



## **CONFLICT-OF-INTEREST POLICY FOR TRUSTEES, OFFICERS, SENIOR MANAGERS, KEY PERSONS AND SPECIAL DESIGNEES**

### **I. Scope**

This Policy sets forth the policy and procedures of Mercy University (the “University”) regarding conflicts and potential conflicts of interest as they apply to all Trustees, Officers, Key Persons, Senior Management and Special Designees of Mercy University (“Covered Persons”).

### **II. Applicability**

A. This Policy applies to any person who is now, or at any time during the past five years was:

1. a Trustee of the University or an “Affiliate” (as defined below);
2. an Officer (as defined below);
3. a “Key Person” (as defined below);  
a “Senior Manager” (as defined below); and
4. a “Special Designee” (as defined below).

Each a “Covered Person” or “you”.

B. Covered Persons also have an obligation to disclose transactions or arrangements involving their “Relatives” (as defined below) that may constitute a potential conflict of interest, as provided herein.

### **III. Definitions**

A. The following words have the specified meaning in this Policy:

1. “Affiliate” means a person or entity that is directly or indirectly through one or more intermediaries controlled by or in control of the University.
2. “Board” or “Board of Trustees” means the governing body of the University.

3. “Covered Person” means a Trustee, Officer, Key Person, Senior Manager or Special Designee.
4. “Designated Compliance Officer” means the Secretary of the Board or other Officer designated by the Board.
5. “Director” means any member of another organization’s board or other governing body, whether designated as director, trustee, manager, governor or by any other title.
6. “Financial Interest” means any financial interest, including, directly or indirectly, through business, investment, or family: (i) an ownership or investment interest in any entity with which the University has, or is considering entering into, a transaction or arrangement; (ii) a compensation arrangement with the University or with any entity or individual with which the University has, or is considering entering into, a transaction or arrangement; or (iii) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the University is negotiating a transaction or arrangement. For these purposes, compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial in nature.
7. “Key Person” means a person, other than a Trustee or 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 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, operating budget, compensation of employees, or financial aid or scholarships for students.
8. “Member” means an individual holding a membership interest or rights in a corporation, limited liability company or other entity in accordance with the provisions of its certificate of incorporation, by-laws, operating agreement, or similar governance documents.
9. “Officer” means any chair, president, vice-president, secretary, treasurer or other officer elected or appointed by the Board of Trustees.
10. “Relative” means an individual’s spouse or domestic partner, ancestors, brothers and sisters (whether whole or halfblood), children (whether natural or adopted), grandchildren, great-grandchildren, or spouse or

domestic partner of brothers, sisters, children, grandchildren and great-grandchildren.

11. “Related Party” means (i) any Trustee, Officer, or Key Person of the University or any Affiliate; (ii) any Relative of any Trustee, Officer, or Key Person of the University or any Affiliate; or (iii) any entity in which any individual described in clauses (i) or (ii) has a 35% 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 5%.
12. “Related Party Transaction” means any transaction, agreement, or other arrangement in which a Related Party has a Financial Interest and in which the University or an Affiliate 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. A Related Party Transaction is a type of Conflict of Interest.
13. “Senior Manager” means the following individuals who the President has designated as being covered by this Policy:
  - a. individuals who are specifically designated by the President as direct reports to the President; and
  - b. those individuals serving in the President’s Cabinet of the University.
14. “Special Designee” means any other employee volunteer, independent contractor of, or substantial contributor to, the University who is specifically designated by the President as being covered by this Policy.
15. “Trustee” means a trustee of a governing board of an entity, including the University.

#### **IV. Fiduciary Responsibilities**

##### **A. Fiduciary Responsibilities**

Covered Persons shall not take advantage of their positions or relationships with the University for personal or private gain, whether for themselves, or any organization in which they have an interest. Additionally, Trustees, Officers, as well as those Key Persons, Senior Managers and Special Designees who are employees of Mercy University have a duty of undivided loyalty to the University. Decisions on behalf of the University must be made based solely on a desire to promote the best interest of the University. Covered Persons must scrupulously avoid situations or relationships that could impair, or cause the perception of impairing, their independence of judgment on behalf of the University. Persons covered by this Policy also must recognize and act upon the obligation to disclose any actual or potential conflict of interest as provided in this Policy.

The University recognizes that men and women of substance inevitably are involved in the affairs of other institutions and organizations, and that an effective Board and administration cannot consist of individuals entirely free from any possible conflict of interest. Although many potential conflicts are and will be deemed to be inconsequential, it is important for any actual or potential conflict to be disclosed and for the transaction or other matter at issue to be considered by disinterested Trustees, as further discussed below.

#### **B. Confidentiality During and After Service**

Covered Persons shall not, either during or after their service to the University, use or disclose any confidential information related to the University's business to any person or entity, except with written authorization of the University or as may be required by law or regulation, or use confidential information for their own personal benefit or the benefit of persons or entities outside the University. Confidential information shall include, but is not limited to, financial information, student data, mailing lists, donor lists and any other information relating to fundraising.

#### **C. Excess Benefits Transactions Prohibited by the IRS**

As a tax-exempt, nonprofit organization, the University and Covered Persons must comply with the IRS private benefit and private inurement rules which prohibit an individual inside or outside a nonprofit from reaping an excess benefit from the University's transactions or assets. An excess benefit is any payment or transfer of assets made (directly or indirectly) by the University that exceeds reasonable compensation for the services provided or the goods sold to the University, or that is for services or products that do not further the University's tax-exempt purpose.

### **V. Conflicts of Interest and Related Party Transactions**

#### **A. Potential Conflict of Interest**

A conflict of interest arises whenever the interests of the University come into conflict with a financial or personal interest of a Covered Person, or otherwise whenever the personal or financial interest of a Covered Person could be reasonably viewed as

affecting his or her objectivity or independence in fulfilling his or her duties to the University. In addition, each Covered Person should refrain from any potential conflicts of interest which could lead an independent observer to reasonably question whether the individual's actions are due to significant personal or financial interest.

While it is not possible to describe or anticipate all the circumstances that might involve a conflict of interest, a potential conflict of interest typically arises when:

1. A Covered Person has a Financial Interest in a transaction or arrangement of the University which would trigger review as a Related Party Transaction;
2. A Covered Person has a non-Financial Interest in a transaction or arrangement of the University;
3. A Covered Person receives compensation for services, directly or indirectly, from the University;
4. A Covered Person or a Relative of a Covered Person is an Officer, Director, trustee, Member, owner or employee of any entity with which the University has a relationship; or
5. A Covered Person's obligation to further the University's purposes and to act for the benefit of the University is otherwise at odds with such Covered Person's own interests, such as through personal relationships with family members, friends and employees with whom the University has a relationship or who represent entities with which the University has a relationship.

If there is any uncertainty, a Covered Person is encouraged to treat the relationship as a Potential Conflict of Interest.

Each person who is covered by this Policy has an obligation to make the Audit Committee aware of any situation that could create an actual or potential conflict of interest. The possible existence of such conflicts is a matter for disclosure and evaluation. It does not necessarily preclude a Covered Person from serving the University in that position, nor does it necessarily preclude the University from dealing with any individual or organization where it is in the best interests of the University to do so.

#### B. Disclosure Statements

A Covered Person must disclose the existence of any potential conflict of interest to the Audit Committee by providing a detailed written disclosure of material facts, including whether the Covered Person has a substantial Financial Interest, on the Conflict of Interest Disclosure Statement and Affirmation of Certain Policies form appended to this Policy (the

“Disclosure Statement”), or may provide an Update of Disclosure Statement (an “Update”) certifying that the prior Disclosure Statement remains unchanged except as specifically disclosed in the Update:

1. Prior to his or her initial election or appointment (for Trustees and Officers; and
2. Prior to his or her initial hiring or involvement (for Key Persons, Senior Managers and Special Designees); and
3. At least annually thereafter (for all Covered Persons); and
4. Upon any relevant change of circumstances (for all Covered Persons), such as:
  - a. At the time the Covered Person acquires the financial or other interest giving rise to the potential conflict of interest;
  - b. Promptly upon becoming aware of any current, proposed, or pending situations not previously disclosed that may constitute a conflict of interest; and
  - c. Promptly upon becoming aware that the University is considering a transaction or arrangement that may constitute a Related Party Transaction.

The Disclosure Statements or Updates shall be filed with the Designated Compliance Officer. The Designated Compliance Officer is thereafter responsible for providing copies of all Disclosure Statements or Updates to the Chair of the Audit Committee. If the Designated Compliance Officer or the Chair of the Audit Committee is the Covered Person with a potential conflict, the Disclosure Statement or Update shall be provided to another appropriate Officer.

All Disclosure Statements and Updates shall be retained in accordance with the University’s document retention policy and available for review by any Trustee and by the President. The Disclosure Statements and Updates, and the information contained therein, otherwise shall be confidential and shall not be further disclosed except: (a) as necessary to counsel or auditors engaged by the University; (b) by official action of the Board upon a showing that the University’s best interests would be served by the disclosure; (c) with the consent of the Covered Person who submitted the information that is to be disclosed; (d) by court order; or (e) as otherwise required by law.

A copy of this Policy, with the form of Disclosure Statement or Update, shall be distributed annually to each Covered Person.

#### C. Determination by Audit Committee

After disclosure of a potential conflict of interest and all material facts, the Audit Committee may request that the Covered Person present information or answer questions. After any discussion, the Covered Person shall leave the Audit Committee meeting prior to any Audit Committee discussion and vote. The Audit Committee shall determine whether the disclosed matter constitutes a conflict of interest and whether any conflict of interest requires review as a Related Party Transaction, including whether it requires additional scrutiny as a Related Party Transaction with a substantial Financial Interest.

#### D. Restraint on Participation and Voting; Quorum

Any Covered Person who has a conflict of interest shall not attempt to influence deliberations, votes or other determinations on the transaction or other matter giving rise to the conflict.

A Covered Person who has been determined to have a conflict of interest in any business transaction with or other matter involving the University shall refrain from making any decision about, and from participating in any consideration of, such transaction or other matter, except that he or she may respond to requests for information by the President or any disinterested Trustee concerning the matter.

In particular, any Trustee who has been determined to have a conflict shall be required to leave the meeting during any discussion and vote on the transaction or other matter, except that he or she may respond to requests for information by the Board.

The University shall not enter into any Related Party Transaction unless the transaction is determined by the Audit Committee to be fair, reasonable, and in the University's best interest at the time of such determination. If the Covered Person has a substantial Financial Interest, the Audit Committee must: (i) consider alternatives to the transaction to the extent available; (ii) approve the transaction by not less than a majority of the Board or Audit Committee members present at the meeting; and (iii) contemporaneously document in writing the basis for the Committee's approval of such transaction, including the consideration of alternative transactions.

Trustees who are present at a meeting but not present at the time of a vote due to a Related Party Transaction or other conflict of interest shall be considered present at the time of the vote for purposes of quorum.

#### E. Records of Proceedings

The minutes of the Audit Committee and/or Board meeting at which a determination is made with respect to a Related Party Transaction, other conflict of interest or potential conflict of interest shall be prepared on a contemporaneous basis and shall contain, as appropriate: (i) the names of the persons who disclosed or otherwise were found to have a

conflict of interest or a potential conflict of interest, the nature and material facts of the interest, any action taken to determine whether a conflict of interest was present, and the Audit Committee's decision as to whether a Related Party Transaction or other conflict of interest in fact existed; (ii) the names of the persons who were present for discussions and votes relating to the transaction or other matter, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings; (iii) a statement that the transaction was found to be "fair, reasonable and in the University's best interest at the time of such determination" (required for Related Party Transactions); and (iv) if the Related Party has a substantial Financial Interest in a Related Party Transaction, the minutes must contain the basis for the approval, including a description of the alternative transactions considered.

## **VI. Gifts, Loans and Entertainment**

No Covered Person or Relative of a Covered Person shall solicit or accept in any fiscal year any gifts with a fair market value over \$250 (singly or in the aggregate, from any source or sources) including but not limited to entertainment, loans, or other favors where such gift might create the appearance of influence on the Covered Person.

Any gift, loan, entertainment or other favor within the scope of the preceding paragraph that has been accepted shall be disclosed under this Policy on a Disclosure Statement or Update.

## **VII. Enforcement, Sanctions and Non-Retaliation**

Any person who believes in good faith that a violation of this Policy has occurred shall report the matter to the President, the Board Chair, or any member of the Audit Committee, each of whom is bound to bring the matter for consideration to the Audit Committee. If the Committee finds that a violation of this Policy has occurred, the Committee shall report the violation to the Board, which may take such actions as it deems appropriate, including, without limitation, reprimand, censure, discipline, demotion, suspension, removal, or dismissal.

No Covered Person shall retaliate in any way against any person who in good faith reports a violation or potential violation of this Policy. Any such retaliation shall constitute a violation of this Policy as well.

Date: This Policy was adopted by the Board on July 22, 2020.