

**BUSH FOUNDATION**  
**CONFLICT OF INTEREST/CODE OF CONDUCT POLICY**  
**Updated July 9, 2012**

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**I. Statement of Policy**

In order to promote confidence in the integrity of the Bush Foundation and its dealings with its communities, we seek to avoid the appearance as well as the reality of Conflicts of Interest. As part of doing so, it is our responsibility to avoid any illegal or inappropriate transaction between the Bush Foundation and its Covered Individuals and Disqualified Persons.

Individuals affiliated with the Bush Foundation play active roles in their communities by serving as board members or otherwise being involved with a wide spectrum of for-profit and not-for-profit organizations. This means that, from time to time, potential conflicts of interest or the appearance of such conflicts will inevitably arise. It is the Foundation's policy to deal with such conflicts in as open and appropriate a way as possible.

**II. Definitions**

**"Conflicts of Interest"** exist when relationships or obligations, either business or voluntary, may impair or be perceived to impair the independence of judgment of Covered Individuals in the exercise of their duties or of judgment relating to the Foundation and its affairs. Conflicts are not limited to financial interests or legal obligations, but also relate to questions of loyalty or due diligence.

**"Control,"** according to IRS rules, means the ability to require an organization to make or refrain from making an expenditure. The issue is control of the organization, not of a particular program or grant.

**"Covered Individuals"** include Foundation directors, corporate officers, non-Board member committee members, employees, and consultants. Spouses or children of the aforementioned are family members to be considered when determining if a conflict exists with another organization.

**"Disclosure"** is declaring on the written record of a meeting or by appropriate written means that are available to members of the Board and the president of the existence of relations or obligations which might give rise to "conflicts of interest" in the exercise of duties or of judgment relating to the Foundation.

**"Disqualified Persons,"** according to the Internal Revenue Code, are substantial contributors to a private foundation, directors, foundation managers, certain public officials, family members of Disqualified Persons (defined as ancestors, spouse, children, grandchildren, great grandchildren and the spouses of children, grandchildren and great grandchildren), businesses of which Disqualified Persons own or control the vote of 35% or more of the shares and Trusts in which Disqualified Persons own 35% or more of the beneficial interests.

**"Grantees"** are organizations to which we make grants or enter into contracts.

**"Out of Corpus"** is a term typically used when granting to other private foundations, but comes into play when a Board member controls a grantee. It requires that a grant must be spent no later than 12 months after the close of the taxable year in which it is received. In other words, it must be taken out of corpus and spent so that the grant benefits the public and doesn't build another's investment portfolio.

**“Personal Interest”** means:

1. The person owns five percent or more of the voting interest or equity interest in the entity;
2. The interest in the entity owned by the person represents five percent or more of the person’s net worth;
3. More than five percent of the person’s gross income for the preceding year was derived from the entity; or
4. The person donated more than 50 hours of time or the donation made up more than 5% of the person’s total giving for the current or prior calendar year or the donation made up 5% or more of the recipient entity’s total contributions for the current or prior calendar year.

**“Self-Dealing”** means any direct or indirect transaction with a Disqualified Person described in Internal Revenue Code 4941(d)(1). It is immaterial whether the transaction benefits or injures the Foundation. A private foundation is generally prohibited from entering into any financial transaction with Disqualified Persons. The few exceptions to this rule include paying reasonable compensation to a Disqualified Person (other than a governmental official) for services that are necessary to fulfilling the foundation’s charitable purposes. Violations will result in a requirement to correct the act of Self-Dealing, an initial, “tier one” penalty tax equal to ten percent of the amount involved, payable by the self-dealer, and may also be imposed at five percent on foundation managers who participated and knew that the act was Self-Dealing. Furthermore, if the act of Self-Dealing is not corrected within a prescribed timeline, a “second tier” tax of 200% can be imposed on the Disqualified Person who participated, and a 50% tax on the foundation manager who fails to help correct the act of Self-Dealing. Self-Dealing transactions must also be reported on the foundation’s IRS Form 990-PF, which is a publicly available document.

Under IRC 4941(d), the following acts of Self-Dealing are described:

- Sale, exchange or leasing of property;
- Lending of money or other extension of credit;
- Furnishing of goods, services or facilities;
- Payment or compensation (except for personal services that are necessary and reasonable);
- Transfer to, or use by or for the benefit of, a Disqualified Person of the assets of a foundation;
- Certain payments to government officials.

### III. **Code of Conduct**

1. **Duty to Disclose and Abstain.** Covered Individuals must disclose their Personal Interests and any actual and potential Conflicts of Interest, and shall not take part in formal Board deliberations or decisions to approve transactions on behalf of the Foundation if they have a Personal Interest or Conflict of Interest in an entity which is a party to the transaction. Disqualified Persons must avoid engaging in any transactions that are or may be considered Self-Dealing.

Note: The applicability of this Policy to members of the Investment Committee, investment staff, and the investment consultant, and certain additions and exceptions, is stated in the Foundation’s Investment Policy, section V-E. Those individuals should read this Policy in conjunction with that provision.

2. **Grantee Control.** When a Disqualified Person holds a senior position with a Grantee—one that entitles him or her to exercise Control over the grantee’s expenditures— and that person sits on the Foundation’s Board, additional rules apply, as follows: 1) If a Disqualified Person controls the grantee, the grant funds must be wholly used for the Grantee’s charitable and

administrative purposes by the end of the first taxable year after the year in which the contribution is received; 2) the expenses of the Grantee must be deemed to be "out of corpus;" 3) the Foundation must obtain adequate documentation of the above facts. Otherwise, the grant will not count toward the Foundation's payout.

3. **Conflicting Employment.** Covered Individuals of the Foundation shall not maintain full- or part-time employment or accept paid remuneration for services or consultation that will impair their independence of judgment in the exercise of duties for the Foundation. If they have doubt about the propriety of such employment/remuneration, an advisory opinion should be sought from the president or the chair of the Board of Directors, and the circumstances documented and attached to the Conflict of Interest signature page. In evaluating whether to accept such employment or remuneration, the appearance of a conflict of interest, as well as the reality of such conflict, should be considered.
4. **Payments or Gifts to Government Officials.** No Covered Individual shall offer to give or participate in any personal gratuity, fee or other financial arrangement with any government official (or employee, or consultant of such government official), directly or indirectly in connection with the recipient's official functions or judgments as they may relate to the Foundation. (This does not prohibit the exclusively personal exercise of support for campaigns of public officials, unrelated to one's role with the Foundation.)

Under the Internal Revenue Code, the Foundation is specifically precluded from engaging in most forms of political activity if it wishes to maintain its tax-exempt status. Political activity, as defined by the Code, includes:

- a. Attempting to influence legislation;
- b. Attempting to elect or defeat any candidate for political office;
- c. Attempting to approve or defeat any ballot measure.

Covered Individuals may not associate the Foundation with any political activity.

5. **Entertainment, Meals, Gifts and Gratuities.** The acceptance of entertainment, meals, gifts, or gratuities of any amount from Grantees or prospective Grantees, or their officers or directors while on Foundation business, or while grant or contract requests are pending before the Foundation, or while an organization is a Grantee, should be carefully avoided as tending to create the appearance of Conflict of Interest in the eyes of competing prospective grantees and the public.
  - a. Adequate expense account budgets are available from the Foundation to defray meal or conference expenses incurred in necessary meetings with other organizations' officials or employees.
  - b. Donor recognition events, dedications and similar events may be exceptions to be reviewed with the president or Board chair. In certain cases, common courtesy may influence the appropriate decision, such as the acceptance of food at a necessary meeting. The test is whether there appears to be a conflict due to an implied obligation for the Foundation to reciprocate in any significant way.
6. **Honoraria.** It is expected that Covered Individuals may be called upon to speak before various groups as representatives of the Foundation. As a representative, it would be generally inappropriate to accept an honorarium, gift or similar means of payment. (A traditional token, such as a mug, shirt or pen with the sponsor's logo may be reasonable.) Honorary degrees or other individual insignia of accomplishment related to the Foundation's work from outside, benefited organizations shall be declined.

7. **Advocating for Grantees.** No Covered Individual shall act as an advocate with the staff for a grant or contract to an institution with which he/she is affiliated.
8. **Confidentiality.** Covered Individuals will have access to confidential information in their work for the Bush Foundation. This information shall be maintained as confidential and not be used for personal gain.

#### **IV. Process**

##### **1. Annual Disclosure and Review.**

- a. All Covered Individuals shall annually prepare and sign the Annual Statement in the form attached hereto, disclosing official connections and Personal Interests.
- b. In the event a Covered Individual becomes aware that an item which should have been disclosed was not disclosed on a previously filed Annual Statement, then an Annual Statement form shall be completed immediately at the time of discovery of the item.
- c. The chair of the Governance Committee shall review all disclosures provided in the Annual Statements and develop a mitigation plan with the respective member to address the potential Conflict of Interest, with a particular focus on reducing the risk of an actual or perceived conflict creating confusion or affecting the Covered Individual's judgment.
- d. The Finance and Audit Committee shall review the disclosures provided in the Annual Statements, mitigation plans and compliance with the plan and policy on an annual basis.

##### **2. Consideration of Transactions or Arrangements in Which a Personal Interest or Potential Conflict of Interest Exists.** When the Foundation is considering a transaction or arrangement in which a Covered Individual has a Personal Interest or potential Conflict of Interest, the following shall apply:

- a. Covered Individuals shall disclose the Personal Interest or potential Conflict of Interest prior to the related decision.
- b. Once such a disclosure has been made, the remaining Board members or, in appropriate cases, the president, will determine whether or not there is an actual Conflict of Interest or potential act of Self-Dealing.
- c. If the transaction or arrangement may give rise to Self-Dealing and an exception does not apply, neither the Foundation nor the affected Covered Individual will enter into the proposed transaction or arrangement.
- d. If the transaction or arrangement involves an actual Conflict of Interest, the individual with the conflict shall not be present during discussion and voting on the transaction or arrangement, and shall abstain from voting on or otherwise approving the transaction or arrangement.
- e. Recusal and/or non-participation shall be noted in minutes of the proceedings.
- f. If known in advance, a write-up or memorandum to the Board or staff shall contain a reference in any recommendation to the potential conflict of any Covered Individual.

Notwithstanding the foregoing, a Covered Individual may be permitted to participate in discussion and voting on an item otherwise barred by this policy, if a prior written opinion of legal counsel is obtained outlining the procedures to be followed under IRS rules and Minnesota law, where the transaction is deemed to be in the best interest of the Foundation.

## **V. Examples of Conflicting Involvements**

Examples of conflicting involvements include but are not limited to the following:

- Covered Individuals serving as executives, board members, or advisory committee members of vendor, applicant or grantee organizations;
- Immediate family members, especially Disqualified Persons (see definition above), being employed by vendor, applicant or grantee organizations;
- Close business relationships between Foundation representatives and outside vendors;
- Using or transmitting confidential information except as required for the conduct of Foundation business;
- Requesting employment for family members;
- Accepting a gift from a vendor, applicant or grantee;
- Hiring an investment manager run by a family member of a Covered Individual;
- Receiving an honorarium for speaking at events on the Foundation's behalf;
- Accepting tickets to events or other items of value from current or potential vendors or grantees.

## **VI. Special Situations**

Many special situations will confront Foundation directors, Foundation staff, or Foundation consultants that are not covered by this policy statement. If there is any doubt as to the proper course of action, the matter should be discussed with the president (staff or consultants) or Board chair (directors).

Exceptions to this policy may be appropriate after conferring with legal counsel when the work of the Foundation will be furthered or where the grant or contract will not affect the job or compensation of the Covered Individual in question. The process for approving exceptions is as follows:

- The president approves exceptions related to employees and consultants;
- The Board chair approves exceptions related to the president, Foundation directors and non-Board member committee members;
- The Audit Committee chair approves exceptions related to the Board chair.

Exceptions will be communicated to the entire Board and documented on the Annual Statement signature page.

## **VII. Disciplinary Action**

Disciplinary action will be taken if this conflict of interest policy is violated. Disciplinary action may include censure, termination, or removal from the Board or committee, among other actions.

**BUSH FOUNDATION  
CONFLICT OF INTEREST/CODE OF CONDUCT POLICY  
Annual Statement**

The undersigned Foundation director, non-Board member committee member, corporate officer, employee, or consultant of the Bush Foundation hereby acknowledges that he/she has read the attached Conflict of Interest/Code of Conduct Policy.

The undersigned hereby informs the president and the Board of Directors of the Foundation that he/she has the following official connections, such as board memberships, offices, employee status or serves as a professional advisor with applicants or prospective applicants or grantees or prospective grantees of the Foundation, or has special relationships to vendors or investment professionals that deal with the Foundation, including but not limited to ownership or investment interests, any of which could impair his/her independence of judgment in the exercise of duties relating to the Foundation's affairs. If the undersigned is a "Disqualified Person" for purposes of Self-Dealing, the similar relationships of family members and business interests which are included in the definition of Disqualified Persons are also disclosed here:

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The undersigned hereby informs the president and the Board of Directors of the Foundation that during the past calendar year, he/she or an organization in which he/she has a Personal Interest had the following dealings with the Foundation:

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I have read and have a clear understanding of the Foundation's Conflict of Interest/Code of Conduct Policy, and my actions have and will continue to be guided thereby.

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Signature

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Date

\_\_\_\_\_  
Printed Name