

Conflict of Interest Policy

Updated July 7, 2011

Purpose

The purpose of the conflict of interest policy is to protect Reinvent Albany's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Plain Language Intent and Declaration

Reinvent Albany exists to serve a public purpose, not to materially benefit its board or staff. The staff and board shall receive no compensation, material gifts or direct or indirect re-numeration related to their work at Reinvent Albany outside of their approved salary, employment, service contracts or reimbursements. The staff and board shall be free to donate cash or services to Reinvent Albany which further its mission, including tax deductible contributions.

Definitions

1. Interested Person

Any director, principal officer, or member of a committee with board delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person.

2. Financial Interest

A person has a financial interest if the person has, directly or indirectly, through business, investment or family:

- a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,
- b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

Procedures

1. Duty to Disclose

Reinvent Albany is a non-profit, non-partisan, 501c3 charitable organization, incorporated in New York State.

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Organization can 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.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

4. Written Record of Decision

The board shall issue a written decision for every conflict of interest case it determines, and make that written decision available to board members. That written decision shall include the facts of the matter, why a conflict may be perceived or exist legally, the criteria the board used for its decision, a description of its decision and whether any remedial actions need to be taken to address the conflict or potential conflict.

The written decision shall be summarized at the subsequent board meeting, and entered or appended to the minutes. It shall include 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.

5. Violations of the Conflict of Interest Policy

Reinvent Albany is a non-profit, non-partisan, 501c3 charitable organization, incorporated in New York State.

a. If the governing board believes that Reinvent Albany organizationally, or member of its board or staff, are violating the conflict of interest policy, it shall act to immediately to eliminate that conflict.

Compensation

- a. A voting member of the governing board who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
- c. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Annual Affirmation of Understanding

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

- a. Has received a copy of the conflicts of interest policy,
- b. Has read and understands the policy,
- c. Has agreed to comply with the policy, and
- d. Understands the mission of Reinvent Albany and its charitable purpose.

Annual Conflict of Interest Review

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, annual reviews shall be conducted. These shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in impermissible private benefit or in an excess benefit transaction.

The board of directors hereby adopts the above Conflict of Interest Policy,

Mark Gorton
President

Aaron Naparstek
Treasurer

John Kaehny
Secretary, Exec Dir.

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Appendix

Summary of Private Foundation Self-Dealing Regulations

Section 4941 of the Internal Revenue Code

The Internal Revenue Code and Treasury Regulations prohibit private foundations from engaging in acts of “self-dealing” with “disqualified persons.”

Disqualified persons with respect to a foundation include: *foundation managers* (officers, directors, trustees, or individuals with similar responsibilities); *substantial contributors* (defined as any person who has contributed an aggregate amount of more than \$5,000 to a private foundation, if such amount is more than 2% of the total contributions received by the foundation before the end of the year in which the person makes a contribution); individuals who own more than 20% of a business enterprise that is a substantial contributor; family members of any person described above (spouse, ancestors, lineal descendants and spouses of lineal descendants); corporations, partnerships, and trusts or estates in which a person described above owns more than 35% of the voting power, profits interest, or beneficial interest; government officials.

Disqualified persons are prohibited from entering into the following types of transactions under the self-dealing regulations:

1. Sale, exchange or leasing of property between a private foundation and a disqualified person;
2. Lending of money or other extension of credit between a private foundation and a disqualified person, other than the lending of money by a disqualified person to the foundation without interest or other charge, so long as the loan proceeds are used exclusively for charitable purposes;
3. Furnishing of goods, services and facilities between the foundation and a disqualified person, other than the furnishing of goods, services or facilities by a disqualified person to the foundation without charge so long as the goods, services or facilities are used exclusively for charitable purposes; the foundation may furnish goods, services and facilities to a disqualified person so long as they are furnished on a basis no more favorable than that on which they are made available to the general public.
4. Payment of compensation (or payment or reimbursement of expenses), other than the payment of compensation and the payment or reimbursement of expenses by the foundation to a disqualified person for “personal services” that are reasonable and necessary to carrying out the exempt purposes of the foundation, so long as the compensation, payment, or reimbursement is not excessive (“personal services” include foundation management by trustees, directors and officers, legal and accounting services, and investment management; payment of directors’ and officers’ (D&O) liability insurance premiums on behalf of trustees and directors can be part of a reasonable (not excessive) compensation package);

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5. Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation, except when the benefit is incidental and tenuous, such as some public recognition for grants;
6. Payment to government officials;
7. Transaction involving corporate securities, except under narrow conditions (corporations that are disqualified persons generally may not purchase or exchange securities from their sponsored charitable foundations).

Summary of Excess Benefit Transaction Regulations

(“Intermediate Sanctions”): Section 4958 of the Internal Revenue Code

The Internal Revenue Code and Treasury Regulations prohibit public charities from providing “excessive” (more than fair market value) economic benefits to “disqualified persons.” The Regulations set forth procedures, or “rebuttable presumption” rules, that, if followed, provide a presumption of reasonableness for transactions between a public charity and a disqualified person.

All transactions that provide an economic benefit to disqualified persons—such as compensation for services and purchases and sales of property—are subject to the intermediate sanctions rules, whether the transactions are done directly by the organization or indirectly through a controlled entity (taxable or tax-exempt) or an intermediary.

Under the Regulations implementing the intermediate sanctions rules, three conditions must be satisfied to take advantage of the rebuttable presumption. These include:

1. Approval by disinterested governing board (or committee) before the transaction is entered into.
2. Reliance on comparable data to determine that the economic benefit provided to a disqualified person does not exceed fair market value for the services or property provided by the disqualified person in return.
3. Concurrent documentation that adequately documents the basis for making the determination that the transaction is reasonable (the Regulations specifically provide what information must be documented).

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www.reinventalbany.org
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