

Applies to: Units, Board of Trustees, and current and prospective affiliated entities.

Responsible Office

Office of Legal Affairs

POLICY

Issued: 05/28/2008

Revised: 07/01/2017

Separate entities may be affiliated with The Ohio State University because of their missions or the services they provide in support of the university's mission. The university recognizes the value of affiliated entities and has an interest in their success. The university seeks to provide oversight for the efforts and activities of each affiliated entity, while still preserving their separateness.

Purpose of the Policy

To standardize the requirements for establishing and maintaining affiliated entity status and to clarify the role and responsibilities of university employees.

Definitions

Term	Definition
Affiliated entity	An organization that has: <ol style="list-style-type: none">1. A legal existence separate from the university; and2. A mission in support of, or complementary to, the mission of the university; and3. At least one of the following:<ol style="list-style-type: none">A. Was created by the university, and/orB. Is controlled or strongly influenced by the university, and/orC. Receives significant financial support from the university, and/orD. Uses university resources, name, and/or marks.4. Received Board of Trustee approval for affiliated entity status.
Reserve powers	Specific acts of the affiliated entity that must be authorized by: <ol style="list-style-type: none">1. A unanimous or super-majority vote of its governing board; or2. The university representatives on the affiliated entity governing board to be effective.
Senior university oversight official	A university employee holding a position of a dean, vice president, or above, who is responsible for general university oversight of an affiliated entity, including appropriate reporting to the university president and/or Board of Trustees. Is to be appointed by a letter from the university president and must adhere to the expectations outlined in the letter.

Policy Details

I. Guiding Principles

- A. Each **affiliated entity** is expected to work cooperatively and collaboratively with the university including the **senior university oversight official** to fulfill all requirements under this policy.
- B. The creation and activities of each affiliated entity must promote, sponsor, or complement educational, scientific, research, charitable, health-care, or cultural activities for the benefit of the university.
- C. The university's relationship with each affiliated entity must be memorialized through a memorandum of agreement or equivalent agreement.
- D. Affiliated entities are monitored through a regular reporting process by the Board of Trustees.
- E. Each affiliated entity must:
 1. Use sound fiscal and accounting procedures;
 2. Manage its operations and affairs in a manner consistent with their own enabling documents and policies; and
 3. Adhere to standards of ethics and integrity.

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II. Establishment of an Affiliated Entity

- A. An affiliated entity may be established by the university, subject to review and approval by the Board of Trustees.
- B. The Board of Trustees approval process differs depending on whether the entity is to be created by the university or is an existing entity.
- C. In making its determination, the Board of Trustees will review the affiliated entity's purpose, organizational format, scope of activities, and associated risks. See Procedure I.

III. Affiliated Entity Oversight

- A. The Board of Trustees exercises oversight over each affiliated entity through the following mechanisms:
 - 1. Establishment process,
 - 2. Memorandum of agreement or equivalent agreement,
 - 3. Governance requirements including but not limited to the designation of a senior university oversight official and annual audit or other financial review procedures,
 - 4. Reporting process, and
 - 5. Sunsetting provisions.
- B. Affiliated entities are also overseen by their governing boards.

IV. Sunsetting Provisions

- A. It is expected that some affiliated entities will have finite life spans. If it becomes evident during the establishment process that the affiliated entity will have a finite existence, then the affiliated entity governing board should consider inserting automatic sunsetting provisions into its governing documents.
- B. During review, it may be determined that it is or will no longer be appropriate for an affiliated entity to continue its relationship with the university or to continue to exist as a separate entity. Such a determination will begin the sunsetting process. See Procedure V.

PROCEDURE

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I. University Establishment of an Affiliated Entity

- A. Units considering the establishment of an affiliated entity, whether with a new entity or an existing entity that meets the first, second, and third components of the affiliated entity definition, must consult with the Offices of Legal Affairs (OLA) and Business & Finance (B&F) at the earliest stage of the planning process to ensure that all legal, financial, and policy requirements are fulfilled.
- B. See [Considerations for Creation of an Affiliated Entity](#) for factors that should be addressed when proposing the creation of an affiliated entity.
- C. The unit seeking to sponsor an affiliated entity must develop a detailed written proposal that includes:
 - 1. Goals and objectives of the affiliated entity.
 - 2. Organizational and governing board structure, which must clearly articulate university representation on its governing board and reserve powers. See Procedure II.
 - 3. Projected budget and business plan for at least five years.
 - 4. Thorough risk assessment that defines and classifies risks inherent to both the affiliated entity and the university, including all potential conflicts of interest. The risk assessment must include mitigation strategies and metrics designed to quantify risk throughout the life of the affiliated entity.
 - 5. Significant business terms for the memorandum of agreement defining the affiliated entity's relationship with the university. See Procedure III.
 - 6. Identification of the senior university oversight official.
- D. The written proposal must be reviewed and approved by the sponsoring unit's vice president or dean, OLA, and B&F.

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- E. Upon approval pursuant to I.D, the sponsoring unit's vice president or dean, with the support of OLA and B&F, recommends creation of the affiliated entity for review and approval by President's Cabinet.
- F. Upon approval pursuant to I.E, the sponsoring unit's vice president or dean, with the support of OLA and B&F, recommends the proposal to the Board of Trustees. The Board of Trustees must review and approve the establishment of the affiliated entity.

II. Memorandum of Agreement

- A. Each affiliated entity must enter into a memorandum of agreement or equivalent agreement with the university addressing the relationship, expectations, and obligations of the parties.
- B. The memorandum of agreement or equivalent agreement must also address university services and financial contributions, use of university marks, and other support provided by the university, unless memorialized elsewhere in writing.

III. Affiliated Entity Governance

- A. The university must have representatives on each affiliated entity's governing board.
 - 1. Each affiliated entity must provide for at least one university representative with full voting rights on its governing board. University representatives must be appointed by the university president or designated as an ex-officio in the governing documents of the affiliated entity.
 - 2. In addition to the other obligations and duties as a governing board member and as a university employee, the university representative must keep the senior university oversight official informed of the affiliated entity's activities on a regular basis. This includes proactive reports as detailed in procedure IV.B.2.
 - 3. Prior to voting on any action that involves a **reserve power** or on any action that could pose significant risk to the university, the university representative must notify the senior university oversight official. Each senior university oversight official must keep the President's Cabinet, OLA, and B&F informed of such voting matters.
- B. The governing documents of an affiliated entity must contain reserve powers as agreed to in the memorandum of agreement or equivalent agreement between the affiliated entity and the university.
- C. Each affiliated entity must have an annual audit performed, or other financial review as approved by B&F.

IV. Reporting

- A. Each affiliated entity must provide reporting information to the university.
- B. Types of Reports
 - 1. Annual Reports – Each affiliated entity, through the senior university oversight official, must submit a report annually to OLA as outlined in the [Affiliate Annual Report Template](#). This report includes items related to governance, financials, operations, and other practices.
 - 2. Proactive Reports – Each affiliated entity, through the university representative(s), must report to the senior university oversight official as needed on all significant issues; for example, material business dealings, changes in governance structure, establishment of or material changes to a subsidiary, material litigation, and transactions with the university. Each senior university oversight official must then keep OLA and B&F informed of these reports.

V. Sunsetting

- A. Relationships with each affiliated entity will be reviewed in consultation between OLA and B&F, the senior university oversight official, and the sponsoring unit at least every five years to determine if it is appropriate to maintain or terminate affiliated entity status.
- B. When affiliated entity status is terminated, OLA will take appropriate steps to implement sunseting provisions, keeping President's Cabinet and the Board of Trustees informed as necessary.

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Responsibilities

Position or Office	Responsibilities
Affiliated entity	<ol style="list-style-type: none"> 1. Use sound fiscal and accounting procedures (e.g., annual audit or B&F-approved financial review). 2. Manage in a manner consistent with their enabling documents and policies. 3. Adhere to standards of ethics and integrity. 4. Enter into a memorandum of agreement or equivalent agreement with the university. 5. Provide for at least one university representative with full voting rights on governing board. 6. Contain reserve powers in governing documents as agreed to in the memorandum of agreement or equivalent agreement. 7. Have an annual audit performed or other financial review s approved by B&F. 8. Submit annual and proactive reports as outlined in the procedure.
Board of Trustees	<ol style="list-style-type: none"> 1. Review and approve establishment of affiliated entities considering purpose, organizational format, scope of activities, and associated risk. 2. Exercise oversight through the means identified in the policy.
Office of Business and Finance (B&F)	<ol style="list-style-type: none"> 1. Consult with sponsoring units and OLA to determine if affiliated entity status should be sought. 2. Review and approve proposals for affiliated entities in collaboration with OLA and the sponsoring unit's dean/VP. 3. Approve financial review procedures of the affiliated entity if not conducting an annual audit. 4. Collaborate with the senior university oversight official, OLA, and the sponsoring unit to examine relationships with affiliated entities at least every five years to determine whether to maintain or terminate an affiliated entity's status.
Office of Legal Affairs (OLA)	<ol style="list-style-type: none"> 1. Consult with sponsoring units and B&F to determine if affiliated entity status should be sought. 2. Review and approve proposals for affiliated entities in collaboration with B&F and the sponsoring unit's dean/VP. 3. Collaborate with the senior oversight official, B&F, and the sponsoring unit to examine relationships with affiliated entities at least every five years to determine whether to maintain or terminate an affiliated entity's status. 5. Implement sunseting processes when affiliated entity status is terminated, keeping President's Cabinet informed.
University president	Appoint university representatives to affiliated entity governing boards.
President's Cabinet	Review and approve proposals for affiliated entities.
Senior university oversight official	<ol style="list-style-type: none"> 1. Keep President's Cabinet, OLA, and B&F informed of voting matters as provided by the university representative. 2. Provide annual reports to OLA and proactive reports from the university representative to OLA and B&F as needed. 3. Collaborate with OLA, B&F, and the sponsoring unit to examine relationships with affiliated entities at least every five years to determine whether to maintain or to terminate an affiliated entity's status.
Sponsoring unit	<ol style="list-style-type: none"> 1. Consult with OLA and B&F at the earliest stage if considering establishing an affiliated entity (new or existing entity). 2. Develop a detailed written proposal for the affiliated entity as outlined in the procedure. 3. Collaborate with the senior university oversight official, OLA, and B&F to examine relationships with affiliated entities at least every five years to determine whether to maintain or to terminate an affiliated entity's status.
Dean/VP of sponsoring unit	<ol style="list-style-type: none"> 1. Review and approve written proposals for affiliated entities in collaboration with OLA and B&F; after approval, recommend creation of affiliated entity to President's Cabinet. 2. Recommend the proposal to the Board of Trustees with the support of OLA and B&F.
University representatives	<ol style="list-style-type: none"> 1. Meet obligations and duties as a governing board member and a university employee as set forth in his or her appointment from the university president or otherwise. 2. Keep the senior university oversight official informed of activities (i.e., proactive reports) on a regular basis. 3. Notify senior university oversight official prior to voting on actions that involve reserve powers or that could pose significant risk to the university.

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Resources

The following resources are available at legal.osu.edu/topics/affiliated-entities:

- Affiliate Annual Report Template
- Considerations for Creation of an Affiliated Entity

Contacts

Subject	Office	Telephone	E-mail/URL
Policy interpretation	Office of Legal Affairs	614-292-0611	legal.osu.edu

History

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