

CHAPTER VI

FINANCIAL MATTERS, ENDOWMENT AND TRUST FUNDS

NOTES:

Adopted 02/08/91

**THE CUSTODY AND MANAGEMENT OF INSTITUTIONAL TRUST FUNDS
AND SPECIAL FUNDS OF INDIVIDUAL INSTITUTIONS**

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.1 charged the Board of Governors of the University of North Carolina with the custody and management of the institutional trust funds of the University of North Carolina and of each constituent institution, and instructed the board to adopt uniform policies and procedures applicable to the administration of these funds; and

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.2 charged the chancellor of each constituent institution of the University of North Carolina with the custody and management of special funds of that institution and instructed the Board of Governors to adopt uniform policies and procedures for the administration of these funds; and

WHEREAS the 1977 General Assembly (2nd Session, 1978) by enactment of N.C.G.S. § 116-36.3 charged the chancellor of each constituent institution of the University of North Carolina with the custody and management of institutional student auxiliary enterprise funds of that institution, subject to uniform policies and procedures adopted by the Board of Governors; and

WHEREAS, after due consideration, the board concluded that moneys received by an institution in respect to fees and other payments rendered by medical, dental or other health care professionals under organized practice plans or under contractual agreements between the institution and a hospital or other health care provider should be deposited in the institution's official depository rather than with the State Treasurer;

WHEREAS the 1990 Reconvened Session of the 1989 General Assembly enacted legislation, Chapter 936 of the 1989 Session Laws, which provides management incentives and budgetary flexibility for constituent institutions of the University of North Carolina and an expanded definition of "institutional trust funds" to include institutional student auxiliary enterprise funds and funds received from the operation and maintenance of institutional forest and forest farmlands, thereby necessitating revision of the Board of Governors resolution dated January 12, 1979, concerning custody and management of institutional trust funds and special funds of individual institutions;

NOW, THEREFORE, BE IT RESOLVED: That the following policies and procedures are hereby established for the administration of: institutional trust funds, as now defined in N.C.G.S. § 116-36.1 and special funds of individual institutions, as defined in N.C.G.S. § 116-36.2.

I. GENERAL PROVISIONS

- A. Funds not to substitute for state appropriations.** Neither the funds covered by these policies and procedures nor the investment income therefrom shall take the place of state appropriations or any part thereof, but any portion of these funds available for general institutional purposes shall be used to supplement state appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.
- B. Presumption that receipts belong to the General Fund unless shown otherwise.** Except as otherwise provided by or pursuant to law, all moneys received by or accruing to an institution shall be deemed institutional receipts within the meaning of the Executive Budget Act and shall be deposited with the State Treasurer to the credit of the General Fund unless the chancellor can show that the moneys fall within one or more of the following general categories: (1) institutional trust funds, as defined in N.C.G.S. § 116-36.1. (2) special funds of the institution, as defined in N.C.G.S. § 116-36.2. (3) endowment funds, as defined in N.C.G.S. § 116-36. (4) funds subject to debt instruments containing special provisions with respect to the deposit of receipts

pledged to secure such debt.

- C. **Accounting.** The chancellor of each institution, with the approval of the State Controller, shall establish and maintain an accounting system for the funds covered by these policies and procedures in conformity with generally accepted principles of institutional accounting and in accordance with these policies and procedures.
- D. **Internal control.** The chancellor of each institution shall institute internal control procedures with respect to the handling of funds covered by these policies and procedures that are necessary or desirable to prevent misappropriation or mishandling of the funds.
- E. **Preaudit of disbursements.** No bill or claim against an institution to be charged to an account established here under may be paid unless it has been approved by the officer or employee authorized to initiate disbursements from that account. No bill or claim may be paid in any form other than a check or draft on an official depository of the institution or a warrant on the State Treasurer.
- F. **Facsimile signatures.** The chancellor may authorize the use of facsimile signature machines or signature stamps in signing checks, drafts, and warrants.

II. INSTITUTIONAL TRUST FUNDS

- A. **Applicability.** This Section II applies to moneys within the following categories:
 - (1) moneys, or the proceeds of other forms of property, received by the institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment funds of the institution.
 - (2) moneys received by the institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof.
 - (3) moneys received by the institution pursuant to grants from, or contracts with, any state agencies, any political subdivisions of the state, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs.
 - (4) moneys collected by the institution to support extracurricular activities of students of the institution.
 - (5) moneys received from or for the operation by the institution of activities established for the benefit of scholarship funds or student activity programs.
 - (6) moneys received from or for the operation by the institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services.
 - (7) moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other healthcare professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider.
 - (8) moneys received from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision

and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in Section II.A. as 'trust funds', except the net proceeds from disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a state agency. (Chapter 529 of the 1981 Session Laws)

- (9) moneys received from operation and maintenance of institutional forests and forest farmlands, provided that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs.

B. Delegation of authority. The chancellor of each institution, under the supervision of the president, is charged with the custody and management of all moneys within the categories described in Section II.A. now held by or hereafter accruing to that institution in accordance with applicable laws of the State of North Carolina and these policies and procedures.

C. Agency Fund Authorities. The president is authorized to approve and transmit to the State Treasurer an agency fund authority for each institution receiving any of the moneys identified in Section II.A. This document shall contain the following information:

- (1) The name of the institution.
- (2) The categories of moneys as described in Section II.D. to be deposited in the fund.
- (3) The position or individual authorized to approve disbursements from the fund.

The fund authority shall constitute authorization for the State Treasurer to establish and administer such a fund in the name of the institution.

D. Institutional trust fund authorities. The president is authorized to approve for each institution for which an Agency Fund is established pursuant to Section II.C. one or more Institutional Trust Fund Authorities for each of the following categories as may be appropriate to that institution's operations:

- (1) **Gifts, devises and bequests.** This category comprises all receipts described in Section II.A.(1), including income derived from the investment of institutional trust fund balances and gifts and grants for student loans (including federal and state contributions).
- (2) **Federal contracts, grants and agreements.** This category comprises receipts described in Section II.A.(2), including receipts derived from the sale of surplus federal property originally purchased through a federal institutional trust fund.
- (3) **Non-federal contracts and grants.** This category comprises receipts described in Section II.A.(3) not properly includable in another category.
- (4) **Student extracurricular activities.** This category comprises receipts described in Section II.A.(4), including receipts from student activities fees established by the Board of Governors for the support of student organizations, student athletic and recreational activities (other than intercollegiate athletics), student entertainment, student publications and similar activities.

- (5) **Institutional auxiliary enterprises and activities supporting scholarship funds and student activity programs.** This category comprises receipts described in Section II.A.(5) and Section II.A.(6) from the operation of self-supporting service enterprises which exist primarily to furnish goods or services to students, faculty, or staffs and institutional programs and for which charges or fees are related to the cost of the goods or services. By way of illustration but not limitation, these enterprises include the operation of housing, food, health, and laundry services, central stores, printing and duplicating services, student stores, student centers, athletic facilities, rental property, utilities systems, and similar operations, specifically including all operations whose profits are dedicated to scholarship support or specific student activity programs.
- (6) **Fees for services of health care professionals.** This category comprises receipts described in Section II.A.(7).
- (7) **Dispositions of real property.** This category includes receipts described in Section II.A.(8) of net proceeds from the disposal of any interest in real property belonging to an institution and acquired as described in Section II.A.(8).
- (8) **Institutional forests and forest farmlands.** This category includes receipts described in Section II.A.(9) of moneys received from operation and maintenance of institutional forests and forest farmlands and used, when used, in support of forest-related research, teaching, and public service programs.

Each Institutional Trust Fund Authority shall contain the following information:

- (1) The name of the institution.
- (2) The source(s) of the moneys to be credited thereunto.
- (3) The purpose(s) for which the moneys credited thereunto may be used.
- (4) The position or individual authorized to receive moneys to be credited thereto and to disburse them.

Upon the approval of the president, the Institutional Trust Fund Authority shall be transmitted to the chancellor of the institution and a copy shall be filed among the permanent records of the president's office. When established as provided therein, the Institutional Trust Fund Authority shall constitute authorization for the institution to receive and disburse the moneys described therein in accordance with the purposes stated, subject to the provisions of G.S. 143-18.1 with respect to capital improvements projects.

E. Subsidiary Account Authorities. For each subsidiary account within one of the categories described in Section II.D., the chancellor is authorized to approve an account authority containing the following information:

- (1) The Institutional Trust Fund Authority within which the account is established.
- (2) The name of the account and its accounting designation.
- (3) The source of the moneys to be credited thereto.
- (4) The purpose of the account, including any specific restrictions, terms or conditions on the use of the moneys credited thereto.

(5) The position or individual authorized to accept receipts and initiate disbursements from the account. Each account authority for institutional trust funds authorized by the chancellor shall be filed among the permanent records of his office and it shall constitute authorization for establishment and operation of the account in accordance with the purposes stated therein.

- F. Deposit to and disbursement from institutional trust fund accounts.** Except as provided in Section II.I., all moneys within the categories described in Section II.A. that are received by an institution shall be deposited with the State Treasurer in that institution's Agency Fund and credited to the appropriate Institutional Trust Fund and subsidiary account on the institution's books. Disbursement of such moneys shall be accomplished by warrant on the State Treasurer issued by the person designated in the Agency Fund Authority upon voucher or requisition of the person designated in the Institutional Trust Fund Authority or the subsidiary account authority as appropriate. No disbursement shall be made for a purpose not specified in the appropriate fund or account authority or contrary to any specific restrictions, terms or conditions on the use of the funds.
- G. Allocation of investment income.** Subject to any restrictions thereon, investment income credited to an institution's Agency Fund by the State Treasurer as provided in Section II.D. may be used for institutional support purposes in such manner as the president shall approve.
- H. Financial reports.** Financial reports on the Institutional Trust Funds as identified in this Section II shall be submitted by the chancellors to the State Budget Officer, the president and the local Board of Trustees of the institution. The frequency, form and content of the reports shall be prescribed by the president, in accordance with the requirements of the Director of the Budget.
- I. Fees for services of health care professionals.** Any of the foregoing provisions of this Section to the contrary notwithstanding, funds identified in Section II.A.(7) shall be deposited in an official depository of the institution.
- J. Investment of cash balances.** Available cash balances shall be invested in interest bearing deposits and investments so that the rate of return equals that realized from the investment of state funds generally and shall otherwise be managed in the manner provided for in Section III.D, E, F, G, and H. Income earned on investment of funds shall be used, subject to any restrictions thereon, in such manner as may be prescribed further in the Institutional Trust Fund Authority.

III. SPECIAL FUNDS OF INDIVIDUAL INSTITUTIONS

- A. Applicability.** This Section III applies to moneys within the following categories:
- (1) moneys received from or for the operation by the institution of its program of intercollegiate athletics.
 - (2) moneys held by the institution as fiscal agent for individual students, faculty, staff members, and organizations.
- B. Account Authority.** Effective January 15, 1979, a chancellor shall not authorize the creation or continuation of an account for special funds falling within any of the categories described in Section III.A. until he has established an account authority for that account. Upon approving an account authority for special funds, the chancellor shall file it among the permanent records of his office and it shall constitute authorization for establishment and operation of the account in accordance with the purposes stated therein.

- C. Allocation of investment income.** Income earned on investment of funds covered by this Section III shall be used, subject to any restrictions thereon, in such manner as may be prescribed in the account authority.
- D. Fidelity bonding.** Each officer, employee, or agent of an institution who handles or has in his custody any of the funds described in Section III.A., or who has access to physical inventories constituting assets of accounts established under this Section III, shall be covered by an individual or blanket fidelity bond with sufficient sureties payable to the institution.
- E. Investment of idle funds.**
- (1) An institution may deposit at interest or invest all or part of the cash balance of any account established under this Section III.
 - (2) Moneys may be deposited at interest in any bank or trust company in this state in the form of certificates of deposit, savings accounts, or similar interest-bearing time deposits. Such deposits shall be secured as provided in Section I II.G.
 - (3) Moneys may be invested in any form of investment allowed by law to the State Treasurer or any of the securities authorized by A RESOLUTION CONCERNING THE INVESTMENT OF UNIVERSITY FUNDS NOT REQUIRED FOR CURRENT USE adopted by the Executive Committee of the Board of Trustees of the University of North Carolina on March 14, 1969.
 - (4) The institution may employ one or more fiscal agents for the purposes of this section.
- F. Selection of depositories.** The chancellor of each institution shall designate as the official depository of the institution one or more banks or trust companies in this state. No funds subject to this Section III shall be deposited in any place, bank or trust company other than an official depository, except as otherwise required by the terms of any debt instrument containing special provisions with respect to deposits.
- G. Deposits to be secured.** The amount of money on deposit in an official depository or deposited at interest pursuant to Section III.E. shall be fully secured by deposit insurance, surety bonds, or investment securities of such nature, in such amounts, and in such manner as is prescribed by the State Treasurer for the security of state funds generally.
- H. Daily deposits.** All receipts subject to this Section III shall be deposited daily. If the chancellor gives his approval, deposits shall be required only when the moneys on hand amount to as much as two hundred and fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the week.
- I. Reports on the status of deposits and investments.** The chancellor shall report annually to the president as of June 30 of each year of the amounts of funds on deposit in official depositories of the institution, a list of all investment securities held on behalf of these accounts, and a description of the surety bonds or investment securities securing these deposits and investments.

IV. IMPLEMENTATION

- A. Requests for Authorizations.** On or before February 1, 1979, or with respect to funds cited in Section II.A.(6),(8), and (9) as directed by the State Controller, the chancellor of each institution shall forward a request for approval of an agency fund authority as identified in Section II.C. and such institutional trust fund authorities as

may be required by the institution, as identified in Section II.D. The request shall be accompanied by a complete list of all accounts in his possession or under his direct control as of January 1, 1979, or on July 1, 1990, with respect to funds cited in Section II.A.(6),(8), and (9) containing any institutional trust funds as defined in G.S. 116-36.1. This inventory shall be organized in the categories described in Section II.D. and for each separate account shall show the following information:

- (1) The name of the account and its accounting designation.
- (2) The amount of cash balance and investments of the account as of the date of the inventory.

B. Deposit of funds with the State Treasurer. Upon the receipt of approved fund authorities, the chancellor shall transfer the cash balance and investments of accounts so identified (other than organized practice plan receipts as defined in N.C.G.S. § 116-36.1(g)(7)) to the State Treasurer for deposit in the State Treasurer's Agency Fund for that institution and shall proceed to disburse moneys in accordance with the provisions of Section II.F. These transfers shall be made in accordance with the following schedule:

- (1) The current cash balance of each account shall be transferred as directed above.
- (2) Cash-equivalent investments shall be converted into cash and transferred upon maturity.
- (3) Investment securities shall be converted into cash and transferred at such time as may be mutually agreeable to the State Treasurer and the institution.

These initial transfers of cash balances and investments shall be without prejudice to adjustments later found to be appropriate.

C. Accounting and reporting. The chancellor of each institution will proceed to establish the subsidiary account authorities as identified in Section II.E. and to modify further the internal accounting systems and procedures of the institution as may be necessary to the end that all requirements of this resolution will have been met forthwith.

Administrative Procedures Relative to Trust Fund Legislation

In 1978 the General Assembly passed legislation which addressed the custody and management of federal and other nonappropriated funds held by the University. The legislation identified three specific categories of nonappropriated funds and directed the Board of Governors to adopt uniform policies and procedures for administration of these funds. The three categories of funds addressed in the legislation were identified as institutional trust funds, special funds of individual institutions, and institutional student auxiliary enterprise funds. On January 12, 1979, the board adopted a resolution which established administrative policies and procedures in accordance with the requirements of the 1978 legislation.

In 1990 the General Assembly enacted legislation which expanded the definition of "institutional trust funds" to include institutional student auxiliary enterprise funds and funds received from the operation and maintenance of institutional forest and forest farmlands, thereby necessitating a revision of the Board of Governors' resolution of January 12, 1979. On February 8, 1991, the board adopted the foregoing resolution which revises established policies and procedures concerning the custody and management of institutional trust funds and special funds of individual institutions.

Due to this expanded definition of institutional trust funds, the board's resolution of February 8, 1991 now addresses only two categories of federal and other nonappropriated funds which are identified as follows.

1. **Institutional Trust Funds.** The Board of Governors is charged with custody and management of these funds. The following receipts are included in this category: gifts, devises, and bequests; federal contracts, grants, and agreements; nonfederal contracts and grants; student extracurricular activities; activities supporting scholarship funds and student activity programs; self-supporting auxiliary enterprises, including institutional student auxiliary funds for the operation of housing, food, health and laundry services; fees for services of healthcare professionals; proceeds from disposition of real property; and institutional forests and forest farmlands. With the exception of fees for services of healthcare professionals, these funds are to be deposited with the State Treasurer.
2. **Special Funds of Individual Institutions.** The chancellor of each institution is responsible for custody and management of the special funds of that institution. The following receipts are included in this category: intercollegiate athletic program receipts; and funds held by the institution as fiscal agent for individual students, faculty, staff members, and organizations. These funds are to be deposited in an official depository of the institution.

With respect to funds cited in Section II.A. (6), (8), and (9) of the foregoing Board of Governors' resolution, the following schedule has been established for implementing the board's regulations.

1. The transfers of all cash balances from Auxiliary Enterprise Funds (budget code 560XX) to Institutional Trust funds (budget code 060XX) should have been completed as directed by the State Controller's memorandum No. 90-19 dated August 1, 1990. This memorandum is provided as an attachment to *Chart of Accounts Memorandum No. 40*.
2. On or before March 1, 1991, the chancellor of each institution shall forward a request for approval, by the president, of an agency fund authority as identified in Section II.C. of the resolution and such institutional trust fund authorities as may be required by the institution as identified in Section II.D. of the resolution. The formats for these fund authorities are provided as attachments to *Chart of Accounts Memorandum No. 40*. The chancellor's request should be accompanied by a complete list of all accounts in the chancellor's possession or under the chancellor's direct control as of July 1, 1990, which contain any institutional trust funds as defined in Section II.A.

(6),(8), and (9) of the board's resolution. This inventory shall be organized in the categories as described in Section II.D. of the resolution and for each separate account shall show the following information.

- (1) The name of the account and its accounting designation.
 - (2) The amount of cash and investments in each account as of the date of the inventory.
3. The institution will proceed simultaneously to establish any required subsidiary account authorities, as identified in Section II.E. of the resolution, which must be approved by the chancellor and to modify the internal accounting systems and procedures of the institution to the end that all requirements of the regulations are met no later than March 1, 1991.

A uniform format for a quarterly report on Institutional Trust Funds financial activity has been developed and is provided in a set of guidelines attached to *Chart of Accounts Memorandum No. 40*. Also, definitions of Institutional Trust Fund receipts categories have been prepared in order to achieve uniformity in the classification and reporting of receipts. These definitions are also included in the guidelines.

[This is a rewrite of Administrative Memorandum #302.]

NOTES:

Adopted 10/14/77
Revised 02/13/81

ENDOWMENT FUNDS UNDER N.C.G.S. § 116-36

A. Regulations for Endowment Property Exclusively for the Benefit of One Constituent Institution.

1. Under the provisions of N.C.G.S. § 116-36, as amended by Chapter 506, 1977 Session Laws, and pursuant to these regulations, uniformly applicable to all constituent institutions, the Board of Trustees of each constituent institution shall establish and maintain an endowment fund for the constituent institution.
2. It is not the statutory intent underlying these regulations that the proceeds from any endowment fund shall take the place of state appropriations or any part thereof, but it is the statutory intent underlying these regulations that those proceeds shall supplement the state appropriations to the end that the constituent institution may improve and increase its functions, may enlarge its area of service, and may become more useful to a greater number of people.
3. Pursuant to these regulations each Board of Trustees shall appoint an investment board to be known as "The Board of Trustees of the Endowment Fund of" _____ (here shall be inserted the name of the constituent institution).
4. The Board of Trustees of the endowment fund shall consist of no fewer than five members and no more than seven members, as determined by the Board of Trustees of the constituent institution. One member of the Board of Trustees of the endowment fund shall be the chairman of the Board of Trustees of the constituent institution, one member shall be the chancellor of the constituent institution, and the remainder of the members may be (but need not be) members of the Board of Trustees of the constituent institution and shall be elected by the Board of Trustees of the constituent institution for overlapping terms of three years each. The terms of the three elected members of the Board of Trustees shall be initially for one, two, and three years each. All elections thereafter shall be for a regular term of three years, except that any person elected by the Board of Trustees to fill a vacancy created otherwise than by the expiration of a term shall be elected to serve the remainder of the term of the person whom he or she succeeds. The chairman of the Board of Trustees of the constituent institution shall be *ex officio* the chairman of the Board of Trustees of the endowment fund of that institution. The Board of Trustees of the endowment fund may establish procedures, consistent with these regulations, for executing business and shall at least establish a quorum and a necessary vote for the transaction of business and require the keeping of minutes for meetings of the endowment board.
5. The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from state appropriations and from tuition and fees collected from students and used for the general operation of the institution.
6. Any gift, devise, or bequest of real or personal property to the constituent institution shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case maybe, to the endowment fund of the constituent institution. This presumption shall not apply to property made available to the institution prior to June 8, 1977.

7. Property shall not be deemed a part of the corpus of the endowment fund until it has been presented by the chancellor of the institution through written description of the property to the trustees of the endowment fund and has been acknowledged in writing as received by the trustees of the endowment fund. Property expressly or presumptively made available to the constituent institution for its endowment fund shall be presented by the chancellor to the trustees of the endowment fund as provided in this paragraph unless the chancellor finds that the property: (1) though presumptively made available to the institution for its endowment fund, was in fact made available to the institution for some other purpose; (2) has been made available to the institution under conditions which make its acceptance or use illegal; or (3) is unsuitable for use as property of the endowment fund.
8. The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.
9. The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Advisory Budget Commission by the Board of Trustees of the endowment fund through successive endorsements by the Board of Trustees of the institution and the Board of Governors; and provided further that, any gratuitous transfer of property or funds from the endowment fund shall be only upon direction of the Board of Trustees of the institution upon recommendation of the chancellor.
10. The Board of Trustees of the endowment fund may appoint a fiscal agent or agents having all the privileges, powers, and immunities set forth in paragraph A.9. to the trustees of the endowment fund except that no fiscal agent shall have authority to approach the Advisory Budget Commission as otherwise provided in paragraph A.9. The Board of Trustees of the endowment fund may from time to time change its appointed fiscal agent or agents.
11. In the process of prudent investment of the fund (including the acquisition and maintenance of property for the fund) or to realize the intent underlying these endowment regulations, the Board of Trustees of the endowment fund or a fiscal agent appointed pursuant to paragraph A.10. may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used nor violate the provisions of paragraph A.9.
12. To realize the statutory intent underlying these endowment regulations, the Board of Trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the constituent institution; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer; and provided further that, such transfer be executed only by direction of the Board of Trustees of the institution and for the purpose identified by the Board of Trustees of the institution, upon recommendation of the chancellor.

13. Whenever any property of the endowment fund is disposed of or otherwise transferred from the endowment fund to the constituent institution or to any other recipient, any instrument of transfer shall indicate that the donor, grantor, seller, lessor, lender, or transferor, as the case may be, is the Board of Trustees of the endowment fund
14. The Board of Trustees of the endowment fund shall annually submit a comprehensive report on the endowment fund through the Board of Trustees of the institution to the Board of Governors.
15. The Board of Trustees of each constituent institution shall within a reasonable time establish an endowment fund as provided in these regulations.
16. After a constituent institution has established an endowment fund as provided in these regulations, the Board of Trustees of the institution shall direct that the chancellor inventory, consider, and present for placement in the endowment fund, as provided in paragraph A.7., all property that reposes in any institutional endowment, trust, or account as endowment property. The provisions of this paragraph shall not apply to property reposing in any endowment, trust, or foundation that has corporate identity other than under N.C.G.S. § 116-3.
17. When the trustees of the endowment fund acknowledge in writing receipt of property pursuant to paragraph A.16., the provisions of the "Policy on Endowments" of April 11, 1974, of the Board of Governors and any resolution of the Board of Governors made in consequence of the "Policy on Endowments" shall be deemed inoperative with respect to the pertinent constituent institution; provided that, the transfer of title to any property by the Board of Governors to the endowment fund of the constituent institution shall be deemed to have continued in effect. These regulations shall be effective upon their enactment by the Board of Governors.

B. Regulations for Endowment Property for the Benefit of The University of North Carolina as a Whole or for the Benefit of Two or More Constituent Institutions.

1. Under the provisions of N.C.G.S. § 116-36, as amended by Chapter 506, 1977 Session Laws, and pursuant to these regulations, uniformly applicable to all constituent institutions, the Board of Governors of the University of North Carolina hereby establishes an endowment fund for all endowment funds now held or hereafter acquired by the University of North Carolina for the benefit of the University as a whole, or for the joint benefit of any two or more constituent institutions of the University.
2. It is not the statutory intent underlying these regulations that the proceeds from the endowment fund shall take the place of state appropriations or any part thereof, but it is the statutory intent underlying these regulations that those proceeds shall supplement the state appropriations to the end that the University and its constituent institutions may improve and increase their functions, may enlarge their areas of service, and may become more useful to a greater number of people.
3. The Committee on Budget and Finance of the Board of Governors of the University of North Carolina shall constitute the Board of Trustees of all endowment funds now held or hereafter acquired by the University of North Carolina for the benefit of the University as a whole or for the joint benefit of any two or more constituent institutions of the University, to be known as "The Board of Trustees of the Endowment Fund of the University of North Carolina." The chairman of the Committee on Budget and Finance shall be *ex officio* the chairman of the Board of Trustees of the endowment fund. Procedure for the conduct of business by the Board of Trustees of the endowment fund shall be consistent with Section 302C of *The Code of The University of North Carolina*.

4. The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from state appropriations and from tuition and fees collected from students and used for the general operation of the institution.
5. Any gift, devise, or bequest of real or personal property to the University of North Carolina shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be to the endowment fund. This presumption shall not apply to property made available to the University of North Carolina prior to June 8, 1977.
6. Any gift, devise or bequest of real or personal property to the University of North Carolina for the benefit of the University as a whole or for the joint benefit of any two or more constituent institutions that reposes in any endowment, trust, or account as endowment property shall be inventoried, considered, and presented by the president for placement in the endowment fund as provided in paragraph B.8. The provisions of this paragraph shall not apply to property reposing in any endowment, trust, or foundation that has corporate identity other than under N.C.G.S. § 116-3.
7. Any gift, devise, or bequest of real or personal property jointly to two or more constituent institutions shall be presented through written description of the property by the chancellors of the beneficiary institutions to the president for his consideration and action as provided in paragraph B.8. The provisions of this paragraph shall not apply to property reposing in any endowment, trust, or foundation that has corporate identity other than under N.C.G.S. § 116-3.
8. Property shall not be deemed a part of the corpus of the endowment fund until it has been presented by the president through written description of the property to the trustees of the endowment fund and has been acknowledged in writing as received by the trustees of the endowment fund. Property expressly or presumptively made available to the endowment fund shall be presented by the president to the trustees of the endowment fund as provided in this paragraph unless the president finds that the property:
 - (1) though presumptively made available to the University of North Carolina for its endowment fund, was in fact made available to the University for some other purpose;
 - (2) has been made available under conditions which make its acceptance or use illegal; or
 - (3) is unsuitable for use as property of the endowment fund.
9. The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.
10. The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging their credit or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes, provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the

endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Advisory Budget Commission by the Board of Trustees of the endowment fund upon the endorsement of the Board of Governors; and provided further that, any gratuitous transfer of property or funds from the endowment fund shall be only upon direction of the Board of Governors of the University of North Carolina upon recommendation of the president.

11. The Board of Trustees of the endowment fund may appoint a fiscal agent or agents having all the privileges, powers, and immunities set forth in paragraph B.10. relative to the trustees of the endowment fund except that no fiscal agent shall have authority to approach the Advisory Budget Commission as otherwise provided in paragraph B.10. The Board of Trustees of the endowment fund may from time to time change its appointed fiscal agent or agents.
12. In the process of prudent investment of the fund (including the acquisition and maintenance of property for the fund) or to realize the intent underlying these endowment regulations, the Board of Trustees of the endowment fund or a fiscal agent appointed pursuant to paragraph B.11. may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used nor violate the provisions of paragraph B.10.
13. To realize the statutory intent underlying these endowment regulations, the Board of Trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the University of North Carolina or to constituent institutions provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer, and provided further that, such transfer be executed only by direction of the Board of Governors of the University of North Carolina and for the purpose identified by the Board of Governors, upon recommendation of the president.
14. Whenever any property of the endowment fund is disposed of or otherwise transferred from the endowment fund to the University of North Carolina, to a constituent institution, or to any other recipient, any instrument of transfer shall indicate that the donor, grant or, seller, lessor, lender, or transferor, as the case may be, is the Board of Trustees of the endowment fund.
15. The trustees of the endowment fund shall maintain discrete accounts for property received into the endowment fund identified as to those institutions made beneficiaries of the respective properties by their donors; and, upon distribution, the income and other proceeds from the various properties shall be provided only to those beneficiary institutions intended by the donor and in the proportion intended by the donor.
16. The Board of Trustees of the endowment fund shall annually submit a comprehensive report on the endowment fund to the Board of Governors.
17. The president shall inventory, consider, and present for placement in the endowment fund, as provided in paragraph B.8., all property that presently reposes in any endowment, trust, or account as endowment property for the benefit of the University of North Carolina as a whole or for the benefit of two or more constituent institutions. The provisions of this paragraph shall not apply to property reposing in any endowment, trust, or foundation that has corporate identity other than under N.C.G.S. § 116-3.
18. When the trustees of the endowment fund acknowledge in writing receipt of property pursuant to paragraph B.17., the provisions of the "Policies on Endowments" of April 11, 1974, of the Board of Governors concerning endowment funds for the benefit of

the University as a whole or for the joint benefit of any two or more constituent institutions shall be deemed inoperative.

19. These regulations shall be effective upon their enactment by the Board of Governors.

C. Regulations for Endowment Property for the Benefit of The University of North Carolina Press.

1. Under the provisions of N.C.G.S. § 116-36, as amended by Chapter 506, 1977 Session Laws, and pursuant to these regulations, uniformly applicable to all constituent institutions, the Board of Governors of the University of North Carolina hereby establishes an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Press.
2. It is not the statutory intent underlying these regulations that the proceeds from the endowment fund shall take the place of state appropriations or any part thereof, but it is the statutory intent underlying these regulations that those proceeds shall supplement the state appropriations to the end that the University of North Carolina Press may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.
3. The Board of Governors of the University of North Carolina Press shall constitute the Board of Trustees of all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Press, to be known as "The Board of Trustees of the Endowment Fund of the University of North Carolina Press." The chairman of the Board of Governors of the University of North Carolina Press shall be *ex officio* the chairman of the Board of Trustees of the endowment fund. Procedures for the conduct of business by the Board of Trustees of the endowment fund shall be consistent with procedures for the conduct of business by the Board of Governors of the University of North Carolina Press, Incorporated.
4. The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from state appropriations and from tuition and fees collected from students and used for the general operation of the University.
5. Any gift, devise, or bequest of real or personal property to the University of North Carolina Press shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the University of North Carolina Press. This presumption shall not apply to property made available to the University of North Carolina Press prior to June 8, 1977.
6. Property shall not be deemed a part of the corpus of the endowment fund until it has been presented by the president of the University of North Carolina through written description of the property to the trustees of the endowment fund and has been acknowledged in writing as received by the trustees of the endowment fund. Property expressly or presumptively made available to the University of North Carolina Press for its endowment fund shall be presented by the president of the University of North Carolina to the trustees of the endowment fund as provided in this paragraph unless the president, in consultation with the Director of the University of North Carolina Press, finds that the property: (1) though presumptively made available to the University of North Carolina Press for its endowment fund, was in fact made available to the Press for some other purpose; (2) has been made available under conditions which make its acceptance or use illegal; or (3) is unsuitable for use as property of the endowment fund.

7. The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.
8. The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging the credit of the State of North Carolina or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Advisory Budget Commission by the Board of Trustees of the endowment fund upon the endorsement of the Board of Governors of the University of North Carolina; and provided further that, any gratuitous transfer of property or funds from the endowment fund shall be only upon direction of the Board of Governors of the University of North Carolina Press upon recommendation of the president.
9. The Board of Trustees of the endowment fund may appoint a fiscal agent or agents having all the privileges, powers, and immunities set forth in paragraph C.8. relative to the trustees of the endowment fund except that no fiscal agent shall have authority to approach the Advisory Budget Commission as otherwise provided in paragraph C.8. The Board of Trustees of the endowment fund may from time to time change its appointed fiscal agent or agents.
10. In the process of prudent investment of the fund (including the acquisition and maintenance of property for the fund) or to realize the intent underlying these endowment regulations, the Board of Trustees of the endowment fund or a fiscal agent appointed pursuant to paragraph C.9. may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used nor violate the provisions of paragraph C.8.
11. To realize the statutory intent underlying these endowment regulations, the Board of Trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the University of North Carolina Press; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer; and provided further that, such transfer be executed only by direction of the Board of Governors of the University of North Carolina Press and for the purpose identified by the Board of Governors of the University of North Carolina Press, upon recommendation of the president.
12. Whenever any property of the endowment fund is disposed of or otherwise transferred from the endowment fund to the University of North Carolina Press or to any other recipient, any instrument of transfer shall indicate that the donor, grantor, seller, lessor, lender, or transfer or, as the case may be, is the Board of Trustees of the endowment fund.
13. The Board of Trustees of the endowment fund shall annually submit a comprehensive report on the endowment fund to the Board of Governors of the University of North Carolina, through the president.

14. The president shall inventory, consider, and present for placement in the endowment fund, as provided in paragraph C.6., all property that presently reposes in any endowment, trust, or account as endowment property for the benefit of the University of North Carolina Press. The provisions of this paragraph shall not apply to property reposing in any endowment, trust, or foundation that has corporate identity other than under N.C.G.S. § 116-3 or the University of North Carolina Press, Incorporated.
15. When the trustees of the endowment fund acknowledge in writing receipt of property pursuant to paragraph C.14., the provisions of the "Policies on Endowments" of April 11, 1974, of the Board of Governors of the University of North Carolina concerning endowment funds for the benefit of the University of North Carolina Press shall be deemed inoperative.
16. When the trustees of the endowment fund acknowledge in writing receipt of property pursuant to paragraph C.14., the resolution of May 10, 1974, of the Board of Governors of the University of North Carolina concerning property held for the use and benefit of the University of North Carolina Press shall be deemed inoperative; provided that, the transfer of title to property under Section 1 of the resolution of May 10, 1974, to the Board of Governors of the University of North Carolina Press shall be deemed to have continued in effect.
17. These regulations shall be effective upon their enactment by the Board of Governors of the University of North Carolina.

Administrative Policies on Endowment Funds

North Carolina General Statutes § 116-36 provides a convenient and serviceable basis for the creation and maintenance of endowment funds of the constituent institutions. The law requires each constituent institution to create an endowment fund.

On October 14, 1977, the Board of Governors established the foregoing regulations to assist the creation and operation of endowment funds under N.C.G.S. § 116-36. The board amended these requirements on February 13, 1981. The following is a procedural guide for establishing the endowment fund as required under N.C.G.S. § 116-36(a).

1. The Board of Trustees of the constituent institution should convene and determine the elective members of the endowment board as provided in paragraph A.4. of the regulations. The institutional board should then name for the record all the members, *ex officio* and elective, of the endowment board and declare the endowment board established as required by paragraph A.15.
2. The endowment board should then convene to establish procedures for the execution of business, to include at least specifying a quorum, establishing the necessary vote for transaction of business, and requiring the keeping of minutes, as set forth in paragraph A.4.
3. The institutional board should then direct the chancellor to inventory endowment property of the institution as required under paragraph A.16.
4. All personal property (1) reposing in an endowment fund established pursuant to Section 2 of the Board of Governors resolution of April 11, 1974, entitled "Policies on Endowments," (superseded by the attached resolution) reposing as endowment property in any endowment, trust, or account having no corporate identity other than under N.C.G.S. § 116-3 and (2) not deemed by the chancellor improper for placement in the endowment fund under paragraph A.7., should be presented by the chancellor to the new endowment board as provided in paragraph A.16.
5. All real property (1) reposing in an endowment fund established pursuant to Section 2 of the Board of Governors resolution of April 11, 1974, entitled "Policies on Endowments," (superseded by the attached resolution) or reposing as endowment property in any endowment, trust, or account having no corporate identity other than under N.C.G.S. § 116-3 and (2) not deemed by the chancellor to be improper for placement in the endowment fund under paragraph A.7., should be presented by the chancellor to the institutional Board of Trustees to initiate transfer of the real property to the endowment board according to policies of the Board of Governors, policies of the Council of State, and provisions of N.C.G.S. Chapter 146 concerning disposition of State real property other than by lease or rental. Pursuant to N.C.G.S. § 146-75 the actual transfer must be effected by a deed from "the State of North Carolina" signed by the Governor and attested by the Secretary of State. The grantee should be named "the Board of Trustees of the Endowment Fund of [the constituent institution]." Deeds from the State are normally prepared by the State Property Office in the Department of Administration, Raleigh.
6. Any real property coming expressly to the new endowment board or pursuant to paragraph A.6. coming by presumption on or after June 8, 1977 to the endowment fund may be placed in or transferred into the new endowment fund without reference to N.C.G.S. Chapter 146.
7. As property is presented to the endowment board through the procedures of steps 4 through 6, the endowment board should receive the written inventories and instruments of title of the property, accept by motion the property offered, and make the inventories and motions a part of the minutes of the endowment board.

8. The grantor or transferor of any property from the new endowment fund should be designated "The Board of Trustees of the Endowment Fund of [the constituent institution]." Although conveyances and transfers from the new endowment fund may be executed by the endowment board without reference to N.C.G.S. Chapter 146, the form of pertinent documents should be consistent with requirements of the State Property Office.
9. Conveyances of title or transfers of the useful possession of real property valued at \$50,000 or more among the endowment fund, the institution, and the State of North Carolina would require prior approval of the Board of Governors; but conveyances or transfers of real property valued at \$50,000 or more pursuant to accepting gifts and devises of benefactors at large into the endowment fund or in managing the corpus of the endowment would not require prior approval of the Board of Governors.

[This is a rewrite of Administrative Memoranda #93 and #150.]

Adopted 03/20/81

**THE ENDOWMENT FUND OF
THE UNIVERSITY OF NORTH CAROLINA CENTER FOR PUBLIC TELEVISION**

1. Under the provisions of N.C.G.S. § 116-36, as amended by Chapter 506, 1977 Session Laws and by Chapter 649, 1979 Session Laws, and pursuant to these regulations, uniformly applicable to all constituent institutions, the Board of Governors of the University of North Carolina hereby establishes an endowment fund for all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Center for Public Television.
2. It is not the statutory intent underlying these regulations that the proceeds from the endowment fund shall take the place of state appropriations or any part thereof, but it is the statutory intent underlying these regulations that those proceeds shall supplement the state appropriations to the end that the University of North Carolina Center for Public Television may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.
3. The Board of Trustees of the University of North Carolina Center for Public Television shall constitute the board of trustees of all endowment funds now held or hereafter acquired for the benefit of the University of North Carolina Center for Public Television, to be known as "The Board of Trustees of the Endowment Fund of The University of North Carolina Center for Public Television." The chairman of the Board of Trustees of the University of North Carolina Center for Public Television shall be *ex officio* the chairman of the Board of Trustees of the endowment fund. Procedures for the conduct of business by the Board of Trustees of the endowment fund shall be consistent with procedures for the conduct of business by the Board of Trustees of the University of North Carolina Center for Public Television.
4. The trustees of the endowment fund may receive and administer as part of the endowment fund gifts, devises, and bequests and any other property of any kind that may come to them from the Board of Governors of the University of North Carolina or that may come to the trustees of the endowment fund from any other source, excepting always the moneys received from state appropriations and from tuition and fees collected from students and used for the general operation of the University.
5. Any gift, devise, or bequest of real or personal property to the University of North Carolina Center for Public Television shall be presumed, nothing to the contrary appearing, a gift, devise, or bequest, as the case may be, to the endowment fund of the University of North Carolina Center for Public Television. This presumption shall not apply to property made available to the University of North Carolina Center for Public Television or its functional predecessor prior to May 28, 1979.
6. Property shall not be deemed a part of the corpus of the endowment fund until it has been presented by the president of the University of North Carolina through written description of the property to the trustees of the endowment fund and has been acknowledged in writing as received by the trustees of the endowment fund. Property expressly or presumptively made available to the University of North Carolina Center for Public Television for its endowment fund shall be presented by the president of the University of North Carolina to the trustees of the endowment fund as provided in this paragraph unless the president, in consultation with the director of the University of North Carolina Center for Public Television finds that the property:
 - (1) though presumptively made available to the University of North Carolina Center for Public Television for its endowment fund, was in fact made available to the center for some other purpose;

- (2) has been made available under conditions which make its acceptance or use illegal; or
 - (3) is unsuitable for use as property of the endowment fund.
7. The trustees of the endowment fund shall be responsible for the prudent investment of the fund in the exercise of their sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries but in compliance with any lawful condition placed by the donor upon that part of the endowment fund to be invested.
8. The trustees of the endowment fund shall have the power to buy, sell, lend, exchange, lease, transfer, or otherwise dispose of or to acquire (except by pledging the credit of the State of North Carolina or violating a lawful condition of receipt of the corpus into the endowment fund) any property, real or personal, with respect to the fund, in either public or private transaction, and in doing so they shall not be subject to the provisions of Chapters 143 and 146 of the General Statutes; provided that, any expense or financial obligation of the State of North Carolina created by any acquisition or disposition, by whatever means, of any real or personal property of the endowment fund shall be borne by the endowment fund unless authorization to satisfy the expense or financial obligation from some other source shall first have been obtained from the Advisory Budget Commission by the Board of Trustees of the endowment fund upon the endorsement of the Board of Governors of the University of North Carolina; and provided further that, any gratuitous transfer of property or funds from the endowment fund shall be only upon direction of the Board of Trustees of the University of North Carolina Center for Public Television upon recommendation of the president.
9. The Board of Trustees of the endowment fund may appoint a fiscal agent or agents having all the privileges, powers, and immunities set forth in paragraph 8 relative to the trustees of the endowment fund except that no fiscal agent shall have authority to approach the Advisory Budget Commission as otherwise provided in paragraph 8. The Board of Trustees of the endowment fund may from time to time change its appointed fiscal agent or agents.
10. In the process of prudent investment of the fund (including the acquisition and maintenance of property for the fund) or to realize the intent underlying these endowment regulations, the Board of Trustees of the endowment fund or a fiscal agent appointed pursuant to paragraph 9 may expend or use interest and principal of gifts, devises, and bequests; provided that, the expense or use would not violate any condition or restriction imposed by the original donor of the property which is to be expended or used nor violate the provisions of paragraph 8.
11. To realize the statutory intent underlying these endowment regulations, the Board of Trustees of the endowment fund may transfer interest or principal of the endowment fund to the useful possession of the University of North Carolina Center for Public Television; provided that, the transfer would not violate any condition or restriction imposed by the original donor of the property which is the subject of the proposed transfer; and provided further that, such transfer be executed only by direction of the Board of Trustees of the University of North Carolina Center for Public Television and for the purpose identified by the Board of Trustees of the University of North Carolina Center for Public Television upon recommendation of the president.
12. Whenever any property of the endowment fund is disposed of or otherwise transferred from the endowment fund to the University of North Carolina Center for Public Television or to any other recipient, any instrument of transfer shall indicate that the donor, grantor, seller, lessor, lender, or transferor, as the case may be, is the Board of Trustees of the endowment fund.
13. The Board of Trustees of the endowment fund shall annually submit a comprehensive report on the endowment fund to the Board of Governors of the University of North Carolina, through the president.

- 14.** The president shall inventory, consider, and present for placement in the endowment fund, as provided in paragraph 6, all property that presently reposes in any endowment, trust, or account as endowment property for the benefit of the University of North Carolina Center for Public Television. The provisions of this paragraph shall not apply to property reposing in any endowment, trust, or foundation that has corporate identify other than under N.C.G.S. § 116-3.
- 15.** These regulations shall be effective upon their enactment by the Board of Governors of the University of North Carolina.

NOTES:

Adopted 10/11/85
Amended 11/10/95

THE DISTINGUISHED PROFESSORS ENDOWMENT TRUST FUND

The Board of Governors received from the 1985 Session an appropriation of \$4 million (\$2 million in fiscal year 1985-86 and an additional \$2 million in fiscal year 1986-87) for the purpose of establishing "a Distinguished Professors Endowment Trust Fund to be maintained by the Board [of Governors] to provide challenge grants to the constituent institutions" (Chapter 757, 1985 Session Laws, Sec. 202; N.C.G.S. § 116-41.13-41.19). In 1995, the North Carolina General Assembly amended the statute that authorized the trust fund, to make clear that distinguished professorships could be awarded to either current faculty or newly hired faculty (Chapter 507, 1995 Session Laws, Sec. 15.12; N.C.G.S. § 116-41.18).

Consistent with the terms and conditions set out in the legislation, the Board of Governors of the University of North Carolina hereby enacts the following rules and regulations for administering the Board of Governors' Distinguished Professors Endowment Trust Fund (hereafter "the Trust Fund").

I. General

1. All funds appropriated for the Trust Fund shall be held by the Board of Governors, in accordance with N.C.G.S. § 116-36.6.
2. Matching funds shall be allocated by the Board of Governors to the constituent institutions from the Trust Fund in accordance with the schedule set out in Section II., below, and subject to all requirements and conditions in these regulations being met by the institutions that apply for allocations.

II. Schedule of Allocations

1. The sum of \$2,338,000 appropriated for the Trust Fund shall be available to fund 14 challenge grants, each in the amount of \$167,000, and each for the purpose of creating a \$500,000 endowment for a distinguished professorship in each constituent institution of the University of North Carolina, except North Carolina State University at Raleigh and the University of North Carolina at Chapel Hill.
2. The sum of \$668,000 appropriated for the Trust Fund shall be available to fund two challenge grants, each in the amount of \$334,000, and each for the purpose of creating a \$1,000,000 endowment for a distinguished professorship, one at North Carolina State University at Raleigh and one at the University of North Carolina at Chapel Hill; however, the Boards of Trustees of North Carolina State University at Raleigh and of the University of North Carolina at Chapel Hill may elect that one \$167,000 challenge grant be held in reserve for them, in lieu of the \$334,000 reserve provided for above, and in the event either or both make this election, then the balance of the \$334,000 reserve shall be added to the general reserve established in II.3., below.
3. The balance of the \$4,000,000 appropriation, plus all accrued interest shall be available to fund additional challenge grants in the amounts specified in II.1. and 2., or to increase a \$167,000 challenge grant made pursuant to II.1. to a \$334,000 grant to enable the creation of a \$1,000,000 endowment to any institution, upon proper application.
4. This schedule of allocations shall continue in effect until February 1, 1987. By that date the Board of Governors shall receive the recommendation of the Committee on Personnel and Tenure, on the basis of availability of funds and after a review of the operation of the schedule until that date, to continue this schedule or to adopt an

alternative schedule.

III. Requirements for Private Contributions

1. An institutional board of trustees, to be eligible for an allocation from the Board of Governors under the schedule set forth herein, shall establish a Distinguished Professors Endowment Fund (hereafter "Endowment Fund") to be administered in accordance with N.C.G.S. § 116-36, and to that Endowment Fund shall be deposited private contributions received for this purpose, together with the challenge grant from the Trust Fund.
2. Private contributions to this Endowment Fund must be given or pledged specifically for the purposes of the Trust Fund, and only contributions received after July 1, 1985, may be credited to the special Endowment Fund of the institution.
3. To qualify for a challenge grant from the Trust Fund in the amount of \$334,000, the institution shall have \$666,000 in donations and interest in its Endowment Fund; and to qualify for a \$167,000 challenge grant the institution shall have \$333,000 in donations and interest.
4. The appropriate challenge grant amount (\$334,000 or \$167,000) may be placed in escrow in the Trust Fund for an institution that has in its Endowment Fund \$111,000 or \$55,500, respectively, and written pledges of additional private contributions in the amount of \$555,000 or \$227,500, as appropriate; provided, that each payment or aggregate payments on this balance shall be no less than the amount of the initial payment or payments and shall be made on or before the anniversary date of the initial payment or payments and the full amount shall be paid within five years of the initial payment or payments. When the full amount (\$666,000 or \$333,000) is in the Endowment Fund, the challenge grant shall be paid from the Trust Fund.

IV. Procedures for Establishing Endowed Chairs

1. At the time an institutional board of trustees establishes the Endowment Fund required in Section III, the chancellor shall prepare a plan for the establishment of the endowed chair or chairs contemplated. This plan shall be submitted to the president for review and approval. No challenge grant shall be made in the absence of an approved plan. The plan shall describe:
 - a. the number of chairs contemplated;
 - b. the general level of salary and other benefits and perquisites, and the amounts to be supported annually by the income from the Endowment Fund;
 - c. the academic department or other unit to which it is anticipated that the chair or chairs will be assigned; and
 - d. whether the chair will be filled by an external or internal appointment (or either). Institutions are encouraged to consider plans for external appointments who will constitute distinguished additions to the faculty; and
 - e. the expected benefits to the institution.
2. The Board of Trustees may name the endowed chair or chairs in honor of a donor, benefactor, or other person or organization.
3. The selection of each distinguished professor to hold an endowed chair shall be made in the following way:

- a.** The selection and appointment procedures followed shall be fully consistent with the institution's tenure policies and regulations and other applicable personnel policies;
 - b.** The distinguished professor shall be appointed at the rank of professor¹ and the appointment shall be subject to approval by the Board of Governors;
 - c.** The academic discipline to which the person is appointed shall be one of major importance to the educational program of the institution; and
 - d.** The person appointed shall have a record of outstanding accomplishment in that discipline or field as a teacher and scholar or practitioner.
- 4.** When a vacancy occurs in an endowed chair established with the Endowment Fund, the chancellor shall consult with the institutional board of trustees. The chancellor shall there after recommend to the president any amendments to the approved plan or shall recommend continuation of the plan without amendment. Upon approval of the plan by the president, selection and appointment of the new distinguished professor shall then proceed in accordance with these regulations.

¹ At the North Carolina School of the Arts other appropriate rank shall be conferred.

NOTES:

Adopted 02/08/91

INSTITUTIONAL VENDING FACILITIES

- 1. Vending Facilities Definition.** The term "vending facilities" includes both the following: (1) any mechanical or electronic device dispensing items or something of value or entertainment or services for a fee, regardless of the method of activation, and regardless of the means of payment, whether by coin, currency, tokens, or other means; and (2) a snack bar, cafeteria, restaurant, cafe, concession stand, vending stand, cart services, or other facilities at which food, drinks, novelties, newspapers, periodicals, confections, souvenirs, tobacco products or related items are regularly sold. [N.C.G.S. § 143-12.1(g), N.C.G.S. § 111-42(d)]
- 2. State Funds.** The receipts from vending facilities operated by a constituent institution of the University of North Carolina are State funds. The payments received by a constituent institution of the University of North Carolina under which another party operates vending facilities and pays a sum to the State, whether computed as a percentage of gross or net receipts or gross or net profits, or as a fixed or variable fee, are State funds. [N.C.G.S. § 143-12.1(a)]
- 3. Deposits.** Those receipts or payments deemed State funds pursuant to paragraph 2., above, shall be deposited as provided by law in the appropriate fund to be determined by the Office of State Budget and Management. [N.C.G.S. § 143-12.1(b)]
- 4. Authorized Uses.** The following uses of net proceeds from the operations of vending facilities are authorized:

 - a.** Scholarships and other direct student financial aid programs;
 - b.** Debt service on self-liquidating facilities;
 - c.** Any of the following student activities if specifically authorized by the chancellor:

 - i.** Social and recreational activities for students residing in self-supporting University housing. However, expenditures for these purposes shall not exceed the amount of total net proceeds derived from vending facilities located in such housing facilities.
 - ii.** Special orientation programs for targeted groups of students (e.g., peer mentor programs).
 - iii.** Operating expenses of scholarships and other student awards and honors programs.
 - iv.** Supplementary student center operating support. However, expenditures for this purpose shall not exceed the total net proceeds derived from vending facilities located in such student center facilities.
 - d.** Specified use of net proceeds as a condition of certain gifts, grants, or bequests. (For example, Carolina Inn proceeds, as specified in the gift of the Inn to the University of North Carolina at Chapel Hill, are used, in part, to support the University libraries, especially the North Carolina Collection.)
 - e.** Retention to provide for working capital, replacement of facilities and equipment, and other purposes to support the continuing, orderly operation of the particular self-supporting service operation.

- f. Transfers to other self-supporting student service operations and authorized capital improvements projects, upon the written recommendation of the chancellor and subject to the written, advance approval of the president. [N.C.G.S. § 116-36. 4]
5. **Account Applicability.** Only those accounts defined, budgeted, and expended pursuant to N.C.G.S. § 116-36.1 (Institutional Trust Funds) are subject to the reporting requirements for vending facilities under N.C.G.S. § 116-36.4.
6. **Definition of Net Proceeds.** The term "net proceeds" for a covered vending facility means: total revenues less all appropriate expenditures for the operation and maintenance of the identified operation.
7. **Reports.** The president is authorized and directed to make such reports with respect to vending facilities as may be required under N.C.G.S. § 116-36.4.
8. **Effective Date.** These regulations shall be effective for the 1990-91 fiscal year and thereafter.

Administrative Policies on Institutional Vending Facilities

The 1990 Session of the General Assembly amended N.C.G.S. § 116-36.1 to provide an expanded definition of institutional "trust funds." That definition now includes institutional student auxiliary enterprise funds and funds received from the operation and maintenance of institutional forests and forest farmlands. The same legislation also repealed N.C.G.S. § 116-36.3, which had regulated institutional student auxiliary enterprise funds. This legislation required revision to the Board of Governors' regulations for institutional vending facilities. On February 8, 1991, the board adopted the foregoing resolution to make appropriate changes to board policy with respect to institutional vending facilities and guidelines related to the board's new regulations for reporting proceeds from vending facilities (Attachment B). These administrative policies provide further guidance in implementing the amended law and the revised regulations through comment within the following series of paragraphs, whose titles and numbers correspond to the section titles and numbers of the board's revised regulations. In addition, "Vending Facilities Reporting Guidelines" and report formats are attached.

1. **Vending Facilities Definition.** The term "vending facilities" as defined in the regulations is unchanged and thereby continues the broad and comprehensive definition previously established by the General Assembly.
2. **State Funds.** The designation as "State funds" of receipts from vending facilities operated by a constituent institution of the University of North Carolina remains in effect.
3. **Deposits.** The deposit requirement remains unchanged. UNC General Administration previously requested specific confirmation from the Office of State Budget and Management (OSBM) that current practices for depositing vending receipts are acceptable. By letter of November 17, 1987, to Vice President Joyner from Mr. Marvin K. Dorman, Jr., Deputy State Budget Officer, OSBM reaffirmed its earlier acceptance of institutional practices for depositing vending receipts. This reaffirmation remains in effect.
4. **Authorized Uses.** The authorized uses of net proceeds from the operations of vending facilities are unchanged. In some cases, though, those uses are closely conditioned by instruments of gift or other external documents. For example, Carolina Inn proceeds, as specified in the gift of the Inn to the University of North Carolina at Chapel Hill, are used, in part, to support the University libraries, especially the North Carolina Collection.
5. **Account Applicability.** The requirement under N.C.G.S. § 116-36.4 for reporting the net proceeds of vending facilities embraces only those accounts defined, budgeted, and expended pursuant to N.C.G.S. § 116-36.1 (Institutional Trust Funds). However, N.C.G.S. § 116-36.1, as amended in 1990, expanded the definition of institutional "trust funds" to include institutional student auxiliary enterprise funds for the operation of housing, food, health and laundry services, effective July 1, 1990; and to include moneys received from the operation and maintenance of institutional forests and forest farmlands, effective July 1, 1991. The effect of the first statutory addition was to subject accounts for the four student auxiliary services to the vending regulations. On the other hand, moneys received from the operation and maintenance of institutional forests and forest farmlands, by definition, are not subject to vending regulations.

The majority of the vending operations covered by N.C.G.S. § 116-36.1, as amended, are included in student auxiliaries (activity 200), along with some portions of institutional auxiliaries (activity 210) and independent operations (activity 220). The attached "Reporting Guidelines" denote general categories of reporting applicability. This listing should be used as a guide. A continuing assessment must be made by each institution to determine the institutional vending facilities covered by the legislation and related reporting requirements. In some instances, it may be necessary to establish internal records to provide a separate accounting for covered vending facilities. It is the responsibility of each institution to establish such records. Refer to Section 7. or applicable formatting instructions.

Special Funds (N.C.G.S. § 116-36.2) are not covered by the vending legislation; but the budgeting and expenditures of those accounts are covered by other applicable legislation.

6. **Definition of Net Proceeds.** The definition of the term "net proceeds" for a covered vending facility is unchanged. It continues to be the equivalent of "net income" in accounting terminology.
7. **Reporting.** The board's regulations direct the president to make such reports concerning vending facilities as may be required under N.C.G.S. § 116-36.4. The annual reporting requirement and the due date, "not later than October 1 of each year," is unchanged. The reports are due in General Administration by September 1 for subsequent transmittal to the Joint Legislative Commission on Governmental Operations by October 1 of each year.

N.C.G.S. § 116-36.4 requires an "itemized annual report . . . concerning the use of net proceeds. . . broken down by campus and by authorized purpose." This requirement is unchanged; and, therefore, the current format, with emphasis on authorized uses of net proceeds being consistent with N.C.G.S. § 116-36.4, is also unchanged. The reporting format, as determined by the Office of State Budget and Management, is attached. It consists of two sections: Summary Report and Specific Vending Activity Report(s).

The "Summary Report" is the total of the values reported for the separately identified vending activities cited on the accompanying "Specific Vending Activity Report" form(s).

Each "Specific Vending Activity Report" identifies a separate vending activity by stating a brief descriptive title and a three-digit Chart of Accounts purpose number. The use of purpose 219, Other Auxiliaries, requires further identification of specific vending activity(ies) by the use of a more descriptive (non-standard) phrase on the vending report. A separate report is required for each current vending activity and for any additional activities subsequently and appropriately identified pursuant to the "Vending Facilities Definition" and "Account Applicability" sections of the regulations.

The following aspects of the two format sections should be noted:

- a. The amount reported in the space for "Total Net Proceeds" should be equal to the amount reported in the space for "Total Authorized Uses of Net Proceeds." All net proceeds for the reporting period must be identified with one or more authorized uses.
 - b. As a result of multi-year reporting experience, when net proceeds accumulated in a prior fiscal year (typically via item "e" of the authorized uses) are used for an authorized purpose during a subsequent fiscal year, the use of a negative number for item "e" may be required to balance the "Total Net Proceeds" with "Total Authorized Uses of Net Proceeds." This has the effect of spending previously accumulated (prior fiscal year) net proceeds from available fund balances during a subsequent reporting period.
 - c. Item "f," "Transfers . . . ," is to be specifically identified both on the format sections and by a separate attachment, including appropriate documentation authorizing such use pursuant to the requirements stated in item "f" of the " Authorized Uses" section.
8. **Effective Date.** These regulations are effective retroactively to July 1, 1990.

[This is a rewrite of Administrative Memorandum #301.]

VENDING FACILITIES REPORTING GUIDELINES

In the institutional trust fund accounts, the majority of the operations covered by the legislation are included in student auxiliaries (activity 200), along with some portions of institutional auxiliaries (activity 210) and independent operations (activity 220). The following general determinations of applicability have been made. This listing is to be used as a guide. A continuing assessment must be made by each institution to determine the vending facilities covered by the legislation and related reporting requirements.

200 Student Auxiliaries

202 Campus Center - Sales and services revenues generated in this purpose are included in the reporting requirement. Typical revenue sources are: game rooms; snack bars; bowling alleys; pool rooms; automated (coin activated) dispensers, including, but not limited to, candy and newspaper stands, food and beverage machines; and similar concessionary activities.

203 Food Services - Sales and services revenues generated in this purpose are included in the reporting requirement. Typical revenue sources include, but are not limited to: snack bars, lunchrooms, cafeterias, restaurants, catering activities, vending machines, and similar concessionary activities.

204 Health Services - Purpose 204 is generally excluded from the reporting requirement.

205 Housing Services - Purpose 205 is generally excluded from the reporting requirement. However, vending machine revenues budgeted and expended in purpose 205 are included.

206 Laundry Services - Sales and services revenues generated in this purpose are included in the reporting requirement. Revenue sources include, but are not limited to, coin activated washers and dryers.

207 Recreational Services - Purpose 207 is generally excluded from the reporting requirement.

208 Student Stores - Sales and services revenues generated in this purpose are included in the reporting requirement. Typical revenue sources include, but are not limited to: over-the-counter sales, services, and rentals; snack bars; book stores; copy machines, satellite vending stands; and similar concessionary activities.

210 Institutional Auxiliaries

211 Central Motor Pool - Purpose 211 is generally excluded from the reporting requirement.

212 Central Stores - Purpose 212 is generally excluded from the reporting requirement.

213 Creamery (NCSU only) - Purpose 213 is generally excluded from the reporting requirement.

214 Printing and Duplicating - Sales and services revenues generated in this purpose are included in the reporting requirement. Satellite copy machines and copy centers are included in the reporting requirement.

215 Rental Property - Purpose 215 is generally excluded from the reporting requirement.

216 Vehicle Registration - Purpose 216 is generally excluded from the reporting requirement.

219 Other Auxiliaries - Institutions should identify applicable sales and services revenues for purpose 219. Separately organized vending operations would be included, for example.

220 Independent Operations

222 Carolina Inn (UNC-CH only) - Sales and services revenues generated in purpose 222 are included in the reporting requirement. Typical revenue sources include, but are not limited to: dining room; cafeteria; catering activities; vending machines; and similar concessionary activities. Room rentals and conference fees are excluded from reporting requirements.

227 Utility Services - Purpose 227 is generally excluded from the reporting requirement.

228 Continuing Education Center - Sales and services revenues generated in purpose 228 are included in the reporting requirement. Typical revenue sources include, but are not limited to: dining rooms, snack bars, and restaurants; catering activities; vending machines; and similar concessionary activities. Room rentals and conference fees are excluded from the reporting requirement.

Institution _____

**REPORT ON VENDING FACILITIES
 AUTHORIZED USES OF NET PROCEEDS**
 Summary Report
 For the Fiscal Year Ending June 30, _____

Total Net Proceeds \$ _____

Authorized Uses of Net Proceeds:

- a. Scholarships and other direct student financial aid programs \$ _____
 - b. Debt service on self-liquidating facilities _____
 - c. Student activities specifically authorized by the chancellor:
 - i. Social and recreational activities for students residing in self-supporting University housing (not to exceed the amount of total net proceeds derived from vending facilities located in such housing facilities) _____
 - ii. Special orientation programs for targeted groups of students _____
 - iii. Operating expenses of scholarships and other student awards and honors programs _____
 - iv. Supplementary Student Center operating support (not to exceed the total net proceeds derived from vending facilities located in such Student Center facilities) _____
 - d. Use required by express condition of gifts, grants, or bequests _____
 - e. Retention to provide for working capital, replacement of facilities and equipment, and other purposes to support the continuing, orderly operation of the particular self-supporting service operation _____
 - f. Transfers to other self-supporting student service operations and authorized capital improvements projects (identify) _____
- _____ _____
- _____ _____

Total Authorized Uses of Net Proceeds \$ _____

Report Approved by: _____
 Chief Finance Officer

_____ Date

Institution _____
REPORT ON VENDING FACILITIES
AUTHORIZED USES OF NET PROCEEDS
SPECIFIC VENDING ACTIVITY REPORT
 For the Fiscal Year Ending June 30, _____

Description _____

Chart of Accounts Purpose No. _____

Total Net Proceeds \$ _____

Authorized Uses of Net Proceeds:

a. Scholarships and other direct student financial aid programs \$ _____

b. Debt service on self-liquidating facilities _____

c. Student activities specifically authorized by the chancellor:

i. Social and recreational activities for students residing in self-supporting University housing (not to exceed the amount of total net proceeds derived from vending facilities located in such housing facilities) _____

ii. Special orientation programs for targeted groups of students _____

iii. Operating expenses of scholarships and other student awards and honors programs _____

iv. Supplementary Student Center operating support (not to exceed the total net proceeds derived from vending facilities located in such Student Center facilities) _____

d. Use required by express condition of gifts, grants, or bequests _____

e. Retention to provide for working capital, replacement of facilities and equipment, and other purposes to support the continuing, orderly operation of the particular self-supporting service operation _____

f. Transfers to other self-supporting student service operations and authorized capital improvements projects (identify) _____

Total Authorized Uses of Net Proceeds \$ _____

Report Approved by: _____
 Chief Finance Officer

_____ Date

Adopted 11/08/85

REPLACEMENT OF LOST SECURITIES

The Board of Governors of the University of North Carolina, in recognition of the fact that bonds and other securities issued by or in behalf of the agencies and constituent institutions of the University of North Carolina through authorization of the Board of Governors may from time to time be lost, stolen, or destroyed, hereby authorizes the treasurer of the University of North Carolina to act as the board's agent for the purpose of authorizing the paying agent for such securities and their coupons, if any, and for the purpose of authorizing the issuing entity to replace the underlying lost, stolen, or destroyed securities. This authorization to the treasurer of the University is conditioned to exercise only in those instances where the owner of the securities that are lost, stolen, or destroyed has filed with the treasurer of the University an affidavit of loss with respect to the pertinent securities and a surety bond of indemnity for double the amount of the lost, stolen, or destroyed securities and their coupons, if any.

NOTES:

Adopted 04/13/84

THE SETOFF DEBT COLLECTION ACT

N.C.G.S. § 105A-8(a) provides that hearings under the Setoff Debt Collection Act, when undertaken by institutions or agencies of the University of North Carolina, "shall be conduct[ed] according to administrative procedures deemed lawful by the Attorney General." The Attorney General intends such hearings to constitute final agency decisions for purposes of judicial review. In order to establish such finality, it is hereby RESOLVED by the Board of Governors of the University of North Carolina, that as permitted by Section 501C(4) of *The Code*, any hearing under the Setoff Debt Collection Act which is conducted by an institution or agency of the University of North Carolina under procedures deemed lawful by the Attorney General shall constitute the final agency decision for all purposes.

Administrative Policies on the Setoff Debt Collection Act

The Setoff Debt Collection Act (N.C.G.S. Chapter 105A) is designed to facilitate collection of debts owed by an individual to an agency of the State. The act establishes a procedure for setting off any such debt against any refund that is due the debtor under North Carolina income tax law. An outline of the required steps is attached. The North Carolina Department of Revenue has established procedures (attached) for institutions to follow to comply with the requirements of the act.

1. The act defines the constituent institutions, the State Education Assistance Authority, the University of North Carolina Hospitals at Chapel Hill and the Board of Governors in performance of its duties in administering the Scholarship Loan Fund for Prospective College Teachers as "claimant agencies" subject to the act.
2. Compliance with the act by claimant agencies is mandatory but it does not preclude the use of other available remedies to collect debts. Therefore, agencies must annually file with the Department of Revenue a complete list of debtors whose debts are subject to set-off; but, the Attorney General, in the regular process of list review, may decide that the debt can be collected by other means.
3. For a debt to be eligible for set-off, (a) the debt must be at least \$50 (b) the debt must be at least 90 days in arrears or already reduced to judgment, and (c) the tax refund due the debtor must be at least \$50. Since agencies will not know whether a tax refund is due, every individual debtor whose debt is at least \$50 and 90 days or more in arrears or reduced to judgment should be listed on the annual list sent to the Department of Revenue.
4. To obtain the necessary match between the debtor and individuals eligible for a tax refund, the act requires claimant agencies, "whenever possible," to obtain information, including the social security number, "from any person for whom the agencies provide any service or transact any business and who the claimant agencies can foresee may become a debtor" under the act. The federal Privacy Act of 1974 prohibits, in effect, the involuntary disclosure to a state agency of an individual's social security number except in some contexts, such as the "administration of any tax." The Attorney General has taken the position that the federal statutory exemptions are broad enough to include the provisions of the Setoff Debt Collection Act as an "administration of any tax" and, therefore, permit the state agency to require the disclosure by any debtor or potential debtor of that person's social security number in contemplation of possible debt set-off against tax refund. Institutional personnel are advised to review the University's guidelines in this policy manual for use of social security numbers.
5. The act gives the alleged debtor the right to a hearing to contest the validity of the debt. The act also provides that the University claimant agencies "shall conduct hearings according to administrative procedures deemed lawful by the Attorney General." The Attorney General has approved the following procedures to be followed whenever a debtor who receives notice of a debt requests a hearing:
 - a. The debtor shall be provided written notice of the date, time, and place set by the institution for the hearing, and of the identity of the hearing officer. The notice shall be sent certified mail, return receipt requested; a model notice is attached to this policy. Any notice used in lieu of the model notice shall address at least paragraphs a., b., e., f., g. and h. of these instructions.
 - b. The notice shall state, that any further review of the debt will be limited to evidence presented at the hearing, and that if the debtor fails to appear at the hearing (either personally or through an authorized representative pursuant to paragraph h., below), the institution in the debtor's absence shall proceed to determine the validity and amount of the debt as a final agency decision pursuant to paragraph k., below.

- c. The chancellor or chancellor's designee shall appoint a hearing officer to hear the evidence and make a final determination, on behalf of the institution, on the validity and amount of the debt owed. The hearing officer shall have no prior involvement in the claim which would constitute a conflict of interest, and the hearing officer shall not be able to offer testimony or evidence on behalf of the institution.
- d. The institution shall have the burden of establishing the validity and amount of the debt upon the evidence presented at the hearing.
- e. The debtor shall be able to appear and to present evidence, including the testimony of witnesses. Although the debtor cannot compel the attendance of witnesses, the hearing officer shall have the authority to direct the attendance of any witnesses employed by the institution whose possible testimony the hearing officer believes relevant.
- f. The debtor shall be able to cross-examine the institution or agency's witnesses.
- g. The debtor shall be able to review, prior to the hearing, the documents the institution or agency intends to introduce in support of its claim and to obtain copies of the documents at the debtor's expense.
- h. The debtor may be advised or represented by another person, including legal counsel, at the debtor's own expense.
- i. The hearing shall provide an opportunity for introduction of credible and relevant evidence, but judicial rules of evidence need not be followed. The hearing officer shall have the authority to exclude irrelevant, immaterial, or unduly repetitious evidence and to limit unnecessary examination of witnesses.
- j. To assure compliance with the judicial review provisions of N.C.G.S. § 150A-47, the hearing officer shall record the proceedings in a manner which can be reduced to a verbatim transcript in the event of an appeal. The hearing record shall include this recording or transcript and all documents offered or received into evidence at the hearing.
- k. The hearing officer shall issue a written determination on the validity and amount of the debt owed, if any, which by resolution of the Board of Governors dated April 13, 1984 (attached), shall be the final institutional or agency decision pursuant to N.C.G.S. § 150A-43. The determination shall state the hearing officer's decision and summarize the facts relied on in making that decision.
- l. The determination shall be sent to the debtor by certified mail, return receipt requested. If the determination is against the debtor in any respect, there shall be included with it a notice of right to appeal to Superior Court within 30 days of receipt of the written determination, pursuant to N.C.G.S. § 150A-43.
- m. Within 20 days of the issuance of a written determination pursuant to paragraph k. above, the institution or agency shall notify the Department of Revenue of the determination and of the amount of any debt determined therein to be due and owed.

Please note the following consideration. In the context of a student debt, a hearing under the act likely will involve presentation of "education records" as defined under the Family Educational Rights and Privacy Act of 1974 (the "Buckley Amendment"). Such documents are protected under the Buckley Amendment from disclosure, other than to the student, unless particular conditions specified in the Buckley Amendment are present. Thus, a hearing on a student's contested debt should not be a public hearing unless one of these Buckley provisions pertains:

- The student has waived the right to privacy (if the records to be used include financial records of the student's parents, their waiver also is needed);
 - The contested debt is based upon records generated "in connection with a student's application for, or receipt of, financial aid"; or
 - The records are produced at the hearing "pursuant to any lawfully issued subpoena" (the procedures approved by the Attorney General do not provide for agency subpoenas).
6. The act provides that a hearing outcome adverse to the debtor may be taken to court by the debtor "except that the place of initial review shall be the superior court for the county in which the debtor resides." The Attorney General has ruled that "residence" is be defined as one's "domicile or place of business." The Attorney General has also ruled that "superior court" as used in the act refers only to superior courts of North Carolina. Therefore, a debtor contesting a debt who is neither a domiciliary of North Carolina nor established in business in this State must still look to the superior courts of North Carolina for debt review, logically either the county in which the institution is located or Wake County (the usual situs for judicial review under the Administrative Procedures Act).

Compliance

Each constituent institution should cooperate fully with the Department of Revenue in establishing the debt set-off machinery required of it by N.C.G.S. Chapter 105A and, in supplying the annual list of debtors. For each institution this machinery should include a designated agent or office to receive notice from a debtor of the debtor's intent to contest an asserted debt.

[This is a rewrite of Administrative Memoranda #127 and #195.]

**STEPS IN SET-OFF PROCEDURE
NORTH CAROLINA DEPARTMENT OF REVENUE**

1. Claimant agencies annually submit lists of debtors by December 1 showing name, social security number and address and the award of the obligation for each debtor.
2. Department runs lists against refunds.
3. When match occurs, department notifies in writing the claimant agency giving the amount of refund and the debtor's address listed on the tax return.
4. The claimant agency must notify the debtor within 10 days of receipt of the department's notice of its intent to claim the refund and send a copy of such notice to the department so as to be received within 15 days from the date the department mailed its notice that a match had occurred.
5. Debtor may contest agency's claim by giving written notice to agency within 30 days from the date of the mailing of the agency notice to the debtor.
6. If claim is not contested within the required 30 days, within 20 days thereafter, the claimant agency must certify the debt to the department.
7. If claim is contested, the period for certification is 20 days following completion of the hearing process.
8. The department shall transfer by check the net proceeds collected (gross minus 15% collection assistance fee) to the appropriate claimant agency together with the following information:
 - Full name of the debtors
 - Social Security number of debtors
 - Gross Proceeds per set-off
 - Net Proceeds per set-off
 - Collection fee per set-off
9. Claimant agency will credit the debtor with gross proceeds.
10. Department notifies taxpayer of action taken and refund any remaining balance.

**SET-OFF DEBT COLLECTION PROGRAM
PROPOSED RULES AND PROCEDURES**

The function of the Department of Revenue under the Set-Off Debt Collection Program is to assist claimant agencies, upon request, in the collection of qualifying delinquent accounts. From lists of qualifying debtors furnished by the various claimant agencies, the department will identify those entitled to individual income tax refunds of at least \$50 and, upon receipt of a final certification of the debt from the respective claimant agency, set-off the applicable amount. Periodically, the department will remit the respective claimant agencies the net proceeds collected which shall be the gross proceeds collected less than 15% collection assistance fee. A transmittal statement will be included reconciling the amount of the remittance with the gross proceeds collected per individual set-off so that the claimant agency can credit the debtor's obligation with gross proceeds collected as required by N.C.G.S. § 105A-14(b).

Claims for set-off must be filed with the Department of Revenue in accordance with the provisions of Article 1 of Chapter 105A and the rules and procedures set forth below and authorized under N.C.G.S. § 105A-16.

Each claimant agency must submit its complete list of debtors for which set-off is sought to the department annually by December 1 of the year preceding the calendar year during which refunds would have been paid. For example, a list of debtors submitted by December 1, 1979, will be matched against taxpayers entitled to refunds in the calendar year 1980. The list must include the full name, social security number, address and the amount of the obligation for each debtor. The amount of the obligation is required to facilitate the processing of multiple claims. A new list must be submitted each year. Magnetic tape specifications and record layouts are available upon request. Claimant agencies that have the capability and volume to justify it are urged to send debtor information on magnetic tape. [N.C.G.S. § 105A-6(a).]

To participate in the set-off procedure, each claimant agency must register with the Department of Revenue. A registration form is available for this purpose.

Claims for obligations of less than \$50 should not be submitted (N.C.G.S. § 105A-4).

No debt should be certified for set-off that is less than 90 days in arrears unless there is an outstanding judgment for the debt. In the case of debts that are less than 90 days in arrears, it shall be presumed that an alternative means of collection is pending and believed to be adequate.

"Debtor" means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy. [N.C.G.S. § 105A-2(2).]

"Debt" means liquidate sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum. [N.C.G.S. § 105A-2(3).]

The claimant agency, upon receipt of notification from the Department of Revenue that a debtor is entitled to a refund, shall within 10 days send a written notification to the debtor and a copy of the same to the department of its assertion of rights to the refund or any part thereof. **SUCH NOTICE SHOULD CLEARLY INDICATE TO THE DEBTOR THAT ANY OBJECTIONS TO THE CLAIM SHOULD BE DIRECTED TO THE CLAIMANT AGENCY, NOT THE DEPARTMENT OF REVENUE.** In this connection the Department of Revenue prefers that the notice also give the name and telephone number of the appropriate contact person within the claimant agency. [N.C.G.S. § 105A-7(a).]

If a claim is contested, the claimant agency should notify the Department of Revenue and indicate a date by which final determination of this claim might reasonably be expected.

If a claim is paid or otherwise settled, the claimant agency should notify the Department of Revenue immediately so that the tax refund can be promptly released.

_____, 19____

Dear (Debtor):

You are hereby notified that a hearing to determine the validity and amount of the debt described in our notice to you of *(date)* will be held before *(hearing officer name)* at *(time)* on *(date)* in *(location)*. Any time prior to that day and time you may appear at *(location)* during regular business hours to inspect (and copy, at your expense) the documents the university intends to present in support of its claim. If you desire to review the university's documents but cannot come to the campus, you should contact the hearing officer to make alternative arrangements (*telephone* ____-____).

During the hearing you will be allowed to cross-examine the university's witnesses and present relevant evidence in your own behalf, including the testimony of any witnesses you may bring with you. If you believe an employee of the university has information helpful to your case, you should notify the hearing officer of the employee's name and the nature of the information; if the hearing officer determines that the information may be relevant, the employee can be directed to attend the hearing. You may, if you choose, have the advice and representation of another person at your own expense, including legal counsel.

You will have the right to appeal to Superior Court any adverse decision made at the conclusion of the hearing, **but judicial review will be limited to the evidence presented during this hearing. If you fail to appear at this hearing, the university shall in your absence proceed to determine the validity and amount of the debt.** Any further correspondence in this matter should be directed to *(hearing officer's name, campus address and telephone number)*.

NOTES:

Adopted 02/09/90
Amended 11/14/97

ANNUAL FINANCIAL AUDITS AND OVERSIGHT OF UNIVERSITY-RELATED PRIVATE FOUNDATIONS

Privately chartered foundations, associations, and clubs from time to time have been established by interested citizens for the purpose of providing resources to enrich various programs of the constituent institutions of the University of North Carolina with which they are identified. Both the academic and athletic programs of the affected constituent institutions have benefited substantially from the generous contributions made by such private organizations. On August 25, 1989, President Spangler, proposed the timely public disclosure of appropriate financial information concerning the operation of such private organizations, as a means of allaying possible public concern about the purposes of such organizations and the nature and extent of benefactions realized by the constituent institutions. The Board of Governors thereafter resolved that the president shall direct the chancellor of each constituent institution to request annually of the appropriate officer of any such private foundation, association, or club, organized for the primary purpose of providing financial support to the constituent institution, a copy of the organization's annual independent financial audit, with the understanding that such audit would not be required to include identification of persons or entities that have made contributions to the organization; that copies of said audits shall in turn be supplied by the chancellor to the Board of Trustees of the institution and to the president; and that such audits thereafter shall be deemed to be public records.

In November 1997, the Board of Governors found it appropriate to require that there be means, in addition to the annual financial report, by which the University and the constituent institutions could maintain fiscal familiarity and comfort with those independent organizations serving the University or any of its constituent institutions. To accomplish this, the Board of Governors directed the president, through the chancellors or other appropriate University officials, to require that any private foundation, private association, or private club created for the primary purpose of financial support to the University of North Carolina or to a constituent institution of the University meet organizational, governance, and fiscal guidelines of the president, as a condition for the use, or continued use, of the supported institution's name or other resources.

[This is a rewrite of resolutions adopted by the Board of Governors on February 9, 1990, and November 14, 1997, respectively.]

**Administrative Policies on Annual Financial Audits
of University-Related Private Foundations**

The resolution of the Board of Governors adopted February 9, 1990, instructs each chancellor to secure copies of the annual independent financial audit of any privately chartered foundation, association or club that has been established for the primary purpose of accumulating and dispersing resources to support the programs of a constituent institution of the University of North Carolina. The audit to be obtained and disclosed need not include identification of persons or entities that have made contributions to the private organization.

Each chancellor should inform the vice president for finance whether an organization identified with the chancellor's institution is audited on a calendar-year or fiscal-year basis (with date of fiscal year-end). Annually, the chancellor should supply a copy of each such audit to the president, via the vice president. Simultaneously, the chancellor should supply a copy of the audit to the chairman of the institution's Board of Trustees.

[This is a rewrite of Administrative Memorandum #284.]

Collection of Debts Owed the State by State Employees, Officials, and Legislators

In 1989 the General Assembly passed the State Employee Debt Collect Act (N.C.G.S. Chapter 143, Article 60). This act promotes payment of a debt owed the State by an employee, official, or legislator of the State through the threat of sanctions (e.g., discharge of employment) if the debt is not paid.

This act was written to assist in the collection of debts owed the State by employees, public officials, and legislators of the State. The definition of "public official" includes those members of State boards, commissions, councils, committees, and other State agencies "created by law" whose personnel positions are not salaried by the State. "Public officials," therefore, would include members of the Board of Governors, the Boards of Trustees of the constituent institutions, the Boards of Trustees of the institutional endowment funds, the Board of Directors The University North Carolina Hospitals at Chapel Hill, the Board of Directors of the State Education Assistance Authority, and the Board of Trustees of the University of North Carolina Center for Public Television. Where an individual is both a salaried State employee and a nonsalaried member of a State agency, the individual should be treated procedurally as a State employee, not as a "public official" (e.g., the president of the university, who is both a State employee and *ex officio* a trustee of The University of North Carolina Center for Public Television).

Debts collectible under the act.

Any "delinquent" debt owed the State by a State employee, public official, or legislator may be pursued under the act.

Method of debt collection.

The means of inducing debt payment by State employees is the threat of termination of employment. Similarly, public officials are faced with termination of appointment for nonpayment. Nonpaying legislators, however, are to be dealt with by the Legislative Ethics Commission.

Responsibilities of State agencies.

In basic outline, the act requires (1) identification of employees, officials, or legislators of the State who are indebted to the State, (2) transmission of notice of the identity of the debtor and the fact of indebtedness to the entity that employs the debtor (or that appointed the official or that is responsible for superintending the conduct of legislators), and (3) actions by the debtor's employer relative to the debtor and the indebtedness, including ultimately the possibility of terminating the State employment of the debtor.

Reporting debtors.

The various components of State government, are responsible for identifying delinquent debtors to the State who also are employees, officials, or legislators of the State.

In recognition of the difficulty likely to be encountered by a State governmental entity in identifying debtors to it who also are employees of another State entity, the State Department of Budget and Management has prescribed a system for addressing the basic reporting responsibility. Using the University context for purposes of illustration, the system requires a constituent institution to report to the Office of State Budget and Management all "past due accounts" for which "satisfactory provisions for repayment" have not already been made. That agency in turn will compare the list supplied with the comprehensive list of State employees and identify those debtors who are State employees. The constituent institution then will be given the name of any debtor to the institution who also is an employee of the State; and the constituent institution then is responsible for notifying the employer that one of the entity's employees is indebted to the institution.

The "representative" of the entity responsible for reporting debtors to the employer of the debtor is not defined by the legislation. The term reasonably appears to suggest that a designated official of the State entity (e.g., vice chancellor for finance) should be identified and authorized to perform the reporting requirement.

The act establishes no timetable for periodic reportings of debtors to the entities responsible for acting on such reports. However, the State Budget Office has directed that it be sent the names and social security numbers of "individuals with past due accounts" for which no satisfactory provisions for repayment has been made. In short, each constituent institution should send to the State Budget Office a list of delinquent debts for which the constituent institution has not been able to induce the debtor to repay or to begin to repay.

Privacy act concerns.

The State Budget Office has called for providing to it the debtor's social security number. The act, however, contains no statutory authorization for such a disclosure and use. In fact, the act expressly states: "Nothing in this Article is intended to conflict with any provision of federal law . . . If the exchange among employing entities of information necessary to effectuate the provisions of this Article would conflict with this intention, the exchange of information shall not be made." In light of these circumstances, the State Budget Office has agreed that an agency need not transmit to the State Budget Office the social security number of an individual debtor if that number was received by the entity under conditions that would cause the federal Privacy Act of 1974 to prohibit its disclosure. For purposes of applying this policy, the following guidelines seem required by the Privacy Act of 1974:

- (1) The transfer from a constituent institution to the State Budget Office of an individual's social security number in the process of debtor/State employee identification is a "disclosure" of that number within the meaning of the Privacy Act of 1974 and is conditioned by that act.
- (2) Any individual who is asked to make initial disclosure to an institution of a social security number in the context of this act must be told that
 - (a) such disclosure is voluntary,
 - (b) such request for disclosure is incident to State administrative procedures for debt collection, and
 - (c) the number, upon disclosure, would be available to effect debt collection.
- (3) Any individual whose social security number has been disclosed to an institution in a manner other than according to condition (2), above, without informing the individual of possible use of the number for debt collection, must be informed of such possible use before transfer of the number to the State Budget Office. (The time lapse between informing the individual of the intended or potential use and the transfer of the number is not stated by the Attorney General to be important so long as the individual is, in fact, informed before the transfer.)

The Attorney General's opinion of November 21, 1980, establishes two principles of which special note should be made.

- (a) It is not significant whether an institution obtained a social security number before December 31, 1974 (the effective date of the Privacy Act of 1974). The Privacy Act conditions use of any social security number.
- (b) It is important whether an institution obtained the social security number for use under the act (a) by initial disclosure from the individual (see condition (2), above) or (b) from pre-existing institutional records or from a third party (see condition (3), above).

In light of the foregoing, an agency may delete from the requested debtor list a social security number whose disclosure is, in effect, prohibited by the Privacy Act of 1974 but should indicate which deletions are made with reference to the Privacy Act, as opposed to mere lack of information.

Informing the employing entity.

When an agency to whom a State debt is owed learns that the debtor is a State employee, public official, or legislator, the agency must inform the employer of the debtor or the appointing authority of a public official or the Legislative Ethics Commission, as the case may be.

Because a debtor to the State may be both a State employee, public official, or legislator and also a taxpayer due a refund of at least \$50 from the Department of Revenue, some debts of an individual will prove collectible under both this act and the Setoff Debt Collection Act. When an agency to whom the debt is owed learns that both acts may pertain to collection of the debt, that agency should inform the employer of the debtor. This will help minimize the possibility that sanctions will be imposed under this act for a debt collected or in the process of being collected under the Setoff Debt Collection Act.

Debt resolution.

State employees have an "employing entity" and public officials have an "appointing authority" to whom notice of the debt must be made. Once notice is received, the statutory duties shift from the agency owed the debt to the employing entity (or appointing authority) of the debtor. The employer, upon receiving notice of the debt, must initiate debt resolution.

Depending upon the nature of the employee or public official's position with the State, the act prescribes the procedure for resolution of the debt to the State by the employer:

- (1) **Public officials** - "Upon receipt of notification, the appointing authority shall investigate the circumstances of the claim of money owed to the State for purposes of determining if a debt is owed and its amount". The act then provides for notice of termination of duties unless a repayment plan is fulfilled or undertaken.
- (2) **State employees** - The act calls for termination of employment if payment is not effected within a "reasonable period." However, passage of a reasonable time without payment is not cause for termination if there is (a) a "genuine dispute" over the existence or amount of the debt, (b) "an unresolved issue concerning insurance coverage," or (c) pursuit by the employee of administrative or judicial remedies in the matter. And, as with public officials, a State employee is saved from sanctions if the employee is undertaking repayment as permitted by the act. With respect to employees, one acceptable plan is to agree to have periodically withheld for repayments "not less than ten percent (10%) of . . . net disposable earnings." "Net disposable earnings" are defined to constitute salary less statutory deductions such as taxes and State retirement, which appear to leave subject to dunning that part of an employee's salary otherwise to be voluntarily paid over to such as retirement funds other than TSERS and the Optional Retirement Plan. Unlike public officials, however, State employees, even after termination, have a right of termination review as provided by N.C.G.S. Chapter 126 if they are subject to the State Personnel Act. The act, reads into its provisions the usual array of remedies available to an aggrieved member of the University community. Essentially, it requires a constituent institution to sit down with its employees who are debtors to the state to work out repayment; but if the employee contests the debt, the constituent institution should treat the process of debt collection as a serious, contested personnel action.

Statutes of limitations and bankruptcy.

The act provides that where collection of the debt is barred by an applicable statute of limitations, the act "shall not be construed to revive" the debt or any part of the debt or to "extend" the statute of limitations. The act contemplates the pursuit by the debtor of judicial remedies, which could include discharge of the debt in bankruptcy. Consequently, no employee or public official of the University

should be terminated for nonpayment of debt whose collection is barred by bankruptcy decree or a statute of limitations.

[This is a rewrite of Administrative Memoranda #132 and #144.]

**MAGNETIC TAPE
PAST DUE ACCOUNTS FORMAT
OFFICE OF STATE BUDGET AND MANAGEMENT**

The data can be on tape or cards. If tape, the record length should be 80 characters and blocksize 6400 characters. The tape should be either IBM standard labeled or non-labeled and should be 1600 or 6450 BPI.

FORMAT

Column 1	Institution	Alpha Code
	A - ASU	I - PSU
	B - ECSU	J - UNC-A
	C - ECU	K - UNC-CH
	D - FSU	L - UNC-C
	E - NCA&T	M - UNC-G
	F - NCCU	N - UNC-W
	G - NCSA	O - WCU
	H - NCSU	P - WSSU
		Q - UNCH-CH
Column 2 - 10	Social Security Number	
Column 11 - 40	Name	

Please send this information to this office by December 1. Call 733-7061 concerning any questions.

OFFICE OF STATE BUDGET AND MANAGEMENT PROCEDURES

The 1979 General Assembly enacted House Bill 561 (Chapter 864 of the 1979 Session Laws) relating to the collection of money owed to the State by certain public employees. The purpose of this memorandum is to indicate what procedures to follow in collecting past due accounts owed to the State by State employees, certain local governmental employees and public officials.

1. Send a list to this office of the names and Social Security numbers of individuals with past due accounts owed to the State. Do not include names of individuals with past due accounts when satisfactory provisions have already been made for repayment.
2. This office will arrange to compare your lists with lists of employees who are members of the Teachers and State Employees Retirement System or who are on a central payroll.
3. You will be notified if any of the individuals on your lists are employed by a State department, agency or institution, Community College system or by a city or county Board of Education.
4. You should then write the agency employing the individual who has a past due account with your department and State: (a) individual's name, amount of money owed and for what reason; (b) that a written notice be sent to the employee stating that full restitution of the amount owed is a condition of continued employment (Chapter 143, Article 59 of the North Carolina General Statutes); (c) that the employee obtain and provide written evidence from the department owed that a satisfactory arrangement for payment has been agreed upon; (d) that the employee be given a reasonable time period to accomplish (c) above. If the employee does not provide this evidence, steps must be taken to terminate employment unless the employee is pursuing administrative or judicial remedies.

Adopted 09/13/91
 Amended 09/09/94
 Amended 09/08/95
 Amended 09/13/96
 Amended 05/22/97
 Amended 11/14/97
 Amended 11/13/98
 Amended 08/13/99

SELECTION CRITERIA AND OPERATING GUIDELINES FOR SPECIAL RESPONSIBILITY CONSTITUENT INSTITUTIONS

A. Achieving and Retaining Status as a Special Responsibility Constituent Institution

Management Staffing Standards and Internal Controls and Safeguards

1. Responsibilities of Special Responsibility Constituent Institutions

The following standards and safeguards must be met and maintained in order to receive and retain the designation as a special responsibility constituent institution.

- a.** The chancellor must assume personal responsibility and also establish the appropriate administrative and internal control procedures for carrying out the special delegations of authority. In this regard, the chancellor must certify that the administrative capability on campus in the areas of budgeting and accounting, personnel, and purchasing, as noted in b., c., and d. below, are sufficient to carry out the increased flexibility being granted.
- b.** The capability of the staff and the system of budgeting, accounting and internal controls must be sufficient to administer the increased budget flexibility given to the designated institutions.
- c.** The personnel capacity, which must be exercised under the direction of appropriate administrative officials, must be available on campus to evaluate jobs, classify positions appropriately, set compensation properly, and carry out the related functions of position management at the level of authority provided by the delegation.
- d.** The on-campus expertise must be available to purchase properly the equipment, supplies, and other goods and services for the institution up to the benchmark level established by the Board of Governors for the institution pursuant to N.C.G.S. § 116-31.10.
- e.** The institution must maintain its financial records in such a manner that there are no significant findings in the annual financial audit reports, special reports, electronic data processing reports, performance reports, management letters, or any other report issued by the State Auditor's Office.

2. Responsibilities of the President and the Board of Governors

The president is directed to establish the administrative procedures necessary to carry out the following rules:

- a.** The president and the General Administration staff shall review the annual financial audit reports, special reports, electronic data processing reports, performance reports, management letters, or any other report issued by the State Auditor's Office for each special responsibility constituent institution.

- b. The president shall take immediate action regarding reported weaknesses in the internal control structure, deficiencies in the accounting records, and noncompliance with rules and regulations. In any instance where significant findings are identified, the president shall notify the chancellor of the particular special responsibility constituent institution that the institution must make satisfactory progress in resolving the findings, as determined by the president of the University, after consultation with the State Auditor, within a three-month period commencing with the date of receipt of the published financial audit report, any other audit report, or management letter.
- c. If satisfactory progress is not made within a three-month period, the president shall recommend to the Board of Governors at its next meeting that the designation of the particular institution as a special responsibility constituent institution be terminated until such time as the exceptions are resolved to the satisfaction of the president of the University of North Carolina, after consultation with the State Auditor. However, once the designation as a special responsibility constituent institution has been withdrawn by the Board of Governors, reinstatement may not be effective until the beginning of the following fiscal year at the earliest.
- d. Any actions taken by the Board of Governors with respect to withdrawal or reinstatement of an institution's status as a special responsibility constituent institution shall be reported immediately to the Joint Legislative Education Oversight Committee.
- e. The president and the General Administration staff, after consultation with the State Auditor, shall review and consult with the director of the Office of State Personnel and the director of the Division of State Purchasing and Contracts in ascertaining whether or not a constituent institution has the management staff and internal financial controls to administer the additional authorities authorized under N.C.G.S. §§ 116-30.2, 116-30.4, and 116-31.10. Such review and consultation must take place no less frequently than once each biennium.

B. Budget Administration

1. Appropriations to Special Responsibility Constituent Institutions

- a. All General Fund appropriations made by the General Assembly for continuing operations of a special responsibility constituent institution of the University of North Carolina shall be made in the form of a single sum to each budget code of the institution for each year of the fiscal period for which the appropriations are being made.
- b. Notwithstanding N.C.G.S. §§ 143-23(a1), 143-23(a2), 143-23(a3), and 120-76(8), each special responsibility constituent institution may expend the General Fund monies so appropriated to it in the manner deemed by the chancellor to be calculated to maintain and advance the programs and services of the institutions, consistent with the directives and policies of the Board of Governors including but not limited to the following:
 - 1. A current institutional expenditure plan for each budget code must be established and maintained under the direction of the chancellor.
 - 2. No action shall be taken that would materially change the capability of the institution to carry out its educational mission as defined by the Board of Governors. The Board of Governors will retain program responsibility. No actions taken should have the effect of either

establishing a new academic, research, or public service program or closing such a program without the specific approval by the board. Reallocation of academic program resources should not be made to the extent that a particular existing program is seriously weakened or effectively discontinued, or a new activity not expressly authorized by the Board of Governors is initiated.

3. Reallocations of interinstitutional program resources should not be made to the extent that campus participation in a particular program is materially weakened without specific approval by the board.
 4. No action should be taken which would have the effect of establishing a new community service or student financial aid program without specific approval by the Board of Governors.
 5. For the 1998-99 and 1999-2000 fiscal years, appropriations providing support for Distance Education/Extension degree credit instruction at off-campus locations cannot be reallocated for other purposes without specific approval by the Board of Governors.
- c. The quarterly allotment procedure established pursuant to N.C.G.S. § 143-17 shall apply to the General Fund appropriations made for the current operations of each special responsibility constituent institution.
 - d. All General Fund monies so appropriated to each special responsibility constituent institution shall be recorded, reported, and audited in the same manner as are General Fund appropriations to other constituent institutions.
 - e. The preparation, presentation, and review of General Fund budget requests of special responsibility constituent institutions shall be conducted in the same manner as are requests of other constituent institutions.

2. Reversions and Carry-Forwards of Appropriations

Of the General Fund current operations appropriations credit balance remaining in each budget code of a special responsibility constituent institution, at the close of a fiscal year, any amount of the General Fund appropriations for that budget code, may be carried forward by the institution to the next fiscal year and may be used for one-time expenditures that will not impose additional financial obligations on the State. However, the amount carried forward under this section shall not exceed two and one-half percent (2 1/2%) of the General Fund appropriation. The director of the Budget, under the authority set forth in N.C.G.S. § 143-25, shall establish the General Fund current operations credit balance remaining in each budget code of each institution.

3. Designated Uses of Previously Required Reversions for 1999-2000

- a. Previously required reversions shall be available to each special responsibility constituent institution, with the exception outlined in section b, below.
- b. For fiscal year 1999-2000, the 16 campuses must reallocate \$1,300,000 of previously required reversions to initiatives funded in the expansion priorities (see Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, June 29, 1999). [This use of reversions was incorporated into the board's expansion budget allocations approved on July 21, 1999.]

C. Personnel Administration

The chancellor of a special responsibility constituent institution, when he finds that to do so would help to maintain and advance the programs and services of the institution, may establish and abolish positions, acting in accordance with:

1. State Personnel policies and procedures if these positions are subject to the State Personnel Act and if the institution is operating under the terms of a Performance Agreement or a Decentralization Agreement authorized under Chapter 126 of the General Statutes; or
2. Policies and procedures of the Board of Governors if these positions are exempt from the State Personnel Act.

The results achieved by establishing and abolishing positions pursuant to the conditions set forth in subdivision (1) of this section shall be subject to postauditing by the Office of State Personnel.

With respect to personnel actions taken under subdivision (2) of this section, no action should have the effect of either establishing a new academic program or administrative unit or closing an existing academic or inter-institutional program or administrative unit. No action should be taken which permanently reduces the number or amount of budgeted teaching positions supported by General Fund appropriations thereby changing the student-faculty ratio or the budgeted average teaching salary established by the Board of Governors.

Implementation of all personnel actions shall be subject to the availability of funds within the institution's current budget to fund the full annualized costs of these actions.

D. Purchasing

Notwithstanding N.C.G.S. § 143-53.1 or N.C.G.S. § 143-53(a)(2), the expenditure benchmark for a special responsibility constituent institution with regard to competitive bid procedures and the bid value benchmark shall be an amount not greater than \$250,000. The board shall set the benchmark for each institution from time to time. In setting an institution's benchmark, the board shall consider the institution's overall capabilities including staff resources, purchasing compliance reviews, and audit reports. The board shall also consult with the director of the Division of Purchase and Contract and the director of the Budget prior to setting the benchmark.

E. Impact on Education

Each special responsibility constituent institution shall include in its institutional effectiveness plan those assessment measures that are determined by the board to be measures that will assure some standard measure of student learning and development in general undergraduate education. The intent of this requirement is to measure the impact of N.C.G.S. § 116-30.1 through N.C.G.S. § 116-30.5, establishing and administering special responsibility constituent institutions, and their implementation on undergraduate student learning and development. The measures shall be taken from monthly accountability reports to the board and any other performance measures developed for this purpose by the board.

F. Reporting Requirements

1. Monthly Report

Each designated institution must prepare a monthly operating report for each budget code in the format of the current BD-701 report. The "Authorized Budget" included in this report, which may be changed under the direction of the chancellor, will show

the institution's current expenditure plan. The current Chart of Accounts will be used for reporting purposes.

2. Annual Report

An annual report, and other reports as may be directed by the president, are required from each special responsibility constituent institution. The annual report shall include the following information:

- a. an annual operating report in the same format as the monthly report described above;
- b. the impact on undergraduate student learning and development as demonstrated by the standard assessment measures related to this topic;
- c. fiscal savings;
- d. management initiatives undertaken;
- e. increased efficiency and effectiveness achieved;
- f. other outcomes made possible by the flexibility provided;
- g. documentation of any reallocation of resources which distinguishes between one-time and permanent transfers;
- h. the availability and use of non-reverted appropriations;
- i. any additional costs incurred;
- j. a schedule of positions established and positions abolished;
- k. institutional purchases under the expenditure benchmark established by the Board of Governors for the institution.

Each institution must establish the administrative procedures necessary to accumulate this information for reporting purposes.

NOTES:

Adopted 10/11/91

DESIGNATION OF SPECIAL RESPONSIBILITY CONSTITUENT INSTITUTIONS

The *Selection Criteria and Operating Guidelines for Special Responsibility Constituent Institutions*, approved by the board on September 13, 1991, were forwarded to the campuses and each chancellor was given the opportunity to request designation as a special responsibility constituent institution. Ten chancellors requested that their institution be designated at the October meeting of the board. The ten institutions were:

East Carolina University
 Elizabeth City State University
 Fayetteville State University
 North Carolina School of the Arts
 North Carolina State University at Raleigh
 The University of North Carolina at Chapel Hill
 The University of North Carolina at Charlotte
 The University of North Carolina at Greensboro
 The University of North Carolina at Pembroke
 The University of North Carolina at Wilmington

In each instance the chancellor indicated his acceptance of the responsibility to carry out the additional authority on behalf of the institution, certified that the selection criteria had been met, and committed to operate under the guidelines approved by the board.

Each request for special designation was reviewed by the senior staff of General Administration, who recommended approval. As required by the legislation, the president consulted with the State Auditor regarding the designation of these ten institutions. Formal designation by the board was the only remaining action required to be taken.

On October 11, 1991, the ten institutions named above were designated special responsibility constituent institutions by the Board of Governors.

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- A resolution designating Western Carolina University as a special responsibility constituent institution was adopted 03/06/92.
 - A resolution designating Appalachian State University as a special responsibility constituent institution was adopted 03/06/92.
 - A resolution designating North Carolina A&T State University as a special responsibility constituent institution was adopted 03/06/92.
 - A resolution designating The University of North Carolina at Asheville as a special responsibility constituent institution was adopted 03/06/92.
 - A resolution designating North Carolina Central University and Winston-Salem State University as special responsibility constituent institutions was adopted 09/10/93.
 - In 1999, the General Assembly awarded the Office of General Administration of The University of North Carolina, special responsibility status. (See N.C.G.S. §§ 116-14 and 116-30.3(e).)

NOTES:

Adopted 06/14/96

Administrative Policy Concerning Restrictions on the Selection of Bond Counsel

The Board of Governors wishes to insure that the University and its constituent institutions do not retain the services of lawyers or law firms to serve as bond counsel, incident to the issuance of University revenue bonds, under circumstances where such counsel may also be representing parties with interests adverse to those of the University in any pending or prospective litigation. Accordingly, at its meeting on June 14, 1996, the Board adopted the following resolution:

As a prerequisite to designation as bond counsel, the firm must certify that it is not now engaged and, for the duration of its service as bond counsel to the University, it will not engage in the representation of any party who is, or has given notice of its intention to become, a party plaintiff in any lawsuit in which the University, or a constituent institution of the University or an officer of the University named in his or her official capacity is or would be a party defendant.

Appropriate steps shall be taken to insure that responsible campus officials are informed about and comply with this requirement.

[This is a rewrite of Administrative Memorandum #362.]

NOTES:

Adopted 11/14/97

DESIGN AND CONSTRUCTION OF CAPITAL IMPROVEMENT PROJECTS

The 1997 Session of the General Assembly delegated to the Board of Governors the authority for the administration of design and construction of capital improvement projects estimated at \$500,000 or less. The board was also authorized to delegate that authority to constituent institutions of the University of North Carolina and to the North Carolina School of Science and Mathematics, if an institution is qualified under procedures developed in consultation with the director of the Budget and the State Building Commission. Pursuant to this authority, regulations entitled "The University of North Carolina Design and Construction Guidelines" were implemented to provide assistance to the constituent institutions in the administration of the design and construction of capital improvement projects. Copies of the guidelines may be obtained at UNC General Administration.

NOTES: