

OSBHE FINANCIAL ADMINISTRATION STANDARD OPERATING MANUAL

This policy was developed prior to implementation of Banner FIS. Therefore, specific information related to the previous accounting system (FMS) is no longer relevant. This policy is made available on-line since certain general principles are still applicable. If you have questions, please contact the Controller's Division at (541) 737-3636 / cdwebmaster@ous.edu. Applicable sections of this policy will be transitioned to the new Fiscal Policy format as time and resources permit.

Section 07.01 ODHE INSURANCE (Last Revised 07/87)

A INSURANCE OBJECTIVES

The Department of Higher Education, through the State Insurance Fund, and the purchase of commercial insurance in special situations, is protected against loss from:

- a. Damage or destruction of property that is owned, leased, controlled, or possessed by an institution.
- b. Third party claims for damages due to the acts or omissions of employees, volunteer workers, and agents while acting within the course and scope of their duties.
- c. Other risks when the peculiarity of the risk warrants obtaining approval from the State Department of General Services to purchase commercial insurance.

B CATEGORIES OF INSURANCE

Section 7 applies only to those categories of insurance which are financed by the Department of Higher Education to protect institutions, employees, volunteer workers, agents, and students. It does not apply to medical, dental, or life insurance plans acquired by or for employees. The following paragraphs identify the types of insurance maintained by or available to the Department of Higher Education.

[1] State Insurance Fund- Property

A State self-insurance program to insure all State property against loss, damage, or destruction. Applies to: vehicle loss or damage, and loss or damage to other property caused by vandalism, malicious mischief, or theft when the loss is over \$100; and all losses of over \$1,000 due to other covered perils. See Section 07.02, Insurance Fund - Property.

[2] State Insurance Fund - Liability

A State self-insurance program to insure State agencies, officers, employees, and agents against liability from tort claims arising out of acts or omissions of employees and agents while acting within the scope of their employment or duties. See Section 07.03, Insurance Fund - Liability.

[3] Commercial Insurance

Commercial insurance may be acquired when necessary on certain real property built with borrowed funds, on personal property in an institution's control, and in certain other cases where Insurance Fund coverage is not provided or inadequate. See Section 07.04, Commercial Insurance.

[4] Bonds

A fidelity bond on employees is purchased by the Department of General Services to indemnify agencies against loss due to employee dishonesty. Institutions may purchase bonds to protect against other losses. See Section 07.05, Bonds.

[5] Foreign Liability Insurance

Insurance is acquired on foreign operations and employees including: general liability, professional liability, contractual liability, and personal injury liability; employer's liability for occupational injury to foreign nationals and U.S. nationals hired in a foreign country; fire insurance on rental buildings; and liability from the operations of non-owned vehicles. See Section 07.06, Foreign Liability Insurance.

[6] Motor Vehicle Liability Insurance

Liability insurance to protect operators of State owned, leased, or controlled vehicles. See Section 07.07, Motor Vehicle Liability Insurance.

[7] Aviation Insurance

Insurance to protect operators of rented aircraft and aircraft of a flying club of which the employee is a member. See Section 07.08, Aviation Insurance.

[8] OSU Oceanographic Vessel Insurance

Insurance to protect institutions and employees against liability for the loss, damage, or destruction of vessels or property of others, or for personal injury, when the loss or injury is due to the operation of an institution-owned or rented vessel. See Section 07.09, OSU Oceanographic Vessels.

[9] Nuclear Energy Liability Insurance

Insurance on the nuclear facility at OSU. Covers the \$250,000 deductible on the federal nuclear facility insurance. See Section 07.10, Nuclear Energy Liability Insurance.

[10] Intercollegiate Athletic Insurance

Accidental injury insurance protection for members of intercollegiate athletic teams. See Section 07.11, Intercollegiate Athletic Insurance.

[11] Non-Employee Health & Accident Insurance

Health and accident insurance for participants in an institution supported organization, e.g., nursery school or day care center, or who enroll in an institution supported program, e.g., overseas program or summer program. Volunteer workers are covered with medical coverage effective 4/1/87. See Section 07.12, Non-Employee Health and Accident Insurance.

[12] Worker's Compensation

Workers' Compensation insurance protects institutions against liability for injury or illness, arising out of and in the course of employment, to employees. See Section 07.13, Worker's Compensation.

C LIABILITY FOR NON-OWNED PROPERTY

The Department of Higher Education has no liability for the loss of or damage to property of others, merely because the property is on Department premises, unless such loss or damage occurs as a result of employee negligence while in the course and scope of employment. When there is negligence, the liability insurance described in FASOM 07.03 pertains. The Department

of General Services has advised that a waiver of responsibility should be obtained from the owner before property is accepted, if the property is not under control or in the possession of the Department of Higher Education.

[1] **Personal Property**

Personal property being used in the course and scope of employment by institution officers, employees, or agents is covered by the Insurance Fund in accordance with FASOM 07.02B. Insurance Fund coverage may extent to personal property owned, leased, controlled, or possessed by the State agency.

Insurance Fund coverage applies to non-owned property only when there is a binding written agreement between the owner and the Department of Higher Education to provide such coverage. Before accepting the property, a contract may be entered into with the owner to return the property in as good condition as received when (a) there is a demonstrable benefit to the State, and (b) it is necessary to make such an agreement to receive the property. When this is done, institution funds could be used to reimburse the owner for any loss not covered by insurance. The agreement should specify that the owner's insurance is primary. For the property to be covered by the Insurance Fund, it must be reported to the Controller's Division as described in paragraph 07.02B[3], Leased, Controlled, or Possessed Personal Property. If the agreement requires all risk coverage, it will be necessary to obtain commercial insurance for perils not covered by the Insurance Fund (see paragraph 07.04E, NON-OWNED PROPERTY UNDER INSTITUTION CONTROL).

Legal "consideration" is required for an agreement to be binding upon both parties. A legal definition of consideration is "an act or promise, done or given by one party in return for the act of promise of another." For a sample agreement form, see the Office of Administration's Contract, Leasing and Licensing Manual, Figure 9-1, Personal Property Loan Agreement.

[2] **Art and Other Exhibits**

Art exhibits and similar displays that are loaned or rented to an institution usually are adequately covered by the owner's insurance. In such a case, there is no need to provide Insurance Fund coverage. If there is a binding agreement to return the items in as good condition as received, however, Insurance Fund and commercial coverages may be provided as described in the second paragraph of 07.04C[1], Personal Property. Related information can be found in paragraph 07.04C, ART OBJECTS/EXHIBITS.

D INSURANCE PROVISIONS IN CONTRACTS

The insurance provisions in a contract to construct or remodel a building must conform with the **Construction Management Handbook** of the Office of Facilities Planning.

The insurance provisions in other contracts regarding the renting of facilities, or providing or acquiring services must conform with the **Contracting, Leasing and Licensing Manual** of the Office of Administration, Management and Planning Services Division, except as specified in paragraphs 07.01D[2], Interstate Contracts, through 07.01D[4], Contracts to Provide Services to or Rent Property from Others.

[1] **Certificates of Insurance**

Before a contractor can begin work, certificates of insurance required in the contract must be reviewed and approved. Insurance for contracts let by the institution is approved by the institution. Insurance for construction contracts let by the Office of Facilities Planning is approved by the Controller's Division.

Certificates sent to the Controller's Division are reviewed within 48 hours. Notices are mailed to the contractor and institution advising them either that the insurance is approved or that insurance requirements are not met. In some cases, it may be essential to start contract work promptly. If the contractor states that the certificates have been mailed, the Controller's Division can be called to ascertain if they are approved.

[2] Interstate Contracts

Institutions sometimes contract to provide products or services to others outside Oregon. Such contracts must contain the following clause to limit the liability of Oregon and the institution:

State of Oregon Indemnification

To the extent permitted by Oregon Law (ORS 30.260 through 30.300) and the Oregon Constitution, Article XI, Section 7, **Institutions** shall hold and save harmless **Contractor**, its officers, agents, and employees from damages arising out of the tortious acts of **Institutions**, or its officers, agents, and employees acting within the scope of their employment and duties in performance of this agreement. The **Contractor** shall save, defend, indemnify, and hold harmless the State of Oregon, the State Board of Higher Education, the Institution, and their officers, agents, employees, and members from all claims, suits, and actions of whatsoever nature resulting from or arising out of the activities of the **Contractor** or its subcontractors, agents, or employees acting under this agreement.

Standard Contract Provisions are contained in Chapter 3 of the Office of Administrations Contract, Leasing and Licensing Manual (Indemnify).

If the contract is with a state agency or another state university, and no personnel from Oregon is going to the other state and no personnel from the other state is coming to the state of Oregon to perform any services, but the contract is merely for performance in the State of Oregon by State of Oregon personnel or in other state by the other state's personnel, then no indemnification clause is required. If an employee from either state will be going to the other state than a reciprocal indemnification clause would be required wherein each state agrees to be responsible and assume liability for its own wrongful acts or omissions, and those of its officers, agents and employees to the extent allowed, required or provided by law.

"The Oregon Department of Higher Education shall comply with the Worker's Compensation Laws of the state where the work will be performed."

[3] Contracts to Acquire Services from or Rent Real Property to Others

All contracts to acquire services from others, or to rent property to others, should include the insurance provisions listed below.

The second paragraph in the provision on "Indemnify and Insurance" specifies a minimum of \$1,000,000 liability insurance. When this amount is not consistent with the actual risks involved, the need for a higher or lower minimum should be documented and the clause changed to that amount. Documentation should be kept in institution files.

Responsibility for Damages

The Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the carrying out of the work to be done under this contract, or from any act, omission, or neglect of the Contractor, its subcontractors, or employees.

State Tort Claims Act

Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265.

Indemnity and Insurance

The Contractor shall save, defend, indemnify, and hold harmless the State of Oregon acting by and through the State Board of Higher Education on behalf of **(name of institution)** and their officers, agents, employees, and members from all claims, suits, and actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this agreement.

The Contractor shall secure at its own expense and keep in effect during the term of this contract either comprehensive general liability insurance with a broad form CGL endorsement or commercial general liability insurance with a minimum limit of \$1,000,000 per occurrence and auto liability insurance with a minimum limit of \$1,000,000 per occurrence. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. The State of Oregon, acting by and through the State Board of Higher Education on behalf of **(enter name of institution)** and their officers, employees, and agents, shall be included as an additional insured in said insurance policy.

If the claims made form of commercial general liability insurance is utilized, the **Contractor** shall certify that "tail coverage" will be provided if such insurance is cancelled, nonrenewed or no replaced in like form. This is to cover claims made up to 12 months following work acceptance or services nonrenewal.

The Contractor shall at all times during the term of this contract comply with Worker's Compensation laws of the State of **Oregon**. It shall also require all subcontractors or anyone else directly employed by either the Contractor or the subcontractor to also provide the Worker's Compensation in accordance with the laws of the State of **Oregon**. The Contractor shall require proof of such Worker's Compensation by receiving and keeping on file a Certificate of Insurance from each subcontractor or anyone else directly employed by either the Contractor or subcontractor.

Certificate of Insurance

Before work under this contract is commenced, the Contractor shall furnish to **(name of the designated officer)** certificates of insurance as evidence of the insurance coverages required by this contract, including Worker's Compensation. The certificate shall provide that the insurance company will give a 30-day notice to the **(officer designated above)** if the insurance is canceled or materially changed.

Additional certificates of insurance must be furnished when the coverage is renewed or materially changes.

[4] Contracts to Provide Services to or Rent Property from Others

The party acquiring services from or renting property to an institution may require a "hold harmless" clause in the contract. The hold harmless clause on pages 3-10 of the **Contracting, Leasing, and Licensing Manual** may be used in such cases. Contact the Controller's Division before entering into a contract where the other party requires that insurance be provided.

[5] OHSU Personnel Services Agreement

Physicians and other health professionals involved in the treatment activities at OHSU are covered by the Tort Claims Act because of ORS 30.267 even if there is a Personal Services Agreement. It would be inappropriate to include any requirement in these contracts that the contractor indemnify the state or provide evidence of liability insurance for these services. (Reference James J. Casby, Jr. letter dated 02-04-87).