

SOUTHERN WEST VIRGINIA COMMUNITY COLLEGE FOUNDATION, INC.
SFP -1001

SUBJECT: Conflict of Interest Policy

REFERENCE: None

ORIGINATION: December 3, 2009

EFFECTIVE: September 22, 2021

REVIEWED: September 22, 2021

SECTION 1. PURPOSE

- 1.1 The purpose of the conflict of interest policy is to protect the Southern West Virginia Community College Foundation's (Foundation) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, committee member, or anyone who is in a position to exercise substantial influence over the Foundation. This policy is intended to supplement, but not replace, any applicable state laws governing conflicts of interest applicable to nonprofit corporations.
- 1.2 This policy also serves as a process to protect individual officers, directors, and key employees from exposure to excess benefit penalties. These penalties are imposed on disqualified persons of tax-exempt organizations if such individual directly or indirectly receives an excess benefit from a transaction with the tax-exempt organization. Penalties may also be assessed against individual who approve the transaction.

SECTION 2. DEFINITIONS

- 2.1 **Board Due Diligence Committee** – The Board Due Diligence Committee shall consist of two non-office holding members and one at-large member as appointed. The Board Due Diligence Committee is responsible for receiving disclosures of proposed conflict of interest transactions and reviewing proposed conflict of interest transactions as further described in this policy.
- 2.2 **President** – The President of the Southern West Virginia Community College Foundation, Inc.
- 2.3 **Treasurer** – The Treasurer of the Southern West Virginia Community College Foundation, Inc.
- 2.4 **Conflicts of Interest** — A conflict of interest will be deemed to exist whenever an individual is in the position to approve or influence Foundation policies or actions which involve or could ultimately harm or benefit financially: (a) the individual; (b) any family member (spouse, domestic partner, grandparents, parents, children, grandchildren, great grandchildren, brothers or sisters, and spouses of these individuals); or (c) any organization in which he or a family member is a director, trustee, officer, member, partner or more than 10% of the total (combined) voting power. Service on the board of another not-for-profit corporation does not constitute a conflict of interest.
- 2.5 **Disqualified Person or Insider** – In general, the law defines an insider or a disqualified person as any person who, during the last five years, was “in a position to exercise substantial influence over the affairs of the organization.” The regulations define categories of persons who are deemed to be Insiders per se, those who are deemed not to be Insiders, and those who may or may not be Insiders depending on whether the

“facts and circumstances” show that the person has substantial influence over the affairs of the organization.

Per se Insiders include, among others:

2.5.1 Voting Board Members; and

2.5.2 Officers of the Foundation.

2.5.3 Additionally, certain related parties may also be considered insiders for this purpose, including family members and businesses in which an insider (or group of insiders) has more than a 35 percent interest.

2.6 **Entity** (for purposes of this policy) – A corporation, partnership, unincorporated association, or any similar group.

2.7 **Excess Benefit Transaction** – An excess benefit transaction is a transaction in which an economic benefit is provided by an applicable tax-exempt organization, directly or indirectly, to or for the use of any disqualified person, and the value of the economic benefit provided by the organization exceeds the value of the consideration (including the performance of services) received for providing the benefit.

2.8 **Fair Market Value** – The price at which property, or the right to use property, would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy, sell or transfer property or the right to use property and both has reasonable knowledge of relevant facts.

2.9 **Financial Interest** – A person has a financial interest if the person has, directly or indirectly, through business, investment or family.

2.9.1 an ownership or investment interest in any entity with which the Foundation has a transaction or arrangement;

2.9.2 a compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement; or

2.9.3 a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement

2.10 **Former** – Defined as a period of five years from the end of their term.

2.11 **Family Members** – Includes, as applicable, your spouse or domestic partner, ancestors (i.e., parents, grandparents, etc.), children (natural or adopted), grandchildren, great grand children, brothers, or sisters (whether whole or half blood) and spouses of these individuals.

2.12 **Interested Person** – Current officers, directors, key employees, family members of such individuals, 35% owned entities (includes direct or indirect ownership, individual or collectively, by current or former officers, directors, trustees or key employees or their family members). Note: While former officers, directors, trustees and key employees are not legally considered interested persons, they remain subject to possible excess benefit penalties for a five-year period after they end their service with the Foundation.

2.13 **Significant relationship** - Exists as to an entity if a person is director, trustee, officer, or employee of, a partner or member in, or has a financial interest in, the entity in question. A significant relationship exists as to an individual if that individual is a family member of a person subject to this policy.

SECTION 3. POLICY STATEMENT

3.1 The Foundation values both excellence and integrity in serving the purposes to which the Southern West Virginia Community College Foundation, Incorporated is dedicated. In order to promote these values, the Foundation aspires to ensure that both actual and perceived conflicts of interest are avoided. Therefore, the Foundation has established the following conflict of interest policy for its directors, officers, and committee

members.

3.1.1 **Directors, Officers, and Committee Members** - The directors, officers, and committee members of the Foundation are chosen to serve the purposes to which the Foundation is dedicated. These persons have a duty to conduct the affairs of the Foundation in a manner consistent with such purposes and not to advance their personal interests. This conflict of interest policy is intended to permit the Foundation and its directors, officers, and committee members to identify, evaluate, and address any real, potential, or apparent conflicts of interest that might, in fact or in appearance, call into question that person's duty of loyalty to the Foundation.

3.1.1.1 **Duty to Disclose** - In connection with any actual or possible conflict of interest, an interested person (as defined below) must disclose the existence and nature of his or her financial interest, and must be given the opportunity to disclose all material facts, to the directors and members of the Board Due Diligence Committee for consideration of the proposed transaction or arrangement. An interested person shall disclose a conflict of interest: (a) prior to voting on or otherwise discharging his duties with respect to any matter involving the conflict which comes before the board or any committee; (b) prior to entering into any contract or transaction involving the conflict; (c) as soon as possible after the interested person learns of the conflict; and (d) on the Annual Disclosure form.

3.1.1.1(a) All directors, officers, committee members and committee members shall be required to complete an annual disclosure form. This Annual Disclosure form will request specific information regarding the terms of any contract or transaction with the Foundation and whether the process for approval set forth in this policy was used. The Annual Disclosure form may also require disclosure of other relationships that may not constitute an actual conflict of interest, but which are required to be disclosed in order for the Foundation to comply with its annual reporting requirements to the Internal Revenue Service including completion of the IRS Form 990.

3.1.1.2 **Approval of Contracts and Transactions Involving Potential Conflicts of Interest** - An interested person who has or learns about a potential conflict of interest should disclose promptly to the Chair of the Board Due Diligence Committee and the Foundation's President the material facts surrounding any potential conflict of interest, including specific information concerning the terms of any contract or transaction with the Foundation. All effort should be made to disclose any such contract or transaction and have it approved by the committee before the arrangement is entered into.

3.1.1.2(a) Following receipt of information concerning a contract or transaction involving a potential conflict of interest, the Board Due Diligence Committee shall consider the material facts concerning the proposed contract or transaction, including the process by which the decision was made to recommend entering into the arrangement on the terms proposed. The committee shall approve only those contracts or transactions in which the terms are fair and reasonable to the Foundation and the arrangements are consistent with the best interests of the Foundation. Fairness includes, but is not limited to, the concepts that the Foundation should pay no more than fair market value for any goods or services which the Foundation receives and that the Foundation should receive fair market value consideration for any goods or services that it furnishes others. The committee shall set forth the basis for its decision with respect to approval of contracts or transactions involving conflicts of interest in the minutes of the meeting at which the decision is made, including the basis for determining that the consideration to be paid is fair to the Foundation including any comparability data used to make such determination.

3.1.1.3 **Board Due Diligence Committee** - This policy will be administered and implemented by the Board Due Diligence Committee.

SECTION 4. BACKGROUND OR EXCLUSIONS

4.1 None.

SECTION 5. GENERAL PROVISIONS

5.1 None.

SECTION 6. RESPONSIBILITIES AND PROCEDURES

6.1 **Annual Disclosure Form.** In order to assist the Foundation in identifying proposed conflicts of interest interested persons as defined in the policy will complete the Foundation's Annual Disclosure form provided by the Foundation and will update such form promptly as necessary to reflect changes during the course of the year. The disclosure form affirms that each person has received a copy of the conflict of interest policy, has read and understands the policy, has agreed to comply with the policy, and understands the Foundation is a charitable organization, and in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

6.1.1 Completed forms will be returned to the President and will be subject to review by the President and the Board Due Diligence Committee.

6.2 **Disclosure, Refrain from Influence, and Recusal.** When an interested person becomes aware of a proposed conflict of interest transaction, he or she will have a duty to take the following actions:

6.2.1 immediately disclose the existence and circumstances of such conflict of interest transaction to the Chair of the Due Diligence Committee and to the Foundation's President;

6.2.2 refrain from using his or her personal influence to encourage the Foundation to enter into the conflict of interest transaction;

6.2.3 and physically recuse themselves from participation in any discussions regarding the conflict of interest transaction with officials of the Foundation, at meetings of the board of directors, and with other members of the Foundation community, except to respond to requests for information about the conflict of interest transaction. An interested person may make a presentation at the committee meeting, but after the presentation, he or she shall leave the meeting during the discussion of and the vote on the transaction or arrangement that results in the conflict of interest.

6.3 **Board Due Diligence Committee Process for addressing the Conflict**

6.3.1 For transactions less than \$100,000 the committee may delegate the approval and due diligence to the President and Treasurer of the Foundation. For transactions \$100,000 and greater the committee will address the transaction.

6.3.2 The chairperson of the committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

6.3.3 After exercising due diligence, the committee shall determine whether the Foundation 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. Comparability data shall be reviewed and discussed. It is the Foundation's general policy that for any contract or payment of \$100,000 or greater, the Foundation requires three written responsive bids, quotes, or requests for proposals from separate individuals or companies.

6.3.4 If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority

vote of the disinterested committee members whether the transaction or arrangement is in the Foundation's best interest and for its own benefit, and whether the transaction is fair and reasonable to the Foundation. The board or committee shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

6.3.5 Each agreement with an interested person should contain an appropriate provision permitting the agreement to be modified or terminated in the event that the Internal Revenue Service determines that any transaction that is the subject of the agreement is an excess benefit transaction within the meaning of §4958 of the Internal Revenue Code.

6.3.6 For purposes of this policy, a disinterested person is one who is not an interested person with respect to the transaction, who is not in an employment or other financial relationship with any disqualified person with respect to the transaction, and who does not have any other material financial interest that may be affected by the transaction.

6.4. **Violations of the Conflicts of Interest Policy.** If the board has reasonable cause to believe that an interested person failed to disclose actual or possible conflicts of interest, it shall investigate the alleged failure to disclose. If the board determines the interested person failed to disclose an actual or possible conflict of interest in accordance with this policy, it shall take appropriate disciplinary and corrective action.

6.5. **Correction of an Excess Benefit Transaction.** A disqualified person corrects an excess benefit transaction by repaying the amount of the excess benefit, with interest, to the Foundation and by taking any additional measures necessary to place 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. If an underlying agreement is in effect, then that agreement must be modified with respect to future payments. The Foundation shall also report such transaction to the IRS in the year in which such transaction is identified and corrected.

6.6 **Records of Proceedings.** The minutes of the board and all committees with board authority shall contain:

6.6.1 the names of the persons who disclosed or otherwise were found to have a financial interest in connection with a transaction or arrangement, and the nature of the financial interest; and

6.6.2 the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

6.7. **Periodic Review.** To ensure the Foundation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted to ensure compliance with this policy.

6.7.1 **NOTE:** The information contained in this document is intended to be used for Southern West Virginia Community College Foundation, Inc. internal policy guidelines only and cannot be used for the purpose of tax reliance or tax advice related to IRS or any other federal or state regulations.

SECTION 7. CANCELLATION

7.1 None.

SECTION 8. REVIEW STATEMENT

8.1 None.

SECTION 9. SIGNATURES

President

Date

Attachments: SFP-1001.A, Annual Disclosure Form

Distribution: Members, Southern West Virginia Community College Foundation, Incorporated
President, Southern West Virginia Community and Technical College
Chief Development Officer, Southern West Virginia Community and Technical College
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Revision Notes: September 2021 - Revisions reflect minor grammatical changes.