

# UNIVERSITY OF VERMONT AND STATE AGRICULTURAL COLLEGE

## BOARD OF TRUSTEES

### CONFLICT OF INTEREST POLICY

#### **Policy Statement**

University Trustees work in service to the institution and the public trust and are obligated to fulfill their responsibilities in a manner consistent with this charge. All decisions of the Board and its members individually must be made in good faith, with diligence and care, in a manner reasonably believed to be in the best interests of the University, and with due regard for the University's reputation. It is therefore the policy of the University and this Board that Trustees have an affirmative duty to identify, disclose and manage conflicts in conformance with this Policy and the law.

#### **Definitions**

*Conflict of interest.* A conflict arises when there is a direct or indirect potential, apparent or actual divergence between a Trustee's private interests and his or her fiduciary duties as a University Trustee. Conflicts may affect non-financial as well as financial Trustee interests. The Trustee may be personally involved in a proposed transaction, have an employment, fiduciary or investment relationship with an entity with which the University is dealing, or have a family relationship with a person or entity with which the University is engaged.

For purposes of this Policy, a conflict of interest arises where the relevant material facts affect a Trustee, a member of his/her immediate family, or an affiliate, as herein defined. In the case of conflicts involving a member of the immediate family or an affiliate of a Trustee, the Trustee is obligated to make disclosure when he or she knows or reasonably should know of a conflict.

An *apparent conflict* exists when a reasonable person would conclude from the circumstances that a Trustee's ability to discharge his or her duties as a Trustee, as summarized in the Policy Statement above, are compromised by personal interest.

A *member of the immediate family* of a Trustee includes a spouse or civil union partner, child, parent, sibling, or such relations by marriage or civil union partnership (wherever residing), person claimed as a dependent for federal income tax purposes (wherever residing), and any relative residing in the same household as the Trustee. There may be other family members as to whom disclosure should also be made to avoid the appearance of a conflict, and doubts should be resolved in favor of disclosure.

An *affiliate* includes a business, association, corporation, or other legal entity in which a Trustee or a member of his/her immediate family is a director, trustee, officer, partner, joint venturer, principal, employee, owner, and/or holder of five percent (5%) or more of voting stock or a controlling interest. In addition, an affiliate is an entity from which the Trustee or a member of his/her immediate family otherwise annually receives or has the right to receive \$10,000 or more compensation, income, or other financial consideration or value.

A “*substantial interest*” means an interest in “business” “with which the Trustee is associated” in the manner and to the extent described in this paragraph. A “business” is any of the following: a. Association; b. Business trust; c. Corporation; d. Enterprise; e. Joint venture; f. Organization; g. Partnership; h. Proprietorship; i. Vested trust; j. Every other business interest, including ownership or use of land for income. A business “with which the Trustee is associated: means a business in which the Trustee or any member of the Trustee’s immediate family: a. Is an employee; b. Holds a position as a director, officer, partner, proprietor, or member or manager of a limited liability company, irrespective of the amount of compensation received or the amount of interest owned; or c. Owns a legal, equitable, or beneficial interest of five percent (5%) or more of the business, other than as a trustee on a deed of trust.

## **Policy Elaboration**

It is not possible to provide an all-inclusive list of situations giving rise to a conflict of interest. In general, Trustees may not use their positions or confidential information to which they become privy as Trustees for the gain of themselves or others. Below are examples of situations presenting potential, actual or apparent conflicts.

1. **Commercial transactions.** The University will consider engaging in commercial transactions, such as contracts for goods or services, with a Trustee or any business entity in which a Trustee has a substantial interest only if the proposed transaction has undergone the customary conflict of interest disclosure and University procurement processes and, after review, the Board Audit Committee determines that the transaction is in the best interests of the University, following which the Board must take action on the Audit Committee’s recommendations. Examples of when such a contract might be in the best interest of the University include, but are not limited to, when it has financially advantageous terms, when the goods or services to be provided are demonstrated to be unique, or when the contract is a continuation of a contract that was in effect before the person with the substantial interest became affiliated with the University.
2. **Confidential, Proprietary or Privileged Information.** Except as required by law, no Trustee shall, without proper Board or institutional authorization, give or release University information or data (“Information”) of a confidential, proprietary or privileged nature, or use such Information to gain personal advantage or avoid personal detriment, insofar as such Information is not in the public domain. This rule applies to Trustees

during and after their University service relative to Information acquired in the course of their Trusteeship.

3. **Business Opportunities.** No Trustee shall divert from the University for private gain of self or others a business opportunity in which the University would foreseeably engage in furtherance of its mission, unless the University has been offered, and through an authorized official declined, a right of first refusal.
4. **Trustee Employment at UVM.** Except under extenuating circumstances as determined by a two-thirds (2/3) majority of the Board, no Trustee may enter into compensated employment with the University while the individual is a Trustee and for a period of one year after leaving the Board. This prohibition does not apply to student trustees who wish to engage in part-time University employment during their trusteeship, subject to the conflict of interest disclosure rules otherwise state in this Policy.
5. **Employment or Retention of Immediate Family Members or Affiliates.** No Trustee may be directly or indirectly involved in the hiring, supervision, performance evaluation, compensation or retention of personal or business services by the University of an immediate family member or an affiliate.
6. **Remuneration, Honoraria, Gifts, and other Consideration**
  - a. **From External Parties.** No Trustee shall solicit or accept from any person, organization, corporation, or other legal entity (or representatives thereof) seeking to do, or doing, business with, or otherwise gain benefit from, the University, any remuneration, gift, gratuity, services, loans, travel, entertainment or other consideration of more than nominal value in exchange for a promise, or reasonable inference, that the Trustee's influence with the University has been exchanged for such consideration. This prohibition applies without limitation to vendors, contractors, sponsors, donors, and job or admissions applicants.
  - b. **From the University.** It shall not be considered a conflict of interest for a Trustee to accept from the University (1) gifts or other items of value in consideration of his/her service or retirement from University service; (2) customary *honoraria*; (3) reasonable reimbursement for travel, food, or lodging for expenses incurred in connection with University Trusteeship pursuant to applicable University policy and procedures; or (4) complimentary tickets for a Trustee and his/her guest at University functions or events when the presence of the Trustee is deemed to serve the best interests of the University.
  - c. **From External Parties or the University.** No Trustee shall solicit or accept any fee or honorarium offered in return for a speech or appearance or article made or written in the individual's official capacity as a Trustee. Reasonable and necessary expenses reimbursed to the Trustee for participation in such an event are permissible

subject to the filing of a conflicts disclosure form. Any such appearance shall be subject to the provisions of the Statement of Trustee Responsibilities, and in particular the requirement that a Trustee recognize that the President is the spokesperson for the University and the Chair is the spokesperson for the Board and that, when a Trustee engages in communications with University personnel, students, the citizenry, and the media on an individual basis, the Trustee shall be guided by the duty of loyalty as set forth in the Statement of Trustee Responsibilities.

7. **Employment of University Personnel.** A Trustee wishing to employ or retain a University officer of administration for private consulting or other non-University purposes must first obtain from the General Counsel an opinion as to whether such engagement does, or may, give rise to a conflict of interest. If the General Counsel concludes that a conflict does, or may, arise, the Trustee shall disclose the proposed employment or consulting arrangement to the Board Chair. The Board Chair will either authorize or decline to authorize the proposal, conferring with the Executive Committee in his/her discretion. If the proposal is authorized, the Chair shall communicate the authorization in writing to the Trustee, with a copy to the General Counsel. The Trustee's Conflict of Interest Disclosure Form shall then be amended to reflect the affiliation. In the case of proposed employment of other University personnel, the Trustee should consider whether such employment might reasonably result in a conflict of interest and, if so, he/she should thus amend the Conflict of Interest Disclosure Form.
8. **Testimony.** A Trustee who testifies in person or through recorded or written communication before any public body or public official, whether judicial, legislative or administrative, shall make it initially and clearly known on the record when s/he is speaking on the matter as a University representative. Trustees shall obtain authorization to speak on behalf of the University by means of customary governance protocols.
9. **Political or Appointive Office.** The constituency of each Trustee is the University, regardless of the source of appointment. Trustees whose service on the Board is incidental to elective or appointive office shall engage in such service with due regard for the fiduciary duties of a Trustee, and in a manner consistent with this Policy.

### **Summary of Protocol**

Upon commencement of Board service, Trustees file Conflicts Disclosure Forms, amending them no less than once annually and otherwise as circumstances dictate.

In advance of any meeting at which a conflict may foreseeably arise, the Trustee must disclose the conflict to the Committee Chair (and/or to the Board Chair if the conflict will arise during a Board meeting). The Trustee, Committee Chair, or Board Chair may request an opinion on the existence of a conflict from the General Counsel. In the event that a Board Chair or a Committee

Chair conflict is in issue, the disclosure shall be made to the Vice Chair, who may also request a legal opinion from the General Counsel.

Once having disclosed the conflict, the Trustee may him/herself decide to decline to participate in discussion of, and any vote upon, the matter as to which a conflict exists. In such instances, the meeting record shall reflect his/her self-recusal and abstention.

If the Trustee does not her/himself decline to participate in discussion of the matter as to which a conflict exists, the Committee (or Board) Chair shall, prior to consideration of the matter, and in open session, identify the conflict. In the event that a Board Chair or Committee Chair conflict is in issue, the Vice Chair shall identify the conflict. The Trustee as to whom a conflict is identified may participate in open session discussion of the matter if a majority of the members of the Committee or the Board authorize such participation by majority vote; if such authorization is given, the Trustee shall nonetheless abstain from voting on the matter. The Trustee shall be excused from any portion of an Executive Session devoted to the matter as to which a conflict arises.

A Trustee who recuses from participation in discussion of, and/or voting upon, a matter before a Committee or the Board shall not be counted toward a quorum.

## **Protocol**

### **Disclosure Forms**

Each Trustee shall file a Trustee Disclosure Form at the time of initial appointment and by March 1 of each subsequent year of service. The Form will require the Trustee to acknowledge his/her review of the Policy and to agree to disclose on the Form and as otherwise required by the Policy any matter as to which a conflict does, or may, exist. The Trustee shall update the Form during the year as circumstances dictate. Forms will be filed with the Trustee Coordinator, and maintained by the Assistant Secretary of the Board, with a copy to the General Counsel.

### **Disclosure Obligation**

In advance of any meeting at which a conflict may foreseeably arise, the Trustee must disclose the conflict and all relevant material facts to the Committee (or Board) Chair. If the Trustee with such conflict is the Committee or Board Chair, the conflict shall be disclosed to the Vice Chair, who shall instead preside for the agenda item as to which the matter arises.

Relevant material facts may include the benefits that could inure to the Trustee; the extent to which, if any, the Trustee is participating in a competitive process to enter into a transaction or business affiliation with the University; whether the Trustee is privy, in his or her capacity as a Trustee, to proprietary or other non-public University information that could be advantageous to the Trustee in relation to other parties interested in a proposed transaction; and/or if the

University would be likely to enter into the proposed transaction or relationship in the absence of the Trustee's University affiliation.

A Trustee may elect, following such disclosure, to self-recuse from participation in discussion of the matter as to which disclosure is made. Alternatively, if a Trustee submits a disclosed conflict for consideration by a Committee or the Board, when the item arises on the agenda the Chair shall, for the record, identify to the Committee or the Board the conflict and the material facts relating thereto. (If the Trustee with such conflict is the Committee or Board Chair, the conflict shall be identified by the Vice Chair, who shall preside for the agenda item as to which the matter arises.)

The Trustee shall request authorization from the Committee or the Board to participate in any discussion of the agenda item that takes place in open session, and shall be recused from any portion of an Executive Session devoted to the matter as to which a conflict arises. If the Committee or Board by majority vote authorizes the Trustee's participation in such public discussion, the Trustee shall nonetheless abstain from voting on any such item.

In all instances, the determination as to whether to permit the Trustee to participate in discussion of the agenda item as to which a conflict arises shall be made following full disclosure by the Trustee of the nature of the conflict, and on the basis of whether, in the considered judgment of the Committee or the Board, the University's interests will be best served by participation of the Trustee notwithstanding the conflict.

### **Role of the University General Counsel**

Prior to each Committee and Board meeting, the General Counsel shall review the agenda in relation to Trustee Disclosure Forms to determine whether a conflict may, or will, arise. If a conflict is identified, the General Counsel shall contact the Trustee and the Committee (or Board) Chair regarding the relevant agenda item. The Trustee and the Chair shall otherwise proceed as described in the first section of this Protocol ("Disclosure Obligation").

Upon request of the Trustee and/or the Committee or Board Chair, the General Counsel shall provide an opinion as to whether a conflict of interest arises as to such Trustee. All such opinions shall be subject to applicable privileges under law.

### **Approval of a Conflict of Interest Transaction**

If a conflict is identified for the first time subsequent to any action by the Board in which a conflicted Trustee participated, such action shall be voidable by the Board in accordance with the Vermont Nonprofit Corporation Act and otherwise applicable procedures relating to Board meetings and action.

Notwithstanding the preceding paragraph, a conflict of interest transaction is not voidable or the basis for imposing liability on the Trustee if the transaction (a) was fair at the time it was entered into or (b) is approved in advance by vote of the Board or a Committee if (i) the material facts of the transaction and the Trustee's interest are disclosed or known to the Board or Committee; and (ii) Trustees approving the transaction in good faith reasonably believe that the transaction is fair to the University. Any approval must receive an affirmative vote of a majority of the Trustees on the Board, and any Trustee who recuses from participation in discussion of, and/or voting upon, a matter before the Committee or Board shall not be counted toward a quorum.

In cases in which the Board or a Committee considers approval of a conflict of interest transaction, its review of the material facts and its resulting decision shall be documented in the meeting minutes.

### **Post-Transaction Challenge Procedure**

Complaints of non-compliance with this Policy shall be filed promptly and in writing with the Chair of the Board, with copies to the Secretary and Assistant Secretary of the Board. Disposition of such complaints shall be handled in the same manner as proposed or approved transactions under this Policy and, and as to a non-compliant Trustee, under relevant provisions of the University Charter, Bylaws and Vermont Nonprofit Corporation Act.

### **Questions Regarding Application of this Policy**

Questions regarding application of this policy may be directed to:

Chair of the Board of Trustees  
University of Vermont  
349 Waterman Building  
Burlington, VT 05405  
[trustees@uvm.edu](mailto:trustees@uvm.edu)

with a copy to:

UVM Office of the General Counsel  
357 Waterman Building  
Burlington, VT 05405  
[General.Counsel@uvm.edu](mailto:General.Counsel@uvm.edu)

or to:

[UVM Ethics and Compliance Reporting HelpLine](https://www.uvm.edu/compliance/helpline) (<https://www.uvm.edu/compliance/helpline>)

## **Governing Law**

This Policy incorporates by reference any obligations imposed upon the University, the Board, and/or a Trustee by federal or State law.

*Adopted by the Board of Trustees: February 12, 2005*

*Amended by the Board of Trustees: February 4, 2012*

*Amended by the Board of Trustees: November 8, 2012*

*Amended by the Board of Trustees: February 9, 2013*

*Amended by the Board of Trustees: May 16, 2015*