

# Classification of Gifts and Sponsored Awards



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| <b>Responsible Officers:</b> | VP - Research & Innovation<br>AVP - Institutional Advancement |
| <b>Responsible Offices:</b>  | Research & Innovation<br>Institutional Advancement            |
| <b>Issuance Date:</b>        | {to be inserted at time of issuance}                          |
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| <b>Scope:</b>                | Faculty, Staff, and Students                                  |

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## **I. POLICY SUMMARY**

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This Presidential Policy on Classification of Gifts and Sponsored Awards (Policy) describes the distinctions and appropriate classification of Gifts and Sponsored Awards to ensure that external support directed to the University receives the proper acknowledgement, stewardship, accounting, compliance review, administrative oversight, and monitoring. This Policy applies to all support received by University of California (University) that should be classified as a Gift or a Sponsored Award as defined below.

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## **II. DEFINITIONS**

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**Chief Executive.** The position with primary authority over a Location. In the University's context, this means a Location's President, its Chancellor, the Director of Lawrence Berkeley National Laboratory, or the Vice President-Agriculture and Natural Resources, or their designees.

**Contracts.** In general, contracts are agreements between two or more parties that create a legal obligation to perform a specific scope of work for the benefit of the funding party. Contracts define specific rights and obligations of the contracting parties with regard to matters such as research results and deliverables, publication rights, inventions, public dissemination of results, and liability.

**Development Office.** The Location office responsible for central fundraising, donor engagement, acceptance of Gifts, and partnering with others to help solicit private Sponsored Awards. This office may initiate prospective development and supports a Location's Gift stewardship and management.

**Funder.** The individual or entity providing monetary or other support to the University. This is a neutral term that may apply either to donors or sponsors. Donors are funders who provide Gifts. Sponsors are funders who provide Sponsored Awards.

**Gifts.** Gifts are voluntary contributions made to the University that are motivated by a donor's charitable intent, for which the donor receives no substantial return benefit and over which the donor does not retain control. Generally, funds received from individuals, donor-advised funds, and family foundations should be classified as gifts. Unexpended funds are not typically returned to the donor. Support may be treated as a gift even when the donor instructs the University as to the timing of expenditure of funds (e.g., an endowed fund) or use of the funds for a specific academic area or for specific academic purposes. Support for a capital project should typically be classified as a gift, unless the donor requires or expects certain return benefits (excluding naming rights). While terms for restricted gifts may specify particular activities and general budgets for those activities, they usually do not specify how the support is internally administered or require deliverables from the University beyond acknowledgement, summary narrative, and financial reporting to assure proper gift stewardship.

**Gift Fees.** Some Locations assess fees associated with Gifts. Such fees, which may be referred to by different names at the Locations, may be used to recoup some of the costs incurred in raising and administering gift support and/or for other purposes on the campus. Gift fees are distinct from Indirect Costs.

**Grants.** Grants are awarded to the University by federal and state agencies, local governments, foundations, associations, corporations, and other private entities to support the University's mission. In broad terms, they represent legal mechanisms used to transfer financial assistance to support a University program, and to achieve some general or specific purpose. Grants typically require the University to provide some sort of deliverable to the sponsor, such as a technical report.

**Indirect Costs.** Sometimes called overhead, facilities and administrative (F&A) costs, or shared expenses, indirect costs are costs incurred in the conduct of externally sponsored research that are not attributable to any single project, but are shared across a large number of projects, as well as other functions of the University. Examples of indirect costs include grant administrative services, lab operations and maintenance, depreciation and debt services taken on for new construction to provide researchers with modern facilities.

**Location.** A location is any University campus, the Lawrence Berkeley National Laboratory (LBNL), Medical Centers, the Office of the President (UCOP), and the Division of Agriculture and Natural Resources (ANR).

**Sponsored Awards.** This category includes all arrangements in which the University is providing a return benefit, or agrees to provide a defined deliverable to the sponsor or to complete a set of activities in exchange for Support. Award instruments for sponsored awards typically include Grants, Contracts, material transfer agreements, cooperative agreements, consortium agreements, and other agreements. While sponsored awards are typically made to support research, it is possible that Support for a purpose other than research may be classified as a sponsored award.

**Sponsored Projects Office.** The Location office(s) responsible for reviewing and authorizing proposals for submission and for interpreting, negotiating, and accepting/executing Sponsored Awards from governmental agencies (domestic and foreign), foundations, private industry, and other public and private sources.

**Support.** Monetary or other resources provided to the University from private or public Funders.

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### III. POLICY TEXT

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Each Location is responsible for reporting their Gifts and Sponsored Awards to UCOP. Each Location may, however, determine its own procedures for the processing/ acceptance/ administration of Support consistent with this Policy. Each Location is encouraged to employ practices that will facilitate the timely classification and processing of Support. When there is a question about the classification, offices at the Location involved in the classification process will work together to determine the appropriate classification. If necessary, the final authority regarding classification will be the Location's Chief Executive or a designee.

All projects determined to be Sponsored Awards must be processed through the Location's Sponsored Projects Office (or equivalent), as described in Section V of this Policy. Processing of Sponsored Awards includes the application of Indirect Costs in accordance with other applicable University policies.

Activities supported by a Funder that are classified as Gifts must be processed through the Development Office (or equivalent), as described in Section V of this Policy. The processing of Gifts does not include the application of Indirect Costs. Locations may assess Gift Fees at their discretion.

Judgment must be exercised to ensure that classification determinations are made in accordance with the intent of this Policy and in consideration of the criteria outlined below. In many situations, not all of the characteristics will be present. **The decision as to whether Support should be considered a Gift or a Sponsored Award should not be made based upon the presence or absence of a single characteristic or criterion.** Rather, one must consider all of the information associated with the Support to make a judgment as to its proper classification. Although the terms "gifts", "grants", and "grant awards" may be used interchangeably both in conversation and in the instruments providing the Support, such terminology does not determine the internal University classification nor treatment as either a Gift or Sponsored Award.

In general, Support should be classified as a Gift when the following characteristics exist:

- The Support is motivated by charitable intent
- The Support furthers the University's mission
- The Funder provides Support to the University without expectation of direct economic or other tangible benefit commensurate with the value of the Support
- Support is awarded irrevocably

- While the area of work to be supported may be specified, there is no detailed scope of work, line-item budget, or period of performance specified by the Funder or promised by the University.

In general, Support should be classified as a Sponsored Award when the following characteristics/requirements exist:

- The funded activity is directed to satisfying specific Funder requirements (e.g., terms and conditions originating from the Funder stating a precise scope of work to be done rather than a general area of research)
- The Funder requires specific reporting, such as a detailed technical report of research results or a line-item report of expenditures
- A specified period of performance is prescribed or termination is at the discretion of the Funder
- Support that remains unexpended at the end of the specified period must be returned to the Funder.

Support should always be classified as Sponsored Awards when the following characteristics exist:

- Testing or evaluating of proprietary materials (including software) provided by or on behalf of the Funder is involved; or
- University intellectual property rights are requested by Funder.

University employees must not participate in attempts to avoid Indirect Costs or Gift Fees by mischaracterizing the Support.

In determining the appropriate classification for Support, the Location's responsible offices should obtain and consider all of the relevant documentation, including solicitations, agreements, and any other information that relate to the same scope of work.

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## **IV. COMPLIANCE AND RESPONSIBILITIES**

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### **A. Policy Approval**

The President of the University is the Approver of this Policy and may consult with Institutional Advancement and Research Policy Analysis and Coordination (RPAC) units before approving revisions.

### **B. Policy Review**

Either of the University Provost or Senior Vice President (SVP) for External Relations has the authority to initiate a review of this Policy. Revision recommendations to the President should be made jointly by the University Provost and the SVP for External Relations.

**C. Exceptions to the Policy**

Exceptions to the Policy may be granted by the Location’s Chief Executive, or designee.

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**V. POLICY IMPLEMENTATION**

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This Policy applies to University faculty, staff, and students that have responsibility to receive and administer external Support. Under this Policy, a Location’s Development Office (or equivalent) will process as a Gift any agreement providing the Support where the preponderance of information indicates classification as a Gift; the Sponsored Projects Office (or equivalent) will process as a Sponsored Award any agreement providing Support where the preponderance of information indicates that classification. Where it is unclear whether Support should be classified as a Gift or a Sponsored Award, the Location’s Development Office and Sponsored Projects Office, or their equivalents, will consult with each other to determine the appropriate classification, regardless of which unit initially received the Support. In the event that they cannot resolve the matter, it will be escalated to Location’s Chief Executive.

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**VI. RELATED INFORMATION**

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A. University Policy and Delegation of Authority References

1. Presidential Policies

- a. [Disclosure of Financial Interests and Management of Conflicts of Interest in Private Sponsors of Research, Policy COI 700](#) (applies to Gifts and Sponsored Awards.)
- b. [Policy on Naming University Properties, Academic and Non-Academic Programs, and Facilities](#), 2012
- c. [Requirement to Submit Proposals and to Receive Awards for Grants and Contracts through the University](#)

2. [Regents Policy 5203 \(Policy on Support Groups, Campus Foundation and Alumni Associations\)](#)
  3. [Research Policies & Guidance](#)
  4. [Business and Finance Bulletins](#)
  5. [University Accounting Policies](#)
  6. [Delegation of Authority to Return Gifts, DA 2579, February 4, 2014](#)
- B. [GASB 33 \(Accounting and Financial Reporting for Nonexchange Transactions\)](#)
- C. [University Indemnification of Donors for Claims Unrelated to Donor Activity – March 6, 2003 Regents’ Item](#)
- D. [Approval of Indemnification Terms in Certain Limited Agreements in Support of Research – May 17, 2007 Regents’ Item and the related Delegation of Authority, September 19, 2009](#)
- E. [UCOP Institutional Advancement Development Reference Guide](#)

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## **VII. FREQUENTLY ASKED QUESTIONS**

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### **1. Why is the Policy being updated?**

Locations requested clarification of the existing policy, which was adopted in 1980 (1980 Policy). Specifically, in the decades since the adoption of the 1980 Policy, the University has seen a significant increase in external support – especially from private foundations (including family foundations) and from corporations. The increased activity has led to the need for greater clarity in properly classifying Support.

This revised Policy is intended to assist University staff in making consistent and timely decisions, and to help articulate to external parties (including Funders) the rationale for certain decisions. This Policy is not intended to mandate how Locations delegate various Sponsored Awards among centralized contracting offices.

### **2. Why doesn't UC simply rely upon the terminology used in the Agreement with the Sponsor?**

While the Funder's terminology of Support provided to the University (e.g., as a Gift or Sponsored Award) may reflect the Funder's intent, it does not dictate how the University

should classify the Support. For example, corporations may classify Support as a “gift,” but require certain deliverables that make it difficult, if not impossible, for the University to classify and administer the Support as a Gift. Similarly, private foundations almost always use the term “grant” for all of their charitable distributions – including Support that would be classified as a Gift by the University.

**3. What are the major changes/differences between the current and the proposed (old and new) Policy?**

The 1980 Policy emphasized a review of specific factors that are often determinative of how Support should be classified. Although not specified, in practice, the factors were often considered to be of equal import. This revised Policy recognizes that certain factors should be given more weight than others. For example, providing intellectual property rights to a Funder indicates that Support should be classified as a Sponsored Award – even if all other factors might suggest a Gift. Conversely, the requirement for general reports in the absence of other Sponsored Award-like factors should not preclude classifying Support as a Gift. This takes into account the fact that, as “stewardship” practices have evolved, Funders often request progress reports, but that such reports do not constitute the kind of “deliverable” or benefit that would make an award a Sponsored Award.

**4. Does the fact that a Funder agrees or declines to pay for Indirect Costs determine whether Support should be classified a Gift or a Sponsored Award?**

No. Whether Support allows for or prohibits Indirect Costs does not affect the determination of whether it represent a Gift or a Sponsored Award. The classification of Support as a Gift or a Sponsored Award depends on the terms and conditions accompanying the Support.

**5. May Support be classified as a Gift to reduce Indirect Costs or as a Sponsored Award to reduce Gift Fees?**

No. University employees must not attempt to avoid Indirect Costs or Gift Fees by mischaracterizing the Support.

**6. Can Sponsored Awards be counted as private support?**

Yes, if the Funder is a private entity. Both Gifts and private grants (Sponsored Awards) are philanthropic, and both can be counted as private support. Support from governmental sources, however, cannot be counted as private support.

**7. What about qualified sponsorship payments?**

The University may receive Support from a private entity engaged in a trade or business in the form of a “qualified sponsorship payment.” As defined in Section 513(i) of the Internal Revenue Code, a qualified sponsorship payment is a payment for which there is no

arrangement or expectation of any substantial return benefit to the Funder, other than the use or acknowledgement of the Funder's (or its product lines') name or logo. Such payments are typically classified as Gifts, regardless of how the Funder may classify them for its own tax purposes.

**8. Is crowd-sourced Support treated as Gifts or Grants?**

Typically, crowd-sourced Support is considered a Gift. However, this Support should be reviewed on a project-by-project basis and processed in accordance with the factors set forth in this Policy and the Location's applicable policies and guidelines.

**9. What are some routine examples of factors that could appear in agreements that are irrelevant to the classification of the Support?**

- Non-allowance of Indirect Costs or administrative or Gift Fees
- Terminology: what the Support is called (e.g. "grant") or what the agreement is called (e.g., "contract")
- Legal language: prohibiting the use of Support for lobbying or electioneering; requiring mediation or arbitration; specifying applicable laws or courts of jurisdiction; or requiring confidentiality or non-disclosure.
- Indemnification or hold harmless provisions.

**10. Doesn't a Funder's request to be indemnified cause the Support to be classified as a Grant?**

No, but the University's ability to indemnify the Funder, and specifically for acts other than those of University officers, employees or agents (i.e., third party acts), will be handled differently depending on whether the Support is classified as a Gift or a Sponsored Award.

In the case of Gifts that will be funded with cash or marketable securities, the Regents have delegated to the President the ability to indemnify donors for third party liability when the donor does not have an active ongoing role that could give rise to donor liability. See Regents Item 1-EF, dated March 6, 2003, for more details. This authority was further delegated to the chancellors in Delegation of Authority 2631.

In the case of Sponsored Awards, the ability to accept indemnification terms is more limited. Under Standing Order 100.4(dd)(9), Regents' approval is required for agreements by which the University assumes liability for non-University entities. In 2007, the Regents delegated to the President the authority to accept indemnification provisions in certain research, training, or public service agreements with nonprofit or governmental entities, which the President has further delegated to the Director of Research Policy Analysis and Coordination (RPAC) at UCOP. However, this delegated authority permits acceptance of third party liability only under certain conditions. Indemnification provisions that exceed these conditions must still be approved by the Regents. See Regents Item F-4, dated May 17, 2007, for more details.

**11. Will the University incur a tax liability if it misclassifies Support from a Funder?**

The University is responsible for making a good-faith determination regarding the appropriate classification of the Support. As a general rule, the tax treatment of the Support provided is determined by, and is the responsibility of, the Funder.

**12. Can a Sponsored Award be made for a purpose other than research?**

Yes. While, as a general rule, most Sponsored Awards are made for research, it is possible that Support for another purpose should be classified as a Sponsored Award (e.g., public service or education projects).

**13. Does a requirement for reporting mean that the Support must be classified as a Sponsored Award?**

Not necessarily. A gift agreement may require, or best practices may suggest, that a University unit report on expended funds and balances as well as provide stewardship reports to the Funder that share evaluation information about the project, explain how the Gift was used and/or describe the impact of the Gift. Such requirements, including stipulations or limitations regarding press and/or public announcements, are not determinative of whether Support should be classified as a Sponsored Award.

**14. Can a revocable agreement/commitment still constitute a Gift?**

Yes. Although Support in the form of a Gift is typically considered irrevocable, initial documentation for a Gift may state that the donor's obligation is not deemed to be a binding, legal obligation on the donor. This is so because, increasingly, donors want utmost flexibility to satisfy some/all of a charitable commitment (most commonly referred to as a "pledge") through a donor-advised fund (DAF) or a family foundation. To ensure that such a pledge doesn't violate complex rules applicable to DAFs and private foundations, the initial commitment from a donor may be documented as a non-binding, revocable pledge. However, when the pledge is ultimately satisfied and Support is transferred to the University, the Support is considered to have been awarded irrevocably.

It should also be noted that the law applicable to charitable gifts provides that gift Support is restricted for the purpose specified by the donor, if any. Although rare, there are instances where circumstances change so that it becomes impossible or impracticable for the University to adhere to such restrictions. To account for such circumstances, some gift agreements may include language that provides for return of the Gift to the donor. As a technical matter, such a Gift might be interpreted as revocable. However, any such return of Support is addressed by applicable University policy, which sets forth a rationale and process for return of a Gift that complies with applicable law. See Regents Standing Order 100.4(v) and Delegation of Authority 2579.

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## **VII. REVISION HISTORY**

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This Policy replaces the one set forth in President Saxon’s letter to the Chancellors et al., of July 8, 1980, which was reformatted and added to presidential policies on July 1, 2012.

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**APPENDIX:**

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**GIFT vs. SPONSORED AWARD GUIDE**

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This checklist may be helpful in distinguishing between Gifts and Sponsored Awards. It is intended only to serve as a reference in the event of questions. The questions and the checklist highlight general characteristics of these two Support categories. However, this checklist is not intended as a substitute for the judgment of University employees. **For additional information, please see Section V of the Policy on Classification of Gifts and Sponsored Awards under “Policy Implementation.”**

**1. Obtain all documentation associated with the Support, including all correspondence with the Funder directly related to the Support. This could include:**

- Correspondence requesting Support, such as a request letter or proposal
- Documents describing the activities to be supported and the intent/purpose of the Support
- Documents or communications that describe or define Funder’s expectations (e.g. funding document, agreement, or budget)

**2. Review documentation for indications that will help you to complete the questions below for determining if the Support should be considered a Sponsored Award or a Gift.**

**I. Funder Type**

- a. Is the Support provided by the federal, state, or local government?  
 Yes → SPONSORED AWARD\*                       No
- b. Is the Support provided or primarily funded by a foreign government?  
 Yes → SPONSORED AWARD\*                       No
- c. Is the Support intended for endowment?  
 Yes → GIFT\*\*     No
- d. Is the Support provided by an individual (not an organization)?  
 Yes → MOST LIKELY A GIFT\*\*                       No

**II. Funder’s Expectations**

- a. Does the Funder expect intellectual property rights (e.g. licenses, copyrights, royalties)?  
 Yes → SPONSORED AWARD\*                       No
- b. Does the project involve testing or evaluating proprietary products provided by or on behalf of the Funder?

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- Yes → SPONSORED AWARD\*                       No
- c. Is the Funder requiring project specific deliverables (e.g. equipment, records, detailed research report or results, study data)?
- Yes → SPONSORED AWARD\*                       No

If you answered “Yes” to any question in sections 1 & 2, the determination of Gift vs. Sponsored Award should be clear.

\*Contact your Sponsored Projects Office

\*\* Contact your Development Office

3. If there are remaining questions after completing questions 1 & 2 above, the following factors should be taken into consideration for determining whether the Support is a Gift or a Sponsored Award. Note that no one factor is determinative; rather, a preponderance of factors should help to indicate whether Support should be classified as a Gift or Sponsored Award.

| A. Gift  | B. Sponsored Award   |
|--|--|
| <b>Research Focus/Scope of Work</b>  |  |
| <input type="checkbox"/> Broad research focus  | <input type="checkbox"/> Detailed scope of work required   |
| <b>Persons Performing Funded Activities</b>  |  |
| <input type="checkbox"/> Left to discretion of University, school, department or one or more named individuals | <input type="checkbox"/> Key personnel named in the proposal and changes must be pre-approved by the Funder  |
| <b>Budget</b>  |  |
| <input type="checkbox"/> General project budget  | <input type="checkbox"/> Detailed line item budget (e.g., detailing project costs by budget categories; listing personnel percentage of effort, etc.)                                    |
| <input type="checkbox"/> No prior approval required for variance from proposed budget                          | <input type="checkbox"/> Requires Support to be spent in accordance with the proposed/approved budget, or requires prior approval for re-budgeting in excess of an established threshold |
| <b>Period of Performance</b>   |  |
| <input type="checkbox"/> Not specified, at the discretion of UC  | <input type="checkbox"/> Project start and end dates specified by the Funder   |
| <b>Financial Terms and Reporting</b>   |  |
| <input type="checkbox"/> Stewardship and general fiscal accountability and reporting to the Funder             | <input type="checkbox"/> Detailed financial reporting (e.g. line item detail, percentages of effort, etc.)   |
| <input type="checkbox"/> No specific audit requirements  | <input type="checkbox"/> Right to perform or require a financial audit of fund expenditures  |

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|--|--|
| <input type="checkbox"/> No terms and conditions for the disposition of tangible property.   | <input type="checkbox"/> Terms and conditions for the disposition of tangible property (e.g., equipment, records, technical reports, theses, dissertations, or other deliverables) |
| <input type="checkbox"/> Future payments/ Support not contingent on technical reporting (note: progress toward goals provided in a stewardship report may still be appropriate for a Gift) | <input type="checkbox"/> Future payments/Support contingent on programmatic and fiscal reporting and/or progress   |
| <input type="checkbox"/> Support is awarded irrevocably  | <input type="checkbox"/> Unexpended Support to be returned at the end of the designated period   |
| <input type="checkbox"/> The ability of the Funder to terminate the Support is limited.  | <input type="checkbox"/> Funder has the ability to terminate the agreement and/or demand repayment if the specific project plans have not been implemented as agreed upon          |
| <b>Narrative Reporting</b>   |  |
| <input type="checkbox"/> General description of progress, few or no specific requirements/guidelines   | <input type="checkbox"/> Technical report requires details on scientific results or accomplishments and progress towards a specific project plan                                   |

4. A preponderance of checks in column A above likely indicates that the Support should be classified and administered as a Gift. A preponderance of checks in column B above likely indicates that the Support should be classified and administered as a Sponsored Award.
5. If, after reviewing question 3, it is still unclear whether Support should be classified as a Gift or Sponsored Award, campus determinations should be made in consultation with other relevant offices as described in Section V of the Policy on Classification of Gifts and Sponsored Awards under “Policy Implementation.”