

REVISED BOARD OF TRUSTEES CONFLICT OF INTEREST POLICY

A Recommendation

1. **Division and Department:** Board of Trustees Governance Committee
2. **Introduction:** The Board of Trustees currently has two separate policies that address conflicts of interest. The *Conflict of Interest Policy* that addresses personal and financial conflicts of interest was adopted in 1981 and amended in 1995. The *Conflict of Interest Policy in the Appointment and Assignment of Related Employees* that addresses nepotism was adopted in 1993.

Conflicts of interest generally arise when a person in a position of authority may benefit personally from a decision he or she could make. While financial conflicts of interest tend to dominate university discussions, the subjects of political gain, unmerited preference in hiring, student admission decisions and other conflicts of interest can compromise the integrity that universities hold in trust. Conflict of interest policies typically consist of a set of procedures to follow to avoid the possibility that those in positions of authority may advance personal interests or those of others or receive an inappropriate benefit.

In 2013, the Board of Trustee's Audit Committee (Audit Committee) began discussions around updating the Board's conflict of interest policies, because conflicts of interest represent a growing enterprise risk for every institution, including the University. The Audit Committee directed the General Counsel to consider and benchmark the Board of Trustee (Board) policies against other representative conflict of interest policies. In that regard, the General Counsel considered and benchmarked, among others: the conflict of interest provisions contained in the Michigan Constitution and applicable Michigan statutes; Internal Revenue Service conflict of interest rules and regulations for tax-exempt organizations; the Sarbanes-Oxley Act; the policies adopted by all other Michigan public universities, another Michigan governmental agency and the Horizon League; the Association of Governing Boards' (AGB) *A Guide to Updating the Board's Conflict of Interest Policy*, *A Guide to Conflict of Interest Disclosure*, the AGB's recent statements and recommendations regarding conflicts of interest, and attended an AGB webinar with the Chair of the Audit Committee and the Internal Audit Director on those topics; and conflict of interest materials from the American Council on Education.

The consideration and benchmarking shows that common elements of most conflict of interest policies are that they: promote the best interests of the institution and avoid befitting any one individual's personal interests; recognize both actual and apparent conflicts of interest; identify financial interests and gifts; and apply to all board members and employees, include prior disclosure and recusal provisions, a mechanism to resolve nepotism issues, and documentation processes. Annual written disclosures by trustees and high level employees are becoming more commonplace, as are independent evaluations and formal resolution and documentation processes.

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The consideration and benchmarking also shows that while the Board's current policies contain the basic tenants contained in most conflict of interest policies, they lack annual disclosures from trustees and high level employees, recusal, a formal independent evaluation process, and formal documentation of the process and the management of the conflicts of interest. In that regard, the General Counsel was directed to prepare a revised draft conflict of interest policy for the Audit Committee's consideration, and the consideration of that draft was reassigned from the Audit Committee to the Board's newly formed Governance Committee (Governance Committee) consistent with the Governance Committee's charge.

The attached revised Board Conflict of Interest Policy has been thoroughly discussed by the Governance Committee, has gone through several renditions directed by the Governance Committee, and has been vetted and approved by both the University's Internal Audit Director and the Board's External Audit firm, Andrews, Hooper and Pavlik.

3. **Previous Board Action:** The Board of Trustees *Conflict of Interest Policy* was approved by the Board on November 18, 1981, and amended on October 5, 1995. The companion policy governing *Conflict of Interest in the Appointment and Assignment of Related Employees* was approved by the Board on August 5, 1993.
4. **Budget Implications:** None
5. **Educational Implications:** None
6. **Personnel Implications:** None
7. **University Reviews/Approvals:** The attached revised Board Conflict of Interest Policy was developed by the Governance Committee with support from the General Counsel, the Internal Audit Director and the Board of Trustees' External Audit firm.
8. **Recommendation:**

RESOLVED, that the Board of Trustees approves the attached revised *Board of Trustees Conflict Interest Policy*, effective immediately, to replace the *Conflict of Interest Policy* adopted in 1981 and amended in 1995 and the *Conflict of Interest Policy in the Appointment and Assignment of Related Employees* adopted in 1993.

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9. Attachments:

- A. Revised Board of Trustees Conflict of Interest Policy

Recommended on _____, 2014
to the Board of Trustees for Approval by

Scott G. Kunselman
Chair of the Board of Trustees Governance Committee

**OAKLAND UNIVERSITY BOARD OF TRUSTEES
CONFLICT OF INTEREST POLICY**

**Article I
Purpose**

The purpose of this policy is to express the Board of Trustee's intent that trustees, faculty, staff, and others serving Oakland University should not be personally involved in any arrangement that could create a conflict of interest with the university. Everyone who serves the university should promote the best interests of the university over their own personal and financial interests. Conflicts of interest occur in a complex society. Everyone who serves the university must report their own conflicts of interest and those of others to the university as soon as they become known so that the conflict of interest can be promptly and properly managed. This policy will be interpreted and applied broadly.

**Article II
Conflicts of Interest**

Conflicts of interest are those personal and financial interests, whether actual, apparent or possible, that could lead someone to: (a) compromise or lose their own independence, impartiality or judgment in connection with an arrangement with the university; (b) propose or support an arrangement with the university that is not in the university's best interest; (c) results in personal or financial gain to that person; (d) involves preferential treatment to the person's family or business associates; or (e) would damage the university's reputation or erode the public's confidence in the university.

**Article III
Annual Written Disclosures**

To maximize awareness of conflicts of interest, each year trustees, executives, deans and directors must submit a signed written disclosure that affirms they will comply with this policy, and informs the university of their personal, financial and business interests and those of their family and business associates that could involve an arrangement with the university. Trustees and the President will deliver their disclosures to the chairperson of the board's audit or successor committee or designee, and everyone else will deliver their disclosures to the Conflict of Interest Review Committee. The written disclosures will be maintained in confidence by the university to the fullest extent permitted by law.

**Article IV
Ethics Awareness Program**

The Vice President for Finance and Administration, or designee, will publicize this policy to the university community and conduct an annual ethics awareness program that will inform people what a conflict of interest is and how to report them to the university.

Article V
Conflict of Interest Review Procedures

1. Conflict of Interest Review Committee

A Conflict of Interest Review Committee is hereby established whose members are the: (a) Internal Audit Director, (b) Purchasing Manager, and (c) Assistant Vice President for Human Resources, or the successors to those positions ("CRC").

2. Duty to Promptly Self-Disclose/Report/Inquire-About Conflicts of Interest

As soon as the conflict of interest becomes known, Trustees and the President will report their own conflicts of interest and those of others to the chairperson of the board's audit or successor committee or designee in writing, and everyone else will report their own conflicts of interest and those of others to the CRC in writing. The university may also require that a person or entity being considered for an arrangement with the university disclose conflicts of interest.

3. The Conflict of Interest Review Process

- a. Who Conducts the Review. The Trustees without the conflict of interest will review conflicts of interest involving Trustees and the President. The CRC will review conflicts of interest involving everyone else. If a CRC member is the person with the conflict of interest, that CRC member will not participate and the Vice President for Finance and Administration will appoint a temporary replacement for that review.
- b. Participation. The person with the conflict of interest will be given an opportunity to disclose all material facts related to their conflict of interest, to explain why the arrangement may not be a conflict of interest or that the conflict of interest will bring a compelling benefit to the university. After that discussion, the person with the conflict of interest must leave the meeting while the matter is discussed and a decision is made.
- c. Analyzing the Conflict of Interest. To determine whether a conflict of interest exists, the Trustees and the CRC will apply the principles and definitions contained in: (a) MCL 15.301 and any other applicable State of Michigan and federal conflict of interest statutes as they are adopted and amended from time to time; (b) the conflict of interest policy statements, principles and technical guidelines most recently published by the Association of Governing Boards of Universities and Colleges; (c) the definitions commonly used to define and interpret the terms direct, indirect, apparent, actual and possible in the context of conflicts of interest; and (d) the following definitions:
 - i. Arrangements. Arrangements include the purchase of any good or service, gifts and nepotism in any aspect of university employment and teaching and advising of students.
 - ii. Family. Family includes those persons with whom the person has a personal relationship by blood, marriage, domestic partnership, adoption, or other personal relationship including but not limited to as a parent, step or foster parent, child, step or foster child, brother, sister, grandparent, grandchild, half-brother or half-sister, aunt, uncle, niece, nephew, other dependents and their respective spouses, and in-laws.

- iii. Gift. A gift is anything of value in any form including money, goods, entertainment, services, use of property or facilities, loans and price concessions. Nominal advertising items, promotional materials of token value and business meeting meals are not gifts.
- iv. Nepotism. Nepotism is the bestowal of patronage to family members through initiation, participation or influence of arrangements involving the family member.
- d. Decisions. The Trustees and the CRC will by majority vote of disinterested members will decide whether a conflict of interest exists and whether the conflict of interest will be avoided entirely or effectively and properly managed because the conflict of interest will bring a compelling benefit to the university, such as by prohibiting the person with the conflict of interest from playing any role whatsoever on behalf of the university in the arrangement.
- e. Documentation. Conflict of interest meetings, deliberations and decisions will be documented to confirm the integrity of the process and the propriety of the decision by written minutes or memorandum that include the nature of the conflict of interest, the names of all persons involved, the due diligence conducted, the roll call vote and any management conditions established.

Article VI
Confidentiality and Appropriation of University Opportunities

No one may use confidential information acquired in service to the university for any purpose other than university business, or give confidential information to any person or entity without the prior written consent of the university. If a person becomes aware of a business, investment or other potentially valuable opportunity that rightfully belongs to the university, that person must bring the opportunity to the university.

Article VII
Actions Not Void or Voidable

No arrangement undertaken by the university is void or voidable or may be challenged by a third party under this policy.

Article VIII
Scope

This policy supplements but does not replace any applicable State of Michigan or federal law that governs conflicts of interest; and in all cases of federally sponsored grants and contracts, the regulations and procedures necessary to meet federal agency conflict of interest requirements will control. The Board of Trustees is responsible for assuring compliance with this policy directly or through its appointed committee.