Policy 3.9
Gift Agreements

This policy version was not current at the time of printing. Please see http://policies.emory.edu/3.9 for the current version.

Responsible Official: VP for Development & University Relations
Administering Division/Department: Gifts
Effective Date: June 23, 2008
Last Revision: July 17, 2014

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Overview

Preparing a gift agreement will be an iterative process involving the development office, leadership of the unit receiving the gift, the appropriate Executive Vice President, and the donor. It shall be the responsibility of each Vice President for Development to work with development officers, academic leadership, and appropriate cabinet members to ensure that this process is undertaken in an open and well-communicated manner. In certain cases, the Office of General Counsel may be consulted as needed. The following policies and procedures shall guide this process.

Applicability

This policy governs the creation and execution of formal gift agreements which document the mutual understanding between a donor and the university. The primary purpose of formal gift agreements is to document donor intent, which includes donor restrictions on gift designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by the donor and the university.

The policy also stipulates the use of a memorandum of understanding (MOU) to clarify the gift's designation, use, and reporting requirements when donors are unable or unwilling to sign formal agreements. It also stipulates the use of an award letter when a gift is from a corporation or a foundation.

Any university department benefiting from a gift is obligated to use that gift according to the wishes of the donor as documented in formal gift agreements and/or other documentation clearly stating donor intent.

Policy Details

Gift Documentation

All formal gift agreements, MOU’s, and all other applicable documentation (i.e., subsequent revisions and addenda) are created by the DAR Central Stewardship Office in consultation with the soliciting development officer. All documentation created by the DAR Central Stewardship Office must be in the format approved by DAR leadership and the Office of the General Counsel. These documents must be maintained in the DAR database.
Formal Gift Agreement

- A formal gift agreement must be created for:
  - Any gift to create an endowment
  - Any gift to name any physical space (building, facility or portion thereof)
  - Any gift to name an academic unit or program
  - Any non-endowed (expendable) gift of $50,000 or more

Exceptions

In certain situations, an MOU and/or award letter may be acceptable in lieu of a formal gift agreement, as follows:

A. Gifts from Individual Donors:

If a donor is unable or unwilling to sign a formal agreement, yet commits to make a charitable gift to Emory, an MOU should be created that documents the donor’s intent, which includes donor restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by the donor and the university. The MOU must be supported by a letter of intent and/or alternate documentation (i.e., internal memos, emails, letters, etc.). See Section 5: Definitions for information on letter of intent, alternate documentation, and Memorandums of Understanding.

B. Gifts from Foundations and Corporations:

An award letter from a Foundation or Corporation is an acceptable form of documentation if it accepts the terms of the original proposal in total and/or documents restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and/or other obligations agreed upon by the foundation or corporation and the university. The gift award proposal and other documentation submitted to the foundation or corporation clarifying the use of the gift must also be attached to the gift record.

However, an MOU, supported by appropriate alternate documentation, should be created in the following situations and maintained as part of the gift’s document of record if:

- The gift award letter accepts some but not all of the terms of the original proposal or does not refer to the original proposal and/or its associated details (as discussed above).
- The restrictions on the gift, as defined by the donor, have changed since the original gift award letter.

See Section 5: Definitions for information on alternate documentation and Memorandums of Understanding.

Additional Considerations

- Indirect Fees - Per the university's endowment spending and distribution policy and other finance policies, if a donor stipulates that indirect fees (i.e. the infrastructure charge or any unit based fees) may not be charged against an endowment or expendable gift, the development officer must secure the approval of the dean/director of the unit, and the Gift Acceptance Committee prior to accepting the gift. Per the University spending and distribution policy, the benefitting unit may be assessed any indirect fees. If the gift is accepted, language reflecting the donor's restriction on fees must be documented in the agreement.
- Grants - Grants administered by the Office of Sponsored Programs that may require DAR’s involvement and/or stewardship in order to manage donor relations should be documented with an MOU. The Central Stewardship Office may draft an MOU in consultation with other development staff and/or OSP, as appropriate, after being made aware of the grant. This document will outline roles and responsibilities for DAR and OSP, including reporting and grant administration responsibilities.

Review and Signature Authority

The Central Stewardship Office will confirm that all formal gift agreements, award letters, MOUs, and all other applicable documentation have been reviewed by relevant stakeholders before obtaining signatures or adding documentation to the official record. The review should include the chief development officer of the unit securing the gift, the appropriate DAR VP, and the Controller’s office.

Formal Gift Agreements:

Signatures are obtained after the draft document has been thoroughly reviewed by appropriate internal parties and the donor(s). After the document has been reviewed and approved, the final agreement should be signed by all internal parties prior to obtaining the signature of the donor(s). In rare cases the donor(s) may be the first signer, but only upon approval of the appropriate vice president for development.

The Central Stewardship Office will obtain signatures on agreements in the following order:

- the appropriate vice president for development (Health Sciences or University Programs)
- the dean or director representing the unit receiving the gift
• the donor(s)
• Agreements for $1 million or more require the signature of Emory's president.

Revisions: At no time may the purpose of a gift as directed by the donor in any documentation, be revised or amended without the express consent of the donor or his/her legal designate. Non-DAR staff must direct all requests to amend and/or revise the purpose of a gift to the DAR office. DAR staff will work directly with the donor or his/her designate, as appropriate, to discuss amendments and/or revisions. Any revisions to the original gift agreement require either a) an addendum to the agreement that details the change and is signed by the appropriate parties, or b) a MOU with appropriate approvals as noted in “Gift MOU” below. In some cases a new gift agreement may be warranted.

Award Letter:
Please see section 3.b.

Memorandum of Understanding (MOU):
An MOU must be supported by a letter of intent or alternate documentation if available. The letter of intent or alternate documentation must be approved in writing by the appropriate VP for development.

Other Approvals:
In certain cases the Central Stewardship Office will seek the approval and/or review of other offices including:

• Office of the General Counsel: The Central Stewardship Office is required to consult the Office of the General Counsel when preparing agreements for gifts of real estate and/or those having a high degree of complexity.
• Office of Foundation and Corporation Relations: Documentation for gifts given through the Office of Sponsored Programs should be reviewed by the Office of Foundation and Corporate Relations if the gift requires DAR involvement and/or stewardship.
• Office of the Vice President for Finance and/or the Office of the Controller: Documentation for gifts given that use the terminology of “grant” or “endowment” in the language should be reviewed by the Office of the Controller prior to Emory’s acceptance.
• Named spaces, schools, units, etc.: Naming of any physical space, school, unit, and other major centers within the University in recognition of a major gift must meet the criteria outlined in the DAR naming policy and must be approved by the Naming and Inscriptions sub-committee of the Board of Trustees. The office of the Sr. Vice President for Development will provide the President’s Office with the requisite information for Board approval.

Distribution
The Central Stewardship Office will generate two (2) original gift agreements. One signed original will be provided to the donor(s); the second original shall be maintained in the files of the Office of Gift Records (OGR), where it will be digitally imaged and attached in the development database.

Copies of the signed formal gift agreement or other acceptable documentation in lieu of a gift agreement (MOU, gift award letters) along with any related revisions or addenda will be distributed electronically to:

• the appropriate unit development office
• the appropriate VP for Development
• the dean or director representing the unit receiving the gift
• the appropriate executive vice president (academic affairs or health affairs)
• the business unit finance officer
• the central stewardship office
• the office of the controller
• the development communications office

Additional Restricting Policies

• The use of donated funds for a purpose other than stipulated by the donor is prohibited.
• Clauses in proposals, gift agreements or solicitations that discriminate in favor of or against any race, color, religion, nationality, sexual orientation, or national origin are prohibited, with the only exceptions being when such a restricted clause is consistent with Emory Affirmative Action policies.
• The terms of any gift should be as flexible as possible to permit the most productive use of the funds, while clearly stating the intent of the donor.
• Gifts that restrict or impede the work or scholarly activity of a faculty member, fellowship holder or student will not be accepted.
• No fellowship or scholarship gift will be accepted if the terms of the gift in any way include a commitment for the future acceptance, employment, or provision of funds to or for any specific student recipient.
• The donor of a gift may not serve on any committee involved in the final selection or evaluation of students or faculty members who will receive funds related to the gift.
• Preferences for relatives or descendants in the awarding of scholarships or in the use of donated funds are unacceptable.
• Gifts from any donor for a fellowship or scholarship made on the condition or with the understanding that the award will be made to a student of the donor’s choice will not be accepted. Money received subject to such restrictions may be credited to a depository account within the University Office of Student Financial Aid, but will not be recorded as a gift to Emory University.

Definitions

**Donor**: A donor may be an individual or foundation or corporation (i.e., private funding agency) which gives assets to Emory University.

**Gift**: To qualify as a gift to Emory University, the following conditions must be met:

• The transfer of cash or other assets must be unconditional;
• The transfer must be in furtherance of Emory’s charitable mission; and,
• The transfer must be non-reciprocal, which means there must be no implicit or explicit statement of exchange, purchase of services, or provision of exclusive information to the donor in exchange for his or her gift.

**Gift Agreement**: A legal document, signed by a donor and an officer of the institution, confirming the mutual promises, commitments, undertakings, restrictions and agreements of the involved parties pertaining to the naming of a gift to the institution.

**Award Letter**: A letter from the foundation or corporation indicating that the proposal has been funded and documents the restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by the donor and the university.

**Memorandum of Understanding (MOU)**: An internal document that documents restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by the donor and the university.

• **Letter of Intent**: A document from a donor that documents a donor’s intent, which includes donor restrictions on the gift’s designation, use, reporting requirements, giving vehicle, contribution schedule, recognition, and any other obligations agreed upon by the donor and the university, and/or
• **Alternate Documentation**: Documentation from a donor (such as email and letters), and/or Emory University internal documents (i.e., internal memos, proposals, etc.) that provides details about the gift and notes any donor imposed restrictions on the gift’s use, designation, and reporting requirements.

Related Links

• Current Version of This Policy: [http://policies.emory.edu/3.9](http://policies.emory.edu/3.9)

**Contact Information**

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<th>Subject</th>
<th>Contact</th>
<th>Phone</th>
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<tbody>
<tr>
<td>Clarification of Policy</td>
<td>Maggi McKay</td>
<td>404.727.3518</td>
<td><a href="mailto:mbmckay@emory.edu">mbmckay@emory.edu</a></td>
</tr>
<tr>
<td>Clarification of Policy</td>
<td>Benjamin Tompkins</td>
<td>404.712.8073</td>
<td><a href="mailto:btompki@emory.edu">btompki@emory.edu</a></td>
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**Revision History**

Emory University policies are subject to change at any time. If you are reading this policy in paper or PDF format, you are strongly encouraged to visit policies.emory.edu to ensure that you are relying on the current version.