

TOPICS IN RESEARCH ADMINISTRATION

Gifts vs. Grants

Implications for Indirect Costs

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Office of the General Counsel **Office of the Provost**

Agenda

1. Institutional Context and Indirect Costs

Claude Canizares, Bruno B. Rossi Distinguished Professor, Dept. of Physics

2. What is a Gift?

A.L. (Lorry) Spitzer, Counsel, Office of the General Counsel

3. What is a Grant?

Shawna Vogel, Director of Grant and Contract Administration, Office of Sponsored Programs

4. Gifts vs. Grants and Process

Richelle Nessralla, Counsel, Office of the General Counsel

GIFT VS. GRANT: IMPLICATIONS FOR INDIRECT COSTS

Claude Canizares, Bruno B. Rossi Distinguished Professor, Dept. of Physics



Gift vs. Grant?

- Context:
 - “Private” sources are an increasing fraction of MIT’s revenue
 - MIT “Campaign for the future” is breaking records for gifts to MIT
 - Federal research funding is flat or declining
 - How such funds are classified, as **Gift** or **Grant**, has important implications on how they may be used
 - Understanding the rules can help you inform and guide PI’s and donors

Gift vs. Grant, PI Perspective

- Grants (Shawna Vogel)
 - Give grantor greater visibility and control
 - Incur standard Indirect Costs
- Gifts (Lorry Spitzer)
 - Give PI's greater flexibility
 - Have different, usually lower, Indirect Costs
 - May have tax advantage for donor
- Gifts vs. Grants (Richelle Nessralla)

Treatment of Indirect Costs is a significant differentiator so first:

[A Short Primer on Indirect Costs](#)

MIT Operating Revenue

Four categories of operating revenue:

(totaling \$3.6 B in MITFY2017 incl. Lincoln Lab)

- Grants (or contracts) for Sponsored Activities
- Gifts – for current use (expendable)
- Tuition (net of financial aid)
- Other (e.g. fee for service)

Plus:

- Endowment returns – internal transfers

MIT Expenditures

Four categories of expenditures:

- “Organized research”
- Instruction and “departmental research”
- Other institutional activities (e.g. housing, dining)
- Other sponsored activities

Project Costs

Two categories of costs:

– Direct Costs:

Salaries, equipment, M&S, for project

“can be directly assigned to a particular project with a high degree of accuracy”

– Indirect Costs (F&A) ~~Overhead:~~

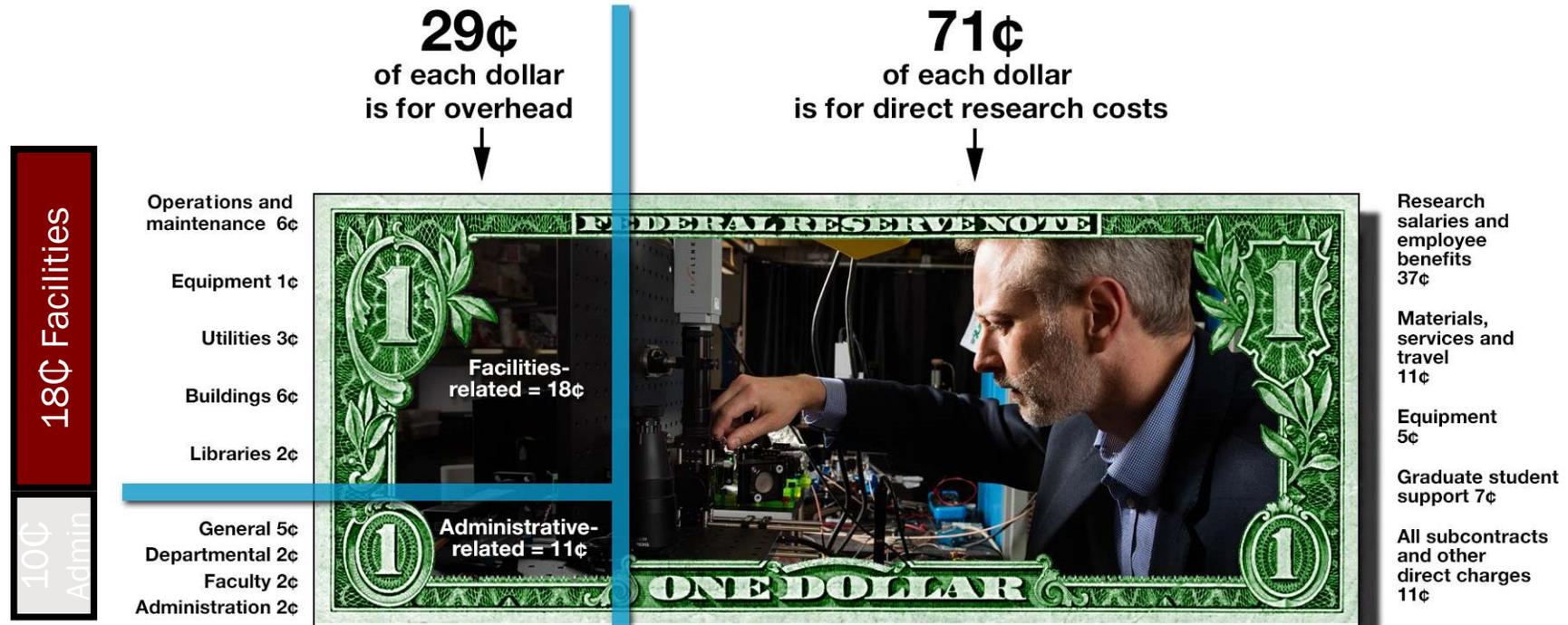
Facilities & shared Administration (i.e., OSP, Central & Dept. Admin...)

“incurred for common or joint objectives and so cannot be ...identified with a particular sponsored project”

The Federal Research Dollar on the MIT Campus

MIT FY17

F
&
A



Source: MIT Office of Sponsored Programs, FY17
Chart: MIT, November 2017

Image: Geoffrey Beach, associate professor in MIT's Department of Materials Science and Engineering, and co-director of the Materials Research Laboratory. Beach combines the deep, theoretical understanding of a physicist with an engineer's passion for building and refining the devices needed to carry out his investigations.

MIT Photo / M. Scott Brauer



Credit: John P. Donahue, OSP

F&A Recovery

- F&A Costs are allocated proportionately to four categories of expenditure -- Organized Research, Instruction, Other Sponsored Activities, Other
- For Organized Research, each award must carry its “Fair Share” of F&A
- “Fund fees” (F&A rates for fund accounts) cover a fraction of F&A for other categories
- Institute funds must cover what’s left

F&A Recovery

- For Organized Research, F&A Recovery is charged like a “sales tax”

$$\text{F\&A Costs} = (\text{F\&A rate}) \times (\text{MTDC})$$

MTDC is “Modified Total Direct Costs”

MTDC = TDC – tuition, major equipment, subs

F&A Rate is negotiated with and audited by U.S. Government

- Fund Accounts are charged using one of 3 rates depending on type of expenditure

Current (MITFY2017) F&A Rates

- Organized Research: 59% of MTDC
Negotiated with & audited by US Government
- Gifts, MIT funds:
 - non-faculty salary/EB 59% = Res. Rate
 - GRAs , M&S, equipment 10%
 - Faculty, students, TA tuition 0%

Indirect costs: Fund with transaction fee

**Subject to negotiated F&A
59%**

- Administrative, research, academic, support and service staff salaries + EB (no vacation accrual)

**Subject to fund transaction fee
10%**

- Grad student RA stipends & tuition
- Most other direct expenses
 - materials
 - travel
 - equipment (major & minor)

**No additional costs
0%**

- Faculty summer & AY salaries + EB
- Undergrad wages
- Graduate TA, and grad or postdoc fellow stipend/tuition/insurance

Take-away on Indirect Costs

- Indirect costs are real costs to MIT
- “Organized Research” F&A rates are set by U.S. Government, applied to ALL such projects
- Gifts are charged a different (generally lower) F&A rate than Grants
- Any F&A expense not covered by sponsor (i.e. “under-recovered”) must be covered by MIT

WHAT IS A GIFT?

A.L. (Lorry) Spitzer, Counsel, Office of the General Counsel



What is a Gift?

The Supreme Court wrestled with this decision in 1960 in the Duberstein decision

Duberstein was an income tax case. “Gifts” are not included in income.

The Court refused to spell out a definitive definition, although it did recognize that if a donor is a business entity that claims a business deduction for the transfer these facts (while not “shibboleths”) could suggest that the transfer is not a gift.

The Duberstein Court stated that:

“A gift... proceeds from a detached and disinterested generosity ... [and] out of affection, respect, admiration, charity or like impulses”

And further that:

“The decision of the issue must be based ultimately on the application of the fact-finding tribunal’s experience with the mainsprings of human conduct to the totality of the facts of each case.”

Translation: Good luck, you are on your own!

Issue: Can MIT say “thank you” in a formal manner without causing a gift to be characterized as a grant?

- Recognition as a “sponsor?”
- Ceremonial dinner?
- Naming rights?
- Professorship?
- Creation of a “fund” that includes the donor’s name?

Can MIT agree to restrictions on the gift without causing it to be characterized as a grant?

- For example: “These funds may only be used to support nanotechnology research”?
- Can MIT offer a broad outline of the intended use of the gift?

Gifts with Benefits

- Donor receives “access” to researchers?
- Donor requires notification of research results at the same time the findings are made public?
- Detailed research plan with required reporting back to donor?
- Donor negotiates for intellectual property rights
- Donor negotiates for investment rights

Summary

Even though the Supreme Court declined to identify a “talismán” for identifying a gift, it did make this comment about the benefit enjoyed by the donor:

A payment is not a gift if it proceeds “*primarily from ... the incentive of anticipated benefit of an economic nature*”

Summary, Cont'd

If the donor is primarily motivated by an economic return, the transfer is not a gift and would generally constitute sponsored research, subject to the negotiated F&A rate.

If the donor receives nothing in return for the transfer other than an acknowledgement of the transfer, which can include naming rights, the transfer will generally be a gift, subject to the fund transaction fee.

If the donor receives detailed rights of a non-economic nature, such as the right to meet periodically with researchers and to receive a detailed accounting of expenditures, the transfer won't be characterized as a gift, but will nonetheless be subject to the fund transaction fee, not the negotiated F&A rate.

WHAT IS A GRANT?

Shawna Vogel, Director of Grant and Contract Administration, Office of Sponsored Programs



What is a Grant?

“Grant” = sponsored activity

- Agreement generally in the form of a grant or cooperative agreement (i.e. an assistance award) or a contract
- Agreement to perform a particular activity, typically in exchange for funding
- Agreement benefits each party, but unlike a gift it usually includes **significant benefits to sponsor**
 - Financial (e.g. rights to intellectual property)
 - Having MIT faculty & students address a specific project & deliver results
- Commitments often require MIT to **track project separately**
 - Managed in a **WBS account**; Internal Controls in place
 - Only allowable expenses, no mixing funds from different sources, sponsor approval where required, defined period for use of the funds, etc.
 - Either an organized research (6000000-9999999) or fund account (2000000-4479999)

Grants support many types of activities

Organized Research

- “Creation of new knowledge” or fundamental research

Non-research:

- ***Instruction***
 - Primary purpose is to teach or to train
 - Also, not the creation of new knowledge
- ***Other Sponsored Activity (OSA)***
 - Not the creation of new knowledge. Not teaching or training
 - Activity serves some other purpose, e.g., public service

Fellowships

- Supports a “training” activity
- Awards are generally made to individuals. MIT agrees to administer awards on behalf of the individual.

Indirect Costs - Summary

Activity type determines secondary costs (F&A, EB, VA)

Sponsor type (federal vs non-federal) is now also a factor in determining secondary costs

Activity type	Sponsor type	Overhead
Organized Research	Federal or non-federal	Negotiated F&A (59%)
Non-research (Instruction, Other)	Federal	<i>De minimis</i> 10% MTDC
	Non-federal	Fund with transaction fee (59/10/0%)
Fellowship	Federal or non-federal	0%

What makes it a grant?

It comes down to the award terms and the commitments we make to the sponsor

Questions we ask:

- **Is there a specific Statement of Work and/or detailed Budget for the project?**
 - The more specific/detailed the less likely it is a gift since these represents more involvement/oversight by Sponsor in what we do with the funds
- **Are there Intellectual Property and/or licensing terms?**
 - These provide financial benefit to sponsor; require separate tracking so we know what inventions were funded
- **Are there audit terms? Must unexpended funds be returned?**
 - These necessitate financial tracking and/or control in WBS accounts
- **Are there deliverables?**
 - For example: periodic or final reports that exceed what one might consider stewardship of a gift
- **Is there a particular period of performance or start/end date for the project?**
 - A defined end date implies that unexpended funds must be returned or sponsor approval is needed to spend remaining funds beyond the end date
- **Any other commitments that necessitate we manage the project separately?**
 - For example: SOW includes specific instructions RE disposition of property

What is a grant? - Summary

Agreement generally includes some or all of the following:

- Specific statement of work
- Detailed budget for the work
- Results reported/delivered to sponsor
- Sponsor rights to intellectual property
- Sponsor right to audit
- Return of unused funds
- Defined period for use of funds
- Funds must be separately accounted for

GIFT VS. GRANT AND PROCESS

Richelle Nessralla, Counsel, Office of the General Counsel



Gift vs. Grant Indicators

A **gift** is a philanthropic contribution.

A **sponsored program, or grant** (research or educational activity) is an exchange of value.

Benefits to Funder

Gift

No tangible benefit to donor. No specific reporting of research results.

Grant

Sponsor Derives tangible benefits, usually rights.

Use of Funds

Gift

Donor may designate purpose or topic.
MIT has some discretion over activities
and spending.

Grant

Includes a specific statement of work,
and/or timeline or milestone
requirements.

Budget

Gift

Only very high level budget is shared with donor. There is typically a separate internal detailed budget.

Grant

Detailed budget is shared with funder and may be subject to funder approval.

Time and Return of Funds

Gift

No specific time to use funds, and no return of funds at the end of time period or project.

Grant

Typically has specific project time period, and return of unexpended funds at end of such time.

Financial Accounting

Gift

General information about use of funds (stewardship letter) can be provided to donor.

Grant

Typically requires detailed financial accounting of expenditures. Funds must be separately accounted for. The funder may also have a right to audit MIT books and records.

Form of Agreement

Gift

Usually a brief, general agreement.

Grant

To cover all of the details of the transaction, usually a detailed and specific agreement.

Complications

- Some projects will include both a sponsored program portion and a gift portion.
- Rarely, a project will be neither a gift nor a sponsored program. Examples are facilities use agreements, fee for service agreements and some member agreements. These are treated as “Other Revenue” by the Office of Vice President for Finance.

Resources

- Contract Administrators in OSP and the Office of the Recording Secretary
- They can elevate to an inter-office working group on difficult cases.

QUESTIONS?