

Sponsored Projects vs. Gifts

KEY DIFFERENCES

Presenters

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Sponsored Projects

In general, a **sponsored project / agreement** can be distinguished from a private gift by any one of the following criteria.

The sponsor has:

- ♦ Control or approval of work scope;
- ♦ A requirement for a defined deliverable in terms of a report on results of research, or financial accounting for the expenditure of funds;
- ♦ Pre-publishing review rights; or,
- ♦ Licensing rights of products resulting from the research

♦ ORA administers sponsored agreements on behalf of UMD.

Definition of “Gifts” - Sponsored Projects Handbook

Gifts represent non-reciprocal, unconditional and irrevocable transfers of property or money and have no donor-imposed restrictions, conditions or control. Gifts are not considered sponsored agreements and are not administered by ORA.

University of Maryland College Park Foundation (UMCPF)

- Gift Policy Key Points:**
- General Gifts to the UMCPF may be for the general purposes of the University or for the specific use of a designated school, department, institute or agency of the University of Maryland.
 - Donors may direct:
 - That a gift be expended in full during one or more years current operations;
 - That the gift be used to establish an endowment fund within the Foundation's general endowment pool;
 - That funds be handled in other ways not inconsistent with the purposes and policies of the University.

University of Maryland College Park Foundation (UMCPF)

- Gift Policy Key Points:**
- Gifts may be designated for a wide range of purposes such as scholarships, research, professorships, chairs, the library, or University-approved building funds.
 - Gifts for current or deferred use, as well as for general or special purpose endowment funds, should name the University of Maryland College Park Foundation as owner or beneficiary
 - Barring any extenuating circumstances, gifts received by the Gift Acceptance Office with appropriate supporting documentation will be deposited within two business days of receipt.

Tax Requirements and Accountability

- ◀The IRS code, Internal Revenue Code 26 U.S. § 170 contains specific requirements concerning gift-giving and gift acceptance
- ◀These requirements must be met to maintain the organization's non-profit status, and the donor's eligibility to take tax deductions for gifts provided
- ◀The statute contains requirements for an organization to be designated as a non-profit that is eligible to receive charitable donations

Tax Requirements and Accountability

- ◀ While section 170 of the Code governs deductibility of contributions by individuals, section 501(c)(3) governs tax exemption of organizations. Section 170 provides that contributions to certain types of organizations—primarily 501(c)(3)'s and a few others—are deductible by the donor as itemized deductions.
- ◀ IRC 170(c)(2) describes the legal requirements of a "gift" (contribution or donation) to domestic organizations
- ◀ Eligibility as a gift in turn determines eligibility for donor tax deductions.
- ◀ § 501, Non-Profit, defines non-profit organizations and includes universities and foundation types among them and describes prohibited activities, for instance lobbying for legislation
- ◀ §501 (c)(3) describes types of organizations that qualify for tax exemptions.

Gifts and Internal Controls

- ┆ All gifts, regardless of the nature of the philanthropic donation, must be accounted for on the UMCPF's financial statements.
- ┆ All philanthropic activity is accounted for in accordance with Generally Accepted Accounting Principles as codified by the Financial Accounting Standards Board.
- ┆ Foundation Gift Receipts -Gift receipts are provided to donors for their tax preparation purposes and are prepared in accordance with IRS regulations. Additional letters of thanks (acknowledgement), depending on the size of the donation, may be generated in alternative formats.

Leading Principles in Gift Acceptance

- Academic Freedom
- Outside Party Influence
- Exclusions / Preferences
- Financial Burden
- Partner Requirements
- Donor Notification
- Transparency / Conflicts of Interest

Sponsored Projects vs Gifts

- Institutions rely on gifts to supplement the financial resources that fund endowments, infrastructure, research activities, and to defray student tuition costs.
- Donors provide gifts of money, real estate, and other items of value to support institutions of higher education, and receive tax benefits in return for their generosity.
- The flexibilities in institutions' ability to use gifts, combined with the IRS tax code governing donations, can result in management and oversight challenges.
- Following are some examples to be mindful.

Gift-related Audit Findings

Internal Controls:

- ◀ **Lack of Segregation of Duties:** Consistent with the requirements for cash management, generally, responsibilities for the receipt, recordation, and reconciliation of gifts must not be assigned to one person.
- ◀ **Certification Training:** Staff responsible for gifts must be certified in the relevant University cash management certification programs.
- ◀ **Procurements Funded with Donations:** Pertinent procurement policies and procedures must be adhered, even when the funding source for the procurement is a gift. Donors may not designate a source(s) for goods and services as a condition of a donation(s).

Gift-related Audit Findings

Internal Controls:

- ◆ Procedures need strengthening pertaining to the review of disbursement, the classification of and depositing procedures
- ◆ Lack of Gift Policies despite maintaining significant account balances. For instance, \$40 million as at the end of the institution's FY.
- ◆ Payroll policies lacked provisions to ensure the compensation funded through donations was justified.

Oversight:

- ◆ Failure to routinely obtain/review certain available documentation that could be used to assess risk, such as the Foundation's policies and the required IRS Form 990. The 990 provides details on the Foundation's governance, finances, and activities.

Gift-related Issues in the News

- ▶ A public university's decision to name its law school after a famous conservative judge, after years of accepting gifts from known conservative organizations, caused concerns for faculty and students about undue influence on the academic independence of the university, its faculty, and curriculum.
 - ▶ Specific allegations centered on conditions attached to donations that permitted respective donors a say in the selection of faculty to fill key academic positions

Gift-related Issues in the News

- ▶ Board members of a foundation associated with a large public community college, had received nearly \$200 million in business contracts from the college, many of which were allegedly awarded without competitive bidding.
- ▶ A university president resigned amid charges that he used foundation expense accounts for lavish personal spending; he was hired to lead a state college in another state, where a state investigation in 2013 found that he had diverted foundation funds for extravagant personal travel and entertainment that brought the foundation to the brink of bankruptcy.

Gift-related Issues in the News

- ▶ In 2005, a state university had to cut faculty and academic programs after the university's affiliated foundation ran up a \$26 million deficit from investing in a failed real estate development project.
- ▶ In 2015, a foundation affiliated with a state university was dissolved after debt for real-estate and construction projects led to financial failure.
- ▶ In 2011, the president of a statewide research foundation of unlawfully using foundation funds to create a no-show job for the daughter of the state senate majority leader.

Criteria for Determining a Gift

Revised 4-9-2019

General Criteria for Determining if a Contribution is a Gift¹

The following list of escalation factors indicates when to require additional review of a potential gift by the Office of Gift Acceptance. Note: The standard gift agreement template should be used for all gift agreements. Any language that varies from the standard template language should be sent to the Dean's Office, and the Director of Gift Acceptance and the Associate Vice President for Research Administration if necessary, for early review.

- ☐ There is no financial benefit, i.e., no goods or services expected, implied or provided to the donor in exchange for the gift beyond the donor's philanthropic interest.

See handout for full text.

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- ☐ There is no financial benefit, i.e., no goods or services expected, implied or provided to the donor in exchange for the gift beyond the donor's philanthropic interest.
- ☐ The donor letter that documents the provision of the gift may specify use in an area of research or education, general or specific. The **donor may not** prescribe specific methods, strategies, approaches or workplans.
- ☐ No deliverables are required as a term(s) of the gift, though general intent for use may be specified.
- ☐ A time frame for gift use may be specified. However, there is no period of performance, stop/start date, or **specific** scope of work required for the project supported.
- ☐ No restrictions on publishing nor rights to licensing of products accrue to the donor. (The donor may request acknowledgement in publications that result from the gift.)
- ☐ The donor has no right to acquire or restrict the University's right to intellectual property or publications developed as a result of the effort funded by the gift. Conditions for the disposition of intellectual property (including open source software or public dedication or a requirement to put in the public domain) must be approved by the Office of Technology Commercialization (OTC-soon to be UMWentures) prior to gift acceptance. Please use this form to make the request (XXXXLINK to new form on OTC's website)
- ☐ No donor control is maintained on the expenditure of the donation. The University, university Foundation, department, or one named individual employed by the aforementioned organizations exercises control over how the donation will be spent.
- ☐ Donor preapprovals are not required, except in cases where the original purpose of the gift has been achieved and the University requests to redirect funds.
- ☐ Technical progress reports are not required to be submitted to the donor.
- ☐ There is no requirement for a line item budget. Financial reporting to the donor is limited to stewardship purposes only.
- ☐ No terms of funding are applied to the gift.
- ☐ The donor may not recoup the gift.
- ☐ Unless the gift is an endowment no binding agreement is executed between the donor and the university Foundation as to how the funding will be used.

¹ Gift and Donation are used interchangeably

Endowments are governed by memoranda of understanding between the donor and the university Foundation.

- ☐ No preferential or discriminatory practices are prescribed by the gift.
- ☐ The gift is not contingent on a specified financial commitment by the University. Any commitment of staff / funds toward the objective of the gift is determined by the University. No post-acceptance donor notification, e.g., change of personnel, is required by the terms of the gift.
- ☐ The gift does not preclude disclosure of the gift or the donor to University leadership with stewardship responsibilities for gift/donation management. (Such disclosure does not impede a donor's wish to otherwise remain anonymous.)
- ☐ The gift does not create a Conflict of Interest for the donor, or for the institution and/or its administrators or faculty.

Signature**

Date

Department Representative**

**If Departmental Representative is unsure how to categorize the funding, contact the respective Dean's office