LEHIGH UNIVERSITY

Responsible Lehigh Official: Vice President, Development and Alumni Relations (DAR)
Responsible Office: DAR Operations
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GIFT-IN-KIND POLICY

Policy Statement

This policy governs the acceptance and disposition of all gifts-in-kind made to Lehigh University (Lehigh or the university). Gift-in-kind opportunities exist when individuals and entities desire to give Lehigh tangible or intangible property. This support may be valuable to the university's mission and community and requires special consideration before being accepted.

Lehigh's Gift Acceptance Policy governs the acceptance and disposition of all philanthropic gifts made to the university. This policy should be read in connection with Lehigh's Gift Acceptance Policy and incorporates its terms. Other than Lehigh's Gift Acceptance Policy, this policy supersedes any existing policy, procedures, or practices that may be in place throughout the university related to acceptance of gifts-in-kind.

Reason for Policy/Purpose

- Provide standards for the acceptance of gifts-in-kind by Lehigh University
- Reflect the responsibility of the Lehigh Board of Trustees (board) and the External Engagement Committee (committee) of the board for the governance of gift-in-kind acceptance
- Ensure consistent application of policies and processes governing when and how gifts-in-kind are accepted
- Ensure that gifts-in-kind further the mission of and impose no undue burden on the university

Compliance with Law, University Policies, and Higher Education Standards

All gifts-in-kind to the university will be accepted in accordance with: (a) the Internal Revenue Code and applicable IRS regulations pertaining to charitable gifts; (b) all Lehigh University governance documents and university policies and procedures, including Lehigh's Gift Acceptance Policy; and (c) all applicable laws and regulations governing fundraising and higher education. Lehigh is committed to following accepted standards of higher education professional organizations for gift acceptance, such as those recommended by the Council for the Advancement and Support of Education (CASE).

Who Needs to Know This Policy

- Development and Alumni Relations staff
- The university president, provost, vice presidents, deans, other senior leadership, and financial managers
- Finance and Administration staff and the Office of the General Counsel staff
- Lehigh faculty and staff involved in the discussion, solicitation, acceptance, recording, or other administration of gifts-in-kind

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Policy

A. Understanding Gift-in-Kind Contributions

For the purpose of this policy, gifts-in-kind refer to contributions of tangible and intangible property to the university.

Tangible property includes inventory, materials, personal property, physical assets, and real property (i.e., real estate or realty) that can be owned.

Intangible property includes commercial annuities and life insurance; gas, mineral, oil, and water interests; intellectual property (IP); securities, and virtual currency (e.g., cryptocurrency).

All gifts-in-kind must convey the donor's entire interest in the contributed property. The donor must fully and irrevocably relinquish ownership of the property to Lehigh.

B. Acceptance and Approval

The university will assess the financial desirability of receiving gifts-in-kind from potential donors and determine whether or not to accept a contribution as offered. Contributions should not be accepted and/or counted as a gift if any of the following circumstances exist:

- The contribution is in contravention of applicable federal, state, or local laws, this policy, or other applicable university policies and procedures.
- The contribution involves unlawful discrimination or any other basis prohibited by federal, state, and local laws and regulations or university policies and procedures.
- The contribution is not in agreement with the university’s educational, research, and service missions and values or could damage the reputation of the university.
- The contribution could compromise the academic freedom of the university community.
- The contribution could violate the university’s ethical standards.
- The contribution could jeopardize the university’s tax-exempt status.
- The contribution could place an undue financial or other burden on the university as a result of measures that must be taken for responsible storage, maintenance, and upkeep.
- The contribution cannot be properly administered within the intended recipient's normal budget or available university resources (for example, in the case of the requirement for matching funds or resources).
- The contribution would obligate the university to undertake duties, financial or otherwise, which it may not be fully capable of meeting.
- The contribution presents an unreasonable or unacceptable degree of risk, either financial, legal, environmental, or health/safety issues.

- The donor intends or insists on control or directional authority over some aspect of the program identified as a beneficiary of the proposed contribution.
- There is a question as to whether the donor has sufficient title to the assets or whether the donor is mentally competent to legally transfer the property as a contribution to the university.
- When considering a contribution from a potentially controversial source, the vice president for DAR in consultation with the Gift Acceptance and Naming Committee (GANC) will exercise due diligence and scrutiny to ensure that acceptance of the contribution is in accordance with the university's interests, values, and practices.

In addition to the applicable standards set forth in the university's Gift Acceptance Policy, before the university agrees to accept the property or takes possession of the property, the following must occur:

- The dean or vice president of the departmental unit that would be the primary beneficiary of the gift-in-kind must confirm the unit's ability and willingness to accept the proposed gift-in-kind contribution, taking into account the considerations listed below. During this evaluation process, the dean or vice president should work in close collaboration with the DAR staff member assigned to their area or other appropriate partners from DAR.
- If one or more departmental units other than the primary beneficiary are needed to ensure the university's ability to accept the proposed gift-in-kind, such departmental unit(s) should be consulted in the evaluation of the considerations listed below.
- In the event that a donor seeks naming rights of a physical or non-physical entity in exchange for a gift-in-kind, the GANC has approved such arrangement; provided that in no event (other than as approved by the board) shall the university agree to recognize a gift-in-kind as a contribution toward a capital project. For these purposes, a "gift-in-kind" shall not include easily liquidated gifts-in-kind, such as gifts of publicly traded securities or virtual currency.
- The departmental unit is responsible for submitting information regarding the proposed gift-in-kind contribution to the vice president of DAR for review and preparation of a formal Gift Agreement, including conditions for possession in perpetuity and deaccessioning if applicable, and approvals as outlined in this policy and the Gift Acceptance Policy.
- Regardless of specific approvals outlined below and in the Gift Acceptance Policy, DAR must approve all gifts-in-kind.

1. Gift Acceptance Policy Approvals

The approvals set forth in the Gift Acceptance Policy are restated below for convenience. Additional specific requirements are set forth in Section G below.

Gift commitments, complex asset transfers, or gifts of $50,000 or more with a restriction or designation require a formal Gift Agreement (GA). Gifts-in-kind of tangible and intangible property may also have additional requirements for a GA as defined in the university's Gift-in-Kind Policy. The GA shall follow the format(s) approved by the GANC to properly document the understanding between the donor and the university regarding the terms of the gift and its use.

Upon presentation of a proposed GA for a gift of $1,000,000 or more, the vice president for DAR shall inform the GANC. Gifts-in-kind of tangible and intangible property may also have additional requirements for informing the GANC as defined in the university's Gift-in-Kind Policy. The GANC shall typically meet by telephone conference and conduct its work digitally to determine the appropriateness of the potential gift, resulting in the vice president for DAR approving or declining the gift in a timely manner. The vice president for DAR and the GANC may consult with any trustee, officer, administrator, faculty, or staff member of the university whom they believe appropriate when considering matters relating to gift acceptance.

C. Considerations

When considering the acceptance of a gift-in-kind the departmental unit (including dean or vice president of the departmental unit), DAR, and any other parties involved in acceptance should ensure the following are true:

- The contribution directly, through possession of the property, or indirectly, through liquidation of the property, is relevant to the missions and work of the university. As a general rule, Lehigh shall only accept contributions that further the missions and work of departments and programs at the university.
- The contribution is consistent with the tax-exempt, non-profit status of the university.
- The contribution does not jeopardize the reputation of the university.
- The requirements for storage, display, insurance, and security are reasonable and within the budget of the departmental unit.
- The immediate and long-term costs that may be incurred by the university, such as for care, maintenance, repair, or preservation, are reasonable and within the budget of the departmental unit.
- The useful life of the contribution is acceptable.
- Special conditions imposed by the donor, including deaccession, are acceptable.
- The departmental unit, in consultation with other university offices with relevant knowledge, expertise, or resources, has conducted a documented and prudent due diligence process of appropriate scope considering the type of property sought to be donated, and has determined that accepting

the gift-in-kind is in the university's best interests and that any risks associated with accepting the contribution are acceptable. The due diligence process, among other things, should include confirmation of the donor's title to the donated property and any actual or anticipated liabilities associated with the donated property.

D. Gift Agreements

Gift Agreements may be used to properly document the understanding between the donor and the university regarding the terms of the contribution and its use.

Per the Lehigh Gift Acceptance Policy, gift commitments, complex asset transfers, or gifts of $50,000 or more with a restriction or designation require a formal gift agreement. Depending on the type of gift-in-kind, additional requirements for a gift agreement may exist.

Gift Agreements for gift-in-kind contributions shall address:

- Use and placement of the property. This cannot be guaranteed in perpetuity.
- Physical delivery of the property to the university, including the time and location when title transfers, and insurance.
- Supplemental gifts to support costs that may be incurred by the university, if applicable.
- Sale, exchange, or disposal of the property. Each Gift Agreement shall include a provision granting the board the right to approve the sale, exchange, or disposal of donated property in the event that the board determines, in its sole discretion, that conditions render impractical or undesirable continued possession of such property, and to devote the income to such other purpose as in their judgment will perpetuate the desire of the donor(s) and will further the educational effectiveness of the university.
- How due diligence expenses will be allocated among the parties, as applicable.

Gift agreements for gifts-in-kind, and any other documents outlining acceptance of gifts-in-kind, may only be prepared by DAR. All such documents must be signed by the vice president for DAR.

E. Assigning Value

It is the sole responsibility of the donor to determine the value of contributed property for their tax purposes. Lehigh will never provide the donor with a receipt which states the value of contributed property. Receipts will only include a description of the property contributed. A university employee or representative shall never value property for a donor. Lehigh will attest, at the request of the donor, for tax purposes, that Lehigh took ownership of the property.

In general, for Lehigh counting and recognition purposes Lehigh will value the property in one of the following ways:

- If the donor provides a contemporaneous independent appraisal, inventory value or market pricing documentation (adjusted for any regularly offered discount for which Lehigh would be eligible) of the property, Lehigh will use that value.
- If the donor does not provide a contemporaneous independent appraisal, inventory value or market pricing documentation (adjusted for any regularly offered discount for which Lehigh would be eligible) of the property, and the donor estimates the value of the property to be $5,000 or below, Lehigh will accept the donor's estimated value as the value if Lehigh deems that value reasonable. The donor should provide a basis for this value which may include, but is not limited to: a paid bill of sale, or an invoice and proof of payment.
- If the donor does not provide a contemporaneous independent appraisal, inventory value or market pricing documentation (adjusted for any regularly offered discount for which Lehigh would be eligible) of the property, and the donor estimates the value of the property to be above $5,000, Lehigh will use reasonable means to determine the value of the property. This could include Lehigh acquiring an independent appraisal (to be used only for counting and recognition purposes), or other methods of determining fair market value appropriate for the property. In some cases, Lehigh may decide that determining the value of the property is impractical and will assign a default value of $0.

Some types of gifts-in-kind may necessitate specific methods of valuation, for counting and recognition purposes, that differ from or are more restrictive than the methods listed above. Those methods will be detailed below (see Sections F. and G.) as appropriate.

Lehigh must determine the value for counting and recognition purposes prior to recording and receipting the gift. In some cases, a delay in the donor providing a value may result in Lehigh using alternative methods, as described above, to determine value.

F. Non-Charitable Contributions

Some gift-in-kind contributions to Lehigh may support the mission of the university, but do not qualify as charitable contributions, per the applicable provisions of the Internal Revenue Code and other applicable laws and regulations. While the university may accept and acknowledge these contributions, using the same guidelines as above, they are not eligible for charitable tax receipts or counting in the university's fundraising totals.

Examples of contributions that are non-charitable include, but are not limited to, contributions of:

- less than an entire interest in property;
- time or services;
- appraisal fees;
- licenses to use software;

- time-limited use of equipment or materials; and
- use of facilities.

G. Types of Gifts-in-Kind; Specific Requirements

1. Tangible Property

a. Inventory, Materials, Personal Property, and Physical Assets

Contributions of this type include, but are not limited to, art, books, personal collections, vehicles, equipment, educational materials, and consumable items.

i. Specific Approvals and Consultations

All contributions of inventory, materials, personal property, and physical assets with an estimated value of $10,000 or more must be reviewed and approved by the vice president for DAR. They must also be approved by the GANC.

Regardless of a need for approval, the vice president for DAR and the GANC will be informed of all gifts-in-kind of inventory, materials, personal property, and physical assets.

ii. Specific Gift Agreement Requirements

All gifts-in-kind of inventory, materials, personal property, and physical assets require a gift agreement.

b. Real Property (i.e., Real Estate or Realty)

Real property is defined as land and improvements to it, including both commercial and residential properties.

In addition, real property may be given as a life estate, which is defined as a gift to charity of a house, farm, or ranch where the donor(s) retain(s) the right to income, use, and enjoyment of the real property for life.

i. Specific Approvals and Consultations

All contributions of real property must be reviewed and approved by the vice president for DAR. They must also be approved by the GANC and Real Estate Services. Real Estate Services may have additional requirements for approval.

ii. Specific Considerations

Factors to be considered in review of a proposed contribution of real property include, but are not limited to: the existence of any liens, claims, or extended liabilities, including any current or potential exposure to environmental liability or cleanup or restoration obligations under relevant law.

iii. Specific Gift Agreement Requirements

All gifts-in-kind of real property require a gift agreement.

2. Intangible Property

a. Commercial Annuities and Life Insurance

A commercial annuity is defined as a contract between the owner of the annuity and an insurance company whereby the company agrees, in return for specified payment(s), to pay a specified sum to the annuitant(s) under the contract.

Life insurance is defined as a contract between the owner of a policy and an insurance company whereby the company agrees, in return for specified premium payment(s), to pay a specified sum to the beneficiary(ies) upon the death of the insured.

Life insurance and commercial annuity contracts may contain other provisions related to investment, conversion, and other options in addition to their primary purposes.

Commercial annuities and life insurance contributions must irrevocably name Lehigh as the owner and beneficiary. Additionally, gifts of this type must not be term life insurance policies.

i. Specific Approvals and Consultations

All contributions of commercial annuities and life insurance must be reviewed and approved by the vice president for DAR.

Additionally, the Controller’s Office and the Treasurer’s Office must approve all contributions of commercial annuities and life insurance. The Controller’s Office and the Treasurer’s Office may have additional requirements for approval.

ii. Specific Gift Agreement Requirements

All gifts-in-kind of commercial annuities and life insurance require a gift agreement.

iii. Specific Valuation

In general, contributions of commercial annuities and life insurance are valued at no more than the cash surrender value as identified in writing by the insurance company. The paid-up status of the policy will determine when and how much the contribution will be valued at.

b. Gas, Mineral, Oil, and Water Interests

i. Specific Approvals and Consultations

All contributions of gas, mineral, oil, and water interests must be reviewed and approved by the vice president for DAR. They must also be approved by the GANC.

Additionally, Real Estate Services, the Controller’s Office and the Treasurer’s Office may be consulted on contributions of gas, mineral, oil, and water interests. Real Estate Services, the Controller’s Office and the Treasurer’s Office may have additional requirements for approval.

ii. Specific Considerations

Factors to be considered in review of a proposed contribution of gas, mineral, oil, and water interests include, but are not limited to:

- extended liabilities;
- whether the proposed gift is a working and/or expense bearing interest; and
- any current or potential exposure to environmental liability or cleanup or restoration obligations under relevant law.

iii. Specific Gift Agreement Requirements

All gifts-in-kind of gas, mineral, oil, and water interests require a gift agreement.

c. Intellectual Property (IP)

Contributions of this type include, but are not limited to, ownership of copyrights, patents, software IP, trade names and trademarks.

i. Specific Approvals and Consultations

All contributions of IP must be reviewed and approved by the vice president for DAR. They must also be approved by the GANC.

Additionally, the Office of Technology Transfer should be consulted on all contributions of IP.

ii. Specific Gift Agreement Requirements

All gifts-in-kind of IP require a gift agreement.

iii. Specific Valuation

Valuation of IP requires appropriate professional expertise and/or valuation services. As such, Lehigh will need to engage independent experts relevant to the type of IP it is if it desires to determine a value for counting and recognition purposes. The donor’s estimated value will never be used to value the contributed IP.

d. Securities

The university may accept both publicly traded securities and closely held securities.

Publicly traded securities are securities regularly traded on a public stock exchange. It is the university’s policy to sell all marketable securities on receipt.

Closely held and restricted securities include not only debt and equity positions, but also interests in limited partnerships and limited liability companies or other ownership funds.

i. Specific Approvals and Consultations

a. Publicly Traded Securities

The Treasurer’s Office must approve all contributions of publicly traded securities.

b. Closely Held and Restricted Securities

All contributions of closely held securities and securities that are deemed restricted must be reviewed and approved by the vice president for DAR. They must also be approved by the GANC.

ii. Specific Considerations

Factors to be considered in review of a proposed contribution of securities include, but are not limited to:

- any restrictions on the security that would prevent its timely conversion to cash;
- the marketability of the security; and
- liabilities and reputation of the entity whose securities are being contributed, or the liabilities and reputation of its assets.

iii. Specific Gift Agreement Requirements

a. Closely Held and Restricted Securities

All gifts-in-kind of closely held and restricted securities require a gift agreement.

iv. Specific Valuation

a. Publicly Traded Securities

For counting and recognition, Lehigh will value the contribution using the average share price between the highest and lowest quoted selling prices quoted on the day Lehigh took ownership of the security.

b. Closely Held and Restricted Securities

Due to their nature, all contributions of closely held securities and securities that are determined to be restricted by applicable securities laws require an independent appraisal to determine an accurate value. A donor’s estimated value will never be used to value closely held and restricted securities.

e. Virtual Currency (e.g., cryptocurrency)

Virtual currency is a digital representation of value, other than a representation of the U.S. dollar or a foreign currency (“real currency”), that functions as a unit of account, a store of value, and a medium of exchange. The most common types of virtual currency are often referred to as cryptocurrency.

Lehigh treats contributions of virtual currency similar to contributions of securities. As such, it is the university’s policy to convert all virtual currencies to U.S. dollars on receipt.

The Treasurer’s Office maintains the list of virtual currency that Lehigh is able to accept, should such a contribution be desirable, and the process for transferring ownership.

i. **Specific Approvals and Consultations**

The Treasurer’s Office must approve all contributions of virtual currency.

ii. **Specific Considerations**

Departmental units should take care to ensure the timing of the contribution of virtual currency has the donor’s desired financial impact for the university.

iii. **Specific Valuation**

For counting and recognition, Lehigh will value the contribution at the executed price at the time Lehigh took ownership of the virtual currency.

3. **Other Property**

Property not otherwise described in this section, whether tangible or intangible, of any description (including, but not limited to, mortgages, notes, installment obligations, certain rights to tangible property, and royalties) may be accepted upon the recommendation and approval of the vice president for DAR and the GANC.

H. Exceptions

Any exceptions to this policy must be approved by the vice president for DAR in consultation with the GANC.

Contacts

For policy clarification, assistance with a Gift Agreement, or additional information regarding gift-in-kind acceptance, please contact the senior director of Donor Relations for DAR.

Related Information

Lehigh University Gift Acceptance Policy

Lehigh University Naming Policy

Named Gift Threshold Guidelines

Lehigh University Campaign Counting Policy

History/Revision Dates

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