

5.3.a

Institution-Related Entities: Legal Authority is Clearly Defined

For any entity organized separately from the institution and formed primarily for the purpose of supporting the institution or its programs:

- a. the legal authority and operating control of the institution is clearly defined with respect to that entity.

Judgment

Compliant Non-Compliant Not Applicable

Narrative

The University of South Carolina has authorized and is supported by six (6) independent, separately incorporated entities formed primarily for the purpose of supporting the University of South Carolina and its programs. These entities are:

- 1. the University of South Carolina [Educational Foundation](#);
- 2. the University of South Carolina [Development Foundation](#);
- 3. the University of South Carolina [Business Partnership Foundation](#);
- 4. the [South Carolina Research Foundation](#);
- 5. the [Educational Foundation of the University of South Carolina Lancaster](#); and
- 6. the University of South Carolina [Alumni Association](#).

(These entities are collectively referred to herein as the "Support Foundations" and individually referred to herein as the "Support Foundation.")

Each Support Foundation is a non-profit corporation incorporated under the laws of the State of South Carolina.

The relationship between the University of South Carolina and each Support Foundation is defined by a written affiliation agreement ("Affiliation Agreement") approved by the University of South Carolina Board of Trustees ("Board of Trustees") and the Support Foundation's Board of Directors or Trustees. The Affiliation Agreements are reviewed and updated periodically; most recently, the Affiliation Agreements for the University of South Carolina Educational Foundation, the University of South Carolina Development Foundation and the University of South Carolina Business Partnership Foundation were reviewed and approved by the Board of Trustees on July 19, 2020, and the Affiliation Agreements for the South Carolina Research Foundation, the Educational Foundation of the University of South Carolina Lancaster, and the University of South Carolina Alumni Association were reviewed and approved by the Board of Trustees on August 14, 2020.

Each Affiliation Agreement expressly recognizes the Southern Association of Colleges and Schools Commission on Colleges ("SACSCOC") accreditation standards ("SACSCOC Accreditation Standards") and commits both the University of South Carolina and the Support Foundation to perform its respective activities under the Affiliation Agreement in full compliance with SACSCOC Accreditation Standards. Each Affiliation Agreement provides:

The Parties agree to work together to comply with the principles of institutional control and other regulations of the Southern Association of Colleges and Schools Commission on Colleges ("SACSCOC") (or other equivalent body or association that may provide accreditation or similar rating standards upon USC, and to which USC is subject) applicable to the accreditation of USC ("SACSCOC Accreditation Standards"). In the event that any provision of this Agreement violates the SACSCOC Accreditation Standards, such provision of this Agreement shall be automatically reformed and construed so as to be valid, operative, and compliant with SACSCOC Accreditation Standards while preserving its original intent to the maximum extent possible."

[See Article II in each Affiliation Agreement.]

SACSCOC Standard 5.3. Article I of each Affiliation Agreement addresses directly the requirements of SACSCOC Standard 5.3, as follows:

The purpose of this Agreement is to (i) define the relationship of the Foundation to USC as a separate and independent organization formed primarily for the purpose of supporting USC, (ii) formally delineate any liability exposure between the Parties arising out of such relationship, and (iii) assure that the activities of the Foundation, on behalf of and for the benefit of USC, shall at all times further the mission of USC."

SACSCOC Standard 5.3(a). SACSCOC Standard 5.3(a) requires that "The Legal authority of and operating control of the institution is clearly defined with respect to that entity."

The Affiliation Agreements recognize that each Support Foundation is a separate and independent organization incorporated as a non-profit corporation pursuant to the laws of the State of South Carolina. Article I of each Affiliation Agreement provides in part: "The purpose of this Agreement is to define the relationship of the Foundation to USC as a separate and independent organization formed primarily for the purpose of supporting USC."

As required by the South Carolina Nonprofit Corporation Act [See Section 33-31-101 *et seq.* of the *South Carolina Code of Laws*] pursuant to which each Support Foundation was created, each Support Foundation is governed by a Board of Directors or Trustees whose statutory and fiduciary duties require it to maintain separate and distinct corporate status from the University of South Carolina and to act in the best interests of the Support Foundation.

Section 33-31-801 of the South Carolina Nonprofit Corporation Act provides in part:

- (a) Each corporation must have a board of directors.

- (b) ... all corporate powers must be exercised by or under the authority of and the affairs of the corporation managed under the direction of its board.

Section 33-31-830 of the South Carolina Nonprofits Corporation Act provides in part:

- (a) A director shall discharge his duties as a director ...:
 - (1) in good faith;

 - (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstance; and

 - (3) in a manner the director reasonably believes to be in the best interests of the corporation.

Each Affiliation Agreement also recognizes that the primary purpose of the Support Foundation is to support the mission of the University of South Carolina.

[See the preamble provisions in each Affiliation Agreement; See Article III of the Affiliation Agreements for the University of South Carolina Educational Foundation, the University of South Carolina Development Foundation, the University of South Carolina Business Partnership Foundation, and the Educational Foundation of the University of South Carolina Lancaster; See Article IV of the Affiliation Agreement with the South Carolina Research Foundation; See Article VI of the Affiliation Agreement with the University of South Carolina Alumni Association.]

Sources

-  [Business Partnership Foundation](#)
-  [Development Foundation Agreement](#)
-  [SC Research Foundation Agreement](#)
-  [USC Alumni Association Agreement](#)

 USC Educational Foundation Agreement

 USC Lancaster Educational Foundation