

5.3 Institution-related entities

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.
- (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.
- (c) The institution demonstrates that (1) the chief executive officer controls any fund-raising activities of that entity or (2) the fund-raising activities of that entity are defined in a formal, written manner which assures that those activities further the mission of the institution.

Compliance Judgment: In Compliance

Rationale

There are two affiliated, legally-separate entities that support the University of South Carolina Aiken and its programs -- the South Carolina Research Foundation ("Research Foundation") and the University of South Carolina Educational Foundation (the "Educational Foundation") and its subsidiary the Aiken Partnership Board (the "Partnership"). The [Bylaws of the Partnership](#) ^[1] identifies the foundation as, "an eleemosynary, nonprofit corporation whose purposes shall be similar to those of any charitable or eleemosynary corporation, except as limited by the charter granted to the University of South Carolina Educational Foundation." The purpose of the organization is to raise funds for the improvement of the University of South Carolina Aiken. The Partnership works as a subsidiary of the University of South Carolina Educational Foundation. The [Bylaws of the Educational Foundation](#) ^[2] state that it "was established to support the University of South Carolina (the "University") in all of its educational, instructional, scientific, literary, research, service, charitable, and outreach endeavors."

The Research Foundation was created to increase the support for faculty doing research within the USC System. The Research Foundation provides greater flexibility and competitiveness in implementing research grants and contracts, building infrastructure, and developing intellectual property for the faculty.

The relationship between the [University of South Carolina System and all of its component campuses](#) ^[3] and each support foundation is defined by a written affiliation agreement approved by the University of South Carolina Board of Trustees and the relevant supporting foundation's Board of Directors. The affiliation agreements are reviewed and updated periodically; most recently, the [affiliation agreement for the University of South Carolina Educational Foundation](#) ^[4] was reviewed and approved by the Board of Trustees on July 19, 2020, and the [affiliation agreement for the South Carolina Research Foundation](#) ^[5] was 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 and commits both the University of South Carolina and the supporting foundation to perform its respective activities under the affiliation agreement in full compliance with SACSCOC accreditation standards. Each affiliation agreement states that:

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.

Legal Authority and Operating Control Clearly Defined. 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, [Section 33-31-101 et seq. of the South Carolina Code of Laws](#) ^[6] pursuant to which each support foundation was created, each support foundation is governed by a Board of Directors whose statutory and fiduciary duties require it to maintain separate and distinct corporate status from the University and to act in the best interests of the support foundation. [Section 33-31-801](#) ^[7] of the South Carolina Nonprofit Corporation Act provides in part that “each corporation must have a board of directors” and “... 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.” Further, [section 33-31-830](#) ^[8] of the South Carolina Nonprofits Corporation Act provides in part that “a director shall discharge his duties as a director...:in good faith...with the care an ordinarily prudent person in a like position would exercise under similar circumstance; and...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 (see Article III of the affiliation agreement for the Educational Foundation and Article IV of the affiliation agreement with the Research Foundation).

Extent of Liability. 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 states that, “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.” With respect to limitation of authority, “neither Party shall obligate the other Party, pursuant to contract or otherwise, without the express written consent of the other

Party.”

Further, each affiliation agreement contains a limitation of liability provision that protects the University 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 contractual 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.

Fund-raising activities defined. Each affiliation agreement confirms that fund-raising activities are designed to further the mission of the University. Article I of each affiliation agreement provides in part: “The purpose of this Agreement is to ... 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.” Each agreement also contains a provision describing the role of the foundation in raising funds on behalf of or otherwise supporting the University, stating that:

USC hereby acknowledges the role of the Foundation, and the Foundation hereby accepts its acknowledge role, to create an environment conducive to increasing levels of private support for the mission and priorities of USC, to receive, manage and administer certain private philanthropy for the benefit of USC as described herein, and to do and to undertake such other activities as contemplated herein. USC authorizes the Foundation to receive, directly and indirectly, gifts, grants, pledges, commitments, and other aid and support from donors and grant-makers for the benefit of and support of USC, its programs and mission. The Foundation will establish,

adhere to and periodically assess their gift acceptance and administrative policies. The Foundation will work with the USC Office of University Development (or its success office) to provide appropriate recognition and stewardship of such gifts.

To protect funds raised by the support foundation for the benefit of the University, each affiliation agreement contains an asset management provision pursuant to which the support foundation must establish asset investment, disbursement, and spending policies that adhere to applicable federal and state laws, including the [South Carolina Prudent Management of Institutional Funds Act](#).^[9] The financial activities of each support foundation are also subject to an annual audit. Finally, to ensure that the fund-raising activities of the support foundations align with the mission and priorities of the University, the affiliation agreements indicate that appropriate representatives of the University and the support foundation shall hold periodic meetings to foster and maintain productive relationships, to ensure open and continuing communications and alignment of priorities, and to ensure the support foundation is aware of the current and long-range strategic planning, mission, objectives and programmatic goals of the University.

Supporting Documentation

1. [Bylaws of the Aiken Partnership Board](#)
2. [Bylaws of the Educational Foundation](#)
3. [University of South Carolina System and its component campuses](#)
4. [University of South Carolina Educational Foundation Agreement](#)
5. [South Carolina Research Foundation Agreement](#)
6. [South Carolina Code of Laws: Section 33-31-101 et seq.](#)
7. [South Carolina Code of Laws: Section 33-31-801](#)
8. [South Carolina Code of Laws: Section 33-31-830](#)
9. [South Carolina Code of Laws: Section 34-6-10 et seq.](#)