

801 CMR 50.00: EXPENDABLE TRUST REGULATION

Section

- 50.01: Application, Purpose and Scope
- 50.02: Definitions
- 50.03: Secretariat Responsibilities
- 50.04: Declaration of Trust
- 50.05: Waivers

50.01: Application, Purpose and Scope

(1) Application. 801 CMR 50.00 applies to any office, department, agency, board, division, commission or institution of the Executive Department, excluding the Legislative and Judicial Branches, the Constitutional Offices, and independent public authorities.

(2) Purpose. The purpose of 801 CMR 50.00 is to provide uniform rules and procedures pertaining to the acceptance, expenditure and use of one-time or temporary funds (including grants, gifts, cash and in-kind contributions) received from any person or any quasi-governmental, municipal governmental, or other nongovernmental entities, as an Expendable Trust outside the normal appropriation process. Unless otherwise provided by law, such funds may be accepted, expended and used only in accordance with the procedures set forth in 801 CMR 50.00. 801 CMR 50.00 excludes federal grant funds governed by M.G.L. c. 29, § 6B and any other funds that are directed for deposit in another fund or account in accordance with general or special law.

(3) Scope. Only Executive Office Secretaries are authorized to establish Expendable Trusts pursuant to 801 CMR 50.00, on behalf of the Executive Office or any Department. The head of any other state agency or state authority, each as defined in M.G.L. c. 29, § 1, may request the Secretary of Administration to establish an Expendable Trust on the agency's or authority's behalf.

50.02: Definitions

Declaration of Trust. The formal legal instrument, which may be a declaration, an agreement or a similar instrument, governing operation of the Expendable Trust.

Department. Any office, department, agency, board, division, commission or institution in the Executive Department, whether or not subject to the jurisdiction of an Executive Office, but excluding the Legislative and Judicial Branches, the Constitutional Offices and independent public authorities. Organizations recognized as Departments have unique departmental identification in the state accounting system.

Executive Office. Any of the Executive Offices established by M.G.L. c. 6A, § 2. For the purposes of 801 CMR 50.00, Secretariat shall have the same meaning as Executive Office.

Expendable Trust. An account of the Commonwealth established on MMARS and with the State Treasurer into which are deposited monies that are held by the Commonwealth or any of its Executive Offices in a trustee capacity and from which both principal and interest may be expended only in accordance with the terms of the trust. The terms and conditions for expenditure, financial accounting and reporting of an Expendable Trust shall be the same as any other state funding as prescribed by the Comptroller under generally accepted accounting principles. An Expendable Trust is designated as a temporary account and not as a permanent revenue stream. Expendable Trusts shall be subject to fringe and indirect costs for non-budgetary accounts as prescribed by law.

MMARS. The Massachusetts Management Accounting and Reporting System established by the Comptroller of the Commonwealth of Massachusetts pursuant to M.G.L. c. 7A, § 7.

Office of the Comptroller (the Comptroller). The Office established by M.G.L. c. 7A.

50.02: continued

Person. An individual, corporation, society, association or partnership.

Secretary. The Secretary of any Executive Office, as established by M.G.L. c. 6A, § 2, or duly authorized designee.

Secretary of Administration. The Secretary of the Executive Office for Administration and Finance, as established under M.G.L. c. 7, § 2.

50.03: Secretariat Responsibilities

(1) A Secretary seeking to establish an Expendable Trust shall submit a written request therefor to the Secretary of Administration. The request shall include:

- (a) The rationale, purpose and name of the proposed Expendable Trust;
- (b) The anticipated sources of revenues to the Expendable Trust;
- (c) The estimated total of such revenues;
- (d) The types of planned expenditures;
- (e) The expected duration of the Expendable Trust;
- (f) A draft of the Declaration of Trust; and
- (g) The name of the person to be appointed as Trustee.

(2) Upon receipt of approval from the Secretary of Administration, the requesting official shall forward to the Comptroller a copy of the approved request and the final Declaration of Trust.

(3) The Comptroller shall coordinate the establishment of a separate account for the Expendable Trust with the State Treasurer and establish the appropriate account in MMARS.

(4) The requesting official shall ensure that transactions in the Expendable Trust are reported and accounted for in accordance with MMARS policies and procedures.

(5) Unless otherwise provided by law, revenue and expenditure activity pursuant to 801 CMR 50.00 is authorized by M.G.L. c. 6A, § 6 and governed by 801 CMR 50.00 and related declarations of trust and is not subject to appropriation.

(6) The Expendable Trust shall terminate at the direction of the trustee or trustees or the Secretary of Administration or as provided in the Declaration of Trust, but generally shall not extend beyond three years from the date of receipt of funds, unless the terms of the initial trust anticipates expenditure over a longer period of time not to exceed five years. Any extensions beyond the initial term of the Expendable Trust will require an amended and re-executed Declaration of Trust, submitted in the same manner as stated in 801 CMR 50.03(1), which will be for the temporary period necessary to expend the initial funding.

(7) Any balance remaining at termination of the Expendable Trust shall revert to the Commonwealth unless otherwise provided in the Declaration of Trust.

50.04: Declaration of Trust

The Declaration of Trust shall address the particular purposes for which the Expendable Trust is created and shall include the following subject matters, as applicable:

- (1) Establishment of the Expendable Trust;
- (2) Name of Expendable Trust;
- (3) Appointment of Trustee;
- (4) Governance;

50.04: continued

- (5) Contributions to the Expendable Trust;
- (6) Exclusive Purposes of the Expendable Trust;
- (7) Payments from the Expendable Trust;
- (8) Administrative Powers;
- (9) Accounting;
- (10) Amendments;
- (11) Governing Law;
- (12) Additional and Successor Trustees;
- (13) Compensation of Trustees; and
- (14) Termination.

The Secretary of Administration or the Comptroller may publish a template for a Declaration of Trust.

50.05: Waivers

The Secretary of Administration may grant a written waiver from one or more of the provisions of 801 CMR 50.00 upon written request of a Secretary based on special circumstances or need, provided that such request shall be in writing, signed by the Secretary, and shall contain at a minimum the following:

- (1) the signature of the Secretary of the Executive Office;
- (2) the transactions to which such waiver would apply and the provisions of 801 CMR 50.00 to be waived;
- (3) the reasons for the request, including if relevant, any effort to comply with 801 CMR 50.00; and
- (4) all documentation supporting the special circumstances or need for such requested relief.

The granting of a waiver pursuant to 801 CMR 50.05 shall not relieve the Secretary of responsibility to comply with the other provisions of 801 CMR 50.00 and all other relevant requirements of law. If the waiver is granted, the Secretary shall file a copy of such waiver with the Office of the Comptroller.

REGULATORY AUTHORITY

801 CMR 50.00: M.G.L. c. 6A, § 6 and c. 7, §§ 3 and 4.