MEMORANDUM

TO: Denise Yunker

FROM: Everett Moreland

DATE: June 29, 2012

RE: OUS institutions becoming separate legal entities and continuing to participate in OUS's retirement plans

If OUS institutions become separate legal entities and continue to participate in OUS's retirement plans (rather than each institution establishing and administering its own retirement plans), several matters about OUS's retirement plans will need to be addressed. OUS's retirement plans are the:

• OUS Optional Retirement Plan (a 401(a) qualified defined contribution plan)
• OUS Tax Deferred Investment 403(b) Plan
• OUS Supplemental Retirement Plan (a 401(a) qualified defined benefit plan)
• OUS Defined Contribution Retirement Plan (a 401(a) qualified defined contribution plan through TIAA-CREF)
• OUS Retirement Plan (a 403(b) plan through TIAA-CREF that stopped receiving contributions in 1989 when it was replaced by the plan immediately above)

For the above 403(b) plans, it will need to be determined whether the institutions will be one employer for purposes of Internal Revenue Code Section 403(b) and, if not, how to restructure the plans to satisfy the rules under IRC Section 403(b) for a plan adopted by multiple employers.

For all the plans, it will need to be determined whether all needed exemptions from registration under federal and Oregon laws for employee benefit plans will continue to apply to the plans as adopted by the institutions as separate legal entities. My sense, without having the qualifications to know, is that all needed exemptions will continue to apply, but this will need to be determined before OUS allows institutions that are separate legal entities to continue to participate in OUS's retirement plans.

For all the plans, each plan's governance structure will need to be revised, to help prevent the actions of one institution from disqualifying the plan (causing loss of the plan's tax benefits) for all the institutions and their employees. The revisions to a plan's governance structure would identify (1) the institutions eligible to adopt the plan and the adoption procedure, (2) who has power and responsibility to amend the plan, (3) who administers the plan and makes decisions about the plan that bind the adopting institutions, and (4) the obligations of the adopting institutions to (a) contribute funds to the plan, (b) comply with the plan administrator's directives, and (c) give the plan administrator requested information and access to records.