

VIII-13.00 - USM POLICY ON BUSINESS ENTITIES

A financial obligation or liability of a business entity established, invested in, financed, or operated in accordance with Section 12-113 may not be a debt or obligation of the State or University.

Section 12-113 also refers to Section 15-107 of the Education Article, which encourages the promotion of economic development of the State through commercial application of Institution-owned intellectual property.

C. Purpose and Scope

This Policy governs the establishment, investment in, financing of, and operation of Business Entities by USM and its Institutions. Business Entities may be established or operated for the purpose of shielding the Institution from liability; engaging in activities that are more appropriately conducted by a Business Entity; enabling non

- E. Prior Approval Required by the Board of Regents for Establishing, Operating, Investing in, or Financing a Business Entity
 - 1. USM and USM Institutions must obtain prior Board of Regents approval in order to:
 - a. Establish a new Business Entity,
 - b. Operate a Business Entity, or
 - c. Invest in or Finance a Business Entity as further provided in Section F below.
 - 2. However, no new approval shall be required with respect to the establishment or operation of any Business Entity which was approved by the Board of Regents prior to December 31, 2022. All Business Entities whenever established are subject to the reporting requirements set forth in Section J below.
 - 3. In addition, no new approval shall be required with respect to the establishment by a previously approved Business Entity of a subsidiary or affiliate, if it is (a) consistent with the initial approval of the purpose and intended operations of the Business Entity, and (b) not considered an agency or instrumentality of the State or unit of the Executive Branch, including USM, for any purpose, and its debts and obligations are not considered debts or obligations of the State or USM. For example, a real estate development Business Entity may create single-purpose entity (SPE) subsidiaries for acquiring parcels of real estate, in order to shield the Business Entity from the liabilities of the SPE. All subsidiaries and affiliates are subject to the reporting requirements set forth in Section J below.
- F. Approval Required for Investments or Financings
 - 1. USM and USM Institutions must obtain Board of Regents approval in order to make an investment in, or provide financing to, a Business Entity of \$5,000,000 or more.
 - 2. USM and USM Institutions must obtain specific written approval of the Chancellor (or designee), in order to make an investment in, or provide financing to, a Business Entity of \$1,000,000 or more but less than \$5,000,000. The Chancellor (or designee) shall have determined that the investment in the Business Entity furthers one or more goals of USM or Institution and is related

G. Process for Seeking Approval from the Board of Regents

1. When seeking approval from the Board of Regents under Sections E or F of this Policy, the Responsible Official shall submit a business opportunity assessment prepared with assistance from independent experts. The assessment shall include a description of the product or service; the potential market for the product or service to be offered by the Business Entity; the business opportunities; and the financial risks. The assessment shall also include a plan that describes the financial relationship between the Business Entity and the Institution; operating capital requirements; any anticipated State funding through economic development grant or loan programs; any venture capital relationships; the start-up period of operation and funding; and a financial pro forma for at least five years. Additionally, the Responsible Official shall recommend appropriate performance

- b. The funds invested in, or financing provided by, the Institution or any affiliated foundation to Business Entities;
 - c. Ownership interests acquired by an Institution or any affiliated foundation in Business Entities;
 - d. The current status of the Business Entities and subsidiaries and affiliates;
 - e. Annual financial audit report for those Business Entities with more than \$1,000,000 in assets or annual revenues at the end of the previous fiscal year end; or a compilation or review of financial statements for those Business Entities with both less than \$1,000,000 in assets and annual revenues at the end of the previous fiscal year end;
 - f. A list of officers and directors of all Business Entities and subsidiaries and affiliates;
 - g. A list of USM or Institution employees who received compensation or other payments, services, or gifts from the Business Entities and subsidiaries and affiliates during the fiscal year and the amount of that compensation or payment, service or gift (but excluding reimbursement of travel or other expenses) as well as a list of USM or Institution employees who provided services to Business Entities and affiliates without compensation; and
 - h. A list of all state and federal contracts and grants managed by the Business Entity and subsidiaries and affiliates during the fiscal year.
2. S18/F1 11.04 T332 Tm affiliates