Classification of Gifts and Grants: Review of Saxon Policy - Summary of Issues
Council of Vice Chancellors for Research – July 13, 2007

Issue: Need to review the criteria/process under which the University determines whether an award should be classified as a gift or a grant.

Proposal: Formation of a systemwide work group to include both UCOP and campus representatives with expertise in relevant areas (e.g., Research Administration; Development/Donor Relations; Financial Management; Research Policy; Research Compliance).

Possible Charge to Work Group:

a. Review University’s 1980 Saxon policy (http://www.ucop.edu/ucophome/coordrev/policy/7-08-80.html) and its implementation systemwide.

b. Advise whether changes are needed to the policy, and/or whether Implementation Guidance should be issued to clarify and supplement policy.

c. If needed, develop recommended Guidance to:

   i. Clarify process and criteria to be used in determining whether an award should be classified as a gift or a grant;

   ii. Recommend models that could be used to reduce concerns that arise from current classification criteria/process: e.g., should UC consider:

      1. Creating third category of research award – a “research gift” (see Berkeley policy)?

      2. Creating uniform systemwide policy or practice regarding charge and use of administrative fees on certain categories of gifts?

      3. Draft guidelines based on premise that all research awards from charitable foundations are gifts unless they have certain characteristics?

      4. Adopting aspects of NACUBO standards?

   d. Consider whether Work Group’s charge should be limited to considering classification of awards related to research.

Possible Review Outcomes:

1. Revise Saxon Policy; OR

2. Maintain Saxon policy largely in current form, but supplement it with interpretive Guidance to include:

   i. clear criteria for determining when something is NOT a gift; and/or
   ii. specific recommendations for classifying awards from charitable foundations; and/or
   iii. clarification that certain indicia can be present without requiring classification as a “grant” (e.g., stewardship reports; brief program reports; summary financial reports; terms regarding indemnification); and/or
   iv. clarification that award classification need not dictate how institutional processes/goals are fulfilled (e.g., Contract & Grant office involvement may be appropriate/necessary in administering certain “gifts;” similarly, Development may be the appropriate lead contact in working with donors of certain awards classified as “grants;” rules such as those about conflict of interest reporting need not turn on how the award is classified).
BACKGROUND

The University of California receives millions of dollars in funding in the form of gifts and grants each year. Distinguishing between these two types of awards has been an ongoing challenge. An award’s classification as either gift or grant can have significant tax and financial reporting implications and may determine the administrative route it takes through the University.

Since 1980, the University has relied upon the “Saxon Policy” (http://www.ucop.edu/ucophome/coordrev/policy/7-08-80.html) to determine whether individual awards should be classified as gifts or grants. The Saxon Policy was issued by then-President David Saxon in response to a 1978 State Auditor General report to the Joint Legislative Audit Committee that concluded that some monies awarded to the University and classified as grants and contracts should have been classified as gifts. In broad terms, the Policy identifies gifts as those awards that come with no contractual requirements and grants as those that do.

Increasingly, donors are placing controls on gifts that had previously applied only to grants, serving to blur the line between these two types of awards and necessitating a re-evaluation of the Saxon Policy – is it adequate or are revisions necessary? We have begun the process of assessing the Saxon Policy internally and now would like to convene a small working group of campus representatives to look at the policy in more depth. Below is a brief summary of some of the issues that may require this group’s consideration.

**The Saxon Policy**

Classify awards as gifts when
- Donor does not impose contractual requirements
- Funds are awarded irrevocably

Classify awards as grants/contracts when
- Provision for audits by or on behalf of the grantor
- The grantor is entitled to receive some consideration such as a detailed technical report of research results or a report of expenditures
- Testing or evaluating of proprietary products is involved
- The research is directed to satisfying specific grantor requirements (e.g. terms and conditions stating a precise scope of work to be done rather than a general area of research)
- A specified period of performance is prescribed, or termination is at the discretion of the grantor
- Funds unexpended at the end of period shall be returned to the grantor
- Patent rights are requested by grantor

The Saxon Policy states that overhead will apply to grants, but not to gifts.

**Concerns About the Saxon Policy**

In addition to the challenges presented by increasing donor requirements related to gifts, additional internal concerns may merit a review of the Saxon Policy. These concerns include:

*Perception/Reality that indicia are applied too rigidly* There may be a need to review and provide more guidance relating to the comparative import of the various indicia described in the Saxon Policy and how they should be considered in award classification.

*Perception/Reality that process for analysis/classification takes too long and is too “bureaucratic”* This perception may affect donor relations and may warrant a consideration of
different models for improving the administrative process relating to the classification of awards and simplifying/streamlining contacts with donors.

Lack of clarity regarding which unit has authority to decide how an award will be classified
There may be a need to provide more guidance to campuses regarding which units have authority to classify awards, and a consideration of how to promote communication/cooperation among relevant administrative units.

Lack of consistency in campus practices, both regarding classification and regarding application of overhead/gift fees.

Adequacy of resources The University currently lacks a mechanism to ensure that when an award includes terms that require administrative follow-up (e.g., reporting), that those costs are covered, and that responsibility for follow-up is clearly delegated to unit with expertise/infrastructure best suited to conduct that follow-up.

No distinction made between process for classification depending on type of donor There may be a need to consider whether there should be a presumption that awards from charitable foundations are “gifts,” unless certain criteria are present [e.g., terms giving IP rights to donors; terms providing for a “deliverable”].

Instances in Which Classification May be Difficult
Increasingly, donors are placing controls on gifts such as financial reports, right to audit, sharing of royalties etc. that previously had applied only to grants. This has served to blur the line between gifts and grants. Examples of instances in which the distinction between gift and grant may not be clear:

- Can an award be considered a gift if it requires a subcontract?
- Can gifts come from local governments?
- Can an award be a gift if the donor requires indemnification by the University? (i.e. is indemnification a benefit to the donor?) [Currently, Regental authority to approve indemnification is delegated to the President and can only be granted on a case by case basis with the approval of the Office of General Counsel]
- Can an award be considered a gift if it has been awarded by a foundation funded by a for-profit corporation where the funded research will benefit that corporation?

Implications of Classification
Classifying an award as a gift or grant can have significant implications that raise issues relevant to determining whether the Saxon Policy merits revision:

Administration of Award: Classification of awards as gifts or grants determines how and by whom an award will be administered. A gift would normally be administered by a campus’ Development Office and a grant by a campus’ Office of Sponsored Projects; each has varying levels of expertise in different areas of award administration and this expertise may merit consideration when determining which office might most appropriately administer an award. For example, the administration of an award that is subject to detailed and frequent financial reporting (e.g. by budget line item) may be facilitated if that award is administered by the Office of Sponsored Projects.

The cost to the University of administering an award may depend on the number of reporting requirements tied to that award. Since gifts are not subject to indirect costs, the University may incur significant costs in administering gifts. Some universities believe that gifts should be
subject to overhead. At some campuses, the Development Office is funded by a 6% “gift tax”; funding of the office is tied to the number of gifts obtained.

The Office of Research Administration at the Office of the President has identified the following issues as relevant to determining whether an award is administered by the Office of Sponsored Projects or a Development Office:

- Indemnification requirements
- Intellectual property requirements
- Requirements regarding ownership and use of generated data
- Auditing requirements
- Testing of donor products
- Performance requirements
- Payments contingent upon performance
- Mandates involving anti-terrorism clauses etc.
- Political policies that restrict academic freedom

Donor Relations: Donor relations often play a significant role in obtaining and classifying an award; in the case of large awards particularly, it may be of importance from a donor relations perspective to classify an award as a gift rather than a grant in line with the wishes of a donor, even when that award may bear the characteristics of a grant.

Faculty members frequently cultivate important relationships with donors. In instances where a faculty member obtains an award from a private donor, there may be a reluctance to classify the award as a grant that is then subject to overhead. Faculty members may also make informal commitments to donors regarding the sharing of data, reporting etc. that would normally trigger the classification of an award as a grant. It is unclear how, or whether, such relationships might appropriately be managed.

Auditing and Financial Reporting: UC’s A-133 auditors, PriceWaterhouseCoopers recently stated the importance of the classification of extramural awards with respect to ensuring the accuracy and credibility of UC financial statements. (Contracts and grants, but not gifts, are reported to the Office of the President for inclusion in the Corporate Systems Database).

UC reports data related to extramural awards to the National Association of College and University Business Officers (NACUBO). It is unclear that NACUBO classification criteria are adequate for the classification of transactions for all UC purposes.

Tax Liability: The classification of an award has important implications for its status under the Internal Revenue Code. An award may be tax exempt if classified as a gift by the grantor and consideration should be given to whether UC might be liable in instances where a grantor claims a tax exemption for an award that UC has accepted as a gift but which may bear the hallmarks of a grant.

Availability of University Resources: Contracts and grants are subject to the UC Contracts and Grants Manual, local campus policies, and related approvals (e.g. regarding availability of space, other resources, Principal Investigator time etc.) These guidelines and policies may be circumvented by classifying an award as a gift, with a potential impact on the availability of resources etc.

Campus Perspectives
At a recent meeting of campus Contracts and Grants Officers, campus representatives indicated that, in general, they view the current Saxon Policy as adequate. However, our understanding is
that development officers may feel that there is a more pressing need to review and, perhaps, clarify or revise the policy or its implementation.

Some campuses provide additional training regarding how to distinguish between gifts and grants, while other have published supplemental guidelines. Additionally, since the Saxon policy is silent regarding who should be charged with classifying an award as a gift or grant, campuses have adopted different practices: in some instances, the Office of Sponsored Projects reviews all awards and determines whether they should be treated as a gift or grant; at Riverside a committee is charged with reviewing those awards that are difficult to classify.