



## TEXAS TECH UNIVERSITY™

### Operating Policy and Procedure

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

**DATE:** June 13, 2012

**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 even-numbered years by the vice chancellor for institutional advancement (VCIA). Changes regarding financial procedures will be made with the concurrence of the 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**

###### **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 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) 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.

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 will be accepted.
- (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. 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 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. 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

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.

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. 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 \$50,000 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 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 8283 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.

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 will serve as trustee of charitable remainder trusts that benefit TTFI if the trusts conform to the policies and procedures adopted by TTFI. The 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.

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 \$5,000.
- (7) The minimum contribution for an additional gift annuity by an individual who has previously established a gift annuity shall be \$2,500.

d. Remainder Interests

- (1) 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.
- (2) The donor should receive full disclosure of the possible future ramifications of the transaction.

e. Life Insurance

(1) General

- (a) Donors are encouraged to transfer to TTFI ownership of life insurance policies donors own and which are paid-up policies.
- (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 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 the donation (or "gift") benefits related to whole life insurance policies do not apply to term life insurance policies.

(4) Variable Life Insurance Policies

- (a) TTFI will accept ownership of variable life insurance policies owned by donors that are considered paid-up policies.
- (b) When ownership of a variable 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.

#### 4. **Special Rules Applicable to Gifts Made by Texas Tech University Faculty and/or Staff**

##### a. General Rule

Texas Tech encourages faculty and staff donations. However, it is not allowable for a faculty or staff member to make a donation with the requirement that such donation be deposited into an account over which such faculty or staff member (1) has signing authority and/or (2) has the ability to provide funds to or for the use of such faculty or staff member. Such funds result in a benefit to the donor (the faculty and/or staff member) and, thus, are not considered a gift. Therefore, an income tax charitable contribution deduction is not allowed.

##### b. Examples

A donation to a Texas Tech University restricted fund or similar Texas Tech Foundation fund that the donor receives a benefit of any kind is not considered a gift. This includes, but is not limited to, the following:

- (1) Funds that support the salary of the donor;
- (2) Funds that support the salaries of employees who report to the donor;
- (3) Funds that can be used to pay for consumer goods to be used by the donor;
- (4) Funds that can be used to pay for travel by the donor;
- (5) Funds that support research efforts of the donor;
- (6) Funds that can be used to purchase research or instruction materials to be used by the donor; and
- (7) Funds that can be used to support staff and/or coworkers with respect to the donor's research program.

##### c. Gift Receipts

While it is possible under certain circumstances to make a donation to an account from which the donor receives a benefit, such donation cannot be taken as a charitable deduction on the donor's income tax return. If a donation cannot be taken as a charitable deduction for income tax purposes, a gift receipt will not be issued to the donor.

Institutional Advancement may not be able to monitor the use of funds after a donation has been made. As such, and pursuant to the Internal Revenue Code, it is ultimately the responsibility of the donor to ensure that a donation meets the definition to qualify as a charitable deduction for income tax purposes regardless of whether or not a gift receipt has been issued.

*Attachment: Gifts-in-Kind Information Form*