

Ithacare Center Service Company, Inc.

*Board of Directors
Independence and Conflict of Interest Policy*

Purpose

The purpose of this policy is to protect Ithacare's interests when contemplating 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 meet applicable State and Federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

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.
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 of arrangement, or
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with whom the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors.

A financial interest is not necessarily a conflict of interest. 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.

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: 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.
 - a. 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.
 - b. 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.
 - c. 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.

Records of Proceedings

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

1. 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.

2. 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.

Compensation

1. 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.
2. 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.
3. 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.

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, annual reviews shall be conducted. The annual reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
2. 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.

Use of Outside Experts

When conducting the periodic reviews as provided for above, 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.

Disclosure (Statement) of Financial Interest(s)
*(To be completed and signed annually by each member of the
Ithacare Center Service Company, Inc. board of directors)*

Interested Persons are requested to use this form to disclose the existence of actual or possible conflict(s) of interest. This information will be considered by the board of directors to determine the existence of a “conflict of interest” under applicable Federal and State law(s).

As explained in, and defined by, this Policy, I am able to I may not be able to
carry out my responsibilities as a member of the Ithacare Center Service Company, Inc.
board of directors with independence and without “conflict(s) of interest”.


*Only if you've checked the second box (above), stating that “I may not be able to...”
please continue and complete the following section.*

The following information discloses and describes/explains the existence of actual or possible conflict(s) of interest”.

Name of member of BOD (print)

Signature of member of BOD




Date

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Preventing Conflicts Of Interest

By Catherine Oetgen and Sarah Siegel

Charities are facing heightened scrutiny today from both regulators and the general public in situations where their directors, officers, and other insiders derive (or appear to derive) personal benefits from the organization.

Although conflicts of interest have traditionally fallen within the purview of state regulators, conflicts are now even more important than ever with the Internal Revenue Service's (IRS) introduction of the revised Form 990.

The new Form 990, which emphasizes transparency, requires filers to complete a separate schedule devoted entirely to the public disclosure of transactions involving interested individuals.

Not every transaction involving a conflict is illegal or impermissible. But they can lead to significant legal compliance issues and can also pose serious reputation risks for charities in the eyes of the public if they are not properly addressed. In this environment, it is essential for charities to maintain safeguards to avoid even the appearance of impropriety.

The adoption of a comprehensive conflict of interest policy is critical to protect a charity and to prevent its directors from violating fiduciary obligations and self-dealing rules. Charities are encouraged to go beyond just the policy by implementing detailed conflict procedure guidelines to ensure legal compliance and to protect against potential damage to the organization's reputation.

Board members and management owe a fiduciary duty of loyalty to the charity they serve, which requires that directors and officers exercise their powers with undivided allegiance. The duty of loyalty prohibits directors and other insiders from engaging in impermissible self-dealing. At the same time, board members are often chosen because of their experience and ability to make valuable resources available on favorable terms.

The purpose of a conflict of interest policy is to protect the best interests of a charitable organization when it contemplates entering into a contract or other transaction that could benefit the private interest of an organization's officers, directors, key employees or certain other individuals (such as close family members or business interests).

Although a contract or transaction that involves a conflict of interest does not alone require that the organization avoid the arrangement altogether, it does require special attention by the board in deciding whether to authorize the arrangement. Conflict policies help ensure that when an actual or potential conflict arises, proper procedures are in place to address the situation. At a minimum, the policy should specify who is covered by the policy (commonly referred to as "interested persons"), how individuals should disclose to the organization potential or actual conflicts, and what the procedures are for considering and resolving conflicts.

There are several important elements that should be included in every effective conflict of interest policy. First and foremost, the policy should begin with a purpose clause that clearly states the policy is to protect the charity's best interests when it is contemplating entering into a transaction that could confer excess benefits on an interested person.

The policy should also establish the meaning of important terms. At least three definitions should always be included. The policy should clearly define the "interested persons" covered by the policy and when such persons have a "financial interest" that would give rise to a conflict of interest. The IRS's sample conflict policy considers "interested persons" to be directors, officers, or committee members who have a financial interest in transactions with the charity. However, many charities might prefer to expand the definition to include senior executives and staff.

Examples of situations where an insider has a "financial interest" include one in which an insider has a significant ownership interest in a company that provides goods or services to the charity or where an insider sits on the board of another organization that is the potential recipient of a grant from the charity.

"Compensation" should also be clearly defined to include direct and indirect remuneration as well as substantial gifts and favors. A gift or favor may be defined in such a way that it is only considered "substantial" if it is valued above a certain capped amount. This amount may vary depending on the activities of the charity.

The policy should establish procedures for the board to follow with respect to conflicts of interest. In general, the following steps should be required. First, the material facts relating to the potential conflict of interest should be disclosed to the board.

Next, although it might be permissible under state law for interested directors to be counted when determining the presence of a quorum at the board meeting which authorizes the transaction, it is advisable that the policy specify that interested directors will not be present at the time the board discusses and votes on whether to authorize the transaction.

Finally, the remaining disinterested board members should make the final determination of whether a conflict exists and whether to authorize the transaction. To do so, they should review all material information related to the transaction and investigate alternatives to the proposed

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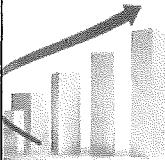
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transaction to determine if the organization can, using reasonable efforts, obtain a more advantageous transaction that will not lead to a conflict of interest. If an alternative is not possible or readily obtainable, disinterested members of the board may determine whether the transaction is in the organization's best interest and whether it is fair and reasonable.

In the event that there are no remaining disinterested directors to vote on the matter, the board could appoint a committee composed of independent outsiders to examine and vote to authorize the transaction on behalf of the board. Large boards in particular might also consider establishing a special committee to initially vet situations involving conflicts and to make threshold determinations before bringing the matter to the full board.

As with other important board decisions, any time a transaction involving an actual or potential conflict is addressed at a board or committee meeting, the minutes of that meeting should reflect who participated in the discussions, the basis for the board or committee's decision on the transaction, and the basis for determining whether the transaction was or was not in the organization's best interest.

Conflict disclosure questionnaires are a key element of good governance practices for charities when dealing with conflicts of interest. On an annual basis, a charity should distribute its conflict policy and require directors, officers, key employees, and committee members to complete a questionnaire in which all potential and actual conflicts are disclosed.

The questionnaire should prompt insiders to disclose various situations which could lead to conflicts, including any financial interests in or membership on the board of entities doing business or associated with the charity, any compensation received from the charity, any affiliation with an entity that might compete with the charity, and any relationships (whether by family or business) to any other officer, director, or key employee of the charity. The disclosure statement can be customized to address the specific needs and activities of a particular charity.

As a helpful way of reminding directors, officers, and other insiders of their special duties to the organization, the annual questionnaire should include a statement to be signed by the individuals affirming that they have read, understood, and agreed to comply with the organization's conflicts policy.

This statement should also affirm their understanding that the charity must engage primarily in activities that further its charitable purposes. The statement may also provide that each individual agrees to fulfill his or her fiduciary obligations to the charity, to protect confidential information, to notify the board of any conflicts involving his or her business interests (or those of his or her family members), and that they will recuse themselves from any board action when a conflict exists.

Some charities have begun to take the concepts contained in their conflict of interest policies and procedures a step further by developing separate comprehensive guidelines as a companion to the conflict policy to help their boards and staff members identify and resolve each conflict situation appropriately. The policy, procedures and guidelines work together to provide clear and consistent guidance to the organization's management and staff in addressing conflicts. Typically, conflict guidelines outline the disclosure, review and approval procedure for various types of conflicts that may arise.

For example, the guidelines might specify how a conflict involving a staff member should be disclosed, reviewed and ultimately resolved, which could differ substantially from the procedures applicable to disclosure by directors or related organizations.

Perhaps the most important tool in thorough conflict guidelines is a conflict of interest decision tree for various circumstances in which conflicts arise. This helpful resource allows the organization to consider different types of conflict scenarios ahead of time and determine what outcome is best for the organization. By answering a series of questions in a particular order, the board or the conflicts review committee is able to uniformly analyze the conflict situation and reach a recommended course of action, whether that is to authorize the transaction despite the conflict or avoid the arrangement all together.

Consequences of non-compliance involving conflicts of interest can be severe. State regulators can investigate the organization and its directors, officers, or other key management employees individually to seek various remedies, such as imposing financial sanctions, removing directors (and in extreme cases, replacing the entire board), or seeking criminal penalties for financial mismanagement, such as fraud or embezzlement.

In states that limit the personal liability of volunteer directors, this liability shield usually does not apply to conflict of interest transactions involving such directors. Furthermore, directors and officers insurance may not cover claims involving conflicts. In addition to compliance concerns on the state level, federal regulators also have a strong interest in ensuring that charities adhere to good governance with respect to conflicts of interest.

The IRS has developed extensive rules against private inurement and private benefit transactions and is empowered to impose harsh financial penalties against individuals and management and, in situations involving egregious violations, to revoke the charity's tax exempt status entirely.

Good governance and compliance flow from the top down, so the burden falls on every nonprofit board to stress the importance of disclosures and to make a regular practice of analyzing and deciding whether to authorize transactions involving conflicts. The best way to ensure that the organization is effectively handling conflicts of interest is to educate the board on this important area of governance and to adhere to a comprehensive conflict of interest policy and procedures supplemented by a carefully considered set of guidelines that is regularly reviewed by the board, officers and top management.

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