

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: V. FINANCIAL AFFAIRS
SUBSECTION: E. Gifts and Affiliated Foundations

June 2019

1. 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 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 and agencies under the Board's governance raise money through private 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 and agencies under the Board's governance. Foundations are established for the purpose of raising, 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 or agencies. The Board wishes to encourage a broad base of support from many 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 recognized affiliated foundations
- b. The Board recognizes that foundations:
 - i. Provide an opportunity for private individuals and organizations to contribute to the institutions and agencies under the Board's governance with the assurance that the benefits of their gifts supplement, not supplant, state appropriations to the institutions and agencies;
 - ii. Provide assurance to donors that their contributions will be received, distributed, and utilized as requested for specified purposes, to the extent legally permissible, and that donor records will be kept confidential to the extent requested by the donor and as allowed by law;
 - iii. Provide an instrument through which alumni and community leaders can help strengthen the institutions and agencies through participation in the solicitation, management, and distribution of private gifts; and
 - iv. 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.
- c. The Board, aware of the value of tax-exempt foundations to the well being of the institutions and agencies under the Board's governance, adopts this policy with the following objectives:

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- i. To preserve and encourage the operation of recognized foundations associated with the institutions and agencies under the Board's governance; and
- ii. To ensure that the institutions and agencies under the Board's governance work with their respective affiliated foundations to make certain that business is conducted responsibly and according to applicable laws, rules, regulations, and policies, and that such foundations fulfill their obligations to contributors, to those who benefit from their programs, and to the general public.

2. Institutional Foundations

a. General Provisions Applicable to all Affiliated Foundations

- i. All private support of an institution not provided directly to such institution shall be through a Board approved affiliated foundation. While an institution may accept gifts made directly to the institution or directly to the Board, absent unique circumstances making a direct gift to the institution more appropriate, donors shall be requested to make gifts to the Board approved affiliated foundations.
- ii. Each affiliated 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 Internal Revenue Service. The management and control of a foundation shall rest with its governing board. All correspondence, solicitations, activities, and advertisements concerning a particular foundation shall be clearly discernible as from that foundation, and not the institution.
- iii. The institutions and foundations are independent entities and neither will 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 staff.
- iv. 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.
- v. Foundation funds shall be kept separate from institution funds. No institutional funds, assets, or liabilities may be transferred directly or indirectly to a foundation without the prior approval of the Board except as provided herein. Funds may be transferred from an institution to a foundation without prior Board approval when:

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- 1) A donor inadvertently directs a contribution to an institution that is intended for the foundation. 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 an institutional account, and Board approval will be required prior to transfer to an affiliated foundation; or
 - 2) The institution has gift funds that were transferred from and originated in an affiliated foundation, and the institution wishes to return a portion of funds to the foundation for reinvestment consistent with the original intent of the gift.
 - 3) The transfer is of a *de minimis* amount not to exceed \$10,000 from the Institution to the Foundation and the transferred funds are for investment by the Foundation for scholarship or other general Institution/Agency support purposes.
 - 4) The transfer is of funds raised by the institution for scholarship or program support and the funds are deposited with the affiliated foundation for investment and distribution in accordance with the purpose for which the funds were raised.
- vi. Transactions between an 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. Under no circumstances shall an institution employee represent both the institution and foundation in any negotiation, sign for both the institution and foundation in a particular transaction, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the institution and the foundation.
 - vii. Prior to the start of each fiscal year, an affiliated foundation must provide the institution chief executive officer with the foundation's proposed annual budget, as approved by the foundation's governing board.
 - viii. 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 (GASB) or Financial Accounting Standards Board (FASB) principles, as appropriate.

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- ix. Institution chief executive officers shall be invited to attend all meetings of an affiliated foundation's governing board in an advisory role. On a case by case basis, other institution employees may also serve as advisors to an affiliated foundation's governing board, as described in the written foundation operating agreement approved by the Board.
- x. Although foundations are private entities and are not subject to the Idaho Public Records Law, foundations, while protecting personal and private information related to private individuals, are encouraged, to the extent reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or similar non-personal and non-confidential financial or policy information.
- xi. A foundation's enabling documents (e.g., articles of incorporation and bylaws) and any amendments are to be provided to the institution. 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 the Board or the affiliated institution. To the extent practicable, the foundation shall provide the institution with an advance copy of any proposed amendments, additions, or deletions to its articles of incorporation or bylaws. The institution shall be responsible for providing all of the foregoing documents to the Board.
- xii. Foundations may not engage in activities that conflict with federal or state laws, rules and regulations; or cause an institution to be in violation of Board policy; 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.
- xiii. Fund-raising campaigns and solicitations of major gifts for the benefit of an institution by its affiliated foundation shall be developed cooperatively between the institution and its affiliated foundation. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by an institution, a foundation will obtain the prior approval of the institution chief executive officer or a designee.
- xiv. Foundations shall obtain prior approval in writing from the institution chief executive officer or a designee if gifts, grants, or contracts include a financial or contractual obligation binding upon the institution.
- xv. Foundations 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 institution; and

2) Responsibility for the governance of the foundation, including investment of gifts and endowments, resides in the foundation's governing board.

xvi. Institutions shall ensure that foundation controlled resources are not used to acquire or develop real estate or to build facilities for the institution's use without prior Board approval. The institution shall notify the Board, at the earliest possible date, of any proposed purchase of real estate for such purposes, and in such event should ensure that the foundation coordinates its efforts with those of the institution. Such notification to the Board may be through the institution's chief executive officer in executive session pursuant to Idaho Code, Section 74-206(1)(c).

b. Foundation Operating Agreements

Each institution shall enter into a written operating agreement with each of its affiliated foundations that ensures compliance with this Policy.

Board approval of affiliated foundation operating agreements is required if an affiliated foundation will receive donations, membership dues, gifts or other funds (collectively "funds") and delivers those funds directly to the institution. If an affiliated foundation will not receive or maintain funds, or if it routes all funds received to the institution through another Board-approved affiliated foundation, Board approval of the operating agreement is not required. In such cases, the institution shall ensure that services provided by a Board approved affiliated foundation to another affiliated foundation are provided pursuant to a service agreement between the affiliated foundations which complies with Board policy, a copy of which is available to the institution and to the Board.

Operating agreements must be signed by the chairman or president of the foundation's governing board, and by the institution chief executive officer. Operating agreements requiring Board approval must be approved by the Board prior to execution and must be re-submitted to the Board for re-approval every three (3) years, or as otherwise requested by the Board. Operating agreements shall follow the operating agreement template approved by the Board and found at <http://boardofed.idaho.gov/>. When an operating agreement is presented to the Board for review, an institution must include a redline to the Board's operating agreement template, as well as a redline to the previously Board approved version of the operating agreement, if there is one.

Foundation operating agreements shall establish the operating relationship between the parties, and shall, at a minimum, address the following topics:

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- i. Institution Resources and Services.
 - 1) Whether, and how, an institution intends to provide contract administrative and/or support staff services to an affiliated foundation. When it is determined that best practices call for an institution employee to serve in a capacity that serves both the institution and an affiliated foundation, then the operating agreement must clearly define the authority and responsibilities of this position within the foundation. Notwithstanding, no employee of an institution who functions in a key administrative or policy making capacity (including, but not limited to, any institution vice-president or equivalent position) shall be permitted to have responsibility or authority for foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of foundation employees. The responsibility of this position within the foundation that is performed by an institution employee in a key administrative or policy making capacity shall be limited to the coordination of institution and affiliated foundation fundraising efforts, and the provision of administrative support to foundation fundraising activities.
 - 2) Whether, and how, an institution intends to provide other resources and services to an affiliated foundation, which are permitted to 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 cash disbursements and receipts, accounts receivable and payable, bank reconciliation, reporting and analysis, auditing, payroll, and budgeting;
 - c) Investment, management, insurance, benefits administration, and similar services; and
 - d) Development services, encompassing research, information systems, donor records, communications, and special events.
 - 3) Whether the foundation will be permitted to use any of the institution's facilities and/or equipment, and if so, the details of such arrangements.
 - 4) Whether the institution intends to recover its costs incurred for personnel, use of facilities or equipment, or other services provided to the foundation. If so, then payments for such costs shall be made directly to the institution.

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No payments shall be made directly from a foundation to institution employees in connection with resources or services provided to a foundation pursuant to this policy.

ii. Management and Operation of Foundations.

- 1) Guidelines for receiving, depositing, disbursing and accounting for all funds, assets, or liabilities of a foundation, including any disbursements/transfers of funds to an institution from an affiliated foundation. Institution officials into whose department or program foundation funds are transferred shall be informed by the foundation of the restrictions, if any, on such funds and shall be 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.
- 2) Procedures with respect to foundation expenditures and financial transactions, which must ensure that no person with signature authority shall be an institution employee in a key administrative or policy making capacity (including, but not limited to, an institution vice-president or equivalent position).
- 3) The liability insurance coverage the foundation will have in effect to cover its operations and the activities of its directors, officers, and employees.
- 4) Description of the investment policies to be utilized by the foundation, which shall be conducted in accordance with prudent, sound practice to ensure that gift assets are protected and enhanced, and that a reasonable return is achieved, with due regard for the fiduciary responsibilities of the foundation's governing board. Moreover, such investments must be consistent with the terms of the gift instrument.
- 5) Procedures that will be utilized to ensure that institution and foundation funds are kept separate.
- 6) Detailed description of the organization structure of the foundation, which addresses conflict of interest in management of funds and any foundation data.

iii. Foundation Relationships with the Institutions

- 1) The institution's ability to access foundation books and records.
- 2) The process by which the institution chief executive officer, or designee, shall interact with the foundation's board regarding the proposed annual

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operating budget and capital expenditure plan prior to approval by the foundation's governing board.

- 3) Whether, and how, supplemental compensation from the foundation may be made to institutional employees. Any such payments must have prior Board approval, and shall be paid by the foundations to the institutions, which in turn will make payments to the employee in accordance with normal practice. Employees shall not receive any payments or other benefits directly from the foundations.

iv. Audits and Reporting Requirements.

- 1) The procedure foundations will utilize for ensuring that regular audits are conducted and reported to the Board. Unless provided for otherwise in the written operating agreement, such audits must be conducted by an independent certified public accountant, who is not a director or officer of the foundation. The independent audit shall be a full scope audit, performed in accordance with generally accepted auditing standards.
- 2) The procedure foundations will use for reporting to the institution chief executive officer the following items:
 - a) Regular financial audit report;
 - b) Annual report of transfers made to the institution, summarized by department;
 - c) Annual report of unrestricted funds received, and of unrestricted funds available for use in that fiscal year;
 - d) A list of foundation officers, directors, and employees;
 - e) A list of institution employees for whom the foundation made payments to the institution 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; and
 - g) An annual report of the foundation's major activities;

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- 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 institution; 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.

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

A description of the foundation's conflict of interest policy approved by the foundation's governing board and applicable to all foundation directors, officers, and staff members, and which shall also include a code of ethics and conduct. Such policy must assure that transactions involving the foundation and the personal or business affairs of a trustee, director, officer, or staff member should be approved in advance by the foundation's governing board. In addition, such policy must provide that 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. Finally, such policy must assure that no director, trustee, officer, or staff member of a foundation shall accept from any source any material gift or gratuity in excess of fifty dollars (\$50.00) that is offered, or reasonably appears to be offered, because of the position held with the foundation; nor should an offer of a prohibited gift or gratuity be extended by such an individual on a similar basis.

vi. Affiliated Research Foundations and Technology Transfer Organization for Institutions of Higher Education

The Board wishes to encourage research and technology transfer and the corresponding economic development potential for the state of Idaho. The Board acknowledges that independent, affiliated foundations operating to support an institution's research and technology transfer efforts can be useful tools to provide institutions with avenues for engagement with the private sector as well as with public and private entities interested in funding research, funding technology transfer and promoting spin-off enterprises arising from institutional intellectual property and technology. Such affiliated foundations should operate substantially within the framework for affiliated foundations set out in paragraph 1 and 2 of this policy, with such variances as are reasonable based on the nature of the anticipated function of the specific foundation.

- 1) The institutions under the Board's governance may affiliate with non-profit entities which generally meet the criteria set forth in paragraph 2.b. of this

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policy and which operate for the purpose of supporting the research and technology transfer efforts of one or more of the institutions.

- 2) Research and Technology Transfer Foundation Operating Agreements. The requirement of a foundation operating agreement under paragraph 2.c. of this policy shall also apply to foundations supporting research and technology transfer. Institutions proposing to affiliate with a particular foundation may propose reasonable variances from specific requirements under paragraph 2.c. based upon the anticipated function of the foundation, provided that any such variances are specifically identified by the institution in materials presented to the Board when requesting approval of the foundation.

3. Foundations for Other Agencies

Other agencies under the Board's jurisdiction may establish foundations to accept gifts made for the benefit of the agencies' operating purposes. These agencies are subject to the same policies as the institutional foundations. However, agency foundations with annual revenues less than \$100,000 are not required to obtain an independent audit. These agencies must instead submit an annual report to the Board of gifts received and the disposition of such gifts.

4. Idaho Public Television Foundation

- a. Foundations that exist for the benefit of Idaho Public Television (IPTV) are required by Federal Communications Commission (FCC) regulations to have specific spending authority designated by the Board. Audits of the IPTV Foundation will be conducted by the State Legislative Auditor.
- b. By action of the Board, the Friends of Idaho Public Television, 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.

5. Acceptance of Direct Gifts

Notwithstanding the Board's desire to encourage the solicitation and acceptance of gifts through affiliated foundations, 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 or agency under its governance. Gifts worth more than \$250,000 must be reported to and approved by the executive director of the Board before such gift may be expended or otherwise used by the institution or agency. Gifts worth more than \$500,000 must be approved

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by the Board. The chief executive officer of any institution or agency is authorized to receive, on behalf of the Board, gifts that do not require prior approval by the executive director or the Board and that are of a routine nature. This provision does not apply to transfers of gifts to an institution or agency from an affiliated foundation (such transfers shall be in accordance with the written operating agreement between the institution or agency and an affiliated foundation, as described more fully herein).