



Affiliated Corporation Policy

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| Effective Date: | June 27, 2022 |
| Supersedes: | Affiliated Corporation Policy effective June 8, 2018 |
| Policy Review Date: | To be reviewed every 1 year from effective date |
| Issuing Authority: | Research Foundation President |
| Policy Owner : | Vice President, Office of Industry and External Affairs |
| Contact Information: | affiliates@rfsuny.org |

Reason for Policy

Partnering with external entities to create research and discovery opportunities for SUNY's faculty, staff, and students is an essential component of The Research Foundation's ("RF") mission to serve SUNY. These partnerships take various forms, and some must be structured carefully to avoid adverse business, legal, tax and other implications.

The creation of new, university-connected legal entities is one mechanism that can be used to facilitate interaction between SUNY campuses and strategic partners. The RF has employed this mechanism of the "Affiliated Corporation" since 1983 working in partnership with campus-based foundations and other New York community-based organizations to create experiential learning and applied research opportunities for SUNY faculty, staff and students. However, Affiliated Corporations are created only to achieve a specific business objective that cannot be accomplished in an effective and efficient manner through existing SUNY or RF infrastructure. This policy establishes the parameters and process for the establishment, governance and monitoring of Affiliated Corporations; to manage enterprise risk while empowering campuses to achieve academic research and innovation objectives.

The Research Foundation reserves the right to make exceptions or changes to this policy at any time or as warranted by unique circumstances. In the event of any conflict between requirements of this policy and SUNY policy or guidelines governing SUNY affiliates, the more restrictive shall apply. In the event of any conflict between requirements of this policy and an Affiliate's bylaws or operating agreement, the bylaws or operating agreement shall control, provided the RF has provided express consent to their adoption. Deviations or exceptions to this policy must be approved by the RF President or designee. Nothing in this policy shall supersede or prevent the acceptance or performance of grants or contracts with or from agencies of the United States upon terms and conditions, or applicable provisions of Federal law or regulations, requiring different policies or procedures.

Statement of Policy

The following requirements for Oversight and Accountability, Formation of Affiliated Corporations, and Board Governance, are effective June 1, 2018, as amended.

Oversight and Accountability

The respective campus RF Operations Manager (OM) is responsible to monitor its campus-related Affiliate(s) for compliance with this policy and shall annually certify the Affiliate's compliance with these provisions.

1. Periodic Strategic Review: RF leadership will consult with SUNY leadership, as appropriate, to conduct a periodic strategic review of each Affiliate's business records, financial condition, and operating results and activities at least once every five (5) years. Affiliates shall provide all requested books and records upon request.
2. Research Foundation Internal Audit: At the discretion of the Vice President of Internal Audit or upon request of the RF Board of Directors or RF management, the RF Office of Internal Audit Services will periodically conduct routine auditing to determine compliance with this policy. Final internal audit reports will be submitted to the Affiliate's Audit Committee. Notice of such audit will come in the form of a scope memo.

Affiliate bylaws must include provisions for member organizations or designee(s) to access all books and records. Affiliate leadership must provide all information requested by the RF to facilitate this review in a timely manner. The RF Office of Industry and External Affairs will coordinate with the Affiliate to address areas of noncompliance as outlined in the strategic review or internal audit and the Affiliate must develop an appropriate corrective action plan within 30 days after the issues have been identified. Failure to address non-compliance will result in an escalation process as defined below:

1. If the corrective action plan is not developed or the agreed upon plan is not met to the satisfaction of the RF, the Operations Manager must provide justification for absence of and/or deviations from the plan. Any revisions to previous approved plans will be performed in consultation with the RF, as appropriate;
2. If the Affiliate deviates from the agreed corrective action plan, the RF President (or designee) will consult with the SUNY Chancellor (or designee) on a course of action to address the Affiliate's noncompliance;
3. If noncompliance with the corrective action plan continues, the RF President will report it to the RF Board of Directors; and
4. Following consultation with the RF Board of Directors, the final remedial actions will be taken:
 - a. Changes to the OM delegation of authority;
 - b. Restructuring or dissolution of Affiliate;
 - c. RF's withdrawal from membership in the Affiliate; or
 - d. Other action by the RF President, consistent with recommendations.

Formation of New Affiliated Corporations

Establishment of an RF Affiliated Corporation requires:

1. The submission of a [Research Initiative Plan](#) to the RF President by the respective campus president;
2. Notice to and consent of the SUNY Chancellor or designee;
3. Recommendation by the RF President to the RF Board of Directors; and
4. Formal resolution by the RF Board of Directors.

Approval by the RF Board is contingent upon the Board's determination that the following conditions are satisfied:

1. There exists a clear and identifiable connection between the proposed Affiliate and the research mission of the campus or SUNY. The mission of the Affiliate should involve, utilize, or support students, faculty, or staff of the campus or SUNY in the performance or furtherance of learning, research, teaching, or student or faculty related training or economic development. For existing Affiliates, activity must be consistent with the original mission and objective of the certificate of incorporation.
2. Sufficient independent resources exist, and expertise has been identified to support the maintenance of the proposed Affiliate consistent with the [Financial Risk Accountability](#) and [At Risk Policies](#);
3. The business plan and financial model of the new corporation supports the mission of the Affiliate and demonstrates a clear financial path to achieve the objectives of the proposed Affiliate consistent with the [Financial Risk Accountability](#) and [At Risk Policies](#);
4. No less burdensome vehicle exists to fulfill SUNY's objectives in achieving the business objective; and
5. The creation of the proposed Affiliate will not create or transfer any risk of loss to the Operating Location beyond that location's ability to cover the loss, pursuant to the [RF Responsibility for Losses Policy](#).

When, the RF Board approves the formation of an Affiliate, from the point of formation, to the earlier of RF's withdrawal from the corporation or issuance of the certificate of dissolution, every RF Affiliate

must maintain satisfaction of these conditions.

Director Appointment and Conflict of Interest

The RF President shall make appointments to RF Affiliate boards consistent with the bylaws of each Affiliate. The RF President may delegate this authority in accordance with the [Delegation of Authority Policy](#). No RF-appointed representative may simultaneously serve as an officer and director of an Affiliate.

Consistent with New York law, individuals appointed by the RF, solely or jointly with another member, to serve as a Director of an Affiliate must disclose and manage all actual, apparent, and potential conflicts of interest and must update their Conflict of Interest Disclosure annually, as new reportable interests are obtained, and as new reportable situations arise. Disclosures shall be submitted pursuant to the conflict of interest policy and procedure of the Affiliated Corporation and reviewed by the Affiliated Corporation's compliance or legal staff or other member of the Affiliated Corporation's management or staff with requisite experience and knowledge on relevant NY law, conflicts management, and the business of the Affiliated Corporation.

Prior to the appointment of a new Director to the Board of an Affiliated Corporation, the Secretary of the Affiliated Corporation must certify that the candidate for appointment has submitted a Conflict of Interest Disclosure and that the candidate has no actual, apparent, or potential conflict of interest or a conflict management plan was implemented to mitigate any conflict of interest. Confirmation should be submitted to the Vice President of Industry and External Affairs or designee. No Director will be appointed or re-appointed without an up-to-date conflict of interest disclosure and, when necessary, a management plan.

RF appointed Directors must update their disclosure form at least annually in a manner consistent with the policy and procedure of the Affiliated Corporation. Confirmation that each RF appointed Director has updated a disclosure each year must be submitted to the RF upon request.

Compliance with this requirement is subject to routine auditing by the RF's Internal Audit Services and monitoring by the RF's Office of Compliance Services.

Board Governance

Once appointed, the Affiliate board is responsible for providing oversight and accountability for the operation of the Affiliate, consistent with New York law and applicable federal laws, rules, and regulations. The Affiliate board is responsible for approving the annual budget and the audited financial statements. Each Affiliate must provide to the RF notice of all meetings of its governing board and any committees thereof, and the RF may designate a representative to attend any board meeting. Notices and materials for Affiliate board meetings should be sent to affiliates@rfsuny.org.

The following Staffing, Compliance and Reporting Requirements are effective August 1, 2018, as amended.

RF Staffing Support of Affiliates

Staffing Services

Consistent with [RF's At Risk Policy](#) and [Agency Services Policy](#), RF employees may only fulfill day-to-day operational duties to an Affiliate, where the Affiliate and RF have established, at arm's length, a staffing services agreement, to provide for the advancement of costs to cover the employee's salary and fringe benefit charges, as well as an administrative fee to the RF, which varies by campus and by Affiliate. An RF employee listed on a staffing services agreement works at the discretion of Affiliate management and supports the work of the Affiliate as outlined in the employee's job description. Those listed on the staffing services agreement, may, at the discretion of Affiliate management, support the work of a third-party entity unless doing so would violate this policy or the Affiliate conflict of interest policy.

A campus Operations Manager is not authorized to sign a Staffing Services agreement between the RF and the Affiliate without the express approval of the RF President or designee.

Observers, Directors, and Officers

With supervisor approval and subject to the requirements below, RF employees are authorized to attend Affiliate Board meetings as an observer or to serve on Affiliate Board as an appointed Director.

An RF employee not on a staffing services agreement who is appointed as a Director of the Affiliate,

may serve as Chair or Vice Chair of the Affiliate only if that position is distinct from the RF employee's role and responsibilities outlined in that their job description. RF employees who are not on a staffing services agreement may not hold any Officer position other than Chair or Vice Chair of the Affiliate, including Treasurer or Secretary.

Prior to the appointment of an RF employee as a Director, that employee must disclose actual, apparent, or potential conflicts of interest to the RF's Office of Compliance Services as required by the [RF's Conflict of Interest Policy](#) or [Management of Conflicts of Interest Procedure](#). The Office of Compliance Services, in its discretion, may require a conflict mitigation plan be put in place prior to the appointment of the RF employee as a Director. The RF employee may also be subject to the policies of the Affiliate. RF employees may receive separate compensation from the Affiliate if the Affiliate Board determines by resolution that it is necessary and appropriate, and such compensation is consistent with the Affiliate's bylaws.

RF employees who attend Board meetings of Affiliates during work hours are not required to charge leave time, and all reasonable mileage and travel expenses incurred as a result of support provided to Affiliates may be reimbursed through RF processes unless otherwise reimbursed by the Affiliate.

RF employees are not authorized to support day-to-day operations of Affiliates unless the RF employee is dedicated solely to serving the Affiliate pursuant to a staffing services agreement between RF and the Affiliate, consistent with the section on Staffing Services, above. In support of the Affiliate's activities, the employee may be tasked to support other third-party entities, including the campus that is supported by the Affiliate, if Affiliate management believes that support is necessary to further the mission of the Affiliate and documents this necessity. Any support of a third-party entity must be consistent with the Affiliate's conflict of interest policy and may not result in any unmanaged conflict of interest or related party transaction.

Legal Counsel

RF employees are prohibited from serving as legal counsel for any RF Affiliate including, but not limited to, providing ad hoc legal advice or serving as General Counsel or Secretary to the Board of any RF Affiliate, unless the attorney is dedicated solely to serving the Affiliate and not the RF, consistent with the section on Staffing Services, above. No person may simultaneously provide legal representation to both the RF and any Affiliate under any circumstances.

Compliance and Reporting Requirements

All Affiliates are required to conduct business in compliance with applicable laws and regulations and in accordance with the highest ethical principles. Upon incorporating, the Affiliate must begin the process for appropriate filings with the IRS and NYS Department of Taxation and Finance to determine the Affiliate's tax-exempt status. Affiliated Corporations must implement all written policies that are required by law. In addition to the policies required by law, the Affiliate must adopt and implement adequate policies to ensure compliance with all laws, rules, and regulations governing its business, contractual obligations and the requirements of relevant SUNY policies and this policy. The Affiliate must also regularly review and evaluate compliance with its mission, vision, and values and its governing documents, (e.g. Charter, Articles of Incorporation, By-Laws).

Relevant governance documents and policies to consider include but are not limited to:

- Mission Statement
- Vision Statement
- Values Statement
- Code of Conduct
- Policies governing employee time and attendance, employee travel, expense reimbursement, use of petty cash, procurement, information security, and policies prohibiting harassment, discrimination, and retaliation.

The Affiliated Corporation may adopt a relevant RF policy in lieu of creating an in-house policy. Adoption of all policies must be publicized to management and must be readily available to the management and staff of the Affiliated Corporation

Financial Accountability and Independent Auditing

Each Affiliate must establish and maintain a system of internal controls designed to provide reasonable assurance of the achievement of objectives, reliability of financial reporting, safeguarding of assets, effectiveness and efficiency of operations, and compliance with laws and regulations.

Affiliates must also prepare an annual financial statement in conformity with US generally accepted accounting principles and have an audit conducted by a licensed, independent, certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. Each annual audit must include an opinion by the independent certified public accounting firm or sole practitioner as to the fairness of the financial statements as presented, and an annual management letter with any issues outlined and comments on the cooperation of the Affiliate management with the auditors during the audit, together with management's responses and plans of action. They must also meet all regulatory filing requirements and on a timely basis. Consistent with principles of good governance, the independent auditor should be appointed only after a competitive procurement process. The term of appointment must be for no more than a five-year term, after which each Affiliate must solicit these services through a new competitive procurement process.

Annually, each Affiliate will provide a copy of its audited financial statements to the RF no later than 90 days after the close of the fiscal year, and the IRS Form 990 within 150 days after the close of the fiscal year. The audited financial statements shall be accompanied by an annual report, including:

- Details of any transactions between the RF and the Affiliate;
 - Leadership changes;
 - Explanation of substantial debt or liabilities; and
 - Significant operational milestones achieved during the reporting period and plan for the next year.
- All materials should be sent to affiliates@rfsuny.org.

In the event affiliate requires an extension for completion of audited financial statements and/or the IRS Form 990, any such notification of extension should be sent to affiliates@rfsuny.org.

Responsibilities

The following table outlines the responsibilities for compliance with this Policy:

| Responsible Party | Responsibility |
|--|--|
| RF Board of Directors | Review and approval of any and all RF Affiliated Corporations. |
| RF President or Delegate | RF Affiliate board appointments. |
| RF Office of Industry and External Affairs | Proposal review and recommendations, monitoring, reporting; ensure that each Affiliate complies with annual reporting requirements. |
| RF Operations Manager | Proposal review, submission, monitoring, reporting, and compliance. |
| RF Finance Office | Ensure that audited financial statements, annual management letter, and IRS Form 990 are received from each Affiliate pursuant to the requirements of this policy. |
| RF Office of Compliance Services | Provide oversight of conflict review for RF Affiliate board appointments. |
| RF Office of Internal Audit Services | Conduct routine periodic audits to determine compliance with this policy. |
| Affiliate Board of Directors/Audit Committee | Oversight, governance, compliance, reporting. |

Definitions

"Affiliated Corporation or "Affiliate" – An Affiliated Corporation is a separate private corporation or business organization, established with the Research Foundation as a member at the request of SUNY to address a specific SUNY campus-related need or objective which benefits from being supported by an separate, independent entity from the Research Foundation and SUNY with their own governing structure and with a minimum of two corporate members, one of which is the Research Foundation. Research Foundation and other members may exercise rights as members that are established in NY law, but have no day-to-day governance of the Affiliate, unless otherwise provided in law, contract, or the bylaws of the Affiliate. This definition applies to the internal governance of the Affiliate for the purposes of exercising the RF's rights as a Member. Wholly owned subsidiaries of the RF are not Affiliated Corporations and are not subject so the mandates of this policy.

Related Information

[Joint Venture Policy](#)

[Joint Venture Guidelines](#)

[Conflict of Interest Policy](#)

[Management of Conflicts of Interest Procedure](#)

[Code of Conduct](#)

[Delegation of Authority Policy](#)

Forms

[Research Initiative Plan](#)

Change History

| Date | Summary of Change |
|-------------------|---|
| May 10, 2023 | Policy reviewed. |
| June 27, 2022 | Required Conflict of Interest disclosure, review, and management for director appointments revised to be the responsibility of the Affiliated Corporation rather than the RF's Office of Compliance Services. RF Staffing Support of Affiliates section revised to clarify the role of RF employees. Compliance and Reporting Requirement section revised and simplified. |
| June 8, 2018 | Revised to enhance controls and align with SUNY's Foundations and Other Related Entities Guidelines and the RF's policy on Conflicts of Interest . |
| December 30, 2014 | New policy. |

Feedback

Was this document clear and easy to follow? Please send your feedback to webfeedback@rfsuny.org.