

# **Charitable Gift Acceptance Policies Of The Broward College Foundation<sup>1</sup>**

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<sup>1</sup> BC policy [TBD] hereby incorporated by reference.

## **Introduction**

Broward College is a public, state college organized under the laws of the state of Florida (hereinafter referred to as the “College”). The College encourages the solicitation of gifts that will help further its mission. The Broward College Foundation, as a 501(c)(3) direct support organization (hereinafter referred to as the “Foundation”) to the College, is established to allow donors to make tax-deductible gifts through the Foundation. Only charitable gifts made through the Foundation are tax deductible.

The College and the Foundation adhere to all IRS regulations related to charitable support and are guided by the Council for Advancement and Support of Education (CASE) Reporting Standards and Management Guidelines. The Office of Advancement is responsible for the oversight and management of all fund-raising activities made on behalf of the College.

Gifts made to the Foundation may be either for the general purposes of the College or for the specific use of one of its institutes, centers, departments, programs, units or for scholarships to benefit the College’s student body. While preference is for unrestricted gifts, a donor often has several reasons for making a gift, including furthering a particular goal or supporting a particular purpose.

In general, neither the College nor the Foundation can accept gifts that contain restrictions in violation of the College’s Equal Opportunity and Non-Discrimination Policy and/or federal and state law. Under the College’s Equal Opportunity Policy (BC POL 6Hx2-2.15), discrimination is defined as unlawful and unequal treatment based on race, color, sex, national origin, religion, age, disability, marital status, sexual orientation or other legally protected classification. While most gifts are directed or submitted to the Foundation, pursuant to their operating agreements, the Foundation is subject to and must comply with College policies.

## **Purpose of Policy**

The Broward College Foundation and Office of Advancement secure gifts from individuals, corporations, foundations, and other private entities to ensure the financial health and fulfill the mission of the College. The purpose of gift acceptance policies is to define the acceptable criteria and stewardship for charitable gifts sought for the College and received by the Foundation.

## **General Policy**

The Foundation will accept unrestricted gifts and gifts restricted for specific College programs and purposes, provided that:

- such gifts are consistent with the College’s and Foundation’s stated missions
- such gifts do not violate the terms of the College’s or Foundation’s policies
- any restrictions or conditions imposed on the use of such gifts are approved by the College and Foundation

## **Definition**

A gift is a voluntary transfer of assets from an individual or entity made without consideration. That is, the donor does not receive any goods or services from the College or Foundation in consideration of the gift. The following criteria generally identify a gift:

- satisfies IRS qualifications as a charitable transaction
- except in the case of approved estate planning mechanisms
  - a gift is an irrevocable transfer of assets
  - a gift is not subject to an exchange of consideration or other contractual duties between the College or the Foundation and the donor

## **Gift Acceptance Committee**

It is recognized that certain gifts, including but not limited to those involving unusual funding arrangements, are reviewed by the gift acceptance committee. The gift acceptance committee makes all final decisions on the restrictive nature of a gift and its acceptance or refusal.

The gift acceptance committee consists of senior managers from the following offices, appointed by the most senior manager of that office:

- Office of Advancement (representing the interests of the Foundation)
- Legal Counsel
- College Administration
- Academic Affairs

The representative from the Office of Advancement serves as the chair of the gift acceptance committee. The chair is encouraged to consult subject matter experts at her/his discretion to determine the value and appropriateness of the gift. All committee members must participate in the consideration of the gift.

The types of gifts referred to the gift acceptance committee include the following:

- gifts of property valued at \$5,000 or more
- gifts requiring unusual funding arrangements or other commitments
- gifts of intangible or unusual personal property, including vessels or boats
- gifts of non-publicly traded securities
- gifts of partnership interests and other non-traditional investments
- gifts of real estate as defined further in this policy statement
- certain annuity contracts and charitable annuity trusts as defined further in this policy statement
- gifts where the management fee has been re-negotiated with the donor in an amount less than the stated management fee percentage as stipulated in the Investment Policy Statement

- gifts with special restrictions that may be difficult or costly to administer
- any gifts that are exceptions to existing guidelines or which fall outside the definition of acceptable gifts as defined by this policy

Any gift that may incur liability for the College or Foundation is referred by the gifts acceptance committee to the executive director of the Broward College Foundation, the senior vice president for administration and the general counsel for determination of whether it is an acceptable gift.

### **Donor Relations**

The interests of donors are a primary consideration with respect to any gift. Pressure techniques are not acceptable, and no program, agreement, trust or contract shall be presented which would benefit the College or its beneficiary units at the expense of the donors' best interests and charitable motivations.

All prospective donors will be advised to consult their own legal or financial counsel regarding the tax implications of a gift and matters related to estate planning. All information obtained from or about donors, prospects and gift beneficiaries is held in strictest confidence in accordance with Broward College's Code of Ethics and the Broward College Foundation's Code of Ethics. The College and Foundation will respect donor wishes in regard to publication of information or other forms of recognition.

### **Types of Acceptable Gifts**

#### **Current and Deferred Giving**

**Current Giving**—A current gift involves the transfer of money or property by a donor to the Foundation without economic or other benefit to the donor in return for making the gift. Such gifts are placed at the disposal of the College and may be either restricted (according to policies herein) or unrestricted in purpose. Most types of property may be donated to the College through the Foundation as current gifts, although gifts other than cash and publicly traded securities must comply with the provisions and guidelines contained within this policy.

**Deferred Giving**—A deferred gift involves the irrevocable transfer of an asset to the Foundation for the benefit of the College. Current tax laws allow several planning alternatives for deferred gifts, although a donor will not receive charitable tax deductions unless the gift complies with applicable requirements established by the Internal Revenue Code, or other laws or regulations which govern certain types of deferred gifts. The Broward College Foundation and Office of Advancement will urge all prospective donors to seek the assistance of personal legal and financial advisors in matters relating to their gifts and the resulting tax and estate planning consequences.

## Gift types

- cash
- tangible personal property
- marketable securities and closely held securities
- real estate
- bargain sale
- remainder interest in property, or retained life estate gift (RLE)
- gifts-in-kind
- life insurance
- oil, gas and mineral interests

## Deferred gift mechanisms:

- bequest
- charitable gift annuity
- split-interest trust
- charitable lead trust
- charitable remainder trust
- life estate
- pooled income fund
- irrevocable and legally enforced gifts

The following criteria govern the acceptance of the gift types listed above:

*Cash*—Cash is acceptable in the form of currency, money orders, checks or electronic transfer (either through a wire transfer to the Foundation bank account or by a verified credit card transaction). Checks are made payable to “Broward College Foundation.” Gifts received by mail at calendar year end are deemed received as of the postmark date.

*Securities*—The Foundation accepts both publicly traded securities and closely held securities under the conditions described below:

- Publicly traded securities—These are securities regularly traded on a public stock exchange. It is preferred that donors electronically transfer marketable securities directly to the Foundation’s brokerage account. Transfers made directly to the brokerage account can be liquidated almost immediately and with little additional paperwork required from donors. Alternatively, marketable securities may be delivered physically to the Office of Advancement, acting as an agent on behalf of the Foundation, with the donor’s/transferor’s stock power attached. It is the Foundation’s policy to sell all marketable securities as soon after receipt as reasonably feasible. The value of the gift will be calculated using the mean

share price between the high and low selling prices quoted on the day the stock is transferred to the Foundation.

Securities with legal restrictions will be reviewed by the Foundation and legal counsel of the College. If the restrictions are deemed to be unreasonable or excessive, the gift acceptance committee will determine the proper course of action.

- **Closely held securities**—Acceptance of closely held securities, which include debt and equity positions in non-publicly traded companies and interests in limited partnerships, limited liability companies, or other ownership funds, must be approved by the gift acceptance committee, with the following factors to be considered: any restrictions on the security that would prevent its conversion to cash, the marketability of the security, and the potential for other undesirable consequences.

*Tangible personal property*—Tangible personal property is property (corporeal movable property) other than real property (immovable property), which is often defined as property that can be touched. Property received through the Foundation is immediately transferred to the College, with the exclusion of items secured for fund-raising purposes. If the College intends to sell a gift, rather than use it, the donor will be informed that IRS rules may limit the amount of the charitable deduction to the donor's cost basis, and the donor will be advised to seek professional financial counsel on the tax consequences of such a donation. Only the gift acceptance committee can approve an agreement to hold property for a specified period of time.

Qualified appraisals, at the donor's expense, are required for all gifts for which the donor estimates the fair market value to be \$5,000 or more. IRS form 8283 must accompany all contributions of real property.

The College and Foundation reserve the right to obtain an appraisal, at the organization's expense, of any tangible property or real estate offered for donation, prior to acceptance. In situations where advisors retained by the College or Foundation prepare documents or render advice in any form to the College or Foundation and a donor, it shall be disclosed in writing to the donor that the professional involved is in the employ of the College or Foundation and is not acting on behalf of the donor. Any documents or other advice rendered in the course of the relationship between the College or Foundation and the donor should be reviewed by counsel of the donor prior to completion of the gift.

*Real estate*—Gifts of real estate (immovable property) include developed property and undeveloped property, as well as gifts subject to a prior life interest or usufruct. Prior to acceptance of real estate, the Foundation shall require, at the donor's expense, an independent appraisal of the property's fair market value, as well as a Phase I

environmental study to ensure that the property has no environmental damage or other environmental issues that would expose the College or the Foundation to liability. The legal office may issue a written opinion recommending that the gift acceptance committee decline the proposed real estate donation. If the real estate donation is accepted, the legal office will proceed with obtaining an acceptable title opinion to ensure that there is a clear title to the property prior to acceptance of the donation.

*Remainder interests in property or retained life estate gift (RLE)*—The Foundation on behalf of the College will accept a remainder interest in a personal residence or vacation property subject to the provisions regarding the acceptance of real estate outlined previously in this policy document. Time share properties are not accepted. The donor or other named beneficiary may continue to occupy the real property for the duration of the stated life or the term of the usufruct. Expenses for maintenance, real estate taxes, and any property indebtedness are to be paid by the donor or life beneficiary. At the death of the donor or life beneficiary, as applicable, the College may use the property or revert it to cash. All procedures for evaluating proposed gifts of real property, outlined elsewhere in this document, apply to proposed RLEs as well. Donors are strongly encouraged to have all documents related to a proposed RLE reviewed by their own attorneys.

*Life insurance policies*—The Broward College Foundation must be named both beneficiary and irrevocable owner of an insurance policy before a life insurance policy can be recorded as a gift. The gift shall be valued at its interpolated terminal reserve value (cash surrender value) on the date of receipt. Should the donor contribute future premium payments, the entire amount of the additional premium payment will be counted as a gift in the year the payment is made. If the donor elects not to continue to make gifts to cover premium payments on the life insurance policy, the Foundation may opt to continue to pay the premiums. Otherwise the Foundation may convert the policy to paid-up insurance or surrender the policy for its current cash value. Neither the College nor the Foundation endorses insurance products, insurance companies or agents in the course of receiving life insurance policy gifts.

*Bequests*—A bequest is a gift of cash, property or other asset made in a donor's will or living trust. Bequests may provide for a specific dollar amount in cash, specific securities, and specific articles of tangible property or a percentage of the residuary estate. The donors are advised to name the Broward College Foundation specifically in their wills and trusts in order to clearly indicate the intent of their bequest to the Foundation for purposes to benefit the College. Bequests may be given as unrestricted gifts or gifts restricted to a purpose or program designated by the donor that is acceptable according to College and Foundation policies. Donors may establish a testamentary charitable remainder trust or unitrust. If such a gift is made by will, the principal will pass to the Foundation only after the death of the life income beneficiary or beneficiaries.

*Retirement Plan and Insurance Beneficiary Designations*—A great deal of an individual's assets do not pass through an individual's will at the time of death because they have already been designated through other financial management instruments. Therefore, donors are encouraged to name the Broward College Foundation as beneficiary of their retirement plans and life insurance policies.

The instruments usually include individual retirement accounts (IRAs), qualified pension plans, profit-sharing plans and insurance policies. In each case, donors may designate the Broward College Foundation as primary, secondary or contingent beneficiary. Such designations will be recorded as gifts at such time that they become irrevocable. When the receipt of funds is not due until a future date, the present value of the expected cash inflow of beneficiary funds is recorded as a gift at the time the designation becomes irrevocable.

*Charitable Gift Annuities (including Deferred Charitable Gift Annuities)*—A charitable gift annuity (CGA) is a contractual arrangement between a donor and the Foundation for which it accepts a transfer of cash, cash equivalents or publicly traded securities from the donor in return for periodic payments to the donor and/or one other named beneficiary for life. In the case of a deferred CGA, the periodic payments are specified in the contract to begin in a future time period. Upon the death of the donor (or, if applicable, the other named beneficiary), the balance of the principal is retained by the Foundation for purposes approved by the College. A portion of the annual payment is tax-free income to the donor, being considered return of principal. Since the gift annuity is part gift, in addition to the purchase of the annuity, the donor is allowed an income tax deduction. Donors will be advised to seek legal and financial counsel regarding tax deductibility and similar matters.

The annuity is secured by the Foundation's assets, and the rate of return used by the Foundation and stated in the annuity contract is determined from tables provided by the American Council on Gift Annuities. The rates in these tables take into account the age of the donor and/or beneficiary at the time of the gift, as well as the date at which payments are to begin in the case of a deferred CGA, and are actuarially calculated to provide that approximately fifty percent (50%) of the market value of each gift will remain at the death of the last annuitant.

The Foundation may enter into CGA contracts with minimum funding of \$50,000 and minimum age for life income beneficiaries of 70, except in the case of deferred CGAs, for which the minimum age is 60. For deferred CGAs, the minimum deferral period for life income beneficiaries over age 60 but less than age 70 is ten (10) years. The minimum deferral period for life income beneficiaries age 70 and older is five (5) years. Exceptions to minimum requirements require approval of the gift acceptance committee.

No more than two life income beneficiaries will be permitted for any gift annuity. The Foundation will not accept real estate, personal property or any other illiquid asset in exchange for any charitable gift annuity.

The tables published by the American Council on Gift Annuities will be used for contractual rates, unless the gift acceptance committee grants an exception. Upon the death of the donor and/or other named beneficiary, the funds representing the remaining principal contributed in exchange for the gift annuity will revert to an account for the purpose specified by the donor or, if no such purpose is specified, the fund shall revert to the unrestricted use of the College.

Gift annuity contracts are governed by the laws of the state in which the donor resides. Certain of these states have stringent registration requirements. For gift annuities to be established in states other than Florida, the specific annuity regulations and requirements for that state will first be reviewed by the vice president of advancement and the College's legal counsel. The Foundation reserves the right to reject any annuity contract proposals from states where the regulations are deemed overly burdensome or when excessive compliance costs would be required.

*Charitable Lead Trusts*—The Foundation may accept designation as the income beneficiary of a charitable lead trust. A charitable lead trust is a form of split-interest gift. A lead trust is similar to a charitable remainder trust, although the qualified charity receives the income interest with the remainder interest passing to the donor or some other designated beneficiary. Because of the complexity of split-interest deduction rules, the Foundation and Office of Advancement will advise prospective donors in writing to rely upon the donor's legal, financial and tax advisors in determining whether to pursue the gift of a charitable lead trust. The Foundation and Office of Advancement will discuss trustee option with the donors, who will retain complete discretion as to the choice of trustee.

*Charitable Remainder Trusts*—The Foundation accepts designation as remainder beneficiary of charitable remainder trusts. A charitable remainder trust (CRT) is an irrevocable trust created during the life of the donor or through the donor's will or trust (a testamentary CRT). The CRT must provide that a specified amount (not less than 5%) of the trust's value is paid to one or more beneficiaries on an annual or more frequent basis. At least one beneficiary must be non-charitable. Neither the College nor the Foundation serves as trustee for new CRTs; however the Foundation and Office of Advancement will discuss trustee options with the donors, who will retain complete discretion regarding the choice of trustee.

There are two alternatives for CRTs. One is a unitrust (CRUT), which pays a fixed percentage of trust assets (not less than 5%) determined annually. The other is an annuity trust (CRAT), which pays a fixed annuity and requires that an amount not less than 5% of the initial fair market value of trust assets be paid at least annually to the named income beneficiary or beneficiaries.

*Charitable Remainder Unitrust (CRUT)* — Only assets of the trust may be used to satisfy the commitment to the donor; assets of the Foundation or College are not involved. If annual income and capital gain do not equal the committed percentage, principal is used to make up the difference. If there is excess, it is added to the principal.

*Charitable Remainder Annuity Trust (CRAT)* — The annuity trust provides fixed payments based upon the fair market value on the date the trust is established. The payout must equal at least five percent (5%) of the fair market value of the assets placed in the trust when it is created. Income in excess of the annual payment is added to the principal. If the income in any one year is less than the annual payment, the difference comes from principal.

### **Miscellaneous Provisions**

Neither the College nor the Foundation pays fees or commissions of any kind to any party as consideration for directing a gift to the College. Neither the College nor the Foundation endorses any professional or fiduciary services.

The office of the controller will be responsible for filing the required IRS Form 8283 upon the sale or disposition of any property sold or otherwise disposed of within three years of receipt by the College when the charitable deduction value of the item is greater than \$5,000. It is understood that the College must file this form within 125 days of the date of sale or disposition of the asset.

### **Guidelines to Establish a Named Scholarship**

- To establish a named scholarship endowment that lasts in perpetuity, an individual or organization contributes \$25,000 or more, payable over a period of up to five years.
- A named expendable scholarship requires a gift of \$2,500, payable over a period of up to 12 months.
- The College and Foundation strictly adhere to IRS regulations and CASE guidelines in terms of securing and managing scholarship funding.
- A donor may designate if the scholarship is to be awarded on the basis of academic merit and/or financial need. Additionally, the program of study may be specified. Gifts of lesser amounts will be administered through the General Scholarship Fund, American Dream, First Generation or Opportunity Scholarship programs.
- Scholarship criteria must reflect the interests of the College student body, not private interests of the donor.

## **Terms of Agreement with Each Scholarship Benefactor**

- Scholarships may be awarded for any costs related to tuition, fees, books, supplies and equipment required for courses.
- The Office of Student Financial Services is responsible for making the final selection of the recipient(s) based upon donor-designated criteria. In the event the Office of Student Financial Services is unable to identify a student who exactly matches the designated criteria, the Office of Student Financial Services will select students who most closely match the criteria established.
- Each award amount is at the discretion of the Office of Student Financial Services based upon the student's financial aid package and amount of money available in the fund. It is understood that if the fund's balance falls below \$100 (one hundred dollars), the Foundation reserves the right to distribute the remaining money through the General Scholarship Fund.
- The College must have full control and discretion over the expenditure.
- The College and Foundation may not be bound by a commitment or "understanding" that the contribution will benefit a designated individual. The donor's intent must be to benefit and advance the mission of the College.
- In accordance with Internal Revenue Code Section 170, a donor is entitled to a deduction for charitable contributions to the Broward College Foundation for the use of Broward College.

## **Scholarship Criteria and the IRS**

Any act that does not adhere to IRS regulations risks penalties to the individuals who receive the benefit and those who manage the organization, as well as loss of the organization's tax exempt status. The purpose of this section is to clarify "charitable class" and how it relates to the development of scholarship criteria and awarding of scholarship funds.

For a scholarship donation to be qualified as tax deductible, the IRS and other federal agencies have established acceptable and unacceptable criteria by which and by how scholarships can be awarded. The Foundation exists solely to transform lives through education by providing community awareness, advocacy and financial support to the College. As a 501(c)(3) non-profit organization and tax exempt public Foundation, the Foundation is required to use its assets for charitable purposes, as defined by the Internal Revenue Code. Promotion of education is the Foundation's charitable purpose.

The IRS term for those who deserve our charity is "charitable class." Each 501(c)(3) non-profit organization must provide a public benefit to a specified charitable class. For the purposes of scholarship programs, the College's student body is the "charitable class" of the Foundation.

Scholarships must be for public not private interest

- Criteria must be “broad enough” to serve the charitable class for which the Foundation’s tax-exemption was granted, the student body of the College.
- Criteria must not directly or indirectly limit scholarship awards to private interests or groups, unless the groups are protected (listed below).
- Scholarship restrictions and awarding practices must allow for a broad pool of eligible students, one that warrants the conclusion that the scholarship is serving a broad public interest for the College student body as a class rather than the private interest of a donor.

Permissible criteria include:

- merit, including major, area of study and grade point average
- financial need
- fluency in or primary language other than English
- residency in a particular geographic area
- graduating from a particular high school or school district
- demonstrating commitment to working with historically underprivileged or underrepresented populations
- disabilities or having overcome specific challenges (ex. drug/alcohol recovery, growing up in a single parent household, first generation to attend College)

Impermissible criteria include:

- race or color
- religion
- citizenship or national origin
- gender
- age
- sexual orientation
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- specific employer
- quid pro quo

Additionally:

- The criteria for selection must be related to the purposes of the scholarship.
- Scholarships must be awarded and used for the purpose(s) intended.
- The financial amount of the award(s) cannot exceed the students’ educational costs.

## **Savings Clause**

If any provision of this agreement is found to conflict or violate any federal or state law or regulation, or in the event that the stated uses of this scholarship become impossible, impracticable or no longer applicable, the Foundation will confer with the donor or their representative to modify the agreement. If the Foundation is unable to locate the donor or their representative after reasonable effort, the Foundation is authorized to utilize the funds for other appropriate educational support purposes.

## **Transparency**

In accordance with Internal Revenue Code Section 170, a donor is entitled to a deduction for charitable contributions to the Broward College Foundation for the use of Broward College. The Foundation and College must have full control and discretion over the contribution and may not be bound by a commitment or “understanding” that the contribution will benefit a designated individual. The donor’s intent must be to benefit Broward College.

The Foundation must comply with the IRS guidelines:

- Criteria are objective and nondiscriminatory.
- The purpose furthers the College’s purpose.
- Selection criteria are published.
- Assurances are in place that improper private benefit is not given.
- Non-interested persons review applicants and grant awards.

## **Common Questions Related to Scholarships**

Below are questions frequently asked by donors regarding restrictions. For each restriction, alternative clauses or language is provided to help achieve the donor’s intent in a legally compliant manner.

*Can a gift or scholarship award be restricted on the basis of race?*

No. This restriction violates College policy as well as federal and state law. Broward College, as a public institution, is subject to the Fourteenth Amendment of the Constitution, which guarantees that no state shall “deny to any person within its jurisdiction the equal protection of the laws” (Equal Protection Clause). Any scholarship award by the college is considered a “state action.” In addition, public and private institutions are subject to Title VI, which provides that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance.” As a result, any race-based award, whether benign or pernicious, is subject to a strict scrutiny standard of review by the courts and would likely be deemed or struck down as unlawful discrimination.

*If the donor desires a gift or scholarship award to be restricted by race or only awarded to specific minorities, what are our options?*

While the College and Foundation cannot restrict scholarships on the basis of race, we can use race-neutral criteria to help increase the pool of the intended recipients the donor desires, even if that means a disproportionate share of the award or aid is directed toward a particular race or minority. Below are some examples of race-neutral criteria that can increase the likelihood of the award being made closer to the donor's intended purpose:

- "The scholarship is awarded to a student with demonstrated interests in the Latino heritage."
- "The donor desires that when awarding this scholarship special consideration be given for students who have demonstrated experience in or a commitment to working with the African-American community."
- "The donor desires that when awarding this scholarship, priority should be given to students who (1) are underrepresented in the Broward College student body population or (2) have overcome obstacles such as socioeconomic or educational disadvantage or (3) are first generation in their family to attend college; and who reside in Broward County."

*Can we accept a gift or award with the intent to achieve diversity in the student body?*

Yes. The U.S. Department of Education has stated that an institution may use financial aid to create diversity under limited circumstances. For example, the College may use its financial aid program to promote diversity by considering factors which are a part of the College's diversity definition, such as geographic origin, English as a second language, diverse experiences, or socioeconomic backgrounds. In addition, a college may consider diversity as a plus factor in combination with other race-neutral criteria in awarding financial aid. In addition to the previous examples, below are other examples that can be used to increase diversity:

- "The purpose of this scholarship is to support educational diversity at Broward College by giving priority to students who are under-represented in the Broward College student body population with concentrated study in sciences."
- "The purpose of this scholarship is to support educational diversity at Broward College consistent with its mission. Therefore, it is the donor's intent to consider all highly qualified students in an inclusive and broad spectrum of characteristics and categories."
- "The donor desires that when awarding this scholarship, special consideration should be given to students who: (1) have overcome obstacles such as socioeconomic or educational disadvantage or disabilities, or who are the first generation in their family to attend college; or (2) are members of groups that are underrepresented at Broward College."

*What if a donor wants to limit an award to individuals from certain countries or based upon alienage?*

No. This restriction violates federal and state law. As discussed above, Title VI prohibits discrimination on the basis of national origin and the United States Supreme Court has recognized alienage as a suspect classification under the Equal Protection Clause. According to the Equal Employment Opportunity Commission (“EEOC”), national origin discrimination means treating someone differently because that individual (or his or her ancestors) is from a certain place or belongs to a particular national origin group. Most commonly, this discrimination occurs by restricting the award to individuals or groups from a particular country or a group of people sharing a common language, ancestry, and/or other similar social characteristics, such as ethnicity.

However, we can use geographic criteria to help the donor achieve his/her intent for the award. For example, we can use “residing in” China as an eligibility requirement rather than “from” China.

*Can we restrict a gift or scholarship award to requirements of U.S. citizenship alone?*

No. The Supreme Court holds that such a restriction by public colleges and universities is an unlawful discrimination based on alienage. At best, the restriction can be based on “U.S. citizen or permanent resident.”

*Can we limit the recipients of certain awards to women or men only?*

Generally no. This restriction violates College policy as well as federal law. Most courts have found that discrimination based on gender is unlawful under the Equal Protection Clause. In addition, Title IX prohibits discrimination based on gender in any education program or activity that receives federal financial assistance, and its regulations prohibit scholarships that are restricted on the basis of sex, with a few limited exceptions. Athletic scholarships, within certain parameters, are one of the exceptions under Title IX.

However, we can use gender-neutral criteria to help achieve the donor’s desire in the award. For example:

"The donor desires that the scholarship be used to assist students who are pursuing degrees in disciplines such as [specify areas where there are few women] or where steadily progressing careers in and leadership positions are not readily available to them."

"The donor desires that when awarding this scholarship special consideration be given to students who are under-represented in the Broward College student body population with concentrated study in sciences."

*A donor wants to make a gift or scholarship award based upon a person's religious beliefs.*

*Can we do that?*

No. This restriction violates College policy as well as federal law. As a public institution, Broward College is also subject to the First Amendment's Establishment Clause of the U.S. Constitution, which prohibits government from promoting or opposing religion.

However, we can use non-religious criteria which can closely match the donor's intent in the award. For example:

"Although not a specific criteria of the award, the award is intended to recognize and support students who have shown an interest or have participated in outreach or service learning work in partnership with a faith-based organization."

*Are we allowed to restrict gifts by marital status?*

Maybe. Discrimination based on marital status has been prohibited in the context of employment. Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer to discriminate against individuals on the basis of sex, unless sex is a bona fide occupational qualification that is reasonably necessary to the operation of the particular business or enterprise. Although Title VII does not specifically prohibit employment distinctions based on marital status, federal court and EEOC decisions indicate that such distinctions may constitute sex discrimination under Title VII. Therefore, any gifts likely cannot discriminate based upon the marital status.

Consult with the College's Office of General Counsel before accepting any other gifts or awards based upon marital status.

*If a donor wants to focus the award on people with disabilities, can we do that?*

Maybe. While disability is a protected category under College policy, and federal and state law, a restriction may be permissible if it is reasonable. The difficulty in using disability as a criteria is that proof would have to be submitted to the Office of Disability Services as a baseline for the award. A person with a disability is not required to register with ODS. Thus, the application of such an award is burdensome to the College and would be difficult to implement. Please consult with the Office of General Council before agreeing to such an award.

One option is:

"This scholarship is intended to support students who have overcome physical challenges."

*Can we restrict an award based upon sexual orientation?*

No. It is clearly an impermissible criteria according the IRS. A permissible clause would be:

“This scholarship is intended for those students who have worked in the GLBT community or have an interest in GLBT issues.”

*Can a scholarship be designated for a particular individual, family or a small group of individuals?*

No. Critical to a determination that a gift is eligible for a charitable deduction for tax purposes is that the scholarship and like awards are awarded to a charitable class. The group of individuals from which the recipients are selected must be sufficiently broad as to be considered a charitable class. Normally a charitable class must be sufficiently large and indefinite so that assisting members of the charitable class benefits the community as a whole. Earmarking scholarships to help a particular preselected individual violates this requirement. The donor of a scholarship cannot take a charitable deduction for a scholarship that is earmarked for the benefit of a specific individual, even if that individual is unrelated to the donor. Therefore, gifts from any donor for a fellowship or scholarship made on the condition or with the understanding that the award will be made to a student of the donor's choice will not be accepted.

Examples of valid charitable classes include 9/11 victims, lower income students, students with a grade point average of 3.5 or higher, all graduating seniors of a particular school, students in a particular city, or valedictorians in a state. Each of these examples is broad and indefinite.

*Can a scholarship be designated for a military veteran?*

Yes.

*Can a scholarship be designated for a single parent?*

Yes, however mother or father cannot be specified.

## **Process to Award Scholarships**

### **Selection Process**

The College is proud to honor students with a variety of scholarships funded by benefactors through the Foundation. These dollars provide opportunities to recruit and retain students. These procedures are intended to expedite those opportunities and the impact of each donor's generosity.

To ensure that the scholarship selection process remains objective and nondiscriminatory, recipients of all scholarships through the Foundation will be selected in accordance with College policies and procedures within the Office of Student Financial Services.

- The College is solely responsible for the final selection of scholarship recipients.
- Persons selecting beneficiaries must not be in a position to derive direct or indirect benefit.

- The donor cannot select the recipient(s) under any circumstances or serve on a selection committee, as their presence can control the selection process.

### **Compliance with Regulations and Donor Intent**

Compliance with federal regulations and donor intent is paramount. Because of this, each student's financial award package is subject to audit with the final determination to be made by the College's Office of Student Financial Services. The total of all funds (including all forms of federal, state, internal and external assistance) to a student cannot exceed the total direct and indirect costs of education (such as in-state tuition, fees, allowances for room and board, transportation, childcare, etc.). The intent of the College is to satisfy the unmet financial need of each student to cover the direct and indirect costs of his/her education.

### **Student Eligibility**

A student becomes eligible for a scholarship award when he/she:

- is registered for minimum number of credits as defined by the College or certificate program AND
- completes the FAFSA (Free Application for Federal Student Aid) document AND
- completes the online scholarship application AND
- demonstrates good academic standing (as defined by the Office of Student Financial Services)
- renewable awards are contingent upon maintaining a minimum grade point average, completion of the donor appreciation letter and meeting all other conditions of the criteria as specified.

### **Awards Calendar**

The Office of Student Financial Services will develop and communicate the annual awards calendar, outlining specific dates for the following:

- deadline for students to complete FAFSA and online scholarship application
- deadline for students to register for minimum number of credits as defined by the College
- scholarship committee (see below) receives scholarship information and eligible pool
- deadline for scholarship committee recommendations
- financial award packages are completed and the Office of Student Financial Services sends notifications to students
- the Office of Student Financial Services posts scholarships to the student accounts

Any scholarships not awarded will be forfeited until the next semester.

The stewardship coordinator in the Office of Advancement will contact the student to facilitate completion of the appreciation letter to be sent to the benefactor(s).

## **Committee Process**

Several scholarships require the engagement of faculty/staff in the selection process. Each year, a Scholarship Review Committee will be appointed to facilitate the selection of students to be recommended to the Office of Student Financial Services for scholarship awards.

Members of the Scholarship Review Committee will be given the criteria for scholarships in the member's unit, names of eligible students and a deadline for the recommendations to be submitted. A minimum of two weeks will be provided for this process. Should recommendations not be submitted by the date specified, the Office of Student Financial Services will make the awards to students who are eligible.

## **Documenting Appreciation**

Scholarship awards are made possible through generous gifts from individuals and organizations. The College encourages students who have benefited from the generosity of others to make a similar investment when they are in a financial position to do so. Recipients will be provided with information regarding their scholarship benefactor(s) for the purpose of sending a letter of appreciation through the Office of Advancement. It is the Foundation's expectation that scholarship recipients write letters of appreciation to donors.

## **Endowments: Frequently Asked Questions**

*Why are endowments important to Broward College and the Broward College Foundation?*

Endowments help student success by making it financially feasible to attend college; they allow us to provide scholarships to deserving students so that they don't incur an unreasonable amount of student loan debt. Through an endowed teaching chair program, endowments fund and recognize excellence in teaching, while attracting and retaining the best instructors at Broward College. Endowments are a source of funding for construction and maintaining capital facilities as state appropriations have significantly decreased in recent years.

*What is a true endowment?*

An endowment is a long-term investment in Broward College that provides benefits to students, faculty and programs year after year, generation after generation, in perpetuity.

A true endowment is a fund made up of gifts (including realized will bequests) that are subject to a donor requirement that the corpus be maintained and invested to create a stream of income. Only a portion of the average investment earnings are expended to carry out the specified purpose of the endowment. To guard against the eroding consequences of inflation, the remaining portion of investment return is reinvested to help ensure that the endowment maintains its purchasing power over time to support future generations.

*What is the 2.25% administrative fee?*

The administrative operations of the foundation, excluding investment manager fees, are partially supported through a 2.25% administrative fee based on the three-year quarterly rolling average of the fair market value of the endowed and quasi-endowed funds. This annual fee is assessed quarterly providing there are sufficient funds in the respective earnings account. The College supports all overhead costs in excess of the 2.25% fee.

*What is the corpus?*

The corpus represents the total amount of donor gifts to a true endowment plus returns to principal, if applicable.

*What is a quasi-endowment?*

A quasi-endowment is created when the donor and the Foundation and College agree that both the investment earnings and corpus (principal) may be used to further the purpose of the donation. The donor may allow use of corpus dollars and stipulate a limit on what percentage may be utilized.

*What legal requirements regulate endowments in Florida?*

The Florida Uniform Prudent Management of Institutional Funds Act, adopted as Section 617.2104 of the Florida Statutes, which took effect on July 1, 2012.

*What is the difference between Broward College and the Broward College Foundation?*

The Broward College Foundation, as a direct support organization to Broward College, was established to solicit, manage and distribute funds for educational purposes, primarily scholarships, program support and capital facilities for Broward College.

While Broward College and the Broward College Foundation are separate legal entities, each with its own federal tax I.D. number, the foundation exists solely to support the College. The Broward College Foundation is incorporated under the laws of the State of Florida as a nonprofit organization and is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and is a publicly supported charitable organization under Sections 509(a)(1) and 170(b)(1)(A)(vi). The Foundation is officially designated as a conduit for contributing private financial support to the College.

*How are endowment investments managed by the Broward College Foundation?*

The Foundation's Finance and Investment Committee, under the direction of the Board of Directors of the Broward College Foundation, is a fiduciary and is responsible for directing and monitoring the investment management of the endowment.

The committee is responsible for adopting the provisions of the Investment Policy Statement. This responsibility includes approving investment strategy; hiring and firing of investment managers, custodians, and investment consultants; monitoring performance on a regular basis (at least quarterly); and maintaining sufficient knowledge about the endowment and its managers to be reasonably assured of their compliance with the Investment Policy Statement.

The Finance and Investment Committee is authorized to delegate certain responsibilities to professional experts in various fields. These include, but are not limited to:

**Investment Consultant.** The investment consultant may assist the Finance and Investment Committee in: establishing investment policy, objectives, and guidelines; conducting asset allocation reviews; selecting investment managers; reviewing such managers over time; measuring and evaluating investment performance; and other tasks as deemed appropriate.

**Investment Manager.** The investment manager has discretion to purchase, sell or hold the specific securities that will be used to meet the endowment's investment objectives, within the investment strategy approved by the Finance and Investment Committee.

#### *What is asset allocation?*

Asset allocation is the manner in which endowment funds are distributed among the various long-term investment asset classes. Asset allocation is a major factor in maximizing portfolio return taking into consideration an acceptable risk level. The objective of an endowment, and thus the allocation decision, is to provide "generational neutrality." In other words, endowment management seeks to provide at least the same level of inflation-adjusted support to future generations as the current beneficiaries receive. The Foundation's asset allocation strategy for the endowment is as follows:

**Global Equity** – the allocation consists of public and private equity-oriented funds managed by external investment firms. This is the highest risk and highest return asset category. The allocation is diversified by factors including security, sector, geography, market capitalization, and manager style.

**Global Fixed Income** – the allocation consists of three broad categories (1) interest rate sensitive, (2) credit/distressed, and (3) emerging market debt. The rate sensitive bonds provide equity risk mitigation, deflation protection and liquidity to the portfolio. The credit/distress allocation provides investment opportunities to generate a substantial real return. Emerging market debt provides elements of both interest rate and credit sensitivity, as well as having currency risk.

Real Assets – the allocation consists primarily of real estate and natural resources. These investments are expected to provide inflation protection as well as generate positive real rates of return.

Diversifying Strategies – the allocation will consist of investments whose primary source of risk and return is not a constant allocation to one of the above three asset classes. This includes but is not limited to absolute return hedge funds and multi-strategy funds.

*What is the spending policy?*

The Foundation’s spending policy focuses on protecting the corpus and establishing spending levels necessary to support programs and scholarships funded by the Foundation. The policy is a three-pronged approach to determining the endowment’s spending distribution.

Hibernation – The endowment must generate earnings for one year before spending is distributed.

Spending limitations – Four percent (4%) of the three-year rolling average of the quarterly portfolio market value may be granted annually, provided there are sufficient funds in the respective earnings account.

Prohibition – The fund receives no spending distribution on endowments with a total balance less than the original gift’s fair market value.

*What happens to any “excess returns” in the endowment?*

Earnings beyond the amount needed for spending are referred to as “excess returns” and are added back to principal and reinvested in the long-term pool to promote growth and protect against inflation for future programs. These excess returns are also used to provide funding for future spending budgets in down investment performance periods.

*What is an “underwater” endowment?*

This is an endowment that, through declining market performance, has used all accumulated earnings and appreciation and has eroded the original gift value, or corpus. The Foundation’s spending policy prohibits spending distribution on endowments with a total balance less than the original gift’s fair market value, unless the donor agrees in writing to invade the corpus, or the donor elects to contribute to the endowment earnings fund to allow for a spending distribution.

*Can an endowment be designated for a specific purpose?*

Yes. As with any gift made to the College through the Foundation, an endowed gift offers alumni and friends the opportunity to have their names, or the name of a loved one, linked to an area of the College in which they have a special interest.

- Some donors create unrestricted endowments, recognizing that the needs and challenges of the future will differ from those of today. Unrestricted gifts are used for the highest priority needs on campus and provide the most flexibility as these needs change.
- Many donors create scholarships to aid deserving students.
- Broward College and the Broward College Foundation strictly adhere to IRS regulations and CASE guidelines in terms of establishing scholarship criteria.
- Some donors choose to support an Endowed Teaching Chair.
- Other donors choose to direct their gifts to areas or programs of special interest to them, knowing that these additional funds provide an opportunity for those programs to grow and continue to excel.

*What is the minimum amount for establishment of an endowment?*

The Foundation's minimum to establish a named scholarship or program endowment is \$25,000. Donors may specify an endowment level greater than the Foundation's minimum in their endowment agreement.

### **Recognition through Naming of Facilities and Programs**

On occasion, Broward College and the Broward College Foundation seek to recognize the efforts and contributions of individuals and organizations by the naming of buildings, portions of buildings, programs, etc. Recommendations for such recognition is determined on a case-by-case basis by the gift acceptance committee.

### **Revisions to Gift Acceptance Policy**

Except as otherwise stated within these written policies, the gift acceptance committee must approve any exceptions to policy provisions. The Office of Advancement periodically will review these policies and make recommendations for revisions. Any recommended revisions and updates will be presented to the Broward College Foundation Board of Directors and the Broward College District Board of Trustees for approval.

Sources:

- Robert Sumner, Sumner & Associates, P.C., June 10, 2012
- Professional Tax & Estate Planning Notes, June 2002
- “Laws and Regulations Affecting Scholarship Programs,” Center for Energy Workforce Development, [cewd.org/toolkits/Scholarship/Scholarship%20Laws.pdf](http://cewd.org/toolkits/Scholarship/Scholarship%20Laws.pdf)
- FinAid: the SmartStudent Guide to Financial Aid, [finaid.org](http://finaid.org)

Public foundations are encouraged to follow the guidance provided for private foundation scholarship programs through the following:

- IRS Publication 578, Tax Information for Private Foundations and Foundation Managers
- Revenue Procedure 76-47, 1976 CB 670
- Internal Revenue Manual 4.76.11.1-4
- Equality Act of 2010
- IRS Publication 970, Tax Benefits for Education
- College Scholarship Fraud Prevention Act of 2000, [finaid.org/scholarships/s1455.pdf](http://finaid.org/scholarships/s1455.pdf)

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