



## TEXAS TECH UNIVERSITY™

### Operating Policy and Procedure

#### **OP 02.03: Acceptance of Gifts and Grants from Private Philanthropic Sources**

**DATE:** August 9, 2011

**PURPOSE:** The purpose of this Operating Policy and Procedure (OP) is to set forth Texas Tech University policies and procedures related to acceptance of all gifts, donations, and non-contractual grants from private philanthropic sources; e.g., individuals, foundations, and corporations.

**REVIEW:** This OP will be reviewed in April of odd-numbered years by the vice chancellor for institutional advancement (VCIA). Changes regarding financial procedures will be made with the concurrence of the Texas Tech University System chief financial officer (CFO).

#### **POLICY/PROCEDURE**

##### **1. General**

To promote and protect the interests of Texas Tech University (TTU) and Texas Tech Foundation, Inc. (TTFI), as well as the persons and other entities who support their programs, these policies are designed to ensure that all gifts to or for the use of TTU and TTFI provide maximum benefits to all parties. It is the goal of TTU and TTFI to encourage funding of TTU without encumbering them with gifts that may generate more costs than benefits, or that are restricted in a manner that is not in keeping with the mission of the institution.

To optimize funding from individuals and other entities, TTU and TTFI must respond quickly, and in the affirmative when possible, to gifts offered by prospective donors. Except where stated otherwise, these policies are intended as guidelines. Flexibility will be maintained since some gift situations will be complex and decisions can be made only after careful consideration of all related factors. Thus, these policies sometimes will require that the merits of a particular gift be considered by the Board of Regents of TTU and/or the Board of Directors of TTFI, along with legal counsel, if necessary.

##### **2. Outright Gifts**

To qualify as an outright gift, the donor must irrevocably transfer ownership and implicit control over the use of the gift.

###### **a. Cash**

- (1) Gifts in the form of cash and checks shall be accepted regardless of amount unless, as in the case of all gifts, there is a question as to whether the donor has sufficient title to the assets or is mentally competent to legally transfer the funds as a gift to TTFI or TTU.

- (2) All checks should be made payable to "Texas Tech Foundation, Inc." Checks should never be made payable to an employee, agent, or volunteer for the credit of TTU or TTFI.

b. Securities

- (1) Publicly Traded

- (a) Securities that are traded on the New York, NASDAQ, or American stock exchanges, or other readily marketable securities, shall be accepted by TTFI. Such securities shall be sold immediately upon receipt by TTFI, unless a compelling reason, such as direction of the donor, exists for holding the securities. Staff shall communicate this policy prior to acceptance of such gifts.
- (b) If the donor wishes for the stock to be held rather than sold, the donor should make this request in writing directed to the Office of Institutional Advancement, and it must be approved by the VCIA

- (2) Closely Held

- (a) The stock subject to these considerations is stock in companies that are of a size such that they are not required to register with the Securities and Exchange Commission (fewer than 35 shareholders). These are generally small family companies.
- (b) The development officer must determine if there are restrictions on transfer contained in the bylaws and/or reflected on the stock certificate and must inspect the certificate for transfer restrictions upon receipt of the certificate.
- (c) Prior to acceptance of the gift, the development officer must request a copy of the company's most recent audited financial statement or financial appraisal. The development officer should explain that this information will be used only to reasonably value the stock for purposes of recording the gift and its sale.
- (d) Since the primary market for this type of stock is often the company itself to the other stockholders, the development officer should determine the intent of these parties. It should be made clear to the donor and other interested parties that the primary intent of TTFI is to sell the stock and every effort will be made to accomplish this objective. It should also be made clear to the donor that TTFI has the right to sell gift stock to any buyer at any time in order to protect the interests of TTFI.
- (e) Before acceptance, the development officer should provide the information obtained to the treasurer of TTFI and inform the prospective donor that it will be reviewed by staff and an answer provided on a timely basis. If there is any question about donor intent or financial solvency, the prospective gift and circumstances will be brought to the attention of the chief operating officer for further consideration.
- (f) If the value of the gift is more than \$500, an Internal Revenue Service Form 8283 should be filed by the donor. If the claimed amount is more than \$10,000, the donor is required to secure a formal appraisal. The appraiser and TTFI will be required to sign the Form 8283. If TTFI signs the Form 8283 and sells the stock

within two years of acceptance of the gift, TTFI is required to file Form 8282 with the Internal Revenue Service, reporting the net proceeds from the sale.

- (g) TTFI will communicate with the company periodically, at least annually, requesting financial information and other pertinent data as appropriate, while advising the company that the stock is for sale and asking for assistance in locating interested buyers.

c. Real Property

(1) Conditions of Acceptance

- (a) If the real property is to be sold, it should be given to TTFI. If the real property is not to be sold, it should be given to TTU.
- (b) No working interests or any other property deemed inappropriate by TTU or TTFI, in their sole discretion, will be accepted. This exclusion includes both inter vivos and testamentary gifts.
- (c) The donor must provide an acceptable policy of title insurance or an acceptable title opinion drawn by an attorney.
- (d) If staff determines that circumstances surrounding the property warrant an environmental audit, the donor must provide an environmental audit for hazardous waste.
- (e) If staff determines that circumstances surrounding the property warrant a survey of the property, the donor must provide an updated survey of the real property.
- (f) The donor must provide a general warranty deed by which the real property is to be conveyed.
- (g) No liens or unpaid taxes may exist on the property.
- (h) Neither TTU nor TTFI shall be made liable for any fees or assessments on the property.
- (i) The donor shall provide a fair market value appraisal by a qualified appraiser, or if such an appraisal is not provided, the property shall be valued based upon the taxing authority appraised valuation.
- (j) Real property appraised for less than \$50,000 shall not be accepted.

(2) Procedure for Acceptance

Official approval must be obtained before a gift receipt may be issued for the property. In order to obtain official approval, the following steps must be followed:

- (a) Initiate a *Gifts-in-Kind Information Form* (see attachment) through administrative channels to the Office of Institutional Advancement via the faculty member, staff member, student, or student organization's administrative head or dean. A third – party independent appraisal of the gift secured and paid for by the donor, must be attached to the information form. Employees of the Texas Tech University System

cannot appraise the gift, nor can TTU System funds be used to pay for the appraisal.

- (b) The VCIA will review and approve the proposed gift. The VCIA will forward the form to the CFO for review. The CFO will forward the form to the president after either approving or disapproving the acceptance of the gift, and then the form will be sent back to the VCIA. The VCIA will seek Board of Regents' approval of the gift. After receiving all approvals on the gift, the Office of Institutional Advancement will acknowledge the gift to the donor. No recitation of valuation will be made in the acknowledgment letter.
- (c) If approval to accept real property is granted, the vice chancellor and general counsel will be consulted regarding required documentation. A copy of the *Gifts-in-Kind Information Form* will be forwarded to the CFO for appropriate accounting entries.
- (d) Gifts of real property to TTFI must be approved only by the Board of Directors of TTFI.
- (e) Internal Revenue Service Reports
  - (i) Any forms required by the Internal Revenue Service by either TTU or TTFI as charitable donee of real property must be forwarded to the VCIA for appropriate signature and handling. This includes Internal Revenue Service Form 8283.
  - (ii) If any real property is sold within two years of acquisition by TTU or TTFI, the person responsible for the sale must notify the VCIA of such sale, including the amount received at sale. The VCIA will file the appropriate Internal Revenue Service Form 8282 as required.

#### d. Personal Property

- (1) If the personal property is to be sold, it should be given to TTFI. If the personal property is not to be sold, it should be given to TTU.
- (2) Procedure for Acceptance

Official approval must be obtained before a gift receipt may be issued for the property. In order to obtain official approval, the following steps must be followed:

- (a) Initiate a *Gifts-in-Kind Information Form* through administrative channels to the Office of Institutional Advancement via the faculty member, staff member, administrative head, or dean. A third-party independent appraisal of the gift secured and paid for by the donor must be attached to the information form. Employees of the Texas Tech University System cannot appraise the gift, nor can Texas Tech University System funds be used to pay for the appraisal. For new equipment, a fair market value price of the item may be provided by the manufacturer in lieu of an appraisal.
- (b) The VCIA will review and approve the proposed gift. The VCIA will forward the form to the CFO for review. The CFO will return the form to the VCIA after either approving or disapproving the acceptance of the gift. The VCIA will seek Board

of Regents approval of the gift if the gift has been appraised for \$250,000 or more. After receiving all approvals on the gift, the Office of Institutional Advancement will acknowledge the gift to the donor. No recitation of valuation will be made in the acknowledgment letter.

- (c) The associate vice president for operations (AVPO) will review the gift to determine whether further assessment is required regarding gifts involving hazardous materials and/or equipment installation.
  - (i) Gifts that involve chemicals and/or equipment producing or containing hazardous materials must have prior approval from and coordination with Environmental Health and Safety's chemical hygiene officer and hazardous waste specialist. Environmental Health and Safety will provide the requesting department with guidelines for accepting donations involving hazardous materials and an estimated cost of ultimate disposal.
  - (ii) Equipment donations requiring installation, utility service connections (gas, water, electric, etc.), and/or environmental temperature conditions require coordination with the Physical Plant. Submit a *Customer Project Request* indicating requirement and equipment specifications to Building Maintenance and Construction for engineering and cost estimates. The department accepting the donation will be responsible for funding costs associated with installation and disposal.
- (d) Upon coordination with Environmental Health and Safety and Physical Plant, the AVPO will approve or disapprove the acceptance of the gift and return the form to the VCIA. The Office of Institutional Advancement will notify the originator of the form through the appropriate administrative head that approval or disapproval of the gift acceptance has occurred.
- (e) If approval to accept personal property is granted, a copy of the *Gifts-in-Kind Information Form* will be forwarded to the CFO for appropriate accounting entries.
- (f) Gifts of personal property with a value of \$250,000 or more to TTFI must be approved only by the Board of Directors of TTFI.
- (g) Internal Revenue Service Reports
  - (i) Any forms required by the Internal Revenue Service by either TTU or TTFI as charitable donee of real property must be forwarded to the VCIA for appropriate signature and handling. This includes Internal Revenue Service Form 8283.
  - (ii) If any real property is sold within three years of acquisition by TTU or TTFI, the person responsible for the sale must notify the VCIA of such sale, including the amount received at sale. The VCIA will file the appropriate Internal Revenue Service Form 8282 as required.

e. Vehicle Donations

All motor vehicles donated to TTU are subject to the approval of the vehicle fleet manager, as well as the standards and procedures outlined in OP 80.07 on Vehicle Fleet Management

Program. Color requirements, alternative fuel program, and vehicle use reporting are also applicable.

Donated vehicles may not be replaced without approval of the state Office of Vehicle Fleet Management.

f. Computing Donations

Gifts of software and hardware are accepted for academic and research purposes only. Educational discounts are not considered gifts to the institution. The agreement between the donor and TTU will be used to determine whether the transaction is classified as a gift.

All qualified computing donations donated to TTU are subject to the approval of the vice chancellor for information technology.

3. **Deferred Gifts**

a. Bequests

- (1) If approached by the attorney or other representative of a person intending to leave a bequest to the TTU or TTFI, all efforts should be used to ascertain the name of the donor, and all other relevant details of the bequest, while also recognizing the confidentiality that exists between the donor and representative.
- (2) When approached by either the donor intending to leave a bequest to TTU or TTFI or that person's representative, the person should be informed that the bequest will be officially accepted at the donor's death only in accordance with the terms of sections 2.a. through 2.d of this OP.
- (3) If notified during the lifetime of the donor about a bequest that does not comply with the provisions of sections 2.a. through 2.d. of this OP, the donor should be informed about the probability that the bequest will not be accepted upon the death of the donor unless action is taken to bring the bequest into conformity with these policies. If notified of a bequest that does not comply with the acceptance policies of TTU and TTFI, upon the death of the donor, the bequest shall be disclaimed. Legal counsel shall expeditiously communicate the decision of TTU or TTFI to the legal representatives of the estate.
- (4) To properly substantiate the receipt and value of bequest, the donor must provide a photocopy of the paragraph only from the operative document that names Texas Tech University or TTFI as beneficiary.

b. Charitable Trusts

- (1) Attempts should be made to discover all charitable trusts of which TTU or TTFI is a beneficiary and for which TTFI does not serve as trustee.
- (2) TTFI may elect to serve as trustee of charitable remainder trusts that benefit TTFI if the trusts conform to the policies and procedures adopted by TTFI. Such selected trusts will be managed by a manager from outside TTU that will be engaged to provide the appropriate services necessary to manage and report on the trusts.

- (3) Unless otherwise approved by the Board of Directors of TTFI, charitable trusts for which TTFI serves as trustee must comply with the following requirements:
  - (a) The value of the initial corpus of each trust must be no less than \$50,000 or the donor must agree in writing to bring the corpus of the trust to at least \$50,000 within three years.
  - (b) With regard to charitable remainder trusts, TTFI must receive 100 percent of the remaining corpus of the trust upon its termination.
  - (c) Any gift in trust to TTFI must comply with the existing gift acceptance policies of TTFI.
  - (d) All trusts must use a standard trust agreement appropriate to the gift approved by the Board of Directors of TTFI.
  - (e) An investment policy for assets given in trust to TTFI will be established and approved by the Board of Directors of TTFI.

c. Charitable Gift Annuities

- (1) TTFI has established a gift annuity program and will accept and establish gift annuities and deferred gift annuities that benefit TTFI, provided they comply with the policies of TTFI on gift annuities.
- (2) All gift annuities and deferred gift annuities will be managed by a manager from outside TTU and engaged to provide the appropriate services necessary to manage and report on gift annuities.
- (3) Without prior approval of the treasurer of TTFI, no gift annuity shall be accepted which names an income beneficiary under 60 years of age.
- (4) Deferred gift annuities shall be accepted from donors less than 60 years of age if income is not payable until the donor reaches the age of 60 years or after.
- (5) There shall be no more than two income beneficiaries for a gift annuity.
- (6) The minimum initial contribution for a gift annuity shall be \$10,000
- (7) The minimum contribution for an additional gift annuity by an individual who has previously established a gift annuity shall be \$2,500.
- (8) TTFI will use those gift annuity rates recommended by the American Council on Gift Annuities as a guideline in establishing rates for gift annuities, with a maximum rate at the rate recommended for a single-life annuity at age 75.

d. Remainder Interests

Gifts in which the donor retains a life interest in real property may be accepted if approved by the Board of Directors of TTFI or the Board of Regents of Texas Tech University System.

e. Life Insurance

(1) General

- (a) Donors are encouraged to transfer to TTFI ownership of life insurance policies donors own and for which all the premiums have been paid, with no further premium payment due.
- (b) No insurance products may be endorsed for use in funding gifts to TTFI without appropriate approval of the Board of Directors of TTFI and the Board of Regents.
- (c) The names of donors to TTFI and TTU will not be furnished to anyone for the purpose of marketing life insurance benefiting TTFI or TTU, as this practice constitutes a potential conflict of interest and may be construed as involvement in the marketing of life insurance.

(2) Whole Life and Variable Life Insurance Policies

- (a) TTFI will accept ownership of whole life insurance policies owned by donors that are considered paid-up policies.
- (b) When ownership of a whole life insurance policy has been transferred to TTFI, notice of future premium payments will be sent to the donor of the policy. The donor should make all future premium payments through the Office of Institutional Advancement. The donor will then receive an official gift receipt for the amount of such premium payment.

(3) Term Life Insurance Policies

Donors may make TTFI the beneficiary of term life insurance policies, but term life policies may not be transferred to, nor accepted by, TTFI.

(4) Gift Exclusions—Types of Transactions not Classified as Gifts

Council for Advancement and Support of Education Reporting Standards & Management Guidelines for Educational Fundraising—4<sup>th</sup> Edition, 2010

- (a) *Advertising Revenue*: The IRS defines advertising as qualitative or competitive pricing or product information displayed because of a donation or any form of endorsement on the part of the host organization.
- (b) *Alumni Membership Fees/Dues*: While the IRS may suggest that certain amounts paid as alumni dues constitute a legal gift, for these standards they are always excluded. The terms alumni dues and membership fee imply a perceived benefit to the donor of equal or greater value. Therefore, alumni dues, as such, are excluded from official fundraising totals. However, if an amount is paid over and above the assessed alumni dues amount in conjunction with that dues payment, and that additional amount is applied toward philanthropic endeavors, those additional funds are counted.
- (c) *Appraisal Costs*
- (d) *Contract Revenues*, including clinical trial funds

- (e) *Contributed Services*: FASB and GASB recognize certain contributions of professional services as assets to an institution, which are therefore entered as such on the accounting books of the institution. However, contributions of said services are not considered charitable contributions by the IRS and are excluded from CASE and CAE reporting.
- (f) *Discounts on Purchases*, such as the common practice of offering education discounts, but not to be confused with “bargain sales,” which are countable gifts
- (g) *Earned Income*, including transfer payments from medical practice plans or other campaigns, even if realized during the campaign reporting period
- (h) *Expenses* associated with transferring a gift to an institution
- (i) *Gifts or Pledges*, outright and deferred, that already have been counted in previous campaigns, even if realized during the campaign reporting period
- (j) *Gifts to Social Organizations* such as sororities and fraternities, even if the organizations are affiliated with the institution
- (k) *Government Funds*, whether local, state (including state matching grants), federal, or foreign. This includes distributions from Indian Tribal Governments, including payments from Indian Tribal Enterprises acting as conduits for those governments; distributions from these entities should be treated similarly to transactions from state governments. This exclusion also applies to contributions from cities or regional governments, even though those entities may be incorporated. While the Canadian Council for the Advancement of Education (CCAEE) reporting standards for annual campaigns do permit limited counting of certain gifts from city, municipal, and regional governments, for consistency and comparison purposes they are excluded from reports to CASE and CAE
- (l) *Investment Earnings on Gifts*, even if accrued during the fundraising reporting year and even if required within the terms specified by the donor. The only exception permitted is interest accumulations counted in guaranteed investment instruments that mature within the reporting year, such as zero-coupon bonds.
- (m) *Monies Received as a Result of Exclusive Vendor Relationship*, such as “pouring rights” agreements
- (n) *Non-gift Portions of Quid Pro Quo Transactions*
- (o) *Proceeds from Sale of Merchandise*, unless the merchandise is sold as part of a fundraising program and the charitable portion of the transaction is clearly identified
- (p) *Royalties* from affinity agreements
- (q) *Sales Tax* on the purchase of goods
- (r) *Surplus Income* transfers from ticket-based operations, except for any amount equal to that permitted as a charitable deduction by the IRS when identified to donors as a gift in advance of their ticket purchase

- (s) *Tickets Purchased* at fair market (face) value
- (t) *Tuition Payments*

*Attachment: Gifts-in-Kind Information Form*