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OREGON UNIVERSITY SYSTEM

DIVISION 46

INSTITUTION FOUNDATIONS

580-046-0005

Recognition of a Foundation

(1) An institution president may award recognition as an institution foundation to an entity that meets and maintains the requirements of these rules. Throughout division 046, "president" refers to an institution president and "foundation" refers to an institution foundation.

(2) Only one entity may have recognition as a foundation, except that the president may recognize other foundations existing at the time this rule is adopted. The president shall report all awards of recognition to the Chancellor. All private support of the institution not provided directly to the institution shall be through a recognized foundation, or affiliated or associated organizations as provided by OAR 580-046-0020(4) and (5).

(3) To be eligible for recognition and to maintain continued recognition, a foundation must:

(a) Be created and operated with the primary purpose of support of the institution;

(b) Have as its purpose the solicitation, management and/or investment of private support for the benefit of the institution; and

(c) Be organized and operated in a manner to permit compliance with these rules.

(4) Procedures for Recognition:

(a) An entity seeking recognition as a foundation shall submit to the president for review its:

(A) Articles of incorporation;

(B) Bylaws; and

(C) Any other of its organic or enabling documents.

(b) A president shall notify the governing body of a foundation in writing of recognition and that compliance with these rules is a condition of continued recognition.

(c) The foundation shall submit all amendments to the documents described in subsection (4)(a) of this rule to the president who shall submit them to the Chancellor.

(5) State System Foundation:

(a) The Chancellor may recognize as the State System foundation an entity created to provide support to the Oregon State System of Higher Education.

(b) In the event of recognition, the procedure, conditions and limitations of these rules shall apply.

(c) In such instances, all references in these rules to a president shall be deemed to refer to the Chancellor and references to institution shall be deemed to refer to the State System. Where these require reports to the Chancellor, the Chancellor shall report to the President of the Board of Higher Education.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef.

580-046-0010

Privileges and Responsibilities of Recognition

(1) Privileges of recognition by a president of a foundation may include:

(a) License to use the institution name, logos, informal seals, symbols and marks; and

(b) Use of institution resources in the manner provided by OAR 580-046-0035(7).

(2) No individual, group or entity not awarded recognition under these rules shall use any of the privileges described in this rule or otherwise make use of the institution name except as expressly approved by the institution by license or contract.

(3) A foundation's governing body promptly shall provide to the president a resolution of acceptance of the condition expressed in OAR 580-046-0005(4)(b), and such resolution of acceptance shall be reaffirmed annually.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 5-1996, f. & cert. ef. 12-18-96

580-046-0020

Institution Foundation Organization, Affiliates, Relationships

(1) A foundation shall be organized and operated pursuant to the Oregon nonprofit corporation law.

(2) A foundation shall obtain and maintain status as a tax-exempt entity pursuant to **Section 501(C)(3)** of the federal **Internal Revenue Code** and other similar Oregon statutes.

(3) A foundation's articles of incorporation or other governing documents shall require that, upon its dissolution or withdrawal of recognition, the foundation's net assets shall, within the limitations imposed by legal and fiduciary rights and responsibilities, be distributed to the institution that awarded recognition, or another entity that has been awarded recognition by that institution pursuant to OAR 580-046-0005.

(4) A foundation may include as part of its organization one or more affiliates that support a particular unit or activity of the institution but that are not separately incorporated.

(a) An affiliate may have an advisory board that reports to and is advisory to the foundation governing body. Institution employees may serve on an affiliate's advisory board so long as they do not comprise a majority of the advisory board membership nor a majority of any quorum of such body. Institution employees may provide staff support for an advisory board, subject to OAR 580-046-0035(7).

(b) A foundation shall not delegate to an advisory board of an affiliate its authority to hire personnel or to enter into contracts.

(c) A member of each advisory board of an affiliate should serve on the foundation governing body whenever possible.

(d) No entity shall become an affiliate of a foundation until the affiliation is approved in writing by the president and reported to the Chancellor.

(5) A foundation may establish or associate with another entity interested in the institution, provided:

(a) The president in writing approves of such relationship prior to any operations and the president reports approval to the Chancellor;

(b) Such relationship does not impair or circumvent the requirements of OAR 580-046-0025 and otherwise is consistent with the requirements of these rules; and

(c) All for-profit activities are approved by the president and reported to the Chancellor.

(6) Upon application of an institution, the Board of Higher Education may grant specific exemptions from the provisions of sections (4) and (5) of this rule.

Stat. Auth.: ORS 351

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

580-046-0025

Foundation Independence from Institution

(1) A foundation shall be independent of the institution.

(2) To assure independence, a foundation's governing body, employees, and agents:

(a) Shall not be subject to control by the institution or an institution employee;

(b) Shall not give the appearance that the institution or any of its officers or employees control the foundation or its property, including investment of gifts and endowments made to the foundation.

(3) No institution employee may be a voting member of a governing body of the institution-recognized foundation.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93

580-046-0030

President's Responsibilities, Additional Rules

(1) A president or designee shall be, and other institution employees may be, ex officio, nonvoting members of a foundation's governing body and of any executive or similar committee empowered to act for the governing body. Such appointments shall be described in all contracts entered into pursuant to OAR 580-046-0035(7).

(2) The president shall monitor foundation activities and institution foundation relationships to ensure compliance with Board of Higher Education rules and periodically shall report thereon to the Chancellor.

(3) A president may establish additional written policies and guidelines applicable to a foundation consistent with these and all Board of Higher Education rules and Internal Management Directives. Such policies and guidelines shall be reported to the Chancellor and the Board prior to their adoption.

(4) The president shall report to the Chancellor as required by OAR 580-046-0005(2) & (4)(c); 580-046-0020(4)(d), (5)(a), and (5)(c); 580-046-0030(2) & (3); 580-046-0035(3), (6)(b), (6)(c), & (7)(b); 580-046-0040(2)(a); & 580-046-0045(1) .

Stat. Auth.: ORS 351

Stats. Implemented:

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89

580-046-0035

Foundation and Institution Operational Procedures, Gifts, Accounts, Institution Support, Contracts

(1) An institution employee may, consistent with ORS 351. 130, encourage gifts to the institution directly as well as through the foundation.

(2) In accepting gifts of any kinds, a foundation shall:

(a) Obtain institution approval of any restrictive terms and conditions, and advise donors that a restricted gift for the benefit of the institution may not be accepted without institution approval; and

(b) Coordinate with the institution's development office or other appropriate institutional officer regarding funding goals, programs or campaigns proposed by an institution.

(3) The foundation shall report gifts to the foundation and to an institution as a result of foundation activities. Such reports shall be made annually to the president. The president shall provide such reports to the Chancellor.

(4) Revenue received from an institution activity, other than through normal development activities, shall not be deposited in a foundation account.

(5) An institution and the institution-recognized foundation shall develop and implement guidelines regarding the identification of funds so that the intended donee, whether institution or

foundation, actually receives the funds, subject to the following:

(a) If the foundation is the intended recipient of funds made payable to an institution, the funds shall first be deposited in a state account and then transferred to the foundation.

(b) Funds payable or gifts made to the institution shall not be transferred to the foundation unless accompanying documents demonstrate that the foundation is the intended recipient.

(c) If the foundation deposits funds in its accounts or receives other gifts intended for the institution, the foundation shall transfer those funds or gifts to the institution.

(6) Salaries, consulting fees, loans, perquisites or other benefits provided to or on behalf of an institution employee, other than a student employee, by a foundation shall be:

(a) Approved by the Board of Higher Education when paid to the president or other employee appointed directly by the Board of Higher Education.

(b) Approved by the president in writing, and reported to the Chancellor in instances where subsection (a) of this section does not apply.

(c) Paid by the foundation to the institution, which in turn will make payments to the employee in accordance with normal institution practice, except where the Chancellor approves a different form of payment. All exceptions shall be reported to the Board of Higher Education annually by the Chancellor.

(d) This subsection is not applicable to reimbursements for actual and necessary travel and other expenses incurred for authorized institution or foundation purposes that are reported by the foundation to the president annually.

(7) Institution Contract with Foundation:

(a) An institution may provide pursuant to a written contract limited and reasonable support to the foundation, including but not limited to the cost of utilities and janitorial services and all or part of the salary and related personnel costs of staff support, from funds otherwise available to the institution. As used in these rules, staff support is assistance by any personnel whose responsibilities and activities exclude policy making and other functions that would nullify the independence of the foundation from the institution.

(b) An institution providing support to a foundation shall contract with the foundation regarding the terms and conditions for implementing OAR 580-046-0010(1) and subsection (7)(a) of this rule and may contract for other purposes consistent with these rules. Any such contract and amendments thereto shall:

(A) Accurately and fully describe the extent of such use and support and the consideration therefor;

(B) Be reviewed by an Assistant Attorney General assigned to the Oregon Department of Higher Education; and

(C) Be approved by the president and by the Chancellor or their respective designees.

(c) Funds received by an institution because of a contract with a foundation shall be placed in a current restricted account that is not a depository for donated or gift money.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

580-046-0040

Foundation Activities

(1) Financial and other activities of a foundation shall be administered and reported in accordance with law, prudent business practices and generally accepted accounting principles.

(2) Audits and Financial Reports of the Foundation:

(a) A foundation shall be audited annually by a certified public accountant. The audit report shall be provided promptly to the president, who shall submit it and accompanying documents to the Chancellor. The audit report shall be accompanied by a current list of foundation officers, directors, trustees, managers and legal counsel and the officers of any group or entity described in OAR 580-046-0020(4) and (5).

(b) A foundation shall permit the president or, after consultation with both the institution and foundation president, the Chancellor, using institution or OSSHE internal auditors, to inspect

and audit all foundation books and records at reasonable times. The foundation shall provide such reports of and information on its financial status and operations as required by the president or the Chancellor in order to assure conformance by the institution and the foundation with these rules.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

580-046-0045

Revocation of Recognition

(1) The president may revoke recognition as provided therein, if the president finds that a foundation or its operation conflict with these rules or the mission of the institution. The president shall inform and consult with the Chancellor regarding all activities involved in revocation of recognition and shall provide to the Chancellor copies of all documents relating thereto.

(2) Prior to ordering revocation of recognition, a president shall notify the foundation's governing body of the reasons that could form the bases for revocation of recognition. Within 30 days of receipt of the president's notification, the foundation may in writing propose actions to remedy the deficiencies described by the president.

(3) If the president approves the proposed actions, the foundation's governing body shall implement the proposals within a time specified by the president.

(4) If the president rejects the foundation's proposed actions or finds that they are not adequately implemented, the president may revoke recognition by a written order to the foundation's governing body specifying the reasons for revocation.

(5) An order revoking recognition may be appealed to the Board of Higher Education if filed with the Secretary of the Board within 30 days of the date the president issues the order revoking recognition. The Board shall review the president's decision but shall not reverse that decision unless the Board finds the president acted arbitrarily or capriciously.

(6) An order revoking recognition shall terminate the contract provided by OAR 580-046-0035(7) and the privileges of recognition.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: HEB 7-1989, f. & cert. ef. 9-19-89; HEB 1-1993, f. & cert. ef. 2-5-93

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