

Clarifying the Definitions of Grants vs. Gifts

The following is presented as a guideline to determine if funds received from external sources should be treated as a grant/contract or a gift. In certain circumstances, it may be difficult to determine without a review of pertinent University and Board of Regents policies and procedures. In these cases, the intended use of the funds, the source of the project specifications, the nature of the proposed work, and the need/requirement for a legal binding agreement are all critical components in determining if they are grants, fees for services, or gifts.

- A **grant/contract** is an externally funded activity where there is an agreement representing the transfer of money or property from a sponsor in exchange for specific services, often including rights to and products derived from the services, some formal financial and/or technical reporting by the University as to the actual use of the money or property provided. The agreement is enforceable by law, and performance is usually accomplished in a specific time frame, with support being revocable for cause. Generally there is an agreement (orally or in writing) to provide any goods or services using university facilities or the official time or services of FHSU faculty and/or staff, the funds received should be treated as a sponsored project award to FHSU. Sponsored projects occur when FHSU or an employee of FHSU submits a bid, offer, proposal, or the like or responds (orally or in writing) to a request, announcement, call for proposals or the like that results in the issuance of an award involving FHSU and another party. These awards could be in the form of grants, contracts, cooperative agreements, or a variety of other agreement formats. All proposals for external sponsored project support regardless of funding support must be processed through the Grants Office.
- A **gift** is a voluntary and irrevocable transfer of money, services or property from an external donor for either unrestricted or restricted use of the University/ Foundation in the furtherance of the University/Foundation where there has been no commitment of resources or services other than, possibly, the committing to use the gift as the donor specifies. A gift may be restricted or unrestricted. An unrestricted gift may be spent at the discretion of the university and is not limited to specific purposes, objective, programs, or organizational units. A gift is considered unrestricted if the donor does not specify how the funds are to be used. A restricted gift is earmarked for a specific purpose, objective, program or organizational unit but the donor does not have specific control over expenditures or over the work performed. In general, a gift does not have terms that specify how the funding must be spent or administered. As a gift, the funding may be utilized at the full discretion of the recipient, and the funder expresses the goal of an activity rather than a "how to." The funder receives nothing of significant value in return, other than

recognition and disposition of the gift in accordance with the donor's wishes.

No single indicator is, by itself, a characterization of a gift vs a grant. All factors must be weighed to make a final decision.

Grants/Contracts will have one or more of the following characteristics:

- The proposed activity requires the execution of a grant, contract, agreement, Memorandum of Agreement or understanding, term sheet, or other such legal instrument that binds the parties to terms stated therein, thus requiring a review to insure FHSU's ability and responsibility to comply with all state and federal laws, as well as policies and regulations of FHSU and the Kansas Board of Regents.
- Money or property is awarded for a grant proposal submitted by the University in response to a request for proposal, published guidelines or through a competitive application process.
- Sponsor is a governmental agency (or is awarding governmental flow-through funds).
- Money or property is to match a government-funded project.
- The award is a contract, cooperative agreement, consortium agreement, grant, sub grant or subcontract.
- Money or property is awarded for the purpose of research, program development/operation, curriculum development, training, community service, planning or some other specific activity.
- Money or property is provided to achieve a specified scope of work or provide a specific product, service or other expected results within a specified period of time.
- A budget for expenditures by activity, function, or project period is required as a condition of funding.
- The activities involve the use of University facilities or other University resources.
- A specific commitment is made regarding the level of personnel effort, items of output (e.g., publications of papers or reports), or achievement of specific performance targets as a condition of funding.

- The sponsor places restrictions on the use of funds and/or retains the right to revoke the award. The sponsor specifies how funds are to be used and requires prior sponsor approval for changes from the originally approved budget items and disallowance of certain costs.
- Funds are deposited in a University account and the University is responsible for administration of the funds.
- Project involves regular payment of salaries or wages (from the sponsored funds) through the University's payroll system.
- The sponsor requires external audits, detail financial reports, invoices and/or technical status reports as a condition of the award.
- The sponsor requires that any unused funds be returned.
- The sponsor stipulates a variety of other terms and conditions, such as publication restrictions, rights to tangible and intangible assets, compliance with federal and state regulations, allowable and unallowable costs, subcontracting, insurance, indemnification and hold harmless clauses, protection of proprietary or confidential information, modifications, penalties, remedies, termination etc.

Gifts have some or all of the following characteristics:

- The award is from an individual, corporations, foundations.
- Donor refers to the award as a gift, donation or contribution and intends the award to be a charitable gift as reflected by the absence of any quid pro quo.
- The award is from a non-governmental source and is given for such activities as endowments, capital projects, general student financial assistance or other general operations of the University/Foundation.
- The award is given with few terms beyond specifying general intent. Any conditions or stipulations placed on the use of the award are reasonable and serve only to direct the award to support the desired area of interest to the donor.
- The award is given irrevocable and therefore, the donor relinquishes the rights to reclaim the award or any unused portion.
- No financial, technical or progress reports are required. However, courtesy, non-technical reports may be supplied.

- The donor makes the award to the University/Foundation without expectation of direct economic or other tangible benefit commensurate with the value of the award. Indirect benefits such as tax advantages, business or personal goodwill, and benefits derived from donor club status are of an immaterial nature and not sufficient to negate the gift intent.

How to Determine if it is a Gift or Sponsored Activity

