



**THE CITY UNIVERSITY OF NEW YORK**  
**FOUNDATION GUIDELINES**

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## **I. PREAMBLE**

The City University of New York (“CUNY” or the “University”) recognizes the vital role that the CUNY-related foundations (each a “Foundation”) play in enabling the University and the colleges to achieve their mission. Although independent, each Foundation is organized for the sole purpose of supporting CUNY and in most cases, a particular CUNY college or school (each a “college”). Through fundraising and other activities in cooperation with the college, a Foundation can assist its supported college in meeting its goals.

As a condition of a Foundation’s use of the University’s or a college’s name, facilities and/or other resources, a Foundation must accept and follow these Guidelines, which are intended to protect the University’s interests, as well as to help ensure that the Foundation operates in a prudent, lawful manner. As further described in this document, each Foundation shall be:

- organized solely for the benefit of a particular supported college and its students, a particular CUNY or college operation, or CUNY generally;
- operated in a fiscally prudent manner and consistent with its governance documents and applicable federal, state or local law and regulation; and
- guided by best practices in good governance and ethical judgment.

## **II. PURPOSE**

The Foundations are entities created and operated exclusively to benefit a particular CUNY college (including its students) or operation (e.g., CUNY TV, John D. Calandra Italian American Institute), or CUNY generally (e.g., a Foundation organized to benefit the University as a whole, not a particular college or operation), by conducting fundraising, investment and fund management including endowment fund management, and otherwise aiding and promoting the educational and charitable purposes and lawful activities of that college, operation, or CUNY<sup>1</sup>.

Foundations and their Affiliates (as defined below) shall not engage in activities on behalf of a college that are (1) prohibited by applicable federal, state or local law or regulation, or (2) would cause a college to be out of compliance with CUNY policies, procedures or contractual obligations, to the extent that such policies, procedures and obligations are made known to the Foundations and Affiliates. For example, a Foundation:

- shall not offer or manage an educational program unless the Foundation meets any and all governmental requirements for such activity, such as licensure by the State Education Department or organization as an education corporation through the Board of Regents, as the case may be; and

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<sup>1</sup> Throughout these Guidelines references to the “college” and the “college president” or “president” shall mean CUNY and the Chancellor in the case of Foundations and their Affiliates organized to support a particular CUNY operation or CUNY generally, unless otherwise indicated.

- shall not receive and/or manage funds for research that the CUNY Board of Trustees has determined shall be administered by The Research Foundation of The City University of New York.

### **III. AUTHORITY**

A Foundation may be created under a college's name only with the approval of the CUNY Board of Trustees after review of the purpose of the Foundation, its proposed organizational format and scope of its activities. Each college shall have only one Foundation unless otherwise authorized by the CUNY Board of Trustees.

Established Foundations must submit to the CUNY Board of Trustees for approval any proposed change in nature, purpose, or scope of the Foundation activities that is substantial in nature, and outside the normal function of the Foundation.

### **IV. STRUCTURE AND GOVERNANCE**

#### **A. Structure**

1. Foundations. Each Foundation shall be organized and operated as a New York not-for-profit corporation that is legally separate from the college and the University. It shall obtain and maintain status as a tax-exempt, charitable organization under § 501(c)(3) of the Internal Revenue Code and applicable state laws so contributions and bequests to it will be deductible charitable contributions as provided by Federal income tax laws. The charter or certificate of incorporation of the Foundation should make reference to the CUNY college or operation it will benefit in terms of purposes, objectives, and programs.

2. Affiliates. An "Affiliate" for purposes of these Guidelines is an entity formed by a Foundation to assist it in meeting the specific needs of, or providing a direct benefit to a college or an associated Foundation. An Affiliate may be created under a college's name only with the approval of the CUNY Board of Trustees.

3. Dissolution. Each Foundation and Affiliate certificate of incorporation and/or other organizing documents (e.g., bylaws or operating agreement) shall include a clause requiring that in the event of its dissolution, the Foundation's or Affiliate's net assets shall be distributed to another appropriate not-for-profit corporation, or to the University, for the benefit of the CUNY college or operation that the Foundation or Affiliate was created to support.

4. Documentation. Copies of all organizing documents, including all amendments thereto must be on file with the college and the CUNY Office of the General Counsel.

#### **B. Governance**

1. Composition of Board. The composition of a Foundation's or Affiliate's governing body (each a "board"), including its membership, committee structure, and adherence to term limits if any, shall be in full compliance with its governance documents and

these Guidelines. The majority of its members and officers shall be external, non-CUNY employees. The college president or dean (each a “president”) (including any acting or interim president approved by the Board of Trustees) or designee shall be an ex officio, voting member of the Foundation board and shall have the right to serve at the college president’s option, on the governance body of any Affiliate, but may not serve as the chair of the board of the Foundation or any Affiliate, or as the chief executive officer or president of the Foundation or any Affiliate. To the extent that any Affiliate is formed as a single member limited liability company and the Foundation is the sole member thereof, the governance documents for such limited liability company need not provide for the college president or designee to serve on the governance body for such single member limited liability company.

2. Audit Committee. Even if not so required by New York Not-For-Profit Corporation Law (N-PCL) § 712-a, Foundations must have an audit committee whose voting members consist solely of independent directors. The audit committee shall oversee the accounting and financial reporting processes of the Foundation and its Affiliates and the audit of their financial statements, and shall review the Internal Revenue Service (IRS) Forms 990 for the Foundation and its Affiliates before they are signed and filed.

3. Conflict of Interest. Each Foundation and Affiliate must have a conflict of interest policy in compliance with the N-PCL to ensure that its directors, officers, and key persons act in the entity’s best interest and comply with applicable legal requirements.

## **V. ACCOUNTABILITY AND COMPLIANCE**

### **A. Corporate and Fiduciary Responsibilities**

Each Foundation and Affiliate shall meet all requirements of the N-PCL and/or other applicable laws covering its organizational structure. It shall maintain its organizational status on a current basis through filings as required by the New York State Secretary of State.

Each Foundation and Affiliate shall be familiar with, and fulfill, its fiduciary responsibilities under the New York Prudent Management of Institutional Funds Act (NYPMIFA) N-PCL Article 5-A, and any other statutes that define its fiduciary responsibilities. Each Foundation and Affiliate shall comply with all other local, state and federal laws applicable to its organization and activities.

### **B. Solicitation in New York and Other States**

Each Foundation and Affiliate shall meet all registration and reporting requirements of New York charities pursuant to the New York Estates, Powers and Trust Law and the New York Executive Law, and all applicable New York State statutes and regulations affecting fundraising and management of gift assets, as well as the requirements of such other jurisdictions in which the Foundation or Affiliate concentrates its fundraising activities.

### **C. Tax Requirements**

Each Foundation and Affiliate shall make all required filings with the IRS and the New York State Department of Taxation and Finance, and follow all other applicable tax laws enforced and/or promulgated by the IRS or New York State.

Each Foundation and Affiliate shall make available for public inspection its Form 1023 request to the IRS for tax-exempt status, its IRS “determination” letters as a 501 (c)(3) organization, and its Form 990s for the past three years. It shall provide copies of these documents to those who request them, as required by law.

#### **D. Contracts**

No Foundation or Affiliate shall enter into any contract that would obligate its supported college or the University without the prior written approval of the college president or designee, or the Chancellor or designee in the case of a Foundation or Affiliate that supports a University operation or the University generally. All such contracts shall be for the benefit of the college and/or the University.

Consistent with N-PCL § 716, a Foundation or its Affiliate shall not provide a loan to any of its directors or officers, including without limitation the college president, or to any entity in which a director or officer has a financial interest or is a director or officer. Any loan from a Foundation or an Affiliate to its supported college is subject to the approval of the CUNY Board of Trustees prior to its acceptance by the college.

#### **E. Use of College Name and Marks**

A Foundation and its Affiliates may, solely in connection with their lawful activities to benefit the supported college or the University, use the name, logos, seals, and other symbols and marks of the college or University, pursuant to the terms and conditions of the Memorandum of Understanding between the Foundation and the college.

#### **F. Legal Counsel**

Each Foundation may retain independent legal counsel, as appropriate.

#### **G. Compliance with Investigations**

Each Foundation shall cooperate, and shall ensure that its Affiliates cooperate, with the University and government authorities regarding any investigation of the Foundation and/or an Affiliate regarding the conduct of the Foundation’s and/or Affiliate’s activities in support of a college or CUNY generally, as the case may be.

### **VI. INSURANCE AND INDEMNIFICATION**

Each Foundation shall obtain directors and officers’ liability insurance (for a minimum of \$1 million) and comprehensive general liability insurance in such amounts determined by the Foundation board to be reasonable and appropriate. Each Foundation board should routinely review total amounts for all forms of insurance to ensure sufficient and appropriate coverage, including coverage for new gift assets.

Each Foundation’s by-laws shall include provisions indemnifying its directors and officers in a manner consistent with the provisions of Article 7 of the N-PCL.

### **VII. PERSONNEL**

Each Foundation and Affiliate should have adequate and qualified staff, or should retain fiscal agents, to fulfill its responsibilities to donors as trustee under any retained-income

arrangements (gift annuities, pooled income funds, charitable trusts, etc.) and under any other fiduciary relationship between a Foundation or Affiliate and its donors, and to carry out its other responsibilities.

No college employee who is also a voting member of a Foundation's or Affiliate's governing body, including the college president, shall serve as an officer of the Foundation or an Affiliate. In particular, but without limitation, a Foundation's Treasurer shall not be a college employee.

Pursuant to University policy, a college president's salary shall be paid from tax-levy funds; no Foundation shall underwrite any compensation for the college president. No Foundation shall underwrite any compensation for other college faculty and staff without the prior approval of the college president, the Foundation's board, and the Chancellor of the University. Pursuant to University policy a college president shall annually report all college faculty and staff compensation, including any approved compensation paid by a Foundation, to the CUNY Board of Trustee's Committee on Faculty, Staff and Administration. No Foundation shall underwrite any compensation for the Chancellor of the University without the prior approval of the Foundation's board and the University's board of trustees.

No Foundation or Affiliate shall discriminate in employment or in its programs and activities on the basis of race, color, creed, national origin, ethnicity, ancestry, religion, age, sex (including pregnancy, childbirth and related conditions), sexual orientation, gender, gender identity, marital status, partnership status, disability, genetic information, alienage, citizenship, military or veteran status, status as a victim of domestic violence/stalking/sex offenses, unemployment status or any other legally prohibited basis in accordance with federal, state or local laws.

## **VIII. FUNDRAISING AND RELATED ACTIVITIES**

### **A. Cooperation with College and University**

Each Foundation and Affiliate supporting a particular college shall plan and conduct all fundraising and related advancement activities in close cooperation with the president of its supported college and the college office of development and institutional advancement, and in concert with college and University policies. Each Foundation and Affiliate supporting a CUNY operation or CUNY generally shall plan and conduct all fundraising and related advancement activities in close cooperation with the Chancellor or designee and the CUNY Office of Budget and Finance, and in concert with University policies. No funded program shall be created by a Foundation or Affiliate without the approval of the college president, or the Chancellor or designee in the case of Foundation or Affiliate supporting a CUNY operation or CUNY generally.

### **B. Gifts Payable to Other than Foundation**

Each Foundation and Affiliate shall adopt guidelines to ensure that funds or gifts payable to its supported college, the University, or any other University entity are deposited with or transferred to the appropriate entity, or are otherwise dealt with according to policy or agreement with the college or the University. (See also Cash and Treasury Management – Transfer of Funds, below.)

### **C. Approval of Restricted Gifts**

Each Foundation and Affiliate shall advise donors that any restrictive terms and conditions attached to gifts for the benefit of its supported college, a CUNY operation or CUNY generally are subject to college approval in the case of gifts for the benefit of the college and CUNY central office approval in the case of gifts for the benefit of a CUNY operation or CUNY generally. Any restrictions on previous gifts that are illegal or discriminatory must be addressed.

### **D. Stewardship**

Each Foundation and Affiliate shall insure that all donors are appropriately acknowledged, and that use of gifts is in compliance with the donors' intent. A system and written policy to ensure this practice must be implemented.

### **E. Policies and Procedures**

Each Foundation and Affiliate shall adopt appropriate policies and procedures to ensure that the proceeds of its fundraising are appropriately recorded, credited, acknowledged, and administered based on legal requirements and donor stewardship parameters. Each Foundation and Affiliate shall adhere to standards of best practice such as those set out in the Council for the Advancement and Support of Education (CASE) "Donor Bill of Rights" and Association of Fundraising Professionals "Code of Ethical Standards." Policies adopted must include:

- Gift Acceptance Policy, which addresses, among other things:
  - a. accountability of cash at the point of receipt;
  - b. provision of gift documentation to donors in compliance with applicable law. Each donor who creates a restricted fund should enter into a written, signed agreement with the Foundation or Affiliate, which describes any fees to be charged, and which authorizes the Foundation's or Affiliate's board to re-direct disbursements from the fund should the purposes for which it was created no longer be feasible;
  - c. acceptance, management and disposition of non-cash gifts, including securities and real estate gifts;
  - d. prior to acceptance, legal review and estimate of gift management costs of donor restrictive gifts, gifts of real property, and gifts of personal property that are not readily marketable;
  - e. creation of a system for tracking all restricted funds separately; and
  - f. maintenance of a separate record for each donor and for each gift.

Each gift shall be counted, valued or discounted in accordance with CASE standards and Generally Accepted Accounting Principles (GAAP).

- Policy for regularly reporting to donors on the use of funds and on their financial status.

- Policies regarding investment, spending rates, and endowment audits (see Cash and Treasury Management, below).
- A spending policy governing expenses of the Foundation on behalf of its supported college, which shall be established in accordance with policies of the CUNY Board of Trustees regarding the use of non-tax levy funds.

## **IX. MEMORANDUM OF UNDERSTANDING**

Each Foundation shall enter into a written memorandum of understanding (“Memorandum of Understanding” or “MOU”) with its supported college in the form set forth in Appendix B (unless otherwise approved by the CUNY Board of Trustees), which clearly defines their respective roles, relationships, and expectations. In addition to those items mentioned below, the MOU shall address, among other things, the Foundation’s right to use a college or CUNY name and/or trademarks, management and use of funds held by the Foundation, and coordination of fundraising activities.

### **A. Use of Facilities**

A Foundation may occupy, operate, and use college facilities and property separately or jointly with its supported college as identified by the MOU between the college and the Foundation. The Foundation shall use the facilities and property only for those services and functions that are consistent with the MOU and applicable current or future policies, rules, and regulations of the CUNY Board of Trustees and the college.

### **B. Provision of Space and Services**

The college may provide certain services, at no cost, to the Foundation, which may include office space, utilities, telephones, custodial and facilities maintenance services, equipment and information systems service and advice, personnel and related assistance and other similar services.

A Foundation may reimburse its supported college for expenditures incurred by the college as a result of activities of the Foundation. In these situations, the college shall invoice the Foundation for such expenditures, indicating items charged and the method of determining costs. Any such reimbursement by a Foundation should be consistent with the approved annual budget and terms and conditions of the MOU with the college.

### **C. Alumni Information/Database**

In principle and practice, the creation, maintenance, support, and ownership of alumni information and the alumni database itself should always be consistent with the best interests of the college. This is particularly true when these functions and responsibilities are shared among a college and either or both its Foundation and a separately incorporated alumni association. In general and wherever possible, the college should own and manage the alumni database and provide access to the college’s Foundation and/or alumni association. Laws such as the Family Educational Rights and Privacy Act (FERPA) and national best practices and precedents should guide the Foundation and its supported college in addressing the issues of ownership and usage of alumni information. A Foundation, its supported college and any other parties which share use and/or responsibility for alumni information must enter into a written



agreement (which may be the MOU) that sets forth: (i) who owns the alumni information and the database, (ii) permitted and prohibited uses of alumni data by third parties (i.e., credit card services, insurance, and alumni directories), and (iii) college policy regarding the privacy of alumni data. In all events, the college must have the right of full access and use of the alumni data without cost and as and when requested, even when held in a database owned and/or maintained by a Foundation or Affiliate.

## **X. FINANCIAL MANAGEMENT**

Each Foundation and Affiliate is responsible for developing, managing and monitoring its fiscal and operational plans. They are also responsible for complying with applicable federal, state and local laws, and University and college financial procedures regarding participation in the CUNY Investment Pool (for those Foundations and Affiliates that participate) and other procedures made known to the Foundations and Affiliates by the University and necessitated by the inclusion of the Foundations and Affiliates as discretely presented component units in the University's financial statements.

### **A. Budget**

Each Foundation and Affiliate shall develop an annual operating budget in consultation with the college president.

The college president should plan for current and future college operations and programs with the assumption that continued and growing financial support by the Foundation will be in place. Annual budgets and plans shall be reviewed by and approved by a Foundation's board in partnership with the college president. Financial commitments and expenditures by Foundations and Affiliates shall be in accordance with the approved budgets and plans.

### **B. Cash and Treasury Management**

1. Investments. Any cash held by a Foundation that is scheduled to be used in the current year can be invested in short-term investments such as U.S. Treasury bills, money market accounts, certificates of deposits etc., or the University's Short-term Investment Pool (STIP). Funds that can be invested for a longer period should be invested in accordance with the Foundation's investment policy, or may be invested in the University's Investment Pool. All funds shall be managed and invested as required by NYPMIFA and, to the extent that a Foundation or Affiliate invests funds outside of the University's Investment Pool, it shall develop written investment and spending rate policies for those funds in accordance with NYPMIFA.

2. Endowments. Endowments shall be invested with respect to prevailing principles of sound financial management and legal obligations. Earnings are credited according to the amount of principal endowed and any previously unspent earnings on the individual endowment. A portion of the earnings of these accounts becomes available to support the respective endowments in accordance with the directions specified by the donor of the endowment. The Foundation's or Affiliate's spending rate policy shall set forth guidelines for determining how much of the earnings of the endowments may be spent.

3. Transfer of Funds. Any transfer of endowments or other assets by the supported college or the University to a Foundation or Affiliate, or by a Foundation or Affiliate to its supported college or the University, for management or investment (assuming such transfer is permissible under the donor documents), shall be formalized in a memorandum of agreement so the fiduciary requirements of the respective governing boards are complied with and to assure, among other things, that any restrictions governing the future dispositions of the funds are observed.

### **C. Purchasing**

Each Foundation and Affiliate shall follow sound purchasing practices and procedures that provide for open and free competition to the maximum extent practicable while meeting the needs of management for flexibility and minimum administrative burden. Each Foundation and Affiliate shall take steps to ensure fairness in all contracts, including abiding by Section 715 of the N-PCL regarding related party transactions.

### **D. Accounting**

Each Foundation and Affiliate shall maintain a financial system that provides for accrual based accounting and is used to process all financial transactions. Foundations and Affiliates shall follow the Financial Accounting Standards Board (FASB) Statements and Interpretations, Accounting Principles Board Opinions, and Accounting Review Boards of the Committee of Accounting Procedures and Generally Accepted Accounting Principles (GAAP). Each Foundation should implement all new FASB accounting rules and regulations.

## **XI. FINANCIAL REPORTING AND AUDIT**

### **A. Reporting to the Board/Financial Statements**

The chief executive officer and/or chief financial officer of each Foundation and Affiliate shall provide its board with periodic financial and managerial reports. Each Foundation and Affiliate shall prepare annual financial statements in conformity with GAAP and have them audited by a licensed, independent certified public accounting firm (CPA) in accordance with generally accepted auditing standards. To enable the University to include pertinent information in its annual financial statements, the audit committee and board, if applicable, must accept the audited financial statements within 90 days after the close of a Foundation's fiscal year.

### **B. Independent Auditor**

The independent CPA retained by a Foundation and/or Affiliate must have experience auditing tax exempt organizations and must be approved by a designee of the Chancellor. No independent CPA firm shall serve as the audit firm for the Foundation or Affiliate for more than seven years and a three-year period must elapse before such CPA firm may serve again as auditor.

On an annual basis the Foundation's auditor must confirm its independence to the University's external auditors via a signed "independence letter."

### **C. CUNY Audit Rights**

1. CUNY Audit. The books and records, financial condition, operating results, and program activities of a Foundation and its Affiliates are subject to periodic audit by the college president and/or designee, the University or outside firms hired by the University, and to the extent allowed by law, outside regulatory bodies.

2. Reporting to CUNY. A Foundation shall promptly provide copies of each of its audit reports from whatever source, including the certified (consolidated) financial statements, any report indicating a significant deficiency or material weakness in the internal controls over financial reporting and any management letter or other report, together with the associated corrective action plan of the Foundation and each of its Affiliates, to the college president and the University's Office of Budget and Finance.

Additionally, each Foundation must:

- Semi-annually upload their financial statement information to the University's financial accounting system, CUNYfirst, using a template established by the Office of Budget and Finance.
- Annually provide the college and the University's Office of Budget and Finance with a complete list of all bank and investment accounts;
- Require each member of the Foundation's and any Affiliate's board to provide written acknowledgement to the Foundation of the following, upon implementation of these Guidelines for directors currently serving at such time or upon their election or appointment to the board for new directors, and thereafter upon any modification to the Guidelines or the MOU: (i) that they have received a copy of these Guidelines and the MOU and reviewed them and (ii) that they understand that these Guidelines and the MOU are binding on the Foundation or Affiliate, as the case may be; and require all officers of the Foundation and any Affiliates to provide the same written acknowledgement on an annual basis and upon any modification to the Guidelines or the MOU. Directors and officers may provide such acknowledgements as part of their annual conflict of interest disclosure statements. The Foundation shall provide on a timely basis copies of such acknowledgements to the college president or the University upon their request.
- Concurrent with its filing with the IRS, provide a copy of the Foundation's and any Affiliate's IRS Form 990 to the University's Office of Budget and Finance, and provide on a timely basis such other information on the Foundation's financial status and operations as requested by the college president.

### **XII. POLICY MANUAL**

Each Foundation and Affiliate shall develop a comprehensive manual documenting the policies, procedures, standards, and other administrative and operating criteria applicable to it. The manual shall be maintained on a current basis and the Foundation and/or Affiliate shall provide copies of the current version, as well as any updates or revisions as they are adopted, to the supported college's business office and the

University's Office of Budget and Finance, and to internal and external auditors on request.

### **XIII. INTERNAL CONTROLS**

Each Foundation and Affiliate is responsible for establishing and maintaining adequate internal controls. Some of these controls include maintaining segregation of duties between the cash receipts and disbursements functions, preparing timely bank reconciliations, requiring dual signatories on payments over set amounts, maintaining segregation duties between the accounts payable and purchasing and payroll and human resource functions and restricting access to the vendor listing.

### **XIV. RECORDS RETENTION**

Each Foundation and Affiliate should establish a document retention policy that provides for the orderly management of Foundation and Affiliate records consistent with local, state and federal laws.

### **XV. EXCEPTIONS AND AMENDMENTS**

Any proposed exceptions to these Guidelines must be approved in writing by the Chancellor or designee. Any proposed amendments to these Guidelines must be approved by the Board of Trustees. The CUNY Offices of the General Counsel and Budget and Finance are responsible for the periodic review of these Guidelines, as well as ensuring that all appropriate parties are informed of them. All Guideline amendments shall become effective upon a duly adopted amendment to the MOU between the college and the Foundation.

### **XVI. RELATED INFORMATION**

The following links and/or references provide additional information related to this guidance:

New York Not-for-Profit Corporation Law: <http://public.leginfo.state.ny.us>

Internal Revenue Service: [www.irs.gov](http://www.irs.gov)

New York State Charities Bureau

- [www.oag.state.ny.us/charities/charities.html](http://www.oag.state.ny.us/charities/charities.html)
- [http://www.charitiesnys.com/pdfs/Charities\\_Conflict\\_of\\_Interest.pdf](http://www.charitiesnys.com/pdfs/Charities_Conflict_of_Interest.pdf)
- <http://www.charitiesnys.com/pdfs/NYPMIFA-Guidance-March-2011.pdf>
- [http://www.charitiesnys.com/pdfs/Audit\\_Committees.pdf](http://www.charitiesnys.com/pdfs/Audit_Committees.pdf)

New York State Office of the Inspector General: <https://ig.ny.gov/>

Payment Card Industry Data Security Standards:

<https://www.pcisecuritystandards.org>

National Association of State Charity Officials: [www.nasconet.org](http://www.nasconet.org)

American Institute of Certified Public Accountants: [www.aicpa.org](http://www.aicpa.org)

Financial Accounting Standards Board: [www.fasb.org](http://www.fasb.org)

National Association of College and University Business Officers: [www.nacubo.org](http://www.nacubo.org)

Council for Advancement and Support of Education: [www.case.org](http://www.case.org)

Association of Fundraising Professionals: <http://www.afpnet.org/>