

Private Foundations Bulletin

Managing the Foundation's Conflict of Interest Policy

By Ryan Campbell, Manager and Scott Brown, Partner

A conflict of interest policy is an important governance tool for private foundations to ensure that the organization's activities are conducted with integrity and in the best interest of the foundation's mission and beneficiaries. In this month's bulletin, we focus on conflict of interest guidelines for private foundations. We set forth best practices, how to manage the foundation's policy, as well as suggested measures for addressing a potential conflict of interest should one arise.

Purpose of Conflict of Interest Policy

The purpose of a conflict of interest policy is to ensure that the private foundation's directors, officers and employees act solely in the best interest of the foundation and avoid conflicts between personal, professional and organizational interests. A conflict of interest occurs when an individual's personal interest prevents him/her from making an impartial decision that is in the best interest of the foundation. A conflict of interest policy can be used to protect the foundation and provide safeguards to prevent transactions that result in private benefit at the foundation's expense. A conflict of interest policy will also provide guidance so that when a possible or actual conflict of interest arises, the foundation has procedures in place to advise management and those charged with governance with the proper steps to take to protect the foundation.

Best Practices

Although it is impracticable for a conflict of interest policy to cover every potential conflict of interest transaction that may occur, a private foundation should ensure that, at a minimum, the policy includes the most common types of activities that may arise. Some of the more common potential activities that we have seen addressed in conflict of interest policies are grants provided to grantees in which a director, trustee, or staff member is affiliated and/or the acceptance of gifts, favors, or honoraria from businesses and charities that have dealings with the foundation. When drafting a conflict of interest policy, it is important that private foundations make a list of the most common activities that arise, as well as the ones they feel the policy should address.

A conflict of interest policy should also document who meets the criteria of an interested person and what meets the criteria for a financial interest that may result in a conflict. The IRS has provided a definition of an interested person in their sample conflict of interest on Form 1023; however, private foundations must keep in mind that the IRS' definition of an interested person is different from – and less inclusive than – the federal tax code's definition of a disqualified person. A good starting point that private foundations can use to define an interested person would be those who meet the criteria of a disqualified person from the self-dealing rules in the federal tax code.

Another common feature of best practice conflict of interest policies would be a reference to the self-dealing rules under federal law. Board members and foundation staff should be aware of the self-dealing rules and both the financial and reputational risk for the foundation if these self-dealing statutes are violated.

Lastly, a foundation should document the procedures for how it should respond in common situations if and when a potential or actual conflict occurs.

Once the foundation has established a conflict of interest policy applying the above best practices, the policy should be distributed to directors and staff members. Directors and staff members should then sign a disclosure form acknowledging that he or she has received a copy of the policy and has read, understands and agrees to abide with the policy. This signed acknowledgement should also disclose the names of any organizations with which the foundation has an affiliation as a related party. These signed acknowledgements should be obtained and updated annually to ensure that all potential conflicts are disclosed.

Addressing a Potential Conflict of Interest

Although a Board or staff member may have a conflict with an organization the foundation is considering entering into a business transaction with, that does not mean the foundation is prohibited from doing so. There are some additional safeguards that a foundation should take prior to entering into the transaction. For example, when a director or staff member has a conflict with a potential grantor, that director or staff member should recuse himself or herself without comment from not only the vote approving the grant, but also from the deliberation. This recusal should also be documented in the minutes of the Board or committee meeting to provide proof that safeguards were taken before entering into the potential conflict of interest transaction.

When addressing the acceptance of gifts, favors, or honoraria from businesses and charities that have dealings with the foundation, a common best practice that is frequently included in conflict of interest policies is a blanket prohibition on these gifts with an exception for incidental or tenuous gifts (for example, reasonable meals in connection with business meetings).

As discussed earlier, while these are some of the more common conflicts that we have seen, foundations should tailor their conflict of interest policy to address any common conflicts accordingly.

Conclusion

Establishing and implementing a conflict of interest policy is an excellent way to protect the foundation and provide safeguards to prevent transactions that could result in financial and reputational harm. While the items discussed above are a great starting point for inclusion in the foundation's policy, it's important to consult with legal professionals or experts to ensure compliance with local laws and regulations when drafting the conflict of interest policy.

Contact Us

We welcome the opportunity to answer any questions you may have related to this topic or any other accounting, audit, tax or advisory matters relative to private foundations. Please call 212.286.2600 or email any of the Private Foundation Services team members below:

Thomas Blaney, CPA, CFE
Partner, Co-Director of Foundation Services
tblaney@pkfod.com

Joseph Ali, CPA
Partner
jali@pkfod.com

Scott Brown, CPA
Partner
sbrown@pkfod.com

Anan Samara, EA
Partner
asmara@pkfod.com

Christopher Petermann, CPA
Partner, Co-Director of Foundation Services
cpetermann@pkfod.com

Elizabeth Gousse Ballotte
Partner
eballotte@pkfod.com

Raymond Jones, Sr., CPA
Partner
rjones@pkfod.com