

# ST. BONAVENTURE UNIVERSITY POLICY REVIEW FORM

(Development/Amendment Process)

## Policy: Conflict of Interest Policy

Division initiating development or amendment: Finance & Administration

Individual(s)/Title(s) responsible for development or amending: Vice President for Finance & Administration

Does this policy replace an existing policy?  YES  NO

If yes, please give name of existing policy & date of last revision: Conflict of Interest Policy

Related policies: Click here to enter text.

Other departments/divisions affected by policy: Board of Trustees, all others as needed

Date originally presented to Cabinet: February 16, 2018

### I. Review Status

Returned, under advisement for re-write Date: Click here to enter text.

Returned to President Date: September 10, 2018

Sent for legal review Date: February 4, 2018

Approved by President Date: August 29, 2018

### II. Policy sent for advisory review to\*:

\*Must be returned, with acknowledgement, to the Cabinet within ten working days after receiving the original policy

Date Sent:      Date Returned:      Comments Attached:

Board of Trustees      8/13/2018      9/7/2018       Yes  No

Faculty Senate      Click here to enter a date.      Click here to enter a date.       Yes  No

Hourly Affairs      Click here to enter a date.      Click here to enter a date.       Yes  No

Student Government      Click here to enter a date.      Click here to enter a date.       Yes  No

### III. Final Approval

  
\_\_\_\_\_  
(President)

Date: September 18, 2018

Attach the final copy of the Policy, with amended text highlighted in yellow (if applicable), to this form

Approved policy posted to the Governing Doc. Website      Date: Click here to enter a date.

**CONFLICT OF INTEREST POLICY  
OF  
SAINT BONAVENTURE UNIVERSITY**  
(Adopted September 7, 2018)

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**ARTICLE I: PURPOSE**

The purpose of this Conflict of Interest Policy is to reaffirm the strong commitment of Saint Bonaventure University (the "University") to the highest standards of legal and ethical conduct in its business practices and to protect the University's interest when it is considering entering into a transaction or arrangement that might benefit the private interests of (i) a Trustee (as defined in Sections 102(a)6 and 701 of the Not-for Profit Corporation Law); (ii) a Corporate Officer (as defined in Section 713 of the Not-for-Profit Corporation Law, including without limitation, the President the Chief Financial Officer, and their respective Assistant Officers); (iii) a member of a committee who has assumed powers delegated by the Board of Trustees (Committee Member); (iv) a Key Person (as defined below); or (v) a Relative (as defined below) of any person described in items (i) through (iv). This policy supplements but does not supersede applicable state and federal laws governing conflicts of interest.

**ARTICLE II: DEFINITIONS**

1. **Interested Person.**

An Interested Person is any Trustee, Corporate Officer, Committee Member or Key Person who (1) has a direct or indirect Financial Interest, as defined below, (2) has a Fiduciary Relationship, as defined below, and/or (3) is a Related Party, as defined below.

2. **Disinterested Trustee.**

A Disinterested Trustee is any Trustee of the University who is not an Interested Person with respect to a contemplated transaction or arrangement.

3. **Relative.**

A "Relative" of an individual means (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law; (ii) his or her ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren.

4. Financial Interest.

A person has a Financial Interest if the person has, directly or indirectly, through business, investment or a Relative:

- a) an ownership or investment interest in any entity with which the University has entered into or is negotiating a transaction or arrangement; or
- b) a compensation arrangement with the University or with any entity or individual with which the University has entered into or is negotiating a transaction or arrangement except for compensation payable to a Trustee of the University for service on the Board that is to be made available or provided to all Trustees of the University on the same or substantially similar terms; or
- c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the University has entered into or is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

5. Substantial Financial Interest.

A Financial Interest in a Related Party Transaction is a "Substantial Financial Interest" if, in the discretion of the Oversight Committee (as hereinafter defined) after giving due consideration to the material facts and circumstances of the Financial Interest as presented, the Oversight Committee determines that such Financial Interest is substantial.

6. Fiduciary Relationship.

A person has a Fiduciary Relationship if the person has or a Relative has a fiduciary relationship (e.g., board membership) with any entity or individual participating in a contract or transaction with the University or with which the University competes, directly or indirectly.

7. Related Party.

A Related Party includes:

- a) any Trustee, Corporate Officer or Key Person of the University or any Affiliate of the University, or any other person who exercises the powers of directors,, officers or Key Persons over the affairs of the University or any Affiliate of the University;

b) any Relative of any individual described in subdivision “a” of this section; or

c) any entity in which any individual described in clauses (a) and (b) of this paragraph has a thirty-five percent or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of five percent.

8. Key Person.

A “Key Person” means any person, other than a Trustee or Corporate Officer, whether or not an employee of the University, who (i) has responsibilities, or exercises powers or influence over the University as a whole similar to the responsibilities, powers, or influence of Trustees and Corporate Officers; (ii) manages the University, or a segment of the University that represents a substantial portion of the activities, assets, income or expenses of the University; or (iii) alone or with others controls or determines a substantial portion of the University’s capital expenditures or operating budget.

9. Affiliate of the University.

An Affiliate of the University means any entity controlled by or in control of the University.

10. Related Party Transaction.

A “Related Party Transaction” means any transaction, agreement or any other arrangement in which a related party has a Financial Interest and in which the University or any affiliate of the University is a participant, except that a transaction shall not be a Related Party Transaction if: (i) the transaction or the Related Party’s Financial Interest in the transaction is de minimis, (ii) the transaction would not customarily be reviewed by the board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms, or (iii) the transaction constitutes a benefit provided to a Related Party solely as a member of a class of the beneficiaries that the University intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

11. Conflict of Interest.

A Conflict of Interest describes any circumstance, including, without limitation, a Financial Interest or Fiduciary Relationship, that would cast doubt on the ability of a Trustee, Member, Corporate Officer, Committee Member or Key Person to act with total objectivity with regard to the University's interest or impair the individual's ability to perform his or her responsibility in the best interests of the University.

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**ARTICLE III: DISCLOSURE**

1. Initial Disclosure.

Prior to the initial election of any Trustee, Corporate Officer, or Committee Member or hiring of any Key Person, the prospective Trustee, Corporate Officer, Committee Member, or Key Person shall complete, sign and submit to the Secretary or Compliance Officer of the University's Board a written Disclosure Statement, attached as **Appendix A**, identifying, to the best of his or her knowledge, the following information:

- a) any entity of which such prospective Trustee, Corporate Officer, Committee Member, or Key Person is an officer, director, member, owner (either as a sole proprietor or a partner), or employee and with which the University has a relationship; and
- b) any transaction in which the University is a participant and in which the prospective director, officer, Committee Member, or Key Person might have a Financial Interest or Fiduciary Relationship that may give rise to a Conflict of Interest or Related Party Transaction.

2. Annual Disclosure.

Each Trustee, Corporate Officer, Committee Member, and Key Person shall annually submit to the Secretary or Compliance Officer of the University's Board the written Disclosure Statement, attached as Appendix A, in which such person:

- a) identifies, to the best of his or her knowledge, the information specified in clauses (a) and (b) of Paragraph 1 of this Article III; and
- b) affirms that he or she has received a copy of the Conflict of Interest Policy, read and understands the policy, agrees to comply with the policy, and understands the University is not-for-profit educational institution and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

3. Submission of Disclosure Statements.

The Secretary of the University's Board shall provide copies of all statements completed pursuant to Paragraphs 1 and 2 of this Article III to the Chair of the Oversight Committee.

4. Continuing Duty to Disclose.

In connection with any actual or possible Conflict of Interest or Related Party Transaction, an Interested Person must disclose the existence of any and all material facts regarding his or her Financial Interest and/or Fiduciary Relationship to the Board of Trustees or Oversight Committee immediately upon becoming aware of the actual or possible Conflict of Interest or Related Party Transaction. Such disclosure may be made in a written statement or orally at a meeting of the Board or the committee, provided that such oral disclosure must be documented in the minutes of the meeting at which such disclosure is made.

**ARTICLE IV: GENERAL PROCEDURES**

1. General Prohibitions.

a) An Interested Person is precluded from being present at or participating in any Board or committee deliberation or vote related to the transaction or arrangement giving rise to a Conflict of Interest or Related Party Transaction. Notwithstanding the foregoing, the Board of Trustees or the Oversight Committee, may request that an Interested Person present information to the Board or the Oversight Committee prior to the commencement of deliberations or voting relating thereto.

b) An Interested Person shall not directly or indirectly attempt to influence improperly the deliberation or voting on the transaction or arrangement giving rise to the conflict.

2. Determining Whether a Conflict of Interest or Related Party Transaction Exists.

a) After the Interested Person's disclosure of the existence of and all material facts relating to his or her Financial Interest and/or Fiduciary Relationship as required under Article III, and after any discussion between the remaining members and the Interested Person regarding the facts and circumstances of the Financial Interest, the Interested Person shall leave the meeting while the remaining members discuss the information disclosed.

b) Upon discussion, the remaining members shall decide and document in the meeting minutes if the transaction or arrangement constitutes a Related Party Transaction as defined in Article II, Paragraph 10. If so, then the Oversight Committee must also determine and document in the meeting minutes whether the Related Party has a Substantial Financial Interest, as defined in Article II, Paragraph 5, in the proposed Related Party Transaction.

Regardless of whether or not the Financial Interest is a Substantial Financial Interest, a Related Party Transaction is subject to the procedures set forth in Article V.

c) If the transaction or arrangement does not constitute a Related Party Transaction as defined in Article II, Paragraph 10, then the remaining members in their discretion shall decide if a Conflict of Interest, as defined in Article II, Paragraph 11, exists nonetheless, after giving due consideration to the material facts and circumstances presented. If the members determine that the transaction or arrangement involves a Conflict of Interest, then such transaction or arrangement is subject to the procedures set forth in Article V.

## **ARTICLE V: PROCEDURES FOR ADDRESSING CONFLICTS OF INTEREST & RELATED PARTY TRANSACTIONS**

### 1. Consideration of Alternatives.

a) If the transaction or arrangement is a Related Party Transaction in which the Related Party has a Substantial Financial Interest, then consideration of alternatives in accordance with this section is mandatory. Otherwise, consideration of alternatives is within the discretion of the Oversight Committee.

b) After disclosure and discussions with the Interested Person, the Oversight Committee shall, if appropriate, appoint a Disinterested Trustee or committee of Disinterested Trustees to investigate alternatives to the proposed transaction or arrangement. Alternatives must be presented to the Oversight Committee and must be documented in the minutes of the meeting at which the determination is made.

c) If alternatives are investigated and presented to the Oversight Committee, then after exercising due diligence and giving due consideration for any such alternative transactions presented, the Oversight Committee shall determine whether the University can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a Conflict of Interest or Related Party Transaction.

### 2. Board or Committee Decision.

a) If alternatives are considered, whether mandatory or discretionary, and if the Oversight Committee determines that a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a Conflict of Interest or Related Party Transaction, the Oversight Committee shall determine by a majority vote of the Disinterested Trustees whether the transaction or arrangement is in the University's best interest and for its own benefit and whether the transaction is fair and reasonable to the University.

b) In conformity with the above determination, in accordance with the University's Bylaws, the Oversight Committee shall make its decision as to whether to enter into the transaction or arrangement.

c) If the transaction or arrangement involves a Related Party Transaction in which the Related Party has a Substantial Financial Interest, then a majority of the members present at the meeting is required to approve such transaction.

3. Documentation Required.

The minutes of Board of Trustee meetings and all meetings of Committees with Board of Trustees-delegated powers, shall contain specific information regarding disclosures of Financial Interests and Fiduciary Relationships and the consideration and disposition of matters related thereto, including the following:

a) The names of the persons who disclosed or otherwise were found to have a Financial Interest and/or Fiduciary Relationship in connection with an actual or possible Conflict of Interest or Related Party Transaction, the nature of the Financial Interest and/or Fiduciary Relationship, any action taken to determine whether a Conflict of Interest or Related Party Transaction was present, and the Board or Committee's decision as to whether a Conflict of Interest, Related Party Transaction or Substantial Financial Interest in a Related Party Transaction in fact existed.

b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussions at the meeting regarding the proposed transaction or arrangement, including the alternatives to the proposed transaction or arrangement considered, if any.

c) The determination as to whether the transaction or arrangement is fair, reasonable and in the University's best interest.

d) The determination as to whether to enter into the transaction or arrangement which gives rise to the Conflict of Interest or Related Party Transaction. If the Oversight Committee approves a Related Party Transaction in which the Related Party has a Substantial Financial Interest, then the minutes must also include the basis for such approval.

e) A record of any votes taken in connection with the proceedings.



## ARTICLE VI: OVERSIGHT

### 1. Oversight Responsibility.

The Board of Trustees shall adopt, and oversee the implementation of, and compliance with, a conflict of interest policy to ensure that its Trustees, Corporate Officers and Key Persons act in the University's best interest and comply with applicable legal requirements. Notwithstanding the foregoing, the Board may, at any time and from time to time, designate a Committee of the Board to oversee the adoption of, implementation of, and compliance with this Conflict of Interest Policy (the Board, or if the Board has designated a Committee of the Board for such purpose, shall be the "Oversight Committee" for purposes of overseeing the adoption of, implementation of, and compliance with this Conflict of Interest Policy).

### 2. Compliance Officer.

The Compliance Officer shall be the Chair of the Board, or, if a Committee of the Board has been designated as the Oversight Committee for purposes of this Conflict of Interest Policy, then the Chair of such Committee of the Board shall be the Compliance Officer for purposes of administering this Conflict of Interest Policy.

### 3. Designated Oversight Committee and Compliance Officer.

Absent an amendment to this Conflict of Interest Policy by the Board of Trustees, the Audit Committee of the Board of Trustees shall be the designated Oversight Committee for purposes of this Conflict of Interest Policy, and the Chair of the Audit Committee shall be the designated Compliance Officer for purposes of administering this Conflict of Interest Policy.

### 4. Violations of the Conflict of Interest Policy.

a) If the Oversight Committee has reasonable cause to believe that a Trustee, Corporate Officer, Committee Member or Key Person has failed to disclose an actual or possible Conflict of Interest or Related Party Transaction, it shall inform the person of the basis for such belief and afford the person an opportunity to explain the alleged failure to disclose.

b) If, after hearing the response of the Trustee, Corporate Officer, Committee Member or Key Person, and making such further investigation as may be warranted under the circumstances, the Oversight Committee determines that the person has in fact failed to disclose an actual or possible Conflict of Interest or Related Party Transaction, it shall take appropriate disciplinary and corrective action, up to and including dismissal or termination, in accordance with the University's Bylaws.

## **ARTICLE VII: PERIODIC REVIEWS**

To ensure that the University operates in a manner consistent with its nonprofit educational purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, periodic reviews shall be conducted.

1. **Compensation Arrangements.**

The periodic reviews shall include, without limitation, information to the effect that compensation arrangements and benefits have been examined and are reasonable and the result of arm's-length bargaining.

2. **Agreements with Employees.**

The periodic reviews shall include, without limitation, information regarding whether agreements with employees further the University's nonprofit educational purposes and do not result in inurement or impermissible private benefit.

## **ARTICLE VIII: USE OF OUTSIDE ADVISORS**

In conducting the periodic reviews provided for in Article VII, the University may, but need not, retain outside advisors. If outside advisors are retained, their retention shall be consistent with the Board of Trustees' responsibility for ensuring that periodic reviews are conducted. The Board of Trustees shall take such measures, as it deems appropriate to ensure that the requests of outside advisors are privileged and confidential.

**DISCLOSURE STATEMENT  
OF  
SAINT BONAVENTURE UNIVERSITY**

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1. I have received, read and understand the Conflict of Interest Policy of the University in effect as of the date written below, and I agree to comply with the Conflict of Interest Policy.

2. I understand that the University is a not-for-profit educational institution, and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

3. **Personal Interests & Relationships.** I am an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or an employee of the following entities with which the University has a relationship or with which the University competes, directly or indirectly: *[If none, please write "None." If such interests exist, please specify the capacity in which you hold such an interest (for example, employee, director, or owner). If an owner, please specify your percentage ownership].*

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4. **Interests & Relationships of Relatives.** A Relative (spouse or domestic partner, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren; great-grandchildren, and spouses or domestic partners of brothers, sisters, children, grandchildren and great-grandchildren) of mine is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or an employee of the following entities with which the University has a relationship or with which the University competes, directly or indirectly: *[If none, please write "None." If such interests exist, please specify the Relative (for example, sibling or spouse) and the Relative's position (for example, employee, director, or owner). If an owner, please specify the percentage ownership].*

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5. **Transactions.** The University is a participant in the following transactions in which I or my Relative may have a Financial Interest or Fiduciary Relationship that may give rise to a Conflict of Interest or Related Party Transaction, as defined in the Conflict of Interest Policy. *[If none, please write "None." If such transaction(s) exists, please specify the transaction and the potential*

Appendix A

*financial interest or fiduciary relationship involved and whether you or a Relative has such an interest for any such transaction(s). Please specify the Relative and their position, if applicable.]*

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I certify that the above statements are true and correct to the best of my knowledge.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_