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UTS138 - Gift Acceptance Procedures



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Gift Acceptance Procedures

Responsible Officer: VC for External Relations, Director of Development and Gift Management
Sponsoring Office: Office of External Relations
Effective Date: March 21, 2005
Last Reviewed: March 21, 2005
Next Scheduled Review: March 31, 2009
Errors or changes to: policyoffice@utsystem.edu

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POLICY STATEMENT

Private sector support is critical to The University of Texas System. Contributions from foundations, corporations, and other entities are vitally important to the fulfillment of the mission and to the provision of high-quality educational opportunities. The purpose of this policy is to clarify and facilitate the process for making gifts to the U.T. System and 15 institutions referred to hereafter as "U.T.(").

RATIONALE

As authorized by Regents' Rules and Regulations, [Series 60101](#) this policy is designed to streamline administrative processes associated with the acceptance, administration, and investment of gifts processed or administered by the Office of Development and Gift Planning Services (ODGPS), a designee of the Vice Chancellor for External Relations in a prudent and efficient manner while keeping fundamental fiduciary responsibilities kept firmly in mind. [These procedures do not cover gifts of securities, gifts of family limited partnerships, bequests, or distributions.] This policy is also intended to ensure that staff members are able to handle gifts in a timely, effective, and professional manner in the context of institutions that are engaged in comprehensive fund-raising efforts. When this policy does not indicate an appropriate action or if they are inappropriate in light of all aspects of a specific situation, staff members are directed to consult with the relevant offices as outlined in this policy to establish an appropriate course of action.

The glossary provides definitions for terms used throughout the Gift Acceptance Process. The Acceptance of Gifts Conforming to Policy Matrix summarizes the review and acceptance of gifts.

SCOPE

All institutions and UT System Administration

WEBSITE ADDRESS FOR THIS POLICY

<http://www.utsystem.edu/policy/ov/uts138.html>

RELATED STATUTES, POLICIES, REQUIREMENTS OR STANDARDS

UT System Administration Policies & Standards	Other Statutes, Policies & Standards
<ul style="list-style-type: none"> • Regents' <i>Rules and Regulations</i>, Series 60101 • Regents' <i>Rules and Regulations</i>, Series 60103 • UTS161, <i>Environmental Review Policy for Acquisition of Real Property</i> • Regents' <i>Rules and Regulations</i>, Series 60202 	<ul style="list-style-type: none"> • <i>Internal Revenue Code of 1954</i>, as amended • <i>Texas Government Code Chapter 201</i>, Texas Public Information Act • <i>Texas Property Code Chapter 65</i>

CONTACTS

If you have any questions about UT System Administration Policy UTS138, *Gift Acceptance*, contact the following office(s):

Subject	Office Name	Telephone Number	Email/URL
	Office of Development and Gift Planning Services	512-499-4300	jhopson@utsy

DEFINITIONS

Administrative Approval Process

The procedure for accepting gifts to be approved by the Vice Chancellor for External Relations and which conform to U.T. Board of Regents' Policy.

Available University Fund (AUF)

Distributions from the Permanent University Fund.

Book Value

As pertaining to an endowment, the book value is the original value of all gifts and contributions to the endowment, as well as reinvestment of earnings and any realized gains or losses from the sale of non-cash gifts.

Charitable Lead Trust

A trust in which distributions are paid to one or more qualified charities for a certain period after which the charitable interest terminates and the trust remainder typically reverts to non-charitable beneficiaries.

Charitable Remainder Trust

A tax-exempt trust that provides for payment to non-charitable beneficiaries for life (or for a term-of-years not to exceed 20 years, after which the trust remainder goes to one or more charities.

Closely-Held Stock

A corporation the stock of which is held by a few shareholders, often the management members of a family. Some closely-held stock is publicly traded. Closely-held stock of "corporation" is not publicly traded.

Completed Gifts

Generally, a gift is complete when the donor has parted with dominion and control over transferred property or property interest, as in the unconditional delivery of the gift to the donee's agent, leaving the donor without the power to change its disposition, whether for the benefit of the donor or for the benefit of others. A gift that is subject to conditions may not be a completed gift at all.

Current Purpose Gifts

Non-endowed gifts to be expended for the purposes designated by the donor.

Deferred Gift Annuity

A charitable gift annuity for which payments to the annuitant(s) begin more than one year after the property is transferred to the charity. (See Gift Annuity.)

Endowments Held and Administered by External Trustees

Funds administered by a trustee other than the U.T. Board of Regents, from which a university receives distributions, or from which the institution will receive distributions at a specified time. Examples of such trustees are banks, individuals, or other charitable entities.

Gift Annuity

A charitable giving device by which a donor transfers money or other property to a qualified charity in exchange for guaranteed lifetime payments, the present value of which is less than the value of the property transferred.

Gift Value

The value of a gift at the time it is made. Gifts are valued in accordance with the provisions of the Internal Revenue Code and regulations thereunder.

Intellectual Property

Creations of the mind: inventions, literary and artistic works, symbols, names, images, and designs used in commerce. Intellectual property includes inventions, patents, trademarks, and copyrights. ([More on intellectual property](#))

Limited Partnerships

A limited partnership is an entity in which one or more persons, with unlimited liability (General Partners) manage the partnership, while one or more other persons only contribute capital. The latter partners (called Limited Partners) have no right to participate in the management of the business and assume no liability beyond the capital contributed.

Market Value

The price that an asset would bring in a market of willing buyers and willing sellers, in the normal course of trade.

Mineral Interest in Real Property

Rights to gas, oil, and other minerals, whether joined to or severed from the surface estate.

Permanent or True Endowment

A fund created with gifts received from a donor with the restriction that the principal is not expendable. The gifts are invested in perpetuity and only the distributions are expendable for the purposes designated by the donor.

Permanent University Fund (PUF)

A state endowment fund, which was established by the Texas Constitution of 1876, and supports 18 institutions and six agencies of The University of Texas System and The University System. The PUF consists of 2.1 million acres in West Texas and the portfolio resulting from the investment of mineral royalties generated by the land. Fiduciary responsibility for managing and investing the PUF is constitutionally assigned to the U.T. Board of Regents (PUF)

Quasi-endowment

Institution funds functioning as an endowed fund, which may be dissolved and returned to the institution with the approval of the U.T. Board of Regents.

S Corporation

A form of corporation, allowed by the Internal Revenue Service for most companies with fewer than 100 shareholders, none of which can be partnerships or corporations, which enables the company to enjoy the benefits of incorporation but be taxed as if it were a partnership. Formerly known as an S Corporation.

Surface Interest in Real Estate

Any interest in the surface of real estate and improvements, and all other property interests that do not constitute the mineral estate.

Term Endowment

Funds for which the donor has stipulated that the principal may be expended after a certain period of time or on the occurrence of a certain event.

The University of Texas Foundation, Inc. (U.T. Foundation)

A non-profit corporation established in 1967 to accept and manage gifts in support of the University of Texas System and its institutions are the beneficiaries of the U.T. Foundation, but the Foundation operates independently under its own Board of Directors and pursues its own investment policies and the management of its portfolios. ([More on U.T. Foundation](#))

The University of Texas Investment Management Company (UTIMCO)

An investment management corporation created in March of 1996 solely for the purpose of the investment of assets under the fiduciary care of the U.T. Board of Regents. The Board of Regents appoints all nine members of the UTIMCO Board. ([More on UTIMCO](#))

The University of Texas System Board of Regents

The governing body for The University of Texas System. It is composed of nine members appointed by the Governor and confirmed by the Senate. Terms are of six years each and are staggered with the terms of three members expiring on February 1 of odd-numbered years. ([More on Board of Regents](#))

The University of Texas System Long Term Fund (LTF)

An internal U.T. System pooled investment fund of privately raised endowments and other funds of the 15 institutions of the U.T. System. ([More on the Long Term Fund](#))

The University of Texas System Pooled Income Fund (PIF)

A trust maintained by the U.T. System in accordance with federal tax laws in order to obtain favorable tax treatment for donors to the Fund. It is designed to receive gifts of cash and readily liquid securities, paying the income from pooled gifts to persons designated by the donors during their lives. At the death of the life beneficiary, a proportionate part of the principal of the Trust is distributed to the U.T. System or institution as designated by the donor.

RESPONSIBILITIES

Vice Chancellor for External Relations or the Vice Chancellor's designee

- Executes all necessary IRS forms that relate to gifts processed or administered by the ODGPS.
- Signs any gift agreement or other gift documentation to be signed by a representative of the Board after review of the gift.

Institution

- Submit for consideration gifts to be processed or administered by the ODGPS as soon as practical.
- Contact the ODGPS immediately for instructions when securities are to be given to the institution.
- Provides the donor acknowledgement of the gift.
- For endowed and certain planned gifts submits a request for acceptance to the ODGPS as possible after the delivery of assets.
- Reviews the source(s) and amounts of funds to be added to an endowment to determine if a separate, but related quasi-endowment account should be established if only one endowment account is in existence at the time of an additional contribution to an endowment established with mixed sources of funds.
- Reviews the source(s) of funds to determine the correct allocation if separate and quasi-endowment accounts exist at the time of an additional contribution.
- Sends any requests to amend the terms or purpose of an endowment or to terminate an endowment to the ODGPS for review and approval with the legal advice of the ODGC.
- Selects all appointments to endowed academic positions.
- Submits a request for acceptance of the U.T.'s interest in an endowment held by a trustee as soon as possible after delivery of the gift to the external trustee.
- Notifies the ODGPS immediately and forwards copies of all available documentation and correspondence when notified of the death of a person who has named the U.T. or an institution as a beneficiary.
- Preserves the value of a life insurance policy owned by the Board pursuant to the guidelines.

ODGPS

- Reviews all gift assets processed or administered by the OER, other than cash securities, in conjunction with other U.T. System offices as needed and, as appropriate, with the UTIMCO or other financial managers.
- Refers proposed gifts that do not conform to this policy to the Board for approval on the Agenda or the Docket.
- Reviews and processes gifts of securities that are donated to the U.T. System institution.
- Sells security as soon as possible after the transfer, and notifies the institution of the sale of securities as early as practicable.
- Assures there is a written gift agreement for gifts of closely-held stock indicating intent to make the gift and its purpose.
- Analyzes a proposed gift of interest in a limited partnership to confirm there is

to be derived by the institution that is commensurate with any potential risks associated with the gift.

- Reviews and processes gifts of personal property, other than outdoor works of art, to an institution only if used to establish or make additions to an endowment or remainder trust.
- Reviews and approves all endowments.
- At the creation of an endowment, determines whether separate permanent endowment accounts should be established when current restricted funds and institutional funds are to be combined with a donor's gift.
- Reviews and approves U.T.'s interest in any endowment held and administered by an external trustee.
- Reviews annual reports which detail the value of the assets of an endowment and receipts and expenditures provided by external trustees.
- Reviews annual reports which detail value of the assets of a trust and the annual receipts and expenditures provided by external trustees.
- Reviews and approves an initial or new advertisement or planned giving brochure, existing advertisement or planned giving brochure that has been materially modified since last approval.
- Notifies the beneficiary of a bequest promptly when notified of the death of a donor who has named the U.T. System or an institution as a beneficiary.
- Provides instructions to estate executors and administrators regarding the disposition of estate assets bequeathed to U.T.
- Reviews all charitable remainder trusts for which the Board would be the trustee.
- Reviews all charitable remainder trusts for which the Board would be the successor trustee.
- Keeps proper gift records and required tax returns filed by the Office of External Affairs on its designee (from section I E of procedures).

UTIMCO

- Maintains separate accounting records for each endowment so that investments can be accurately analyzed over time.
- Reviews assets to be processed or administered by the ODGPS that create potential unrelated business income tax liability in conjunction with ODGPS for economic purposes.
- Analyzes a proposed gift of interest in a limited partnership to confirm there is to be derived by the institution that is commensurate with any potential risks associated with the gift.
- Reviews all charitable remainder trusts for which the Board would be the trustee.
- Reviews all charitable remainder trusts for which the Board would be the successor trustee.

OGC

- Reviews assets to be processed or administered by the ODGPS that create potential unrelated business income tax liability in conjunction with ODGPS for legal implications.
- Performs legal review of proposed gifts of an interest in a limited partnership to determine if there is a real benefit to be derived by the U.T. System or institution that is commensurate with any potential risks and costs associated with the gift.
- Performs legal review and approves an initial or new advertisement or planned giving brochure and an existing advertisement or planned giving brochure that has been materially modified since last approval.

modified since last approval.

- Performs legal review of all charitable remainder trusts for which the Board w trustee.
- Performs legal review of all charitable remainder trusts for which the Board w successor trustee.
- Performs legal review and approves gifts of real estate, including remainder ir personal residences or farms, with a life estate reserved prior to acceptance.

President or President's Designee of an Institution

- Develop and implement Handbook of Operating Procedures policies consistent policy for the review and acceptance of gifts for which responsibility for accept delegated to presidents.
- Refers proposed gifts that do not conform to this policy to the Board for appro Agenda or the Docket.
- Signs a written agreement for each new quasi-endowment.
- Signs any gift agreement or other gift documentation to be signed by a repres Board after review of the gift for which responsibility has been delegated to pr

Executive Vice Chancellor for Business Affairs

- Refers proposed gifts of real estate that do not conform to this policy to the B approval via the Agenda or the Docket.

REO

- Review and evaluate gifts of real estate.
- Review and approve gifts of real estate, including remainder interests in persc or farms, with a life estate reserved prior to acceptance.

ULWTO

- Review and evaluate gifts of mineral estates in real property.

Department Chair/Institution Administrative Officer

- Makes an effort to obtain non-binding repurchase provisions when the gift inv for which the donor or related parties are the primary market.
- Delivers donated assets once an endowment has been officially established to soon as possible for custody and investment by UTIMCO.
- Signs a written agreement for each new quasi-endowment.

OER

- Reviews and approves an initial or new advertisement or planned giving broch existing advertisement or planned giving brochure that has been materially m last approval.

U.T. Representative

- Makes an effort to obtain non-binding repurchase provisions when the gift inv for which the donor or related parties are the primary market.
- Keeps detailed written notes to supplement written correspondence to demon:

practices in negotiations with each donor.

- Makes reasonable efforts to be aware of and sensitive to the donor's expectations.
- Advises all prospective donors in writing to seek legal and/or tax advice from counsel and professional consultants.

U.T. Employee

- Any U.T. employee who agrees to serve as executor or administrator of an estate that benefits the U.T. System or institution must immediately notify the ODGPS of the appointment.
- Any U.T. employee who agrees to serve as a trustee of a trust benefiting the U.T. institution must immediately notify the ODGPS of his or her appointment.

PROCEDURES

Section I: Responsibility to Donors

A. U.T. Representative should make reasonable efforts to be aware of and sensitive to donor expectations.

B. U.T. will advise all prospective donors in writing to seek legal and/or tax advice from counsel and professional consultants. Each U.T. representative should be knowledgeable and should disclose to the donor advantages and disadvantages that could reasonably influence the decision of the donor to make a gift to U.T. In particular, planned gift items that have adverse tax implications to the donor or are subject to variability (such as market value fluctuations or income payments) should be discussed fully.

C. U.T. will not knowingly accept a gift that it believes to be contrary to the donor's best interests.

D. U.T. will not furnish property appraisals or valuations to donors for tax purposes or other purposes. U.T. will not knowingly participate in a transaction in which the value of a gift exceeds its true fair market value to obtain a tax advantage for a donor.

E. In accordance with the provisions of the *Internal Revenue Code of 1986*, as amended and related regulations, proper gift records will be kept and required tax returns filed by the U.T. External Relations (OER) or its designee, ODGPS, for all gifts processed and/or administered by the ODGPS, as designee of the Vice Chancellor for External Relations. The Vice Chancellor for External Relations or the Vice Chancellor's designee(s) shall execute all necessary IRS forms that are processed or administered by the ODGPS, including IRS Forms 8283 and 8282. Forms that are not processed or administered by the ODGPS will otherwise be executed by the appropriate officer(s) at each institution.

F. All gift records will be released only when authorized by the donor or as required by law, with the exception to the disclosure of the name of the donor is provided in Section 552.1235 of the Government Code.

Section II: Review and Acceptance of Proposed Gifts

A. The institutions shall submit for consideration gifts to be processed or administered (as set out in Regents' *Rules and Regulations, Series 60101*) to the ODGPS as soon as possible following the procedures outlined below. Prior to acceptance by the ODGPS, the ODGPS will review all gift assets processed or administered by the OER (as set out in Regents' *Rules and Regulations, Series 60101*) other than cash or marketable securities. Such review will be done in conjunction with

System offices and, as appropriate, with The University of Texas Investment Management (UTIMCO) or other financial managers authorized by the Board of Regents of The University of Texas System (Board). Each proposed gift shall be reviewed to determine whether it should be accepted, including: consideration of any required cash expenses, liabilities, contingent liabilities, business income taxes, donor requirements which may result in risk of loss, and other funds available to cover expenses and liabilities. This review process shall determine whether economic risks are appropriate prior to acceptance of the gift. Examples of assets that may include limited partnership interests, stock of closely-held corporations, stock of S corporations, options, warrants, and intellectual property.

B. Assets to be processed or administered by the ODGPS that create potential unrelated income tax liability must be reviewed by the ODGPS in conjunction with UTIMCO for economic implications and by the Office of General Counsel (OGC) for legal implications.

C. Gifts of real estate shall comply with the Regents' *Rules and Regulations, Series 601* for Acceptance of Gifts of Real Property and the U.T. System Environmental Review Policy for Acquisitions of Real Property Assets. These and additional documents may be found on the Office's Web site (REO).

D. Any gift agreement or other gift documentation to be signed by a representative of the institution shall be signed by a properly delegated representative, after review of the gift as provided in any applicable institutional policy.

E. The presidents of the institutions should develop and implement Handbook of Operations policies consistent with this policy for the review and acceptance of gifts for which responsibility for acceptance has been delegated to presidents.

F. Any proposed gift that does not conform to this policy shall be referred to the Board via the Agenda or the Docket. Any such referral must first be reviewed by the Chancellor. The Chancellor's recommendation obtained. It is the responsibility of the institution president or the Executive Vice Chancellor for Business Affairs, respectively, to refer non-conforming gifts to the Board.

Section III: Gift Processing

A. Institution business offices and development offices, the Office of Academic Affairs (OAA), the Office of Health Affairs (OHA), the Office of Business Affairs (OBA), the REO, University of Texas Operations (ULWTO), the OER, the ODGPS and the OGC will cooperate as necessary to process proposed gifts promptly.

B. Gifts are valued as of the date transferred to the Board in accordance with the provisions of the Internal Revenue Code and applicable regulations. The amount received from the sale of a non-cash gift shall be the fair market value or less than the value of the gift.

C. Gifts of real estate must be reviewed and evaluated by the REO and/or ULWTO as provided in the Regents' *Rules and Regulations, Series 60103: Guidelines for Acceptance of Gifts of Real Estate*.

D. Gifts of securities that are donated to an institution must be reviewed and processed by the ODGPS. The Regents' *Rules and Regulations* authorize only certain U.T. System and University of Texas personnel to purchase, exchange, sell, assign and transfer securities on behalf of the Board. No person or entity may execute or instruct others to execute a transaction involving any securities in the name of the Board. When securities are to be given to an institution, the institution shall submit the securities to the ODGPS immediately for instructions, even if the gift is for current purpose use at the institution. For current purpose gifts, sale proceeds will be transferred to the institution after receipt by the ODGPS.

Sale of the security will take place as soon as possible after the transfer. ODGPS will not

institution of the receipt and sale of securities as early as practicable. Acknowledgment be provided to the donor by the institution that the gift benefits, and will be in compliance with the provisions of the Code and regulations thereunder.

E. Gifts of Closely-Held Stock

1. An effort should be made to obtain non-binding repurchase provisions when the gift securities for which the donor or related parties are the primary market.

2. To the extent applicable, the following criteria, in addition to those outlined in Section 1, must be met for the ODGPS to approve or accept gifts of closely-held stock:

- The ODGPS must assure there is a written gift agreement indicating the donor's intent to make the gift and its purpose.
- Prior to acceptance, the donor must provide to the ODGPS financial and valuation information on the stock, including appraisals and/or statements of value.
- Copies of any applicable shareholder agreements and buy-sell agreements must be provided by the donor for review by the ODGPS, the OGC, and UTIMCO, especially those containing any restrictions on the transfer of the stock, i.e., rights of first refusal, formulas for determining stock price.
- The donor must provide to the ODGPS a written copy of any related offer to purchase the stock, including the purchase price per share.
- The ownership of the stock must be properly assigned by the donor to the Board of Regents.

F. Gifts of Interests in Limited Partnerships

1. The ODGPS or the institution's president, as appropriate, may accept gifts of interests in limited partnerships, subject to a thorough analysis of all available information by the ODGPS, with the assistance and advice of the OGC and UTIMCO. At a minimum, the U.T. System should obtain documentation of the limited partnership agreement, the proposed assignment of interest, and financial statements sufficient to describe the assets of the partnership and their valuation.

2. The ODGPS, the OGC, and UTIMCO will analyze a proposed gift of an interest in a limited partnership to confirm that there is a real benefit to be derived by the institution that is commensurate with any potential risks and costs associated with the gift. Among the factors to be considered are the following:

- The donor's relationship to the institution designated to benefit from the gift, the donor's demonstrable charitable intent, and whether the limited partnership is merely an accommodation for the donor.
- Administrative obligations to be assumed by the U.T. System, such as monitoring the partnership for unrelated business income tax.
- Guaranteed annual distribution from the partnership interest sufficient to cover the U.T. System's administrative costs or a cumulative payment made in the form of a preferred distribution to other partners at the termination of the partnership.
- Whether the partnership agreement provides for a defined distribution/ termination date.
- Whether the U.T. System has any obligation to make capital contributions to the partnership.
- Whether the U.T. System would be held liable for debts of the partnership.
- Whether the partnership appears to be adequately capitalized in light of its activities and whether it maintains liability insurance.

3. All confidentiality requirements must allow release of information as required by the Information Act.

4. The U.T. System should receive a full accounting for the partnership annually, as well as any tax returns filed or required to be provided to partners pursuant to the Internal Revenue Code. Gifts of Interests in General Partnerships

U.T. will not accept interests in general partnerships due to the state constitutional limitation on incurring state debts and the risk of future liability or debt.

H. Gifts of Personal Property (Other than Outdoor Works of Art)

Gifts of personal property, other than outdoor works of art, donated to an institution must be reviewed for approval and processed by the ODGPS prior to acceptance only if used to make additions to an endowment or charitable remainder trust. Gifts of outdoor works of art comply with Regents' *Rules and Regulations, Series 60101*, Section 2.1.

Section IV: Gifts to Establish Permanent Endowments Held and Administered by the Board of Regents

Endowments will be established with gifts that have been completed for tax purposes or a combination of such gifts, pledges, and other funds at a minimum funding level of \$10,000. Endowments may be established to fund scholarship programs and other educational programs as the endowed academic positions specified in Regents' *Rules and Regulations, Series 60101* concerning endowed academic positions. All endowments must be reviewed and approved by the ODGPS and must meet minimum funding levels as set out in Regents' *Rules and Regulations, Series 60101* and *Series 60202*. With the approval of the appropriate Executive Vice Chancellor or Chancellor for External Relations, each institution may set minimum funding levels that are higher than those set by the Board. The required minimum funding level will be determined by the Board of gifts from donors and transfers of funds, valued as of the gift date or date of transfer. Reinvestment of endowment distributions may be used to determine the total funding level.

Example: A donor contributes \$20,000 a year for five years to fund a professorship with an initial contribution value of \$100,000. At the end of the five-year period, the endowment may have a market value of \$250,000 due to capital appreciation. However, the contributed value remains \$100,000. This endowment cannot be redesignated as a distinguished professorship until the contribution amount reaches \$250,000 from additional gifts or transfers of funds.

Negotiations and fundraising for an endowment are permitted prior to its formal approval and establishment by the Board or its designee(s). However, an endowment will not be approved unless it has been established prior to its approval by the Board or its designee(s). New endowments will not be created with accumulated distributions from existing permanent endowments; in rare and special circumstances such endowments may be created with the approval of the Chancellor for External Relations, provided the terms of the new endowment(s) are consistent with the terms of the endowment agreement governing the existing endowment.

A. Endowment Agreements

1. A written endowment agreement signed by the donor(s) is required for each new permanent endowment established. (See Exhibit II for sample endowment agreements.) This instrument, absent compelling reasons, include the following language:

- donor name(s);
- gift description and amount;
- pledge description, amount and due date;
- endowment name;

- college, school and/or department to benefit;
- a statement setting out the intended use or purpose for funds distributed from endowment;
- a statement that the funds shall never become a part of the Permanent Unive Available University Fund or the general funds of the State of Texas;
- a statement that, if in the opinion of the Board, future circumstances change : purposes for which the endowment is established become illegal, impracticabl able to be carried out to meet the needs of the institution, the Board may des alternative use for the endowment payout to further the objectives and purpo: institution, giving consideration to the donor's special interest as evidenced by purpose of the endowment;
- a statement providing that additions to the endowment from any other person unless prohibited, are made subject to the provisions of the endowment agree for a permanent or true endowment, will be considered permanent endowmer
- other provisions the responsible development officer and the ODGPS determin necessary or appropriate.

2. In cases where an endowment is established pursuant to an institution's solicitation the solicitation letter or document sent to prospective donors may be used as the endo agreement to evidence the donative intent and purposes. If the solicitation materials d the provisions required in bulleted paragraphs above, a separate gift agreement memo containing the required provisions and signed by the appropriate institution representa provided to the ODGPS by the U.T. personnel responsible for the solicitation.

3. A gift agreement memorandum should also serve as the endowment agreement in s funding is from multiple donors with no primary donor or donors. (See Exhibit III for a agreement memorandum.)

B. Custody of Assets

The assets donated to fund an endowment may be delivered to the ODGPS for custody investment by UTIMCO pending acceptance. A request for acceptance should be submi ODGPS by the institution as soon as possible after delivery of the assets. Once an endc been officially established, the donated assets must be delivered to the ODGPS as soor custody and investment by UTIMCO.

C. Selection Criteria for Scholarship and Fellowship Recipients

1. A donor may specify or require that:

- the scholarship or fellowship be for institution-wide use;
- the recipient be registered in a particular college, school or department within or the recipient be limited to students studying in a specific academic major or area of study or concentration;
- the recipient have a specified class standing or have completed a specified nu semester hours of college work;
- consideration of recipients be conditioned on academic performance;
- consideration of recipients be based on financial need;
- a preference be exercised in association with the renewal of the award;
- recipients be students from a particular geographic area (city, school district, state). The population of U.T. students from the named geographic area shoul enough to allow for consistent use of the scholarship and to avoid an allegatio

funds were "targeted" to a particular individual or individuals; or

- the recipient be a U.S. citizen or legal resident of the United States. Any gift to a recipient designated for U.S. citizens must also include permanent residents as federal law requires that state entities must give equal consideration to U.S. citizens and to non-citizens admitted to permanent residency.

2. If consistent with Regents' *Rules and Regulations*, U.S. Department of Education regulations, and interpretations of the Texas Higher Education Coordinating Board, the donor may specify certain other selection criteria as a preference for recipient but not as a restriction. U.T. will make reasonable efforts to honor preferences specified provided in this paragraph 2; however, as provided by applicable law, no person shall be denied participation in, denied the benefits of, or be subject to discrimination under, any activity sponsored or conducted by the U.T. System or any of its institutions, on the basis of race, color, national origin, religion, sex, age, veteran status or disability.

3. Endowed scholarship or fellowship awards should be based on the funds distributed in the endowment, rather than a specific amount. The size and number of awards will be determined by appropriate scholarship committees at the institution or under the scholarship program of the endowment. Scholarship or fellowship amounts may also be referred to in more general terms such as "tuition and required fees" in the endowment agreement.

4. The IRS will not recognize a contribution for charitable tax deduction if the donor retains control over the gift funds or how they are used. In accordance with that understanding, the donor should not participate in the final selection of scholarship recipient(s), name a non-U.T. employee selection committee, or structure the criteria so narrowly as to limit selection to a small group comprised solely or primarily of individuals related to the donor or that the donor would control.

D. Endowed Academic Positions

There are six categories of endowed and named academic positions with minimum funding set forth in Regents' Rules and Regulations, Series 60202. With the specific approval of the Board, an endowed academic position may be established without the required minimum funding if in accordance with agreements recommended by the Chancellor, the appropriate Executive Vice Chancellor and the Vice Chancellor for External Relations.

No initial appointment will be made to an endowed academic position without prior approval of a Request for Budget Change by the president of an institution after review and approval by the appropriate Executive Vice Chancellor. Subsequent new or continuing appointments to endowed academic positions may be approved as a part of the annual operating budget. As the IRS will not recognize a contribution for charitable tax deduction if the donor retains control over the gift funds or how they are used, a donor may not participate in the final selection of the appointee or specific individual as the holder of an endowed academic position.

E. Pledge Policy

Pledges from donors that follow this policy may be accepted to fund endowments of an institution as recognized by the Regents' *Rules and Regulations*.

1. At least 20 percent of the donor's total required minimum funding amount prior to the start of an endowment must be received prior to the acceptance of an endowment, i.e., before the endowment will be established.

2. The pledge for payment of the remaining funds shall not extend beyond five years after the execution of the endowment agreement; however, with the approval of the Vice Chancellor for External Relations, the pledge period may be longer than five years under rare and special circumstances.

3. All funds that otherwise would be distributed from the endowment will be reinvested as a permanent addition to the endowment until the endowment is funded with the then recurring funding level for the endowment or is dissolved as provided in paragraph 5 below, except for endowed academic positions with the approval of the Vice Chancellor for External Relations and the Vice Chancellor's designee.

4. Funding levels will not be determined by the amount of net sale proceeds received from a gift or by the current market value of the investment held in an endowment. As an illustration, if a donor gives a gift of stock valued at \$10,000 to create a new endowment. The stock is sold and the sales proceeds are \$9,500. The \$10,000 endowment may still be created because the donor contributed a gift valued at \$10,000, although the endowment's value is only \$9,500.

5. If the donor is unable to fulfill the pledge by the end of the five year period, the endowment shall either be dissolved or redesignated as follows:

- If endowment funds are less than the minimum endowment funding level of \$10,000, the endowment may be dissolved with the approval of the Board or its designee(s). The president of the beneficiary institution shall designate an existing endowment to which the funds shall be transferred, taking into consideration the donor's original intent.
- If endowment funds are in excess of the minimum endowment funding level or are less than the level prescribed for the type of endowment originally approved, the endowment may be redesignated to the highest applicable level based upon the total value of the endowment with the approval of the Board or its designee(s).

Section V: Establishment of Quasi-endowments Held and Administered by the Regents

All quasi-endowments must be reviewed and approved by the ODGPS and must meet the minimum funding levels as set out in the Regents' *Rules and Regulations, Series 60101* and *Series 60102*. The required minimum funding level will be determined by the total value of transfers of funds to the endowment, valued as of the date of transfer. Reinvestment of endowment distributions to determine the total funding value. Requests to establish quasi-endowments should be made only when it is expected that the endowment will be maintained permanently. An endowment shall not be announced as having been established prior to its approval by the Board or its designee(s). Endowments shall not be created with accumulated distributions from existing permanent endowments; however under rare and special circumstances such endowments may be created with the approval of the Vice Chancellor for External Relations, provided the terms of the new endowment(s) are consistent with the terms of the endowment agreement governing the existing

A written agreement, signed by the institution's president or the appropriate dean or department head, is required for each new quasi-endowment established. (See Exhibit IV for a sample agreement memorandum for a quasi-endowment.) This instrument will, absent compelling reasons, include the following language, as applicable:

- Information and provisions described in Section IV. A.; and
- Amount and source or description of the funding.

Section VI. Classification of Endowment Funding

A. When mixed sources of funds (both gifts given specifically for endowed purposes and current funds) are used to establish an endowment, separate but related permanent and quasi-permanent endowment accounts will be created. Each endowment account must be funded with at least the minimum endowment funding level of \$10,000, (i.e., there would need to be at least \$20,000 total to establish separate endowment accounts). If the endowment is initially funded with less than \$20,000 from mixed sources (both endowed and current funds), the entire endowment will be classified as a permanent

endowment.

B. If only a permanent endowment account is in existence at the time of an additional an endowment established with mixed sources of funds, the institution will review the amounts of funds to be added to determine if a separate, but related quasi-endowment should be established. Administrative approval of the related quasi-endowment is not required if there is no redesignation of endowment level or other amendment. Alternatively, if only a quasi-endowment is in existence at the time of an additional contribution, administrative approval of a permanent endowment is not needed if there is no redesignation of endowment level or amendment.

C. If separate permanent and quasi-endowment accounts exist at the time of an additional contribution, the institution will review the source(s) of funds to determine the correct

D. When a transfer of current funds is to be combined with a donor's pledge, the ODGF will use the total of the donor's pledge, rather than the amounts of payments received, to determine if separate permanent and quasi-endowment accounts should be established.

E. Any reinvestment of endowment distributions will be classified in the same manner as the original contribution to the endowment.

F. Notwithstanding any of the above, any additional funds from any source will be classified as permanent endowment funds where the existing permanent endowment is governed by an executed endowment agreement that contains language that "all future additions to the endowment shall be made by the donor or others, including the Board of Regents or the institution, shall be subject to the provisions of the endowment agreement and shall be classified as permanent endowment funds."

Section VII: Investment, Payout and Reinvestment Policy for Endowments

A. As authorized by law, the Board has contracted with UTIMCO to invest all funds donated to the Board which are under the sole control of the Board.

B. No matching funds or other funds of U.T. may be held or managed by a party selected by the donor. No endowment shall be accepted in which the donor directs the investment trust, holds or may approve investment policy or strategy or on which the donor places any investment restrictions.

C. The primary and constant standard for making investment decisions for endowment funds shall be the prudent investor standard of judgment and care that prudent investors, exercising reasonable care, skill and judgment, would acquire or retain in light of the purposes, terms, distribution requirements, and circumstances of the fund then prevailing taking into consideration the investment of a portfolio of assets rather than a single investment."

D. All endowment gifts should be eligible for commingling for investment purposes with other endowment funds. The Board has established the U.T. System Long Term Fund, governed by the U.T. System Long Term Fund Investment Policy Statement, to manage the collective investment of endowment funds. This commingling permits enhanced investment programs, affords appropriate risk control through diversification, and provides for optimization of asset mix through time.

E. Specific language which allows endowment funds to be invested in the U.T. System Long Term Fund or otherwise pooled for investment purposes should be included in all endowment agreements.

F. An endowment agreement shall not include terms regarding endowment payout that conflict with either the payout policies established by the Board or the payout provisions of the Texas Management of Institutional Funds Act, as amended.

G. To ensure the Board has the ability to manage payout and reinvestment portfolio agreement should specifically allow the following:

1. Funds distributed during a year may be retained by the institution and expended for the endowment in subsequent years; and
2. The reinvestment of some portion of the payout as a permanent addition to the principal endowment at the discretion of the Board or institution.

H. Endowments Funded With Mineral Interests in Real Property

In accordance with the Texas Trust Act and the Uniform Principal and Income Act (UPI), percentage of mineral royalty proceeds must be allocated to endowment principal. Because and numerous depletion calculations would be required to determine the correct amount of endowment principal, 100% of mineral royalty proceeds should be allocated to principal administration. An institution may request a lesser allocation of principal by submitting request to ODGPS. Such request must be reviewed and approved by ULWTO in consultation with ODGPS and OGC.

Section VIII: Amendment or Termination of Endowments

- A.** Once an endowment is created, the terms, purpose, or existence of that endowment may be changed only if authorized by the terms of the endowment agreement, Board policy, or laws.
- B.** Any request received by an institution to amend the terms or purpose of an endowment or to terminate an endowment must be sent to the ODGPS for review and approval with the OGC.

Section IX: Endowments Held and Administered by External Trustees

U.T.'s interest in any endowment held and administered by an external trustee must be approved by the ODGPS.

In addition to provisions set out in Sections IV, V and VIII above, to the extent that the Board requires for endowments held and administered by external trustee:

- A.** A predictable stream of distributions from an endowment held by an external trustee with the Board's endowment payout policy and not in conflict with the payout provisions of the Uniform Management of Institutional Funds Act, as amended. The U.T. System prefers that institutions receive such payout on a quarterly basis, but no less often than annually.
- B.** That all appreciation from an endowment held by an external trustee be maintained in the endowment, except that distributed for the purpose(s) of the endowment.
- C.** That the external trustee provides annual reports to the ODGPS which detail the value of the endowment and the annual receipts and expenditures.
- D.** That separate accounting records be maintained for each such endowment so that its performance can be accurately analyzed over time.
- E.** That all appointments to endowed academic positions be selected by the institution.
- F.** That a request for acceptance of U.T.'s interest in the endowment be submitted by the institution to the ODGPS as soon as possible after delivery of the gift to the external trustee or notification to the external trustee that the endowment has been established.

Section X: Planned Gifts

A. Solicitation and Negotiation

1. The OER, the ODGPS, and the OGC must review and approve

- an initial or new advertisement or planned giving brochure and
 - an existing advertisement or planned giving brochure that has been materially since last approved by the OER, the ODGPS, and the OGC to be mailed or otherwise furnished to potential donors before distribution to donors. Minor modification: planned giving advertisements or brochures require review by the OER and then to distribution to potential donors.
2. Negotiation, execution, and acceptance of any planned gift shall follow procedures of policy. All agreements shall include language previously approved by the OGC unless otherwise approved in accordance with the procedures set forth in this policy.
 3. It is the responsibility of each U.T. representative to keep detailed written notes to and written correspondence to demonstrate ethical practices in negotiations with each donor.
 4. The institution's representative working with a donor who desires to make a planned contact the ODGPS as soon as the institution's representative becomes aware of the plan.
 5. Payout rate guidelines for charitable remainder trusts are provided below in X.D.4 for U.T. Representatives authorized to enter into negotiations concerning planned gift agreements assist them during discussions with donors.
 6. Donors should be informed that payout rate guidelines may be adjusted if market conditions change significantly before an agreement is finalized.

B. Restrictions on Acceptance of Planned Gifts and Donated Assets

1. In accordance with Texas law, the Board cannot accept gift annuities and deferred gift annuities. Inquiries concerning gift annuities and deferred gift annuities will be referred to appropriate foundations established to benefit the U.T. System or its institutions.
2. Consistent with Board policy, the Board may serve as trustee of trusts for which the donor has the right to change the charitable beneficiary only if: (a) the U.T. System or its institution(s) receives irrevocably at least 50% of the total funding of the trust; and (b) the value of the U.T. System or institution's irrevocable interest equals the minimum requirements established below in X.D.4 for accounts that cannot be pooled for investment purposes.
3. Consistent with Board policy, the Board may serve as trustee of trusts that allow for principal only if: (a) the standards for invasion of principal are objective and non-discretionary; (b) the U.T. System or institution will receive irrevocably at least 50% of the total funding and (c) the value of the U.T. System or institution's irrevocable interest equals the minimum requirements established below in X.D.4. To avoid conflicts of interest, the Board will not serve as trustee of a trust which allows beneficiaries to invade the principal of the trust at the discretion of the trustee.
4. Consistent with Board policy, the Board may serve as trustee of a charitable remainder trust with multiple charitable remainder beneficiaries only if: (a) the U.T. System or institution will receive at least 50 percent of the remainder; (b) the value of the U.T. System or institution's irrevocable interest equals at least the minimum trust gift levels established below in IX.D.4. and (c) the other charitable remainder provisions deemed appropriate by the OGC.

As an example, a donor may fund a charitable remainder trust with assets that may not be used for investment purposes, such as real estate or restricted stock, name the Board as trustee, name the Board as trustee and the donor as remainder beneficiary for further benefit of one or more institution(s), and name a non-institution(s) as 50% remainder beneficiary(ies). In this instance, the Board would accept trustee terms were acceptable and the trust was funded at a minimum gift level of \$100,000.

5. To avoid conflicts of interest and to avoid liability issues, the Board cannot serve as a person, or as an executor or administrator of an estate.

6. Consistent with the Code and related regulations, the Board will not accept a plan known to have the potential to create unrelated business income tax liability for a charitable remainder trust.

7. In accordance with the provisions of the Code and related regulations, the Board will not hold stock in an S Corporation to fund a charitable trust without the written consent of all of its shareholders.

C. Management and Investments

1. The ODGPS is not authorized to administer or manage trusts of which the Board is a trustee.

2. The U.T. System may request reimbursement from charitable trusts of which the Board is a trustee for any third party charges incurred by the trust. Such charges may include, but are not limited to, bank custodial fees, real estate expenses such as appraisals, surveys, environmental remediation maintenance and repairs, and extraordinary legal fees. In circumstances where it is deemed inappropriate for the affected trust to bear such expenses, the institution shall reimburse the U.T. System.

D. Types of Planned Gifts

1. Wills and Bequests

- When an institution is notified of the death of a person who has named the U.T. System or an institution as a beneficiary, the ODGPS must be notified immediately and furnished with copies of all available documentation and correspondence. If the ODGPS is not notified of the death of a person who has named the U.T. System or an institution as a beneficiary, the ODGPS shall promptly notify the beneficiary of the bequest. The OER and the ODGPS have the exclusive authority to handle matters related to estates benefiting U.T., including to sign partial or complete releases of liability, and will be responsible for providing appropriate documentation to other U.T. System offices as appropriate.
- The ODGPS will provide instructions to estate executors and administrators regarding the disposition of estate assets bequeathed to U.T. All estate distributions will be directed by the ODGPS. Any tangible personal property not liquidated by the estate will be shipped directly to the institution. Unless otherwise requested by the institution, the ODGPS will promptly transmit any bequests designated for use as current funds to the institution.
- Any U.T. employee who agrees to serve as executor or administrator of an estate that benefits the U.T. System or an institution must immediately notify the ODGPS of the appointment. Upon notification, the employee will be furnished a statement of potential for conflicts of interest and directing that all communications pertaining to the estate between the employee and any office of the U.T. System or the institution be in writing.
- Employees of U.T. should not knowingly act as witnesses to wills in which the institution is named as a beneficiary.
- The U.T. System will not draft wills and other documents for donors, but, when requested, may provide sample language for the donor's consideration.
- If an individual provides a copy of the individual's will to a U.T. employee and the U.T. System or an institution as a beneficiary, the institution will promptly provide a copy of the will to the ODGPS for review. As necessary, and at the ODGPS's discretion, the ODGPS will furnish copies to the OGC and the institution development office for review. Any U.T. employee to whom an individual's will is furnished must protect the confidentiality of the will.

confidentiality of its contents to the extent allowed by law.

2. Life Insurance

- The ODGPS or the institution's president, as appropriate, may accept gifts of life insurance policies naming the Board as owner and beneficiary and may execute all necessary documents.
- The beneficiary institution is responsible for preserving the value of a life insurance policy owned by the Board pursuant to institution guidelines. The guidelines should include the manner in which the insurance policy is not paid-up and does not have any source of funding for payment of the premiums identified at the time of the gift or thereafter.

3. Gifts of Retirement Plan Assets

- The ODGPS or the institution's president, as appropriate, may handle gifts of retirement plan assets naming the Board as beneficiary, including processing remaining assets and execute all necessary documents.

4. Charitable Remainder Trusts Held and Administered by the Board

- All charitable remainder trusts for which the Board would be the trustee must be approved by the ODGPS, UTIMCO, and the OGC. A charitable remainder trust of which the Board is proposed to be trustee should have no more than two income beneficiaries, the first of which is at least 55 years of age. A term charitable remainder trust (not to exceed 30 years) may have income beneficiaries of any age and is not limited to two income beneficiaries.
- If the trust: (a) has acceptable terms, (b) is funded with cash or marketable securities, and (c) may be pooled for investment purposes, the trust must be initially funded with a minimum gift level of \$50,000.
- If the trust: (a) has acceptable terms, and (b) is funded with assets that may be pooled for investment purposes, the trust must be initially funded with a minimum gift level of \$100,000.
- A unitrust with a net income payout or net income with make-up provision payable to the Board established for trusts funded with assets other than cash or marketable securities must have acceptable terms depend upon the standard criteria plus the ability and length of time required to liquidate or manage the asset used to fund the trust.
- The following are the recommended maximum payout rates for charitable remainder trusts for which the Board would be the trustee:

For annuity trusts and straight unitrusts with income beneficiaries:

Ages 55 to 69	5%
Ages 70 to 79	6%
Ages 80 and above	7%

For net income unitrusts with income beneficiaries:

All ages	5%
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For term charitable remainder trusts: 7%

- Exceptions to subparagraphs in section 4 above must be reviewed by the ODGPS, UTIMCO and approved by the Vice Chancellor for External Relations.
- A request for acceptance must be submitted by the institution to the ODGPS as soon as possible after receipt of the gift.

5. Charitable Trusts Held and Administered by External Trustees

- Any U.T. employee who agrees to serve as trustee of a trust benefiting the U.T. System or an institution must immediately notify the ODGPS of his or her appointment. Upon notification, the employee will be furnished with a statement advising of the policy regarding conflicts of interests and directing that all communications pertaining to the trust involving the employee and any office of the U.T. System or the institutions shall be in writing.
- All charitable remainder trusts for which the Board would be the successor trustee must be reviewed by the ODGPS, UTIMCO, and the OGC. Donors who name the Board as trustee of a charitable remainder trust should be advised in writing that the Board will review the terms of the trust at the time of succession and determine then whether it will serve as successor trustee.
- The external trustee must provide annual reports to the ODGPS which detail the assets of the trust and the annual receipts and expenditures.
- A request for acceptance must be submitted by the institution to the ODGPS as soon as possible after receipt of the gift. Revocable interests will not be accepted.

6. Charitable Lead Trusts

- The Board may be designated as a beneficiary of a charitable lead trust if other provisions of this policy are met, but to avoid conflicts of interest, the Board will not serve as trustee of a charitable lead trust. Upon request, U.T. personnel may provide information to non-U.T. institutions in the donor's locale that may serve as a trustee.
- Consistent with Board policy, a predictable stream of income from a charitable trust in which the U.T. System or an institution is named as a beneficiary is preferred.

7. Pooled Income Fund

- Gifts to the U.T. System Pooled Income Fund may be accepted only if the beneficiary is age 55 or older and there are no more than two income beneficiaries for each trust established in the Fund. The minimum gift needed to enter the Fund is \$10,000, consisting of a contribution of \$5,000 with a pledge that additional contributions will be made to reach a total dollar share in the Fund to \$10,000 within five years.
- All gifts must be made in cash or readily marketable securities.
- A request for acceptance must be submitted by the institution to the ODGPS as soon as possible after receipt of the gift.

8. Remainder Interest in Real Property with Life Estate

- Gifts of real estate, including remainder interests in personal residences or farmland, must be reviewed and approved by the REO and the OGC and accepted by the REO prior to acceptance.

9. Gift Annuities

- Since the Board of Regents cannot accept gift annuities and deferred gift annuities, these types of gifts may be referred to The University of Texas Foundation, Inc. for acceptance on behalf of the U.T. System.

FORMS AND TOOLS/ONLINE PROCESSES

Sample Endowment Agreements (all 4) [PDF]

- Gift Only
- Gift and Pledge
- Newly Created Endowment with Multiple Donors
- Newly Created Quasi Endowment

APPENDIX

- Acceptance of Gifts Conforming to Policy Matrix

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