

This Policy is based on the IRS model Conflict of Interest Policy, which is an attachment to the Form 1023. The unique characteristics of this Conflict of Interest Policy include its breadth (conflicts are not limited to direct financial transactions) and reach (the Policy extends to Directors, Officers, and committee members).

[NONPROFIT NAME]

ANNOTATED CONFLICT OF INTEREST POLICY

PURPOSE

The purpose of this conflict of interest policy is to protect the interest of [Nonprofit Name] [the “Corporation”] when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer or Director of the Corporation. This policy is intended to supplement but not to replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable corporations.

DEFINITIONS

Interested Person. Any Director, Officer, or member of a committee with Board-delegated powers who has a direct or indirect *financial interest*, as defined below, is an interested person.

Interested Persons typically include Officers, Directors, Trustees, and Key Employees (“ODTKE”). Note that an *Interested Person* can be broadened to include key employees or narrowed to just Directors and Officers. Simple conflicts of “loyalty” are not the concern, but rather transactions with direct or indirect financial ramifications for the *Interested Person* and exempt organization.

Financial Interest. A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

This definition of *Financial Interest* is broad, encompassing not just direct, but also indirect interests that may reach an individual’s family or business interests. An indirect financial interest may include a relationship with a family member or business that in turn has a financial interest in the transaction at issue. Therefore, *Interested Persons* include transactions with: 1) current ODTKEs; 2) family members of ODTKEs; and 3) any entity in which an ODTKE or family member of an ODTKE owns more than 35%. Note that Schedule L of the 990 requires disclosure of transactions with *Interested Persons*.

- an ownership or investment interest in any entity with which the Corporation has a transaction or arrangement, or
- a compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or

- a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

The listing of *potential ownership or investment interest or compensation arrangement* is intended to encourage disclosure by an *Interest Person* in advance of a decision by the organization to engage in a transaction that might lead to a conflict of interest.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest has a conflict of interest only if the appropriate Board or committee determines that a conflict of interest exists.

This serves to remind the Board of Directors that an actual conflict of interest only exists after the Board or appropriate committee has determined that a conflict of interest exists, after following the procedures outlines below. Until the Board or committee makes such a determination, the matter is merely a “possible” conflict.

PROCEDURES

Duty to Disclose

In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and must be given the opportunity to disclose all material facts to the Directors and members of committees with Board-delegated powers considering the proposed transaction or arrangement.

The COI Policy places an emphasis on disclosure of any actual or possible conflicts. The goal is to encourage disclosure of a financial interest in order to provide the Board with ample opportunity to evaluate the potential conflict.

Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, the interested person shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

The *Interested Person* must recuse himself or herself from the discussion and determination of whether a conflict of interest exists, after disclosure of the nature of the financial interest and any material facts.

Procedures for Addressing the Conflict of Interest

An interested person may make a presentation at the Board or committee meeting, but after such presentation, the interested person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

The Chair of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement, and/or consult with counsel.

After exercising due diligence, the Board or committee shall determine whether the transaction would constitute self-dealing under section 4941 of the Internal Revenue Code and accompanying regulations. If the transaction would constitute self-dealing, it must be rejected.

Section 4941 concerns transactions that are applicable to private foundations and certain charitable trusts, but not public charities.

If the transaction would not constitute self-dealing, the Board or committee shall determine whether the Corporation can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested Directors whether the transaction or arrangement is in the Corporation's best interest and for its own benefit and whether the transaction is fair and reasonable to the Corporation, and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

After determining whether a more advantageous arrangement is reasonably attainable, the Board must evaluate and consider two questions: 1) whether the transaction at question is *in the organization's best interest*; and 2) whether the transaction at issue is *fair and reasonable* to the organization.

No Prohibited Acts

No contract, transaction, or act shall be entered into or taken on behalf of the Corporation if such contract, transaction, or act would jeopardize the Corporation's tax-exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code") or constitute an act of self-dealing under section 4941 of the Code.

Violations of the Conflict of Interest Policy

If the Board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the Board or committee determines that the member has

in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

The Board of Directors has discretion to take actions that it may deem necessary upon learning that a Director or Officer has failed to disclose an actual or possible conflict.

RECORDS OF PROCEEDINGS

The minutes of the Board and all committee with Board-delegated powers shall contain:

- the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board's or committee's decision as to whether a conflict of interest in fact existed; and
- the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

COMPENSATION

A voting member of the Board of Directors who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

A voting member of the Board of Directors who is a *family member* of a person who receives compensation, directly or indirectly, from the Corporation for services also is precluded from voting on matters pertaining to that person's compensation.

A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

Officers and Directors are precluded from voting on matters relating to one's own compensation, as are family members of individuals who receive compensation from the organization and who serve on the Board.

ANNUAL STATEMENTS

Each Director, Officer, and member of any committee with Board-delegated powers shall annually sign a statement which affirms that such person:

- has received a copy of the conflict of interest policy,
- has read and understands the policy,

- has agreed to comply with the policy, and
- understands that the Corporation is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Organizations that answer “Yes” to Form 990, Part VI, Question 12(c) (“Did the organization regularly and consistently monitor and enforce compliance with the conflict of interest policy? If “Yes,” describe in Schedule O how this was done.”) may list the distribution of the COI Policy, disclosure questionnaire, and regular review in its narrative response.