



# Conflict of Interest Policy for Council Directors, Officers, and Key Persons

*Amended March 22, 2018*

## **General Principles**

The Council on Foundations (“Council”) seeks to avoid any conflict of interest in its operations and, where possible, to avoid even the appearance of a conflict. The purpose of this policy (the “Policy”) is to protect the Council’s interests when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a Director, Officer, or Key Person of the Council. The Council will not enter into any such transaction or arrangement unless the Audit Committee of the Council’s Board of Directors determines in the manner described below that to do so would be fair, reasonable and in the best interests of the Council at the time of such determination.

In context, the Conflict of Interest Policy serves as a reminder and codification of Council Board Members’ Duties of Loyalty and Care, to the Council. Inherent within your agreement to serve as a Board Member there are two duties: Duty of Loyalty – to make decisions in the best interest of the corporation and not for personal economic benefit; and Duty of Care – to make decisions that are reasonably informed, in good faith and with rational judgement and thought processes.

This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to not-for-profit and charitable organizations.

**Membership Benefits:** As a membership organization, Directors, Officers, and Key Persons serve in their roles with the Council to collectively advance the Council and the philanthropic field. This policy is not intended to address those situations where Directors, Officers, and Key Persons may benefit from a decision simply because they are a member of the Council and/or the philanthropic field. Instead, this policy is designed to address situations where a Director, Officer, or Key Person has a specific or individualized interest, which may impact his/her decision making on behalf of the Council in a manner addressed by this Policy.

## **Definitions**

The following Definitions of terms apply to this Policy:

*Affiliate.* An affiliate of the Council is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Council.

*Board of Directors.* The body responsible for the management of the Council.

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*Director.* Any voting or non-voting member of the governing board of the Council, a corporation, or other organization, whether designated as a director, trustee, manager, governor, or by any other title.

*Financial Interest.* A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement, or other arrangement involving the Council, including direct or indirect remuneration as well as gifts or favors that are not insubstantial.

*Key Person.* A Key Person is an individual, other than an Officer or Director who is otherwise defined as a Related Party, who is, or has within the last five years, been in a position to exercise substantial influence over the affairs of the Council. This includes, but is not limited to:

- Voting members of the Board;
- Presidents, chief executive officers, chief operating officers or employee of any other title with similar responsibilities;
- Treasurers and chief financial officers or employee of any other title with similar responsibilities;
- A “highly compensated” employee, within the meaning of section 4958 of the Internal Revenue Code and guidance issued by the Internal Revenue Service, who is in a position to exercise substantial influence over the affairs of the Council; or
- Any other individual who: (i) has responsibilities, or exercise powers or influence over the Council as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the Council, or a segment of the Council that represents a substantial portion of the activities, assets, income or expenses of the Council; or (iii) alone or with others controls or determines a substantial portion of the Council’s capital expenditures or operating budget.

*Officer.* A person who has the authority to bind the Council as designated in the bylaws of the Council.

*Related Party.* Persons who may be considered a Related Party of the Council or an Affiliate of the Council under this Policy include:

- Directors, Officers, or Key Persons of the Council or an Affiliate of the Council;
- Relatives of Directors, Officers, or Key Persons;
- Any entity in which a Director, Officer, or Key Person of the Council or an Affiliate of the Council, or any entity in which a Relative of a Director, Officer, or Key Person of the Council or an Affiliate of the Council has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%;
- Founders of the Council;
- Substantial contributors to the Council (within the current fiscal year or the past five fiscal years);
- Persons owning a controlling interest (through votes or value) in the Council; or
- Any non-stock entity controlled by one or more Key Persons.

*Related Party Transaction.* Any transaction, agreement or any other arrangement with the Council or an Affiliate of the Council in which a Related Party has a Financial Interest, with the exception of any

transaction, agreement, or other arrangement: (1) where the transaction itself or the Related Party's financial interest in the transaction is *de minimus*; (2) that would not customarily be reviewed by the board or boards of similar organizations and is available to others on the same or similar terms, or (3) that constitutes a benefit provided to a Related Party only as a member of a class of the beneficiaries that the Council intends to benefit as part of its mission, as long as the benefit is available to similarly situated members of the same class on the same terms. Any Related Party transaction will be considered a conflict of interest for purposes of this Policy.

*Relative.* A Relative is a spouse, ancestor, child (whether natural or adopted), grandchild, great grandchild, sibling (whether whole or half blood), or spouse or domestic partner (as defined in section 2994-A of the New York Public Health Law) of a child (whether natural or adopted), grandchild, great grandchild or sibling (whether whole or half blood), or a domestic partner as defined in section 2994-A of the New York Public Health Law.

### **Individuals Covered by the Policy**

This policy applies to all Council Directors, Officers, and Key Persons. Council staff members are not included in this policy because they are governed by a separate conflict of interest policy that may be found in the Council on Foundations Employee Handbook.

### **Related Party Transactions and the Duty to Disclose**

A Related Party Transaction is not necessarily a prohibited transaction. Under this Policy, if the Council contemplates entering into a Related Party Transaction, the Audit Committee of the Board must determine if the transaction is fair, reasonable, and in the best interests of the Council at the time of such determination.<sup>1</sup>

If at any time during his or her term of service a Related Party either (i) acquires any Financial Interest or (ii) when any matter for decision or approval comes before the Board in which a Related Party has a Financial Interest, that Financial Interest or potential Related Party Transaction must be promptly disclosed in writing to the Chair of the Audit Committee, together with all material facts. The Audit Committee will then follow the procedures outlined below.

Recognizing that not all conflict of interest situations are clear-cut and easy to define, it is ultimately the responsibility of each individual to use sound judgment and avoid or determine the existence of and disclose any situation that creates or appears to create a conflict of interest. Board and committees with specific questions about the possible presence of a conflict of interest shall consult with the

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<sup>1</sup> The Board has delegated to the Audit Committee the adoption, implementation of and compliance with this Policy, provided as follows: (i) any Audit Committee member who is also an employee of the Council shall be prohibited from taking part in any Board or Audit Committee deliberations concerning the administration of this Policy; and (ii) if any Related Party Transaction is of a magnitude that would otherwise require full Board approval, the Audit Committee shall first review the transaction pursuant to this Policy and shall then submit the Related Party Transaction to the Board for consideration, along with its recommendation as to whether or not to approve the transaction under this Policy.

Council's Senior Counsel and Vice President of Legal Affairs. Alternatively, the individual may choose to treat the issue as a conflict of interest in accordance with this policy.

Failure to disclose to the Audit Committee a known Financial Interest or a known potential Related Party Transaction may be grounds for removal from the Board or a Committee, or termination from the Council's employment.

### **Disclosure and Voting**

*Disclosure.* Any Related Party shall disclose in good faith all material facts of his or her Financial Interest to the chair of the Audit Committee.

*Non-Participation and Review.* The Audit Committee must review all transactions, agreements or any other arrangements between the Council and a Related Party, and any other transactions that may involve a possible conflict of interest. All Related Parties with a Financial Interest must leave the room in which such deliberations are conducted. The Audit Committee of the Board will then determine whether the contemplated Related Party Transaction is fair, reasonable, and in the best interests of the Council at the time of such determination. The Council will not enter into any Related Party Transaction unless the Audit Committee determines it to be fair, reasonable and in the best interest of the Council at the time of such determination.

*Consideration of Alternate Transactions and Comparability Data.* If the contemplated Related Party Transaction pertains to compensation for services or the transfer of property or other economic benefit to a Related Party, the Audit Committee must determine that the value of the economic benefit provided by the Council to the Related Party does not exceed the value of the consideration received in exchange, by obtaining and reviewing appropriate comparable data prior to entering the transaction.

In those instances where the contemplated Related Party Transaction does not involve compensation, transfer of property or benefits to a Related Party, the Audit Committee must consider alternative transactions to the extent possible, prior to entering into such transaction.

*Comparability Data.* When considering the comparability of compensation, for example, the types of relevant Comparability Data that the Audit Committee may consider include, but are not limited to (1) compensation levels paid by similarly situated organizations, both exempt and non-exempt; (2) the availability of similar services within the same geographic area; (3) current compensation surveys compiled by independent firms; and (4) written offers from similar institutions competing for the same person's services. When the transaction involves the transfer of real property as consideration, the relevant factors include, but are not limited to (i) current independent appraisals of the property, and (ii) offers received in a competitive bidding process.

*Voting.* The Audit Committee shall, after considering alternate transactions and/or comparability data, determine in good faith by vote of all members of the Audit Committee (with the exception of any member(s) of the Audit Committee who is a Related Party) whether the transaction or arrangement is fair, reasonable, and in the best interest of the Council at the time of such decision. The transaction shall be approved by not less than a majority vote of the Audit Committee members present at the meeting.

In conformity with the above criteria, the Audit Committee will make its decision as to whether the Council will enter into the transaction or arrangement and must document the meeting contemporaneously under the Initial and Annual Written Disclosures provisions of this Policy.

No Related Party with a Financial Interest may be present for deliberations and voting on the transaction or arrangement in which he or she has a Financial Interest. However, Related Parties are not prohibited from providing information regarding the transaction to the Audit Committee prior to the Audit Committee's deliberations. No Director or Officer shall vote, act, or attempt to influence improperly the deliberations on any matter in which he or she has been determined by the Audit Committee to have a Financial Interest. Any attempt to vote, act, or improperly influence deliberations by a Related Party on any matter with which such person has a Financial Interest may be grounds for removal from the Board or a Committee, or termination from the Council's employment.

*Compensation.* A voting member of the Board of Directors or an Officer who receives compensation directly or indirectly from the Council for services or a Director serving as a voting member of any Committee whose jurisdiction includes compensation matters is precluded from voting or acting on matters pertaining to that Director's or Officer's compensation.

Any voting member of the Board or any Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Council, either individually or collectively, is prohibited from providing information to any Committee regarding compensation.

### **Records of Proceedings**

The minutes of all meetings of the Board, the Audit Committee, and all other Committee meetings at which a Related Party Transaction is considered shall contain:

- The names of the persons who disclosed or otherwise were determined to have a potential or actual Financial Interest and/or conflict of interest, the nature of the potential or actual Financial Interest and/or conflict of interest, any action taken to determine whether a Financial Interest or conflict of interest exists, and the Audit Committee's decision as to whether a Financial Interest and/or conflict of interest exists.
- The names of the persons who were present for discussions and votes relating to any determinations under this Policy, including whether the Related Party or Related Parties left the room during any such discussions, the content of such discussions, including discussion of alternative transactions, and whether or not the transaction with the Related Party was approved by the Audit Committee.
- The minutes shall be documented contemporaneously to the decision and discussion regarding the Financial Interest or conflict of interest.

### **Initial and Annual Written Disclosures**

Prior to a Director's initial election to the Board, or an Officer or Key Person's employment at the Council, and thereafter on an annual basis, all Directors, Officers, and Key Persons shall disclose in writing to the Secretary of the Council:

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- (i) Any entity of which such person or a Relative of such person is an officer, director, trustee, member, owner, or employee and with which the Council has a relationship;
- (ii) Any Financial Interest such person may have in any corporation, organization, partnership or other entity that provides professional or other goods or services to the Council for a fee or other compensation; and
- (iii) Any position or other material relationship such Director, Officer, Key Person, or Relative of such person, may have with any not-for-profit corporation with which the Council has a business relationship.

A copy of each disclosure statement shall be kept in Council's files and made available to any Director, Officer, or Key Person upon request.

If an individual has reasonable cause to believe that others have failed to disclose a Financial Interest or potential conflict of interest, he/she shall inform the chair of the Audit Committee and the Council's Senior Counsel and Vice President of Legal Affairs. The Audit Committee chair shall discuss the issue with the Council's Senior Counsel and Vice President of Legal Affairs to assist in determining the appropriate steps to protect the Council.

**Annual Certificate**

Each Director, Officer, and Key Person shall annually sign and submit to the Secretary of the Council a statement affirming that such person: (a) has received a copy of this Policy, (b) has read and understands the Policy, and (c) has agreed to comply with the Policy.

**Certificate**

The undersigned hereby certifies that he or she has received a copy of the Council's Conflict of Interest Policy for Council Directors, Officer, and Key Persons, has read and understood it, and agrees to comply with it.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

**Council on Foundations Statement of Disclosure**

The Council on Foundations seeks to avoid any conflict of interest in its operations and, where possible, to avoid even the appearance of a conflict. By signing this Statement of Disclosure, I agree that I will not participate in any Council board or committee decision in which I am or any Relative of mine is a Related Party or in which I have or any Relative of mine has a Financial Interest.

I understand and agree that prior to my initial election to the Board or my employment at the Council as an Officer or Key Person, and thereafter on an annual basis, I must make the following disclosures to the Secretary of the Council:

**Entity Relationships**

I am not aware of any entity of which I, or any Relative of mine, is an officer, director, trustee, member, owner, or employee, with which the Council has a relationship.

**OR**

I have described in the space below or in an attached letter every entity of which I, or any Relative of mine, is an officer, director, trustee, member, owner, or employee, with which the Council has a relationship.

**Financial Interests**

I am not aware of any Financial Interest that I, or any Relative of mine, may have in any corporation, organization, partnership or other entity that provides professional or other goods or services to the Council for a fee or other compensation.

**OR**

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I have described in the space below or in an attached letter every Financial Interest that I, or any Relative of mine, may have in any corporation, organization, partnership or other entity that provides professional or other goods or services to the Council for a fee or other compensation.

**Non-Profit Relationships**

I am not aware of any position or other material relationship that I, or any Relative of mine, may have with any not-for-profit corporation with which the Council has a business relationship.

**OR**

I have described in the space below or in an attached letter every position or other material relationship that I, or any Relative of mine, may have with any not-for-profit corporation with which the Council has a business relationship.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print name: \_\_\_\_\_