



ONEOHIO RECOVERY FOUNDATION EXCESS BENEFIT TRANSACTION POLICY

I. Purpose and Objectives.

- A. Purpose. The purpose of this Excess Benefit Transaction Policy (“**Excess Benefit Policy**”) is to ensure that the OneOhio Recovery Foundation (the “**Foundation**”) avoids entering into an Excess Benefit Transaction and confirm that any transaction with a Disqualified Person is properly evaluated in advance of its finalization.
- B. Background: Section 4958 of the Internal Revenue Code of 1986, as amended (the “**Code**”) imposes penalty taxes, referred to as “intermediate sanctions” on certain persons who engage in or approve of “excess benefit transactions” with organizations that are tax-exempt under Section 501(c)(3) of the Code. The intermediate sanction rules were enacted to give the Internal Revenue Service a less drastic enforcement tool than the revocation of a tax-exempt organization’s tax-exempt status for violation of the private inurement limitation.
- C. Objectives. This Excess Benefit Policy is designed to affect the following specific objectives:
1. Evaluate transactions with a Disqualified Person in order to detect and prevent Excess Benefit Transactions.
 2. To ensure that the net earnings of the Foundation do not inure to the benefit of any Covered Executive, member of the Board, Officer, or person considered a Disqualified Person.
 3. Identify and track Disqualified Persons.
- D. Definitions.
1. “**Board**” means the board of directors of the Foundation.
 2. “**Covered Executive**” means:
 - i. “**Chief Employed Executive**”: The individual or individuals who have the ultimate responsibility for implementing the decisions of the Foundation or for supervising the management, administration, or operations of the Foundation or managing the finances of the Foundation, including the Foundation’s top management official and top financial official. If the ultimate responsibility resides with two or more individuals who may exercise such responsibility in concert, then each individual should be included. For the avoidance of doubt, the Executive Director, the Chief Financial Officer, and the Chief Executive Officer shall be considered Chief Employed Executives.
 - ii. “**Officer**”: A person elected or appointed to serve as an officer of the Foundation in such officer positions as outlined in the Foundation’s Code of Regulations, including, for the avoidance of doubt, the President and Treasurer.

- iii. **“Key Employee”**: Individuals who are not a Chief Employed Executive or an Officer but who meet all of the following criteria:
 - a. \$150,000 Threshold. The individual receives reportable compensation from the Foundation and all related organizations in excess of \$150,000 for a 12-month period.
 - b. Responsibility Criteria. The individual:
 - i. Has responsibilities, power, or influence over the Foundation as a whole that is similar to that influence of an officer or director;
 - ii. Manages a discrete segment or activity of the Foundation that represents ten (10%) percent or more of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
 - iii. Has or shares authority to control or determine ten (10%) percent or more of the Foundations’ capital expenditures, operating budget, or compensation for employees.
 - c. Top 20 Limitation. The individual is one of the top twenty (2) most highly compensated employees (including all income from the Foundation and any related organizations) for a 12-month period (unless the Board otherwise determines that such individual otherwise should be considered a Key Employee).
- iv. **“Organization Manager”** means a Board member, officer, or person without such title who has responsibilities and authority similar to that of a Board member or officer, such as a member of a committee with delegated authority to act on behalf of the Board.
- 3. **“Disqualified Person”** means any person who is or was in a position to exercise substantial authority over the Foundation’s affairs during the five-year period ending on the date of the Excess Benefit Transaction, including, but not limited to, (i) a Covered Executive, (ii) a Family Member of a Covered Executive, (iii) entities which are at least thirty-five (35%) percent controlled or owned by a Covered Executive or the Family Member of a Covered Executive, (iv) a substantial contributor to the Foundation (i.e., has given more than 2% of the total contributions received by the Foundation during the current and four preceding years), and (v) any other person that the Foundation determines has substantial influence over the affairs of the Foundation based on the facts and circumstances. Notwithstanding the foregoing, no organization that is tax-exempt under Section 501(c)(3) of the Code shall be considered a Disqualified Person in accordance with Code Section 4958 and the Treasury Regulations promulgated thereunder.
- 4. **“Excess Benefit Transaction”** means, as more fully described in Code Section 4958, any transaction in which an economic benefit is provided by the Foundation directly or indirectly to or for the use of any Disqualified Person if the value of the economic benefit exceeds the value of the consideration (including the performance of services) received for providing such benefit and includes, without limitation, (i) a direct or indirect purchase from, sale to,

or compensation of a Disqualified Person from the Foundation; (ii) the direct or indirect payment to a Disqualified Person of unreasonable compensation for services; and (iii) a payment or benefit, directly or indirectly, to a Disqualified Person in a transaction which violates the “private inurement” prohibition under the Code. Examples of Excess Benefit Transactions are set forth on Exhibit 1 attached hereto.

5. “**Family Member**” means a spouse, lineal descendants including children and stepchildren, parents, siblings, and a spouse of any such family member.
 6. “**Intermediate Sanctions**” means a two-tier penalty tax imposed pursuant to Code Section 4958 on any Disqualified Person who receives or benefits from an Excess Benefit Transaction or imposed on an Organization Manager; the first-tier penalty tax imposed on the Disqualified Person is equal to twenty-five (25%) percent of the value of the Excess Benefit Transaction; the second-tier penalty tax equal to two hundred (200%) percent of the Excess Benefit Transaction is imposed only if repayment or other correction of the Excess Benefit Transaction is not made by the Disqualified Person; an Organization Manager who knowingly approves an Excess Benefit Transaction is subject to a tax penalty equal to ten (10%) percent of the Excess Benefit Transaction. Such tax rates are set forth in Code Section 4958 and are subject to change.
- II. **Authority and Approval Procedures.** Prior to engaging in any transaction with a Disqualified Person, the following approvals must occur:
- A. **Board Authority.** The Board shall review and approve each transaction with respect to a Disqualified Person or shall delegate its power to review and approve such transactions to a Board committee, which committee shall then review and approve each such transaction; and
 - B. **Approving Body Authority.** An approving body of individuals (i.e., the Board or a Board committee) shall review and approve any transaction with respect to a Disqualified Person. The approval of such transaction shall be structured in compliance with the below requirements with the intent of meeting the “rebuttable presumption” standards set forth in Code Section 4958 and the Treasury Regulations promulgated thereunder. In furtherance thereof, the Foundation shall adhere to the following requirements (the “**Rebuttable Presumption Documentation Requirements**”):
 1. The compensation arrangement or transaction with a Disqualified Person must be approved in advance by the Board (or if applicable, a Board committee) composed of members who do not have a conflict of interest and are entirely independent of the Disqualified Person involved in the transaction in question;
 - i. The Board (or, if applicable, a Board committee) must adhere to the Foundation’s Conflict of Interest Policy.
 - ii. Notwithstanding anything to the contrary in the Conflict of Interest Policy, although the Disqualified Person may be available to answer questions, the Disqualified Person must not be present during the debate and voting on the transaction or compensation arrangement.

2. Such approval is made in reliance upon appropriate data as to comparability; and
 - i. The Foundation must obtain and rely on data that supports the reasonableness and comparability of the transaction. The data must be sufficient, given the knowledge and expertise of the Board (or, if applicable, the Board committee) for the Board (or committee) to determine that the compensation is reasonable or the transaction is at fair market value.
 - ii. The Foundation shall gather data with respect to compensation as set forth in the Foundation's Executive Compensation Policy.
 - iii. The Foundation shall obtain an independent appraisal with respect to any property transactions or other transactions that may be considered Excess Benefit Transactions.
3. The approving body shall fully, adequately and concurrently document (in its minutes) its evaluation of and determination on the transaction in question.
 - i. Such documentation must include:
 - a. The terms of the transaction that was approved and the date it was approved;
 - b. The members of the Board (or, if applicable, a Board committee) who were present during debate on the transaction or arrangement and who voted on it;
 - c. The comparability data obtained and relied upon by the Board (or, if applicable, a Board committee) and how the data was obtained;
 - d. The actions taken with respect to consideration of the transaction by anyone who is otherwise a member of the Board (or, if applicable, a Board committee) but had a conflict of interest with respect to the transaction or arrangement; and
 - e. If the Board (or, if applicable, the Board committee) determines that the compensation or fair market value is higher or lower than the comparability data, it must record the basis for this decision.
 - ii. Such documentation (which will be the minutes of the meeting of the Board, or committee if applicable), must be prepared before the later of 60 days after the final action was taken or the next meeting of the Board (or the committee, if applicable). The Board (or the committee if applicable) must also review and approve the minutes as accurate and complete promptly.
4. The Rebuttable Presumption Checklist for Compensation (as published by the Internal Revenue Service in An Introduction to IRC 4958 (Intermediate Sanctions), 2002 EO CPE Text) is set forth on Exhibit 2 hereto and the Rebuttable Presumption Checklist for Property (from the same publication) is

set forth on Exhibit 3 hereto to provide guidance with respect to the Rebuttable Presumption Documentation Requirements.

III. Protective Procedures.

- A. Process. To ensure that the Foundation takes all steps to avoid an Excess Benefit Transaction, the Board shall regularly engage in each of the following evaluation measures:
1. Adhere to the Foundation's Conflict of Interest provisions set forth in the Code of Regulations.
 2. The Board, the Compensation Committee, other committees of the Foundation, and any Covered Executive shall be (i) briefed on the necessity to identify potential transactions with Disqualified Persons, and (ii) equipped to take steps to assure that a Disqualified Person will not enter into an Excess Benefit Transaction.
 3. The Board and the Compensation Committee shall abide by the Executive Compensation Policy and this Excess Benefit Policy when evaluating each Covered Executive's total compensation package.
 4. The Board shall maintain a list of current and former directors, officers, employees, Covered Executives, and substantial contributors in order to identify Disqualified Persons.
 5. The Board (or if applicable, a committee) shall assure that any transaction with a Disqualified Person will not be an Excess Benefit Transaction and will be approved pursuant to Section II of this Excess Benefit Policy. The Board (or if applicable, a committee) shall follow the Rebuttable Presumption Documentation Requirements.
 6. If an Excess Benefit Transaction occurs, the Foundation shall require the transaction to be corrected as soon as possible. The correction shall be done in compliance with Code Section 4958 and the Foundation shall take all measures necessary to place the Foundation in a financial position no worse than it was prior to such transaction.
 7. In the event that the Foundation is ever determined to be a private foundation under Code Section 509, the Foundation shall amend and restate this Excess Benefit Policy to instead prohibit self-dealing transactions under the Code.
 8. The Foundation may engage legal counsel, consultants, appraisers or other advisors to assess any potential Excess Benefit Transaction and the reasonableness of such transaction and any other related matters.

EXHIBIT 1

EXAMPLE OF EXCESS BENEFIT TRANSACTIONS

1. A total compensation package paid to the Executive Director that is in excess of industry standards.
2. A loan made to a Disqualified Person at a less than fair market value interest rate.
3. A sale of assets by the Foundation to a Disqualified Person for less than fair market value.
4. The payment of rent to a Disqualified Person at an above fair market value rental rate.
5. The rental of property by the Foundation to a Disqualified Person at a rate below fair market value.
6. The provision of services by the Foundation to a Disqualified Person with a greater benefit than can be derived at an arm's length transaction.

EXHIBIT 2

REBUTTABLE PRESUMPTION CHECKLIST FOR COMPENSATION

(attached)

EXHIBIT 3

REBUTTABLE PRESUMPTION CHECKLIST FOR PROPERTY

(attached)

APPENDIX 2

**REBUTTABLE PRESUMPTION CHECKLIST
COMPENSATION**

(See text for definitions of terms in *italics*.)

1. *Applicable tax-exempt organization:* _____

2. *Disqualified person:*
Name: _____
Title / Position Description: _____

3. Terms of compensation arrangement:
Salary: _____
Bonus: _____
Deferred compensation: _____
Fringe benefits (excluding IRC 132 fringes and expense reimbursements under an accountable plan):

Liability insurance premiums: _____
Foregone interest on loans: _____
Other: _____

4. Name of *authorized body*: _____

5. Date *authorized body* approved compensation arrangement: _____

6. Members of *authorized body* on date of approval:
A. _____
B. _____
C. _____
D. _____
E. _____

7. Titles / Positions in *applicable tax-exempt organization*:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

8. Background (education, experience, etc.):

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

9. *Conflict of interest* as to compensation arrangement:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

10. Comparable Data

- Compensation paid by similar organizations for functionally comparable positions: _____

- Availability of similar services in geographic area of *applicable tax-exempt organization*: _____

- Current compensation surveys compiled by independent firms: _____

- Actual written offers from similar institutions: _____

- If *applicable tax-exempt organization* is a *small organization*, compensation data paid by 3 comparable organizations in similar communities for similar services:
 - 1. _____
 - 2. _____
 - 3. _____

11. Documentation

Description of records: _____

Date records were prepared: _____

Date records were approved by *authorized body*: _____

Per records:

- Terms of transaction approved: _____

- Date reviewed and approved by *authorized body* as reasonable, accurate and complete: _____
- Members of *authorized body* present during debate:
 - A. _____
 - B. _____
 - C. _____
 - D. _____
 - E. _____
- Members of *authorized body* who voted on transaction:
 - A. _____
 - B. _____
 - C. _____
 - D. _____
 - E. _____
- Description of comparability data obtained and relied on by *authorized body*:

- Description of how comparability data was obtained:

- Description of any actions taken as to consideration of transaction by member of *authorized body* who had a *conflict of interest*: _____

- If value determined differs from comparability data, basis for determination:

12. For a non-fixed payment subject to a cap:

- Date authorized body obtained comparability data that a fixed payment would be reasonable compensation: _____
- Amount of such fixed payment: _____
- Maximum amount payable under contract (both fixed and non-fixed payments):

APPENDIX 3

**REBUTTABLE PRESUMPTION CHECKLIST
PROPERTY**

(See text for definitions of terms in *italics*.)

1. *Applicable tax-exempt organization*: _____

2. *Disqualified person*:

Name: _____

Title / Position Description: _____

3. Property to be transferred or used:

Description: _____

Location: _____

4. Name of *authorized body*: _____

5. Date *authorized body* approved property transfer:

Members of *authorized body* on date of approval:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

7. Titles / Positions in *applicable tax-exempt organization*:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

8. Background (education, experience, etc.):

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

9. Conflict of interest as to property transfer:

- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

10. Comparable Data – Appraisals

- Appraiser(s) name and address:

- Appraiser(s) qualifications:

- Date(s) of appraisal(s):

- Fair market value per appraisal(s):

- Appraisal method(s) used (e.g., sales comparison, income analysis, replacement cost, etc.):

11. Comparable Data – Offers received from open and competitive bidding:

12. Documentation

Description of records: _____

Date records were prepared: _____

Date records were approved by *authorized body*: _____

Per records:

- Terms of transaction approved: _____

- Date reviewed and approved by *authorized body* as reasonable, accurate and complete: _____
- Members of *authorized body* present during debate:
 - A. _____
 - B. _____
 - C. _____
 - D. _____
 - E. _____
- Members of *authorized body* who voted on transaction:
 - A. _____
 - B. _____
 - C. _____
 - D. _____
 - E. _____
- Description of comparability data obtained and relied on by *authorized body*:

- Description of how comparability data was obtained: _____

- Description of any actions taken as to consideration of transaction by member of *authorized body* who had a *conflict of interest*: _____

- If value determined differs from comparability data, basis for determination:

