneficial, particularly in larger organizations where such events often incur significant expenses. Such an event might benefit from having a separate responsible individual, with separate accounting and internal review outside of any other IF expenses. The example SOP in Appendix A is for a general activity fund; this format should be sufficient as a means to support all of the recurring unofficial events in most organizations.

### 2. One Responsible Individual (Paragraph 4-20b)

The requirement to designate one individual "to be responsible for fund custody, accounting, and documentation"<sup>57</sup> is simple, but there are still concepts to explore. First, although not stated explicitly, it is implied that this individual should not be the unit commander.<sup>58</sup> Second, when multiple IFs are used for different purposes in the same unit, there is nothing in the regulation to disqualify the same individual from being designated to control more than one fund, though this may be ill-advised in some cases. For example, it may be reasonable for the 1st IN BN adjutant to be responsible for both the activity fund (used for an annual event) and the cup and flower fund (ongoing; supported by regular member donations). On the other hand, if the battalion also maintains a separate IF for another major event (annual military ball for example), the organization might be better served if the commander designates a different responsible individual for this fund only.<sup>59</sup>

Only the responsible individual's supervisor is required to be apprised annually of the fund's status.<sup>60</sup> In practice, if the reviewing supervisor is not also the commander, there needs to be some arrangement for reporting back to the commander since IFs are command-run activities. In the 1st IN BN hypothetical, there are no facts to indicate whether the commander designated a responsible individual, and whether the commander established any internal controls over IF expenses. A formal SOP is helpful for specifying how all of this is to be accomplished.

### 3. Ethical Informal Fund Operation (Paragraph 4-20c)

An individual violates ethical boundaries by operating an IF inconsistently with the Army Values or the JER, but the same is not necessarily true if an individual only violates the

<sup>54</sup> AR 600-20, *supra* note 17, para. 4-20.

<sup>55</sup> *Id.* ("office coffee, cup and flower, and annual picnic funds.").

<sup>56</sup> *Id.* See also AR 600-29, *supra* note 3, para. 1-10. Cf. ECD, *supra* note 12, sec. IV, para. C., at 6. This paragraph highlights that the term *fundraising* is often applied to informal funds, even though other federal regulations define *fundraising* more narrowly as raising funds for charitable or non-profit organizations (which does not include informal funds by definition). ECD, *supra* note 12, sec. IV, paras. A, B.

<sup>57</sup> AR 600-20, *supra* note 17, para. 4-20a.

<sup>58</sup> The regulation includes a requirement for the responsible individual's

supervisor to be annually apprised of the fund's financial status. AR 600-20, *supra* note 17, para. 4-20b. Therefore, it makes contextual sense that the commander should not be responsible for the fund so that the supervisory chain remains within the unit served by the fund.

<sup>59</sup> This point will be further expounded upon in Part IV, *infra*, Best Practices.

<sup>60</sup> AR 600-20, *supra* note 17, para. 4-20b.

purpose of the IF.<sup>61</sup> This is interesting since the requirement for the fund to be operated consistent with its purpose is more restrictive than the requirement for the fund to be operated consistent with the Army Values and the JER.<sup>62</sup> However, using an IF contrary to its established purpose might still violate ethical obligations. The established fund purpose, the Army Values, and JER requirements are not mutually exclusive, and the range of possible outcomes for violations of any of these requirements is similar. In the opening hypothetical, there were no facts indicating that the 1st IN BN IF even had a designated purpose, and there was no SOP to show what that purpose might have been. This left the door open for misuse. The scenario facts resulted in an official reprimand, but different facts might require different consequences. Specific acts determine the range of administrative or punitive actions available for ethical failures related to IFs, and the usual command discretion applies in these situations.<sup>63</sup>

#### 4. Fundraising Among Members (Paragraph 4-20d)

The final sub-section of AR 600-20, para 4-20 states:

d. Fund-raising solicitations conducted by organizations composed of civilian employees or members of the Uniformed Services among their own members for organizational support or for the benefit of specific member welfare funds are permitted, but they should be limited in number and scope during the official Combined Federal Campaign/ Army Emergency Relief periods in order to minimize competition with Combined Federal Campaign/Army Emergency Relief.<sup>64</sup>

This final section echoes the language found in EO 10728 issued by President Eisenhower in 1957, and raises the important question of what “fundraising among their own members”<sup>65</sup> means. Some commanders and ethics counselors

take a restrictive approach to this language, with the interpretation that alpha company is permitted to fundraise among alpha company and bravo company is permitted to fundraise among bravo company, but bravo company Soldiers may not take part in alpha company fundraising events and vice versa.<sup>66</sup> This approach is more restrictive than intended by the JER and DoD guidance, which both draw language from EO 10728.<sup>67</sup> The rationale for EO 10728 was that federal workplace fundraising for *external* organizations was in need of more control, while fundraising among federal employees and specifically *within the military community* did not necessitate the same degree of control.<sup>68</sup> Unless local policy dictates otherwise, a pragmatic rule permits fundraising within the physical footprint of the respective garrison. This is especially pertinent in garrisons with multiple geographic locations, as often occurs outside of the continental United States (OCONUS). If the hypothetical 1st IN BN headquarters was geographically isolated, apart from the barracks or family housing, it would not make sense to restrict fundraising activities only to the unit footprint, where other members of the military community might not go, thereby unnecessarily limiting the base of potential authorized contributors.

One example of designated fundraising locations within an organization comes from United States Army Europe (USAREUR) Regulation 210-22. This regulation empowers garrison commanders to designate fundraising locations outside of the federal workplace, including “areas near public entrances, in community-support facilities, or in personal quarters.”<sup>69</sup> Regardless of local guidance vis-à-vis location, fundraising participants must take precautions to avoid soliciting contractors or civilians from outside of the military community. One possible precaution is to request to see a military identification card from anyone not in uniform prior to accepting any money at a fundraising event. While doing so might be cumbersome, it may be the best way to ensure that the fund receives only authorized contributions.

Finally, organizations have a limited ability to fundraise during the CFC and Army Emergency Relief (AER) fund drives.<sup>70</sup> In this context, it is important to note that

or other worthwhile causes. *Id.*

<sup>61</sup> *Id.* paras. 4-20a, 4-20c. In other words, it could be possible for an individual to operate a fund inconsistently with its purpose, without necessarily violating ethics regulations.

<sup>62</sup> *Id.* para. 4-20a, states “[u]se is limited to expenses consistent with the purpose and function of the fund.” However, this provision is not punitive and does not necessarily require a response if violated inadvertently, absent any fraud or other blatant ethical violations.

<sup>63</sup> *Id.* para. 4-7 (“Commanding officers exercise broad disciplinary powers in furtherance of their command responsibilities. Discretion, fairness, and sound judgment are essential ingredients of military justice.”).

<sup>64</sup> *Id.* para. 4-20d.

<sup>65</sup> *Id.* This part focuses on interpretation of the phrase “among their own members,” however the phrase “for the benefit of specific member welfare funds” is also significant. *Id.* Commanders should not use IFs for the benefit of organizations not comprised of military members, even charities

<sup>66</sup> This assertion is based on the author’s professional experiences as an administrative law attorney for the First Armored Division and the Military and Civil Law Division, USAREUR.

<sup>67</sup> EO 10728, *supra* note 11, Sec. 7.

<sup>68</sup> *Id.*

<sup>69</sup> U.S. ARMY IN EUROPE, REG. 210-22, PRIVATE ORGANIZATIONS AND FUNDRAISING POLICY para 11a (13 Aug. 2010), available at [http://www.eur.army.mil/aepubs/publications/AER210-22\\_1004303!.pdf](http://www.eur.army.mil/aepubs/publications/AER210-22_1004303!.pdf). This regulation applies to IFs as well as POs, even though the identically numbered Army Regulation (AR 210-22) specifically *does not* apply to informal funds. AR 210-22, *supra* note 47, para 1-1b(2)(r).

<sup>70</sup> AR 600-20, *supra* note 17, para. 4-20d. This prohibition is also further codified in the general Army fundraising regulation. AR 600-29, *supra* note 3, para. 1-10.

commander's IFs are subject to different fundraising rules than fundraising for 501(c)(3) charitable or non-profit organizations.<sup>71</sup> The CFC runs annually from September 1 to December 15,<sup>72</sup> and "is the only authorized solicitation of Government personnel in the Federal workplace on behalf of charitable organizations."<sup>73</sup>

### 5. Fundraising Policy

At the Army level, requirements for fundraising organizations, including IFs, are found in AR 600-29. Paragraphs 1-10a through 1-10h contain fundraising prohibitions that apply to IFs including, but not limited to, a summarized list of prohibitions.<sup>74</sup> Commanders, supervisors, or IF fundraising organizers shall not: 1) Make fundraising solicitations during the CFC; 2) Make inquiries about whether individual Soldiers or civilian employees choose to make IF contributions, or make performance evaluations based on participation or nonparticipation in fundraising events; 3) Use figures that purport to represent an individual's *fair share* contribution to the organization (although suggested contributions are authorized); 4) Develop or use "lists of either noncontributors or contributors for purposes other than the routine collection and forwarding of contributions;"<sup>75</sup> 5) Grant military members "special favors, privileges, or entitlements, such as special passes, leave privileges, or the wearing of civilian clothing, that are inducements to contribute;"<sup>76</sup> 6) Harass "an individual through continued discussions, meetings, orientations, 'counseling,' or other methods to cause an individual to change his or her decision to give or not give;"<sup>77</sup> 7) Make "an individual to believe, either directly or indirectly, that he/she is the only one, or one of a small number of people, preventing the achievement of an organizational goal, whether it is a participatory goal or a monetary goal;"<sup>78</sup> 8) Solicit government contractors. General ethical guidance and local regulations may add to this list of fundraising prohibitions. Judge advocates can add value in this area by observing local practices and spotting issues as they arise.

### 6. Local Policy

Finally, local policy or regulation may establish further

procedures or limitations for IFs. No specific provision in DoD or Army policy restricts a higher-level commander from dictating IF procedures to subordinate or tenant units. Local regulations can often bring clarity to unclear aspects of IF policy. For example, local regulations may establish a fund cap, specify authorized fund purposes, geographic fundraising restrictions, SOP formats, etc. One such example is Fort Campbell Regulation 210-4 (CAM 210-4), which applies to Informal Fund Organizations (IFOs) operating on Fort Campbell.<sup>79</sup> Among other particulars, this regulation establishes: caps on annual income and annual cash balance for IFs, a list of approved fundraising activities, an approval process for fundraising on the installation, and general guidance regarding IF tax liability.<sup>80</sup> United States Army Europe Regulation 210-22 is another example of local policy, though this regulation only touches the fundraising aspect of IFs, without the same degree of specificity regarding IF operation as found in CAM 210-4. Other installations may have similar local policies regarding IFs, fundraising, or both. When Army regulations, local policies, and competent legal advice all come together, best practices for informal fund operations emerge.

### IV. Best Practices

There are ten recommended best practices to effectively establish IFs at the unit level.<sup>81</sup> The best practices are primarily focused on the judge advocate's role in advising commanders of ethical concerns related to IFs, and the commander's role in establishing clear IF guidance. These best practices may also assist fund custodians and fundraising organizers.

First, informal funds need a clearly defined purpose. Judge advocates should advise organizations to establish separate funds for separate purposes, tailored to the organization's needs. For example, a brigade judge advocate (BJA) may advise the commander of a brigade-sized unit to establish a separate card & flower fund, general activity fund, and unit ball fund, while a battalion-sized unit may be better served with a general activity fund covering all events including its annual battalion ball. A company may only require a cup and flower fund, an informal coffee fund, or no fund at all. The upfront advice and recommendations of the

<sup>71</sup> ECD, *supra* note 12, sec. IV, at 5-6.

<sup>72</sup> CFC Scope, *supra* note 15, § 950.102(a).

<sup>73</sup> ECD, *supra* note 12, sec. V, para. A.3, at 11.

<sup>74</sup> This list of prohibitions applies to all Army fundraising, but some of the specific language does not apply to informal funds, such as the language regarding allotments in paragraph 1-10d. AR 600-29, *supra* note 3. This summarized list highlights the language most applicable to informal fund fundraisers.

<sup>75</sup> AR 600-29, *supra* note 3, para. 1-10d.

<sup>76</sup> AR 600-29, *supra* note 3, para. 1-10e. Furthermore, there should be no "express or implied requirement to contribute as a condition precedent to normal career progression." *Id.*

<sup>77</sup> AR 600-29, *supra* note 3, para 1-10f.

<sup>78</sup> AR 600-29, *supra* note 3, para 1-10g.

<sup>79</sup> U.S. Dep't of Army, Fort Campbell Installation, Reg. 210-4, Recreational and Educational Private Organizations and Informal Funds on Fort Campbell (1 Jun. 2015) (on file with the author). Fort Campbell Regulation 210-4 defines informal funds more broadly as Informal Fund Organizations (IFOs), which include both traditional informal funds established by commanders and select POs allowed to operate on the installation. *Id.* para. 1-2.

<sup>80</sup> *Id.* para. 2-2, ch. 4.

<sup>81</sup> These best practices assimilate the DoD and Army guidance into practical, real-world guidance.



BJA or other servicing legal advisor are invaluable in this area.

Second, commanders should decide upfront whether an IF will consist of member donations only, or whether the fund members will engage in authorized fundraising activities. If fundraising is involved, commanders should establish parameters to manage these activities in accordance with Army and local policies. A formal SOP provides one way to accomplish this objective. The advice of the servicing legal advisor or installation ethics counselor is beneficial at this early stage, when a fund is first created.

Third, commanders should carefully select a responsible IF custodian. The IF custodian should be a Soldier or Government Services (GS) civilian employee who is not directly in the command group and not a contractor or dependent.<sup>82</sup> Further, the fund custodian should be appointed in writing, and should be capable of using basic accounting procedures. Ideally, the commander should designate separate custodians for separate funds. In cases where the same individual manages more than one fund, the commander should be able to reasonably articulate why this arrangement is necessary.

Fourth, judge advocates that serve as ethics counselors should become subject matter experts on IFs and fundraising policy. Ethics counselors should assist in reviewing local policies for consistency with DoD and Army guidance, and may also help draft local policy.

Fifth, commanders must ensure that family readiness group (FRG) events and fundraisers are separate from commander's IF events and fundraisers. Family readiness group IFs are completely distinct from other IFs in the unit, and FRG events cannot be augmented with unit IFs.<sup>83</sup> To maintain this separation, FRG funds should not be used to support unofficial events that are otherwise funded through the commander's IF.

Sixth, IFs that incur significant expenses or that maintain a large cash balance should have an SOP. This primarily applies to unit activity funds, military ball funds, or any other IF used to support command-wide unofficial events. As a

practical matter, IFs at the battalion-level and above derive the most benefit from having a formal SOP due to the number of personnel served by the fund. Though not required by Army regulations, an SOP is also extremely beneficial for any IF that engages in fundraising events. Standard operating procedures should include all required elements from Army policy and any applicable local or installation policies. The SOP included in Appendix A is modeled for an informal activity fund at the battalion level.<sup>84</sup>

Seventh, commanders should regularly review IF expenses and accounting. For a fund such as unit ball fund, annual accounting may be adequate since these events usually occur on an annual basis. One best practice is to require a review within the week following an annual event, once all expenses are reconciled. For other types of funds, more regular reviews (quarterly or semi-annual) may be advised, especially if expenditures are more dynamic. This is more applicable for funds like a cup and flower fund that collects and expends funds more frequently.

Eighth, commanders should seriously consider imposing an IF monetary cap for several reasons. Even though such a cap is not expressly required by AR 600-20 or other regulations, there are benefits in setting a fund cap. For starters, since many IFs will outlast the command team that initially established the fund, a fund cap prevents a build-up of funds over time, due to potential fluctuations in the degree of emphasis or oversight between different commanders. Second, a fund cap alleviates the possibility of largescale fraud and abuse. Finally, a fund cap avoids potential tax liability issues involved in amassing large sums of money.<sup>85</sup> Though not applicable to commander's IFs, FRG IF guidelines provide a good example of a reasonable fund cap.<sup>86</sup>

Ninth, informal funds generating substantial sums (greater than \$200 for instance) should use a non-interest bearing bank account at an easily accessible financial institution located on or near the installation. This enables easy access and facilitates transfer of funds in the account due to changes of the fund custodian. Some banks require an Employer Identification Number (EIN) for an account opened in the

<sup>82</sup> This requirement is implied, since contractors cannot donate or be solicited for donations. AR 600-20, *supra* note 17, para. 4-20b. *See also* AR 600-29, *supra* note 3, para. 1-10. Furthermore, while the executive officer (XO) and senior non-commissioned officer in an organization are not prohibited by regulation from serving as a fund custodian, commanders should consider negative perception issues before appointing these individuals as custodians.

<sup>83</sup> AR 608-1, *supra* note 5, para. J-7a(3). *See also supra* note 5 (regarding use of the term *unit informal funds*).

<sup>84</sup> This SOP borrows elements from numerous sources. *See, e.g.*, AR 608-1, *supra* note 5, para. J-7c (FRG IF SOP language); FAMILY READINESS PROGRAM MGMT., MANEUVER SUPPORT CTR. OF EXCELLENCE, FORT LEONARD WOOD FRG FUNDRAISING GUIDE para. 6-4 (Mar. 2011), <http://www.wood.army.mil/family/Documents/FRG%20Fundraising%20Guide%20v2.1.doc>; GORDON MWR, FORT GORDON FUNDRAISING GUIDE (7 Jun 2012), [\[content/uploads/2014/10/Fundraising-Guide-2012.pdf\]\(http://www.fortgordon.com/wp-content/uploads/2014/10/Fundraising-Guide-2012.pdf\) \(Fort Gordon FRG informal fund SOP\).](http://www.fortgordon.com/wp-</a></p></div><div data-bbox=)

<sup>85</sup> The Internal Revenue Service (IRS) does not require some organizations, including properly constituted informal fund organizations, whose gross annual receipts are not more than \$5,000, to apply for formal tax exempt status in order to be considered tax exempt. I.R.S. PUB. 1635, *Understanding your EIN* 10, <https://www.irs.gov/pub/irs-pdf/p1635.pdf> (last visited May 25, 2017). *See also* I.R.C. § 501(c)(7). Generally, this excludes occasions where unit members pay directly for an event, such as ticket sales for a military ball. Ethics advisors should consider recommending further tax consultations in unique situations.

<sup>86</sup> AR 608-1, *supra* note 5, para. J-7e (“FRG informal funds will therefore not exceed an annual gross receipt (income) cap of \$10,000 per calendar year from all sources, including fundraising, gifts, and donations. Unit commanders may establish a lower annual income cap.”).

name of a group rather than an individual.<sup>87</sup> This does not preclude the IF custodian from opening a personal account for the fund using their own social security number, but it would make the fund custodian personally liable for any income generated by the account. For this reason, the account should be non-interest bearing. In this case, the fund custodian must also take measures to transfer control of the account prior to permanently changing stations. Informal funds generating small sums, such as a modest coffee fund, should make use of a cash box accessible only to the fund custodian or other means to ensure security of the funds and easy access for regular inspection by the command.

Finally, commanders should consult an ethics counselor from the servicing Office of the Staff Judge Advocate (OSJA) regarding any gifts offered to IF organizations<sup>88</sup> and prior to purchasing any gifts using IFs. The organization should take reasonable steps to ensure no gifts of money or tangible objects are received from prohibited sources.<sup>89</sup> Generally, units should not buy gifts for unit members using IFs, unless the fund is established for that purpose. Purchasing specific gifts would also have to be consistent with the purpose of the fund, and be for the benefit of those served by the fund. Additionally, for gifts to military members there must be a way to determine who contributed and how much, due to price limits on gifts between federal employees imposed by the JER.<sup>90</sup>

Some funds are operated in a pay-in, pay-out manner (i.e. members who contribute \$100 to the unit plaque fund get battalion colors and their spouse gets flowers at the end of their tour). This system is essentially more of a payment for goods received, and is not subject to gift restrictions, since the recipient paid market value for the goods. Additionally, there is no restriction on maintaining a list of contributors in such a scenario, because such funds are not subject to the prohibition found in AR 600-29, paragraph 1-10d.

These recommended best practices are just a few areas in which judge advocates and commanders will interact regarding the establishment and operation of IFs. Because IFs are command-run, command involvement is required to operate them successfully. Judge advocates can play an important role to ensure that these funds are established properly and operated in an ethical manner.

## V. Conclusion

The opening scenario involved major ethical failures that led to a negative outcome for the 1st Infantry Battalion

commander. The ideal control in that scenario would have been the use of an IF SOP, such as the example in Appendix A. Additionally, proactive suggestions from an ethics counselor may have helped minimize ethical problems in the activity planning stage, avoiding the issue altogether. Judge advocates play a critical role in offering advice and recommendations to commanders regarding IFs. Without this advice and other controls in place, even small mistakes may compound and lead to greater ethical lapses.

Informal funds provide an excellent mechanism for commanders to fund unofficial unit activities that build healthy morale. When operated properly, IFs can be a highly effective tool and a significant resource. Command oversight is essential for IFs to operate properly. The best practices articulated in this formal guide to informal funds should help commanders, fund custodians, and judge advocates avoid common mistakes and maintain high ethical standards related to unofficial unit activities.

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<sup>87</sup> See, e.g., *Tax-exempt organizations need an Employee Identification Number*, <https://www.irs.gov/pub/irs-tege/EIN%20article%20final%20100214%20508.pdf> (last visited May 25, 2017) (“EIN Benefits. . . It is usually required to open a business bank account.”).

<sup>88</sup> U.S. DEP’T OF ARMY, REG. 100-1, THE ARMY GIFT PROGRAM para. 2-7 (27 July 2015). Organizations are only required to consult with an ethics counselor regarding “any gift proffer valued at more than \$250 that a delegated gift acceptance authority can accept.” *Id.* However, the ethics

counselor will likely also be the individual responsible to determine whether a delegated gift acceptance authority may accept any gift, regardless of value.

<sup>89</sup> Standards of Ethical Conduct, *supra* note 16, § 2635.202.

<sup>90</sup> JER, *supra* note 2, para 2-203(a). See also Standards of Ethical Conduct, *supra* note 16, § 2635.304.

Letterhead

Office Symbol

Date

MEMORANDUM FOR 1st Infantry Battalion Members

SUBJECT: Battalion Activity Fund

#### 1. References

- a. AR 600-20, Army Command Policy
- b. AR 600-29, Fundraising Within the Department of the Army
- c. DoD 5500.7-R, Joint Ethics Regulations
- d. AR 1-100, The Army Gift Program
- e. [Insert any applicable installation-level policies]

2. **Purpose.** Identify procedures for the creation and management of the 1st Infantry Battalion's Activity Fund (BAF), which is an informal fund (IF) authorized IAW AR 600-20, para 4-20. The purpose of the BAF is to fund or defer expenses for unofficial team-building and social events for members of the battalion and their dependents. Examples of such events include organization days, the annual Battalion Ball, and approved social observances. The BAF is not a business, and is not being run to generate profits. The BAF operates solely using funds solicited from and/or raised by its members through sanctioned fund-raising events. This fund is not considered an instrumentality of the U.S. Government. It shall be self-sustaining and shall not receive any financial assistance from the U.S. Army or non-appropriated funds.

3. **Applicability.** This SOP applies to the 1st Infantry Battalion and subordinate units, including all assigned Soldiers and civilians, and Family members who participate in BAF events. This SOP does not apply to the 1st Infantry Battalion Family Readiness Group (FRG), which operates a separate IF solely for FRG functions. This SOP does not preclude the creation of other IFs within the 1st Infantry Battalion with command approval (for example company activity funds, office coffee funds, or cup & flower funds.)

#### 4. Responsibilities

- a. The Battalion Commander will—
  - (1) Serve as Chairman of the BAF Committee.
  - (2) Approve in writing all expenditures from the Fund in excess of [\$1000].
  - (3) Appoint the Fund Custodian in writing.
- b. The Battalion Executive Officer (XO) will serve as written approval authority for all fund expenditures in amounts greater than [\$500], up to [\$1000].
- c. The Fund Custodian (FC) will—
  - (1) Establish and maintain a non-interested bearing bank account at a local financial institution for BAF funds.
  - (2) Approve all expenditures in amounts up to [\$500], and retain receipts or invoices documenting such expenditures for no less than 24 months.
  - (3) Deposit proceeds from fundraisers within 48 hours of the fundraiser event.

(4) Reconcile bank statements with fund receipts on a monthly basis.

(5) Review financial records semi-annually with the BAF Committee.

## **5. Management**

a. The Fund Custodian is appointed by the Battalion Commander. The Fund Custodian will normally be the Battalion S-1. The tenure of this appointment is for a period not to exceed [24 months].

b. The BAF Committee manages and oversees BAF operation. The Committee consists of four members: the Battalion Commander (Chairman), the Command Sergeant Major, the XO, and the Fund Custodian. The Committee will meet at least semiannually to review the current status of the Fund.

## **6. Fundraising**

a. Fundraising is governed by the requirements of the Joint Ethics Regulation, DoD 5500.7-R, and AR 600-29, Chapter 1. Fundraising events should involve prior consultation with a DA ethics official or servicing judge advocate.

b. The prohibitions in AR 600-29 are applicable to all fundraising events. Participation in fundraising events must be entirely voluntary. No special inducements such as granting special passes, leave privileges, or the wearing of civilian clothing may be used as fundraising incentives.

c. The BAF may conduct fundraising activities within the unit population served by the fund, and at other locations within the garrison footprint unless otherwise restricted. Government contractors may not be solicited for donations or participation, regardless of the fundraising location.

d. Fundraising events will state the purpose of the fundraiser on all advertisements.

e. Earnings from the fundraiser will be turned-in to the Fund Custodian for deposit within 48 hours of the event. Prior to funds transfer to the Fund Custodian, monies will be secured in a combination safe where access is limited to authorized personnel. The organizer of the fundraiser will provide a statement of accounting to the Fund Custodian listing the income and itemized expenses for the fundraiser.

f. The BAF shall not solicit gifts nor accept unsolicited gifts from prohibited sources. Donations from military members to the BAF are not considered gifts. The Fund Custodian shall consult with the Office of the Staff Judge Advocate for any necessary clarification pertaining to gifts.

## **7. Banking and expenditure of funds**

a. Funds will be expended for expenses consistent with the purpose and function for which they were established. In the case of the BAF, expenses may include food, beverages, supplies, entertainment, and other similar purposes.

b. Informal funds will not exceed an annual gross receipt (income) cap of [\$5,000] per calendar year from all sources, including fundraising and gifts, and donations.

c. The Battalion Commander will be the approval authority for all expenditures from the BAF in excess of [\$1000]. Approval will be obtained in writing and retained on file.

d. The Battalion XO will be the approval authority for all expenditures from the BAF in amounts in excess of [\$500]. Approval will be obtained in writing and retained on file.

e. Funds will be used for the benefit of the participants of the fund, i.e., 1st Infantry Battalion military and civilian employees, and their dependents.

f. The Fund Custodian will record a log receipt for all fund deposits and withdrawals. These receipts will be routinely reconciled with bank deposit and withdrawal transaction vouchers. All documentation will be maintained and ready for review at any time.

g. All monies deposited into and withdrawn from the BAF will be itemized; that is to say, all individual amounts comprising the deposit or withdrawal will be clearly annotated. Individual donations must be logged at the time of receipt.

h. The Fund Custodian will deposit proceeds from fundraisers in a non-interested bearing bank account within 48 hours of receipt of funds when possible. Prior to funds deposit, monies will be secured in a combination safe where access is limited to authorized personnel only. Bank statements will be reconciled on a monthly basis.

i. Expenses and earnings from fundraising events will be itemized and clearly recorded. Clearly itemized receipts of goods purchased with withdrawn funds and clearly itemized records of monies earned in the fundraiser event must be maintained. Within 72 hours of a fundraising event, the Fund Custodian will reconcile receipts of funds spent to receipts of funds collected during the fundraiser. The Fund Custodian will keep this documentation and make it available to the command upon request.

8. **Disestablishment of the BAF.** The Fund will be disestablished when the purpose for the Fund ceases to exist. The Battalion Commander must approve disestablishment of the fund.

9. Point of Contact for this SOP is the undersigned.

IAM A. COMMANDER  
LTC, IN  
Commanding