



Budget Basics

#10: Don't Be Hypocrites on Special Funds

Claim: "If you have concerns about raiding special funds, please contact or text Senator Frank Aguon" (from Adelup press release entitled "NEWS: To Avert Cruz Crisis, Aguon Continues Pushes to Use Special Funds," dated February 28, 2018).

Fact:

Recycling Revolving Fund

DOA has permanently transferred approximately \$10,175,718 out of the Recycling Revolving Fund to the General Fund, thereby artificially increasing the General Fund balance between 2012 & 2016.

E-911 Fund

The Enhanced 911 Emergency Reporting System Fund (E911 Fund) provides a source of funding for costs associated with Enhanced 911 Emergency Reporting System and equipment and system costs as necessary. Between Fiscal Years 2014–2016, the **DOA has permanently transferred approximately \$3,041,134 out of the E911 Fund** to the General Fund, thereby artificially increasing the General Fund balance.

Fire Life and Medical Emergency Fund

The Fire, Life and Medical Emergency Fund (FLAME Fund) provides funding for the purchase, critical maintenance, and repair of essential emergency rescue and firefighting vehicles; emergency life support and medical equipment; and training for Emergency Medical Technician and Paramedic certifications. Between Fiscal Years 2014–2016, the **DOA has permanently transferred approximately \$1,317,838 out of the FLAME Fund** to the General Fund, thereby artificially increasing the General Fund balance.

"It takes a lot of brass to criticize a guy for doing what you have repeatedly done yourself. For years, Adelup has permanently transferred funds out of protected accounts to inflate the General Fund. Governor, tell the truth about us, we don't need to lie about you—all we have to do is remember."—Speaker Benjamin J.F. Cruz

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For more information, please contact the Office of Speaker Benjamin J.F. Cruz at #477-2520.





Office of the Speaker
BENJAMIN J.F. CRUZ
I Mina'trentai Kuåtro na Liheslaturan Guåhan
Committee on Appropriations and Adjudication

October 25, 2017

Transmitted via Electronic Mail
christine.baleto@doa.guam.gov

Ms. Christine W.P. Baleto
Director
Department of Administration
Suite 224, ITC Building
590 South Marine Corps Drive
Tamuning, Guam 96913

Re: Halt Special Revenue Fund Permanent Transfers to the General Fund

Dear Director Baleto:

As the Fiscal Year 2017 closing process is conducted by the Department of Administration (DOA), I want to call attention to the permanent transfers from certain Special Revenue Funds to the General Fund that have occurred over the past several fiscal years, and call for such transfers, if planned, to cease immediately.

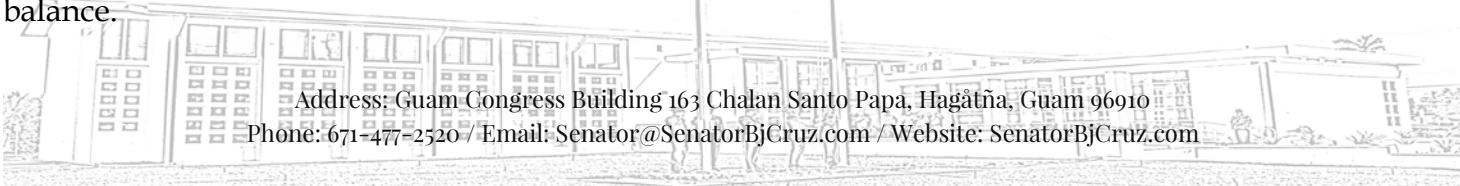
Recycling Revolving Fund

The Recycling Revolving Fund (RRF) has experienced consistent collections over the past several fiscal years—averaging over \$2.7 million per year between Fiscal Years 2012–2016, with Fiscal Year 2017 unaudited RRF revenues at \$2.8 million. Within that same time frame, the DOA has permanently transferred approximately **\$10,175,718** out of the RRF to the General Fund, thereby artificially increasing the General Fund balance.

Such permanent transfers out of the RRF to the General Fund take away from the government's ability to fulfill the intent of the RRF and is, furthermore, in violation of § 51302, Chapter 51, Title 10 of the Guam Code Annotated. Such section states that "the funds deposited into the Recycling Revolving Fund shall not be subject to the transfer authority of *I Maga'låhen Guåhan*."

Enhanced 911 Emergency Reporting System Fund

The Enhanced 911 Emergency Reporting System Fund (E911 Fund) provides a source of funding for costs associated with Enhanced 911 Emergency Reporting System and equipment and system costs as necessary. Between Fiscal Years 2014–2016, the DOA has permanently transferred approximately **\$3,041,134** out of the E911 Fund to the General Fund, thereby artificially increasing the General Fund balance.





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Such transfers are exempted in § 12304(f), Chapter 12, Title 12 of the Guam Code Annotated, which states, “Notwithstanding any other provision of law, no monies in the Fund shall be expended for purposes other than provided for in this Section, without the expressed approval of *I Liheslatura*. The Fund is *exempt* from any transfer authority.”

Fire, Life and Medical Emergency Fund

The Fire, Life and Medical Emergency Fund (FLAME Fund) provides funding for the purchase, critical maintenance, and repair of essential emergency rescue and firefighting vehicles; emergency life support and medical equipment; and training for Emergency Medical Technician and Paramedic certifications. Between Fiscal Years 2014–2016, the DOA has permanently transferred approximately **\$1,317,838** out of the FLAME Fund to the General Fund, thereby artificially increasing the General Fund balance.

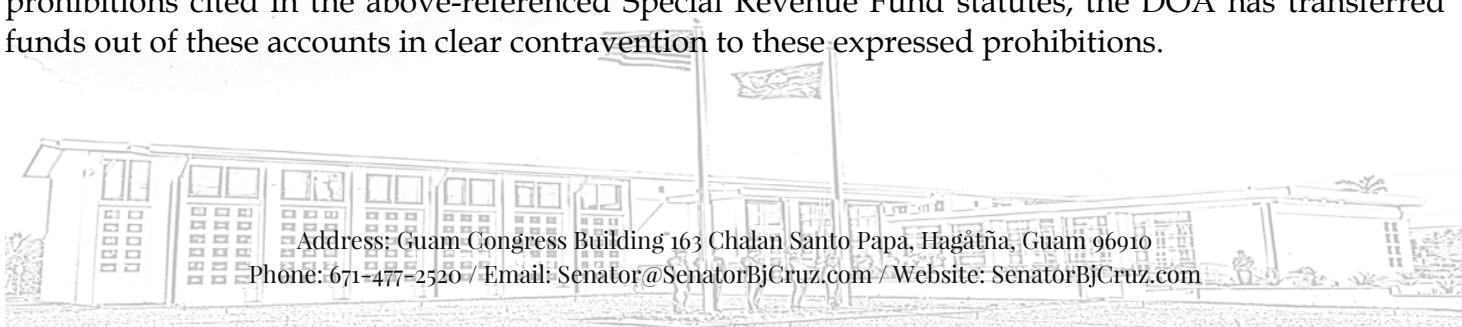
Such transfers are prohibited pursuant to § 72016(c), Chapter 72, Title 10 of the Guam Code Annotated, which states, “No Transfer Authority by *I Maga'låhen Guåhan*. *I Maga'låhen Guåhan* may *not* use his transfer authority to utilize any monies deposited in the Fund.”

Prior Transfers from Special Funds and Accounts

As you are aware, transfers from the Child Support Enforcement Account were being performed by the DOA until such time I had called attention to it. Additionally, I introduced what is now Public Law 34-04, in order to protect the Guam Cancer Trust Fund from any unauthorized or prohibited withdrawal and use.

Furthermore, Supreme Court Case No. CRQ14-001, In Re Request of *I Mina'trentai Dos na Liheslaturan Guåhan*, relative to the use of funds from the Tax Refund Efficient Payment Trust Fund, found that transfers, withdrawals, or expenditure of funds from the Income Tax Refund Efficient Payment Trust Fund (Refund Trust Fund) were prohibited. This was ruled upon subsequent to Governor Calvo's withdrawal of nearly **\$50 million** from the Refund Trust Fund. The Supreme Court upheld that the Refund Trust Fund law did “not permit the Governor to withdraw monies from the Trust Fund for purposes other than those prescribed...”

Since that landmark Declaratory Judgment against the Calvo Administration, the DOA has complied with the specific provision of law in question. Yet, despite the presence of similar transfer prohibitions cited in the above-referenced Special Revenue Fund statutes, the DOA has transferred funds out of these accounts in clear contravention to these expressed prohibitions.





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Moving forward, I urge the Department of Administration to cease transfers from Special Revenue Funds to the General Fund – especially where clear statutory prohibitions against such transfers exist.

Additionally, pursuant to the authority granted by the *Sunshine Reform Act of 1999* (§ 10103, 5 GUAM CODE ANN.), I hereby request for the Department of Administration to provide:

- 1. Any and all written and/or electronic correspondence or documentation (including attachments) within the Department of Administration, authorizing the transfer of funds out of the Recycling Revolving Fund, the Enhanced 911 Emergency Reporting System Fund, and/or the Fire, Life and Medical Emergency Fund between October 1, 2012 to the date of this letter.**

Under § 10103(d) of 5 GCA, you shall comply within four (4) working days from the date or receipt of this request, pursuant to law. These items may be submitted electronically to senator@senatorbjcruz.com or delivered to my office. Please call my office at 477-2520/1 should you require assistance or additional information.

Thank you for your attention to this important matter, and I look forward to your prompt response.

Si Yu'os ma'åse',

Benjamin J.F. Cruz



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