



making headway **foundation**

Conflict of Interest Policy

This Conflict of Interest Policy (the “Policy”) governs the activities of the Board of Directors and staff of Making Headway Foundation (the “Foundation”). Questions about the policy should be directed to the Chair of the Board of Directors (currently Edward Manley). The purpose of the Policy is to protect the Foundation’s interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director, or staff member of the Foundation or might result in an excess benefit transaction. This Policy is intended to supplement, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit and charitable organizations. This policy provides guidelines for identifying and disclosing conflicts and procedures to be followed to assist the Foundation in managing conflicts of interest and situations that may result in the appearance of a conflict.

1. **Who might be affected by this policy?** Typically persons who are affected by a conflict of interest policy are the organization’s directors, officers, and senior staff. Any director, officer, member of a committee with governing board delegated powers, or senior staff member who has a direct or indirect financial interest in a potential transaction, as defined below, is an interested person (“Interested Person”). In some cases, a major donor to the Foundation could also be an Interested Person for purposes of this Policy. The Foundation takes a broad view of conflicts and board/staff are urged to think of how situation/transaction would appear to outside parties when identifying conflicts or possible conflicts of interest.

2. **What is a conflict of interest?** A conflict of interest arises when a director or staff member has a personal interest or financial interest that conflicts with the interests of the Foundation or arises in situations where a board/staff member has divided loyalties. The former can result in situations that result in inappropriate financial gain to persons in authority at the Foundation which can lead to financial penalties and violations of IRS regulations. Similarly, situations or transactions arising out of a conflict of interest can result in either inappropriate financial gain or the appearance of a lack of integrity in the Foundation’s decision-making process. Both results are damaging to the Foundation and are to be avoided.

Example #1: a person in a position of authority over the Foundation has a financial interest in a transaction with the Foundation, which may occur if the person has, directly or indirectly, through business, investment, or family:

- i. An ownership or investment interest in any entity with which the Foundation has a transaction or arrangement,
- ii. A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement, or
- iii. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. A person who has a financial interest may have a conflict of interest only if the Board of Directors or appropriate committee decides that a conflict of interest exists.

Example #2: A conflict of interest could be a direct or indirect financial interest such as those described above, or a personal interest such as the situation where a director of the Foundation is also a board member of another nonprofit or for-profit entity in the community with which Foundation collaborates or conducts business.

3. Duty to Disclose. It is the duty of all directors and staff to be aware of this policy, and to identify conflicts of interest and situations that may result in the appearance of a conflict and to disclose those situations/conflicts/or potential conflicts to the Chair of the Board of Directors, or other designated person, as appropriate.

4. Disclosure of Conflicts. Each director, officer, member of a committee with governing board delegated powers, and senior staff member will annually disclose and promptly update any disclosures previously made to the Chairman of the Board of Directors on an Annual Conflict Disclosure Questionnaire form provided by the Foundation on which any interests that could give rise to a conflict of interest will be identified. Information to be disclosed includes a list of family members, substantial business or investment holdings, and other transactions or affiliations with businesses and other organizations or those of family members as well as other nonprofit organizations. The form shall also include a statement, to be signed by each director, officer, member of a committee with governing board delegated powers, or senior staff member, which affirms that such person:

- i. Has received a copy of this Policy,
- ii. Has read and understands this Policy,
- iii. Has agreed to comply with this Policy, and
- iv. Understands that the Foundation is charitable 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.

Directors and staff are also required to disclose conflicts and potential conflicts as they arise. Advance disclosure must occur so that a determination may be made as to the appropriate plan of action to manage the conflict. An Interested Person should disclose their financial or personal interest to the Chair of the Board of Directors as soon as that person is aware of the conflict/potential conflict or appearance of a conflict exists. The Interested Person must be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

5. **Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the Interested Person, he/she shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining directors or committee members shall decide if a conflict of interest exists.

6. **Procedures for Addressing the Conflict of Interest.** An Interested Person may make a presentation at the board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest. The Interested Person may serve as a resource to provide other decision-makers with information during the course of the discussion, as appropriate.

The Chairperson of the Board of Directors or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

After exercising due diligence, the Board of Directors or committee shall determine whether the Foundation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the Board of Directors or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Foundation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination it shall make its decision as to whether to enter into the transaction or arrangement.

The Chair of the Board of Directors will monitor proposed or ongoing transactions of the Foundation for conflicts of interest and disclose them to the directors and staff, as appropriate, whether discovered before or after the transaction has occurred.

7. **Violations of the Conflict of Interest Policy.** If the Board of Directors or committee has reasonable cause to believe a staff person or director has failed to disclose actual or possible conflicts of interest, it shall inform the staff person or director of the basis for such belief and afford them an opportunity to explain the alleged failure to disclose.

If, after hearing the staff member or director's response and after making further investigation as warranted by the circumstances, the Board of Directors or committee determines the staff member or director has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

8. **Records of Proceedings.** The minutes of the Board of Directors and all committees with board delegated powers shall contain:

- i. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the Board of Director's or committee's decision as to whether a conflict of interest in fact existed.
- ii. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, 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.

9. **Compensation.** A voting director who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that director's compensation. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation for services is precluded from voting on matters pertaining to that member's compensation. However, no voting member of the Board of Directors or any committee whose jurisdiction includes compensation matters is prohibited from providing information regarding compensation to any committee or to the Board of Directors by virtue of the fact that he/she receives compensation, directly or indirectly, from the Foundation.

10. **Periodic Reviews.** To ensure the Foundation operates in a manner consistent with its charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- i. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
- ii. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Foundation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

11. **Use of Outside Experts.** When conducting the periodic reviews as provided for above, the Foundation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the Board of Directors of its responsibility for ensuring that periodic reviews are conducted.