

**AUDIT COMMITTEE  
FEBRUARY 19, 2015**

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<b>TAB</b>	<b>DESCRIPTION</b>	<b>ACTION</b>
<b>1</b>	<b>AUDIT COMMITTEE APPOINTMENTS</b>	Motion to approve
<b>2</b>	<b>FY 2014 COLLEGE AND UNIVERSITIES' NET POSITION BALANCES</b>	Information item
<b>3</b>	<b>FY 2014 COLLEGE and UNIVERSITIES' FINANCIAL RATIOS</b>	Information item
<b>4</b>	<b>LEWIS-CLARK STATE COLLEGE FOUNDATION OPERATING AGREEMENT</b>	Motion to approve

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**AUDIT COMMITTEE**  
**FEBRUARY 19, 2015**

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**SUBJECT**

Reappointment of Mark Heil and Appointment of Brent Moylan to Audit Committee

**REFERENCE**

December 2008  
December 2012

Board appointed Mark Heil to Audit Committee  
Board renewed appointment of Mark Heil

**APPLICABLE STATUTE, RULE, OR POLICY**

Governing Policies and Procedures V.H.  
Board Bylaws H.4.b  
Idaho Committee Charter, Appendix B

**BACKGROUND/DISCUSSION**

Board Bylaws H.4.b, Composition, provides that the Audit Committee members shall be appointed by the Board and shall consist of five or more members. Three members of the Committee shall be current Board members and at least two members shall be independent non-Board members who are familiar with the audit process and permanent residents of the state of Idaho. Members may be reappointed.

Mark Heil is a non-Board member of the Audit Committee. He was originally appointed to a two-year term through December 31, 2010. The Audit Committee approved his reappointment through December 31, 2013 at its December 2012 meeting. Mr. Heil's one year term was used to stagger his appointment with the other non-Board member who subsequently resigned from the Committee leaving Mr. Heil as the only non-Board member. Consequently, the Board revised the Bylaws to eliminate the limit of three year terms.

The Board and Committee have been searching for another outside member.

**IMPACT**

Since Mr. Heil's appointment was made before the Bylaws were revised, staff requests the Board reappoint Mr. Heil to the Audit Committee under the new Bylaws which do not include a set term. Mr. Heil has expressed his interest in continuing to serve the Board on the Audit Committee.

Prospective individuals for another outside member were considered by the Committee resulting in a conference call on January 8<sup>th</sup> with Mr. Brent Moylan as a candidate.

The Board Bylaws for the Audit Committee state the following:

*No employee of an institution or agency under the governance of the Board shall serve on the Audit Committee. Each Audit Committee member shall be*

**AUDIT COMMITTEE  
FEBRUARY 19, 2015**

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*independent, free from any relationship that would interfere with the exercise of her or his independent judgment. Audit Committee members shall not be compensated for their service on the committee, and shall not have a financial interest in, or any other conflict of interest with, any entity doing business with the Board, or any institution or agency under the governance of the Board.*

The Audit Committee charter also includes the following:

*Each Committee member shall be independent and free from any relationship that would interfere with the exercise of her or his independent judgment. Committee members shall not be compensated for their service on the Committee and shall not have a financial interest in or engage in related-party transactions, or any other conflict of interest with any entity doing business with the Board, or any institution under the governance of the Board. Members, or their immediate relatives, shall not hold a salaried position with any Institution under the Board's governance nor be employed by any entity that provides services for a fee to any such Institution.*

The Committee reviewed Mr. Moylan's resume (Attachment 1) and voted unanimously to confirm his independence and recommend his appointment to the Committee.

**ATTACHMENTS**

Attachment 1 – Brent Moylan Resume

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

Staff recommends renewing the appointment of Mr. Heil as a non-Board member of the Audit Committee. Staff also recommends the appointment of Mr. Brent Moylan as a non-Board member of the Audit Committee.

**BOARD ACTION**

I move to renew the appointment of Mark Heil as a non-Board member of the Audit Committee.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

**BOARD ACTION**

I move to approve the appointment of Brent Moylan as a non-Board member of the Audit Committee.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

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VP & Food Group Controller

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**QUALIFICATIONS**

- Strategic Leadership Development
  - Treasury Management and financial reporting
  - Background in accounting processes and controls
  - Expertise in leadership and development of staff and managers
- 

**PROFESSIONAL EXPERIENCE**

J.R. Simplot Company, Boise, Idaho.

2010 to Present

**VP & Food Group Controller, Food Group**

**Responsible for presenting Food group results to the shareholders on a quarterly basis and ensuring that the Food Group is resourced properly in order to execute to both Group and Corporate strategies.**

**Set strategic direction for the Food Group by participating on the Executive Leadership Team to ensure that sustainable growth is achieved and aligned with shareholder expectations.**

**Assist in developing growth opportunities both domestic and international markets to ensure sustainable returns on our invested capital.**

**Provide leadership to the Food Group Finance and IT Function aligning resources to meet company objectives and developing personnel to ensure quality of information and a capable skillset to analyze and evaluate the business on a ongoing basis.**

J.R. Simplot Company, Boise, Idaho.

2008 to 2010

**Financial Accounting Manager, Food Group**

**Responsible for preparing and presenting P & L and management information for the Food Group operation to senior management and assisting them in the daily operations of the business.**

**Direct and control the compilation of the budget and forecast to meet company objectives. Develop tracking tools to monitor the performance of the business segments the contribution they provided towards goals and objectives. Evaluate new business opportunities to see if they meet expectations.**

**Develop proper controls and procedures to ensure that the company's assets are safeguarded and management is provided with timely and accurate information.**

**Provide leadership to professional accounting staff to develop their skills and systems to add value in a dynamic working environment in which real time information is essential. Create management tools to assist in the daily decision making by analyzing daily, monthly and quarterly performance reports and engaging the operating groups.**

Woodgrain Millwork, Inc. Fruitland, Idaho

2001 to 2008

**Corporate Controller**

**Responsible for preparing and presenting the consolidated P & L and management information to the owners and Vice Presidents and assisting them in evaluating divisional and international operations performance.**

**Establishing transfer pricing between the division by evaluating market conditions and standard costing for each plant site. Evaluating each division's performance and provide guidance in achieving RONA and EVA goals.**

**Providing direction to the site controllers in developing standard cost information to assist management in analyzing Material, Labor and Overhead variances through cost studies and material process flow.**

**Control the compilation of the budget and forecast to meet company objectives and external reporting requirements in order to maintain banking relationships and communications with shareholders.**

**Plan due diligence requirements for acquisitions and participated in the preparing of the contracts and price negotiations. This included integrating the newly acquired entity into the existing business structure.**

M.C.M.S., Nampa, Idaho.  
**Controller**

1999 to 2001

**Responsible for preparing and presenting P & L and management information for a custom manufacturing operation to senior management and assisting them in the daily operations of the business.**

**Direct and control the compilation of the budget and forecast to meet company objectives and investors expectations. Develop tracking tools to monitor the performance of the business units and the contribution they provided towards goals and objectives. Evaluate new business opportunities to see if they meet expectations.**

**Develop proper controls and procedures to ensure that the company's assets are safeguarded and management is provided with timely and accurate information.**

**Provide leadership to professional accounting staff to develop their skills and systems to add value in a dynamic working environment in which real time information is essential. Create management tools to assist in the daily decision making by analyzing standard costs, BOM's, routers, labor and material efficiencies and customized automated reporting systems.**

M.C.M.S., Nampa, Idaho.  
**Financial Analyst**

1998 to 1999

**Responsible for establishing quote rates and compiling quote assembly information used in the quoting process. Utilizing analytical skills and interacting with Sales, Operations, and the technical teams. Understanding of the PTM and ABC models and their impact on products.**

**Developed a quote database to be utilized by M.C.M.S. team members to analyze and track the performance of their customers and suppliers.**

**Responsible for consolidating and standardizing the assembly quoting process from each site and preparing quote documentation for management review. Analyzing product cost and customer programs for value add impact.**

J.R. Simplot Company, Boise, Idaho.  
**Assistant Controller, Food Group**

1991 to 1998

J.R. Simplot Company, Boise, Idaho.  
**Financial Accounting Manager**

1989 to 1991

J.R. Simplot Company, Boise, Idaho.  
**Financial Accountant**

1986 to 1989

Tullis, Grigg & Hytrek, Boise, Idaho.  
**Staff Accountant**

1985 to 1986

Mark Denham Company, Fresno, California.  
**Financial Accountant**

1984 to 1985

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**Education**

BBA-Accounting, Boise State University, Boise, Idaho

**Appointments**

Team Leader Investment Grade Task Force. Team Member Pricing Task Force. Team Member Restructuring Team for Sales and Marketing. Nominated for Food Group Presidents Award. ERP Implementation Team Member.

**Affiliations**

HP Global Services Strategy Advisory Board

**Technical**

PC, Excel, Word, Dec VAX, Novel Netware, LAN's, BAAN, Infoflo, Avante

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**SUBJECT**

FY 2014 College and Universities' Unrestricted Net Position

**REFERENCE**

December

Annual Audit report submitted to the Board

**BACKGROUND/DISCUSSION**

The net position balances are shown in the Attachments as of June 30, 2014. The net position is broken down as follows:

**Invested in capital assets, net of related debt:** This represents an institution's total investment in capital assets, net of accumulated depreciation and outstanding debt obligations related to those capital assets. To the extent debt has been incurred but not yet expended for capital assets, such amounts are not included.

**Restricted, expendable:** This represents resources which an institution is legally or contractually obligated to spend in accordance with restrictions imposed by external third parties.

**Restricted, nonexpendable:** This represents endowment and similar type funds in which donors or other outside sources have stipulated, as a condition of the gift instrument, that the principal is to be maintained inviolate and in perpetuity, and invested for the purpose of producing present and future income, which may either be expended or added to principal.

**Unrestricted:** This represents resources derived from student tuition and fees, and sales and services of educational departments and auxiliary enterprises. These resources also include auxiliary enterprises, which are substantially self-supporting activities that provide services for students, faculty and staff. Not all source of revenues noted above are necessarily present in the unrestricted position.

Within the category of **Unrestricted Position**, the institutions reserve funds for the following:

**Obligated:** Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which contractual commitments exist.

**Designated:** Designated net position represents balances not yet legally contracted but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative cost recovery returns

from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

*Note: Designated reserves are not yet legally contracted, so technically they are still subject to management decision or reprioritization. However, it's critical to understand that these net position balances are a snapshot in time as of June 30, 2013, so reserves shown as "designated" on this report could be "obligated" at any point in the current fiscal year.*

**Unrestricted Funds Available:** Balance represents reserves available to bridge uneven cash flows as well as future potential funding shortfalls such as:

- Budget reductions or holdbacks
- Enrollment fluctuations
- Unfunded enrollment workload adjustment (EWA)
- Unfunded occupancy costs
- Critical infrastructure failures

## **IMPACT**

The volatility of state funding as well as fluctuations in enrollment and tuition revenue necessitates the need for institutions to maintain fund balances sufficient to stabilize their operating budgets. As such, the Board has set a minimum target reserve of 5% of operating expenditures as a benchmark in its [Strategic Plan](#) (Goal 3, Objective A). The institutions' unrestricted funds available as a percent of operating expenses are as follows:

	FY 2012	FY 2013	FY 2014
BSU:	3.5%	5.0%	6.1%
ISU:	7.3%	12.6%	16.2%
UI:	2.6%	2.7%	4.2%
LCSC:	3.8%	5.1%	6.5%

## **ATTACHMENTS**

BSU Net Position Balances	Page 3
ISU Net Position Balances	Page 5
UI Net Position Balances	Page 7
LCSC Net Position Balances	Page 9

## **STAFF COMMENTS AND RECOMMENDATIONS**

The institutions will present a brief analysis of their respective unrestricted net position.

## **BOARD ACTION**

This item is for informational purposes only. Any action will be at the Board's discretion.



**Boise State University**  
**Net Position Balances**  
**As of June 30, 2014**

1	<b>Net Position:</b>	<b>FY 2014</b>
2	Invested in capital assets, net of related debt	271,584,602
3	Restricted, expendable	14,344,550
4	Restricted, nonexpendable	0
5	Unrestricted	99,397,746
6	<b>Total Net Position</b>	<b>\$385,326,898</b>
7		
8	<b>Unrestricted Net Assets:</b>	<b>\$99,397,746</b>
9	Obligated (Note A)	
10	Debt Reserves	18,607,004
11	Capital Projects	
12	Facilities	10,071,860
13	Equipment	639,557
14	Program Commitments	
15	Academic	2,516,935
16	Research	3,555,709
17	Other	5,434,226
18	Administrative Initiatives	599,589
19	Total Obligated	41,424,880
20	Designated (Note B)	
21	Capital Projects	
22	Facilities	21,247,100
23	FFE	2,040,000
24	Program Commitments	
25	Academic	6,409,011
26	Research	6,673,337
27	Other	334,028
28	Administrative Initiatives	669,089
29	Other	500,000
30	Total Designated	37,872,565
31		
32	<b>Unrestricted Funds Available (Note C)</b>	<b>\$20,100,301</b>
33		
34	Operating expenses	330,277,822
35	Ratio of Unrestricted Funds Available to operating expenses	6.1%
36	5% of operating expenses (minimum reserve target)	16,513,891
37		
38	Two months operating expenses	55,046,304
39	Ratio of Unrestricted Funds Available to two months of operating expenses	36.5%
40	Number of days expenses covered by Unrestricted Funds Available	22.21

**Note A:**           **Obligated** - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service and staffing commitments for outstanding debt and personnel. These amounts also consist of inventories and other balances for which a contractual commitments exist.

**Note B:**           **Designated** - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

**Note C:**           **Unrestricted Funds Available** - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding. Current examples of potential future reductions are:  
Federal grant reductions related to shut-down, debt ceiling  
Unfunded Enrollment Workload Adjustment (EWA)  
Budget reductions or holdbacks  
Enrollment fluctuations

# Idaho State University

## Net Position Balances

As of June 30, 2014

Information Taken from Workpapers Relating to Audited Financial Statements

1	<b>Net Position:</b>	<b>FY 2014</b>
2	Invested in capital assets, net of related debt	\$123,062,611
3	Restricted, expendable	\$5,267,523
4	Restricted, nonexpendable	
5	Unrestricted	<u>\$103,154,532</u>
6	Total Net Position	<u><u>\$231,484,666</u></u>
7		
8	<b>Unrestricted Net Assets:</b>	<b>103,154,532</b>
9	Obligated (Note A)	
10	Debt Reserves	11,219,474
11	Capital Projects	
12	Facilities	-
13	Equipment	5,155,513
14	Program Commitments	
15	Academic	10,557,773
16	Research	29,788
17	Other	
18	Administrative Initiatives	-
19	Other	1,641,249
20		-
21	Total Obligated	<u>28,603,798</u>
22		
23	Designated (Note B)	
24	Capital Projects	
25	Facilities	6,478,657
26	Equipment	
27	Program Commitments	
28	Academic	14,375,271
29	Research	2,912,339
30	Other	11,123,302
31	Administrative Initiatives	1,808,365
32	Other	2,302,430
33		-
34	Total Designated	<u>39,000,364</u>
35		
36	<b>Unrestricted Available (Note C)</b>	<b><u><u>\$35,550,370</u></u></b>
37		
38	Operating expenses	219,960,108
39	Ratio of Unrestricted Funds Available to operating expenses	16.2%
40	5% of operating expenses (minimum available reserve target)	10,998,005
41		
42	Two months operating expenses	36,660,018
43	Ratio of Unrestricted Funds Available to two months of operating expenses	97%
44	Number of days expenses covered by Unrestricted Funds Available	58.99

**Note A:** Obligated - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which a contractual commitments exist.

**Note B:** Designated - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

**Note C:** Unrestricted Funds Available - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding.

## Idaho College and Universities Net Position Balances

As of June 30, 2014

Information Taken from Workpapers Relating to Audited Financial Statements

1	<b>Net Position:</b>	<b>University of Idaho</b>
2	Invested in capital assets, net of related debt	\$ 248,651,560
3	Restricted, expendable	31,913,431
4	Unrestricted	65,015,217
5	Total Net Position	<u>\$ 345,580,208</u>
6	<b>Unrestricted Net Position:</b>	<b>\$ 65,015,217</b>
7	<b>Obligated (Note A)</b>	
	- Debt Service and Real Estate Lease Obligations	\$ 16,798,260
	- Capital Project and Equipment Funds	<u>6,396,543</u>
	<b>Total Obligated Funds</b>	<b>\$ 23,194,803</b>
8	<b>Designated (Note B)</b>	
	Academic Funds:	
	- Dedicated Course Fees	\$ 1,355,025
	- Research Funds	1,000,885
	- Faculty Start-up Funds	998,200
	- Support Funds	3,905,807
	Total Academic Funds	\$ 7,259,918
	Agricultural Extension Funds:	
	- Agricultural Extension Education Funds	\$ 758,460
	- Agricultural Extension Research Funds	1,444,177
	- Agricultural Extension Support Funds	1,887,518
	Total Agricultural Extension Funds	4,090,155
	Student Funds:	
	- Student Services Funds	\$ 806,406
	- Student Scholarship Funds	197,291
	Total Student Funds	1,003,697
	Faculty Start-up & Research Support Funds (from F&A)	9,544,857
	Anticipated University Capital Projects:	
	University House Project	650,000
	Service Centers	1,251,527
	Benefits & Self-Insured Health Plan	820,000
	Auxiliary Services Funds	1,333,821
	Facility/Departmental Repair and Replacement Funds	350,638
	<b>Total Designated Funds</b>	<b><u>\$ 26,304,612</u></b>
9	<b>Unrestricted Available (Note C)</b>	<b><u>\$ 15,515,802</u></b>

## Idaho College and Universities Net Position Balances

As of June 30, 2014

Information Taken from Workpapers Relating to Audited Financial Statements

10	Operating expenses	\$368,164,892
11	Ratio of Unrestricted Funds Available to operating expenses	4.2%
12	5% of operating expenses (minimum available reserve target)	\$18,408,245
13	Two months operating expenses	\$61,360,815
14	Ratio of Unrestricted Funds Available to two months of operating expenses	25%
15	Number of days expenses covered by Unrestricted Funds Available	15

### NOTES

**Note A:**     **Obligated** - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which a contractual commitments exist.

**Note B:**     **Designated** - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

**Note C:**     **Unrestricted Funds Available** - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding. Current examples of potential future reductions are:

Budget reductions or holdbacks  
Enrollment fluctuations  
Unfunded Enrollment Workload Adjustment (EWA)  
Loss of ARRA funding

# Lewis-Clark State College

## Net Position Balances

As of June 30, 2014

	FY 2014
<b>1 Net Position:</b>	
2 Invested in capital assets, net of related debt	\$46,192,648
3 Restricted, expendable	951,772
4 Restricted, nonexpendable	0
5 Unrestricted	28,831,962
<b>6 Total Net Position</b>	<b>\$75,976,382</b>
7	
<b>8 Unrestricted Net Position:</b>	<b>\$28,831,962</b>
9 Obligated (Note A)	
10 Debt Service	2,331,213
11 Other	544,311
12 Total Obligated	\$2,875,525
13	
14 Designated (Note B)	
15 Capital Projects	
16 Facilities	\$8,605,746
17 Equipment	4,049,192
18 Program Commitments	
19 Academic	3,650,591
20 Other	5,003,524
21 Strategic Initiatives	1,000,000
22 Other	550,813
23 Total Designated	\$22,859,865
24	
<b>25 Unrestricted Available (Note C)</b>	<b>\$3,096,573</b>
26	
27 Operating expenses	\$47,593,411
28 Ratio of Unrestricted Funds Available to operating expenses	6.5%
29 5% of operating expenses (minimum available reserve target)	\$2,379,671
30	
31 Two months operating expenses	\$7,932,235
32 Ratio of Unrestricted Funds Available to two months of operating expenses	39%
33 Number of days expenses covered by Unrestricted Funds Available	24

**Note A: Obligated** - Contractual obligations represent a variety of agreements which support initiatives or operations that have moved beyond management planning into execution. Obligations include contracts for goods and services, including construction projects. Obligations contain debt service commitments for outstanding debt and staffing commitments for personnel. These amounts also consist of inventories and other balances for which a contractual commitments exist.

**Note B: Designated** - Designated net assets represent balances that are not yet legally contracted, but have been dedicated to initiatives that have been deemed to be strategic or mission critical. Balances include capital or maintenance projects that are in active planning phases. Facility and administrative returns from sponsored projects (grants and contracts) are reinvested in infrastructure or on efforts to obtain additional grant funding. Documented central commitments to initiatives that have been approved at an executive level are designated.

**Note C: Unrestricted Funds Available** - Balance represents reserves available to bridge uneven cash flows as well as future potential reduced funding. Current examples of potential future reductions are:

Enrollment fluctuations  
Budget reductions or holdbacks



**AUDIT COMMITTEE  
FEBRUARY 19, 2015**

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**SUBJECT**

FY 2014 College and Universities' Financial Ratios

**REFERENCE**

December

Annual report submitted to the Board

**BACKGROUND/DISCUSSION**

The ratios presented measure the financial health of the institution and include the composite index comprised of four ratios. The ratios are designed as a management tool to measure financial activity and trends within an institution. They do not lend themselves to comparative analysis between institutions because of the varying missions and current initiatives taking place at a given institution.

Institution foundations are reported as component units in the college and universities' financial statements. The nationally developed ratio benchmarks model is built around this combined picture.<sup>1</sup> An institution foundation holds assets for the purpose of supporting the institution. Foundation assets are nearly all restricted for institution purposes and are a very important part of an institution's financial strategy and financial health.

Ratio	Measure	Benchmark
Primary reserve	Sufficiency of resources and their flexibility; good measure for net assets	.40
Viability	Capacity to repay total debt through reserves	1.25
Return on net assets	Whether the institution is better off financially this year than last	6.00%
Net operating revenues	Whether institution is living within available resources	2.00%
Composite Index	Combines four ratios using weighting	3.0

**IMPACT**

The ratios and analyses are provided in order for the Board to review the financial health and relative efficiency of each institution.

**ATTACHMENTS**

Boise State University

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Idaho State University

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University of Idaho

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Lewis-Clark State College

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<sup>1</sup> See *Strategic Financial Analysis for Higher Education: Identifying, Measuring & Reporting Financial Risks* (7th ed.). New York, NY: Prager, Sealy & Co., LLC; KPMG, LLP; Attain, LLC. The model's well vetted analysis developed by industry experts has been around and evolving since 1980. It is widely used and accepted in the higher education finance community.

**AUDIT COMMITTEE  
FEBRUARY 19, 2015**

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**STAFF COMMENTS AND RECOMMENDATIONS**

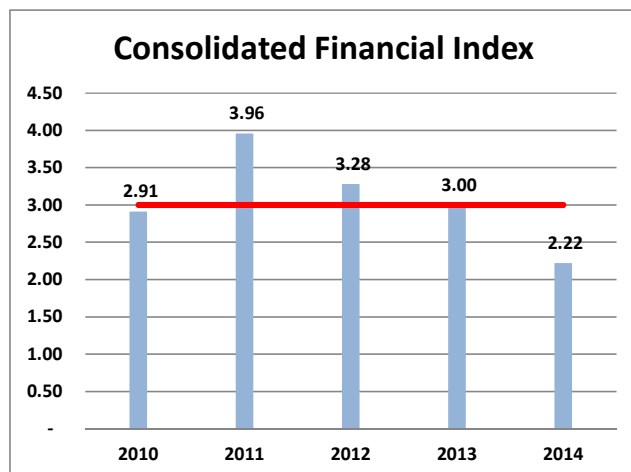
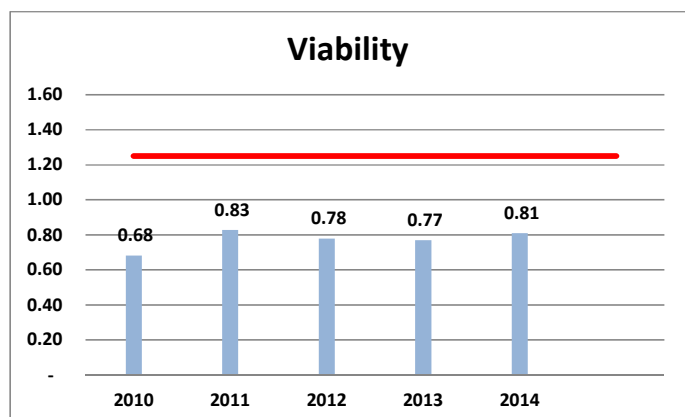
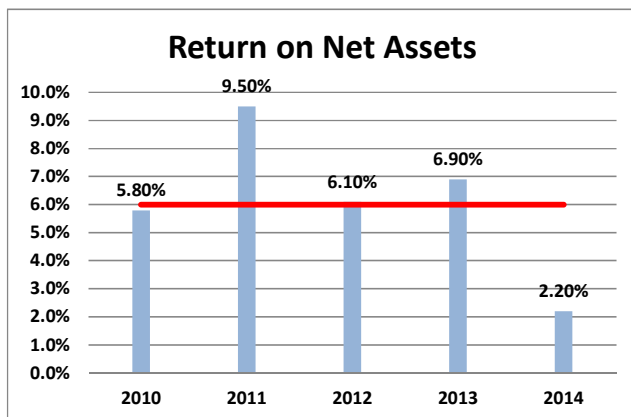
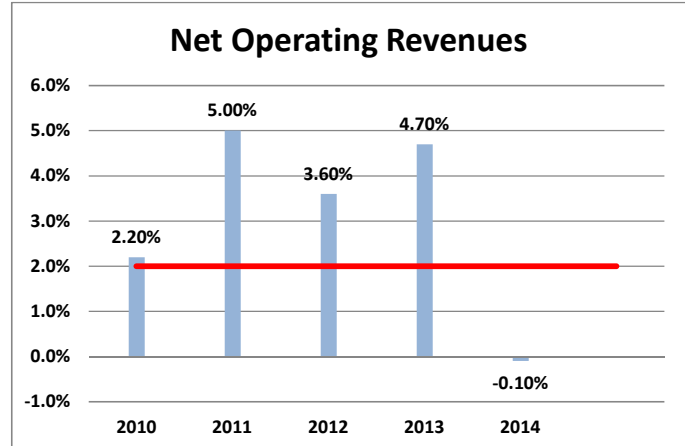
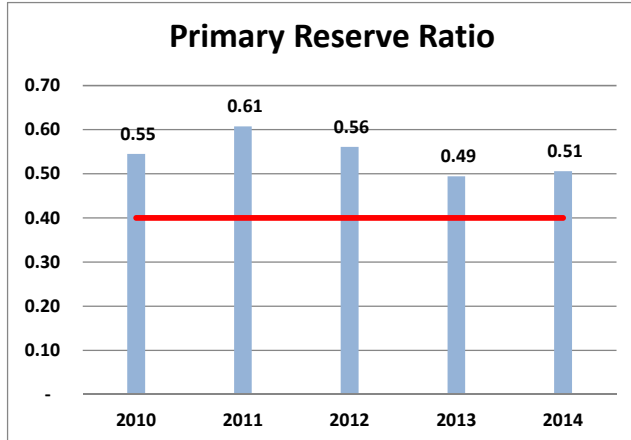
The institutions will present a brief analysis of the financial ratios and be available for questions by the Board.

**BOARD ACTION**

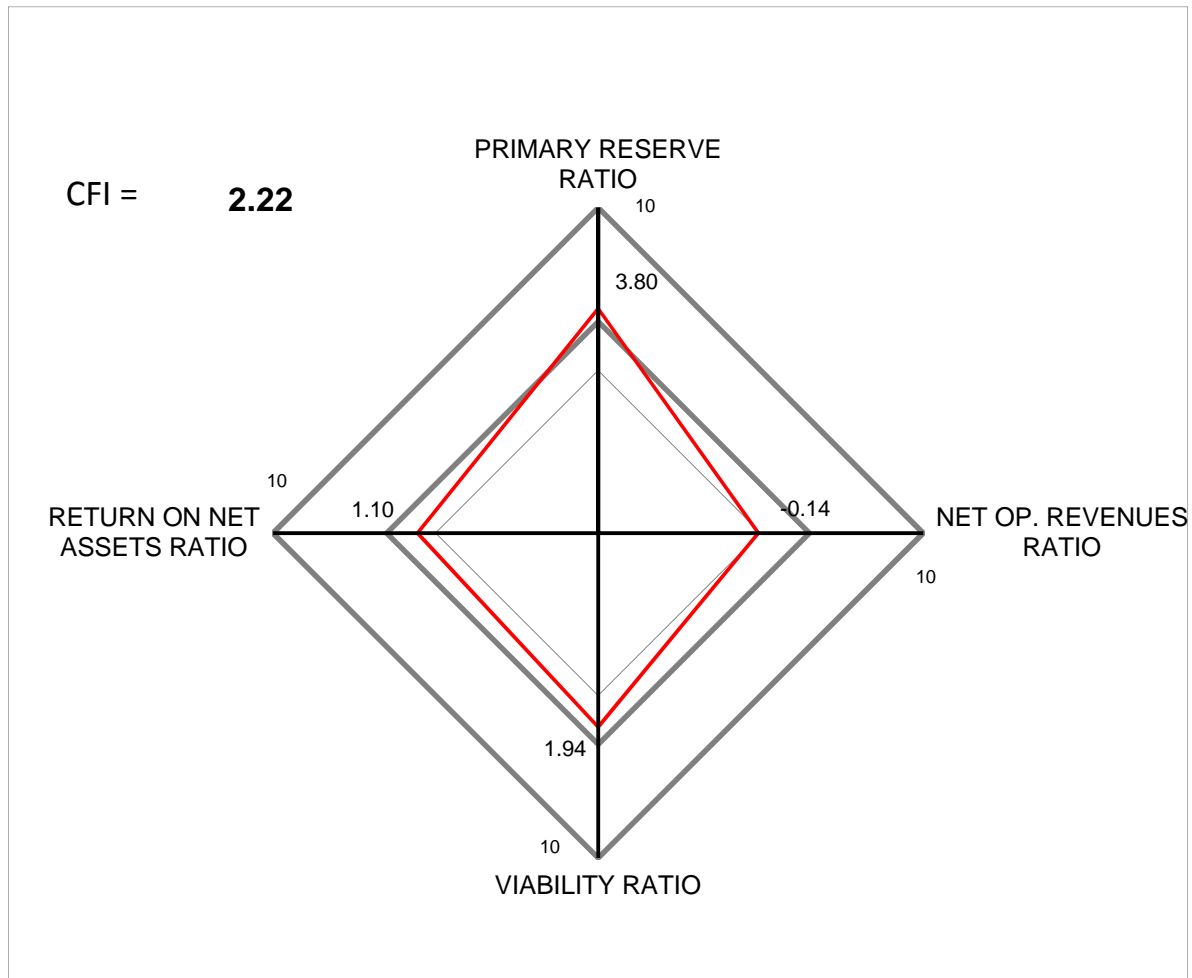
This item is for informational purposes only. Any action will be at the Board's discretion.

## Boise State University

	2010	2011	2012	2013	2014	Benchmark
Primary Reserve	0.55	0.61	0.56	0.49	0.51	0.40
Net Operating Revenues	2.2%	5.0%	3.6%	4.7%	-0.1%	2.00%
Return on Net Assets	5.8%	9.5%	6.1%	6.9%	2.2%	6.00%
Viability	0.68	0.83	0.78	0.77	0.81	1.25
CFI	2.91	3.96	3.28	3.00	2.22	3.0

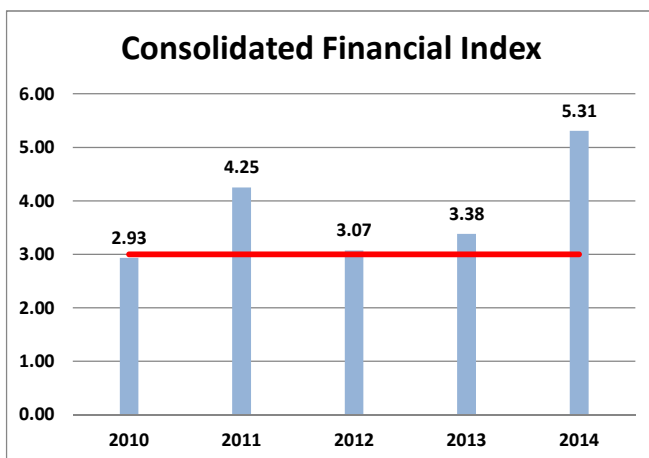
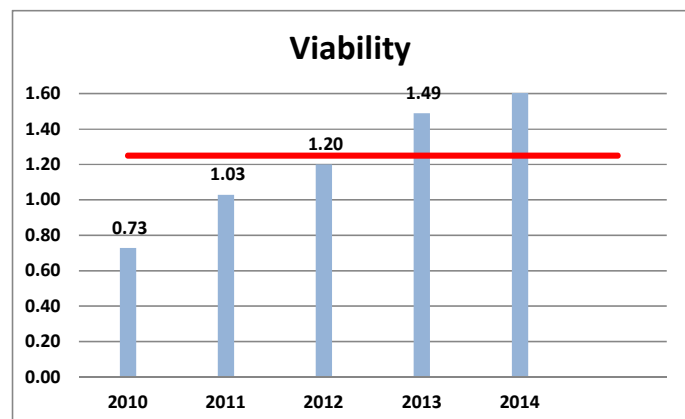
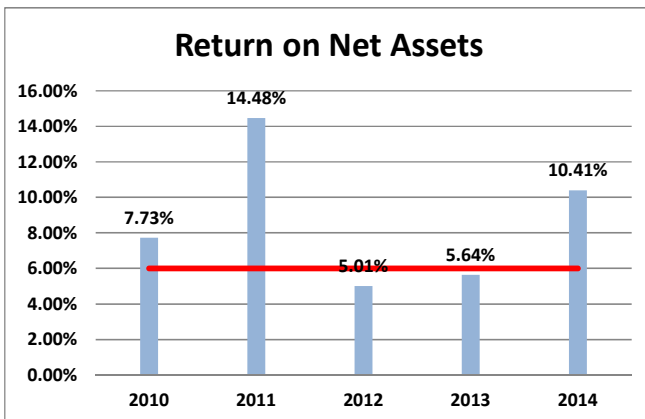
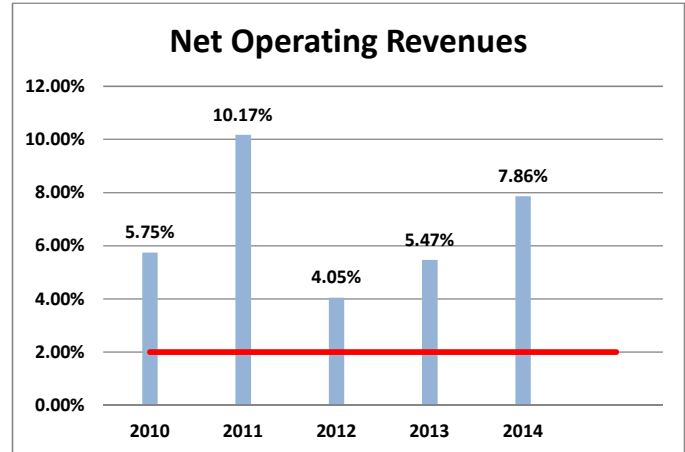
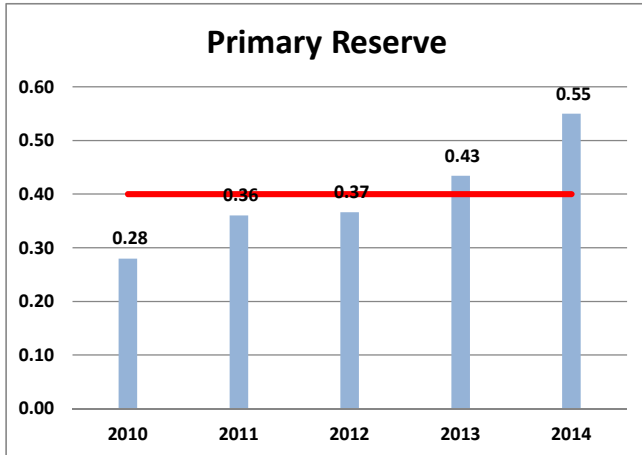


Boise State University  
FY 2014

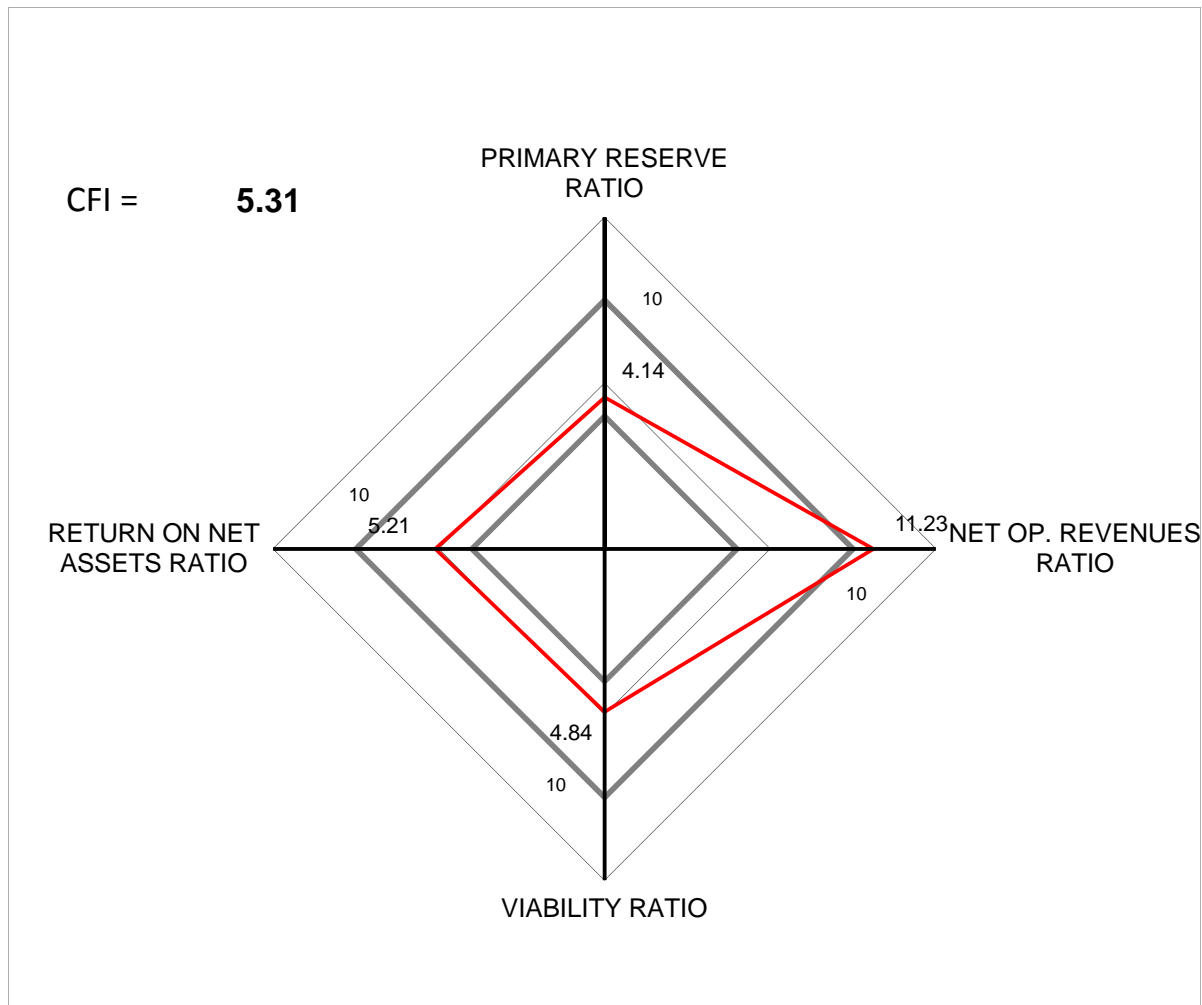


## Idaho State University

	2010	2011	2012	2013	2014	Benchmark
Primary Reserve	0.28	0.36	0.37	0.43	0.55	0.40
Net Operating Revenues	5.75%	10.17%	4.05%	5.47%	7.86%	2.00%
Return on Net Assets	7.73%	14.48%	5.01%	5.64%	10.41%	6.00%
Viability	0.73	1.03	1.20	1.49	2.02	1.25
CFI	2.93	4.25	3.07	3.38	5.31	3.00

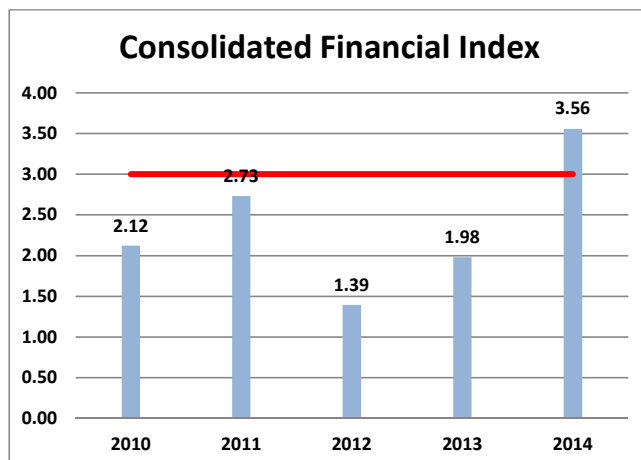
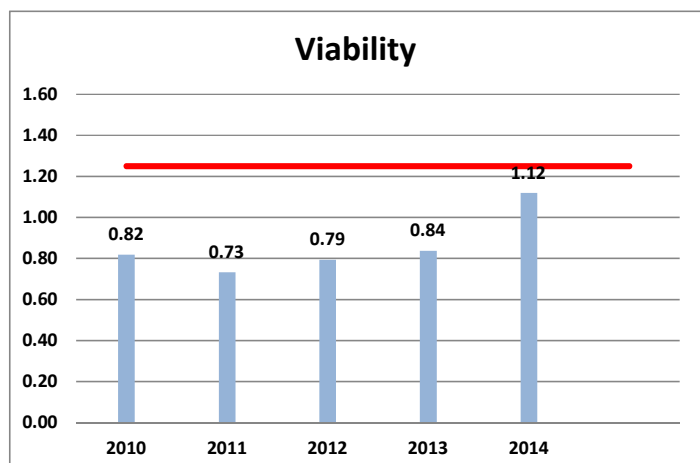
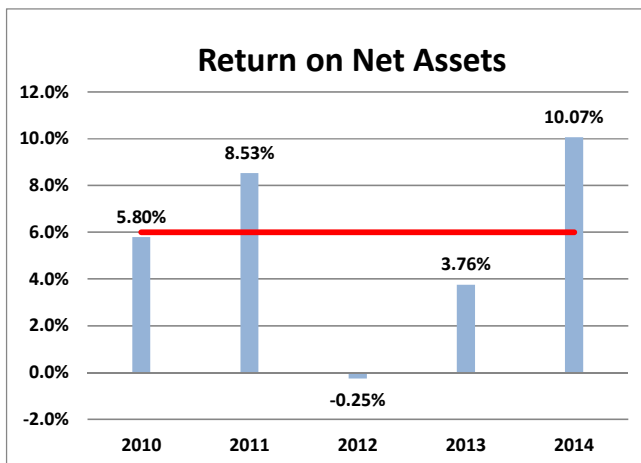
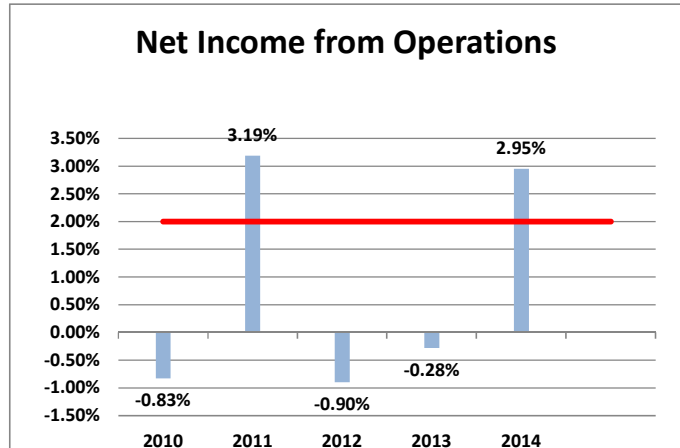
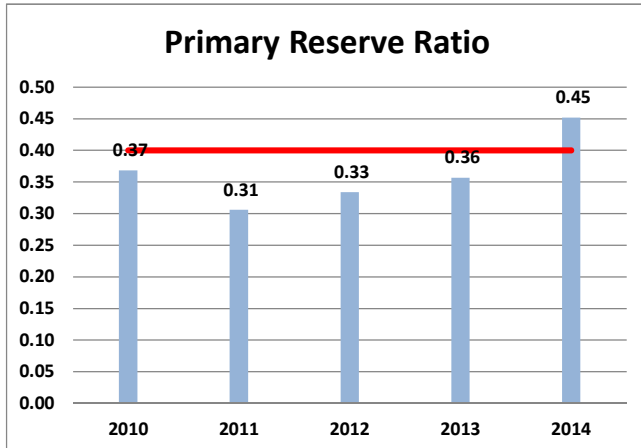


Idaho State University  
FY 2014

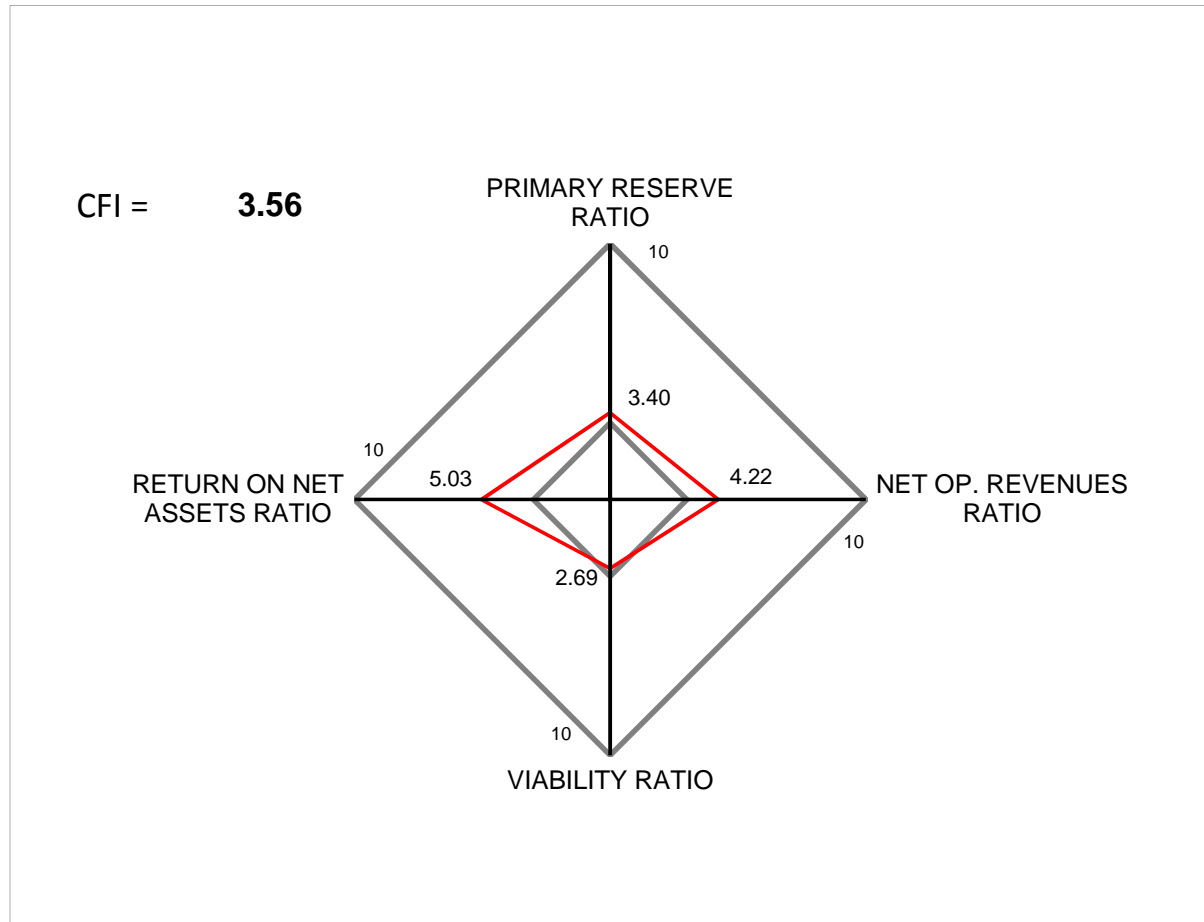


## University of Idaho

	2010	2011	2012	2013	2014	Benchmark
Primary Reserve Ratio	0.37	0.31	0.33	0.36	0.45	0.40
Net Operating Revenues	-0.83%	3.19%	-0.90%	-0.28%	2.95%	2.00%
Return on Net Assets	5.80%	8.53%	-0.25%	3.76%	10.07%	6.00%
Viability	0.82	0.73	0.79	0.84	1.12	1.25
CFI	2.12	2.73	1.39	1.98	3.56	3.00



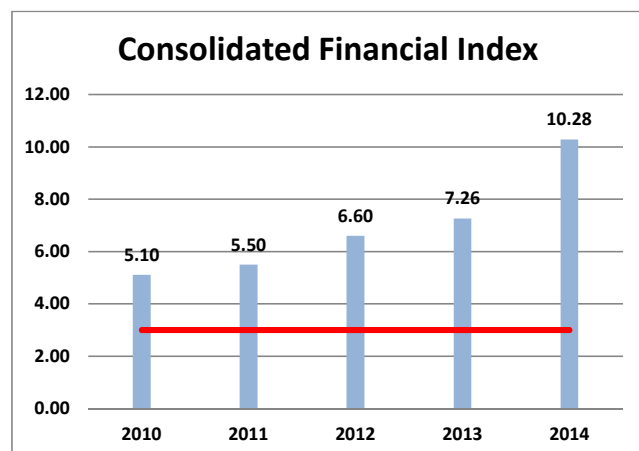
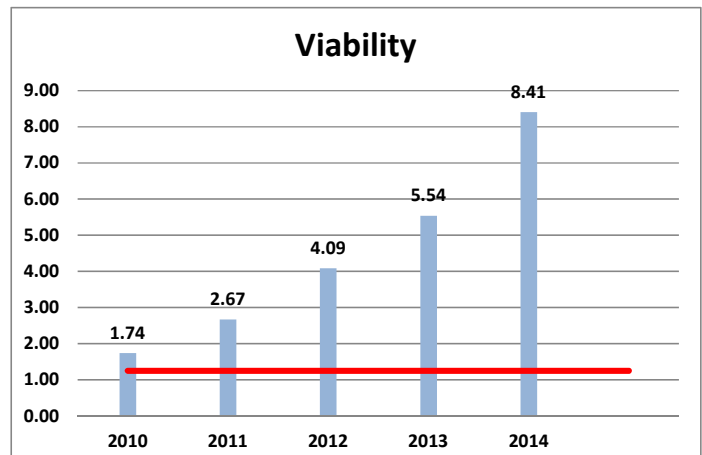
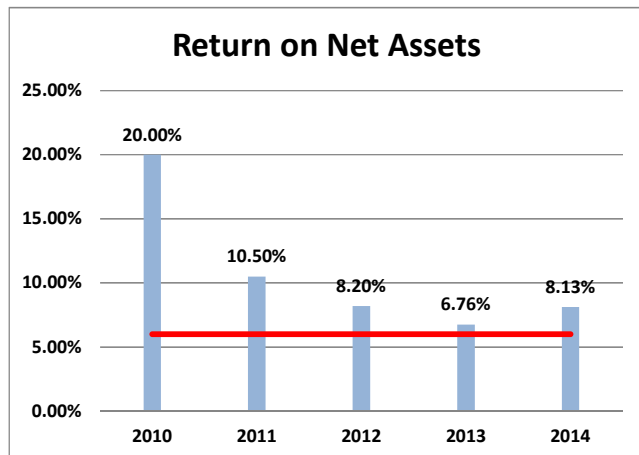
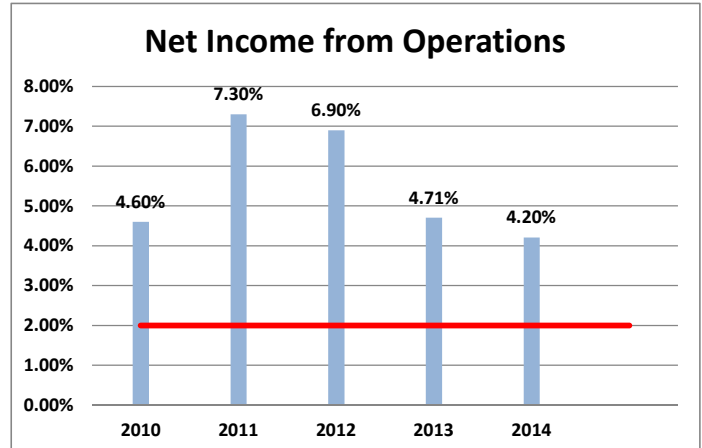
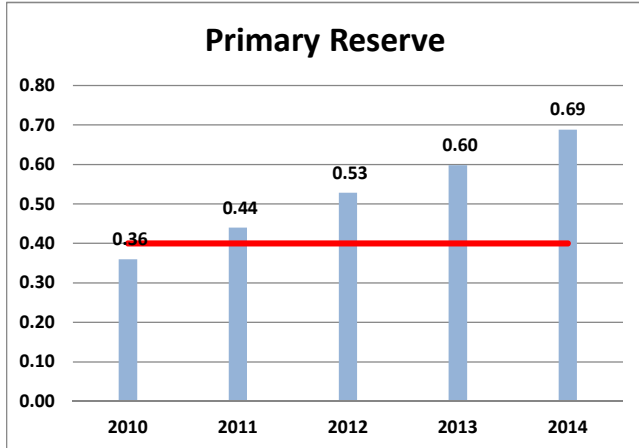
University of Idaho  
FY 2014





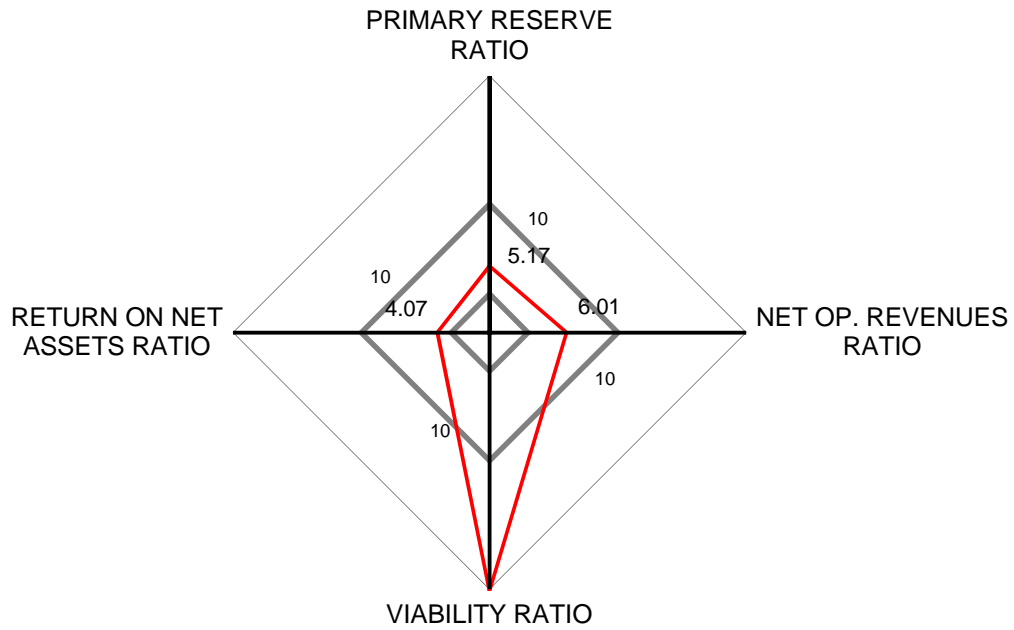
## Lewis-Clark State College

	2010	2011	2012	2013	2014	Benchmark
Primary Reserve	0.36	0.44	0.53	0.60	0.69	0.40
Net Operating Revenues	4.60%	7.30%	6.90%	4.71%	4.20%	2.00%
Return on Net Assets	20.00%	10.50%	8.20%	6.76%	8.13%	6.00%
Viability	1.74	2.67	4.09	5.54	8.41	1.25
CFI	5.10	5.50	6.60	7.26	10.28	3.00



Lewis-Clark State College  
FY 2014

CFI = **10.28**



**AUDIT**  
**FEBRUARY 19, 2015**

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**LEWIS-CLARK STATE COLLEGE**

**SUBJECT**

Board approval of Lewis-Clark State College operating agreement with LCSC Foundation

**REFERENCE**

October 2009	Board approval of LCSC operating agreement with LCSC Foundation
August 2012	Board approval of revised operating agreement
December 2014	Audit Committee reviewed and recommended Board approval of revised operating agreement

**APPLICABLE STATUTE, RULE, OR POLICY**

Idaho State Board of Education Governing Policies & Procedures, Section V.E.

**BACKGROUND/DISCUSSION**

State Board policy stipulates that *“each institution shall enter into a written operating agreement with each recognized foundation that is affiliated with the institution.”* The proposed revision to the LCSC operating agreement updates the agreement approved by the Board in 2012 to address the following points:

- 1) Adds the recently re-established position of Vice President for Student Affairs as an ex officio member of the Foundation. Other ex officio members of the Foundation include the College President, Provost/Vice President for Academic Affairs, Vice President for Finance and Administration, Faculty Senate Chair-Elect, and an LCSC Alumni Association Board representative). Ex officio members are not entitled to vote.
- 2) Revises the section describing Foundation Officers to delete the former restrictive wording, which mandated that the College Budget Officer serve as the Foundation Treasurer, and provides more flexible language which will permit the Foundation to elect as Treasurer either one of the members of the Foundation Board of Directors, or upon mutual consent of the Foundation and the President of the College, a College staff officer.
- 3) Stipulates that executive officers of the College (President and Vice Presidents) shall not serve as officers of the Foundation Board of Directors.
- 4) Amends the section on “signature authority” to make it clear that no College employee, including College executive officers (Presidents or Vice Presidents), has the authority to sign any transaction on behalf of the Foundation.

**IMPACT**

The proposed revisions will align the wording of the operating agreement with the current (Board-approved) organizational structure of the College (reflecting establishment of Vice President for Student Affairs) and strengthens language

**AUDIT**  
**FEBRUARY 19, 2015**

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which ensures mutual independence of the executive leadership of the College and the Foundation Board. The language draws a bright line to make it clear that College executive-level officers cannot serve as officers of the Foundation, or exercise signature authority on behalf of the Foundation. The revision preserves and strengthens the underlying principle that neither the Foundation nor the College can financially commit the other party without mutual consent and written authorization.

**ATTACHMENTS**

Attachment 1—Revised LCSC Foundation Operating Agreement

Page 3

**STAFF COMMENTS AND RECOMMENDATIONS**

The current operating agreement, which was approved by the Board in 2012, provided that the Budget Director of the College shall serve as Treasurer of the Foundation. The revised operating agreement replaces the Budget Director with “an officer of the College” approved by the Foundation. It is anticipated that the college’s Controller may be appointed as the Foundation Treasurer. Staff was told the duties of the Treasurer were mainly to keep the books and make periodic reports to the Foundation Board. Responsibility for policy making, financial oversight, authorizing payments, investments, and supervision of college staff working for the foundation rests with the Board of Directors of the Foundation.

Staff recommends approval.

**BOARD ACTION**

I move to approve the revisions to the Operating Agreement between Lewis-Clark State College and the Lewis-Clark State College Foundation, Inc., as presented.

Moved by \_\_\_\_\_ Seconded by \_\_\_\_\_ Carried Yes \_\_\_\_\_ No \_\_\_\_\_

## FOUNDATION OPERATING AGREEMENT

THIS OPERATING AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, ~~2012~~ 2015, by and between LEWIS-CLARK STATE COLLEGE, hereinafter referred to as "College", and LEWIS-CLARK STATE COLLEGE FOUNDATION, INC., hereinafter referred to as "Foundation",

WHEREAS, the Foundation is a non-profit corporation incorporated on April 4, 1984 pursuant to the Idaho Nonprofit Corporation Act for the purpose of supporting Lewis-Clark State College, its students, staff, faculty and programs;

WHEREAS, the Foundation has been recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the parties hereby acknowledge that they will at all times conform to, and abide by, the Idaho State Board of Education's ("State Board") Governing Policy and Procedures, Gifts and Affiliated Foundations policy, Section V.E.; and

WHEREAS, the parties enter into this Agreement to establish the operating agreement between the parties, all as is required under Section V.E.2.c, of the State Board's Policies and Procedures.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties agree as follows:

### ARTICLE I Foundation's Purposes

The Foundation is the primary affiliated foundation responsible for securing, managing and distributing private support for the College. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and Bylaws, and the State Board's Policies and Procedures, the Foundation shall:

1. solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the College from the general public (including individuals, corporations, other entities and other sources);
2. manage and invest the money and property it receives for the benefit of the College; and
3. support and assist the College in fundraising and donor relations. In carrying out its purposes the Foundation shall not engage in activities that conflict with:
  - a. federal or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations);
  - b. applicable policies of the State Board; or
  - c. the role and mission of the College.

## **ARTICLE II**

### **Foundation's Organizational Documents**

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the College. All amendments of such documents shall also be provided to the College and State Board. Furthermore, the Foundation shall, to the extent practicable, provide the College with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

## **Article III**

### **Institutional Resources and Services**

- 1. Staff.** The Director of College Advancement, an employee of the College, shall serve as Executive Director of the Foundation and shall supervise the College Advancement Staff who are likewise employees of the College and who will provide administrative services to the Foundation. The College is responsible for the employment and compensation of College Advancement Staff providing services to the Foundation, including the Director of College Advancement in his or her capacity as Executive Director of the Foundation. ~~The Budget Director of the College shall serve as Treasurer of the Foundation~~ Subject to approval by the President of the College, the Foundation may appoint an employee of the College to serve as Treasurer. The Treasurer shall provide and/or supervise the provision of financial and accounting services for the Foundation. While providing services to the Foundation, College employees are subject to the oversight and direction of the Board of Directors of the Foundation. ~~Executive officers of the College (President and Vice Presidents) shall not serve as Foundation Board officers or staff members.~~
- 2. Other Services.** The College shall provide the following additional services to the Foundation:
  - a.** Access to the College's financial system to receive, disburse and account for funds of the Foundation. Except for funds transferred into Foundation's brokerage accounts, all funds received by the Foundation shall be deposited with the College and credited to one or more agency accounts established in the name of the Foundation within the College's financial system. In using the College's financial services, the Foundation shall comply with the College's financial and administrative policies and procedures.
  - b.** Accounting services, to include cash receipts and disbursements, accounts receivable and payable, bank reconciliation, reporting and analysis, and internal auditing.
  - c.** Investment, insurance, and similar services.
  - d.** Development services, including research, information systems, donor records, communications and special events.
- 3. Facilities, Furnishings and Office Equipment.** The business office of the Foundation shall be located in the College Advancement Office at 500 8<sup>th</sup> Avenue, Lewiston, Idaho. The College will provide office space to the Foundation including providing all maintenance and utilities, and local and long-distance telephone service for use in the business of the Foundation. The furnishings, computers, copiers and

other items of office equipment used in the Foundation's office are owned by the College but shall be made available for use in the business of the Foundation. The cost of repairing, maintaining and replacing such furnishings and equipment shall be paid by the College.

- 4. Reimbursement.** Except as otherwise provided in this Agreement, the Foundation shall have no obligation to reimburse the College for costs incurred by the College for personnel, use of facilities or equipment or for other services provided to the Foundation by the College. No payments shall be made directly from the Foundation to College employees in connection with resources or services provided to the Foundation under this Agreement.

## **Article IV Management and Operation of Foundation**

### **1. Gift Solicitation.**

- a. Form of Solicitation.** Any and all Foundation gift solicitations shall make clear to prospective donors that (1) 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 College; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides with the Foundation's Board of Directors.
- b. The Foundation is Primary Donee.** Absent unique circumstances, donors shall be requested to make gifts directly to the Foundation rather than to the College.
- c. Real Property.** No gifts, grants or transfers of real or personal property will be accepted by the Foundation which do not comply with state law, State Board and College policy.
- d.** The Foundation shall not accept gifts or grants containing a condition committing the College financially or contractually without prior written approval of the College President or VP for Finance and Administration.

### **2. Receiving, Depositing, Disbursing and Accounting for Funds.**

- a. General.** College Advancement staff on behalf of the Foundation shall receive, accept and administer gifts in accordance with the Foundation's Gift Acceptance Policy and Policy for Accounting of Gift Revenue, copies of which are attached hereto as Exhibits A and B. The College's financial systems and administrative policies and procedures will be utilized in receiving, depositing, disbursing and accounting for funds of the Foundation.
- b. Institutional Funds Transferred to the Foundation.** In compliance with the policies of the State Board, the College shall not transfer institutional funds, assets, or liabilities directly or indirectly to the Foundation without the prior approval of the State Board and the Foundation Board of Directors. Segregation of duties among College employees who provide accounting and reporting support to the Foundation will be maintained to prevent unauthorized access to or transfer of funds to or from the College and Foundation.

c. **Funds Transferred to College.** Funds, including gifts designated by the donor to a specific College department or program, will not be transferred from the Foundation to the College except as approved by the Foundation Board of Directors. The College official responsible for that department or program will be notified of the transfer and the purpose of the gift by the College Advancement Staff. The College official into whose department or program Foundation funds have been transferred shall be responsible to account for those funds in accordance with College policies and procedures, to use those funds for their designated purposes, and shall notify the Foundation of the use of those funds on a timely basis. Once funds have been transferred to the College, the transferred funds shall be the property of the College.

3. **Signature Authority.** Foundation expenditures, transfer of funds and financial transactions must be authorized and approved by the Board of Directors or officers designated by the Board. Signature authority on behalf of the Board shall be exercised only by the Foundation President and Vice President. No College employee (including, but not limited to, ~~a College Vice-President~~ the College President or Vice Presidents) shall have the authority to sign on any transaction on behalf of the Foundation.

4. **Investment Policies.** Gifts will be invested in accordance with the guidelines set out in the "Investment Policy Statement," a copy of which is attached hereto as Exhibit C. The responsibility for investment of gifted funds resides with the Foundation's Board of Directors who act upon the recommendations promulgated by the Foundation's Finance and Investment Committee. College employees may provide technical information and reports to the Committee but have no voting rights and are not part of the policy approval process.

5. **Insurance.** To the extent that the Foundation is not covered by the State of Idaho Risk Management insurance, the Foundation shall maintain insurance to cover the operations and activities of its Board of Directors and Officers, attached as Exhibit D.

6. **Separation of Foundation and College Funds.** Foundation and College funds will not be co-mingled. Foundation funds will be deposited in the College's financial system and credited to the appropriate agency account in the Foundation name. It shall be the responsibility of the Foundation Treasurer to reconcile the Foundation's agency accounts on a monthly basis. The Foundation Treasurer shall make a monthly written financial report to the Foundation Board in accordance with generally accepted accounting principles.

7. **Description of Organizational Structure of Foundation.**

a. **Foundation Board of Directors.** The Foundation is a non-profit corporation organized under the laws of the State of Idaho. It is governed by a board of not more than thirty (30) directors. The directors are elected by the Foundation Board members. Foundation Directors serve staggered terms of up to three (3) years. The President, the Provost and Vice President for Academic Affairs, the Vice President for Finance and Administration, the Vice



- President for Student Affairs, the ~~Budget Director~~ the Treasurer (if a College employee has been designated to fill this position), the Faculty Senate Chair-Elect and the LCSC Alumni Association Board Representative are Designated Members of the Foundation who are entitled to attend meetings of the Foundation Board of Directors but are not entitled to vote. Other College officials may serve as advisors to Foundation's Board and may be invited to attend meetings of the Foundation Board on a case-by-case basis.
- b. **Board Committees.** The standing committees of the Foundation Board of Directors shall be the Executive Committee, the Scholarship Committee, and the Finance and Investment Committee. The composition, duties and authority of each of those committees is set out on Exhibit E.
  - c. **Executive Director.** The chief operating officer of the Foundation is its Executive Director who is employed by the College as Director of College Advancement. In the performance of his or her duties with the Foundation, the Executive Director shall report to and be subject to the direction of the Foundation Board of Directors. The Executive Committee of the Foundation Board may prepare and provide to the College President an annual written job performance evaluation of the Executive Director.
  - d. **Officers.** The ~~Chief Executive Officer of the Foundation is the~~ Foundation President ~~who~~ is elected by the Board of Directors. The Foundation Board of Directors also elects a Vice President, Secretary, and Treasurer. Subject to the mutual consent of the Foundation Board of Directors and the College President, an employee from the College staff may be appointed to serve as Treasurer. ~~The Treasurer of the Foundation is the College Budget Officer. In the performance of his or her duties with the Foundation, the Treasurer shall report to and be subject to the direction of the Foundation Board of Directors.~~

## Article V

### Relationship between the Foundation and the College

#### 1. Access to Foundation Books and Records.

- a. The financial records of the Foundation shall be available to the College, its officers and representatives in accordance with the policies and procedures of the College. Other financial records of the Foundation shall be made available to the College at reasonable times upon written request of the College President or his or her designee.
- b. Donor records containing information with respect to gifts to the Foundation are the property of the Foundation and shall be maintained and secured by the College. The Foundation and the College shall take the steps necessary to monitor and control access to donor records and to protect the security of the donor database. The College shall not access such information except in compliance with the Foundation's donor confidentiality policies. The College shall enforce policies that support the Foundation's ability to respect the privacy and preserve the confidentiality of donor records. The Foundation will provide information contained in donor records to College officials upon request in accordance with applicable laws, Foundation policies and guidelines. Such information may also be provided to Foundation officers and Foundation Board members.

- 2. Foundation Budget.** The Finance and Investment Committee of the Foundation Board shall, in consultation with the College President or his or her designee, develop a proposed annual operating budget and capital expenditure plan. After a final review by College President, the budget and capital expenditure plan shall be presented to the full Foundation Board for approval.
- 3. Compensation to College Employees.** It is not anticipated that Foundation will provide supplementary compensation to College employees. The Foundation Board of Directors may provide funds to the College annually for Faculty and Staff Achievement Awards. The College identifies the faculty and staff members who will be recipients of those awards and disburses the funds to the recipients.

## **Article VI**

### **Audit and Reporting Requirements**

- 1. Fiscal Year.** The Foundation and the College shall have the same fiscal year.
- 2. Independent Audit.** The business and affairs of the Foundation shall be audited annually as a component unit of the College by the independent certified public accountants who are the auditors for the College. Those accountants shall not be officers or directors of the Foundation. The audit shall be a full scope audit, performed in accordance with generally accepted auditing standards and prepared in accordance with Government Accounting Standards Board (GASB) principles or Financial Accounting Standards Board (FASB) principles, as appropriate. The cost of the audit shall be paid by the College. A written report of the audit shall be provided to the Idaho State Board of Education.
- 3. Foundation Reports to the College President.** The Foundation shall provide the following reports to the President of the College. Except for the audit report prepared by College's independent auditor, these reports will be prepared by or under the direction of the Executive Director. Copies of each report shall be provided to the Foundation Board. The reports and their frequency are as follows:
  - a.** Annual financial audit report;
  - b.** Annual report of transfers made to the College, summarized by departments;
  - c.** Annual report of unrestricted funds received, and of unrestricted funds available for use in that fiscal year;
  - d.** A list of Foundation officers and directors shall be provided annually and the President shall be promptly notified of any changes in that list;
  - e.** A list of any College employees for whom the Foundation made payments to College for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment
  - f.** A list of all state and federal contracts and grants managed by the Foundation;
  - g.** An annual report of the Foundation's major activities;
  - h.** An annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the College; and

- i. An annual report of any actual litigation involving the Foundation during its fiscal year, as well as legal counsel used by the Foundation for any purpose during such year. This report should also discuss any potential or threatened litigation involving the Foundation.

## **Article VII**

### **Conflicts of Interest and Code of Ethics**

**1. Conflicts of Interest Policy Statements.** The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached as Exhibit F.

**2. Dual Representation.** Under no circumstances may a College employee represent both the College and the Foundation in any negotiation, sign for both entities in transactions, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the College and the Foundation. This shall not prohibit College employees from drafting transactional documents that are subsequently provided the Foundation for its independent review, approval and use.

**3. Contractual Obligation of College.** The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the College without first obtaining the prior written approval of the College. College approval of any such contract shall comply with policies of the State Board with respect to approval of College contracts.

**4. Acquisition or Development of Real Estate.** The Foundation shall not acquire or develop real estate or otherwise build facilities for the College's use without first obtaining approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the College shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the College's use shall be a coordinated effort of the College and the Foundation. Any notification to the State Board required pursuant to this paragraph may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

## **Article VIII**

### **General Terms**

**1. Effective Date.** This Agreement shall be effective on the date set forth above.

**2. Right to Terminate.** This Operating Agreement shall terminate upon the mutual written agreement of both parties. In addition, either party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either party may terminate this Operating Agreement in the event the other party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting party specifying the nature of the default.

Should the College choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the College to pay, within 180 days of written notice, all debt incurred by the Foundation on the College's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives.

Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the College that is not cured within the time frame set forth above, the College may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner.

The parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event the parties are unable to negotiate a new agreement within the time period specified herein, they will refer the matter to the State Board for resolution. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.

- 3. Board Approval of Operating Agreement.** Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every three (3) years or more frequently if otherwise requested by the State Board.
- 4. Modification.** Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.
- 5. Providing Document to and Obtaining Approval from the College.** Unless otherwise indicated herein, any time documents are to be provided to the College or any time the College's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the College's President or an individual to whom such authority has been properly delegated by the College's President.
- 6. Providing Documents to and Obtaining Approval from the Foundation.** Unless otherwise indicated herein, any time documents are to be provided to the Foundation or any time the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.
- 7. Notices.** Any notices required under this agreement may be mailed or delivered as follows:

Lewiston, ID 83501

- 8. No Joint Venture.** At all times and for all purposes of this Operating Agreement, the College and the Foundation shall act in an independent capacity and not as an agent or representative of the other party.
- 9. Liability.** The College and Foundation are independent entities and neither shall be 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 employees.
- 10. Indemnification.** The College and the Foundation each agree to indemnify, defend and hold the other party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one party who is working for the benefit of the other party. Nothing in this Operating Agreement shall be construed to extend to the College's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et seq.
- 11. Dispute Resolution.** The parties agree that in the event of any dispute arising from this Operating Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the parties. If the staff cannot resolve the dispute, the dispute will be referred to the President of the Foundation and the College President. If the Foundation and the College President cannot resolve the dispute, then the dispute will be referred to the Foundation President and the State Board of Education for resolution. If they are unable to resolve the dispute, the parties shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unsolved, then, in such case, either party shall have the right to initiate litigation arising from this Operating Agreement. In the event of litigation, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.
- 12. Dissolution of Foundation.** Consistent with provisions appearing in the Foundation's Bylaws and/or Articles of Incorporation, should the Foundation cease to exist or cease to qualify as an Internal Revenue Code §501(c)(3) organization, the Foundation will transfer its assets and property to the College, to a reincorporated successor Foundation organized to benefit the College, or to the State of Idaho for public purposes, in accordance with Idaho law.
- 13. Assignment.** This Operating Agreement is not assignable by either party, in whole or in part.
- 14. Governing Law.** This Operating Agreement shall be governed by the laws of the State of Idaho.

**15. Severability.** If any provision of this Operating Agreement is held invalid or unenforceable to any extent, the remainder of this Operating Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

**16. Entire Operating Agreement.** This Operating Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

**17. List of Attachments**

- Exhibit A – Gift Acceptance Policy
- Exhibit B – Policy for Accounting for Gift Revenue
- Exhibit C – Investment Policy Statement
- Exhibit D – Directors and Officers Liability Insurance
- Exhibit E – Committee Descriptions
- Exhibit F – Policy on Conflict of Interest

IN WITNESS WHEREOF, the College and the Foundation have executed this agreement on the above specified date.

LEWIS-CLARK STATE COLLEGE

BY \_\_\_\_\_

COLLEGE

LEWIS-CLARK STATE COLLEGE  
FOUNDATION, INC.

BY \_\_\_\_\_

FOUNDATION