

NC STATE UNIVERSITY

A Guide to Preferential Language within a Gift Agreement

The Office of Donor Services

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Preferential Language within a Gift Agreement

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Section 1: Preferences and Requirements

Overview

When making a gift, donors have the option of giving to support the general mission of the university (unrestricted giving) or giving a gift with specific preferences and restrictions to support a specific college, institute, center, department, program or unit. As a best practice, NC State prefers unrestricted gifts; however, with preferences donors can request certain criteria language be included within the fund purpose of their gift agreement.

Criteria can be in the form of requirements and preferences. A requirement means that NC State must adhere to the criteria. NC State limits restrictions to funds being directed to a certain college, major, department, grade level or research subject. By utilizing preferences for any other criteria, NC State has flexibility in awarding the fund to ensure the donor's gift has the greatest impact. As a practice, NC State strives to meet the donor's preferences when administering the fund.

NC State cannot accept gifts that contain restrictions in violation of university policies and/or federal and state law. While most gifts are directed or submitted to one of the university's foundations, pursuant to their operating agreements, all foundations are subject to and must comply with university policies.

Common Questions about Preferences

What criteria can a donor choose to restrict?

Awarding restrictions can only be limited to the following criteria:

1. Major
2. Area of support
3. Academic level (undergraduate or graduate)
4. Merit or need

Note: If the donor combines these to be too restrictive, the donor's request might be declined; however, Donor Services will suggest acceptable language.

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Are there exceptions for donors to request restrictions within an agreement?

No. It is currently NC State's policy that we do not allow restrictions within a gift agreement unless it is for a major, department, academic level, area of support or research area. In addition, we will avoid placing the words "must", never, or "required" within the agreement.

What if a donor's original agreement had restrictions and we are now amending their agreement? Can we uphold the restrictions?

In reviewing an agreement for an amendment request, we will review the agreement for any compliance issues. Donor Services will always try to get the agreement closest to the donor's intent, but in most cases we will need to convert restrictions to preferences to ensure that NC State is able to award funds in perpetuity, thereby ensuring that the donor's gift has the greatest impact.

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

No. This restriction violates the university's Equal Opportunity and Non-Discrimination Policy, POL 04.25.05, as well as federal and state law. As a public institution, NC State is subject to the Fourteenth Amendment of the Constitution. Any scholarship award by the university is considered a "state action." In addition, public and private institutions are subject to Title VI. As a result, any race-based award 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?

We can use race-neutral language to help increase the pool of qualified recipients the donor is desiring to achieve.

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. We may use our financial aid program to promote diversity by considering factors which are a part of NC State's diversity definition such as geographic origin, English as a second language, diverse experiences or socioeconomic backgrounds.

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

No. This restriction violates university policy as well as federal and state law, including Title VI. 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

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similar social characteristics, such as ethnicity. However, we can use geographic criteria to help the donor achieve their intent for the award.

Can we restrict a gift or scholarship award to U.S. citizens?

No. The Supreme Court holds that such a restriction by public universities is an unlawful discrimination based on alienage.

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

No. This restriction violates university policy as well as federal law. Most courts have found that discrimination based on gender is unlawful under the Equal Protection Clause in addition to violating Title IX. However, we can use gender-neutral criteria to help achieve the donor's desire in the award.

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 university policy as well as the First Amendment's Establishment Clause of the U.S. Constitution. However, we can use non-religious criteria which can closely match the donor's intent in the award.

Are we allowed to restrict gifts by marital status or having children?

No. Discrimination based on marital status or children status has been prohibited in the context of employment and is a violation of Title VII of the Civil Rights Act of 1964.

Are we allowed to restrict gifts to designate for a particular individual, family or a small group of individuals?

No. 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 pre-selected individual violates this requirement.

Can a scholarship be designated for a military veteran?

Yes.

Can a scholarship be designated for a single parent?

No. Discrimination based on marital status or children status has been prohibited in the context of employment and is a violation of Title VII of the Civil Rights Act of 1964.

Can a donor apply multiple restrictions or preferences to narrow the awarding criteria?

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When applying restrictions or preferences, NC State carefully reviews the criteria to ensure that the award will be applied to a "charitable class" (IRS Publication 3833 (Rev.9-2005), which is a group of individuals that may properly receive assistance from a tax-exempt charitable. A charitable class must be large enough or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, benefits when a charity provides assistance. For example, a charitable class could consist of all the individuals in a city, county or state. This charitable class is large enough that the potential beneficiaries cannot be individually identified and providing benefits to this group would benefit the entire community. We recommend avoiding restrictions or preferences that would limit awards to students from a specific high school or from small communities such that only one or two students may be eligible as a result of the small charitable class. In addition, applying multiple restrictions or preferences may narrow the charitable class to an unacceptably small pool of potential candidates. This can also contribute to an unacceptable level of donor control (IRS Revenue Ruling 68-484, 1968-2 C.B. 105 and section 170 of the Code), for example where a donor already has an awardee in mind, so they request multiple restrictions or preferences to narrow the awarding criteria.

General Tips for Talking About Preferences

1. Assure the donor that the university uses preferences rather than requirements to ensure the fund can spend each year to allow for the greatest impact of the donor's gift.
2. Restrictions based on gender, citizenship or race violate NC State policies and federal and state laws and therefore should not be included as criteria in any agreement.

Section 2: Complex Criteria Preference Language

This language is meant to assist Development Officers in determining what criteria language will best fit the donor's intent. This is not meant to be a menu for donors to select multiple criteria options, and it is recommended that only one complex criteria preference be included per agreement. Multiple instances of complex criteria in a single gift agreement increases administration and awarding issues.

Disclaimer: This language may be adjusted to fit the context of the agreement.

Scholarship Language

Citizenship or National Origin

1. The Donor intends that when awarding this scholarship special consideration be given to students who are U.S. citizens or permanent residents.
2. Preference will be given to students who are U.S. citizens or permanent residents.

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3. Preference will be given to students who currently reside in or are a resident of _____.
4. The purpose of this scholarship is to provide support to international undergraduate students who have lived in _____ for at least one year.

Diversity and Inclusivity

1. Preference will be given to students with demonstrated interest in the _____ heritage. Examples of demonstrated interest may include, but are not limited to, students' coursework and involvement in student organizations.
2. Preference will be given to students who have demonstrated experience in or a commitment to working with the _____ community. Examples of demonstrated experience in or a commitment to working with the _____ community may include, but are not limited to, students' volunteer activity and involvement in student organizations.
3. Preference will be given to students who have demonstrated experience in or commitment to working with historically underserved or marginalized populations.
4. Preference will be given to students who have demonstrated experience living or working in diverse environments.
5. Preference will be given to students who have demonstrated interest in equity, diversity or social justice for _____ by participating in community activities, social groups, student clubs or organizations that support this focus.
6. Preference will be given to students who have a demonstrated interest in creating and promoting equal opportunities for all in _____.
7. Preference will be given to those students who have worked in the _____ or have an interest in _____ issues.
8. Distributions from the Fund will be used to provide support for activities within _____ focused on equity, diversity, inclusivity or social justice. This includes but is not limited to continued education, experiential learning, staff support and recruiting individuals committed to promoting a more diverse and inclusive class of _____.
9. Preference will be given to students who have demonstrated experience in or commitment to working with historically underserved or marginalized populations or

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demonstrated interest in enhancing the diversity of the teaching force.

10. Preference will be given to students who have demonstrated experience living or working in diverse environments and have demonstrated interest in enhancing the diversity of the teaching force.

First Generation to Attend College

1. Preference will be given to students who are from the first generation in their family to attend college.

Gender

1. Preference will be given to students who have demonstrated experience in or a commitment to working with the _____ community. Examples of demonstrated experience in or a commitment to working with the _____ community may include, but are not limited to, students' volunteer activity and involvement in student organizations.
2. Preference will be given to students who have demonstrated interest in equity, diversity or social justice for _____ by participating in community activities, social groups, student clubs or organizations that support this focus.
3. Preference will be given to students who have a demonstrated interest in creating and promoting equal opportunities for all in _____.
4. Preference will be given to those students who have worked in the _____ or have an interest in _____ issues.

Military Service/Veterans

1. Preference will be given to students who are current or former service members of the U.S. Armed Forces.
2. Preference will be given to students who would qualify for transferred Post-9/11 GI Bill benefits (38 U.S.C. § 3319).

Particular County

1. Preference will be given to students who reside in _____ counties.
2. Preference will be given to students who reside in rural North Carolina counties as determined by the North Carolina Rural Economic Development Center, currently defined as Tier 1 and Tier 2 counties.

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(At the end of the "Awards will be determined by..." paragraph, insert:) In addition, awards may be renewable for recipients residing in counties whose designations by the North Carolina Rural Economic Development Center have changed.

Particular State

1. Preference will be given to students who are _____ (State) residents.

Religion

1. Preference will be given to students who have shown an interest or have participated in outreach or service learning work in partnership with a faith-based organization.

Sexual Orientation

1. Preference will be given to students who have worked in the LGBTQ+ community or have an interest in LGBTQ+ issues.

Socio-Economic Status

1. Preference will be given to undergraduate students who have demonstrated financial need.

Single Parent

1. Preference will be given to students from a single-parent household.

Programmatic Language

Disabilities

1. Distributions from the Fund will be used to provide support for the Disability Services Office within the Division of Academic and Student Affairs with preference for supporting students who have overcome challenges such as disabilities.

Diversity and Inclusivity

1. The Donor established this fund to provide support for activities within the university focused on equity, diversity or social justice.
2. The Donor established this fund to provide support for the Office for Institutional Equity and Diversity.

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3. The Donor established this fund to provide support for The African American Cultural Center.
4. The Donor established this fund to provide support for Multicultural Student Affairs.
5. The Donor established this fund to provide support for the Cultural Competence and Inclusivity Program.
6. The Donor established this fund to provide support for the Interfaith Prayer and Meditation Spaces initiative.
7. The Donor established this fund to provide support for the GLBT Center.
8. The Donor established this fund to provide support for the Women's Center.

Research Language

Diversity and Inclusivity

1. Distributions from the Fund will be used to provide unrestricted support for research focused on equity, diversity or social justice.

Distributions from the Fund will be determined by the _____ (*select either: Dean or Department Head*), or their designee.

Section 3: Laws, Policies and Regulations

NC State must adhere to the following laws, policies and regulations in regards to gift agreements.

Equal Opportunity and Non-Discrimination Policy, POL 04.25.05

This policy defines discrimination as the “unlawful and unequal treatment based upon race, color, religion, creed, sex, national origin, age, disability or veteran status”. Discrimination based upon sexual orientation is also prohibited by this policy.

First Amendment’s Establishment Clause of the U.S. Constitution

Prohibits the government from promoting or opposing religion.

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Fourteenth Amendment of the U.S. Constitution

Guarantees that no state shall “deny to any person within its jurisdiction the equal protection of the laws” (Equal Protection Clause).

Title IX of the Education Amendments of 1972

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.

Title VI of the Civil Rights Act of 1964

States that “no person in the United States shall, on the ground 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.”

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 race, color, religion, sex or national origin.