

INSTITUTION / AGENCY AGENDA - continued

1ST READING

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: E. Gifts and Affiliated Foundations

~~June, 2005~~ ~~October 2003~~

E. Gifts and Affiliated Foundations

1. Acceptance of Gifts by an Institution, School, or Agency.

a. The Board may accept donations of gifts, legacies, and devises (hereinafter "gifts") of real and personal property on behalf of the state of Idaho that are made directly to the Board or to an institution, school, or agency under its governance. Gifts worth more than \$10,000 must be officially accepted by the Board before the gift may be expended or otherwise used by the institution, school, or agency. The chief executive officer of any institution, school, or agency is authorized to receive, on behalf of the Board, gifts worth \$10,000 or less and of a routine nature. (Section 33-3714, Idaho Code.) This provision does not apply to transfers of gifts to an institution, school, or agency from an affiliated foundation. Such transfers shall be in accordance with pertinent institution, school, or agency policies, as described in the written operating agreement between the institution, school, or agency and an affiliated foundation.

b. While an institution, school, or agency may accept gifts made directly to the institution, school, or agency, or directly to the Board, absent unique circumstances making a direct gift to the institution, school, or agency more appropriate, donors shall be requested to make gifts to affiliated foundations.

2. Purpose of the Policy.

a. The Board recognizes the importance of voluntary private support and encourages grants and contributions for the benefit of the institutions, school, and agencies under its governance. Private support for public education is an accepted and firmly established practice throughout the United States. Tax-exempt foundations are one means of providing this valuable support to help the institutions, school, and agencies under the Board's governance raise money through contributions. Foundations are separate, legal entities, tax-exempt under Section 501(c) of the United States Internal Revenue Code of 1986, as amended, associated with the institutions, school, and agencies under the Board's governance and established for the purpose of receiving, holding, and/or using funds from the private sector for charitable, scientific, cultural, educational, athletic, or related endeavors that support, enrich, and improve the institutions, school, or agencies. The Board wishes to encourage a broad base of support from many

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sources, particularly increased levels of voluntary support. To achieve this goal, the Board will cooperate in every way possible with the work and mission of affiliated foundations.

b. The Board recognizes that foundations:

(1) Provide an opportunity for private individuals and organizations to contribute to the institutions, school, and agencies under the Board's governance with the assurance that the benefits of their gifts supplement, not supplant, state appropriations to the institutions, school, and agencies;

(2) Provide assurance to donors that their contributions will be distributed and utilized for specified purposes; and

(3) Create an effective forum for alumni and community leaders to help strengthen the institutions, school, and agencies through participation in the solicitation, management, and distribution of private gifts.

c. The Board, aware of the value of tax-exempt foundations to the well being of the institutions, school, and agencies under the Board's governance, adopts this policy with the following objectives:

(1) To preserve and encourage the operation of foundations associated with the institutions, school, and agencies under the Board's governance, and

(2) To ensure that foundations associated with the institutions, school, and agencies under the Board's governance conduct ~~their~~ business responsibly according to applicable laws, regulations, and policies while fulfilling their obligation to contributors, to those who benefit from their programs, and to the general public.

d. The Board may recognize as an affiliated foundation an organization that is created and operated in support of the interests of an affiliated institution, school, or agency to aid and assist the Board in attaining its approved educational, research, public service, student loan and financial assistance, alumni relations, and financial development program objectives, consistent with the policies of the Board. Foundations are expected to have mission statements relevant to this purpose, and to adopt policies, plans, and budgets to achieve their respective missions.

e. Technology transfer organizations, including the Idaho Research Foundation, are not subject to this policy.

3. Institutional Foundations.

The purpose of this policy is to promote and strengthen the operations of foundations that have been and may be established for the benefit of the public colleges and universities in Idaho. The following provision sets forth a framework that, from the

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Board's perspective, enables and enhances a sound and mutually supportive foundation/institution relationship.

a. Recognition of Foundations.

(1) The Board recognizes that it cannot and should not have direct control over affiliated foundations. These foundations must be governed separately to protect their private, independent status. However, because the Board is responsible for ensuring the integrity and reputation of the institutions and its campuses and programs, it must be assured that any affiliated foundation will adhere to ethical standards appropriate to such organizations in order to assure the public that it is conducting its mission with honesty and integrity. Therefore, each institution chief executive officer must ensure that any affiliated foundation ascribes to these policies.

(2) ~~An institution president~~ The Board may ~~award~~ recognize as an affiliated foundation ~~to~~ an entity that meets and maintains the requirements of this policy.

(3) All private support of the institution not provided directly to the institution shall be through a recognized foundation.

(4) It is the responsibility of the foundation to support the institution at all times in a cooperative, ethical, and collaborative manner; to engage in activities in support of the institution; and, where appropriate, to assist in securing resources, to administer assets and property in accordance with donor intent, and to manage its assets and resources.

(5) No institution funds may be transferred directly or indirectly to a foundation without the prior approval of the Board. It is understood that instances may occur where a donor inadvertently directs a contribution to an institution that is intended for the foundation. The institutions shall establish procedures to govern such transfers, which shall be described in the written foundation operating agreement, described in Subsection V.E.3.b. of the Board's Governing Policies and Procedures.

(6) The chief executive officers of the institutions may develop and present a recommended budget to an affiliated foundation to ensure that institution objectives are reflected in the allocation of foundation funds.

(7) The foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent possible or reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance, personnel information, and/or other information that would normally be open in the conduct of institution affairs.

(8) The organization, before the effective date of this policy, of a nonprofit corporation or affiliated foundation to benefit a public college or university in Idaho, for one or more of the purposes previously described in this policy, shall be brought into substantial conformance with these policies and, upon so doing, the institution shall provide prompt

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notice to the Board in order that the Board may recognize the affiliated foundation. Upon recognition by the Board, the organization of the nonprofit corporation or foundation is ~~hereby~~ ratified, validated, and confirmed, and it shall be deemed to have been organized as if its organization had taken place under authority of this policy.

(9) A foundation's enabling documents (e.g., articles of incorporation and bylaws) and any amendments are to be filed with and reviewed by the ~~Board~~institution chief executive officer or a designee. These documents must include a clause requiring that in the event of the dissolution of a foundation, its assets and records will be distributed to its affiliated institution, provided the affiliated institution is a qualified charitable organization under relevant state and federal income tax laws.

(10) Foundations acting on behalf of the institutions may be granted various privileges, which may include:

- (a) Use of the name and seal of the institution, provided that institution delegations of authority and policies are observed; and
- (b) Use of institution space, equipment, and staff in the performance of the foundation's activities, consistent with these policies.

b. Foundation Operating Agreements.

(1) Each foundation shall enter into a written agreement with the institution with which the foundation is affiliated. The written agreement must be approved by the Board, and must be re-submitted to the Board every two(2) years, or sooner at the request of the Board, for review and re-approval. In addition to any other requirements discussed elsewhere in this policy, foundation operating agreements shall establish the operating relationship between the parties, describe the purpose of the foundation, and acknowledge the applicability of this policy, which shall be incorporated by reference therein. Written agreements must be signed by the chairman of the foundation's governing board, and by the institution chief executive officer.

(2) The written agreement shall condition the foundation's use of the institution's name or any other name, emblem, or mark to which the university has any legal right, upon the foundation's continuing compliance with the agreement and this policy.

(3) The foundation operating agreement shall include the foundation's conflict-of-interest policy, and shall also include a code of ethics and conduct, as further described in Subsection V.E.3.h of the Board's Governing Policies and Procedures.

c. Structure and Independence.

(1) Each foundation shall operate as an Idaho nonprofit corporation that is legally separate from the institution and is recognized as a 501(c)(3) public charity by the

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Internal Revenue Service. The management and control of a foundation shall rest with its governing board.

(2) Institution chief executive officers shall be permitted to attend all meetings of an affiliated foundation's governing board in an advisory role~~ex-officio and non-voting members of the foundation's governing board~~. On a case by case basis, other institution employees may also serve as advisors to an affiliated foundation's governing board~~serve as ex-officio and non-voting members of the foundation's governing board~~, as described in the written foundation operating agreement approved by the Board.

d. Institution Resources and Services.

(1) ~~With the approval of the institution chief executive officer, a~~An institution may provide contract administrative and/or support staff services to an affiliated foundation, provided such~~These~~resources and services must be~~are~~ described in the foundation operating agreement approved by the Board. Such resources and services~~, and~~ may include:

(a) Access to the institution's financial systems to receive, disburse, and account for funds held (with respect to transactions processed through the institution's financial system, the foundation shall comply with the institution's financial and administrative policies and procedures manuals);

(b) Accounting services, to include monthly cash disbursements and receipts, accounts receivable and payable, bank reconciliation, monthly reporting and analysis, auditing, payroll, and budgeting;

(c) Investment, management, insurance, benefits administration, and similar services; and

(d) Development services, encompassing research, information systems, communications, and special events.

(2) The foundation is eligible to use the institution's facilities, subject to availability and applicable policies to be established by the institution chief executive officer or a designee, as described in the foundation operating agreement.

(3) The institution is entitled to recover its costs incurred for personnel, use of facilities, or other services provided to the foundation. Payments for such costs shall be made directly to the institution. No payments shall be made to institution employees in connection with resources or services provided to a foundation pursuant to this policy.

e. Management and Operation of Foundations.

(1) The institutions and the foundations want to maintain the highest levels of accountability and stewardship, and each entity shall retain primary responsibility for

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funds under its respective management. To accomplish these goals, each will share information, develop reporting processes, and institute compliance and auditing procedures that ensure donated funds are accounted for, expenditures are made in accordance with donors' wishes, and reports are made to donors on the use of funds.

(2) Foundations may not engage in activities that conflict with federal or state laws, rules and regulations; the policies of the Board; or the role and mission of the institutions. Foundations shall comply with applicable Internal Revenue Code provisions and regulations and all other applicable policies and guidelines.

(3) Transfers of funds to an institution from an affiliated foundation shall be in accordance with pertinent institution policies, and delegations of authority, which shall be described in the foundation operating agreement. Fund-raising campaigns and solicitations of major gifts for the benefit of the institution by the foundation shall be approved in advance by the institution chief executive officer or a designee, and should be compatible with the plans and needs of the institution. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by an institution, a foundation must obtain the prior approval of the institution chief executive officer or a designee. The foundation shall assure that each donation shall be used in accordance with the legally enforceable terms and conditions attached to such gift.

(4) Foundations shall make clear to prospective donors that:

(a) The foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the institution;

(b) Responsibility for the governance of the foundation, including investment of gifts and endowments, resides in the foundation's governing board;

(c) Checks for charitable gifts to any of the institution's participating academic and support programs should be made payable to the foundation; and

(d) Gifts made for a designated purpose will be dedicated in their entirety to that purpose unless it is specifically stated that an administrative charge will be applied.

(5) In accepting gifts of all kinds, foundations shall:

(a) Advise donors that any restrictive terms and conditions they attach to gifts for the institution are subject to institution approval;

(b) Ensure that gifts are reported to and approved for acceptance by the institution chief executive officer and/or Board in accordance with pertinent institution policies and delegations of authority;

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(c) Coordinate their funding goals, programs, and campaigns with the institution; and

(d) Obtain prior approval in writing from the institution chief executive officer or a designee, if Gifts, grants, or contracts ~~that~~ include a financial or contractual obligation binding upon the institution ~~must have prior concurrence in writing from the institution chief executive officer or a designee.~~

(6) Financial activities of a foundation shall be administered in accordance with prudent business practices. Each foundation's governing board shall adopt an expense authorization and reporting process. The process shall define the dollar threshold and nature of expenses requiring approval of a member of the foundation's governing board, who shall not be an institution employee or official, and it shall define the type and frequency of expense reporting to the foundation's governing board.

(7) Foundations shall ensure that appropriate written guidelines are developed pertaining to the receiving, depositing, disbursing, and accounting of all monies of a foundation, and that such guidelines have the approval of the foundation's governing board and are systematically enforced. An institution may assist an affiliated foundation in developing these guidelines.

(8) Officers and staff members of a foundation, and institution staff assigned to carry out any functions of a foundation involving handling money (whether receiving or disbursing), shall be adequately bonded, and liability insurance for directors and officers shall be obtained by the foundation, in amounts to be determined by the foundation's governing board.

(9) Foundations shall provide the institution chief executive officers evidence that at least two signatures by authorized and qualified officers of the foundation are required on any checks written on behalf of such foundation. No foundation officer with signature authority shall be a shared institution employee.

(10) Foundation investment procedures should be conducted in accordance with prudent, sound practice to ensure that gift assets are protected and enhanced, and that a reasonable return is achieved, ~~and~~ with due regard for the fiduciary responsibilities of the foundation's governing board. The investments must be consistent with the terms of the gift instrument.

(11) Income from investments, net of administrative fees, should be administered in accordance with pertinent policies of the foundation's governing board, and, where appropriate, transferred to the institution and expended from the designated institution department or program accounts.

(12) Should a foundation's investments under-perform appropriate market indices for three consecutive years, then the Board may request from the foundation an independent review of its investment strategies along with plans for corrective action.

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(13) Foundations should carry out financial commitments and expenditures consistent with pertinent policies, plans, and budget approved by the foundation's governing board and consistent with the mission of the institution.

(14) Foundation funds shall be kept separate from institution funds. Institution funds shall not be transferred to or loaned to foundations for any purpose except, when appropriate, by action of the Board. Funds or gifts payable to the Board or any institution under the Board shall not be deposited with or transferred to a foundation, except with prior Board approval. If an affiliated foundation is the intended recipient of funds made payable to the Board or to an institution, then such funds may be deposited with or transferred to the affiliated foundation, provided that accompanying documents demonstrate that the foundation is the intended recipient. Otherwise, the funds shall be deposited in a state account, and Board approval will be required prior to transfer to an affiliated foundation.

(15) Foundations shall not be permitted to make direct payments for specific institutional expenses, including student scholarships or awards.

(16) Institution officials into whose department or program foundation funds are transferred are responsible both to account for them in accordance with institution policies and procedures, and to notify the foundation on a timely basis regarding the use of such funds. The foundation, in consultation with the institution, shall determine who shall be responsible for reporting to the donor regarding the use of such funds.

(17) Foundation-controlled resources shall not be used to acquire or develop real estate or to build facilities for the institution's use without prior Board approval. The foundation shall notify the ~~Board~~institution chief executive officer or a designee, at the earliest possible date, of any proposed purchase of real estate for such purposes and any material debt to be incurred for permanent or working capital, and also shall coordinate its efforts with those of the institution. The foundation may notify the Board through the

~~(18) Foundation-controlled resources shall not be used to acquire or develop real estate or to build facilities for the institution's use without prior Board approval.~~

~~(19) When an institution's chief executive officer becomes aware that a foundation is considering the purchase of real estate for the eventual or possible future donation to the institution, the chief executive officer shall report such possible land acquisition to the Board~~ in executive session pursuant to Idaho Code 67-2345 (1) (c).

~~(20) Such reporting shall be at the first Board meeting following the chief executive officer becoming aware of the possible land transaction.~~

~~(1824)~~ The executive director of an affiliated foundation must be a paid employee of the foundation, and not of the institution. The appointment or re-appointment of the foundation executive director shall be subject to approval of the foundation's governing

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board. Prior to approval, the foundation's governing board shall confer with the institution chief executive officer regarding the appointment or re-appointment.

f. Foundation Relationships with the Institutions.

(1) The institutions and foundations acknowledge that each is an independent entity and agree neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members, or staff.

(2) Transactions between the institution and an affiliated foundation shall meet the normal tests for ordinary business transactions, including proper documentation and approvals. Special attention shall be given to avoiding direct or indirect conflicts of interest between the institution and the affiliated foundation and those with whom the foundation does business.

(3) A foundation shall permit the institution chief executive officer or a designee (including the Board's auditors) to inspect, at reasonable times, the following documents:

(a) The foundation's books and records;

(b) The foundation's most recent federal and state tax returns; and

(c) A list of the foundation's employees, consultants, and legal counsel for the fiscal year.

(4) The foundation shall provide to the institution chief executive officer prior to the beginning of the new foundation fiscal year an annual budget and capital expenditure plan approved by the foundation's governing board. The budget should be presented in a comparative format with the prior year, and include major categories of revenues and expense. The institution chief executive officer shall report this information to the Board in accordance with policies established by the Board.

(5) All correspondence, solicitations, activities, and advertisements concerning the foundation shall be clearly discernible as being from the foundation and not the institution.

(6) Employees hired by the foundations shall be solely funded by the foundations, and such employees shall not be entitled to state employment rights and benefits. These appointments are not subject to Board approval.

(7) The following provisions shall govern payments made to institutional employees, including institution chief executive officers, which are made in support of the institution, and not in connection with services provided to the foundation:

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(a) Any such support payments made by foundations to institution employees must have the prior written approval of the ~~chief executive officer of the institution or a designee. Payments to an institution chief executive officer must be approved by the~~ Board; and

(b) Any such support payments provided to or on behalf of an institutional employee, including payments to institution chief executive officers, shall be paid by the foundations to the institutions, which in turn will make payments to the employee in accordance with normal practices, except where the Board approves a different form of payment. Employees shall not receive any payments or other benefits directly from the foundations. This provision shall include reimbursements for expenses incurred for authorized institution and foundation purposes.

(9) The institution shall ensure that its associated foundation provides adequate insurance to cover its operations and the activities of its directors, officers, and employees. Foundations shall not operate on state property or on any property under the control of the Board unless adequate liability insurance coverage is in effect.

(10) Under no circumstances will any employee of the institution who is providing support staff services to a foundation represent both parties in any negotiation between the foundation and the institution.

g. Audits and Reporting Requirements.

(1) Each foundation shall be audited annually by an independent certified public accountant, who is not a director or officer of the foundation, and who is approved by the ~~Board institution chief executive officer or a designee~~. The foundation may use the auditor selected by the Board to provide auditing services on behalf of the institution. Each foundation shall conduct its fiscal operations to conform to the institution's fiscal year. Each foundation shall prepare its annual financial statements in accordance with Government Accounting Standards Board generally accepted accounting principles. The independent audit shall be a full scope audit review, performed in accordance with generally accepted auditing standards. As part of the audit, the auditor shall verify a summary annual report of transfers of funds made to the institution. Additionally, each foundation shall have a management letter prepared annually by its independent certified public accountant and submitted to the foundation's governing board. Finally, the foundation's governing board shall also require that the scope of the external audit be expanded to include compliance testing of the required policies and procedures herein, including but not limited to general accounting, fund raising, and gift accounting, investment, and institution and foundation employee policies and procedures.

(2) The foundation shall report on a mutually agreed upon schedule to the institution chief executive officer, and shall provide the following documents to the chief executive officer or a designee, with a copy ~~ies to the Board of the following~~:

(a) Annual financial audit report;

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- (b) Annual audit report of transfers made to the institution;
 - (c) Annual audit report of unrestricted funds available for the benefit of the institution;
 - (d) A list of foundation officers and directors;
 - (e) A list of institution employees who received compensation or other payments from the foundation during the fiscal year, and the amount of that compensation or payment;
 - (f) A list of all state and federal contracts and grants managed by the foundation; and
 - (g) An annual report of the foundation's major activities.
- (3) The foundation shall also prepare an annual report to the institution, with a copy to the Board, that summarizes the funds transferred to each institution department. The report shall summarize these amounts by each account and the total for each department. The institution and foundation shall provide each other with other reports necessary to assure proper financial oversight.
- (4) The foundation shall report annually to the ~~Board~~institution chief executive officer each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding foundation fiscal year. Notice also should be provided periodically of any potential and actual litigation involving the foundation during its fiscal year.
- (5) The foundation shall provide the ~~Board~~institution chief executive officer with an advance copy of any amendments, additions, or deletions to its articles of incorporation or bylaws.
- (6) On an annual basis, the executive director of each foundation shall submit to the institution chief executive officer and to the Board a letter, which certifies compliance with the following requirements:
- (a) Copies of the Board's policy have been circulated among all members of the foundation staff and its governing board;
 - (b) Compensation of any kind which the foundation has provided to any institution employees has been approved by the chief executive officer or a designee prior to payment (a listing of total payments to specific individuals should be attached to the certification letter);
 - (c) An audit by an independent certified public accounting has been completed, and the audit committee of the foundation has met and reviewed the management letter and response with that auditor;

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(d) The annual budget of the foundation has been approved by the foundation governing board and has been provided to the chief executive officer or a designee;

(e) Written approval has been obtained from the chief executive officer and the Board for any substantial proposed business venture or changes in the nature, scope, or purpose of the foundation; and

(f) Other specific requirements as mutually agreed upon by the foundation governing board and the chief executive officer or a designee.

h. Conflict of Interest and Code of Ethics and Conduct.

(1) Transactions involving the foundation and the personal or business affairs of a trustee, director, officers, or staff member should be approved in advance by the foundation's governing board. In addition, directors, officers, and staff members of a foundation disqualify themselves from making, participating, or influencing a decision in which they have or would have a financial interest.

(2) No director, trustee, officer, or staff member of a foundation shall accept from any source any gift or gratuity that is offered, or reasonably appears to be offered, because of the position held with the foundation; nor should an offer of a gift or gratuity be extended by such an individual on a similar basis.

(3) Board members, administrative officers and officials, and all other employees of the institutions are subject to the Board's conflict of interest policy as stated in Section I, Subsection G, of the Board's Governing Policies and Procedures and any other applicable laws or regulations. The foundation operating agreement must provide that foundation members, officers, and employees shall also comply with the Board's conflict of interest policy, as applicable. In addition, the foundation operating agreement must provide that such foundation shall develop its own conflict of interest policy, as well as a code of ethics and conduct. These policies shall be complied with by the foundation, and shall be provided to the Board for review and approval along with the foundation operating agreement.

4. Foundations for Other Agencies and ISDB.

Other agencies and ISDB under the Board's jurisdiction may establish foundations to accept gifts made for the benefit of the agencies' or school's operating purposes. These agencies and school are subject to the same policies as the institutional foundations. However, agency/school foundations with annual revenues less than \$~~10025~~10025,000 are not required to obtain an independent audit. These agencies/school must instead submit an annual report to the Board of gifts received and the disposition of such gifts.

5. Idaho Educational Public Broadcasting System Foundations and Friends Groups.

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Foundations and Friends groups that exist for the benefit of the Idaho Educational Public Broadcasting System (IEPBS) are required by Federal Communications Commission (FCC) regulations to have specific spending authority designated by the Board. Audits of the IEPBS Foundation and Friends groups will be conducted by the Legislative Auditor.

a. By action of the Board, the Idaho Educational Public Broadcasting System Foundation, Inc., has been designated to accept gifts made for the benefit of public television in the state of Idaho. The Foundation will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.

b. By action of the Board, the Friends of Channel 4, Inc., has been designated to accept gifts made for the Benefit of KAID TV, Channel 4. The Friends of Channel 4, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.

c. By action of the Board, the Friends of Channel 10, Inc., has been designated to accept gifts made for the benefit of KISU TV, Channel 10. The Friends of Channel 10, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.

d. By action of the Board, the Friends of KUID, Inc., has been designated to accept gifts made for the benefit of KUID TV, Channel 12. The Friends of Channel 12, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.