



## VIII-13.00 - USM POLICY ON BUSINESS ENTITIES

(Approved by the USM Board of Regents on July 13, 2001, revised February 17, 2023)

### A. Definitions

For the purposes of this Policy, the following terms shall have the following meanings:

**"Business Entity"** means a for profit or non-profit business or business entity that is separate from USM and its Institutions. For example, Business Entities include without limitation:

- a. Entities created for the purpose of owning or developing real estate;
- b. Entities created for the purpose of carrying on or facilitating research, education, or services consistent with the Institution's mission;
- c. Fiscal sponsor host organizations;
- d. Entities that were previously recognized by USM as affiliated foundations, but which are subsequently primarily engaged in activities other than fundraising or fundraising-support; and
- e. Entities established to further one or more goals of USM or its institutions and related to the mission of any institution.

**"Establish"** means to create or legally organize a Business Entity, e.g., by incorporating a corporation, organizing a limited liability company, or entering into a partnership or joint venture agreement.

**"Financing," "finance,"** or any correlative term means the provision of a loan or extension of credit to a Business Entity.

**"Institution"** means a university within the University System of Maryland, or a regional center.

**"Investment," "invest,"** or any correlative term means the acquisition of an ownership interest in the Business Entity in exchange for consideration, or to provide value to a Business Entity by support or gift.

**"Operate"** means to control or to substantially or significantly influence the management of the operations of a Business Entity.

**"Responsible Official"** means the following official responsible for seeking approvals and for monitoring compliance with this Policy and other USM policies applicable to Business Entities at his or her Institution:

- a. For the USM or USM Office: the Chancellor (or his or her designee); and
- b. For an Institution and any component of an Institution (including a regional higher education center through its sponsoring Institution): the appropriate President, unless otherwise approved by the Chancellor.

### B. Background

Section 12-113 of the Education Article of the Annotated Code of Maryland, as may be amended, allows the Board of Regents "to establish, invest in, finance, and operate businesses or business entities when the Board finds that doing so would further one or more goals of the University and is related to the mission of the University." Section 12-113 requires that a business entity may not be considered an agency or instrumentality of the State or a unit of the Executive Branch for any purpose.

A financial obligation or liability of a business entity established, invested in, financed, or operated in accordance with Section 12-113 may not be a debt or obligation of the State or University.

Section 12-113 also refers to Section 15-107 of the Education Article, which encourages the promotion of economic development of the State through commercial application of Institution-owned intellectual property.

### **C. Purpose and Scope**

This Policy governs the establishment, investment in, financing of, and operation of Business Entities by USM and its Institutions. Business Entities may be established or operated for the purpose of shielding the Institution from liability; engaging in activities that are more appropriately conducted by a Business Entity; enabling non-USM personnel with appropriate expertise to participate in the management or governance of the Business Entity; or for other purposes to enhance or accomplish the mission of the USM or the Institution.

### **D. Applicability**

1. Subject to Section D.2, this Policy shall apply to the establishment, investment in, financing of, and operation of Business Entities by USM and USM Institutions.
2. This Policy shall not apply to any of the following entities:
  - a. Entities that are subject to Board of Regents Policy VIII-15.00 (Policy on High Impact Economic Development Activities).
  - b. Affiliated philanthropic support foundations that are subject to Board of Regents Policy IX-2.00 (Policy on Affiliated Philanthropic Support Foundations).
  - c. Public-private partnerships that are subject to the provisions of Board of Regents Policy VIII-17.00 (Policy on Public-Private Partnerships).
  - d. Business Entities that are specifically exempted from this Policy by the Board of Regents.
3. This Policy shall also not apply to the following:
  - a. The receipt of an equity interest in a Business Entity or a license to use the Business Entity's intellectual property as a condition of the Business Entity's participation in an Institution's business incubator program;
  - b. The receipt of an equity interest in a Business Entity in consideration for the licensing of Institution-owned intellectual property;
  - c. Investments and financings made according to the provisions of Board of Regents Policy VIII-14.00 (Policy on Investments and Loans to Maryland-based Businesses that are Affiliated with USM Institutions); and
  - d. Provided, however, that in each of D.3.a, b, and c, the Institution provides no other Investment in, Management of, provision of more than one director, trustee or manager, to or Financing for, the Business Entity.

**E. Prior Approval Required by the Board of Regents for Establishing, Operating, Investing in, or Financing a Business Entity**

1. USM and USM Institutions must obtain prior Board of Regents approval in order to:
  - a. Establish a new Business Entity,
  - b. Operate a Business Entity, or
  - c. Invest in or Finance a Business Entity as further provided in Section F below.
2. However, no new approval shall be required with respect to the establishment or operation of any Business Entity which was approved by the Board of Regents prior to December 31, 2022. All Business Entities whenever established are subject to the reporting requirements set forth in Section J below.
3. In addition, no new approval shall be required with respect to the establishment by a previously approved Business Entity of a subsidiary or affiliate, if it is (a) consistent with the initial approval of the purpose and intended operations of the Business Entity, and (b) not considered an agency or instrumentality of the State or unit of the Executive Branch, including USM, for any purpose, and its debts and obligations are not considered debts or obligations of the State or USM. For example, a real estate development Business Entity may create single-purpose entity (SPE) subsidiaries for acquiring parcels of real estate, in order to shield the Business Entity from the liabilities of the SPE. All subsidiaries and affiliates are subject to the reporting requirements set forth in Section J below.

**F. Approval Required for Investments or Financings**

1. USM and USM Institutions must obtain Board of Regents approval in order to make an investment in, or provide financing to, a Business Entity of \$5,000,000 or more.
2. USM and USM Institutions must obtain specific written approval of the Chancellor (or designee), in order to make an investment in, or provide financing to, a Business Entity of \$1,000,000 or more but less than \$5,000,000. The Chancellor (or designee) shall have determined that the investment in the Business Entity furthers one or more goals of USM or Institution and is related to the mission of USM or Institution. Prior Board of Regents approval shall be necessary for investments in or financing to any Business Entity as soon as the cumulative investments and financings is to exceed \$5,000,000 outstanding at any one time.
3. Any investment or financing in an amount less than \$1,000,000 shall not require Chancellor (or designee) approval, but the Institution shall report it to the Chancellor in accordance with Section J of this Policy. The Responsible Official shall have determined that the investment in the Business Entity furthers one or more goals of the Institution and is related to the mission of the Institution. Prior written approval by the Chancellor shall be necessary for investments in or financing to any Business Entity as soon as the cumulative investments and financings is to exceed \$1,000,000 outstanding at any one time.

## **G. Process for Seeking Approval from the Board of Regents**

1. When seeking approval from the Board of Regents under Sections E or F of this Policy, the Responsible Official shall submit a business opportunity assessment prepared with assistance from independent experts. The assessment shall include a description of the product or service; the potential market for the product or service to be offered by the Business Entity; the business opportunities; and the financial risks. The assessment shall also include a plan that describes the financial relationship between the Business Entity and the Institution; operating capital requirements; any anticipated State funding through economic development grant or loan programs; any venture capital relationships; the start-up period of operation and funding; and a financial pro forma for at least five years. Additionally, the Responsible Official shall recommend appropriate performance indicators for the Business Entity.
2. The Responsible Official shall also:
  - a. Describe the legal form of the Business Entity;
  - b. Explain why a separate Business Entity is needed or is preferable;
  - c. Explain how the Business Entity will further one or more goals of the Institution or the USM;
  - d. Explain how the Business Entity is related to the mission of the Institution or the USM;
  - e. Explain how the Business Entity will compete, if at all, with the Institution or the USM;
  - f. Define the composition of the Business Entity's governing body, addressing specifically, any role of the Institution or USM in appointing and removing members of the governing body;
  - g. List the names of any and all USM or Institution employees who will have a role in creation, operation, or management of the Business Entity, along with a description of their respective roles;
  - h. Describe any Public Ethics Law issues presented by the proposal and how they will be resolved, including a specific reference to and addressing matters included in Section 5-525 of the General Provisions Article of the Annotated Code of Maryland;
  - i. Describe any other potential conflict of interest or other problems which might be anticipated at the time Board's approval is sought, e.g., individuals who have potential conflicts regarding compensation; members of the governing board who stand to financially benefit from the activities of the Business Entity; and if the Business Entity might receive goods or services at a below market price as a result of actions of a member of the governing board; and
  - j. Comply with any Board of Regents approved due diligence requirements.
3. A copy of the articles of incorporation or organization must be sent to the Chancellor when the Business Entity files them with the Maryland State Department of Assessments and Taxation or other appropriate government filing office.

## **H. Compliance with Board of Regents Policy Requirements and State of Maryland Public Ethics Requirements**

1. USM and Institutions must operate their Business Entities in compliance with all requirements of this Policy and applicable laws.
2. USM and Institution employees may participate in the operation or governance of a Business Entity only in such circumstances where approved by the Responsible Official and in compliance with Public Ethics laws.
3. Pursuant to State law, a Business Entity shall not offer an educational program (i.e., an organized course of study that leads to the award of a certificate, diploma, or degree) unless it has obtained a certificate of approval from the Maryland Higher Education Commission (MHEC) to operate as an institution of postsecondary education. A Business Entity shall not apply for a certificate of approval from MHEC without first obtaining written approval from the Chancellor (or designee).
4. Without specific approval by the Board of Regents, an Institution may not use a Business Entity to engage in education, research, or service activities in place of the Institution that would ordinarily be performed by the Institution.
5. An Institution may not use a Business Entity for the principal purpose of circumventing law, USM procurement requirements, or any other policy of the Board of Regents.
6. A Business Entity may acquire personal property or real property for the eventual transfer to, or purchase by, the USM or an Institution. However, the Business Entity 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.
7. An Institution should only establish or manage Business Entities that are organized under Maryland law and that have their primary place of business in Maryland. However, an Institution may seek approval from the Board of Regents to establish or manage a Business Entity to be organized under another jurisdiction's laws or to have its primary place of business outside of Maryland, e.g. where the Business Entity will be created for the purpose of operating in a foreign country and is required by a foreign government to be organized under the laws of the foreign country and/or to have its primary place of business in the foreign country.

## **I. Termination of Business Entity status**

Upon notice to the subject Institution, the Board of Regents may act to rescind and revoke the approval of an Institution to operate a Business Entity. The loss of such approval will require that the Institution end its support or provision of resources, including personnel, to the Business Entity.

## **J. Reporting to the Chancellor <sup>1</sup>**

1. Within 120 days after the end of USM's fiscal year, the President of each Institution shall provide to the Chancellor a report of:
  - a. The Business Entities established by the Institution and any and all subsidiaries and affiliates thereof;

- b. The funds invested in, or financing provided by, the Institution or any affiliated foundation to Business Entities;
  - c. Ownership interests acquired by an Institution or any affiliated foundation in Business Entities;
  - d. The current status of the Business Entities and subsidiaries and affiliates;
  - e. Annual financial audit report for those Business Entities with more than \$1,000,000 in assets or annual revenues at the end of the previous fiscal year end; or a compilation or review of financial statements for those Business Entities with both less than \$1,000,000 in assets and annual revenues at the end of the previous fiscal year end;
  - f. A list of officers and directors of all Business Entities and subsidiaries and affiliates;
  - g. A list of USM or Institution employees who received compensation or other payments, services, or gifts from the Business Entities and subsidiaries and affiliates during the fiscal year and the amount of that compensation or payment, service or gift (but excluding reimbursement of travel or other expenses) as well as a list of USM or Institution employees who provided services to Business Entities and affiliates without compensation; and
  - h. A list of all state and federal contracts and grants managed by the Business Entity and subsidiaries and affiliates during the fiscal year.
2. For good cause, the President of an Institution may request from the Chancellor (or designee) a waiver of the foregoing reporting requirements, or additional time in which to provide such reports. For example, if the Business Entity is a foreign corporation, additional time may be required in order to receive the audit report or financial statements required by Section J.1.e.
  3. The President shall submit an evaluation of whether the Business Entity met the performance indicators recommended to or adopted by the Board of Regents. A President may present alternative information if approved by the Board of Regents or Chancellor (or designee).

#### **K. Reporting by the Chancellor**

The Chancellor shall provide to the Board of Regents, Governor, and the General Assembly within 180 days after the end of USM's fiscal year a report of:

1. The Business Entities established in accordance with this Policy;
2. The funds invested in, and financing provided to, Business Entities in accordance with this Policy;
3. Ownership interests in any Business Entities established in accordance with this Policy; and
4. The current status of the Business Entities established in accordance with this Policy.

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<sup>1</sup> The reporting provisions of this Policy also apply to the USM Office or any Institution that received Board of Regents approval for establishing, investing in, financing, or operating a Business Entity since July 1, 1999, even if the approval was prior to the effective date of this Policy.