

## **Regulation on Required Elements of University-Associated Entity Relationship**

### **I. Purpose**

A. Associated Entities. The University of North Carolina (UNC) System encourages the establishment of private organizations, known for purposes of this regulation as Associated Entities, to support the constituent institutions and other units of the University, consistent with G.S. 116-30.20. Associated Entities engage in activities that are critical to and aligned with the mission, goals, and objectives of the constituent institutions and institutional units with which they are associated. Activities undertaken by Associated Entities include fundraising, provision of services to students and campus organizations, research support, and collaborating with organizations outside the UNC System to promote and support initiatives and activities that are related to the University's mission of teaching, research, and service. Associated Entities and the constituent institutions and units of the University with which they are associated rely on the dedicated guidance, support, and leadership of Associated Entity directors, officers, donors, and volunteers to pursue shared goals and objectives.

B. Associated Entity Affiliation. Each Associated Entity becomes affiliated with either a constituent institution or the UNC System Office pursuant to the written approval of the chancellor and board of trustees (in the case of an entity associated with a constituent institution) or the president and Board of Governors (in the case of an entity associated with the UNC System Office). Associated Entities are in turn, subject to the direction of the applicable Associated Entity's governing body and provide funding and other support to the Approving Institution. In recognition of and to facilitate such support, Associated Entities are permitted, in accordance with this regulation and pursuant to written agreements with Approving Institution, to represent that they are affiliated with the UNC System Office or a constituent institution. In addition, many Associated Entities benefit from resources of the constituent institution in carrying out their activities.

C. Framework. This regulation establishes a framework of cooperation and coordination within which the head of the Approving Institution is expected to structure the Approving Institution's engagement with its Associated Entities. The authority and responsibility for establishing and maintaining cooperative and mutually beneficial relationships between the Approving Institution and its Associated Entities rests with the head of the Approving Institution. This regulation recognizes the independence of each Associated Entity as an organization that is separate from the Approving Institution, while ensuring the Approving Institution maintains essential oversight and control over the Approving Institution's name, marks, resources, and activities that could impact accreditation standards, and compliance responsibilities applicable to the Approving Institution. Further, these regulations recognize that funds raised by Associated Entities are to be used to support the Approving Institution consistent with donor intent and

applicable law. Accordingly, this regulation articulates standards for governance and operations of Associated Entities in their support of and interaction with their Approving Institutions, and create pathways of communication to ensure that the University and its constituent institutions are informed about the activities of their Associated Entities so that those activities remain aligned with the mission, goals, and objectives of the Approving Institution. The president adopts these regulations to apply to any University Associated Entity.

II. Definitions. As used in this regulation:

A. An “Associated Entity” means any foundation, association, corporation, limited liability company (LLC), partnership, or other nonprofit entity: (1) that was established by officers of the University; or (2) that is controlled by the University; or (3) that raises funds in the name of the University; or (4) that has a primary purpose of providing services or conducting activities in furtherance of the University’s mission pursuant to an agreement with the University; or (5) that has a tax-exempt status that is based on being a support organization for the University.

B. An “Athletically Related Associated Entity” means an Associated Entity that supports or conducts activities in furtherance of an Approving Institution’s intercollegiate athletics program, as determined by the chancellor of the Approving Institution.

C. “Approving Institution” means (1) a constituent institution of the University of North Carolina System that approves an Associated Entity, or (2) the UNC System Office for an Associated Entity approved by the president.

D. “UNC System Office” means the Office of the President and the affiliated programs of the University associated with the UNC System Office that are not centers or institutes of a constituent institution.

E. “Special Purpose Entity” means an Associated Entity (including any approved subsidiary or affiliate of an Associated Entity) that: (1) is established by an Approving Institution or is controlled by an Approving Institution; (2) undertakes a specified activity for the Approving Institution as its sole purpose (e.g., constructing or managing facilities, research development, or intellectual property management); and (3) does not engage in fundraising activities.

F. “State” means the State of North Carolina.

G. “University” means the University of North Carolina System (UNC System), including its constituent institutions.

H. When “head of the Approving Institution” is used in these regulations, it means the chancellor if the Approving Institution is a constituent institution, and it means the president if the Approving Institution is the UNC System Office.

I. When “Board of Governors or board of trustees” is used in this regulation, it means the Board of Governors if the Approving Institution is the UNC System Office, and it means the board of trustees if the Approving Institution is a constituent institution.

III. Creation and Approved Status of Associated Entities

A. Associated Entity Must be Approved. An Associated Entity (including any subsidiary or affiliate of an existing Associated Entity), seeking to be associated with a constituent institution must be approved in writing by the chancellor and the board of trustees of the constituent institution. An Associated Entity (including any subsidiary or affiliate of an existing Associated Entity), seeking to be associated with the UNC System Office must be approved in writing by the president and the Board of Governors. An Associated Entity must be approved in order to receive University-provided services or to be able to use any University names, logos, or marks.

B. Abide by Relevant University Policies; Alignment with Mission and Goals. In order to obtain and maintain approved status, the Associated Entity must agree, pursuant to a written agreement also described in subpart VII.A., to abide by the policies or regulations established by the University and by the Approving Institution, including the requirements of this regulation, and to assure that the activities of the Associated Entity align with the mission, goals, and standards of or applicable to the Approving Institution, including accreditation standards applicable to institution-related entities, and athletics conference standards applicable to intercollegiate athletics programs. Approving Institutions should make reasonable efforts to notify Associated Entities of the accreditation standards, athletic conference standards, and/or the institutional policies that may affect Associated Entities' operations.

C. Removal of Approved Status. The Approving Institution must adopt policies or provide in written agreements with any Associated Entity that an Associated Entity's approved status shall be removed only upon advance written notice specifying material noncompliance with or breach of: (1) these regulations; (2) the applicable policies of the University and the Approving Institution; or (3) the written agreement required by section III.B., or VII.A. The advance written-notice period shall not exceed ninety (90) days, during which time the Approving Institution may consider and accept or reject a corrective action plan submitted by the Associated Entity. The head of the Approving Institution may neither remove the approved status of an Associated Entity of that Approving Institution, nor decline to extend such approved status beyond the expiration of the Associated Entity's then-current term, without advance written approval of the Board of Governors and the president, or board of trustees of the Approving Institution and the president, depending on whether the Approving Institution is the UNC System Office or a constituent institution. When any request for permission to remove or discontinue an Associated Entity's approved status is submitted to the Board of Governors or board of trustees of the Approving Institution and the president, notice of the request and the grounds for such request shall be simultaneously submitted in writing to the Associated Entity. If an Associated Entity desires to remove its status as an Associated Entity, for whatever reason, it shall provide the Approving Institution with at least 60 days prior written notice. If an Associated Entity loses its status as an approved Associated Entity for whatever reason it shall immediately dissolve and distribute its assets in accordance with Section IV.D of this Regulation.

D. Recusal of Board Members. When the Board of Governors or a board of trustees considers or votes whether to approve an Associated Entity, to remove an Associated Entity's approved status, or to allow an Associated Entity's approved status to expire, any member of the Board of Governors or board of trustees who also serves as a member of the governing body of the relevant Associated Entity shall recuse himself or herself from any such consideration or vote.

E. Compliance with Policies, Regulations, and Agreements. The head of the Approving Institution shall be responsible for taking reasonable steps to ensure that the Approving Institution and its Associated Entities operate in accordance with all requirements of this

regulation, the applicable policies of the University and the Approving Institution, and the written approvals and agreements between the Approving Institution and each Associated Entity.

#### IV. Organizational Requirements of an Associated Entity

A. Purpose to Benefit University. The Associated Entity must be organized for the primary purpose of (1) supporting the University or one or more of its constituent institutions or programs, and/or (2) conducting activities that are in furtherance of the mission of the University or of one or more of its constituent institutions or programs.

B. State Nonprofit Entity. The Associated Entity must be organized on a nonprofit basis as a separate legal entity recognized under and in compliance with North Carolina law. If a constituent institution proposes to establish or approve an Associated Entity on a for-profit basis, it must receive prior approval from the Board of Governors.

C. Tax-Exempt Status. Except as provided in paragraph IV.B. (concerning Associated Entities established on a for-profit basis), an Associated Entity must either (1) apply for, receive, and maintain both federal and state tax-exempt status; or (2) be eligible to utilize the tax-exempt status of one or more constituent institutions or tax-exempt Associated Entities.

D. Dissolution of Associated Entity. The Associated Entity's governing documents, including but not limited to the articles of incorporation or by-laws if a corporation and the articles of organization or operating agreement if a limited liability company, must address termination, dissolution, or winding up the affairs of the Associated Entity and provide that, upon such termination, dissolution, or winding up of the Associated Entity, unless otherwise designated by the donor of an asset, all of its assets will revert to (1) the Associated Entity's Approving Institution, (2) another Associated Entity named in the governing documents of the dissolving Associated Entity, which Associated Entity shall be approved by the same Approving Institution as the dissolving Associated Entity, and/or (3) some combination of the above.

E. Requirements for Members of Associated Entity Governing Body; Board Members for Athletically Related Associated Entities

1. All Associated Entities (including Athletically Related Associated Entities)<sup>1</sup>. Unless otherwise required by applicable law, or waived by the president, at least one third (1/3) of the voting shares of an Associated Entity's governing board must be allocated to members who are appointed by the head of the Approving Institution or are senior academic or administrative officers (SAAO) of the Approving Institution. The head of the Approving Institution may delegate this appointment power.

2. Athletically Related Associated Entities. Prior to appointing members to serve on the governing body of an Athletically Related Associated Entity, the president or chair of the Athletically Related Associated Entity's governing body shall consult with the chancellor of the Approving Institution concerning such appointment.

F. Audit Committee Required

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<sup>1</sup> Approving Institutions and Associated Entities have until December 31, 2027, to comply with this requirement.

1. An Associated Entity's by-laws must provide for a standing audit committee or other committee with an audit function. The audit committee must receive the report of the individual or firm that conducts the Associated Entity's annual audit and relevant tax forms to be submitted by the Associated Entity.
2. No employee of the Associated Entity may serve on an audit committee or a committee with an audit function. If practical, each audit committee or committee with an audit function should have a financial expert as a member.
3. A Special Purpose Entity is not required to have an audit committee provided that it is subject to independent audit at the request of one or more designated trustees, sureties, insurers, certificate holders or bondholders, or is audited during the Approving Institution's audit.
4. A single-member LLC is not required to have an audit committee provided its operations are audited in connection with the audit of the member.

V. Financial and Accounting Controls

A. Sound Accounting and Business Principles. An Associated Entity must use sound fiscal and business principles, ensure that a sound internal control structure is in place, and follow generally accepted accounting procedures.

B. Annual CPA Audit. Associated Entities and their single-member subsidiaries (LLCs or corporations) must be audited on an annual basis by an independent CPA firm in good standing with the North Carolina Board of CPA Examiners that is pre-approved by the UNC System Office through a competitive solicitation conducted by the System Office, or where an Associated Entity wishes to engage a CPA firm not on the pre-approved list, it provides a justification and requests a waiver from the head of the Approving Institution (or designee). If an associated entity is a component unit of the institution, the audit must be completed no later than November 1 following the end of the prior fiscal year; audits for all other associated entities must be completed no later than March 1 following the end of the prior fiscal year. An Associated Entity with annual expenditures of less than \$250,000 may elect to have its annual audit conducted by the Approving Institution's internal auditor, another UNC System internal auditor, or by an independent CPA firm selected as described above, and may elect to have an annual external review conducted in lieu of an audit, provided an audit is conducted every five years. A CPA firm providing an audit for an Associated Entity may not provide nonauditing services to the Associated Entity other than tax preparation services that are preapproved by the audit committee.

1. An Associated Entity of a constituent institution must provide copies of the audit report, management letters, and responses to management letters to the chancellor of the Approving Institution, through the chancellor to the governing board of the Approving Institution and the president, and through the president to the Board of Governors.
2. An Associated Entity of the UNC System Office must provide copies of the audit report, management letters, and responses to management letters to the president, and through the president to the Board of Governors.

C. Annual Budgets. Each Associated Entity must create an annual operations and capital budget. If requested to do so, an Associated Entity shall meet with the head of the Approving Institution (or designee) to review the Associated Entity's proposed annual operations and capital budget, and any subsequent proposed material changes to such annual operations and capital budget. Each Associated Entity in setting its budget shall consider in good faith all suggestions offered by the head of the Approving Institution (or designee) regarding the proposed budget of the Associated Entity and how the budget might be better aligned with the mission, goals, and objectives of the Approving Institution. The approved budget shall be made available to the head of the Approving Institution (or designee), upon request.

D. Officer and Employee Compensation. All salary and nonsalary compensation provided by the Associated Entity to its officers or employees must be approved by the Associated Entity's governing board. All Associated Entity positions established to support the Approving Institution must be established pursuant to a plan (including the Associated Entity's written agreement with the Approving Institution), or be individually approved, by the head of the Approving Institution (or designee). The Associated Entity must comply with Section 300.1.1 of the UNC Policy Manual, concerning the prohibition of payments to specified University employees. Further, salary and nonsalary compensation provided by the Associated Entity to individuals who are also at the same time employees of the University must be made in accordance with an approved plan, or be individually approved, by the head of the Approving Entity (or designee). This requirement does not prohibit the Associated Entity from reimbursing its officers or employees for expenditures made on behalf of the Associated Entity. All Associated Entities shall, if requested, make available for inspection information detailing the salary and nonsalary compensation and reimbursements provided to each officer and each employee of the Associated Entity and each employee of the University assigned to the Associated Entity for the prior year. Notwithstanding the foregoing, an Associated Entity may seek an exemption from the requirement that positions be approved, by making such a request to the president through the head of the Approving Institution (or designee).

E. Indemnification of University. The Approving Institution shall require an Associated Entity to indemnify and hold the Approving Institution and the University harmless from any damages or liabilities that the Approving Institution or the University incurs as a result of the Associated Entity's actions.

F. University-Associated Entity Monetary Transfers. All transfers of funds of any kind from the Associated Entity to the University or to the Approving Institution, including reimbursements, must be documented in writing or electronically in a form that has a retrievable transaction trail. All Associated Entities shall, if requested by the head of the Approving Institution, submit an annual report summarizing transfers of funds from the Associated Entity to the Approving Institution or to third parties for the benefit of the Approving Institution for the prior year.

G. Whistleblower Protection. An Associated Entity must have a confidential and anonymous mechanism to encourage individuals to report any inappropriateness within the entity's financial management and must prohibit punishment of or retaliation against any employee for reporting problems. An Associated Entity may utilize the Approving Institution's mechanisms for reporting, including use of the Approving Institution's hotline.

H. Chief Executive Officer. The chief financial officer of the Approving Institution may not be the chief executive officer of an Associated Entity.

I. Acquisition of Debt. An Associated Entity may not acquire debt in excess of \$500,000 without first notifying the head of the Approving Institution and consulting with the vice president for finance of the UNC System Office. In determining the level of scrutiny to give to the proposed transaction, the vice president shall take into account the amount of the debt in relationship to the Associated Entity's assets and income and the extent of experience of the Associated Entity in entering into similar debt transactions. A Special Purpose Entity that issues debt to construct facilities for the University must provide a financial or construction audit to the vice president for finance of the UNC System at the vice president's request or to the governing board of the Approving Institution at the request of the chair of the Approving Institution's governing board.

J. Property Transactions and Capital Projects. Unless approved by the Board of Governors, any acquisition, disposition, or capital project undertaken by an Associated Entity shall not materially alter the value or functionality of any State property. Further, any real property transaction or capital project that will require an increase of state funds, tuition revenue, or student fees must be approved in advance by the Board of Governors. Requests for Board of Governors' approval shall be made in a manner as prescribed by the president, or designee, and may include the redaction of trade secret or other confidential or proprietary information not considered a public record within the meaning of Chapter 132 of the General Statutes and may be considered in closed session, as permitted by applicable law.

K. Audit Findings. Within 90 days of the issuance of an audit report with audit findings, the Associated Entity must demonstrate to the head of the Approving Institution and to the UNC System vice president for finance that satisfactory progress has been made to implement a corrective action plan. Failure of an Associated Entity to receive an unqualified audit opinion, to comply with the reporting requirements of this regulation, or to satisfactorily implement a corrective action plan in response to an audit finding may result in the Associated Entity's losing its approved status.

L. Investments of Assets. Associated Entities exist to support their Approving Institution by definition and often hold or manage significant assets for the Approving Institution's benefit. Approving Institutions have a clear interest in ensuring those assets are held appropriately. Associated Entities are required to seek approval from the head of the Approving Institution (or designee) prior to investing, or maintaining the investment of, material assets in any entity that is not itself an Associated Entity, the Approving Institution, or the State. An Approving Institution must establish rules governing its approval, including materiality thresholds, approval limits, optional risk assessments, and/or designations that account for an appropriate management of risk to the approving institution, and at all times subject to applicable law. When giving approval to invest in these other entities, the Approving Institution shall determine that the investment is in the best interest of the Approving Institution. Notwithstanding the foregoing, an Associated Entity may seek an exemption from this requirement from the president, by making such a request through the head of the Approving Institution (or designee).

## VI. Insurance and Bonding

A. Bonding Required. Officers and employees of an Associated Entity who have check-signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Associated Entity's governing body, in collaboration with the Approving Institution.

B. Insurance. The governing body of an Associated Entity, working in collaboration with the Approving Institution's insurance and risk management personnel, UNC System risk management personnel, or approved vendors, should evaluate the potential risks arising from the operation of the Associated Entity and obtain commercially reasonable amounts of general liability and directors'/officers' insurance.

VII. Provision of Administrative and Other Services by University for Associated Entity

A. Written Agreement Required. The Associated Entity must enter into a written agreement with the Approving Institution in which the Associated Entity agrees to abide by the policies and regulations established by the University and by the Approving Institution. An Associated Entity may only use University or constituent institution assets, facilities, and personnel pursuant to the terms of the written agreement. The term for such written agreements shall not exceed three (3) years, where it may be renewed by the parties in writing.

B. Reimbursement of Costs. Any reimbursement to the Approving Institution or the University for services the Approving Institution or the University provides to the Associated Entity must be made pursuant to a written agreement between the University or the Approving Institution and the Associated Entity entered into before the service is provided.

C. Control of University Personnel. When University personnel provide services for the Associated Entity and there arises a conflict between the University and the Associated Entity, the University's employee must comply with the policies, regulations, and directives of the University.

VIII. Acceptance of Gifts by Associated Entity

A. Direction and Control of Fundraising and Development Activities. The fundraising and development activities of the Associated Entity shall be conducted subject to the policies and regulations of the Approving Institution and the University and coordinated with the Approving Institution's development office. Absent prior approval from the Approving Institution, the Associated Entity may not engage in fundraising or development activities that impose obligations on the Approving Institution, or receive gifts that impose obligations on the Approving Institution.

B. Restricted or Conditional Gifts that Require University Approval. An Associated Entity may not accept any restricted or conditional gifts that impose an obligation on the University or the Approving Institution or the state to expend resources in addition to the gift or that impose an obligation on the University's or the Approving Institution's operations without the Approving Institution's prior approval. In addition, an Associated Entity may not accept a gift which has any restriction that is unlawful.

C. Notification to Donors of Restricted Gift Policies. An Associated Entity must advise prospective donors of all restricted or conditional gifts to the Associated Entity if acceptance of the gift is conditioned upon the Approving Institution's approval.

IX. Conflict of Interest and Ethics Policies

A. Policies Required. The Associated Entity must have in place conflict of interest and ethics policies, as approved by the Approving Institution, pertaining to relationships between the Approving Institution, the Associated Entity, members of the governing body of the Associated



Entity and persons doing business with the Associated Entity, and establishing required ethical standards for the members of the governing body and employees of the Associated Entity.

B. Transactions Between Associated Entity and its Employees. All transactions (other than reimbursements as provided in section V.D.), between the Associated Entity and an individual member, manager, officer, director, or employee of the Associated Entity must be approved by the Associated Entity's governing body. For the avoidance of doubt, only an individual designated as a member pursuant to state law shall be considered a "member" for purposes of this section.

C. Recusal from Business Decisions. No Associated Entity individual member, manager, officer, director, or employee having a private business interest in an Associated Entity business transaction may be involved in the decision with respect to whether the Associated Entity should enter into such transaction.

D. Associated Entity Scholarships. No Associated Entity scholarship or fellowship award may be made to an individual member, manager, officer, director, or employee of the Associated Entity or to a family member of such person unless the recipient of the award is determined by an independent awards committee or is overseen by the Approving Institution's Financial Aid and Scholarship Office. For the avoidance of doubt, only an individual designated as a member pursuant to state law shall be considered a "member" for purposes of this section.

X. Reports Required to be Submitted by Associated Entity to University

A. The Associated Entity must file annual reports with the head of Approving Institution, which shall be submitted to the Board of Governors through the president, covering the following items:

1. A list of all members of the Associated Entity's governing body;
2. A copy of the publicly disclosed portion of the Associated Entity's Form 990, or other series 990 form or other similar information return;
3. A copy of the Associated Entity's CPA audit report and related management letters and responses to management letters;
4. A list of current real estate holdings and current funding commitments for capital projects; and
5. A report of all real property activity and completed and ongoing capital projects since the last reporting period.

B. At the request of the head of the Approving Institution, the president, or the chair of the Approving Institution's governing board, the Associated Entity must meet with the head of the Approving Institution, the president, their designees, or member of the Approving Institution's governing board and allow that person to inspect any information requested, subject to appropriate confidentiality protections.

XI. Miscellaneous Requirements

A. Associated Entity Communications. An Associated Entity must conduct business in its own name, and all correspondence, advertisements, and other communications by the Associated Entity must clearly indicate that the communication is from the Associated Entity and not from the Approving Institution or the University.

B. Lobbying and Political Activities. An Associated Entity must comply with all provisions of the Internal Revenue Code and all state laws regarding lobbying and political activity.

C. Associated Entity Courses and Seminars. An Associated Entity may not offer any course or seminar in which the University's name is used without first obtaining the permission of the institution(s) whose name(s) will be used.

D. Record Retention Schedule. An Associated Entity must have a policy governing retention and destruction of documents, including electronic files, and which prohibits destruction of documents if an audit other than in the ordinary course, investigation into wrongdoing, or litigation is anticipated or underway.

XII. Waiver. If the application of any of the requirements of these regulations to a particular Associated Entity in specific circumstances is of limited benefit and is unduly burdensome, the president may waive that requirement as to that specific Associated Entity under circumstances that are set out in writing and supported by the Approving Institution.

XIII. Other Matters

A. Effective Date. The requirements of this regulation shall be effective upon the date of adoption of this regulation by the president.

B. Relation to Federal and State Laws and Policies. The foregoing regulation as adopted by the president is meant to supplement, and does not purport to supplant or modify, those statutory enactments, regulations, and policies which may govern or relate to the subject matter of this regulation.