

**KANSAS STATE UNIVERSITY**  
**FOUNDATION**

Title	Conflict of Interest and Confidentiality Policy	Version	5
Approved By	Kansas State University Foundation Board of Directors	Approval Date	06/16/2023
Approved By	Governance Committee	Approval Date	06/16/2023
Liaison to the Committee	Greg Lohrentz (Senior Vice President of Operations and Finance - COO/CFO)		

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**Rationale**

This Policy is to protect the interests of the Foundation when it is contemplating entering a Transaction or Arrangement that might benefit the Personal or Private interest of a member of the Board, an Officer of the Foundation, a member of a Committee, or any Key Employee. This Policy also protects the Foundation’s Confidential Information.

All capitalized terms used in this Policy and not otherwise defined are defined below in the Definitions section.

**Applies to**

This Policy applies to Covered Persons (Foundation Board members, Officers, Foundation Committee members (including volunteer non-Board members) and Foundation Key Employees.

**Policy**

*Protection of Confidential Information.* The Policy requires the protection of the confidentiality of communications made in Executive Session and other Confidential Information in order to preserve and protect the integrity of the Foundation and its decisions, and to foster an open and trusting relationship between and among members of the Board and the Foundation staff.

*Management of Conflicts of Interest.* This Policy also requires Covered Persons to maintain the highest standard of corporate ethics not only to avoid conflicts of interest in the Foundation’s affairs, but also to avoid even the appearance of impropriety. This Policy is intended to supplement but not replace any applicable laws governing conflicts of interest and fiduciary duties applicable to nonprofit and charitable corporations.

Any Covered Person who may have a Conflict of Interest in a Transaction or Arrangement presented to the Board or a Committee for deliberation, authorization, approval, or ratification--- or any Covered Person who reasonably believes such an interest exists in another person--- must make a prompt, full, and frank disclosure of the potential Conflict of Interest, either verbally or in writing, to the Board or Committee prior to its acting on such Transaction or Arrangement. The Covered Person must disclose the existence of the potential Conflict of Interest and all material facts, known to the Covered Person about the potential Conflict of Interest to the extent permitted by law.

In addition to making the disclosures required above prior to the Board's or a Committee's consideration of a Transaction or Arrangement which may involve a Conflict of Interest, all Covered Persons shall complete the annual disclosure statement distributed pursuant to the section of this Policy headed "Distribution of Policy". Disclosure on the annual disclosure statement does not relieve the Covered Person from the obligation under this Policy to disclose a potential Conflict of Interest and, when required by this Policy, withdraw from a Board or Committee meeting when a specific Transaction or Arrangement involving a Conflict of Interest is being considered.

### **Procedures for addressing a potential or actual Conflict of Interest**

The following procedures are required for Board or Committee action when a potential Conflict of Interest has been disclosed:

- The Covered Person may make a presentation at the Board or Committee meeting. The Board or Committee Chair may require the person with the potential Conflict of Interest to leave the meeting during the consideration and vote on whether a Conflict of Interest exists and whether the Foundation should approve the Transaction or Arrangement that results in the Conflict of Interest.<sup>1</sup>
- After disclosure of the potential Conflict of Interest and all material facts, the Directors or Committee members shall then discuss and, if requested by any Director or Committee member, vote on whether a Conflict of Interest exists and shall seek the advice of legal counsel where appropriate in making such a determination. In considering whether a Conflict of Interest exists with respect to a Transaction or Arrangement with the University or a Related Organization, the Board or Committee shall consider the definition of Personal or Private Interest below.
- The Transaction or Arrangement that would result in the Conflict of Interest must be reviewed by the Governance Committee before being presented to the Board, unless otherwise determined by the Board.
- The Board or Committee may also appoint, if appropriate, a disinterested person or special Committee to investigate alternatives to the proposed Transaction or Arrangement.

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<sup>1</sup> If all members of the Board or Committee have a potential or actual Conflict of Interest, all Board or Committee members may participate in the determination of whether a Conflict of Interest exists and whether to adopt the proposed Transaction or Arrangement, with advice of legal counsel when appropriate, or the Board or Committee may appoint a Committee of disinterested persons to make the determination.

- In deciding whether to adopt a Transaction or Arrangement involving a Conflict of Interest, the Board or Committee shall review and consider:
  - Alternatives to the proposed Transaction or Arrangement.
  - Whether the transaction is fair and reasonable to the Foundation.
  - Whether the Transaction or Arrangement is in the Foundation's best interest.
  - Other market arrangements.

The Board shall exercise special care in these considerations.

- The Board or Committee shall determine by a majority vote of the disinterested members whether the Transaction or Arrangement is in the Foundation's best interest and for its own benefit and whether the Transaction or Arrangement is fair and reasonable to the Foundation, and the Board or Committee will make its decision as to whether to enter into the Transaction or Arrangement in conformity with such determination.
- The Board or Committee will further follow all conflicts of interest laws to the extent they apply to the Board or Committee.

### **Confidentiality Procedures**

- **Executive Sessions:** All Executive Sessions will be conducted consistent with the Foundation's Bylaws and state law. Only those individuals authorized under the Foundation's Bylaws to participate in Executive Session shall attend and participate.
- **Written Material:** The Board or Committee will keep all written or documented Confidential Information separate from documents that are available to Third Parties and will not reproduce or disclose such Confidential Information to any Third-Party unless expressly authorized to do so by formal action of the Board.
- **Communications with Third Parties:** No Director or Committee member may communicate any Confidential Information to any Third-Party unless expressly authorized to do so by formal action of the Board.
- **Consultation with Foundation Counsel:** To avoid an unauthorized disclosure of Confidential Information, the Board or Committee shall consult with the Foundation's legal counsel prior to responding to any Third-Party's request for the release of Confidential Information. Confidential Information may not be released without the prior approval of the Foundation's administration and the Board in consultation with the Foundation's legal counsel.

### **Enforcement and Violation of the Policy**

- The President and Board shall review and monitor the annual disclosure forms and bring to the attention of the Board or appropriate Committee the disclosed Personal or Private Interests.
- If the Board or Committee has reasonable cause to believe that a Covered Person has failed to disclose an actual or possible Personal or Private Interest, has disclosed Confidential Information to a Third-Party or has engaged in a Prohibited Action, it shall inform the Covered Person of the basis for such belief and afford the Covered Person an opportunity to explain the alleged failure to disclose, alleged breach of disclosure of Confidential Information or alleged Prohibited Action.

- If, after hearing the response of the Covered Person and making such further investigation as may be warranted in the circumstances, the Board or Committee determines that the Covered Person has in fact failed to disclose an actual or possible Personal or Private Interest, disclosed Confidential Information to a Third-Party, or has engaged in a Prohibited Action, it shall take appropriate disciplinary and corrective action as outlined herein.

### **Disciplinary and Corrective Action**

- If the Board determines that a Covered Person has failed to disclose an actual or possible Personal or Private Interest, has disclosed Confidential Information to a Third-Party, or engaged in a Prohibited Action, the Board may do one or more of the following:
  - Counsel the Covered Person regarding their obligations under this Policy;
  - Exclude the Covered Person from future discussions and voting on the matter at issue and any related matters;
  - Exclude the Covered Person from participation on specified Committees or as an Officer of the Foundation.
- If the Board determines that Covered Person has failed to disclose an actual or possible Personal or Private Interest, disclosed Confidential Information to a Third-Party, or engaged in a Prohibited Action, and the disciplinary and corrective actions outlined above would be insufficient to protect the best interests of the Foundation or would impair the Covered Person's ability to fulfill their responsibilities to the Foundation, then the Covered Person may be removed from his or her position as Director, Officer, Committee member, or employee in accordance with the applicable Foundation Bylaws, policies and procedures.

### **Record Keeping**

The minutes of the meetings of the Board and all Committees must include:

- The names of the persons who disclosed or otherwise were found to have a Personal or Private Interest in connection with an actual or possible Conflict of Interest, the nature of the Personal or Private Interest, any action taken to determine whether a Conflict of Interest was present, and the Board's or Committee's decision as to whether a Conflict of Interest in fact existed; and
- The names of the persons who were present for discussions and votes relating to the Transaction or Arrangement; the content of the discussions, including any alternatives to the proposed Transaction or Arrangement; and a record of any votes taken in connection therewith.

### **Distribution of Policy**

This Policy must be distributed to all Covered Persons. Annually, the Sr. Director of Compliance Services will distribute to each such Covered Person an annual disclosure statement and each such Covered Person will complete and sign such that the person:

- Received a copy of the Policy;
- Has read and understands the Policy;
- Agrees to comply with the Policy;
- Understands that the Policy applies to all the Foundation’s Committees and subcommittees having Board-delegated powers.

**Compensation**

- A voting member of the Board who receives compensation, directly or indirectly, from the Foundation or a Related Organization for services is precluded from participating in the consideration of and voting on matters pertaining to that member’s compensation. The member may answer questions prior to recusal from the consideration and voting.
- A voting member of any Committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation or a Related Organization for services is precluded from participating in the consideration of and voting on matters pertaining to that member’s compensation. The member may answer questions prior to recusal from the consideration and voting.
- Individuals who receive compensation (other than reimbursement for expenses incurred as a Director, Officer, or Committee member), directly or indirectly, from the Foundation or a Related Organization are precluded from voting membership on a Committee whose jurisdiction includes compensation matters. No individual is prohibited from providing information to any Committee regarding their compensation.

**Definitions**

Term	Definition
Aware	Aware means actual knowledge without any duty to inquire.
Board of Directors or Board	The Board of Directors of the Foundation.
Business relationships	Business relationships between two persons include the following: <ol style="list-style-type: none"> <li>1. One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a <a href="#">trustee</a>, <a href="#">director</a>, <a href="#">officer</a>, or greater-than-35 percent Owner.</li> <li>2. One person is transacting business with the other, directly or indirectly, in one or more contracts of sale, lease, license, loan, performance of services or other transaction involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the organization’s tax year. Indirect transactions are transactions with an organization with which the one person is associated as a <a href="#">trustee</a>, <a href="#">director</a>, <a href="#">officer</a>, or greater-than-35 percent Owner.</li> </ol>

	<p>3. The two persons are each a <a href="#">director</a>, trustee, <a href="#">officer</a> or greater than 10 percent <a href="#">Owner</a> in the same business or investment entity (but not the same tax-exempt organization).</p> <p><u>Exceptions to the above rules (do not report transactions meeting the exceptions below):</u></p> <ol style="list-style-type: none"> <li>1. The ordinary course of business exception- (the transaction must be on the same terms as are generally offered to the public).</li> <li>2. The privileged relationship exception- (attorney and client, medical professional and patient, priest/clergy and penitent/communicant)</li> </ol>
<b>Committee</b>	Foundation Committee with Board-delegated powers.
<b>Compensation</b>	Compensation is defined as direct and indirect remuneration (whether in cash or in kind), as well as gifts or favors that are substantial in nature. Compensation does not include permissible payments received by donors or their designated beneficiaries pursuant to split-interest gift arrangements (such as charitable remainder trusts), charitable gift annuities, or life income arrangements.
<b>Confidential Information</b>	Confidential Information means any written or oral communication and information, including but not limited to all practices, procedures, member lists and other nonpublic information that has come into a Covered Person’s possession and that has been identified as confidential by Foundation or provided to the Covered Person during an Executive Session. Confidential Information includes any communications covered under the attorney-client privilege whether or not provided in Executive Session.
<b>Conflict of Interest</b>	A Conflict of Interest exists with respect to any issue on which the Foundation may act where (i) a Covered Person has a Personal or Private Interest, or (ii) a Covered Person is Aware that a member of their Family has a Personal or Private Interest.
<b>Covered Person</b>	<p>Covered Person includes the following:</p> <ul style="list-style-type: none"> <li>• A Director with voting rights</li> <li>• An Officer. (All Officers are covered by this Policy with no minimum compensation threshold.).</li> <li>• A member of a Committee with voting rights.</li> <li>• Key Employees.</li> <li>• Former Officers, Directors, Key Employees, who meet <b>both</b> of the following conditions: The Foundation did (or should have) reported the individual on the Foundation’s Form 990, for any one or more of the five prior years in one or more of the following capacities: Officer, Director, or Key Employees <b>and</b></li> </ul>

	<p>The individual received reportable compensation (e.g., W-2 wages or 1099 services) from the Foundation and related organizations, in the calendar year ending with or within the Foundation’s current tax year in excess of the threshold amount (\$100,000 for former Officers and Key Employees, \$10,000 for services for a Director)</p> <p>If a person is a Covered Person with respect to any entity related to the Foundation, they are a Covered Person with respect to all related organizations.</p>
<b>Executive Session</b>	Executive Session shall mean those times when the Board or any Committee closes a meeting.
<b>Family relationships</b>	Family relationships include: Unless specified otherwise, the family of an individual includes only their spouse, ancestors, siblings (whether whole or half-blood), children (whether natural or adopted), grandchildren, great grandchildren and spouses of siblings, children, grandchildren, and great grandchildren.
<b>Foundation</b>	The Kansas State University Foundation
<b>Highest Compensated Employee</b>	Highest compensated employee is one of the five highest compensated employees of the organization (including employees of a disregarded entity of the organization) other than <a href="#">officers</a> , <a href="#">directors</a> , or <a href="#">key employees</a> . The five highest compensated employees are determined by the amounts of reportable compensation (over \$100,000 of reportable compensation) for the calendar year ending with or within the organization’s tax year.
<b>Key Employee</b>	<p>A Key Employee is an employee of the Foundation (other than an Officer, Director or Committee member) who meets all three of the following tests, applied in the following order:</p> <ul style="list-style-type: none"> <li>○ \$150,000 test. Receives reportable compensation from the Foundation and all related organizations in excess of \$150,000 for the calendar year ending with or within the Foundation’s tax year.</li> <li>○ Responsibility Test <ul style="list-style-type: none"> <li>• Has responsibilities, powers, or influence over the Foundation as a whole that is similar to those of Officers, Board of Directors or subcommittee members;</li> <li>• Manages a discrete segment or activity of the Foundation that represents 10% or more of the activities, assets, income, or expenses;</li> <li>• Has or shares authority to control or determine 10% or more of the Foundation’s capital expenditures, operating budget or compensation for employees.</li> </ul> </li> <li>○ Top 20 test. Is one of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test) with the highest reportable compensation from the Foundation and related organizations for the calendar year ending with or within the Foundation’s tax year.</li> </ul>

<b>Officer</b>	An Officer of the Foundation (a person elected or appointed to manage the Foundation’s daily operations or officers of the Board of Directors, such as a president, vice-president, secretary, or treasurer).
<b>Ownership</b>	Ownership is measured by stock ownership (voting power or value, whichever is greater) of a corporation, profits or capital interest (whichever greater) in a partnership or limited liability company, beneficial interest in a trust, or control of a nonprofit organization. Ownership includes indirect ownership, <i>e.g.</i> , ownership in an entity that has ownership in the entity doing business with the Foundation; there may be ownership through multiple tiers of entities.
<b>Personal or Private Interest</b>	<p>A Personal or Private Interest is defined as one or more of the following interests, arising directly or indirectly:</p> <ul style="list-style-type: none"> <li>• An Ownership or investment interest in any entity (other than a 5% or less Ownership in a publicly traded corporation) with which the Foundation has a current or potential Transaction or Arrangement;</li> <li>• A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a current or potential Transaction or Arrangement;</li> <li>• A position in a public office or institution, whether appointed, elected or employed, which will require participation in matters involving the Foundation;</li> <li>• An uncompensated consultant, officer, committee member or board member of any entity with which the Foundation has a Transaction or Arrangement or to which the Foundation makes any expenditure of funds; or</li> <li>• Any other interest which may compete with or conflict with the interests of the Foundation.</li> </ul> <p>A member of the Kansas State University Board of Trustees, or an officer or employee of the University, who is also a Covered Person, does not have a Personal or Private Interest in a Transaction or Arrangement with the University, unless the Covered Person would directly derive a personal financial benefit from the Transaction or Arrangement.</p>
<b>Policy</b>	This Conflict-of-Interest and Confidentiality Policy
<b>Prohibited Action</b>	In addition to the policies and procedures set forth herein governing Conflicts of Interest and Confidential Information, it shall be a violation of this Policy to engage in any Prohibited Action. Prohibited Actions shall include any of the following: acceptance by any Officer or Director of any personal loans or credit extensions by the Foundation, receipt of gifts (which exceed the IRS de minimis rules) from third parties dealing with the Foundation, or any ethical violation detrimental to the Foundation.
<b>Third Party</b>	Third-Party means anyone who is not covered under the Foundation’s attorney-client privilege or is not authorized by the Board to participate in the Executive Sessions of the Board.



<b>Transaction or Arrangement</b>	Transaction or Arrangement includes a measure, contract, resolution, grant, agreement, or other similar matters considered by the Board or Committee.
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**References & Links**

There are no references or links applicable to this policy.

**Contact**

<b>Department Name or Person</b>	<b>Phone Number</b>
<b>President/CEO</b>	785-775-2004
<b>Sr. VP Operations and Finance/COO/CFO</b>	785-775-2010
<b>Sr Director of Compliance Services</b>	785-775-2103