

 <p>Category: Financial Related Entities</p> <p>Responsible Office: University Controller</p>	<p>Policy Title: Foundations Guidelines</p> <p>Document Number: 9600</p> <p>Effective Date: May 04, 2016</p> <p>This policy item applies to: State-Operated Campuses</p>
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Summary

State-operated campuses are authorized to contract with campus-related foundations (Foundations) to support fundraising, real property management or other activities and functions that are not specifically vested with the campus. Fundraising activities allow for receipt and management of charitable gifts on behalf of the campus. Real property management is limited to assets not managed by the campus itself or another approved campus related entity. In addition, the Foundation may provide fiscal, administrative, and investment functions to a campus auxiliary services corporation, alumni association, student government association, and chief administrative officer's fund.

Foundations may also hold funds or perform activities in support of system-wide or multi-campus functions, with the approval of the Chancellor or designee. A State-operated campus may also use its Foundation to assume the responsibilities of an auxiliary service corporation, such as operating a campus bookstore.

To the extent appropriate, Foundations are authorized to receive and acquire, on behalf of the campus, real and personal property that supplements State of New York resources and provides a means to meet campus facility requirements in areas that are intended to be self-funding in nature, such as student housing.

Any proposed exceptions to these guidelines must be approved in writing by the Chancellor or designee. Any proposed amendments to these guidelines must be approved by the Board of Trustees upon the recommendation of the Chancellor and Audit Committee.

Policy

I. Structure and Governance

The charter or certificate of incorporation of the Foundation should make reference to the State University of New York (University) campus it will benefit in terms of purposes, objectives, and programs. Each campus should have only one Foundation unless otherwise authorized by the Chancellor or designee. The Foundation must be a non-profit corporation organized and existing under the laws of the State of New York and tax-exempt under the Internal Revenue Code (IRC). The Foundation's board of directors (Foundation Board) is responsible for the governance and oversight of the Foundation's affairs, personnel, and properties. The Foundation Board is also

responsible for issuing necessary policies, ensuring the Foundation operates in accordance with its mission and all legal requirements, and monitoring the Foundation's financial condition.

The campus president (including any acting or interim president approved by the Board of Trustees) or designee will be an ex officio, voting member of the Foundation Board and shall have the right to serve at the campus president's option, on the governance body of any Affiliate, but may not serve as the chair of the board of the Foundation or any Affiliate, or as the manager or president of the Foundation or any Affiliate. If a Foundation performs activities in support of more than one campus, at least one campus president or designee among the campuses supported must serve as an ex officio, voting member of the Foundation Board. A majority of the Foundation's directors and of the governance body of any Affiliate should be individuals who are not faculty, staff, or students of the campus. No members of the Campus Council may serve on the Foundation Board or the governance body of any Affiliate.

The Foundation is authorized to establish one or more Affiliates as permitted by law. Each Affiliate should be a non-profit corporation organized and existing under the laws of the State of New York and tax-exempt under the IRC, unless a different corporate structure is more appropriate as determined by the Foundation Board. Prior to formation of an Affiliate, a plan outlining the structure, governance, purpose, and initial and planned funding/capitalization of each proposed Affiliate, must be approved in writing by the campus president upon consultation with the Chancellor or designee. The majority of the governance body of each Affiliate should also be members of the Foundation Board. To the extent that any Affiliate is formed as a single member limited liability company and the Foundation is the sole member thereof, the governance documents for such limited liability company need not provide for the campus president or designee to serve on the governance body for such single member limited liability company.

The certificate of incorporation and other organizing documents (e.g. bylaws or operating agreement) of a Foundation and each of its Affiliates must provide that the net assets of the organization be distributed to the University, or other University-approved entity organized for similar purposes, on behalf of the campus or the Foundation, respectively, in the event the Foundation or any of its Affiliates is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions. Copies of all organizing documents, including all amendments thereto must be on file with the Office of the University Controller.

II. Accountability, Compliance and Reporting

The Foundation and each of its Affiliates must operate in accordance with sound business practices and at a minimum, must:

- Obtain the respective Board's approval of the annual budget and the audited financial statements.
- Cause an appropriate official of the Foundation to provide periodic fiscal reports to the Foundation Board for its review.
- Develop, administer, and communicate written policies and procedures for all key business functions. These policies and procedures should, at a minimum, cover the following areas: (i) cash receipts and disbursements, (ii) gift acceptance, (iii) spending, (iv) endowment funds management, including asset allocation, the selection of investment managers and the spending formula, (v) investment management, (vi) procurement (including travel expenses and credit cards), (vii) payroll, (viii) inventory, (ix) agency accounts, (x) conflicts of interest and (xi) whistleblowers. Such policies shall ensure that disbursements are reasonable business expenses that support the campus, are consistent with donor intent, are adequately documented, and do not conflict with the law. If the Foundation or any of its Affiliates engages a third-party (e.g. an auxiliary service corporation) to provide administrative support services, each must ensure that this third-party has in place, to the extent applicable, the written policies and procedures enumerated above.
- Comply with all applicable laws, including the Non-profit Revitalization Act of 2013, each as amended from time to time.
- Establish and maintain a system of internal controls designed to provide reasonable assurance of the achievement of objectives, reliability of financial reporting, safeguarding of assets, effectiveness and efficiency of operations, and compliance with laws and regulations.
- Ensure that the proceeds of campus fundraising are appropriately recorded, credited, acknowledged and administered based on legal requirements and donor stewardship parameters.
- Adhere to principles as defined in the "Donor Bill of Rights" and the Association of Fundraising Professionals' "Code of Ethical Principles and Standards of Professional Practice."
- Adhere to all applicable legal requirements and University procedures when providing fiscal, administrative, and investment functions to the auxiliary services corporations, alumni associations, student government associations and/or the chief administrative officer's fund.
- Ensure appropriate student and faculty participation when assuming the responsibilities of the auxiliary service corporation.

Foundations and their Affiliates are prohibited from engaging in the following activities:

- Instructional and credit-bearing programs;
- Sponsored research programs (Sponsored research programs are to be administered by The Research Foundation for The State University of New York (“Research Foundation”)); and
- Activities that generate revenue from the use of State property (e.g., cell tower leases and pouring rights); or
- Those that are prohibited by law, policy or regulation.

Any exception to these prohibitions must be requested in writing by the Foundation and campus president, submitted to the Chancellor or designee. The request must include the business case or basis for the exception including the operational, financial and other benefits; must certify compliance with all applicable laws; and must demonstrate that notice of the requested exception has been provided to all affected parties, including without limitation the Research Foundation, campus faculty and any other campus related entity. Written requests will be reviewed and evaluated to determine whether sufficient justification has been provided for approval. Each exception to these prohibitions must be approved in advance by the Chancellor or designee and must be consistent with all applicable laws. Exceptions will be incorporated into the contract between the Foundation and the campus by amendment and will be effective upon approval by the Chancellor or designee and all required external state agencies.

Each Foundation and its Affiliates must prepare annual financial statements (consolidated or separately issued) in conformity with U.S. generally accepted accounting principles and have an audit conducted by a licensed, independent certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. To enable the University to include pertinent information in its annual financial statements, the audit must be completed within 90 days after the close of the Foundation’s fiscal year. Consistent with principles of good governance, the independent auditor should be appointed only after a competitive procurement process. The term of appointment must be for no more than a five-year term, after which each Foundation and/or Affiliate (as applicable) must solicit these services through a new competitive procurement process.

The books and records, financial condition, operating results, and program activities of the Foundation and its Affiliates are also subject to periodic audit by the Office of the University Auditor and, to the extent allowed by law, by outside regulatory bodies. All audit reports from whatever source, the certified (consolidated) financial statements and any management letter, together with the associated corrective action plan of the Foundation and each of its Affiliates must be promptly provided to the campus president and the Office of the University Controller. Management’s corrective action plan should include the planned timeframe for addressing the independent auditor comments. Additionally, on an annual basis, the Foundation must certify to the University that it and each of its Affiliates has complied with the terms of the contract between it and the campus including the provisions of these guidelines.

The Foundation and its Affiliates must meet all regulatory filing requirements on a timely basis (e.g. federal and state taxing authorities, Attorney General Charities Bureau, etc.). Additionally, the Foundation and its Affiliates must also comply with University guidelines related to the adoption of a conflict of interest policy and annually report to the Office of the University Auditor by January 31, all potential or actual conflicts of interest disclosed by Foundation Board members and officers.

III. Linkage to Campus

A formal contract, in substantial accord with the model contract developed by the University (Appendix A), must be executed between the campus and the Foundation. The contract should authorize the Foundation to operate on campus, and should enumerate its activities and those of each Affiliate it establishes. Each authorized activity should be identified in the contract (Exhibit C), with written amendments required for new activities. The contract must be approved by the Chancellor or designee (and external State agencies when required), can extend for a period of not more than 10 years,^[1] and must be terminable by the University in whole or part with 45 days written notice given by the University.

Any reimbursement to the campus for the use of space, utilities, and other services that the campus provides to the Foundation should be consistent with the approved annual budget and terms and conditions of the contract with the campus (Exhibit D).

The Foundation’s use, if any, of the campus name and marks for fundraising, or other appropriate purposes, must be authorized pursuant to the contract between the Foundation and the campus.

IV. Amendments

These guidelines may be amended from time to time by the Board of Trustees upon public notice and the

recommendation of the Chancellor and Audit Committee of the Board of Trustees. All guideline amendments shall become effective upon a duly adopted amendment to the contract between the University and the Foundation.

[1] Contract terms exceeding five years are subject to pre-approval by External State agencies and may not be approved without a satisfactory business justification.

Definitions

Affiliate means an entity formed by the Foundation to assist it in meeting the specific needs of, or providing a direct benefit to the campus, the University as a whole, or the associated Foundation. The objective and purpose of the Affiliate must be consistent with the overall mission of the University.

Chief Administrative Officer's Fund means a fund established pursuant to Article XVI of the Board of Trustees' Policies.

Campus Council means a council for a State-operated campus as provided by NYS Education Law §356, to perform functions, prescribed by statute and the Board of Trustees, at its respective campus.

Other Related Information

[Code of Ethical Standards of the State of New York](#)

[Code of Ethical Principles and Standards of Professional Practice of Fundraising Professionals \(AFP\)](#)

[Donor Bill of Rights](#)

[New York Non-profit Revitalization Act of 2013](#) amending the Not-For-Profit Corporation Law

Procedures

There are no procedures relevant to this policy.

Related Policies

[SUNY Policy Doc. No. 9300 Alumni Associations Guidelines](#)

[SUNY Policy Doc. No. 9400 Auxiliary Services Corporations Guidelines](#)

[SUNY Policy Doc. No. 9500 Other Related Entities Guidelines](#)

Forms

There are no forms relevant to this policy.

Authority

[NYS Education Law §355](#) (Powers and duties of trustees – administrative and fiscal functions)

Refer to the New York State Legislature site for the menu of the [Laws of New York State](#).

[Internal Revenue Code §501\(c\)\(3\)](#) (Exemption from tax on corporations)

[State University of New York Board of Trustees Resolution No. 16-28](#), adopted May 4, 2016

History

These guidelines were established originally by BOT Resolution 75-151, dated May 28, 1975, amended by BOT Resolution 82-141, dated May 26, 1982, amended by BOT Resolution 01-17, dated June 19, 2001, amended by BOT Resolution 03-39, dated April 29, 2003, amended by BOT Resolution 2008-166, dated November 18, 2008 and further amended by BOT Resolution 2016-28, dated May 4, 2016.

Appendices

[Appendix A](#) - Campus/Foundation Model Contract and Exhibits C, D and E

[Appendix B](#) - Foundations Guidelines - Exhibit B