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Resources for Developing or Revising Conflict of Interest Policies

The Nonprofit Risk Management Center has identified the following resources that may be helpful in developing or revising a practical conflict of interest policy and procedures for disclosure by board members:

The IRS Form 990 asks the question whether the organization has a written conflict of interest policy and if the answer is ‘yes’ the IRS asks whether board members, officers and key employees are asked *annually* to disclose potential conflicts, as well as whether the organization “regularly and consistently monitors and enforces” compliance with the policy? See Part VI, Section B of the new 990.

The IRS provides a sample conflict of interest policy in Appendix A to the Instructions to IRS Form 1023, Application for Recognition of Exemption Under Section 501(c)(3), www.irs.gov/pub/irs-pdf/i1023.pdf. However, this sample was developed for a large health care institution and may not be appropriate in other settings. If this sample policy doesn’t seem right for your organization, take a look at the following:

Sample policies that may be more “user friendly” for smaller organizations include:

- The National Council of Nonprofits offers a sample policy at the following web site: <http://www.councilofnonprofits.org/?q=conflict-ofinterest>
- A sample conflict of interest policy is contained in *The AICPA Audit Committee Toolkit*. (American Institute of Certified Public Accountants, 2005), available from this link (scroll down):
http://www.aicpa.org/audcommctr/toolkitsnpo/Independence_and_Related_Topics.htm
- A sample policy adapted from the conflict of interest policy developed by the Minnesota Council of Nonprofit Organizations is below.
- A sample policy is available from the Minnesota Attorney General's Office web site. <http://www.ag.state.mn.us/Charities/> Click on “Charities,” then scroll down to find sample policies.
<http://www.ag.state.mn.us/pdf/charities/ConflictInterestPolicy.pdf>
- BoardSource www.boardsource.org, offers affordable publications on this topic including, Managing Conflicts of Interest: A Primer for Nonprofit Boards, Daniel

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L. Kurtz and Sarah E. Paul (BoardSource, 2006) and an article, "Can Conflicts of Interest be an Obstacle to Board Service?" from the following link:

<http://www.boardsource.org/Knowledge.asp?ID=3.148>

- The Council on Foundations offers various publications, including “Conflict of Interest: A Guide to Key Provisions.” Look for “conflicts of interest” using the search function of the web site: www.cof.org.

SAMPLE #1

Conflict of Interest Policy

Disclaimer: This sample policy is offered for informational purposes only. It is not intended as legal advice. Organizations wishing to use this policy may do so, but should tailor it to their own specific circumstances.

It is in the best interest of [Name of Nonprofit] to be aware of and properly manage all conflicts of interest and appearances of a conflict of interest. This conflict of interest policy is designed to help directors, officers, employees and volunteers of the [Name of Nonprofit] identify situations that present potential conflicts of interest and to provide [Name of Nonprofit] with a procedure to appropriately manage conflicts in accordance with legal requirements and the goals of accountability and transparency in [Name of Nonprofit's] operations.

1. **Conflict of Interest Defined.** In this policy, a person with a conflict of interest is referred to as an “interested person.” For purposes of this policy, the following circumstances shall be deemed to create a Conflict of Interest:
 - a. A director, officer, employee or volunteer, including a board member (or family member of any of the foregoing) is a party to a contract, or involved in a transaction with [Name of Nonprofit] for goods or services.
 - b. A director, officer, employee or volunteer, (or a family member of any of the foregoing) has a material financial interest in a transaction between [Name of Nonprofit] and an entity in which the director, officer, employee or volunteer, or a family member of the foregoing, is a director, officer, agent, partner, associate, employee, trustee, personal representative, receiver, guardian, custodian, or other legal representative.
 - c. A director, officer, employee or volunteer, (or a family member of the foregoing) is engaged in some capacity or has a material financial interest in a business or enterprise that competes with [Name of Nonprofit].

Other situations may create the *appearance of a conflict*, or present a *duality of interests* in connection with a person who has influence over the activities or finances of the nonprofit. All such circumstances should be disclosed to the board or staff, as appropriate, and a decision made as to what course of action the organization or individuals should take so that the best interests of the nonprofit are not compromised by the personal interests of stakeholders in the nonprofit.

Gifts, Gratuities and Entertainment. Accepting gifts, entertainment or other favors from individuals or entities can also result in a conflict or duality of interest when the party providing the gift/entertainment/favor does so under circumstances where it might be inferred that such action was intended to influence or possibly would influence the interested person in the performance of his or her duties. This does not preclude the acceptance of items of nominal or insignificant value or entertainment of nominal or insignificant value which are not related to any particular transaction or activity of [Name of Nonprofit].

2. Definitions.

- a. A "Conflict of Interest" is any circumstance described in Part 1 of this Policy.
- b. An "Interested Person" is any person serving as an officer, employee or member of the Board of Directors of [Name of Nonprofit] or a major donor to [Name of Nonprofit] or anyone else who is in a position of control over [Name of Nonprofit] who has a personal interest that is in conflict with the interests of [Name of Nonprofit].
- c. A "Family Member" is a spouse, parent, child or spouse of a child, brother, sister, or spouse of a brother or sister, of an interested person.
- d. A "Material Financial Interest" in an entity is a financial interest of any kind, which, in view of all the circumstances, is substantial enough that it would, or reasonably could, affect an Interested Person's or Family Member's judgment with respect to transactions to which the entity is a party.
- e. A "Contract or Transaction" is any agreement or relationship involving the sale or purchase of goods or services, the providing or receipt of a loan or grant, the establishment of any other type of financial relationship, or the exercise of control over another organization. The making of a gift to [Name of Nonprofit] is not a Contract or Transaction.

3. Procedures.

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- a. Prior to board or committee action on a Contract or Transaction involving a Conflict of Interest, a director or committee member having a Conflict of Interest and who is in attendance at the meeting shall disclose all facts material to the Conflict of Interest. Such disclosure shall be reflected in the minutes of the meeting. If board members are aware that staff or other volunteers have a conflict of interest, relevant facts should be disclosed by the board member or by the interested person him/herself if invited to the board meeting as a guest for purposes of disclosure.
- b. A director or committee member who plans not to attend a meeting at which he or she has reason to believe that the board or committee will act on a matter in which the person has a Conflict of Interest shall disclose to the chair of the meeting all facts material to the Conflict of Interest. The chair shall report the disclosure at the meeting and the disclosure shall be reflected in the minutes of the meeting.
- c. A person who has a Conflict of Interest shall not participate in or be permitted to hear the board's or committee's discussion of the matter except to disclose material facts and to respond to questions. Such person shall not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting.
- d. A person who has a Conflict of Interest with respect to a Contract or Transaction that will be voted on at a meeting shall not be counted in determining the presence of a quorum for purposes of the vote.
- e. The person having a conflict of interest may not vote on the Contract or Transaction and shall not be present in the meeting room when the vote is taken, unless the vote is by secret ballot. Such person's ineligibility to vote shall be reflected in the minutes of the meeting. For purposes of this paragraph, a member of the Board of Directors of [Name of Nonprofit] has a Conflict of Interest when he or she stands for election as an officer or for re-election as a member of the Board of Directors.
- f. Interested Persons who are not members of the Board of Directors of [Name of Nonprofit], or who have a Conflict of Interest with respect to a Contract or Transaction that is not the subject of Board or committee action, shall disclose to their supervisor, or the Chair, or the Chair's designee, any Conflict of Interest that such Interested Person has with respect to a Contract or Transaction. Such disclosure shall be made as soon as the Conflict of Interest is known to the Interested Person. The Interested Person shall refrain from any action that may affect [Name of Nonprofit]'s participation in such Contract or Transaction.

In the event it is not entirely clear that a Conflict of Interest exists, the individual with the potential conflict shall disclose the circumstances to his or her supervisor or the Chair or the Chair's designee, who shall determine whether full board discussion is warranted or whether there exists a Conflict of Interest that is subject to this policy.

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Updated 12.08

4. **Confidentiality.** Each director, officer, employee and volunteer shall exercise care not to disclose confidential information acquired in connection with disclosures of conflicts of interest or potential conflicts, which might be adverse to the interests of [Name of Nonprofit]. Furthermore, directors, officers, employees and volunteers shall not disclose or use information relating to the business of [Name of Nonprofit] for their personal profit or advantage or the personal profit or advantage of their Family Member(s).

5. **Review of policy.**
 - a. Each director, officer, employee and volunteer shall be provided with and asked to review a copy of this Policy and to acknowledge in writing that he or she has done so.

 - b. Annually each director, officer, employee and volunteer shall complete a disclosure form identifying any relationships, positions or circumstances in which s/he is involved that he or she believes could contribute to a Conflict of Interest. Such relationships, positions or circumstances might include service as a director of or consultant to another nonprofit organization, or ownership of a business that might provide goods or services to [Name of Nonprofit]. Any such information regarding the business interests of a director, officer, employee or volunteer, or a Family Member thereof, shall be treated as confidential and shall generally be made available only to the Chair, the Executive Director, and any committee appointed to address Conflicts of Interest, except to the extent additional disclosure is necessary in connection with the implementation of this Policy.

 - c. This policy shall be reviewed annually by each member of the Board of Directors. Any changes to the policy shall be communicated to all staff and volunteers

Basic Conflict of Interest Disclosure Form [insert date]

Date: _____

Name: _____

Position (employee/volunteer/trustee): _____

Please describe below any relationships, transactions, positions you hold (volunteer or otherwise), or circumstances that you believe could contribute to a conflict of interest between [Name of Nonprofit] and your personal interests, financial or otherwise:

_____ I have no conflict of interest to report

_____ I have the following conflict of interest to report (please specify other nonprofit and for-profit boards you (and your spouse) sit on, any for-profit businesses for which you or an immediate family member are an officer or director, or a majority shareholder, and the name of your employer and any businesses you or a family member own):

1. _____
2. _____
3. _____

I hereby certify that the information set forth above is true and complete to the best of my knowledge. I have reviewed, and agree to abide by, the Policy of Conflict of Interest of [Name of Nonprofit].

Signature: _____

Date: _____

Sample Policy Adopted from a template policy provided by the Minnesota Council of Nonprofit Organizations

SAMPLE TWO

Conflict of Interest Policy

This Conflict of Interest Policy governs the activities of the board and staff of [Name of Organization]. Questions about the policy should be directed to the [Executive Director] [Chair of the Board] [Compliance Officer]. It is the duty of all board members and staff to be aware of this policy, and to identify conflicts of interest and situations that may result in the appearance of a conflict and to disclose those situations/conflicts/or potential conflicts to (i) the employee’s supervisor (ii) the executive director, (iii) the Chair of the Board or (iv) the Compliance officer, or other designated person, as appropriate. This policy provides guidelines for identifying conflicts, disclosing conflicts and procedures to be followed to assist [Name of Organization] manage conflicts of interest and situations that may result in the appearance of a conflict.

1. What is a conflict of interest? A conflict of interest arises when a board member or staff member has a personal interest that conflicts with the interests of [Name of Organization] or arise in situations where a board/staff member has divided loyalties (also known as a “duality of interest”). The former can result in situations that result in inappropriate financial gain to persons in authority at [Name of Organization] which can lead to financial penalties and violations of IRS regulations. Similarly, situations or

transactions arising out of a conflict of interest can result in either inappropriate financial gain or the appearance of a lack of integrity in [Name of Organization's] decision-making process. Both results are damaging to [Name of Organization] and are to be avoided.

- *Example #1:* a person in a position of authority over the Organization may benefit financially from a transaction between the Organization and the board/staff member; or others closely associated with the board/staff member may be affected financially. Family members, or their businesses, or other persons or the businesses of persons with whom the board/staff member is closely associated, could benefit from similar transactions.
- *Example #2:* A conflict of interest could be a direct or indirect *financial interest* such as those described above, or a *personal interest* such as the situation where a board member of [Name of Organization] is also a board member of another nonprofit or for-profit entity in the community with which [Name of Organization] collaborates or conducts business.

2. Who might be affected by this policy? Typically persons who are affected by a conflict of interest policy are the Organization's board members, officers, and senior staff. In some cases a major donor could also be in a conflict situation. [Name of Organization] takes a broad view of conflicts and board/staff are urged to think of how a situation/transaction would appear to outside parties when identifying conflicts or possible conflicts of interest.

3. Disclosure of Conflicts. Board members and senior staff will annually disclose and promptly update any disclosures previously made [Chairperson of the board] on an Annual Conflict Disclosure Questionnaire form provided by the Organization that requests them to identify their interests that could give rise to conflicts of interest, such as a list of family members, substantial business or investment holdings, and other transactions or affiliations with businesses and other organizations or those of family members as well as other nonprofit organizations.

Board and staff are also urged to disclose conflicts as they arise as well as to disclose those situations that are evolving that may result in a conflict of interest. Advance disclosure must occur so that a determination may be made as to the appropriate plan of action to manage the conflict. Staff should disclose to their supervisor/Executive Director and board members should disclose to the board/Chairperson of the board as soon as they person with the conflict is aware of the conflict/potential conflict or appearance of a conflict exists.

4. Procedures to manage conflicts. For each interest disclosed, the full board, or the Executive Director or the Chairperson of the board, as appropriate, will determine whether the organization should: (a) take no action or (b) disclose the situation more broadly and invite discussion/resolution by the full board of what action to take, or (c) refrain from taking action and otherwise avoid the conflict. In most cases the broadest

disclosure possible is advisable so that decision-makers can make informed decisions that are in the best interests of the organization.

- When the conflict involves a decision-maker, the person with the conflict (“interested party”): (i) must fully disclose the conflict to all other decision-makers; (ii) may not be involved in the decision of what action to take (e.g., may not participate in a vote) but may serve as a resource to provide other decision-makers with needed information.
- In some cases the person with the conflict may be asked to recuse him/herself from sensitive discussions so as not to unduly influence the discussion of the conflict.
- In all cases, decisions involving a conflict will be made only by disinterested persons
- The fact that a conflict was managed and the outcome will be documented in the minutes of board meetings if the conflict was related to a board member, and reported by the Executive Director to the board/Chair of the board/other appropriate committee of the board (e.g., Audit committee) if the conflict was related to a staff member.
- The Chairperson of the board/Executive Director will monitor proposed or ongoing transactions of the organization (e.g., contracts with vendors and collaborations with third parties) for conflicts of interest and disclose them to the Board and staff, as appropriate, whether discovered before or after the transaction has occurred.