



Conflict of Interest Policy

California Nonprofit Public Benefit Corporation

Made possible through the support of the **Annenberg Foundation**

About This Form: Public Counsel’s Community Development Project has designed the attached form of Conflict of Interest Policy for a California Nonprofit Public Benefit Corporation to assist nonprofit organizations seeking to adopt or amend such a governance policy and the *pro bono* attorneys who represent them.

This form is annotated with explanatory endnotes, including citations to applicable laws, alternatives and recommended practices. For the latest version, see <https://publiccounsel.org/resources/>.

Important Notes: In creating any governance policy, it is very important that a nonprofit corporation institute procedures that the corporation is likely to be able to comply with consistently in the long term. Therefore, this sample should be used only after carefully considering every provision, and a corporation should not adopt any provisions that will be too burdensome for the corporation to follow given its circumstances. A governance policy will not protect a corporation from liability if it is not followed, and in some cases, a failure to consistently follow a written policy may more likely result in a finding of liability for the corporation than if no written policy existed. Please see the first endnote for more information.

This form should not be construed as legal advice. Please contact an attorney for legal advice about your organization’s specific situation. This sample should not be used “as is” but should be modified after careful consideration of the explanations in the endnotes. Some corporations may need to include additional provisions not discussed in this form to qualify for certain funding or comply with laws applicable to specific types of organizations.

•••

Public Counsel’s Community Development Project provides free legal assistance to qualifying nonprofit organizations that share our mission of serving low-income communities and addressing issues of poverty within Los Angeles County. If your organization needs legal assistance, or to provide comments on this form, visit <https://www.publiccounsel.org/issues/inclusive-community-development/> or call (213) 385-2977, extension 200.

**FORM OF CONFLICT OF INTEREST AND ETHICS POLICY FOR A
CALIFORNIA PUBLIC BENEFIT NONPROFIT CORPORATION**

* * *

CONFLICT OF INTEREST *[AND ETHICS]* POLICY¹

OF

[NAME OF CORPORATION]

A California Nonprofit Public Benefit Corporation

ARTICLE I. INTRODUCTION AND PURPOSE²

[Name of Corporation] (the “Corporation”) requires its directors, officers, employees, and volunteers to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. The Board of Directors (the “Board”) of the Corporation, recognizing that it is entrusted with resources devoted to charitable purposes, has adopted this Conflict of Interest *[and Ethics]*³ Policy (the “Policy”). The purpose of this Policy is to protect the Corporation’s interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director, officer, or other person in a position of authority within the Corporation. The Corporation strives to avoid conflicts of interest to ensure that it continues to operate in accordance with its tax-exempt purpose. This Policy is intended to supplement but not replace any state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations.⁴

ARTICLE II. DEFINITIONS AND KEY CONCEPTS

- A. Covered Persons.**⁵ Covered Persons are the corporation’s directors, officers, and key employees.
- B. Key Employees.** A “key employee” is any employee of the Corporation other than an officer or director who receives more than \$150,000 in annual compensation and meets at least one of the following criteria: (1) has management responsibility over at least ten percent of the Corporation’s assets, income, expenses, or activities; (2) has or shares authority to control or determine at least ten percent of the Corporation’s capital expenditures, budget, or employee compensation; or (3) has responsibilities, powers, or influence over the Corporation as a whole similar to those of officers or directors.
- C. Duty of Loyalty.** Conflicts of interest can place personal interests at odds with the fiduciary “duty of loyalty” owed to the Corporation. The duty of loyalty requires that a director, manager, principal, or officer refrain from using their position for personal gain,

and avoid acting on issues in which their personal or financial interests could conflict with the interests of the Corporation.

- D. Conflict of Interest.** A conflict of interest may arise if a Covered Person is in a position to make or influence the Corporation’s decision about a matter in which the Covered Person has a financial or personal interest. Conflict of interests may arise with respect to matters in which a Covered Person, a family member of a Covered Person, or an entity in which a Covered Person or family member of a Covered Person has a business relationship has a financial interest in the matter.
- E. Family Member.** A “family member” is a spouse, parent-in-law, ancestor, sibling (whole or half), child, grandchild, or great-grandchild of the Covered Person.
- F. Business Relationship.** A Covered Person or family member is considered to have a “business relationship” with an entity if it is an entity (i) in which the Covered Person or a family member has a substantial financial interest as an owner or investor in the entity or (ii) in which the covered Person or family member has an “agency relationship” (i.e., is a director, officer, or employee).
- G. Potential and Actual Conflicts of Interest.** Acts that mix the personal or financial interests of a Covered Person with the interests of the Corporation are indicative of a conflict of interest. Not every potential conflict is an actual conflict, however. A Covered Person who has an interest in a matter involving the Corporation may have a conflict of interest requiring application of the mitigating procedures described in this Policy only if the appropriate party designated in Article V decides that such a potential conflict of interest is actual or material. However, acts that even have the appearance of a conflict of interest can be damaging to the reputation of the Corporation. Consequently, the Corporation seeks to avoid potential and actual conflicts of interest, as well as the appearance of conflicts.

ARTICLE III. ACTIVITIES THAT MAY PRESENT A CONFLICT OF INTEREST

The following is a non-exclusive list of the types of activities that may present a conflict of interest and should be disclosed in accordance with Article IV.

- A. Adverse Interest.** Participation by a covered Person in decisions or negotiations related to a contract, transaction, or other matter between the Corporation and: (i) the Covered Person; (ii) a family member of the Covered Person; or (iii) an entity in which the Covered Person or a family member of such person has a business relationship.
- B. Competing Interests.** Competition by a Covered Person with the Corporation in the purchase or sale of property or property rights, interests, or services, or, in some instances, competition directly for the same donor or external resources.

- C. **Use of Resources.** Use of the Corporation’s resources (for example, staff, contracts, donor lists, or name) for personal purposes of the Covered Person or a family member of such person.

ARTICLE IV. DISCLOSURE⁶

The primary obligation of any person subject to this Policy who may be involved in a conflict of interest situation is to bring it to the attention of those designated under the disclosure procedures in this Article so that the potential conflict can be evaluated and addressed. A Covered Person should not make the decision about whether a conflict of interest exists unilaterally.

- A. **Duty to Self-Disclose.** A Covered Person shall disclose all material facts regarding their interest in a transaction, agreement, or arrangement that may result in a conflict of interest at the time that any actual or potential conflict of interest [*or ethical question*] arises. Covered Persons shall make such disclosures to [*designate the appropriate persons to receive disclosure such as the Chairperson or the Chairperson of the Audit Committee or other*], or, if the potential conflict of interest first arises in the context of a Board meeting, the entire Board.⁷
- B. **Annual Disclosure.** In accordance with Article XI, Covered Persons shall make an annual disclosure of ongoing relationships and interests that may present a conflict of interest.
- C. **Disclosure of Conflicts of Others.** If a Covered Person becomes aware of any conflict of interest involving another Covered Person, they should report it in accordance with the requirements of this Article IV.

ARTICLE V. EVALUATING CONFLICTS⁸

- A. **Determination by the Board.** After disclosure of all material facts and any follow-up discussion with the Covered Person with a potential conflict of interest, the Board shall determine whether a conflict of interest exists. The Covered Person shall not be present at the meeting while the Board is discussing or determining whether a conflict of interest exists.⁹
- B. **Relevant Factors for Determination.** Factors the Board may consider when determining whether an actual conflict exists include (i) the proximity of the Covered Person to the decision-making authority of the other entity involved in the transaction; (ii) whether the amount of the financial interest or investment is *de minimis*¹⁰ relative to the overall financial situation of the Corporation; and (iii) the degree to which the Covered Person might benefit personally if a particular transaction were approved.

ARTICLE VI. PROCEDURES FOR ADDRESSING CONFLICTS

- A. Covered Person or Family Member Has a Material Financial Interest.**¹¹ Subject to the exceptions in Article VI, Section B, if a conflict of interest exists that involves a transaction in which a Covered Person or a family member of a Covered Person has a material financial interest, including transactions to which an entity in which a Covered Person or family member of a Covered Person has an ownership interest is a party, the Board may only approve the transaction if the procedures below are followed:
- i. The Covered Person may make a presentation at the Board meeting at which such transaction is being considered, but after the presentation, they shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
 - ii. The Corporation's [*Chairperson/President/Vice President*] shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
 - iii. After exercising due diligence, the Board shall determine whether the Corporation could obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
 - iv. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board shall determine whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable.
 - v. The transaction must be approved by a vote of a majority of the directors in office, without counting the vote of any interested director.
- B. Exceptions.** The following matters are not subject to the procedure in Article VI, Section A.
- i. an action fixing the compensation of a director as a director or officer;
 - ii. a transaction which is part of a charitable program of the Corporation if it results in a benefit to a Covered Person or their families because they are in the class of persons intended to be benefited by the charitable program, so long as it is approved by the Corporation in good faith and without unjustified favoritism; and
 - iii. a transaction about which the interested director or officer has no actual knowledge involving an amount that does not exceed the lesser of one percent of the gross receipts of the Corporation for the preceding fiscal year or \$100,000.
- C. Other Circumstances.**¹² In all other circumstances where it is determined that an actual conflict of interest exists, the decision-making body will recommend an appropriate course of action to protect the interests of the Corporation. All disclosures and the outcome of the deliberation about whether a conflict of interest exists will be recorded in the minutes of the appropriate deliberative meeting.

ARTICLE VII. RECORDS OF PROCEEDINGS

The minutes of the Board meeting convened to consider a transaction in which a Covered Person has a conflict of interest or potential conflict of interest shall contain:

- i. The names of the Covered Persons who disclosed or whom otherwise were found to have a financial or other interest in connection with an actual or possible conflict of interest, the nature of the financial or other interest, 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.
- ii. 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 with the proceedings.

ARTICLE VIII. INTERLOCKING DIRECTORSHIPS

Section 5234 of the California Corporations Code permits transactions between corporations having common directors so long as all material facts regarding the transaction and the relevant directorships are known to the respective boards of directors, and the matters are approved in good faith by a vote sufficient without counting the vote of the common director(s). Such transactions are not subject to the procedures required in Article VI, Section A.

ARTICLE IX. VIOLATIONS OF THE CONFLICT OF INTEREST POLICY.

If the Board has reasonable cause to believe that a Covered Person has failed to disclose actual or possible conflicts of interest, it shall inform the Covered Person of the basis for such belief and afford the Covered Person an opportunity to explain the alleged failure to disclose. If, after hearing the Covered Person’s response and after making further investigation as warranted by the circumstances, the Board determines the Covered has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

[ARTICLE X. COMPENSATION¹³

A director who receives compensation from the Corporation for services is precluded from voting on matters pertaining to that director’s compensation. No director who receives compensation, directly or indirectly from the Corporation, is prohibited from providing information to the Board or committee of the Board regarding compensation.]

ARTICLE XI. ANNUAL STATEMENTS

Each person subject to this Policy shall annually sign a statement adopted by the Board that at a minimum affirms that such person:

- i. has received a copy of this Policy;
- ii. has read and understands the Policy;
- iii. has agreed to comply with the Policy; and
- iv. understands the Corporation is charitable and in order to maintain its federal tax exemption must engage primarily in activities which accomplishes one or more of its tax exempt purposes.

In addition, Covered Persons shall make an annual disclosure of ongoing relationships and interests that may present a conflict of interest. Disclosures should address current affiliations, as well as past affiliations for the prior two years. Conflict of interest disclosure forms will be submitted to the *[designate recipient of disclosure forms such as the Chairperson of the Audit Committee, Chairperson of the Board, Chairperson of the Executive Committee, Chairperson of the Governance Committee or other]* annually, and when appropriate, at or prior to action on relevant business transactions.

[ARTICLE XII. CODE OF ETHICS

In conducting business and activities connected with the Corporation, a Covered Person shall follow these guidelines:

- (a) **Ethical Conduct.** *Be honest and ethical in his or her conduct, including ethical handling of actual or apparent conflicts of interest between personal and professional relationships. A Covered Person should not engage in activities which have or may have the appearance of impropriety or conflict of interest, or that may call into question the actions or integrity of the Corporation, or of the Covered Person as he or she relates to the Corporation.*
- (b) **Legal Compliance.** *Comply with applicable laws and regulations, including the California Nonprofit Integrity Act of 2004, and report their concerns to the appropriate person listed in Article III if it appears that any other director, officer, employee or contractor of the Corporation is not complying with applicable laws or regulations with respect to the Corporation's business.*
- (c) **Confidentiality.** *Maintain the confidentiality of all internal information about the Corporation, including its donors, clients, and beneficiaries, except when authorized or otherwise legally obligated to disclose such information.*
- (d) **Fair Dealing.** *Deal fairly with the Corporation's staff, donors, volunteers, beneficiaries, and suppliers.*
- (e) **Protect Assets.** *Protect and ensure the proper use of the Corporation's assets, including, its name, goodwill, donor community, and reputation.*
- (f) **Personal Influence.** *Be mindful of the interaction between their relationships inside and outside of the Corporation, and not allow inappropriate personal influence over the affairs of the Corporation.*

- (g) **Commitments.** *Do not “speak for” the Corporation or make or imply commitments by the Corporation without proper internal authorization and communication.*
- (h) **Loans.** *The Corporation should not make loans to Covered Persons except to induce persons who have been offered a position to join the Corporation, as approved by the Board.^{14]}*

CONFLICT OF INTEREST [AND ETHICS] POLICY
SCHEDULE 1: CONFLICT OF INTEREST DISCLOSURE FORM¹⁵

The undersigned, as a director, manager, principal, officer, or member of a committee with governing board-delegated powers, of **[Name of Corporation]** (the “Corporation”), acknowledges that:

1. they have received a copy of the Corporation’s Conflict of Interest Policy (the “Policy”);
2. they have read and understand the Policy;
3. they have agreed to comply with the Policy;
4. they understand the Corporation is charitable 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; and
5. the following on-going relationships and interests may present a conflict of interest: *(disclosures should address current affiliations, as well as past affiliations for the prior two years, and should include all of the following: the undersigned’s employer, all corporations (nonprofit and for-profit) of which the undersigned is a board member or officer, and the names of such of the undersigned’s Family Members or business affiliates or any other relationships the undersigned has which the undersigned believes may present a potential conflict)*

¹ **HOW TO USE THIS FORM:** This sample conflict of interest policy, which includes an optional code of ethics, has been developed for use by small and mid-sized California nonprofit public benefit corporations exempt under section 501(c)(3) of the Internal Revenue Code (the “Code”). The endnotes discuss the applicable law, recommended practices, and why we have included certain language. **Bold** and ***bold italicized*** bracketed language in this form indicates that information specific to the corporation adopting the conflict of interest policy must be inserted. *Italicized* bracketed language in this form indicates optional language that should be included only if the corporation is also adopting a code of ethics as a component of its conflict of interest policy.

Important Note: In order for a corporation to make a truly informed choice about the procedures that will govern its corporate operations, this sample should not be used “as is.” Rather, it should be used as a starting point and be modified after consideration of the explanations in the endnotes and after review of and reconciliation with any conflict of interest provisions that may be contained in the corporation’s bylaws, personnel policies, executive compensation policy, vendor policies, volunteer policies, grant contracts, or the contractor prerequisites of governmental agencies. **It is very important that anyone creating a conflict of interest policy for a nonprofit corporation fully understand the mechanics of such a policy, and choose provisions that fit the scope of the corporation’s specific operations. Therefore, each user of this form should think through every provision carefully, and should not draft any provisions that will be too burdensome for the corporation to follow under its circumstances.** Further, all directors and officers should be provided with a copy of the policy, and should be fully oriented as to its content in order to understand their respective rights and responsibilities.

The endnotes discuss relevant provisions of law, in effect as of October 2023. The primary sources of law described in these endnotes are (a) the California Nonprofit Corporation Law (California Corporations Code sections 5000 *et seq.*) which is sometimes referred to in these endnotes as “the law,” and (b) the Internal Revenue Code of 1986, as amended (U.S. Code Title 26), which is referred to in these endnotes as the “Code.”

Occasionally the endnotes refer to Public Counsel’s annotated bylaws which can be found on the Public Counsel website at <https://publiccounsel.org/publications/annotated-form-of-bylaws-for-a-california-nonprofit-public-benefit-corporation>.

² While acknowledging that it cannot enforce governance practices, the Internal Revenue Service (IRS) has for many years taken the position that the adoption of a conflict of interest policy is an indication of good governance practices and correlates positively with the likelihood that a 501(c)(3) organization will comply with the requirements necessary to maintain tax-exempt status. IRS Form 1023 (the application for tax-exempt status under section 501(c)(3)) asks whether the applicant has adopted a conflict of interest policy that is similar to the sample policy the IRS includes in the Form 1023 instructions. If the corporation does not have a conflict of interest policy consistent with the IRS sample, it must “describe the procedures [it] will follow to ensure that persons who have a conflict of interest will not have influence over setting their own compensation or regarding business deals with themselves.” (IRS Form 1023, Part V, Question 2).

Public Counsel’s [annotated bylaws for public benefit nonprofit corporations](#) and many other form bylaws utilized by California public benefit nonprofit corporations include language that models the provision in the California Corporations Code that addresses director self-dealing transactions. (Cal. Corp. Code § 5233). Public Counsel’s annotated bylaws applies the required self-dealing procedures to transactions involving officers as well as directors. These provisions, combined with other sections of Public Counsel’s annotated bylaws, can serve as a conflict of interest policy for IRS purposes. However, more comprehensive resolution of potential conflict of interest issues is often better handled in a stand-alone policy, particularly if the organization seeks to address conflicts that are not

only financial in nature. Adopting a stand-alone policy also has another practical benefit. A §501(c)(3) organization has a continuing obligation to report significant changes to its organizing documents, including its bylaws, to the IRS. If the conflict of interest policy is contained in the organization’s bylaws and is subsequently amended, such a change would need to be reported. If the organization decided to amend a stand-alone conflict of interest policy not contained in the bylaws by board resolution, such an amendment would not need to be reported. (Instructions to Form 990, Part VI, Section A, Line 4, available at <https://www.irs.gov/pub/irs-pdf/i990.pdf>).

Section 501(c)(3) organizations required to file the annual informational tax return Form 990 will also be confronted with the question of whether, as of the end of the organization’s tax year, the organization has adopted a conflict of interest policy (Form 990, Part VI, Line 12a, available at <https://www.irs.gov/pub/irs-pdf/i990.pdf>).

The instructions to Form 990 describe a conflict of interest policy as a policy that:

defines conflict of interest, identifies the classes of individuals within the organization covered by the policy, facilitates disclosure of information that may help identify conflicts of interest, and specifies procedures to be followed in managing conflicts of interest. A conflict of interest arises when a person in a position of authority over an organization, such as an **officer, director,** or manager, or **key employee** can benefit financially from a decision he or she could make in such capacity, including indirect benefits such as to **family members** or businesses with which the person is closely associated. For this purpose, a conflict of interest does not include questions involving a person’s competing or respective duties to the organization and to another organization, such as by serving on the boards of both organizations, that do not involve a material financial interest of, or benefit to, such person.

Thus, if an organization decides to edit this form policy or use another form, the organization should make sure that the policy it ultimately adopts at a minimum addresses all of the issues outlined in the IRS definition.

³ This form policy includes an optional code of ethics. According to the Panel on the Nonprofit Sector’s Principles for Good Governance and Ethical Practices, available at <https://independentsector.org/programs/principles-for-good-governance-and-ethical-practice/#principles-anchor-2>, a charitable organization should have a formally adopted, written code of ethics with which all of its directors or trustees, staff, and volunteers are familiar and to which they adhere:

Adherence to the law provides a minimum standard for an organization’s behavior. Each organization should also have a code of ethics that outlines the practices and behaviors that its staff, board, and volunteers agree to follow, such as the confidentiality and respect that should be accorded to clients, consumers, donors, volunteers, and board and staff members. The code of ethics should be accompanied by specific policies and procedures that describe how it will be put into practice and how violations will be addressed.

As stated by the Nonprofit Sector, the process by which a code of ethics is adopted and implemented can be just as important as the code itself. The board and staff should be active participants in developing, drafting, adopting, and implementing a code that fits the organization’s characteristics. It should then be complemented by policies and procedures that describe how the principles in the code will be put into practice. For that reason, the code contained in Article XII of this form is included by way of example only and should not automatically be adopted as a component of a corporation’s conflict of interest policy without appropriate board and staff review. This section and all internal references to an ethics policy are optional and can be deleted.

⁴ This policy may not be the only expression of the corporation’s procedures for dealing with conflicts of interest. In addition to being subject to statutes that govern conflict of interest issues, it is not unusual for conflict of interest provisions to be contained in a corporation’s bylaws, personnel policies, executive compensation policies, vendor policies, volunteer policies, grant contracts, or in the contractor prerequisites of governmental agencies. The last sentence of Article I serves as a reminder that potentially incompatible conflict of interest provisions must be reconciled in some manner, either by a provision such as this one or through the adoption of a more comprehensive policy that attempts to address all of the potential sources of conflict in a single document.

⁵ This policy has a broad definition of Covered Persons, designed to encompass California corporate law provisions regarding duty of loyalty and self-dealing, as well as IRS rules on private inurement, conflicts of interest, and excess benefit transactions. While the duty of loyalty applies to officers and directors, the IRS prohibition on excess benefit transactions extend to all disqualified persons, i.e. any person or family member of a person in a position to exercise substantial influence over the organization. An excess benefit transaction is a transaction where an economic benefit is provided by the organization to a disqualified person, and the value of the benefit exceeds the value of the consideration (goods or services) received in exchange for the benefit. (IRC § 4958(c); Treas. Reg. § 53.4958-4(a)). Further, as discussed in Note 2, the IRS definition of a conflict of interest in the 990 Instructions applies to “key employees” as well as officers and managers. That said, the sample IRS conflict of interest policy in Appendix A to the Form 1023 Instructions applies only to directors, “principal” officers, and members of committees with board-delegated powers (and not to key employees). While this annotated policy applies to high-level employees as well as directors and officers, it may be modified to apply more narrowly, especially if existing personnel policies address employee conflicts of interest and ethical situations or if the corporation does not have any key employees. If so, the corporation will need to determine the appropriate scope of coverage intended by this policy and amend this definition accordingly.

⁶ A conflict of interest policy must describe the corporation’s procedure for managing a disclosed potential conflict of interest. The procedure begins with identification of the party to whom a potential conflict is reported, and the party that will determine if a conflict of interest requiring further management exists. This “screening” decision could be made by any individual or group of individuals that the corporation determines can render a disinterested opinion as to whether an actual conflict of interest exists, such as the Audit Committee, the Governance Committee, a sub-committee of the full board, members of the Executive Committee, or specific officers or committee chairs.

⁷ This section identifies possible persons to whom a disclosure of a potential conflict of interest can be made. Each corporation adopting a conflict of interest policy will need to determine whether the persons named in this section are the appropriate parties to receive such disclosures. If the conflict of interest policy applies to key employees, the corporation may decide, for example, to require key employees to disclose potential conflicts of interest to the Executive Director, rather than the President or Chairperson. The person receiving disclosure of a potential conflict of interest need not be the person who will decide whether an actual conflict exists.

⁸ This section describes a procedure for evaluating whether a potential conflict is actual or material. Additional guidance for the decision makers may be added to this section, such as a dollar-based definition of materiality. If the corporation decides to include a code of ethics with this policy, then the provisions of the code will also serve to inform the decision makers about whether the potential conflict is consistent with the ethical principles that serve as a framework for persons governed by this policy to measure their business conduct.

⁹ If Article IV provides that employees should report conflicts of interest to the Executive Director or another senior employee, rather than the Chairperson or President, it may be more efficient for the Executive Director to determine whether an actual conflict exists and if so, whether it should be referred to the Board or dealt with by the Executive

Director. For example, the policy may require that all matters involving a transaction in which the employee has a financial interest be referred to the board.

¹⁰ Consider whether to include a specified dollar amount that will be considered *de minimis*.

¹¹ This section tracks the requirements for self-dealing transactions in section 5233 of the California Corporations Code. However, while the Corporations Code requires the procedures in this section in order to approve a transaction in which a *director* has a material financial interest, this conflict of interest policy applies these rules more broadly to transactions in which any “covered person” or family member of a covered person has a material financial interest. As discussed in Note 2, Public Counsel’s annotated bylaws similarly apply the self-dealing rules to officers as well as directors. The broader application of the rules facilitates compliance with IRS rules avoiding private inurement and excess benefit transactions (see Note 5) which apply to disqualified persons and their families. Moreover, a policy that provides a different procedure for conflicts of interest for directors and officers might be unwieldy and difficult to implement. However, a corporation is free to modify this section so that it applies to directors only and create another procedure that applies to officers or to non-spousal family members of directors (for example, removing the requirement that the transactions are approved by a majority of all directors in office).

¹² “Other Circumstances” could include, for example, transactions between the corporation and an entity of which a covered person or a family member of a covered person is a director or employee (but not an owner) or approval of vendor/procurement policies from which a covered person stands to benefit.

¹³ This Article should only be included if the corporation does not have a policy addressing executive compensation.

¹⁴ The law prohibits loans to directors and officers unless approved by the California Attorney General. There are a few limited exceptions to this rule, including for advancement of expenses, payment of life insurance premiums or a secured loan to help the director or officer finance the purchase of a principal residence (only if this is necessary to retain the director or officer’s services). (Cal. Corp. Code § 5236).

¹⁵ The format of this sample annual disclosure questionnaire is very short and simple, but squarely places the burden of understanding the nuances of the policy and appropriately disclosing potential conflicts of interest on the person who fills out the form. Some corporations trade brevity for the hope of a greater likelihood of relevant disclosure by leading the director, officer or other person with disclosure obligations through a long series of fill-in questions, such as “name any corporations (nonprofit and for-profit) of which you are a board member or officer,” “name any family members you believe present the potential for conflict of interest,” “identify persons with whom you have a business relationship who also transact business with this corporation.” The decision about which approach to follow often depends on the culture of the corporation and on which form most likely will be timely completed and turned in. In addition to conflict of interest policy expectations for annual disclosure, the IRS Form 990 requires filing organizations to disclose certain relationships, arrangements and transactions involving conflicts of interest and independent decision-making by their governing bodies. Some nonprofit corporations view the annual conflict of interest questionnaire as an opportunity to gather required Form 990 information as well. The Form 990 disclosure requirements focus on the following three categories: (a) interested persons (i.e., those who may possess conflicts of interest); (b) independent directors (i.e., those who are independent of the corporation); and (c) relationships among directors, officers and key employees (i.e., transactions or relationships between two persons, rather than relationships with the corporation). For more information, please refer to the Form 990 instructions, available at www.irs.gov/pub/irs-pdf/i990.pdf. To facilitate disclosure, it may make sense to convert the form to a google form or some other online questionnaire.

ADDITIONAL MATERIALS AND INFORMATION

Public Counsel

- Form 990 Resources
 - Annotated Form 990: <https://publiccounsel.org/publications/annotated-irs-form-990-2011/>
 - Whistleblower Policy: <https://publiccounsel.org/publications/annotated-form-of-whistleblower-policy-2016/>
 - Records Management and Retention Policy: <https://publiccounsel.org/publications/annotated-form-of-records-management-and-retention-policy/>
 - Executive Compensation Policy: <https://publiccounsel.org/publications/executive-compensation-policy/>
- Annotated Form of Bylaws: <https://publiccounsel.org/publications/annotated-form-of-bylaws-for-a-california-nonprofit-public-benefit-corporation/>
- Board Orientation Manual: <https://publiccounsel.org/publications/board-orientation-manual/>

Internal Revenue Service

- Form 990 Resources and Tools: <https://www.irs.gov/charities-non-profits/form-990-resources-and-tools>
- Tax Information for Charities: www.irs.gov/charities

California Attorney General

- Guide for Charities: https://oag.ca.gov/sites/all/files/agweb/pdfs/charities/publications/guide_for_charities.pdf
- Nonprofit Integrity Act FAQ: <https://oag.ca.gov/charities/laws#integrityact>