

Hawai'i Association for College Admission Counseling

**CONFLICT OF INTEREST POLICY**

As approved by the Executive Board: effective August 29, 2011

**ARTICLE I. PURPOSE**

1. To protect this tax-exempt organization's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Executive Board member of the organization or might result in a possible excess benefit transaction.
2. This policy is intended to supplement but not replace state and federal laws governing conflict of interest applicable to nonprofit, charitable organizations.

**ARTICLE II. DEFINITIONS**

1. Interested Person: An interested person may be any person described below who has a direct or indirect interest, financial or otherwise, in a transaction with the Organization.
  - a. Any person who was, at any time during the 5-year period ending on the date of the transaction, in a position to exercise *substantial influence* over the affairs of the Organization;
  - b. A *member of the family* of a person described in the preceding category;
  - c. An entity in which individuals described in the preceding categories own more than a 35% of the combined voting power in a corporation, or of the profits interest in a partnership, or of the beneficial interest in a trust or estate.
2. Conflict of Interest: Conflicts of interest cannot be readily defined. Virtually any situation in which an individual with decision-making authority for the Organization is influenced in a decision within the scope of his or her organizational duties by personal, financial, business or other concerns unrelated to the Organization's best interest may present a conflict of interest.
  - a. Conflicts of interest may involve direct or indirect interests. For example, an individual has an indirect interest in a transaction if another entity in which the individual has a material interest or in which the individual is a general partner is a party to the transaction, or another entity of which the individual is a director, officer, or trustee is a party to the transaction.
3. Financial Interest: A person has a financial interest if the person has, directly or indirectly, through business, investment or family:
  - a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement;
  - b. A compensation arrangement with the Organization or with any entity or individual with which the Organization 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 Organization is negotiating a transaction or arrangement.
  - d. Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.
4. Substantial Influence: A person is in a position of substantial influence if the person is:

- a. A voting member of the Organization's governing body; or\
  - b. Any person who, regardless of title, has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the Organization (for example, the president); or
  - c. Any person who, regardless of title, has ultimate responsibility for managing the finances of the Organization (for example, the treasurer); or
  - d. Any other person who may have substantial influence over the affairs of the Organization in view of the facts and circumstances.
5. Member of the family: An interested person's family includes the person's:
- a. Spouse;
  - b. Brothers or sisters (by whole or half blood) and their spouses (by whole or half blood);
  - c. Ancestors;
  - d. Children, grandchildren and great grandchildren, and their spouses.
  - e. A legally adopted child of an interested person is treated as a child of that person by blood.

### ARTICLE III. PROCEDURES

1. Governing Body: The Organization's authorized body to review actual or possible conflicts of interest shall be Executive Board members or a committee of the Executive Board (composed solely of directors). The members of the board or committee, as the case may be, shall not have any conflict of interest with the transaction or arrangement at issue. A member of the board or committee shall:
  - a. Not be an interested person participating in or economically benefiting from the transaction or arrangement at issue and not be a member of the family of any such interested person;
  - b. Not be in an employment relationship subject to the direction or control of any interested person participating in or economically benefiting from the transaction or arrangement at issue;
  - c. Not be receiving compensation or other payments subject to approval by any interested person participating in or economically benefiting from the transaction or arrangement at issue;
  - d. Have no material financial interest affected by the transaction or arrangement at issue; and
  - e. Not be in a position to approve a transaction providing economic benefits to any interested person participating in the transaction or arrangement at issue, who in turn has approved or will approve a transaction providing economic benefits to the member.
2. Duty to Disclose: In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.
3. Determining Whether a Conflict of Interest Exists: After disclosure of the interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is

discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

4. Procedures for Addressing the Conflict of Interest: A conflict of interest transaction may be approved if the material facts of the transaction and the individual's interest are disclosed or known to the board or a committee of the board, and the transaction is authorized, approved or ratified by an affirmative vote of a majority of the directors either on the board or on the committee of the board, who have no direct or indirect interest in the transaction; provided, that a transaction may not be authorized, approved, or ratified by a single director. The procedures for addressing conflict of interest transactions or arrangements shall be as follows:
  - a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest;
  - b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement (appropriate data as to comparability) so that, given the knowledge and expertise of the members, the board or committee has information sufficient to determine the reasonableness or fairness of the transaction or arrangement;
  - c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest;
  - d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the governing board or committee shall make its decision as to whether to enter into the transaction or arrangement.
5. Violations of the Conflict of Interest Policy: If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

#### ARTICLE IV. RECORD OF PROCEEDINGS

1. The minutes of the governing board and all committees with board delegated powers shall contain the following:
  - a. In determining whether a conflict of interest exists: The names of the persons who disclosed or otherwise were found to have an interest in connection with an actual or possible conflict of interest, the nature of the interest, the names of the persons present for discussions and votes relating to the transaction or

arrangement, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact exists.

2. In addressing the conflict of interest:
  - a. The names of the persons who were present for discussions and votes relating to the transaction or arrangement; the content of the discussion, including any alternatives to the proposed transaction or arrangement, the comparability data obtained, how it was obtained, and what data was relied upon; and a record of any votes taken in connection with the proceedings and those who approved;
  - b. The terms of the approved transaction and date it was approved; and
  - c. Any actions taken with respect to consideration of the transaction by anyone who is otherwise a member of the authorized body but who had a conflict of interest with respect to the transaction.
  - d. Such documentation must be prepared before the later of the next meeting of the authorized body or 60 days after the final action or actions of the authorized body are taken. The authorized body must review and approve the record as being reasonable, accurate and complete within a reasonable time thereafter.

#### ARTICLE V. COMPENSATION

1. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

#### ARTICLE VI. ANNUAL STATEMENTS

1. Each director, principal officer and member of a committee with governing board-delegated powers shall annually sign a statement, which affirms such person:
  - a. Has received a copy of the conflict of interest policy;
  - b. Has read and understands the policy;
  - c. Has agreed to comply with the policy; and
  - d. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities, which accomplish one or more of its tax-exempt purposes.

#### ARTICLE VII. PERIODIC REVIEWS

1. To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

#### ARTICLE VIII. USE OF OUTSIDE EXPERTS

1. When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.