



Washington and Lee University

Procedures for Reviewing Transactions with Interested Persons

Approved By: Board of Trustees

History: Issued – May 16, 2008

Revised – _____

Responsible Office: Office of General Counsel

Related Policies: [Conflict Policy for Trustees;](#)

[Conflict Policy for Officers, Senior Administrators,](#)

[and Finance Officers; Conflict of Interest Policy](#)

[for Employees; Statement of Ethical Principles;](#)

[W&L Guidelines on Executive Compensation;](#)

[Finance Personnel Code of Ethics](#)

I. INTRODUCTION

Policy Statement

Washington and Lee University's governing body desires to maintain the highest ethical standards of accountability and transparency in governing University operations. Consistent with the Internal Revenue Service (IRS) regulations and guidelines on Intermediate Sanctions and Excise Taxes on Excess Benefit Transactions, the Board of Trustees adopts these procedures for reviewing transactions between certain persons with special relationships with W&L -- interested persons, hereafter described as "Disqualified Persons," and the University. The IRS imposes two-tiered excise tax penalties on Disqualified Persons who receive "excess benefits" in a business transaction with a non-profit corporation like W&L. The Code also provides for an excise tax on "organization managers" of a tax-exempt entity who knowingly approve an excess benefit transaction. There are times when Disqualified Persons have goods, services, or realty of interest to W&L and W&L desires to adopt these procedures so that such transactions are transparent and in the best interests of the University. See Internal Revenue Code Section 4958. Compliance with these procedures is intended to allow W&L to rely upon the rebuttable presumption that its transactions and relationships with Disqualified Persons are not excess benefit transactions as defined by IRS Section 53.4958-6.

Applicability

These procedures apply to transactions between "Disqualified Persons" (as defined by IRS Section 4958, its interpretive guidelines and this policy) and Washington and Lee University, including any person acting on its behalf. This policy also applies to direct family members of Disqualified Persons.

These procedures supplement W&L's policies on Conflict of Interest for Trustees, Officers, Senior Administrators, Finance Personnel, and Employees, as well as W&L's Guidelines on Executive Compensation, Statement of Ethical Principles, and Finance Personnel Code of Ethics, as these policies may be amended from time to time.

II. DEFINITIONS

“**Disqualified Person(s)**” include any person who is or was in a position to exercise substantial influence over the business affairs of W&L at any time during a five-year period ending on the date of the transaction, to be determined on a case-by-case basis depending upon the facts and circumstances: i) as determined by the Board Committee on Trusteeship for Members of the Board of Trustees, Trustees Emeriti and substantial donors to W&L; and ii) as determined by the Audit Subcommittee of the Finance Committee of the Board of Trustees for Officers of W&L (President, Treasurer, and Secretary), Provost, Vice President for Finance and Administration, Vice President for Advancement, Vice President for Student Affairs and Dean of Students, General Counsel, and other persons who may be “disqualified persons” as may be determined by the Committee on Trusteeship or the Audit Subcommittee .

“**Transaction**” includes W&L’s exchange of compensation or compensatory benefits or services in return for the services of a Disqualified Person¹, or an exchange of property, goods or services between a Disqualified Person and W&L. A transaction obligates the University to provide compensation or services to a Disqualified Person, whether it involves the sale of goods, property, or services.

“**Excess Benefit Transaction**” includes any transaction in which an excess benefit is provided by W&L, directly or indirectly, to or for the use of any Disqualified Person. Excess benefit means the excess of the economic benefit received from W&L over the consideration given for a transaction or services by a Disqualified Person. An excess benefit can occur in an exchange of compensation and other compensatory benefits in return for the services of a Disqualified Person, or in an exchange of property, goods, or services between a Disqualified Person and W&L.

III. POLICY

Review of Transactions between Disqualified Persons and Washington and Lee University

When a Disqualified Person intends to conduct a transaction with the University, the University shall follow the review and decision process set forth herein and any other applicable W&L policies, or related IRS regulations, as they may be amended from time to time.

The initial review and finding of whether W&L is paying fair market value for the goods, property, or services shall be made by the Controller upon receipt of the recommendation from the supervisor of the department handling the transaction after the supervisor’s review of all consideration and benefits to be exchanged between or among the Disqualified Person and W&L. The supervisor shall document the information relied upon and make a written recommendation to the Controller. The Controller shall then review the supervisor’s

¹ Compensation and compensatory benefits for W&L employees who may be Disqualified Persons are addressed in a separate Board adopted policy entitled “[Guidelines for Reviewing Executive Compensation Pursuant to Internal Revenue Service Regulations on Intermediate Sanctions.](#)”

recommendation and supporting documentation, and any other relevant information about the transaction, make a written finding as to whether it is an excess benefit transaction, and send that finding and the supervisor's supporting documentation to the Chair of the Committee on Trusteeship, or Chair of the Audit Subcommittee, depending upon the identity of the Disqualified Person. The Committee on Trusteeship or Audit Subcommittee shall then make an independent determination as to fair market value and the existence of no excess benefit transaction. Each Committee may designate a member who shall review the supporting data or details regarding the transaction and report the same to the respective Committee. No Disqualified Person involved in the transaction at issue shall participate in the Board Committee's or Subcommittee's decision about the transaction. During its review of the transaction, the Committee on Trusteeship or Audit Subcommittee shall comply with IRS guidelines to create a rebuttable presumption of no excess benefit, to the extent practicable. See IRS regulation at CFR Sec. 53-4958-6.

Rebuttable Presumption: Transactions covered hereunder are presumed to be at fair market value and not an excess benefit if:

- 1) The terms of the transaction were approved in advance by the Board Committee on Trusteeship or Audit Subcommittee;
- 2) The Board Committee on Trusteeship or Audit Subcommittee relied upon appropriate comparable data in making its determination; and
- 3) The Board Committee on Trusteeship or Audit Subcommittee documented the basis for its determination concurrently with making the determination – its deliberations and finding are recorded in the minutes of the Committee/Subcommittee.

To the extent it is not practicable for the Board Committee on Trusteeship or Audit Subcommittee to approve a Disqualified Person transaction in advance, it shall review the transaction at its next meeting and ratify the transaction, after review of the factors noted above, if it determines it is not an excess benefit transaction. Under these circumstances, W&L shall use reasonable efforts to have reviewed the transaction internally in advance and have made an initial finding that the transaction is not an excess benefit transaction.

Correcting the Excess Benefit: If the Board Committee on Trusteeship or Audit Subcommittee finds an excess benefit transaction, W&L shall use best efforts to cause it to be corrected, consistent with IRS regulations at Section 53-4958-7. A Disqualified Person corrects an excess benefit transaction by undoing the benefit to the extent possible and by taking additional measures necessary to place W&L in a financial position not worse than that in which it would be if the Disqualified Person were dealing under the highest fiduciary standards. W&L is not required to rescind the underlying agreement, but the parties may need to modify an ongoing contract with respect to future payments.

Tax and Penalties on Disqualified Person, Organization Manager or W&L: If an excess benefit has been found and has not been corrected, the Disqualified Person, W&L employee who approved the transaction, and/or W&L may be subject to excise taxes per current IRS regulation.

W&L, its Board Committee on Trusteeship, and its Audit Subcommittee shall refer to current IRS regulations and interpretive guidelines to implement these procedures consistent therewith to the extent practicable. Questions about these procedures and their application should be directed to the Chair of the Committee on Trusteeship, Chair of the Audit Subcommittee, the Controller, or General Counsel.

IV. ANNOTATED REVISION HISTORY

There are no revisions to these procedures.
