

## SECTION 5. Fundraising and Development

### 5.5 Fundraising Events

#### 5.5.1 Policy Objective

It is the policy of the California State University (University) that fundraising solicitations meet federal, state and local law requirements, fundraising solicitation materials are accurate and truthful, and fundraising costs are reasonable. This policy addresses due diligence and reporting requirements specific to fundraising events. Each campus is required to develop written procedures, consistent with this policy. Each campus may establish more restrictive procedures under this policy, which may also apply to its auxiliary organizations. Auxiliary organizations shall adopt policies and procedures consistent with university policy.

#### 5.5.2 Policy Statement

a. Purpose

This policy governs the manner and extent to which the university and its auxiliary organizations may conduct fundraising events. There exists a fiduciary relationship between a charity or any person soliciting on behalf of a charity, and the person from whom a charitable contribution is being solicited. The acceptance of charitable contributions by a charity or any person soliciting on behalf of a charity establishes a charitable trust and a duty to use those charitable contributions for the declared purposes. (California Business and Professions Code §17510.8)

b. Scope

This policy governs fundraising events with gross receipts of greater than \$5,000 which result in a charitable contribution receipt for participants by the University or its auxiliary organizations. The university may also restrict the use of its name and protect against misleading representations in solicitations by affiliated organizations; e.g. athletic booster clubs, friends of the library, alumni associations, or similar support groups. The policy does not apply to faculty associations, student social clubs, fraternities or sororities raising funds for their own benefit.

c. Authority

Authority to this policy is pursuant to California Education Code §89720. This policy is issued under delegation of authority from the Chancellor to the Vice Chancellor, University Relations and Advancement, and implementation and compliance with the policy is further delegated to the campus Vice President for University Advancement. (California Education Code §89035)

### 5.5.3 Definitions

- a. Commercial Fundraiser – a person or corporation who is paid by the university or its auxiliary organizations to raise money on its behalf. The for-profit business usually arranges a flat fee or charges a percentage of the donations collected. Commercial fundraisers must be registered with the Attorney General under California law (see Nonprofit Integrity Act Manual). Employees of the university or its auxiliary organizations are not considered commercial fundraisers. (California Government Code §12599(a))
- b. Controlled Games – as identified in California Penal Code §337j, subdivision (e), paragraph (1), to include poker, pai gow “and any other game played with cards or tiles, or both, and approved by the Department of Justice” as well as “any game of chance” played for something of value, unless such game is otherwise prohibited by statute or local ordinance.
- c. Delegated Authority – a person to whom authority has been delegated in writing to accept gifts on behalf of the university or auxiliary organization.
- d. Fundraising Counsel – a person or corporation who is paid by the university or its auxiliary organizations to manage, advise, counsel, consult or prepare material for, or with respect to, the solicitation in California of funds, assets or property for charitable purposes and who does not (i) solicit funds, assets or property for charitable purposes; (ii) receive or control funds, assets or property solicited for charitable purposes in California; and (iii) employ, procure or engage any compensated person to solicit, receive or control funds, assets or property for charitable purposes. Fundraising Counsel must be registered with the Attorney General under California law (see Nonprofit Integrity Act Manual). Employees of the university or its auxiliary organizations are not considered fundraising counsel. (California Government Code §12599.1(a))
- e. Fundraising Event – events conducted for the sole or primary purpose of raising charitable funds where participants make a charitable contribution and a purchase for the fair market value of goods or services. Fundraising events may include dinners, dances, door-to-door sales of merchandise, concerts, carnivals, golf tournaments, auctions, casino nights, and similar events. Fundraising events do not include the following:
  1. Activities substantially related to the accomplishment of the CSU’s educational purpose, including such activities that receive sponsorship.
  2. Unrelated trade or business activities that generate fees for service.
  3. Fundraising solicitations and related prospecting activities intended to generate only a contribution (no purchase of goods or services).

- f. Raffle – also known as an opportunity drawing or basket auction is a scheme for the distribution of prizes by chance among persons who have paid money for paper tickets that provide the opportunity to win these prizes. Each ticket is sold with a detachable coupon or stub, and both the ticket and its associated coupon or stub are marked with a unique and matching identifier.

#### **5.5.4 Approval**

Fundraising events with gross receipts greater than \$5,000 must be approved in writing by the Assistant Vice President of Advancement Services when the fundraising event utilizes the university name, logo or trademarks and represents that the university will benefit from the proceeds. Prior to the event, the delegated authority shall review the fundraising event's budget, drafts of solicitation materials, and action plan to comply with federal, state and local regulations.

#### **5.5.5 Budget**

The budget must sufficiently detail anticipated revenues and expenditures to project net revenue and quid pro quo benefits. The Internal Revenue Service requires fundraising events with gross receipts greater than \$5,000 to report the following revenue and expenditure categories<sup>1</sup>:

1. Gift income
2. Non-gift income
3. Cash prize expenditures
4. Non-cash prize expenditures
5. Rent or lease of property or facility expenditures
6. Food and beverage expenditures (including service fees and taxes for catering)
7. Entertainment expenditures (including expenses for labor and wages)
8. Other direct expenditures (including labor and wages for fundraising event workers or paid independent contractors)

The budget should estimate the fair market value of goods and services provided to the purchaser. An event is tax deductible to the extent that the purchase price exceeds the fair market value of what the purchaser receives in return (e.g., the price of the ticket to a dinner is \$100 and the fair market value of the dinner is \$45. The tax-deductible portion would be \$55). The words "donation", "contribution", and "charitable gift" may only be used when there is a charitable tax-deductible component. Events that do not provide a charitable tax deduction component for the participant are not fundraising events. Post-event, a report of actual revenue and expenditures against budgeted revenue and expenditures must be submitted to the delegated authority to review for compliance.

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<sup>1</sup> Aligns with reporting categories for Internal Revenue Service Form 990 Schedule G

### **5.5.6 Cash Handling**

Cash and cash equivalents must be collected and documented in a timely, controlled and cost-effective manner. In circumstances where it is not practical (e.g., event parking) to process a receipt, other mitigating controls must be implemented, such as ticket count reconciliations against cash collected. (ICSUAM Acceptance of Cash and Cash Equivalents 3102.03)

### **5.5.7 Commercial Fundraiser and Fundraising Counsel**

The use of a commercial fundraiser or fundraising counsel must comply with California law and reporting requirements of the California Attorney General. Commercial fundraisers and fundraising counsel must be registered with the California Attorney General and the contract must be executed before the commencement of services. The California Nonprofit Integrity Act Manual listed in the reference section of this policy outlines the state regulations and provides templates for commercial fundraiser and fundraising counsel contracts.

### **5.5.8 Gaming Activities**

Certain gaming activities are permitted as long as they are conducted in compliance with California law and local ordinances. Cash and prizes awarded to participants are subject to miscellaneous income reporting rules.

#### **a. Bingo**

Bingo games conducted by nonprofit organizations (including auxiliary organizations) for charitable purposes are lawful under California Penal Code §326.3 and local ordinance, provided that: (1) the proceeds are used only for charitable purposes, (2) the games are conducted by volunteer members of the organizations, (3) no salaries are paid with bingo proceeds, (4) there is no commingling of bingo money with any other funds, and (5) the organization conducting bingo holds a valid license issued by the city or county in which bingo is played. Contact local police or sheriff's departments for reporting requirements.

#### **b. Controlled Games**

Casino nights, poker nights and other fundraising events with "controlled games" conducted by nonprofit organizations (including auxiliary organizations) for charitable purposes are lawful under California Business and Professions Code §19985-19987. Nonprofit organizations and suppliers of equipment and/or services for such fundraising events must submit an annual registration form to the Bureau of Gambling Control for approval 30 days prior to conducting activities. Contact local police or sheriff's departments for local reporting requirements.

1. A nonprofit organization may only hold one "controlled games" fundraising event per year and it may not exceed five hours.
2. Only individuals over 21 years of age may participate in controlled games.

3. No cash prizes or wagers may be awarded to participants; however, the winner of each controlled game may be entitled to a prize from those donated to the fundraiser. An individual prize awarded to each winner shall not exceed a cash value of five hundred (\$500). For each event, the total cash value of prizes awarded shall not exceed five thousand dollars (\$5,000).
  4. At least 90 percent of the gross revenue collected must go directly to the nonprofit organization and no more than 10% of the gross revenue may be used to compensate individuals or entities that conduct the fundraising event on behalf of the nonprofit.
  5. Controlled games may not be conducted over the internet.
  6. Detailed records must be maintained for each fundraising event using controlled games.
- c. Raffles
- Raffles conducted by nonprofit organizations (including auxiliary organizations) for charitable purposes are lawful under California Penal Code §320.5. The law required charitable organizations to register with the Attorney General’s Registry of Charitable Trusts for approval prior to conducting a raffle (a response may take up to 30 days) and annually report the results of any raffles conducted. Registration and reporting forms may be obtained from the Registry of Charitable Trusts by mail or from the Charitable Trusts website.
1. Ninety percent of raffle revenue must be used for a charitable purpose or program. 50/50 drawings are not permissible under California law.
  2. The raffle must be conducted under the supervision of an individual who is 18 years of age or older.
  3. Raffles may be advertised on the internet under specific rules but tickets may not be sold via the internet.
  4. Only nonprofit organizations that have been in existence for a year or more are eligible to conduct raffles.

California Penal Code §320.5, subdivision (m) states that a raffle is exempt from registration with the Attorney General’s Office if all of the following are true:

1. It involves a general and indiscriminate distributing of the tickets.
2. The tickets are offered on the same terms and conditions as the tickets for which a payment is given.
3. The scheme does not require any of the participants to pay for a chance to win.

Payments received for the purchase of raffle tickets are not eligible for a charitable tax deduction. The purchasers receive value in return the benefit of a “chance to win.” The value of their chance to win equals the cost of the raffle ticket.

### 5.5.9 Quid Pro Quo Contribution

A payment made that is partly as a contribution and partly for goods or services is a quid pro quo contribution. For example, if the donor gives \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable contribution part of the payment is \$60. Even though the deductible part of the payment is not more than the \$75 threshold for a written acknowledgement, a disclosure statement must be provided. Failure to make the required disclosure may result in a penalty to the nonprofit organization.

a. Disclosure Statement

The required written disclosure statement must:

1. Inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the fair market value of goods or services provided, and
2. Provide the donor with a **good faith estimate** of the fair market value of the goods or services that the donor received. The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when it actually receives the contribution.

No disclosure statement is required if **any** of the following is true:

1. The goods or services given to a donor have **insubstantial value** as described in Revenue Procedures 90-12 and 92-49,
  2. The donor makes a payment of \$75 or less per year and receives only annual membership benefits that consist of:
    - i. Any rights or privileges (other than the right to purchase tickets for college athletic events) that the taxpayer can exercise often during the membership period, such as free or discounted admissions or parking or preferred access to goods or services, or
    - ii. Admission to events that are open only to members and the cost per person of which is within the limits for low-cost articles described in Revenue Procedures 90-12 and 92-49 (as adjusted for inflation). Also see the discussion of **insubstantial value** above.
- b. Good Faith Estimate of Fair Market Value
- Any reasonable method to estimate the fair market value (FMV) of goods or services may be used, as long as the method is applied in good faith. The FMV of

goods and services that generally are not commercially available may be estimated using the FMV of similar or comparable goods or services. Goods or services may be similar or comparable even if they do not have the unique qualities of the goods or services being valued.

c. Penalty for Failure to Disclose

A penalty is imposed on a charity that does not make the required disclosure of a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

### 5.5.10 Risk Management

Management may review all fundraising event agreements to ensure compliance with University and campus policies relative to indemnification and insurance. Risk Management can also assist in the acquisition of appropriate insurance, when required.

### 5.5.10 Sale Activities

The sale of goods or merchandise is subject to sales tax unless it is covered by a specific exemption or exclusion. This is true whether a person pays by cash or another method, or offers something in barter or trade. In general, the taxable amount is the *price* set and received for the item. However, in the case of auctions, the *full amount received* is taxable, regardless of the item's fair market value. Specific exemptions from sales tax include:

- Sales of tickets for concerts, movies, plays, shows, and similar events when food and meals are not included in the ticket price.
- Sales of services such as travel, home rentals, lessons, and other things of value that are not physical products.
- Sales of gifts cards, gift certificates and coupon books.

a. Auctions

Donors who purchase items at an auction may claim a charitable contribution deduction for the excess of the purchase price paid for an item over its fair market value. The donor must be able to show, however, that he or she knew that the value of the item was less than the amount paid. Each person who attends an auction should be provided with a good faith estimate of items that will be available for bidding either through a catalog or bid sheets. Assuming the donor has no reason to doubt the accuracy of the published estimate, if he or she pays more than the published value, the difference between the amount paid and the published value may constitute a charitable contribution deduction.

In addition, donors who provide goods for charities to sell at an auction often ask the charity if the donor is entitled to claim a fair market value charitable deduction for a contribution of appreciated property to the charity that will later be sold.

Under these circumstances, the law limits a donor's charitable deduction to the donor's tax basis in the contributed property and does not permit the donor to claim a fair market value charitable deduction for the contribution. Specifically, the Treasury Regulations under section 170 provide that if a donor contributes tangible personal property to a charity that is put to an unrelated use, the donor's contribution is limited to the donor's tax basis in the contributed property. The term unrelated use means a use that is unrelated to the charity's exempt purposes or function, or, in the case of a governmental unit, a use of the contributed property for other than exclusively public purposes. The sale of an item is considered unrelated, even if the sale raises money for the charity to use in its programs. (IRS website Charity Auctions).

b. **Meals Served at Fundraising Events**

Sales tax generally applies to charges for drinks, food, and meals included in the ticket price of fundraising events. The business or organization that serves the meals at a fundraising event is responsible for reporting the taxable sales and paying the tax due. When the event host is also the caterer, tax is due based on the ticket price for the meal. If the value of the meal is not separately listed on the fundraising event ticket, the entire ticket price is taxable. (California State Board of Equalization Publication 18 August 2008)

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