

**SOCIETY HOTLINE  
1-800-539-7202**

**AMERICAN CANCER SOCIETY, INC. AND ITS AFFILIATED ENTITIES**

**CODE OF ETHICS  
AND  
CONFLICT OF INTEREST POLICY**

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## CODE OF ETHICS AND CONFLICT OF INTEREST POLICY AMERICAN CANCER SOCIETY, INC. AND ITS AFFILIATED ENTITIES

### Introduction and Applicability

The Code of Ethics and Conflict of Interest Policy (the “Code”) of the American Cancer Society, Inc. and its affiliated entities (collectively, the “Society”) establishes the ethical standards for volunteers and staff of the Society (collectively referred to as “associates”) in connection with Society business. The purposes of the Code are to provide evidence of the Society’s commitment to the lawful and ethical conduct of its business, to promote lawful and ethical behavior by its associates, and to protect those who report violations of the Code consistent with the Society’s Whistleblower Policy.

Conflicts of interest will arise in the normal course of conducting Society business. The Code is not designed to prohibit conflicts of interest but to protect the Society’s interest when it is contemplating entering into a transaction or arrangement that might benefit the private interests of an associate or might result in a possible excess benefit transaction. The Code is intended to supplement but not replace any applicable state or federal laws governing ethical conduct or conflicts of interest applicable to nonprofit and charitable organizations.

The Code applies to all staff and to all volunteers responsible for governance at any Society affiliated entity and those volunteers who have any fiduciary obligations in discharging their duties on behalf of the Society, including but not limited to, members of the National Assembly, the Boards of Directors and their committees. It is every associate’s responsibility to discharge his or her duties in a manner that promotes and preserves public trust, proper stewardship, and confidence in the integrity of the Society. Associates must respect and comply with Society rules and regulations, observe high standards of conduct, and participate in establishing and maintaining such high standards. **Adverse consequences, including employee termination or removal of a volunteer from his or her position, can result from failure to comply with the Code.**

It is the duty of all associates to review and assess their conduct in light of the provisions of the Code. Each associate shall seek, either in writing or in person, the advice of his or her supervisor or Society Counsel when a reasonable doubt regarding an ethical or legal consideration arises.

The Conflict of Interest Disclosure Statement (EXHIBIT A) must be completed by all staff and volunteers on an annual basis. The determination of which volunteers must complete the form is made by Society Counsel.

**I. Policies Governing Ethical Conduct**

- A. Society associates will perform their duties properly, diligently, and in an appropriately courteous manner.
- B. Consistent with the provisions of any applicable document retention policy, no associate shall falsify, destroy, mutilate, conceal, or fail to make required entries on any record within the associate's control, including the destruction of documents that are the subject of an investigation or a civil or criminal action to which the Society is a party.
- C. Associates with reporting responsibilities shall provide full, fair, accurate, timely, and understandable disclosure in all reports.
- D. Associates shall act honestly and ethically.
- E. No associate shall discriminate on the basis of race, color, religious creed, gender, national origin, age, physical ability, sexual orientation, marital status, or veteran status in the conduct of services for the Society.
- F. Associates who are attorneys, medical clinicians, certified public accountants, or members of other professional groups are bound by the appropriate professional duties and code of conduct of those roles.
- G. Associates shall comply with all state, federal and local laws, statutes and ordinances.
- H. Associates shall comply with all policies on confidentiality and privacy of information. Associates shall not use confidential or proprietary information for personal financial gain.

**II. Duty of Loyalty to the Society – Avoiding Abuses of Position and Conflicts of Interest**

The Society is a nonprofit, tax-exempt organization. Maintenance of its tax-exempt status is critical both for its continued financial stability and for public support. The Society is subject to scrutiny by, and is held accountable to, governmental and regulatory authorities as well as the public.

Consequently, there exists between the Society and its associates a fiduciary duty which carries with it a duty of loyalty. Associates have the responsibility of administering the affairs of the Society honestly and prudently and of exercising their best care, skill, and judgment for the sole benefit of the Society. Moreover, because of the Society's status as a public charity, every associate has an affirmative duty to act as a steward of the funds entrusted to the Society by its contributors.

Associates shall use the resources, property, and funds under the associate's control judiciously and in the best interest of the Society. Associates shall exercise good faith in all transactions, and they shall not use their positions with the Society or knowledge gained therein for their personal benefit or for the benefit of any other person or organization. The interests of the Society must be the first priority in all decisions and actions.

No associate shall accept, solicit, or agree to accept any gift, favor, complimentary service, or other thing of value under circumstances from which it might be reasonably inferred that such gift, service, or other thing of value was given or offered for the purpose of influencing the associate in the discharge of his or her duties. Vendor selections and purchasing decisions must always be business decisions based on merit: by comparing and evaluating price, quality, performance, and suitability. Decisions must not be influenced by any other factor, such as personal relationships, gifts or hospitality.

**A. Areas in Which Conflicts May Arise** – A conflict of interest may arise in the relations of associates with any of the following third parties:

- Persons and firms supplying or *potentially* supplying goods and services to the Society (vendors and professionals), including, but not limited to:
  - Construction services.
  - Professional services, including accounting and legal services.
  - Contracts with individuals, including consultants and part time staff.
  - Contracts with *companies* providing non-professional services, such as marketing, research services, information technology, consulting or other services, etc.
  - Persons and firms from whom the Society purchases or leases property and equipment.
  - Persons and firms with whom the Society is dealing or planning to deal in connection with the purchase or sale of real estate, securities, or other property.
- Persons or parties with a direct, material, Financial Interest in the outcome of Society programs, policies or positions.
- Customers of Society services (e.g. Quitline/Employer Initiative customers).
- Donors, volunteers, and other supporters of the Society.
- Agencies, other nonprofits, and associations that affect the operations of the Society.
- Entities from whom the Society receives grants or to whom the Society provides grants.
- Tobacco Companies and their related entities.

**B. Nature of Conflicting Interest** - A conflicting interest may be defined as an interest, direct or indirect, with any persons or firms listed in Section A. Such an interest might arise through:

- An association with any entity that deals with the Society of which an associate or an immediate family member is a partner or a controlling shareholder, executive officer, or has any other position with another entity that would reasonably cause the appearance of a conflict of interest. Any question regarding independence should be reviewed by Society Counsel or, where appropriate, the Audit Committee for final resolution.
- Receiving compensation for services with respect to individual transactions involving the Society.
- Using Society time, personnel, equipment, supplies, or goodwill for any purpose other than Society-approved activities, programs, or purposes.

- Receiving allowances from the Society (other than incidental amounts incurred while traveling with any excess promptly repaid in full) if you are a director, volunteer, or officer of the Society.
- Receiving any gift, courtesy or loan from third parties dealing or competing with the Society, or seeking to deal with the Society, except for gifts with a value of less than seventy-five dollars (\$75) that could not be refused without discourtesy and which will not give rise to the perception that the associate's independent judgment might be compromised. Nominal gifts such as pens; caps; paperweights; t-shirts; coffee mugs; soft drinks; flowers; chocolates or other small tokens may be accepted. No personal gift of cash or a cash equivalent (i.e. gift cards, gift checks, vouchers, phone cards, checks or money orders, etc.); special discount; tickets for entertainment where the host will not be present; gifts that would embarrass the Society; or situations where the Society's commitment to diversity and respect for others could be violated or could cause unease, such as adult entertainment, shall ever be accepted from a vendor during a bidding or contracting process. Associates shall never request gifts or hospitality of any sort. Associates shall avoid a pattern of accepting frequent courtesies from the same person or company.

### **C. Conflict of Interest Disclosure Procedures:**

The areas of conflicting interest listed in Section A, and the relationships in those areas that may give rise to conflicts, as listed in Sections B, are not exhaustive. Conflicts may arise in other areas or through other relationships. The Code does not prohibit conflict of interest transactions but instead provides a framework for conflict avoidance and management. However, if an associate believes that he or she is in a possible conflict situation, he or she should assume that a conflict does exist and act accordingly.

The fact that one of the interests described in Section A or B exists does not necessarily mean that a conflict exists, or that the conflict, if it exists, is material enough to be of practical importance, or if material, that upon full disclosure of all relevant facts and circumstances, it is necessarily adverse to the interests of the Society. However, it is the policy of the Society that the existence of any of the interests described in Section B must be disclosed before any transaction is consummated. Moreover, all disclosed conflicts shall be addressed in accordance with the procedures set forth below.

It shall be the continuing responsibility of associates to scrutinize their transactions and outside business interests and relationships for potential conflicts and to immediately make any necessary disclosures. In deciding whether a transaction might constitute a conflict of interest, an associate should ask these questions:

- Is the transaction included as a scenario in the Frequently Asked Questions attached to the Code?
- Would the transaction be prudent, be in good faith, and be in the best interests of the Society?
- Would the transaction affect any decision I will make for the Society?

- How would the transaction look to someone outside of the Society, such as a donor, a public watchdog group, the state attorney general, the news media or a Congressional Committee?
- How would the transaction seem to others within the Society? Would they think it might affect how I do my job for the Society?

### **1. Annual Statements**

Each associate shall annually sign a Conflict of Interest Disclosure Statement, which describes any existing or potential conflict of interest and affirms that such person:

- a. Has received a copy of the Code;
- b. Has read and understands the Code; and
- c. Has agreed to comply with the Code.

Annual Conflict of Interest Disclosure Statements shall be filed on or before January 31<sup>st</sup> in the case of employees and on or before the date of the first meeting of the board in each calendar year in the case of governance volunteers.

### **2. Continuing Disclosure**

In connection with any actual or potential conflict of interest, an associate must disclose the existence of the Financial Interest as defined in Part V on a Conflict of Interest Disclosure Statement. If the associate is a disqualified person, he or she must disclose all material facts to the directors and members of the committees with governing board delegated powers prior to engaging in the proposed transaction or arrangement.

The receipt of an offer of any gift(s) exceeding the value of \$75 must be reported immediately to your supervisor (if staff). Similarly, a series of gifts within a one-year time frame, all of which cumulatively are valued at seventy-five dollars (\$75) or more should be treated as a single gift for purposes of this policy. Volunteers receiving offers of gifts in excess of \$75 must notify Society Counsel or, in the case of a Division without Society Counsel, the Chief Financial Officer (CFO). In each instance, a Conflict of Interest Disclosure Statement should be filed with Society Counsel, or the CFO where appropriate. Society Counsel (or CFO where appropriate) will review the circumstances to determine if the potential gift can be accepted or determine if a potential conflict of interest exists and communicate its decision to the supervisor (in the case of staff) or the Audit Committee (in the case of volunteers). No gift in excess of the value of \$75 may be accepted without the prior approval of the supervisor (if staff) and Society Counsel or CFO where appropriate (for both staff and volunteers).

In international situations where turning down a gift with more than a \$75 value would be culturally discourteous, the gift may be accepted on behalf of the Society but must be immediately reported to the National Home Office, Office of Corporation Counsel.

### **3. Procedures for Addressing the Conflict of Interest**

In general, once a conflict of interest transaction is identified, the associate with the conflict shall not attempt to influence other decision makers regarding the matter, and shall not participate in any discussion of the transaction except to respond to information requests. In addition, if the associate is in a position to vote on, or otherwise participate in the decision with respect to, the conflict of interest transaction, he or she shall abstain from any such vote or participation. It shall be the responsibility of the decision-making authority or body to properly record in the minutes of any discussion regarding a conflict of interest transaction the name of the person who discloses the conflict of interest, the nature of the conflict of interest, and documentation of the comparability data (i.e. industry surveys, compensation studies, competitive bids, etc.), if any, used in determining whether the Society should enter into the transaction.

In the case of a transaction involving a disqualified person:

- a. The disqualified person may respond to questions at the governing board or committee meeting, but after answering any questions, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee of disinterested persons to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Society 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.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested persons whether the transaction or arrangement is in the Society's best interest, and whether it is fair and reasonable. It shall then make its decision as to whether to enter into the transaction or arrangement and record the decision, together with the supporting analysis, in the minutes of the proceeding.

In the case of a transaction involving a non-disqualified person, Society Counsel or, in the case of a Division without Society Counsel, the CFO, shall review the circumstances surrounding the transaction, including any comparability data, and determine whether the transaction requires further review and approval by the Audit Committee. Society Counsel, or in the case of a Division without staff counsel, the CFO, shall maintain a record of all disclosed or discovered conflict of interest transactions and report quarterly to the Audit Committee the actions taken with respect to each.

#### **D. Violations of the Conflicts of Interest Policy**

If Society Counsel (or CFO where appropriate), or in the case of a volunteer, the governing board or committee, has reasonable cause to believe an associate has failed to disclose actual or possible conflicts of interest, it shall inform the associate of the basis for such belief and afford the associate an opportunity to explain the alleged failure to disclose.

If, after reviewing the associate's response and after making further investigation as warranted by the circumstances, Society Counsel (or CFO where appropriate), or the governing board or committee determines the associate has failed to disclose an actual or possible conflict of interest, it shall initiate appropriate disciplinary and corrective action.

### **III. Confidential Information**

Associates shall not violate Society privacy and confidentiality policies. In addition, associates shall not use confidential or proprietary information for personal financial gain.

### **IV. Reporting Conflicts and Violations - Duties, Protections and Corrective Actions**

A. Each associate shall immediately report conflicts and violations of the Code, criminal law, or the attempt to induce another to violate these standards or violate criminal law, in accordance with established policies. A failure to report a violation is itself a violation of the Code. If anonymity is requested, the Society will not disclose the identity of the reporting individual except as needed to properly investigate the allegation, or unless legally required to do so.

The Society's Whistleblower Protection Policy (attached hereto as EXHIBIT B and incorporated herein by reference) establishes the protections against retaliatory actions for any reports of Code violations. Moreover, the Society's independent hotline at **1-800-539-7202** is a confidential resource dedicated solely to answering questions and concerns or reporting questionable activity related to financial internal controls, audit, prevention of illegal activity, accounting issues, and related matters. Associates may ensure complete anonymity when reporting a concern by simply not giving their names. More information on the hotline is available at [www.societylink.org](http://www.societylink.org) (the Intranet) under Risk Management.

B. An associate found to be in violation of the Code shall be subject to corrective actions taken by the appropriate level manager (or Board for board members and other volunteers). Such action may include further training and instruction regarding the provisions of the Code, necessary steps to remediate any harm to the Society, fellow associates, or others, and disciplinary actions up to and including termination. Each violation will be assessed on an individual case by case basis and the corrective action tailored to the specifics of that violation. When deciding what action is necessary, consideration will be given to the flagrancy of the violation, the harm caused, whether the violation was intentional or unintentional, whether the associate voluntarily disclosed the violation, prior misconduct, the likelihood of future misconduct, the general circumstances surrounding the violation, and other considerations as appropriate.

C. When an associate completes the annual conflict of interest disclosure statement, the associate must disclose all of the items on the questionnaire for the past calendar year. Any intentional failure to disclose required information or the provision of information that is inaccurate or false in nature is a violation of the Code. In addition, there is a continuing duty to disclose any conflict of interest that arises during the course of the year.

## **V. Definitions**

### **1. Disqualified Person:**

A “disqualified person” is any person who is, or has been during a period beginning five (5) years from the date of a transaction between the Society and such person, in a position to exercise substantial influence over the affairs or finances of the Society. It is not necessary that the person actually exercise substantial influence, only that the person be in a position to do so.

Certain insiders, by definition, are disqualified persons, including the members of the National Home Office Executive Cabinet and Chief Financial Officer, Division CEO’s, CFO’s and COO’s, and the voting members of the Boards of Directors, regardless of their compensation.

Certain family members of a disqualified person and entities controlled by a disqualified person are also disqualified persons. For this purpose, the term control is defined as owning more than 35% of the voting power of a corporation, more than 35% of the profits interest in a partnership, or more than 35% of the beneficial interest in a trust.

### **2. Financial Interest:**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Society has a transaction or arrangement;
- b. A compensation arrangement with the Society or with any entity or individual with which the Society has a transaction or arrangement; or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Society is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not nominal in value. Compensation does not include the reimbursement of reasonable expenses incurred in connection with the performance of Society duties.

A Financial Interest is not necessarily a conflict of interest. A person who has a Financial Interest may have a conflict of interest if the appropriate reviewing body determines that a conflict of interest exists.

**3. Society Counsel:**

With respect to the National Home Office, Society Counsel shall mean the Chief Counsel.

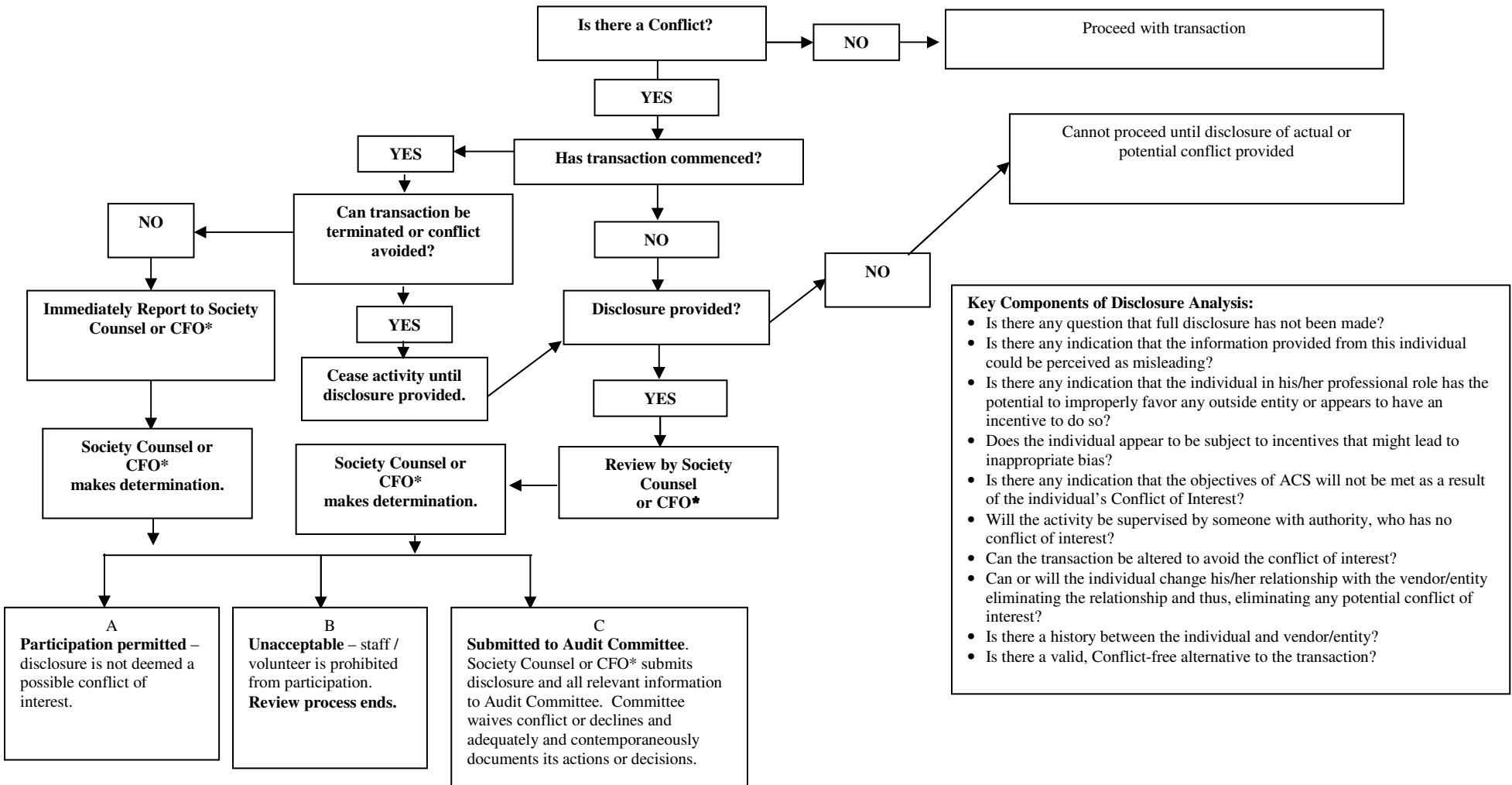
In the case of affiliates with staff attorneys, Society Counsel shall mean such in-house counsel. For affiliates without staff attorneys, Society Counsel shall mean the outside Counsel engaged by the affiliates to perform legal services in matters relating to the Code of Ethics.

**4. Tobacco Company:**

“Tobacco Company” means any company that manufactures tobacco products and is commonly considered to be part of the tobacco industry, including subsidiaries and parent companies, and companies under common control with such company, as well as philanthropic foundations and other organizations closely linked with the tobacco industry.



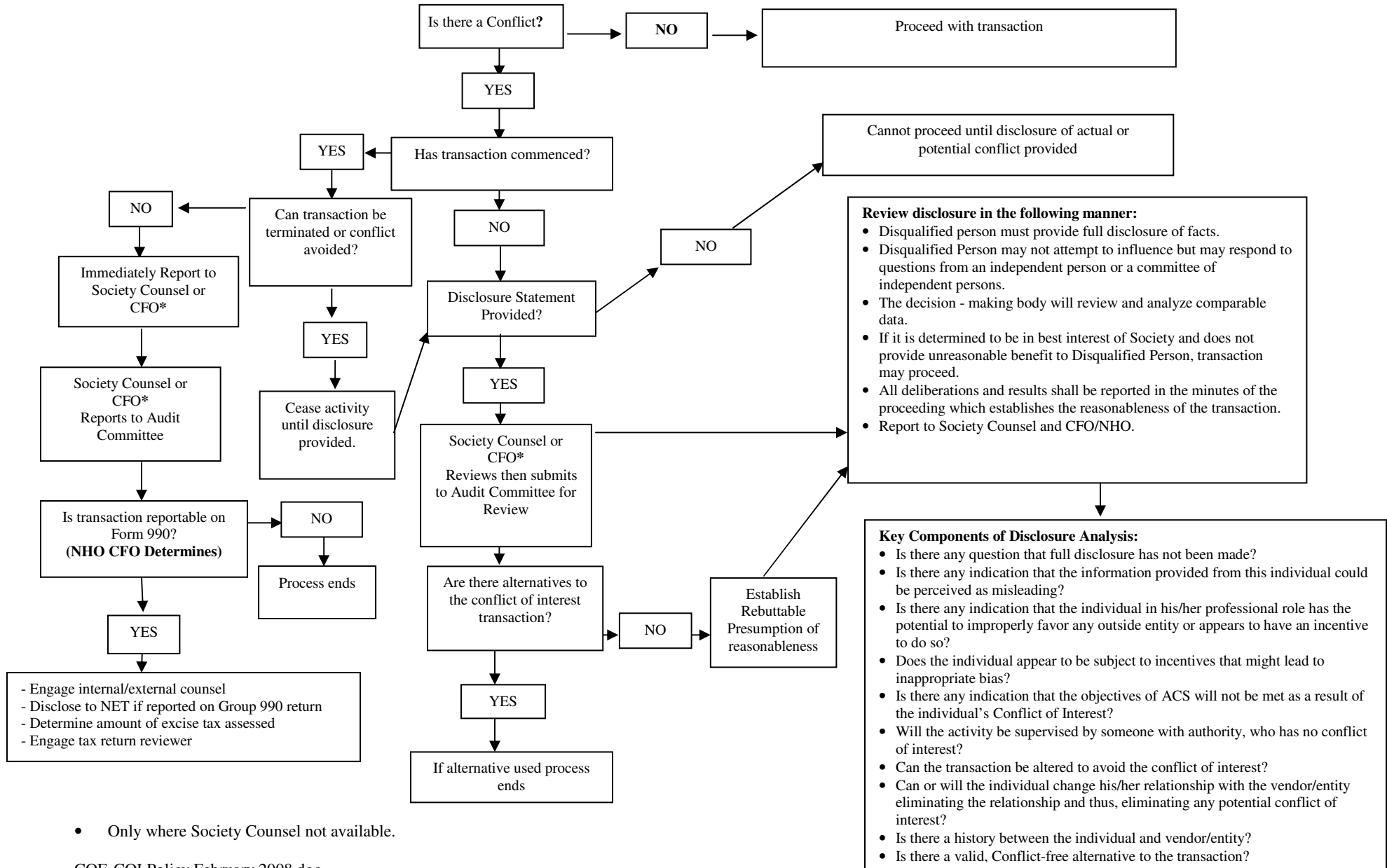
## CONFLICT OF INTEREST REVIEW PROCESS (NON DISQUALIFIED PERSONS)



\* Only where Society Counsel not available.



## CONFLICTS OF INTEREST REVIEW PROCESS (DISQUALIFIED PERSONS)



- Only where Society Council not available.

**EXHIBIT A**

**American Cancer Society, Inc.**

**CONFLICT OF INTEREST DISCLOSURE STATEMENT  
(FILED ANNUALLY AND WHEN A CONFLICT OF INTEREST ARISES)**

In order to be comprehensive, this statement of disclosure/questionnaire requires you to provide information with respect to certain parties that are related to you. These persons are termed “affiliated persons” and include the following:

- a. your spouse, domestic partner, parents, grandparents, siblings, children, grandchildren, great grandchildren, and spouses of parents, grandparents, siblings, children, grandchildren and great grandchildren or anyone residing with you.
- b. any entity that deals with the Society of which:
  - you are a partner or a controlling shareholder or executive officer; or
  - you have any other position, financial or otherwise, that would cause the appearance of a conflict of interest. Any question regarding a conflict of interest should be reviewed by Society Counsel and the Audit Committee for final resolution.
- c. any trust, estate, or other legal entity in which you have a substantial beneficial interest or as to which you serve as a trustee or in a similar capacity.

1. YOUR NAME (Please print)

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2. YOUR SOCIETY POSITION:

\_\_\_\_\_ Board of Directors Member

\_\_\_\_\_ Board of Directors Officer

\_\_\_\_\_ National Assembly Member

\_\_\_\_\_ Other Volunteer Role: Describe Role \_\_\_\_\_

\_\_\_\_\_ Staff (position): \_\_\_\_\_

3. Have you or any of your affiliated persons been employed by or provided services or property to the Society in the past year other than in your capacity shown in question 2 above and other than services or property you donated? \_\_\_\_\_ YES \_\_\_\_\_ NO

If yes, please describe the nature and value of the services or property, and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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4. Have you or any of your affiliated persons purchased services or property from the Society in the past year other than services or property generally available for purchase by others (i.e. the purchase of Relay and other Society branded items, postage, equipment generally offered for sale to all staff and volunteers, etc.)? \_\_\_\_YES \_\_\_\_NO

If yes, please describe the purchased services or property and the value and, if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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5. Have you or any of your affiliated persons had any direct or indirect interest in any business transaction(s) or other business relationship in the past year to which the Society or any volunteer officer or staff officer of the Society or its affiliates was or is a party? \_\_\_\_YES \_\_\_\_NO

If yes, describe the transaction(s) or relationship and value, and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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6. If you are a director, staff officer, or volunteer officer, were you or any of your affiliated persons financially indebted to the Society at any time in the past year (other than minor amounts incurred in the ordinary course of business and promptly repaid in full)? \_\_\_\_YES \_\_\_\_NO

If yes, please describe the reason for the indebtedness and the amount, and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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7. In the past year, did you or any of your affiliated persons receive, or become entitled to receive, directly or indirectly, any personal benefits from the Society as a result of your relationship with the Society that in the aggregate could be valued in excess of \$1,000, that were not or will not be compensation directly related to your duties to the Society? \_\_\_\_YES \_\_\_\_NO

If yes, please describe the benefit(s) and value, and, if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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8. Are you or any of your affiliated persons a party to, or have an interest in, any pending legal proceedings involving the Society? \_\_\_\_\_YES \_\_\_\_\_NO

If yes, please describe the proceeding(s) and magnitude of potential claims or settlements if any, and, if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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9. Are you aware of any other events, transactions, arrangements, or other situations that have occurred or may occur in the future that you believe should be examined by the Society in accordance with the terms and intent of the Society's Code of Ethics and Conflict of Interest Policy? \_\_\_\_\_YES \_\_\_\_\_NO

If yes, please describe the situation(s), and, if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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10. Have you received any gift or loan from a third party dealing or competing with the Society, or seeking to deal with the Society, that exceeded the value of seventy-five dollars (\$75) and that was not returned to the giver? \_\_\_\_\_YES \_\_\_\_\_NO

If yes, please describe the situation(s), and all of the facts and circumstances and amounts involved.

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11. Have you or any of your affiliated persons been employed by or provided services to a Tobacco Company in the past year? \_\_\_\_\_YES \_\_\_\_\_NO

If yes, please describe the nature of the employment or services activity, and if an affiliated person is involved, the identity of the affiliated person and your relationship with that person:

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**SOCIETY HOTLINE**  
**1-800-539-7202**

I HERBY CONFIRM that I have read and understand the Society's Code of Ethics and Conflict of Interest Policy and that my responses to the above questions are complete and correct to the best of my information and belief.

I agree that if I become aware of any information that might indicate that this disclosure is inaccurate or that I have not complied with the Code of Ethics and Conflict of Interest Policy, I will immediately notify the Society Counsel.

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Signature

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Date

Please return to:

SAMPLE

[Office of Corporation Counsel

American Cancer Society, Inc

250 Williams Street

Atlanta, Georgia 30303

Fax: 404-417-5808

ConflictsDisclosure@cancer.org]

**EXHIBIT B**

**Whistleblower Protection Policy: Reporting Suspected Violations of Law or Misconduct**

The American Cancer Society, Inc. and its affiliated entities (“the Society”) are committed to maintaining a workplace where associates are free to raise good faith concerns regarding the Society's business practices, specifically: **(1)** reporting suspected violations of law on the part of the Society, including but not limited to federal laws and regulations; **(2)** providing truthful information in connection with an inquiry or investigation by a court, agency, law enforcement, or other governmental body; and **(3)** identifying potential violations of the Society's Code of Ethics.

The Society policy forbids any retaliatory action, including harassment, intimidation, or adverse employment actions of any kind, to be taken against an individual who, in good faith, reports a suspected violation of law or the Code of Ethics, or who in good faith complains about, or raises a claim or concern about, any type of harassment, retaliation or discrimination prohibited by applicable law or Society policy. Retaliation is also prohibited against individuals who are not themselves complainants, but who participate in good faith in an investigation. Any associate who engages in any form of retaliation will be subject to discipline, up to and including employee termination or removal of volunteer from his or her position. Individuals who believe that they or someone they know are being, or have been, retaliated against should immediately report this to his or her appropriate supervisor, Society Counsel, the appropriate talent management/human resource representative, or anonymously by calling the Hotline at 1-800-539-7202. The Hotline is created for this purpose and is managed and staffed by an outside company in order to maintain the anonymity of the source.

**Frequently Asked Questions  
Regarding Potential Ethical Dilemmas**

The purpose of this section is to provide associates (volunteers and staff) with a non-exhaustive list of potential ethical dilemmas that may arise and how the Code of Ethics and Conflicts of Interest Policy would serve to guide their actions and behavior. If any associate is ever unsure as to what is appropriate legal or ethical behavior, the associate should consult with his or her supervisor. Also, Society Counsel is always available to answer any questions regarding ethical considerations.

**Some Possible Scenarios**

**Duty to Report**

**Question** – I work for the Society and one of the reasons I chose to work here is that it feels good to be a part of an organization that does something important and positive for society. The other day I saw one of my colleagues doing something that I am pretty sure is a violation of the Code of Ethics. I do not want to get anyone in trouble. What should I do?

**Answer** – No one likes the feeling of reporting the wrong conduct of another. At the same time, the work environment that we all enjoy is a result of respectful behavior. When it seems clear that another associate is doing something unethical, then each of us has an obligation to report that behavior to an appropriate supervisor and/or to Society Counsel. In the event the unethical conduct is financially related as described in Section IV of the Code, you may report it by way of the toll free anonymous Confidential Hotline at **1-800-539-7202**.

**Gifts and Hospitality**

**Question** – I work with our vendors as part of my job and from time to time they will offer to take me out to lunch or some other social outing. Is it permissible for me to accept these gifts?

**Answer** – The Code of Ethics and Conflicts of Interest Policy has specific provisions about accepting gifts. As a general rule, we should decline even small gifts where it is not going to be perceived as impolite or cause us to harm a vendor relationship. It is easy to use this Code as an excuse why you are unable to accept a vendor's generosity. Under no circumstances should you accept a gift worth \$75 or more without the prior approval of your supervisor and Society Counsel.

**Question** – A vendor asks me to accompany him to a baseball game at which we plan to discuss business. May I go?

**Answer** – Yes, as long as the ticket has a face value of less than \$75 and the outings are infrequent (one per year).

**Question** – Occasionally, a vendor will call and offer to give me tickets to a sports event or a concert. The face value of the tickets is less than \$75. May I accept this gift?

**Answer** – No. The gift does not serve an ACS business purpose.

**Question** – May I purchase sporting or concert tickets from a vendor?

**Answer** – Yes, as long as the event is not “Sold Out”. Under those circumstances you would be accepting a gift of an opportunity to buy tickets that are not generally available for purchase and that is inappropriate.

**Question** –Is our department allowed to keep flowers, chocolates, or other small treats sent from a vendor?

**Answer** – Generally it is appropriate to accept such occasional, infrequent, nominal gifts, but they should be shared with your co-workers.

**Question** – I have been invited by a vendor to go to a conference in another city about new issues facing technology departments. The vendor is offering to pay for my plane, hotel, meals, and to take me golfing once or twice while we are there for the weekend. My department was debating about whether to send me to the conference at ACS expense before this offer was extended. Should I accept this gift from the vendor?

**Answer** – This type of gift should be brought to the attention of both your supervisor and Society Counsel for review. If this is a conference that the Society was considering asking you to attend, it might be appropriate to accept that part of the gift from the vendor. If the gift is going to benefit the Society, then it is much like a donation since it saves the Society the expenses of your flight and hotel. At the same time, if you are involved in the review of purchases and potential purchases from this vendor, the offer to buy your meals and pay for your golfing (or other activities) are too close to creating a real conflict issue and should not be accepted. The review by Society Counsel and your supervisor will give you the guidance you need.

**Question** – A Society donor that I have been cultivating has died. I have found out that the donor left me \$10,000 in his will. What am I ethically bound to do with the money?

**Answer** – Ethically, you should either disclaim the gift or ask that the executor give the bequest to the Society. If state law does not grant the executor the power to give the bequest to another organization, you could accept the gift and make a donation to the Society in the exact amount of the gift.

### **Confidentiality and Privacy**

**Question** – In my job with the Society, I sometimes come in contact with donor information. I am amazed sometimes at the people who donate money to the Society and how much they donate. Sometimes I can't help but share little tidbits with my friends. Is this a problem?

**Answer** – Yes, it is a big problem. We are all bound by the highest standards of confidentiality and as a condition of our employment we have agreed to protect the confidentiality of our constituent medical information and our donors' information, which is some of the most sensitive information we handle. If we are not careful and do not handle confidential information appropriately, we run the risk of losing future funding and seriously hurting our organization. What seems like a little bit of innocent gossip is a serious violation and should be avoided.

**Question** - In my job at ACS I have access to our screening guidelines before they are made public. I know that our new guidelines will be extremely beneficial for a particular company that manufactures a test included in the guidelines. I would like to buy shares of that company's stock now because I think once our guidelines are made public, the shares of that company's stock will increase. Is it permissible for me to make this trade?

**Answer** – No, under our Code of Ethics, it is not permissible for you to buy or sell shares of publicly traded stock based on confidential information. In addition, you may be subjecting yourself to prosecution by the Securities and Exchange Commission if you do so.

**Question** - I was part of a team that selected a vendor for a particularly large project for us. I would like to buy shares of the vendor's stock now because I think once it becomes public that the vendor is doing such a large project for us, the shares of the vendor's stock will increase significantly. Is it permissible for me to make this trade?

**Answer** – No, it is not permissible for you to buy or sell shares of publicly traded stock based on confidential information. In fact, you may be subjecting yourself to prosecution by the Securities and Exchange Commission if you do so.

### **Doing Business With Relatives**

**Question** – A donor I have cultivated has died and left the Society their house. The Society has decided to sell the house. My spouse is a real estate agent. Can I recommend my spouse to the Society to conduct the sale of the house?

**Answer** – No. This is a situation where there is clearly the appearance of impropriety since your spouse (and indirectly you) would benefit monetarily from the sale of the property.

**Question** – What if my spouse is willing to act as the real estate agent for the sale of the property in return for the Society reimbursing the costs of the sale (e.g. listing fees, etc.)?

**Answer** – This would depend upon the particular situation and would need to be reviewed by Society Counsel.

**Question** – As a planned giving officer for the Society, I maintain a referral list of attorneys for potential donors. May I include my spouse on this list? What if my spouse will provide the legal services pro bono?

**Answer** – You may not refer potential donors to your spouse unless your spouse will provide the legal services pro bono. Otherwise, there is an appearance of impropriety since your spouse (and indirectly you) would benefit monetarily from the referral. Obviously since your spouse would be in this case representing the donor pro bono, the fact of the relationship would have to be disclosed to the donor, consistent with the ethical canons of the local jurisdiction.

**Question** – My brother owns a sign company. I was asked by the income development director to see if I could get them a good price on the signs for an event and the signs were purchased from my brother's sign company by ACS. Do I need to disclose the relationship?

**Answer** – Yes. If any of your affiliated persons provide services or property to ACS, the transaction must be disclosed. Purchase of services and property from any affiliated person should be approved by Society Counsel and senior management prior to entering into the purchase. If a transaction has occurred since the last Conflict of Interest Disclosure Statement, you should submit an updated Conflict of Interest Disclosure Statement to Society Counsel.

**Frequently Asked Questions related to transactions that may lead to the imposition of “Intermediate Sanctions” by the IRS<sup>1</sup>**

**Question** – What are the Intermediate Sanctions rules and how do they apply to the Society?

**Answer** – “Intermediate Sanctions” are a form of excise tax (i.e., penalty) that the IRS assesses in the case of certain transactions, known as “excess benefit transactions,” between the Society and certain individuals (or their controlled entities), known as “disqualified persons.” Only the few influential persons within our organization are covered by these rules when they receive benefits, such as compensation, fringe benefits, or contract payments. The terms “excess benefit transaction” and “disqualified person” are defined in the Internal Revenue Code. For purposes of the Intermediate Sanctions rules, a “disqualified person” is defined generally as someone in a position to exert substantial influence over the affairs of an organization. This would include, for example, voting members of the governing body, and persons holding the positions of president, chief executive officer, chief operating officer, treasurer and chief financial officer, or positions of similar influence. A disqualified person also includes certain family members of a disqualified person and entities of which a disqualified person owns a 35% or greater interest.

An “excess benefit transaction” is a transaction in which an economic benefit is provided by the Society, directly or indirectly, to or for the use of a disqualified person, and the value of the economic benefit provided by the Society exceeds the value of the consideration received by the Society. To determine if an excess benefit transaction has occurred, the review of the transaction in question must take into account all consideration and benefits exchanged between or among a disqualified person and the Society and any of its affiliates. In the case of an excess benefit transaction, the general rule for the valuation of property, including the right to use property, is fair market value. For purposes of the Intermediate Sanctions rules, fair market value is defined as the price at which property, or the right to use property, would change hands between a willing buyer and a willing seller, neither being under any compulsion to engage in the transaction (generally referred to as an arms-length transaction).

**Question** - If I discover a potential violation of the Intermediate Sanctions rules, what should I do?

**Answer** – If you become aware of any potential violations of the Intermediate Sanctions rules in a transaction that involves the Society, you must contact the Office of Corporation Counsel. The Office of Corporation Counsel will be able to give you comprehensive advice on exactly what needs to be done to rectify the situation and how to protect yourself and the Society.

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<sup>1</sup> Note that the vast majority of ACS employees and contractors are not affected by these rules.

**Question** - Is there a threshold or de minimis amount below which the Intermediate Sanctions rules do not apply? In other words, do we only really need to be concerned about very large transactions or dollar amounts?

**Answer** – There is no such threshold or de minimis amount with Intermediate Sanctions. Technically, even one dollar of excess compensation to a disqualified person is defined as an excess benefit transaction subject to the Intermediate Sanctions excise tax. While the IRS, upon audit, might choose to focus on larger transactions, as a matter of policy the Society and its associates should avoid violating these rules regardless of the amount involved.

**Question** - What is the statute of limitations for violations of the Intermediate Sanctions rules?

**Answer** – The general period in which the IRS could assess an Intermediate Sanctions excise tax would be three years from the date the transaction occurred. For purposes of the Intermediate Sanctions rules, an excess benefit transaction occurs on the date the disqualified person is deemed to receive the economic benefit from the Society under federal income tax principles. Certain exceptions to this general rule, including the failure to disclose the transaction on a timely filed return, could double the statute of limitations to six years or even eliminate the statute of limitations altogether. Any concerns regarding a potential excess benefit transaction should be discussed with one of the Society experts identified by the Office of Corporation Counsel. These experts can help you address all relevant questions including the statute of limitations applicable to your situation.

**Question** - Does the Society have a list of potential disqualified persons that I can refer to when approving contracts or other transactions that might become excess benefit transactions?

**Answer** – Because the ultimate determination of whether someone is a disqualified person depends on a factual analysis related to the degree of influence that person may exercise over the affairs of an organization, the Society can not maintain a comprehensive list of potential “disqualified persons”. You will need to make the necessary inquiries of parties involved in any potential “excess benefit transaction” to determine if any of them may meet the definition of a “disqualified person.”

**Question** - If I am involved in an Intermediate Sanctions violation and assessed an excise tax, does that become public information?

**Answer** –Yes, the IRS requires full disclosure on the Society’s annual Federal Form 990, Return of Organization Exempt from Income Tax, of the details of any excess benefit transactions which involve the Society. This includes listing the names of any disqualified persons involved in the transactions. The Federal Form 990 is a public

document available for inspection by anyone. The Society's Form 990 is regularly reviewed by the local media looking for potential stories and is available on the internet.

**Question** - A high level employee has chosen to purchase a valuable Society asset. The employee plans to complete the purchase using payroll deductions. Does this give rise to a potential excess benefit transaction under the Intermediate Sanctions rules?

**Answer** – The transaction could give rise to a potential excess benefit transaction if the employee is not charged interest because the transaction is tantamount to an interest free loan. To determine if disclosure and penalties apply, you will need to determine if the employee would be considered a disqualified person under the IRS definition. Some employees will meet the definition because of the office they hold (e.g. CEO or CFO). Others meet the definition based on facts and circumstances that establish their ability to exercise substantial influence over the operations and/or finances of the Society.

**Question** - A relative of a high level employee is receiving payments from the Society for consulting services. Does this qualify as a potential excess benefit transaction under the Intermediate Sanctions rules?

**Answer** – You will need to determine if the employee is a disqualified person. If the employee holds an office with the Society that makes the staff member an “automatic” disqualified individual, the payments must be reviewed for reasonableness and documentation to that effect retained for at least the extended (6 year) statute of limitations period. If the employee is not an "automatic" disqualified person, you need to contact the Office of Corporation Counsel for a facts and circumstances review.

**Question** – The Society is making payments to a relative of a member of the Board for consulting services. Does this qualify as a potential excess benefit transaction under the Intermediate Sanctions rules?

**Answer** – A voting member of the Board is an "automatic" disqualified person. So are certain family members of the Board member. If the payments are not reasonable, an excess benefit transaction exists. You should contact the Office of Corporation Counsel for a review of the facts and circumstances including appropriate Audit Committee review/approval and disclosure.