

**UNIVERSITY OF CALIFORNIA,  
SANTA BARBARA**

**OFFICE OF RESEARCH POLICY**

**RESEARCH CIRCULAR E.1.**

**POLICY ON MATERIAL TRANSFER AGREEMENTS**

**I. References**

- A. Guidelines on University-Industry Relations , University of California, Office of the President (May, 1989);
- B. Academic Personnel Manual Chapter 020, Section II.5;
- C. Principles Regarding Rights to Future Research Results in University Agreements with External Parties” (August 26, 1999); and,
- D. Redelegation of Contract and Grant Authority to Add Material Transfer Agreement (MTA) Delegation, University of California, Santa Barbara (October 1, 2011), as amended.

**II. Overview**

A Material Transfer Agreement (MTA) is a legally binding contract that governs the transfer of tangible research materials between two organizations. An MTA is used when an organization is providing the materials as a public service to support academic or scholarly research. Consistent with this purpose, the materials are typically provided either for free or for a nominal fee to cover costs. There is often no formal collaboration between scientists at the two organizations, although MTA terms can be embedded in a research agreement (or an MTA simultaneously executed) when the parties anticipate materials will be exchanged during the research project.

MTAs are used to transfer a broad array of materials, including biological materials (such as plant samples, reagents, cell lines, plasmids, bacterial strains and vectors), chemical compounds, engineering components (including wafers) and even, depending on the circumstances, software and data.<sup>1</sup> MTAs are considered “Incoming MTAs” when materials are being provided to a UCSB researcher from another organization, and “Outgoing MTAs”, when the University of California, Santa Barbara (UCSB) researchers desire to share materials with others.

The use of MTAs is widespread in today’s research and development environment, occurring when materials are transferred to and from universities, government agencies, commercial

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<sup>1</sup> Data is provided under MTA-style terms when a data access agreement is required by the organization providing the data.

firms, nonprofit organizations, and others.

### III. Policy

#### Incoming MTAs

All incoming MTAs must be reviewed and executed by the UCSB Office of Technology & Industry Alliances (TIA), which is the only campus office with the delegation of authority to sign MTAs.

MTAs specify the rights, obligations, and conditions that attach to the receipt of a particular material. While many incoming MTAs are relatively simple and straightforward, an incoming MTA will often address complex issues such as intellectual property ownership/access, publication, permitted/restricted uses and liability for damages. Occasionally, a provider will use the provision of materials as leverage to extract inappropriate intellectual property rights or control over the research project and resulting publications. As with any agreement related to academic research, it is critical to assure the terms of the proposed MTA will not negatively impact the researcher's academic freedom or ability to publish. It is also important to assure that the proposed MTA terms do not conflict with the terms of relevant funding contracts or grants, do not create any unreasonable administrative burdens on the researchers or their departments, and are consistent with applicable UC policies and practices.

#### Outgoing MTAs

Because MTAs cover a wide array of materials and data, researchers are encouraged to contact the MTA Officer in TIA to determine if an outgoing MTA is needed for a contemplated material transfer. MTAs are executed to authorize the transfer of materials between two organizations. Even if an outgoing MTA is not required, it is important to assure that the underlying transfer of materials is consistent with U.S. export control laws and UCSB's export control policies and practices. Under U.S. export control laws, a formal export control license may be required from the Bureau of Export Administration of the Department of Commerce before certain materials can be sent to certain non-U.S. destinations. Many materials that may seem innocuous to the researcher have some level of restriction under U.S. export control law. If an export control license is not obtained when one is required, both the university and the involved researchers may be exposed to both civil and criminal liability. If any materials are to be shipped to non-U.S. destinations, it is critical for researchers to work with the UCSB Export Compliance Officer in advance of any actual transfer of the materials to determine whether an export control license is needed.

There are some circumstances where an outgoing MTA is not required, namely for:

- The transfer of materials to a non-profit research organization (including government laboratories) for that organization's internal research use. Provided that, prior to any outgoing transfer of animals or materials that can be used in humans, the researcher sending the materials expressly states to the recipient of

the materials, in writing, that the materials cannot be further distributed without UCSB's permission and that the materials cannot be used in humans. Researchers are responsible for keeping a record of this statement. In the alternative, the researcher can provide a copy of the statement to the TIA MTA Officer for record retention.

- The transfer of an unmodified, naturally-occurring, non-hazardous material that does not contain any human or animal tissue (such as a sample of granite or dirt)
- The transfer of material to another nonprofit, research organization when the purpose of the transfer is to send material for the researcher's own use (such as sending material in advance of a sabbatical trip to a host institution for personal use during the visit)
- Materials that have been purchased commercially
- The transfer of purchased equipment or instrumentation to the seller for repair or replacement
- The transfer of documents

An outgoing MTA is strongly encouraged if the material to be transferred relates to an invention that has been disclosed to the UCSB TIA office. Additionally, TIA will issue an MTA for any outgoing material transfer upon request.

#### **IV. Delegation of Authority**

The Office of Technology and Industry Alliances (TIA) is the only office at UCSB with the authority to negotiate and sign MTAs. The following positions within TIA have been delegated the authority to negotiate and sign MTAs:

Director of TIA  
MTA Officer

#### **V. Responsibilities for Material Transfer Agreements**

##### *Office of Technology & Industry Alliances Responsibilities*

TIA is responsible for reviewing MTAs to assure compliance with all applicable UCSB policies, practices and procedures and, if the proposed terms are not compliant, for conducting appropriate negotiations. TIA is also responsible for executing MTAs on behalf of UCSB.

TIA strives to review MTAs in a timely fashion to minimize any potential delays in research involving the requested materials or information. Most MTAs are negotiated and processed smoothly. However, it is not uncommon for an MTA to contain troublesome clauses that would impact a research project negatively or expose the university to liability. Such troublesome clauses can also potentially cause conflicting legal obligations to arise, as well as violate UC Policies. Incoming Material transfer agreements from companies for the transfer of proprietary materials can be challenging and may take more time. Researchers are encouraged to inform the MTA Officer of the need for an MTA as early as possible to help avoid any potential research delays.

### *Researcher Responsibilities*

Lead researchers are responsible for reviewing and following the terms of all MTAs related to their research activities, as well as assuring that their research group complies with all such terms. An MTA is a legal agreement – breaching of the terms of an MTA could result in liability.

### *Departmental Responsibilities*

As with any other research agreement, the department is responsible for assuring its research personnel comply with the terms of any executed MTA.

## **VI. Procedures and Implementation**

When a UCSB researcher receives an incoming MTA or requires an outgoing MTA, the following procedure is used:

1. The researcher completes the MTA Incoming Form or the MTA Outgoing Form, as appropriate, attaching any draft MTA provided by the other organization. (A copy of the forms can be downloaded from the TIA website.) The form can be submitted to the TIA MTA Officer either by hard copy, via email, or via fax.
2. The MTA Officer will review the information provided by the researchers and work with the other organization to develop appropriate MTA terms for the transfer.
3. If the MTA involves either the transfer of material to a foreign organization or shipment of material outside the United States, the MTA Officer will initiate a review for compliance with U.S. Federal Export Control regulations. Please note, however, that the MTA Officer will only review the export-compliance of materials that are the subject of a contemplated outgoing MTA. Researchers should contact the UCSB export control compliance officer directly for all other material transfers to locations outside the United States.
4. Once appropriate terms are reached, the MTA Officer will sign the agreement on behalf of UCSB. The fully-executed MTA will be uploaded into the Office of Research's ORBiT system for electronic distribution. Additionally, a copy of the signed MTA will be sent to the lead researcher for his or her records.

# UC SANTA BARBARA POLICY AND PROCEDURE

## Gift/Grant/Contract/Sponsorship Determination

Contact: Office of Sponsored Research and Development Office

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**New**

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## GIFTS, GRANTS, CONTRACTS, and SPONSORSHIPS DETERMINATIONS

### I. SCOPE

The classification of all gifts, grants, research contracts, and sponsorships is governed by this policy. This policy provides: 1) the guidelines used to determine whether a financial transaction will be treated as a gift, a grant, a contract or a sponsorship, 2) the deposit and expenditure control requirements associated with each type of financial contribution and 3) reference to the associated gift fees and/or indirect cost recovery charges.

### II. POLICY

#### A. Making a Determination - **General**

1. Determinations on whether a payment is a gift or a grant or a research contract shall be made in accordance with UC Presidential memorandum, *Review of Gifts/Grants for Research*, issued on July 8, 1980. It states:

“In general, classify funds as gifts when the following characteristics exist:

- donor does not impose contractual requirements;
- funds are awarded irrevocably.”

“In general, classify funds as grants when the following characteristics exist:

- 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 end of period shall be returned to the grantor;
- patent rights requested by grantor.”

“Since, in many situations not all of the above characteristics will be present, campuses must exercise judgment in order to classify the gift/grant in accordance with the intent of this policy. The decision as to whether a particular award should be considered a gift cannot be made based upon the presence or absence of a single characteristic or criterion. Rather, one must look at the award in toto in order to make a judgment as to its proper classification... [The] organization of the processing/acceptance/administration of gift/grant funds is a local matter.”

2. Determinations involving private foundations are to take into consideration the following impacts. Private foundations, without a corporate affiliation, operate within a legal environment that has become increasingly complex and regulated. Therefore, private foundations:
  - a. Are required to gather certifications in order to maintain their tax status. These include, but are not limited to, verification of 501(C)(3) status, verification that funds will not be used for lobbying or other political activities, homeland security certifications.
  - b. May use very standard grant proposal forms or electronic formats with grant-sounding boilerplate language or structure, and may use the term “grant” even though it doesn’t meet UC’s definition of a grant.
  - c. May require summary financial and/or programmatic reporting or certifications.

## B, Making a Determination - **Gifts**

1. In general, classify funds as gifts when the following factors are present:
  - a. The intention is to make a charitable contribution.
  - b. The donor does not impose contractual requirements.
  - c. The funds are awarded with the intention to be irrevocable.
2. The presence of the following factors **does not prevent** funding from being classified as a gift:
  - a. The opportunity for a donor to attend meetings to provide non-binding advice to the department, center or program.
  - b. The opportunity for a donor to interact with students, including help in identifying possible interns and hires.
  - c. The opportunity for a donor to receive periodic materials that update the donor about the activities of the department, center or program and the impact and use of gift funds in those activities.
  - d. The opportunity for a donor to attend events, presentations or award luncheons/dinners.
  - e. Giving appropriate publicity to a gift in catalogues, publications, news releases, etc.
  - f. Informing the donor of the outcome of a selection or appointment process.
  - g. A stipulation that a gift not replace present University support for a program or position.
  - h. Standard reporting on the investment and expenditure of funds common to stewardship reports.
  - i. Designating the funds to support a specific faculty member’s research or project, or a specific research program area.
  - j. Restriction on how or when the funds will be expended.
  - k. A waiver of liability related to the condition, maintenance and operation of equipment being donated to the university.

- I. Certifications that private foundations are required to gather in order to maintain their tax status (these include but are not limited to verification of 501(C)(3) status, verification that funds will not be used for lobbying or other political activities, homeland security certifications, etc.)
  - m. If an entity uses very standard grant proposal forms or electronic formats with grant-sounding boilerplate language or structure, even if the language used includes the term “grant”.
3. The acceptance of gifts on behalf of the UC Regents or the UC Santa Barbara Foundation shall be in accordance with the Solicitation and Acceptance of Gifts Policy. Only the following officers are authorized to accept gifts on behalf of the UC Regents or the UC Santa Barbara Foundation:
- Chancellor - value not to exceed \$5 million
  - Vice Chancellor, Institutional Advancement - value not to exceed \$1 million
  - Associate Vice Chancellor, Development - value not to exceed \$1 million
  - Deputy Director, Development - value not to exceed \$100,000
  - Director of Finance and Administration, Institutional Advancement – value not to exceed \$100,000
  - Senior Director of Advancement Services - value not to exceed \$25,000
  - Manager, Gift Administration, Advancement Services – value not to exceed \$25,000

#### C. Making a Determination - **Grants and Research Contracts**

1. In general, classify funds as grants or contracts when the following factors are present:
  - a. The sponsor retains the right to revoke all or part of the funding or requires the University to return any unspent funds (i.e., the funds are not given irrevocably).
  - b. The sponsor offers the financial support with the intent or expectation of direct economic benefit or other tangible benefits. (However, indirect benefits such as tax advantages or business/personal goodwill derived from close association with the university do not negate gift intent.)
  - c. The sponsor imposes requirements concerning the disposition of intellectual property developed with the funding. Requirements may include, but are not limited to rights for the sponsor to access or use resulting intellectual property or requirements to open source or place resulting intellectual property in the public domain.
  - d. The sponsor requires detailed financial accountability, such as a detailed or line-item budget related to a project plan, rules on allowable/unallowable costs, a specified period of performance with “start” and “stop” dates, regular financial reporting or audit rights. (However, gifts may involve voluntary or mandatory reporting to the donor regarding the use of funding for the purpose of demonstrating good stewardship. Reporting may take the form of acknowledgement letters, annual reports, and financial statements on the status/use of funds.)
  - e. The sponsor requires goods, services or deliverables in exchange for the funding.
  - f. The sponsor requires prior review of publications resulting from the funded work prior to publication.
  - g. The sponsor requires the University to adhere to a detailed statement of work and/or commit to a specified project plan (as opposed to a general field of study or research area).
  - h. The sponsor is a state or federal agency.

2. The acceptance of grants and contracts on behalf of the UC Regents or the UC Santa Barbara Foundation shall be in accordance with the [Policy on Submittal of Proposals, Acceptance of Awards, and Administration of Contracts and Grants](#). Only the following officers are authorized to accept research contracts and grants:
  - The Chancellor – value not to exceed \$5 million.
  - The Vice Chancellor, Research - value not to exceed \$5 million.
  - The Assistant Vice Chancellor, Research - value not to exceed \$5 million.
  - Director of Technology and Industry Alliances - value not to exceed \$5 million.
  - Director of Sponsored Projects - value not to exceed \$5 million.
  - Associate Director of Sponsored Projects - value not to exceed \$5 million.
  - Senior Sponsored Project Officers - value not to exceed \$2 million.
  - Sponsored Project Officers - value not to exceed \$2 million.
  - Sponsored Project Analysts - value not to exceed \$1 million.

#### D. Making a Determination - **Sponsorships**

1. In general, classify funds as sponsorships when the following factors are present:
  - a. The fair market value of the benefits (as established by authorized university employees) that are associated with the financial transaction meet or exceed the payment amount.
  - b. The entity making the payment does not explicitly state, in advance and in writing, that they do not wish to receive any of the potential benefits offered by the University.
  - c. The payment made is irrevocable.
2. Sponsorships that entail an external entity making a payment to UCSB in return for receiving benefits that have a fair market value that meets or exceeds the amount of the sponsorship payment require a business contract that has been executed by the delegated authority within Business and Financial Services. Sponsorship agreements must be approved prior to advertisements, promotions, or other activities involving the sponsor entity. Sponsorship proposals shall include a description of what the sponsor will provide to the University, the estimated fair market value of the product or service, what the University will provide in return, and the governing terms and conditions. The estimated fair market value of benefits is to be validated by the Office of Finance and Administration for Institutional Advancement.

#### E. Making a Determination – When Assessments Differ

1. If the Director of Sponsored Projects, the Director of Development for Information and Strategic Planning and the Director of Business and Financial Services do not reach unanimous agreement in designating a payment or financial agreement as a gift, grant, contract or sponsorship, they shall refer the matter for final determination to the Executive Vice Chancellor, with a written summary of the reasons underlying the differing assessments.
2. The Executive Vice Chancellor may, at his or her discretion, convene a committee composed of the Executive Director for Academic Affairs, the Chief Financial Officer of the UC Santa Barbara Foundation, a senior representative from Development, the Director of Business and Financial Services, and the Assistant Vice Chancellor for Research to review the issue and provide a recommended designation. If the Executive Vice Chancellor elects to convene the committee, the Executive Vice Chancellor may take the recommendation into consideration when making the final determination but is not bound by the recommendation of the committee.



### III. RESPONSIBILITIES

#### A. The University Beneficiary Department/unit

1. Department/unit heads are responsible for making sure their designated assessment employee(s) is trained and complies with this policy so that gifts, grants, contracts and sponsorships are properly identified and administered.
2. Beneficiary departments/units are to use the criteria above to assess whether the funding proposal/support will be structured as a gift, grant, contract or sponsorship and are strongly encouraged, during the preliminary stages, to consult with the Development Office for gifts, the Office of Research for grants and contracts, or Business and Financial Services for sponsorships.
3. After assessing whether the proposal/support is a gift, grant, contract, or sponsorship, the beneficiary departments/units are to submit and process the proposal/support with the appropriate responsible office(s) in accordance with the relevant guidelines. See below for the responsible offices for gifts, grants, contracts, and sponsorships.
4. Beneficiary departments/units have the fiduciary responsibility to assure that funds received through gifts, grants, contracts or sponsorships are expended in accordance with their associated terms and conditions, University policy, State and Federal regulations, reporting requirements and laws.

#### B. The Development Office - Gifts

1. The Development Office is responsible for administering all fundraising campaigns and significant gift solicitations and the acceptance of gifts on behalf of the UC Regents and the UC Santa Barbara Foundation. Responsibilities include identifying sources and giving opportunities, developing gift terms and conditions, acceptance of gifts, and gift receipting and reporting in accordance with University policy and State and Federal regulations and law.
2. The Development Office serves as the lead in assisting the beneficiary department/unit in developing gift solicitations, presenting gift proposals, and in finalizing any terms and conditions proposed by the donor. If there are terms and conditions that impose contract or grant like restrictions, the Office of Research shall be consulted during the review.

#### C. The Office of Finance and Administration - Gifts

The Office of Finance and Administration is responsible for monitoring and overseeing gift policy compliance. The Director of Finance and Administration and Chief Financial Officer of the UC Santa Barbara Foundation is responsible for campus determinations on the valuation of gifts-in-kind, quid pro quo benefits, and sponsorship structures.

#### D. The Office of Research – Grants and Research Contracts

1. The Office of Research (OR) is responsible for helping the university community secure support for their research activities. Within OR, the Sponsored Projects Office is responsible for negotiating and accepting agreements on behalf of the Regents for research projects funded by federal and state agencies, foundations, and other public and private sources. The Office of Technology and Industry Alliances is responsible for negotiating and accepting agreements on behalf of the Regents from industry partners that support research collaborations.
2. The Office of Research serves as the lead in reviewing and approving the beneficiary department/unit's grant or research contract proposal. In instances that relate to private entities, the Development Office shall be consulted during the review.

3. The Office of Research plays a lead role in making the final determination on whether funds are classified as gifts, grants, contracts, or sponsorships. However, in instances where there isn't consensus on the treatment of any transaction, the procedure in Section IIE *Final Determination – When Assessments Differ* shall govern.

#### E. Business and Financial Services - Sponsorships

1. Business and Financial Services is responsible for recording donations in the form of checks, wires, stocks, funds functioning as an endowment, and true endowments; posting revenue and budget entries; transferring funds to the Office of the President for investment; completing a monthly reconciliation to clear the cash holding accounts; assisting departments with gifts and endowments processing issues; and providing accurate and timely financial data to the campus community, Office of the President, and external entities.
2. In addition, Business and Financial Services is responsible for reviewing and approving all sponsorship agreements. The Office of Finance and Administration shall review and approve the fair market value of sponsorship benefits prior to the execution of the agreement.

### IV. DEPOSIT AND FINANCIAL CONTROLS

- A. Business and Finance Bulletin (BFB) BUS-49 governs handing cash and cash equivalents. Whether a gift, grant, contract, or sponsorship payment, departments/units are to deposit cash and cash equivalents in the Main Cashiering Office on the same date they are received. However, if a deposit cannot be made on the date of receipt, it must be secured by the department until the deposit can be hand-carried to the Main Cashiering Office. The Main Cashiering Office is responsible for validating and posting the funds to a holding account and issuing a receipt to the department/unit and sending a copy to Extramural Funds Accounting and Advanced Services.
- B. In addition:
  1. **Gifts** - All gift checks must be accompanied by a fully executed Form UDEV 100.
  2. **Grants and Contracts** - Contract and Grant payments must be segregated in accordance with the University of California Contract and Grant Manual and must not be comingled with gift or sponsorship income.
  3. **Sponsorships** - Sponsorship payments are to be treated as departmental revenue and should not be comingled with gifts, grants or contract income.

### V. RELATED POLICIES AND RESOURCES

- A. Review of Gifts/Grants for Research - President David S. Saxon Memorandum, July 8, 1980
- B. University of California BUS-49, Policy for Cash and Cash Equivalents Received
- C. University of California Contract and Grant Manual, Chapters 2, 8 and 9
- D. University of California Development Policy Manual
- E. UCSB Contracts and Grants Delegation, September 29, 2011
- F. UCSB Gifts Delegations, December 27, 2007 and August 22, 2012
- G. UCSB Gift Fee Policy
- H. UCSB Indirect Cost Policy
- I. UCSB Solicitation and Acceptance of Gifts