

1. Title

University-Affiliated Foundations

2. Rule and Regulation

Sec. 1 Importance and Mission Alignment. The independence and diversity of the U. T. System's university-affiliated foundations is a great strength, one that uniquely reflects and serves the System's mission and community with great impact. As a public entity entrusted with both private and public funds, the U. T. System's governing board has a responsibility to ensure that the development, management, and expenditure of resources that support U. T. System institutions are done in a manner consistent with federal, state, and local laws, and that the focus of university fundraising efforts by university personnel remain on funds to be administered by the university. The U. T. System also shares with its institutions and the affiliated foundations a special obligation to maintain the public's trust.

Each U. T. System institution and its university-affiliated foundations should assess, develop, and promote alignment between the university-affiliated foundation's and the institution's missions.

1.1 Memorandum of Understanding. Each U. T. System institution should engage its affiliated foundations in a process to review or develop a [Memorandum of Understanding \(MOU\)](#). The process should principally involve the institution and the affiliated foundation, including the chief executive of the university, the chief executive officer of the affiliated foundation, and the chair of the foundation board. Representatives of the U. T. System's Office of External Relations, Office of Academic Affairs or Office of Health Affairs, Office of General Counsel, and Office of the Board of Regents and the affiliated foundation's legal counsel should be engaged as necessary throughout the process.

The resulting proposed MOU should substantially comply with a model MOU developed with broad and appropriate input from U. T. System institutions and university-affiliated foundations and approved by the Board of Regents. The MOU should also include the provisions listed in Section 1.2 below.

The MOU process should culminate in a formal adoption of the MOU between the System or the institution and respective affiliated foundation executed by the institutional President or the Chancellor after approval by the Deputy Chancellor, the appropriate Executive Vice Chancellor, and the Vice Chancellor and General Counsel.

- 1.2 MOU Provisions. The MOU should include provisions that:
- (a) Summarize the overall relationship between the foundation and the university and how the foundation's assets, functions, gift administration, or grant-making serve the university's mission.
 - (b) Establish the President, or the President's designee, as the primary institutional staff contact for the university-affiliated foundation; the institution's Chief Financial Officer, or the Chief Financial Officer's designee, as the primary financial contact for the university-affiliated foundation; and the institutional Chief Development Officer, or the Chief Development Officer's designee, as the primary fundraising contact for the university-affiliated foundation.
 - (c) Define the foundation's role in fundraising, if any, and delineate, as appropriate, the respective oversight responsibilities of foundation and institutional personnel with regard to prospect management, gift acceptance and receipting, and stewardship. The primary focus of fundraising efforts by university-compensated personnel, including development professionals, deans, and faculty, should remain on funds given directly to the university and administered by the university. The exclusive focus of any fundraising efforts by university-compensated personnel to benefit an external entity must be for funds to directly benefit the university.
 - (d) Identify specific services provided by the foundation, which might include fundraising, gift acceptance and

advancement services, records and data management, investment services, real estate projects, or other activities in support of institutional functions and priorities, and any payments or consideration provided to the foundation in exchange for such services (precise fees or payments may be documented in separate agreements).

- (e) Describe any institutional resources provided for the use of the foundation. Resources might include budget allocations, staff support, office space, and technology. Recovery of costs associated with providing such resources should be at the same rates charged to university departments. Further, the institutions and university-affiliated foundations should use separate computers and computer systems to avoid the intermingling of data and information. If a database is shared for purposes of maximizing efficiency, accuracy of data, and prospect management, the rationale for sharing a database should be documented and approved in accordance with applicable policies of the Board of Regents (see Regents' [Rule 10501](#)), and appropriate steps should be taken and documented to protect the interests of both the U. T. System institution and the university-affiliated foundation, for example, by implementing separate gift-processing modules. (Because funding and fee structures may vary from year to year, the MOU may reference separate support or service agreements or disclosures.)
- (f) Identify a process to phase out any employment arrangements currently in place between any institution and its affiliated foundation whereby an institution and foundation share staff. Where extraordinary circumstances exist requiring the continuation of any such arrangement, establish terms under which foundation functions and operations may be staffed by university employees, including a description of reporting relationships and the role played by foundation staff or board members in hiring decisions, performance evaluation, and compensation decisions. Consistent

with the guidance found in the Attorney General Opinion No. [MW-373](#) (1981), U. T. System institutions lack the authority to place foundation employees on payroll or to provide them benefits reserved for state employees. (Because funding and fee structures may vary from year to year, the MOU may reference separate support or service agreements or disclosures.)

- (g) Describe records, including alumni and donor records, owned either by the institution or foundation and policies governing the use and sharing of such records, including public access under the Texas Public Information Act. The MOU should also include language related to the privacy of student information subject to the Family Educational Rights and Privacy Act (FERPA) and include procedures for providing and safeguarding any student information in full compliance with FERPA.
- (h) Define reciprocal responsibilities and mutual expectations regarding the frequency, content, and method of reporting between the university-affiliated foundation and its supported institution. This should include a requirement for an independent annual audit of the foundation and a requirement that the audit report be provided to the supported institution.
- (i) Describe the terms, process, and frequency by which foundation funds or grants will be provided to the university, including discretionary funds or funds intended to fund the compensation or benefits of university employees (not including transfers of funds for endowed faculty or administrative positions). This should also include requisition guidelines, annual guidelines for seeking foundation funds or support for the purchase of tickets to attend or sponsor third-party or institutional annual dinners, galas, auctions, or other donor-related functions, and provisions for the reimbursement to university employees for expenses incurred on behalf of the foundation.
- (j) Define terms for the foundation's use of the university's name, service marks, branding, and

other proprietary university property, consistent with Board of Regents' policy. (See [U. T. System Trademark Licensing Policy](#)).

- (k) Include statements regarding (a) practices to identify and appropriately manage potential conflicts of interests involving institutional staff, foundation staff, and foundation board members, and (b) practices to prevent the payment or accrual of impermissible benefits to university or university-affiliated foundation employees, directors, or officers. This should include a prohibition of the gift or loan of university-affiliated foundation property, services, funds, credit, or assets to university employees, families, or their representatives, except under circumstances whereby a specific program or strategy has received prior written approval by the Board of Regents.
 - (l) Include information regarding gift or management fees assessed by the foundation.
 - (m) Clearly define the extent of any liability arising out of the relationship.
 - (n) Establish guidelines and the conditions under which the MOU may be terminated by the institution or foundation and outline a process for the orderly separation of an institution from a foundation and/or a foundation from an institution as well as the distribution of foundation assets consistent with its articles of incorporation and bylaws.
- 1.3 Periodic Assessment. Institutions and affiliated foundations should engage in periodic assessment of the role of the university-affiliated foundation and its relationship with its supported institution by revisiting the MOU process periodically.
- 1.4 Use of Name or Logo. Execution of an MOU is required for the continued approval for the use of the name or logo of any entity within the U. T. System by a university-affiliated foundation.

- Sec. 2 Transparency. Institutions and their affiliated foundation(s) should work together to implement practices that increase transparency, openness, and disclosure to the supported institution and the public.
- 2.1 Each institution and its university-affiliated foundations should provide for the sharing, consistent with applicable laws and donor privacy, of financial information, audits, annual IRS filings, and other records with each other and outside parties.
 - 2.2 Each institution and its university-affiliated foundations should work together to adopt a transparency statement oriented specifically to donors, alumni, and outside parties that
 - (a) clarifies the relationship between the institution and the university-affiliated foundation;
 - (b) explains the role that the private foundation plays in the university setting;
 - (c) lists each foundation's leadership, budget, and assets; and
 - (d) explains the difference between making a gift to the U. T. System, a U. T. institution, or the university-affiliated foundation.
 - 2.3 Each institution and its university-affiliated foundations should adopt practices to assure the university is aware of foundation policies regarding gift or administrative fees, including the disclosure to donors or potential donors of any and all fees for endowment or non-endowment gifts, pledges, or bequests.
 - 2.4 Each institution and its university-affiliated foundations should establish a practice to assure routine reports to donors.
 - 2.5 Each institution should identify all affiliated foundations on its website, clearly noting their status as separate from the supported institution. Similarly, each university-affiliated foundation should have a well-developed website that provides public access to information about

the foundation's mission, a list of foundation employees and board members, and clear contact information for the foundation.

- Sec. 3 Governance. Each institution and university-affiliated foundation should:
- (a) Ensure that the work of the foundation is aligned with the strategic priorities of the supported university.
 - (b) Collaborate to establish strong periodic orientation programs to educate new university officials and all new foundation board members about the foundation's mission, legal requirements, and fiduciary duties.
- Sec. 4 Foundation Policies. University-affiliated foundations should adopt policies that are transparent, reflect best practices, and mitigate even the appearance of impropriety, unfairness, financial self-dealing, or fiscal imprudence.
- Sec. 5 Donor Intent. Institutions and university-affiliated foundations should adopt and consistently apply gift acceptance policies, thoroughly document donor intent, and carefully review proposed gifts to ensure that donors' intentions can be fulfilled and that through the acceptance of gifts, institutions will not be subject to undue external influence, such as over academic programs and appointments, or to financial or compliance risk.

The policies should require consultation between the foundation and appropriate institution representatives prior to the foundation accepting gifts restricted for a) institution purposes other than those addressed in existing gift acceptance policies, or b) that may subject the institution to unusual conditions or requirements.

3. Definitions

University-Affiliated Foundations - Texas nonprofit trusts or corporations whose sole, primary, or operationally significant purpose is to provide financial support to a U. T. System institution.

4. Relevant Federal and State Statutes

Texas Business Organizations Code Section [22.353](#)

Texas Government Code Section [2255.001](#) – Rules (Private Donors or Organizations)

Texas Attorney General Opinion No. [MW-373](#) (1981)

5. Relevant System Policies, Procedures, and Forms

Regents' *Rules and Regulations*, [Rule 10501](#), Delegation to Act on Behalf of the Board

Regents' *Rules and Regulations*, [Rule 30104](#), Conflict of Interest, Conflict of Commitment, and Outside Activities

Regents' *Rules and Regulations*, [Rule 60101](#), Acceptance and Administration of Gifts

Regents' *Rules and Regulations*, [Rule 60304](#), External Nonprofit Corporations

Regents' *Rules and Regulations*, [Rule 60306](#), Use of University Resources

[The University of Texas System Administration Policy UTS138, *Gift Acceptance Procedures*](#)

[Best Practices Regarding University-Affiliated Foundation Relationships – Advisory Task Force Report \(2013\)](#)

6. Who Should Know

Administrators
Chief Business Officers
Development Officers

7. System Administration Office(s) Responsible for Rule

Office of External Relations

8. Dates Approved or Amended

Editorial amendment to Section 1.1 made July 13, 2015
May 15, 2014

9. Contact Information

Questions or comments regarding this Rule should be directed to:

- bor@utsystem.edu