

## SAM L. COHEN FOUNDATION

### CONFLICT OF INTEREST POLICY

Approved by the Board November 11, 2006

Revised by the Board, November 14, 2008

#### Introduction

The Sam L. Cohen Foundation (the “Foundation”) believes that effective governance and operation depend on decision making by directors and staff which is unbiased and appears to be unbiased. The Foundation values the active roles that its directors and employees play by serving on boards and committees in their communities and recognizes that directors and employees have financial interests unrelated to the Foundation. As such, it is inevitable that situations of dual interest may occur. Directors and employees must neither use nor appear to use their board position or their employment for personal or professional gain or to promote the solicitations of their affiliated organizations. For this reason, directors and employees must be mindful of actual and potential conflicts of interest or the appearance thereof. Timely disclosure and candid discussions are critical to minimize the likelihood that a director’s or employee’s affiliation with other public, private or governmental organizations will be perceived as conflicting or promoting undue influence.

In order to avoid impermissible conflict between the personal interests of directors or staff and the interests of the Foundation, the directors of the Foundation have adopted the following policy to identify and respond to potential conflicts of interest.

#### Definitions and Concepts Pertinent to this Policy

A conflict of interest may exist when a director, a member of his or her immediate family or an employee has a financial interest in a decision by or on behalf of the Foundation or, when affiliations or other dual loyalties of a director or employee, without having any financial interest, may lead to, or suggest influence in, a decision by or on behalf of the Foundation.

Members of a director’s family include first-degree relatives (such as spouse or domestic partner, children, stepchildren, and parents) and any other member of the director’s household with whom the director has a significant long-term relationship.

This policy focuses on two types of conflicts which may arise as part of the activities and operations of the Foundation: the business conflict and the grant-making conflict.

**Business Conflict:** A director or an employee of the Foundation has a business conflict when a director, a family member or an employee has a financial interest as an owner (either as a sole proprietor or a partner), shareholder, partner, or trust beneficiary of any entity with which the Foundation has, or might be expected to have, a business relationship, including but not limited to being a supplier, lessor, lessee, borrower, lender, or contractor.

**Grant-making Conflict:** A director or an employee of the Foundation has a grant-making conflict when a director, a family member or an employee either serves as a volunteer or compensated board member, a compensated member of a standing committee, or is a paid employee or independent contractor of an organization (private or governmental) applying for support from the Foundation. Such a fiduciary relationship exists not only at the time of the application, but also with respect to a future relationship that could be anticipated if an organization receives funding from the Foundation.

### **Policy**

It is the policy of the Foundation that no director or employee shall derive any personal profit or gain, directly or indirectly, by reason of his or her directorship or employment by the Foundation, except as authorized by the directors.

If a transaction, agreement or other relationship should arise which might present a conflict of interest, then the remaining directors will determine the extent of the conflict of interest arising from the transaction, agreement or other relationship and the extent (if any) the affected director or employee can participate in the discussion or decision about the transaction, agreement or other relationship.

With respect to any transaction, agreement or other relationship determined to be a conflict of interest, each individual covered by this Policy agrees that such individual will not participate in any decision by or on behalf of the Foundation that benefits such individual, a member of such individual's immediate family, or any organization with which such individual has a formal relationship, except as authorized by the directors in accordance with the procedures outlined below.

### **Procedures for Identifying Potential Conflicts of Interest**

All directors and covered employees (who are defined below) annually must complete a Conflict of Interest Statement that identifies and discloses any existing or potential relationships that may lead to an actual or perceived conflict of interest or act of self-dealing. The Conflict of Interest Statements will be completed annually. Directors and covered employees are responsible for informing the board chair or the executive director of any subsequent changes in a timely manner. Information will be updated as needed, but no less frequently than annually.

The board chair or the executive director will review each Conflict of Interest Statement. These statements may be distributed to the Foundation's board members and Foundation staff, and also may be disclosed publicly on request. Requests by directors that any portion of this statement be kept confidential will be evaluated on a case-by-case basis by the executive director and the board chair. In the event that the requesting director is the board chair, the evaluation will be made by the executive director and another director. In the event the request for confidentiality is made by the executive director, the evaluation will be made by the board chair and another director.

Covered employees shall be senior employees, other employees who have a decision making role in hiring, contracting or grant making, and any other employee whom the executive director determines should be a covered employee. Each new director or covered employee shall be advised of the policy and furnished a disclosure statement upon undertaking the duties of such position.

### **Procedures for Discovering and Resolving Conflicts of Interest**

**Disclosure:** Prior to each meeting of the Board of Directors, the executive director will mail an agenda, and all necessary accompanying information, to each of the directors and the covered employees. After receipt of such materials, each director and covered employee must review the materials to determine if any action to be taken by the Foundation could give rise to a conflict of interest.

If an action does involve or may involve a potential Business Conflict or Grant-making Conflict, the director or employee involved shall make known the potential conflict, whether disclosed by his/her written statement or not, at the first possible opportunity.

If the responding director or covered employee reports that an action may constitute a conflict of interest, then the remaining directors shall confirm this position at the meeting. No reported action can be taken on this matter until this decision is confirmed. The remaining directors must determine if the action constitutes a conflict of interest or a perceived conflict of interest and follow the procedures set forth below.

**Recusal Concerning a Conflict of Interest:** When a potential business or grant-making conflict has been identified, any director or employee involved shall answer any questions that may be asked of him or her concerning the nature of the potential conflict, and shall disclose all material facts. The affected director or employee shall not exert personal influence to affect the board's decision, and shall not be counted in determining whether a quorum exists for the board meeting. After disclosure and discussion, the remaining directors (exclusive of the involved director) shall determine whether a conflict of interest exists by a majority vote. If a quorum does not exist but at least two directors are not affected, then this group can discuss and vote on the issue. In this case, the vote must be unanimous.

**Business Conflicts:** If the Board of Directors determines that a business conflict exists with respect to a proposed transaction, such transaction must be rejected, unless the directors determine the transaction would not constitute self-dealing under section 4941 of the Code and accompanying regulations (See Prohibition Against Self-Dealing Policy).

If the business conflict is not an act of self-dealing then the board may reach one of the following conclusions:

- The conflict or appearance of a conflict is grounds to reject the business transaction.
- The conflict or appearance of a conflict is not grounds to reject the business transaction, but the affected director or employee may not participate in the discussion and/or the vote.
- The benefit to the affected director or employee from the relationship under consideration is less than tenuous and incidental, allowing the director or employee to participate in both the discussion and the vote. The director or employee may decide to recuse him or herself from the discussion and/or vote.

Nothing in this policy should be interpreted as preventing the board from rejecting a business transaction partially or solely on the basis of a conflict or the appearance thereof.

**Grant-making Conflicts:** Directors should protect their objectivity by maintaining an arms-length relationship with prospective and actual grantees relative to the design of specific projects, the preparation and submission of specific proposals, and the review and oversight of funded projects.

It is inevitable that situations will arise in which the board must reach a decision about an organization or activity in which one of its members or an employee of the Foundation has an interest that represents an actual or apparent conflict. The Foundation will not automatically disqualify the organization from receiving grant funds on the grounds of a grant-making conflict in which a director (or family member) or an employee is a compensated or volunteer trustee, director, officer of a potential grantee organization, or is compensated as an employee or independent contractor. However, director and staff conflicts must be disclosed in advance of any board discussion or action in which the conflict may be a factor. Upon disclosure, the board must assure through its policies and procedures that its decisions are based on objective review by disinterested parties.

In the case of a grant-making conflict, the board may reach one of the following conclusions:

- The conflict or appearance of a conflict is grounds to reject the grant application.
- The conflict or appearance of a conflict is not grounds to reject the grant application, but the affected director or employee may not participate in the discussion and/or the vote.
- The benefit to the affected director or employee from the relationship under consideration is less than tenuous and incidental, allowing the director or employee to participate in both the discussion and the vote. The director or

employee may decide to recuse him or herself from the discussion and/or vote.

Nothing in this policy should be interpreted as preventing the board from rejecting a grant proposal partially or solely on the basis of a conflict or the appearance thereof.

**Minutes of Board Meetings:** Whenever a potential conflict of interest is disclosed, discussed, considered, or acted upon, the minutes of the board meeting shall thoroughly document all actions taken with respect to the potential conflict of interest.

**No Prohibited Acts:** No transaction, agreement or other relationship or act shall be entered into or taken on behalf of the Foundation if such transaction, agreement or other relationship or act would jeopardize the Foundation's tax-exempt status under section 501(c)(3) of the Internal Revenue Code or constitute an act of self-dealing under section 4941 of the Code.