

Harvard University Policy on Conflicts of Interest and Confidentiality for the Governing Boards

I. Introduction: Harvard's Approach

Members of Harvard University's Governing Boards commonly have a range of professional and personal associations with other organizations and individuals. To assure Harvard's many constituents of the integrity of its endeavors, it is important to avoid situations in which such associations could compromise or reasonably appear to compromise important academic values or the University's business decisions. Accordingly, the University has long had policies directing the members of its Governing Boards and its most senior officials, among others, to act in a manner consistent with their responsibilities to the University and to avoid circumstances where their financial or other relationships with outside organizations or individuals could present a conflict of interest or impair Harvard's reputation.

In a variety of ways, members of Harvard's Governing Boards are in special positions of authority to influence the University's academic mission, strategic vision, administrative priorities, and business decisions. While these individuals (other than the President of the University) are not generally expected to consider their responsibilities to the University as their primary professional obligations, the University depends on their service and on their stewardship of the University's policies and standards. This Policy is intended to describe the expectations for members of Harvard's Governing Boards about the area of conflicts of interest, so that conflicts, real or perceived, may be identified early, disclosed, and resolved appropriately. In addition, the Policy recognizes that a commitment to maintaining the confidentiality of nonpublic information is an important element in creating a climate for internal discussion and deliberation that promotes robust and candid participation by board members and others.

To accomplish these objectives, this Policy describes the University's expectations regarding conflicts of interest and confidentiality and establishes a disclosure system whereby potential conflict situations and confidentiality concerns will be identified upon a Governing Board member's initial election, and at least once a year thereafter, on a prescribed form (the "**Disclosure Statement**," reproduced at Appendix B). Such a system promotes an understanding of the situations that may give rise to such issues and raises them at least annually as a reminder of each Governing Board member's responsibilities.

Ideally, this Policy will promote an affirmative awareness of these topics, and the Disclosure Statement will be a vehicle by which actual and potential conflicts can be appropriately identified and resolved through early and open communication and discussion. In this spirit, and because conflicts do not necessarily manifest themselves at scheduled times, potential conflict situations and new relationships and activities are expected to be disclosed promptly as they arise, in addition to being set forth in the initial and annual Disclosure Statements. The key to the successful application of this Policy for members of the Governing Boards is ongoing communication between the member

and the Secretary of the University or the Vice President and General Counsel, who will work together with appropriate others to review and resolve actual and potential conflicts in accordance with processes applicable to the Corporation or the Board of Overseers, as the case may be.

Because the University's academic and business activities are so broad, diverse, and complex, it is not possible to capture every potential conflict in the appended form of disclosure. Members of Harvard's Governing Boards should be alert to areas of conflict that may be novel or unusual or particular to their authority and responsibilities. Members of the Governing Boards who have questions about how this Policy applies to a particular situation, or about the Disclosure Statement itself, should contact the Secretary of the University or the Vice President and General Counsel.

II. Application of the Policy to Members of the Governing Boards.

This Policy applies to the members of Harvard University's Governing Boards (other than the President of the University¹), defined as the Harvard Corporation and the Harvard Board of Overseers.²

III. The Policy

Each Governing Board member shall at all times act in a manner consistent with his or her responsibilities to the University and shall exercise due care to avoid situations that create conflicts between his or her personal or professional interests and those of the University. This responsibility extends not only to matters involving the Governing Board member and the University, but also to relationships between Governing Board members and Harvard faculty and personnel. While serving in his or her role on the Governing Board, each member shall act in the best overall interest of Harvard and shall not subordinate the University's interests to external interests, considerations, or causes, be they professional or personal.

A collective commitment to safeguarding the confidentiality of nonpublic information, including refraining from its use to advance external interests, is a foundation for robust and candid participation by Governing Board members and others in the work of the Boards. Accordingly, each Governing Board member is expected to honor the strict confidentiality of meetings and discussions, as well as other nonpublic information made available or otherwise obtained in the course of board service. Unless clearly designated otherwise, information made available to or otherwise obtained by a Governing Board member in the course of service, whether in written or other form, should be regarded as confidential and should be held in confidence both during and after a Governing Board member's service. So, too, should the meetings and deliberations of the Boards and their committees, and other private discussions related to the work of the University, including its operations, policies, and plans, as well as its students, faculty, and staff.

¹ The President is subject to the Conflict of Interest Policy Governing Senior Officials of the University.

² Other defined terms applicable to this Policy are listed alphabetically in Appendix A.

A “**Conflict of Interest**” may arise when a Governing Board member, his or her Family Member,³ or an entity with which the Governing Board member or his or her Family Member is Associated:

- (i) has an existing or potential external interest, financial or other, that impairs or might reasonably appear to impair the Governing Board member’s judgment in the discharge of his or her responsibilities to the University; or
- (ii) may receive a material benefit, financial or other, from the use or disclosure of nonpublic information relating to the University.

Various external interests, both personal and professional, could implicate this policy and warrant disclosure to the University as the first step in the conflict resolution process. They could involve members of the Governing Boards, their family members, or entities with which the member or family member is associated. It is not possible to fully catalog those interests, but examples include serving as an officer in a company doing or seeking to do business with the University; being, having been, or expecting to be a party in a legal proceeding adverse to the University or being, having been, or expecting to be involved with such a party, as in the role of counsel, witness, expert, consultant, or advisor; or seeking nonpublic information to benefit an interest other than that of the University. In determining whether a potential conflict of interest exists, consideration should be given to whether the situation could subject the University to reputational harm or legal action or whether the Governing Board member’s activities could reasonably be seen as adverse to Harvard or as elevating an external interest above the interests of the University.

In addition, when a Governing Board member accepts personal gifts⁴ from individuals or organizations that do business or seek to do business with Harvard, or that seek other forms of association with or benefits from Harvard, this situation could raise a question whether the Governing Board member’s judgments are formed with the University’s best interests foremost in mind. Therefore, to prevent any question of bias or favoritism,

³ “**Family Member**” means a person living in the same household as a Governing Board member who is also the Governing Board member’s spouse, domestic partner, parent, sibling, child, or other relative. Because Governing Board members must affirmatively make inquiry and include the interests of Family Members in their Disclosure Statements, it is appropriate to limit this definition so that the disclosure obligation relates to people whose interests are close and readily ascertainable, in that they share the same household. However, if a Governing Board member learns of a potential conflict situation involving a relative who does not meet the definition of Family Member, the Governing Board member should disclose this conflict situation like any other under this Policy. For example, an emancipated child no longer living at home or the spouse of this child is not a “Family Member” for purposes of this Policy; however, a Governing Board member should disclose any activity of this child or spouse that could give rise to a conflict promptly upon learning of it.

⁴ A “**gift**” is any transfer of an item of value (including a trip, personal belongings, or special concessions in connection with personal business) for less than fair market value, including a personal discount. Business dinners or other business outings are not considered “gifts,” unless the business component is not significant or the social component does not comport with the overall professional standard of avoiding actual or apparent conflicts of interest.

Governing Board members must disclose the receipt of a gift that exceeds \$75 in value, and that is not the result of a close personal relationship, when:

- (i) the giver is a person or entity that seeks to conduct business with Harvard, and such business is subject to the review of the Governing Board on which the member sits; or
- (ii) the giver asks the Governing Board member to intervene with Harvard on his or her behalf; or
- (iii) the Governing Board member seeks to influence a decision by Harvard with respect to the giver or can reasonably be seen as doing so.

Potential conflicts of interest, including gifts, must be disclosed and resolved *before* the interested Governing Board member participates in any way in the matter to which the potential conflict relates. Other practical aspects of the disclosure and resolution of potential conflicts of interest are discussed in Part IV below.

IV. Practical Implementation of This Policy

(i) Disclosure Responsibilities Relating to Conflicts

a. Nature and Timing of Disclosures

Under this Policy, each Governing Board member is required:

- when initially elected, and annually thereafter, to acknowledge in writing that he or she has reviewed this Policy and is complying with it, in letter and in spirit;
- when initially elected, and annually thereafter, to complete the attached Disclosure Statement; and
- to disclose actual or potential conflicts of interest at any time when he or she becomes aware of them.

(ii) Dissemination of This Policy and the Disclosure Statement

The Office of the Governing Boards will be responsible for disseminating this Policy and for collecting signed Disclosure Statements at the time a Governing Board member is first elected. Completed Disclosure Statements will be sent to the Secretary of the University.

Annually, the Office of the Governing Boards will disseminate this Policy and the appended Disclosure Statement to all members of the Governing Boards on or about July 1. Completed Disclosure Statements shall be due to the Secretary of the University by

August 15 of each year and will be reviewed by both the Secretary of the University and the Vice President and General Counsel.

(iii) **Report of Situations as They Arise**

When a Governing Board member is required by this Policy to report a situation as it arises, the Governing Board member shall make this disclosure to the Secretary of the University or the Vice President and General Counsel. As indicated above, this obligation to report situations as they arise is in addition to the annual completion of a Disclosure Statement. When in doubt, a Governing Board member should err on the side of disclosure.

(iv) **Conflict Resolution**

The resolution of any conflict or perceived conflict that is identified by or to the Secretary of the University or the Vice President and General Counsel will occur through the processes applicable to and specific to each Board.

This Policy is to be interpreted in a manner that will best serve the interests of the University, taking into account the responsibilities of the Governing Boards. Actual or perceived conflicts may be resolved in a number of ways, including by the Governing Board member's recusal or exclusion from participation in the Board's discussion or from voting on a particular matter. In some cases, it may be determined that, after full disclosure to those concerned, the University's interests are best served by participation by the interested Governing Board member. In those cases, the Vice President and General Counsel shall conduct periodic reviews, as appropriate, to ensure the beneficial nature of the arrangement or transaction in question.

If a potential conflict has been identified but not yet resolved, the member ordinarily shall leave the meeting during any discussion, shall not have access to nonpublic information or materials relating to the underlying matter, and shall refrain from voting on the underlying matter.

V. General

This Policy is available by contacting the Office of the Governing Boards or the Office of the General Counsel.

All information concerning actual or potential conflicts of interest or commitment on the part of a Governing Board member shall be held in confidence, unless the best interests of the University dictate otherwise or Harvard is ordered by a court or other legal process to disclose such information.

This Policy may be amended from time to time to reflect developments in the law, questions of interpretation, and application of practical experience, as well as new policies of the University. This Policy sets forth Harvard's expectations for members of

the Governing Boards about conforming to Harvard's practices and standards and is not intended to alter any applicable legal standards.

If a Governing Board member is uncertain about the applicability or interpretation of the foregoing standards or the propriety of any possible action, then he or she should raise the issue with the Secretary of the University or the Vice President and General Counsel.

Appendix A

The following terms used in the Policy are defined as follows:

“Associated” means the following type of relationship to a trust, partnership, corporation, association or other organization or enterprise:

- (i) when the person is a director, trustee, officer, employee, consultant, or partner of such an entity; or
- (ii) when the person has a financial interest that represents at least 5% of the entity’s ownership or assets (or, in the case of a publicly held corporation, at least 1% of the corporation’s outstanding capital stock), or any interest that enables him/her materially to influence policies of such an entity.

“Family Member” means a person living in the same household as a Governing Board member who is also the Governing Board member’s spouse, domestic partner, parent, sibling, child, or other relative.

“Gift” is any transfer of an item of value (including a trip, personal belongings, or special concessions in connection with personal business) for less than fair market value, including a personal discount. Business dinners or other business outings are not considered “gifts,” unless the business component is not significant or the social component does not comport with the overall professional standard of avoiding actual and apparent conflicts of interest.

3. I have, and/or my Family Member has, the ability materially to influence⁶ the governance or other decision-making of the following entities, with which my Family Member or I am Associated.

(This includes any entity in which I have a financial interest that represents at least 5% of the entity's ownership or assets of a privately owned entity (or, in the case of a publicly held corporation, at least 1% of the corporation's outstanding capital stock).)

4. To the best of my knowledge, neither I nor any of the entities identified in response to questions 1, 2, or 3 has or is seeking a business relationship with the University, including Harvard faculty and personnel.

If this is not the case, describe the existing or potential relationship:

⁶ There are many ways one may have material influence over the decision-making of an entity. For example, a person is *per se* considered to have a material influence if he or she has a financial interest that represents at least 5% of the entity's ownership or assets of a privately owned entity (or, in the case of a publicly held corporation, at least 1% of the corporation's outstanding capital stock). Sole proprietors, by definition, have a material influence. A general partner of a partnership has decision-making authority for that partnership and, thus, has a material influence over it. If a Governing Board member, alone or in combination with Family Members, may cast the deciding votes as board members or shareholders of an organization, this would be considered a material influence. Where the relationship between the Governing Board member and the organization is less legally defined, the Governing Board member should exercise his or her best judgment about the degree of influence. It is recommended that when in doubt, the Governing Board member should err on the side of disclosure.

5. In addition to the above, the following relationships, transactions, or situations should be disclosed in accordance with the Policy, its definition of Conflict of Interest, and its provisions regarding confidentiality:

6. Are you engaged in, or have you been engaged in, any activity that might reasonably be perceived as presenting a conflict of interest under this Policy. If “yes,” please explain below.

_____ Yes

_____ No

By signing below, I acknowledge that I have received and reviewed the Harvard University Policy on Conflicts of Interest and Confidentiality for the Governing Boards. I also affirm that I will comply with the requirements of the Policy, both in letter and in spirit; that the disclosures made above are full and complete as of the date I sign this form; and that I will honor the strict confidentiality of meetings and discussions, as well as other nonpublic information made available or otherwise obtained in the course of board service. I understand that it is my responsibility to report promptly any new situation that potentially implicates the Policy.

Name: _____

Signed: _____

Date: _____

To be returned to: Secretary of the University
Harvard University
17 Quincy Street
Cambridge, MA 02138
FAX: 617-495-8819

If you have any questions regarding the completion of this form, please contact the Secretary of the University or the Vice President and General Counsel. The telephone number for the Office of the Governing Boards is (617) 495-1534, and the telephone number for the General Counsel is (617) 495-4778.

FOR INTERNAL OFFICE USE ONLY

Received by the Office of the Governing Boards: _____

Review completed: _____