

3.2.13

For any entity organized separately from the institution and formed primarily for the purpose of supporting the institution or its programs: (1) the legal authority and operating control of the institution is clearly defined with respect to that entity; (2) the relationship of that entity to the institution and the extent of any liability arising out of that relationship is clearly described in a formal, written manner; and (3) the institution demonstrates that (a) the chief executive officer controls any fund-raising activities of that entity or (b) the fund-raising activities of that entity are defined in a formal, written manner which assures that those activities further the mission of the institution.

Compliance

Partial Compliance

Not in Compliance

SACS COMPLIANCE ASSESSMENT

It appears that the relationship between the institution and the University of Louisville Foundation (ULF) may not be adequately described in a formal, written manner, with clear roles and responsibilities and agreements outlining appropriate operational controls. This is a particular concern in the areas of financial reporting short-term investment practices. In its response, the institution provided additional information regarding two instances of UofL funds being provided to the ULF and to the University of Louisville Real Estate Foundation (ULREF), without review and approval by the UofL Board nor the active involvement of the UofL Senior Vice President for Finance. These actions involved funds totaling \$67 million. From the

documentation provided, it remains unclear if provisions to clarify the extent of any liability arising from those actions were adequately reviewed, documented in writing, and determined to be appropriate. A review of the agreements finds that they did not include payback terms that provided for the ability of the institution to request return of the funds if needed.

UNIVERSITY RESPONSE

The University of Louisville (UofL) is in compliance with Comprehensive Standard 3.2.13. The University of Louisville submits the following information in response to SACSCOC compliance assessment for Standard 3.2.13:

1. Background/Purpose of the UofL Foundation (ULF)
2. University of Louisville's (UofL) Relationship to the University of Louisville Foundation
3. Financial Relationship between UofL and ULF
4. Liability Protections
5. Short-Term Investments
6. UofL Loans to ULF/ULREF
7. University and ULF Actions Strengthening Financial Control
8. Summary

The university and the University of Louisville Foundation have signed a new Memorandum of Understanding that clearly defines operating and financial controls. As well, the university has established controls that limit the ability of its representatives to make independent financial decisions.

1. Background/Purpose of the UofL Foundation (ULF)

The University of Louisville Foundation (ULF) is a related or affiliated corporation of the University of Louisville (UofL). Founded in 1970, the ULF is organized as an independent 501(c)(3) not-for-profit corporation. It is directed and supervised by a 15-member Board of Directors [1]. The university's relationship with the ULF is defined by three documents: the Articles of Incorporation [2], the memorandum of understanding (MOU) (revised spring 2017) [3], and the ULF Bylaws (also revised spring 2017) [4].

The ULF's Articles of Incorporation mandate that the ULF "conduct and carry on its work, not for profit, but, exclusively, for the charitable and educational purposes" of the university. The ULF's purpose is to support the university's mission to be a premier metropolitan research institution [5].

The direction and oversight of fundraising activities for the University of Louisville is the responsibility of the UofL Office of University Advancement ("Advancement") [6], headed by the vice president for university advancement, who reports directly to the president of the university [7]. The ULF invests funds raised by UofL's Office of Advancement in support of the university's education, research, and service goals, and the funds are also used for scholarships, endowments, research chairs, grants, and other academic initiatives.

Information about the operations of the UofL Board of Trustees and the ULF is disseminated at regular meetings of both boards and is shared with the public on the websites of both groups.

- UofL Board of Trustees website – <http://louisville.edu/president/board-of-trustees>
- ULF Board of Directors website - <http://www.louisvillefoundation.org/about/board-of-directors-information/>

2. University of Louisville’s (UofL) Relationship to the University of Louisville Foundation

The University of Louisville’s recent interactions with SACSCOC can be traced back to several public announcements about activities at UofL and the ULF. Concerns about a lack of transparency in the relationship between the two entities were initially raised by members of the UofL Board of Trustees. In June 2015, then Kentucky State Auditor Adam Edelen announced the initiation of an audit examination (after an official request by a member of the Board of Trustees) focused on governance issues tied to the dual leadership roles between UofL and ULF and compensation received from the ULF by former President James Ramsey and other university employees.

In 2016 the newly elected Kentucky State Auditor of Public Accounts (Mike Harmon) continued the examination of the governance of the ULF and its relationship to the university. The Auditor’s report was released December 14, 2016, and the university forwarded the report to SACSCOC on December 16, 2016. One of the Auditor’s recommendations was that “*the UofL*

and ULF Boards consider developing a MOU [Memorandum of Understanding] to establish an effective set of operational and governing policies. The MOU should be the result of a collaborative process between the two boards and should include a review of recommended principles and practices.”

On February 16, 2017, the UofL Board of Trustees appointed an *ad hoc* Committee on Board Governance (the Governance Committee) [8] to review the Board’s current governance practices and documents and recommend updates and amendments reflecting best practices. The Governance Committee was also to undertake the development of a new Memorandum of Understanding (MOU) between the university and the ULF. The ULF also appointed a Committee on Governance to oversee the foundation's governance and organizational structure and to suggest any needed modifications, including changes to its bylaws.

The UofL Governance Committee worked with the ULF Committee on Governance to develop a new MOU between the university and the ULF. The new agreement was modeled on the “Illustrative Memorandum of Understanding Between a Public Institution or System and an Affiliated Foundation” by the Association of Governing Boards (AGB) [9]. The new MOU [10] was approved by the UofL Board of Trustees on June 28, 2017 [11], and has been officially signed by both parties.

With the new MOU in place, the relationship between UofL and ULF is now adequately described in a formal, written document that clearly describes the relationship between the university and ULF and provides clear roles, responsibilities, and agreements outlining

appropriate operational controls. The MOU establishes the ULF's ability and responsibility to receive funds donated to the university, to manage those funds, and to distribute funds to the university in support of its academic mission.

The MOU covers the following information:

1. University Governance
2. The Foundation's Relationship to the University
3. The University's Relationship to the Foundation

Items of particular note:

- *“The University President controls the University's fund-raising activities” [IV.B].*
- *“The University President shall be an ex-officio, voting member of the Foundation's Board of Directors” [IV.C].*
- *“Effective September 29, 2017, the Chair of the Foundation's Board of Directors and the Chair of its Nominating Committee always shall be a member of the University's Board of Trustees” [IV.E].*
- *“The Foundation Chief Executive or his or her designee shall be included as an ex-officio member of any University-wide strategic or facilities planning committee [IV.G].*
- *“The University's Chief Financial Officer shall serve, ex-officio, as a voting member of the Foundation's Finance Committee [IV.I)].*

4. Foundation Responsibilities

5. University Responsibilities
6. Terms of the Memorandum of Understanding

The ULF Bylaws provide further clarification of the relationship between the university and the ULF. The ULF has revised its Bylaws [12] to better reflect the ULF's overall function (approved by the ULF Board of Directors on March 28, 2017 [13]). Article 4.4 of the revised Bylaws states that the university President cannot be the President of the ULF, as was the previous practice: *"The [ULF] President who need not be a director of the Corporation and who shall not be the President of the University of Louisville shall be elected to that office by the directors of the Foundation at each of its annual meetings for a term of one year until his or her successor is elected and qualifies for office"* [14]. Article 3.9 outlines that the Ex Officio Director [the president of the university] serves on the ULF Executive Committee, the ULF Committee on Finance, and the ULF Nominating Committee. The university's Chief Financial Officer also serves ex officio on the ULF Committee on Finance.

3. Financial Relationship between UofL and ULF

Operational controls between UofL and the ULF are defined in the recently approved MOU. In December 2016 the ULF hired Keith Sherman as interim executive director/chief operating officer to oversee the management of ULF. In this role, Sherman serves as liaison to the university and to the university's Board of Trustees on the finances of ULF. The UofL President serves as an ex officio voting member of the Foundation. Diane Medley serves as the chair of the ULF. Medley is also a Governor-appointed member of the UofL Board of Trustees and has

been elected treasurer of the UofL Board of Trustees. In total, four UofL Board of Trustee members, plus the UofL president, serve on the ULF Board of Directors.

The ULF Board's Committee on Finance (the "Finance Committee") is at all times comprised of the ex officio director (i.e., the president of the university), the chief financial officer of the university (ex officio), one trustee director, and seven at-large directors.

The university's financial relationship with the ULF is documented via the Board-approved operating budgets at the beginning of each fiscal year and audited financial statements at the end of each fiscal year. UofL and ULF both adhere to the state-mandated external audit process [15], which results in a consolidated annual financial statement that covers all affiliated entities and related corporations [16].

The ULF's "University of Louisville Endowment Fund Statement of Investment Objectives and Guidelines" (the "Investment Policy"; dated June 9, 2017) [17] identifies and presents a formal set of investment objectives and performance standards so that the ULF Board and the ULF Finance Committee can be assured that the assets of the ULF, including those of the endowment fund, are managed in accordance with generally accepted standards and in a manner consistent with the financial needs of the university. As described in the Investment Policy, the ULF Board has assigned responsibility for the oversight of the Fund to the ULF Board's Finance Committee. To achieve the mandates set forth in the Investment Policy the Finance Committee uses additional resources, including investment managers, investment consultants, custodians, and Foundation staff.

The new MOU between UofL and the ULF [18] outlines the following information related to finances between the ULF and the university:

- *The Foundation receives, invests, encourages, manages, and administers private gifts and bequests donated for the benefit of the University and directs them to specific areas or projects within the University when designated by the donor. The Foundation acts in a fiduciary capacity, distributing money as required by the terms of the gift and consistent with the donor's intent. Unrestricted gifts are administered by the Foundation in consultation with the University President or his designee to provide the greatest flexibility in day-to-day operations, to fund the University's strategic plan, to meet unanticipated University needs, and to fund University approved special projects. The Foundation acts as custodian for endowed funds and serves in other fiduciary capacities when gifts are made through bequests and other planned giving arrangements. The University designates the Foundation as the repository of private gifts made in support of the University unless otherwise specified by the donor. (page 1)*
- *The Foundation's investment and spending policies shall be with the purpose of ensuring that the corpus of gifts made to the endowment for the benefit of the University are maintained in perpetuity and not invaded, except as permitted by law and which do not contradict donor intent. Current use gifts shall be made available to the University for its use when requested by the University President (or authorized designee), consistent with donor intent. (III.C)*

- *The funding transferred from the Foundation to the University may be used by the University to support its annual budget, as approved by the University’s Board of Trustees, including support for endowed professorships. Without the University’s Board of Trustees’ approval, no money transferred to the University shall be used for University employee compensation except in full compliance with the Financial Transactions Policy passed by the University’s Board of Trustees on March 26, 2017 (the “Spending Policy”), as amended from time to time. The Foundation will not pay any salary or non-salary compensation to a University employee or an employee of any other University affiliate for service as a University employee without the prior request of the University’s Board of Trustees and the approval of the Foundation’s Board of Directors. (III.G)*
- *The Foundation may serve as an instrument for entrepreneurial activities for the University and engage in such activities as purchasing, developing, or managing real estate for multiple purposes, including but not limited to University expansion, student housing, or office building and research facilities. It may also hold licensing agreements and other forms of donated intellectual property, borrow or guarantee debt or engage in other activities to further the purpose of the University. The Foundation may use donor gifts for the purposes described in this paragraph V.A.4 unless expressly prohibited. (V.A.4)*

Asset Management (B)

- *The Foundation's investment strategy shall be to protect the corpus of endowment gifts, in perpetuity, and to achieve investment returns sufficient to sustain reasonable spending necessary to help support the University's academic mission and pursuits. While it is recognized that investment return is market dependent, the Foundation's goal is to prudently maximize returns, net of reasonable expenses and fees and inflation, to provide a reliable annual allocation to the University at the maximum level of sustainable support. The Foundation's goal shall be to equal or exceed the average three, five, and ten-year returns (net of fees) for Public Colleges, Universities, or Systems, as reported by the National Association of College and University Business Officers or a comparable benchmark with similar total assets. (B.1)*
- *The Foundation agrees to provide the University with timely information about investment performance and the current market value of endowments, as requested to allow the University to provide donors with this information. (B.2)*
- *The Foundation will establish prudent asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, including the Kentucky Principal and Income Act (KRS 386.450 to 386.504) and the Kentucky Uniform Prudent Management of Institutional Funds Act (KRS 273.600 to 273.645). (B.3)*
- *The Foundation will receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-*

gift instruments. The Foundation will maintain separate accounts for (a) endowment funds, (b) current use gifts, and (c) operating cash. (B.4)

- *The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements, including management letters and responses to management letters within 30 days of receipt or provision. Within 90 days of the issuance of an audit report with audit findings, the Foundation shall demonstrate to the University that satisfactory progress has been made to implement a corrective action plan. If the University recommends that specific actions be included in the corrective action plan, the Foundation Chief Executive shall promptly communicate the University's recommendations to the Foundation's independent accounting firm and the Foundation's Board of Directors for their consideration. (B.5)*
- *At the time it requests the transfer of funds, the University will provide the Foundation with appropriate documentation establishing that the University is adhering to terms, conditions or limitations imposed by the donor on the gift. The Foundation and the University will work together to develop a set of forms and procedures that implement this obligation in an efficient and effective manner. (B.6)*

Transfer of Funds

- *All transfers of funds from the Foundation to the University must be documented in writing or electronically in a form that has a retrievable transaction trail. (V.C.3)*
- *No later than March 1 of each year, the Foundation Chief Executive shall confer and discuss with the University's President and Chief Financial Officer about the Foundation's investment performance, its anticipated ability to meet its goal under Section V.B.1 for the next fiscal year, and the amount of current use funds anticipated to be available to the University during the next fiscal year over and above the endowment returns contemplated by Section V.B.1. Representatives of the Foundation shall be made available, as requested, and no less often than quarterly, to attend meetings of the University's Board of Trustees for the purpose of making a presentation and answering questions about the Foundation's performance. (V.C.4)*

Foundation Funding and Administration

- *The Foundation will provide copies of its financial data and records to the University, upon request, within a reasonable period of time. The Foundation will also provide copies of its annual report and other information that may be publicly released. (V.D.6)*

The additional ULF documents below also describe the financial relationship between the university and the ULF:

- ULF Bylaws. The revised ULF Bylaws [19] state:

Prohibited Transactions: “*The Corporation shall not engage in any act of self-dealing [as defined in Section 4941(d) of the Internal Revenue Code of 1954 as amended], retain any excess business holdings [as defined in Section 4943(c) of said Code], make any investments in such manner as to subject the Corporation to tax under Section 4944 of said Code, or make any taxable expenditures [as defined in Section 4945(d) of said Code].*” [Section 2.5]

Audit Committee: “*The Audit Committee shall consist of the Chairman of the Committee on Finance, who shall serve ex officio, one (1) Trustee Director and three (3) At-Large Directors. The Audit Committee shall be responsible for, and shall present to the Board for approval the annual financial audit of the Corporation and the Corporation’s annual Form 990, Return of Organization Exempt from Income Tax and such other responsibilities as may be prescribed from time to time by the Board.*” [Section 3.9(9)]

Duties of the ULF Treasurer: “*The Treasurer, who shall be annually elected by the Board of Directors from among its members for a term of one year, shall have general supervision over the financial matters of the Corporation and shall see that reports as to the financial condition of the Corporation are made at each Regular Meeting of the Board of Directors, or at such other times as may be required by the Board. He shall receive and have charge of all money, bills, notes, bonds, securities and similar property*

belonging to the Corporation, subject to the order of the Board of Directors. He shall be the principal disbursing agent of the Corporation, and shall keep accurate and complete financial accounts as required by law and by sound business practice. The Treasurer generally shall perform such other and further duties as may be required of him by the Board of Directors. In the absence of the Treasurer or in the event of his disability, his duties shall be performed by any assistant treasurer or by any director who may be appointed by the Board.” [Section 4.7]

- Revised Asset Allocation. On June 9, 2017, the ULF revised its asset allocation targets and ranges [20]. This document addresses the following:
 1. The responsibilities of the various parties involved in the management of the Foundation.
 2. Overall investment objectives and performance standards.
 3. Overall fund guidelines and asset allocation.
 4. Fund component guidelines.
 5. Relationship with the investment managers.
- ULF Spending Policy. The ULF Board of Directors adopted a change to the ULF Spending Policy on March 28, 2017 [21]. The Spending Policy [22] provides guidelines for management of endowment earnings made available by the ULF to the university’s academic and support units.

- ULF Signature Authority. The Board of Directors of ULF Corporate Signature Authority (Spending Authority) [23] provides signature authority and limitations for executing contracts (approved by the ULF Board of Directors on February 28, 2017).

4. Liability Protections

The following guidelines in the MOU address Liability:

- *Officers and employees of the Foundation who have check-signing authority or who handle cash or negotiable instruments must be bonded in an amount determined to be reasonable by the Foundation's governing body, after consultation with the University. (V.D.9)*
- *The Foundation's Board of Directors, after consulting with the University's insurance and risk management personnel, shall evaluate the potential risks arising from the Foundation's operation and obtain commercially reasonable amounts of general liability and directors'/officers' insurance. (V.D.10)*

The revised ULF Bylaws contain the following statement:

5.7 Insurance.

The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was serving at the request of the

Corporation as a director, officer, member, partner, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the Corporation would have the power or be obligated to indemnify such person against such liability under the provisions of this By-Law or Kentucky Revised Statutes Chapter 273 (or corresponding provisions of any subsequent state laws). [24]

5. Short-Term Investments

The ULF manages three pools of short-term cash with specific purposes behind each pool. The main objective when managing cash is the safety of principal and liquidity. Maximizing investment income is a secondary goal of cash and cash equivalents. The Foundation uses a combination of interest-bearing checking accounts, money market funds, short duration bond mutual funds and short-term individual fixed income securities. All short-term investment products used can be converted into cash within one business day. Cash is monitored on a daily basis and investments are adjusted as needed to meet daily liquidity needs.

The ULF's Short-Term Investment Policy ("Investment Guidelines for Internally Managed Short-Term Funds" [25]) assigns responsibility for short-term funds to its Vice President for Finance, who is to report to the Board on the status of invested short-term funds as requested. The policy also outlines permissible investments. The policy states the following investment objectives:

The primary objective of short-term funds is to achieve and maintain a high degree of safety and liquidity. The secondary objective is to maximize investment income with due regard to the constraints imposed by the short-term nature of the funds and the primary objective. That being the case, the yield objective for short-term funds is to realize a return in excess of that produced by investments in 90 day United States Treasury Bills.

The UofL short-term investment policy [26] states that the primary objective is to achieve and maintain a high degree of safety and liquidity. The secondary objective is to maximize investment income with due regard to the constraints imposed by the short-term nature of the funds and the primary objective. The policy lists allowable investments, all of which are short-term (0 – 7 year maturity), low-volatility investments. As a practical matter, UofL invests the majority of its reserves in one of three state-sponsored investment funds or in an interest-bearing commercial bank account, depending on the rates of return of each.

6. UofL Loans to ULF/ULREF

The UofL Board of Trustees has established a policy whereby transactions such as the 2014 and 2015 loans from the university to the ULF/ULREF questioned by SACSCOC would require approval by the Board of Trustees. Section II of the policy states that “the President is responsible for recommending to the appropriate Board of Trustees committees and, as appropriate, to the full Board of Trustees for review and approval” of “Financial transactions not provided for in the annual operating budget with a value in excess of \$250,000, including loans,

guarantees, or fund transfers of any kind from the University to another person or organization, including an affiliated or related entity” [27].

As discussed in note 4 of the UofL and Affiliated Corporations Auditor’s Report and Financial Statements for FY 2013-2014 [28], in 2014, the university entered into a Memorandum of Agreement for a loan of \$29 million to ULF. This agreement [29], was a one-year loan and was signed by former UofL president James Ramsey; Jason Tomlinson, ULF Chief Financial Officer (CFO); and Susan Howarth, UofL’s lead financial officer and Associate Vice President for Finance and Business Affairs. In the agreement, the university loaned funds to the Foundation to support real estate activities related to the university’s strategic goals as outlined in the UofL *2020 Strategic Plan* [30] and the UofL *21st Century Initiative* [31]. In return, the university received 1 percent interest from ULF. The ULF fully repaid the 2014 loan as of June 30, 2015.

In 2014, ULF established the University of Louisville Real Estate Foundation (ULREF) [32] as an affiliated corporation in order to provide infrastructure for future acquisition, development, and management of real estate, primarily on the university’s Belknap campus but also throughout the city, in support of the university. The ULREF also served the purpose of shielding the ULF endowment from potential liability for injuries or claims arising out of or on any of the real estate properties. As discussed in note 5 of the UofL and Affiliated Corporations – Auditor’s Report and Financial Statements for FY 2015-2016 [33], in 2015, the university entered into a memorandum of agreement for a loan of \$38 million to the ULREF. The agreement between UofL and the ULREF [34] was a three-year term loan and was signed by James Ramsey (then UofL president, who signed on behalf of the university)

and Jason Tomlinson (who signed as ULF Chief Financial Officer and as assistant treasurer of the ULREF). This loan also supported real estate activities related to the university's strategic goals. The terms of this MOA included a 1 percent interest return to the university. The ULREF has repaid \$28.2 million of the loan, leaving a current outstanding balance of \$9.8 million.

UofL Financial Oversight at the Time of the Loans

Dr. James R. Ramsey served as the president of the university from 2002 through July 2016. As president, Dr. Ramsey was charged with being the chief administrative officer of the university, preparing and presenting an annual operating budget to the Board, and managing the university through officials that report to the Office of the President [35]. As president of the university, Dr. Ramsey was also responsible for implementing the university's strategic planning agenda, and the funds involved in the loans were used toward that end. In his role as university president Dr. Ramsey also served as the president of the ULF.

The Vice President for Finance, who held the lead financial position at the university and was the liaison to the ULF, retired in 2014. At that time, Jason Tomlinson assumed the role of assistant treasurer/chief financial officer of the ULF, and Susan Howarth assumed the role of lead financial officer for UofL as the associate vice president for finance and business affairs. Both were long term employees with many years of experience working in budget and finance at UofL. In January of 2015 Mr. Harlan Sands was hired as the UofL senior vice president for

finance and administration and had a direct report to the President. The first loan was repaid prior to his arrival. The second loan was initiated after Mr. Sands's arrival.

The administrators who signed the loans to the ULF and the ULREF in 2014 and 2015 had the signature authority to execute and sign contracts on behalf of the university [36].

Purpose of the Loans

The loan agreements stated the purpose of the loan, the benefit it had for the university, and the terms of the agreement. Each agreement listed the financial benefit [37] to both the university and the foundation. The promissory agreements were legally “term” loans with specific repayment periods, and would not have included a “demand” clause for return of funds prior to the fulfillment of the agreement. Since the loan funds were used to purchase property that benefited the university, the inclusion of a demand clause would have been inconsistent with the funding objectives.

The funds were loaned to enable the ULF and ULREF to purchase properties in support of the university's strategic initiatives (see Table 2), and served to expand the footprint of the university campuses. Some of the property the university already occupied under lease agreements through the ULF, and the loans allowed for the purchase of the property. The university was able to loan the money at a lower rate than ULF would otherwise pay to a lending institution. In return the university not only collected interest but it also had the ability to use the land purchased for its benefit.

Table 2. Use of University Funds Loaned to ULF/ULREF

Year of Loan	Project Funded	Amount of Loan
2014 Loan		
2014	Cardinal Station (Republic Bank) - Location of the ULF Offices, UofL Student Health & Counseling Centers [38]	\$8,200,000
2014	North Quad Properties (Tafel Properties) – Location of UofL Payroll, HR offices and First Build Project [39]	\$6,000,000
2014	Dulworth Property – part of the NUCLEUS downtown campus in Louisville, KY [40]	\$3,400,000
2014	Cardinal Club Golf (CCG) Purchase — UofL Golf Club [41]	\$4,000,000
2014	Health Sciences Campus Medical School – Instructional Building Renovation (needed for LCME accreditation) [42]	\$7,400,000
2015 Loan		
2015	Belknap Research & Technology Park Connector Project – New engineering school research facilities and office park [43]	\$6,200,000
2015	Floyd & Warnock Streetscapes project – Street improvements and new entrance to the university [44]	\$4,500,000
2015	K&I Lumber – E. Lee Street property adjacent to UofL campus [45]	\$3,200,000
2015	UL Counseling’s Cardinal Station lease – relocation to Cardinal Station [46]	\$500,000
2015	Speed/UL AMCC (Additive Manufacturing Competency Center) - part of engineering’s Institute for Product Realization [47]	\$1,400,000
2015	ULREF line of credit principal payment to ULF. The ULREF invests in and manages real estate properties for the benefit of the university. The \$22M served as a bridge loan to enable the ULF to re-finance the Kentucky Trailer Property. The property was developed for the Institute of Product Realization and Belknap Research and Office Park for UofL [48].	\$22,000,000

Note: The 2014 UofL to ULF loan of \$29.0 million was fully repaid as of June 30, 2015. With respect to the 2015 \$38.0 million UofL loan to ULREF, a balance of \$9.8 million remains outstanding.

7. University and ULF Actions Strengthening Financial Control

The university and the ULF have implemented the policies, guidelines, and procedures below to ensure appropriate control over the financial operations between the university and ULF.

ULF Hired an Interim Executive Director/Chief Operating Officer. In November of 2016 the ULF hired Keith Sherman as the interim executive director/chief operating officer of the ULF. Sherman oversees the management of the Foundation and serves as liaison to the university and the university's Board of Trustees on the finances of the Foundation.

Governance Committees. On January 21, 2017, UofL established a Governance Committee to identify best practices in public university governance and recommend for consideration by the Board policies, procedures, and a committee structure to strengthen the Board's ability to carry out its fiduciary responsibilities [49]. The ULF also appointed a Committee on Governance to oversee the foundation's governance and organizational structure and to suggest any needed modifications. The UofL and ULF Governance Committees worked together to develop the revised MOU between the university and the ULF.

UofL BOT Financial Transactions Policy. On March 16, 2017, the UofL Board of Trustees adopted a new resolution regarding financial transactions. The "Recommendation to the Board of Trustees of the University of Louisville Regarding University Financial Transactions"

(Spending Policy) [50] has been added to the university's Policy Library [51]. Sections II and III of the policy, provided below, outline controls related to financial matters. Of especial note in the policy is Section II (g), which requires Board approval for financial transactions in excess of \$250,000.

Section II. Approval of Financial Transactions: Consistent with the President's

responsibility under Section 2.1.2 of the Redbook for recommending major actions to the Board of Trustees for final action, the President is responsible for recommending to the appropriate Board of Trustees committees and, as appropriate, to the full Board of Trustees for review and approval the following financial transactions:

(a) Any long-term debt financing transaction.

(b) Capital projects that involve University-owned land or which are for the University's use when the estimated cost of acquisition, construction, reconstruction, improvement, or structural maintenance is estimated at \$500,000 or more, regardless of fund source, except in the case of an expenditure determined by the President to be necessary because of an emergency (e.g., natural disaster or unforeseen mechanical, electrical, or structural breakdown that makes a facility or structure unusable.) Expenditures over the \$500,000 threshold that are made in response to an emergency shall be initiated in consultation with the Board Chair, when circumstances make that possible, and shall be reported to the Board at its next meeting.

(c) Changes in scope of an approved University capital project that exceed five percent (5%)

- (d) The acquisition or disposition of property by lease when the transaction involves an annual rental of over \$250,000 per year or a term longer than five (5) years.*
- (e) Disposition of an interest in University real property, other than via lease, for a total amount in excess of \$500,000.*
- (f) The award of any compensation, including base salary; bonuses; housing, car, club or similar allowances or stipends; or deferred compensation to the University President, any Vice President reporting directly to the President, or any Dean reporting directly to the Executive Vice President and Provost.*
- (g) Financial transactions not provided for in the annual operating budget with a value in excess of \$250,000, including loans, guarantees, or fund transfers of any kind from the University to another person or organization, including an affiliated or related entity.*

The President or the President's designees shall have the authority to approve all financial transactions not requiring prior approval by the Board of Trustees. Any question about whether a particular transaction requires Board approval should be directed to the Board Chair and the University's General Counsel.

Section III. Periodic Reporting Regarding Financial Matters: *The President or his designee(s) shall report to the appropriate Board of Trustees committees and, as appropriate, to the full Board no less than quarterly on the University's financial status, including a budget-to-actual analysis.*

The full Board of Trustees and appropriate Board of Trustees committees shall receive a report annually on:

- (a) the University's audited annual financial reports;*
- (b) a budget-to-actual analysis;*
- (c) the financial support provided by the University of Louisville Foundation, Inc. and its affiliates;*
- (d) the status of the University's long-term debt obligations;*
- (e) any change in the rating or outlook assigned to the University's debt by any rating agency;*
- (f) the receipt of gifts and pledges;*
- (g) the total compensation (including all fund sources) of the top fifty highest paid employees of the University, excluding faculty members in the School of Medicine;*
- (h) the total compensation (including all fund sources) of:*
 - (i) the President,*
 - (ii) any Vice President reporting directly to the President, or*
 - (iii) any Dean reporting directly to the Executive Vice President and Provost, to the extent such individuals are not already included in the report required by subparagraph*
- (i) the University's strategies for managing cash and short-term investment funds; and*
- (j) the status of those matters approved by the Board pursuant to Section II above during the prior twelve months.*

The Board shall request from the Chair of the Foundation Board a report no less than quarterly on: (I) the Foundation’s primary activities in support of the University; (II) the Foundation’s financial status, (III) a budget-to-actual analysis; and (IV) the Foundation’s investment performance.

MOU Revisions Related to Financial Control. The revised MOU [52] outlines policies and procedures related to financial controls. These policies are provided earlier in this document (see the header, “Financial Relationship between UofL and ULF”).

Policy on UofL President Serving as President of ULF. The UofL President can no longer serve as the president of the ULF. *Section 4.4 of the ULF Bylaws states, “The President who need not be a director of the Corporation and who shall not be the President of the University of Louisville shall be elected to that office by the directors of the Foundation . . .”* [53].

Interim President Gregory Postel’s appointment letter [54] states: *“You will have control of the University’s fund-raising activities and will serve as an ex officio, voting member of the board of directors of the University of Louisville Foundation, Inc.”*

Involvement of UofL Chief Financial Officer in the ULF. The university and ULF will ensure that the university’s chief financial officer will serve on the foundation’s finance committee. Section 3.9(3) of the ULF Bylaws states that *“The Committee on Finance shall consist of the Ex Officio Director, the Chief Financial Officer of the University of Louisville, who shall also serve ex officio, one (1) Trustee Director and seven (7) At-Large Directors”* [55].

ULF Board of Directors' Orientation Program. The ULF has established a Board of Directors' Orientation Program. Three identical orientation sessions were held on March 14, 24, and 28 and focused on ULF bylaws, conflict of interest, open records request procedures, organizational structure, and policies [56].

Enhanced Reporting between the University and ULF. As provided earlier in this report, the revised MOU between UofL and the ULF establishes the following policies for financial reporting between the two entities.

- *The Foundation agrees to provide the University with timely information about investment performance and the current market value of endowments, as requested to allow the University to provide donors with this information. (B.2)*
- *The Foundation will engage an independent accounting firm annually to conduct an audit of the Foundation's financial and operational records and will provide the University with a copy of the annual audited financial statements, including management letters and responses to management letters within 30 days of receipt or provision. Within 90 days of the issuance of an audit report with audit findings, the Foundation shall demonstrate to the University that satisfactory progress has been made to implement a corrective action plan. If the University recommends that specific actions be included in the corrective action plan, the Foundation Chief Executive shall promptly communicate the University's recommendations to the Foundation's independent accounting firm and the Foundation's Board of Directors for their consideration. (B.5)*

- *At the time it requests the transfer of funds, the University will provide the Foundation with appropriate documentation establishing that the University is adhering to terms, conditions or limitations imposed by the donor on the gift. The Foundation and the University will work together to develop a set of forms and procedures that implement this obligation in an efficient and effective manner. (B.6)*
- *All transfers of funds from the Foundation to the University must be documented in writing or electronically in a form that has a retrievable transaction trail. (V.C.3)*
- *No later than March 1 of each year, the Foundation Chief Executive shall confer and discuss with the University's President and Chief Financial Officer about the Foundation's investment performance, its anticipated ability to meet its goal under Section V.B.1 for the next fiscal year, and the amount of current use funds anticipated to be available to the University during the next fiscal year over and above the endowment returns contemplated by Section V.B.1. Representatives of the Foundation shall be made available, as requested, and no less often than quarterly, to attend meetings of the University's Board of Trustees for the purpose of making a presentation and answering questions about the Foundation's performance. (V.C.4)*
- *The Foundation will provide copies of its financial data and records to the University, upon request, within a reasonable period of time. The Foundation will also provide copies of its annual report and other information that may be publicly released. (V.D.6)*

UofL Board of Trustees Bylaws. The UofL Board of Trustees' Bylaws have been revised to say that the board ensures that the financial resources of the university are sufficient to provide a

sound educational program, and that the BOT periodically evaluates the university's progress in implementing its missions, goals, and objectives (Section 2.1) [57]. Per Bylaws, Section 2.8, a roll-call vote of the Board of Trustees is required on motions related to the annual operating budget, funding request for capital outlay and capital maintenance projects, and revenue or institutionally funded capital projects [58].

All of the actions listed above have been completed and are supporting the university's improved interactions with the foundation and its affiliates. As well, the actions above have set in place controls that limit loan interactions from the university to the ULF. These actions work to address SACSCOC's concerns related to the relationship of the university and the ULF.

8. Summary

The University of Louisville is in compliance with Comprehensive Standard 3.2.13. The new Memorandum of Understanding between the university and the University of Louisville Foundation (ULF) clearly defines the legal authority and operating control of the university with respect to the ULF, makes provisions for any liability arising out of the relationship, and provides that the chief executive officer of the university controls all fund-raising activities. The MOU also makes provision for regular reporting on the part of the ULF to the UofL Board of Trustees. In addition, the ULF has updated its own Short-Term Investment Policy and Spending Authority. The ULF Bylaws and financial policy documents also document the policies and procedures related to the two entities' collaborative relationship and function.

The university and ULF have set controls in place to limit the ability of their representatives to make independent financial decisions and have established policies that provide guidance in determining financial approval. The UofL Board of Trustees passed a Financial Transactions Resolution (Spending Policy) that provides specific and detailed guidelines and procedures for obtaining Board of Trustees approval for financial transactions. The university and ULF have strengthened the reporting requirements for the future to ensure full accounting on a regular basis, which will enable the UofL Board of Trustees to fulfill its fiduciary responsibilities.

[1] ULF Board of Directors
3_2_13_fn01.pdf

[2] University of Louisville Foundation, Inc. Articles of Incorporation
3_2_13_fn02.pdf

[3] Memorandum of Understanding between UofL and ULF
3_2_13_fn03.pdf

[4] University of Louisville Foundation, Inc. Board of Director's Bylaws
3_2_13_fn04.pdf

[5] KRS 164.003, Legislative Findings and Goals for Achievement by 2020
3_2_13_fn05.pdf

[6] Office of University Advancement
3_2_13_fn06.pdf

[7] Org. Chart with VP for University Advancement
3_2_13_fn07.pdf

[8] UofL BOT Resolution Establishing BOT Committee on Governance
3_2_13_fn08.pdf

[9] "Illustrative Memorandum of Understanding Between a Public Institution or System and an Affiliated Foundation"
3_2_13_fn09.pdf

- [10] Memorandum of Understanding between UofL and ULF
3_2_13_fn10.pdf
- [11] BOT Meeting Minutes, June 28, 2017, Approval of MOU
3_2_13_fn11.pdf
- [12] Revised ULF Bylaws
3_2_13_fn12.pdf
- [13] ULF Meeting Minutes, 3-28-2017, Approval of Revised Bylaws
3_2_13_fn13.pdf
- [14] ULF Bylaws, Article 4.4
3_2_13_fn14.pdf
- [15] KRS 164A.570, State-Mandated External Audit Process
3_2_13_fn15.pdf
- [16] UofL and Affiliated Corporations Financial Statements, 206
3_2_13_fn16.pdf
- [17] UofL Endowment Fund Statement of Investment Objectives and Guidelines
3_2_13_fn17.pdf
- [18] Memorandum of Understanding between UofL and ULF, 2017
3_2_13_fn18.pdf
- [19] ULF Bylaws (Revised)
3_2_13_fn19.pdf
- [20] ULF's Revised Asset Allocation Targets and Ranges
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- [21] ULF Resolution, 3-28-2017, Approval of Spending Policy
3_2_13_fn21.pdf
- [22] ULF Spending Policy
3_2_13_fn22.pdf
- [23] ULF Signature Authority (Spending Authority)
3_2_13_fn23.pdf
- [24] ULF Bylaws, Section 5.7
3_2_13_fn24.pdf

- [25] ULF's Short-Term Investment Policy
3_2_13_fn25.pdf
- [26] UofL's Short-Term Investment Policy
3_2_13_fn26.pdf
- [27] UofL Financial Transaction Policy, Section II
3_2_13_fn27.pdf
- [28] FY 2013-14 UofL Audited Financial Statements, page 37, note 4
3_2_13_fn28.pdf
- [29] 2014 Memorandum of Agreement – University Receivable from the Foundation
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- [30] UofL 2020 Strategic Plan
3_2_13_fn30.pdf
- [31] UofL 21st Century Initiative
3_2_13_fn31.pdf
- [32] University of Louisville Real Estate Foundation (ULREF) Articles of Incorporation
3_2_13_fn32.pdf
- [33] FY 2015-16 UofL Audited Financial Statements, page 37, note 5
3_2_13_fn33.pdf
- [34] 2015 Memorandum of Agreement - University Receivable from the UofL Real Estate
Foundation
3_2_13_fn34.pdf
- [35] *The Redbook*, Section 2.1.2, Powers and Duties of the President
3_2_13_fn35.pdf
- [36] Signature Authority (Ramsey)
3_2_13_fn36.pdf
- [37] Financial Benefits to the University Resulting from Loans to ULF/ULREF
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- [38] Cardinal Station
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- [39] North Quad Properties (Tafel Properties)
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- [40] Dulworth Property
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- [41] Cardinal Club Golf—Louisville, LLC
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- [42] Health Sciences Campus Medical School Renovations
3_2_13_fn42.pdf
- [43] Belknap Research & Technology Park Connector Project
3_2_13_fn43.pdf
- [44] Floyd & Warnock Streetscapes Project
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- [45] K&I Lumber Property
3_2_13_fn45.pdf
- [46] UL Counseling's Cardinal Station Lease
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- [47] Speed/UL AMCC (Additive Manufacturing Competency Center)
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- [48] ULREF Property for Belknap Research Park
3_2_13_fn48.pdf
- [49] UofL Board of Trustees Approval of *Ad Hoc* Committee on Governance
3_2_13_fn49.pdf
- [50] UofL Board of Trustees Resolution on Financial Transactions Policy, 3-16-2017
3_2_13_fn50.pdf
- [51] Financial Transactions Policy in UofL Policy Library
3_2_13_fn51.pdf
- [52] Memorandum of Understanding between UofL and ULF, 2017
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- [53] ULF Bylaws, Section 4.4
3_2_13_fn53.pdf
- [54] President Postel's Appointment Letter
3_2_13_fn54.pdf

[55] ULF Bylaws, Section 3.9(3)
3_2_13_fn55.pdf

[56] ULF Board of Directors' Orientation Program Powerpoint
3_2_13_fn56.pdf

[57] UofL Board of Trustees Bylaws, Section 2.1, General Powers of the Board
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[58] UofL Board of Trustees Bylaws, Section 2.8
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