

Discussion of Board Functions

In addition to consideration of a proposal to extend OSF's conflicts of interest process to U.S. Programs (see attached draft), we will discuss making the February board meeting a one day session consisting of board-led sessions devoted to the opportunities and challenges of the next four years in the fields of interest and expertise of USP board members. More information will be distributed at the board meeting.

Conflict of Interest Policy

Memorandum to: U.S. Programs Board of Directors
From: Kay Murray, Deputy General Counsel, OSF
Re: Conflicts of Interest Policy – Procedure for Conflicts Committee Review
Date: December 7, 2012

Attached is a description of the procedure by which Conflicts of Interest involving members of the boards of the programs and national foundations in the Open Society Foundations network are reviewed by a Conflicts of Interest Committee. This procedure has been in place for 8 years for OSF programs and 15 years for national foundations and has worked well. Among other benefits, the procedure has eased communications between boards and staff members, because it allows a committee independent of the program/foundation to ensure that no conflicts are inherent in a grant or contract recommendation.

As the U.S. Programs board has been delegated more authority over program strategies, including grant portfolios and some grants, OSF recommends that the use of the COI Committee process be extended to cover U.S. Programs. This will bring U.S. Programs into conformity with the general practice throughout OSF. This recommendation does not arise out of any concerns about prior practices.

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Procedure and Questionnaire for Transactions Presenting a Conflict of Interest Involving a Member of the U.S. Programs Board

The OSI Global Advisory Board has delegated decision-making authority over conflicts of interests involving national foundations and network programs to a Conflicts of Interests Committee, which as of this writing consists of Ricardo Castro, Annette Laborey, and George Vickers (Chair).

In addition to OSI-New York's Conflicts of Interest and Gift Policy, which applies to the Trustees, officers, advisory boards, expert committees and all staff, OSI-NY wishes to bring U.S. Programs into conformity with the general practice now in place for OSF's thematic programs and national foundations. Therefore, it has decided to delegate decision-making authority over conflicts of interest involving members of the board of U.S. Programs to the Conflicts of Interest Committee (the "Committee").

In assuming the role of decision-maker in certain limited conflict situations, the Committee does not mean to discourage consideration of worthy projects merely because a board member has an affiliation with, or interest in, a project. Referral does not mean that the Committee substitutes its judgment for that of people who may be far more knowledgeable about the substantive merits of the proposal. Rather, the Committee's role is to ensure that the decision to award a grant or contract is made by an independent decision-making body whose members have no material interest in the outcome of the decision, and thereby to facilitate ease of communication between board and staff about proposals for funding.

Referral to the Committee avoids even the appearance of impropriety. It should be viewed as a routine process consistent with the values of an open society: transparency, objective decision-making based on the merits of the proposal and candidate, and equitable allocation of foundation resources.

DEFINITION OF CONFLICT OF INTEREST

Under the current OSI-NY Conflicts of Interest Policy, a board or staff member has an Interest if he or she, or, *to his or her knowledge*, a family member, close business associate or close friend either:

- is employed by, and receives compensation from, any organization or person with which OSF has entered into a transaction or is considering entering into a transaction (e.g., grant, consultancy agreement, vendor agreement); or
- holds a senior or fiduciary position or has a shareholder or partnership interest greater than 5% in any organization with which OSF has entered or is considering entering into a transaction (e.g., grant, consultancy agreement, vendor agreement); or
- has derived or will derive a financial benefit either directly or indirectly from a transaction entered into or being considered by OSF (e.g., grant, consultancy agreement, vendor agreement); or

- takes part in an OSF decision in which she/he may be unable to remain impartial or maintain objectivity in choosing between the interests of the foundation and his/her personal interests, or otherwise has a conflict of loyalties that may lead to or suggest influence in the foundation's decision, even where there is no question of personal financial gain from the particular transaction.

Note that a personal interest in a grant applicant or contract partner should be distinguished from OSF's interest in that applicant or partner. In some cases, OSF board or staff members may serve on boards of spin-off organizations or grantees in an ex-officio capacity at the request of OSF, in order to assist the organization in development or in order to allow OSF to monitor closely the organization's work. In such cases, a board or staff member's affiliation does not necessarily rise to the level of a personal affiliation, and in such cases these conflicts of interest procedures may not be applicable.

In the case of other circumstances when there is or may be an apparent conflict including, but not limited to, with a person who has recently left the board, USP's Director or Deputy Director in their discretion may submit such a matter to the Committee for decision.

PROCEDURES FOR SUBMITTING CONFLICTS OF INTERESTS TO THE COMMITTEE

In order to facilitate USP's submission of potential conflicts of interest to Committee, we have designed the attached questionnaire. Referral to the Committee is encouraged as soon as a potential conflict appropriate for review becomes known. The answers to the questions may therefore be tailored to the particular situation.

The Executive Director or applicable Program Director should complete the questionnaire and email it to George Vickers, with a copy to Daphne Panayotatos (dpanayotatos@sorosny.org). George will perform an initial analysis and gather and disseminate any additional information he deems necessary for consideration by the Committee. The Committee will then consider all information and render a decision; alternatively, the Committee may choose to refer the matter to the OSI-NY Trustees for further consideration. Once the Committee renders a decision, any dispute over that decision can be taken to the Trustees via Chris Stone for review.

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Conflict of Interests Questionnaire

DATE: _____
TO: George Vickers (gvickers@sorosny.org)
CC: Daphne Panayotatos (dpanayotatos@sorosny.org)
FROM: _____ URGENT: ____ Yes ____ No
TITLE: _____ DEADLINE _____
FOUNDATION: _____ FOR DECISION: _____

1. Name and position (title) of the individual(s) with actual or apparent conflict:

2. Explain the individual(s) role, if any, in submitting and/or participating in the transaction or funded project which is being proposed for funding:

3. Describe the relationship or affiliation that gives rise to the conflict:

Examples: 1) a particular family or business affiliation; 2) conflicted individual (or family or business associate) is an officer, director or employee of an organization that may receive a grant or contract; 3) other relationship that may affect conflicted individual's objectivity

4. Will the conflicted individual (or a family member, close friend or close business associate) personally benefit from the transaction? If so, how?

Examples: 1) receipt of grant; 2) salary or other payment; 3) promotion; 4) consulting fee; 5) receipt of a contract to provide goods or services

5. Has OSF previously awarded any grants or contracts to the organization with which the conflicted person is affiliated, or to the conflicted individual or a family member, close business associate or close friend thereof? If so, describe and list each grant or contract, including date, amount, and an indication whether the conflicted individual had a position in the organization at the time the grant was made.

6. If the transaction is a grant, please describe how the proposal came to the program. As part of your response, please indicate whether the grant was a solicited or unsolicited proposal.

7. If the transaction is a contract, please describe whether there was competitive bidding or any comparative pricing analysis.

8. Please indicate the recommendation of the President, Executive Director, or Program Director on this proposal:

9. Was the individual with the conflict excluded from the program's discussion of the proposal? If not, describe his/her involvement in the discussion.

10. Please attach a copy of the proposal and any relevant comments or reviews by program staff or others.