

CONFLICTS OF INTEREST AMONG FOUNDATION BOARD MEMBERS: POLICY FRAMEWORK

I. PERSPECTIVE

A. GOAL

The goal of this policy is sound, diligent, and prudent governance that, *in all cases*, advances the interests of the Foundation absent biases caused by conflicts of interest among Foundation Directors.¹

B. CONTEXT AND OBLIGATIONS

As Directors of a public trust, Foundation Board members – collectively and individually – are expected not only to meet their legal obligations as fiduciaries, but also to establish and maintain standards of fairness and integrity. Above all, when they join the Board, Directors accept the duty to put the best interests of the Foundation first and foremost while they are fulfilling their duties as Board members, ahead of any other personal or professional interests or preoccupations.

This means that: (i) in distributing Foundation resources to the community in the form of grants, the overriding obligation of the Board is to protect the Foundation's credibility, integrity, and fairness in dealing with the issues it addresses, and with the grantee communities and organizations that are its partners; and (ii) when entering into financial transactions with business enterprises, the overriding obligation of the Board is to protect the Foundation's financial position.

The issue of conflict of interest is salient because members of the Foundation's Board are capable, prominent, and active individuals in their communities, with multiple areas of personal and professional interest and involvement. It is inevitable – indeed expected – that situations will arise in which the Board must reach a decision about an organization or activity in which one of its members has an interest that represents an actual, potential, or apparent conflict. Therefore, *the issue is not whether conflicts of interest will arise but, rather, how they are handled when they do.*

Accordingly, it is imperative that Foundation Directors, both as individuals and as a group, adopt standards of conduct and behavior designed to: (i) protect the integrity of Board decision-making processes; and (ii) preserve the quality, fairness, and openness of the Foundation's grantmaking development, review, funding, and oversight processes, as well as its other financial transactions.

¹ Foundation board members may be either Directors or Trustees. For the purpose of this document, the term “Directors” refers to both.

C. THREATS

Threats to the goal of effective Foundation governance include anything that gets in the way of the duty of Directors to put the Foundation's interests first, as they fulfill their obligations as Board members. Principal among these threats are those having to do with self-interest or divided loyalties.

Financial Self Interest. Money changes everything! The most obvious and pervasive conflicts of interest come about as the result of the possibility that a decision may benefit a Director or a close relative financially by: (i) steering Foundation business to a vendor or professional practice (e.g., law office, accounting firm) in which the Director or close relative has a financial interest; (ii) steering grants to a non-profit organization in which the Director or close relative is a board member, employee, or volunteer; or (iii) supporting a business transaction (e.g., purchase of real estate) from which the Director or close relative stands to benefit financially

Personal or Professional Self Interest. Beyond financial self-interest are a number of less obvious but perhaps more insidious threats to the goal of effective governance by Foundation Directors. For example: (i) professional insecurity or conceit may reduce a Director's effectiveness through his/her need always to be right and to dominate all conversations, and through an inability to serve as *one* member of a governing Board that, to be effective, must work as a team; (ii) personal beliefs and agendas may lead a Director to become perceived by other Board members as a "*one-note Johnny*," i.e., a strong advocate for particular issues, population groups (e.g., racial or ethnic minorities, social or economic classes, age cohorts), or geographic areas to the exclusion of all others; and (iii) loyalty to friends and colleagues – or, conversely, personal animosities – may bias a Director's views of certain issues, programmatic strategies, programs, or organizations.

Divided Loyalties. Divided loyalty refers, primarily, to a conflict between a Director's duty to the Foundation and his/her loyalty to another organization. In fulfilling their obligations to the Foundation, Directors must be diligent about not allowing their relationship (or that of a close relative) with their home organization or another organization with which they have an interest – financial or otherwise – to bias their input to Board deliberations or decisions.

II. POLICY FRAMEWORK

Principles. It is inevitable that the Foundation will have to decide how best to handle decisions about issues in which one of its Directors – or a close relative or professional associate – has an "outside" interest that represents an actual or apparent conflict with his/her obligations to the Foundation. The challenge is to prevent as many conflicts as possible but, when they occur, to manage them firmly and consistently.

The following represents a set of principles that, if adhered to, can reduce the threats posed by conflicts of interest to the goal of sound, diligent, and prudent governance:

- **Obligation.** While fulfilling their duties as Board members, Directors are obligated to put the best interests of the Foundation first and foremost, ahead of any other personal or professional interests or institutional loyalties.
- **Objectivity.** Effective governance requires focused, clear thinking, unimpeded by concern for one's own interests, or those of other individuals or institutions.
- **Threat.** Conflicts of interest – whether actual or apparent – are real, ubiquitous, and potentially a threat to a Director's effectiveness and the Foundation's success.
- **Policy Imperative.** Potential and actual conflicts of interest among Directors can best be prevented and managed by the development of, and strict adherence to, a clear, explicit, and consistent policy.
- **Awareness.** It is the responsibility of each Director, and the Board as a whole, to be vigilant and sensitive about situations that represent actual or apparent conflicts between their obligations to the Foundation and other personal or professional interests, agendas, or organizational loyalties.
- **Disclosure** – When a Director identifies a conflict, it should be disclosed well in advance of any discussion or action in which the conflict is a factor (for example, by submitting an annual disclosure form), and *again* at the time of the discussion or action.
- **Recusal** – A Director for whom an issue being discussed by the Board or Board committee represents a real, apparent, or potential conflict of interest should leave the room while the issue is being discussed and action taken. *Conflicted Directors must not attempt to influence a decision process nor be present when decisions are being contemplated or made.*
- **Confidentiality.** All discussions, decisions, actions, and documents related a Director's role as a member of the Board are to be treated with strict confidentiality. What happens in the Board room stays in the Board room.

Policy. It is the policy of the Foundation to maximize the degree to which the decisions made and actions taken by members of the Board of Directors are free from biases caused by conflicts between Directors' duty to the Foundation and: (i) financial self interest; (ii) loyalty to another organization; (iii) competing personal or professional agendas; or (iv) personal or professional relationships.

It is the responsibility of Board members to be vigilant and sensitive about situations that represent actual, potential, or apparent conflicts of interest. This means, at a minimum:

- Annually completing a conflict of interest disclosure form describing all situations and affiliations that represent actual, potential, or apparent conflicts of interest;

- In addition, disclosing conflict situations at the time when they are relevant to discussions being held by the Board or Board committees on which the Director serves;
- Absenting himself or herself from the portion of any discussion by the Board or Board committee, making himself or herself available to respond to questions before leaving; and
- Maintaining a practice of strict confidentiality concerning discussions, actions, and decisions in which the Director is involved, and materials to which the Director is exposed.

Definitions. For the purpose of this policy statement, a conflict of interest exists if a Director, or a close relative of a Director, acting on behalf of himself or herself or of some *other* organization, takes any action that would result in, or give the appearance of resulting in, a financial gain or advantage to that individual, relative, or other organization, or would result in an adverse effect on the Foundation's best interest, integrity or financial position. In the case of this policy:

- "*Other organization*" shall mean: (i) any business enterprise or professional entity from which the Foundation might purchase goods or services; (ii) any educational, research, policy, health care, social service or other non-profit entity which represents a current or potential future recipient of grant support from the Foundation; and (iii) any for-profit or not-for-profit entity with which the Foundation might partner or collaborate.
- "*Acting on behalf of some other organization*" shall mean: (i) in the case of not-for-profit organizations, serving as a Trustee/Director, paid staff, advisor, or volunteer, or having a relative who serves one of these functions; and (ii) in the case of for-profit organizations, serving as an owner, director, employee, advisor, counsel, or other capacity, or having a relative who serves one of those capacities, or holding sufficient financial interest as to potentially benefit materially from transactions with the Foundation, or having a relative who holds such an interest.
- "*Relative*" shall mean spouse, life partner, child, parent, mother/father/sister/brother in-law, and sibling of a director.
- "*Financial interest*" shall mean: (i) an actual or potential ownership or other material investment interest in an entity with which the Foundation has a transaction or arrangement; or (ii) a compensation arrangement (direct or indirect remuneration, as well substantial gifts or favors) with another organization or with any entity or individual with which the Foundation has an actual or potential transaction or arrangement.