

University-Related Legal Entities

UA-09



About This Policy

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10-09-2014

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Responsible University Office:

Office of the Vice President and General Counsel

Responsible University Administrator:

Board of Trustees

Policy Contact:

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Vice President and General Counsel

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Related Information

- * Establishment of Centers and Institutes, RP-11-002
- * Conflicts of Commitment Involving Outside Professional Activities for Academic Appointees, ACA-29
- * Fiscal Misconduct / Ghost Employment, FIN-ACC-I-30
- * Conflicts of Commitment, HR
- * Conflicts of Interest, HR
- * Donations and Contributions to Other Entities, FIN-ACC-I-80
- * Inappropriate Use of University Funds, FIN-ACC-I-330
- * Licensing and Trademark Policy, FIN-LT-01
- * External Agency Agreements, FIN-TRE-VI-90
- * Political Activities of Academic Personnel, ACA-34
- * Contacts With Federal and State Government Officials and Agencies for Academic Appointees, ACA-36
- * Political Activity, HR
- * Office of Government Relations guidelines and policies

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Scope

All University campuses, schools, units, centers and institutes, and anyone employed by the University, including all faculty and staff.

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Policy Statement

This policy provides a framework for guiding University employees and units in establishing and monitoring “University-Related Entities.”

A “**University-Related Entity**” means any organization with a legal existence separate from the University (e.g., a not-for-profit corporation, limited liability company, or corporation) that is likely to be viewed as an instrumentality of the University or affiliated with the University, for reasons such as that the entity:

- Was formed or is operated with University resources of any kind or through funds donated to the Indiana University Foundation for the benefit of the University;
- Was formed or is operated to support the mission of the University or any of its units;
- Represents itself as a University-affiliated entity in any way, such as through the use of the University’s trademarks or name in the legal entity’s name, or in a manner not authorized by the University’s Licensing and Trademarks Policy; or
- Is effectively controlled or managed by University personnel acting in their roles as University employees.

Before establishing, acquiring, or otherwise taking control of, a legal entity falling within the definition of a University-Related Entity, the party interested in creating such a University-Related Entity must follow the procedures outlined below, including finding a University unit to sponsor the University-Related Entity and receiving approval from the Board of Trustees.

Each sponsoring University unit is responsible for monitoring, on an ongoing basis, the University’s relationship with that University-Related Entity and is required to submit an annual report to the Office of the Vice President and General Counsel with respect to that entity.

Legal entities existing prior to the adoption of this policy and falling within the definition of a University-Related Entity are subject to the monitoring and reporting requirements set forth in this policy. The Office of the Vice President and General Counsel will review the University-Related Entities in existence prior to the adoption of this policy and may require that such entities dissolve and move their work into a University unit or enter into an external agency agreement with the University.

Each and every University unit has an ongoing responsibility to report to the Office of the Vice President and General Counsel the existence of any legal entity associated with that unit or using that unit’s resources. The Office of the Vice President and General Counsel will then determine whether the legal entity falls within the definition of a University-Related Entity and is subject to this policy.

The following entities are outside the scope of this policy: Indiana University Foundation, Inc. (IUF), Indiana University Alumni Association Inc. (IUAA), Indiana University Research and Technology Corporation (IURTC) and any companies started and monitored by IURTC policies and procedures, Indiana University Building Corporation (IUBC), Old Crescent Insurance Company (OCIC), and any organizations that have an external agency agreement in effect with the University as a result of following the External Agency Agreements policy ([FIN-TRE-VI-90](#)). These entities meet the criteria set forth below and have adequate governance structures in place to mitigate the legal, financial, and reputation risks to the University.

University-Related Entities engaged in political activities are also subject to the University’s policies on political organizations and contacts with public officials.

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Reason For Policy

Indiana University recognizes that occasionally the creation of a University-Related Entity is necessary or advantageous for achieving the University’s mission; however, University-Related Entities create a number of legal, financial, and reputational risks for the University and should be subject to the highest level of approval. These risks include:

- Reputational damage to the University if a University-Related Entity’s actions are negatively perceived by the public and the public attributes those actions to the University;
- The loss of University resources inappropriately funneled to the University-Related Entity;
- Conflicts of interest, conflicts of commitment, and ghost employment by University employees;
- The undermining of University policies regarding the use of University funds; and
- Fines and penalties imposed on the University for failure to comply with state and federal laws, particularly with respect to financial and tax requirements and accounting standards.

This policy has been adopted to ensure that University employees and units give adequate consideration to legal, financial, and reputational risks when establishing a University-Related Entity and sufficiently monitor the University’s relationship with that University-Related Entity to minimize those risks.

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Procedure

Creating a University-Related Entity:

Before creating a University-Related Entity, the party interested in creating such an entity must:

1. Receive sponsorship from a University unit, obtain a letter of support from the head of that unit (i.e., the Dean or Vice President), and receive approval from the Provost or Chancellor, as applicable.

2. Submit the letter of support, documentation of Provost or Chancellor approval (if applicable), and a detailed proposal to the Office of the Vice President and General Counsel. The proposal should include the following information:
 - Proposed purpose for the entity;
 - Justification for setting up a separate legal entity instead of doing the work within the University;
 - Proposed governance structure, including the names of individuals tentatively selected to be the directors and officers;
 - Proposed budget and business plan for the first three (3) years;
 - Business risk assessment; and
 - Proposed Memorandum of Understanding (MOU) with the University, describing the entity's proposed relationship with the University.

The proposal will then be routed to the Office of the Vice President and Chief Financial Officer, the Office of the President, and any other offices that may be relevant to the proposal. Any of these offices may require additional information from the initiating party or sponsoring unit.

The proposal will be evaluated based on the following criteria:

- Justification for setting up a separate legal entity
 - Are there some significant advantages to operating through a separate legal entity instead of the University?
 - Is setting up a separate legal entity necessary to comply with certain laws?
- Adequacy of proposed governance structure
 - If the entity will create significant risks for the University, does the University and the unit have sufficient oversight over the entity?
- Credibility of proposed budget and business plan
 - Has the unit proposed a financially-sound business plan?
- Adequacy of business risk assessment
 - Has the unit identified the salient business risks for the proposed activities and set forth reasonable plans for mitigating those risks?
- Compliance with applicable legal requirements
 - Does the arrangement create any significant legal risks or violate any laws?

If the proposal is endorsed by all of the relevant offices listed above, a summary of the proposal will then be provided to the Board of Trustees for consideration. If the Board of Trustees approves the proposal, the party interested in creating such a University-Related Entity will be permitted to establish, acquire, or otherwise take control of such entity, in accordance with the advice of the Office of the Vice President and General Counsel. In some cases the Office of the Vice President and General Counsel might require that the University-Related Entity's governing documents reserve some powers to the Trustees of Indiana University or the President of Indiana University, such as with respect to dissolution, liquidation, merger, or consolidation of the University-Related Entity. In addition, the Office of the Vice President and General Counsel might require that the governing documents provide for one or more central administrators to be appointed to the University-Related Entity's governing body.

Monitoring a University-Related Entity:

Within six (6) months of the end of each fiscal year, each University-Related Entity or its sponsoring unit shall submit to the Office of the Vice President and General Counsel:

- Copy of the University-Related Entity's financial report (audited by a CPA) and tax returns – e.g., IRS Form 990 and 990-T (exempt organization tax returns);
- Summary of business activities with the University for the past year;
- List of current directors and officers, current governing documents, proposed amendments to any of its governing documents, minutes of its board meetings, and business entity reports to the Secretary of State;
- Report of any significant asset purchases or financial arrangements, list of any subsidiaries, notice of material litigation, any external agency agreements, any facilities use agreements; and
- Conflict of interest statements.

Each University-Related Entity is responsible for procuring its own insurance coverage, as necessary, and for maintaining its own corporate compliance, including filing tax returns and business entity reports, and complying with any industry-specific regulatory requirements.

If the Office of the Vice President and General Counsel determines for any reason that the University should no longer continue its relationship with a University-Related Entity, the Office of the Vice President and General Counsel shall decide on a means for terminating that relationship and require the relevant University unit to assist in implementing that decision. Terminating the relationship may include canceling contracts with the University-Related Entity, removing University personnel from the University-Related Entity's board of directors, and/or dissolving the University-Related Entity.

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Sanctions

If a University employee or unit, (a) creates or assists in creating a University-Related Entity without following the procedures set forth in this policy, or (b) fails to monitor an approved or pre-existing University-Related Entity, the University may require that the employee or unit dissolve that University-

Related Entity. If any University employee refuses to dissolve such a University-Related Entity or otherwise disregards this policy, such employee may be subject to disciplinary action, up to and including termination.

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Additional Contacts

<i>Subject</i>	<i>Contact</i>	<i>Phone</i>	<i>Email</i>
Office of the Vice President and General Counsel	Jeff Goetz, Associate General Counsel	812-855-1052	jmgoetz@iu.edu
Office of the Senior Vice President and CFO	Joan Hagen, Associate Vice President and University Controller	812-856-2548	jhagen@iu.edu

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History

This policy was approved by the Board of Trustees, October 9, 2014.