

CONFLICT OF INTEREST POLICY
Baylor University Board of Regents
(Approved July 25, 2008)

Purpose: The ultimate purpose of any conflict of interest policy is to ensure that each Regent exercises independent judgment in a manner that he or she reasonably believes to be in Baylor's best interest and to effectuate the duty of loyalty to Baylor. A comprehensive policy must protect Baylor from compromised business judgment or inappropriate influence of individual members of the Board (i) by interests of the individual members in Baylor, (ii) by outside interests, and (iii) by interests within the Board itself. In this way, the Board can ensure the independence of individual action as well as collective action.¹ An effective conflict of interest policy is much more than a financial control; it is a component of effective Board performance, independence, and loyalty to Baylor.

The Conflict of Interest Policy does not prohibit the relationships that should be reported. The Policy is intended to require disclosures to allow the Board to manage the decision-making process by ensuring that Regents who participate in decisions are independent, individually and collectively, as to the decision under consideration.

Bases for a Conflict of Interest Policy: Several external considerations relate to the requirements for a Conflict of Interest Policy:

Statutory Fiduciary Duty of Each Regent: Each Regent has a duty to act in good faith, with ordinary care, and in a manner the Regent reasonably believes to be in Baylor's best interest.

Approval Process Imposed by Statute for Contracts or Transactions between a Regent and Baylor University: A contract or a transaction between Baylor and one or more Regents (or between Baylor and another legal entity in which one or more Regents have either a financial interest or is a managerial official or a member) is voidable (may be declared null and void) by Baylor unless the contract or transaction is approved by the Board of Regents in one of two ways. Either:

The contract or transaction is found by the Board to be fair to Baylor at the time the contract or transaction is authorized, approved, or ratified by the Board.

or

The material facts as to the relationship or interest and as to the contract or transaction are disclosed to the Board, and the Board, in good faith and with ordinary care, authorizes the contract or transaction by the affirmative vote of a majority of disinterested Regents.

¹ Some examples that demonstrate the potential breadth of such relationships are attached.

Accreditation Requirements of the Southern Association of Colleges and Schools (SACS): SACS has several requirements that relate to the need to disclose and review potential conflicts of interest:

The Board may not be controlled by a minority of the Board or by interests separate from it. Core Requirement 2.2.

Neither the Chair of the Board nor the majority of other voting members of the Board can have contractual, employment, personal, or familial financial interest in Baylor. Core Requirement 2.2.

The Board must have a policy addressing conflicts of interest for its members, be free of undue influence from political, religious, or other external bodies, and protect Baylor from such undue influence. Comprehensive Standards 3.2.3 and 3.2.4.

Definitions:

Immediate Family: All natural persons related to the Regent in the first or second degree by blood, marriage or adoption. (This would include: husband or wife, parents, grandparents, children, grandchildren, brothers and sisters.)

Associate: All natural persons, organizations or entities with which a Regent or a member of the Regent's Immediate Family:

- Is trustee, director, officer, manager, employee, member or partner, or
- Has a relationship of any type that enables:
 - the Regent or a member of the Regent's Immediate Family to influence the Associate, or
 - the Associate to influence the Regent or a member of the Regent's Immediate Family

Conflict of Interest: A Conflict of Interest is any proposed, existing or potential financial or other interest or relationship of the Regent, a member of the Regent's Immediate Family, or an Associate of the Regent that actually impairs, may impair (depending on context), or could be perceived by a reasonable person to impair, a Regent's duty to act independently in the best interest of Baylor.

Such financial or other interests or relationships include those with Baylor University, persons or entities external to Baylor, and other members of the Board of Regents.

Regent Duties Regarding Conflicts of Interest:

- A Regent must review the Conflict of Interest Policy at least annually.
- A Regent must certify, annually and in writing, that he or she has reviewed the Conflict of Interest Policy.
- A Regent has a continuing duty to identify and disclose any relationship that may be or may create a Conflict of Interest to the Board in accordance with this Policy.

- A Regent has a duty to recuse himself or herself from any discussion or decision in which the Regent has a Conflict of Interest, unless the Board decides otherwise consistent with the law.

Procedures:

- Each Regent must disclose Conflicts of Interest on a Certification, Disclosure and Information Statement approved by the Audit Committee. The disclosures must be made when the Conflict of Interest becomes known to the Regent and annually even if no new Conflicts of Interests have occurred since the last annual disclosure.
 - In order to facilitate ongoing disclosures and analysis in the context of pending Board business, the Office of General Counsel shall include in each mailing of Meeting Agenda a copy of the Conflict of Interest Policy and a disclosure form.
 - Additionally, before each meeting, the Office of General Counsel and the Internal Auditor shall review existing disclosures and report potential conflicts regarding the meeting agenda to the Chair of the Audit Committee and to the Chair of the Committee on Board and Administrative Affairs.
- The Regent shall provide such disclosures (ongoing and annual) to the Chair of the Audit Committee or his or her designee. Except as otherwise provided, the Audit Committee shall review the disclosure and make a written determination regarding the Conflict of Interest and any restrictions on the Regent regarding Board activities. The Audit Committee may at any time seek guidance or action by the Board.
- At the time of annual disclosures, each Regent shall also review the Conflict of Interest Policy, acknowledge such review in writing on the Certification, Disclosure and Information Statement and provide the acknowledgement to the Chair of the Audit Committee or his or her designee.
- A contract or a transaction between Baylor and one or more Regents (or between Baylor and another legal entity in which one or more Regents either have a financial interest or are directors, officers, or members) should be approved by the Board of Regents² in one of two ways, or the contract or transaction is voidable by Baylor. Either:

The contract or transaction is found by the Board to be fair to Baylor at the time the contract or transaction is authorized, approved, or ratified by the Board.

Or

The material facts as to the relationship or interest and as to the contract or transaction are disclosed to the Board, and the Board, in good faith and with

² Although the underlying statute would permit a committee to approve such a contract or transaction, Baylor's Bylaws do not permit any committee of the Board to act for the Board. Consequently, any contract between a regent and Baylor (or between Baylor and an entity in which the regent is a director, officer or member or has a financial interest) must be approved by the full Board. Approval can occur with full disclosure by the interested regent or if the transaction is determined to be fair to Baylor.

ordinary care, authorizes the contract or transaction by the affirmative vote of a majority of Disinterested Regents.³

- A person nominated by the Board and Administrative Affairs Committee to serve as a Regent must review the Conflict of Interest Policy and disclose Conflicts of Interest, as if he or she were a Regent, on the Certification, Disclosure and Information Statement and submit the Statement to the Chair of the Committee on Board and Administrative Affairs. The Chair of the Committee on Board and Administrative Affairs shall provide a copy of the nominee's Certification, Disclosure and Information Statement to the Chair of the Audit Committee. The Audit Committee and the Committee on Board and Administrative Affairs shall confer on the disclosures by the candidates before election by the Board. In the event the candidate has a Conflict of Interest, the Committee on Board and Administrative Affairs shall report it to the Board before the election by the Board.

³ This is the minimum required to comply with the Interested Director statutory provision. As a matter of sound practice, the Board could require competitive bids to ensure an objective evaluation of the fairness of the transaction to Baylor.

Examples of Relationships That Should be Disclosed

Based upon the purpose of a conflict of interest policy, an effective conflict of interest policy must be expressed, disseminated, and implemented in a way that ensures disclosure and review of several different types of relationships between a Regent, a Regent's Immediate Family or a Regent's Associates with:

- Baylor University, its officers, employees, agents
- Outside interests
- Other Regents

Direct relationships between Regents and Baylor are the most readily identified and most likely the best understood. However, a comprehensive policy must expressly include other relationships and be implemented in a way that permits the Board to manage possible conflicts of interest. By way of example only, here are some types of relationships of regents that should be disclosed and reviewed by the Board:

- Relationships with Baylor
 - Employment by Baylor of a regent or a member of the regent's family
 - Vendor relationships between Baylor and a regent, a member of the regent's family, or an entity in which the regent has a financial or other interest (including serving as a director or officer or member in the other entity)
 - Enrollment by a regent or a regent's family member as a student if it is on terms and conditions not available to other students or potential students
 - Excess benefits provided to the regent by Baylor
- Relationships with outside interests
 - Service by a regent as a director or officer of, or membership in, an entity officially or unofficially associated with Baylor
 - Service by a regent's family member as a director or officer of, or membership in, an entity associated with Baylor
 - Service by a regent as a director, officer or employee of any vendor seeking to do business with Baylor
 - Financial interest or other interest that may be or become adverse to Baylor
 - Financial interest in apartments leased to Baylor students
 - Financial interest in a bookstore that sells textbooks to Baylor students
 - Financial interest of less than 35% in a publicly-traded company need not be disclosed.
- Relationships between or among regents themselves
 - Employment of one regent by another
 - Employment of a regent's family member by another regent or by an entity in which another regent has an interest
 - Benefits provided by one regent to another regent or to another regent's family member; provided, however, that benefits of an aggregate value of less than \$1,000 in any fiscal year do not need to be disclosed.

NOTICE OF ADDITIONAL DISCLOSURES

Additional Disclosures Required by Internal Revenue Service

The Internal Revenue Service is requiring additional disclosures that must be included on the Baylor University IRS Form 990. Because these disclosures are very broad and relate to individuals who may have been a Regent, officer, or highly compensated person within the last five years, Baylor will provide a separate questionnaire to facilitate the IRS Disclosures.

The IRS Form 990 approved for the 2008 tax year contains the following questions:

Part IV, Question 28: “During the tax year, did any person who is a current or former officer, director, trustee, or key employee:

- a. Have a direct business relationship with the organization (other than as an officer, director, trustee, or employee), or an indirect business relationship through ownership of more than 35% in another entity (individually or collectively with other persons listed in Part VII, Section A⁴).
- b. Have a family member who had a direct or indirect business relationship with the organization.
- c. Serve as an officer, director, trustee, key employee, partner, or member of an entity (or a shareholder of a professional corporation) doing business with the organization.”

Part VI, Question 1b: “Enter the number of voting members that are independent”

The Draft Instructions state that a member of the governing body is considered independent only if all four of the following circumstances applied at all times during the tax year:

1. The member was not compensated as an officer or other employee of the organization or of a related organization.
2. The member did not receive total compensation or other payments exceeding \$10,000 for the year from the organization or from related organizations as an independent contractor, other than reimbursement of expenses or reasonable compensation for services provided as a member of the governing body.
3. The member did not otherwise receive, directly or indirectly, material financial benefits from the organization or from a related organization. Material financial benefits include excess benefit transactions, loans, or any transaction with an amount greater than \$50,000.

⁴ Section A of the Form 990 includes: current officers, directors, trustees and key employees regardless of amount of compensation; the five highest compensated employees (other than officers, directors, trustees or key employees) who received compensation of more than \$100,000 from the organization and any related organization; all former officers, key employees or highest compensated employees who received more than \$100,000 of reportable compensation from the organization or any related organizations; and all former directors or trustees that received in their capacity as a former director or trustee of the organization, more than \$10,000 in reportable compensation from the organization and any related organizations.

4. The member did not have a family member that received compensation or other material financial benefits from the organization or from a related organization. A family member includes the member's spouse, ancestors, brothers and sisters (whole or half blood), children (natural or adopted), grandchildren, and spouses of brothers, sisters, children and grandchildren.

Part VI, Question 2: "Did any officer, director, trustee, or key employee have a family or a business relationship with any other officer, director, trustee, or key employee?"

The Draft Instructions provide:

Family relationship: The family of an individual includes only his or her spouse, ancestors, brothers and sisters (whole or half blood), children (natural or adopted), grandchildren, and spouses of brothers, sisters, children and grandchildren.

Business relationship: Business relationships between two persons include the following:

1. One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a trustee, director, officer, key employee, or greater than 35% owner.
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 transactions involving transfers of cash or property valued in excess of \$5,000 in the aggregate during the tax year. Indirect transactions are transactions with an organization with which one person is associated as a trustee, director, officer, key employee or greater than 35% owner.
3. The two persons are each a director, trustee, officer, or greater than 10% owner in the same business or investment entity.