

### 5.3.b

#### Institution-Related Entities: Formal, Written Description of Relationship

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

- b. the relationship of that entity to the institution and the extent of any liability arising from that relationship are clearly described in a formal, written manner.

#### 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(b). SACSCOC Standard 5.3(b) requires that “The relationship of that entity to the institution and the extent of any liability arising from that relationship are clearly described in a formal, written manner.”

The Affiliation Agreements clearly articulate that the activities of each Support Foundation are independent of and do not create liability for the University of South Carolina.

Each Affiliation Agreement provides:

Relationship of the Parties. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the Parties, and each of the Parties is an independent contractor to the other Party in all matters

Limitation of Authority. Neither Party shall obligate the other Party, pursuant to contract or otherwise, without the express written consent of the other Party.

[See Section 2.2 and 2.3 in each Affiliation Agreement.]

Further, each Affiliation Agreement contains a Limitation of Liability provision that protects the University of South Carolina from liability arising from the activities of the Support Foundation. The provision states:

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE CONTRACTURAL RELATIONSHIPS ESTABLISHED, ACTIVITIES, RESPONSIBILITIES, AND SERVICES CONTEMPLATED HEREUNDER, WHETHER IN AN ACTION BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR ANY OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUE, LOSS OF THE BENEFITS OF USE OR LOSS OF BUSINESS, EVEN IF A PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

[See Article VI 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 IX of the Affiliation Agreement with the South Carolina Research Foundation; See Article XII of the Affiliation Agreement with the University of South 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](#)