



Board of Trustees – Conflict of Interest Policy & Procedures

POLICY 400.1

Policy: 1, BOT Conflict of Interest
Policy & Procedures
Responsible: Governance Committee
Responsible Department: 400
President's Office
Originally Issued: May 2007
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POLICY STATEMENT

To ensure that the Fielding Graduate University ("FIELDING") complies with California law under which it is organized, its Board of Trustees (individually, "Trustees" and collectively, "Trustees" or the "Board") hereby adopts this conflict of interest policy ("Policy"). The Policy applies to members of the Board and also applies to FIELDING's [directors, officers and senior-level employees] (collectively, "Employees"), where applicable. This Policy outlines procedures to be followed when the Board contemplates entering into a transaction or arrangement that might implicate the private interest of a Trustee or Employee of FIELDING. *This Policy is intended to supplement, but not replace, any applicable state laws governing conflict of interest applicable to nonprofit and charitable corporations.*

GUIDELINES

I. DUTIES OF THE BOARD OF TRUSTEES

A. Ultimate Responsibility

The Board is responsible for overseeing the management of FIELDING and all related activities and operations. Although the Board may, with due care, delegate certain matters to staff, committees, or others, the Board remains ultimately responsible for overseeing the management of FIELDING.

B. General Duty of Care

Trustees must exercise their powers in good faith in a manner in which they believe to be in the best interests of FIELDING, and must consider the impact a transaction has on FIELDING's mission. Trustees must exercise their powers with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. Some of the steps required to meet this standard include regularly attending Board meetings, reviewing the Board's minutes and other documents provided to Trustees, and seeking clarification of matters that are unclear.

C. Reliance on Information Supplied by Others

In performing their duties, a Trustee may reasonably rely on information provided by qualified Employees, legal counsel or other qualified experts, and committees comprised of Trustees. Trustees must, however, exercise due care in monitoring such information. For example, if a Trustee receives information that the Trustee believes to be inaccurate, the Trustee has a duty to inquire further and, if the Trustee still believes the information is inaccurate, to address all concerns to the Board.

D. Confidential Information

Trustees will have access to confidential information regarding the affairs, business, and plans of FIELDING. Trustees are prohibited from using or disclosing such information, whether or not specifically identified as confidential, for the personal profit or advantage of the Trustee or anyone else. Specifically, the use of corporate information by a Trustee involved in the same activity as FIELDING is prohibited, despite the non-existence of a direct business transaction between the Trustee and FIELDING, when such information is used to compete with FIELDING.

II. CONFLICTS OF INTEREST INVOLVING OFFICERS/TRUSTEES

A. Definitions

1. Interested Person

Any Trustee, Employee, or member of a committee with Board-delegated powers who has a direct

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or indirect financial interest, as defined below in Article II, Section (A) (2), is an interested person. Included within this definition of an interested person is any Trustee who serves as a Trustee or trustee/board member of another corporation with whom FIELDING is contemplating a transaction or arrangement.

2. Financial Interest

A Trustee has a financial interest if the Trustee has, directly or indirectly, through business, investment, or family:

- a. an ownership or investment interest in any entity with which FIELDING has a transaction or arrangement,
- b. a compensation arrangement with FIELDING or with any entity or individual with which FIELDING has a transaction or arrangement, or
- c. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which FIELDING is negotiating a transaction or arrangement.

3. Compensation

Compensation includes direct and indirect remuneration as well as gifts and favors that are substantial in nature.

4. Conflict of Interest

A financial interest is not necessarily a conflict of interest. Under Article II, Section (B) (2), a Trustee who has a financial interest may have a conflict of interest only if the Board or appropriate committee decides that a conflict of interest exists.

B. Procedures

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of his or her financial interest and /or that of other Trustees or Employees to the chairperson of the Board and must be given the opportunity to disclose all material facts to the chairperson of the Board. The chairperson shall then select the appropriate members and/or committees with Board-delegated powers to consider the proposed transaction or arrangement which gives rise to the actual or possible conflict of interest. The Trustee should disclose the potential conflict of interest as soon as possible, but no later than the first Board meeting after the Trustee discovers the potential conflict.

2. Board Determination of Whether a Conflict of Interest Exists

The Board or committee members (as determined by the Chairperson) shall decide whether a conflict of interest exists in accordance with the following procedures.

3. Procedures for Addressing the Conflict of Interest

- a. Following disclosure to the chairperson of the Board, an interested person may make a presentation at the Board or committee meeting, but after such presentation, the interested person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that result in the potential conflict of interest.
- b. Facts should be gathered regarding the proposed transaction or arrangement and the Trustee's material financial interest. The chairperson of the Board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction.
- c. All the relevant facts gathered about the proposed transaction or arrangement and the Trustee's material financial interest should be disclosed to the Board. In addition, all committee findings and transactional alternatives, if any, should be presented to the Board.

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- d. After reasonable investigation, the Board or committee shall determine whether FIELDING can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.
 - e. If the Board or committee determines that a more advantageous transaction or arrangement is not reasonably attainable under the circumstances, the Board or committee may move to approve the proposed transaction or arrangement, despite the conflict of interest.
 - f. If the Board or committee determines that the conflict of interest is irreconcilable the Board may require the Trustee to resign from the Board with the stipulation that when the conflict of interest is removed the Trustee will be eligible for Board service. In such instance, the normal vetting process for potential Public trustees will be employed. If approved, the returning Trustee will be elected to a full term. Prior service will be counted toward Board term limits.
 - g. In order to approve the proposed transaction or arrangement, the Board or committee shall determine by a majority vote of the disinterested Trustees whether the transaction or arrangement is:
 - i. in FIELDING's best interest and for FIELDING's own benefit,
 - ii. the proposed transaction or arrangement is fair and reasonable to FIELDING, and
 - iii. that FIELDING could not have obtained a more advantageous agreement with reasonable effort under the circumstances.
 - h. The interested person shall not be present for the final discussion or vote regarding the proposed transaction or arrangement.
 - i. The transaction must be approved by a majority vote of the Trustees, not including the interested person.
4. Voting Rules Regarding Compensation
- a. A voting member of the Board of Trustees who receives compensation, directly or indirectly, from FIELDING for services is precluded from voting on matters pertaining to that Trustee's compensation.
 - b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from FIELDING for services is precluded from voting on matters pertaining to that Trustee's compensation.
5. Records of Proceedings
- a. The minutes of the Board and committee meetings shall indicate the following:
 - i. full disclosure to the Board, including any investigation and reports, including the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest and the nature of the interest,
 - ii. the content of discussions related to the transaction or arrangement, the persons present during such discussions and whether alternatives to such transaction or arrangement were presented,
 - iii. findings of the Board or committee,
 - iv. any action taken to determine whether a conflict of interest was present and the Board's decision as to whether a conflict of interest in fact existed, and
 - v. Board approval of the proposed transaction or arrangement by roll call vote.

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- b. The reasonableness of the transaction or arrangement may, but need not, be documented and supported by independent, third-party appraisals, compensation surveys, and other appropriate supporting data.
- c. In order to limit the period of time during which the transaction is subject to challenge, the Board may vote to file a notice of transaction with the California Attorney General.

III. CONFLICT OF INTEREST STATEMENT:

A. Annual Statement

- 1. Each Trustee, principal officer, and member of a committee with Board delegated powers shall annually sign the following:

a. Conflict of Interest Statement

b. Disclosure Statement

- i. has received a copy of the conflict of interest policy, conflict of interest statement and disclosure statement
 - ii. has read and understands the policy,
 - iii. has agreed to comply with the policy, and
 - iv. understands that FIELDING is a charitable organization and that in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.
- 2. The Policy shall be reviewed annually for the information and guidance of the Trustees.
- 3. All new Trustees shall be advised of the Policy upon entering their office.

B. Periodic Reviews

- 1. To ensure that FIELDING operates in a manner consistent with its mission and purpose and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:
 - a. Whether compensation arrangements and benefits are reasonable and are the results of arm's-length bargaining.
 - b. Whether acquisitions of services result in inurement or impermissible private benefit.
 - c. Whether partnership and joint venture arrangements conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further FIELDING's mission and purpose, and do not result in inurement or impermissible private benefit.
 - d. Whether agreements with employees and third party payors further FIELDING's mission and purpose and do not result in inurement or impermissible private benefit.
- 2. In conducting these periodic reviews, FIELDING may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring that periodic reviews are conducted.

IV. VIOLATIONS OF THE POLICY

A. Hearing

If the Board has reasonable cause to believe that a Trustee or officer has violated this Policy, it shall inform the Trustee or officer of the basis for such belief and afford the Trustee or officer an opportunity to explain the alleged violation.

B. Disciplinary and Corrective Action

If, after hearing the response of the Trustee or officer and making such further investigation as may be warranted under the circumstances, the Board determines that the Trustee or Officer has in fact violated this Policy, it shall take whatever disciplinary and corrective action it believes is appropriate under the circumstances.

PROCESS AND TIMELINE

March

- Step 1** Annual review of policy and forms with Committee. If updates are made prepare Resolution to be presented to the Executive Committee for approval.

April

- Step 1** Send request to the Executive Assistant of the Board to include the Policy, Conflict of Interest Statement and Disclosure Statement with the Spring Board Book.

April/May (Spring Board Meeting)

- Step 1** Executive Assistant to the Board to collect completed forms during the Friday morning session of the Board (prior to the Committee Meeting).
- Step 2** During Committee meeting review forms to determine possible conflicts of interest. Report any possible conflicts of interest to the Board Chair.

May

- Step 1** Executive Assistant to the Board to scan and all signed forms then file with the confidential records.

WHO SHOULD READ THIS POLICY

All University Board of Trustee members.

CONTACT

For questions please contact the following staff member:

Executive Assistant to the Board of Trustees
Fielding Graduate University
2020 De la Vina Street
Santa Barbara, CA 93105
805-898-2905 (phone); 805-682-8129 (fax)

DOCUMENTS

Controlled Documents Table

Document Name	Revision Date	Owner
BOT Conflict of Interest Policy & Procedures	January, 2013	Exec. Assistant to the BOT
Conflict of Interest Statement	January, 2013	Exec. Assistant to the BOT
Disclosure Statement	January, 2013	Exec. Assistant to the BOT