

I. General Purpose of the Policy

A. Affiliated Foundations exist because of, and for, the public institutions they support and whose names they share. Looking beyond their separate corporate identities, the Foundations can be depositories of substantial funds charitably donated for the benefit of public higher education institutions and their related activities. Their assets exist essentially because of public tax policy and publicly spirited donations. As a consequence, fiduciary obligations are impressed by law on the management of such funds.

(This policy statement is drawn from the "Prologue" of the Attorney General's Memorandum dated May 20, 1983, to the Presidents of Virginia's Public Universities and Colleges. The Attorney General's Memorandum contains a comprehensive assessment of affiliated Foundations, as well as recommendations regarding institutional oversight and Foundation accountability.)

These fiduciary obligations fall primarily on the officers and directors of the Foundation.

B. Virginia State University (VSU) has a vital interest in, and recognizes the value of, University-Related Foundations that are established and operated to solicit funds in VSU's name, to manage and invest gifts and property for VSU's benefit, and/or to promote or sponsor programs in support of VSU's activities.

C. The Board of Visitors (BOV) is committed to providing quality support for the fundraising efforts of each University-Related Foundation, and to that end seeks to promote efficiency and coordination among, as well as maintain independence and integrity within, all University-Related Foundations.

D. To protect VSU's interests, and as a condition of the Foundations' use of VSU's name and resources, it is the Virginia State University policy that University-Related Foundations shall be:

- 1) established and organized solely for VSU's benefit;
- 2) operated in accordance with generally accepted business and accountability principles; and
- 3) managed in a manner consistent with the Foundations' own enabling documents and VSU's purpose, mission, and procedures, as specifically set forth in this Policy.

II. Establishment and Organization of Foundations

A. A University-Related Foundation ("Foundation"-- all references in this policy of University-Related Foundations shall include subsidiaries and affiliates of University-Related Foundations as well as the Foundations themselves) is an organization that is created and operated exclusively to benefit VSU or one or more of VSU's units. (The term "unit" as used throughout this policy encompasses colleges, departments, and other components of VSU.) A Foundation as defined for purposes of this policy is one which uses VSU's name or the name of one of VSU's units, consumes University resources, occupies University space, or enters into transactions with VSU which require the concurrence of VSU. A Foundation has as its purpose one or more of the following:

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- 1) To facilitate fundraising programs and contributions from private sources for the benefit of VSU or one or more of its units;
- 2) To manage and invest private gifts and/or property for the benefit of VSU or one or more of its units;
- 3) To promote, sponsor, and complement educational, scientific, research, charitable, or cultural activities for the benefit of VSU or one or more of its units;
- 4) To acquire, develop and manage property and business ventures for the benefit of VSU or one or more of its units.

B. Foundations may be created only with the approval of the BOV after a review of the purpose of the Foundation, its proposed organizational format, and the scope of its activities.

C. Established Foundations shall submit to the BOV for approval any proposed new business venture or change in nature, purpose, or scope of Foundation activities that is substantial in nature, and outside the normal function of the Foundation. Such approval shall not be unreasonably withheld. New business ventures are considered to be any significant change from current business activities; e.g., a Foundation which has been engaged primarily in fundraising proposes to purchase and lease commercial office space.

D. A Foundation shall be organized and operated as a Virginia non-profit, non-stock corporation or association that is legally separate from VSU. It shall obtain and maintain status as a tax-exempt, charitable organization under State and Federal income tax laws so contributions and bequests to it will be deductible charitable contributions as provided by Federal income tax law.

E. Each Foundation's enabling documents shall include a clause requiring that in the event of its dissolution the Foundation's assets shall be distributed in the best interest of VSU and, if applicable to the unit within VSU that the Foundation was created to support.

F. One University representative, designated by the president and one representative designated by the Board of Visitors, shall serve as ex-officio voting members of the Foundation's governing board. The representatives shall also serve on any executive or similar committee empowered to act for the governing board of the Foundation. This responsibility may not be delegated.

G. Where practical, the Foundation will establish an audit committee to report to the Foundation's governing board. The audit committee shall include the BOV designated representative.

III. University Resources and Services

A. VSU, upon the Foundation's request, shall make available administrative services to aid the Foundation in its management and operation. Alternatively, a specific entity with sufficient staff capabilities shall be designated by VSU to provide these central support services to the Foundation. These services include:

- 1) Access to VSU's financial systems to receive, disburse, and account for funds held. With respect to transactions processed through VSU's financial system, the foundation shall comply with VSU's Financial and Administrative Policies and Procedures Manuals;
- 2) Accounting services to include: monthly cash disbursements and receipts, accounts receivable and payable, bank reconciliation, monthly reporting and analysis, auditing, payroll, and budgeting;
- 3) Investment, management, insurance, benefits administration, and similar services;
- 4) Central University services such as dining services, printing services, parking and transportation, and facilities management;
- 5) Training programs including instructional information on procurement and purchasing practices; and
- 6) Development/Advancement services encompassing research/information systems support, marketing/communications, and special events.

B. The Foundation is eligible to use VSU's facilities, subject to availability and applicable policies. (If University space is assigned to the foundation by the appropriate Dean or other designated building space coordinator, the description of such space and any special conditions applicable to its use shall be communicated to the VSU Space Administrator by the appropriate Dean or designee.)

IV. Foundation Relationship with VSU

A. VSU and the Foundation acknowledge that each is an independent entity and agree neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members, staff or activity participants. (The Foundation's disclaimer in this regard similarly applies to the Commonwealth of Virginia, i.e., the Commonwealth will not be liable for any foundation acts or omissions.)

B. Transactions between VSU and a University-Related 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 VSU and the related foundation and those with whom the Foundation does business.

C. The Foundation shall not offer a post-secondary course, seminar, workshop or similar instruction, whether or not for credit, using the name of VSU or any of its school or departments, unless given prior approval by VSU President or his/her designee. Any Foundation publicity concerning such a course or similar program shall make clear that it is not being offered by VSU or any of its academic departments.

D. All correspondence, solicitations, activities and advertisements concerning the Foundation shall be clearly discernible as being from the Foundation and not VSU.

E. VSU is entitled to recover its costs incurred for personnel, use of facilities, or other services provided to the Foundation; and the Foundation likewise is entitled to recover its costs incurred for personnel, use of facilities, or other services provided to VSU.

V. Management and Operation of Foundations

A. The Foundation shall adopt guidelines governing fundraising activities that conform with the following objectives:

- 1) Plan and conduct all fundraising activities in close cooperation with the Office of Institutional Advancement, to ensure proper coordination, including participating in any VSU-wide advancement computer system, provided that the computer system meets the needs of the Foundation.
- 2) Ensure that funds or gifts payable to the Board of Visitors, VSU or to any University entity shall be deposited with or transferred to VSU. Ensure that any gift payable to a Foundation shall be deposited with or transferred to that Foundation. (The Foundation's solicitation literature shall make it clear when gifts are to be made payable to the Foundation). Each Foundation shall develop a procedure to document when gifts intended for the Foundation are erroneously made payable to a University entity other than a foundation, and when such documentation is possible, an exchange check may be issued by VSU to the Foundation.)
- 3) Advise donors that any restrictive terms and conditions attached to gifts for the benefit of VSU or of any Foundation are subject to BOV, Foundation and University approval.

B. The Foundation shall adopt the following guidelines governing the appointment, compensation and retention of Foundation personnel:

- 1) Non-discrimination: The Foundation shall not discriminate on the basis of race, color, religion, national origin, disability, sex, age, political affiliation, citizenship, status as disabled veteran, or veteran of the Vietnam era. Notwithstanding these requirements, the Foundation's programs that exists primarily for the disbursement of funds to members of a minority class, such as scholarship funds, may restrict eligibility on that basis to the extent authorized by law. In determining cases of discrimination, it is not sufficient to look merely to the articles of incorporation or by-laws of the Foundation; its actual practices and operations also are relevant.
- 2) Appointment and retention: The appointment and re-appointment of the Foundation Executive Director shall be established by the Foundation board. Prior to approval, the Foundation board shall inform VSU President of the appointment/re-appointment decision.

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- 3) Compensation: Compensation and all associated costs may be deferred for up to five (5) years for the provision of the University core services and for University personnel assigned to the Foundation, at which time the compensation structure will be revisited by the BOV, University President, and the Foundation Board. The terms and conditions of any such deferrals will be delineated in a separate written agreement between the University and the Foundation.

C. The Foundation shall adopt and observe the following guidelines governing the investment and disbursement of foundation funds and assets:

- 1) Any transfer of endowments or other assets by VSU to the Foundation, or by the Foundation to VSU, for management or investment shall be formalized in a Memorandum of Agreement so the fiduciary requirements of the respective governing boards are complied with and to assure, among other things, that any restrictions governing the future disposition of funds are observed.
- 2) The Foundation shall notify the University President or his/her designee, at the earliest possible date, of any material debt to be incurred for permanent or working capital, and coordinate its efforts with those of VSU and other foundations.

D. The Foundation shall adopt and observe the following guidelines governing its purchasing and procurement of goods and services.

- 1) Even though not required to comply with the Virginia Public Procurement Act, the Foundation shall endeavor to employ competitive practices in procuring goods and services. An effort also should be made to utilize minority vendors whenever possible.
- 2) The Foundation shall not purchase goods and services on behalf of any University unit with the expectation of reimbursement from that unit, because such a transaction would conflict with the Virginia Public Procurement Act. Goods and services may be purchased by the Foundation as a gift for VSU subject to the normal review and approval for gift acceptance.

VI. Financial Transactions and Accounting Practices

A. The Foundation shall have in place an accounting system to assure financial activities are carried out and reported in accordance with generally accepted business and accounting practices. If the Foundation has limited staff capability to satisfy this requirement, VSU or a designated entity may provide accounting services as described in Section III of this Policy.

B. The Foundation shall adopt a detailed annual operating budget and capital expenditure plan with the approval of the Foundation's governing board. Financial commitments and expenditures by the Foundation shall be in accordance with the approved budget and capital plan. The Foundation may authorize its Executive Director to disburse funds on behalf of the Foundation up to \$5,000, but any amount over \$5,000 will require the signature of a board officer or his/her designee (other than the Executive Director).

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C. The Foundation shall have an annual audit conducted by an independent certified public accountant. The audit firm or client partner and managers shall be rotated at least every seven (7) years. The Foundation's governing board shall also require that the scope of the external audit be expanded to include compliance testing of the required policies and procedures in this document, including but not limited to general accounting, fund raising and gift accounting, investment, University and foundation employee compensation policies and procedures, and the effectiveness of the Foundation's internal controls.

D. Officers and staff members of the Foundation shall be bonded as appropriate in amounts to be determined by the Foundation's governing board. General liability insurance and directors' and officers' liability indemnification (see § 13.1-870.1 of the *Code of Virginia* which limits liability of directors and officers of Virginia non-profit, non-stock corporations) also shall be obtained in amounts determined by the governing board to be reasonable and appropriate. These costs shall be borne by the Foundation.

E. With the Foundation governing board's approval, which shall not be unreasonably withheld, the University President or his/her designee may inspect and audit the Foundation's books and records at reasonable times.

F. In accordance with Internal Revenue Service regulations governing tax exempt organizations, no substantial part of the activities of the Foundation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, or participating or intervening in any political campaign on behalf of any candidate for public office.

G. No salaries, consulting fees, loans, or perquisites shall be paid to a University employee or to a foundation trustee by the Foundation without the prior written approval of the Foundation Board of Directors. No salary, consulting fee, loan or perquisite for work for or on behalf of the Foundation shall be paid to any University employee without the prior written approval of the University President.

H. Business transactions involving the Foundation and the personal or business affairs of a trustee, director, officer, or staff member shall be approved in advance in writing by the governing Foundation board. In addition, trustees, directors, officers, and staff members of the Foundation shall disqualify themselves from making, participating in making, or in any way attempting to use their official positions to influence a decision in which they have or would have a financial interest. Each member of the Foundation's board shall annually execute a conflict of interest statement which shall be retained and available for inspection in the Foundation's records.

I. No director, trustee, officer, or staff member of the Foundation shall accept from any source any gift or gratuity that is offered, or reasonably appears to be offered, because of the position held with the Foundation by the individual, nor shall an offer of a gift or gratuity be extended by such an individual on a similar basis. (A gift or gratuity means any payment to the extent that consideration of equal or greater value is not received. It does not include informational materials, such as books, reports, calendars, or other unsolicited promotional material. A gift does not include modest entertainment, such as meals/refreshments in connection with meetings, conferences, or public ceremonies, or home hospitality.) This provision applies to the individual and does not apply to gifts offered to or by a foundation as an organization.

VII. Reporting Requirements

A. On an annual basis, the Foundation shall submit to the University President a copy of its financial report and tax return, audited by an independent certified public accountant, the management letter, and management's response thereto. Confirmation that a meeting has been held between the Foundation audit committee (or similarly designated committee) and its external auditor is a required element of the Certification Letter. *See* Section VIII of this policy.

B. The Foundation shall provide to the University President prior to the beginning of the new foundation fiscal year, an annual budget and capital expenditure plan approved by the Foundation governing board. The budget should be presented in a comparative format with the prior year and include major categories of revenues and expenses.

C. The Foundation shall report annually to the University President each material capital lease, investment, or financing arrangement entered into during the preceding foundation fiscal year. Notice also should be provided as soon as practical concerning potential and actual litigation involving the Foundation during its fiscal year.

D. The Foundation shall report on a mutually agreed upon schedule to the University President regarding its financial position and capital expenditures, with special emphasis on transactions between the Foundation and VSU or its units as well as transactions affecting Foundation employees and/or trustees. This report may be made in regularly scheduled review sessions between Foundation administrators and the University President's designee.

E. The Foundation shall provide to the University and to the BOV periodic reports on returns obtained from the investment of the Foundation's assets at such times and in such format as may be prescribed.

F. The Foundation shall provide the University President with an advance copy of any amendments, additions or deletions to its Articles of Incorporation or By-laws.

VIII. Annual Certification Letter

A. On an annual basis, the Executive Director of each foundation shall submit to the BOV and to the University President a letter which certifies compliance with the following requirements:

- 1) Copies of this policy have been circulated among all members of the Foundation staff and its governing board.
- 2) Compensation of any kind which the Foundation has provided to any University employee has been communicated to the University President or his/her designee prior to payment. A listing of total payments to specific individuals should be attached to the certification letter.
- 3) An audit by an independent certified public accountant has been completed, and the audit committee of the Foundation has met and reviewed the management letter and response with that auditor.

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- 4) The annual budget of the Foundation has been approved by the Foundation governing board and has been provided to the University President or his/her designee.
- 5) Written approval from the Foundation Board of Directors has been obtained prior to any funds being borrowed by VSU from the Foundation.
- 6) Written approval has been obtained from the BOV and the University President for any substantial proposed business ventures or changes in the nature, scope, or purpose of the Foundation.
- 7) Other specific requirements as mutually agreed upon by the Foundation governing board and the University President or his/her designee.

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Board of Visitors Plan for Working with University-Related Foundations

(1) Each University-Related Foundation Board will include one member who serves as a Representative of the BOV as required by the Board's Policy on University-Related Foundations.

(2) The following procedures will apply to the Board's Representative on University-Related Foundations:

- a. Terms will be for up to four years.*
- b. Representatives will serve a maximum of two terms.*
- c. Priority will be given to the appointment of sitting and past members of the BOV.*
- d. The Rector will appoint Representatives as needed between Board of Visitors meetings subject to ratification by the full Board.*
- e. The BOV will ratify new appointments of Representatives and confirm the list of existing Representatives on an annual basis.*
- f. No Board Representative shall hold the position of an officer on the board of any University-Related Foundation.*

(3) Representatives will prepare annual reports not later than September 1 covering the previous July 1 - June 30 fiscal-year. The report will include a summary of the activities for the prior year and will identify any issues that are appropriate to be brought to the attention of the BOV. The representative will include comments on the compliance of the Foundation with the Board's Policy on University-Related Foundations.

(4) The BOV will designate an officer of the University to:

- a. Oversee compliance with the Board's Policy on University-Related Foundations.*
- b. Accept and review documents received from University-Related Foundations on behalf of the University President.*
- c. Prepare an annual report on compliance for the BOV.*

Approved By: The Board

Date: April 11, 2014