

SYSTEM REGULATIONS

21.99.03 Gifts, Donations, Grants, ~~Loans~~, and BequestsEndowments

April 24, 1996

Revised October 11, 2000

1. GENERAL

- 1.1 Authority to accept gifts, donations, grants, ~~loans~~, and bequestsendowments made to any component of the System is vested in the Board of Regents (BOR). Gifts, donations, grants, ~~loans~~, and bequestsendowments, as herein defined, will be reported to the ~~BOR~~Board for formal acceptance, in accordance with instructions prescribed by the ~~System Comptroller~~System Office of Budgets and Accounting.
- 1.2 The Chief Executive Officer (CEO) or designee of the System component is authorized to issue an appropriate acknowledgment to the potential donor at an early date.
- 1.3 The CEO of each System component will establish written rules 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, ~~loans~~, and bequestsendowments.
- 1.4 Conditional gifts from foreign persons are to be reported by the System component to the board for filing with the U. S. ~~Office~~Department of Education and the Secretary of State in accordance with Paragraph 5, ~~DISCLOSURE OF GIFTS FROM FOREIGN SOURCES~~ of this regulation.
- 1.5 Acceptance of gifts of real property is subject to System Policy 41.01, Real Property Gift and Bequest Acceptance Policy.
- 1.6 Policies and regulations 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.

2. DEFINITIONS

Definitions as used herein are:

- (1) Gift: 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 of 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 government support, whether federal, state, local or foreign; unpaid pledges; 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.
- (34) Grant: 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 educational, research, or extension project 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).
- (45) Endowment: 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. ~~Loan: Personal property furnished for the temporary use of the System. Real property may be used on loan only if no legal interest is acquired by the System in such real property.~~
- ~~(5) Bequest: Money or other property, other than real property, conveyed by a legal declaration of the individual's intent as to the manner in which the individual's property must be disposed of after his/her death.~~

NOTE: Gifts, donations, grants, ~~loans~~, and ~~bequests~~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.

3. CONDITIONS FOR ACCEPTANCE

- 3.1 A gift, donation, grant, ~~loan~~, or ~~bequest~~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, ~~loan~~, or ~~bequest~~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~~DISCLOSURE OF GIFTS FROM FOREIGN SOURCES.~~)

4. UTILIZATION AND MANAGEMENT

4.1 Gifts, donations, grants, ~~loans~~, and bequestsendowments made to System components must be used for the purpose designated by the donor. If a purpose is not specified by the donor, utilization will be as directed by the ~~BOReard~~ after consideration of recommendations of the CEO of the recipient component.

4.2 Gifts, donations, grants, and endowments may 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 all letters of permission and transfers of gifts shall be kept by the System component and shall be reported to the State Auditor.

4.23 Real or personal property acquired through gifts, donations, grants, ~~loans~~, or bequestsendowments is subject to the same management requirements as other state property. Disposal of any real property acquired through gifts, donations, grants, ~~loans~~, or bequestsendowments is handled 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 1011f1145d.

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](#) ~~chapter~~, 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](#) ~~Definitions Related to Gifts from Foreign Sources~~

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.

5.56 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.

~~5.6 Each System component having such reportable gifts will submit an appropriate agenda item, with a copy of the report as submitted under Paragraph 5.1 above, for approval by the board at the first meeting of the Board after the close of the fiscal year during which the gift is received.~~

CONTACT OFFICE: ~~System Comptroller~~System Office of Budgets and Accounting

HISTORY: Last Revised ~~January 17, 1991 (APRM-C.3.4)~~April 24, 1996