

Establishment of New Supporting Organizations or Affiliation with Existing Organizations

11/29/2016

Individuals employed by or otherwise associated with UW-Madison may wish to form non-profit organizations to pursue a variety of activities. Such individuals are almost entirely free to establish organizations to pursue activities separate and independent from the University and the individuals' University responsibilities, subject to standard conflict of interest and conflict of commitment principles and reporting requirements. However, when individuals wish to form a non-profit organization with the expectation that the organization will have some sort of relationship or affiliation with the University, additional considerations arise and some level of University authorization is necessary. In some cases, explicit authorization from the Board of Regents is required.

The purpose of this memorandum is to describe the two main categories of outside non-profit organizations that may be formed in connection with the University, "Regents" corporations and "supporting" organizations, to provide guidance regarding the operation of outside organizations, and to identify certain features of outside non-profit organizations which may require University approval.

I. Supporting Organizations

Also known as "friends" organizations, these are established by private citizens (including UW employees acting in their private capacity), using private funds, to engage in some activity in support of the UW.

The need for creation of a supporting organization as an alternative to the use of established mechanisms for philanthropy directed to the UW Foundation should be examined and justified early in the considerations of establishing a new organization. In many cases, similar outcomes can be achieved without the need for creation of a new organization. Supporting organizations may not be established to provide a mechanism to bypass University and State of WI policies and laws, and may not accept funds derived from University revenue producing activities such as fees received for services provided or for the use of University facilities.

The supporting organizations which implicate the fewest policy or legal issues are those that operate completely independently from the University, do not rely on access to University facilities or require the support of University staff, and which exist simply to raise funds for the benefit of, and/or solicit volunteer support for a University School, College, Department, Center, program or activity. A good example of this form of organization is the Friends of the Lakeshore Nature Preserve, <http://www.friendslakeshorepreserve.com/>. In order to ensure that a supporting organization is responsive to the unit it is formed to support, documentation of expected programmatic contributions and best practices for operation such as controls over use of organizational funds must be established as part of the creation of a Friends organization. To the extent that the supporting organization wishes to directly participate in programmatic activities of the University unit, an additional level of coordination and approval of the University is necessary.

In some instances, individuals may desire to establish an organization to support the University in ways beyond soliciting donations, such as recruiting volunteers, entering into a special arrangement with a campus unit to collaborate on education or research, or to perform some activity in connection with intellectual property arising from the University. A University unit may also wish to extend certain privileges or provide certain resources to aid a supporting organization in carrying out its mission, such as access to office space, support from University staff, joint employment arrangements, or access to campus services such as network access, affiliate ID cards, etc. These arrangements must be integral to the purpose of the supporting organization, and not provided as a benefit to the organization or its membership.

There is no universal rule about which or how many special arrangements can be extended to a supporting organization, but approval by the Office of the Vice Chancellor for Finance and Administration after consultation and approval of appropriate institutional leadership is required before any commitment can be made to provide to the supporting organization the variety of arrangements or resources noted in the above paragraph. For example, proposals to establish a supporting organization to perform some function related to the University's research enterprise will be reviewed by the Office of the Vice Chancellor for Research and Graduate Education, and proposals to establish an organization to support or engage with an academic program will be reviewed by the Office of the Provost.

Further, to the extent additional special arrangements are intended to be provided to the supporting organization, such as access to compliance programs (such as Institutional Review Boards, the animal care and use, chemical, and biosafety programs), additional legal and policy issues will arise. In those cases, a more rigorous University review and approval process will be required. Because the nature of the approval process is dependent upon the specifics of the particular proposed supporting organization and because there are so many possible structures that a supporting organization can take, campus units that are contemplating a relationship with a supporting organization should consult with the UW-Madison Office of Legal Affairs prior to taking steps to engage with such an organization.

Finally, even though supporting organizations are by definition independent legal entities distinct from the University, accountability measures to assure operation in true support the University are appropriate. As examples of best practice, the supporting organization should be: (1) organized as a non-stock, non-profit organization exempt from tax under 501(c)(3); (2) the registered office and principal business address of the supporting organization should not be a University address; (3) the exempt purpose of the organization is to support the University or a unit of the University; (4) no part of the earnings can be directed to the private benefit of any individual; and (5) upon dissolution, the assets of the organization are given to the University. Additional appropriate measures can include such things as designating a University representative as a member of the board of directors of the organization (either acting or ex officio), and providing copies of the organization's articles of incorporation, by-laws, meeting minutes, and audit reports to the University unit that the organization was established to support.

The sponsoring University unit must also establish written policies and procedures to assure clarity in the anticipated interactions between the University unit and the supporting organization, including such things as identification of the individual(s) with authority to administer the interaction, procedures for receipt of funds from the supporting organization into the University, intended use of funds according to University and State of WI policies and laws, and access to University facilities and services as governed by existing University policies and procedures.

Funds provided by supporting organizations that are intended as gifts should in most circumstances be transferred to an account in the UW Foundation, and then transferred to a 233 account for expenditure by the University according to existing State and UW accounting and purchasing rules and regulations, (e.g., http://www.bussvc.wisc.edu/howto/admin/gift_funds.html or <https://www.rsp.wisc.edu/routing/checks.cfm>). Once transferred, funds may not be returned to the supporting organization or used by the University to support the independent activities of the supporting organization.

II. Regents Corporations

A “Regents” corporation is a non-profit corporation formed to perform a University function under authority delegated from, and for purposes established by, the UW Board of Regents. An example is University Health Care, Inc. (a corporation formed when the UW Hospital was still part of the UW to engage in health care networking activities). Because of the need to have their creation and purposes specifically authorized by the Board of Regents, they are rarely formed. The chief advantage of a Regents corporation is that there is no barrier to use of University staff time and resources to operate the corporation, and funds can flow back and forth in connection with its authorized activities. The chief constraints are the Regents’ approval process, lack of independence, and specific rules covering transfer of funds between different funding sources. University units considering the establishment of an outside organization to conduct activities directly related to the University’s mission, and which are intended to be operated through use of University resources, staff, or facilities, should consult with the UW-Madison Office of Legal Affairs prior to taking steps to form such an organization.

III. Affiliation with Existing Organizations

A spectrum of organizations formed for a purpose other than direct support of the University, and so not to be confused with supporting organizations or Regents corporations, may wish to establish some sort of affiliation or other close relationship with the University, such as Medical Research Organizations, external foundations, or even private for-profit corporations. These affiliations are distinct from contracts and agreements that provide defined business service and research purposes carried out under existing policies and procedures (see <http://www.bussvc.wisc.edu/purch/purch.html> and <https://research.wisc.edu/projectagreementsip/oip/>).

A decision to grant the organizations mentioned in this section affiliate status for purpose of access to University privileges or resources requires clear justification of purpose, careful planning of scope, and institutional approval. Because of the many possible permutations of such organizations and the different relationships which may be contemplated, the process for seeking approval for an

affiliation with such organizations will be determined on a case-by-case basis. Consult with the UW-Madison Office of Legal Affairs for guidance regarding the process for seeking approval of these types of relationships.