

Policy Title:	Inventions, License Agreements, Educational and Professional Materials Development, Patents and Copyrights
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Governing Body:	Southern Oregon University	Policy Number:	FAD.056 (580-043)
Policy Contact:	Vice President for Finance & Administration	Date Revised:	July 2015
Custodial Office:	Finance & Administration	Date Approved:	July 2015
Approved By:	President	Next Review:	July 2019
Related Policy:	Internal Management Policy 6.200: Licensing, Patent, Educational, and Professional Materials Development, and Copyright Policies and Procedures		

Revision History

Revision Number:	Change:	Date:
-	Initial version	July 2015
1	Revision	July 2016

A. Purpose

This policy codifies and revises as Southern Oregon University Policy the rules previously adopted by the State Board of Higher Education at Oregon Administrative Rule 580, Division 043 and transferred to SOU by operation of law on July 1, 2015.

B. Policy Statement

<p><b><u>I. General</u></b></p> <p><b>A. Division 43, 580-043-0006 Policy</b></p> <p>The educational and research activities of employees of the institution frequently result in the discovery of new knowledge in the form of inventions, technological improvements, and the production of educational and professional materials. It shall be the general policy of the Board that such results be made available to the public in the most expeditious manner.</p> <p><b>B. Division 43, 580-043-0007 Objectives of Policies</b></p> <p>It is Board intent to:</p> <ol style="list-style-type: none"> <li>1. Provide systematic means of bringing inventions, technological improvements and educational and professional materials into the public domain.</li> </ol>
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2. Encourage the development of new knowledge while protecting traditional academic freedom of employees in the publication of materials, development of inventions and discovery of technological improvements.
3. Establish principles and procedures for equitably sharing net royalty income with employees, and with sponsoring agencies when required by an agreement.

**C. Division 43, 580-043-0011 Employee Responsibilities and Rights**

1. As a condition of employment, all institution employees shall agree to assign to the institution rights to:
  - (a) Any invention or improvement in technology conceived or developed using institutional facilities, personnel, information or other resources; and
  - (b) Educational and professional materials, whether or not registered for copyright, that result from the instructional, research or public service activities of the institution.
2. Employees shall be responsible for disclosing to designated institutional representatives all inventions, technological improvements and educational and professional materials conceived, developed and/or produced during the conduct of normal activities.
3. Employees shall be responsible for cooperating and assisting Board and institutional representatives responsible for patenting, licensing, registering for copyright, publishing and generally assisting public access to new knowledge resulting from employee activities.
4. Employees shall be eligible to share in net royalty income from each invention or separate improvement thereof, an amount not to exceed:
  - (a) 40 percent of the first \$50,000, 35 percent of the next \$50,000, and 30 percent of all additional net royalty income received by the Board for inventions and technological improvements; and
  - (b) 50 percent of net royalty income from educational and professional materials.
5. For the limited purposes of administering the policies under Division 43, persons acting in the following capacities shall be entitled to the benefits and subject to the responsibilities of said rules: graduate teaching assistants, graduate teaching fellows, graduate research assistants and student employees.

**D. Division 43, 580-043-0016 Institutional Responsibilities**

To manage inventions, technological improvements and educational and professional materials developed by employees, the institution shall:

1. Apply Board-adopted policies and procedures.
2. Encourage employee activities that lead to new knowledge.
3. Actively seek applications for new knowledge developed by employees.
4. Anticipate and comply with conditions in contracts, grants and agreements with sponsoring agencies.
5. Recommend to the Vice President for Finance and Administration or designee contractual agreements, patent applications and equitable sharing of net royalty income.

## **E. Division 43, 580-043-0026 Office of Finance and Administration Responsibilities**

The Office of Finance and Administration shall:

1. Assist the institution in the development of procedures implementing Board policies and managing new knowledge.
2. Monitor institutional application of Board policies.
3. Review and approve institutional recommendations regarding assignment of rights, applications for patents, execution of licenses and agreements and distribution of royalties.

## **II. University Venture Development Funds**

### **A. Division 43, 580-043-0060 Purpose and Definitions**

1. Purpose. Chapter 580, Division 43, authorizes the institution to establish one Venture Development Fund for the purpose of facilitating the commercialization of research and development. The purpose of the institution's Fund shall be to provide qualified grant applicants with moneys to facilitate the commercialization of the institution's research and development. Within the scope of this purpose and subject to these administrative rules, the institution may use moneys in its Fund to provide:

- (a) Capital for university entrepreneurial programs;
- (b) Opportunities for students to gain experience in applying research to commercial activities;
- (c) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services; and
- (d) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state. Contributors to the institution's Fund are eligible for Oregon income tax credits to the extent set forth in the Act and these rules.

2. Definitions:

- (a) Act: Oregon Laws 2005, chapter 592, as amended by Senate Bill 582 (2007).
- (b) Entity: Any governmental body or agency, association, partnership, corporation, limited liability company, or other organization, however described or named and regardless of legal status, other than a Person.
- (c) Person: A natural person or sole proprietorship.
- (d) Venture Development Fund or Fund: A fund authorized by the Act.
- (e) Venture Grant Program or Program: A grant program authorized by the Act.
- (f) Institution: Southern Oregon University.
- (g) Department of Revenue: The Oregon Department of Revenue.
- (h) General Fund: The general fund of the State of Oregon.
- (i) Remain in Oregon: Maintaining the Entity headquarters in Oregon or employing a majority of employees (on a full-time equivalent, head-count, or payroll basis) in Oregon.
- (j) Board: The Southern Oregon University Board of Trustees.
- (k) Tax Credit Certificate: A certificate authorized by the Act and in a form designated by the Board that evidences a contribution to a Venture Development Fund.
- (l) Donor: A person or entity that makes a contribution to a Fund authorized by the Act and these rules.
- (m) Taxpayer: A person or entity that makes a contribution to a Fund authorized by the Act and these rules and that applies for a tax credit certificate authorized by the Act and these rules.

(n) Gross Royalty Income: Cash realized by the Board from royalties, milestone and license fee payments and from the sale of equity as a result of grants made under the Program.

**B. Division 43, 580-043-0065 Establishment of a Venture Development Fund by the Institution**

1. The institution may establish a Fund in accordance with the Act and these rules.
2. If the institution establishes a Fund, the institution shall:
  - (a) Notify the Board and the Department of Revenue of the establishment of the Fund;
  - (b) Either directly or through its affiliated foundation solicit contributions to the Fund and receive, manage, and disburse any such contributions and the earnings thereon;
  - (c) Subject to the Act and these rules, issue tax credit certificates to contributors to the Fund;
  - (d) Establish a grant program that meets the requirements for a Venture Grant Program under the Act and these rules;
  - (e) Subject to available moneys from the Fund, provide qualified grant applicants with moneys for the purpose of facilitating the commercialization of university research and development; and
  - (f) Report to the Department of Revenue the amounts of tax credit certificates issued by the institution and maintain records of licensing and royalty revenue received by the institution as the result of grants made from the Fund and records of amounts paid to the General Fund under the Act.
3. The institution may deposit moneys received for its Fund in the Higher Education Donation Fund established under ORS 351.130. Interest earned by such moneys shall be credited to the Fund. The State Treasurer, as payment for expenses, may deduct a fee pursuant to ORS 293.718 from a Fund administered by the institution.
4. The use of moneys donated under these rules may not be directed by a Donor. Rather, all moneys shall be available for the purposes set forth in the Act and these rules without regard to specific Donor instructions, except that the institution or its affiliated foundation may charge its customary administrative assessment to manage the Fund as permitted by the Act. Except as authorized by law, no other fees or indirect costs may be charged against the Fund or any associated grants or other disbursements from the Fund.
5. At the election of the institution, moneys in a Fund may be held in the form of an endowment. The institution may discontinue endowment treatment at any time.

**C. Division 43, 580-043-0070 Allocation of Authority to the Institution to Raise Funds and Issue Tax Credits**

1. The Board will not allocate fundraising or tax credit certificate issuance authority to the institution until the institution has established a Venture Development Fund in accordance with the Act and these rules.
2. Immediately upon deposit into the General Fund of amounts transferred by the institution in repayment of tax credits previously issued, the institution may issue new tax credits in an amount not to exceed the transferred amount.

**D. Division 43, 580-043-0080 Eligibility to Receive Grants**

1. Subject to compliance with these rules, the institution may make grants to itself for use by a constituent part of the institution or to Entities but not to Persons. The institution shall establish criteria for the receipt of grants under the Program. Each prospective recipient shall submit an application to the institution. Each grant shall be documented and implemented through an appropriate grant agreement and each grant agreement shall provide that the recipient, if other than a public agency, remain in Oregon for at least five years following the final disbursement of funds under

the agreement or repay the grant plus compound interest at 8 percent per annum. Other criteria shall be as determined by the institution except for the following:

- (a) All grants must be used to facilitate the commercialization of the institution's research and development;
- (b) Priority should be given to applicants who can demonstrate with specificity that their efforts will result in technology with high commercial potential, that they are close to realizing economic development potential, and that proof-of-concept funding will assist them in transforming research and development concepts into commercially viable products or services.

2. To at least some degree, a Program as a whole, but not each individual grant, must provide:

- (a) Capital for university entrepreneurial programs;
- (b) Opportunities for students to gain experience in applying research to commercial activities;
- (c) Entrepreneurial opportunities for persons interested in transforming research into viable commercial ventures that create jobs in this state; and
- (d) Proof-of-concept funding for transforming research and development concepts into commercially viable products and services.

3. The institution shall screen potential awards for conflicts of interest. No award shall be made if an identified conflict of interest cannot be eliminated or managed.

#### **E. Division 43, 580-043-0085 Issuance of Tax Credit Certificates**

1. Taxpayers making a contribution to the institution's Fund and wishing to receive a tax credit certificate evidencing that contribution must submit the contribution, together with an application for tax credit certificate, in a form designated by the institution, to the institution or, if directed by the institution, to its affiliated foundation.

2. The institution or its affiliated foundation may begin accepting contributions and applications after the institution's Fund has been established in accordance with the Act and these rules.

3. The institution shall consider applications for tax credit certificates in the chronological order in which the applications were received.

4. The institution shall act on an application for a tax credit certificate within 60 days of its receipt unless unanticipated or extraordinary circumstances reasonably prevent the institution from acting within that timeframe, in which case the institution shall act on the application as soon as reasonably possible thereafter.

5. Subject to section E6 of this rule, the institution shall approve an application for a tax credit certificate if the application is complete and the institution has verified receipt of the contribution. Within 45 days of application approval, the institution shall issue to the Taxpayer a tax credit certificate that specifies the amount of the contribution.

6. The institution shall deny an application for a tax credit certificate and may not issue a tax credit certificate to the Taxpayer if:

- (a) The Taxpayer's contribution to the Fund, together with the amounts specified on all tax credit certificates previously issued by the institution less amounts transferred into the General Fund, exceeds the institution's then-current tax credit certificate issuance authority;
- (b) The Taxpayer's application is incomplete; or
- (c) The institution cannot verify receipt of the Taxpayer's contribution.

7. If the institution denies a Taxpayer's application for a tax credit certificate, the institution shall notify the Taxpayer in writing within 45 days of the denial.

8. A Taxpayer who receives a notice of denial of an application for a tax credit certificate may request, in writing and within 90 days after the receipt of the denial, a refund of its contribution to the extent the contribution was actually received. The institution shall ensure that the refund is issued within 60 days after its receipt of the request for the refund.

9. Eligibility for a tax credit (as distinguished from the receipt of a tax credit certificate from the institution) shall be subject to the Act, the rules of the Department of Revenue, and other applicable law.

#### **F. Division 43, 580-043-0090 Tax Credit Certificate and Grant Record-Keeping and Reporting**

1. The institution shall retain copies of all tax credit certificates that it issues. Upon every issuance of a tax credit certificate by the institution, upon transfer of moneys into the General Fund, and promptly after Board adoption of an order or resolution establishing or modifying the institution's allocation of tax credit certificate issuance authority, the institution shall calculate and record in its records the amount, if any, of its fundraising and tax credit certificate issuance authority then remaining unused.

2. As requested by the Board from time to time but no less often than annually, the institution shall submit a written report to the Board summarizing its fundraising activity, amounts transferred to the General Fund, and issuance of tax credit certificates since its most recent report to the Board under this section and specifying its fundraising tax credit certificate issuance authority and the amount of that authority remaining unused as of the date of the report. The report shall include the number of tax credit certificates issued, the amount of funds raised by the institution, and the amounts transferred to the General Fund since its most recent prior report to the Board under this section.

3. As requested by the Board from time to time but no less often than annually, the institution shall submit a written report to the Board summarizing the grants made by the institution under its Program and how they serve the goals of the Act and these rules.

#### **G. Division 43, 580-043-0095 Recoupment of Tax Credits**

After establishing a Fund and making grants under a Program, the institution shall monitor the use of such grants and identify sources of Gross Royalty Income received by the institution as the result of the use of the grants. Gross Royalty Income results from the use of a grant when it is traceable to the grant. The institution shall cause the transfer of 20 percent of such Gross Royalty Income to the General Fund but not to exceed the amount of the tax credits issued by the institution as a result of contributions to the Fund. This does not preclude transfers from other sources. Immediately upon deposit of the transferred amount into the General Fund, the institution may issue new tax credits in an amount not to exceed the transferred amount. The institution shall maintain records of all transfers to the General Fund.

#### **H. Division 43, 580-043-0100 Reports to the Legislative Assembly**

After establishing a Fund, the institution shall report annually to the Legislative Assembly or, if the Legislative Assembly is not in session, to the interim legislative committees on revenue. The report shall be at the end of the fiscal year of the institution or of its affiliated foundation and provide information for that fiscal year. The institution shall include in the report the following information pertaining to its Fund:

1. The amount of donations received for the Fund;

2. The amount of income received from the Fund;
3. The amount of disbursements and grants paid from the Fund;
4. The amount of income and royalties received from disbursements from the Fund; and
5. The amount of moneys transferred from the Fund to the General Fund.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon approval.

#### C. Policy Consultation

This policy was transferred to SOU by operation of law on July 1, 2015 from Oregon Administrative Rule 580, Division 043. Revisions to the text of the policy were posted for campus comment on June 21, 2016.

#### D. Other Information

The Policy Contact, defined above, will write and maintain the procedures related to this policy and these procedures will be made available within the Custodial Office.