



## CONFLICT OF INTEREST POLICY

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### I. INTRODUCTION

The Board of Directors of The California Endowment (“ The Endowment”), recognizing that we are entrusted with a large endowment devoted to charitable purposes, has adopted this Conflict of Interest Policy (“ Policy” ).

Conflicts of interest place personal interests at odds with the fundamental duty of loyalty owed by foundation directors and staff members as fiduciaries of The Endowment with a philosophy of broad public accountability. In addition, the appearance of a conflict of interest can damage institutional credibility and the ability to fulfill the institution's mission and programmatic goals. The Board of Directors expects that each of the directors and staff members will respect his/her obligations to act in the best interest of The Endowment in fulfilling its charitable mission.

A primary purpose of this Policy is to assist Directors and staff members in the performance of their duties. The Policy strives to state clear guidelines to be followed in identifying and resolving conflict of interest and self dealing issues. The Policy recognizes that Directors and staff members may have been selected in part for their strong involvement with underserved communities, and therefore encourages broad disclosure of affiliations and establishes procedures by which the Board may make the determination whether a conflict of interest exists.

There are three sources of rules regarding conflicts of interest that are included in the Policy. They are:

- the prohibition of self dealing and private inurement under the Internal Revenue Code,
- the requirement of special steps in approving transactions in which Directors have material financial interests under Section 5233 of the California Corporations Code, and transactions involving interlocking directorships under Section 5234 of the California Corporations Code, and
- additional limitations which the Board of The Endowment has adopted.

Because each covers common areas as well as areas not covered by the others, each potential conflict of interest must be tested against all three standards.

## II. DEFINITIONS

“ Disclosable Relationship” shall mean a relationship in which a Foundation Manager, staff member, or Family Member has Potential Conflict of Interest.

“ Family Member” shall mean a spouse or equivalent, ancestors (parents, grandparents, etc.), direct descendants (children, grandchildren, and great grandchildren) and the spouses of direct descendants, siblings, aunts and uncles.

“ Foundation Manager” shall mean Directors, Officers, and any other staff member of The Endowment deemed by the CEO upon the advice of counsel to be a Foundation Manager.

“ Grant” shall mean grants, board recommended grants, direct charitable activity contracts, sponsorships, or matching gifts.

“ Potential Conflict of Interest” shall mean an instance where a Foundation Manager or a staff member, or their Family Member has: a) a close relationship (such as service as an employee, supervisor, trustee, director, committee member, consultant, advisor<sup>1</sup>, shareholder, beneficiary, partner, or student) with an organization or person: i) seeking or having received a Grant from The Endowment; or ii) with which The Endowment proposes to enter into a financial, investment or business transaction, or b) a material financial interest: i) in any existing or potential Endowment Grant; or ii) in any financial, investment or business transaction which is intended to be supported by an Endowment Grant or potential Grant; or iii) in any financial, investment or business transaction to which The Endowment is a party.<sup>2</sup>

“ Transaction” shall mean any financial, investment, or business transaction.

## III. SELF DEALING AND CONFLICTS OF INTEREST

### A. Internal Revenue Code: Prohibition of Self Dealing With Disqualified Persons and Private Inurement

1. Under the Internal Revenue Code, The Endowment, as a private foundation, may not engage in self dealing transactions with disqualified persons. (See Appendix 1 for an explanation of the application of Section 4941 of the Internal Revenue Code and a definition of self dealing transactions). Self dealing may exist even if the transaction is economically beneficial to The Endowment.

2. In addition to the prohibition on self dealing, the Internal Revenue Code requires

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<sup>1</sup> An exception shall be made in situations where a staff member sits on an advisory committee or advisory board solely as a representative of the Endowment.

<sup>2</sup> Incidental Benefits. The receipt of the following types of benefits shall not be a conflict of interest or violate this Conflict of Interest Policy:

- a. incidental or tenuous benefits from The Endowment's grant making or financial, investment or business transactions, or
- b. benefits (received in good faith and without favoritism) solely by virtue of being among the class of persons intended to be benefited by charitable or public benefit programs conducted by The Endowment or supported by The Endowment's grants.

that no part of the net earnings of The Endowment may inure to the benefit of any private individual. The consequences of violations of the prohibition of private inurement may include loss of The Endowment's tax exempt status.

#### **B. California Nonprofit Corporation Law: Process for Approval of Self Dealing by Director**

1. Section 5233 of the California Corporations Code defines self dealing as a transaction in which a director has a material financial interest. Unlike Federal Tax law, the California Corporations Code does not prohibit self dealing transactions. It requires adherence to a specific process in order to approve any self dealing transactions with The Endowment. See Appendix 2 for an explanation of the application of Section 5233 of the California Corporations Code.

2. Section 5234 of the California Corporations Code permits transactions between corporations having common directors and provides process in order to approve such transactions. See Appendix 2 for an explanation of the application of Section 5234.

#### **C. The California Endowment' s Definition of " Potential Conflict of Interest"**

Affiliations (current affiliations as well as past affiliations for the prior two years) as Potential Conflict of Interest. A "Potential Conflict of Interest" exists if a Foundation Manager or a staff member, or their Family Member Relationships has:

1. a close relationship (such as service as an employee, trustee, director, committee member, consultant, advisor, shareholder, beneficiary, partner, or student) with an organization or person:

- seeking or having received a Grant from The Endowment; or
- with which The Endowment proposes to enter into a financial, investment or business transaction,

or

2. a material financial interest:

- in any existing or potential Endowment Grant; or
- in any financial, investment or business transaction which is intended to be supported by an Endowment Grant or potential Grant; or
- in any financial, investment or business transaction to which The Endowment is a party.

#### **D. Disclosure of Potential Conflicts of Interest**

1. Disclosure Forms - Foundation Managers and staff members will fully and regularly disclose all material facts relating to any Potential Conflict of Interest related to them

or their Family Members. Disclosures should encompass current affiliations as well as affiliations for the prior two years. Additionally, to the extent possible, Foundation Managers and staff are encouraged to disclose material facts relating to any Potential Conflict of Interest related to persons with whom they have a close relationship, e.g., close friends, business relationships, etc. They will submit conflict of interest disclosure forms:

- a. annually, before the Board meeting following the Annual Meeting; and
- b. as soon as possible after a new affiliation begins but no later than at or prior to action on Grants and transactions. (An example would be a new affiliation such as becoming a director of a proposed grantee during the year.)

2. Other Disclosure Obligations - If a Foundation Manager/staff member becomes aware of any Potential Conflict of Interest related to another Foundation Manager/staff member, it should be brought to the attention of the Foundation Manager/staff member with the Potential Conflict of Interest. Should the Foundation Manager/staff member feel uncomfortable bringing the Potential Conflict of Interest issue to the other Foundation/staff member's attention, they may bring it to the attention of counsel to the Endowment, the President, or the Chair of the Audit Committee promptly either directly or through Ethicspoint. In that instance, the Foundation Manager/staff member with the Potential Conflict of Interest should be informed by the counsel to the Endowment, President or Audit Chair of the Potential Conflict of Interest after a thorough investigation. After initial consideration, the counsel to the Endowment, President, or Audit Chair should, individually or together, decide if a review is advisable, and inform the Audit Committee.

3. Disclosure to the Board of Directors - All material facts concerning the existence and nature of the Potential Conflict of Interest and the relationship of any interested Foundation Manager to the Potential Conflict of Interest shall be disclosed to the Board of Directors and to counsel for The Endowment. Such facts shall be recorded in the minutes of the Board meeting that considered the authorization or approval of the affected Grant or transaction, and where applicable in any proposal summary or recommendations presented to committees and/or the Board of Directors for decision.

#### **E. Procedures for Approval or Rejection of Grants or Transactions Involving Potential Conflicts of Interest involving Staff Members who are not Foundation Managers.**

1. A Grant may be made, or a Transaction may be entered into, where there is a Potential Conflict of Interest if:

- a. Potential Conflicts of Interest involving staff members who are not Foundation Managers, as defined in Section II.C., are disclosed in writing and the staff member will not be involved in the presentation, review, awarding, monitoring, or evaluation of the Grant or Transaction. The Board will be informed that this process has occurred.

- b. In the case of a Grant:

i) the Grant meets The Endowment's stated eligibility and selection criteria and was found, after an objective review, to carry out The Endowment's goals and objectives;

ii) the review was conducted and the recommendation arrived at without the involvement or input of the interested staff member prior to the relevant review meetings where action is taken except that the interested staff member may provide factual information, but not advocacy, upon request of uninterested staff members. Notwithstanding the above, this section does not preclude staff members from initiating Matching Gifts;

iii) in addition to disclosing the relationships in writing, the staff member will recuse himself/herself from all meetings in which this Grant recommendation is discussed. This recusal will be reflected in the meeting's minutes. The Board will be informed that this process has occurred;

iv) any Grant to an organization that employs a former Endowment staff member, when that staff member was employed by The Endowment at a seniority level of Program Officer or higher, is approved by the Board as a Disclosable Relationship for two years from the departure date of the Endowment staff member.

c. In the Case of a Transaction:

i) the staff member's supervisor determines in good faith that The Endowment is entering into the Transaction for its own benefit, that the Transaction is fair and reasonable to The Endowment, and that The Endowment could not have obtained a more advantageous arrangement with reasonable effort under the circumstances;

ii) the review was conducted and the recommendation arrived at without the involvement or input of the interested staff member prior to a decision being made except that the interested staff member may provide factual information, but not advocacy, upon request of the interested staff member's supervisor;

iii) in addition to disclosing the relationships in writing, the interested staff member will recuse himself/herself from all meetings in which the Transaction is being discussed; and

iv) the interested staff member's supervisor will assign an uninterested staff member to manage the Transaction relationship.

**F. Board Procedures for Approval or Rejection of Grants or Transactions Involving Potential Conflicts of Interest involving Foundation Managers**

A Grant may be made, or a transaction entered into, where there is a Potential Conflict of Interest if:

1. The disclosures set forth in section D above have been made.

2. The Grant or Transaction would not constitute a self dealing transaction under Section 4941 of the Internal Revenue Code.

3. In the case of a Grant, the Grant met The Endowment's stated eligibility and selection criteria and was found, after an objective review, to carry out The Endowment's programmatic goals and objectives.

4. In the case of a Transaction, the Board determines in good faith that The Endowment has entered into the Transaction for its own benefit, that the Transaction is fair and reasonable to The Endowment, and that The Endowment could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

5. The review was conducted and the recommendation arrived at without the involvement or input of the interested Foundation Manager prior to the relevant committee or Board meeting where action is taken. The interested Foundation Manager may provide factual information, but not advocacy, upon request of the uninterested staff members or Directors. Notwithstanding the above, this section does not preclude Directors from initiating board recommended grants nor Foundation Managers from initiating matching gifts.

6. The interested Foundation Manager is present during Board deliberations of the issues related to the Grant or Transaction to provide factual information, but not advocacy, upon request of the uninterested Foundation Managers.

7. The interested Foundation Manager is absent from the room during Board action or vote, except when items are on a consent calendar in which case the interested Foundation Manager may be present but not vote.

8. A Grant or Transaction involving a Foundation Manager with a material financial interest is approved by a majority of the Directors in office. All other Grants and Transactions must be approved by a majority of the Directors present.

9. A Grant, with the exception of matching gifts, to an organization where the Director (or the Director's family member) is compensated more than \$1,000 is reviewed by The Endowment's Independent Review Committee

10. A Director neither recommends a Board Recommended Grant nor requests a Matching Gift to an organization where the Director (or the Director's family member) is compensated more than \$1,000.

An exception to this provision is made for universities. A Board Recommended Grant or Matching Gift may be made to a university that employs a Director (or family member) if the department receiving the grant is distinct from the department that employs the Board member.

11. Any Grant to or Transaction with an organization that compensates a former Endowment Board member more than \$1,000 is approved by the Board as a Disclosable Relationship for two years from the departure date of the Endowment Board member.

#### **IV. ADDITIONAL GUIDELINES FOR FOUNDATION MANAGERS AND STAFF**

A. Foundation Managers and staff members shall not use their position as a director or staff member of The Endowment to benefit the interests of a particular organization, constituency, or special interest group by any means, including but not limited to providing information not available to grantees or potential grantees, lobbying on behalf of or serving as spokesperson to The Endowment for an organization, constituency, or special interest group with which he or she is affiliated, or attempting to affect a decision through his or her position within The Endowment.

B. Staff members will not hold a close relationship (such as serving as a director, trustee, committee member, employee, shareholder or partner) with any organization which has obtained, is seeking, or is likely to seek, a grant from The Endowment unless and until prior written approval is granted by the President (or the Board Chair in the case of the President). The approval will be based upon a determination by the President (or the Board Chair in the case of the President) that such an exception will not be contrary to the interests of The Endowment. The President (or Board Chair in the case of the President) shall consider factors such as any perceptions of a conflict of interest, the likelihood of time conflicts, whether there is a strong relationship to the staff member's role at The Endowment, the professional benefits that are likely to flow to the staff member or The Endowment, and whether there is a possibility that the organization may misperceive the relationship as enhancing the chance of The Endowment's funding.

C. Foundation Managers and staff members will maintain the confidentiality of internal information about The Endowment. Information about The Endowment's activities should be disseminated widely once determined to be available for public use to promote equal opportunities for access. Conduct should not create preferential access nor create material benefit from any information regarding grant making, investment or other business actions or decisions by The Endowment which has not been fully disclosed to the general public by The Endowment. Specifically, Foundation Managers and staff members may not derive personal financial benefit through the inappropriate use of investment information acquired through the Foundation.

#### **V. POLITICAL ACTIVITIES**

Foundation Managers and staff members are free to engage in political activities when, in their best judgment, such activities will not conflict with their ability to carry out Endowment responsibilities. Foundation Managers and staff members should keep in mind, when making such decisions, the potential difficulty in outside perception in distinguishing between their personal and professional capacities. No political activities can be conducted during a staff member's business day, or with the use of any Endowment resources.

#### **VI. INVESTMENT ACTIVITIES**

A. **Co-Investments** – Staff members will not co-invest their personal assets with any investment manager, general partner or other entity that manages assets for the Endowment,

except in mutual funds or other products offered to the general public. Staff members will not invest in private equity or venture capital partnerships which the Endowment is considering for investment or in any non-publicly traded companies where the Endowment has a beneficial interest through an investment in a private equity or venture capital partnership.

**B. Front running** – While the Endowment will rarely hold individual stocks of corporations under the sole investment discretion of any Staff member, it will happen occasionally as the result of a partnership distribution or manager termination. Staff members may not trade the stock, or options in the stock in their personal account for a period beginning five business days before the Endowment sells the stock until the sixth business day following the trade sale date.

## **VII. RECEIPT OF BENEFITS FROM THIRD PARTIES: GIFTS AND GRATUITIES**

A. Foundation Managers and staff members will not directly or indirectly solicit or accept gifts (other than unsolicited gifts or tokens of nominal value, less than \$50 per year, per source, where refusal would be impractical or imprudent) from persons or organizations doing business or seeking to do business with The Endowment (including but not limited to grantees, potential grantees, former grantees, vendors, independent contractors, and professional service agents).

B. If unsolicited gifts exceeding \$50 per year, per source, are received by Foundation Managers or staff members, the person or organizations offering the gifts will be thanked and informed of The Endowment's policy, and the gifts will be returned. Unsolicited gifts that cannot be returned will be donated to a nonprofit organization or disposed of in a manner that does not directly benefit the individual Foundation Manager or staff member.

C. Meals, courtesy food, refreshment, or social invitations offered while conducting Endowment business may be accepted if they are in keeping with good business ethics and do not influence the recipient from making any decision on behalf of The Endowment

D. Foundation Managers and staff members will not directly or indirectly solicit or accept anything of monetary value from persons or organizations has requested or is receiving a grant or is doing business or seeking to do business with The Endowment (including but not limited to grant recipients, potential grantees, former grantees, vendors, independent contractors, and professional service agents) other than unsolicited gifts or tokens of nominal value, less than \$50 per year, per source, where refusal would be impractical or imprudent) unless the solicitation or acceptance is based upon a relationship with such person or organizations in a capacity other than that of director or staff member of The Endowment.

E. It is in the interest of The Endowment to encourage Foundation Managers and staff members to be current on health related issues of the communities served by The Endowment and familiar with the members of those communities. However, The Endowment must avoid the perception of favoritism or obligations to particular individuals or organizations. Accordingly, Foundation Managers and staff members shall not accept complimentary invitations of organizations or individuals in any way related to the programs or activities of

The Endowment to attend events, such as dinners, luncheons, benefits, fund-raising events, etc. With the prior approval of the CEO or his/her designee, The Endowment will reimburse Foundation Managers and staff members for the purchase of tickets to such events.

F. In the rare instances in which acceptance of an item of monetary value is allowed under this Policy and is accepted from an individual or organization doing business or seeking to do business with The Endowment (including but not limited to grant recipients, potential grantees, former grantees, vendors, independent contractors, and professional service agents), Foundation Managers and staff members shall list such items (except for meals, courtesy food, or refreshments valued at less than \$25) on the Annual Disclosure form.

## **VIII. VIOLATIONS OF THE CONFLICT OF INTEREST POLICY**

If the Audit Committee has reasonable cause to believe that a Foundation Manager or staff member has failed to disclose actual or possible conflict of interests, it shall inform the Foundation Manager or staff member of the basis for such belief and afford him/her the opportunity to explain the alleged failure to disclose.

If, after hearing the Foundation Manager or staff member's response and after making further investigation as warranted by the circumstances, the Audit Committee determined the Foundation Manager or staff member has failed to disclose an actual or possible conflict of interest, it shall refer the matter to the Board of Directors to take appropriate disciplinary and corrective action.

## **IX. RETALIATION IS PROHIBITED**

This Conflict of Interest Policy is intended to encourage and enable Foundation Managers and staff members to raise concerns within The Endowment for investigation and appropriate action. With this goal in mind, no Foundation Manager or staff member who, in good faith, reports a concern to an Endowment representative or government agency shall be subject to retaliation or, in the case of an employee, adverse employment consequences by The Endowment. Moreover, a Foundation Manager or staff member who retaliates against someone who has reported a concern in good faith is subject to discipline up to and including termination of employment or service on the Board of Directors.

## **X. REFERRED TO COUNSEL**

Questions regarding the interpretation or application of this Conflict of Interest Policy should be referred to counsel for The Endowment.

**Appendix 1**  
Self Dealing Transactions under  
Section 4941 of the Internal Revenue Code

1. Under Section 4941 of the Internal Revenue Code an excise tax is levied on Disqualified Persons who engage in self dealing transactions with a private foundation. The responsible Foundation Managers are also subject to tax.
2. “ Disqualified Persons” include<sup>3</sup> “ Foundation Managers,” a term defined as directors, officers and staff having responsibilities similar to those of directors and officers, and, with respect to any act or failure to act, the employees of the foundation having authority or responsibility with respect to such act or failure to act. The following positions at The Endowment qualify as Foundation Managers: Director, Officer, and any other staff member determined by the CEO upon advice of counsel to be a Foundation Manager.
3. A Disqualified Person’ s also include “ Family Members,” a term defined as spouses, ancestors, direct descendants, and spouses of direct descendants.
4. Subject to exceptions, some of which are noted below, self dealing is defined in the Internal Revenue Code as:
  - a. sale or exchange, or leasing of property between The Endowment and a Disqualified Person  
exception: lease of property by a Disqualified Person to The Endowment without charge
  - b. lending of money or other extensions of credit between The Endowment and a Disqualified Person  
exception: loan or extension of credit by a Disqualified Person to The Endowment without interest or other charge, and loan proceeds used exclusively for charitable purposes
  - c. furnishing of goods, services or facilities between The Endowment and a Disqualified Person  
exception: furnishing goods, services or facilities by a Disqualified Person to The Endowment without charge and used exclusively for charitable purposes
  - d. payments of compensation or expenses by The Endowment to a Disqualified Person  
exception: payment of reasonable compensation (and expenses) for personal services of Disqualified Person that are reasonable and necessary to carry out The Endowment’ s charitable purpose

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<sup>3</sup> Other disqualified persons with respect to The California Endowment include substantial contributors, such as California HealthCare Foundation and WellPoint Health Networks and certain entities in which disqualified persons have substantial ownership interests.

- e. transfers of foundation income or assets to, or use by or for the benefit of, a Disqualified Person
    - exception: only incidental or tenuous benefit to Disqualified Person from use of The Endowment' s income or assets
  - f. agreement to pay a government official
    - exception: limited travel expenses solely within the United States, scholarship or fellowship grants, or costs to attend conferences sponsored by The Endowment.
5. The consequences of violation of the prohibition on self dealing are punitive excise taxes imposed upon both the Disqualified Person and the responsible Foundation Managers.

**Appendix 2**  
Self Dealing Transactions and Transactions Involving Interlocking Directors  
Under California Corporations Code Sections 5233 and 5234

In general, the process for approval of director self dealing transactions under Section 5233 of the California Corporations Code requires that the Board determines in good faith that The Endowment is entering into the business transaction for its own benefit that the transaction is fair and reasonable to The Endowment, and that The Endowment could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.<sup>4</sup>

Pertinent exceptions to the mandatory process for approval of director self dealing include:

- a. action fixing Board or officer compensation;
- b. a charitable program approved in good faith and without unjustified favoritism if a director or members of their family are within the intended class of charitable beneficiaries; and
- c. a transaction involving less than \$100,000 per year where the interested director has no actual knowledge of the transaction.

Section 5234 of the California Corporations Code permits transactions between corporations having common directors and provides an approval process for such transactions, namely:

- a. all material facts as to the transaction and The Endowment director's other directorship are known to the Board; and
- b. the matter is approved in good faith by a vote sufficient without counting the vote of the common director(s).

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<sup>4</sup> Note that this California law covers only directors and not staff members or those associated with directors or staff.