

MAIN CATEGORY

Conflict of Interests – Board of Directors and Officers

POLICY

As each Director and officer participates in the business of the United Way of Southwestern Pennsylvania (“Organization”), he/she has a fiduciary duty to act prudently and in the best interest of the Organization, as opposed to his or her personal interest or the interest of some other person or entity. The Internal Revenue Code also requires that officers and directors of a 501(c)(3) organization not engage in excess benefit transactions with the 501(c)(3) organization. Indeed, officers and directors will be subject to onerous excise taxes if they do engage in excess benefit transactions with the 501(c)(3) organization. An excess benefit transaction occurs whenever the organization does not receive fair consideration in a transaction with an officer, director or other disqualified person or a family member of an officer, director, or other disqualified person.

This policy is intended to assist Directors in satisfying their fiduciary duty to the Organization. It also assists officers and Directors in avoiding excess benefit transactions.

Definition of a Conflict

An actual or potential conflict of interest exists when any of the following exists:

- 1) The Organization does or proposes to do business with:
 - a) an officer or Director; or
 - b) a family member of an officer or Director; or
 - c) an organization in which an officer, Director or a family member of an officer or Director has an ownership or investment interest or compensation relationship; or
- 2) An officer is to receive compensation for performing services for the Organization, which compensation is being determined by the Organization.

Person(s) Responsible for Policy: President & Chief Executive Officer and Chair of Board of Directors

Policy Last Updated: March 16, 2009; August 1, 2015 (new name)

Drafted on 5/26/2009

PROCEDURE

Disclosure

Annually, each Director and officer must complete a disclosure statement reflecting his or her interests. The Chairman of the Board is responsible for reviewing the disclosure statements so that he or she is familiar with potential conflicts. In addition, each Director and officer is personally responsible for disclosing his/her actual or potential conflict at the time the Organization is considering a transaction that may involve a conflict.

Executive Committee Approval

The Executive Committee of the Board of the Organization must approve in advance every transaction to be entered into by the Organization which includes a conflict.

Directors and officers shall act in a manner intended to further the best interests of the Organization. If at any time a Director or officer has or may have a conflict of interest, the Director shall disclose the conflict to the Executive Committee, recuse himself or herself from its consideration of the subject (if they serve on the Executive Committee) and, if so requested by any other participant in the meeting, shall leave the room while the matter is discussed. Prior to leaving the room, the affected Director shall answer any questions asked by disinterested members of the Executive Committee. Recusing himself or herself shall not prevent a Director or officer from participating in other activities or discussions where no conflict of interest exists.

Standard for Approval

In the event the Executive Committee concludes that a conflict exists, the Chairman or majority of the disinterested members of the Executive Committee present may appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement which presents the conflict. Alternatively, the Executive Committee may approve the transaction or arrangement that is the subject matter of the conflict by an affirmative vote of a majority of the disinterested members of the Executive Committee present so long as the disinterested members constitute a quorum.

In either case, the decision making body must have determined (i) that the transaction or arrangement is in the Organization's best interest and for its own benefit, (ii) that it is fair and reasonable to the Organization and (iii) after exercising due diligence, the Organization would not obtain a more advantageous transaction with reasonable efforts under the circumstances. Where reasonably possible, the Executive Committee shall obtain comparable information to assist it in reaching such conclusions. Comparable information may include appraisals, valuations, competing offers or bids, compensation surveys, reports of experts and similar data. When setting compensation for disqualified persons, including without limitation officers and Directors, the Organization shall obtain comparable information and exclude from the decision making body the applicable disqualified persons and any persons they supervise¹.

Minutes

The minutes of all meetings of the Executive Committee shall reflect (i) the names of the persons who disclosed any conflicts; (ii) the determination as to whether an actual or potential conflict of interest existed; (iii) the names of the persons who were present for discussions and votes relating to the transaction or arrangement; (iv) the content of the discussions, including any alternatives to the proposed transaction or arrangement and the basis for the determination of the Executive Committee, including any comparability data; (v) the voting record, including any abstention from voting; and (vi) any action to be taken.

Person(s) Involved With Procedure: Directors and President & Chief Executive Officer

Approvals: None

Frequency of Procedure: Annually (July 1st of each year)

Procedure Last Updated: March 16, 2009; August 1, 2015 (new name)

¹ Generally, a disqualified person is anyone who has (or during the last 5 years had) substantial influence over the Organization. Directors and officers are always disqualified persons.

**UNITED WAY OF SOUTHWESTERN PENNSYLVANIA
CONFLICT OF INTEREST DISLCOSURE
and
FORM 990 QUESTIONNAIRE
FOR THE TAX YEAR FROM JULY 1, 20XX THROUGH JUNE 30, 20XX**

NAME AND POSITION:

Your Name: _____

Position(s)/Status from July 1, 20XX through June 30, 20XX:

(e.g., officer, director, **key employee**) List all that apply.

I. BUSINESS AND FAMILY RELATIONSHIPS AMONG DIRECTORS, OFFICERS, AND KEY EMPLOYEES

A. Business Relationships. During the time period from July 1, 20XX through June 30, 20XX, to your knowledge, did you have any of the following relationships with a person who was also a director, officer, or **key employee** of the United Way (see Exhibit A for a listing):

- a) Both you and another United Way director, officer, or **key employee** were directors, trustees or officers of the same business or investment entity and/or were greater than 10% owners of the same business or investment entity? [] YES [] NO
- b) You employed another United Way director, officer, or **key employee** or he or she employed you? [] YES [] NO
- c) A company 35% owned by you employed another United Way director, officer, or **key employee** or a company 35% owned by another United Way director, officer, or **key employee** employed you? [] YES [] NO
- d) A company you served as a director, officer, trustee or **key employee** employed another United Way director, officer, or **key employee**? [] YES [] NO
- e) You were employed by a company where another United Way director, officer, or **key employee** served as a director, trustee or **key employee**? [] YES [] NO
- f) You had a **business transaction** (directly or **indirectly**) with another United Way director, officer, or **key employee** involving transfers of cash or property valued in excess of \$10,000²? [] YES [] NO

² For purposes of this question, do **NOT** report the following transactions and relationships: (a) transactions occurring in the ordinary course of either party's business on the same terms as are generally offered to the public; (b) attorney-client relationships; (b) physician/psychologist-patient relationships; and (c) priest/clergy-penitent/communicant relationships.

If you answered yes to any of the preceding questions, please describe the relationship and identify the entity and persons involved. If you answered “yes” to (f), please also describe the **business transaction**.

B. Family Relationships. Please list below any other current officer, director, or **key employee** of the United Way with whom you have a **family** relationship:

Name	Relationship

II. BUSINESS RELATIONSHIPS WITH THE UNITED WAY – PAST OR PROSPECTIVE

A. To your knowledge, did any of the following persons make a payment to or receive a payment from the United Way for a past **business transaction**, or expect to, in connection with a prospective **business transaction**:

- 1) Do you or a company in which you have a significant interest expect to enter into a **business transaction** with the United Way in the upcoming year or have you in the past year? [] YES [] NO

- 2) Do you expect your employer to enter into a **business transaction** with the United Way in the upcoming year or the past year? [] YES [] NO

- 3) Do you or any of your **family members** have a significant interest in any company that you expect to enter into a **business transaction** with the United Way in the upcoming year or in the past year? [] YES [] NO

If you answered yes to any portion of the question regarding a past transaction between July 1, 20XX, and June 30, 20XX, please provide the name of the person or involved organization, the amount of money involved and the nature of the transaction.

If you answered yes to any portion of the question regarding a prospective transaction, please identify the persons or companies involved and the nature of the **business transaction**.

4) Do you, or does any **family member**, serve as an officer, [] YES [] NO
 director, trustee, manager, consultant, or similar position,
 whether paid or unpaid, for any organization that you expect
 enter into a **business transaction** with the United Way in the
 upcoming year? If so, please complete the chart below

You/Family Member	Name of Organization	Position	Organization's Business

III. GRANTS ASSISTANCE PROVIDED BY THE UNITED WAY

A. Past Grants or Assistance from the United Way

During the time period from July 1, 20XX through June 30, 20XX, did any of the following persons receive a grant (e.g., scholarships, prizes, awards, or part-gift-/part-sale transactions) or other assistance (e.g., cash, goods, services, or provision of facilities) from the United Way:

- a) You? [] YES [] NO
- b) Any of your **family members**? [] YES [] NO
- c) An entity owned 35% by you and/or your **family members**? [] YES [] NO

If you answered yes to any portion of this question, please provide the name of the person or entity that received the grant or assistance and the nature and/or amount of the grant or assistance provided.

B. Relationships with Prospective Grantees and Grant Applicants

Do you and/or any of your **family members** serve as a director, trustee, officer, employee, or paid consultant of any organization that currently receives or seeks, or is anticipated to receive or seek, grant funding from the United Way? [] YES [] NO

If yes, please identify the organization(s) and the position that you and/or your **family member** holds at the organization(s).

IV. DEFINITIONS

“Business Transactions” include but are not limited to contracts of sale, leases, licenses, performance of services (whether initiated during the tax year or ongoing from a prior year), and joint ventures (whether new or ongoing) in which either the profits or capital interest of the organization and the interested person each exceeds 10% of the joint venture. Business transactions don’t include charitable contributions.

“Family members” include spouses, domestic partners, ancestors, brothers or sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren, or spouses or domestic partners of brothers, sisters, children, grandchildren, or great-grandchildren.

“Indirect transactions” are transactions with an organization with respect to which you or the other person is/was associated as a trustee, director officer, key employee, or greater-than-35% owner. For example, a transaction between the company in which you have a 35% ownership interest and the United Way is an indirect transaction between you and the United Way.

A **“key employee”** is an employee who satisfies each of the following three tests: (1) has reportable compensation from the organization and related organizations of at least \$150,000 (the **“\$150,000 test”**); (2) has responsibilities, power, or influence over the entire organization similar to a director or officer; OR manages a segment or activity representing at least 10% of the organization’s activities, assets, income, or expenses; OR has or shares authority to control/determine 10% or more of the organization’s capital expenditures, operating budget, or employee compensation (the **“responsibility test”**); and (3) is one of his/her employer’s top 20 highest paid persons for the year who satisfied both the \$150,000 test and the responsibility test (**“top 20 test”**). Management companies and similar entities that are independent contractors with respect to the organization should not be treated as key employees.

“Ownership” is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust. Ownership includes indirect ownership (e.g., ownership in an entity that has ownership in the entity in question).

ACKNOWLEDGMENT AND SIGNATURE

To the best of my knowledge and belief, the above information is true and accurate.

DATED this _____ day of _____, 20XX.

By: _____

Print Name: _____

RETURN THIS COMPLETED FORM TO:

United Way of Southwestern Pennsylvania
Attention: Executive Office
1250 Penn Avenue
P.O. Box 735
Pittsburgh, PA 15230-0735

Due July 31, 20XX

