Gift acceptance: balancing university priorities with donor intent

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Introductions

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BACKGROUND

Presentation goals and objectives

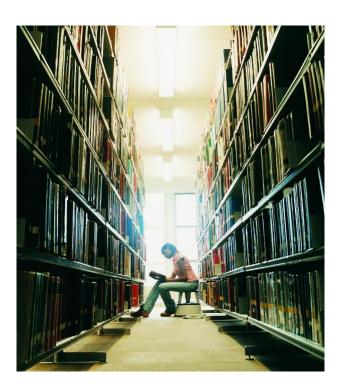| Policies and procedures	Learn how to develop gift acceptance policies and procedures to ensure a balance between academic enterprise and donor engagement
Leading practices	Share leading practices related to policy principles and potential escalation criteria that would lead to additional review of gift agreements based on specific flags and thresholds
Ongoing analysis and assessment	Offer ideas for how to establish on-going analysis and assessment of gift acceptance policies and procedures

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Agenda

- Overview and challenges
- Develop a process
- Define gift criteria
- Create escalation criteria
- Perform ongoing analysis

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Overview and challenges
of gift acceptance

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Overview

– Philanthropy and gift acceptance is vital to the funding of high education institutions.
– Higher education institutions must maintain core principles of academic independence while simultaneously engaging quality donor cultivation and stewardship. Institutions should strive to remain committed to the following:
  – Maintaining academic independence
  – Respecting and engaging donors
  – Engendering trust by increasing transparency related to gift agreements
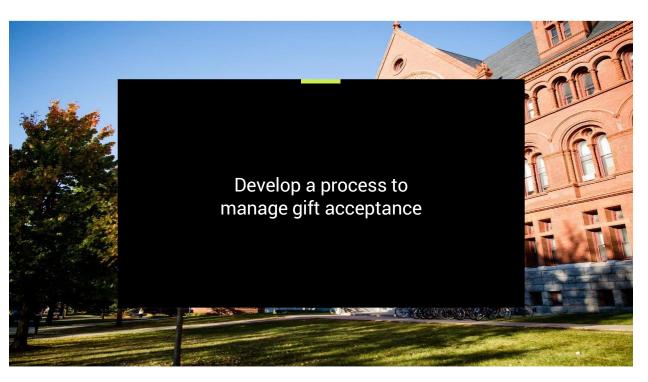
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Common risks associated with gifts

- Institutions may face these common risks related to accepting, managing, or reporting of gifts:
  - Distributing restricted funds to a department or division that uses them for an unintended purpose
  - Accepting a gift that does not align with the institution's mission
  - Experiencing environmental or institutional changes whereby the original intended purpose for a restricted gift is no longer applicable
  - Misreporting fund use to donors
  - Spending and releasing funds in a way that is not consistent with relevant regulations

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Develop a process to manage gift acceptance

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DEVELOP A PROCESS

Gift management life cycle

A gift management cycle typically includes the following components:

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |

Gift cultivation
(initial discussion with donors)

Research
(due diligence)

Proposal creation
(draft agreement, options)

Gift agreement
(review and approval)

Acceptance
(signatories, approval)

Processing
(receiving, recording, reconciling)

Administration/stewardship
(budgeting, spending, monitoring)

Reporting
(compiling, reviewing, distributing)

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DEVELOP A PROCESS

Roles and responsibilities

– Define the roles and responsibilities of those involved in the gift acceptance process
  – Cultivation
  – Research
  – Proposal creation
  – Gift agreement
  – Acceptance
– Communicate authorities and responsibilities to key individuals
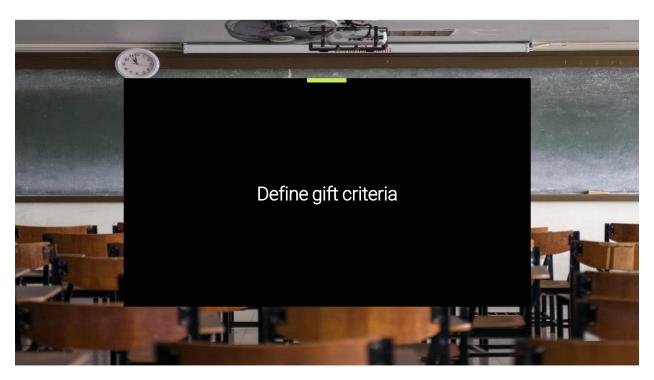– Consider creating a gift acceptance committee to review potential high risk gifts

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DEVELOP A PROCESS

Policies and procedures

- – Institutions should create policies for gift acceptance, which include considerations around thresholds, accountabilities, and roles and responsibilities
- – Policies should be formally documented and communicated
- – Consider need for creating training around policies to key individuals
- – Continually assess need for improvements and clarifications to policies

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Define gift criteria

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GIFT CRITERIA
Eight gift agreement provisions/conditions

Consider the following eight primary areas in which gift agreements may contain provisions/conditions that raise concerns prior to accepting gifts:

1	**Academic freedom:** limitations or restrictions on missions, programs or curricula	5	**Partner requirements:** required actions by a separate entity
2	**Exclusions/preferences:** restrictions related to designated people or groups	6	**Donor notification:** requirements to inform donor
3	**Outside party influence:** ability of donor or other party to exert influence	7	**Transparency:** confidentiality requirements of the gift's existence or use
4	**Financial burden:** funding requirements for the institution beyond the gift amount	8	**Intellectual property:** restrictions related to intellectual property created through gift

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GIFT CRITERIA
Academic freedom

Limitations or restrictions on missions, programs or curricula

Factors to consider:

– Does gift require the university to conform to specific curriculum requirements (e.g., specify outcome of scholarly inquiry)?
– Does gift outline what the university can/can't include in a program?
– Does gift restrict the university as to "mission"?

Sample leading practice language to include in policy:

– Gifts that interfere with or influence the university's academic freedom or its capacity to fully control the management, operations, and direction of its affairs, including admission procedures, academic programs, and their integrity, shall not be accepted.
– While gifts that support research or study in a particular subject matter or discipline are welcomed, gifts directed toward a particular result or conclusion of scholarly work should not be solicited and shall not be accepted.

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GIFT CRITERIA
Exclusions/preferences

Restrictions related to designated people or groups

Factors to consider:

– Does gift require the university to give preference to designated people or groups, or preference based on a set of criteria that the donor has provided?
– Does the gift put restrictions in an area covered by the university's equal opportunity/non-discrimination policy?

Sample leading practice language to include in policy:

– Gifts that are specifically related to the appointment or retention of a specific individual shall be escalated for review.
– Gifts with restrictions that unlawfully discriminate, unlawfully restrict, or unlawfully show preference on the basis of race, creed, color, citizenship, national origin, religion, sexual orientation, gender identity, gender expression, age, marital or partnership status, military status, or disability shall not be accepted.

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GIFT CRITERIA
Outside party influence

Ability of donor or other party to exert influence

Factors to consider:

– Governance (e.g., independent board, advisory board): Does gift require the university to establish, manage, or govern an institute, center, program, department, or activity in a specific way?
– Ongoing donor role that is more than advisory in nature or providing for stewardship: Does donor or a third party designated by donor intend to play active role in the future that would influence academic freedom? Does donor expect to oversee the university's activities related to a gift?

Sample leading practice language to include in policy:

– Donors have the right to be appropriately acknowledged, recognized, and assured that their gifts are being used as intended, but they may not direct or participation in the direction of appointments, research, or other activities.
– The convening of donor oversight or advisory committees should not be a condition of a gift. If such a committee is included, the university should appoint the majority of the members, and any donor designees should be limited to a non-voting role and have the option to recuse themselves.

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GIFT CRITERIA

Financial burden

Funding requirements for the
institution beyond the gift amount

Factors to consider:

– Does the nature of the agreement alter the make-up of faculty in a school (e.g., require the school's resources to be directed in a particular fashion related to hiring of faculty positions)?
– Does the agreement require a permanent impact on the base budgets?

Sample leading practice language to include in policy:

– Gifts that potentially create immediate or future financial or administrative burden shall be escalated for review.
– A new chair or named position endowment may not be established for a lower amount than the established threshold set by the university, unless so approved by the Committee. Schools may choose to set higher minimums as they deem appropriate.

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GIFT CRITERIA

Partner requirements

Required actions by
a separate entity

Factors to consider:

– Does the gift have a required or confidential third party beneficiary?

Sample leading practice language to include in policy:

– Partnership and support from the corporate sector will only be accepted that enable the institution to better achieve its mission without compromising its principles and will only be accepted if disclosed within the confines of university policies.
– Gifts must be intended for public benefit rather than for private interest.

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GIFT CRITERIA

Donor notification

Requirements to inform donor

Factors to consider:

– Does the agreement specify that if an individual holding the critical position changes, the university shall immediately notify the donor?
– Does donor require the university to notify additional parties other than the donor (e.g., descendants) when it is not possible to use funds as designated?

Sample leading practice language to include in policy:

– The institution will follow university policy regarding donor reporting practices and exercise good donor stewardship; however, gifts cannot contain conditions that require notifications to the donor beyond normally accepted stewardship practices (e.g., related to the continued employment of specific personnel).
– If it becomes impossible for the donation to serve the specific purpose for which it was created due to unforeseeable circumstances, the university shall in the first instance discuss this with the donor to find a resolution. If the donor cannot be contacted, then the gift will be devoted to purposes that are most consistent with the wishes of the donor. If this is not possible, the gift should be reassigned in consultation with university leadership.

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GIFT CRITERIA

Transparency

Confidentiality requirements of the gift's existence or use

Factors to consider:

– Does the agreement restrict sharing the purpose of the agreement with others (e.g., gift existence or use confidentiality)?

Sample leading practice language to include in policy:

– Transparency should be encouraged at all levels and by all parties in the gift acceptance process. Upon request, a donor's identity may be protected, but the President, Provost, Vice President for Advancement, and Gift Acceptance Committee must be aware of the identity and approve the request for anonymity.
– For gifts with an accompanying gift agreement, any associated conditions that govern the use of funds by the university, donor involvement, or donor notification, shall be made available, even when donor identity is protected.
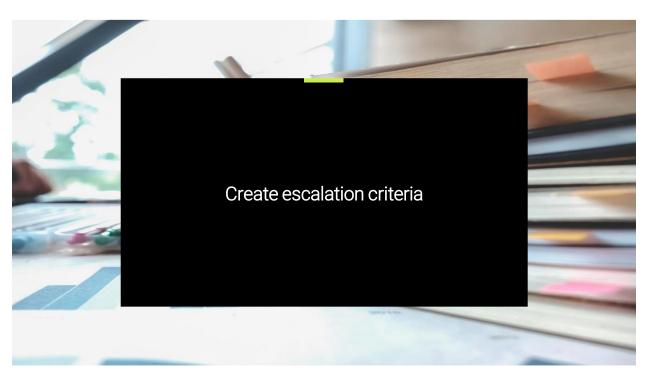
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GIFT CRITERIA

Intellectual property

Restrictions related to intellectual property created through gift

Factors to consider:

– Does the agreement permit use of the university logo or trademark by donor or other third party?
– Does the agreement require the university to share anything created as result of the gift?
– Does the agreement require the university to publicize in a specific way?

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Create escalation criteria

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Considerations checklist

✓ Higher Education institutions should consider adopting an "escalation checklist" that present a sample of escalation indicators that the university could establish to indicate when to require an additional review of a potential gift.

✓ Note: A standard gift agreement template should be used for all gift agreements. Any other forms of agreement language that varies from the standard template language should be sent to key individuals for review.

✓ Items on the escalation considerations shouldn't automatically disqualify a gift, but rather raise conversation with key individuals.

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Escalation criteria checklist

Academic freedom

✓ Does the gift require the university to conform to specific curriculum requirements (e.g., specify outcome of scholarly inquiry)?
✓ Does the gift outline what the University can/cannot include in a program?
✓ Does the gift restrict the university's mission?
✓ Does the gift advocate for, endorse, or support a certain aspect of an issue?
✓ Does the gift support a particular result or conclusion or scholarly work?

Exclusions/ preferences

✓ Does the gift require the university to give preference to designated people or groups?
✓ Does the gift require the university to give preference based on a set of criteria that the donor provided?
✓ Might gift put restrictions in areas covered by the university's equal opportunity/non-discrimination policy?

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Escalation consideration checklist

Outside party philosophy
- ✓ Does the gift require the university to establish or govern an institute, center, program, department, or activity in a specific way (e.g., independent board)?
- ✓ Does gift propose an advisory board with donor involvement?
- ✓ Does the donor intend to play an active role in the future?
- ✓ Does the gift require the appointment or retention of a specific individual?
- ✓ Will the donor expect to oversee the university activities related to the gift?

Financial burden
- ✓ Does the gift potentially create an immediate or future financial burden for the university?
- ✓ Does the gift obligate the university to create new faculty lines (e.g., to run an institute, staff an advisory committee, administer a program)?
- ✓ Does the gift require spending by the university in excess of the amount the donor contributes?
- ✓ Does the gift establish a named position endowment for a lower amount than the established threshold?

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Escalation consideration checklist

Partner requirements
- ✓ Does the gift commit the university to take action not in its control (i.e., required actions by a separate entity?)

Transparency
- ✓ Are there clauses that preclude the university from disclosing the very existence or purpose of the agreement?
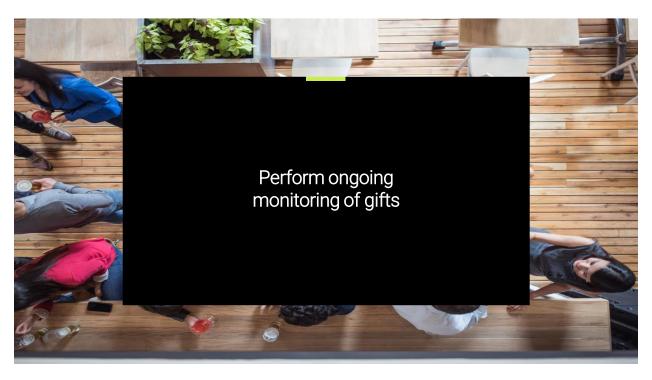- ✓ Does the gift include high-profile naming or create a possible reputational issue?
- ✓ Does the gift create any potential conflicts of interest?

Intellectual property
- ✓ Does the gift permit use of the university logo or other trademark by donor or third party?
- ✓ Does the gift require the university to give away or share anything created as a result of the gift?
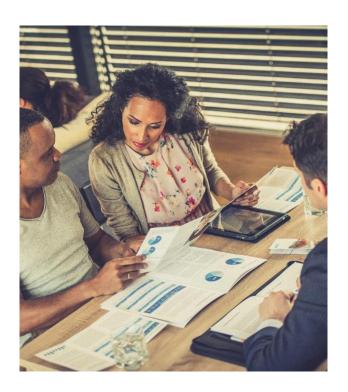
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Perform ongoing
monitoring of gifts

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ONGOING MONITORING
Recommended activities

– Periodically (e.g., annually) communicate with donors to demonstrate how their gift is being used. These are often personalized updates to donors to promote continued giving and reaffirm past gifts

– Monitor the spending of restricted gifts to ensure compliance with donor intent and periodically (e.g. semi-annually) review restricted gifts to assess if unspent gifts could and should be allocated

– When reviewing a gift, keep in mind that the institution's giving policy at the time the gift was received may be different than the current policy

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ONGOING MONITORING

Targeted audit activities

Additional targeted audit activities

- Gift management
  - Activities related to the receipt and usage of the gift management process
- Endowments
  - Activities related to creation and expenditure of endowed funds
- IT systems
  - Activities related to IT systems used during the gift management process

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ONGOING MONITORING – TARGETED AUDIT ACTIVITIES

Gift management – audit considerations

- Choose a sample of donor gifts to review
  - Is the Gift Agreement readily accessible?
  - Has gift been spent and if so, for what areas?
  - If gift has not been spent, why not?
  - Track costs to ensure gift has been spent according to donor intent
  - Verify that the gift receipts sent to Advancement are received and properly recorded to the correct budget
- Interview key process owners and relevant parties
  - Which processes do they control? Assess segregation of duties and review procedures

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ONGOING MONITORING – TARGETED AUDIT ACTIVITIES

Endowments – audit considerations

- Choose a sample of donor gifts to review
    - Have you received any gifts-in-kind?
        - How are gifts-in-kind recorded? Is there a policy/procedure for recording these types of gifts?
- If gifts are expended from the endowment, are they done in accordance with university standards, federal regulation, and donor intent?
    - Monitor and track spending in order to set realistic budgets that follow actual expenditures
- Does gift include a scholarship? If so,
    - When are gifts received by students? Do recipients comply with donor intent?

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ONGOING MONITORING – TARGETED AUDIT ACTIVITIES

IT Systems – audit considerations

- IT audits may focus on security controls and accuracy of IT Systems:
    - Are the system in-house or outsourced (via cloud)?
        - What steps are taken to ensure security?
    - Audit team should run reports from systems and match data to ensure data accuracy and completeness
- How dependent are the departments on the IT systems in order to operate?
    - Are processes mostly automatic or manual?
        - Manual input can lead to clerical errors in data
    - Are the available IT systems used efficiently and effectively?

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Questions?

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Thank you

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