

**LOKER UNIVERSITY STUDENT UNION
CONFLICT OF INTEREST/CONFLICT OF COMMITMENT POLICY**

INTRODUCTION

The goal of the Loker University Student Union, Inc. (hereinafter "USU") is to provide services that aid, supplement and advance the educational purposes of California State University, Dominguez Hills (hereinafter "University"). Integral to the achievement of this goal is the USU's commitment to the involvement of students, faculty and University administration in the governance of the USU through its Board of Directors.

This shared responsibility brings with it possibilities for conflicts of interest and conflicts of commitment (referred to jointly hereinafter as "conflicts"). Conflicts may arise from the different but related positions that individual board members may hold on the University campus and in other organizations or entities.

A USU director may find himself or herself in a position where the director may be called on to vote on matters that affect an organization or entity that he or she represents in another capacity. This concern reaches not only voting on such matters, but taking part in discussions, or being present during deliberations or other actions that may benefit the other organization entity or that may harm the USU.

In addition, a USU director may find that he or she has access to information held by the USU that could be used to negatively affect the future operations, goals or status of the USU or to benefit another organization or entity. Conversely, a USU director may find that he or she has access to information held by another organization that could be used to negatively affect the future operations, goals or status of the USU.

To address the concerns surrounding possible conflicts, and to prevent conflicts from hindering the participation of Board members in the governance process, the USU has looked to the California Education Code and the California Corporations Code for guidance. The result is a policy that seeks to define conflicts, so that Board members are better able to structure their relationships with other organizations and entities in view of their fiduciary responsibilities to the USU, as well as provide a mechanism by which Board members can assess their activities within the USU and with other organizations and entities.

It is not the intent of this policy to regulate or eliminate all conflicts, but rather to enable Board members to recognize situations that may be subject to question and ensure that such situations are properly disclosed and, if necessary, reviewed and resolved. Thus, an integral part of the policy is a disclosure mechanism whereby Board members regularly review their roles on other boards and their activities with their responsibilities to the USU clearly in mind.

DEFINITIONS

- **Conflicts of Commitment**

With the acceptance of an appointment to the Board of Directors of the USU, an individual makes a commitment to the USU that is understood to be a commitment in the most inclusive sense. Board members are expected to act with professional loyalty within their roles as directors of the USU. Accordingly, they should arrange outside activities, loyalties and financial interests so as not to interfere with this responsibility.

- **General Duty of Care:** Directors of Public Benefit Corporations, such as the USU, are held to a general duty of care. This standard requires that a director follow the “prudent person” rule. The director must act in good faith, in the best interests of the corporation, after reasonable inquiry, with the care of an ordinarily prudent person under similar circumstances. Directors should use this standard to gauge their involvement in other organizations or entities. Most important is the legal requirement to act in the best interest of the USU. (CA Corp. Code 5231(a))
- **Outside Directorships and Activities:** The USU recognizes that its members may participate as officers and board members of other campus and outside organizations and entities. To the extent that these activities serve the USU’s interests, as well as those of the participant, the USU encourages such involvement. In addition, the USU recognizes the valuable educational opportunities associated with serving on the USU Board of Directors, as well as other campus and outside organizations and entities. In an effort to ensure that these educational opportunities are available to the largest number of students, as well as to address concerns regarding the inherent conflict of commitment which may exist, the USU Board of Directors has determined that:
 - No student employed in any capacity by the USU may concurrently hold a voting position on the USU Board of Directors; and
 - No student serving as a voting member of Associated Students, Inc. may concurrently serve as a student member-at-large on the USU Board of Directors.
- **Participation in Decisions Affecting Other Interests:** Each Board member must be aware that situations may arise where he or she may be asked by the USU to participate in a decision that may affect an organizations or entity which that Board member represents in another capacity. Likewise, the Board member may be asked by another organization to participate in a similar decision affecting the USU. This includes participation in discussions, voting, or the mere presence during deliberations, discussions, or voting on such matters. In such cases, the Board member must act in a manner consistent with his or her professional loyalty and fiduciary obligation to the USU. If uncertain if a conflict exists, the Board member should recuse him or herself from discussions, deliberations and voting on the matter or follow the disclosure procedures outlined under Disclosure and Review Procedure.

Additionally a Board member has a duty to present to the Board information the Board member may obtain that potentially hurts the USU including, but not limited to, its current and future

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operations, goals or status, even if it involves another member of the Board (e.g. that a vendor recommended by a fellow Director is a relative of a Director, or that a fellow Director has submitted a fraudulent expense report). All Board members shall maintain the confidentiality of any and all sensitive or confidential matters discussed by the Board or its subcommittees, as well as issues that are discussed in closed session of the Board.

- **Conflicts of Interest**

- **Financial Interest** – A Board member is considered to have a conflict of interest when he or she, any family member or any associated entity possesses a financial interest in an activity that involve his or her responsibilities as a Board member of the USU. No member of the Board shall be financially interested in any contract or other transaction entered into by the Board of which he or she is a member, and any contract or transaction entered into in violation of this section is void. (CA Educ. Code 89906)

No contract or other transaction entered into shall be void, nor shall any member of the Board be disqualified or deemed guilty of misconduct if:

- The fact of such financial interest is disclosed or known to the governing Board and noted in the minutes, and the governing Board thereafter authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members, and
- The contract or transaction is just and reasonable as to the USU at the time it is authorized and approved. (CA Educ. Code 89907 (a)(b))

These exceptions, however, will not apply if one of the following circumstances exist:

- The contract or transaction is between the USU and a member of the governing Board of the USU.
 - The contract or transaction is between the USU and a partnership or unincorporated association of which any member of the Board of the USU is a partner or in which he or she is the owner, holder, directly or indirectly, of a proprietorship interest.
 - The contract or transaction is between the USU and a corporation in which any member of the Board of the USU is the owner, holder, directly or indirectly, of five percent (5%) or more of the outstanding common stock.
 - A member of the Board of the USU is interested in a contract or transaction, and without first disclosing such interest to the Board at a public meeting of the Board, influences or attempts to influence another member or members of the Board to enter into the contract or transaction. (CA Educ. Code 89908 (a)(b)(c)(d))
- **Utilization of Public Information:** It is unlawful for any person to utilize any information, not a matter of public record, which is received by him or her by reason of his or her membership on the Board of the USU, for personal pecuniary gain, regardless of whether he or she is or is not a member of the Board at the time such gain is realized. (CA Educ. Code 89909)

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- **Self-Dealing Transactions:** Directors are prohibited by law from engaging in self-dealing transactions to which the USU is a party and in which one or more directors have a material financial interest. A mere common directorship is not in itself a material financial interest. (CA Corp. Code 5233(a), 5234) There are exceptions from the definition of self-dealing transactions and they are:
 - Actions fixing the compensation of directors or officers;
 - Transactions that are part of public or charitable programs that benefit a class of which directors or their families are members;
 - Transactions of which interested directors had no actual knowledge and which do not exceed one percent (1%) of the USU's gross annual receipts or \$100,000, whichever is smaller.
(CA Corp. Code 5233(b)(1)(2)(3))

Directors, are thus liable to the USU for self-dealing transactions unless the transaction was approved by one of the following:

- Approval by the Attorney General, or by court in an action in which Attorney General was an indispensable party, either before or after consummation of the transaction;
- Approval before consummation of the transaction by a disinterested board, under the following circumstances:
 - USU entered into the transaction for its own benefit.
 - Transaction was fair and reasonable to the USU.
 - More advantageous arrangement could not have been made with reasonable effort.
- Interim approval by a committee having authority for the Board, where immediate action was needed and action by the full Board was not feasible, and ratification by the full Board at its next meeting, under the circumstances listed in (2), above.
(CA Corp. Code 5233 (d)(1)(2)(3))

DISCLOSURE AND REVIEW PROCEDURE

If a Board member finds that he or she is faced with a possible conflict, the Board member shall inform, in writing, the Chair of the Board, who shall have the affirmative duty to advise the Ethics Subcommittee of the conflict as soon as possible.

The Ethics Subcommittee, with advice as needed from the USU's attorneys, shall review the circumstances surrounding the possible conflict and shall make a determination as to whether an actual conflict exists. If a conflict is found to exist, the Subcommittee shall present the information to the Board member, with a recommendation that the Board member recuse himself or herself from any further discussions, deliberations, voting or presence on the matter to alleviate or avoid the conflict or potential conflict, or take other appropriate action as required.

If a Board member has knowledge of a possible or actual conflict involving another member of the Board, the Board member who has acquired the information has an affirmative duty to disclose, in writing, such information to the Chair of the Board. Procedures as outlined above shall subsequently be followed. In such cases where such a possible or actual conflict involves the Chair of the Board, such disclosure shall be made, in writing, to at least one member of the Ethics Subcommittee, who shall then follow the procedures above and inform the Chair if a conflict is determined to exist, as a recommendation as described above.

In such cases where the Ethics Subcommittee determines that a Board member has knowingly violated this Conflict of Interest Policy by failing to disclose a possible conflict of interest, by ignoring the Board's directive to cease or modify activities or conduct posing a conflict or potential conflict, or in any other manner knowingly and purposefully acted in a way that violated the spirit or purpose of this Conflict of Interest Policy, the Subcommittee shall recommend disciplinary action to the Board. Such action shall include, but not be limited to, a notice to the Board member's appointing constituency or body of the specific activities or conduct which constitute the violation, the specific provisions of this Conflict of Interest Policy which have been violated, with a recommendation for an appropriate sanction or sanctions by that constituency or body.