

GEORGIA STATE UNIVERSITY FOUNDATION, INC.

Policy number/name: 2.5 Gift Acceptance Policy Title V, Restrictions on Gifts

Issuing date: 6/4/2008 Effective date: 6/4/2008

Policy approved by: Board of Trustees

Governance oversight by: Development Committee

I. Revision history

Adopted 12/2/2004

Triennial Review and Amendment completed 6/4/ 2008

II. Purpose of the policy/Policy statement

From Gift Acceptance Policy Title I, Principles and Definitions:

The board of trustees of the foundation finds that the orderly and expeditious handling of gifts requires policy guidance from the board to protect the interests of donors, the university and the foundation. This policy provides for the acceptance, valuation and disposition of gifts to the foundation. It was developed as a resource for developing campaign reporting guidelines and foundation procedures.

Interpretive Note. The charter of the foundation was granted on January 13, 1958 and amended in 1969 and 1994. Several charter items specifically address gift acceptance and disposition. (DWB, 6/29/07)

II. Definitions

See Gift Acceptance Policy Title I, Principles and Definitions

III. Applicability

The policy applies to all gift and pledges to the foundation.

IV. Exceptions

The policy generally does apply to gifts directly to the university or gifts to other cooperative organizations. The “exception to the exception” is tangible gifts of personal property (gifts-in-kind) to the university.

V. Detailed policy statement

I. *Acceptance*

The foundation may accept restricted gifts. The president of the foundation has general authority to accept restricted gifts except “restricted cash contributions that have special conditions attached” of which the Bylaws require acceptance by the executive committee (Bylaws as amended through April 17, 2006, Article V, Section 4, Part C). “Special conditions” are defined as those that raise policy issues or are characterized by unique, unusual, demanding or highly detailed restrictions. No gift shall be accepted which creates an undue financial or administrative burden, impairs the university’s or foundation’s ability to define and pursue its mission, requires illegal or unethical acts, hinders governance or administration or compromise the university’s accreditation or the foundation’s tax-exempt status.

Interpretive Note. The “Cooperative Organization Guiding Principles Memorandum of Understanding” between the foundation and the university dated November 3, 2004 (see item 2) provides that the foundation “shall not accept any gift, donation, grant or enter into any transaction that creates any liability for the institution [i.e., university], without advance written approval by the president [of the university]. (DWB, 6/29/07)

II. *Gift Agreements*

A gift agreement, including without limitation memoranda of understanding and endowment agreements and descriptions, is indicated for a named endowment fund or when a gift goes beyond broad restriction and presents a level of detail that requires documentation for effective administration and stewardship. (A gift designated for a college or department without further restriction is an example of a broadly restricted gift.) The president of the foundation has the authority to negotiate gift agreements,

draft sample forms and promulgate procedures for concluding gift agreements. The following guidelines are included to give guidance to these activities:

- The gift agreement documents clearly and concisely the donor's intent and the roles and responsibilities of the donor and the foundation in the execution of the intent. Documentation of the donor's responsibility includes statements about the funding plan of the gift including without limitation the amount of gifts and pledges and the terms of fulfilling pledges.
- The gift agreement should preserve the prerogatives of the board of trustees to set investment policies, including endowment spending rules.
- A gift agreement should contain a "savings" or "escape" clause in the event the restrictions on the gift become obsolete, inappropriate or impracticable and must be changed.
- Gift agreements should state that they are governed by Georgia law.

Interpretive Note. The University System of Georgia "Guiding Principles for Cooperative Organizations" states that it the responsibility of a cooperative organization (e.g., the foundation to "administer assets and property in accordance with donor intent..." (item 2) (DWB, 6/29/07)

Interpretive Note. The charter of the foundation (item 11; see also item 8) states that "All contributions received accepted shall be devoted exclusively to the purposes set forth in this charter." (DWB, 6/29/07)

III. *Changing Restrictions*

The use of donated funds for a purpose other than that stipulated by the donor is prohibited. If another use is deemed necessary, consent for using the funds in a different manner may be sought from the donor or may be altered in accordance with the terms of the gift agreement. If the use becomes obsolete, inappropriate, or impracticable, court approval may be sought to alter the use. Similarly, for a donor to change the originally stated use of donated

funds, appropriate foundation officials must first agree to the change.

Interpretive Note. The *Official Code of Georgia Annotated* includes the "Uniform Prudent Management of Institutional Funds Act" (aka UPMIFA) (OCGA 44-15-1 through 44-15-8), which permits changes in restrictions by mutual agreement of donor and institution but also provides for court action. (DWB, 6/4/08)

IV. Restrictions on Planned Gifts

The foundation retains the right to disclaim distributions from matured planned gifts. If accepted, restricted planned gifts will be administered according to gift agreements previously executed by the donor and an authorized foundation representative. If no gift agreement was executed, then the planned gift will be administered in a manner that as nearly as possible achieves the donor's purpose.

In those cases where the donor makes no restriction on the use of a planned gift, it shall be the policy of the foundation to direct all such gifts to Unrestricted Net Assets Functioning as Endowments.

HELP

People to contact

Position Title

Director, Gifts and Records Management

Vice President for Development/President of the Foundation

Assistant Vice President for Development/Chief Financial Officer of the Foundation

Associate Vice President for Development (Development Resources)

Additional information and helpful resources

NCPG Counting Guidelines, 2nd Edition

CASE Management and Reporting Standards, 3rd Edition

Foundation policies

2.1 Gift Acceptance Policy Title I, Principles and Definitions

2.2 Gift Acceptance Policy Title II, Outright Gifts

2.3 Gift Acceptance Policy Title III, Pledges

2.4 Gift Acceptance Policy Title IV, Planned Gifts

2.6 Gift Acceptance Policy Appendices

Foundation procedures

2.5a Establishing Endowment Agreements & Endowment Descriptions
Procedure