

Xavier University Board of Trustees Conflicts of Interest Policy

1) Policy and Purpose

The purpose of this conflict of interest policy is to protect the integrity of the University and to demonstrate compliance with Federal Laws, State Laws, contractual arrangements, and the University's Code of Regulations.

- Federal Laws are primarily associated with the Internal Revenue Service, specifically the Form 990 which is the reporting form filed by nonprofit corporations. Those inquiries tend to be *focused on transactions, relationships and independence* between Trustees and the University. It is to be noted that the IRS Form 990 requires reporting for persons other than Trustees, and that reporting is addressed by management.
- State Laws in Ohio also *focus on transactions* between Trustees and the University but also require that Trustees always *act in "good faith"* and in a manner the Trustee "reasonably believes to be in or not opposed to *the best interests* of the corporation."
- The University's Code of Regulations focuses on "financial or other interests that *impair or appear to impair* the Trustee's independent unbiased judgment in the discharge of the Trustee's responsibilities to the University." It is to be noted that this Policy addresses any conflicts of interest involving the following: Trustees, any persons appointed to Board Committees who are not Trustees, and University Officers who hold elected positions on the Board.

2) Definitions

- "Trustee" includes not only the individuals elected to serve on Xavier University's Board of Trustees, but also includes any "Family Member" of the Trustee and at times, where the context allows, it means persons appointed to Board Committees who are not Trustees and University Officers who hold elected positions on the Board of Trustees.
- "Family Member" is defined by the Code of Regulations and the IRS slightly differently, but together they cover the Trustee's spouse, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great grandchildren, and spouses of brothers, sisters, children,

grandchildren, and great-grandchildren, and any other relative residing in the Trustee's household.

- "Financial Interest" occurs if a person has, directly or indirectly, through business, investment or a family member any of the following:
 - a. an ownership or significant investment interest in any entity with which the University has a transaction or arrangement; or
 - b. a compensation arrangement (compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature) with the University or with any entity or individual with which the University 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 University is negotiating a transaction or arrangement; or
 - d. Board or management service with any non-profit entity with which the University is negotiating a transaction or arrangement regardless of whether the person receives compensation.

- "Conflict of Interest" is defined:
 - a. in the University's Code of Regulations as follows:

"A Trustee shall be considered to have a conflict of interest if the Trustee (i) has existing or potential financial or other interests that impair or appear to impair the Trustee's independent, unbiased judgment in the discharge of the Trustee's responsibilities to the University; or (ii) is aware that a member of the Trustee's family has financial or other interests that would impair or appear to impair the Trustee's independent judgment in the discharge of the Trustee's responsibilities to the University."
 - b. by the Internal Revenue Service as follows:

The Internal Revenue Service approaches the topic on the Form 990 instructions from the point-of-view of transactions, independence and relationships as follows:

"A conflict of interest arises when a person in a position of authority over an organization, such as an officer, director, manager, or key employee can 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."

The definitions in the Internal Revenue Code will be part of the Combined Form 990 Disclosure and University Conflict of Interest Policy Questionnaire so as to inform those who complete the questionnaire and are available from the Office of General Counsel.

3) Procedures

➤ Duty to Disclose:

No less than annually, the Trustees and other persons subject to this Policy will complete and submit to the Secretary of the Corporation the Combined Form 990 Disclosure and University Conflict of Interest Policy Questionnaire disclosing any known conflict of interest during the specified period of time. Further, if at any time thereafter a conflict of interest should arise, the matter must be promptly disclosed by the interested person at the earliest point in time to either the Board Chair, the Chair of the relevant Board Committee where the conflict of interest arose, or the Secretary of the Corporation. Any such disclosure received by any of the foregoing should also be reported promptly to the Chair of the Governance Committee who will report it, as warranted, to the Governance Committee for its consideration. All disclosures should be in writing.

➤ Evaluation of Conflicts of Interest:

The University's Board of Trustees Governance Committee shall review all reports of Trustees, any persons appointed to Board Committees who are not Trustees, and University Officers who hold elected positions on the Board. The Governance Committee will transmit to the Executive Committee for appropriate action any reported conflicts of interest it receives, together with the substance of its review of same.

➤ Evaluation of Alternatives:

The Board, or the Committee in which a conflict of interest has been identified, in evaluating any conflict of interest may investigate alternatives to the proposed transaction or arrangement that gave rise to the reported conflict. The Board or such Committee shall determine whether the University can obtain the same advantage with reasonable efforts from a person or entity that would not give rise to a conflict of interest. If such advantage is not reasonably obtainable under the circumstances, the Board or the Committee shall determine by a majority vote of the dis-interested Trustees whether the transaction or arrangement is in the University's best interest and for its own benefit and whether the transaction is fair and reasonable to the University and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

➤ Violations of the Policy:

If the Board or any Committee where the conflict of interest arose has reasonable cause to believe that a person has failed to disclose actual or possible conflicts of interest, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose. If after hearing the response of the person and making such further investigation as may be warranted in the circumstances the Board or Committee determines that the

person has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate and necessary action and report the same to the Governance Committee and the Executive Committee which may then take further appropriate disciplinary and corrective action.

➤ Records of Proceedings:

The meeting minutes of the Board and any Committee addressing issues of conflicts of interest should reflect the following:

- a. the name of the person who disclosed or otherwise was found to have a conflict of interest;
- b. the nature of the conflict of interest;
- c. the action taken to determine whether a conflict of interest was present;
- d. the determination of whether a conflict of interest existed;
- e. the names of the persons who were present for discussions and vote relating to the matter; and
- f. a record of any votes taken in connection therewith.