

**Office of the Chancellor
Pennsylvania State System of Higher Education
Procedures and Standards for University Operations**

**Procedure/Standard Number 2012-12
Fiduciary Agreements**

Approved by:  Date: June 14, 2013
Chancellor

History: [Board of Governors' Policy 1985-04-A: University External Financial Support](#), and [Board of Governors' Policy 1986-02-A: Investment](#), require the Chancellor to establish guidelines and standards for fiduciary agreements with affiliated organizations for the management of certain, limited university funds.

Additional History:

Related Policies, Procedures or Standards:

[Board of Governors' Policy 1985-04-A: University External Financial Support](#)
[Board of Governors' Policy 1986-02-A: Investment](#)
[PASSHE Procedure/Standard Number 2013-15, Relationships with Affiliated Entities](#)
[PASSHE Procedure/Standard Number 2011-07, Expenditure of Public Funds Guidelines, Standards, and Limits](#)

Additional References:

I. Introduction

Board of Governors' Policy 1985-04-A: *University External Financial Support*, requires the establishment of procedures, standards, and guidelines concerning relationships between and among universities and their affiliated organizations. Fiduciary agreements codify specific relationships that convey the management of financial assets. That policy explicitly limits the ability of the System or any of its entities to enter into fiduciary agreements with any qualified affiliated organization for the administration of university gifts and grants, subject to the approval of the Chancellor; and/or to the management of the investment of certain limited long-term funds, in accordance with Board of Governors' Policy 1986-02-A: *Investment*. Each of these instances requires a specific fiduciary agreement to be established consistent with the requirements below.

II. Definitions

Affiliated Organization: A private, nonprofit organization (typically classified as a 501(c)3 organization for federal tax purposes) that exists solely for the benefit of the university, including but not limited to foundations, alumni associations and student associations. To be affiliated, the organization must: (1) be recognized as an affiliate through council of trustees' resolution; (2) make financial contributions to the university or provide similar benefits on a regular basis, satisfactory to the president and council of trustees; and (3) provide an annual external audit report to the university on a timely basis.

Fiduciary: A party that accepts the custody or responsibility of caring for the property of another party for the benefit of that party.

Fiduciary Agreement: A contract between two parties whereby one party (the principal or the "fiduciant") assigns the other party (the "fiduciary") the management or administration of certain assets owned by the fiduciant.

Long-Term Funds: For the purpose of this standard, long-term funds are defined as the principal amount of gift assets, including both unrestricted and restricted true endowments, given directly to the university that originate only from external sources; and/or net resources from public/private partnerships.

Memorandum of Understanding (MOU): A written, legal document that defines the mutually beneficial relationship between the university and its affiliate, specifying the responsibilities and expectations of each regarding services, staffing, facilities usage, finances, etc. All MOUs are subject to the same legal approval as PASSHE service purchase contracts.

Public/Private Partnerships: Joint endeavors between a university and a third party that result in net financial gain for the university. The partnerships have been defined in an MOU, service purchase contract or other document with the same legal review and approval. Examples include but are not limited to student housing agreements with affiliate organizations and corporate sponsorships.

III. Fiduciary Agreements for the Administration of University Gifts and Grants

- A. Board of Governors' Policy 1985-04-A: *University External Financial Support*, provides the basis for PASSHE to enter into fiduciary agreements with any qualified affiliated organization to administer university gifts and grants, subject to the approval of the chancellor.
- B. Each university, with the approval of the local council of trustees, may establish local guidelines for the administration of gifts and grants by affiliated organizations.
- C. Each university that has established local guidelines, with the approval of the local council of trustees, may enter into a fiduciary agreement with an

affiliated organization to assign the administration of certain university gifts and/or grants. The fiduciary agreement may accompany documentation (e.g., MOU) that specifies the responsibilities and expectations regarding the administrative duties of the affiliate.

- D. The affiliated organization will be required to operate within the principles contained within Board of Governors' Policies 1985-04-A: *University External Financial Support*, and 1986-02-A: *Investment*, and the guidelines promulgated by the respective university. This document is to be used as a guideline in preparing such a fiduciary agreement.

IV. **Fiduciary Agreements for the Investment of Long-Term Funds**

- A. Board of Governors' Policy 1986-02-A: *Investment*, provides the basis for the System to manage responsibly the funds in its custody in accordance with the investment philosophy and objectives therein articulated. That policy allows for limited fiduciary agreements with affiliated organizations for the investment of limited, certain long-term funds. Board of Governors' Policy 1986-02-A: *Investment*, specifies that the management of long-term funds shall be the responsibility of the individual university.
- B. Each university, with the approval of the local council of trustees, will establish local guidelines for the investment of long-term funds consistent with the provisions contained in the *Investment* policy. Each university may, with the approval of the local council of trustees, elect to manage and invest these funds using internal staff. Other permissible investment options include: the Common Fund, the American Association of State Colleges and Universities (AASCU) Capital Fund, a professional investment manager, a pooling arrangement among universities for common investment purposes, and/or through a fiduciary agreement with a qualified affiliated organization.
- C. Each university, with the approval of the local council of trustees, may enter into a fiduciary agreement with an affiliated organization to assign the investment management duties of limited long-term funds, as defined above. Neither appropriated funds nor funds of a current unrestricted nature, other than net revenue resulting from public/private partnerships, may be assigned. The university shall retain title to all assigned assets and shall record the assets on its financial statements, including funds (principal and interest) assigned to and/or invested by the affiliated organization acting as the university's fiduciary.
- D. The professional manager/affiliated organization will be required to operate within the principles contained within Board of Governors' Policy 1986-02-A: *Investment*, and the guidelines promulgated by the respective university. This document is to be used as a guideline in preparing such a fiduciary agreement.

V. Fiduciary Agreement Templates and Approval

- A. Fiduciary agreements are to be completed consistent with Attachment 1, Template for Fiduciary Agreements for the Administration of University Gifts and Grants; or Attachment 2, Template for Fiduciary Agreements for the Investment of Long-Term Funds.
- B. Fiduciary agreements are limited to a period of five years or less.
- C. All fiduciary agreements require the approval of the vice chancellor for administration and finance, chief counsel, and the Office of Attorney General prior to final execution.

VI. Implementation

Universities are to review all existing fiduciary agreements and practices, ensuring compliance within six months of the approval of this document.

ATTACHMENT 1
Pennsylvania State System of Higher Education
Template for Fiduciary Agreements for the Administration of University Gifts and Grants

BY THIS AGREEMENT, entered into this [DATE] day of [MONTH], [YEAR], the [AFFILIATED ORGANIZATION NAME] (hereinafter "Affiliate") and [UNIVERSITY] University of Pennsylvania (hereinafter "University") are entering into a fiduciary relationship with respect to the administration of certain university assets, subjecting the Affiliate to equitable duties to administer the assets for the benefit of the University. In return for the confidence reposed in the Affiliate, by University, the Affiliate will be obliged to apply the assets properly, faithfully and according to such confidence. Therefore, intending to be legally bound hereby, the parties hereto agree as follows:

1. The President of the University or his/her designee shall approve the distributions of gift and/or grant funds to be administered by the Affiliate. The University shall retain title to all funds administered by the Affiliate. The University assigns to the Affiliate administrative duties of the following funds: [SPECIFY.]

The University shall retain title to all assigned assets and shall record the assets on its financial statements, including funds (principal and interest) assigned to, administered by, and/or invested by, the Affiliate acting as the University's fiduciary. All assignment of assets must be authorized in writing by the President of the University or his/her designee.

2. Wherever possible, the concurrence of the original donor should be secured in writing before gift or grant assets are assigned to the Affiliate.
3. The Affiliate shall administer assigned assets for the University. Assets shall be placed only in "authorized investments" as defined in the Pennsylvania State System of Higher Education (PASSHE) Board of Governors' Policy 1986-02-A: *Investment*, and investment guidelines of the University. The Affiliate will be bound by the "prudent man rule" as defined in the Decedents, Estates and Fiduciaries Act of 1972 (Act of June 30, 1972, P.L. 508, No. 164) §7302.
4. Concurrent with the assignment, the University shall inform the Affiliate of all prior restrictions, rules and agreements governing each assigned asset. The Affiliate is obligated to honor all prior restrictions, rules and agreements governing each assigned asset. The Affiliate may not alter the purpose of any assigned asset.
5. The Affiliate is bound to act, with all due speed and without a vote of its Board of Directors, upon all written requests by the President of the University or his/her designee, for the return of assigned assets and for checks drawn upon assigned funds, including the payment of all bills and other obligations associated with each fund.
6. The Affiliate may levy charges approved by the University that represent the actual direct cost associated with managing the assets assigned. General

administrative overhead fees, service charges and indirect costs are not allowable.

7. All assigned University assets will be audited in the Affiliate's annual independent audit and any special audits required by the President of the University or his/her designee, which will be presented to the University in accordance with PASSHE policies and regulations.
8. Either party reserves the right to revoke this Agreement at any time without cause upon thirty (30) days' written notice. The Affiliate shall then return all University assigned assets, principal at market value and unspent accrued interest, within ten (10) working days from the expiration of the University's notice. Marketable securities held by the Affiliate shall not be sold upon notice of revocation. Possession of all equities and unexpired bonds and other investments shall be reassigned to the University within the time frame herein required, or upon a schedule that the University shall specify.
9. This Agreement expires on [MONTH, DAY, YEAR—NO MORE THAN FIVE YEARS]. This Agreement may be amended at any time by mutual agreement between the University and the Affiliate and with the approval of PASSHE's Vice Chancellor for Administration and Finance.
10. In all questions arising from this Agreement, the laws of the Commonwealth of Pennsylvania shall apply.

IN WITNESS WHEREOF, duly authorized representatives of the parties have executed this Fiduciary Agreement as of the date and year first above written.

FOR THE AFFILIATE:

Signature

Signature

Title

Title

Date

Date

Federal I.D. Number

FOR THE UNIVERSITY:

President

Vice President for Finance
and Administration

Date

Date

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION:

FOR THE CHANCELLOR:

Approved as to Form and Legality:

Signature

University Legal Counsel

Vice Chancellor for Administration
and Finance

Date

Date

FOR THE ATTORNEY GENERAL:

Signature

Title

Date

ATTACHMENT 2
Pennsylvania State System of Higher Education
Template for Fiduciary Agreements for the Investment of Long-Term Funds

BY THIS AGREEMENT, entered into this [DATE] day of [MONTH], [YEAR], the [AFFILIATED ORGANIZATION NAME] (hereinafter "Affiliate") and [UNIVERSITY] University of Pennsylvania (hereinafter "University") are entering into a fiduciary relationship with respect to certain university assets, subjecting the Affiliate to equitable duties for the investment management of the assets for the benefit of the University. In return for the confidence placed in the Affiliate, the Affiliate will be obliged to apply property faithfully and according to such confidence. Therefore, intending to be legally bound hereby, the parties hereto agree as follows:

1. The University assigns to the Affiliate investment management duties of the principal amount of the following funds: [SPECIFY THE GIFT ASSETS GIVEN DIRECTLY TO THE UNIVERSITY THAT ORIGINATE FROM EXTERNAL SOURCES; AND/OR THE NET RESOURCES FROM PUBLIC/PRIVATE PARTNERSHIPS.]

Neither appropriated funds nor other funds of a current unrestricted nature may be transferred. The University shall retain title to all assigned assets and shall record the assets on its financial statements, including funds (principal and interest) assigned to, and/or invested by, the Affiliate acting as the University's fiduciary. All assignment of assets must be authorized in writing by the President of the University or his/her designee. This fiduciary agreement identifies the only funds for which the investment management is assigned to the affiliated organization.

2. Wherever possible, the concurrence of the original donor should be secured in writing before assets are assigned to the Affiliate.
3. The Affiliate shall hold and manage assigned assets for the University. Assets shall be placed only in "authorized investments" as defined in the Pennsylvania State System of Higher Education (PASSHE) Board of Governors' Policy 1986-02-A: *Investment*, and investment guidelines of the University. The Affiliate will be bound by the "prudent man rule" as defined in the Decedents, Estates, and Fiduciaries Act of 1972 (Act of June 30, 1972, P.L. 508, No. 164) §7302.
4. Concurrent with the assignment, the University shall inform the Affiliate of all prior restrictions, rules, and agreements governing each assigned asset. The Affiliate is obligated to honor all prior restrictions, rules, and agreements governing each assigned asset. The Affiliate may not alter the purpose of any assigned asset.
5. The Affiliate is bound to act, with all due speed and without a vote of its Board of Directors, upon all written requests by the President of the University or his/her designee, for the return of assigned assets and for checks drawn upon assigned funds, including the payment of all bills and other obligations associated with each fund.

6. The Affiliate may levy charges approved by the University that represent the actual direct cost associated with managing the assets assigned. General administrative overhead fees, service charges and indirect costs are not allowable.
7. All assigned University assets will be audited in the Affiliate's annual independent audit and any special audits required by the President of the University or his/her designee, which will be presented to the University in accordance with PASSHE policies and regulations.
8. Either party reserves the right to revoke this Agreement at any time without cause upon thirty (30) days' written notice. The Affiliate shall then return all University assigned assets, principal at market value and unspent accrued interest, within ten (10) working days from the expiration of the University's notice. Marketable securities held by the Affiliate shall not be sold upon notice of revocation. Possession of all equities and unexpired bonds and other investments shall be reassigned to the University within the time frame herein required, or upon a schedule that the University shall specify.
9. This Agreement expires on [MONTH, DAY, YEAR—NO MORE THAN FIVE YEARS]. This Agreement may be amended at any time by mutual agreement between the University and the Affiliate and with the approval of PASSHE's Vice Chancellor for Administration and Finance.
10. In all questions arising from this Agreement, the laws of the Commonwealth of Pennsylvania shall apply.

IN WITNESS WHEREOF, duly authorized representatives of the parties have executed this Fiduciary Agreement as of the date and year first above written.

FOR THE AFFILIATE:

Signature

Signature

Title

Title

Date

Date

Federal I.D. Number

FOR THE UNIVERSITY:

President

Vice President for Finance
and Administration

Date

Date

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION:

FOR THE CHANCELLOR:

Approved as to Form and Legality

Signature

University Legal Counsel

Vice Chancellor for Administration
and Finance

Date

Date

FOR THE ATTORNEY GENERAL:

Signature

Title

Date