



IX - 2.00 - POLICY ON AFFILIATED PHILANTHROPIC SUPPORT FOUNDATIONS

(Approved by the Board of Regents on March 1, 1989; amended on November 29, 1990; amended on October 1, 1999 and amended on February 17, 2023)

I. Purpose and Scope

The Board of Regents of the University System of Maryland (USM) recognizes the importance of philanthropy and encourages private support (1) for the benefit of the USM and its constituent institutions and components (herein collectively referred to as “USM”) and (2) for education and support activities operated by the USM. The Board also recognizes the important role of affiliated philanthropic support foundations (foundation) in supporting philanthropic activities across the USM. This policy governs the formation and operation of affiliated philanthropic support foundations and the respective rights and responsibilities of the Board of Regents, USM institutions, and foundations.

This policy applies to existing or prospective Section 501(c)(3) organizations that are created and operated with one or more of the following purposes:

- To support fundraising programs and contributions from private sources to foster, support, and promote the general welfare of the USM; and/or
- To manage and invest private gifts and/or property for the benefit of the USM.

The USM, its institutions, and such other components of the USM as the Board of Regents may determine may have an affiliation with such an entity.

A subsidiary legal entity formed or owned by an affiliated foundation may use the name, personnel or facilities of the USM only if it is separately recognized by the Board of Regents pursuant to this policy or a Board of Regents policy applicable to non-fundraising affiliates.

Entities with the primary purpose of economic development or research activities are governed by Board of Regents Policy VIII-13,00 Policy on Business Entities.

II. Responsible USM Official

A Responsible Official is accountable for the relationship between the foundation and the institution or component with which it is affiliated. The Responsible Official shall monitor compliance with USM policies and agreements between the foundation, the USM, and the institution or component.

- A. The chancellor is the Responsible Official for the University System of Maryland Foundation and any other System-wide or multi-institution philanthropic foundation.
- B. The institution president is the Responsible Official for a foundation affiliated with the institution, including any components of that institution.

The Responsible Official shall be evaluated annually to determine whether they have ensured that the foundation has complied with Board of Regents policies and reasonable prudent business practices.

III. Establishment and Recognition of a New Affiliated Philanthropic Support Foundation

Launching a new foundation requires (1) establishment of the legal entity, (2) completion of an operating agreement between the foundation and the institution and (3) recognition by the Board of Regents as an affiliated philanthropic support foundation. Although institution presidents may establish a foundation without Board of Regents approval, Board recognition is required in order for the foundation to use the institution's name or resources. It is recommended that these three steps be addressed concurrently or in close succession.

A. Establishment

In accordance with § 15-104 of the Education Article, Annotated Code of Maryland, the president of a USM institution may establish campus-based foundations without the approval of the Board of Regents, provided that such entities must operate subject to this USM Board of Regents' policy and any others adopted by the Board of Regents with provisions explicitly applicable to affiliated philanthropic support foundations.

A president shall give the chancellor notice of the establishment of any new foundation in conjunction with the signing of an operating agreement and a request for Board of Regents recognition. Such notice shall include: The (proposed) name of the foundation, its mission statement, its initial Board members, copies of its articles of incorporation and corporate bylaws, and, if available, the IRS Form 1023 and any IRS determination letters.

B. Operating Agreement

The institution and the foundation shall enter into an annual operating agreement, to be signed by the Responsible Official and the foundation officer authorized to sign such agreements. The agreement shall establish the relationship between the parties, describe the purpose of the foundation, and acknowledge the applicability of Board of Regents policies. The agreement shall also condition the organization's use of the institution's name or any other name, emblem, or mark to which the institution has any legal right upon the foundation's continuing compliance with all Board of Regent policies on foundations. The agreement shall be approved by the chancellor or the chancellor's designee to ensure consistency with all applicable Board of Regents policies.

C. Board of Regents Recognition of Affiliation Status

The Responsible Official and the foundation shall obtain Board of Regents recognition of status as an affiliated foundation before the foundation can use the institution's name or any other name, emblem, or mark to which the institution has any legal right. This

request, to be submitted by the Responsible Official to the chancellor, shall include the following:

1. Notification of establishment (see item III.A)
2. Operating agreement between the institution and the foundation (see item III.B)
3. Draft affiliation agreement between the foundation and the Board of Regents to be signed after final approval of affiliation status by the full Board of Regents (see Appendix A for a sample agreement).
4. Business plan narrative for the new entity, including use of institution staff or resources, if any, and information on how the fundraising foundation will achieve a scale sufficient to satisfy all reporting and compliance requirements for tax-exempt organizations and appropriately manage organizational risks.

The chancellor shall review this request and provide any feedback to the Responsible Official within 45 days of submission. The chancellor may reject the request without Board of Regents consideration if feedback is not addressed. Following chancellor approval, requests shall be considered first by the Board of Regents Committee on Advancement and then by the full Board of Regents.

Any dispute about the propriety or right to a foundation's name related to the institution's name or intellectual property shall be resolved by the Board of Regents.

IV. Recognition of Existing Affiliated Foundations

For those philanthropic support foundations identified in Board of Regents Policy IX-2.01: Recognition of Affiliated Foundations that are in compliance with reporting requirements as of the date of adoption of this policy, the Board of Regents shall verify their affiliated status upon receipt of the:

- A. Operating agreement between the institution and the foundation (see item III.B);
- B. Draft affiliation agreement between the affiliated fundraising foundation and the Board of Regents (see Appendix A for a sample agreement; to be signed after approval of affiliation status by full Board of Regents);
- C. Articles of incorporation and corporate bylaws, the IRS Form 1023 and any IRS determination letters for the affiliated philanthropic support foundation.

These documents shall be provided to the Board by December 31, 2023. Any dispute about the propriety or right to a foundation's name related to the institution's name or intellectual property shall be resolved by the Board of Regents.

V. Changes and Revocation of Affiliated Status

- A. Changes in foundation organizational documents, such as Articles of Incorporation, Bylaws or similar documents and agreements, or changes to the exempt purpose approved by the Internal Revenue Service, are to be communicated to the chancellor within 30 days of adoption and/or communication to the Internal Revenue Service.

- B. When changes to organizational documents or exempt purpose as approved by the Internal Revenue Service change the activities such that the organization becomes something other than a fundraising foundation, the organization will no longer have recognized status as an affiliated foundation and will then be subject to policy appropriate for the form of relationship to the USM or its institutions.
- C. Failure to obtain a determination in a timely manner from the Internal Revenue Service that the foundation has been recognized as a publicly supported charitable organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code, or a foundation's loss of IRS qualification as a publicly supported charitable organization exempt from tax under Section 501(c)(3) will result in the Board of Regents revocation of a foundation as an affiliated foundation within the scope of this policy.
- D. The Board of Regents may revoke its recognition of an affiliated foundation that fails to comply with this policy or the terms of the affiliation and/or operating agreements. In such case, the foundation shall no longer be entitled to use the name, staff, resources or facilities of the USM. The Board of Regents may seek guidance of the Office of the Attorney General in seeking any appropriate legal remedies.

VI. Structure and Independence

- A. Each affiliated fundraising foundation shall operate as a Maryland charitable non-stock corporation that is legally separate from the USM and is recognized as a 501(c)(3) public charity by the Internal Revenue Service with a clearly articulated purpose of support of the USM or one or more of its institutions or components.
- B. Articles of Incorporation shall include provisions that in the event of termination, dissolution, or loss of affiliated status, all remaining assets, direct or indirect, of the entity shall be transferred to a Board of Regents recognized affiliated philanthropic support entity
- C. The management and control of a foundation shall rest with a board of directors (or board of trustees; in this policy, directors shall also refer to trustees.)
- D. Presidents may serve only as ex-officio and non-voting members of the foundation's board of directors. USM employees may serve as voting members of the board of directors of any affiliated foundation, provided that USM employees do not constitute more than 20 percent of the foundation's board of directors.
- E. With the approval of the Responsible Official, an officer or employee of the USM may also serve as an officer or employee of an affiliated philanthropic support foundation. An employee or officer of a foundation who is also an employee or officer of the USM may not represent both parties in any negotiation between the foundation and the USM. Institutions must develop and formalize conflict of interest management arrangements for each USM employee performing roles for an affiliated philanthropic support foundation. Any exemptions to the requirements of the Public Ethics Law are to be documented in a

manner consistent with that required under Board of Regents Policy III-1.10 Policy on Conflicts of Interest in Research and Development.

- F. Officers and staff members of a foundation and USM staff assigned to carry out functions of a foundation shall be bonded, and liability insurance for directors and officers shall be obtained by the foundation, in amounts to be determined by the board of directors.
- G. An affiliated fundraising foundation may use non-staff resources (e.g., space, equipment, facilities) of its affiliated institution without direct, dollar for dollar reimbursement to the institution.

VII. Scope of Activities

- A. Foundations shall comply with applicable Internal Revenue Code provisions and regulations and all other applicable policies and guidelines. Foundations may not engage in activities that conflict with federal or state laws, rules and regulations, USM policies, or the role and mission of the USM.
- B. Other than fundraising, fundraising support, gift management and investment management, after December 31, 2023, foundations may not engage in activities on behalf of the USM or institutions or components that the USM or its institutions or components could perform, without specific written approval by the Board of Regents.
- C. Foundations may acquire personal or real property assets for the eventual transfer to, or purchase by, the USM or its institutions; however, foundations may not make such acquisitions in a manner inconsistent with public ethics laws that would apply if the USM or its institutions were directly acquiring said property.
- D. All activities of foundations shall be in conformance with Section 501(c)(3) of the United States Internal Revenue Code. This includes but is not limited to the restriction that "[n]o substantial part of the activities (of a foundation shall be) carrying on propaganda, or otherwise attempting to influence legislation." Furthermore, no foundation shall directly or indirectly "participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of (or in opposition to) any candidate for public office." In particular, a foundation may not make any contribution, whether in money or in kind, to any candidate for public office. The purchase of tickets to an event intended to raise money for use by a candidate in a political campaign is a violation of this policy.

VIII. Financial Activities and Business Operations

- A. The directors of each foundation board have the fiduciary responsibility to oversee the adequacy of the foundation's internal controls, as well as the sufficiency and appropriateness of its financial reporting. In fulfillment of these responsibilities, directors shall foster direct and private communications with the foundation's independent accountants on a regular basis and shall assure direct access to its internal audit function for independent accountants.

- B. The foundation shall ensure that it clearly presents itself as an independent entity separate and distinct from the USM and its constituent institutions and components. All correspondence, solicitations, activities, and advertisements on behalf of a foundation shall use the name of that foundation and shall be clearly identified as an activity of that foundation to ensure that the public is aware that the activities undertaken by the foundation are separate and distinct from those of the USM. The letterhead of a foundation shall carry the complete legal name of the foundation or a registered Doing Business As (DBA) name (e.g., The University System of Maryland Foundation, UMBC Foundation, USG Foundation, etc.).
- C. Trademarks, service marks, logos, seals, or the name of the USM or any of its constituent institutions or components may be used by the foundation only with the prior written approval of the Responsible Official.
- D. In all negotiations and transactions with third parties, for fundraising and all other activities, foundation officers and employees shall take care to ensure that all parties involved are aware that the foundation is an independently established and separately operated legal entity from the USM. Obligations of foundations shall not be obligations of the USM or the State of Maryland.
- E. Foundation funds shall be kept separate from USM funds. USM funds shall not be transferred to foundations for any purpose except, when appropriate, by action of the Board of Regents after review by the Office of the Attorney General. Funds or gifts payable to the Board of Regents, the USM, one of its constituent institutions, or to any other USM component shall not be deposited with a foundation.
- F. Acceptance of gifts by the USM or a foundation is subject to applicable USM policies on gifts, including Board of Regents Policy IX-5.00 Policy on Ethical Practices in Charitable Giving. Fundraising campaigns and solicitations of major gifts for the benefit of the USM shall be approved in advance by the Responsible Official and should be compatible with the plans and needs of the USM. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by a constituent institution or other component of the USM, a foundation must obtain the prior approval of the Responsible Official. The foundation shall assure that each gift shall be used in accordance with the legally enforceable terms and conditions attached to such gift.
- G. Financial activities of an affiliated fundraising foundation shall be administered in accordance with prudent business practices. Each foundation's board of directors shall adopt an expense authorization and reporting process. The process shall define the dollar threshold and nature of expenses requiring approval of a member of the board of directors, who shall not be a USM employee, and it shall define the type and frequency of expense reporting to the board of directors. An adequate and effective system of internal control designed to reduce the risk of loss, ensure appropriate attention to compliance obligations, and formalize approvals and lines of authority, is an important and necessary part of prudent business practices.

- H. Foundations are encouraged to use the professional investment management resources and infrastructure provided by the University System of Maryland Foundation (or its successor(s)). In the circumstance where a foundation chooses another entity to perform investment management services, should the foundation's investments underperform appropriate market indices for three consecutive years, the Board of Regents may request from the foundation an independent review of its investment strategies along with plans for corrective action.
- I. All USM affiliated foundations may be assessed an annual overhead charge that shall be determined by the Board of Regents in consultation with the Presidents. The charge shall be transferred to the University System of Maryland Foundation (or its successor(s)) to cover certain costs incurred by the University System of Maryland Foundation on behalf of the Board of Regents and the Chancellor.

IX. Audits, Inspection and Reports

A. Audits and Inspection

1. Each foundation shall be audited annually by an independent certified public accountant who is not a director or officer of the foundation and who is approved by the Responsible Official. Each foundation should conduct its fiscal operations to conform to the USM's fiscal year. Each foundation shall prepare its annual financial statements in accordance with generally accepted accounting principles. The independent audit shall be performed in accordance with generally accepted auditing standards. As part of the audit, the auditor shall verify a summary annual report of transfers of funds made to the USM or its institutions.
2. Each year each foundation shall provide a separate audit, to be performed by either the foundation's independent auditor, or the USM Office of Internal Audit, of all unrestricted funds available to the Chancellor and/or the President(s).
3. Annually, the Responsible Official, directors and chief officers of each foundation should review their responsibilities, and the business and operational risks facing the foundation.
4. A foundation shall permit the Responsible Official or their designee to inspect, at reasonable times, the following documents: the foundation's books and records; its most recent federal and state tax returns; and a list of employees, consultants, and legal counsel for the fiscal year. At the request of the Chancellor or the Chairperson of the Board of Regents, the foundation shall permit the internal auditors of the Board of Regents access to all books and records of the foundation.

B. Reports

1. Within 120 days after the close of the USM's fiscal year, each foundation shall provide the Responsible Official with copies of the following, which are to be

transmitted to the Office of the Chancellor along with a set of assertions as to affiliated fundraising foundation compliance with Board of Regents policy requirements:

- a. annual financial audit report;
 - b. annual audit report of transfers made to the USM, institution and components;
 - c. annual audit report of unrestricted funds available to the Chancellor and/or the President;
 - d. a list of foundation officers and directors;
 - e. a list of USM employees who received compensation or other payments from the foundation during the fiscal year and the amount of that compensation or payment, detailed into compensation for services, and other payments;
 - f. IRS Form 990 and any related State or other regulatory compliance reports (when filed or available);
 - g. a list of all state and federal contracts and grants managed by the foundation; and
 - h. A written affirmation of the foundation board chair, executive director and the Responsible Official that they have read, understand and have complied with the provisions of the Board of Regents Policy on Affiliated Philanthropic Support Foundations.
2. Should the foundation not submit the required documents and reports within the required time period, the Chancellor and the Responsible Official (if other than the Chancellor) shall issue a joint warning to the foundation. Should the foundation not demonstrate satisfactory progress toward immediate compliance, the Board of Regents may revoke its affiliated status or take other appropriate action.
 3. The Chancellor may request from the Responsible Official information on foundations according to the schedule and format specified by the Chancellor.
 4. The Chancellor shall annually send any revised Board of Regents' policies relating to affiliated foundations to the Department of Legislative Services within 180 days of the end of the USM's fiscal year.
 5. The Board of Regents shall issue an annual report to the Legislative Joint Audit and Evaluation Committee regarding the operations of the affiliated foundations. The report shall be available no later than 180 days after the end of the USM's fiscal year.



Appendix A

Model Affiliation Agreement between the University System of Maryland Board of Regents and Affiliated Philanthropic Support Foundation

Board of Regents Policy IX-2.00 Policy on Affiliated Philanthropic Support Foundations, Section III C. requires:

The Responsible Official and the foundation shall obtain Board of Regents recognition of status as an affiliated foundation before the foundation can use the institution's name or any other name, emblem, or mark to which the University has any legal right.

and in the same section #3, including a:

Draft affiliation agreement between the foundation and the Board of Regents...

This agreement is to remain in force for as long as the affiliation status is maintained and recognized by the Board of Regents. The affiliated philanthropic support foundation named above agrees and acknowledges that:

1. The above-named affiliated philanthropic support foundation commits to maintaining an operating agreement with the affiliated university that reflects best practices and the requirements of the BOR policy.
2. The BOR acknowledges that the named affiliated philanthropic support foundation is an independent 501 (c) 3 entity with its own governing board and financial systems.
3. The above-named affiliated philanthropic support foundation commits to compliance with all applicable BOR policies.
4. The above-named affiliated philanthropic support foundation understands and agrees to the consequences of failing to comply with the BOR policy governing affiliated philanthropic foundations, including but not limited to denial of the right to use the name and resources of the university.
5. The above-named affiliated philanthropic support foundation acknowledges that its dissolution will result in transfer of its funds to a BOR-recognized foundation for the benefit of the affiliated university.

6. The above-named affiliated philanthropic support foundation agrees to follow all applicable laws pertaining to their 501 (c) 3 status.
7. The above-named affiliated philanthropic support foundation agrees that any changes to corporate documents or purpose must be communicated to the BOR within 60 days, and that certain changes may result in revocation of recognition.
8. The above-named affiliated philanthropic support foundation agrees that it will cease using the institution or USM name or any other name, emblem, or mark of the university or USM in the event of a Board of Regents action to revoke its recognition as an affiliated philanthropic support foundation upon formal communication of such action.

We the undersigned, do hereby agree to, and acknowledge the terms of this affiliation agreement:

Executive Director, President or Chief Executive
Affiliated philanthropic support organization

Date

Responsible Official
USM institution

Date

Chancellor (on behalf of the Board of Regents)
University System of Maryland

Date