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OREGON UNIVERSITY SYSTEM

DIVISION 43

POLICIES RELATING TO INVENTIONS, LICENSE AGREEMENTS, EDUCATIONAL AND PROFESSIONAL MATERIALS DEVELOPMENT, PATENTS, AND COPYRIGHTS

580-043-0006

Policy

The educational and research activities of employees of the Board of Higher Education and its institutions frequently result in the discovery of new knowledge in the form of inventions, technological improvements, and the production of educational and professional materials. It shall be the general policy of the Board that such results be made available to the public in the most expeditious manner.

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 8-1978, f. & cert. ef. 12-5-78

580-043-0007

Objectives of Policies

It is Board intent to:

- (1) Provide systematic means of bringing inventions, technological improvements and educational and professional materials into the public domain.
- (2) Encourage the development of new knowledge while protecting traditional academic freedom of employees in the publication of materials, development of inventions and discovery of technological improvements.
- (3) Establish principles and procedures for equitably sharing net royalty income with employees, and with sponsoring agencies when required by an agreement.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1978, f. & cert. ef. 12-5-78; HEB 5-1996, f. & cert. ef. 12-18-96

580-043-0011

Employee Responsibilities and Rights

- (1) As a condition of employment, all Board and institution employees shall agree to assign to the Board rights to:
 - (a) Any invention or improvement in technology conceived or developed using institutional facilities, personnel, information or other resources; and
 - (b) Educational and professional materials, whether or not registered for copyright, that result from the instructional, research or public service activities of the institutions.
- (2) Employees shall be responsible for disclosing to designated institutional representatives all inventions, technological improvements and educational and professional materials conceived,

developed and/or produced during the conduct of normal activities.

(3) Employees shall be responsible for cooperating and assisting Board and institutional representatives responsible for patenting, licensing, registering for copyright, publishing and generally assisting public access to new knowledge resulting from employee activities.

(4) Employees shall be eligible to share in net royalty income from each invention or separate improvement thereof, an amount not to exceed:

(a) 40 percent of the first \$50,000, 35 percent of the next \$50,000, and 30 percent of all additional net royalty income received by the Board for inventions and technological improvements; and

(b) 50 percent of net royalty income from educational and professional materials.

(5) For the limited purposes of administering the policies under division 43, persons acting in the following capacities shall be entitled to the benefits and subject to the responsibilities of said rules: graduate teaching assistants, graduate teaching fellows, graduate research assistants and student employees.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1978, f. & cert. ef. 12-5-78; HEB 9-1980, f. & cert. ef. 8-20-80; HEB 1-1982, f. & cert. ef. 4-20-82; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

580-043-0016

Institutional Responsibilities

To manage inventions, technological improvements and educational and professional materials developed by employees, institutions shall:

(1) Apply Board-adopted policies and procedures.

(2) Encourage employee activities that lead to new knowledge.

(3) Actively seek applications for new knowledge developed by employees.

(4) Anticipate and comply with conditions in contracts, grants and agreements with sponsoring agencies.

(5) Recommend to the Vice Chancellor for Finance and Administration or designee contractual agreements, patent applications and equitable sharing of net royalty income.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 8-1978, f. & cert. ef. 12-5-78; HEB 1-1986, f. & cert. ef. 1-17-86; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

580-043-0026 REPEALED by University of Oregon Board of Trustees on 12/10/14

Office of Finance and Administration Responsibilities

University Venture Development Funds

580-043-0060

Purpose; Definitions

(1) Purpose. Chapter 580, division 043, authorizes each Institution to establish one Venture Development Fund for the purpose of facilitating the commercialization of research and development. The purpose of an Institution's Fund shall be to provide qualified grant applicants

with moneys to facilitate the commercialization of the Institution's research and development. Within the scope of this purpose and subject to these administrative rules, an Institution may use moneys in its Fund to provide:

- (a) Capital for university entrepreneurial programs;
- (b) Opportunities for students to gain experience in applying research to commercial activities;
- (c) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services; and
- (d) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state. Contributors to an Institution's Fund are eligible for Oregon income tax credits to the extent set forth in the Act and these rules.

(2) Definitions:

- (a) Act: Oregon Laws 2005, ch. 592, as amended by Senate Bill 582 (2007).
- (b) Entity: any governmental body or agency, association, partnership, corporation, limited liability company, or other organization, however described or named and regardless of legal status, other than a Person.
- (c) Person: a natural person or sole proprietorship.
- (d) Venture Development Fund or Fund: A fund authorized by the Act.
- (e) Venture Grant Program or Program: A grant program authorized by the Act.
- (f) Institution: An institution of the Oregon University System.
- (g) Department of Revenue: the Oregon Department of Revenue.
- (h) General Fund: the general fund of the State of Oregon.
- (i) Remain in Oregon: maintaining the Entity headquarters in Oregon; or employing a majority of employees (on a full-time equivalent, head-count, or payroll basis) in Oregon.
- (j) State Board of Higher Education or Board: the Board created by ORS 351.010.
- (k) Tax Credit Certificate: a certificate authorized by the Act and in a form designated by the Board that evidences a contribution to a Venture Development Fund.
- (L) Donor: a person or entity that makes a contribution to a Fund authorized by the Act and these rules.
- (m) Taxpayer: a person or entity that makes a contribution to a Fund authorized by the Act and these rules and that applies for a tax credit certificate authorized by the Act and these rules.
- (n) Gross Royalty Income: cash realized by the Board from royalties, milestone and license fee payments and from the sale of equity as a result of grants made under the Program.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef.

7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0065

Establishment of a Venture Development Fund by an Institution

- (1) An institution may establish a Fund in accordance with the Act and these rules.
- (2) Each Institution that establishes a Fund shall:
 - (a) Notify the Board and the Department of Revenue of the establishment of the Fund;
 - (b) Either directly or through its affiliated foundation solicit contributions to the Fund and receive, manage, and disburse any such contributions and the earnings thereon;
 - (c) Subject to the Act and these rules, issue tax credit certificates to contributors to the Fund;
 - (d) Establish a grant program that meets the requirements for a Venture Grant Program under the Act and these rules;
 - (e) Subject to available moneys from the Fund, provide qualified grant applicants with moneys for the purpose of facilitating the commercialization of university research and development;

and

(f) Report to the Department of Revenue the amounts of tax credit certificates issued by the Institution and maintain records of licensing and royalty revenue received by the Institution as the result of grants made from the Fund and records of amounts paid to the General Fund under the Act.

(3) An Institution may deposit moneys received for its Fund in the Higher Education Donation Fund established under ORS 351.130. Interest earned by such moneys shall be credited to the Fund. The State Treasurer, as payment for expenses, may deduct a fee pursuant to ORS 293.718 from a Fund administered by an Institution.

(4) The use of moneys donated under these rules may not be directed by a Donor. Rather, all moneys shall be available for the purposes set forth in the Act and these rules without regard to specific Donor instructions, except that an Institution or its affiliated foundation may charge its customary administrative assessment to manage the Fund as permitted by the Act. Except as authorized by law, no other fees or indirect costs may be charged against the Fund or any associated grants or other disbursements from the Fund.

(5) At the election of an Institution, moneys in a Fund may be held in the form of an endowment. An Institution may discontinue endowment treatment at any time.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef.

7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0070

Allocation of Authority to Institutions to Raise Funds and Issue Tax Credits

(1) The Board will not allocate fundraising or tax credit certificate issuance authority to an Institution until the Institution has established a Venture Development Fund in accordance with the Act and these rules.

(2) Oregon State University, Portland State University, and University of Oregon: The Board allocates fundraising authority and commensurate authority to issue tax credit certificates among Oregon State University, Portland State University, and the University of Oregon as follows:

(a) Portland State University: \$.88 million;

(b) Oregon State University: \$5.35 million;

(c) University of Oregon: \$3.27 million. Such authority shall be contingent on the establishment of a Fund in accordance with the Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(3) Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University: The Board by order or resolution shall allocate \$500,000 in fundraising authority and commensurate authority to issue tax credit certificates among Eastern Oregon University, Oregon Institute of Technology, Southern Oregon University, and Western Oregon University. An allocation of authority shall be contingent on the establishment of a Fund in accordance with the Act and these rules and subject to the rule on redistribution of authority to raise funds and issue tax credits.

(4) Notwithstanding sections (2) and (3) of this rule, immediately upon deposit into the General Fund of amounts transferred by an Institution in repayment of tax credits previously issued, the Institution may issue new tax credits in an amount not to exceed the transferred amount.

(5) The amount owed to the General Fund by the Institutions, collectively, may not exceed \$6 million at any one time.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef.

7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0075

Redistribution of Authority to Raise Funds and Issue Tax Credits

No earlier than two years from the effective date of this rule, the Board, by order or resolution, may, to further the purposes of the Act, reallocate unused fundraising authority and

commensurate authority to issue tax credit certificates from one Institution to another. An Institution may receive additional authority only if it has exhausted its existing authority or can demonstrate that it would likely do so. Reallocation of authority shall not require amendment of section 0070.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef.

7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0080

Eligibility to Receive Grants

(1) Subject to compliance with these rules, an Institution may make grants to itself for use by a constituent part of the Institution or to Entities but not to Persons. Each Institution shall establish criteria for the receipt of grants under the Program. Each prospective recipient shall submit an application to the Institution. Each grant shall be documented and implemented through an appropriate grant agreement and each grant agreement shall provide that the recipient, if other than a public agency, remain in Oregon for at least five years following the final disbursement of funds under the agreement or repay the grant plus compound interest at 8 percent per annum. Other criteria shall be as determined by the Institution except for the following:

(a) All grants must be used to facilitate the commercialization of an Institution's research and development;

(b) Priority should be given to applicants who can demonstrate with specificity that their efforts will result in technology with high commercial potential, that they are close to realizing economic development potential, and that proof-of-concept funding will assist them in transforming research and development concepts into commercially viable products or services.

(2) To at least some degree, a Program as a whole, but not each individual grant, must provide:

(a) Capital for university entrepreneurial programs;

(b) Opportunities for students to gain experience in applying research to commercial activities;

(c) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state; and

(d) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services.

(3) Each institution shall screen potential awards for conflicts of interest. No award shall be made if an identified conflict of interest cannot be eliminated or managed.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef.

7-24-06

580-043-0085

Issuance of Tax Credit Certificates

(1) Taxpayers making a contribution to an Institution's Fund and wishing to receive a tax credit certificate evidencing that contribution must submit the contribution, together with an application for tax credit certificate, in a form designated by the Institution, to the Institution or, if directed by the Institution, to its affiliated foundation.

(2) An Institution or its affiliated foundation may begin accepting contributions and applications after the Institution's Fund has been established in accordance with the Act and these rules.

(3) An Institution shall consider applications for tax credit certificates in the chronological order in which the applications were received.

(4) An Institution shall act on an application for a tax credit certificate within 60 days of its receipt unless unanticipated or extraordinary circumstances reasonably prevent the Institution from acting within that timeframe, in which case the Institution shall act on the application as soon as reasonably possible thereafter.

(5) Subject to section 6 of this rule, an Institution shall approve an application for a tax credit certificate if the application is complete and the Institution has verified receipt of the contribution. Within 45 days of application approval, an Institution shall issue to the Taxpayer a tax credit certificate that specifies the amount of the contribution.

(6) An Institution shall deny an application for a tax credit certificate and may not issue a tax credit certificate to the Taxpayer if:

(a) The Taxpayer's contribution to the Fund, together with the amounts specified on all tax credit certificates previously issued by the Institution less amounts transferred into the General Fund, exceeds the Institution's then-current tax credit certificate issuance authority;

(b) The Taxpayer's application is incomplete; or

(c) The Institution cannot verify receipt of the Taxpayer's contribution.

(7) If an Institution denies a Taxpayer's application for a tax credit certificate, the Institution shall notify the Taxpayer in writing within 45 days of the denial.

(8) A Taxpayer who receives a notice of denial of an application for a tax credit certificate may request, in writing and within 90 days after the receipt of the denial, a refund of its contribution to the extent the contribution was actually received. The Institution shall ensure that the refund is issued within 60 days after its receipt of the request for the refund.

(9) Eligibility for a tax credit (as distinguished from the receipt of a tax credit certificate from an Institution) shall be subject to the Act, the rules of the Department of Revenue, and other applicable law.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef.

7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0090

Tax Credit Certificate and Grant Record-Keeping and Reporting

(1) Each Institution shall retain copies of all tax credit certificates that it issues. Upon every issuance of a tax credit certificate by the Institution, upon transfer of moneys into the General Fund, and promptly after Board adoption of an order or resolution establishing or modifying the Institution's allocation of tax credit certificate issuance authority, the Institution shall calculate and record in its records the amount, if any, of its fundraising and tax credit certificate issuance authority then remaining unused.

(2) As requested by the Board from time to time but no less often than annually, each Institution shall submit a written report to the Board summarizing its fundraising activity, amounts transferred to the General Fund, and issuance of tax credit certificates since its most recent report to the Board under this section and specifying its fundraising tax credit certificate issuance authority and the amount of that authority remaining unused as of the date of the report. The report shall include the number of tax credit certificates issued, the amount of funds raised by the Institution, and the amounts transferred to the General Fund since its most recent prior report to the Board under this section.

(3) As requested by the Board from time to time but no less often than annually, each Institution shall submit a written report to the Board summarizing the grants made by the Institution under its Program and how they serve the goals of the Act and these rules.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef.

7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0095

Recoupment of Tax Credits

An Institution that has established a Fund and has made grants under a Program shall monitor the use of such grants and identify sources of Gross Royalty Income received by the Institution as the result of the use of the grants. Gross Royalty Income results from the use of a grant when it is traceable to the grant. The Institution shall cause the transfer of 20 percent of such Gross Royalty Income to the General Fund but not to exceed the amount of the tax credits issued by the Institution as a result of contributions to the Fund. This does not preclude transfers from other sources. Immediately upon deposit of the transferred amount into the General Fund, the Institution may issue new tax credits in an amount not to exceed the transferred amount. The Institution shall maintain records of all transfers to the General Fund.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 1-2006(Temp), f. & cert. ef. 2-9-06 thru 8-8-06; OSSHE 5-2006, f. & cert. ef. 7-24-06; OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

580-043-0100

Reports to the Legislative Assembly

An Institution that has established a Fund shall report annually to the Legislative Assembly or, if the Legislative Assembly is not in session, to the interim legislative committees on revenue. The report shall be at the end of the fiscal year of the Institution or of its affiliated foundation and provide information for that fiscal year. The Institution shall include in the report the following information pertaining to its Fund:

- (1) The amount of donations received for the Fund;
- (2) The amount of income received from the Fund;
- (3) The amount of disbursements and grants paid from the Fund;
- (4) The amount of income and royalties received from disbursements from the Fund; and
- (5) The amount of moneys transferred from the Fund to the General Fund.

Stat. Auth: OL 2005, ch. 592, sec. 2.

Stats. Implemented: OL 2005, ch. 592, sec. 1, 2.

Hist: OSSHE 5-2007(Temp), f. & cert. ef. 7-23-07 thru 1-18-08; OSSHE 2-2008, f. & cert. ef. 1-14-08

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