



51-001: Policy on University-Related Foundations¹

Responsible Executive: Vice President for University Advancement

Responsible Office: University Advancement

Related Policy:

Approved-On Date: NSU Board of Visitors on May 10, 2002

NSU Board of Visitors on August 30, 2002 - Resolution adding Item "H." under Section III

NSU Board of Visitors on May 9, 2008 – Resolution adding Statement of Policy under Section "I", revising E, F, and G under Section "III" and adding "F" under section VII

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I. Statement of Policy

The Board of Visitors (BOV)' "Policy on University-Related Foundations" is designed to ensure efficiency and accountability among, and maintain independence and integrity within, all University foundations that are established and operated for the University's benefit and that use the University's name and resources.

II. Purpose

- 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 funds². These fiduciary obligations fall primarily on the officers and directors of the foundation.

¹This policy was modeled on a similar policy adopted by the Board of Visitors for the University of Virginia.

² 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.

- B. Norfolk State University has a vital interest in, and recognizes the value of, University-related foundations that are established and operated to solicit funds in the University's name, to manage and invest gifts and property for the University's benefit, and/or to promote or sponsor programs in support of the University's activities.
- C. The Board of Visitors 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 the University's interests, and as a condition of the foundations' use of the University's name and resources, it is the policy of the Board of Visitors that University-related foundations shall be:
 - (1) established and organized solely for the University'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 the University's purpose, mission, and procedures, as specifically set forth in this Policy.

III. Establishment and Organization of Foundations

- A. University-related foundation³ ("Foundation") is an organization that is created and operated exclusively to benefit the University or one or more of the University's units⁴. A Foundation as defined for purposes of this Policy is one which uses the University's name, consumes University resources, occupies University space, or enters into transactions with the University which require the concurrence of the University. A Foundation has as its purpose one or more of the following:
 - (1) to facilitate fundraising programs and contributions from private sources for the benefit of the University or one or more of its units;
 - (2) to manage and invest private gifts and/or property for the benefit of the University or one or more of its units; or

³ All references in this Policy of the Board of Visitors shall include subsidiaries and affiliates of University-related foundations as well as the foundations themselves, and organizations using the University's name.

⁴ The term "unit" as used throughout this Policy encompasses schools, departments, and other components of the University

- (3) to promote, sponsor, and complement educational, scientific, research, charitable, or cultural activities for the benefit of the University or one or more of its units.
- B. Foundations may be created only with the approval of the Board of Visitors 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 Board of Visitors 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 purposes 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 the University.⁵ 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 or final liquidation of the Foundation (a) none of the property or any proceeds thereof shall be distributed to or divided among any of the officers or directors or inure to the benefit of any individual; and (b) after liabilities and obligations of the Foundation have been paid, satisfied and discharged and adequate provisions made thereof, all remaining property of the Foundation and the proceeds thereof shall be distributed by the Board of Directors to the University or its designee provided it is an organization or organizations that is (are) qualified under Section 501 (c)(3) and 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended..
- F. The Rector of the Board of Visitors or his/her designee shall serve as *ex officio* non-voting member of the Foundation's governing board and its executive committee. The Rector shall also designate a BOV representative who shall serve as *ex officio* voting member of the Foundation's governing board and its executive committee.
- G. The President or his/her designee shall serve as *ex officio* voting member of the Foundation's governing board and its executive committee. The President shall also designate a University representative who shall serve as *ex officio* non-voting member of the Foundation's governing board and its executive committee. Efforts

⁵ It is foreseeable that a Foundation may find it desirable to form for-profit subsidiaries in order to assist it in carrying out its mission. It is expected that approval of the Board of Visitors will be sought prior to any such incorporation.

will be made to preserve the make-up of the Foundation's governing board with respect to the University appointments.

- H. The Foundation will establish an audit committee to report to the Foundation's governing board. The audit committee shall include one or both of the University designated representatives.
- I. The requirements for Board approval for the types of activities identified in paragraphs C and D above, including footnotes, shall not apply to the Enterprise and Empowerment Foundation at Norfolk State University (E²F). However, E²F shall inform the Board through its appropriate Committee as soon as practicable after the Foundation has engaged in, or performed, such activities.

IV. University Resources and Services

- A. The University, upon the Foundation's request, shall make available administrative services⁶ to aid the Foundation in its management and operation. These services include:
 - (1) access to the University's financial systems to receive, disburse, and account for funds held. With respect to transactions processed through the University's financial system, the Foundation shall comply with the University'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 services encompassing research, information systems, communications and special events.
- B. The Foundation is eligible to use the University's facilities, subject to availability and applicable policies⁷.

⁶ Alternatively, a specific entity with sufficient staff capabilities may be designated by the University to provide these central support services to the Foundation.

⁷ 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 University Space Administrator by the appropriate Dean or designee.

- C. Foundation personnel shall be accorded privileges generally available to University employees (e.g., use of recreational facilities, eligibility for season tickets, etc.)

V. **Foundation Relationship with the University**

- A. The University 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 participants⁸.
- B. Transactions between the University and a 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 the University 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 the University or any of its school or departments, unless given prior approval by the University 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 the University 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 the University.
- E. The University 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 the University.

VI. **Management and Operation of Foundations**

- A. The Foundation shall adopt guidelines governing **fundraising** activities that conform to the following objectives:
 - (1) plan and conduct all fundraising activities in close cooperation with the Office of University Advancement, to ensure proper coordination, including participating in the University-wide development computer system, provided the computer system meets the needs of the Foundation;

⁸ 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.

- (2) ensure that funds or gifts payable to The Rector and Visitors or to any University entity shall be deposited with or transferred to the University⁹; and
 - (3) advise donors that any restrictive terms and conditions attached to gifts for the benefit of the Rector and Visitors of the University are subject to 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.
 - (2) **Appointment and retention:** The appointment and re-appointment of the Foundation executive director or chief operating officer (“Foundation executive”) shall be subject to approval of the Foundation board. Prior to approval, the Foundation board shall confer with the University President regarding the appointment and re-appointment. The appointment (and reappointment) letter shall expressly stipulate that the Foundation executive’s employment is subject to termination for cause, prior to completion of the stipulated appointment term for failure or refusal to comply with Foundation policies or to act in consonance with University standards.
 - (3) **Compensation:** The Foundation board shall set compensation standards, including salary ranges and fringe benefits, for all its employees. At least annually the governing board shall approve the salary of all Foundation staff, and confirm this action in the minutes of the board meeting. Compensation plans for Foundation staff which set a defined rate or percentage payment may be submitted for approval annually in lieu of specific dollar amounts.
- 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 the University to the Foundation, or by the Foundation to the University, 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.

⁹ 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 the University to the Foundation.

- (2) The University shall obtain written approval from the governing board of the Foundation, the University's Board of Visitors and the President in order to borrow funds from the Foundation.
 - (3) The Foundation shall notify the President or his/her designee, at the earliest possible date, of any proposed purchase of real estate and any material debt to be incurred for permanent or working capital, and coordinate its efforts with those of the University 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 may deem it advisable and appropriate 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 the University subject to the normal review and approval for gift acceptance.

VII. 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, the University or a designated entity may provide accounting services as described in Section III.
- B. The Foundation shall adopt a detailed annual operating budget and capital expenditure plan with the approval of the governing board. Financial commitments and expenditures by the Foundation shall be in accordance with the approved budget and capital plan.
- 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, and University and Foundation employee compensation policies and procedures.
- 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 indemnification¹⁰ also shall be obtained in amounts determined by the governing board to be reasonable and appropriate.

- E. With the Foundation governing board's approval, which shall not be unreasonably withheld, the Rector 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 by the Foundation without the prior written approval of the University's Rector and President or their designees. Compensation plans for University employees which set a defined rate or percentage payment may be submitted for approval annually in lieu of specific dollar amounts.
- 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 by the governing 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.
- 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 basis¹¹. 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 Rector 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

¹⁰ See §13.1-870.1. of the Virginia Code which limits liability of directors and officers of Virginia non-profit, non-stock corporations.

¹¹ 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 a meal or refreshments in connection with meetings, conferences, or public ceremonies, or home hospitality.

designated committee) and its external auditor is a required element of the Certification Letter (see Section VIII).

- B. The Foundation shall provide to the Rector prior to the beginning of the new Foundation fiscal year, or on a mutually agreeable date, 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 Rector each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year. Notice also should be provided periodically of any potential and actual litigation involving the Foundation during its fiscal year.
- D. The Foundation shall report on a mutually agreed upon schedule to the Rector and President regarding its financial position and capital expenditures, with special emphasis on transactions between the Foundation and the University 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 President's designee.
- E. The Foundation shall provide the Rector with an advance copy of any amendments, additions or deletions to its articles of incorporation or by-laws.
- F. The Foundation shall publish an annual report to its constituents.

VIII. Annual Certification Letter

- A. On an annual basis, the executive director of each Foundation shall submit to the Board of Visitors and to the 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 employees has been approved by the Rector President or their designees 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.
 - (4) The annual budget of the Foundation has been approved by the Foundation governing board and has been provided to the Rector or his/her designee.

- (5) Written approval has been obtained for any funds the University has borrowed from the Foundation.
- (6) Written approval has been obtained from the Board of Visitors and the Rector 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 President or his/her designee.