

MILLIKIN UNIVERSITY CONFLICT AND DUALITY OF INTEREST POLICY

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MILLIKIN UNIVERSITY CONFLICT AND DUALITY OF INTEREST POLICY

INTRODUCTION

Millikin University (the "University" or "Millikin") recognizes that the proper governance of Millikin depends on Trustees, officers and employees who give their valuable time for the benefit of Millikin. Due to the varied interests and backgrounds of Trustees, officers and employees who are also active in other professional and community life, their service to Millikin may result in situations involving dual interests which might be interpreted as conflicts or dualities of interest. Their valuable service should not be made impossible solely by a conflict or duality of interest.

Service by Trustees and officers require care and loyalty because it is the responsibility of the Trustees and officers to govern Millikin's business with the utmost integrity. Consistent with Illinois law, any possible conflict or duality of interest should be handled through full disclosure, together with no involvement in any deliberation or vote where that interest is involved. Since the fiduciary duties of Trustees and officers include the duty of care and loyalty, it is incumbent upon

Trustees, officers and certain others to be informed of the terms of this Policy.

Millikin has maintained a long-standing "Conflicts of Interest" policy as Article XXIV of its Corporate Bylaws. Article XXIV has now been deleted from the Bylaws and is amended, restated and simplified by this revised Policy.

POLICY AND PROCEDURE

The purposes of this Policy are: (a) to assist the Trustees, officers, members of Trustee committees, Designated Employees and Designated Agents (both defined below) all of whom are "Covered Persons" (also defined below); (b) to protect the interests of the University when non-public information is provided to Covered Persons; (c) to protect the University when considering entering into a transaction that could benefit the private interest or competing interest of a Covered Person; (d) to protect Covered Persons from liability or suspicion regarding confidentiality breaches and conflicts or dualities of interest by setting standards of conduct; and (e) to comply with state and federal laws. This Policy recognizes that real and apparent Conflicts of Interest or Dualities of Interest (both defined below) sometimes occur in the ordinary course of conducting University business. Sometimes a Covered Person will owe identical, but uncompensated, duties to other charitable organizations conducting similar activities or seeking the same grants, contributions and strategic opportunities. This does not mean they are justified in breaching confidentiality standards or ignoring the implications of their conflicts or dualities. Conflicts and dualities are undesirable because they may cause, or appear to cause, Covered Persons to place their own interests or place the interests of others ahead of the University's obligations to its educational and charitable tax exempt purposes. Conflicts and dualities are also undesirable because they reflect adversely upon the persons involved and upon the institutions with which they are affiliated, regardless of the actual facts or motivations of the parties. However, the long-range best interests of the University do not require the termination of all associations with persons who may have real or apparent conflicts or dualities, as long as this Policy renders such conflicts and dualities harmless to all concerned.

A. Definitions.

- **"Compensation"** includes direct and indirect remuneration as well as gifts or favors (except those less than \$250 per calendar year).
- **"Conflict of Interest" or "Conflict"** occurs when an Interested Person (defined below) has an Interest (defined below) which is disclosed as or found under this Policy to be a personal and proprietary interest to the Interested Person or his or her Family Member (defined below), and the promotion or protection of such Interest will or may cause such Interested Person to act in a manner opposed to, incompatible with, or not in the best interests of the University and its educational and charitable tax exempt purposes. Examples of Conflicts of Interest are listed in

Schedule - 1.

- **"Covered Person"** means all persons to whom this Policy applies, including Trustees, members of Trustee committees, Designated Employees (defined below) and Designated Agents (defined below) and are all sometimes referred to as "covered fiduciaries." See B. Covered Persons below.
- **"Designated Agents"** are the University's bankers, auditors, attorneys and consultants who provide services in amounts in excess of \$10,000.00 per calendar year.
- **"Designated Employees"** are: the President, Chief of Staff and Board Secretary, Vice President for Finance and Business Affairs, Vice President for Academic Affairs, Vice President for Enrollment, Vice President for Development, Director of Facility Services, University Deans, and the University's Food Service Director, Department Directors and other key employees designated by the Chief of Staff and Board Secretary.
- **"Duality of Interest" or "Duality"** occurs when an Interested Person has an Interest that is disclosed as or found under this Policy to be not personal or proprietary to the Interested Person or his or her Family Member, where the promotion or protection of such Interest will or may cause such Interested Person to not act exclusively in the best interests of the University and its educational and charitable tax exempt purposes. A Duality of Interest may include a competing uncompensated fiduciary obligation to another charitable institution. Examples of Dualities of Interest are listed in Schedule - 1.
- **"Family Members"** shall mean a Covered Person's spouse, ancestor, children, grandchildren, great-grandchildren, siblings (whether by whole or half blood, natural or adopted), and the spouses of children, grandchildren, great-grandchildren, and siblings.
- **"Interested Person"** shall mean any Covered Person who has a direct or indirect Interest. "Interested Persons" are sometimes referred to as "covered fiduciaries and Disqualified Persons" when the *Intermediate Sanctions* of Section 4958 of the Internal Revenue Code of 1986, as amended ("Section 4958") applies as described in B. Covered Persons below.
- **"Interest"** includes any of the following interests of a Covered Person, whether direct or indirect, through business, investment, or the business or investment interests of the Covered Person's Family Member:
 - (i) A ten percent (10%) ownership or investment interest in any entity with which the University has a transaction or contractual arrangement;

(ii) A compensation arrangement with the University or with any entity or individual with which the University has a transaction or contractual arrangement, in which the compensation is in excess of ten thousand dollars (\$10,000) in any year;

(iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the University is negotiating a transaction or contractual arrangement; or

(iv) A director or officer position or other position of substantial influence with respect to an entity, charitable or otherwise, that competes with the University for grants, contributions or strategic opportunities.

- "Trustee(s)" means each member of the full Board of Trustees of the University.

An Interest is not always a Conflict or Duality of Interest. It may be too tenuous or contingent. As provided below, a person who has an Interest may have a Conflict or Duality of Interest only if, pursuant to disclosure, the Trustees determine, as herein provided, that a Conflict or Duality of Interest exists.

B. Covered Persons.

This Policy shall apply to all Covered Persons. It is the intention of the University and its Trustees to utilize this Policy to assure compliance with the *Intermediate Sanctions* under Section 4958. All Covered Persons are covered fiduciaries of the University and have an affirmative legal duty to act in the best interests of the University and not to put their personal or competing interests ahead of those of the University. Each of the persons identified by the University from time to time as a Covered Person shall also be deemed a *Disqualified Person* under Section 4958. A *Disqualified Person* is any person, regardless of title, who is able to materially influence the policies of the University as defined in Section 4958 and its regulations. A copy of Code Section 4958 and the regulations are on file with the University. *Intermediate Sanctions* are the federal excise taxes assessable against individuals under Section 4958 in cases of individuals obtaining an "excess private benefit" from a tax-exempt organization such as the University. This Policy includes a procedure for dealing with cases which might arise to avoid the imposition of *Intermediate Sanction Excise Taxes* by the Internal Revenue Service (the "IRS").

C. Intermediate Sanctions Procedures.

For every transaction between the University and any Covered Person (other than compensation or gratuities worth less than \$250 per calendar year), the Covered Person/Conflict of Interest and Duality of Interest provisions of this Policy shall apply in full. In addition, the IRS *Intermediate Sanctions* rules shall be followed, including the obtaining of written comparability data to support the transaction with the Covered Person as being at fair market value and, overall, fair and reasonable to the University. The resolution of the Trustees approving such transactions shall contain express findings and articulation of the Trustees' desire to establish a rebuttable presumption of reasonableness, and the University shall maintain the comparability data relied upon in its files.

CONFIDENTIALITY REQUIREMENTS

No Covered Person shall disclose, transmit or publicize information which the University has a legal duty not to disclose publically and all information not known to the general public except: within the privacy of Trustee or other official meetings to other Covered Persons, or pursuant to process of law. The confidentiality requirements of this Policy shall survive the expiration of Covered Person status, so that University confidential information remains confidential as long as it is not public information. The following are examples of breaches of a Covered Person's duty of confidentiality:

1. Disclosing or sharing unpublished financial statements, budgets, minutes, agenda or other non-public Trustee meeting materials with others who are both not Covered Persons and not eligible to receive same. If the Covered Person has any doubt about whether information is confidential information, it is that person's responsibility to inquire reasonably into such matter to obtain evidence before concluding that public disclosure is allowable.

2. Quoting Trustees' comments made at Trustees' meetings or Trustee committee meetings to others.
3. Revealing votes of Trustees or vote totals from Trustees' meetings to others.
4. Disclosing to others the University's fundraising strategies or targets or discussing terms of gifts not already made public.

The Trustees shall determine University sanctions for all breaches of confidentiality. See "Breaches of Confidentiality and Violations of the Conflicts and Dualities of Interest Policy" set forth below.

DUTY OF INTERESTED PARTY TO DISCLOSE

Each Interested Person who has reason to believe, or is advised that he or she may have an actual, potential or apparent Conflict or Duality of Interest in regard to an action being taken or considered by the University must promptly disclose in writing the Conflict or Duality and all relevant facts regarding the Interest to the chair or vice chair of the Trustees' Committee on Governance. Upon disclosure, an Interested Person may conclude a Conflict or Duality of Interest exists. The Chair or Vice Chair shall report the disclosure to the Trustees together with committee's recommendation of whether or not a Conflict or Duality exists. The Interested Person(s) involved may be present and may speak during a discussion of the relevant facts, but shall leave the room for Committee debate and voting. A recommendation that a Conflict or Duality may exist shall be by a simple majority vote, the Interested Person(s) involved not voting, but being counted for a quorum. Disclosure shall include whether the Interested Person believes such Interest is a Conflict or Duality of Interest. Annually a disclosure statement form shall be provided to all Covered Persons for completion and return, but disclosure is most appropriate whenever Conflicts or Dualities arise or are suspected, so Covered Persons are encouraged not to wait for the distribution of such forms if a Conflict or Duality occurs.

A. Determining Whether a Conflict or Duality of Interest Exists.

The Trustees shall review all Committee on Governance recommendations. In addition, all disclosed Conflicts and Dualities shall be reviewed by the Trustees as to degree of seriousness. The Interested Person(s) involved may be present and may speak during a discussion of the relevant facts, but shall leave the room for Trustee debate and voting. A Conflict or Duality may be found to exist by a simple majority vote, the Interested Person(s) involved not voting, but being counted for a quorum.

B. Procedures for Resolving the Conflict or Duality of Interest.

If a Conflict or Duality of Interest is found to exist, the following procedures shall be followed:

1. The Interested Person may provide information and input to the Trustees, as reasonably requested. Thereafter the Interested Person shall leave the meeting room for, and shall not in any way participate in, the Trustee or Trustee committee's deliberations and voting regarding the transaction under consideration.
2. If appropriate or warranted based on the facts as known, the chair or Trustee committee may appoint a person having no real or apparent Conflict or Duality of Interest with respect to the proposed transaction, or a committee, to investigate alternatives to the proposed transaction.
3. The Trustees or Trustee committee shall evaluate whether, with reasonable efforts, the University could obtain a more advantageous transaction from another person or entity under circumstances that would not give rise to a Conflict or Duality of Interest.
4. If a more advantageous transaction is not reasonably available under circumstances that would not give rise to a Conflict or Duality of Interest, the Trustees or Trustee committee shall determine by a majority vote of the disinterested Trustees whether the transaction is in the University's best interest and in furtherance of its obligations to its educational and charitable tax exempt, purposes, and shall make its decision as to whether to enter into the transaction in conformity with such determination.
5. An Interested Person having a Conflict or Duality of Interest with respect to a transaction proposed to be undertaken by the University shall also have a Conflict of Interest with respect to establishing the compensation of Covered Persons having the authority to recommend or approve the University's participation in the transaction as to which the Conflict or Duality of Interest relates.

BREACHES OF CONFIDENTIALITY AND VIOLATIONS OF THE CONFLICTS AND DUALITIES OF INTEREST POLICY

1. If the Trustees or Trustee committee have reasonable cause to believe that an Interested Person has failed to disclose an actual or potential Conflict or Duality of Interest, it shall inform the Interested Person of the basis for such belief and afford him or her an opportunity to explain the alleged failure to disclose.
2. If, after receiving the response of the Interested Person and making further investigation as may be warranted in the circumstances, the Trustees or Trustee committee determine that the Interested Person breached his or her duty of confidentiality or has failed to disclose an actual or potential Conflict or Duality of

Interest, it shall take appropriate sanctions. Sanctions may range from seeking removal of a Trustee or officer to a reprimand. Pursuant to other applicable employee policies of the University, Designated Employees may be terminated, reprimanded, placed on warning or have their compensation affected. Sanctions may also include terminating relationships with Designated Agents. The sanction shall reflect the Trustees' view of the violation's seriousness and the degree of harm or potential harm to the University.

RECORDS OF PROCEEDINGS REGARDING CONFLICTS AND DUALITIES OF INTEREST

The minutes of the Trustees and of all Trustee committees shall contain:

1. The names of the persons who disclosed or otherwise were found to have an Interest in connection with an actual or potential Conflict or Duality of Interest, the nature of the Interest, any action taken to determine whether a Conflict or Duality of Interest was present, and the Trustees' or Trustee committee's determination as to whether a Conflict or Duality of Interest, in fact, existed; and
2. A record of measures taken with respect to persons having Conflicts or Dualities of Interest, including whether the Interested Person left the meeting room and did not participate in the deliberations and voting of the Trustees or Trustee committee. The record shall include the names of all persons who were present for discussions and votes relating to the transaction or arrangement, the general content of the discussion, and any alternative transaction or arrangements considered.

PERIODIC DISCLOSURE STATEMENTS

The Chief of Staff and Board Secretary shall have the affirmative obligation to periodically publicize and implement this Policy and its procedures to all Covered Persons.

At least annually, each Covered Person shall sign a statement for the purpose of disclosing Interests that may give rise to Conflicts and Dualities of Interest and affirming that such person:

1. Has received a copy of this Policy;
2. Has read and understands this Policy;
3. Has agreed to comply with this Policy;

4. Understands that the University is organized and operated exclusively for educational and charitable tax exempt purposes and, to maintain its federal tax exemption, University business must be operated in a manner consistent with this Policy; and
5. Will promptly report any change in his or her responses that may result from changes in circumstances or any further Interest that may develop before completion of his or her subsequent annual questionnaire.

Schedule - 1
Examples of Conflicts of Interest

1. A Covered Person is a director of a business that sells software to the University for any consideration.
2. A Covered Person is a more than 10% stockholder, partner or proprietor of a business that sells services to the University for any consideration.
3. A Covered Person is a part-time employee of a business that sells office supplies to the University for any consideration.
4. A Covered Person who chairs the Trustees' audit committee and receives a \$2,000 vacation from the engagement partner of the accounting firm that represents the University.
5. A Covered Person and his/her spouse are provided with a free dinner, theater tickets, and overnight stay, valued in excess of \$250.00 by representatives of a conference center that seeks to host a conference to be sponsored by the University.
6. A Covered Person's spouse is a part-time consultant to a consulting firm that bids for a contract with the University in a material amount.
7. A Covered Person provides services to a third party where the Covered Person believes that the requested services are requested by the third party to assist the third party in obtaining a material contract exceeding \$250.00 with the University, without regard to the intentions of the Covered Person.
8. A Covered Person who is also a consultant-for-hire requests that he or she be among the panelists at a conference sponsored by the University and that a competing consultant be dropped from consideration as a panelist.

Examples of Dualities of Interest

1. A Trustee or officer also serves in a similar capacity to another charitable organization that competes with the University as to revenue sources, including general fundraising.
2. A Trustee also serves in a similar capacity to another charitable or governmental organization that competes with the University as to programs and activities.