Gifts vs. Sponsored Research

gray area

ONE WAY

SEVERAL OTHER WAYS

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RAC Forum

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Presenters

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Outline

- Who are we?
- Gifts vs. sponsored projects policy
- What are research gifts
- How to submit research gifts
- Exercises: distinguishing between gifts and sponsored research

Funding Universe

- [UDAR](#) - gifts (individuals, foundations/non-profit entities, corporations, consulates)

- [Sponsored Projects Office](#) (SPO)- grants (foundations/non-profit entities including corporate foundations; federal and state government; foreign governments)

- [Industry Alliances Office](#) (IAO) - corporate sponsored research

- [Business Contracts and Brand Protection](#) (BCBP)-- business contracts/fee for services (corporation, foundation)

Policy History

In a Report of the Office of the Auditor General to the Joint Legislative Audit Committee, August 1, 1978, titled "University of California: Review of Privately Supported Research," the State Auditor General concluded that in many cases monies awarded to the University which should have been classified and processed as grants were classified and processed as gifts.

To clarify this situation and to insure greater consistency among campuses, the President issued a policy entitled [Review of Gifts/Grants for Research](#) on July 8, 1980. The policy specified that In general, funds should be treated as gifts when the donor does not impose contractual requirements; and funds are awarded irrevocably. Whereas in funds should be treated as grants when the funder expects more involvement in the research being conducted/use of funds, and or deliverables.

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Updated Policy (in draft)

- The new [DRAFT](#) policy has not been officially published

- It codifies many practices already in place

- And reinforces the fact that transactions must be weighed in toto

- Uses term "sponsored research" in place of grant

- The draft policy on helps clarify the differences between gifts and sponsored research as follows.

What Are The Main Differences?

Gifts

- Gifts do not require anything of value, tangible or intangible, to be returned to the donor.

- In addition, gifts should only require broad narrative reporting, if any, to the donor on the progress of purposes funded. In addition, gifts can require descriptive financial reporting.

- The campus retains the exclusive right to any intellectual property, patent rights, copyright, or other materials produced as a result of work performed with a gift.

- Gifts are never given by the federal government.

- Gifts must benefit Berkeley by supporting activities that relate to the university's mission of teaching, research, and public service.

- Gifts cannot be subawarded to non-UC entities. Gifts may only be used to expend funds on campus or to purchase services (exchange transactions).

What Are The Main Differences?

Sponsored Research

- SRAs include a line-item budget that the campus must adhere to when spending funding, as well as detailed financial reporting back to the funder.

- A funder may require that monies not expended during the timeline of the project, be returned to them.

- An SRA may have deliverables that could include specific material, training, a report, or product in return that might be intellectual property, patent rights, copyright, or technical reports.

- Funding is given by federal and state entities, as well as non-profit institutions or industry sponsors. Sponsored Research is not funded by individuals. <u>SRAs are negotiated by SPO or IAO.</u>

- Sponsored Research funding may be subawarded by Berkeley to other organizations

- In general SRAs are more likely to include complex terms and conditions.

What Characterizes a Gift…

- Given with "philanthropic intent" – given intentionally
- Donor gives up control.
    - No earmarking – a donor may not select recipients, only the campus has that ability.
    - Is irrevocable, no return on unused funds
- In general, no specified "period of performance" or "start/stop" date.
- The donor does not expect to receive anything of value in return (quid pro quo).
    - i.e. no contractual obligations or deliverables (no intellectual property rights, data ownership, detailed technical reports etc.)
- Line item budgets and itemized financial reporting not required.
- Must support Berkeley's work/mission
- No subawarding
- Berkeley retains right to publish work resulting from gits, and IP created

What Do Gifts Fund?

Gifts can fund restricted purposes, including specific 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.

- 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

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Research vs Non-Research Gifts

Non-research gifts are defined as those that are given to support non research related activities, such as student support, faculty retention, operations etc.

- 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.

Research Gift Acceptance

Staff on the Fund Management team in UDAR have the delegated authority to accept gifts on behalf of Berkeley. Gift acceptance is not simply signing and agreement or setting up a new fund - it is the process of reviewing ALL gift documentation to ensure that:

- The transaction in question IS a gift by IRS standards
- There is no quid pro quo
- The donation is voluntary
- That the gift does not violate Berkeley's gift acceptance policy
  - In particular, does not violate Berkeley's mission or have the potential to cause reputational harm.
- If not, the transaction may be passed to IAO or SPO

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What Documentation is Needed?

- The award letter, or gift agreement

- Most research gifts are given in response to proposals, applications, and/or presentations that outline specific work.
  - Per the IRS, probate law, AND UPMIFA any proposal, application, or communication exchanged between the funder and the PI is considered part of the gift documentation. Proposals and applications may outline the scope of of the research, project timelines, and other requirements. Terms and conditions in applications may also tell us that the transaction we are looking at cannot be accepted as a gift, and that UDAR needs to negotiate with the funder for changes.

- Some funders always forward the proposal to UDAR along with their gift letters. This is not always the case, and so these MUST be submitted with other gift documentation.

- PIs must also disclose any conflicts of economic interest by way of the 700-U form.

Submitting an Agreement/Documentation?

The [Research Gift Intake Form](#) is used by Fund Management to accept research gift documents for processing.

The Research Gift Intake Form should be used when there is:

- An agreement or letter for a research gift that needs to be reviewed and signed by an authorized signatory in UDAR (letters may only be signed by a UDAR authorized signatory. This letter may not precede a check/wire but usually does.

- A new check or wire for a research gift has been received and needs to be processed and deposited into an existing fund or a new fund.

The form requests the information needed to ensure that a transaction can be accepted by UC Berkeley as a gift and will comply with relevant University policies and guidelines, as well as IRS rules.

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Submitting an Award Letter

To submit an award letter you will need the following:

- Gift/Award Letter - This could be an externally generated letter, email notification of award, or other email or document stating that a gift is being made.

- Completed proposal or application for funding - This could be a completed application form requesting funding, a formal or informal proposal that was submitted to the funder, or communication with the funder discussing the nature of the gift. This is not necessarily a proposal you would upload to Phoebe. Rather, it is the communications between the PI and funder about the research and gift.

- Call for applications - This is the funder's call for nominations or call for proposals. Please include the funder's submission guidelines.

Submitting Documentation to Claim Check/Wire

To claim a wire or check you will need the following:

- Signed 700-U Form. Positive disclosures should come with the Conflict of Interest (COI) determination notification and related backup.

- Gift/Award Letter - This could be an externally generated letter, email notification of award, or other email or document stating that a gift is being made.

- Completed proposal or application for funding - This could be a completed application form requesting funding, a formal or informal proposal that was submitted to the funder, or communication with the funder discussing the nature of the gift.

- Call for applications - This is the funder's call for nominations or call for proposals. Please include the funder's submission guidelines.

- Invoice if submitted to funder

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.

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/sponsor's intentions

- Donors/sponsors 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.

Takeaways

- Gifts are negotiated, approved and processed by UDAR, Donor & Gift Services
- Sponsored Research is 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 sponsored research.

Questions

Resources

- UCOP "old" Policy: [Review of Gifts and Grants for Research](#)
- [New DRAFT policy](#)
- UCOP Contract and Grant Manual: [Chapter 9-500](#)
- [Research Gift Intake Form](#)
- [Lifecycle of Grant/Gift](#)
- [Contracting at Berkeley Decision Making Tool](#)

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