


Gift vs Grant Determinations

David Doty, Director
Sponsored Programs Administration



1

Agenda

Gift vs Grants

- Types of funding
- Consideration areas for Gift vs. Grant determinations
- Other complexities to consider
- NU Foundation vs UNMC/SPA
- Short story
- Summary

Other upcoming items

2



VS



3

Types of Extramural Funding

Gifts/Donations			Grants	Cooperative Agreement	Contract	OTA's
String Free	Directed	Directed+	Public Service	Public Service	Purchase Or Procurement	Mixed
<ul style="list-style-type: none"> • Gift to UNMC 	<ul style="list-style-type: none"> • Gift to UNMC • Directed to Dept. 	<ul style="list-style-type: none"> • Gift UNMC • Directed to Dept. • For specific purpose 	<ul style="list-style-type: none"> • CFDA / Assistance Listings 	<ul style="list-style-type: none"> • CFDA Federal Participation 	<ul style="list-style-type: none"> • FAR • Service • R&D • Hard Deliverables 	<ul style="list-style-type: none"> • Contract • Co-op • Grant
Federal Funding						
Foundational Funding						
Industry Funding				Industry		

4

Indicators of a Gift


- The donor receives (or expects) no benefit in exchange for the funding
- No detailed scope of work
- No detailed budget
- No restrictions on how the funds are spent (other than for the donations purpose)
- No detailed financial reporting
- No return of unexpended funds
- No period of performance

5

Indicators of a Grant


- Specific period of performance
- Detailed scope of work and budget
- Fiscal accountability to include:
 - Financial reporting
 - Prior approval on items of cost / budget changes
 - Audit provisions
 - Return of unspent funds
- Compliance related issues (COI, IRB, IACUC, EC, etc.)
- Rights to tangible or intangible property
 - Equipment, data, technical reports
 - Copyrightable or Patentable materials

6

Additional Considerations 


- No single indicator, distinguishes a gift from a sponsored project
- Expectations and understandings should be mutual by and between the Donor and the Donee
- For most foundations, entities, and individuals who provide gifts / donations do so in order to:
 - Get a tax write off
 - Maintain their non-profit status

7

Donations to UNMC 

- The University of Nebraska System maintains a 501(c)3 status with the IRS
- All four of the UN campuses can accept gift funds directly from donors
- The bulk of gift/donation/foundation funding goes through the NU Foundation
 - The Foundation accepts the funding from the donor, manages, and holds the funds
 - Reimburses UNMC for costs incurred against 37 type accounts

8

Why do we care? 

- With the potential for overlap by and between UNMC and UN Foundation and collectively need to be clear about where funding should route
- The main goal is to classify incoming extramural funding and get it in the right fund type / bucket
- This ensures proper:
 - Compliance Review (COI, EC, IRB, etc.)
 - Accounting Treatment
 - Administrative oversight by the University

9

Current and Upcoming...

- UNMC reports quarterly to the NU Foundation gift and foundational funding provided directly to UNMC
- VCR / SPA is currently working with the NU Foundation to develop a decision tree to help with these determinations
- Help ensure that we get funding situations to the right place faster
- 90% completed hope to have something to roll out to campus shortly

10

A Short (and true) Story

- The Players:
 - Dr. Well Known (Dr. WK)
 - Mr. X
- The parties:
 - Major Research University (MRU)
 - GloboCorp Incorporated




11

The Initial Short Story

- Dr. WK, conducts a presentation in their area of technical expertise at an international conference
- Mr. X, is in attendance and thinks that Dr. WK's work is very interesting
- Over drinks Dr. WK and Mr. X talk about how they might collaborate with one another
- GloboCorp issues a \$200K check made out to MRU and sends directly to the faculty member's campus address
- GloboCorp did not issue an agreement that needed to be signed
- Dr. WK hands the check over to his Departmental Administrators asking for a gift account to be created

12




Poll Question #1

Based solely on the information you have on hand; do you think that MRU should treat this funding from GloboCorp as a gift?

- Yes
- No
- Not sure

13




Poll Question #2

What are some potential issues with our story so far?

- Nothing the two players can talk openly and freely about potential for collaboration
- There are no strings attached to the funding, so creating a gift account is fine
- Dr. WK can't charge the costs of the drinks they had at the reception to the University as it's an unallowable expense
- All the above
- None of the above


14



Story Continued...

- Dr. WK has a gift account created within their department as requested
 - The \$200K is deposited in that account
 - Work is conducted using the funds
- MRU sends a gift acknowledgment letter addressed to Mr. X at GloboCorp, thanking them for their kind and generous donation to MRU
- About 2 years after the donation, Dr. WK and their research team believe that they have created some patentable Intellectual Property (IP) while using these funds
- Dr. WK reports the invention to the MRU technology licensing office as well as GloboCorp

15




Poll Question #3

With this additional information; do you still think that MRU should treat this funding from GloboCorp as a gift?

- Yes
- No
- Not sure

16




Poll Question #4

Who do you think owns the Intellectual Property?

- GloboCorp, they provided the funds under which the intellectual property was created
- MRU, the funding under which the intellectual property was coded in their system as a gift
- Both parties have a potential claim
- None of the Above


17



Story Continued...

- With valuable IP at play everyone becomes really interested in this project and start to ask questions
- Which lead to information that had not previously been disclosed, becomes clearer that processes were not followed by either party:
 - Dr. WK and Mr. X jointly developed a specific project research plan and detailed budget prior to any check being cut to MRU
 - When GloboCorp sent the check to MRU they included the company purchase order. Dr. WK was told by Mr. X was just standard procedure and didn't need to be signed
 - Mr. X and GloboCorp didn't follow up on the MRU donation letter and should have clarified that the funding was not a donation but for a R&D project

18




Poll Question #5

With this further information; do you still think that MRU should treat this funding from GloboCorp as a gift?

- Yes
- No
- Not sure

19




Poll Question #6

What do you think happens next?

- Nothing, both parties go about their merry way
- WW3 breaks out both parties claiming ownership of the IP and threats of lawsuits
- MRU has the high ground it's a gift, sorry for you GloboCorp
- GloboCorp's purchase order trumps all and MRU is the one crying


20



Story Continued...

- Both parties claim ownership
 - GloboCorp
 - While they didn't issue an agreement, they did issue a Purchase Order (PO) which states:
 - GloboCorp own everything resulting from the work
 - By cashing the check and conducting the work you've agreed to the terms of the PO
 - Major Research University
 - As a gift should have no strings attached
 - Company had the opportunity to claim it wasn't a donation
- Threats of lawsuits from both parties
- GloboCorp says it will never work with MRU again

21




Poll Question #7

Who was harmed as a result of this interaction / situation?

- GloboCorp
- Major Research University
- Dr. Well Known
- Mr. X
- All the above
- None of the above


22



Story Continued...

- Nobody sues anyone
- Mr. X got shuffled off to another less important job
- Dr. Well Known continued with their research but never worked with GloboCorp again
- MRU eventually licensed the IP exclusively to GloboCorp for a limited amount of royalty revenue
- GloboCorp's initial stance that they would never fund projects at MRU ever again... eventually they did
- In the long run everyone ended up loosing with a larger relationship between the parties on hold for a four-year period

23



Summary

- The short story is not normal one, it is an oddball situation but shows what can happen if not all the facts are in hand
- Collectively (PI, Dept, College, SPA, Foundation) need to ask many questions when deciding Gift vs. Grant
- Better to get things in the right bucket from the start then to have to pull back from an initial determination
- There are many nuances to making a gift vs. grant determination
- More definitive decision tree is coming. In the meantime, don't hesitate to ask for assistance

24

Upcoming Items

- Effective 10/5 NIH no longer require DMS cost estimate in a single line item/cost category in the budget. DMS costs will now be in their germane budget categories but to be estimated and explained in justification.
 - <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-23-161.html>
- Internal Research Administration ListServ
- Working with the VCR office on some new communication mechanisms to get information out to the campus research community
- In the future training / session to be joint with the campus Research Admin community bringing other unit's perspectives and issues to the table (not just SPA)

25



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26
