

Conflict of Interest Policy

Adopted by the NSPA Board of Directors on July 28, 2004. Amended July 22, 2013.

Introduction

The purpose of this Conflict of Interest Policy is to protect the interests of the National Scholarship Providers Association (NSPA) when it is contemplating taking an action or making a decision that may benefit the private interests of a director or senior manager of NSPA. The standards set forth in this Policy are guiding principles, which must be used along with one's good judgment, for handling these situations.

This Policy is intended to supplement, but not replace, federal and state laws governing conflicts of interest applicable to nonprofit corporations. Nothing in this Policy, however, will be deemed to cause a transaction or arrangement to be or become void or voidable if the transaction or arrangement is not otherwise void or voidable under those laws.

Definition of Conflict of Interest

A "conflict of interest" occurs when the private interests of a director or senior manager of NSPA interferes in any way with the interests of NSPA as a whole. Therefore, a conflict of interest may arise when such individual, or a person or entity related to such individual (a related person), receives an improper personal benefit (financial or otherwise) as a result of that individual's position with NSPA. It may also arise, however, when the individual or a related person takes an action or has an interest that may make it difficult for the individual to perform his or her work for NSPA objectively and effectively, even if there is no improper personal benefit.

Related persons include:

- Family members of directors and senior managers, defined as (i) a spouse or domestic partner, (ii) descendants and their spouses or domestic partners, (iii) ancestors and their spouses or domestic partners, and (iv) siblings and their spouses or domestic partners and descendants, in each case, whether by blood, marriage or adoption.
- An organization (whether for-profit or nonprofit) in which a director or senior manager, or a family member, serves as an officer, director, trustee or general partner (or in similar capacity), whether paid or unpaid;

- An organization (whether for-profit or nonprofit) in which a director or senior manager, or another related person, has a material financial interest, defined as any financial interest that, in view of all the circumstances, could call into question the objectivity of the director or manager with respect to the matter to be decided, such as: (i) an ownership or investment interest (or potential interest) in the organization; (ii) a compensation arrangement (or potential arrangement) with the organization; and (iii) the receipt of gifts, entertainment, favors, grants or loans from the organization that are substantial in nature; and
- any estate or trust in which a director or senior manager, or another related person, has a beneficial interest.

Conflicts of interest can be actual, potential or apparent. An “apparent” conflict of interest exists when a reasonably informed person perceives that the performance of the individual’s duties for NSPA could be influenced by his or her private interests. For example, any time a director is also directly engaged in a project sponsored or supported by NSPA there is the possibility of an apparent conflict of interest. A “potential” conflict of interest exists when situation may develop into an actual conflict of interest with the passage of time or the occurrence of certain events.

Types of Conflict of Interest

The following are examples of situations in which a conflict of interest may arise. These examples are not exhaustive, however. Each director and senior manager has a duty to identify any other situation in which he or she may be unable to act in the best interests of NSPA because of a potentially competing private interest.

- NSPA enters into a contract, transaction or financial relationship of any kind with a director or senior manager (or a related person), including, without limitation, (i) the supply of goods or services; (ii) the lease of property or equipment; (iii) the purchase or sale of real estate, securities or other property; (iv) the making of a gift or grant; and (v) the extension or receipt of credit.
- A director or senior manager (or a related person) obtains a non-financial benefit that would not be available absent the director’s or manager’s relationship with NSPA, such as (i) preferential treatment by NSPA, (ii) access to or use of nonpublic information obtained from NSPA for personal benefit (whether before or after his or her service with NSPA), or (iii) adoption by NSPA of a policy that provides significant personal benefits.

- A director or senior manager takes for himself or herself, or another person, a “corporate opportunity” (i.e., a venture, activity, investment, property or idea) that he or she has reason to believe NSPA would have a legitimate interest in pursuing. A “corporate opportunity” includes when a director or manager competes, prepares to compete or assists others in competing with NSPA in providing services to, procuring funding from or entering into a contract, transaction or financial relationship with a third party.
- A director or senior manager (or a related person) accepts gifts, entertainment or other favors from any individual or entity that does or is seeking to do business with NSPA, or has received, is receiving or is seeking to receive a grant or loan or to secure other financial commitments from NSPA, under circumstances where it might be inferred that such action was intended to influence or possibly would influence the director or manager in the performance of his or her duties. This does not preclude the acceptance of items of nominal or insignificant value or entertainment of nominal or insignificant value.

General Guidelines

Directors and senior managers of NSPA must follow these general guidelines with respect to all actions and decisions affecting programs, events and activities sponsored or supported by NSPA.

- Directors and senior managers must always act in the best interests of NSPA.
- Directors and senior managers may not use their positions with or information obtained from NPSA to provide an unfair advantage to themselves or anyone else.
- Directors and senior managers may not take for themselves or another person a corporate opportunity that they have reason to believe NSPA would have a legitimate interest in pursuing, without first offering that opportunity to NSPA.
- Directors and senior managers must manage any conflict of interest in accordance with the procedures described below.

Conflict of Interest Procedures

Disclosure. Each director and senior manager has a ongoing obligation to (i) scrutinize his or her interests, positions and relationships, both direct and indirect, to identify any actual, potential or apparent conflict of interest, and (ii) promptly disclose that conflict of interest as soon as it is known. Disclosure is required annually (see “Annual Statements and Disclosure”) and whenever an individual becomes aware of an actual, potential or apparent conflict of interest that has not previously been disclosed.

Approval. As to any particular matter to be acted upon by NSPA, the board of directors or any board committee delegated authority over the matter must determine whether a conflict of interest disclosed constitutes an actual, potential or apparent conflict. If the conflict of interest is determined to be potential or apparent, the board or board committee has the discretion to determine the procedures to be followed for approval of the matter. If the conflict of interest is determined to be actual, the following procedures for approval must be followed:

- the conflicted director or senior manager must disclose to those charged with making the decision on behalf of NSPA all facts material to the conflict of interest and any material facts that bear on the decision from the standpoint of NSPA, prior to NSPA taking action; and
- although the director or manager may make a presentation at the meeting, and respond to questions, he or she must excuse himself or herself (physically and verbally) from deliberation and voting on the matter, and must not attempt to exert his or her personal influence with respect to the matter, either at or outside the meeting.

NSPA may approve the matter, notwithstanding the conflict of interest, if:

- the material facts as to the individual's interest, position or relationship giving rise to the conflict of interest, and as to the matter, are disclosed or are known to the board of directors or any board committee delegated authority over the matter; and
- the board or board committee in good faith, after a determination of the matter's fairness, authorizes, approves or ratifies the matter by the affirmative vote of a majority of all of the disinterested directors or committee members at a meeting at which a quorum is present, even though the disinterested directors or committee members are less than a quorum.

If the matter is not of the type that is normally acted upon by the board or a board committee, it may be acted in the same manner upon by the executive director (unless the conflict involves the executive director, in which case the matter must be acted upon by the board).

Transactions involving a conflict of interest that provide for ongoing or continuing services or product sales on an as-needed basis should be reviewed and approved by those charged with approving the transaction periodically, but do not require a transaction-by-transaction approval.

Documentation. NSPA should document in the corporate records:

- the name of any director or senior manager who disclosed or was otherwise found to have a conflict of interest, and whether that conflict of interest was determined to be an actual, potential or apparent conflict;
- the individual's disclosure of material facts relating to the conflict of interest and the matter to be decided;
- the fact of the individual's departure from the meeting during deliberation and voting, if required;
- the names of the persons who were present for deliberation and voting on the matter; and
- that NSPA determined to enter into the transaction or arrangement for its own benefit, and those charged with the decision determined that the transaction or arrangement was fair and reasonable to NSPA.

Violations. If a director or senior manager has reason to believe that another director or senior manager has failed to disclose an actual, potential or apparent conflict of interest, he or she must promptly inform the board of directors, and the board must promptly investigate and afford the affected director or manager an opportunity to respond. If, after hearing the response, and making such further investigation as may be warranted in the circumstances, the board determines there was a failure to disclose, the board will take such disciplinary and corrective action as it deems appropriate, which may include removal under NSPA's bylaws.

Integration with Immediate Sanction Rules

In the event that a director or senior manager (or a related person) is also a "disqualified person," as defined in the intermediate sanction rules applicable to 501(c)(3) organizations (see Treas. Reg. § 53.4958-3)), any transaction or arrangement between NSPA and the director or manager (or a related person) must be approved in accordance with this Policy and with such other substantive and procedural requirements as may be required to satisfy the applicable intermediate sanction rules. To the extent reasonably feasible, the transaction or arrangement should be approved in accordance with the procedural requirements necessary to establish the "rebuttable presumption" of reasonableness under Treas. Reg. § 53.4958-6.

Annual Statement and Disclosure

Each director or senior manager must, upon election or appointment and annually thereafter, sign a statement that affirms such person:

- has received a copy of this Policy;
- has read and understands this Policy; and
- has agreed to comply with this Policy.

In addition, each director and senior manager must, upon election or appointment and annually thereafter, complete a disclosure form identifying any interests, positions or relationships that he or she believes could contribute to a conflict of interest. Disclosure forms must be submitted to the board of directors for review and evaluation. Information disclosed will be treated as confidential and will generally be made available only to the chair of the board of directors, the executive director and the other members of the board, except to the extent additional disclosure is necessary in connection with the implementation of this Policy. All such information will remain on file in the corporate records of NSPA.

The form of the annual statement is attached as Appendix 1.

Adopted by Board of Directors: July 22, 2013

Printed Name: