

## SAMPLE CONFLICT OF INTEREST POLICIES AS OF JANUARY 16, 2011

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### NOTE ON THE SCOPE OF THIS MATERIAL

This material is designed to provide general guidance about an aspect of nonprofit corporate governance in the specific and limited context of the governance questions contained in the new IRS Form 990 (published by the IRS in 2008 and applicable to 990 filers based on a 2009-2011 filing year phase-in period depending on the size of the nonprofit). It is intended to provide some general guidance on the establishment of processes and/or policies to address a specific governance question in the Form. The subject matter of that question implicates a broad array of legal and practical issues ranging far beyond the immediate subject matter of the question itself. This material may address some of those issues but does NOT attempt to review them comprehensively and is NOT intended to be relied on for guidance on how they should be addressed in any specific situation.

Whether or not a nonprofit organization adopts a specific governance process or policy (or modifies an existing one), either in response to the disclosure requirements of the new IRS Form 990 or to change its governance practices for other reasons is a matter to be carefully considered by that organization, with input from its board and advisors and evaluation of its specific circumstances. The IRS has explicitly stated that adoption of the policies and practices about which the new Form 990 asks is not mandatory, although the IRS has also indicated that it attaches significance to the manner in which all tax-exempt nonprofit organizations govern themselves. This sample policy is not intended to suggest that the policy is appropriate for every nonprofit organization nor that, if a policy on that topic is determined to be appropriate, the formulation in the sample necessarily fits the needs of an individual nonprofit organization. A customized approach, with outside professional advice, is recommended. Accordingly, this material is intended as general information for legal practitioners advising nonprofit organizations as to their governance and does not constitute legal advice for any particular nonprofit organization. For more information, see the related Form 990 Policy Series Memorandum at: <http://www.publiccounsel.org/tools/assets/files/CoIMemo.pdf>.

Although the subject matter of this material may have relevance to nonprofit organizations that are not required to file informational tax returns with the IRS or are permitted to file on an IRS form other than Form 990, the focus of this material is 990 filers. While this material is meant to apply to Form 990 filers who are exempt under Section 501(c) of the Internal Revenue Code, certain portions of this material may be applicable only to Section 501(c)(3) organizations. In addition, although this material may be of assistance with respect to nonprofit organizations that are not subject to oversight under California law, there may be portions of this material that are relevant only to nonprofits organized under, or (by reason of their California-related activities) otherwise subject to, California law.

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*Sample Policy A: California Public Benefit or Religious Corporations; Narrow Range of Covered Persons; Broad Range of Covered Interests; Annual Disclosure of Potential Conflicts of Interest.* The following policy includes a conflict of interest policy intended for a California nonprofit public benefit or religious corporation exempt from federal income tax under Code Section 501(c)(3), an annual acknowledgment form, and an annual disclosure of interests that could give rise to a conflict of interest. The policy reflects the following choices:

1. Narrow Range of Covered Persons. The policy is **narrow** in terms of covered persons; it applies to officers, directors, and key employees ONLY. It does not cover all insiders that are disqualified persons under Code Section 4958, and it does cover key

employees using the definition from the Form 990 Instructions (which is not part of Code Section 4958). This range of coverage may be appropriate for an organization that wishes to have in place a conflict of policy that meets the minimum requirements necessary to answer “Yes” to Lines 12a-c of Part VI.B, or an organization that wishes to have a separate conflict of interest policy that meets allows it to answer “Yes” to these questions, and separate policies that set forth the policy and procedure for dealing with the conflicts of interests of other persons.

2. Broad Range of Covered Interests. The policy is broad in scope; it applies broadly to all interests potentially affecting a person’s judgment, not just financial and not just those regulated by federal tax law or state corporate law. Some organizations will prefer a narrower scope, focusing only on interests and transactions that are regulated by law.

3. Covered Transactions and Relationships. While the policy is designed to pick up many transactions and relationships to be disclosed on Form 990, it may not reach all of them. An organization may need a more detailed disclosure form to collect all the information requested on other parts of current or future versions of Form 990.

4. Disclosure of Family Relationships. The form limits disclosure of family members to those presenting a specific potential conflict. Please be aware that the IRS *may* want names of all listed relatives. Be aware that, pending clarification by the IRS, not listing all relatives may not be sufficient disclosure to answer “Yes” to Part VI.B, Line12c.

5. Prior Transactions Not Addressed. This policy does not address the approval process for past transactions that have already occurred or commenced.

6. Statutory Compliance Not Guaranteed. Compliance with this sample policy *does not guarantee compliance* with Code Section 4958 or other applicable rules of law, including California state corporate law.

7. The Board of Directors as Arbiter of Conflicts. This sample policy assumes that the Board of Directors will be the arbiter of conflicts, and not a committee of the Board or, in the case of religious corporations, the members.

*(Sample Policy A continued on next page)*

[NAME OF ORGANIZATION]

CONFLICT OF INTEREST POLICY<sup>1</sup>

Article I: Purpose

This conflict of interest policy is designed to foster public confidence in the integrity of [Name of Organization] (the “Organization”) and to protect the Organization’s interest when it is contemplating entering a transaction (defined below) that might benefit the private interest of a director, a corporate officer, the top management or top financial official, or a key employee (defined below). [Note to Organization: Compliance with this Sample Policy A will not insure compliance with Code Section 4958 or CCC Section 5233 or 9243. Although the range of interests covered by this policy may be broader than those covered by law, the range of covered persons is more narrow. Additional procedures may apply to transactions covered by Code Section 4958 or CCC Section 5233 or 9243.]

Article II: Definitions

The following are considered *insiders* for the purposes of this policy:

1. Each member of the Board of Directors or other governing body.
2. The president, chief executive officer, chief operating officer, treasurer and chief financial officer, executive director, or any person with the responsibilities of any of these positions (whether or not the person is an officer of the Organization under the Organization’s Bylaws and the California Corporations Code).
3. Any *key employee*, meaning an employee whose total annual compensation (including benefits) from the organization and its affiliates is more than \$150,000 **and** who (a) has responsibilities or influence over the organization similar to that of officers, directors, or trustees; **or** (b) manages a program that represents 10% or more of the activities, assets, income, or expenses of the organization; **or** (c) has or shares authority to control 10% or more of the organization’s capital expenditures, operating budget, or compensation for employees.

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<sup>1</sup> Note that this Conflict of Interest Policy does not assume the existence of a separate Compensation Policy. Compensation paid to insiders, including for their service as directors, officers, and key employees, should be evaluated under this Policy in its current form. If an organization has a separate Compensation Policy that addresses such compensation decisions, this sample policy may be modified accordingly.

*Interest* means any commitment, investment, relationship, obligation, or involvement, financial or otherwise, direct or indirect, that may influence a person's judgment, including receipt of compensation from the Organization, a sale, loan, or exchange transaction with the Organization.

A *conflict of interest* is present when, in the judgment of the Board of Directors, an insider's stake in the transaction is such that it reduces the likelihood that an insider's influence can be exercised impartially in the best interests of the Organization.

*Transaction* means any transaction, agreement, or arrangement between an insider and the Organization, or between the Organization and any third party where an insider has an interest in the transaction or any party to it. **[Note to Organization: If the Organization has a separate Compensation Policy that addresses the receipt of compensation by an insider in his or her capacity as an insider (e.g., compensation paid to the President for her services to the Organization as its President), please include the following sentence: "*Transaction* does not include compensation arrangements between the Organization and a director, officer, or other insider that are wholly addressed under the Organization's Compensation Policy."]**

### **Article III: Procedures**

#### *1. Duty to Disclose*

Each insider shall disclose to the Board all material facts regarding his or her interest in the transaction, promptly upon learning of the proposed transaction.

#### *2. Determining Whether a Conflict of Interest Exists*

With regard to an insider, the Board shall determine if a conflict of interest exists. The insider(s) and any other interested person(s) involved with the transaction shall not be present during the Board's discussion or determination of whether a conflict of interest exists, except as provided in Article IV below.

#### *3. Procedures for Addressing a Conflict of Interest*

The Board shall follow the procedures set forth in Article IV in order to decide what measures are needed to protect the Organization's interests in light of the nature and seriousness of the conflict, to decide whether to enter into the transaction and, if so, to ensure that the terms of the transaction are appropriate.

#### **Article IV: Review by the Board**

The Board may ask questions of and receive presentation(s) from the insider(s) and any other interested person(s), but shall deliberate and vote on the transaction in their absence. The Board shall ascertain that all material facts regarding the transaction and the insider's conflict of interest have been disclosed to the Board and shall compile appropriate data, such as comparability studies, to determine fair market value for the transaction.

After exercising due diligence, which may include investigating alternatives that present no conflict, the Board shall determine whether the transaction is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable to the Organization; the majority of disinterested members of the Board then in office may approve the transaction.

#### **Article V: Records of Proceedings**

The minutes of any meeting of the Board pursuant to this policy shall contain the name of each insider who disclosed or was otherwise determined to have an interest in a transaction; the nature of the interest and whether it was determined to constitute a conflict of interest; any alternative transactions considered; the members of the Board who were present during the deliberations on the transaction, those who voted on it, and to what extent interested persons were excluded from the deliberations; any comparability data or other information obtained and relied upon by the Board and how the information was obtained; and the result of the vote, including, if applicable, the terms of the transaction that was approved and the date it was approved.

#### **Article VI: Annual Disclosure and Compliance Statements**

Each director, each corporate officer, the top management official, the top financial official, and each key employee of the Organization, shall annually sign a statement on the form attached, that:

- affirms that the person has received a copy of this conflict of interest policy, has read and understood the policy, and has agreed to comply with the policy; and
- discloses the person's financial interests and family relationships that could give rise to conflicts of interest.

#### **Article VII: Violations**

If the Board has reasonable cause to believe that an insider of the Organization has failed to disclose actual or possible conflicts of interest, including those arising from a transaction with a related interested person, it shall

inform such insider of the basis for this belief and afford the insider an opportunity to explain the alleged failure to disclose. If, after hearing the insider's response and making further investigation as warranted by the circumstances, the Board determines that the insider has failed to disclose an actual or possible conflict of interest, the Board shall take appropriate disciplinary and corrective action.

### **Article VIII: Annual Reviews**

To ensure that the Organization operates in a manner consistent with its status as an organization exempt from federal income tax, the Board shall authorize and oversee an annual review of the administration of this conflict of interest policy. The review may be written or oral. The review shall consider the level of compliance with the policy, the continuing suitability of the policy, and whether the policy should be modified and improved.

*(Sample Policy A continued on next page)*

**[NAME OF ORGANIZATION]**

**CONFLICT OF INTEREST POLICY:  
ACKNOWLEDGMENT AND FINANCIAL INTEREST DISCLOSURE  
STATEMENT**

[Name of Organization] (the “Organization”) follows a conflict of interest policy designed to foster public confidence in our integrity and to protect our interest when we are contemplating entering a transaction or arrangement that might benefit the private interest of a director, a corporate officer, our top management official and top financial official, or any of our key employees.

**Part I. Acknowledgment of Receipt**

I hereby acknowledge that I have received a copy of the conflict of interest policy of [Name], have read and understood it, and agree to comply with its terms.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

*(Sample Policy A continued on next page)*

**Part II. Disclosure of Financial Interests**

We are required annually to file Form 990 with the Internal Revenue Service, and the form we file is available to the public. To complete Form 990 fully and accurately, we need each officer, director and key employee to disclose the information requested in this Part II.

A “conflict of interest,” for purposes of Form 990, arises when a person in a position of authority over an organization, such as an officer, director, or key employee, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.

**Part II** Please check ONE of the following boxes:

My interests and relationships have not changed since my last disclosure of interests. [Proceed to signature block below. Do not complete the tables.]

**OR**

I hereby disclose or update my interests and relationships that could give rise to a conflict of interest: [Complete the table below. Use additional pages as needed.]

Family Relationships	Names of those presenting a potential conflict of interest
Include spouse/domestic partner, living ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great grand-children, and spouses/ domestic partners of brothers, sisters, children, grandchildren, and great grandchildren	

Type of interest	Description of interest that could lead to a conflict of interest
Transactions or arrangements with the Organization	
Transactions or affiliations with other nonprofit organizations	
Substantial business or investment holdings	
Transactions or affiliations with businesses not listed above	

I am not aware of any financial interest involving me or a family member that could present a conflict of interest that I have not disclosed either above or in a previous disclosure statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name



B. *Sample Policy B: California Mutual Benefit Corporations; Narrow Range of Covered Persons; Narrow Range of Covered Interests; Annual Disclosure of Potential Conflicts of Interest.* The following policy includes a conflict of interest policy intended for a California nonprofit mutual benefit corporation exempt under Code Section 501(c)(5), (6), or (7), an annual acknowledgment form, and an annual disclosure of interests that could give rise to a conflict of interest. The policy reflects the following choices:

1. Narrow Range of Covered Persons. Like Sample Policy A, Sample Policy B is **narrow** in terms of covered persons; it applies to officers, directors, and key employees **ONLY**. Because Code Section 4958 does not apply to Code Section 501(c)(5), (6), or (7) organizations, no attempt is made to address persons who would be “disqualified persons” under Code Section 4958. Sample Policy B covers key employees using the definition from the Form 990 Instructions. This range of coverage may be appropriate for an organization that wishes to have in place a conflict of interest policy that meets the minimum requirements necessary to answer “Yes” to Lines 12a-c of Part VI.B, or an organization that wishes to have a separate conflict of interest policy that allows it to answer “Yes” to these questions, and separate policies that set forth the policy and procedure for dealing with the conflicts of interests of other persons (such as employees who are not key employees).

2. Narrow Range of Covered Interests. The policy is narrow in scope; it applies to material financial interests potentially affecting a person’s judgment. Compliance with this Sample Policy B will not insure compliance with CCC Section 7233. The interests covered by this policy are potentially more narrow. Some organizations may prefer a broader scope, focusing on all of the interests and transactions that are regulated by law.

3. Covered Transactions and Relationships. While the policy is designed to pick up many transactions and relationships to be disclosed on Form 990, it may not reach all of them. An organization may need a more detailed disclosure form to collect all the information requested on other parts of current or future versions of Form 990.

4. Disclosure of Family Relationships. The form limits disclosure of family members to those presenting a specific potential conflict. Please be aware that the IRS *may* want names of all listed relatives. Be aware that, pending clarification by the IRS, not listing all relatives may not be sufficient disclosure to answer “Yes” to Part VI.B, Line 12c.

5. Statutory Compliance Not Guaranteed. Compliance with this sample policy ***does not guarantee compliance*** with all rules of law.

6. The Board of Directors as Arbiter of Conflicts. This sample policy assumes that the Board of Directors will be the arbiter of conflicts, and not a committee of the Board.

*(Sample Policy B continued on next page)*

## [NAME OF ORGANIZATION]

### CONFLICT OF INTEREST POLICY<sup>2</sup>

#### Article I: Purpose

This conflict of interest policy is designed to foster public confidence in the integrity of **[Name of Organization]** (the “Organization”) and to protect the Organization’s interest when it is contemplating entering a transaction (defined below) that might benefit the private interest of a director, a corporate officer, the top management or top financial official, a key employee (defined below). [Note to Organization: Compliance with this Sample Policy B will not insure compliance with CCC Section 7233. The interests covered by this policy are potentially more narrow.]

#### Article II: Definitions

The following are considered *insiders* for the purposes of this policy:

1. Each member of the Board of Directors or other governing body.
2. The president, chief executive officer, chief operating officer, treasurer and chief financial officer, executive director, or any person with the responsibilities of any of these positions (whether or not the person is an officer of the Organization under the Organization’s Bylaws and the California Corporations Code).
3. Any *key employee*, meaning an employee whose total annual compensation (including benefits) from the organization and its affiliates is more than \$150,000 **and** who (a) has responsibilities or influence over the organization similar to that of officers, directors, or trustees; **or** (b) manages a program that represents 10% or more of the activities, assets, income, or expenses of the organization; **or** (c) has or shares authority to control 10% or more of the organization’s capital expenditures, operating budget, or compensation for employees.

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<sup>2</sup> Note that this Conflict of Interest Policy does not assume the existence of a separate Compensation Policy. Compensation paid to insiders, including for their service as directors, officers, and key employees, should be evaluated under this Policy in its current form. If an organization has a separate Compensation Policy that addresses such compensation decisions, this sample policy may be modified accordingly.

*Interest* means any material financial interest, whether through commitment, investment, relationship, obligation, involvement or otherwise, direct or indirect, that may influence a person's judgment, including receipt of compensation from the Organization, a sale, loan, or exchange transaction with the Organization.

A *conflict of interest* is present when, in the judgment of the body or individual determining whether a conflict exists, an insider or person related to the insider by family or business relationship ("interested person") has a material financial interest in the transaction such that it reduces the likelihood that an insider's influence can be exercised impartially in the best interests of the Organization.

*Transaction* means any transaction, agreement, or arrangement between an interested person and the Organization, or between the Organization and any third party where an interested person has a material financial interest in the transaction or any party to it. [Note to Organization: If the Organization has a separate Compensation Policy that addresses the receipt of compensation by an insider in his or her capacity as an insider (e.g., compensation paid to the President for her services to the Organization as its President), please include the following sentence: "*Transaction* does not include compensation arrangements between the Organization and a director, officer, or other insider that are wholly addressed under the Organization's Compensation Policy."]

### **Article III: Procedures**

#### *1. Duty to Disclose*

Each interested person shall disclose to the Board all material facts regarding his, her, or its interest (including relevant affiliations) in the transaction. The interested person shall make that disclosure promptly upon learning of the proposed transaction.

#### *2. Determining Whether a Conflict of Interest Exists*

With regard to an interested person, the Board shall determine if a conflict of interest exists.

#### *3. Procedures for Addressing a Conflict of Interest*

The Board shall follow the procedures set forth in Article IV in order to decide what measures are needed to protect the Organization's interests in light of the nature and seriousness of the conflict, to decide whether to enter into the transaction and, if so, to ensure that the terms of the transaction are appropriate. In the case of an insider who is a director, the director shall not vote

on any transaction in which the director has an interest, and the remaining Board members shall decide the matter.

#### **Article IV: Review by the Board**

The Board may ask questions of and receive presentation(s) from the insider(s) and any other interested person(s), and may deliberate and vote on the transaction in their presence. The Board shall ascertain that all material facts regarding the transaction and the interested person's conflict of interest have been disclosed to the Board and shall compile appropriate data to ascertain whether the proposed transaction is just and reasonable to the Organization.

After exercising due diligence, which may include investigating alternatives that present no conflict, the Board shall determine whether the transaction is in the Organization's best interest, for its own benefit, and whether it is just and reasonable to the Organization; the transaction can be approved by the Board by majority vote of those present at a meeting for which quorum requirements have been met, without counting the vote of any interested directors. Interested or common directors may be counted in determining the presence of a quorum at such meeting.

#### **Article V: Records of Proceedings**

The minutes of any meeting of the Board pursuant to this policy shall contain the name of each interested person who disclosed or was otherwise determined to have an interest in a transaction; the nature of the interest and whether it was determined to constitute a conflict of interest; any alternative transactions considered; the members of the Board who were present during the debate on the transaction, those who voted on it, and to what extent interested persons were excluded from the deliberations; any comparability data or other information obtained and relied upon by the Board and how the information was obtained; and the result of the vote, including, if applicable, the terms of the transaction that was approved and the date it was approved.

#### **Article VI: Annual Disclosure and Compliance Statements**

Each director, each corporate officer, the top management official, the top financial official, and each key employee of the Organization, shall annually sign a statement on the form attached, that:

- affirms that the person has received a copy of this conflict of interest policy, has read and understood the policy, and has agreed to comply with the policy; and
- discloses the person's financial interests and family relationships that could give rise to conflicts of interest.

### **Article VII: Violations**

If the Board has reasonable cause to believe that an insider of the Organization has failed to disclose actual or possible conflicts of interest, including those arising from a transaction with a related interested person, it shall inform such insider of the basis for this belief and afford the insider an opportunity to explain the alleged failure to disclose. If, after hearing the insider's response and making further investigation as warranted by the circumstances, the Board determines that the insider has failed to disclose an actual or possible conflict of interest, the Board shall take appropriate disciplinary and corrective action.

### **Article VIII: Annual Reviews**

To ensure that the Organization operates in a manner consistent with its status as an organization exempt from federal income tax, the Board shall authorize and oversee an annual review of the administration of this conflict of interest policy. The review may be written or oral. The review shall consider the level of compliance with the policy, the continuing suitability of the policy, and whether the policy should be modified and improved.

*(Sample Policy B continued on next page)*

[NAME OF ORGANIZATION]

**CONFLICT OF INTEREST POLICY:  
ACKNOWLEDGMENT AND FINANCIAL INTEREST DISCLOSURE  
STATEMENT**

Our organization follows a conflict of interest policy designed to foster public confidence in our integrity and to protect our interest when we are contemplating entering a transaction or arrangement that might benefit the private interest of a director, a corporate officer, our top management official and top financial official, any of our key employees, or other interested persons.

**Part I. Acknowledgment of Receipt**

I hereby acknowledge that I have received a copy of the conflict of interest policy of **[NAME OF ORGANIZATION]**, have read and understood it, and agree to comply with its terms.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

*(Sample Policy B continued on next page)*

**Part II. Disclosure of Financial Interests**

We are required annually to file Form 990 with the Internal Revenue Service, and the form we file is available to the public. To complete Form 990 fully and accurately, we need each officer, director and key employee to disclose the information requested in this Part II.

A “conflict of interest,” for purposes of Form 990, arises when a person in a position of authority over an organization, such as an officer, director, or key employee, may benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to family members or businesses with which the person is closely associated.

**Part II** Please check ONE of the following boxes:

- My interests and relationships have not changed since my last disclosure of interests. [Proceed to signature block below. Do not complete the tables.]

**OR**

- I hereby disclose or update my interests and relationships that could give rise to a conflict of interest: [Complete the table below. Use additional pages as needed.]

Family Relationships	Names of those presenting a potential conflict of interest
Include spouse/domestic partner, living ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great grand-children, and spouses/ domestic partners of brothers, sisters, children, grandchildren, and great grandchildren	

Type of interest	Description of interest that could lead to a conflict of interest
Transactions or arrangements with the Organization	
Transactions or affiliations with other nonprofit organizations	
Substantial business or investment holdings	
Transactions or affiliations with businesses not listed above	

I am not aware of any financial interest involving me or a family member that could present a conflict of interest that I have not disclosed either above or in a previous disclosure statement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

C. *Sample Policy C: Code Section 501(c)(3) Organizations; Form 1023, Appendix A: Sample Conflict of Interest Policy.* The sample conflict of interest policy contained in Appendix A to the Instructions to the Form 1023 is flawed for many reasons, but because it was drafted by the Service and is included in the Form 1023 as a model policy, organizations should at least be familiar with its contents. The Instructions to Form 1023 were last updated in June 2006, prior to the revision of the new Form 990, so it is not clear that the Service considers the Appendix A policy to be sufficiently comprehensive to permit an organization to answer “Yes” to Lines 12a-c, for the reasons identified below. Note that Form 1023 and its sample Conflict of Interest Policy are only relevant to Code Section 501(c)(3) organizations.

1. No Annual Disclosure of Potential Conflicts of Interest. Line 12b of Part VI.B of the Form 990 asks if the organization requires “directors, officers, trustees, and key employees” to disclose annually any interests that good give rise to potential conflicts, including indirect conflicts created through family and business relationships. The Form 1023 sample Conflict of Interest Policy requires only that the directors, principal officers, and members of board committees annual acknowledge that they have read the organization’s Conflict of Interest Policy and agreed to comply with it.

2. No Coverage of Key Employees. The Form 990 extends disclosure obligations to Key Employees, a concept that did not exist in the Form 990 when the sample policy in the Form 1023 was drafted. Therefore, in addition to not requiring annual disclosure of potential conflicts, the Form 1023 sample would not permit an organization to answer “Yes” to Line 12b of Part VI.B of the Form 990 because Line 12b asks about requirements for Key Employees.

3. Narrow Range of Covered Interests. The policy is narrow in scope, applying only to financial interests. Other types of interests that could give rise to conflicts are not covered.

4. Federal and State Statutory Compliance Not Guaranteed. Compliance with the Form 1023 sample policy *does not guarantee compliance* with Code Section 4958, Code Section 4941, or other applicable rules of law, including California state corporate law.

5. Disclosure of Family Relationships. The form does not require prior disclosure of business, investment, or family relationships, although it does treat as “financial interests” any interest created “directly or indirectly” through “business, investment, or family.”

6. Prior Transactions Not Addressed. This policy does not address the approval process for past transactions that have already occurred or commenced.

*(Sample Policy C continued on next page)*



**Note:** Items marked *Hospital insert – for hospitals that complete Schedule C* are intended to be adopted by hospitals.

## **Article I Purpose**

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Organization) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

## **Article II Definitions**

### **1. Interested Person**

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

### ***[Hospital Insert – for hospitals that complete Schedule C***

If a person is an interested person with respect to any entity in the health care system of which the organization is a part, he or she is an interested person with respect to all entities in the health care system.]

### **2. Financial Interest**

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

- a.** An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b.** A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c.** A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest

only if the appropriate governing board or committee decides that a conflict of interest exists.

### **Article III Procedures**

#### **1. Duty to Disclose**

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

#### **2. 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, he/she shall leave the governing 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.

#### **3. Procedures for Addressing the Conflict of Interest**

- a.** An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b.** The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c.** After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d.** If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

#### **4. Violations of the Conflicts of Interest Policy**

**a.** If the governing board or committee has reasonable cause to believe 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.

**b.** If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### **Article IV Records of Proceedings**

The minutes of the governing board and all committees with board delegated powers shall contain:

**a.** 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 governing board's or committee's decision as to whether a conflict of interest in fact existed.

**b.** 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 with the proceedings.

#### **Article V Compensation**

**a.** A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.

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

**c.** No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### ***[Hospital Insert – for hospitals that complete Schedule C***

**d.** Physicians who receive compensation from the Organization, whether directly or indirectly or as employees or independent contractors, are precluded from membership on any committee whose jurisdiction includes

compensation matters. No physician, either individually or collectively, is prohibited from providing information to any committee regarding physician compensation.]

## **Article VI Annual Statements**

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a.** Has received a copy of the conflicts of interest policy,
- b.** Has read and understands the policy,
- c.** Has agreed to comply with the policy, and
- d.** Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **Article VII Periodic Reviews**

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a.** Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b.** Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

## **Article VIII Use of Outside Experts**

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.