

## SYSTEM REGULATION

### 25.07.02 Reporting of Foreign Contracts, Gifts, Donations, Grants and Endowments

August 19, 2003

*Supplements System Policy 25.07*

#### 1. GENERAL

State law requires that each component of The Texas A&M University System reports to the Secretary of State each conditional contract, gift, donation, grant, and/or endowment (GDGE) from a foreign source, regardless of value. Federal law also requires each academic component, including the health science center, to report to the United States Secretary of Education each GDGE from a foreign source with a value of \$250,000 or more and each restricted or conditional GDGE or contract regardless of value. To ensure uniform compliance, additional instruction regarding federal and state requirements is presented below.

#### 2. SYSTEM REQUIREMENTS

For more information regarding the System reporting requirements for GDGEs, see System Regulation *21.05.01, Gifts, Donations, Grants and Endowments*.

#### 3. DEFINITIONS

##### 3.1 Definitions Applying to Federal Reporting Requirements

- 3.1.1 “Contract” means 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.
- 3.1.2 “Foreign source” means:
  - (1) a foreign government, including an agency of a foreign government;
  - (2) a legal entity, governmental or otherwise, created solely under the laws of a foreign state or states;
  - (3) an individual who is not a citizen or a national of the United States or a trust territory or protectorate thereof; or
  - (4) an agent, including a subsidiary or affiliate of a foreign legal entity, acting on behalf of a foreign source.
- 3.1.3 “GDGE” means any gift of money or property. See also definitions provided for gifts, donations, grants and endowments in Section 2 of System Regulation *21.05.01*.
- 3.1.4 “Academic component” means any component academic institution or health science center in the A&M System.

3.1.5 “Restricted or conditional GDGE or contract” means any endowment, gift, grant, contract, award, present, or property of any kind which includes provisions regarding:

- (1) the employment, assignment, or termination of faculty;
- (2) the establishment of departments, centers, research or lecture programs, or new faculty positions;
- (3) the selection or admission of students; or
- (4) 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.

## 3.2 Definitions Applying to State Reporting Requirements

3.2.1 “Foreign government” means a government other than the government of the United States or any state or political subdivision thereof.

3.2.2 “Foreign person” means any of the following:

- (1) a foreign government;
- (2) an individual who is not a citizen or national of the United States or of a trust territory or protectorate of the United States;
- (3) 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;
- (4) 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 Paragraphs (2) or (3) above, or a combination of such governments, individuals, or entities; or
- (5) 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 Paragraphs (2), (3) or (4) above, or a combination of such governments, individuals or entities.

3.2.3 “Conditional GDGE or contract” means any endowment, scholarship, or other gift, donation, or grant of money or property of any kind or any contract award, 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.

3.2.4 “Component” means any component of the A&M System.

## 4. DISCLOSURE REPORTS

### 4.1 Federal Disclosure Reports

4.1.1 Whenever a System academic component 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 component must file a disclosure report with the United States Secretary of Education on January 31 or July 31, whichever is sooner.

- (1) A 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 such GDGE and contract attributable to a particular country. The country to which a GDGE 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) A 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.

4.1.2 Notwithstanding the provisions of paragraph 4.1.1 above, whenever a System academic component receives a restricted or conditional GDGE or contract from a foreign source, the academic component must disclose the following to the United States Secretary of Education.

- (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) 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.

### 4.2 State Disclosure Reports

Whenever any System component receives a conditional GDGE or contract from a foreign person, the component 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 with that department a copy of the report that is filed with the U. S. Department of Education in accordance with paragraph 4.1, above.

#### 4.3 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 Paragraphs 4.1 and 4.2 above if:

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

#### 4.4 Failure to Comply with State Reporting Requirements

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

#### 4.5 Failure to Comply with Federal Reporting Requirements

If a component 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 component may be liable for the payment of full costs to obtain compliance.

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CONTACT OFFICE: System Office of Budgets and Accounting

HISTORY: New Regulation (This regulation contains information that was formerly a part of System Regulation *21.99.03 Gifts, Grants, Loans and Bequests*)

[Section 25 Rules](#)