



Policy on Affiliated Entities

Purpose and Guiding Principles

Separate entities are affiliated with The Ohio State University because of services they provide in support of the University's mission. The Ohio State University has a vital interest in and recognizes the value of each affiliated entity. The University is committed to providing quality support for the efforts and activities of each affiliate, while seeking to maintain the appropriate independence from its affiliates.

The Board of Trustees of The Ohio State University has a responsibility to ensure that the University's activities with regard to affiliates are conducted in a proper manner. To protect the University's interests, and as a condition of the affiliates' use of the University's name and resources, the following principles shall apply:

1. The creation and activities of affiliates must promote, sponsor, or complement educational, scientific, research, charitable, health-care related, or cultural activities for the benefit of the University or one or more of its units.
2. To promote a more proactive relationship with affiliates, the University's relationship with each affiliate will be memorialized through a memorandum of agreement.
3. Affiliates will be monitored by the Board of Trustees through a regular reporting process.
4. Affiliates shall provide for at least one University representative with full voting rights on its governing board.
5. Affiliates must use sound fiscal and accounting procedures.
6. Affiliates must be managed in a manner consistent with their own enabling documents and the University's purpose, mission, and procedures, as specifically set forth in this policy.
7. Affiliates must adhere to high standards of ethics and conflicts of interest.
8. The University's relationship with an affiliate is not necessarily intended to be perpetual. Relationships with affiliates will be examined at least every five years to determine whether the affiliate/relationship will be continued or whether a sunset provision is appropriate.

Through the application of these principles, this policy provides a framework to guide the University in establishing and monitoring its relationships with affiliates.

Definition of an Affiliated Entity

An affiliated entity is:

1. an organization that has a legal existence separate from the University, and
2. which is formed or operated to support or complement the mission of the University, and
3. (a) was created by the University, or
(b) is controlled or strongly influenced by the University, or
(c) receives significant financial support from the University, or
(d) uses University resources, name, or identity.

The level of required reporting depends on the form of the relationship between the University and the affiliate. Relationships with affiliated entities may take one of three forms: a significant interest, regular, or arms length. These relationship categories are derived from the calculus of risk to the University, rather than simply the control imposed by the University: the University may have a significant interest in an affiliate with which the University otherwise has an arms-length relationship.

- I. **Significant Interest Affiliates.** The University has a significant interest in an affiliate if:
 - a. The University has a significant *financial investment* in the affiliate, defined for the purposes of this policy as over \$250,000;
 - b. The affiliate poses a *compliance risk* to the University; or
 - c. The affiliate provides *essential services* to the University.
- II. **Regular Affiliates.** The affiliate has closer ties to the University than an arms-length entity, but the University does not have a significant interest in the entity.
- III. **Arms-length Affiliates.** These affiliates may use University resources, but the relationship is defined by contract/memorandum of understanding or does not otherwise establish a close tie with the University. The University may act as fiscal agent or have other financial or operational ties. Specifically included in this category are consortia of which the University is a member and acts as fiscal agent.

Assignment to categories is subjective and based on the discretion of the Board of Trustees and its designees. Assignment may change as the nature or activities of affiliates evolve.

This definition does not encompass internal University units that may conduct business activities with external parties; therefore, these internal units are not covered by this policy.

Establishment of Affiliated Entities

Affiliates may be established by the University or entities outside the University, subject to review and approval by the Board of Trustees. The process to attain Board of Trustees approval will differ depending on whether the affiliate is to be created by the University or an external entity. In making its determination for either type of entity, the Board of Trustees will review the proposed affiliate's purpose, organizational format, scope of activities, and associated risks. See Appendix A for a list of considerations that should be addressed when proposing the creation of an affiliate.

Process for University Establishment of an Affiliate

The Ohio Constitution and state statutes impose limitations on the University's ability to engage in some types of business activities. Units considering establishing an affiliated entity should consult with the Office of Legal Affairs at the earliest stage of the planning process to ensure that all legal requirements are fulfilled.

1. The University unit desiring to establish an affiliate ("Sponsoring Unit") shall develop a detailed proposal which will include:
 - a. Goals and objectives of the proposed affiliate.
 - b. Proposed organizational and governing board structure. The proposed governing board structure shall reserve at least one board seat for a University representative.
 - c. Projected budget and business plan for at least five years.
 - d. Thorough risk assessment that defines and classifies risks inherent to both the proposed entity and the University, including potential conflicts of interest. The risk assessment must include mitigation strategies and metrics designed to quantify risk throughout the life of the entity.
 - e. Proposed memorandum of agreement defining the affiliate's relationship with the University.
2. The proposal shall be reviewed and approved by the Sponsoring Unit, the appropriate Vice President or Dean, the Office of Business and Finance, and the Office of Legal Affairs.
3. The appropriate Vice President or Dean then shall recommend creation of the proposed affiliate for consideration by the University's Senior Management Council and the President's Executive Committee. Upon those approvals, the proposal shall be recommended to the Board of Trustees Audit and Compliance Committee.
4. The Audit and Compliance Committee shall review the proposal and if deemed appropriate, recommend the establishment of the affiliate to the Board of Trustees. The Committee shall assign oversight responsibility for each entity to a University administrator.
5. Approval by the Board of Trustees.

6. The Board of Trustees shall either appoint the University representatives who will serve on affiliate governing boards or delegate appointment authority to the University President.
7. Depending on the circumstances and the degree of separateness of the entity, legal representation with respect to the preparation of organizational documents may be provided by the University, the Office of the Attorney General, outside counsel to the University, or private counsel retained on behalf of the entity.

Process for Relationship with Existing or New Affiliates

1. The external entity desiring to enter into an affiliate relationship with the University shall develop a detailed proposal which will include:
 - a. Goals and objectives of the proposed affiliate.
 - b. Proposed organizational and governing board structure. The proposed governing board structure shall reserve at least one board seat for a University representative.
 - c. Projected budget and business plan for at least five years.
 - d. Thorough risk assessment that defines and classifies risks inherent to both the proposed entity and the University, including potential conflicts of interest. The risk assessment must include mitigation strategies and metrics designed to quantify risk throughout the life of the entity.
 - e. Proposed memorandum of agreement defining the affiliate's relationship with the University.
2. The proposal will be reviewed by the appropriate Vice President or Dean, the Office of Business and Finance, and the Office of Legal Affairs. If these offices agree, the affiliate will be recommended for approval to the Senior Management Council and the President's Executive Committee. Upon these approvals, the proposed relationship will be recommended to the Board of Trustees Audit and Compliance Committee.
3. The Audit and Compliance Committee shall review the proposal and if deemed appropriate, recommend the authorization of the relationship with the proposed to the full Board. The Committee shall assign oversight responsibility for each entity to a University administrator.
4. Approval by the Board of Trustees.
5. The Board of Trustees shall either appoint the University representatives who will serve on affiliate governing boards or delegate appointment authority to the University President.

Oversight of Affiliates

The Board of Trustees shall exercise oversight over established affiliates through the following mechanisms: (1) inclusion of University representatives on the affiliate's governing board; (2) provision for reserve powers on behalf of the University in the affiliate's governing documents; (3) a memorandum of agreement between the University and the affiliate outlining expectations and responsibilities, including governance requirements; and (4) a comprehensive reporting process, as outlined below. In addition, the Board of Trustees will also inquire regularly as to the need for continued affiliation and/or separate entity status.

University Representatives on Affiliate Boards

Each affiliate shall provide for at least one University representative with full voting rights on its governing board. University representatives on affiliate governing boards shall be appointed by the Board of Trustees or the President and shall be required to follow the guidelines and expectations articulated by the University as conditions for their service. The guidelines and expectations will be memorialized in a letter of appointment for each University representative on an affiliate board and shall include the following provisions at a minimum:

- A. The University representative on the affiliate governing board shall keep the President and the Board of Trustees informed of the affiliate's activities on a regular basis, as the Board or President determines appropriate.
- B. The University representative shall consult with the Board of Trustees or the President, as determined appropriate, on any proposal to be presented the affiliate governing board relating to the creation of new corporate subsidiaries or new lines of business. With respect to these matters, the University representatives shall exercise their votes as members of the affiliate governing board in accordance with instructions they receive from the Board of Trustees or the President.
- C. Proposals that would allow an affiliate or its subsidiaries to perform elements of the University's basic research or teaching mission must be approved by the University's Executive Vice President and Provost and the Senior Vice President for Research and any other University academic units that would be affected.
- D. Any grant or loan of University funds, or any action that could reasonably be construed as a guarantee or inducement for any other grant or loan, to an affiliate or any affiliate subsidiary shall be subject to the prior written approval of the University's Senior Vice President for Business and Finance and Chief Financial Officer.
- E. Any contract between the University and the affiliate or any of its subsidiaries, as well as the transfer of any University assets, including intellectual property, to any of those entities must be approved by the University's Senior Vice President for Business and Finance.

- F. These requirements shall apply to any renamed or reorganized corporate structure or organization that the affiliate may create or authorize.

Reserve Powers

Reserve powers are specific acts of the affiliate that must be authorized by the University representatives on the affiliate governing board to be effective, even if the University representatives are not in the majority on the governing board. As determined appropriate by the University, these reserve powers must be memorialized in the affiliate’s governing documents. Examples of acts that may be subject to reserve powers include dissolution, liquidation, merger, consolidation, and formation of subsidiaries. Reserve powers are not required of each affiliate, but will be an additional consideration when affiliate relationships are established.

Memorandum of Agreement

The University shall enter into a memorandum of agreement with each affiliate addressing the University/affiliate relationship and expectations and governance requirements. The memorandum of agreement may also address University services and financial contributions, use of University marks, and other support provided by the University. Upon approval of the Board’s Audit and Compliance Committee, the memorandum of agreement may exempt an affiliate from requirements of this policy. Each memorandum of agreement will be tailored to the specific needs of each affiliate. For a list of potential issues to be addressed by a memorandum of agreement, please see Appendix B.

Reporting Requirements

Reporting Frequency

Based on prior reports and other available information, a "status" will be assigned to each affiliated entity:

	Entity in on track
	Entity is in jeopardy
	Entity is not on track

The following reporting schedule assumes that all entities are operating in "green" status, as assessed by the Office of Legal Affairs upon consultation with the Audit and Compliance Committee. The frequency of reports to the Audit and Compliance Committee is subject to change if the Committee determines that the affiliate needs to be given a "red" or "yellow" status.

Type of Entity	Frequency of Reports		
	<i>Annual</i>	<i>Proactive</i>	<i>Quarterly</i>
Significant Interest	Comprehensive	Update	Update
Regular	Comprehensive	Update	None
Arms-Length	Comprehensive	None	None

Annual Reports

Subsequent to the end of each fiscal year, each affiliate regardless of category shall submit to the President or his/her designee:

- A. A copy of its financial report, audited by an independent certified public accountant, the management letter, and management's response thereto on at least an annual basis.
- B. A copy of its IRS Form 990 and 990-T.
- C. A letter signed by the affiliate's executive head certifying that the affiliate has complied with this policy and any memorandum of agreement between the University and the affiliate regarding their relationship.
- D. Other such information that may be requested by the Board of Trustees on a supplied form, e.g., a list of current directors and officers, current copies of governing documents, and a brief description of the affiliate's activities during the prior year..

In addition to the items listed above, significant interest affiliates must also submit:

- A. Minutes of meetings of its governing board from the previous year.
- B. A report listing each real estate purchase and material capital lease, investment, or financing arrangement entered into during the preceding affiliate fiscal year.

Proactive Reports

From time to time, regular and significant interest affiliates shall submit to the President or his/her designee:

- A. An annual operating budget and capital expenditure plan approved by the affiliate governing board, prior to the beginning of the new affiliate fiscal year. The budget should be presented in a comparative format with the prior year and include major categories of revenues and expenses.
- B. Notice of material litigation involving the affiliate.
- C. An advance copy of any proposed amendments, additions or deletions to any of its governing documents.

Quarterly Reports

On a quarterly basis, significant interest affiliates only shall submit to the President or his/her designee:

- A. A description of activities for the prior quarter, including but not limited to significant business issues and transactions with the University.

- B. A description of the significant business issues or activities anticipated in the upcoming quarter.
- C. A copy of its quarterly financial statements and budget-to-actual reports.
- D. Any updates to information previously provided.
- E. Other such information that may be requested by the Board of Trustees on a supplied form.

Sunset Provisions

It is expected that some affiliates will have finite life spans and that it will no longer be appropriate for an affiliate to continue its relationship with the University or to continue to exist as a separate entity. At least every five years, the University will assess existing affiliates for the need for continued affiliation and separate entity status. The University shall use the reporting process as well as inquiries of affiliate management regarding reasons for continued existence and affiliation to make its determination.

If, after appropriate consultation within the University and with the affiliate, it is determined that it is no longer appropriate for a separate entity to be affiliated with the University, a recommendation to that effect will be made to the Board of Trustees Audit and Compliance Committee.

If it is determined that there is no reason for an affiliate's continued existence as a separate entity, the University may direct through its reserve powers, if applicable, or suggest to the affiliate that the entity be dissolved. It will be determined on a case-by-case basis whether the University can assist the affiliate in its dissolution and whether the remaining activities of the affiliate, if any, can or should be assumed by a University unit. If it becomes evident during the establishment process that the affiliate will have a finite existence, the affiliate governing board should consider inserting automatic sunset provisions into its governing documents.

Appendix A – Considerations For Creation of Affiliates

Policy Issues: “Will the Affiliate Serve the Best Interests of the University?”

- Is the affiliate formed to achieve a public purpose which is consistent with the mission of the University?
- Does the plan project a reasonable probability that the affiliate’s objectives can be attained?
- Have the appropriate internal constituencies been consulted (e.g., faculty, affected departments, etc.)?
- Will the affiliate’s activities conflict or compete with existing university activities?
- How will the affiliate be received by external constituencies?

Financial Issues: “What are the Financial Implications of Establishing the Affiliate?”

- Has a thorough and a credible budget and/or business plan been prepared?
- What level of financial support is expected to be provided by the University, and is it reasonable and appropriate?
- What are the financial risks to the University and how are they addressed?
- If the affiliate will use University facilities or services, is proper reimbursement assured?
- What is the proposed distribution of the affiliate’s revenues and surplus?
- What are the provisions for recovery of university investment?

Governance Issues: “Is the Appropriate Governance Structure Established?”

- Who should represent the University on the affiliate’s board of directors?
- Are the proposed public members of the board of directors qualified to oversee the mission and operations of the affiliate?
- Has responsibility for supervision of the activities of the affiliate been clearly delegated to an official (e.g., vice president or dean) within the University?
- Has a timeline been established for performance review and assessment?
- Is the inclusion of reserve powers in the affiliate’s governing documents appropriate?

Legal Issues: “Are There Adequate Safeguards to Avoid or Minimize Legal Risks and Financial Exposure?”

- Is the affiliate properly structured to maintain the appropriate degree of separation from the University?
- If University employees will be involved with the affiliate, have they complied with all University employment policies?
- Is there a plan to manage real or potential conflicts of interest?
- What are the risks of legal liability that may result from the activities of the affiliate? Are these risks adequately insured? What level of risk is the University prepared to accept?
- Will the activities of the affiliate give rise to questions regarding ownership of intellectual property?

Appendix B – Items Addressed in Memorandum of Agreement

Governance Matters

- Acknowledgement that affiliate is legally independent from the University, and neither party assumes the other's liabilities
- Affiliate is identifiably separate from University
- University representation on affiliate governing board
- Requiring reserve powers to be exercised by the University in certain actions by affiliate, including University review/approval of new business ventures and subsidiaries or other entities
- Fundraising affiliates organized and operated as non-profit, non-stock corporations
- Disposition of assets upon dissolution of affiliate
- Creation of an audit committee of the governing board
- Adoption of policies on ethics, conflict of interest, whistleblowers, compensation, and procurement
- Provision of legal services

Financial Matters

- Requiring an accounting system with appropriate controls and reporting functions and an annual audit by an independent certified public accountant
- Annual adoption by the affiliate governing board of a detailed operating budget and capital expenditure plan
- Transactions between affiliate and University treated as ordinary business transactions, with proper review and approvals
- Provisions regarding use of University registered marks
- Recovery of costs incurred for provision of personnel, facilities, or services by the University
- Provision of administrative services by University to affiliate
- Responsibilities for insurance
- Requiring an accounting system with reporting in accordance with GAAP
- Detailed operating budget and capital expenditure plan
- Officers/staff members bonded as appropriate; general liability and D&O insurance
- University's right to inspect books and records
- Requiring that no substantial part of operations devoted to lobbying/participating in political campaigns
- Requiring that no fees or remuneration shall be paid to University employees without University approval