



Conflict of Interest Policy

Preamble

William and Flora Hewlett established this Foundation exclusively to advance charitable purposes for the public good. The Board honors the Founders' values by requiring the highest ethical standards of the directors, advisors, and staff; by using the Foundation's assets efficiently for the Foundation's philanthropic objectives; and by taking measures to assure that decisions are not influenced by self-interest. This Policy is intended to provide guidance on how to deal appropriately with situations that involve, or may appear to involve, conflicts of interest, and to comply with federal and state laws concerning conflicts of interest. While it is the Foundation's policy that conflicts of interest and appearances of conflicts of interest be kept to a minimum, the Foundation has always included, and benefited from including, directors, advisors, and staff with close associations with other charitable entities that are appropriate recipients of grants, beginning with the Founders' own close affiliation with Stanford University. It is predictable that people with interest and expertise in the nonprofit sector often will have such associations; the Foundation will not discriminate against worthy grant recipients because its Board members or personnel serve those recipients in some role. This Policy describes, among other things, how decisions involving these and similar situations should be dealt with to ensure the integrity of the process. Its basic purpose is to avoid both the reality and the perception that directors, advisors or staff have used their positions to derive inappropriate financial, personal or institutional benefits, and it should be interpreted and applied to achieve this purpose.

Policy Statement

In order to assure impartial decisionmaking, it is the policy of the Hewlett Foundation that any conflicts of interest, or apparent or potential conflicts of interest, be fully disclosed before a decision is made on the matter involved, and that no director, advisor, or staff member participate (other than by providing information) in any decision in which he or she has a conflict of interest. The Board of Directors will not approve, and the Foundation will not participate in, any self-dealing transaction prohibited by law.

It is the continuing responsibility of all directors, advisors, and staff to review their outside business interests, philanthropic interests, personal interests, and family and other close relationships for actual, apparent, or potential conflicts of interest with respect to the Foundation, and to promptly disclose the

nature of the interest or relationship.

Implementation of the Conflict of Interest Policy

Conflict of Interest Defined.

Generally, a conflict of interest with respect to a proposed Foundation transaction or grant exists if a director, advisor, or staff member of the Foundation: (a) is in a position to make or influence the Foundation's decisions about whether and how to proceed with the proposed transaction or grant, and (b) has an affiliation, as described below, with any other party to a business transaction or with the potential beneficiary of a grant. An apparent conflict of interest is one that a skeptical viewer might reasonably believe might cause the director's, advisor's, or staff member's decision to be tainted by self-interest.

For purposes of this policy, an affiliation is the close involvement with a vendor, service provider, or grantee on the part of: (a) a director of the Foundation, (b) an advisor to the Foundation, (c) a staff member of the Foundation, or (d) the spouse, domestic partner, parent, other ancestor, lineal descendant through great-grandchildren, or spouse or partner of such descendants.

Affiliation includes, but is not limited to, serving as a Board member, employee, or consultant to a current or potential grantee, service provider, or vendor, or doing business with the grantee, service provider, or vendor. Directors, advisors, and the staff of the Foundation shall communicate fully with the Foundation regarding such affiliations and any other relationship or commitment that could affect, or be seen to affect, the impartial fulfillment of their roles in the affairs of the Foundation. Doubts about whether a relationship warrants disclosure under this policy should be resolved in favor of disclosure.

Disclosure of Affiliations Generally.

Appendix B of this document is a disclosure statement that each director, advisory committee member, and staff member must complete on appointment and annually thereafter. The disclosure form covers ongoing affiliations that may present conflicts, but directors, advisors, and staff should also be alert to other potential conflicts that may arise during the course of the year.

Disclosure of affiliations in the disclosure statement does not substitute for the disclosure requirements in connection with any specific transaction or grant. Affiliations or interests should be disclosed to other participants in the Foundation's decisionmaking process whenever there is any doubt about whether disclosure is required.

Abstention from Decisionmaking Generally.

In all situations calling for disclosure of affiliations, the director, advisor, or staff member should abstain from voting or otherwise participating in the decision other than by providing information requested by the disinterested decisionmakers. That abstention should be formally noted in the minutes in the case of directors, or in the docket memo and minutes or other appropriate written record in the case of staff.

Disclosure and Abstention in Specific Situations.

- *Conflicts Arising from Recommendations and Approval of Grants.*

Unless well known to the Board or staff considering a proposed grant, disclosure should be made, orally or in writing, whenever a grant involving a conflict or apparent conflict of interest is being considered. Staff members should make disclosure to the President (see section relating specifically to staff below). Directors should normally make disclosure to the Board at the time the grant is first discussed with the Board or any committee of the Board, or sooner to the Chairman of the Board.

If there is a Board deliberation on the merits of a grant to an organization with which a director is affiliated, the interested director shall, in addition to abstaining from voting, leave the room after having answered any questions posed by other directors. If the grant is authorized without discussion as part of a motion to approve the docket, the interested director shall note his or her abstention from that particular docket item.

While grants may be made to organizations that employ a director, advisor, or family member of a director, advisor, or staff member, or that contract for the provision of goods or services from any of those individuals, no grant to such an organization shall include funds designated to pay the compensation for such employment, goods, or services.

- *Conflicts Arising in Transactions Other than Grants.*

Disclosure should be made, orally or in writing, any time a transaction involving a conflict of interest or apparent conflict of interest is being considered. Generally, directors, advisors, and the President should make disclosure to the Chairman of the Board (or, if the conflict involves the Chairman, to the Vice-Chairman). The staff should make disclosure to the President. Formal notation of the disclosure should be part of the process.

The Chairman, Vice Chairman, or President, as the case may be, shall investigate the facts; seek advice from outside counsel on legal issues as necessary; and report to the Board at the time it considers the transaction. When the proposed transaction is considered, the interested director or advisor should leave the room and not participate in the deliberation on the merits or the vote. Directors who leave the room under these circumstances are counted as present for purposes of a quorum.

- *Transactions Not Normally Considered by the Board.*

If there is a conflict of interest or apparent conflict of interest in connection with a transaction that would not normally go to the Board (such as a contract within the discretion of the President or other staff, or a Presidential Discretionary grant), the President may determine that the transaction involves no economic interest of any affiliated party. In that case, the President shall consult outside legal counsel to determine whether federal or state law treats the transaction as self-dealing even in the absence of any economic interest. If outside legal counsel concludes that, on the facts provided, there is no self-dealing, the matter may be referred to the Executive Committee of the Board for review and, if appropriate, approval. The provisions of this Conflict of Interest Policy that specify how the Board shall proceed in reviewing an actual or potential conflict of interest shall govern the operations of the Executive Committee, substituting "Committee" for "Board" as appropriate. The minutes of any meeting of the Committee shall be distributed to the Board within two weeks of such meeting, together with any supporting documentation reviewed by the Committee in reaching its decision. In the event the potential or apparent conflict involves the President, the Chairman shall have the responsibilities otherwise assigned to the President under this paragraph; in the event it involves either the President or the Chairman, the Vice-Chairman of the Board shall participate in the Executive Committee's review in lieu of the individual involved.

The Foundation will generally avoid any transaction that results in direct or indirect material economic benefit to any affiliated person. If the Board believes that such a transaction is in the best interests of the Foundation, and if the transaction is not prohibited by federal or state law, the Board may, with the advice of counsel, consider the transaction in accordance with the relevant procedures set forth in the California Non-Profit Corporation Law.

Self-Dealing Transactions.

The Internal Revenue Code imposes a penalty on self-dealing between the Foundation and disqualified persons (see Appendix A). The Foundation will not engage in such self-dealing. Generally speaking, sales of property, goods, or services; exchanges and loans between a foundation and a disqualified person (such as a director or officer or a member of their families); payment of compensation to a disqualified person; and use of Foundation assets by or for the benefit of a disqualified person constitute self-dealing and, unless an exception applies, are prohibited.

Gifts.

With the exception noted below, directors, advisors, and staff members, and members of their families, may not knowingly receive or accept any pecuniary gain or anything else of value (including gifts, honoraria, loans, and entertainment) from recent, current, or potential grantees, vendors, suppliers, consultants, or others who have existing or proposed business or grantor-grantee relationships with the Foundation. It is permissible to accept gifts of nominal value, meals, and social invitations that are in keeping with good business ethics and do not obligate the recipient to take or refrain from taking any action or decision on behalf of the Foundation. Where it would be awkward to decline a proffered gift, it should be accepted on behalf of the Foundation, and the President should be consulted as to its disposition.

Provisions Specific to Staff.

Full-time employees have a full-time responsibility to the Foundation and may not engage in activities that would interfere with the discharge of this responsibility. No employee may have business dealings with the Foundation beyond receipt of salary and personnel benefits and reimbursement of authorized expenses. Any service as a director of, or advisor or consultant to, any business or nonprofit organization must not only be stated on the employee's Disclosure Statement but, in the case of a relationship with an organization doing business with or receiving a grant from the Foundation, permission must be sought in advance from the President (or from the Chairman of the Board if the President is involved). Permission will be granted only when it is determined that the interests of the Foundation are not compromised by the service to the other organization. Full disclosure of the relationship to the proposed grantee must be made again before the employee recommends any grant or transaction to or with the other organization and, if the recommendation goes forward, the disclosure must be presented to the Board and recorded in the Board minutes.

Appendix A

Private Foundation Self-Dealing Rules

As a private foundation, the William and Flora Hewlett Foundation is subject to the self-dealing rules established by section 4941 of the Internal Revenue Code. These rules tightly regulate all transactions between the Foundation and its directors, officers, and other "disqualified persons." The conceptual starting point of the self-dealing rules is that a private foundation should not engage in economic transactions with disqualified persons even if those transactions result in the net transfer of value to the foundation. The rules establish an important, but limited, exception under which a foundation may pay reasonable compensation to a disqualified person and reimburse reasonable expenses for personal services that are reasonable and necessary to advance the exempt purposes of the foundation.

Sanctions. The sanctions for violating the self-dealing rules fall primarily on the disqualified person(s) involved in a self-dealing transaction, who must both pay a penalty tax and "correct" the violation. Correction generally requires both undoing the transaction to the extent possible and also placing the foundation in a financial position "not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards."

Directors and officers who knowingly, willfully, and without reasonable cause approve a self-dealing transaction are also subject to financial penalty and a correction obligation.

Definition of Disqualified Persons. For purposes of the self-dealing rules, disqualified persons include:

- A foundation's directors and officers as well as other "foundation managers" who have decision authority over a specific transaction;
- Substantial contributors to the foundation;
- Family members of the foregoing (i.e., spouses, ancestors, lineal descendants through great-grandchildren, and spouses of such descendants); and
- Any entity (other than another section 501(c)(3) organization) in which disqualified persons own a 35 percent or greater ownership interest.

Transactions Prohibited Under the Self-Dealing Rules.

- Selling, exchanging, or leasing of property between a private foundation and a disqualified person is an act of self-dealing, even if the foundation pays demonstrably less than the fair market value of the property it receives. A contribution of property subject to a mortgage is treated as a sale or exchange, and hence, constitutes self-dealing.
- Lending of money or other extension of credit by a foundation to a disqualified person is an act of self-dealing. In addition, a disqualified person may not lend to a foundation unless the loan is interest free and the proceeds are used exclusively for charitable purposes. Where a disqualified person has made an interest-free loan to a foundation, the foundation may not repay the loan with property other than cash.
- Furnishing of goods, services, or facilities by a disqualified person to a private foundation is an act of self-dealing unless these items are offered free of charge. Conversely, a foundation may provide goods, services, or facilities to a disqualified person only if the disqualified person is treated no differently from other members of the public to whom the foundation also makes these items available.

- Payment of compensation to a disqualified person and reimbursement of related expenses are acts of self-dealing unless the services are personal services that are reasonable and necessary to carrying out the purposes of the foundation and the compensation and reimbursements are reasonable in amount.