

UC Campus Foundations Detailed Frequently Asked Questions

WHAT ARE CAMPUS FOUNDATIONS?

Colleges and universities across the country have foundations that have been established to foster private giving, manage gift and endowment funds, and provide other support in furtherance of the institution's mission. These foundations are separately incorporated entities with an independent board of trustees, and are organized as charities under Section 501(c)(3) of the Internal Revenue Code.¹

These entities are often referred to as "institutionally related foundations" or "affiliated foundations" and exist primarily at public colleges and universities - though some private schools may also have affiliated foundations. In some states, these foundations are created in order to address state laws pertaining to the investment of public funds, or to perform certain functions on behalf of the institution. While the factors leading to creation of foundations may vary from state to state and from institution to institution, there is one common element: **"a foundation provides an opportunity for a college or university to involve prominent business leaders, alumni, and other successful individuals who are willing to commit their time, resources, and talent to the support of the institution."**²

In some states, and in some state university systems, all gifts to a college or university are given to the affiliated foundation. In other instances, such as is the case at the University of California, gifts can be directed either to the Campus Foundation or to the University itself.

HOW ARE UC CAMPUS FOUNDATIONS STRUCTURED?

Each of the ten UC campuses has an associated Campus Foundation that is a separately incorporated California non-profit public benefit corporation. As such, they have an independent board of trustees (or board of directors) composed of volunteers, not employees of the University. Many of these trustees are UC alumni, but a large number are simply individuals who recognize the value of UC and wish to provide their support.

The Campus Foundations at Berkeley and UCLA were initially established by the campus alumni associations to raise student support and later evolved into entities separate and distinct from the alumni associations. The other Campus Foundations were established with the initial purpose of encouraging private support for all areas.

UC Campus Foundations do not expend any gift funds directly, other than for administrative costs. Gifts to the Foundations and payout from endowments they receive are transferred to the campus for expenditure from Regental accounts.

Gifts in support of a particular campus can be made to The Regents or to the Campus Foundation for that campus. In recent years, almost half of all the private philanthropy received to support the University has been given through the Campus Foundations – and over 80 percent of all gifts to establish endowments. As shown in the table that follows, for each of the past five years, over \$500 million has been gifted to the UC Campus Foundations.³

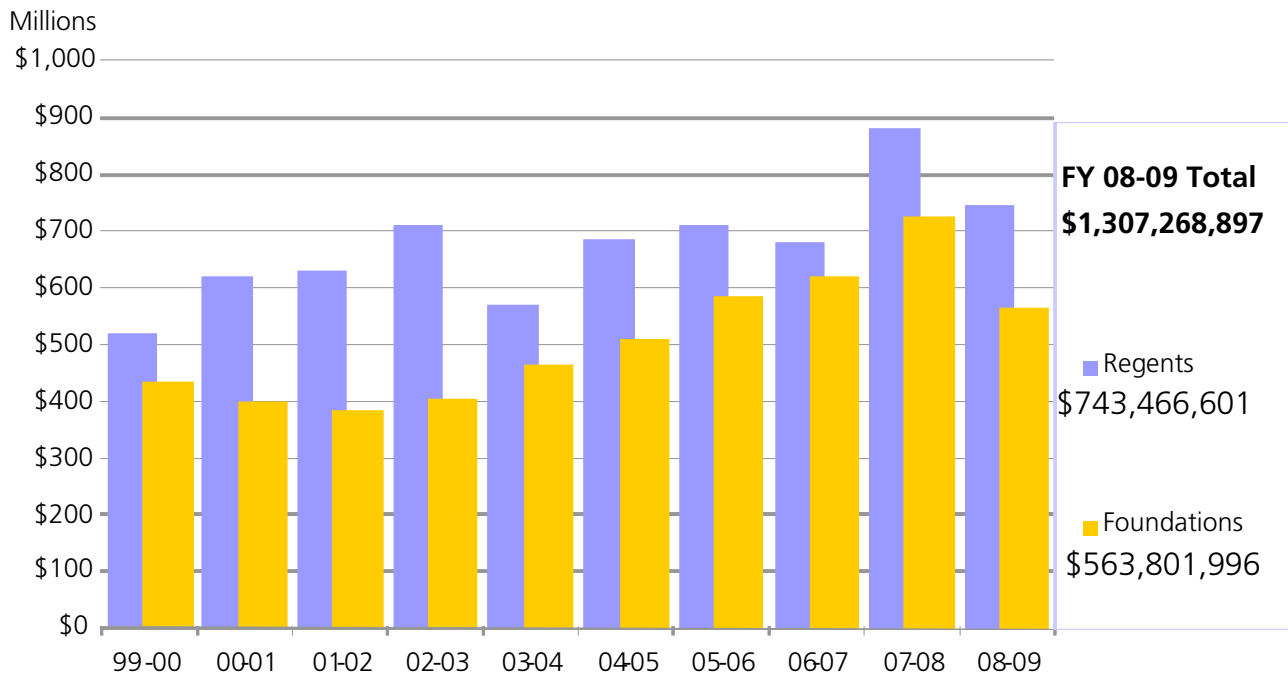
¹ There is a specific provision in the Internal Revenue Code [IRC Section 170(b)(1)(A)(iv)] that recognizes these types of entities that are "organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university... which is an agency or instrumentality of a State."

² CASE (Council for Advancement and Support of Education) FAQ on Institutionally Related Foundations at [case.org](http://www.case.org) and http://www.case.org/Browse_by_Professional_Interest/Institutionally_Related_Foundations/Foundation Similarly, the Association of Governing Boards of Universities and Colleges notes: "**The ability to engage committed, affluent, influential, and independent volunteer leaders is perhaps the most important rationale for institutionally related foundations.**" <http://www.agb.org/institutionally-related-foundations>

³ Per UC's **Annual Report on Private Support**. See <http://www.ucop.edu/instadv/reports.html>

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Annual Private Support to Regents and Campus Foundations, Total for FY 2008-09 shown below



WHO DETERMINES HOW A FOUNDATION'S GIFT FUNDS ARE USED BY THE COLLEGE OR UNIVERSITY? HOW IS THIS DONE AT UC?

In general, donors determine the use that is made of funds held by affiliated foundations at UC and at other institutions. Across the country, gifts for higher education are almost always designated for a particular purpose. Gifts that are to be expended on a current basis might be directed for a specific area of research, a designated capital project, or to support a named academic department. Gifts for endowment might support a graduate fellowship, an undergraduate scholarship, a chair or professorship, or a wide array of other activities in perpetuity.

Private support at UC tends to be even more restrictive than at other higher education institutions. For the past decade or more, approximately 98 percent of all gifts received by UC have been designated for particular purposes.⁴ Although a few older endowments held by The Regents are unrestricted, recent gifts for endowment are restricted resulting in an overall endowment where approximately 93 percent is restricted. The UC Campus Foundation endowments are even more restricted – at the June 30, 2009 fiscal year, only 1.2 percent of the endowment fund dollars held by the UC Campus Foundations was “unrestricted.”⁵ This compares to national averages of 80% restricted funds at public institutions and 55% restricted funds at private institutions.⁶

It should also be noted that institutionally related foundations do not take the lead in establishing funding priorities. Foundations provide guidance on which projects or purposes are most likely to appeal to donors and cultivate support that will help the institution achieve its goals. However, campus campaign goals are set by each campus – after a deliberative process where the Deans provide input to each Chancellor on the needs of the campus where private support can be of greatest assistance.

⁴ Each year's *Annual Report on Private Support* includes detailed information on areas of support; approximately 2% of all support has been unrestricted for at least the last three decades.

⁵ Only 30 funds were unrestricted, out of over 7,000 funds held by the UC Campus Foundations

⁶ Estimates per the American Council on Education (ACE) and the National Association of College and University Business Officers (NACUBO) noted at http://www.acenet.edu/AM/Template.cfm?Section=Search§ion=Government_Relations&template=/CM/ContentDisplay.cfm&ContentFileID=3545

Additional information on private support and endowments is presented in the **University's Accountability Report**, as well as the **Accountability Sub-Report on Private Support**. The January 2010 Presentation can be found at: <http://www.universityofcalifornia.edu/regents/regmeet/jan10/12.pdf>

WHAT INFORMATION IS AVAILABLE TO THE PUBLIC RELATED TO UC CAMPUS FOUNDATIONS?

UC Campus Foundations as charitable organizations are required to file tax returns with the Internal Revenue Service, as well as the California Franchise Tax Board and the State Registry of Charitable Trusts (in the California Attorney General's Office). As a matter of federal law, a Foundation's tax return (Form 990) is required to be made available to the public.⁷ However, recognizing concerns with donor privacy, the IRS provides that certain donor information that is provided on the Form 990 filed with the Service is not included on the public inspection copy of the Form 990. The Foundations' financial statements are also publicly available (as are the financial statements of other California charities under the 2004 Nonprofit Integrity Act).

In addition to the information that is required to be made available under existing law, information on the activities of UC Campus Foundations can be found in numerous other documents that are available to the public, including the following:

University of California Financial Statement - The financial statements for the University of California incorporate pertinent information from the Campus Foundations as required by the Governmental Accounting Standards Board guidelines. Note that this is presented in the aggregate⁸, rather than on a campus by campus basis. See <http://www.universityofcalifornia.edu/finreports/>

Annual Report on the University Private Support - Fundraising activities of each of the Foundations is included in this report that is presented to the Regents, and available on-line. This Report not only summarizes fundraising results for each Foundation, it also includes a hyperlink to each Campus Foundation. See <http://www.ucop.edu/instadv/reports.html>

Annual Endowment Report - The UC Treasurer prepares a detailed report that includes information on each Campus Foundation. This report summarizes investment performance, holdings, policies, benchmarks, etc. See <http://www.ucop.edu/treasurer/foundation/foundation.pdf>

While available publicly for many years, each of these reports are now also available via the **UC Reporting Transparency** web-site: <http://www.universityofcalifornia.edu/reportingtransparency/>

HOW DOES UC ENSURE THAT THE CAMPUS FOUNDATIONS ARE OPERATING EFFECTIVELY AND APPROPRIATELY?

UC Campus Foundation operations are subject to University policy which sets forth certain parameters for foundation activities. The primary policy is the **Policy on Support Groups, Campus Foundations, and Alumni Associations**⁹. This policy governs the overall activities of the organizations that provide "valuable assistance in fundraising, public outreach, and other support for the University's mission." Additionally, it emphasizes the separate nature of the Campus Foundations by stating that "Each Campus Foundation shall be organized and operated as a separately incorporated, tax-exempt entity under relevant provisions of State and federal tax law..." In short, while Foundations are separate legal entities, the University recognizes that there are benefits of accountability and efficiency in requiring that expenditures be made from University accounts.

"as a public trust and the beneficiary of the funds raised, the University is obligated to require that the funds raised by such entities be adequately controlled and properly expended in the same manner as if the funds were raised by the University itself."

Policy on Support Groups, Campus Foundations, and Alumni Associations

⁷ Tax returns of charitable organizations are not only made available by the charity, they are also readily available on-line at the sites such as Guidestar (the California Attorney General also maintains a data base with tax returns for all California charities).

⁸ This reporting is done in accordance with the requirements of GASB (Government Accounting Standards Board) 39.

⁹ See <http://www.universityofcalifornia.edu/regents/policies/6078.html>

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While this policy specifically prohibits certain activities – such as conducting research trials and augmenting the salary of UC employees – its Administrative Guidelines provide more detailed guidance.

The **Administrative Guidelines for Campus Foundations**¹⁰ include various requirements to ensure that Foundations are operated according to prudent business practices and generally accepted accounting principles, including the following:

- Ongoing oversight by the Chancellor and the Office of the President
- Applicability of pertinent University policies and delegations of authority
- Review and reporting annually by the Treasurer to The Regents regarding investment procedures and returns
- Requirement that expenditures be made exclusively from regular University accounts and from University agency accounts
- Annual external audit conducted by a firm of Certified Public Accountants of nationally recognized standing

These rules were put in place by the University of California several decades ago. As such, UC Campus Foundations have been operating in a sound and prudent fashion for many years.

WHAT IS INVOLVED IN THE ANNUAL CAMPUS FOUNDATION AUDIT?

External audits are performed to ensure that an entity's financial statements accurately reflect the financial position of the organization and are presented in conformance with generally accepted accounting principles. In order to reach such a conclusion, the accounting firm performs an audit which entails examining underlying evidence/documents, assessing the accounting principles, and evaluating the overall financial statements. This process is more involved than merely a review or a compilation.

The California Nonprofit Integrity Act (2004) requires an audit of all charitable organizations above a certain size. UC policies required a full audit for decades before this law became effective. Moreover, the UC Campus Foundations have an audit performed by a firm of "nationally recognized standing." This requirement does increase the cost of such an audit – UC Campus Foundations have estimated that their costs may be 40-60 percent higher than if a local, regional firm were engaged. However, this more stringent requirement provides a greater assurance that the auditing firm will have the appropriate expertise and independence.

Each of the UC Campus Foundations undertakes an annual external audit conducted by a firm of Certified Public Accountants of nationally recognized standing.

As part of the audit, the external accounting firm opines as to whether the Campus Foundations are in compliance with all applicable UC policies. This entails a determination that the UC Campus Foundations are complying with the policies noted above, as well as the Campus Foundation Investment Policy noted below.

DO UC CAMPUS FOUNDATIONS HAVE INVESTMENT POLICIES AND HOW ARE ACTIVITIES MONITORED TO ENSURE COMPLIANCE?

Each UC Campus Foundation has an investment policy as well as an Investment Committee composed of trustees with the responsibility of establishing appropriate guidelines and monitoring the investment of the Foundation's gift funds. The investment and management of Foundation funds is also subject to current provisions in California statutes – specifically, the Uniform Prudent Management of Institutional Funds Act (UPMIFA).¹¹

The Regents of the University of California also provide oversight in this area. Recognizing the particular importance of the investment activities conducted by the Campus Foundations, there is a separate policy that pertains solely to this area. The **Investment Policy for the University of California Campus Foundations**¹² refers to the reporting

¹⁰ See <http://www.ucop.edu/ucophome/coordrev/policy/2-12-04foundation-guidelines.html>

¹¹ California Probate Code Section 18501 et. seq.

¹² See <http://www.universityofcalifornia.edu/regents/policies/6201.html> The Policy has been in place for decades; the most recent version was adopted in March 2009.

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requirements of the Foundations cited earlier, and sets forth certain steps to be conducted by the Regents' generalist investment consultant. Although not specifically required under Policy, the Regents' generalist investment consultant also provides interim reports on Campus Foundations to The Regents Committee on Investments. The reports by the independent Regents' generalist investment consultant are presented to The Regents at The Regents Committee on Investments meetings. As with other reports, these are available to the public.

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The introduction of SB 330 has resulted in a number of more specific questions pertaining to the UC Campus Foundation Operations. The University of California has provided detailed information to the media and to the author of this bill, Senator Leland Yee. The following are some of the specific questions that the University has addressed, reproduced here to ensure that the public also has access to accurate information.

SINCE SO MUCH INFORMATION IS ALREADY PUBLIC, WHAT IS THE CONCERN WITH EXTENDING THE PUBLIC RECORDS ACT TO APPLY TO UC CAMPUS FOUNDATIONS?

The University has many concerns with SB 330 including concerns related to donor and trustee privacy and the resulting impact of disclosure on philanthropic support for the University of California.

As noted by CASE (the Council for Advancement and Support of Education) a major factor for many donors in making their gifts via a college or university foundations is that "**Foundations can also serve to safeguard the privacy of donors who may not want the details of their personal finances to become a matter of public record.**" This concern for donor privacy extends beyond donors who wish to be anonymous. It also encompasses all donors whose personal lives may be intruded upon due to the application of the Public Records Act.

As noted earlier, the concern for donor privacy is recognized in the federal Internal Revenue Code as well as the Internal Revenue Service instructions for the NonProfit Organization Tax Return (Form 990). The instructions to the Form 990 include numerous warnings regarding donor information that should NOT be provided "because it may be made available for public inspection."



Do not file this list with the organization's Form 990 or 990-EZ because it may be made Available for public inspection¹³

UC Campus Foundations provide an opportunity for UC to involve prominent business leaders, alumni, and other individuals who are willing to commit their time, resources and talent in support of the University's mission. If the Public Records Act were extended to apply to UC Campus Foundations, the communications between trustees would be subject to disclosure. These communications may inadvertently reveal the name of an anonymous donor, or may simply provide details into a donor's financial circumstances and personal life that a donor would prefer remain private. Moreover, certain foundation trustees will inevitably opt not to serve if their activities are now subject to the Public Records Act. These individuals often serve in a variety of civic arenas, including service on other charitable boards - which would not be similarly burdened.

UC has sought to be conservative in assessing the resulting decline in philanthropic support. Even under this methodology, the initial impact is expected to be in the millions of dollars - and will only increase over time. Any loss in financial support would not be offset by any gains in accountability or transparency.

¹³ See <http://www.irs.gov/pub/irs-pdf/i990sa.pdf>

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ISN'T THE CONCERN FOR DONOR PRIVACY JUST FOR ANONYMOUS DONORS? DOESN'T SB 330 PROVIDE PROTECTION FOR ANONYMOUS DONORS?

UC has concerns with various aspects of donor privacy, and not just for anonymous donors.

Most donors do not seek anonymity, but they have every expectation that their discussions with the Campus Foundations would not be made public. Were these communications to be subject to the PRA, it may provide details into a donor's financial circumstances or personal life that should remain private.

Prospective donors often have discussions with Campus Foundation Trustees and other volunteers well before they opt to support the University. In these discussions, they may reveal certain aspects of their personal finances, personal and family medical history that is the impetus for their interest in particular areas of medical or scientific research, and any number of other personal details.

Anonymous donors have an even greater concern for their privacy. Some are motivated by religious reasons, while others are simply eager to avoid an exponential increase in charitable solicitations. Increasingly, some donors seek to be anonymous due to safety concerns, as news of their wealth may increase potential danger to them and to their families. Whatever the motivating factor, UC needs to be able to honor the request of donors who wish to remain

anonymous. This becomes increasingly difficult if the PRA were to be extended to the Campus Foundations, as e-mail correspondence between volunteer trustees and donors may be required to be disclosed. Even if donor names were redacted, this may not be adequate to ensure that a donor's identity isn't determined due to other factors.¹⁴

SB 330 does not guarantee protection for anonymous donors and volunteers.

SB 330 offers no anonymity to donors who contribute through their donor-advised funds or through charitable or family trusts. Additionally, the \$500 limit in return benefits included in SB 330 is a positive development and appears to be a reasonable level for disclosure of support, however, there is great uncertainty as to how return benefits would be determined. While SB 330 attempts to protect the privacy of charitable donors and volunteers, the Campus Foundations, unlike any other charity, would not be able to guarantee anonymity to potential donors.

UC FOCUSES ON THE CAMPUS FOUNDATIONS, BUT WHAT ABOUT THE OTHER AUXILIARY ORGANIZATIONS THAT OPERATE BUSINESS ACTIVITIES FOR UC – LIKE ATHLETICS?

The business activities of UC – including Athletics – are operated and managed by the University and not by outside entities. There may be some confusion due to the fact that UC uses the term “auxiliary enterprises” in referring to certain commercial-type activities that serve faculty, students, and staff – especially certain activities that might be seen as competing with local businesses.¹⁵ Although by no means exhaustive, a list of auxiliary enterprises might include: student housing operations, non-housing food service operations, parking operations, bookstores, student centers/unions, and child-care centers. These are all activities operated by the University of California.

An inaccurate understanding regarding how UC operates seems to be a major contributing factor in the effort to extend the Public Records Act. The University has attempted to clarify this with the SB 330 author. **Because UC auxiliaries are part of UC itself and are not separate legal entities, UC auxiliaries are already fully subject to the Public Records Act.**

HAS UC PROPOSED ANY AMENDMENTS THAT WOULD ADDRESS THESE CONCERNS?

The University of California has been willing to work with the author of SB 330, Senator Leland Yee, on amendments to the bill that would assure that certain information was available to the public. These amendments would ensure that the public had access to pertinent information related to the UC Campus Foundations, without jeopardizing the personal privacy of donors and trustees. The University's proposed amendment would make available to the public the following documents held by the Campus Foundations:

¹⁴ Ironically, the recent Contract Addendum for a client of the Washington Speaker's Bureau is an example where an individual's name was never stated on the document, but the identify of the individual was clearly evident from other factors. See http://www.sfgate.com/chronicle/acrobat/2010/04/13/Palin_contract.pdf

¹⁵ See Business and Finance Bulletin BUS-72 at <http://www.ucop.edu/ucophome/policies/bfb/bus72.html>

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- Articles of Incorporation, Bylaws or similar corporate instrument, and nonprofit domestic corporation filings
- Resolutions
- Adopted policy statements
- Audited financial statements
- Compensation plans
- Compliance and internal control audit reports
- Tax exemption application
- Annual federal and state tax returns
- Annual endowment report that provides detailed information concerning investment practices, and the financial management fees that it has paid and its holdings
- Its annual reports regarding private support that provide the sources and uses of gifts for the benefit of its affiliated campus.
- Records documenting any loans made by it during the sixty-month period preceding the written request for information.
- Records documenting compensation, if any, paid by it during the sixty-month period preceding the written request for information.
- The names of individuals or entities known to it to have received from either it or the public entity that it supports any service or item with a value in excess of the dollar amount used by the Internal Revenue Service to determine significant contributors to a charitable organization as set forth on Form 990, Schedule A, in exchange for, or in appreciation of, a gift made to it during the sixty-month period preceding the written request for information, a description of the service or item received by the donor, and a statement of the value of the service or item received.