

AGENDA  
ONEOHIO RECOVERY FOUNDATION BOARD MEETING  
MAY 16, 2022  
Ohio Department of Public Safety, 1970 West Broad Street, Columbus, OH  
Room 1106  
1:00 – 3:30 PM

- I. Welcome Remarks from Governor DeWine
- II. Introductions and Update on Regional Appointments (45 mins)
  - a. *Each board member to provide personal introduction, and for the Regional Appointees, please provide a brief explanation of your Region's process for organizing and selecting you to serve on the Board. (3 mins each)*
- III. Review of Articles of Incorporation (5-10 mins)
  - a. *Foundation attorneys will review the purpose statement and mission, as set by the Memorandum of Understanding.*
- IV. Report on Status of the Foundation Entity (5-10 mins)
  - a. *Foundation attorneys will provide an update on the tax exemption application.*
- V. Discussion of Organizational and Operational Checklist (30-45 mins)
  - a. *Foundation attorneys to provide overview of Ohio Ethics Commission Guidance.*
  - b. *Review of checklist, and discussion of necessary tasks to get Foundation up and running. Proposed draft policies and Code of Regulations to be discussed in greater detail at a future meeting.*
  - c. *Consideration of subcommittee formation to address these issues.*
- VI. Selection of Provisional Officers (15 mins)
  - a. *Ohio law and the exemption application requires a President, Secretary, and Treasurer. Board discussion of whether and when to select.*
- VII. Open Discussion (15 mins)
  - a. *Set next meeting date.*

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DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
12/06/2021	202133702796	DOMESTIC NONPROFIT CORP - ARTICLES (ARN)	99.00	0.00	0.00	0.00

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SUITE 2600  
COLUMBUS, OH 43215-6164

# STATE OF OHIO CERTIFICATE

**Ohio Secretary of State, Frank LaRose**  
**4782956**

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
**ONEOHIO RECOVERY FOUNDATION, INC.**

and, that said business records show the filing and recording of:

Document(s)

**DOMESTIC NONPROFIT CORP - ARTICLES**

Effective Date: 12/03/2021

Document No(s):

**202133702796**



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio this  
6th day of December, A.D. 2021.

**Ohio Secretary of State**

Form 532B Prescribed by:

Date Electronically Filed: 12/3/2021



Toll Free: 877.767.3453 | Central Ohio: 614.466.3910

[OhioSoS.gov](http://OhioSoS.gov) | [business@OhioSoS.gov](mailto:business@OhioSoS.gov)File online or for more information: [OhioBusinessCentral.gov](http://OhioBusinessCentral.gov)

**Initial Articles of Incorporation**  
**(Nonprofit, Domestic Corporation)**  
**Filing Fee: \$99**  
**(114-ARN)**  
**Form Must Be Typed**

**First:** Name of Corporation

**Second:** Location of Principal Office in Ohio

City

State

County

**Optional:** Effective Date (MM/DD/YYYY)

(The legal existence of the corporation begins upon the filing of the articles or on a later date specified that is not more than ninety days after filing.)

**Third:** Purpose for which corporation is formed

\*\*\*\*\*see attached\*\*\*\*\*

**\*\* Note:** for Nonprofit Corporations: The Secretary of State does not grant tax exempt status. Filing with our office is not sufficient to obtain state or federal tax exemptions. Contact the Ohio Department of Taxation and the Internal Revenue Service to ensure that the nonprofit corporation secures the proper state and federal tax exemptions. These agencies may require that a purpose clause be provided. **\*\***

**\*\* Note:** ORC Chapter 1702 allows for additional provisions to be included in the Articles of Incorporation that are filed with this office. If including any of these additional provisions, please do so by including them in an attachment to this form. **\*\***

**Original Appointment of Statutory Agent**

The undersigned, being at least a majority of the incorporators of

OneOhio Recovery Foundation, Inc.

(Name of Corporation)

hereby appoint the following to be Statutory Agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. The complete address of the agent is:

ACFB INCORPORATED

(Name of Statutory Agent)

41 S. HIGH STREET, SUITE 2600

(Mailing Address)

COLUMBUS

(Mailing City)

OH

(Mailing State)

43215

(Mailing ZIP Code)

Must be signed by  
the incorporators or  
a majority of the  
incorporators.

MARTHA J. SWETERLITSCH

(Signature)

(Signature)

(Signature)

**Acceptance of Appointment**

The Undersigned, 

ACFB INCORPORATED

, named herein as the  
(Name of Statutory Agent)

Statutory agent for 

OneOhio Recovery Foundation, Inc.

  
(Name of Corporation)

hereby acknowledges and accepts the appointment of statutory agent for said corporation.

Statutory Agent Signature 

MARTHA J. SWETERLITSCH, PARTNER

(Individual Agent's Signature / Signature on Behalf of Business Serving as Agent)

**By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.**

**Required**

Articles and original appointment of agent must be signed by the incorporator(s).

If the incorporator is an individual, then they must sign in the "signature" box and print his/her name in the "Print Name" box.

If the incorporator is a business entity, not an individual, then please print the entity name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print his/her name and title/authority in the "Print Name" box.

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

Signature

By (if applicable)

Print Name

**ARTICLES OF INCORPORATION**  
**OF**  
**ONEOHIO RECOVERY FOUNDATION, INC.**

**THIRD**

**Purpose**

The Corporation is organized and shall be operated exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), or the corresponding section of any future United States Internal Revenue Law, including, as only limited by such purposes, the following purposes and activities related thereto:

- a.)* To promote the health and safety of Ohioans by implementing evidence-based forward-looking strategies, programming and services used to (i) expand the availability of treatment for individuals affected by substance use disorders, (ii) develop, promote and provide evidence-based substance use prevention strategies, (iii) provide substance use avoidance and awareness education, (iv) decrease the oversupply of licit and illicit opioids, and (v) support recovery from addiction services performed by qualified and appropriately licensed providers in order to lessen the burdens of government.
- b.)* To advocate for the interests of Ohioans by working with the State of Ohio, and its counties, townships, cities, villages, etc., to determine the best way to provide Ohioans with the programs and services described in Section a.) above.
- c.)* To fund the programs and services described in Section a.) above by disbursing through a competitive grant process funds to private organizations and government agencies engaged in such programs.

Solely for the above purposes, the Corporation is empowered to have and exercise all powers, rights, and privileges conferred by the laws of Ohio upon nonprofit corporations, including, but not limited to, buying, leasing or otherwise acquiring and holding, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, real or personal, of whatever nature and wheresoever situated, and buying and selling stocks, bonds, or any other security of any issuer as the Corporation, by action of its Board may, at any time and from time to time, deem advisable.

## FOURTH

### Private Foundation

Notwithstanding any other provision of these Articles of Incorporation to the contrary, during any period the Corporation is deemed to be a “private foundation” as defined in Section 509 of the Code, the Corporation:

- a.)* shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) or (b) by a corporation described in Section 170(c)(2), contributions to which are deductible under Section 170(a), 2055(a)(2) and/or 2522(a)(2);
- b.)* shall not engage in any act of “self-dealing,” as defined in Section 4941(d) of the Code, that would give rise to any liability for any tax imposed by Section 4941 of the Code;
- c.)* shall not retain any “excess business holdings,” as defined in Section 4943(c) of the Code, that would give rise to any liability for any tax imposed by Section 4943 of the Code;
- d.)* shall not make any investment that would jeopardize the carrying out of any of the Corporation’s exempt purposes, within the meaning of Section 4944 of the Code, so as to give rise to any liability for any tax imposed by that Section;
- e.)* shall not make any “taxable expenditures,” as defined in Section 4945(d) of the Code, that would give rise to any liability for any tax imposed by Section 4945 of the Code; and
- f.)* shall distribute at such time and in such manner, for each taxable year, amounts at least sufficient to avoid liability for any tax imposed by Section 4942 of the Code.

## FIFTH

### Restrictions

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered, to make payments in furtherance of the exempt purposes of the Corporation and to make distributions as authorized by Chapter 1702 of the Ohio Revised Code, including any distribution upon dissolution of the Corporation.

Notwithstanding anything to the contrary in these Articles of Incorporation:

- a.)* No substantial part of the activities of the Corporation shall be for carrying on propaganda, or otherwise attempting to influence legislation.
- b.)* The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

- c.) The Corporation may not engage in any activity which is not permitted to be engaged in by an organization exempt from federal income tax under section 501(c)(3) of the Code or to which charitable contributions may be deducted pursuant to sections 170, 2055 or 2522 of the Code.

## **SIXTH**

### **Members**

The Directors shall, for purposes of any statute or rule of law relating to this Corporation in particular, be taken to be the members of the Corporation and shall have all rights and privileges of members conferred by the laws of the State of Ohio.

## **SEVENTH**

### **Board of Directors**

The Corporation shall be controlled and managed under the direction of a Board of Directors (the "Board").

## **EIGHTH**

### **Dissolution**

Upon the dissolution of the Corporation, after paying or making provisions for the payment of all known liabilities of the Corporation, any assets remaining shall be conveyed to one or more organizations as shall be selected by the affirmative vote of a majority of the Board; provided, however, that any such organization shall be exempt from federal income taxation under section 501(c)(3) of the Code and shall be organized and operated to engage in the treatment and prevention of substance abuse in the State of Ohio.

## **NINTH**

### **Amendment**

Any provision of these Articles of Incorporation may be amended by the affirmative vote of a majority of the Board at any meeting at which a quorum is present; provided that such amendment shall be consistent with the applicable provisions of Chapter 1702 of the Ohio Revised Code.

## **TENTH**

### **Miscellaneous**

Capitalized terms that are not otherwise defined herein shall have the meaning set forth in the One Ohio Memorandum of Understanding, executed by Governor Mike DeWine on July 1, 2020.

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Merom Brachman, *Chairman*  
Megan C. Kelley, *Vice Chair*  
Bruce E. Bailey  
Julie A. Rutter  
Elizabeth E. Tracy  
Mark A. Vander Laan



OHIO ETHICS COMMISSION  
William Green Building  
30 West Spring Street, L3  
Columbus, Ohio 43215-2256  
Telephone: (614) 466-7090  
Fax: (614) 466-8368

Paul M. Nick  
*Executive Director*

[www.ethics.ohio.gov](http://www.ethics.ohio.gov)

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February 8, 2022

Martha J. Sweterlitsch  
Benesch, Friedlander, Coplan & Aronoff LLP  
41 South High St., Ste. 2600  
Columbus, OH 43215-6164

Dear Ms. Sweterlitsch,

Thank you for contacting the Ohio Ethics Commission regarding the OneOhio Foundation and the Regional Boards established as part of the opioid litigation settlement. This letter<sup>1</sup> is based on our telephone conversation on January 26, 2022, information contained in your February 8, 2022 email, and the materials you provided to the Commission, including: the OneOhio Memorandum of Understanding Toolkit for Local Governments; the Guidance on OneOhio Region Governance and Structure Memorandum (dated January 4, 2022); and the OneOhio Memorandum of Understanding.

You asked two questions:

1. Are members of the governing board of the OneOhio Foundation (Foundation) “public officials or employees” for the purposes of the conflict of interest laws contained in Revised Code Chapter 102?
2. Are members of the Regional Boards “public officials or employees” for the purposes of the conflict of interest laws contained in Revised Code Chapter 102?

### **Brief Answer**

At this time, the Commission cannot provide an opinion under R.C. 102.08 because it is unknown whether the Foundation will obtain tax exempt status from the Internal Revenue Service and the Regional Boards have not yet been formed. However, the Commission can provide guidance that describes under what circumstances these entities and their members would be considered public agencies and public employees for purposes of the Ethics Law.

### **What is a Public Agency?**

R.C. 102.01(C)(1) defines a public agency as “the general assembly, all courts, any department, division, institution, board, commission, authority, bureau or other instrumentality of the state, a county, city, village, or township, the five state retirement systems, or any other governmental entity.” R.C. 102.01(C)(2) states, in relevant part, that “public agency” does not include:

“A department, division, institution, board, commission, authority, or other instrumentality of the state or a county, municipal corporation, township, or other governmental entity that functions exclusively for cultural, educational, historical, humanitarian, advisory, or research purposes; that does not expend more than ten thousand dollars per calendar year, excluding salaries and wages of employees; and whose members are uncompensated.”

The Commission has stated that a non-profit corporation is not a government agency for purposes of the Ethics Laws.<sup>2</sup>

#### *Foundation Board*

In the case of the Foundation, it remains to be determined whether or not the Foundation will receive tax exempt status under Section 501(c)(3) of the Internal Revenue Code.<sup>3</sup> However, the Commission has stated that if a non-profit organization qualifies for tax exemption under Section 501(c)(3), then that organization is not a public agency for purposes of R.C. 102.<sup>4</sup>

#### *Regional Boards*

According to the materials you provided to the Commission, the structure of the Regional Boards is up to each region and there is no requirement that the Regional Boards incorporate in any particular form.<sup>5</sup> The materials you provided recommend against creating an organization through an act of the government or establishing a private non-profit organization.<sup>6</sup> An important factor to consider is that the definition of “public agency” contained in R.C. 102.01(C)(1) specifically includes regional councils of governments established under Revised Code Chapter 167.<sup>7</sup> However, it is not possible at this time to determine whether each Regional Board is a public agency for purposes of R.C. 102.01 because these entities have not yet been formed.

#### **Who is a Public Official or Employee?**

R.C. 102.01(B) defines a public official or employee,<sup>8</sup> in relevant part, as “any person who is elected or appointed to an office or is an employee of any public agency.”<sup>9</sup> In breaking down the definition to its component parts, a “public official or employee” means any person who is: 1) elected or appointed; 2) to an office; 3) or is an employee;<sup>10</sup> of 4) any public agency.

#### *Foundation Board*

In the case of the Foundation Board, as discussed above, if a non-profit organization qualifies for tax exemption under Section 501(c)(3), then that organization is not a public agency for purposes of the Ethics Laws. If a person is not working for a public agency, then the person is not a “public official or employee.”<sup>11</sup> Therefore, a member or employee of a non-profit corporation that qualifies for tax exemption under Section 501(c)(3) would not be a “public official or employee” for purposes of R.C. 102.01(B).<sup>12</sup> However, the Commission cannot reach any conclusion on the Foundation Board at this time because its status is still pending. If the Foundation

is denied tax exemption under Section 501(c)(3) by the Internal Revenue Service, please contact the Commission for further guidance.

### *Regional Boards*

In the case of the Regional Boards, it is not possible at this time to determine whether they are a public agency because many of the regions have not yet formed their boards. However, the Commission has stated that a member of a board that is purely advisory in its function is not a public official or employee for purposes of R.C. 102.01 because he or she does not hold an “office.”<sup>13</sup> The Ethics Commission has established five elements that, in combination, determine whether a person is “appointed to an office.” The Commission considers whether the person: (1) is appointed; (2) has a title; (3) exercises a function of government concerning the public; (4) is not subject to a contract of employment; and (5) exercises the “sovereign power” of government.<sup>14</sup>

For the Regional Boards, the key consideration in determining whether someone is subject to the Ethics Laws is whether he or she exercises “sovereign power.”<sup>15</sup> The Commission has stated that “sovereign power” includes “the exercise of a duty entrusted to one by virtue of statute or some other public authority, a duty that is not merely clerical, but that involves discretionary, decision making qualities.”<sup>16</sup> If a position does not have the power to exercise final decision-making authority, then the person does not exercise sovereign power and is not an officer, or appointed to an office, of a public agency.<sup>17</sup>

Based on the facts you provided, the duties of the Regional Boards are: 1) to select a board member to represent the Region on the Foundation Boards; and 2) to make recommendations regarding the selection of proposed projects to be funded from the region’s Regional Share that will equitably serve the entire regions. These duties appear to be advisory in nature and do not contemplate decision making or the exercise of discretionary authority. Rather, the Regional Boards appear to only have authority to make recommendations to the Foundation Board that, in turn, ultimately decides what projects to fund. If the role of the Regional Board does not include any ability to exercise “sovereign power” by making decisions and exercising discretionary authority, then the Regional Board would be purely advisory in nature and would not be subject to the provisions contained in the Ethics Laws.

Since the exact nature and role of the Regional Boards has not been established, the Commission cannot reach a conclusion on the status of the Regional Board members.

### **Additional Considerations**

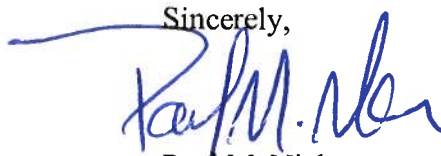
A person who is a public official or employee by virtue of his or her public position or employment is subject to the Ethics Laws regardless of whether he or she serves on the Foundation Board or any of the Regional Boards.<sup>18</sup> A person does not lose his or her status as a public official or employee by taking a position on the Foundation Board or any of the Regional Boards. Based on Appendix F of the OneOhio Memorandum of Understanding Toolkit for Local Governments, the Foundation and the Regional Boards should include large numbers of private sector individuals and a limited number of public officials and employees. Those public officials and employees who

serve on the Foundation Board and any of the Regional Boards should be mindful of the Ethics Laws in their new roles.

This letter is limited to questions arising under Revised Code Chapter 102. and Sections 2921.42 and 2921.43 and does not purport to interpret other laws or rules. This letter is not an advisory opinion. It serves only to provide you with general information about the Ethics Law and Commission precedent and does not reach any conclusions as to the specific facts in the situations that you have set forth.

I hope this information is helpful to you.

Sincerely,



Paul M. Nick  
Executive Director

CC: Jonathon Blanton, Deputy Attorney General for Major Litigation, Ohio Attorney General's Office (via email only)

Enclosures: Advisory Opinion No. 75-013  
Advisory Opinion No. 85-005

The Ohio Ethics Commission Advisory Opinions referenced in this opinion are available on the Commission's Website: [www.ethics.ohio.gov](http://www.ethics.ohio.gov)

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<sup>1</sup> The Commission has stated that the purpose of an advisory opinion is to explain the prohibitions within the Ethics Law and related statutes and set forth the standards and criteria that must be observed in order to avoid a violation of the law in a given set of circumstances. Ohio Ethics Commission Advisory Opinions No. 75-037, 90-013, and 92-003. In this instance, the ongoing process of establishing the Foundation and the Regional Boards leave a great deal of uncertainty regarding the facts of the situation which prevent a given set of circumstances to be presented to the Commission.

<sup>2</sup> Adv. Ops. No. 75-013 and 75-019. The Ethics Laws are contained in Chapter 102 and sections 2921.42 and 2921.43 of the Revised Code.

<sup>3</sup> OneOhio Memorandum of Understanding Toolkit for Local Governments, Appendix F.

<sup>4</sup> Inf. Ops. No. 2003-INF-1129-1 (Recktenwald) and 2012-INF-0405-2 (Crandall).

<sup>5</sup> OneOhio Memorandum of Understanding Toolkit for Local Governments ("The process to form the regional governance structure, appoint the Region's representative to the Foundation and to make regional submissions to the Foundation to fund programs within the Region is not defined in the OneOhio MOU or elsewhere.").

<sup>6</sup> OneOhio Memorandum of Understanding Toolkit for Local Governments, Appendix F.

<sup>7</sup> R.C. 102.01(C)(2).

<sup>8</sup> This letter does not consider R.C. 2921.01, which contains a different definition of "public official" and "public servant" for the purposes of R.C. 2921.42 and R.C. 2921.43.

<sup>9</sup> R.C. 102.01(B).

<sup>10</sup> In the materials you provided, there is no indication that the Regional Boards will hire employees. Therefore, this letter is limited to discussing guidance regarding public officials.

<sup>11</sup> Adv. Op. No. 75-019.

<sup>12</sup> Adv. Op. No. 75-019; Inf. Op. No. 2012-INF-0405-2 (Crandall).

<sup>13</sup> Adv. Op. No. 85-005; Inf. Op. No. 1988-INF-1216-2 (Patton).

<sup>14</sup> Adv. Ops. No. 74-007, 75-004, 77-004, and 2007-02.

<sup>15</sup> Adv. Op. No. 2007-02.

<sup>16</sup> Adv. Op. No. 75-004.

<sup>17</sup> Adv. Ops. No. 85-005 and 2007-02.

<sup>18</sup> Adv. Op. No. 75-019; Inf. Op. No. 2012-INF-0405-2 (Crandall).

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## **ORGANIZATIONAL AND OPERATIONAL CHECKLIST**

### **OF ONEOHIO RECOVERY FOUNDATION**

Foundation: OneOhio Recovery Foundation, Inc., an Ohio nonprofit corporation

MOU: One Ohio Memorandum of Understanding

<b><u>ITEMS</u></b>	<b><u>NOTES/COMMENTS</u></b>
<b><u>I. IMMEDIATE MATTERS</u></b>	
A. Review Code of Regulations	
B. Review Policies <ol style="list-style-type: none"><li>1. Budget Policy</li><li>2. Gift Acceptance Policy</li><li>3. Transparency Policy</li><li>4. Role of the Board Policy</li><li>5. Whistleblower Policy</li><li>6. Executive Compensation Policy</li><li>7. Excess Benefit Transaction Policy</li></ol>	
C. Organize critical sub-committees/working groups and send out critical RFPs <ol style="list-style-type: none"><li>1. Sub-committee/working group tasked with preparing and sending out RFPs for:</li></ol>	

ITEMS	NOTES/COMMENTS
<ul style="list-style-type: none"> <li>a. An investment advisor (to advise and assist in selecting investment managers);</li> <li>b. Banks (in order to set up bank accounts).</li> <li>2. Sub-committee/working group tasked with preparing and sending out RFPs for an executive search firm</li> </ul>	
<b>II. <u>ORGANIZATIONAL MATTERS – ONCE A QUORUM HAS BEEN ASSEMBLED</u></b>	
A. Action by Incorporator to Appoint Directors of the Foundation (to be executed by Benesch, as the incorporator)	
B. Action by Directors of the Foundation (to appoint Officers; approve the Code of Regulations; approve initial corporate actions)	
C. Action by Directors of the Foundation to Approve the Filing of the Form 1023, Application for Tax-Exemption	
<b>IV. <u>OPERATIONAL MATTERS</u></b>	
A. Open Bank Accounts and Investment Accounts	
B. Adopt Policies referenced above and any other relevant Board policies, such as: <ul style="list-style-type: none"> <li>1. Document Retention Policy; and</li> <li>2. Investment and Spending Policy.</li> </ul>	<i>The Foundation's investment advisor should aid in the formulation of the Investment and Spending Policy.</i>
C. Hire Executive Director and other employees	
D. Create Board Committees and Adopt Committee Charters <ul style="list-style-type: none"> <li>1. Audit and Finance Committee</li> <li>2. Executive Committee</li> </ul>	

ITEMS	NOTES/COMMENTS
3. Investment Committee  4. Fundraising Committee	
E. General Business Operations <ul style="list-style-type: none"> <li>- Purchase insurance (including Director and Officer Insurance)</li> <li>- Purchase supplies and equipment</li> <li>- Enter into a lease</li> <li>- Hire a payroll provider</li> <li>- Obtain employee benefit plans</li> <li>- Acquire appropriate software (ex. accounting functions)</li> <li>- All other business functions necessary for an organization of this size</li> </ul>	
F. Prepare a Budget	
G. Appoint Expert Panel and Adopt Expert Panel Charter	
H. Hire Independent Advisors <ol style="list-style-type: none"> <li>1. Tax Accounting Firm</li> <li>2. Audit Firm</li> </ol>	<i>This should be done through a typical RFP process utilized by nonprofit corporations</i>
I. Implement the Grant Process <ul style="list-style-type: none"> <li>- Approve Grant Policy, which will include parameters regarding eligibility, the grant cycle, the</li> </ul>	

ITEMS	NOTES/COMMENTS
<p>grant review process and the appeal process</p> <ul style="list-style-type: none"> <li>- Prepare and approve Grant Application and guidelines related thereto</li> <li>- Determine process and procedures (ex. electronic) for submissions of grant applications</li> </ul>	
J. Determine and Implement Other Programs	<i>The MOU contemplates that funds may be used for statewide programs, innovation, research and education.</i>
K. Implement documentation and governance procedures (such as detailed meeting minutes)	
L. Determine and implement mechanism to obtain balance remaining in LGFF	<i>MOU contemplates that the balance left in the LGFF following the payment of fees revert back to the Foundation. The Foundation needs to ensure that any agreement related to the LGFF contains a mechanism for this process.</i>
M. Complete Annual Disclosure Statements (Conflict of Interest)	
<p>N. File All Required Tax Returns and Tax Reports</p> <ol style="list-style-type: none"> <li>1. Federal Form 990</li> <li>2. State Filings</li> <li>3. Other required tax returns and filings (such as payroll-related tax returns; form 1099s)</li> </ol>	

# ONEOHIO RECOVERY FOUNDATION

## BUDGET PROCESS AND REVIEW

### I. Purpose and Objectives.

- A. Purpose. The purpose of this Budget Process and Review Policy (“**Budget Policy**”) is to ensure that the OneOhio Recovery Foundation (the “**Foundation**”) conducts a timely review of financial reports and completes advanced planning with respect to the Foundation’s finances, using a budget process that supports program priorities while managing spending levels.
- B. Objectives. This Budget Policy is designed to affect the following specific objectives:
  - 1. Provide guidelines by which the Foundation’s funds are budgeted, based on expected revenue levels, to further the Foundation’s mission and priorities.
  - 2. Provide a review process by which finances can be objectively reviewed and analyzed.
- C. Definitions.
  - 1. “**Board**” means the board of directors of the Foundation.
  - 2. “**Budget**” means the Board approved Proposed Budget, comprised of a twelve month estimate of revenues and expenses for the Foundation.
  - 3. “**Proposed Budget**” means a draft of the Budget.

### II. Authority.

- A. Board Authority. The Board, at the annual meeting, shall review and approve the Proposed Budget as presented by the Finance Committee. If the Board determines that there are necessary changes to be made to the Proposed Budget, the Proposed Budget shall be sent back to the Finance Committee with the Boards comments to be revised and updated before sending back to the Board for approval.

The Board review and approval shall be conducted in accordance with the voting requirements outlined in the Foundation’s Code of Regulations, in effect at the time (the “**Code of Regulations**”) and in accordance with the Foundation’s Conflict of Interest provisions set forth in the Code of Regulations.
- B. Finance Committee. The Finance Committee shall prepare the Proposed Budget in accordance with Section III of this Budge Policy. The Finance Committee shall present its recommended Proposed Budge to the Board for review and approval.

III. **Procedure.** The Finance Committee no later than **[two months prior to the annual Board meeting]**<sup>1</sup> shall prepare the Proposed Budget in accordance with the below qualitative and quantitative factors.

A. Qualitative Budget Factors.<sup>2</sup> The Finance Committee shall prepare the Proposed Budget based on an evaluation of the below information:

1. *Financial Results.* A review the prior two fiscal year's financial results.
2. *Mission.* Consideration of the Foundation's mission.
3. *Annual Goals.* Consideration of the annual financial goals of the Foundation as well as the annual policy goals of the Foundation.
4. *Balanced Budget.* The Finance Committee shall work towards achieving a balanced Budget each year, **[and shall in no event have an unbalanced Budget, in any direction that is more than a magnitude of 10% of the total revenue of the Foundation.]**

B. Quantitative Budget Factors. The Proposed Budget shall include, at a minimum, each of the following:

1. **[Revenues, itemized by category; and**
2. **Expenses, itemized by region.]**<sup>3</sup>

IV. **[Budget Review.**

A. The Finance Committee shall annually review the financial results of the Foundation **[from at least the two prior fiscal years (if applicable).]**<sup>4</sup>

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<sup>1</sup> NTD: Please consider the appropriate timing – when will the annual Board meeting be held; what will the fiscal year of the Foundation be?

<sup>2</sup> NTD: Please consider any other factors that should be included in the formation of the Proposed Budget.

<sup>3</sup> NTD: Please consider any additional information to be included.

<sup>4</sup> NTD: A Budgetary review is built into the Budget development (See III.A.1). If the Finance Committee is to conduct an annual review of the Foundation's finances, this may need to be addressed in the Finance Committee charter as well.

**ONEOHIO RECOVERY FOUNDATION**  
**GIFT ACCEPTANCE POLICY**

**I. Purpose and Objectives.**

- A. Purpose. The purpose of this Gift Acceptance Policy (“**Gift Policy**”) is to protect the interests the OneOhio Recovery Foundation (the “**Foundation**”) by ensuring that all gifts to or for the Foundation are (1) structured to provide maximum benefit to each of the Foundation and the donor, and (2) not restricted in a manner that is inconsistent with the mission of the Foundation.
- B. Objective. This Gift Policy is designed to affect the following specific objectives:
1. Except where stated otherwise, this Gift Policy is to act as a guideline for the review process that is to be undertaken prior to the Foundation accepting any gifts.
  2. To optimize funding from individuals and other entities to the Foundation.
  3. To allow for flexibility with respect to the evaluation and acceptance or rejection of a gift, to account for the sometimes complex decisions that involve a number of interrelated factors.
- C. Definitions.
1. “**Board**” means the board of directors of the Foundation.
  2. “**Director**” means a director on the Board.
  3. “**Encumbrances**” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment, or other similar encumbrance.
  4. “**Simple Gift**” has the meaning ascribed to it in Section IV of this Gift Policy.
  5. “**Complex Gift**” has the meaning ascribed to it in Section V of this Gift Policy.

**II. Authority.**

- A. Board Authority. The Board shall review and evaluate all Complex Gifts proffered to the Foundation to determine if acceptance of such Complex Gift is viable. In addition, the Board shall reserve the right to review and approve any Simple Gifts, in addition to the review conducted by the [TBD] Committee, if (i) in the judgement of the Executive Director, the gift warrants immediate action and the [TBD] Committee cannot convene, (ii) in the judgement of the Executive Director, the gift is of such extraordinary circumstances, of the type of asset(s), or the conditions pertaining to the gift are of such significance or complexity.

Any Board review and approval shall be conducted in accordance with the voting requirements outlined in the Foundation's Code of Regulations, in effect at the time of the gift (the "**Code of Regulations**") and in accordance with the Foundation's Conflict of Interest provisions set forth in of the Code of Regulations.

For the review of any Complex Gift, the Board shall include outside legal counsel and such counsel's analysis in the Board's evaluation of the Complex Gift. For the review of any Simple Gift, the Board has the option to include outside legal counsel in its evaluation of the Simple Gift.

- B. [TBD] Committee Authority. The [TBD]<sup>1</sup> Committee shall evaluate, review, and approve each Simple Gift that is proffered to the Foundation pursuant to the guidelines outlined in Sections III and IV this Gift Policy.

### III. **Procedure.**

- A. Purpose of Gift. All gifts made to the Foundation shall be consistent with the tax-exempt purposes of the Foundation. All gifts shall be in compliance with the Internal Revenue Code and any other applicable federal or state statutes, regulations, rulings and comparable tax-exempt statutes of the Foundation.
- B. Acceptance of Gifts.
1. *Evaluation*. All Simple Gifts and Complex Gifts shall be evaluated and approved for acceptance in accordance with Section II of this Gift Policy.
  2. *No Material Restrictions*. Any gift made to the Foundation shall not be directly or indirectly subjected to any material restriction or any such condition that prevents the Foundation from freely and effectively employing the gift or the assets or income derived therefrom, in furtherance of the tax-exempt purposes of the Foundation.
- C. Donor Relations.
1. *Acknowledgement of Gift*. The Executive Director shall acknowledge, or cause to be acknowledged, the receipt of all gifts in a contemporaneous writing to the donor that includes each of the following:
    - i. The name of the donor;
    - ii. The name of the donee organization;
    - iii. The amount of cash and a description of any property other than cash contributed;

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<sup>1</sup> NTD: To determine which committee, or whether a new committee shall be created which, will have the authority to execute under this Policy.

- iv. A statement whether the donee organization provided any goods or services in consideration for the contribution; and
  - v. A description and good faith estimate of the value off any goods or services provided in consideration for the contribution.
- 2. *Legal Counsel.* The Foundation shall encourage donors to consult an independent financial, legal and/or tax counsel in matters relating to the gift in question and any resulting tax and estate planning consequences. It is the donor's responsibility to directly employ and compensate independent financial, legal, and/or tax counsel.
- 3. *Costs.* Any fees or costs associated with the transfer of a gift from a donor to the Foundation, including but not limited to attorney fees, accounting fees, or any other professional fees, appraisal costs, escrow costs, evaluation costs, title insurance costs, any environmental assessment fees and costs, or any other fees or costs shall be the responsibility of the donor unless such expenditures are specifically authorized by the Board in advance of the gift. Any such concessions should be described in the gift agreement.
- 4. *Filings.* To the extent an accepted gift requires the donor to file any tax forms or any other documentation, the donor is responsible for those filings.
- 5. *Notice of Transfer.* The donor shall notify the Foundation of its intent to transfer a gift to the Foundation at the Foundation's business address.
- D. Records Keeping. All files, records, and mailing lists of all donors and prospective donors are to be maintained and controlled by the Board. All such information shall be confidential and used only by the Board and Foundation staff. Use of the information shall be restricted to the Foundation's purposes only. Each donor has the right to review his or her donor file.
- IV. **Simple Gifts.** Any gift of the nature described in this Section IV below, shall be considered a "**Simple Gift**" that the Foundation may accept subject to reviewed and approval in accordance with Section II of this Gift Policy.
  - A. Cash and Cash Equivalents. Cash and cash equivalents shall include cash, checks, credit cards, electronic funds transfer, and automated clearing house payments.
  - B. Publicly Traded Securities. Publicly traded securities shall include securities that are readily marketable or traded on a recognized market exchange.
- V. **Complex Gifts.** Any gift of the nature described in this Section V below, shall be considered a "**Complex Gift**" that the Foundation may not accept, except

with the Board's review and approval in accordance with Section II of this Gift Policy.

- A. Tangible Personal Property. Tangible personal property including, but not limited to, artwork, collectibles, antiques, jewelry, books, automobiles, boats, etc.
- B. Intangible Personal Property. Intangible personal property including, but not limited to, copyrights, patents, and royalties.
- C. Mutual Funds. Mutual funds including, but not limited to, interests in a managed investment program.
- D. Corporate Ownership Interest. Corporate ownership interests including, but not limited to, closely held stock, limited partnership, or limited liability company interests.
- E. Real Estate. Real estate including, but not limited to, residential, commercial, developed, and undeveloped real property.
- F. Bargain Sale. Bargain sales, including a gift resulting from a bargain sale transaction.
- G. Bequests. Bequests made through a will or other bequest vehicle or other estate planning or charitable contribution vehicle or arrangement; provided, that simple bequests of Simple Gifts can be accepted pursuant to the terms set forth herein.
- H. Retirement Plans. Retirement plans or interests therein, including, but not limited to, gifts from or related to retirement plans which shall include individual retirement accounts, 401(k) and 403(b) plans, or other qualified or non-qualified plans.
- I. Life Insurance Policies. Life insurance policies including, but not limited to, gifts of life insurance policies and proceeds of such policies.
- J. Others. Any other types of property or right therein not otherwise described in A-I above or as described as a Simple Gift herein.

# **ONEOHIO RECOVERY FOUNDATION**

## **TRANSPARENCY POLICY**

### **I. Purpose**

The OneOhio Recovery Foundation (the “Foundation”) is organized and shall be operated exclusively for charitable, educational, and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”), or the corresponding section of any future United States Internal Revenue Law.

The Foundation aims to work with government entities and private organizations to carry out its purpose of promoting the health and safety of Ohioans through implementing evidence-based forward-looking strategies, programming, and grantmaking to organizations directly involved in the treatment and prevention of opioid use disorder.

The engagement of the public, government, experts, and key stakeholders such as those with lived experiences, is essential in order to successfully achieve the Foundation’s charitable mission.

To that end, the Foundation staff, Board, Committees, and Expert Panel hereby adopt this policy that will ensure openness, access, and transparency in our work. Meetings shall be accessible to the public and certain records shall be made available upon reasonable request.

### **II. Request for Records**

A “record” generally refers to a document in any format – paper, electronic (including, but not limited to, business e-mail) – that is created or received by the Foundation, regarding its functions, policies, decisions, procedures, operations, or other activities. All Foundation Staff, Board Members, Committees, Expert Panelists, and contractors are required to retain records in accordance with the Foundation’s Record Retention Policy.

This policy does not require us to turn over the following: personal information, confidential documents protected by the attorney-client privilege, trade secrets, proprietary information, protected health and medical records, donor profile records and other confidential donor information, and other similar records, as determined by the Executive Director or the Board.

A “meeting” includes the following: meetings of the Foundation Board and Committees, and Expert Panel meetings.

The Foundation’s most recent financial audit report conducted by an independent accounting firm shall be posted on the website on an annual basis.

### **III. Handling Requests**

No specific language is required to make a request for records. However, the requester must at least identify the records requested with sufficient clarity to allow the Foundation to identify, retrieve, and review the records.

It is the Foundation's general policy not to ask for a written request, the requester's identity, and/or the intended use of the information requested but may do so if (1) a written request or disclosure of identity or intended use would benefit the requester by enhancing the office's ability to identify, locate, or deliver the public records that have been requested; and (2) the requester is first told that a written request is not required and that the requester may decline to reveal the requester's identity or intended use.

In processing the request, the Foundation does not have an obligation to create new records. An electronic record is deemed to exist so long as a computer is already programmed to produce the record through the office's standard use of sorting, filtering, or querying features.

In processing a request for inspection of a record, a Foundation employee may accompany the requester during inspection to make certain original records are not taken or altered.

Records need only be retained in accordance with the Records Retention Policy. Records requested outside of the time period outlined in the schedule need not be provided if unavailable.

### **IV. Denial and Redaction of Records**

If the requester makes an ambiguous or overly broad request or has difficulty in making a request such that the office cannot reasonably identify what records are being requested, the request may be denied, but the office must then provide the requester an opportunity to revise the request by informing the requester of the manner in which records are maintained and accessed by the office.

If the office withholds, redacts, or otherwise denies requested records, it must provide an explanation for the denial(s). If the initial request was made in writing, the explanation must also be in writing. When making records available for public inspection or copying, the office shall notify the requester of any redaction or make the redaction plainly visible.

### **V. Copying and Mailing Costs**

A requester may be required to pay in advance for the actual costs involved in providing a copy of the record. The requester may choose whether to have the record duplicated upon paper, upon the same medium on which the public record is kept, or upon any other medium on which the office determines that the record can reasonably be duplicated as an integral part of the office's normal operations.

If a requester asks that documents be delivered to them, they may be charged the actual cost of the postage and mailing supplies, or other actual costs of delivery. There is no charge for e-mailed documents.

## **VI. Meeting Transparency**

Meetings of the Foundation Board, Committees, and Expert Panel shall be accessible by the general public, except when the Board is in executive session.

Meeting notices shall be posted on the Foundation website and sent using an email subscription listserv.

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# ONEOHIO RECOVERY FOUNDATION

## ROLE OF THE BOARD

### I. Purpose and Objectives.

- A. Purpose. The purpose of this Role of the Board Policy (“**Board Policy**”) is to ensure that directors of the OneOhio Recovery Foundation (the “**Foundation**”) are provided clear and concise guidelines to ensure an accountable, transparent, responsive, and efficient board of directors.
- B. Objective. This Board Policy is designed to summarize those requirements and expectations of a board member serving on the board of directors of the Foundation.
- C. Definitions.
  - 1. “**Board**” means the board of directors of the Foundation.
  - 2. “**Director**” means a director on the Board.

### II. Role of the Board

- A. Each Director on the Board shall act in a manner at all times, in connection with their role as a Director, as a fiduciary of the Foundation.
- B. The Board shall adopt Policies and Procedures as are deemed necessary to operate the Foundation. The Board shall annually review all Policies and Procedures to ensure understanding and compliance.
- C. The Board shall annually review and approve the Foundation’s budget in accordance with the Foundation’s Budget Policy.
- D. The Board shall annually review and approve executive compensation for the Foundation’s executives in accordance with the Foundation’s Executive Compensation Policy and Excess Benefit Transaction Policy.
- E. The Board shall routinely review and approve sales, exchanges, transfers, loans, provision of services and other transactions in accordance with the Foundation’s Excess Benefit Transaction Policy.
- F. The Board shall routinely review and approve any gifts in accordance with the Foundation’s Gift Policy.
- G. The Board shall abide by the Foundation’s Conflict of Interest provisions set forth in the Code of Regulations.
- H. The Board shall annually review and revise, if necessary, its mission statement.
- I. The Board shall prepare annual goals that shall guide the Board in its management of the Foundation.
- J. The Board shall assume stewardship responsibility for the Foundation’s finances.

### **III. Expectation of Directors**

- A. A Director is expected to regularly attend all meetings of the Board in accordance with the requirement of the Code of Regulations.<sup>1</sup>
- B. A Director is expected to participate in committee work.
- C. A Director is expected to inform himself or herself about the Policies and Procedures of the Foundation.
- D. A Director is expected to participate in Board activities.
- E. A Director is expected to act as an informed advocate of the Foundation.

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<sup>1</sup> NTD: Do we want to put a minimum attendance requirement in place.

# **ONEOHIO RECOVERY FOUNDATION**

## **WHISTLEBLOWER POLICY**

### **I. Purpose**

It is the intent of OneOhio Foundation (the “Foundation”) to adhere to all federal and state laws and regulations that apply to the Company. If at any time a concern exists regarding the legality of any action contemplated to be taken or that has been taken by any Foundation employee, investor, vendor, or other person as the action relates to Foundation activities, or if an action needs to be taken for the Foundation to be in compliance with the law, employees can address the issue directly by going to Human Resources or the Board of Directors.

### **II. No Retaliation**

The Foundation will not retaliate against an employee who in good faith reports, in accordance with this Whistleblower Policy, an illegal activity or a practice in violation of a clear mandate of public policy (an employee making such a report is referred to as a “whistleblower”). The Foundation will not harass, retaliate against, or impose adverse employment conditions against an employee as a result of such report. An employee who retaliates against someone who has reported such a violation in good faith is subject to discipline up to and including termination of employment. The protections described in this Whistleblower Policy are only available to employees who comply with the requirements set forth in this Policy and provide the Foundation with a reasonable opportunity to investigate and correct the alleged unlawful activity.

### **III. Reporting Violations**

Employees who wish to report a suspected violation of law or improper activity may do so by submitting a detailed, signed account of the concern in writing via internal mail or email to Human Resources or the Board of Directors. Alternatively, such reports may be submitted in writing on an anonymous basis with the understanding that anonymity may impede the ability of the Foundation to properly investigate the reported problem.

### **IV. Acting in Good Faith**

Anyone filing a complaint concerning a violation or suspected violation of law must be acting in good faith and have reasonable grounds for believing the information disclosed indicates a violation. An employee who intentionally, maliciously, or knowingly files a false report of wrongdoing will be subject to discipline up to and including termination and will be subject to legal claims by individuals accused of such conduct.

### **V. Confidentiality**

Reports of violations or suspected violations will be kept confidential to the extent possible. Generally, this means that whistleblower complaints will only be shared with those who have a

need to know so that the Foundation can conduct an effective investigation, determine what action to take based on the results of any such investigation, and in appropriate cases, with law enforcement personnel. Should disciplinary or legal action be taken against a person or persons as a result of a whistleblower complaint, such persons may legally have the right to know the identity of the whistleblower.

## **VI. Handling of Reported Violations**

Reports of suspected violations will be handled seriously, and reports of retaliation will be investigated promptly and in a manner intended to protect confidentiality, consistent with a full and fair investigation. The Board of Directors will conduct, or designate other internal or external parties to conduct, or assist in conducting, the investigations. The circumstances may warrant use of attorneys or outside auditors and law enforcement agencies. Appropriate corrective action will be taken if warranted by the investigation. The investigating parties will notify the concerned individuals of their findings and prepare other reports as indicated by the circumstances. A summary of all such reports will be presented to the Board of Directors.

# ONEOHIO RECOVERY FOUNDATION

## EXECUTIVE COMPENSATION

### I. Purpose and Objectives.

- A. Purpose. The purpose of this Executive Compensation Policy (“**Compensation Policy**”) is to ensure that a Covered Executive of the OneOhio Recovery Foundation (the “**Foundation**”) is provided fair, reasonable, competitive, and not excessive total compensation as determined pursuant to the procedure outlined in this Compensation Policy.
- B. Objectives. This Compensation Policy is designed to affect the following specific objectives:
1. Evaluate and provide a total compensation package for each Covered Executive, inclusive of base salary, benefits, incentive opportunities, and other adjustments, that attracts and retains high-caliber talent.
  2. Each Covered Executive’s total compensation package is reasonable and comparable to similarly situated organizations.

C. Definitions.

1. “**Board**” means the board of directors of the Foundation.
2. “**Covered Executive**” means:
  - i. “**Chief Employed Executive**”: The individual or individuals who have the ultimate responsibility for implementing the decisions of the Foundation or for supervising the management, administration, or operations of the Foundation or managing the finances of the Foundation, including the Foundation’s top management official and top financial official. If the ultimate responsibility resides with two or more individuals who may exercise such responsibility in concert, then each individual should be included. For the avoidance of doubt, the Executive Director, the Chief Financial Officer and the Chief Executive Officer shall be considered Chief Employed Executives.
  - ii. “**Officer**”: A person elected or appointed to serve as an officer of the Foundation in such officer positions as outlined in the Foundation’s Code of Regulations, including, for the avoidance of doubt, the President and the Treasurer.
  - iii. “**Key Employee**”: Individuals who are not a Chief Employed Executive or an Officer but who meet all of the following criteria:

- a. \$150,000 Threshold. The individual receives reportable compensation from the Foundation and all related organizations in excess of \$150,000 for a 12-month period.
- b. Responsibility Criteria. The individual:
  - i. Has responsibilities, power, or influence over the Foundation as a whole that is similar to that influence of an officer or director;
  - ii. Manages a discrete segment or activity of the Foundation that represents ten (10%) percent or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
  - iii. Has or shares authority to control or determine ten (10%) percent or more of the Foundations' capital expenditures, operating budget, or compensation for employees.
- c. Top 20 Limitation. The individual is one of the top twenty (2) most highly compensated employees (including all income from the Foundation and any related organizations) for a 12-month period (unless the Board otherwise determines that such individual otherwise should be a Key Employee).
- iv. Any other individual who the Board identifies as a Disqualified Person under the Excess Benefit Policy.

## II. Authority.

- A. Board Authority. The Board shall approve each Covered Executive's total compensation package in accordance with the voting requirements set forth in the Foundation's Code of Regulations (the "**Code of Regulations**") and in accordance with the Foundation's Conflict of Interest provisions set forth in the Code of Regulations.
- B. Compensation Committee Authority. The [Compensation Committee]<sup>1</sup> shall evaluate, review, and approve each Covered Executive's total compensation package. The Compensation Committee shall present its recommendation for each Covered Employee's total compensation package to the Board as outlined in this Compensation Policy.

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<sup>1</sup> NTD: To confirm that a compensation committee will be created; if not previously contemplated, it should be and should be created in order to affect this Executive Compensation Policy. The committee will need a formal delegation of authority from the Board as well as a committee charter.

C. Total Compensation Package. For purposes of this Compensation Policy, a Covered Executive's total compensation packages includes, without limitation:

1. All forms of cash and non-cash compensation, including salary, fees, bonuses, severance payments and deferred and noncash compensation;
2. The payment of liability insurance premiums for, or the payment or reimbursement by the Foundation of taxes or certain expenses under IRC Section 4958, unless excludable from income taxes as a de minimis fringe benefit under IRC Section 132;
3. All other compensatory benefits, whether or not included in gross income for income tax purposes;
4. All taxable and nontaxable fringe benefits, except fringe benefits described in IRC Section 132;
5. Foregone interest on loans; and
6. All other economic benefits.

### III. **Procedure.**

A. Process. To fairly and effectively review and approve a Covered Executive's total compensation package, the Compensation Committee shall research and fully develop each factor in the Executive Compensation Framework as outlined in Section III.B of this Compensation Policy and shall then evaluate and approve each Covered Executive's total compensation package against the Executive Compensation Framework before presenting to the Board. The Compensation Committee shall reference and abide by the Foundation's Excess Benefit Transaction Policy in researching and developing each factor in the Executive Compensation Framework and in evaluating and approving each Covered Executive's total compensation package. The Foundation should, if it deems appropriate, engage an independent compensation consultant ("**Independent Consultant**") to collect data and provide a report and opinion to the Compensation Committee and the Board regarding its findings.

B. Executive Compensation Framework.

1. Research and identify relevant market data for each Covered Executive position by obtaining reliable and comparable data from published surveys of both tax-exempt and for-profit organizations, focusing on data from comparable organizations with similarly sized budgets with respect to functionally comparable positions. Also may consider the availability of similar services in the geographic location of the Foundation, compensation surveys compiled by independent firms, and written offers from similar organizations competing for the services of the particular

individual. Hire an Independent Consultant, if the Foundation deems it appropriate; provided, however, that the Foundation should strongly consider hiring an Independent Consultant if the Foundation's pay philosophy is to pay at or close to the top of the market or if it wishes to obtain data from taxable and tax-exempt organizations that are comparable.

2. Develop a target base pay range for each Executive position [based on the median of the market data generated in Item 1 of the Executive Compensation Framework / that reflects the top two-thirds of the data points in the market data generated in Item 1 of the Executive Compensation Framework.]<sup>2</sup>
3. Develop a list of potential benefits and incentive-based compensation opportunities for each Covered Executive position based on examples derived from the market data generated in Item 1 of the Executive Compensation Framework.
4. Develop parameters for base salary increases based on the Foundation's annual financial performance and other relevant factors.

C. Covered Employee Executive Compensation Framework Analysis. The Compensation Committee shall annually execute on the Executive Compensation Framework as follows:

1. Annually administer the Performance Evaluation (as described in Section IV of this Compensation Policy) for each Covered Executive.
2. Set each Covered Executive's base salary based off an evaluation of (i) the market data generated in Item 1 of the Executive Compensation Framework, (ii) the results of the Covered Executive's Performance Evaluation, and (iii) the Covered Executive's background, experience, and skills.
3. Set each Covered Executive's benefit package based off an evaluation of (i) the market data generated in Item 1 of the Executive Compensation Framework, and (ii) the list of potential benefits available generated in Item 3 of the Executive Compensation Framework.
4. Set incentive opportunities for each Covered Executive based off an evaluation of (i) the market data generated in Item 1 of the Executive Compensation Framework, (ii) the list of potential benefits available generated in Item 3 of the Executive Compensation Framework, and (iii) the results of the Covered Executive's Performance Evaluation.

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<sup>2</sup> NTD: The Foundation needs to establish its pay philosophy and its target compensation levels (ex. is the target to pay at the 50<sup>th</sup> percentile of similar organizations?).

5. Set a salary increase for each Covered Executive based off an evaluation of (i) the market data generated in Item 1 of the Executive Compensation Framework, (ii) the parameters generated in Item 4 of the Executive Compensation Framework, and (iii) the results of the Covered Executive's Performance Evaluation.

#### **IV. Documentation.**

- A. Performance Evaluation. Develop a Performance Evaluation<sup>3</sup> that can be administered to each Covered Employee. The Performance Evaluation shall at a minimum facilitate a careful review of the following for each Covered Employee:
    1. Accomplishment of goals for the review period;
    2. Performance on key responsibilities outlined in the Covered Employee's job description;
    3. Additional performance or management factors;
    4. Goals for the upcoming annual period;
    5. Performance improvement plan that is set jointly between the Covered Employee and their supervisor; and
    6. Development plan that is set jointly between the Covered Employee and their supervisor to include monitored target dates.
  - B. Compensation Framework Report. The Compensation Committee shall annually deliver to the Board a report outlining the results of the Compensation Committee's research on each item in the Compensation Framework outlined in Section III.B of this Compensation Policy.
  - C. Covered Employee Report. The Compensation Committee shall annually deliver to the Board a report on each Covered Employee outlining the Compensation Committee's evaluation of each Covered Employee as against each element of the Executive Compensation Framework outlined in Section III.B of this Compensation Policy.
- V. **Excess Benefit Policy**. With respect to any compensation determined hereunder, in all events the Foundation shall comply with its Excess Benefit Policy, including complying with the Rebuttable Presumption Documentation Requirements as set forth in the Excess Benefit Policy.

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<sup>3</sup> NTD: The Compensation Committee will need to develop the Performance Evaluation form and standards.

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## ONEOHIO RECOVERY FOUNDATION

### EXCESS BENEFIT TRANSACTION

#### I. Purpose and Objectives.

- A. Purpose. The purpose of this Excess Benefit Transaction Policy (“**Excess Benefit Policy**”) is to ensure that the OneOhio Recovery Foundation (the “**Foundation**”) avoids entering into an Excess Benefit Transaction and confirm that any transaction with a Disqualified Person is properly evaluated in advance of its finalization.
- B. Background: Section 4958 of the Internal Revenue Code of 1986, as amended (the “**Code**”) imposes penalty taxes, referred to as “intermediate sanctions” on certain persons who engage in or approve of “excess benefit transactions” with organizations that are tax-exempt under Section 501(c)(3) of the Code. The intermediate sanction rules were enacted to give the Internal Revenue Service a less drastic enforcement tool than the revocation of a tax-exempt organization’s tax-exempt status for violation of the private inurement limitation.
- C. Objectives. This Excess Benefit Policy is designed to affect the following specific objectives:
  - 1. Evaluate transactions with a Disqualified Person in order to detect and prevent Excess Benefit Transactions.
  - 2. To ensure that the net earnings of the Foundation do not inure to the benefit of any Covered Executive, member of the Board, Officer, or person considered a Disqualified Person.
  - 3. Identify and track Disqualified Persons.
- D. Definitions.
  - 1. “**Board**” means the board of directors of the Foundation.
  - 2. “**Covered Executive**” means:
    - i. “**Chief Employed Executive**”: The individual or individuals who have the ultimate responsibility for implementing the decisions of the Foundation or for supervising the management, administration, or operations of the Foundation or managing the finances of the Foundation, including the Foundation’s top management official and top financial official. If the ultimate responsibility resides with two or more individuals who may exercise such responsibility in concert, then each individual should be included. For the avoidance of doubt, the Executive Director, the Chief Financial Officer, and the Chief Executive Officer shall be considered Chief Employed Executives.

- ii. **“Officer”**: A person elected or appointed to serve as an officer of the Foundation in such officer positions as outlined in the Foundation’s Code of Regulations, including, for the avoidance of doubt, the President and Treasurer.
- iii. **“Key Employee”**: Individuals who are not a Chief Employed Executive or an Officer but who meet all of the following criteria:
  - a. **\$150,000 Threshold**. The individual receives reportable compensation from the Foundation and all related organizations in excess of \$150,000 for a 12-month period.
  - b. **Responsibility Criteria**. The individual:
    - i. Has responsibilities, power, or influence over the Foundation as a whole that is similar to that influence of an officer or director;
    - ii. Manages a discrete segment or activity of the Foundation that represents ten (10%) percent or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
    - iii. Has or shares authority to control or determine ten (10%) percent or more of the Foundations’ capital expenditures, operating budget, or compensation for employees.
  - c. **Top 20 Limitation**. The individual is one of the top twenty (2) most highly compensated employees (including all income from the Foundation and any related organizations) for a 12-month period (unless the Board otherwise determines that such individual otherwise should be considered a Key Employee).
- iv. **“Organization Manager”** means a Board member, officer, or person without such title who has responsibilities and authority similar to that of a Board member or officer, such as a member of a committee with delegated authority to act on behalf of the Board.
- 3. **“Disqualified Person”** means any person who is or was in a position to exercise substantial authority over the Foundation’s affairs during the five-year period ending on the date of the Excess Benefit Transaction, including, but not limited to, (i) a Covered Executive, (ii) a Family Member of a Covered Executive, (iii) entities which are at least thirty-five (35%) percent controlled or

owned by a Covered Executive or the Family Member of a Covered Executive, (iv) a substantial contributor to the Foundation (i.e., has given more than 2% of the total contributions received by the Foundation during the current and four preceding years), and (v) any other person that the Foundation determines has substantial influence over the affairs of the Foundation based on the facts and circumstances. Notwithstanding the foregoing, no organization that is tax-exempt under Section 501(c)(3) of the Code shall be considered a Disqualified Person in accordance with Code Section 4958 and the Treasury Regulations promulgated thereunder.

4. **“Excess Benefit Transaction”** means, as more fully described in Code Section 4958, any transaction in which an economic benefit is provided by the Foundation directly or indirectly to or for the use of any Disqualified Person if the value of the economic benefit exceeds the value of the consideration (including the performance of services) received for providing such benefit and includes, without limitation, (i) a direct or indirect purchase from, sale to, or compensation of a Disqualified Person from the Foundation; (ii) the direct or indirect payment to a Disqualified Person of unreasonable compensation for services; and (iii) a payment or benefit, directly or indirectly, to a Disqualified Person in a transaction which violates the “private inurement” prohibition under the Code. Examples of Excess Benefit Transactions are set forth on Exhibit 1 attached hereto.
5. **“Family Member”** means a spouse, lineal descendants including children and stepchildren, parents, siblings, and a spouse of any such family member.
6. **“Intermediate Sanctions”** means a two-tier penalty tax imposed pursuant to Code Section 4958 on any Disqualified Person who receives or benefits from an Excess Benefit Transaction or imposed on an Organization Manager; the first-tier penalty tax imposed on the Disqualified Person is equal to twenty-five (25%) percent of the value of the Excess Benefit Transaction; the second-tier penalty tax equal to two hundred (200%) percent of the Excess Benefit Transaction is imposed only if repayment or other correction of the Excess Benefit Transaction is not made by the Disqualified Person; an Organization Manager who knowingly approves an Excess Benefit Transaction is subject to a tax penalty equal to ten (10%) percent of the Excess Benefit Transaction. Such tax rates are set forth in Code Section 4958 and are subject to change.

**II. Authority and Approval Procedures.** Prior to engaging in any transaction with a Disqualified Person, the following approvals must occur:

- A. Board Authority. The Board shall review and approve each transaction with respect to a Disqualified Person or shall delegate its power to review and approve such transactions to a Board committee, which committee shall then review and approve each such transaction; and
- B. Approving Body Authority. An approving body of individuals (i.e., the Board or a Board committee) shall review and approve any transaction with respect to a Disqualified Person. The approval of such transaction shall be structured in compliance with the below requirements with the intent of meeting the “rebuttable presumption” standards set forth in Code Section 4958 and the Treasury Regulations promulgated thereunder. In furtherance thereof, the Foundation shall adhere to the following requirements (the “**Rebuttable Presumption Documentation Requirements**”):
1. The compensation arrangement or transaction with a Disqualified Person must be approved in advance by the Board (or if applicable, a Board committee) composed of members who do not have a conflict of interest and are entirely independent of the Disqualified Person involved in the transaction in question;
    - i. The Board (or, if applicable, a Board committee) must adhere to the Foundation’s Conflict of Interest Policy.
    - ii. Notwithstanding anything to the contrary in the Conflict of Interest Policy, although the Disqualified Person may be available to answer questions, the Disqualified Person must not be present during the debate and voting on the transaction or compensation arrangement.
  2. Such approval is made in reliance upon appropriate data as to comparability; and
    - i. The Foundation must obtain and rely on data that supports the reasonableness and comparability of the transaction. The data must be sufficient, given the knowledge and expertise of the Board (or, if applicable, the Board committee) for the Board (or committee) to determine that the compensation is reasonable or the transaction is at fair market value.
    - ii. The Foundation shall gather data with respect to compensation as set forth in the Foundation’s Executive Compensation Policy.
    - iii. The Foundation shall obtain an independent appraisal with respect to any property transactions or other transactions that may be considered Excess Benefit Transactions.
  3. The approving body shall fully, adequately and concurrently document (in its minutes) its evaluation of and determination on the transaction in question.

- i. Such documentation must include:
    - a. The terms of the transaction that was approved and the date it was approved;
    - b. The members of the Board (or, if applicable, a Board committee) who were present during debate on the transaction or arrangement and who voted on it;
    - c. The comparability data obtained and relied upon by the Board (or, if applicable, a Board committee) and how the data was obtained;
    - d. The actions taken with respect to consideration of the transaction by anyone who is otherwise a member of the Board (or, if applicable, a Board committee) but had a conflict of interest with respect to the transaction or arrangement; and
    - e. If the Board (or, if applicable, the Board committee) determines that the compensation or fair market value is higher or lower than the comparability data, it must record the basis for this decision.
  - ii. Such documentation (which will be the minutes of the meeting of the Board, or committee if applicable), must be prepared before the later of 60 days after the final action was taken or the next meeting of the Board (or the committee, if applicable). The Board (or the committee if applicable) must also review and approve the minutes as accurate and complete promptly.
4. The Rebuttable Presumption Checklist for Compensation (as published by the Internal Revenue Service in An Introduction to IRC 4958 (Intermediate Sanctions), 2002 EO CPE Text) is set forth on Exhibit 2 hereto and the Rebuttable Presumption Checklist for Property (from the same publication) is set forth on Exhibit 3 hereto to provide guidance with respect to the Rebuttable Presumption Documentation Requirements.

### **III. Protective Procedures.**

- A. Process. To ensure that the Foundation takes all steps to avoid an Excess Benefit Transaction, the Board shall regularly engage in each of the following evaluation measures:
1. Adhere to the Foundation's Conflict of Interest provisions set forth in the Code of Regulations.
  2. The Board, the Compensation Committee, other committees of the Foundation, and any Covered Executive shall be (i) briefed on the necessity to identify potential transactions with Disqualified

Persons, and (ii) equipped to take steps to assure that a Disqualified Person will not enter into an Excess Benefit Transaction.

3. The Board and the Compensation Committee shall abide by the Executive Compensation Policy and this Excess Benefit Policy when evaluating each Covered Executive's total compensation package.
4. The Board shall maintain a list of current and former directors, officers, employees, Covered Executives, and substantial contributors in order to identify Disqualified Persons.
5. The Board (or if applicable, a committee) shall assure that any transaction with a Disqualified Person will not be an Excess Benefit Transaction and will be approved pursuant to Section II of this Excess Benefit Policy. The Board (or if applicable, a committee) shall follow the Rebuttable Presumption Documentation Requirements.
6. If an Excess Benefit Transaction occurs, the Foundation shall require the transaction to be corrected as soon as possible. The correction shall be done in compliance with Code Section 4958 and the Foundation shall take all measures necessary to place the Foundation in a financial position no worse than it was prior to such transaction.
7. In the event that the Foundation is ever determined to be a private foundation under Code Section 509, the Foundation shall amend and restate this Excess Benefit Policy to instead prohibit self-dealing transactions under the Code.
8. The Foundation may engage legal counsel, consultants, appraisers or other advisors to assess any potential Excess Benefit Transaction and the reasonableness of such transaction and any other related matters.

## EXHIBIT 1

### EXAMPLE OF EXCESS BENEFIT TRANSACTIONS

9. A total compensation package paid to the Executive Director that is in excess of industry standards.
10. A loan made to a Disqualified Person at a less than fair market value interest rate.
11. A sale of assets by the Foundation to a Disqualified Person for less than fair market value.
12. The payment of rent to a Disqualified Person at an above fair market value rental rate.
13. The rental of property by the Foundation to a Disqualified Person at a rate below fair market value.
14. The provision of services by the Foundation to a Disqualified Person with a greater benefit than can be derived at an arm's length transaction.

EXHIBIT 2

REBUTTABLE PRESUMPTION CHECKLIST FOR COMPENSATION

(attached)

EXHIBIT 3

REBUTTABLE PRESUMPTION CHECKLIST FOR PROPERTY

(attached)

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