

**BOARD OF REGENTS
BRIEFING PAPER**

Handbook Revision: Gifts, Contracts and Sponsored Programs

BACKGROUND & POLICY CONTEXT OF ISSUE:

At its June 2010 meeting, the Board of Regents' Audit Committee reviewed the recommendations resulting from the internal audit of the NSHE University Press. Among the audit recommendations, the report urged the Vice Chancellor of Finance and the Vice Chancellor of Academic and Student Affairs to review matters related to the processing of gifts received by Systems Administration units, contracts and sponsored projects and draft policies for the processing of such items. In accordance with that request, the Vice Chancellors of Finance and Academic and Student Affairs reviewed the existing policies for the approval, acknowledgement and administration of gifts, contracts and sponsored projects that is applicable to NSHE institutions and recommend that the same policies be made applicable to System Administration and the special units of the Chancellor's office, including but not limited to the University Press.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Amend Title 4, Chapter 10, Section 8 concerning the approval, acknowledgement and administration of gifts, contracts and sponsored for NSHE institutions so that such provisions are also applicable to System Administration and the special units of the Chancellor's office. (See attached Policy Proposal)

IMPETUS (WHY NOW?):

This recommendation is brought as a result of the recommendation of internal audit of the NSHE University press that was approved by the Board at its June 2010 meeting.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

If adopted as proposed, the revised policy will:

- Establish policies for the approval, acknowledgement and administration of gifts, contracts and sponsored projects of System Administration and the special units of the Chancellor's office that do not current exist.
- Provide consistency between the institutions and System Administration and the special units of the Chancellor's office for the approval, acknowledgement and administration of gifts, contracts and sponsored projects.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

None.

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Maintain the status quo and leave the policy concerning the approval, acknowledgement and administration of gifts, contacts and sponsored projects as currently written whereby it is not applicable to System Administration and the special units of the Chancellor's office.

COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
- Amends Current Board Policy: *Title 4, Chapter 10, Section 8*
- Amends Current Procedures & Guidelines Manual: Chapter # _____ Section # _____
- Other: _____
- Fiscal Impact: Yes _____ No _____
Explain: _____

POLICY PROPOSAL - HANDBOOK
TITLE 4, CHAPTER 10, SECTION 8
Gifts, Contracts and Sponsored Programs

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 8. Approval, Acknowledgment, and Administration of Gifts, Contracts, and Sponsored Programs

I. Introduction

In order to establish a basis for approval of any proposed gift, contract, or sponsored program, the [President of each] institution, *System Administration, and special units of the Chancellor's Office* will provide assurances to the Board of Regents that:

- A. The designation of the purpose of the gift, contract, or sponsored program is in accordance with [~~the institution's~~] mission [~~statement~~] *statements*, the Board of Regents' policies and procedures including the Academic Master Plan and capital construction priorities, the laws of the State of Nevada and the Internal Revenue Code;
- B. The proposal for acceptance of any gift, contract or sponsored program must include a reporting of total direct and indirect costs as compared to anticipated revenue;
- C. The gift, contract or sponsored program is free from injurious racial or gender biases or any other illegal restrictions imposed by the parties;
- D. Acceptance of the gift, contract or sponsored program does not obligate the institution, *System Administration or a special unit of the Chancellor's Office* to matching commitments or other costs exceeding the amount of the gift, contract or sponsored program unless [~~the institution concurrently identifies and encumbers institutional~~] funds *are identified and encumbered* to cover [~~these~~] *such* costs;
- E. Funds designated by the gift, contract or sponsored program for employee compensation, which includes cash or in-kind perquisites, comply with Board of Regents' Handbook Title 4, Chapter 3;
- F. Gifts, contracts or sponsored programs involving related parties or parties that appear to have conflicting roles in the transaction have been publicly noticed and approved by the Board of Regents;
- G. [~~The institution has defined the~~] *The* basic elements in a donor or contractor's proposal that will be, or have been used to categorize it as a gift, contract or sponsored program *are defined*.
- H. Gifts intended to fully or partially fund a faculty or administrative position that are made on the condition that a particular person be offered a position within NSHE without going through the regular selection process will not be accepted;

- I. During the course of the selection process to fill a faculty or administrative position supported by a donor gift, no undue or inappropriate influence by or on behalf of the donor may be exerted; and
- J. While a donor may, if legally permissible, restrict the use of a gift, restricted gifts will not be accepted from a donor if a condition of the gift precludes NSHE or an institution from pursuing other work or scholarly activity.

II. Gifts

A gift to an institution of the NSHE, *System Administration*, or a special unit of the Chancellor's Office may be accepted only by the Board of Regents, except as provided herein. A gift is defined as a benevolent donation, which does not require any commitment of institutional resources, or services other than the commitment made to carry out the agreed-upon intent of the donor for the use of the gift funds. A gift includes legally enforceable pledges, personal and real property, professional services and forgiveness of indebtedness. A grant will qualify as a gift, contract or sponsored program but not as a separate category for purposes of the Board of Regents' policy. The President of each institution or the Chancellor will accept gifts, or when required, recommend the Board of Regents' acceptance of gifts, regardless of the form of the gift, only after providing assurances:

- A. That all gifts to the endowment, loan, plant and current fund groups have been reported for information purposes or submitted to the Board of Regents for acceptance in accordance with guidelines established by the Chancellor's Office which provide that:
 1. Current loan and endowment fund group gifts which are additions to previously approved or existing programs will not require Board of Regents' approval before acceptance but will be summarized, along with all other gifts, and reported to the Board of Regents annually;
 2. Approved or existing programs will be defined by the Chancellor's Office;
 3. Charitable remainder trusts, under which the institution is named as remainder man, must be approved by the Board of Regents before the remainder interest is transferred (acceptance) whether or not the trusts are guaranteed and/or managed by the Board of Regents. The gift is included in information reports to the Board of Regents in the year the remainder interest is received by the institution;
 4. All endowment funds will be administered in accordance with the Board of Regents' policy Title 4, Chapter 10[~~Section 3~~];
 5. Endowment funds held in trust by foundations or others require Board of Regents' approval and are to be recorded on the general ledger of the institution or the System. The Chancellor's Office will monitor the investment performance and management of these funds. The amount of the gift for information reports to the Board of Regents is the endowment income recorded in the institution's annual financial statements;
 6. Endowment funds will not be accepted if they include requirements in perpetuity for delivery of goods or services to the donor or the donor's designee;

7. Plant fund gifts must be recommended by the institution and accepted by the Board of Regents. The amount of the gift is included in the annual information report to the Board of Regents during the reporting period that the plant fund gift is recorded for annual financial statement purposes;
8. Contributions, which are gifts only in part, must be accepted by the Board of Regents and also included in tests for acceptance of contracts and sponsored programs;
9. If the administration or application of any gift does not comply with institutional policies or meet the criteria established in Section I. (*above*) the non-compliance will be reported to the Board of Regents for a determination as to whether or not the program should be terminated;
10. [~~On a going forward basis (effective April 4, 2008), gifts~~] **Gifts** to an institution, gifts to the Board of Regents on behalf of an institution, or gifts that can otherwise be determined to be for the benefit of a particular institution, will be transmitted to the institution for management as part of the institution's foundation endowment accounts, unless such transmittal is contrary to the express wishes of the donor. If the institution's foundation does not maintain endowment accounts, the NSHE shall manage the funds on behalf of the institution as part of the NSHE endowment pool. Any transfer of such funds to the foundation for such activities is subject to the institution having an operating agreement in place between the institution and the foundation providing for adequate accounting and oversight of such funds consistent with Board of Regents requirements specified in Title 4, Chapter 10[~~, Section 9~~], and shall further provide that the institution or NSHE may obtain the return of the principal and income of these funds for the purpose of depositing such funds in the NSHE endowment pool, subject to any investment restrictions that limit when such funds may be liquidated, under the following circumstances: 1) a material breach of the operating agreement, 2) the declaration of a financial exigency by the Board of Regents, or 3) without cause and effective June 30 upon written notice to the institution no later than March 1 of the preceding year.

11. Gifts to System Administration or special units of the Chancellor's Office will be managed on behalf of System Administration or the special unit as part of the NSHE endowment pool.

- B. That the institution, ***System Administration, or special unit of the Chancellor's Office*** has complied with all applicable federal income tax regulations and restrictions by donors;
- C. That expenditures for entertaining, hosting, travel expenses, or employee perquisites comply with Board of Regents' policies and procedures and will not be authorized by the institution's administration, ***System Administration, or special unit of the Chancellor's Office*** unless the donor has been notified in writing that unrestricted gifts and the investment income from such gifts may be used for these purposes;
- D. That the institution, ***System Administration, or special unit of the Chancellor's Office*** has obtained an independent appraised evaluation of the property received when value is stated for insurance purposes, when the property is sold or recommended for sale by the institution, when the property is recorded officially on the institution's books and records, or when the appraised value is a basis for compliance with tax law. Board of Regents' approval is specifically required for acceptance of all gifts of property except personal property with an estimated fair market value of less than \$5,000.00;

- E. That costs for insurance, real property clean up or storage have been considered in calculating the obligations to the institution, *System Administration, or special unit of the Chancellor's Office* in recommending to the Board of Regents the acceptance of gifts of property;
- F. That a donor's restriction on the sale or use of property is reported along with reasons why the restriction is not unreasonable and should be accepted by the Board of Regents;
- G. That procedures for receipt and acknowledgment of non-cash gifts shall be the same as for cash gifts except that specific value cannot be placed on non-cash or in-kind gifts;
- H. That procedures have been established to provide for timely acknowledgments to donors by the President *or Chancellor* specifically on behalf of the institution, *System Administration, or special unit of the Chancellor's Office* and the Board of Regents, *including a written gift receipt issued in accordance with applicable federal income tax regulations*. Gifts to foundations or other legally separate organizations for the benefit of the institution are to be acknowledged by the foundation or other organization rather than the President of the institution or the Board of Regents; *and*
- I. That the President *or Chancellor*, when required by this policy, recommend the gift for acceptance by the Board of Regents as soon as possible after it has been offered or the offer announced; however, public announcement of gifts received shall not be made until the gift is accepted by the Board of Regents[;]

II. Contracts and Sponsored Programs

The Board of Regents has adopted the following policies to guide the institutions, *System Administration, and special units of the Chancellor's Office* in their administration of contracts and sponsored programs. ~~[Included in these policies are]~~ ***The provisions of this policy are intended to address*** contracts or sponsored programs under proposed agreements ~~[which]~~ ***that*** would commit the institution's resources or commit the institution to a specific course of action for work to be carried out in its academic departments, laboratories, or administrative units whether on or off-campus, ***and contracts or sponsored programs entered into by System Administration or special units of the Chancellor's Office. Institutional contracts*** ~~[Contracts]~~ and sponsored programs must be submitted to the institution's President for approval of the conditions and/or contents of the contract or sponsored program and submitted to the Chancellor's Office for approval of format and signature authority. Contract education agreements are not covered by these guidelines. ***Contracts and sponsored programs of System Administration or special units of the Chancellor's Office must be submitted to the sponsored projects office for approval of the conditions and/or contents of the contract or sponsored program and submitted to the Chancellor's Office for approval of formal and signature authority.***

- A. The Board of Regents accepts the terms and conditions attached to federal government sponsored programs sought by the institutions. If there is any exception to this policy, the institution will be specifically notified that it should not enter into such programs.
- B. ~~[The institution's contracts]~~ ***Contracts*** and sponsored program proposals and agreements ~~[are]~~ ***shall be*** executed in accordance with criteria and directions described by the Chancellor's Office in published procedures.

- C. The institution, *System Administration, and special units of the Chancellor's Office* will have an established policy for the application of indirect overhead to private and governmental contracts and sponsored programs; the policy will include requirements for justification of all modifications to the established overhead rate; the institution will be able to demonstrate that overhead charges based on the established criteria is applied uniformly and equitably to all contractors or sponsors without favoritism;
- D. The institution, *System Administration, and special units of the Chancellor's Office* will through appropriate rules and regulations adhere to basic academic values in contracts and sponsored programs by assuring in the contract agreement the openness of research results and faculty freedom to follow any line of inquiry. Sponsors are to be limited to receiving the research results, publicity for their sponsorship and the goodwill resulting from both.
- E. Interlocal cooperative agreements (*Nevada Revised Statutes 277.080*) and interlocal contracts (*Nevada Revised Statutes 277.180*) shall be executed in accordance with the criteria and directions described by the Chancellor's Office in published procedures. The Board of Regents accepts the terms and conditions of and hereby-approved interlocal cooperative agreements and interlocal contracts, which are in furtherance of federal government, sponsored programs sought by the institutions.