

21.05.02 Reporting of Foreign Gifts, Donations, Grants, Endowments and Contracts

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Regulation Statement

Members of The Texas A&M University System (system) have certain state and federal disclosure requirements when they accept gifts from foreign sources.

Reason for Regulation

The failure of system members to properly comply with the federal and state disclosure requirements for gifts from foreign sources can result in sanctions and financial risk to the organization.

Procedures and Responsibilities

1. GENERAL

Section 51.572 of the Texas Education Code requires that each system member report to the Secretary of State each conditional gift, donation, grant, endowment (GDGE) or contract award received from a foreign source, regardless of value.

Section 1011f of United States Code, Title 20 requires each system academic member, including the health science center, to report to the United States Secretary of Education each GDGE received from or contract with a foreign source with a value of \$250,000 or more, and each restricted or conditional GDGE or contract, regardless of value.

2. REQUIRED DISCLOSURE REPORTS

2.1 Federal Disclosure Reports

- 2.1.1 If a system academic member receives a GDGE from, or enters into a contract with, a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other GDGEs from, or contracts with, that foreign source within a calendar year, the academic member must file a disclosure

report with the United States Secretary of Education on January 31 or July 31, whichever is sooner.

2.1.1.1 The report for a GDGE received from, or a contract entered into with, a foreign source other than a foreign government must include the aggregate dollar amount of the GDGE or contract attributable to a particular country. The country to which a GDGE or contract is attributable is the country of citizenship or, if unknown, the principal residence for a foreign source who is a natural person, and the country of incorporation or, if unknown, the principal place of business for a foreign source which is a legal entity.

2.1.1.2 The report for a GDGE received from, or a contract entered into with, a foreign government must include the aggregate amount of all GDGEs and/or contracts received from that foreign government.

2.1.2 Notwithstanding the provisions of Section 2.1.1, if a system academic member receives a restricted or conditional GDGE or contract from a foreign source, the member must provide a report to the United States Secretary of Education.

2.1.2.1 The report of a restricted or conditional GDGE or contract received from a foreign source other than a foreign government must disclose:

- (a) the amount, the date and a description of conditions or restrictions;
- (b) the country of citizenship or, if unknown, the principal residence for a foreign source who is a natural person; and
- (c) the country of incorporation or, if unknown, the principal place of business for a foreign source which is a legal entity.

2.1.2.2 The report of a restricted or conditional GDGE or contract received from a foreign government must include the amount, the date, a description of conditions or restrictions and the name of the foreign government.

2.2 State Disclosure Reports

If a system member receives a conditional GDGE from a foreign source, the member must file a disclosure report with the Texas Secretary of State. The Texas Secretary of State has ruled that the reporting requirement in Sections 51.572 and 51.573 of the Education Code may be satisfied by filing a copy of the report that is filed with the U.S. Department of Education in accordance with Section 2.1.

2.3 Relation to Other Reporting Requirements

The U.S. Department of Education and the Texas Secretary of State will accept a copy of a report required by any other department, agency or bureau of the Executive Branch in lieu of a report required by Sections 2.1 and 2.2 if:

- (a) the report contains requirements substantially similar to those in this regulation; and/or
- (b) the report contains requirements substantially similar to those in United States Code, Title 20, Chapter 28, Section 1011f.

2.4 Failure to Comply with State Reporting Requirements

If a system member fails to file a required disclosure statement with the Texas Secretary of State, the Attorney General may bring suit to compel disclosure. The member may be fined an amount equal to 5 percent of the conditional GDGE not reported and may be liable for the payment of reasonable attorney fees. Should the Attorney General fail to file such a suit, a private citizen may do so.

2.5 Failure to Comply with Federal Reporting Requirements

If a system member fails to file a required disclosure statement with the United States Secretary of Education, the United States Attorney General may bring suit to compel compliance. The member may be liable for the payment of full costs to obtain compliance.

Related Statutes, Policies, or Requirements

United States Code, Title 20, Chapter 28, Subchapter I, Part B, Section 1011f

Texas Education Code Sections 51.571 to 51.575

System Policy *21.05, Gifts, Donations, Grants and Endowments*

System Regulation *21.05.01, Gifts, Donations, Grants and Endowments*

Prior to the May 2011 version, this regulation was numbered as

System Regulation *25.07.02, Reporting of Foreign Contracts, Gifts, Donations, Grants and Endowments*

Definitions

Federal Reporting Requirements

Academic member – any academic institution or health science center that regularly operates as part of the system and is legally authorized to provide education beyond secondary school, to award bachelor's and advanced degrees and which is accredited by a nationally recognized accrediting agency.

Contract – any agreement for the acquisition by purchase, lease or barter of property or services by the foreign source, for the direct benefit or use of either of the parties.

Foreign source – (a) a foreign government, including an agency of a foreign government; (b) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states; (c) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; or (d) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source.

GDGE – any gift, donation, grant or endowment of money or property that is described in System Policy 21.05.

Restricted or conditional GDGE – any gift, donation, grant, endowment, contract, award, or other property of any kind which includes provisions regarding (a) the employment, assignment or termination of faculty; (b) the establishment of departments, centers, research or lecture programs, or new faculty positions; (c) the selection or admission of students; or (d) the award of grants, loans, scholarships, fellowships or other forms of financial aid restricted to students of a specified country, religion, sex, ethnic origin or political opinion.

State Reporting Requirements

Conditional GDGE – any gift, donation, grant, endowment, scholarship or other gift of money or property of any kind, the use of which is subject to conditions imposed, requested, or provided by a “foreign government” or “foreign person” and which conditions relate to what kinds of teachers or students may benefit from such gift or relate to the bias or slant with which subject matter supported by the gift may be taught.

Foreign government – a government, other than the government of the United States, or any state or political subdivision thereof.

Foreign person – (a) a foreign government; (b) an individual who is not a citizen or national of the United States or of a trust territory or protectorate of the United States; (c) a corporation, partnership, joint venture, proprietorship, trust, association or other entity that is created or organized under or existing pursuant to the laws of a foreign government or that has its principal place of business located outside the United States; (d) a corporation, partnership, joint venture, proprietorship, trust, association, or other entity that is created or organized under laws of the United States or any state or political subdivision thereof, a majority of the stock or other equity interest of which is directly or indirectly owned of record or beneficially by, or a majority of the membership of which is composed of, or which derives a majority of its funding from, a foreign government, an individual or entity described by the definitions (b) or (c) above, or a combination of such governments, individuals or entities; or (e) any committee or other group a majority of the membership of which is composed of, or a majority of the funding for which is derived from, a foreign government, an individual or entity described in the definitions (b), (c) or (d) above, or a combination of such governments, individuals or entities.

Member – any academic institution, agency, or health science center that regularly operates as part of the system.

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