

SYSTEM ~~REGULATIONS~~REGULATION

21.99.0305.01 Gifts, Donations, Grants, and Endowments

April 24, 1996

Revised October 11, 2000

Revised August 19, 2003 (This version replaced former 21.99.03)

Supplements System Policy 21.05

1. GENERAL

- 1.1 ~~Authority~~The authority to accept ~~gifts, donations, grants~~a gift, donation, grant, and endowments/or endowment (GDGE) made to ~~any~~a System component of the System is vested in the Board of Regents (BOR). ~~Gifts, donations, grants, and endowments~~A GDGE, as herein defined, ~~will~~must be reported to the BOR for ~~formal~~final acceptance, in accordance with instructions ~~prescribed~~published by the System Office of Budgets and Accounting.
- ~~1.2 The Chief Executive Officer (CEO) or designee of the~~ The report will include only GDGEs made directly to a System component ~~is authorized to issue an appropriate acknowledgment to the potential donor at an early date~~and not those made to a development foundation or other affiliated organization of the System component.
- 1.2 A cash GDGE from an affiliated organization, as described in System Regulation 60.01.01, Association with Affiliated Fund Raising Organizations, is exempt from the review requirements in this regulation. However, a cash GDGE from an affiliated organization must be reported to the BOR for final acceptance.
- 1.3 ~~The CEO of each System component will establish~~Each component CEO must satisfy internal reporting and recording requirements and Internal Revenue Service receipt requirements by establishing a written ~~rules~~rule for communicating with donors and donor representatives ~~which are in compliance with Internal Revenue Service receipt requirements, and for internal reporting and recording of gifts, donations, grants, and endowments.~~
- 1.4 ~~Conditional gifts~~System components must report receipt of conditional GDGEs from foreign persons ~~are to be reported by the System component~~ to the U. S. Department of Education and the Texas Secretary of State in accordance with ~~Paragraph 5 of this regulation~~System Regulation 25.07.02, Reporting of Foreign Contracts, Gifts, Donations, Grants and Endowments.
- 1.5 Acceptance of ~~gifts~~a gift or bequest of real property is subject to System Policy 41.01, *Real Property Gift and Bequest Acceptance Policy.*
- 1.6 ~~Policies and regulations~~Procedures governing the pursuit, acceptance, and administration of sponsored research contracts are described in System Policy 15.01 ~~and related System Regulations. By definition, a contract is a written agreement, often negotiated between the institution and the contracting firm, agency or individual and is enforceable by law.~~

~~A contract involves the generation of some specified product or service, such as a report of research, often for the exclusive, first or proprietary use of the contractor and is subject to certain standards of performance and the expectation of tangible benefit on the part of the grantor., *Research Agreements*, and System Regulations related to that policy.~~

2. DEFINITIONS

Definitions as used herein are:

- (1) Gift: ~~Cash~~ or donation: A gift or donation is cash or property, other than real property, received for the purpose of ~~enhancing~~ a program for the public good, ~~establishing~~ scholarship funds, ~~making~~ equipment ~~available to expand an area off~~or research, and for other educational purposes, without expectation of specific benefit to the donor. Examples of specific benefit to a donor would be use of the funds to perform research which is to be reported to or to become the property of the donor, or to test for the donor's purposes equipment or a product provided by the donor. ~~Gifts do not include~~ Not included in this definition of a gift, for this purpose, is government support, whether federal, state, local or foreign; an unpaid ~~pledges~~pledge; or value of services provided by volunteers.
- (2) ~~Conditional Gift: Any endowment, scholarship, or other gift, donation, or grant of money or property of any kind, other than real property, or any contract award, the use of which is subject to conditions imposed, requested, or provided; e.g., conditions which relate to what kinds of teachers or students may benefit from such gift or the subject matter which may be taught.~~
- (4) ~~Grant: Cash~~ (2) Grant: A grant is cash or property, other than real property, received from any source, except federal, state, local or foreign government support, which is designated by the grantor to be used ~~for a specific~~ in support of an educational, research, or extension ~~project~~purpose or activity, thus serving a specific interest or objective of the grantor. Not included in this definition of a grant, for this purpose, are those benefits resulting from a contract or similar agreement in which a legal obligation is incurred which is enforceable by law (See ~~Paragraph 1.6, above~~ System Regulation 25.07.01, *Contract Administration Procedures and Delegations*).
- (5) Endowment: ~~Cash~~ An endowment is cash or property (including real property subject to System Policy 41.04) received from an external donor creating a fund in which the principal of the fund is not expendable. The earnings from the investment may be expended.

~~NOTE: Gifts, donations, grants~~ (4) Restricted GDGE: A restricted GDGE is an endowment, scholarship, or other gift, donation, or grant of money or property of any kind, other than real property, or a contract award, the use of which is subject to conditions or restrictions imposed, requested, or provided; e.g., a condition or restriction which relates to what kind of teacher or student may benefit from a gift or the subject matter which may be taught.

~~3. _____, and endowments will include only those made directly to a System component and its departments. Reports described in Paragraph 1, above, do not include donations made to a development foundation or any other affiliated organization of the System component.~~
GDGEs OVER \$1,000,000

~~3.1 The component CEO must submit a report to the Chancellor or designee, which includes (at a minimum) the purpose, any restrictions or conditions, supporting documentation, and the draft press release and plans for honoring the donor. In the interest of time, the CEO may submit the report to the Chancellor or designee prior to the actual receipt of moneys to obtain preliminary approval. The Chancellor or designee must also review and approve any changes to the information provided in the preliminary report.~~

~~3.2 The System must review the GDGE for System/component benefit and the Office of~~
3. CONDITIONS FOR ACCEPTANCE

~~3.1 A gift, donation, grant, or endowment which may require commitment of funds, personnel, space for housing, or which might reasonably cause the System or its components to become involved in a controversy, must be approved by the Chancellor prior to any commitment action on behalf of the System.~~

~~3.2 The terms under which any gift, donation, grant, or endowment is offered and accepted will be provided in a written form in which any proposed terms are set forth. The General Counsel of the System shall review for legal sufficiency such transactions. (See Paragraph 5 of this regulation.)~~

4 General Counsel must provide a legal review and risk analysis.

~~3.3 Upon receiving an affirmative review by the System offices, the Chancellor or designee will provide the information on the GDGE, along with the CEO's report, to the Board Office. The Chancellor or designee may then approve the preliminary acceptance and announcement of the GDGE by the CEO. Final acceptance of a GDGE is vested in the BOR.~~

4. AUTHORITY TO ACCEPT GDGEs - \$1,000,000 OR LESS

The acceptance of GDGEs valued at less than \$1,000,000 must be in accordance with System Policy 21.05, Section 2.2 for cash GDGEs, and Section 2.3 for non-cash GDGEs.

5. DELEGATION OF RESPONSIBILITY FOR PROCESSING

The Chancellor delegates authority to the System Office of Budgets and Accounting (SOBA) for administering the GDGE review and approval process requirements of System Policy 21.05. Accordingly, SOBA is responsible for establishing System-wide procedures for processing GDGEs in accordance with appropriate federal and state law and System policy and regulation. Detailed procedures are published online at the SOBA website located at: <http://sago.tamu.edu/soba>

6. UTILIZATION AND MANAGEMENT

~~46.1 Gifts, donations, grants, and endowments~~A GDGE made to a System component must be used for the purpose designated by the donor. If a purpose is not specified by the donor, the BOR shall approve utilization will be as directed by of the BOR after consideration of recommendations of GDGE upon recommendation from the CEO of the recipient component. ~~CEO.~~

~~4.2 Gifts, donations, grants, and endowments may~~6.2 A GDGE must not be transferred to a private or public development fund or foundation, unless written permission is given by the donor of the gift or a representative of the estate. An account of gives written permission. The System component must keep all records, including letters of permission and transfers of gifts shall be kept by the System component and shall, pertaining to the transfer of a GDGE. A transfer must be reported to the State Auditor and the Office of General Counsel.

~~46.3 Real or personal property acquired through gifts, donations, grants, or endowments~~a GDGE is subject to the same management requirements as other state property. Disposal of any real property acquired through gifts, donations, grants, or endowments is handled a GDGE must be made in accordance with System Policy 41.07.

~~5. DISCLOSURE OF GIFTS FROM FOREIGN SOURCES~~

~~Both federal and state law require the reporting of gifts, grants or contracts of \$250,000 or more from foreign sources. The Secretary of State has ruled that the reporting requirement in Sections 51.572 and 51.573 of the Education Code may be satisfied by filing with that department a copy of the report that is filed with the U. S. Department of Education in accordance with United States Code, Title 20, Section 1011f.~~

~~5.1 Disclosure Reports~~

~~Whenever a System component receives a gift from or enters into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from, or contracts with, that foreign source within a calendar year, the component shall file a disclosure report with the United States Secretary of Education on January 31 or July 31, whichever is sooner. A copy of such report shall also be filed with the Texas Secretary of State in accordance with Section 51.572, Education Code, if such gift is conditional.~~

~~5.1.1 Reports for gifts received from or contracts entered into with a foreign source other than a foreign government shall include the aggregate dollar amount of such gifts and contracts attributable to a particular country. The country to which a gift is attributable is the country of citizenship, or if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation, or if unknown, the principal place of business, for a foreign source which is a legal entity.~~

~~5.1.2 Reports for gifts received from or contracts entered into with a foreign government shall include the aggregate amount of such gifts and contracts received from each foreign government.~~

~~5.2—Additional Disclosures for Restricted and Conditional Gifts~~

~~Notwithstanding the provisions of paragraph 5.1 above, whenever any component institution receives a restricted or conditional gift or contract from a foreign source, the institution shall make certain disclosures:~~

~~5.2.1—For such gifts received from or contracts entered into with a foreign source other than a foreign government, the institution shall report the amount, the date, and a description of such conditions or restrictions. The report shall also disclose the country of citizenship, or if unknown, the principal residence for a foreign source which is a natural person, and the country of incorporation, or if unknown, the principal place of business for a foreign source which is a legal entity.~~

~~5.2.2—For gifts received from or contracts entered into with a foreign government, the institution shall report the amount, the date, a description of such conditions or restrictions, and the name of the foreign government.~~

~~5.3—Relation to Other Reporting Requirements~~

~~If an institution receives a gift from, or enters into a contract with, a foreign source, where any other department, agency, or bureau of the Executive Branch requires a report containing requirements substantially similar to those required under this regulation and/or United States Code, Title 20, Section 1011f, the institution may file a copy of this report with the U. S. Department of Education and the Secretary of State in lieu of a report required under Paragraph 5.1 and 5.2 above.~~

~~5.4—These Terms Apply to Federal Reporting Requirements~~

~~5.4.1—The term "contract" means any agreement for the acquisition by purchase, lease, or barter of property or services by the foreign source, for the direct benefit or use of either of the parties.~~

~~5.4.2—The term "foreign source" means:~~

- ~~(1)——a foreign government, including an agency of a foreign government;~~
- ~~(2)——a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;~~
- ~~(3)——an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; or~~
- ~~(4)——an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source.~~

~~5.4.3—The term "gift" means any gift of money or property.~~

~~5.4.4 The term "institution" means any institution, public or private, or, if a multicampus institution, any single campus of such institution, in any State which:~~

- ~~(1) is legally authorized within such State to provide a program of education beyond secondary school;~~
- ~~(2) provides a program for which it awards a bachelor's degree (or provides not less than a 2-year program which is acceptable for full credit toward such a degree) or more advanced degrees; and~~
- ~~(3) is accredited by a nationally recognized accrediting agency or association and to which institution Federal financial assistance is extended (directly or indirectly through another entity or person), or which institution receives support from the extension of Federal financial assistance to any of its subunits.~~

~~5.4.5 The term "restricted or conditional gift or contract" means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding:~~

- ~~(1) the employment, assignment, or termination of faculty;~~
- ~~(2) the establishment of departments, centers, research or lecture programs, or new faculty positions;~~
- ~~(3) the selection or admission of students; or~~
- ~~(4) the award of grants, loans, scholarships, fellowships, or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin, or political opinion.~~

~~5.5 These Terms Apply to State Reporting Requirements Related to Gifts From Foreign Persons~~

- ~~(1) "Foreign government" means a government other than the government of the United States or any state or political subdivision thereof.~~
- ~~(2) "Foreign person" means any of the following:
 - ~~(a) a foreign government;~~
 - ~~(b) an individual who is not a citizen or national of the United States or of a trust territory or protectorate of the United States;~~
 - ~~(c) a corporation, partnership, joint venture, proprietorship, trust, association, or other entity that is created or organized under or existing pursuant to the laws of a foreign government or that has its principal place of business located outside the United States;~~~~

~~(d) — a corporation, partnership, joint venture, proprietorship, trust, association, or other entity that is created or organized under laws of the United States or any state or political subdivision thereof, a majority of the stock or other equity interest of which is directly or indirectly owned of record or beneficially by, or a majority of the membership of which is composed of, or which derives a majority of its funding from, a foreign government, an individual or entity described by Paragraphs (b) or (c) above, or a combination of such governments, individuals, or entities; or~~

~~(e) — any committee or other group a majority of the membership of which is composed of, or a majority of the funding for which is derived from, a foreign government, an individual or entity described in Paragraphs (b), (c) or (d) above, or a combination of such governments, individuals or entities.~~

~~(3) — "Conditional gift" means any endowment, scholarship, or other gift, donation, or grant of money or property of any kind or any contract award, the use of which is subject to conditions imposed, requested, or provided by a "foreign government" or "foreign person" and which conditions relate to what kinds of teachers or students may benefit from such gift or relate to the bias or slant with which subject matter supported by the gift may be taught.~~

~~(4) — "Subject institution" means any public university or other public institution of higher education located within this state and includes, without limitation, institutions of higher education.~~

~~5.6 — If an institution fails to file a disclosure statement with the Secretary of State, the Attorney General may bring suit to compel disclosure. The institution may be fined an amount equal to five percent of the conditional gift not reported and may be liable for the payment of reasonable attorney's fees. Should the Attorney General fail to file such a suit, then a private citizen may do so, Real Property Disposition.~~

CONTACT OFFICE: System Office of Budgets and Accounting

HISTORY: Last Revised ~~April 24, 1996~~New Regulation to Replace System Regulation 21.99.03