



SACRAMENTO  
STATE

**The University Foundation  
at Sacramento State**

6000 J Street • Sacramento, CA 95819-6030  
T (916) 278-7043 • F (916) 278-5709

TO: The University Foundation at Sacramento State Board of Directors

FROM: xxxx, Executive Officer, The University Foundation at Sacramento State

SUBJECT: Conflict of Interest Disclosure Statement for FY xxxx-xxxx

DATE: xx-xx-xx

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Required by the CSU and in compliance with The University Foundation at Sacramento State bylaws, all board members are required to submit an annual conflict of interest disclosure statement. Please find enclosed the conflict of interest policy and disclosure statement for you to complete and return to me as soon as possible.

Thank you in advance for your prompt return of the form. Should you have any questions, please feel free to contact the Executive Assistant to the University Foundation Board at 916-278-2783 or [xxxx@csus.edu](mailto:xxxx@csus.edu).

# **The University Foundation at Sacramento State**

## **Conflict of Interest Policy**

### **I. INTRODUCTION**

The Board of Directors of The University Foundation at Sacramento State (“the Foundation”), recognizing that we are entrusted with a large endowment devoted to charitable purposes, has adopted this Conflict of Interest Policy. Conflicts of interest place personal interests at odds with the fundamental duty of loyalty owed by Foundation Directors as servants of the public interest. In addition, the appearance of a conflict of interest can damage institutional credibility and the ability to fulfill the institution’s mission and programmatic goals. The Board of Directors expects that the Directors will respect their obligations to act for the good of the charitable beneficiaries and avoid even the appearance of impropriety. As a matter of practice, a Director should promptly raise any issue which may implicate this policy either with the Treasurer of the Foundation or with its outside legal counsel.

### **II. SELF DEALING AND CONFLICTS OF INTEREST**

#### **A. Internal Revenue Code: Prohibition of Excess Benefit Transactions with Disqualified Persons and Private Inurement**

The Foundation is a Charitable Organization under Section 501(c)(3) of the Internal Revenue Code and, under Section 4958 of the Code, may not engage in Excess Benefit Transactions with disqualified persons. Accordingly the Foundation will not engage in any transaction or arrangement which provides an economic benefit to or for the use of any "disqualified person" unless the consideration received by the Foundation at least equals the value of the benefit provided. The directors are disqualified persons, as are certain of their relatives (see Exhibit A). For an explanation of the meaning of Excess Benefit Transaction and the Internal Revenue Service safe harbor approval procedures, please see Exhibit A.

In addition to the prohibition on Excess Benefit Transactions, the Internal Revenue Code requires that the Foundation be operated exclusively for charitable purposes and as such any arrangement involving private inurement or private benefit is forbidden.

#### **B. California Nonprofit Corporation Law: Process for Approval of Self Dealing by Director and Transactions with Interlocking Directorates**

The California Corporations Code specifies procedures that must be followed to approve transactions in which a director has a material financial interest (Section 5233) and in which the participating corporations have common directors (Section 5234). For an explanation of the meaning of Self Dealing and the approval procedures dictated by the Corporations Code, please see Exhibit B.

### **C. Special Conflict of Interest Policies Adopted by The University Foundation at Sacramento State**

In addition to the rules imposed by the Internal Revenue Code and the California Corporations Code, the Board of Directors of the Foundation has adopted the following policy to address Conflicts of Interest. If a Director or a member of his or her family has a Conflict of Interest or potential Conflict of Interest, the Director shall make disclosures as described below, and the Board of Directors shall follow the procedures described below in considering the subject grant or financial, investment or business transaction.

#### 1. Conflict of Interest Defined

A "Conflict of Interest" exists if a Foundation Director or his or her Family Members have:

- a. a (i) relationship of employee, officer, trustee, or director of, or (ii) a significant ownership interest in an organization or person seeking a grant from the Foundation or with which the Foundation proposes to enter into a financial, investment or business transaction; or
- b. a material financial interest in any existing or potential Foundation grant, or in any financial, investment or business transaction which is intended to be supported by a Foundation grant or in any potential grant, or financial, investment or business transaction to which the Foundation is a party.

#### 2. Incidental Benefits Exempted

The receipt of the following types of benefits shall not be a Conflict of Interest or violate this Conflict of Interest Policy:

- a. incidental or tenuous benefits from the Foundation's grant making or financial, investment or business transactions; or
- b. benefits (received in good faith and without favoritism) solely by virtue of being among the class of persons intended to be benefited by charitable or public benefit programs conducted by the Foundation or supported by the Foundation's grants.

#### 3. Family Members

Family members of a Director include their spouse, ancestors, descendants, siblings and the spouses of descendants and siblings.

#### **D. Disclosure of Actual or Potential Conflicts of Interest**

Directors will fully and regularly disclose all material facts relating to any actual or potential Conflicts of Interest. They will submit conflict of interest disclosure forms to the Chair of the Audit Committee:

- a. initially, upon joining the Board of Directors;
- b. annually, before the Annual Meeting;
- c. where appropriate at or prior to action on grant applications and business transactions; and
- d. upon becoming aware of an actual or potential Conflict of Interest.

The disclosure obligations are more fully described in Exhibit C.

#### **E. Board Procedures for Resolution of Conflict of Interest Issues**

A grant may be made, or a business transaction entered into, where there is an actual or potential Conflict of Interest if:

1. The disclosures set forth above have been made;
2. The business transaction would not constitute an Excess Benefit Transaction under Section 4958 of the Internal Revenue Code;
3. In the case of a grant, the grant meets the Foundation's stated eligibility and selection criteria and was found, after an objective review, to carry out the Foundation's programmatic goals and objectives;
4. In the case of a business transaction, the Board determines in good faith that the Foundation is entering into the business transaction for its own benefit, that the transaction is fair and reasonable to the Foundation, and that the Foundation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances;
5. The Interested Director may be present at the time of initial presentation of a prospective grant or business transaction, but is absent from the room during both Board discussion, and action or vote; and
6. If not involving a Director with a material financial interest, a grant may be approved by a majority of the Directors present. All other Grants and Business Transactions involving a Conflict of Interest must be approved by a majority of the Directors in office.

### **III. ADDITIONAL GUIDELINES FOR DIRECTORS**

Directors shall not use their position as Director of the Foundation to advance the interests of a particular organization, constituency, or special interest group by any means, including but not limited to providing information not available to the public, lobbying on behalf of or serving as spokesperson to the Foundation for an organization or interest group with which he or she is affiliated, or attempting to effect a positive decision through his or her position within the Foundation. Directors will not materially

benefit from any information regarding grant making, investment or other business actions or decisions by the Foundation which has not been fully disclosed to the general public.

#### **IV. RECEIPT OF BENEFITS FROM THIRD PARTIES**

##### **A. Gifts and Gratuities.**

Directors will not directly or indirectly solicit or accept anything of monetary value in excess of \$50 annually, from persons or organizations doing business or seeking to do business with the Foundation unless the solicitation or acceptance is based upon a relationship with such person or organizations in a capacity other than that of Director of the Foundation.

#### **V. REFERRAL TO COUNSEL**

Questions regarding the interpretation or application of this Conflict of Interest Policy should be referred to counsel for the Foundation.

## **Exhibit A**

### **Excess Benefit Transactions**

Section 4958 of the Internal Revenue Code imposes a severe excise tax on disqualified persons who engage in "excess benefit transactions" with a Section 501(c)(3) foundations and upon foundation managers involved in the approval of the transactions.

#### **Disqualified Persons:**

A "disqualified person" is:

1. any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the foundation;
2. any member of the "family" of such person (where "family" includes the person's spouse, ancestors, descendants, siblings and the spouses of descendants and siblings); or
3. a corporation, partnership or trust controlled by such a person through the ownership, directly or indirectly of, in the case of a corporation, more than 35 percent of the total combined voting power, in the case of a partnership, more than 35 percent of the profits interest, and, in the case of a trust, more than 35 percent of the beneficial interest.

#### **Approval Process**

With respect to any transaction or arrangement whereby the foundation provides an economic benefit to or for the use of a "disqualified person":

1. Such transaction or arrangement shall be approved by the Board of Directors of the Corporation or a committee thereof that:
  - (i) is composed entirely of individuals unrelated to and not subject to the control of the disqualified person involved in the transaction or arrangement;
  - (ii) relies upon appropriate data as to comparability;
  - (iii) adequately documents the basis for its determination; and
  - (iv) determines that the value of the economic benefit provided by the foundation does not exceed the consideration received by the foundation (or, in the case of compensation, that the total compensation to be paid to an individual is reasonable in amount).

## **Exhibit B - Self Dealing and Interlocking Directorates**

### **Self Dealing by Directors**

1. Section 5233 of the California Corporations Code defines Self Dealing as a transaction in which a Director has a material financial interest.

2. The California Corporations Code does not prohibit Self Dealing Transactions. It requires adherence to a specific process in order to approve any Self Dealing Transaction with the foundation. In general, that process requires that the Directors determine in good faith that the foundation is entering into the business transaction for its own benefit, that the transaction is fair and reasonable to the foundation, and that the foundation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.<sup>1</sup>

3. Pertinent exceptions to the mandatory process for approval of Director Self Dealing include:

- a. action fixing Board or Officer compensation;
- b. a charitable program approved in good faith and without unjustified favoritism if a Director or members of their family are within the intended class of charitable beneficiaries; and
- c. a transaction involving less than \$100,000 per year where the interested Director has no actual knowledge of the transaction.

### **Interlocking Directorates**

Section 5234 of the California Corporations Code permits transactions between corporations having common Directors and provides an approval process for such transactions, namely:

- a. all material facts as to the transaction and the foundation Director's other directorship are known to the Board; and
- b. the matter is approved in good faith by a vote sufficient without counting the vote of the common Director(s).

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<sup>1</sup> Note that this California law covers only Directors and not Staff Members or those associated with Directors or Staff.

## **Exhibit C - Implementation Procedures and Responsibilities**

### **Responsibilities for Implementation**

The following section outlines the responsibilities of different bodies within the Foundation in the disclosure process, and steps for tracking and monitoring potential conflict of interest situations. This process affirms the Foundation's commitment to integrity and fairness in the conduct of all its activities.

Board of Directors. Responsible for reviewing and ratifying the annual report of Director affiliations, as reviewed and presented by the Audit Committee and considering recommendations of the Governance Committee for amendments to the Conflict of Interest Policy.

Audit Committee. Responsible for monitoring the Foundation's conflict of interest program, including an annual review of the report of Director affiliations, prepared by staff from the Director disclosure statements, and presentation of the review to the full Board for ratification.

Governance Committee. Responsible for reviewing Conflict of Interest Policy and recommending amendments to the Board of Directors.

Individual Directors. Responsible for reporting (annually and as changes require) all relationships which may result in real or potential conflicts of interest with Foundation activities.

Staff. Responsible for managing the conflict of interest program, including collecting the annual Director disclosure statements and maintaining a documentation process for tracking Directors' relationships.

### **Disclosure of Affiliations**

At the beginning of each Director's term and annually thereafter, the Foundation will conduct a review of the relationships and affiliations of each Director. Disclosure forms are used to collect the information used for the review. Disclosure forms will document affiliations, business relationships, and other areas of potential conflicts of interest for the Foundation's Directors. All material facts concerning the existence and nature of the actual or potential conflict of interest and the relationship of any interested Director or Staff Member to the actual or potential conflict of interest shall be disclosed to the Chair of the Audit Committee and to counsel for the Foundation. Such facts shall be recorded in the minutes of the Board meeting considering the authorization or approval of the affected grant or business transaction, and where applicable in any proposal summary or recommendations presented to committees and/or the Board for decision. The disclosure process is as follows:

Initial and New Director Process. Each Director will complete the Foundation's conflict of interest disclosure form at the beginning of his or her term. The completed form will be forwarded to the Foundation's Treasurer. The Treasurer will prepare the information for presentation to the Audit Committee at its next meeting.



Annually. Each year, prior to the annual Board meeting, a disclosure form will be forwarded to each Director. The form is to be completed and returned to the Foundation's Treasurer before annual meeting. The Treasurer collects all forms and prepares a listing ("Report"), by Director, of all affiliations reported. The report is presented to the Audit Committee at the annual meeting. The Audit Committee reviews the report and presents the findings to the full Board of Directors for approval.

Interim Review. In addition to the new Director and annual disclosure process, the Foundation and Directors are responsible for disclosure and review of potential conflicts of interest at each Board or Committee meeting as these issues arise. Directors are responsible for reporting potential conflicts of interest on any individual Board or Committee agenda or grant docket item, prior to deliberation on the item.

**The University Foundation at Sacramento State**

**Board of Directors**

**Potential Conflict of Interest Disclosure Statement**

I have listed below all organizations and persons with which I or my family members have a relationship that could constitute an actual or potential conflict of interest with the interests of The University Foundation at Sacramento State (“the Foundation”).

For the purpose of filling out this questionnaire a "**Conflict of Interest**" exists if I or a Family Members have:

- a. a **relationship** of employee, officer, trustee, or director of an organization or person which is likely to seek or receive a grant from the Foundation or with which the Foundation proposes to enter into a financial, investment or business transaction; or
- b. a **material financial interest** in any existing or potential Foundation grant, or financial, investment or business transaction which is intended to be supported by a Foundation grant or potential grant, or financial, investment or business transaction to which the Foundation is a party.

**Family Members** include my spouse, ancestors, descendants, siblings and the spouses of descendants and siblings.

**This Disclosure Statement must be updated as soon as you become aware of any information which should be disclosed under The University Foundation at Sacramento State's Conflict of Interest Policy. (E.g., The University Foundation at Sacramento State enters into discussions on a transaction with an entity with which you are affiliated and which you have not previously listed.)**

Organization or Person	Relationship or Material Financial Interest

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name