

Trustee/Officer Conflict of Interest/Duality of Interest Policy

Introduction

The Kresge Foundation (the “Foundation”) strives to maintain the highest ethical standards in all policies, procedures, and programs and to avoid any conflicts of interest. The Foundation's grant decisions and vendor contracts will be entered into without bias or favoritism on the part of any of its Trustees or Officers. We uphold a duty of loyalty to the Foundation, act in good faith and in a manner we believe to be in furtherance of the purposes of the Foundation, maintain the confidentiality of information required in the performance of our duties and do not use our position or knowledge acquired in carrying out our duties for personal gain or as a representative of other interests, public or private.

(Revised Dec. 11, 2019)

Purpose

The purpose of this policy is to protect the interests of the Foundation, comply with IRS self-dealing regulations (*see attachment A*), and provide Trustees, Officers and Committee members with guidelines for handling perceived, potential, or actual conflicts of interest or duality of interest.

A conflict of interest may occur if an outside interest or activity influences or appears to influence the ability of an individual to exercise objectivity or impairs the individual's ability to perform his or her responsibilities in the best interests of the Foundation. An individual is considered to have a potential conflict of interest when:

- He or she or any of his or her family (spouse, parent, sibling, child, stepchild, grandparent, grandchild, great-grandchild, in-law, or domestic partner) may have direct financial interest or duality of interest (defined below) as a result of the individual's position at the Foundation.
- The individual has the opportunity to influence the Foundation's granting, business, administrative, or other material decisions in a manner that leads to personal gain or advantage.
- The individual has a perceived, potential or actual financial conflict which impairs or might appear to impair the individual's independence in the individual's ability to perform his or her responsibilities in the best interests of the Foundation.

Covered Persons

Any Trustee, Officer, or member of a committee with board-delegated powers is a “covered person(s)” under this policy. *Please note: Foundation employees are covered by a separate staff conflict of interest policy.*

Covered Transactions

A covered transaction includes any transaction in which there may be a perceived, potential or actual conflict of interest, including any transaction in which the interests of a covered person may be seen as competing or at odds with the interests of the Foundation.

Covered transactions are defined as “financial interest” and “duality of interest” for the purposes of this policy.

1. Financial Interest

If a covered person has a financial interest conflicting with the interests of the Foundation in any manner (such as whether to enter into a contract with such individual or with an organization with which such individual is associated), then the covered person must bring the conflict to the attention of the other members, shall provide information as requested and then refrain from deliberating or voting on any decision with respect to the matter.

- a. A substantial financial interest directly in the proposed or existing contract or transaction.
 1. Ownership in a public or private company doing business with the Foundation, or

2. Ownership or investment interest in an entity doing business with the Foundation and that produces income for a Trustee or Officer that is significant for him or her, or
 3. A compensation arrangement with an entity or individual doing business with the Foundation
- b. A substantial financial interest in any other organization that (a) is a party to the proposed or existing contract, transaction, or arrangement, or (b) is in any way involved in the proposed or existing contract, transaction, or arrangement, including through the provision of services in connection therewith.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. 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 Conflict Committee (as defined in the policy below) decides that a conflict of interest exists.

2. Duality of Interest

A duality of interest exists when a covered person is affiliated with an organization seeking to request a grant from the Foundation. Such affiliation exists if the covered person is a director, trustee, officer, or employee of the organization, or has an unofficial role such as significant donor, volunteer, advocate, or advisor.

For purposes of this policy, substantial shall be defined as 2% or more of ownership or a gift or compensation more than \$5,000 either to or from an organization.

Tests to Determine Conflicts of Interest

To assist covered persons in identifying and resolving conflicts of interest, proposed grants and other transactions should be evaluated in accordance with each of the following tests:

1. The Compliance or Legal Test

All grants, investments and disbursements by the Foundation must comply with the federal, state and local laws and regulations governing the Foundation. Where there is doubt whether a particular grant, investment, or disbursement meets the compliance test, a legal opinion can be sought. When possible, conflicts should be avoided because this procedure can be costly and time consuming.

The Internal Revenue Code virtually prohibits transactions between Trustees and the Foundation — i.e., no self-dealing. There are some exceptions and transitional rules, but self-dealing is not permissible, whether or not the parties deal at arm's length.

Under the compliance or legal test, the Foundation should make no grant or investment that would result, directly or indirectly, in a financial benefit to any covered person. This means that under the compliance test:

- General purposes support to a prospective grantee organization would be prohibited if a Trustee is a paid employee of, or consultant to, the organization.
- Support for a particular project would also be prohibited if a Trustee might financially benefit, even indirectly.
- Allowing a Trustee or member of a Trustee's family to pool his or her investments with amounts invested by the Foundation in order to satisfy the minimum investment requirements of a particular private equity or hedge fund or to reduce investment fees paid by the Trustee or member of a Trustee's family (or to increase investment return) would not be permissible.

2. The Program or Merit Test

There are two basic elements of the program or merit test:

- Grants to any organization which a covered person serves as an officer, director, trustee, staff member, or consultant should meet the general program criteria and priorities of the Foundation as previously reviewed and approved by the Trustees.
- A covered person who is an officer, director, trustee, staff member or consultant of a prospective grantee organization should not be involved in submitting, reviewing, recommending or approving the grant, or in its subsequent monitoring or evaluation. Also, as discussed below, as the grant is being processed, approved, or ratified by the Board, any conflict should be fully disclosed with the assurance that the covered person was not involved in the grant process.

3. The Appearance Test

This test is the most difficult to define (e.g., does it look right?), but here is a suggested guideline:

If a covered person is the chief executive officer of an organization, holds a similar management position, or is otherwise prominently identified or associated with an organization, a prospective grant to that organization may fail the appearance test because it suggests the appearance of favoritism. Each such case will be considered on its merits. If there is any appearance of favoritism, the Foundation may decline grant support.

This does not imply that any organization with which a covered person is associated can never receive a grant from the Foundation. A number of organizations with which covered persons have been

associated have received grants, in each case the grant met all of the following criteria:

- The grant fell within the established program guidelines of the Foundation;
- The grantee organization was an established public charity with broad support among the local or national charitable community;
- The covered person with a conflict of interest did not submit the grant request, become involved in the grant review process or approval, or receive economic benefit from the grant;
- The nature of the organization and the role of the covered person in that organization argued against any appearance of conflict or impropriety; and
- The conflict was fully disclosed.

Disclosure, Recusal, and Abstention

1. Duty To Disclose

In connection with any perceived, actual, or potential conflict of interest or duality of interest, a covered person must disclose the existence of his or her financial interest or affiliation and all material facts to the Trustees and members of committees with board-delegated powers considering the proposed transaction or arrangement. All covered persons will

be asked to complete a disclosure form on an annual basis and update appropriately as soon as a new affiliation begins and before it becomes a matter of board or committee action.

2. Recusal/Withdrawal Requirements

When a covered person has a financial interest or duality of interest in a proposed transaction, the covered person shall provide information as requested and shall temporarily withdraw/recuse themselves from the meeting so that the matter can be discussed and acted upon without the covered person's participation in the deliberation or the vote.

3. Abstention

When a covered person does not have a financial interest or duality of interest in a grant proposal, but decides not to vote on a particular matter, the covered person may voluntarily abstain (shall not vote), but is not required to withdraw from the meeting during the discussion, deliberation, and vote.

4. Violations of the Policy

A committee ("Conflict Committee") consisting of the Board Chair, the Nominating Committee Chair, the President/CEO and the Human Resources Director shall investigate the facts and seek input from the Lead Attorney as necessary to fully investigate perceived, potential or actual conflicts of interest.

- a. If the board or committee member has reasonable cause to believe that a covered person has failed to disclose actual or possible conflicts of interests or duality of

interest, the board chair shall inform the covered person of the basis of such belief and afford the covered person an opportunity to explain the alleged failure to disclose.

- b. If, after hearing the response of the covered person and making such further investigation as may be warranted in the circumstances, the Conflict Committee determines that the covered person has in fact failed to disclose an actual or possible conflict of interest or duality of interest, it shall take appropriate action.

Excess Business Holdings

The Foundation shall not make any investment which constitutes excess business holdings. Section 4943 of the IRS Code provisions on private foundations is to prevent a foundation from controlling a for-profit business for any extended period of time. The term “excess business holdings” refers to the rule that a foundation and all of its disqualified persons (or covered persons as defined in this policy) may not own, in the aggregate, more than 20 percent of the voting stock of a business corporation or the voting power/profits interest of an unincorporated business entity.

Documentation

The minutes of the Board and all committees with Board-delegated powers shall contain:

1. The names of the covered person who disclosed or otherwise were found to have a financial interest in connection with a perceived, potential or actual conflict of interest or duality of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest or duality of interest

was present, and the Conflict Committee's decision as to whether a conflict of interest or duality of interest in fact existed and what action, if any, was taken.

2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the summary of the discussion, including adopted alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

Attachments:

Attachment A: Self-Dealing Guidelines

Attachment B: Gifts, Honoraria, and Tickets to Fundraisers

** Please note: Matching Gifts are excluded from this Conflict of Interest/ Duality of Interest Policy.

Attachment A

Prohibitions against Self-Dealing

Self-dealing prohibits any direct financial transactions between the Foundation and the Foundation's disqualified persons.

Disqualified persons include board members, officers, or other covered persons who have the authority to act on behalf of the Foundation. Even if the financial transaction is between the Foundation and an unrelated third party, the act can be a violation of the self-dealing rules if the transaction provides an indirect financial or economic benefit to a Foundation insider.

The laws and regulations that pertain to self-dealing between a foundation and qualified persons include:

1. Buying and selling property from or to a disqualified person, even on terms favorable to the foundation;
2. Leasing of property between a disqualified person and a private foundation;

Exception: Lease of property by a disqualified person to a private foundation without charge.

3. Lending money or extending credit to a disqualified person, or borrowing money from a disqualified person;

Exception: Loans to the foundation by a disqualified person without interest or other charge if the loan proceeds are used exclusively for charitable purposes.

4. Providing goods, services or facilities between a disqualified person and a private foundation;

Exception: Goods, services or facilities provided by a disqualified person to the private foundation without charge if the goods, services or facilities are used exclusively for charitable purposes.

5. Paying compensation or reimbursing expenses to a disqualified person;

Exception: Payment of compensation or reimbursement of expenses for personal services that are reasonable and necessary to carry out the foundation's purpose if the compensation or

reimbursement is reasonable and not excessive.

6. Transferring foundation income or assets to, or for the use or benefit of, a disqualified person; and

Exception: Receipt of incidental benefits from use of the foundation's income or assets.

7. Certain agreements to make payments of money or property to government officials.

Exception: A scholarship or fellowship, any gift (other than money) or service or facilities made available that is not more than \$25 total in a calendar year, payment for certain travel expenses within the United States, and certain conference participation.

The self-dealing rules are designed to provide a sanction where the penalty, in the form of an excise tax, is applied to the self-dealer and, possibly, to a foundation manager participating in the transaction, and is measured as a percentage of the amount involved.

Attachment B

Gifts, Honoraria, and Entertainment

Covered persons may receive gifts of nominal value (less than \$100) or meals and social invitations that are aligned with our business ethics and do not obligate the covered persons to take or refrain from taking any action, or to make or refrain from making any decision on behalf of the Foundation.

Payments for serving in an official capacity or for providing personal services (not related to the Foundation) to an organization, as long as such payments are disclosed to the Foundation and such payments are not made with Foundation grant funds are also generally permissible.

Covered persons shall not knowingly, receive, accept, or solicit any gifts or anything else of value from past, current, or potential grantees, vendors, suppliers, consultants, contractors, or managers who have existing or proposed business or grantor-grantee relationships with the Foundation. This limitation includes payments, gifts, honoraria, loans, tickets to fundraising events or entertainment, except as described above.