

University of Florida Internal Operating Memorandum

No.: 07-20

Date: November 30, 2007 (Supercedes No. 07-17 dated June 15, 2007)

Subject: Direct Support Organizations

Authority: Florida Board of Governors January 7, 2003 Resolution
Sections 1001.74(37), 1004.28, F. S.
6C1-1.300, F.A.C.

Purpose: To establish procedures for the creation, certification, operation, and decertification of University of Florida direct support organizations.

I. Preliminary Statement

Florida Statutes Section 1004.28 provides for the creation of a direct support organization (“DSO”) where an entity is to be organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the benefit of a state university. In addition, this statute requires that the state university provide by rule the requirements with which a university direct support organization must comply in order to use the property, facilities or personal services of a state university. The University of Florida (the “University”) rule is published in the Florida Administrative Code, Rule 6C1-1.300.

In order to implement both the statutory and rule provisions, the Board of Trustees of the University of Florida (“BOT”) has adopted this Internal Operating Memorandum to provide guidance with respect to the creation and certification, operation and, when necessary, the decertification of DSOs. These standards are uniform minimum standards for the University’s oversight of affiliated organizations and all affiliates should at least meet these standards. The University’s Board of Trustees or their designee, the President, may have greater oversight and if there is greater University oversight already, this will not be changed.

It should be recognized that not every situation in which funds will be raised and/or expended on behalf of the University or in which property, facilities or personal services of the University will be used requires the formation of a DSO. Frequently, such activities can be accomplished within the existing University framework. In other situations, the creation and operation of a DSO will be appropriate.

II. Creation

- A. **BOT Responsibility.** The BOT has an oversight responsibility for DSOs because they are supporting organizations of the University. In order to fulfill this responsibility, the BOT is requiring each DSO to satisfy the requirements in this operating memorandum.
- B. **Purpose.** A DSO may be created when an organization will use the property, facilities, or personal services or the name of the University and/or when it will receive, hold, invest or administer assets or property or make expenditures for the benefit of the University.
- C. **Incorporation.** Pursuant to statute, a DSO must be a Florida not-for-profit corporation organized under the provisions of Chapter 617 of the Florida Statutes.
- D. **Tax-Exempt Status.** A University DSO must also be exempt from federal and state taxes. Exemption from federal taxation is not automatic even though the corporation is organized under the state's not-for-profit statute. A DSO must qualify as a tax-exempt organization (typically referred to as a "501(c)(3) organization") by making application to the Internal Revenue Service. This is done by filing an Application for Recognition of Exemption (Form 1023) and is discussed further in section III.B.3.
- E. **Articles of Incorporation.** In order to incorporate, a corporation must prepare and file articles of incorporation with the Florida Secretary of State. The content of the articles of incorporation is prescribed by Florida Statute section 617.0202 but generally must include the name of the organization, its initial street address, the name and address of each incorporator, and, most important, the purposes for which the corporation is organized. A DSO's purpose must be wholly in support of University of Florida programs. Because the corporation is organized solely to support one or more of the public or charitable purposes of the University, the DSO should qualify as a not-for-profit corporation under state law as well as be recognized as a tax-exempt charitable organization by the Internal Revenue Service. DSO articles of organization should be prepared by or in consultation with the Office of the University's Vice President and General Counsel, and must be confirmed by that Office to be consistent with this internal operating memorandum.
- F. **Bylaws.** The day-to-day governance of corporate affairs is provided in the corporation's bylaws. The bylaws must contain provisions dealing with election/appointment of directors, term of office, procedures for calling meetings, quorum requirements, voting, appointment of

committees, the establishment and appointment of corporate officers, and indemnification and insurance. The bylaws may not contain any provisions inconsistent with the DSO statute, rule, or this internal operating memorandum. DSO bylaws should be prepared by or in consultation with the Office of the Vice President and General Counsel, and must be confirmed by that Office to be consistent with this internal operating memorandum.

G. Specific Requirements of Organizational Documents. In addition to general requirements for articles of incorporation and bylaws, each DSO's articles and/or bylaws must contain the following provisions, in addition to satisfying the general requirements set forth above:

1. The provisions set forth in Florida Statute Section 1004.28 and Rule 6C1-1.300, F.A.C.
2. A provision that the corporation's board of directors shall include the members required under the applicable provision of IOM 01-1.
3. A provision that a director, other than an ex officio director, may be removed for any reason by a vote of at least a majority of the corporation's board of directors and any director may be removed for cause by the President of the University after consultation with the corporation's board of directors.
4. A provision that any committee member may be removed for any reason by a vote of at least a majority of the corporation's board of directors, and that any committee member may be removed for cause by the President of the University after consultation with the conflict-free members of the corporation's board of directors.
5. A provision that the board of directors shall appoint an Audit Committee and shall, in conjunction with the Audit Committee, adopt an Audit Committee Charter, which shall be approved by the President of the University or his/her designee, to provide for oversight of the integrity of financial reporting, internal controls and the independence and performance of the audit function by the corporation's independent auditors.
6. A provision that the corporation's chief executive officer (regardless of actual title) shall be selected by (or appointed only after approval of) the President of the University after consultation with the corporation's board of directors, and that the chief executive officer shall report to the President of the

University or his/her designee and the corporation's board of directors, as required by Rule 6C1-1.300, F.A.C.

7. A provision that the corporation's chief executive officer (regardless of actual title) may be removed for any reason by a vote of at least a majority of the board of directors and may be removed for cause or unacceptable performance by the President of the University after consulting with the corporation's board of directors.
8. A provision that as used in the bylaws:
 - (a) "For Cause" shall mean actions or omissions that may adversely affect or reflect on the interest and/or reputation of the corporation or the University of Florida, as determined by the President of the University after consulting with the corporation's directors. Any such determination may be made by the President of the University and need not depend on the conclusion of any external determination or process.
 - (b) "Unacceptable Performance" means a persistent failure to fulfill duties of the position to high standards and in a manner that serves the best interest of the corporation and the University of Florida, as determined by the President of the University after consulting with the corporation's board of directors.
9. A provision that amendments to the articles of incorporation and/or bylaws require a vote of at least a majority of the members of the corporation (if entitled to vote) or of the members of the board of directors, pursuant to Rule 6C1-1,300, F.A.C., and that any such amendments shall not become effective until ratified by the President of the University as the designee of the Board of Trustees.
10. A provision that the President of the University or his/her designee confirms that the corporation's mission is to support one or more of the purposes of the University.
11. A provision that the President of the University shall have the power to: monitor and control the use of University resources by the Direct Support Organization ; control the use of the University name by the corporation; and monitor the corporation's compliance with federal and state laws and rules, pursuant to Rule 6C1-1.300, F.A.C. The Direct Support

Organizations must also have a policy on ethics and conflicts of interest.

12. A provision that the corporation shall comply with IOM 07-20 and any amendments thereto.
13. The foregoing provisions shall apply to all existing DSO's as well as any organization seeking certification as a DSO.

III. Approval Process

A. Approval Authority. Organizations requesting certification as a DSO must submit required documentation (as set forth hereafter) for review and approval. The following approvals are required:

1. The Dean of the College under whose auspices the DSO will function. (This may not be applicable in all cases, in which case the initial approving authority shall be the appropriate Vice President.)
2. The University Vice President having responsibility for the DSO.
3. Vice President for Business Affairs.
4. Provost.
5. President.
6. Board of Trustees.
7. Vice President and General Counsel's office for the purpose of confirming consistency with this internal operating memorandum.

B. Required Submissions. Drafts of the following documents shall be submitted for approval by the foregoing officials of the University:

1. Articles of Incorporation
2. Bylaws
3. IRS Form 1023. The IRS grants tax-exempt status retroactive to the date of incorporation if it approves the application. A proposed DSO must complete the Form 1023 for submission as part of the approval process, but will not be required to have

actually received its tax-exempt determination letter in order to be certified.

4. Policies on conflict of interest and records.
5. Audit Committee Charter.
6. Names and qualifications of proposed initial members of the board of directors, initial members of all board committees and initial Chief Executive Officer.
7. Business Plan. The Business Plan must contain at least the following:
 - a. A statement of the specific purpose(s) for which the corporation is organized and how it will benefit the University.
 - b. A statement of how the corporation intends to use University facilities, property, personal services and/or the name of the University.
 - c. A statement of how the corporation intends to receive, hold, invest or administer assets or property or make expenditures on behalf of the University.
 - d. The names of, with biographical information, its initial board of directors.
 - e. The names of, with biographical information, its initial officers.
 - f. A proposed operating budget for the first two full years of corporate activity.
 - g. A balance sheet.
 - h. A detailed statement of proposed fund raising activities, if any.

(It should be noted that items f, g and h are required inclusions in Form 1023).

IV. Operations

- A. Organizational Document Amendments. The BOT has delegated to the President of the University the authority to review and approve amendments to a DSO's articles of incorporation or bylaws. The DSO must submit them to the President for review. An amendment shall not become effective until approval by the President.
- B. Fiscal Year. The corporation shall observe a fiscal year of July 1 – June 30 unless approval for a different fiscal year has been granted during the certification process.
- C. Budgets. Each DSO shall prepare an annual budget using either a cash or accrual basis. DSO budgets shall be prepared in the format attached to this policy, and shall include:
- Estimated revenues delineated by source of funds;
 - Budgeted expenditures for the construction of physical facilities by project;
 - Budgeted expenditures for salaries, wages and benefits of DSO employees;
 - Budgeted transfers of DSO assets to the University for the purpose of funding salary supplements, compensation and benefits to be provided to University faculty and staff;
 - All other budgeted expenditures and transfers classified in a manner appropriate for the mission and purpose of the DSO;
 - A schedule of the names of the governing board members and their dates of service. The board members appointed by the BOT and the President shall be identified.
- D. Budget Approval. Proposed budgets shall be received and approved by the DSO's governing board and submitted to the President of the University or his/her designee for approval not later than 60 days after the first day of the fiscal year to which the proposed budget pertains. The President or his/her designee shall periodically, but not less than annually, make a report concerning the approved DSOs' budgets and financial performance to the BOT.
- E. Supplemental Notification. Whenever the governing board of a DSO proposes to make or becomes aware of the likelihood of a material or significant change to any item contained in budget awaiting approval or in an approved budget, it shall immediately notify the President of the University or his/her designee of the change, together with a complete explanation for the change and impact that such change may have on the DSO's operations. Material budgetary changes shall not be knowingly made without the approval of the President of the University or his or her designee.

F. Annual Audits. Each DSO shall annually have a financial audit of its accounts and records conducted by an independent certified accountant. The audit shall be completed and, together with management's responses, shall be submitted to the President of the University or his/her designee for review not later than the end of the third month after the close of the corporation's fiscal year. The President of the University shall submit the annual audit report for each DSO to the State Auditor General and to the Board of Governors no later than 9 months after the close of the corporation's fiscal year. The President or his/her designee shall periodically, but not less than annually, make a report concerning material results of the DSOs' audits to the BOT.

G. Salary Supplements.

1. Full or part-time employees of DSO's are not, by virtue of their employment by the DSO, University of Florida employees and may not participate in the State of Florida Retirement System. Other fringe benefits available to University of Florida employees may be made available to DSO employees if allowed by law and approved by the University of Florida BOT.
2. Salary supplements provided by the DSO for University of Florida employees must be approved by the President of the University or designee. Salary supplements will be paid using the University of Florida payroll process. Determination of the compensation of athletic personnel from DSO assets is to be made by the President and cannot be delegated.
3. Prior to increasing the salary or changing the salary source for an individual who receives compensation from a DSO fund source that does not contribute to the Florida Retirement System (FRS) and from a fund source that does contribute to FRS, the University shall request a written analysis from the Division of Retirement, Florida Department of Management Services, or other appropriate state agency, if the proposed change in salary increases the proportion of the total salary that is paid from state funds. This analysis, assessing the potential impact of such action on FRS, shall be provided to the President prior to the President's approval of the change in salary. If the change in salary results in a significant fiscal impact on the FRS, an assessment payable to the FRS may be required.

H. Personnel Policies. DSO's with employees must have appropriate personnel policies, including discrimination policies and policies prohibiting sexual harassment.

V. **Periodic Review.**

Not less frequently than every five years, the University Vice President having line authority for a DSO shall certify to the President in writing that the DSO continues to meet all criteria for being considered a DSO pursuant to applicable statutes, rules and this operating memorandum and that the corporation's continued certification as a DSO is in the best interest of the University.

VI. **Decertification.**

At any time the President of the University may recommend to the BOT that an organization be decertified as a DSO. A recommendation for decertification shall be based on a determination that the organization or the organization's status as a DSO no longer serves the best interests of the University and/or that the functions of the DSO can be accomplished within the existing University framework. In addition, the administrative dissolution of the corporation by the Florida Secretary of State, if not immediately reinstated, the denial or revocation of tax-exempt status of the corporation by the Internal Revenue Service, or the persistent failure to materially comply with applicable laws, rules, or this operating memorandum shall constitute grounds for decertification of a DSO.

Any recommendation for decertification shall include a plan for the disposition of the corporation's assets and liabilities.

History: New 3-28-2003. Revised 3-5-2004; 6-15-2007; 11-30-07.