

2005

Code of Ethics 2005

Bowling Green State University. Administrative Staff Council

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Notes

1. Colored Ink
2. Poor Photocopies
3. Highlighter

X-Sender: mzachar@mailstore.bgsu.edu
X-Mailer: QUALCOMM Windows Eudora Version 6.0.0.22
Date: Wed, 02 Mar 2005 16:36:05 -0500
To: annje@bgnet.bgsu.edu
From: Mary Beth Zachary <mzachar@bgnet.bgsu.edu>
Subject: ethics draft

Interesting,

I immediately have several concerns (actually fairly large concerns) about the draft you shared. here goes.

1. Sec V It appears that we may be losing some "Due Process. I could be wrong, but the language makes it appear that there's a 51%-49% shot. I'd be much more comfortable with a "preponderance" of circumstantial evidence.
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So, you can guess that I think . Yes, we can use an ethics code, but this is an interesting beginning. I hope to god that it will be fixed.

Where in the life of this document

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Code of ethics

accepted principles of right and wrong governing a group

what brought this on?

Overall tone is defensive and negative

Salient points already covered in The Academic Charter

Public Trust

I think of this as administering programs and educating citizens in the best way possible and making the best use of tax dollars

External Constituencies

"We shall treat all visitors to the University with civility and respect." What about each other: students, staff, administration?

The part about the rights of property owners is covered in the Student Code – beer cans in bushes, ripping up flowers, etc. Unless we are going to have a code of how our yards should look.

The last sentence is an entirely separate issue: "Our dealings with all levels of government must be direct, honest, and open. We must never misuse public funds."

Why do these things even need to be repeated in a public document?

Diversity

The danger inherent in creation of a grocery list is that something will be left out

For example in the diversity references only racial and ethnic diversity are listed – where are religious, sexual, handicapped---

Where are the core values such as respect for one another? This is asking you to spy upon your neighbor and accuse her/him

What about academic freedom – are differences of opinion now evil?

"The failure to provide an education with cross cultural experiences and insights will inhibit our graduates from functioning to their full potential in a pluralistic society."

This should be turned around and stated from the positive, not the negative perspective.

Business Officers

Having to state all this about honesty and integrity suggests we do not operate with those two qualities currently.

"If we are involved in such a transaction we must not be *influenced by extraneous matters*; ..." what does that mean exactly?

Record Keeping

Implementation

"The President of the University may issue such directives as the president may deem necessary to implement this code. In each event, a copy of the directive shall be transmitted to the Chair of the Faculty Senate and to the Presidents of the Graduate Student Senate and Undergraduate Student Government." – hey, where are Classified and Administrative Staff Councils?

I though we had shared governance here. Issuing directives with no prior input from the constituent groups gives the president quite a bit of power that is not currently his. What about the BOT?

DRAFT
11/19/2004

**BOWLING GREEN STATE UNIVERSITY
CODE OF ETHICS AND CONDUCT**

I. **PREAMBLE:** It is the policy of Bowling Green State University ("University") to pursue its mission and conduct its academic and business affairs with the highest degree of integrity and honesty and in a manner that is, and appears to be, in full accord with principles of academic excellence, canons of ethical and professional conduct, and all controlling law.

II. **PURPOSE:** The purpose of this University Code of Ethics and Conduct ("Code") is to summarize fundamental principles of ethical conduct that are applicable to all members of the University community. While some of these standards may be detailed in other policy documents having a specific application to a particular circumstance, many other standards have been observed as good practice but have not been previously codified in any one policy statement. This Code summarizes all of these important ethical principles of general application; it is not intended to replace or modify existing written policy statements containing standards tailored to specific circumstances. Those written policy statements containing more detailed standards include, but are not limited to, the following:

does not summarize all
does not include all appropriate documents
some sections do not

- o Bowling Green State University, *Policy on Misconduct in Research*
- o Bowling Green State University, *Conflict of Interest in Sponsored Research*
- o Administrative Staff Handbook, *Conflict of Interest: Research and Consulting, Appendix H*
- o Classified Staff Handbook, *General Rules of Conduct and Code of Ethics*
- o Faculty Handbook, B-II.E: *Employee Responsibilities*
- o Faculty Handbook, B-II.F: *Ethical Responsibilities*
- o Faculty Handbook, B-II.H: *Academic Honesty Policy*
- o Bowling Green State University, *Sponsored Programs and Research, Policies: Frequently Asked Questions*
- o Bowling Green State University, *Fraud Waste and Abuse, Reporting Procedures and Information*
- o *NCAA Constitution and Bylaws*

III. **APPLICABILITY:** This Code is applicable to all members of the University community. For this purpose, the community consists of the students, faculty, staff, and Trustees. Every member of the University community is required to become familiar with and to observe the Code in all respects. In addition, those members of the University community whose actions may be governed by the more detailed written policy statements of the University (as described in Part II) are also expected to become familiar with and to observe those policies to the extent applicable to their status with, or employment by the University.

~~enter about as appropriate~~

IV. **OUR MISSION IMPERATIVE:** Through the provision and interdependence of teaching, learning, scholarship, and scholarship through service, the University has established, and continues to foster, an environment that is grounded in intellectual discovery, community engagement, and multicultural academic and social experiences, while guided in all such pursuits by rational discourse and civility to others. All members of the University community are expected to dedicate their service to, participation in, and administration of University programs and activities for the protection and ~~furthurance of this imperative.~~ *forward their service*

*Promoti
Support*

V. **STANDARD OF CONDUCT:** All members of the University community shall observe the following principles: ~~of ethical conduct and avoid any situation that is, or that reasonably appears to be, a violation of any such principle.~~

A violation of these standards will be established if the relevant record of inquiry establishes that it was more likely than not that the violation occurred. The burden of that demonstration will rest with the authority making the decision. Unless the accused admits culpability, no such decision shall be rendered in the absence of an inquiry that allows the accused a meaningful opportunity to respond to the allegations.

VI. **PRINCIPLES OF ETHICAL CONDUCT:** Each member of the University community shall observe the following principles of ethical conduct:

a. **Public Trust:** We must act in a way to inspire public confidence in the honesty and integrity of our actions. Any violation of a law, rule, or regulation of the Federal Government, the State of Ohio, the City of Bowling Green, or any other political subdivision where the University transacts its business, violates the public trust and has the potential to discredit the University and impede the furthurance of its mission.

*meaning of
Public
Trust*

*Just
sucks*

b. **Political Activities:** We must recognize and heed the responsibilities that we share as an instrumentality of the State of Ohio. University resources cannot be used in a way that demonstrates or reasonably infers an institutional favoritism to a particular political candidate or party.

*STATE
LAW*

Charter

c. **Business Arrangements:** We must not take an illegal interest in a public contract, including any contract awarded by the University. We shall not abuse the authority, trust, or responsibility of our position, or our status as a member of this community, or otherwise act in a way to unfairly benefit ourselves or others at the expense of the University.

Charter

d. **Conflicts of Interest and Conflicts of Commitment:** We may not take any action, participate in any decision, or approve any action or decision on behalf of the University that will directly result in a personal benefit to ourselves, or any person or interest affiliated with us. We shall avoid circumstances that reasonably infer we acted for personal gain rather than for the best interest of the University. We shall not engage in any activity on or off campus that would prevent us from

Charter

*Vague
having family
illness
breaking leg on vacation
with family
man be*

Public Trust

We are administering programs to best educate citizens and to make best use of public tax dollars

DRAFT
11/19/2004

fulfilling our obligations to the University, whether those obligations arise from our status as a student, a faculty member, a staff member, or a Trustee.

e. **External Constituencies:** We shall treat all visitors to the University with civility and respect. We must also operate our facilities and conduct ourselves, on and off campus, in a way that does not unjustly deprive our community neighbors of enjoying the benefits of their rights as property owners. We must not act in a manner that causes any diminution in the quality of life in our surrounding neighborhoods, or that brings discredit to the University, or to any University constituent group. Our dealings with all levels of government must be direct, honest, and open. We must never misuse public funds.

what about each other?

in whose opinion?

separate issue

f. **Diversity:** We value, as a compelling academic interest of the University, the promotion of ethnic and racial diversity in our programs and activities and in the composition of our student body, our faculty, and our staff. The failure to provide an education with cross cultural experiences and insights will inhibit our graduates from functioning to their full potential in a pluralistic society. Accordingly, we shall advance racial and ethnic diversity in all that we do as a member of this community and we shall consider intolerance to be inimical to our fundamental interests as an institution of higher education.

what about academic freedom

turn sentence from neg to pos

g. **Community Engagement:** We consider community engagement to be a form of scholarship that benefits the scholar, the student, and our neighbors. We shall endeavor to expand the educational experiences of our students to include the greater community so that we may teach through the provision of needed services to others. When providing services to the community, we shall treat our neighbors with respect and dignity. We shall refrain from any action that would have the purpose or effect of disadvantaging or discouraging our students or colleagues who are, or who plan to be, engaged in such efforts as an approved element of academic instruction or research.

State more positively

h. **Research:** It is imperative that our research is conducted in accord with the highest standards of honesty and integrity. We must avoid conduct that invites justifiable criticism dealing with improper financial interests or other influences extraneous to the merits of the effort. When conducting sponsored research, we shall adhere to all relevant legal requirements including the rules and regulations of the Office of Research Integrity of the Public Health Service, the common Federal Policies on Research Misconduct issued by the Office of Science and Technology, and/or such other rules, regulations and policies of the awarding agency or other sponsor that may be applicable.

all academic scholarships is based on critical thinking

SPAR is the umbrella for it

i. **Business Officers:** Anyone who participates in the decision or approval process leading to the expenditure of University funds must act for and in the best interest of the University. Integrity, honesty, and a clearly auditable record of actions taken and decisions made are imperative. If we are involved in such a transaction we must not be influenced by extraneous matters; we must act in a manner

DRAFT
11/19/2004

consistent with all controlling laws and policies; and we must report to the Ethics Officer those who would direct or solicit us to act otherwise. We must avoid personal conflicts of interest and always be alert to the potential for fraud, waste, or abuse. We must never accept or solicit anything of value for ourselves or anyone else in return for exercising our discretion in any particular way. Gratuities, except for minor gifts of nominal value, cannot be accepted if a reasonable person may conclude that the gift is of such a character that our actions could or would be influenced by that gratuity. While dealing with vendors and potential vendors to the University we must always act with professionalism and courtesy and honor the terms and conditions of the University's contractual arrangements.

- j. **Record Keeping:** We must keep all accounting, academic, and business records of the University in an accurate, timely, and complete manner. Financial records, in particular, must be maintained in conformity with all controlling generally accepted accounting principles and such other requirements as may, from time to time, be required by the State of Ohio. Records of material transactions must be capable of being audited so that our actions are "transparent" and readily justifiable when measured by relevant standards and requirements. The intentional or negligent making of a materially false or misleading statement in the records or books of account of the University will not be tolerated. Records that are designated by management, or understood by practice, to be considered confidential must be maintained in the strictest confidence and are not to be disclosed to any party, except as directed by the appropriate University manager or as otherwise required by law.
- k. **Duty to Report:** The President and the members of the President's Cabinet, and such other employees as may be designated by the President, are under an affirmative obligation to report to the Ethics Officer any conduct that they reasonably believe may give rise to a violation of this Code of Ethics and Conduct.
- l. **Misuse of University Resources:** All resources of the University must be used for the purposes for which they were intended. We may not improperly convert for our own personal use, or for the use of another, any property of the University. We may not provide someone an advantage for obtaining or accessing University property that is not based on merit and otherwise in accord with all controlling laws, rules, regulations, and policies.
- m. **Non-Retaliation:** It is a violation of this Code for anyone to retaliate against a member of the University community who, in good faith, has alleged a violation of this Code. Similarly, it is also a violation of the Code for anyone to retaliate against an individual who has participated in an investigation conducted under the Code.

DRAFT
11/19/2004

VII. **ETHICS OFFICER:** The University's Ethics Officer shall be _____ [position title].

VIII. **IMPLEMENTATION:** The President of the University may issue such directives as the President may deem necessary to implement this Code. In each such event, a copy of the directive shall be transmitted to the Chair of the Faculty Senate and to the Presidents of the Graduate Student Senate and Undergraduate Student Government.

The Ethics Officer shall make inquiry and investigate allegations of non-compliance with the Code. In lieu of, or in the course of that investigation, the Ethics Officer may refer a matter to another Office that has specific jurisdiction of the particular subject matter of the allegation under one of the specific policies described in Part II of the Code. No one is to abuse the Code as an alternative mechanism to avoid application of existing processes attended to those specific policies.

Inquiries and investigations that may involve the Ethics Officer, the President, or a member of the Board of Trustees shall be referred to the Audit Committee of the Board of Trustees for such action as the Committee may deem appropriate.

Members of the University community are expected to cooperate fully with all inquiries and investigations conducted under the Code.

IX. **AMENDMENTS:** This Code of Ethics and Conduct may be amended only by action of the Board of Trustees of the University.

Shirley legal requirements
F-EO is appropriate
reporting process
shirts to Ethics office
who may refer to
Equity & Diversity

① Where did this come from?
the overall tone is defensive and negative

② Salient points already covered in chapter

Tom
Gunn Counsel
Implementation

X-Sender: abowers@mailstore.bgsu.edu
X-Mailer: QUALCOMM Windows Eudora Version 6.0.0.22
Date: Wed, 23 Mar 2005 09:03:26 -0500
To: annje@bgnet.bgsu.edu
From: Ann Bowers <abowers@bgnet.bgsu.edu>
Subject: ethics

Interesting and scary reading.

First, in my humble opinion this is a political document meant to ease the minds of our taxpayers and legislators that we are not all evil people misusing their hard earned money. It seems to me that we already have a code of ethics and enough policies and procedures to keep us on the straight and narrow path forever.

So my first question is why this and why now and I don't think the purpose section answers this...but that may be one of those rhetorical questions that should not be asked.

Here are specifics:

1. If this is meant for students, why is not the Student Code listed in the long list on page one.
2. You are correct that the language is so proscriptive that I feel after reading this that I must be guilty of something.
It should be more affirmative.
3. Under Standard of Conduct...second paragraph. This is convoluted, vague and terrible and very scary language.
What is the relevant record of inquiry? Who is meant by authority? And what is meant by "meaningful?"
4. The other word that is used several times that I do not like is "reasonable." Is this my definition of reasonable or my supervisors or the president or the ethics officer. And speaking of ethics officer....this seems to smack to me of authority running rampant....why do we need an ethics officer....and what type of person would want this job?
5. You are correct under Records Keeping...the only way--if this document survives and is approved--that it can be followed is if the university provides resources and authority for records management...you can no longer do it alone and Linda has got to deal with this...if you remain with the responsibility for records management then you need assistance as if this is approved and people actually read it....you will be receiving many calls from people about what this means.

X-Sender: mzachar@mailstore.bgsu.edu
X-Mailer: QUALCOMM Windows Eudora Version 6.0.0.22
Date: Thu, 03 Mar 2005 07:45:33 -0500
To: "Ann B. Jenks" <annje@bgnet.bgsu.edu>
From: Mary Beth Zachary <mzachar@bgnet.bgsu.edu>
Subject: Re: ethics draft

Great.

I shared the draft with Bonna, too. Hope you don't mind. I'll be over at 2:30 for the HR presentation.

mbz

At 07:23 AM 3/3/2005, you wrote:

Thank you. Joe passed this out at Exec on Tuesday and I thought you should see it. He said we have to much on the agenda for today's ASC meeting to address it, but perhaps in April. I have asked Marilyn Levinson to attend the ULC time with the candidate today and I will go to ASC.

At 04:36 PM 3/2/2005, you wrote:

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TO: President Ribeau
FROM: Tom Trimboli
FYI

washingtonpost.com

Fannie Mae Agrees to Put in New Controls

The Associated Press
Tuesday, March 8, 2005; 2:53 PM

WASHINGTON - In a second accord with federal regulators, embattled Fannie Mae has agreed to set up new policies to prevent faulty accounting, split its chairman and CEO position into two jobs and create a new office to hear complaints from company employees.

The biggest U.S. buyer of home mortgages announced an agreement Tuesday with the Office of Federal Housing Enterprise Oversight, which supervises Fannie Mae and has been investigating its accounting.

OFHEO Director Armando Falcon said in a statement, "We must put in place all necessary reforms, not just to correct the problems of the past, but to also safeguard against problems emerging in the future."

Fannie Mae Chairman Stephen Ashley voiced support for the pact, saying the company was committed to its terms "as we continue the process of completing the restatement and re-audit of our prior financial statements."

OFHEO last year found serious accounting problems at the government-sponsored company as well as a pervasive pattern of earnings manipulation and lax internal controls. The Securities and Exchange Commission ordered Fannie Mae in December to restate its earnings back to 2001, a correction estimated at \$9 billion. The company's chief executive and chief financial officer were forced out by the board of directors in December.

In late September, after the accounting problems came to light, Fannie Mae agreed under pressure from OFHEO to boost its capital cushion against risk by some \$5 billion, revamp its accounting and tighten its internal controls.

Last month, OFHEO informed Fannie Mae's board of additional problems including accounting for securities and loans, and practices to spread the impact of income and expenses over time. The agency had identified internal control deficiencies at the company "that it believes raise safety and soundness concerns," according to Fannie Mae.

The new agreement, which was signed Monday, calls for the company to take a series of steps to correct inadequacies in internal controls, corporate governance and accounting systems, even as the regulators' investigation continues.

The steps include new policies to prevent the falsification of signatures in accounting ledgers, correcting deficiencies in the company's mortgage-portfolio accounting systems and separating the chairman and CEO jobs - a split that had been resisted by the ousted chief executive, Franklin Raines. The new Office of Compliance and Ethics will review internal complaints and the company's general counsel will report misconduct or suspected misconduct directly to the board.

Fannie Mae and Freddie Mac, its smaller rival in the \$8 trillion home-mortgage market, were created by Congress to pump money into the home-mortgage market. They buy and guarantee repayment of billions of dollars of home loans each year from banks and other lenders, then bundle them into securities that are resold to investors worldwide.

In trading Tuesday afternoon, Fannie Mae shares fell 45 cents to \$57.55 on the New York Stock Exchange. The shares have traded in a 52-week range of \$56.45 to \$79.46.

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Hear Audio Presentations: Upcoming HDS Conference, April 13, 2005

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May 5, 2005

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Summary of Sarbanes-Oxley Act of 2002

Section 3: Commission Rules and Enforcement.

A violation of Rules of the Public Company Accounting Oversight Board ("Board") is treated as a violation of the '34 Act, giving rise to the same penalties that may be imposed for violations of that Act.

Section 101: Establishment; Board Membership.

The Board will have five financially-literate members, appointed for five-year terms. Two of the members must be or have been certified public accountants, and the remaining three must not be and cannot have been CPAs. The Chair may be held by one of the CPA members, provided that he or she has not been engaged as a practicing CPA for five years.

The Board's members will serve on a full-time basis.

No member may, concurrent with service on the Board, "share in any of the profits of, or receive payments from, a public accounting firm," other than "fixed continuing payments, such as retirement payments.

Members of the Board are appointed by the Commission, "after consultation with" the Chairman of the Federal Reserve Board and the Secretary of the Treasury.

Members may be removed by the Commission "for good cause."

Section 101: Establishment; Duties Of The Board.

Section 103: Auditing, Quality Control, And Independence Standards And Rules.

The Board shall:

- (1) register public accounting firms;
- (2) establish, or adopt, by rule, "auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers;"
- (3) conduct inspections of accounting firms;
- (4) conduct investigations and disciplinary proceedings, and impose appropriate sanctions;
- (5) perform such other duties or functions as necessary or appropriate;
- (6) enforce compliance with the Act, the rules of the Board, professional standards, and securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto;
- (7) set the budget and manage the operations of the Board and the staff of the Board.

Auditing standards. The Board would be required to "cooperate on an on-going basis" with designated professional groups of accountants and any advisory groups convened in connection with standard-setting, and although the Board can "to the extent that it determines appropriate" adopt standards proposed by those groups, the Board will have authority to amend, modify, repeal, and reject any standards suggested by the groups. The Board must report on its standard-setting activity to the Commission on an annual basis.

The Board must require registered public accounting firms to "prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any a report, in sufficient detail to support the conclusions reached in such report."

The Board must require a 2nd partner review and approval of audit reports registered accounting firms must adopt quality control standards.

The Board must adopt an audit standard to implement the internal control review require section 404(b). This standard must require the auditor evaluate whether the internal control structure and procedures include records that accurately and fairly reflect the transaction the issuer, provide reasonable assurance that the transactions are recorded in a manner that will permit the preparation of financial statements in accordance with GAAP, and a description of any material weaknesses in the internal controls.

Section 102(a): Mandatory Registration

Section 102(f): Registration And Annual Fees.

Section 109(d): Funding; Annual Accounting Support Fee For The Board.

In order to audit a public company, a public accounting firm must register with the Board. Board shall collect "a registration fee" and "an annual fee" from each registered public accounting firm, in amounts that are "sufficient" to recover the costs of processing and reviewing applications and annual reports.

The Board shall also establish by rule a reasonable "annual accounting support fee" as r be necessary or appropriate to maintain the Board. This fee will be assessed on issuers only.

Section 104: Inspections of Registered Public Accounting Firms

Annual quality reviews (inspections) must be conducted for firms that audit more than 10 issues, all others must be conducted every 3 years. The SEC and/or the Board may orde special inspection of any firm at any time.

Section 105(b)(5): Investigation And Disciplinary Proceedings; Investigations; Use Documents.

Section 105(c)(2): Investigations And Disciplinary Proceedings; Disciplinary Procedures; Public Hearings.

Section 105(c)(4): Investigations And Disciplinary Proceedings; Sanctions.

Section 105(d): Investigations And Disciplinary Proceedings; Reporting of Sanctio

All documents and information prepared or received by the Board shall be "confidential a privileged as an evidentiary matter (and shall not be subject to civil discovery other legal process) in any proceeding in any Federal or State court or administrative agency, . . . unless and until presented in connection with a public proceeding or [otherwise] releasee connection with a disciplinary action. However, all such documents and information can l made available to the SEC, the U.S. Attorney General, and other federal and appropriate state agencies.



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Disciplinary hearings will be closed unless the Board orders that they be public, for good cause, and with the consent of the parties.

Sanctions can be imposed by the Board of a firm if it fails to reasonably supervise any associated person with regard to auditing or quality control standards, or otherwise.

No sanctions report will be made available to the public unless and until stays pending appeal have been lifted.

Section 106: Foreign Public Accounting Firms.

The bill would subject foreign accounting firms who audit a U.S. company to registrations with the Board. This would include foreign firms that perform some audit work, such as in a foreign subsidiary of a U.S. company, that is relied on by the primary auditor.

Section 107(a): Commission Oversight Of The Board; General Oversight Responsibility.

Section 107(b): Rules Of The Board.

Section 107(d): Censure Of The Board And Other Sanctions.

The SEC shall have "oversight and enforcement authority over the Board." The SEC can rule or order, give the Board additional responsibilities. The SEC may require the Board to keep certain records, and it has the power to inspect the Board itself, in the same manner that it can with regard to SROs such as the NASD.

The Board, in its rulemaking process, is to be treated "as if the Board were a 'registered securities association'" - that is, a self-regulatory organization. The Board is required to file proposed rules and proposed rule changes with the SEC. The SEC may approve, reject, amend such rules.

The Board must notify the SEC of pending investigations involving potential violations of securities laws, and coordinate its investigation with the SEC Division of Enforcement as necessary to protect an ongoing SEC investigation.

The SEC may, by order, "censure or impose limitations upon the activities, functions, and operations of the Board" if it finds that the Board has violated the Act or the securities laws or if the Board has failed to ensure the compliance of accounting firms with applicable rules without reasonable justification.

Section 107(c): Commission Review Of Disciplinary Action Taken By The Board.

The Board must notify the SEC when it imposes "any final sanction" on any accounting firm or associated person. The Board's findings and sanctions are subject to review by the SEC.

The SEC may enhance, modify, cancel, reduce, or require remission of such sanction.

Section 108: Accounting Standards.

The SEC is authorized to "recognize, as 'generally accepted'... any accounting principles that are established by a standard-setting body that meets the bill's criteria, which include:

requirements that the body:

- (1) be a private entity;
- (2) be governed by a board of trustees (or equivalent body), the majority of whom are not have not been associated persons with a public accounting firm for the past 2 years;
- (3) be funded in a manner similar to the Board;
- (4) have adopted procedures to ensure prompt consideration of changes to accounting principles by a majority vote;
- (5) consider, when adopting standards, the need to keep them current and the extent to which international convergence of standards is necessary or appropriate.

Section 201: Services Outside The Scope Of Practice Of Auditors; Prohibited Activities.

It shall be "unlawful" for a registered public accounting firm to provide any non-audit service to an issuer contemporaneously with the audit, including: (1) bookkeeping or other service related to the accounting records or financial statements of the audit client; (2) financial information systems design and implementation; (3) appraisal or valuation services, fair opinions, or contribution-in-kind reports; (4) actuarial services; (5) internal audit outsourcing services; (6) management functions or human resources; (7) broker or dealer, investor adviser, or investment banking services; (8) legal services and expert services unrelated to the audit; (9) any other service that the Board determines, by regulation, is impermissible. The Board may, on a case-by-case basis, exempt from these prohibitions any person, issuer, public accounting firm, or transaction, subject to review by the Commission.

It will not be unlawful to provide other non-audit services if they are pre-approved by the audit committee in the following manner. The bill allows an accounting firm to "engage in any non-audit service, including tax services," that is not listed above, only if the activity is pre-approved by the audit committee of the issuer. The audit committee will disclose to investors in periodic reports its decision to pre-approve non-audit services. Statutory insurance company regulatory audits are treated as an audit service, and thus do not require pre-approval.

The pre-approval requirement is waived with respect to the provision of non-audit services for an issuer if the aggregate amount of all such non-audit services provided to the issuer constitutes less than 5 % of the total amount of revenues paid by the issuer to its auditor (calculated on the basis of revenues paid by the issuer during the fiscal year when the non-audit services are performed), such services were not recognized by the issuer at the time of the engagement to be non-audit services; and such services are promptly brought to the attention of the audit committee and approved prior to completion of the audit.

The authority to pre-approve services can be delegated to 1 or more members of the audit committee, but any decision by the delegate must be presented to the full audit committee.

Section 203: Audit Partner Rotation.

The lead audit or coordinating partner and the reviewing partner must rotate off of the audit every 5 years.

Section 204: Auditor Reports to Audit Committees.

The accounting firm must report to the audit committee all "critical accounting policies and practices to be used, all alternative treatments of financial information within [GAAP] that have been discussed with management, all alternatives of the use of such alternative disclosures and treatments, and the treatment preferred" by the firm.



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Section 206: Conflicts of Interest.

The CEO, Controller, CFO, Chief Accounting Officer or person in an equivalent position cannot have been employed by the company's audit firm during the 1-year period preceding the audit.

Section 207: Study of Mandatory Rotation of Registered Public Accountants.

The GAO will do a study on the potential effects of requiring the mandatory rotation of all firms.

Section 209: Consideration by Appropriate State Regulatory Authorities.

State regulators are directed to make an independent determination as to whether the Boards standards shall be applied to small and mid-size non-registered accounting firms

Section 301: Public Company Audit Committees.

Each member of the audit committee shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"Independent" is defined as not receiving, other than for service on the board, any consulting, advisory, or other compensatory fee from the issuer, and as not being an affiliated person of the issuer, or any subsidiary thereof.

The SEC may make exemptions for certain individuals on a case-by-case basis.

The audit committee of an issuer shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer.

The audit committee shall establish procedures for the "receipt, retention, and treatment complaints" received by the issuer regarding accounting, internal controls, and auditing.

Each audit committee shall have the authority to engage independent counsel or other advisors, as it determines necessary to carry out its duties.

Each issuer shall provide appropriate funding to the audit committee.

Section 302: Corporate Responsibility For Financial Reports.

The CEO and CFO of each issuer shall prepare a statement to accompany the audit report to certify the "appropriateness of the financial statements and disclosures contained in the periodic report, and that those financial statements and disclosures fairly present, in all material respects, the operations and financial condition of the issuer." A violation of this section must be knowing and intentional to give rise to liability.

Section 303: Improper Influence on Conduct of Audits

It shall be unlawful for any officer or director of an issuer to take any action to fraudulently influence, coerce, manipulate, or mislead any auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.

Section 304: Forfeiture Of Certain Bonuses And Profits.**Section 305: Officer And Director Bars And Penalties; Equitable Relief.**

If an issuer is required to prepare a restatement due to "material noncompliance" with financial reporting requirements, the chief executive officer and the chief financial officer shall "reimburse the issuer for any bonus or other incentive-based or equity-based compensation received" during the twelve months following the issuance or filing of the restatement compliant document and "any profits realized from the sale of securities of the issuer" during that period.

In any action brought by the SEC for violation of the securities laws, federal courts are authorized to "grant any equitable relief that may be appropriate or necessary for the benefit of investors."

Section 305: Officer And Director Bars And Penalties.

The SEC may issue an order to prohibit, conditionally or unconditionally, permanently or temporarily, any person who has violated section 10(b) of the 1934 Act from acting as an officer or director of an issuer if the SEC has found that such person's conduct "demonstrates unfitness" to serve as an officer or director of any such issuer.

Section 306: Insider Trades During Pension Fund Black-Out Periods Prohibited.

Prohibits the purchase or sale of stock by officers and directors and other insiders during blackout periods. Any profits resulting from sales in violation of this section "shall inure to and be recoverable by the issuer." If the issuer fails to bring suit or prosecute diligently, a suit to recover such profit may be instituted by "the owner of any security of the issuer."

Section 401(a): Disclosures In Periodic Reports; Disclosures Required.

Each financial report that is required to be prepared in accordance with GAAP shall "reflect all material correcting adjustments . . . that have been identified by a registered accounting firm . . ."

"Each annual and quarterly financial report . . . shall disclose all material off-balance sheet transactions" and "other relationships" with "unconsolidated entities" that may have a material current or future effect on the financial condition of the issuer.

The SEC shall issue rules providing that pro forma financial information must be presented so as not to "contain an untrue statement" or omit to state a material fact necessary in order to make the pro forma financial information not misleading.



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Section 401 (c): Study and Report on Special Purpose Entities.

SEC shall study off-balance sheet disclosures to determine a) extent of off-balance sheet transactions (including assets, liabilities, leases, losses and the use of special purpose entities); and b) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in transparent fashion and make a report containing recommendations to the Congress.

Section 402(a): Prohibition on Personal Loans to Executives.

Generally, it will be unlawful for an issuer to extend credit to any director or executive officer. Consumer credit companies may make home improvement and consumer credit loans and issue credit cards to its directors and executive officers if it is done in the ordinary course of business on the same terms and conditions made to the general public.

Section 403: Disclosures Of Transactions Involving Management And Principal Stockholders.

Directors, officers, and 10% owner must report designated transactions by the end of the second business day following the day on which the transaction was executed.

Section 404: Management Assessment Of Internal Controls.

Requires each annual report of an issuer to contain an "internal control report", which shall

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the issuer's fiscal year, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

Each issuer's auditor shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this section shall be in accordance with standards for attestation engagements issued or adopted by the Board. An attestation engagement shall not be the subject of a separate engagement.

The language in the report of the Committee which accompanies the bill to explain the legislative intent states, "--- the Committee does not intend that the auditor's evaluation be the subject of a separate engagement or the basis for increased charges or fees."

Directs the SEC to require each issuer to disclose whether it has adopted a code of ethics for its senior financial officers and the contents of that code.

Directs the SEC to revise its regulations concerning prompt disclosure on Form 8-K to require immediate disclosure "of any change in, or waiver of," an issuer's code of ethics.

Section 407: Disclosure of Audit Committee Financial Expert.

The SEC shall issue rules to require issuers to disclose whether at least 1 member of its audit committee is a "financial expert."

Section 409: Real Time Disclosure.

Issuers must disclose information on material changes in the financial condition or operations of the issuer on a rapid and current basis.

Section 501: Treatment of Securities Analysts by Registered securities Association

National Securities Exchanges and registered securities associations must adopt conflict interest rules for research analysts who recommend equities in research reports.

Section 601: SEC Resources and Authority.

SEC appropriations for 2003 are increased to \$776,000,000. \$98 million of the funds shall be used to hire an additional 200 employees to provide enhanced oversight of auditors and audit services required by the Federal securities laws.

Section 602(a): Appearance and Practice Before the Commission.

The SEC may censure any person, or temporarily bar or deny any person the right to appear or practice before the SEC if the person does not possess the requisite qualifications to represent others, lacks character or integrity, or has willfully violated Federal securities laws.

Section 602(c): Study and Report.

SEC is to conduct a study of "securities professionals" (public accountants, public accounting firms, investment bankers, investment advisors, brokers, dealers, attorneys) who have been found to have aided and abetted a violation of Federal securities laws.

Section 602(d): Rules of Professional Responsibility for Attorneys.

The SEC shall establish rules setting minimum standards for professional conduct for attorneys practicing before it.

Section 701: GAO Study and Report Regarding Consolidation of Public Accounting Firms.

The GAO shall conduct a study regarding the consolidation of public accounting firms since 1989, including the present and future impact of the consolidation, and the solutions to any problems discovered.

Title VIII: Corporate and Criminal Fraud Accountability Act of 2002.



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It is a felony to "knowingly" destroy or create documents to "impede, obstruct or influence any existing or contemplated federal investigation.

Auditors are required to maintain "all audit or review work papers" for five years.

The statute of limitations on securities fraud claims is extended to the earlier of five years from the fraud, or two years after the fraud was discovered, from three years and one year respectively.

Employees of issuers and accounting firms are extended "whistleblower protection" that would prohibit the employer from taking certain actions against employees who lawfully disclose private employer information to, among others, parties in a judicial proceeding involving a fraud claim. Whistle blowers are also granted a remedy of special damages and attorney's fees.

A new crime for securities fraud that has penalties of fines and up to 10 years imprisonment.

Title IX: White Collar Crime Penalty Enhancements

Maximum penalty for mail and wire fraud increased from 5 to 10 years.

Creates a crime for tampering with a record or otherwise impeding any official proceeding.

SEC given authority to seek court freeze of extraordinary payments to directors, officers, partners, controlling persons, agents of employees.

US Sentencing Commission to review sentencing guidelines for securities and accounting fraud.

SEC may prohibit anyone convicted of securities fraud from being an officer or director of any publicly traded company.

Financial Statements filed with the SEC must be certified by the CEO and CFO. The certification must state that the financial statements and disclosures fully comply with provisions of the Securities Exchange Act and that they fairly present, in all material respects, the operations and financial condition of the issuer. Maximum penalties for willful and knowing violations of this section are a fine of not more than \$500,000 and/or imprisonment of up to 5 years.

Section 1001: Sense of Congress Regarding Corporate Tax Returns

It is the sense of Congress that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

Section 1102: Tampering With a Record or Otherwise Impeding an Official Proceeding

Makes it a crime for any person to corruptly alter, destroy, mutilate, or conceal any document with the intent to impair the object's integrity or availability for use in an official proceeding or to otherwise obstruct, influence or impede any official proceeding is liable up to 20 years in prison and a fine.

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Section 1103: Temporary Freeze Authority

The SEC is authorized to freeze the payment of an extraordinary payment to any director, officer, partner, controlling person, agent, or employee of a company during an investigation of possible violations of securities laws.

Section 1105: SEC Authority to Prohibit Persons from Serving as Officers or Directors

The SEC may prohibit a person from serving as an officer or director of a public company if the person has committed securities fraud.

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Sarbanes-Oxley: How Will It Affect Nonprofits and Higher Education Institutions?

An Interview with Jack McCarthy and John Mattie

The Sarbanes-Oxley Act was signed into law on July 30, 2002, largely in response to a number of major corporate and accounting scandals. While the Act does not currently apply to non-public companies — including not-for-profit organisations — it establishes new or enhanced standards for corporate accountability. In fact, some commentators believe that colleges, universities and other nonprofit institutions should consider adopting some of these new rules as they look for ways to enhance institutional accountability and responsibility.

But is that the right course for these institutions? And will Sarbanes-Oxley actually have the effect some say it will? To find out, re: Business talked to Jack McCarthy, leader of PricewaterhouseCoopers' National Education and Nonprofit practice, and John Mattie, who leads PwC's Education Advisory Services practice. Here's what they had to say.

re: Business: How are your nonprofit clients responding to the various new changes brought about by Sarbanes-Oxley? The Act mandates a federal oversight system, new guidelines regarding independence, harsh disclosure requirements with criminal penalties for violations, and new restrictions on loans and stock transactions involving corporate insiders.

McCarthy: While it's true that Sarbanes is designed for public registrants — companies registered with the SEC — the fact is, it raises the bar in general. Higher education institutions don't take their fiduciary responsibilities lightly; a university is every bit as complex as a multinational corporation, and their audit committee members take their duties as seriously as if they were sitting on the board of Ford or GM.

When you think about it, colleges are actually in the education business, the housing business, the entertainment business, and the research and health care businesses, among many others. Even without the same rigorous auditor-rotation or certification issues as public concerns, there are many practical changes they should be making.

Mattie: Many nonprofit audit committee members come from the corporate world, so they're accustomed to more stringent rules: meeting four times a year, for instance, and focusing more closely on the financial reports. Bringing their experience to bear here, they're turning a keener eye on internal budget and fundraising reports, cash flow analysis, and understanding how external financial statements align with internal reports.

In a large, complex, global environment like a university, linking responsibility, authority, and accountability presents a particular challenge.

McCarthy: Up until now, many of both the smaller and larger institutions haven't even had separate audit committees, but that's currently changing. They're reacting not merely to Sarbanes but to the current environment as a whole.

Mattie: Larger university audit committees might have someone from the corporate world who is a financial expert as defined by Sarbanes, but the smaller colleges should be bringing more financially literate members onto their committees. Universities have also started focusing their audit committees on reviewing and refining their policies regarding conflicts of interest and offering compensation oversight and approval.

McCarthy: Increased scrutiny of nonaudit services will be the next step. The new U.S. General Accounting Office

(GAO) independence standards proscribe accountants from performing certain nonaudit services. Even before Sarbanes, some audit committees had already started delineating which services independent auditors shouldn't provide, and the process for approving services they did provide.

Mattie: Issues of conflict have always been out there; they're embedded in the IRS rules, among others. In fact, the federal government departments and agencies have actually gone beyond the SEC in certain areas, for example, the GAO regulations regarding auditor independence mentioned above.

re: Business: How are colleges and universities responding to Sarbanes's ban on having external auditors provide public companies with internal audit outsourcing services, broker, dealer, or investment banking services, legal services, and other expert services?

Mattie: As we've said, Sarbanes applies only to public companies (SEC registrants). The GAO independence standards do not allow the external auditor to perform in a managerial capacity. Many nonprofits have recently begun to require audit committee pre-approval of nonaudit services, which is a policy we recommend.

Also, most of the major accounting firms, like PwC, will not provide total internal audit outsourcing as a matter of company policy. Similarly, they do not perform broker, dealer, investment banking, and legal services.

re: Business: Will nonprofits also adopt the requirement of management certification of financial statements?

McCarthy: The CEOs of public companies are required to provide certification to publicly issued financial reports under Sarbanes, but there is clearly nervousness about signing representation letters to auditors. CEOs (presidents) of universities are not required to provide the same kind of certification and it is highly unlikely that the boards of trustees will mandate that their CEOs and CFOs certify to them in the same manner as the public companies.

Mattie: In a large, complex, global environment like a university, linking responsibility, authority, and accountability presents a particular challenge. For decentralized universities to require that their deans or administrative heads certify upstream to the president and provost is just not in the culture. Sarbanes basically assumes the CEO's complete knowledge of the control structure and asks him or her to sign a piece of paper.

Until now, financial reports have been processed with a limited amount of detailed trustee review. That's going to change.

re: Business: Will there be a change in nonprofit reporting that matches Sarbanes's rules for enhancing financial transparency?

McCarthy: Up until now, financial reports have been processed with a limited amount of detailed trustee review. That's going to change. For example, many of our clients have endowments of more than a billion dollars; Sarbanes is going to bring more attention to the composition of these investment portfolios and to the disclosures about them.

There are a number of creative ways universities have gone off-balance-sheet for financing. Some of these pass muster, some don't. Even where disclosure in financial statements isn't required, though, members of boards of trustees, and audit committees in particular, have begun focusing on whether their financial statements are fully and fairly presented.

Audit, finance and investment committees will be examining transactions to make sure that they not only meet accounting standards but also make good business sense, ensuring there's nothing in them that could damage the university's reputation should they suddenly be featured in the *New York Times*.

re: Business: Will your clients adopt other elements of Sarbanes, like mandated periodic partner rotations, reporting on the assessment of internal controls, and disclosures of material off-balance-sheet

obligations?

McCarthy: Sarbanes requires public companies to rotate audit partners after five years. By contrast, those restrictions don't make as much sense for a college or university, where the interactions with auditors are less frequent because there typically are no external quarterly reports or earnings releases. A period of between five and ten years for rotation of partners, certainly not as stringent as five, may be more appropriate. Our firm's current policy is ten years.

**Nonprofits clearly need to
refresh their codes of conduct in
light of Sarbanes, refining them
for senior financial officers.**

Mattie: Nonprofits clearly need to refresh their codes of conduct in light of Sarbanes, refining them for senior financial officers. They also need to study board members' compensation arrangements to ensure that relationships between audit committee members and the nonprofits that employ them are free of conflict.

McCarthy: While Sarbanes may be a reaction to Enron, the fact is, Enron is hardly the only issue shattering the credibility of corporate America. One result is a heightened focus on reviewing such things as the expenses of universities' senior officers. Certainly, nobody presumes university presidents are overcompensated; most of them could make far more in the corporate world. Yet their expenditures are now being examined and reviewed as never before.

Mattie: These aren't new issues. The IRS issued Intermediate Sanction regulations, which require that a committee of the board of trustees approve total compensation packages for senior officers of nonprofits annually. That's just good business practice.

McCarthy: The Federal Office of Management and Budget (OMB) Circular A-133 requires an annual audit be performed for most recipients of federal funds. This is not as broad as the assessment of internal control Sarbanes covers. It requires an assessment of internal controls over financial reporting and the specific programs receiving federal funds.

Mattie: Currently, independent accountants of institutions that receive federal money, whether grant money or financial aid, are required to assess, with the institution, whether the institution is a low- or high-risk auditee, to determine the degree of audit work required to be performed by independent accountants.

McCarthy: Another widespread problem is poor investment performance. The well-endowed institutions in particular rely on a steady stream of income from investments and endowment portfolios to support operations.

At one prominent research institution, for example, endowment and non-student tuition sources are almost double tuition income. At the same time, the cost of delivering higher education, principally compensation for faculty and the cost of technology, has been rising significantly more than the rate of inflation.

Now many institutions are facing budget cuts, so they have tremendous cost pressures. Budget pressures require a better framework for internal control, as the community at large demands more accountability. There's greater scrutiny than ever over what you do with federal money.

Mattie: For large private institutions, reputation is key. Sarbanes has prompted global universities with extensive businesses and large complex investment portfolios to create a control structure that manages risk — reputational and operational — and contains that risk. The paradigm is slightly different for smaller, tuition-dependent liberal arts colleges without high levels of endowment.

Our clients are going to be facing increased pressure as they meet with their trustees and regents as well as with their investment, audit and compensation committees.

Their most significant challenge in the next five years will be to find financial support in a flat or down economy to support programs. There will likely be more pressure on endowments to support operations. The primary issue for both large and small universities, ultimately, is that of creating and sustaining an effective control structure to manage risk.

McCarthy: In a down economy, as pressure on budgets increases, so interestingly does the demand for education. During times of recession, applications to colleges increase as the unemployed elect to reinvest and reinvent themselves.

This isn't so much an issue for top-tier institutions, whose appeal remains strong in good times and bad. In the middle- and lower-tier educational institutions, however, there's a great demand to get back on campus and retool.

Mattie: This is a unique time in education. With the economy's softening comes a greater number of downsized workers returning to school to retrain themselves. In the next five years, there will be more students enrolled in colleges and universities than ever before.

Add to this an influx of research funding from Washington, unlike anything we've seen in recent years, with research funding for bioterrorism and human genomics fueling faculty hiring and facility needs. Managing the various risks of all these developments is the real challenge facing institutions today.

To the extent that board members serving on corporate boards around the country begin to feel the full effect of Sarbanes, its impact will be passed on to the institutions they serve.

re: Business: Are there aspects of Sarbanes that you expect nonprofits to reject?

McCarthy: Our clients are going to be facing increased pressure as they meet with their trustees and regents as well as with their investment, audit and compensation committees. The boards of these premiere institutions are populated with directors from many public companies. To the extent that board members serving on corporate boards around the country begin to feel the full effect of Sarbanes, its impact will be passed on to the institutions they serve.

Mattie: By the spring, there will be considerably more focus on the elements of good business practice that nonprofits should have in place, those they should adopt in the future, and those that simply don't make sense for them. By spring, the SEC also will have released further clarifications and the Public Company Accounting Oversight Board will be in force.

Moreover, corporate trustees will pass on what they've learned to their nonprofit boards. The outlook will shift considerably once those institutions now finishing their year-end audits have time to digest the changes and determine what makes sense for them.

McCarthy: None of these regulations exists in a vacuum. I recently gave a presentation about Sarbanes to the audit committee of one of our university clients. The university audit committee chair listened to me intently, then

dismissed the rules as irrelevant for them. But later, he called me with real concern about how the specific provisions of Sarbanes were going to affect his university. By spring these questions will be in the forefront everywhere.

John Mattie is the National leader for PricewaterhouseCoopers' Education Advisory Services Group (EAS) for the higher education and healthcare industries, which provides business consulting solutions to educational institutions and academic medical centers in the areas of strategy, finance, information technology, operations, and compliance.

John has been a presenter at the EACUBO Annual Meeting on the topic of "New Reporting Standards for Higher Education". He helped write NACUBO's A Handbook on Debt Management for Colleges and Universities, and assisted in the development of PwC's Internal Control Questionnaire and Financial Reporting Checklist for Education Institutions. He recently was the principal author for the Risk Management White Paper published by NACUBO.

Jack McCarthy is PricewaterhouseCoopers' National Education and Nonprofit Practice Leader. Throughout his 34-year career, Jack has served many of the Firm's most prestigious clients in higher education, as well as in the real estate and utilities industries. He currently serves as auditor or business advisor to over 50 higher education institutions and nonprofit organizations. Jack is considered to be one of the leading authorities on technical and business issues affecting colleges and universities.

Jack has been a frequent speaker on accounting and financial reporting issues for higher education and has also co-authored several publications. He is the higher education representative on the AICPA's Government and Not-for-Profit Expert Panel, which is the senior body that oversees all of the AICPA's activities in the industry. Jack also is a member of the American Institute of Certified Public Accountants (AICPA).

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NFP Perspectives

Providing vision and innovation for not-for-profit organizations

Grant Thornton 

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- 2 Meet Frank Kurre: Managing partner of Grant Thornton's U.S. not-for-profit practice.
- 3 Information overload: Successfully achieving business systems modernization
- 3 TaxTopics
Harvey Berger, partner in charge of National not-for-profit tax services

Establishing a moral compass through ethical behavior, values and goals

"I am very sorry to have to report to you today that our organization has uncovered a major embezzlement." Such statements conjure nightmares throughout the not-for-profit industry. But the reality is that risks are inherent in any business.

Establishing solid business ethics, however, can help not-for-profits mitigate debacles that can put organizations into a tailspin.



Kim McCormick is an assurance partner and not-for-profit practice leader with Grant Thornton's San Jose, Calif., office.

"It's more important now than ever that business ethics are reinforced in not-for-profit organizations," says Kim McCormick, assurance partner and not-for-profit practice leader with Grant Thornton's San Jose, Calif., office.

Higher expectations from regulators and donors have made ethics a hot topic in the industry.

"Stakeholders are pressuring organizations to ensure ethical behavior is a core part of their mission, values and actions," she says.

This increased focus on ethics also affects the day-to-day operations of many not-for-profits. "The days of petty cash are disappearing," says Daryl Koehn, Cullen Chair of Business Ethics at the University of St. Thomas in Houston.

There's something to be said for operating in a congenial, informal way, but stricter regulations are causing not-for-

profits to put formal practices into place.

The Sarbanes-Oxley Act (SOX) has been part of this evolution of operational change. Although SOX was created specifically for public companies, many of the law's provisions can be applied to not-for-profit organizations.

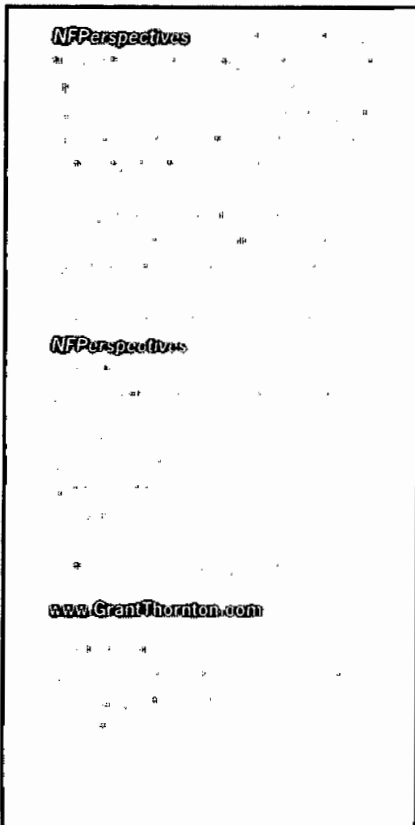
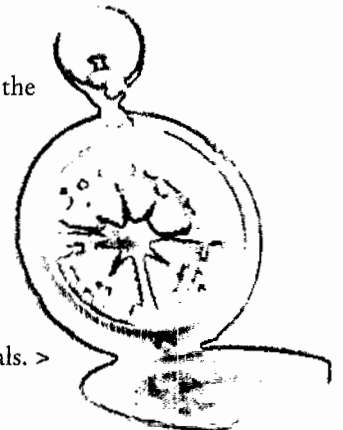
"Creating internal controls, monitoring them and reporting results to the board are good business practices that can lead to a more ethically run business, not-for-profit or otherwise," Koehn says.

The ethical board

To create an ethical culture, tone from the top is essential. Board members especially should be committed to, and passionate about, the mission of the organization. "This commitment from the top will trickle down throughout the organization," says Koehn.

Board members can actively express their commitment to the organization by placing loyalty first with the organization, not management.

Koehn explains that there is a covenant between the not-for-profit, the board and the larger community that is based upon a trust that the organization will ethically serve its mission and goals. >





Deryl Koehn is Co-Chair of Business Ethics at the University of St. Thomas in Houston.

This trust can be challenged, however, when conflicts of interest arise. Koehn provides an example where a board member owns a company and urges the organization to use that company's services.

"The situation is ethical if that director's company offers the best value," she says, "But if it is not the best offer available, there is a conflict of interest here and the pressure from the director should be resisted."

Ethical situations including conflicts of interest are typically covered in the not-for-profit's code of ethics. The code is the primary tool to convey an organization's value message, both internally and externally.

"The code is more than a list of objectives on a piece of paper," says McCormick. "It is a living document that defines the organization's values, ethical culture and environment of integrity."

Producing a code that is consistent with the organization's values and mission statement is more complex than copying another not-for-profit's code and releasing it.

"Not only is that approach in itself unethical, but it doesn't allow you to tailor the code to your organization's specific needs and goals," McCormick says.

Using several templates as examples, however, is a good starting point for organizations to flesh out areas that are relevant to their specific mission.

Once the code of ethics is established, employees should be educated about its meaning and how the code applies to them and their responsibilities.

"Having employees role play hypothetical situations that call for

ethical decisions can reinforce the code's message," says McCormick.

Part of this process is educating employees about possible areas of pitfalls, including conflicts of interest, embezzlement and harassment issues. Codes should also be refreshed annually to reflect any changes in regulation or the organization's mission.

Encouraging an ethical environment

In addition to establishing a code of ethics, there are many other ways organizations can encourage an ethical environment. Koehn provides several examples of best practices.

— *Establish a channel for communicating concerns:* Define a channel through which staff can raise concerns and issues to the board.

— *Communicate the mission:* Inform employees of the organization's purpose and mission to ensure their actions are in line with the objectives of the not-for-profit. "If the mission is to provide the best service value, and the director asks you to use high-priced services, you can refer to the mission to see that behavior is not correct," Koehn explains.

— *Hire well:* Hiring well and conducting background checks can minimize risks. "Do your research," Koehn suggests. "While it does cost some money to check credentials, you run the risk of losing more in the long run if you hire a serial embezzler."

What's the best?

While ethical situations can be complex, some can be resolved with a simple question, concludes McCormick, who recalls a client who was dealing with an ethical issue.

"He looked at me and said, 'I know what my mom would say,' and made the ethical choice." □



NFP perspectives

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- 2 Records-retention policy helps Robin Hood continue to fight poverty
- 3 Keep or toss? Records-retention policies for not-for-profits
- 4 TaxTopics
Harvey Berger, partner in charge of National not-for-profit tax services

Not-for-profits react to Sarbanes-Oxley

While corporate governance may be a relatively new catch phrase in the not-for-profit community, organizations are catching on quickly not only to its meaning, but also related legislation.

According to the Second Annual Grant Thornton National Board Governance Survey for Not-for-Profit Organizations, only 56 percent of organizations were "very" or "somewhat" familiar with the Sarbanes-Oxley Act (SOX) in 2003, but, today, 83 percent of survey respondents are familiar with the act.

The survey, which includes responses from more than 700 not-for-profit entities throughout the United States, also found that these organizations are not only aware of SOX, but almost half (48 percent) have made changes to their corporate governance policies as a result of SOX.

"This increased awareness and action is, no doubt, the result of board members, government entities and other constituencies requiring enhancements in governance, operations and fiscal matters," says Frank Kurre, managing partner of Grant Thornton's National not-for-profit practice.

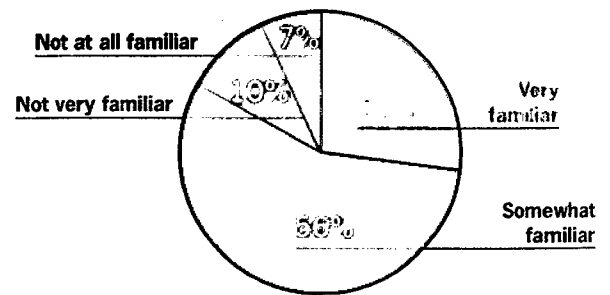
Internal controls scrutinized

Although SOX only currently applies to the governance and internal control policies of public companies, its provisions are trickling into the not-for-profit world.

Since the passage of SOX in 2002, 81 percent of responding organizations

have evaluated their internal controls. Of the 19 percent who have not evaluated their internal controls, 61 percent are planning to review them in the future.

Organizations' familiarity with Sarbanes-Oxley



Not-for-profit organizations have not only evaluated their internal control policies, they are also cognizant of maintaining related documentation. One-third (32 percent) say they maintain a high level of documentation and 51 percent a medium level. Almost two out of 10 (17 percent) cite minimal documentation.

"Internal controls are an integral checks-and-balances structure for all businesses, non-profit and for-profit, alike," says Kurre.

"Organizations that have not put adequate controls in place or have not yet closely reviewed established controls in light of the provisions of Sarbanes-Oxley are leaving a door open for corporate governance risks to impact their organizations." (Continued on page 2) >

Board Governance survey now available!

Read a free copy of the report of the National Board Governance Survey for Not-for-Profit Organizations. Just a few minutes on our Web site at www.grantthornton.com.

NFP perspectives

Not-for-profit organizations are catching on quickly to the meaning and importance of Sarbanes-Oxley (SOX) and related legislation. According to the Second Annual Grant Thornton National Board Governance Survey for Not-for-Profit Organizations, only 56 percent of organizations were "very" or "somewhat" familiar with the Sarbanes-Oxley Act (SOX) in 2003, but, today, 83 percent of survey respondents are familiar with the act.

NFP perspectives

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Policies still lacking

A whistle-blower policy is another governance facet of SOX that is beginning to be adopted by the not-for-profit community, but at a slower pace than might be expected. One-quarter (26 percent) of responding organizations have a whistle-blower policy in place. Of those without such a policy, however, 58 percent are not presently considering one.

“Whistle-blower policies allow not-for-profit organizations to learn about potential fraud regarding internal controls and financial reporting,” says Kurre. “By putting a whistle-blower policy in place, organizations can mitigate risks that could ruin their good name and reputation within the not-for-profit community and the general public.”

While whistle-blower policies are just now gaining ground in the not-for-profit community, more than eight out of 10 (83 percent) survey respondents have a conflict of interest policy. Of those, 85 percent have their board members sign it, 49 percent have executive management sign, and 39 percent have all employees sign the policy.

“Conflict of interest policies are especially important in light of the increased focus on governance issues by the Internal Revenue Service and federal and local governments,” says Kurre. “Requiring all employees and board members to sign a conflict-of-interest policy ensures communication consistency throughout the organization and allows not-for-profits to protect themselves in the event a conflict arises.” □

Records-retention policy helps Robin Hood continue to fight poverty



Michael Cooperman is chief operating officer of Robin Hood in New York City.

Since 1988, Robin Hood has targeted poverty in New York City. By applying sound investment principles to philanthropy, the organization has helped save lives and change fates.

In 2004, Robin Hood applied these same sound principles to its own internal operations and performed an assessment of the organization's internal operating policies and processes. The result was the implementation of a refreshed records-retention policy.

NFPerspectives spoke with Michael

Cooperman, chief operating officer of Robin Hood, to gain insight into how the organization set about the task of updating the records-retention policy and lessons learned along the way.

Q: Why was it important to update your records-retention policies?

A: In 2004, we asked our legal counsel to look at our outside charters and corporate and board committee charters in light of Sarbanes-Oxley. As a result, one of the recommended changes was to update our records-retention policies. We had a policy in place informally, but it needed to be formalized so we could effectively manage our records and data.

Q: What steps did you take to update your policy?

A: We took the rules from our attorneys and worked internally with a team composed of the controller, our information technology manager and me. Going into the process, we also knew that proper electronic backup procedures needed to be integrated into the overall policy. Data retention was always a concern, but updating our records-retention policy caused us to look at backup and retrieval procedures, as well. Now our data-retention policies dovetail with our records-retention policies.

Q: How did you set up your records-retention policy?

A: We implemented a simple and straightforward process that includes two categories: permanent records and those that are retained for seven years. Although there are certain categories under the law that can be kept for three to four years, with advice from Grant Thornton, we decided a two-category policy served our needs best due to its simplicity.

Q: How did you communicate the refreshed policy to the staff?

A: Robin Hood makes grants to other not-for-profits, so our records have always had to be in good order. Updating our records-retention policy really codified already established practices, which the staff was well aware of.

When the new policy was in place in February 2005, the staff was informed about the specifics. Now, everyone knows what to expect from the policy and who is responsible for its ongoing implementation. It was especially important to explain our updated data-retention policies, so the staff had realistic views about what data could be restored, if it was deleted.

Q: What lessons did you take away from the process?

A: It reinforced my belief that not-for-profits need to stay ahead of the curve. In today's business environment, it is not only important for organizations to have a records-retention policy, it is a potential liability if they don't.

The entire process was more seamless than originally thought and now the board and our outside counsel can sleep easier at night knowing the policy is in place. And, it lets us know internally that we have the foundation and architecture in place so we can continue our mission to assist the poor of New York City. □



Keep or toss? Records-retention policies for not-for-profits

Records-retention policies are not new territory for not-for-profits. As a matter of good governance, many not-for-profits have implemented informal records-retention policies. But, with the advent of Sarbanes-Oxley (SOX), more and more not-for-profits are asking, "What records should be kept and what should be tossed?"

To answer that question, organizations must first look at their makeup. "Records-retention policies depend on nature of the organization and factors including donor base, resources, asset mix, and legal and statutory need to be considered," says Charles E. Violand, assurance partner and Southeast Region not-for-profit leader with Grant Thornton's Vienna, Va., office.

"The bottom line is that there's no one-size-fits-all records-retention policy for not-for-profit organizations."

Establishing best practices

Records retention came to the forefront of media and public attention following the Enron scandal where important documents were intentionally destroyed. As a result, SOX was passed into law in 2002. SOX outlines corporate governance provisions for public companies and dictates criminal penalties for hiding and destroying documents.

Although the act is not currently directly applicable to not-for-profits, the records-retention policy defined under SOX is one of several critical policies not-for-profits should consider adopting.

"Establishing a records-retention policy is part of best practices for both for-profit and not-for-profit entities, alike," says Violand. "Regardless of the nature of your business, there has to be prudent policies and procedures in place that dictate processes for capturing,

collecting and maintaining historical data and knowledge."

Beyond establishing best practices, not-for-profits are also required by donors and other funding sources to provide an ongoing trail of expenditures and evidence. And, with an organization's tax-exempt status comes additional scrutiny from the Internal Revenue Service and state and local tax entities.

Implementing a policy

"While records-retention policies vary from organization to organization, there are several steps all not-for-profits should follow when implementing or updating their policy," says Violand, who outlines the following.

LIST. Put together a focus group to list all the internal and external factors that affect records-retention within the organization.

EVALUATE. What needs to be retained? For how long? Look at retention requirements your donor base and funding sources dictate. If you receive federal or state funding, those statutory elements apply, as well. If you obtain donations in California, be sure to consider the laws that apply in that state.

Lay out categories of document retention, which could include:

- Permanent retention for institutional documents such as articles of incorporation, bylaws, licenses, and annual financial statements; and
- Seven-year retention for documents including ledger detail, accounts receivable/payable detail, time sheets, grant documents, committee records and proposals.

When assessing categories, documents related to transactions and assets - including property sales, property development, patents, and trademarks of multiple entities - should also be considered.

Occupancy and storage costs should be discussed at this stage, as well. Costs associated with storage and employee/volunteer time dedicated to retaining documents can add up. To contain costs, the records-retention policy could require electronic storage instead of physical storage.

IMPLEMENT. Categorize documents and store using identified processes. Establish a disposition policy that identifies when documents can be removed, as well.

To ensure accountability, document how items are to be destroyed, by whom, and under what process. This ensures a paper trail of evidence. The timeline to destroy documents depends on the risk factors involved.

INFORM. As with any internal controls-related process, everyone in the organization needs to be informed of the policy. The records-retention policy should be included as part of the organization's personnel booklet and should be reinforced by senior leadership on a recurring basis.

"A records-retention policy shouldn't be looked at as a shield against getting sued," concludes Violand. "It should be viewed as part of prudent business procedures to protect assets and the organization's overall mission." □

For more information on records-retention policies, contact Charles E. Violand at 703.844.7676, or via e-mail at Charles.Violand@gt.com



TaxTopics By Harvey Berger, partner in charge of National not-for-profit tax services

Joint Committee on Taxation releases report on reducing the tax gap

In February 2004, Senators Charles Grassley (R-IA) and Max Baucus (D-MT), the Chairman and Ranking Member of the Senate Finance Committee (SFC), asked the Joint Committee on Taxation (JCT) for suggestions on how to reduce the tax gap.

On Jan. 27, 2005, the JCT released an extensive report containing numerous recommendations for changes to the federal income tax system. The proposals are generally focused on raising revenue, so there is less focus on governance of not-for-profit organizations than there was in the proposals issued by the SFC staff last summer.

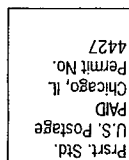
Following is an overview of the major changes proposed by the JCT that will affect organizations.

- Many organizations will have to file voluminous information with the Internal Revenue Service (IRS) every five years to reestablish their exempt status.
- Small organizations not required to file Form 990 will have to file an annual notification with the IRS.

- Severe financial penalties would be imposed on not-for-profit organizations that accommodate tax shelters.
- Form 990-T will have to be publicly disclosed.
- Not-for-profit organizations will have to have an independent certification that they are complying with the unrelated business income tax rules.
- Penalties will increase for violations of the excess benefit (intermediate sanctions) rules and private foundation excise taxes.
- Contributions of clothing and household items will be limited to \$500 per year with no carryover. Deductions for other contributions of property will be limited.

Learn more about the proposed changes

This article lists the major changes proposed by the JCT that will affect not-for-profits organizations. To read more about these proposals, visit Grant Thornton's Web site at www.grantthornton.com/nfptax. ■



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ISSUE TWO

'Sarbanes-Oxley Act' Raises the Bar for Not-For-Profits,

By John Dee

Sarbanes-Oxley Act

Outsourcing IT Programs

Association Directions

Giving to Foundations

Member Lifetime Value

Tips for Staying on Top

At first glance, The Sarbanes-Oxley Act passed by Congress in 2002 only affects publicly-traded companies. It establishes measures to help restore the public's confidence in corporate financial reporting and compliance with applicable laws and regulations. It also holds corporate officers personally accountable for their representation of the corporation to the outside world.

Closer study, however, reveals that The Sarbanes-Oxley Act is also having an effect on private companies and not-for-profits, and that forward looking associations are using the legislation as an opportunity to improve their organizations and become even more responsive to member needs.

THE EFFECT ON NOT-FOR-PROFITS

While the Act specifically targets publicly-traded companies, attorneys and advisors are recommending to their clients in the private and not-for-profit sectors that they comply with Sarbanes-Oxley. In fact, a recent survey by Robert Half Management Services found that nearly 60 percent of CFOs in privately-held companies are already implementing new procedures based on Sarbanes-Oxley regulations.

Why the rush to comply with legislation that doesn't even target you? Good business sense, that's why.

In the year since the legislation was passed, compliance with Sarbanes-Oxley has become viewed as "best practice." Not-for-profit board members are reasoning, "If that level of transparency and scrutiny of financial statements is expected in the corporate world, then it should be standard operating procedure in the private and not-for-profit sectors as well."

There's even some thought that states will begin to pass similar legislation focused on not-for-profits. Associations that make an effort today to improve the transparency of financial reporting and demonstrate compliance with applicable regulations will find it easier to comply with possible new state laws in the future.

AREAS OF IMPACT

Compliance with Sarbanes-Oxley involves five areas within an association. A brief description of each follows.

- Internal Controls

Controls are actually a process affected by an organization's board of directors and management to provide reasonable assurance that objectives are being achieved in the efficiency and effectiveness of operations, reliability of financial reporting, and compliance with laws and regulations.* Management must document and monitor the internal controls and procedures, and provide for independent review and auditor attestation on a periodic basis.

Associations that are too small to develop their own set of controls and procedures can work with a third party,

such as an association management company, to obtain pre-developed internal controls. The third party should itself be accredited to demonstrate its qualifications. Both the American Society of Association Executives (ASAE) and the International Association of Association Management Companies (IAAMC) offer accreditation programs for association management companies.

- Auditor Independence

Conflict is avoided by prohibiting an auditor from performing non-audit services for the association (i.e., bookkeeping, IT design and implementation, etc.) Further, the audit firm partner serving the association should be rotated every five years and should report directly to the audit committee of the board. This level of independence can be expensive for an association—both in dollars and in lost advice from an auditor who also serves as an advisor.

- Audit Committee

The board's audit committee serves as the primary contact with the auditor, and may not include members of the association's management. To maintain its integrity, it must include at least one "financial expert" and none of its members can be compensated by the association for activities outside of the scope of the committee (e.g., banker used by the association.) For added insurance, audit committees may choose to seek their "financial expert" from outside the association's membership.

- CEO and CFO Certification

In addition to making sure the association's internal controls are being implemented and monitored, officers also make sure violations are reported to the auditor and the audit committee. Officers also review the annual report and certify that it contains no material misstatements or omissions.

- Disclosure

Sarbanes-Oxley requires that material changes to the financial position of a publicly-traded company must be disclosed to the shareholders on a "rapid and current basis." While disclosure is less of an issue in the private and not-for-profit sectors, it presents an opportunity for an association by decreasing the risk of material operational and financial problems. It also underscores the need for a code of ethics for officers and the importance of real-time information systems. In the absence of shareholders, an association has to decide which stakeholders it is disclosing to—board of directors, audit committee, membership?

SUMMARY

Compliance with The Sarbanes-Oxley Act is quickly becoming a 'best practice' in the not-for-profit sector. Many associations are using compliance as a method of improving their organizations and becoming even more responsive to their members' needs.

They view compliance as standard operating procedure and are supportive of the changes needed for independent review of internal controls, auditor and audit committee independence, and disclosure.

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John Dee, CPA is the Chief Financial Officer and General Manager of Bostrom Corporation.

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Footnote

* Committee of Sponsoring Organizations of the Treadway Commission.

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WEDNESDAY BUZZ: Senate Explores Tax Abuses Among Nonprofit Organizations

April 6, 2005 12:00 AM

Tax exempt organizations of all types are wittingly and unwittingly being used in tax shelter schemes that cost the government billions of dollars in lost revenue, Mark W. Everson, commissioner of the Internal Revenue Service, told a Senate Finance Committee hearing on charitable reform Tuesday.

Charities and foundations that pay excessive salaries to their executives, donors who write off bogus amounts on their taxes for noncash gifts, and wealthy people who bilk the tax system by using nonprofit organizations as fronts to help pay for their personal expenses came under fire by Senators during the hearing. Senators questioned practices at colleges and universities, tax-exempt hospitals, arts groups, social-service organizations, private foundations, and many other nonprofit organizations.

Sen. Charles R. Grassley (R- IA), chairman of the Finance Committee, called the hearing to discuss ways to strengthen charitable governance and to close tax gaps that some lawmakers claim cost the federal treasury money. This was the committee's second hearing on alleged nonprofit abuses in 10 months.

George K. Yin, chief of staff of Congress's Joint Committee on Taxation, suggested that deductions for certain non-cash donations be capped or limited to the amount the donor paid for the asset. However, Senators from both sides of the aisle expressed concern about the impact of the proposal on charities.

Today's newspapers carry a number of stories on the hearing, including:

Charity Scams Squander Public Trust

USA Today

http://www.usatoday.com/money/companies/management/2005-04-05-nonprofit-usat_x.htm

Lawmaker Vows Crackdown on Charity Tax Abuses

Reuters.com

<http://www.reuters.com/newsArticle.jhtml?type=domesticNews&storyID=8093829>

Official Cites Tax Abuses With Charities

The New York Times (free reg. req.)

<http://www.nytimes.com/2005/04/06/national/06charity.html>

A Sharper Eye On Nonprofits

The Washington Post (free reg. req.)

<http://www.washingtonpost.com/wp-dyn/articles/A28415-2005Apr5.html>

Charities Going Beyond Required Controls to Regain Their Donors' Confidence

The Washington Post (free reg. req.)

<http://www.washingtonpost.com/wp-dyn/articles/A28477-2005Apr5.html>

FEATURES

Feature: Spellings & Boehner Speeches, Minority Status Rep Highlight 87th ACE Meeting

February 25, 2005

Speeches by U.S. Education Secretary Margaret Spellings and Rep. J. Boehner (R-OH) and the debut of this *Minorities in Higher Education Annual Status Report* were among highlights of the 87th Annual American Council on Education Feb. 13-15 at the Marriott Washington Hotel in Washington, D.C. (re

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Senators Are Told of Widespread Tax Abuses by Donors to Colleges and Other Nonprofit Groups

The Chronicle of Higher Education (sub. req.)

<http://chronicle.com/cgi-bin/printable.cgi?>

[article=http://chronicle.com/daily/2005/04/2005040601n.htm](http://chronicle.com/daily/2005/04/2005040601n.htm)

Witnesses appearing at the hearing included:

- Mark Everson, Commissioner Internal Revenue Service, Washington, DC
- George K. Yin, Chief of Staff, Joint Committee on Taxation, Washington, DC
- Leon Panetta, Director, Panetta Institute for Public Policy, Seaside, CA
- Mike Hatch, Attorney General, State of Minnesota, Saint Paul, MN
- Jane Gravelle, Senior Specialist in Economic Policy, Congressional Research Service, Washington, DC
- Richard Johnson, Member, Waller Lansden Dortch and Davis, PLLC, Nashville, TN
- David Kuo, Former Special Assistant to the President and Deputy Director, White House Office of Faith-Based & Community Initiatives, Washington, DC
- Brian Gallagher, President, United Way, Alexandria, VA
- Diana Aviv, President and CEO, Independent Sector, Washington, DC

Witness testimony and a broadcast of the hearing are available on the Senate Finance Committee's web site: <http://finance.senate.gov/sitepages/hearing030505.htm>.

Last Modified: April 6, 2005

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Please send your questions, comments, and suggestions to:

Contact ACE via e-mail

From Tom Trimboli
For your information.

AT THE NON-PROFIT BAR

Bruce D. Collins



and New York Attorney General Eliot Spitzer may not be as well known, but it certainly has rocked the non-profit world.

The result? Thanks to the sheer size of California's economy, we now have a de facto national law governing the corporate governance, fund-raising, executive compensation, audit requirements, accounting standards and more of the non-profit sector. Thus spake Schwarzenegger.

To be sure, the meaning of "doing business in California" will not pull every charity, foundation or unincorporated association in the country into the Act's lair. But it will capture a lot of them because the Act will apply even if a small percentage of a charity's donations come from California. Already big charities are retaining local counsel to figure out how onerous the burden will be and whether they can avoid it altogether. Avoidance would be the much-preferred choice for many because noncompliance could lead to penalties or even revocation of a charity's fundraising registration.

Lockyer v. Spitzer: The Non-Profit Battleground

It seems Lockyer was in a race against the headline-grabbing Spitzer to pass a Sarbanes-Oxley-like law that would clean up the financial shenanigans in the non-profit sector. He succeeded. California's Non-Profit Integrity Act became effective Jan. 1, 2005. Spitzer's own effort is still on the legislative drawing board in Albany, N.Y., perhaps because he was busy putting corporate executives in jail and announcing his candidacy for governor.

Lockyer is the clear winner in his race with Spitzer, but the jury is still out as to whether his haste has made waste. Even after much last-minute watering down in

Sacramento that eliminated especially burdensome reporting requirements on smaller non-profits, the Act remained tough enough that an editorial in the San Jose *Mercury News* called it "the equivalent of a Category 4 hurricane that's been downgraded to a tropical storm," and added, "no longer bad" is not reason enough for Gov. Schwarzenegger to sign [it]."

That the Act became effective only three months after its passage is evidence of its sponsors' desire to make their mark quickly. However, Lockyer has promised to soften the law later (this could have been easily avoided had there not been a race to be

first). Meanwhile, the accounting profession—already booming with new business from SOX—is anticipating an influx of new non-profit clients. But because California is the 800-pound gorilla of the country's state economies, the accountants are getting calls from non-profits in all 50 states. This is because, according to the attorney general's guidance statement, the provisions in the Act also apply to "foreign corporations that do business or hold property in California for charitable purposes."

No doubt the coming months will see a shake-out as lawyers, legislators, regulators and charity executives absorb the implications of California's attempt to do a good thing. The Act's unintended consequences will show themselves and probably spur reform of the reform. One likely outcome is that the high cost of the new audit and reporting requirements on small- and mid-sized non-profits will eat up so many program dollars aimed at feeding the hungry or healing the sick that even the most zealous reformers in Sacramento will back off a bit. Politicians aren't usually happy to be tagged with taking food out of the mouths of babes so that accountants can more easily afford their beachfront retreats.

But things could go in another direction if New York and other states think they've been one-upped by California and decide to pass their own laws to reform the non-profit sector. Such legislative machismo would inevitably lead to greater demands on Congress to sort it all out with a national corporate governance law for non-profits.

That might be a good thing, depending on your regulatory philosophy. Or, California might find itself in the same position regarding non-profits that Texas is now in regarding school textbooks. Because Texas buys the books for all of its public schools, publishers have no choice but to conform their national editions to the Lone Star State's sometimes peculiar take on history, science and everything in between.

Will we have Californization of the non-profit sector? If so, one might ask, what hath California wrought? Ask your lawyer. ◀

**Bruce D. Collins is the corporate vice president and general counsel of C-SPAN.
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X-Sender: colleen@mailstore.bgsu.edu
X-Mailer: QUALCOMM Windows Eudora Version 6.0.0.22
Date: Thu, 26 May 2005 16:54:52 -0400
To: "Ann B. Jenks" <annje@bgnet.bgsu.edu>
From: Colleen Coughlin <colleen@bgnet.bgsu.edu>
Subject: Re: draft response to code of ethics

Hmmm - not an entirely satisfactory response. And it's odd but they make it sound like the due process rights are bad in the handbook and charter and NOT in the Code - it would be better if they added the the word Code to the other three if this is the strategy they really want to take.

It could read "And where charter, handbook or Code of Ethics procedures for ensuring due process are insufficient, we recommend postponing enforcement until the need is met."

Does that make sense to you. Of the record - they're a bunch of wimps (grin). Hey wait a minute - can I say off the record to the Archivist???? (bigger grin).

Have a good holiday weekend!

Colleen

At 07:39 AM 5/26/2005, you wrote:

I just received this from ASC Chair-Elect Lona Leck. It was drafted by the Chairs/Chairs-Elect of Faculty Senate, CSC and ASC.

In my opinion it does not address the serious issues we had with the document such as: absence of due process, the University dictating employee behavior when not at work, vague statements that can be interpreted in any way. The statement says nothing about re-writing or editing it at all.

What do you think?

Ann B. Jenks
Interim Head and University Archivist
Center for Archival Collections
5th Floor Jerome Library
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(419) 372-6936

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Jerome Library, University Libraries
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X-Sender: mzachar@mailstore.bgsu.edu
X-Mailer: QUALCOMM Windows Eudora Version 6.0.0.22
Date: Thu, 26 May 2005 07:53:58 -0400
To: "Ann B. Jenks" <annje@bgnet.bgsu.edu>
From: Mary Beth Zachary <mzachar@bgnet.bgsu.edu>
Subject: Re: draft response to code of ethics

Hi,

I find the statement inadequate as a statement of concern - certainly as we expressed the concerns. I do not trust one individual to write this document. At the very least, we should say that the university council should work with the constituent groups to revise the statement to find a reasonably fashioned document. I find it troubling that we were not involved in any discussions about the scope of or content of such a far-reaching university-wide behaviorally - based document as this.

As reported (somewhere) Sabanes-Oxley said to address boards and ceo's responsibility. In that guise, having university council address a code for the president and BoT would be completely appropriate. To create a document of such scope without SIGNIFICANT input in the content, if not crafting, from all the constituent groups is outside the tradition and common practice of this university. It is imperialistic, at best.

thanks for the look.
mbz

At 07:39 AM 5/26/2005, you wrote:

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Administrative Staff Council 2004 – 2005
Minutes: April 7, 2005
 207 BTSU

Call to Order: Chair Luthman called the meeting to order at precisely 1:30 pm

Members present: Joe Luthman, Lona Leck, Penny Nemitz, Robin Veitch, Wendy Buchanan, Dave Crooks, Nora Cassidy, Mike Ginsburg, Tim Hoepf, Sheila Irving, Steve Kendall, Paul Lopez, Susan Macias, Deb McLean, Teresa McLove, Connie Molnar, Emily Monago, Jeff Nelson, Rich Peper, Diane Regan, Rachel Schaeffer, Larry Spencer

Members Absent: Judy Amend, Gerry Davis, Greg Dickerson, Kim Fleshman, Lawrence Holland, Naomi Lee, Sally Raymont, Deborah Rice, Celeste Robertson

Member Substitutes: Beverly Stearns for Ann Jenks, Colleen Coughlin for Mary Beth Zachary, Brady Gaskins for Rob Cramer and Jill Carr, Flo Klopfenstein for Larry Spencer

Guests: Today's guest is Dr. Linda Dobb, Executive Vice President, who will be answering questions that were sent to her from AS members and will also be providing and update on the People Soft Human Resources conversion.

Approval of Minutes Connie Molnar moved to approve minutes. Rachel Schaeffer seconded. The minutes were approved.

Chairs Report:

The leadership team has represented ASC at several meetings this month, Human Resources (2x), CSC and Faculty Senate Chairs, several times with the Engagement Council and the Compensation Committee. Steve Kendall and Dave Crooks joined Chair-elect Leck and Chair Luthman at the last Compensation Committee meeting. Chair Luthman represented ASC during the April 1st Board of Trustees meeting.

ASC will soon have a room in South Hall in which to store reports, secretary's minutes and such. We may also be able to use the room for small committee meetings.

Past Chairs and Chair-Elects have felt that they have had too many commitments. We feel it is time to streamline the positions, with this in mind there are three changes being made:

1. Kim Fleshman, who is running for ASC Secretary will be sending out the occasional messages to our listproc
2. Penny Nemitz, will be the first ASC Treasurer, thus relieving the Chair-elect of this responsibility
3. Robin Veitch will assume the position of Ombudsman until at least October. It was felt that past chairs are particularly knowledgeable about HR policies and ASC handbook principles

Chair Luthman added a reminder that the Treasurer and Ombudsman position are not in the ASC Handbook, next year these positions would need to be added to the handbook.

At our May meeting, General Counsel Tom Trimboli will discuss the draft of BGSU Code of Ethics and Conduct.

Chair Elect Report: The Engaged University Council will be interviewing several staff members using a sample grid designed to measure engagement activities and outcomes. The ASC website has been getting anywhere from 200-400 hits a week. Next week three separate quick time movies, including the JAQ seminar will be on the website. Blackboard has had 64 different visitors. Most of these visitors were non ASC members. The Draft Code of Ethics is presently on Blackboard for all Administrative Staff members to read.

Code of Ethics from Trustees 2-3 yrs ago

1. code of Ethics for Biz OFFICES
used NAACBO code of ethics
trustees wanted something broader beyond business OFFICES
2. Ohio Ethics Commission
Summary of Statutes
trustees wanted summary, definition of
what BB applies to so applied to
They shall not
3. more toward unified message - generic for all
constituent groups
not designed to be specific
not designed to supplant other policies in place
only way it can be implemented is through procedure
in place

Subsequent delay

1 doc - who are you as institution
what do you stand for

someone is found "more likely than not" to have violated
not circumstantial more than 51% likely
of those regular grievance procedures

Scholarship: There were 37 applications and the committee has decided to interview 8 students.

We have \$3100 to give out this year with one being a \$1000 scholarship

Faculty Senate: no report

Classified Staff: Classified Staff awards banquet is on April 13th at 9:30 in the Union.

Good of the Order:

Kendall- thanks to Joe for his presentation to the Compensation Committee and Lona for the power point presentation. The power point saved time so that we could present our information in a logical, structured way. Lona put Robert Zhang's information in a focused, concise manner, so we had more control of the meeting.

Macias: Traveling visits are going on in Columbus and Cleveland. The Cleveland was closed because of the amount of people coming. There are already over 10,000 applications for fall

Lopez: April 20th at 11:00 there will be a live tour of the Marine Biology Lab. Along with this is a taped interview of President Ribeau at the beginning. The tape will be shown in 18 countries.

Leck: April 22nd at 7:30pm and April 23rd at 1:30 pm and 7:30 pm at the Ice Arena is the Ice Show. Also Congratulations to Connie Molnar who qualified for the National Ballroom Dancing Contest at the Midwest Region. She came in 1st and 3rd

The Library Administrative Staff members met to review the Draft Code of Ethics. They developed a document in response to the draft which will be put on Blackboard for everyone to read more thoroughly. The Library staff interprets the Draft Code of Ethics to govern what you do at the University, what you do away from work, what it is you are perceived to be doing.

Next Meeting: Next meeting will be May 5, at 1:30 p.m. in 207 BTSU

Adjournment: Dave Crooks made a motion to adjourn. Seconded by Diane Regan. The meeting adjourned at 3:30 p.m.

Submitted by: Penny Nemitz ASC Secretary

Diversity issues -

Need end ethnic based on Mich. activism, action case
in recruiting students Faculty staff

Separate from discrimination issues

discrimination working in AS hand book
out of date, needs to be rewritten

Directives - Trimboli left out Admin & Class Staff

audit committee of BOT will address issues
w/ Pres and Board

~~audit~~ ethics officer - controversy

Coordinate - one person to go to

ethics violation

due process?

allow employees to have several avenues to pursue

NEW public records bill

more requirements to retain / produce records

Standards proc. don't change

notice to both parties ensure accused

statement of faculty

Equity & Div. Gen Council

make message make decision

Ethics and Legal Issues

“Appraisal and the FBI Files Case: For Whom Do Archivists Retain Records?” by Susan Steinwall, *American Archivist*, Vol. 49 (1), Winter 1986

“The Implications of *Armstrong v. Executive of the President* for the Archival Management of Electronic Records,” by David Bearman, *American Archivist*, Vol. 56 (4), Fall 1993

“Freeing the Dead Sea Scrolls: A Question of Access,” by Sara Hodson, *American Archivist*, Vol. 56 (4), Fall 1993

Society of American Archivists, “Code of Ethics for Archivists,”

http://www.archivists.org/governance/handbook/app_ethics.asp

Handouts on copyright

Outreach

Keeping Archives

Chapter 11

Pages 306-349

*Assignment: Develop (on paper) exhibit or public program for own archives
Develop content for online newsletter for own archives*

48
Clear what you can and can't do

So broad you can't ^{even} give the appearance
of having acted inappropriately

ZAF

Ethics officer - doc

controls free speech

RECORD OF INQUIRY

ALLEGED VIOLATION OF DUE PROCESS

grievance process how does this relate to
parent authority of this position ^{not} articulated in any way
nothing provides the

no level or degree of violation any

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**ETHICS IS
EVERYBODY'S BUSINESS**



The Ohio Ethics Commission

"No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity."

- James Madison in *The Federalist*

Published by

The Ohio Ethics Commission

Merom Brachman, Chair
Sarah M. Brown, Vice Chair
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Dr. Robert Browning
Prof. Ann Marie Tracey

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THE OHIO ETHICS LAW

The Ohio Ethics Law was originally enacted in 1973 to promote confidence in government. The law:

- establishes a code of conduct making it illegal for state and local public officials and employees to take official action if they have certain conflicts of interest;
- provides for the filing of financial disclosure statements by many public officials, and for public inspection of those statements;
- establishes procedures by which citizens may participate in the enforcement of the

- law; and
- creates three agencies to administer the law:
 - The Ohio Ethics Commission;
 - The Joint Legislative Ethics Committee; and
 - The Supreme Court Board of Commissioners on Grievances and Discipline.

This Ethics Commission publication is designed to help you understand the law. Whether you are a private citizen, public official, public employee, or candidate for public office, the pamphlet will explain how the Ethics Law applies to you.

This pamphlet is designed to advise the reader of general types of conduct prohibited by the Ohio Ethics Law and related statutes and is not intended to restate the specific restrictions of state statute. You are encouraged to contact the Ethics Commission with any questions you may have after reading this publication.

THE OHIO ETHICS COMMISSION

The Ohio Ethics Commission is an independent, bipartisan board whose six members are appointed by the Governor and confirmed by the Senate. The members, citizens from around the state with experience in both the public and private sector, serve six-year terms that are staggered so that one member is appointed each year.

PROHIBITED CONDUCT

Ethics Law recognizes that many public officials and employees are in a position Ohio's to make or influence decisions that directly affect their personal interests. The Ethics Law attempts to prevent this type of activity. Generally, a public officer may not participate in matters that involve his own financial interests, or those of his family or business associates. The following types of conduct are prohibited or restricted by Ohio's Ethics Law.

Misuse of Official Position

A public official or employee may not use, or authorize the use of, his public position to benefit himself or others in circumstances that create a conflict of interest where his objectivity could be impaired. This is a general restatement of one of the most important prohibitions in the Ethics Law.

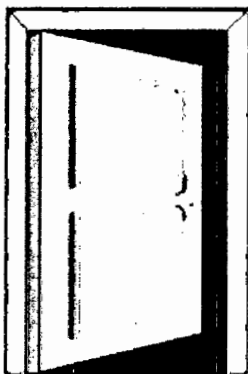
Public officials and employees must avoid situations in which they might gain personally as a result of the decisions they make or influence as public servants. For example, a public official who owns property and profits by influencing his public agency to buy that property would likely be in violation of this prohibition. A public official or employee is also prohibited from using his position to benefit others, such as business associates and family members, because his relationship with those individuals could impair his objectivity in his public duties.

Two related provisions of the Ethics Law prohibit:

1. A public official or employee from soliciting or accepting anything of value that would create a substantial and improper influence upon the official in his public duties; and
2. Any person from promising or giving a public official anything of value that would create a substantial and improper influence upon the official in his public duties.

These provisions prohibit a public official from soliciting or accepting gifts, travel expenses, consulting fees, or any other thing of substantial value from a party that is interested in, regulated by, or doing or seeking to do business with his public agency. Similarly, a private citizen may not promise or give things of value to a public official or employee under circumstances that create a conflict of interest. The Ethics Commission recommends that public servants should avoid all conduct that creates the appearance of impropriety.

The "Revolving Door" Restriction



A present or former public official or employee is prohibited from representing anyone before any public agency, including his former employer, on any matter in which he personally participated in his official capacity. This prohibition is in effect during public service and generally remains in effect for one year following departure from public service. It does not prohibit a public servant from representing his former public agency.

The revolving door restriction applies to all former public officials and employees, including professionals such as attorneys, accountants, and engineers. The restriction prohibits a former public servant from improperly using insider knowledge or exerting influence with his former co-workers on a matter in which he personally participated while in public service. Since this influence could be used to benefit his client, the revolving door provision prohibits the former public servant from performing this type of representation. However, it does not apply to matters in which the former public servant did not participate as a

public official.

Stricter provisions exist for certain former public officials and employees:

1. A former public official or employee who participated as a public official or employee in administrative matters pertaining to solid or hazardous waste management, handling, transporting, or disposal is prohibited for a period of **two** years after his public service from representing, before any public agency, an owner or operator of a waste facility, or an applicant for a permit or license for a facility, on any matter in which he personally participated in his official capacity; and
2. A former commissioner or attorney examiner of the Public Utilities Commission is prohibited from representing public utilities before any state board, commission, or agency, for **two** years after the conclusion of his service, **regardless** of whether he personally participated in the matter.

Sale of Goods and Services to and Representation of Clients before Public Agencies



A public official or employee is prohibited from receiving compensation, other than from his own public agency, for services rendered in a matter before any agency of the governmental entity with which he serves. An example of this kind of activity would be a city transportation department employee who prepares private tax returns, without using public time or resources, and wishes to represent a client before any city department, including, for example, the tax department. The law generally prohibits him from performing this representation. In addition, state officials and employees are specifically prohibited from selling goods and services to state agencies, except through competitive bidding.

Non-elected officials and employees may be exempted from both of these prohibitions if the following conditions are met:

1. The official or employee is doing business with or representing the client before an agency other than the one he serves; and
2. Prior to conducting the business or providing the representation, the official or employee files a statement with his own agency, the agency to which he plans to sell goods or services, and the appropriate ethics agency.

The statement described above must:

1. Contain specific information, including the names of the public agencies involved and a brief description of the business to be conducted; and
2. Contain the public official's or employee's declaration that he will not participate in his public capacity, for a period of two years, in any matter involving the personnel of the agency with which he is conducting business or before which he is representing any clients.

In the example of the private tax service, the city transportation department employee would be required to file a statement with his own public agency (the transportation department), the agency before which he plans to appear for compensation (the city tax or finance department), and the Ohio Ethics Commission, before he could represent a client before the tax or finance department. Finally, the city transportation department employee must declare on the statement that he will abstain for a period of two years from official participation in any matters related to the personnel of the city tax or finance department. Thus, the public servant may conduct business with, or represent clients before, an agency other than the one he serves provided he is not an elected official and, where appropriate, follows the exemption provided by the law.

Confidential Information

CONFIDENTIAL The Ethics Law prohibits present and former public officials or employees from disclosing or using any information appropriately designated by law as confidential. This prohibition remains in effect as long as the information remains confidential.

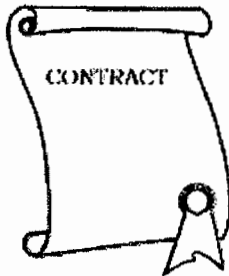
License or Rate-Making Proceedings

A public official or employee is restricted from participating in license or rate-making proceedings that would affect the licenses or rates of any business if he or members of his immediate family own more than five percent of that business. A public servant is also prohibited from participating in license or rate-making proceedings that affect any person to whom the official, his immediate family, or any business of which he or his family members has sold more than \$1,000 of goods or services.

Public Contracts and Public Investments

A public official or employee is prohibited from having a financial or fiduciary

interest in a public contract. A public contract includes any purchase or acquisition of goods or services, including employment, by or for the use of a public agency. Specifically, a public official or employee is prohibited from authorizing, voting, or otherwise using the authority or influence of his office to secure approval of a public contract in which the official, a family member, or a business associate has an interest in the investment.



A public official or employee is also prohibited from having an interest in a public contract with his public entity, or an agency with which he is connected, even if he does not participate in the issuance of the contract. A public servant may have an interest in a public contract with the public entity that he serves if he meets the conditions set forth in two exemptions to this prohibition.

The two exemptions are:

1. A public official is not deemed to be "interested" in a public contract with his public agency if **all** of the following conditions apply:
 - a. his interest in the corporation is limited to being either a stockholder or a creditor of the corporation;
 - b. he either holds less than five percent of the outstanding stock of the corporation, or he is a creditor owed less than five percent of the outstanding debt of the corporation; and
 - c. he informs his public agency of his intentions by filing an affidavit with the agency prior to entering into the contract; and
2. The prohibitions do not apply if **all** of the following conditions are met:
 - a. the public official or employee takes no part in the deliberations and decisions on the transaction;
 - b. the public official or employee informs his public agency of his interest;
 - c. the contract involves necessary supplies or services that are not obtainable elsewhere at the same or lower cost or that are part of a contract established before he was hired; and
 - d. the public agency is given treatment at least equal to that given to other clients involved in similar transactions.

An example of this situation might be a county official or employee who operates a paving company and contracts with the county for road-paving work. The county official or employee may be in violation of the public contract prohibitions of the Ethics Law unless he can affirmatively show that he meets the limited conditions outlined above.

Soliciting or Receiving Improper Compensation

A public official or employee is prohibited from receiving compensation, in addition to that paid by his public agency, for performing his official duties. A private party is also prohibited from giving any supplemental compensation to a public official or employee to perform his official duties. In addition, a public servant is prohibited from soliciting or accepting anything of value, or coercing a campaign

contribution, in exchange for an appointment to a public position, or any other kind of personnel action, such as a promotion or transfer.

PENALTIES

All of the provisions of the Ethics Law are criminal prohibitions. Most of the provisions, including the conflict of interest prohibitions, are first degree misdemeanors, punishable by a maximum fine of \$1000, a maximum prison term of six months, or both. However, certain provisions of the public contract prohibitions are fourth degree felonies, punishable by a maximum fine of \$2500, a maximum prison term of eighteen months, or both.

FINANCIAL DISCLOSURE REQUIREMENT

General Information

Under the Ethics Law, many public officials and employees file annual reports, called Financial Disclosure Statements (FDS), that disclose certain required financial information. The purposes of the financial disclosure requirement are to remind public officials of financial interests that may conflict with their duties and to assist citizens and the three ethics agencies in monitoring the areas of potential conflict of interest of public officials. Public disclosure serves as a deterrent to public officials considering activity that may result in a conflict.

Like a tax return, the FDS reflects personal financial information for the entire preceding calendar year. Therefore, a statement to be filed in 2005 will reflect the financial interests of the filer during the entire year of 2004, and will be described as a 2004 FDS.

Individuals Required to File FDS

Officials and employees who are required to file FDS are:

- Elected officials at the state, county, and city levels;
- Candidates for state, county, and city elective offices;
- School board members and candidates for school board in school districts with over 12,000 students;
- All school district superintendents, treasurers, and business managers;
- Upper-level state employees, including chief administrative officers of sovereign-

- power state boards and commissions; and
- Members of sovereign-power state boards and commissions (List).

Village and township elected officers, board of education members in districts with fewer than 12,000 students, and most state and local public employees are not required to file FDS.

Information the Filer Must Disclose

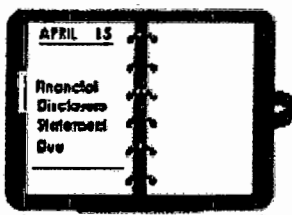
Along with general personal information, most FDS filers identify the following items:

- all sources of income;
- investments worth more than \$1000;
- businesses in which the filer is an officer or board member;
- sources of travel expenses incurred in connection with official duties;
- sources of meals, food, and beverages, incurred in connection with official duties, aggregating more than \$100;
- sources of gifts worth more than \$75;
- Ohio real estate investments; and
- creditors and debtors of over \$1000.

City, county, and school board elected officials who make less than \$16,000 for their public service, and public university trustees, have different disclosure requirements. These officials are required to disclose:

- sources of income over \$500;
- investments worth more than \$1000;
- businesses in which the filer is an officer or board member;
- sources of gifts worth more than \$500;
- Ohio real estate investments; and
- creditors and debtors of over \$1000.

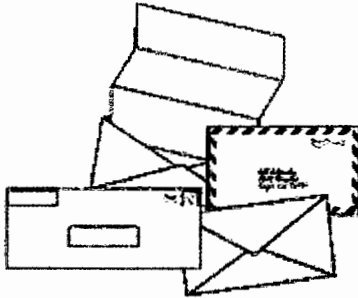
FDS Due Dates



A public official subject to the financial disclosure requirement is **generally** required to file his FDS with the appropriate ethics agency each year by **April 15th**. Statements may be filed by mail or in person, and a statement postmarked on or before April 15th is considered filed by that date.

A candidate who has been certified for ballot placement for election to public office is required to file his FDS not later than 30 days prior to the date of the first election in which his candidacy will be voted upon. A write-in candidate for public office must file his FDS not later than 20 days prior to the first

election at which his candidacy will be voted upon. Unless certified for ballot placement, an incumbent office holder must file his FDS by April 15th. A person appointed to an unexpired term of elective office has 15 days from the date he is sworn into office to file.



A person who is appointed to, promoted to, or employed in a non-elective position for which filing is required must file an FDS within 90 days of employment, promotion, or appointment, **unless** he is appointed before February 15th. A person who is appointed to, promoted to, or employed in a non-elective position for which filing is required, on or before February 15th, must file his FDS by April 15th.

FDS Fees and Penalties

The filer must include a filing fee with his FDS. The filing fees range depending upon the position for which filing is required. Filing fees are listed at www.ethics.ohio.gov/fds.html. The Ethics Commission is required to assess a **late filing fee** of \$10 per day, to a maximum of \$250, against those individuals who fail to file their FDS on time.

If a public official who is required to file a financial disclosure statement fails to file, a penalty of up to a \$250 fine, 30 days in jail, or both, could be imposed by the courts. If an official files a false statement, the penalty could be up to a \$1000 fine, six months in jail, or both.

Filing of statements and availability of filed statements

Three ethics agencies receive FDS from the public officials over whom they have jurisdiction:

- Members of, employees of, and candidates for the General Assembly file with the Joint Legislative Ethics Committee;
- Members of, employees of, and candidates for the judiciary file with the Supreme Court Board of Commissioners on Grievances and Discipline;
- All others file with the Ohio Ethics Commission.

Copies of most FDS are available for public inspection from the Ethics Commission and other ethics agencies. However, the Ethics Law requires that the Ethics Commission keep some statements confidential, such as those filed by school district employees. Blank FDS may be obtained from any county board of elections or from any ethics agency.

INVESTIGATIONS BY THE ETHICS COMMISSION

Any person can refer information that indicates that a public official or employee may have violated any of the criminal provisions of the Ethics Law to the ethics agency that has jurisdiction over the official or employee in question. Allegation forms are available from the Ethics Commission to refer information relating to public servants within its authority.

All Commission investigations and hearings are confidential. Breach of confidentiality by Commission members or employees is a criminal offense. At its discretion, the Commission may share or disclose information with an investigating or prosecuting authority when necessary and appropriate for the conduct of an investigation. However, the Commission generally cannot disclose to others the existence, status, or result of any investigation.

Citizens may contact the Ethics Commission to make a charge or allegation of unethical conduct, or file a sworn complaint alleging specific personal knowledge of facts and evidence supporting each element of an Ethics Law violation. Most investigations are initiated upon charges received by the Commission.

When the Commission receives a charge or allegation of unethical conduct, staff determines whether the alleged misconduct falls within the authority of the Commission. If so, staff initially reviews allegations and investigative priorities with an Investigative Committee of the Commission to determine whether to further review the allegation based upon existing prioritized investigations and available resources. The Commission can then direct the staff to conduct a confidential investigation into the factual support for the charge and the severity of the alleged unethical conduct.

The Commission's authority is analogous to the role of a grand jury. At the conclusion of an investigation, which may include a formal hearing upon a sworn complaint, the Commission may refer the matter for prosecution to the appropriate prosecuting authority. It can also resolve a charge with the accused person, or close the matter. The resolution may include: mediation of the dispute; financial restitution; rescission of affected contracts; forfeiture of any benefits resulting from this activity; or resignation of the public official or employee involved.

The Commission has no authority to prosecute public officials or employees independently. If it finds that the evidence supports a serious violation and determines that a resolution is not an option, the findings are turned over to the appropriate prosecuting authority for criminal prosecution. The referral remains confidential unless the prosecutor fails to act on the referral within 90 days. If the prosecutor fails to take any action with respect to the referral within that time, the Commission may make the referral public, though it can not comment regarding the merits of its findings.

ADVISORY OPINIONS

The Ohio Ethics Commission issues advisory opinions in response to questions relating to conflicts of interest or financial disclosure. Advisory opinions interpret the law and are available to public servants who are considering, but have not yet undertaken, an activity that may involve a conflict of interest. Staff reviews requests for advice with an Advisory Committee of the Commission.

An opinion issued by the Commission provides the official or employee, and any other public servant similarly situated, who follows the opinion with immunity from civil action, criminal prosecution, and removal from office actions. A public official or employee who fails to follow an opinion of the Commission is subject to potential civil and criminal action and removal from office for violating the Ethics Law. Advisory opinions are available, with search capability, on the Commission's Web site.

ETHICS EDUCATION AND PUBLIC INFORMATION

The Ethics Commission provides a wide variety of ethics education and public information free of charge. The Commission presents classes and other educational opportunities for groups of public officials, public employees, and private citizens. In addition, the Commission provides pamphlets on a number of ethics issues. Each public agency is required to provide a copy of the Ethics Law to the officials and employees who serve the agency. The Commission can provide a master copy of the law to any agency, to assist it in complying with this law. Helpful materials are also available on the Web site.

For more information, to request an Ethics Commission speaker, or for answers to questions, write or call:

OHIO ETHICS COMMISSION

8 East Long Street, 10th Floor

Columbus, Ohio 43215

Phone: (614) 466-7090

Fax: (614) 466-8368

www.ethics.ohio.gov

[Revised 03/05]

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Letter from Employee Chairs to Board of Trustees

Chairs of Faculty Senate, Administrative Staff Council, and Classified Staff understand and endorse the ^{concept of} need for an institutional code of ethics directed at the fiduciary ^{governing} board and the responsibilities of Bowling Green State University. Although we support an ethics code, ~~to create a~~ document governing the behavior of every employee without significant input in the content, if not crafting, from all constituent groups is outside the tradition ^{and of shared governance} common practice of this university. ~~at BGSU~~ ^{Employee State institutions are already}

OK profit of inst. not for public

Question or change to

We share concerns on the following ambiguously defined areas: costs, implementation details, duplication, overlap, and potential conflict between the new code and the charter/handbooks. General Counsel has agreed to revise the document to address two concerns raised by ASC: (1) definition of diversity; and (2) inclusion of all constituent groups in those consulted when any changes are made to the code of ethics. About other concerns raised, Counsel has suggested he will issue directives to address the broad and sweeping nature or the lack of specificity about the document. We would like to see the directives prior to the adoption of the code of ethics.

We trust that the administration will work with Faculty Senate, ASC, CSC, Graduate Student Senate, and Undergraduate Student Senate to resolve conflicts between existing procedures and the new code of ethics. And where charter, handbook, or code of ethics procedures for ensuring due process are insufficient or conflicting, we strongly recommend postponing ~~enforcement~~ until the need is met. Gov't

implementation

DR A

The Sarbanes-Oxley Act was written to cover ethics of

Any further

~~Although we support an ethics code for the governing board, there is a General Rules of Conduct / Code of Ethics Policy is already in place for in A Handbook of Community Shared Employment Policies for BGSU Faculty, Administrative and Classified Staff~~
 w/1 ~~is~~ accepted by

ORC

Femin:

Check on trust

June 2004 or Sept BOT letters



Bowling Green State University

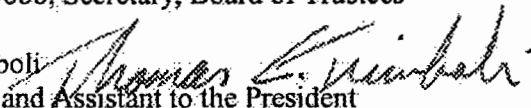
General Counsel
 308 McFall Center
 Bowling Green, Ohio 43403-0010
 Phone: (419) 372-0464
 FAX: (419) 372-8700

Via E-Mail (with Hard Copy to Follow)

June 8, 2005

MEMORANDUM TO: Robert Boughton, Chair, Faculty Senate
 Zach Hilpert, President, Graduate Student Senate
 Joe Luthman, President, Administrative Council
 Kathy McBride, President, Classified Staff Council
 Aaron Shumaker, President, Undergraduate Student Government

cc: Sidney A. Ribeau, President
 Linda S. Dobb, Secretary, Board of Trustees

FROM: Thomas A. Trimboli 
 General Counsel and Assistant to the President

SUBJECT: Revised Code of Ethics and Conduct

I would like to thank each of the addressee organizations for the assistance they have provided me with respect to the November 19, 2004 draft Code of Ethics and Conduct. Your comments and observations were extremely helpful and have resulted in a number of substantive changes that have been included in a revised draft. Enclosed for your ease of reference is the red-lined version of that revised draft, dated June 7, 2005.

We have received many comments since the November draft was disseminated at the January 19, 2005 PAC meeting and further distributed by e-mail to the leadership of both the Classified Staff and Administrative Staff Councils on February 3, 2005. The meetings that I attended with both the Administrative and Classified Staff Councils, the Faculty Senate leadership and Executive Committee, our Deans, staff of the Division of Student Affairs, and my colleagues in the Cabinet, as well as my conversations with student leaders, have all proved to be very helpful and instructive.

I carefully examined all of these comments and recommendations and, guided by those contributions, prepared the revised draft for further review by the Cabinet and action by the President. That revision does, I believe, address all of the material concerns that were voiced by the various constituent groups. These revisions include restrictions on the role of the Ethics Officer (including an absolute prohibition on the authority of that Officer to take disciplinary action), clarification about outside conflicts, a mandated 30 day review and comment period for all constituent groups to comment on the President's proposed directives prior to implementation, and a reservation of ultimate authority by the Board of Trustees. Other suggested changes have

Revised Code of Ethics and Conduct

June 8, 2005

Page 2

been made dealing with the scholarship of engagement, diversity and respect for the individual, and with other issues that some believed needed further clarification.

As I have stated to all the groups that I have met with, implementation of many of these provisions is critically dependent on the issuance of implementing directives by the President. I look forward to a continuing effort of jointly working with all constituent groups as these directives are proposed and evaluated in the future.

The revised June 7 draft has been approved by the President and will be submitted to the Board of Trustees for its approval on June 24, 2005. As I have commented before, the Board has been very patient with this process, but I believe it is constrained by the present legal climate to promulgate a Code for general application to the entire University community. From the beginning of this process a few years ago, the Board has taken "ownership" of this initiative and has urged the University to move forward with the effort. The November 19 draft was reviewed by the Board at its December 2004 meeting and, at the President's suggestion, the Board did authorize us to disseminate the November draft for comment among University constituencies. As indicated above, we did quickly set out to do that and, I believe, have benefited greatly from the process.

If there are any additional comments that you or your respective memberships now have or may have in the future for the text of an implementing directive, please let me know and I will ensure that it is given full and prompt consideration.

Thank you for your input and helpful suggestions.

Enclosure: June 7 Draft Code of Ethics and Conduct

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 11/19/2004
 6/07/2005

BOWLING GREEN STATE UNIVERSITY CODE OF ETHICS AND CONDUCT

- I. **PREAMBLE:** It is the policy of Bowling Green State University ("University") to pursue its mission and conduct its academic and business affairs with the highest degree of integrity and honesty and in a manner that is, and appears to be, in full accord with principles of academic excellence, ~~university~~ canons of ethical and professional conduct, and all controlling law.
- II. **PURPOSE:** The purpose of this University Code of Ethics and Conduct ("Code") is to summarize fundamental principles of ethical conduct that are applicable to all members of the University community. While some of these standards may be detailed in other policy documents having a specific application to a particular circumstance, many other standards have been observed as good practice but have not been previously codified in any one policy statement. This Code summarizes all of these important ethical principles of general application; it is not intended to replace or modify existing written policy statements containing standards tailored to specific circumstances. Those written policy statements containing more detailed standards include, but are not limited to, the following:
- Bowling Green State University, *Policy on Misconduct in Research*
 - Bowling Green State University, *Conflict of Interest in Sponsored Research*
 - Administrative Staff Handbook, *Conflict of Interest: Research and Consulting, Appendix H*
 - Classified Staff Handbook, *General Rules of Conduct and Code of Ethics*
 - Faculty Handbook, B-II.E: *Employee Responsibilities*
 - Faculty Handbook, B-II.F: *Ethical Responsibilities*
 - Faculty Handbook, B-II.H: *Academic Honesty Policy*
 - Student Handbook, *Academic and Student Codes of Conduct*
 - Bowling Green State University, *Sponsored Programs and Research, Policies: Frequently Asked Questions*
 - Bowling Green State University, *Fraud Waste and Abuse, Reporting Procedures and Information*
 - *NCAA Constitution and Bylaws*
 - Bowling Green State University, *Equal Opportunity and Anti-Harassment Policies*
- III. **APPLICABILITY:** This Code is applicable to all members of the University community. For this purpose, the community consists of the students, faculty, staff, and Trustees. Every member of the University community is required to become familiar with and to observe the Code in all respects. In addition, those members of the University community whose actions may be governed by the more detailed written policy statements of the University (as described in Part II) are also expected to become familiar

with and to observe those policies to the extent applicable to their status with, or employment by the University.

- IV. **OUR MISSION IMPERATIVE:** Through the provision and interdependence of teaching, learning, scholarship, ~~and scholarship (including scholarship through service engagement)~~, the University has established, and continues to foster, an environment that is grounded in intellectual discovery, community engagement, and multicultural academic and social experiences, while guided in all such pursuits by rational discourse and civility to others. All members of the University community are expected to dedicate their service to, participation in, and administration of University programs and activities for the protection and furtherance of this imperative.
- V. **STANDARD OF CONDUCT:** All members of the University community shall observe the following principles of ethical conduct and avoid any situation that is, or that reasonably appears to be, a violation of any such principle.

A violation of these ~~standards~~ principles will be established if the relevant record of inquiry establishes that it was more likely than not that the violation occurred. The burden of that demonstration will rest with the authority making the decision. Unless the accused admits culpability, no such decision shall be rendered in the absence of an inquiry that allows the accused a meaningful opportunity to respond to the allegations.

- VI. **PRINCIPLES OF ETHICAL CONDUCT:** Each member of the University community shall observe the following principles of ethical conduct:
 - a. **Public Trust:** We must act in a way to inspire public confidence in the honesty and integrity of our actions. Any violation of a law, rule, or regulation of the Federal Government, the State of Ohio, the City of Bowling Green, or any other political subdivision where the University transacts its business, violates the public trust and has the potential to discredit the University and impede the furtherance of its mission.
 - b. **Political Activities:** We must recognize and heed the responsibilities that we share as an instrumentality of the State of Ohio. University resources cannot be used in a way that demonstrates or reasonably ~~infers~~ implies an institutional favoritism ~~to for, or bias against,~~ a particular political candidate or party.
 - c. **Business Arrangements:** We must not take an illegal interest in a public contract, including any contract awarded by the University. We shall not abuse the authority, trust, or responsibility of our position, or our status as a member of this community, or otherwise act in a way to unfairly benefit ourselves or others at the expense of the University.
 - d. **Conflicts of Interest and Conflicts of Commitment:** We may not take any action, participate in any decision, or approve any action or decision on behalf of

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the University that will directly result in a ~~personal~~ benefit to ourselves, or any person or interest affiliated ~~or connected~~ with us. We shall avoid circumstances that reasonably ~~infer~~ imply we acted for personal gain rather than for the best interest of the University. We shall not ~~knowingly~~ engage in any activity on or off campus that would prevent us from fulfilling ~~our those~~ obligations ~~we fairly~~ owe to the University, whether those obligations arise from our status as a student, a faculty member, a staff member, or a Trustee.

- e. **External Constituencies:** We shall treat all visitors to the University with civility and respect. We must also operate our facilities and conduct ourselves, on and off campus, in a way that does not unjustly deprive our community neighbors of enjoying the benefits of their rights as property owners. We must not act in a manner that causes any diminution in the quality of life in our surrounding neighborhoods, or that brings discredit to the University, or to any University constituent group. Our dealings with all levels of government must be direct, honest, and open. We must never misuse public funds.

- f. **Diversity and Respect for the Individual:** ~~As a member of the University community we shall treat each other with civility and respect. We shall be tolerant of all individuals regardless of race, culture, ethnicity, gender, sexual orientation, age, and disability. We consider the gathering and association of scholars and staff with diverse personal backgrounds, human experiences, and cultures to be highly valued in our learning community. Accordingly, we shall advance diversity and treat others with civility and respect in all that we do as a member of this community and we shall consider intolerance, disrespect, and incivility to be inimical to our fundamental interests as an institution of higher education.~~

~~We also value, as a compelling academic interest of the University, the promotion of ethnic and racial diversity in our academic programs and activities and in the composition of our student body, our faculty, and our staff. The failure to provide an education with cross cultural experiences and insights will inhibit our graduates from functioning to their fullest potential in a pluralistic society. To realize this academic interest, we must engage in positive efforts to promote racial and ethnic diversity in our classrooms, in our curricula, and in all other activities that are designed to further the educational experience of our students. We also believe these efforts are supported by, and are in furtherance of our interest as an instrumentality of the State of Ohio to affirm the equal protection of law for all Ohio citizens. Accordingly, we shall advance racial and ethnic diversity in all that we do as a member of this community and we shall consider intolerance to be inimical to our fundamental interests as an institution of higher education.~~

- g. **Community Engagement:** ~~We consider community engagement the investment of the University's intellectual capital in public and private communities, by~~

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jointly working with others on problems of economic development, educational reform, and quality of life issues, to be a form of scholarship that benefits the scholar/faculty, the students, and our neighbors. We shall endeavor to expand the educational experiences of our students to include the greater engagement with our external community/communities so that we may teach through the provision of needed services to others. When providing services to the community, we shall treat our neighbors with respect and dignity. We shall refrain from any action that would have the purpose or effect of disadvantaging or discouraging our students or colleagues who are, or who plan to be, engaged in such efforts as an approved element of academic instruction or scholarly research.

- h. **Research:** It is imperative that our research ~~is be~~ conducted in accord with the highest standards of honesty and integrity. We must avoid conduct that invites justifiable criticism dealing with improper financial interests or other influences extraneous to the merits of the effort. When conducting sponsored research, we shall adhere to all relevant legal requirements including the rules and regulations of the Office of Research Integrity of the Public Health Service, the common Federal Policies on Research Misconduct issued by the Office of Science and Technology, and/or such other rules, regulations and policies of the awarding agency or other sponsor that may be applicable.
- i. **Business Officers:** Anyone who participates in the decision or approval process leading to the expenditure of University funds must act for and in the best interest of the University. Integrity, honesty, and a clearly auditable record of actions taken and decisions made are imperative. If we are involved in such a transaction we must not be influenced by extraneous matters; we must act in a manner consistent with all controlling laws and policies; and we must report to the Ethics Officer or other appropriate University office or legal authority those who would direct or solicit us to act otherwise. We must avoid personal conflicts of interest and always be alert to the potential for fraud, waste, or abuse. We must never accept or solicit anything of value for ourselves or anyone else in return for exercising our discretion in any particular way. Gratuities, except for minor gifts of nominal value, cannot be accepted if a reasonable person may conclude that the gift is of such a character that our actions could or would be influenced by that gratuity. While dealing with vendors and potential vendors to the University we must always act with professionalism and courtesy and honor the terms and conditions of the University's contractual arrangements.
- j. **Record Keeping:** We must keep all accounting, academic, and business records of the University in an accurate, timely, and complete manner. Financial records, in particular, must be maintained in conformity with all controlling generally accepted accounting principles and such other requirements as may, from time to time, be required by the State of Ohio. Records of material transactions must be capable of being audited so that our actions are "transparent" and readily justifiable when measured by relevant standards and requirements. The

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intentional or negligent making of a materially false or misleading statement in the records or books of account of the University will not be tolerated. Records that are designated by management, or understood by practice, to be considered confidential must be maintained in the strictest confidence and are not to be disclosed to any party, except as directed by the appropriate University manager or as otherwise required by law.

- k. **Duty to Report:** The President and the members of the President's Cabinet, and such other employees as may be designated by the President, are under an affirmative obligation to report to the Ethics Officer or other appropriate University office or legal authority any conduct that they reasonably believe may give rise to a violation of this Code of Ethics and Conduct.
- l. **Misuse of University Resources:** All resources of the University must be used for the purposes for which they were intended. We may not improperly convert for our own personal use, or for the use of another, any property or property right of the University. We may not provide someone an advantage for obtaining, using, or accessing University property that is not based on merit and otherwise in accord with all controlling laws, rules, regulations, and policies.
- m. **Non-Retaliation:** It is a violation of this Code for anyone to retaliate against a member of the University community who, in good faith, has alleged a violation of this Code. Similarly, it is also a violation of the Code for anyone to retaliate against an individual who has participated in an investigation conducted under the Code.

VII. **ETHICS OFFICER AND COMPLIANCE EFFORTS:** The University's Ethics Officer shall be _____ [position title] _____ responsible for investigating alleged violations of the Code, reporting findings to the appropriate decisional authority, and providing advice on the ethical requirements under this Code, the laws of the State of Ohio, the Federal Government and such other jurisdictions as may be appropriate. The Ethics Officer shall not have the authority to take disciplinary action against any person. The President of the University shall appoint the Ethics Officer, upon consultation with the Board of Trustees.

In lieu of, or in the course of an investigation conducted under this Part, the Ethics Officer may refer a matter to another office that has specific jurisdiction of the particular subject matter of the allegation under one of the specific policies described in Part II of the Code. No one is to abuse the Code as an alternative mechanism to avoid application of existing processes attendant to those specific policies.

Inquiries and investigations that may involve the Ethics Officer, the President, or a member of the Board of Trustees shall be referred to the Audit Committee of the Board of Trustees for such action as the Committee may deem appropriate.

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~~Members of the University community are expected to cooperate fully with all inquiries and investigations conducted under the Code.~~

- VIII. **IMPLEMENTATION:** ~~The President of the University may issue such directives as the President may deem necessary to implement this Code. In each such event, a copy of the directive shall be transmitted to the Chair of the Faculty Senate, and to the Presidents of the Graduate Student Senate and Undergraduate Student Government, and to the Presidents of the Classified Staff and Administrative Staff Councils. No such directive may become effective until each of the foregoing organizations is given at least thirty (30) calendar days to comment on the directive.~~

~~The Board of Trustees reserves the right to cancel or modify any directive or to issue directives on its own initiative.~~

~~The Ethics Officer shall make inquiry and investigate allegations of non-compliance with the Code. In lieu of, or in the course of that investigation, the Ethics Officer may refer a matter to another Officer that has specific jurisdiction of the particular subject matter of the allegation under one of the specific policies described in Part II of the Code. No one is to abuse the Code as an alternative mechanism to avoid application of existing processes attendant to these specific policies.~~

~~Inquiries and investigations that may involve the Ethics Officer, the President, or a member of the Board of Trustees shall be referred to the Audit Committee of the Board of Trustees for such action as the Committee may deem appropriate.~~

~~Members of the University community are expected to cooperate fully with all inquiries and investigations conducted under the Code.~~

- IX. **AMENDMENTS:** This Code of Ethics and Conduct may be amended only by action of the Board of Trustees of the University.

Letter from Employee Constituent Group Chairs to Board of Trustees

Chairs of Faculty Senate, Administrative Staff Council, and Classified Staff Council understand and endorse the concept of an institutional code of ethics directed at governing boards of profit and not-for-profit institutions and their the fiduciary responsibilities. We suggest that creation of or changes to any document governing the ethical behavior of any employee without significant input to the content, if not the crafting, by the affected constituent group is outside the tradition of shared governance at Bowling Green State University. A General Rules of Conduct/Code of Ethics Policy is already in place and can be found in A Handbook of Commonly Shared Employment Policies for BGSU Faculty, Administrative and Classified Staff.
www.bgsu.edu/downloads/execvp/file8118.pdf

ok the proposal draft

We share concerns on the following ambiguously defined areas: costs, implementation details, duplication, overlap, and potential conflict between any new code and the Charter/employee handbooks. General Counsel has agreed to revise the draft document to address two concerns raised by ASC: (1) definition of diversity; and (2) inclusion of all constituent groups in those consulted when any changes are made to any code of ethics. About other concerns raised, Counsel has suggested he will issue directives to address the broad and sweeping nature or the lack of specificity about the document. We would like to see the directives prior to the adoption of any broad university code of ethics.

Based on past experience, we trust that the administration will work with Faculty Senate, ASC, CSC, Graduate Student Senate, and Undergraduate Student Government to resolve conflicts between existing policy and any new code of ethics. And where Charter, employee handbooks or a code of ethics conflicts or fails to ensure due process, we strongly recommend postponing implementation until these concerns are addressed.

X-Sender: mzachar@mailstore.bgsu.edu

X-Mailer: QUALCOMM Windows Eudora Version 6.0.0.22

Date: Fri, 10 Jun 2005 12:17:25 -0400

To: Lona Leck <lona@bgnet.bgsu.edu>, ncassid@bgnet.bgsu.edu, dmclean@bgsu.edu, cmolnar@bgnet.bgsu.edu, annje@bgnet.bgsu.edu, sirving@bgsu.edu, dcrooks@bgnet.bgsu.edu, rcramer@bgsu.edu, nplee@bgnet.bgsu.edu, rlynv@bgnet.bgsu.edu, pnemitz@bgnet.bgsu.edu, lona@bgsu.edu, bwendy@bgsu.edu, loholland@bgsu.edu, nelsonj@bgsu.edu, rpeper@bgsu.edu, emonago@bgnet.bgsu.edu, celestr@bgnet.bgsu.edu, dgreg@bgsu.edu, ginsbur@bgsu.edu, hoepfti@bgsu.edu, antonim@bgsu.edu, dyrice@bgsu.edu, schaefer@bgsu.edu, lspence@bgsu.edu, jluthma@bgnet.bgsu.edu, skendal@bgnet.bgsu.edu, kflesh@bgnet.bgsu.edu, lopez@wbgu.bgsu.edu, mskulas@bgsu.edu, garcia@wbgu.bgsu.edu, rsknopf@bgsu.edu, lemch@bgsu.edu, jcarr2@bgsu.edu, dregan@bgsu.edu, mzachar@bgsu.edu

From: Mary Beth Zachary <mzachar@bgnet.bgsu.edu>

Subject: Re: Fwd: Revised Code of Ethics and Conduct

Hi,

I still have concerns about the breadth of scope of language in the new document. I believe Mr. Trimboli tightened much of the language and I actually like some of the new stuff. I begin to see a potential for fighting litigation against the university and supporting our more positive policies. I still have concerns, however. Has the Board even seen the accepted version of the General Code of Conduct and Ethics in the common handbook?

(VI a) As I said in our meeting, if I don't shovel my sidewalk within 24 hours after a snow storm, I am in violation of the ethics code. What if I never shovel my walks and wait until the weather warms it? Is that a different circumstance? My neighbors know I work for the university so does this reflect poorly on the university? There is no language of relativity in this document and we have not seen anything that speaks of it. Will we see that prior to any implementation? I think our statement about seeing directives prior to implementation (the answer to "trivialities") should stand.

(VI b) This code covers all university constituents. I'm not a lawyer, however, I think if this code is used to make us a "visibly" politically neutral environment (for instance, the purging of all political signs last fall posted by students, etc. in various places on campus) that this language will have a chilling effect on free speech especially in the arena of political speech. If students live here, do they get to post signs for and against a candidate? Do they get to post signs in places other than their personal space? Can they do that? What is a university resource in this context? Can student groups use duplicating processes on campus to promote a particular candidate? Is "space" a university resource? Lawn space? Sidewalk space? Window space? Which windows are allowable? Can students write political messages on our sidewalks? I understand the hanging signs on my workstation but not in the hallway. The second sentence is problematic, though. Who is the "reasonably" directed to in this time of a dramatically divided electorate? Do six Bush signs in a row in res hall windows on Wooster Street imply an institutional favoritism toward the republican party to a green party candidate driving through? This is extremely dangerous territory, imho. Were this whole section taken off the table as part of the code, I'd be much happier with the draft. Perhaps we code have an institutional discussion about it before we codify it.

VI g. I'm not sure what the last sentence means. Since this is new language, perhaps that could be clarified with counsel prior to the BoT meeting?

Mary Beth

At 12:47 PM 6/9/2005, Lona Leck wrote:

Administrative Staff Council Members:

As follow-up to our meeting last week regarding the constituent groups' response to the Draft Code of Ethics, I have received the above attachment. Our views were presented to the Cabinet yesterday along with the subsequent changes.

The memo from Mr. Trimboli explains his position which indicates the BOT will have this item on the agenda for the June 24 meeting.

I am anxious to hear your comments regarding the revisions. Please feel free to forward them directly to me or to any Executive Committee Member (indicated by an * on the member list distributed last week). Executive meets on Tuesday, June 14. Additionally, the CSC and Faculty Senate leaders have expressed a desire to discuss.

The updated draft will be available on Blackboard later today.

Lona - ASC Chair
2.7235
lona@bgsu.edu

*Mary Beth Zachary
Head, Access Services
Wm. T. Jerome Library
Bowling Green State University
Bowling Green, OH 43403
Phone (419) 372-2051
Fax (419) 372-6877*

LAST Attendees' Responses to Draft Code of Ethics and Conduct

Members of LAST, in attendance at the April 7th, 2005 meeting, expressed numerous concerns about the draft Code of Ethics and Conduct which is being circulated on campus.

Currently all legitimate behavioral expectations for university community members are set forth in city/county ordinances, the Ohio Revised Code, and applicable federal laws, codes and regulations or in University documents addressing specific constituencies. Bearing this in mind, those present articulated the desire to have the following questions answered by those parties who have proposed the Code: from where did the proposed Code of Ethics come? Why is it being proposed at the present time? What is the basis for proposing it? Is there an established need for such a document?

As a document, members concurred, that the entire proposed Code was far too vague, broad, general and too far reaching in its proposed applications. Individuals expressed concerns that this document would curtail free speech on campus and off, and would have a chilling effect on all community members. Furthermore, LAST members present would like a clarification on the relationships between this document and existing documents which already address ethical conduct. This document is unclear as to which holds sway, current existing policies and procedures or this proposed Code. This document is relatively silent about what procedures community members should take in terms of alleged violations of this Code or existing policy. For example, what would occur with an allegation of sexual harassment? Where should it be reported: the Office of Equity and Diversity or the Ethics Officer? Should it be reported to both simultaneously or one before the other and which would it be?

The staff members present completed a section-by-section analysis of the proposed Code. Following are comments made about each specific section.

Section I. Preamble: the word 'canons' is misspelled at the end of the section.

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Administrative and Classified staff, as well as the Board of Trustees. Inconsistency throughout the document undermines the overall applicability of the Code.

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The standard of proof “more likely than not” is simply an unacceptable standard. In light of the seriousness of potential punishments (on which the document is silent– a serious problem in and of itself) this standard favors the Ethics Officer in a manner which is unacceptable. At a minimum, staff present felt the standard should be preponderance of the evidence (assuming that due process rights are followed – see the following).

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articulated elsewhere with far greater specificity and clarity. However, as written in this document members had grave concerns over the language used throughout this section.

- A. **Public Trust:** We do not believe that “ANY violation of a law, rule or regulation” violates the public trust and that this is an unreasonable standard to which employees should be held accountable. This Code fails to recognize distinctions which the legal system itself recognizes in terms of legal violations. This section makes no acknowledgement of lesser versus greater offenses in a way which is inconsistent with established legal principles. This section even goes further and discusses the “potential” of discrediting the University. This is unacceptable and again fails to provide employees with sufficient specificity or minimum guidelines so as to allow employees to insure compliance. We also struggled here with the concern as to who would or should have the authority to determine a “potential” consequence. What about an individual’s right to engage in acts of civil disobedience based on personally held beliefs?
- B. **Political Activities:** This section is rife with language which is complex and overly complicated. There already exists statutory language which specifically articulates what university employees can or cannot do. This language should be either followed or specifically incorporated by reference.

[Members noted that in fact, Sections B, C and D have already been codified, and in a clearer more specific fashion, in various University documents.]

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- E. **External Constituencies.** This section is too broad, too vague and posits too much authority in the University’s hands. Who would determine what “unjustly deprives our community neighbors?” What does that mean? Who is a neighbor? The language that suggests “any diminution” is too broad and over-reaching. Who determines “quality of life”? What classifies as “discrediting” the University? Who determines this? The statement “We must never misuse public funds” is a separate issue entirely and should be addressed, but elsewhere and not linked with this specific subsection.
- F. **Diversity.** As currently written this subsection takes a giant step backwards from current board approved policy. The exclusive focus on ethnic and racial diversity ignores the full language of University policy. Current policy includes diversity

in terms of “race, sex, sexual orientation, color, national origin, ancestry, religion, age, marital status, disability, or status as a Special Disabled or Vietnam-era veteran.” Exclusively focusing on “ethnic and racial diversity” is too narrow and fails to honor the University’s established core values. The members question how this section would interfere with academic freedom.

- H. **Research.** What about SPAR and their established efforts and policies? This is another example of the ways in which this proposed Code fails to incorporate already clear and established policy and procedure. By specifically ignoring these policies the proposed Code immediately creates unnecessary confusion and uncertainty for individuals who will be subject to the code.
- I. **Business Officers.** What does the phrase “influenced by extraneous matters” mean? What are its limits? How would this be defined? Who would define this? This entire section creates confusion as to what is appropriate and legal action required by the employee in the event of uncovering a possible violation? Is the employee required to only report it to the Ethics officer? What about established University policy which requires the employee to report certain activities to other University such as OED or Risk Management? Would the employee be obligated to engage in dual or multiple investigations and reports? This section implies that silence is complicity. Is that an intended consequence of this section? If it is, then perhaps it should be duly noted and can then be adequately challenged. The final sentence of this subsection is too vague and various members suggested that the concept is already more clearly articulated by state code.
- J. **Record Keeping.** This entire subsection, as written, has enormous implications for University Archivists and under the state’s Sunshine laws. This section should be entirely dropped or rewritten with the active participation of employees whose responsibilities will include compliance with this portion of the code.
- K. **Duty to Report:** Section is confusing; it is not clear what exactly it means. Arguably conflicts with subsection i where silence could be viewed as complicity. Also conflicts with Section III on Applicability. Does this mean that employees not mentioned, nor designated have no affirmative action to report any conduct they believe may give rise to a violation? Do those with the affirmative duty report any conduct? Any employee’s conduct or any of their own conduct which may give rise to a violation? Is it one, a combination or some other variation on this theme?
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Some members raised the belief that these concepts were articulated with more clarity in other applicable and relevant documents.

Section VII. Ethics Officer: Who will, what and how will be the Ethics Officer be selected? This section could also include specific information on the position's authority, limitations, and responsibilities. The section could also include any minimal qualifications and/or training which the Officer should have. Part of Section VIII could be included under this Section so as to be clarify and illustrate the role of an Ethics Officer.

Section VIII. Implementation: As mentioned previously despite the claim that this Code applies to ALL members of the community, this section ignores Administrative Staff, Classified Staff and the Board of Trustees, as relevant bodies to notify of Presidential directives. The question was raised as to whether there was Charter authority for such directives. Are these directives to be made without consultation and/or input from the various constituents groups?

Paragraph two might better be placed in Section VII and should be written with more clarity and specificity. The sentence which begins "In lieu of, or in the course of" creates immediate confusion and conflict with existing policies and procedures to such an extent that a member of the community would not be able to know exactly what her or his legal obligations were based on various statutory reporting requirements. This section could be reworked to make explicit how employees are required to act/report under a variety of situations.

Paragraph three of this section is confusing and unclear. There is no rationale provide as to why all of these particular individuals must report in this particular fashion as opposed to being included as part of the "all" members of the community. Why is there a distinction? Why should the President or Board of Trustees be exempt from an Ethics Officer investigation? If that is NOT what this section means – the section should be clarified.

Paragraph four appears to violate an individual's constitutional right not to incriminate themselves.

Bearing in mind, these concerns and the fact that the majority of these issues are already clearly addressed in applicable ordinances, regulations, laws and university documents the members present questioned the need for this specific document. In its place we would suggest that a brief statement of principal be issued, if needed at all.

Respectfully recorded and submitted,

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Questions for General Counsel, Tom Trimboli

The following questions were received from constituents and request they be anonymous.

===== Concern #1 Draft Code of Ethics document =====

I have GRAVE concerns about this document and GRAVE concerns about the sweeping nature of this institution's movement backward in time.

In my opinion all of our appropriate behaviors are documented in each constituent group's handbooks, codes, and in the charter. WE don't need to use precious U resources in creating a behavior Czar.

I hope we can send this message with vigor. Are Faculty Senate and CSC reviewing this, also?

===== Responses from Library Staff =====
 LAST Attendees' Responses to Draft Code of Ethics and Conduct

Members of LAST, in attendance at the April 7th, 2005 meeting, expressed numerous concerns about the draft Code of Ethics and Conduct which is being circulated on campus.

Currently all legitimate behavioral expectations for university community members are set forth in city/county ordinances, the Ohio Revised Code, and applicable federal laws, codes and regulations or in University documents addressing specific constituencies. Bearing this in mind, those present articulated the desire to have the following questions answered by those parties who have proposed the Code: from where did the proposed Code of Ethics come? Why is it being proposed at the present time? What is the basis for proposing it? Is there an established need for such a document?

As a document, members concurred, that the entire proposed Code was far too vague, broad, general and too far reaching in its proposed applications. Individuals expressed concerns that this document would curtail free speech on campus and off, and would have a chilling effect on all community members. Furthermore, LAST members present would like a clarification on the relationships between this document and existing documents which already address ethical conduct. This document is unclear as to which holds sway, current existing policies and procedures or this proposed Code. This document is relatively silent about what procedures community members should take in terms of alleged violations of this Code or existing policy. For example, what would occur with an allegation of sexual harassment? Where should it be reported: the Office of Equity and Diversity or the Ethics Officer? Should it be reported to both simultaneously or one before the other and which would it be?

The staff members present completed a section-by-section analysis of the proposed Code. Following are comments made about each specific section.

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Section II. Purpose: The section claims that it is applicable to all members yet the list of documents of written policy statements fails to include even one policy statement concerning students and their conduct. Individuals present argued that this Code of Ethics and Conduct does NOT, contrary to the assertion otherwise, summarize the policies contained in the list of documents. The list of policy documents falls short in including significant policies, such as relevant federal laws, Ohio Revised Codes, BG municipal ordinances and other pertinent existing Bowling Green State University policies and procedures. This section also fails to include concise and clear explanations about the interrelationships between and among this Code and the various listed statements.

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===== Concern #2 General Questions =====

Since you have been here, what have been the issues that have become priorities for your office?

What has been addressed since you arrived in July?

===== Concern #3 Office of Equity and Diversity =====

I understand that there have been some significant changes to the process used to investigate allegations brought to the Office of Equity and Diversity. Please describe what those are and the thinking behind the changes.

Letter from Employee Constituent Group Chairs to Board of Trustees

Chairs of Faculty Senate, Administrative Staff Council, and Classified Staff Council, as the elected leadership of all BGSU employees, understand and endorse the concept of codes of ethics adopted to guide the governing boards of organizations. Recent past history of corporate misconduct tells us this is a wise undertaking. By extension, we concur that it makes sense to develop such a code for the BGSU Board of Trustees. As Board members of a public university in the State of Ohio, you have the “ultimate responsibility for the organization and operation of the University.”

With regard to the document before you, we continued to be troubled by the perceived need for such a code to address the behavior of all employees at the institution. We don't mean to suggest that BGSU employees need not be concerned with how they operate in the workplace. As employees, we hold the public trust and understand that responsibility. In response to that understanding, A General Rules of Conduct/Code of Ethics Policy is already in place at BGSU and can be found in A Handbook of Commonly Shared Employment Policies for BGSU Faculty, Administrative and Classified Staff. www.bgsu.edu/downloads/execvp/file8118.pdf

Given existing statements related to our conduct as faculty, administrative and classified staff, we wonder what this additional policy will mean as we go about our daily endeavors. We are concerned that the proposed document does not singularly address the responsibility of this institution's governing body, the Board of Trustees, and its responsibilities in areas where the need for ethical behavior is paramount. Further, we suggest that establishment of a code of ethics without significant input to the content, if not the crafting, by the affected constituent group(s) is outside the historical tradition of shared governance at Bowling Green State University.

We appreciate that General Counsel has worked with us to revise the draft document to address common constituent group concerns regarding: (1) the definition of diversity; (2) the need for consultation with all constituent groups before changes are made to any code of ethics; (3) the need for clear restrictions on the role of the Ethics Officer; (4) the need for a 30-day review and comment period for all constituent groups on the President's proposed directives prior to implementation, and (5) the need for a clarification of what behavior or outside conflicts would cause the code to be invoked.

Beyond those concerns, however, remains the very basic concern about concept of this document –its necessity and intended audience, it’s broad language and sweeping nature. Specifically, we have been informed by General Counsel that the Board feels “constrained by the present legal climate to promulgate a Code for general application to the entire University community. ” BGSU Charter/employee handbooks already address our ethical responsibilities in a clear and consistent manner. Why this document is necessarily directed to the employees is not clear. The Sarbanes-Oxley legislation directs Boards of Directors and CEOs to develop principles of ethical conduct to direct their practices, not those of the employees. Additionally, we remain concerned about when and how consistently this Code will be applied.

Trusting your commitment to shared governance, we ask that if the Board of Trustees accepts this document that the administration will work with Faculty Senate, ASC, CSC, Graduate Student Senate, and Undergraduate Student Government to resolve conflicts between existing policy and this new Code. And where Charter, employee handbooks or a code of ethics conflicts or fails to ensure due process, we strongly recommend postponing implementation until these concerns are addressed.

**BOWLING GREEN STATE UNIVERSITY
CODE OF ETHICS AND CONDUCT
June 24, 2005**

- I. **PREAMBLE:** It is the policy of Bowling Green State University (“University”) to pursue its mission and conduct its academic and business affairs with the highest degree of integrity and honesty and in a manner that is, and appears to be, in full accord with principles of academic excellence, canons of ethical and professional conduct, and all controlling law.
- II. **PURPOSE:** The purpose of this University Code of Ethics and Conduct (“Code”) is to summarize fundamental principles of ethical conduct that are applicable to all members of the University community. While some of these standards may be detailed in other policy documents having a specific application to a particular circumstance, many other standards have been observed as good practice but have not been previously codified in any one policy statement. This Code summarizes all of these important ethical principles of general application; it is not intended to replace or modify existing written policy statements containing standards tailored to specific circumstances. Those written policy statements containing more detailed standards include, but are not limited to, the following:
- Bowling Green State University, *Policy on Misconduct in Research*
 - Bowling Green State University, *Conflict of Interest in Sponsored Research*
 - Administrative Staff Handbook, *Conflict of Interest: Research and Consulting, Appendix H*
 - Classified Staff Handbook, *General Rules of Conduct and Code of Ethics*
 - Faculty Handbook, B-II.E: *Employee Responsibilities*
 - Faculty Handbook, B-II.F: *Ethical Responsibilities*
 - Faculty Handbook, B-II.H: *Academic Honesty Policy*
 - Student Handbook, *Academic and Student Codes of Conduct*
 - Bowling Green State University, *Sponsored Programs and Research, Policies: Frequently Asked Questions*
 - Bowling Green State University, *Fraud Waste and Abuse, Reporting Procedures and Information*
 - *NCAA Constitution and Bylaws*
 - Bowling Green State University, *Equal Opportunity and Anti-Harassment Policies*
- III. **APPLICABILITY:** This Code is applicable to all members of the University community. For this purpose, the community consists of the students, faculty, staff, and Trustees. Every member of the University community is required to become familiar with and to observe the Code in all respects. In addition, those members of the University community whose actions may be governed by the more detailed written policy statements of the University (as described in Part II) are also expected to become familiar

with and to observe those policies to the extent applicable to their status with, or employment by the University.

IV. **OUR MISSION IMPERATIVE:** Through the provision and interdependence of teaching, learning, scholarship (including scholarship through engagement), the University has established, and continues to foster, an environment that is grounded in intellectual discovery, community engagement, and multicultural academic and social experiences, while guided in all such pursuits by rational discourse and civility to others. All members of the University community are expected to dedicate their service to, participation in, and administration of University programs and activities for the protection and furtherance of this imperative.

V. **STANDARD OF CONDUCT:** All members of the University community shall observe the following principles of ethical conduct and avoid any situation that is, or that reasonably appears to be, a violation of any such principle.

A violation of these principles will be established if the relevant record of inquiry establishes that it was more likely than not that the violation occurred. The burden of that demonstration will rest with the authority making the decision. Unless the accused admits culpability, no such decision shall be rendered in the absence of an inquiry that allows the accused a meaningful opportunity to respond to the allegations.

VI. **PRINCIPLES OF ETHICAL CONDUCT:** Each member of the University community shall observe the following principles of ethical conduct:

- a. **Public Trust:** We must act in a way to inspire public confidence in the honesty and integrity of our actions. Any violation of a law, rule, or regulation of the Federal Government, the State of Ohio, the City of Bowling Green, or any other political subdivision where the University transacts its business, violates the public trust and has the potential to discredit the University and impede the furtherance of its mission.
- b. **Political Activities:** We must recognize and heed the responsibilities that we share as an instrumentality of the State of Ohio. University resources cannot be used in a way that demonstrates or reasonably implies an institutional favoritism for, or bias against, a particular political candidate or party.
- c. **Business Arrangements:** We must not take an illegal interest in a public contract, including any contract awarded by the University. We shall not abuse the authority, trust, or responsibility of our position, or our status as a member of this community, or otherwise act in a way to unfairly benefit ourselves or others at the expense of the University.
- d. **Conflicts of Interest and Conflicts of Commitment:** We may not take any action, participate in any decision, or approve any action or decision on behalf of

the University that will directly result in a benefit to ourselves, or any person or interest affiliated or connected with us. We shall avoid circumstances that reasonably imply we acted for personal gain rather than for the best interest of the University. We shall not knowingly engage in any activity on or off campus that would prevent us from fulfilling those obligations we fairly owe to the University, whether those obligations arise from our status as a student, a faculty member, a staff member, or a Trustee.

- e. **External Constituencies:** We shall treat all visitors to the University with civility and respect. We must also operate our facilities and conduct ourselves, on and off campus, in a way that does not unjustly deprive our community neighbors of enjoying the benefits of their rights as property owners. We must not act in a manner that causes any diminution in the quality of life in our surrounding neighborhoods, or that brings discredit to the University, or to any University constituent group. Our dealings with all levels of government must be direct, honest, and open. We must never misuse public funds.
- f. **Diversity and Respect for the Individual:** As a member of the University community we shall treat each other with civility and respect. We shall be tolerant of all individuals regardless of race, culture, ethnicity, gender, sexual orientation, age, and disability. We consider the gathering and association of scholars and staff with diverse personal backgrounds, human experiences, and cultures to be highly valued in our learning community. Accordingly, we shall advance diversity and treat others with civility and respect in all that we do as a member of this community and we shall consider intolerance, disrespect, and incivility to be inimical to our fundamental interests as an institution of higher education.

We also value, as a compelling academic interest of the University, the promotion of ethnic and racial diversity in our academic programs and activities and in the composition of our student body, our faculty, and our staff. The failure to provide an education with cross cultural experiences and insights will inhibit our graduates from functioning to their fullest potential in a pluralistic society. To realize this academic interest, we must engage in positive efforts to promote racial and ethnic diversity in our classrooms, in our curricula, and in all other activities that are designed to further the educational experience of our students. We also believe these efforts are supported by, and are in furtherance of our interest as an instrumentality of the State of Ohio to affirm the equal protection of law for all Ohio citizens.

- g. **Community Engagement:** We consider the investment of the University's intellectual capital in public and private communities, by jointly working with others on problems of economic development, educational reform, and quality of life issues, to be a form of scholarship that benefits faculty, students, and our neighbors. We shall endeavor to expand the educational experiences of our

students to include greater engagement with our external communities so that we may teach through the provision of needed services to others. When providing services to the community, we shall treat our neighbors with respect and dignity. We shall refrain from any action that would have the purpose or effect of disadvantaging or discouraging our students or colleagues who are, or who plan to be, engaged in such efforts as an approved element of academic instruction or scholarly research.

- h. **Research:** It is imperative that our research be conducted in accord with the highest standards of honesty and integrity. We must avoid conduct that invites justifiable criticism dealing with improper financial interests or other influences extraneous to the merits of the effort. When conducting sponsored research, we shall adhere to all relevant legal requirements including the rules and regulations of the Office of Research Integrity of the Public Health Service, the common Federal Policies on Research Misconduct issued by the Office of Science and Technology, and/or such other rules, regulations and policies of the awarding agency or other sponsor that may be applicable.
- i. **Business Officers:** Anyone who participates in the decision or approval process leading to the expenditure of University funds must act for and in the best interest of the University. Integrity, honesty, and a clearly auditable record of actions taken and decisions made are imperative. If we are involved in such a transaction we must not be influenced by extraneous matters; we must act in a manner consistent with all controlling laws and policies; and we must report to the Ethics Officer or other appropriate University office or legal authority those who would direct or solicit us to act otherwise. We must avoid personal conflicts of interest and always be alert to the potential for fraud, waste, or abuse. We must never accept or solicit anything of value for ourselves or anyone else in return for exercising our discretion in any particular way. Gratuities, except for minor gifts of nominal value, cannot be accepted if a reasonable person may conclude that the gift is of such a character that our actions could or would be influenced by that gratuity. While dealing with vendors and potential vendors to the University we must always act with professionalism and courtesy and honor the terms and conditions of the University's contractual arrangements.
- j. **Record Keeping:** We must keep all accounting, academic, and business records of the University in an accurate, timely, and complete manner. Financial records, in particular, must be maintained in conformity with all controlling generally accepted accounting principles and such other requirements as may, from time to time, be required by the State of Ohio. Records of material transactions must be capable of being audited so that our actions are "transparent" and readily justifiable when measured by relevant standards and requirements. The intentional or negligent making of a materially false or misleading statement in the records or books of account of the University will not be tolerated. Records that are designated by management, or understood by practice, to be considered

confidential must be maintained in the strictest confidence and are not to be disclosed to any party, except as directed by the appropriate University manager or as otherwise required by law.

- k. **Duty to Report:** The President and the members of the President’s Cabinet, and such other employees as may be designated by the President, are under an affirmative obligation to report to the Ethics Officer or other appropriate University office or legal authority any conduct that they reasonably believe may give rise to a violation of this Code of Ethics and Conduct.
- l. **Misuse of University Resources:** All resources of the University must be used for the purposes for which they were intended. We may not improperly convert for our own personal use, or for the use of another, any property or property right of the University. We may not provide someone an advantage for obtaining, using, or accessing University property that is not based on merit and otherwise in accord with all controlling laws, rules, regulations, and policies.
- m. **Non-Retaliation:** It is a violation of this Code for anyone to retaliate against a member of the University community who, in good faith, has alleged a violation of this Code. Similarly, it is also a violation of the Code for anyone to retaliate against an individual who has participated in an investigation conducted under the Code.

VII. **ETHICS OFFICER AND COMPLIANCE EFFORTS:** The University’s Ethics Officer shall be responsible for investigating alleged violations of the Code, reporting findings to the appropriate decisional authority, and providing advice on the ethical requirements under this Code, the laws of the State of Ohio, the Federal Government and such other jurisdictions as may be appropriate. The Ethics Officer shall not have the authority to take disciplinary action against any person. The President of the University shall appoint the Ethics Officer, upon consultation with the Board of Trustees.

In lieu of, or in the course of an investigation conducted under this Part, the Ethics Officer may refer a matter to another office that has specific jurisdiction of the particular subject matter of the allegation under one of the specific policies described in Part II of the Code. No one is to abuse the Code as an alternative mechanism to avoid application of existing processes attendant to those specific policies.

Inquiries and investigations that may involve the Ethics Officer, the President, or a member of the Board of Trustees shall be referred to the Audit Committee of the Board of Trustees for such action as the Committee may deem appropriate.

Members of the University community are expected to cooperate fully with all inquiries and investigations conducted under the Code.

VIII. **IMPLEMENTATION:** The President of the University may issue such directives as the President may deem necessary to implement this Code. In each such event, a copy of the directive shall be transmitted to the Chair of the Faculty Senate, to the Presidents of the Graduate Student Senate and Undergraduate Student Government, and to the Presidents of the Classified Staff and Administrative Staff Councils. No such directive may become effective until each of the foregoing organizations is given at least thirty (30) calendar days to comment on the directive.

The Board of Trustees reserves the right to cancel or modify any directive or to issue directives on its own initiative.

IX. **AMENDMENTS:** This Code of Ethics and Conduct may be amended only by action of the Board of Trustees of the University.
