When Gift met Grant...

THE CLASSIFICATION OF

GIFT vs GRANT

RAC Forum

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Presenters

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Outline

- Who we are and the ways we work together
- Policy
- What are gifts
- Distinguishing between gifts and grants

Current UC Policy

- Presidential Policy (based on 1980 President Saxon letter to campuses)
  - 1978 State Auditor General: UC processed grants as gifts

- Reflected in implementing policy manuals
  - UC Contract & Grant Manual 9-500
  - Development Manual
  - Facilities Manual

Current (1980) UC Policy - Gifts

- *In general,* classify as a gift when:
  - Donor does not impose contractual requirements
  - Funds are awarded irrevocably

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Current (1980) UC Policy - Grants

- *In general,* classify as a grant when:
  - Audit provisions
  - Funder receives detailed technical reports or reports of expenditures
  - Testing or evaluation of products
  - Precise scope rather than general research
  - Specific period of performance or termination
  - Unexpended funds returned to funder
  - Patent or other IP rights requested by grantor

UC Working Group
on Gifts/Grants Classification

- Workgroup with OP and campus representatives from development and sponsored projects offices
- Presidential Policy on Classification of Gifts and Sponsored Awards
  - Policy document
  - FAQs about policy
  - Checklist

UC Working Group on Gifts/Grants Classification

- Not intended to change substance of current policy
- Is intended to provide more clarity
- Modern policy format
  - Definitions, policy text, compliance responsibilities, procedures
- Documents are still in draft form
- Review process

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Revised UC policy

- Defines "gifts", "grants", and "contracts." Explains that donor may use terms differently.

- Gift - where funder doesn't expect economic or tangible benefit commensurate with value of award

- Gift - general area of work may be specified but not a detailed scope of work

- Always a sponsored award if:

  – Intellectual property rights are requested by grantor

  – Testing or evaluating proprietary products

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Revised UC policy

- Determination of gift or grant doesn't depend on a single characteristic - consider all of the funding information.

- Shouldn't avoid overhead costs or gift fees by mischaracterizing the funding.

- Indemnification varies whether gift or grant

- Not included in revised policy:
    - Awards from gifts/procurement of services (including research services)

UCB pilot policy sunset

- Impact
- Decision making on triage of agreements in a post pilot world
- How to deal with fees/ vital interest waivers (now called campus determinations)

What Characterizes a Gift...

- Given with "philanthropic intent" – a donor gives a gift intentionally
- Donor gives up control on asset.
  - No earmarking – a donor may not select recipients, only the campus has that ability.
- Are irrevocable, no return on unused funds
- May may be intended to be used in certain timeframe, there is no specified "period of performance" or "start/stop" date.
- The donor does not expect to receive anything in return (quid pro quo).
  - i.e. no contractual obligations or deliverables (no intellectual property rights, data ownership, detailed technical reports etc.)

What Characterizes a Gift...

- No detailed financial responsibility – a gift may be solicited with a description of activities that will be funded but proposals should not include line time budgets; no detailed financial reporting required.
- Periodic progress reports and summary reports of expenditures are allowed. These reports may be thought of as requirements of good stewardship.
- An agreement for a gift may outline intended use. For example, gifts may be provided to support a department, an individual faculty member's laboratory, or a construction project

What Can Be Funded by a Gift?

Gifts can fund restricted purposes, including research projects and complex programs. The use of funds should be broadly defined, so that campus has the flexibility to determine actual expenditures.

Other common purposes:

- Scholarships and fellowships – where campus makes students selections

- Operating support for programs

- Faculty recruitment and retention – including endowed chairs

- Some event sponsorships, and corporate gift memberships to Centers

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Research vs non-research gifts

Most gifts that come in for faculty are considered research. Research gifts usually begin with a proposal.

- A research gift is defined as support for the research of one for more specified faculty members, or a specific research project.

- The 10.5% Research Administrative Fee is charged as a one time fee on each gift to a research fund and is split as follows:
  - 7.5% to cover the costs of the unit administering the research
  - 2.0% to cover central campus cost of research administration
  - 1.0% to invest future research via the Berkeley Futures Fund and Cost Sharing Fund

Research vs non-research gifts

Non-research gifts are defined as those that are not directly to support research.

- Non research gifts are assessed the Philanthropic Allocation (PA), a 5% fee that split as 2.5% to benefitting unit + 2.5% to central campus. The PA is to be used by benefitting units and central campus to invest in fundraising efforts.
- The PA compares favorably to other UCs and select private institutions.

Submitting Research Gifts to UDAR

Funders often develop their own gift agreements/award letters - for the campus the sign. UDAR - Fund Management accepts these agreements under the following conditions:

- We have reviewed the agreement to determined that it is a gift, and not a grant or other sponsored project or contract.

- We have edited the agreement, as needed, so that it is acceptable to the University of California.

- The agreement has been signed by UDAR. **Gifts may only be accepted in UDAR. Agreements or gift letters signed by other unit staff or faculty are invalid**.

Submitting Research Gifts to UDAR

To submit an outside agreement to UDAR please send the following to Fund Management at: fundhelp@berkeley.edu:

- The award letter from the funder
- The proposal that precipitated the gift
- Evidence that the 700-U was submitted to the Conflict of Interest Coordinator.

Checks/wires for research gifts will be processed AFTER the backup has been reviewed and accepted.

Exercise #1 - Gift or grant?

- A PI submits a proposal for gift funding to a company to support work in her lab and in it promises to provide an advance copy of a publication for the donor's exclusive review.

- A PI submits a proposal for gift funding to a company to support work in his lab in exchange for a company employee to work in the lab on the project funded.

- A center director requests a gift from a nonprofit and in return the nonprofit asks for the right to share any royalties on inventions arising from the work in the center.

Yes, there are gift proposals too!

A gift proposal can include a description of the work the gift will support and the benefit to the public. However, it should not include:

- a promise for deliverables,
- rights to results, data, information,or inventions
- that the donor can select projects or participate in the management of the organization it is funding
- that students will work for the donor on the project being funded

Proposals should be sent to UDAR along with award letters, UDAR does not current mandate the review of proposals before they are submitted to funders but will review as needed.

Why is it sometimes difficult to tell the difference?

- Documents may not use clear or consistent language-"standard language" may not fit UC's circumstances

- Recipient's expectations may not match donor's intentions

- Donors may think that if they are using funds budgeted for philanthropic purposes that they are giving gifts regardless of any restrictions

- Difference in orientation between business and universities and between US and other cultures

Exercise #2– Where to start

1. A non-profit funder is making a contribution to support a specific faculty research project and would like detailed financial reporting before it releases funding, as well as the right to have any unused funding returned after the specified period of work has been completed.

2. A corporate funder would like to make a contribution in which they expect to receive a confidential technical report in return.

3. An individual in making a contribution to support faculty recruitment in a department, and has no further expectations of deliverables.

4. A corporation runs a fellowship competition where students self-nominate to be considered for awards. The campus has no control over who will be nominated, or selected.

Ex. #3: XYZ Foundation – Postdoc Fellowship

- Gift agreement received; no problematic terms, e.g. IP rights, obligation to return funds, or financial reporting.

- Fund purpose states: "The Fund is a current use fund in the College of *happiness*. The Fund will be used to support a team that consists of a highly qualified post-doctoral graduate of *happiness*, a graduate student and part-time support from faculty (to support and mentor the post-doc and the student) **that would work with the XYZ Foundation to help address one or more research questions."**

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EX #3 (continued): Gift or Grant?

- Pros to keep as gift: terms are generally ok; precedent for receiving funds from the XYZ Foundation to support fellows under UCB faculty mentorship.

- Cons: Fund purpose mentions working with the foundation on research questions; of who's choosing? To what extent does the foundation get involved in directing the research?

- Additional SOW commitments attached to agreement. Concerns: specific deliverables; sponsor control over (or even input into) the selection process; tax-deductible contribution paying for salary that the foundation would otherwise pay for similar services; and fellows not working on PI projects but instead working on projects of the foundation's choosing.

EX#3 (continued): Options and Outcome

- Option #1: SPO takes the project on. Proposal routed through Phoebe. SPO engages with foundation to negotiate an agreement more appropriate for the SOW.

- Option #2: UDAR engages with campus unit, PI, and sponsor to revisit the SOW; explores possibility of re-writing the proposal to reflect independent work and supervision at UCB.

- Outcome?

Takeaways

- Gifts are negotiated, approved and processed by UDAR, Donor & Gift Services

- Grants are negotiated, approved and processed by SPO and IAO

- Our offices (UDAR, IAO, SPO) will make the determination on whether incoming funding is a gift or grant

Resources

- UCOP Policy: [Review of Gifts and Grants for Research](#)
- UCOP Contract and Grant Manual: [Chapter 9-500](#)
- UCB VCR: [Distinguishing between gifts and grants](#)

Gifts vs. Sponsored Projects

In general, an agreement with a single component that is considered sponsored research will not necessarily mean that the contribution can only be processed as such. Certain components carry more weight than others. In addition, some funders are more willing to negotiate on specific items.

Agreement components	Gift	Sponsored Project
Statement of Work – a detailed commitment to a specific project		X
Specified time period for performance of work relating to project		X
Line item budget		X
Requirement for funder approval for specific expenditures		X
Detailed financial accountability		X
Requirement to return unused funds		X
Tangible deliverables – technical reports, records, equipment etc.		X
Intangible deliverables – rights to data, copyrights, intellectual property		X
Future payments contingent on tangible or intangible deliverables		X
Restriction of funds to a specific purpose, but no detailed scope of work	X	
No requirement to return unused funds	X	
No line item budget	X	
No prior approval from funder for approval of specific expenditures	X	
General stewardship report on yearly progress, outcomes etc.	X	
Funder is a branch of federal government		X

Contacts

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