



## Regional Task Force on the Homeless San Diego City & County

<b>Policy:</b>	Code of Conduct	<b>Policy Number:</b>	RTFHBP12
<b>Owner of Policy:</b>	Governance Board		
<b>Policy Sponsor:</b>	Merger Task Force		
<b>Policy Approval By:</b>	Governance Board		

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### I. PURPOSE

The purpose of this Code of Conduct Policy (“Policy”) is to protect the interests of the Regional Task Force on the Homeless, Inc., a California nonprofit public benefit corporation (the “RTFH”) which also serves as the San Diego Regional Continuum of Care, when it contemplates entering into a transaction or arrangement that might benefit the private interests of an officer, director, or any other person in a position of authority within the RTFH, or that might result in a possible excess benefit transaction as defined by Internal Revenue Code Section 4958.

Because the RTFH serves as the San Diego Regional Continuum of Care, this Policy also addresses potential conflicts for member agencies and their employees and directors under the Homeless Emergency Assistance and Rapid Transition to Housing Act (“HEARTH Act”). This Policy contemplates that directors or officers who represent the RTFH’s member agencies may voluntarily serve as directors for the RTFH consistent with the HEARTH Act and other applicable conflict of interest laws. This Policy provides the procedures for the RTFH’s directors to continue their participation in both the RTFH and the member agencies they represent, while avoiding conflicts of interest. Each director should also refer to the conflict of interest policy of his or her member agency.

This Policy is intended to supplement and clarify, but not replace, any applicable state and federal laws governing conflicts of interest applicable to nonprofit organizations, including the HEARTH Act. In the event of any inconsistency with applicable state or federal law, applicable law shall prevail.

### II. DEFINITIONS

#### 1. Interested Person

Any member of the RTFH Board (a “director”), principal officer, or member of a committee with board-delegated powers, who has a direct or indirect financial interest, as defined below, is an interested person for purposes of this Policy. In addition to the parties noted, this Code of Conduct is also applicable to employees or agents, any member of his/her immediate family, his/her partner or an organization that employs any of the indicated parties.

#### 2. Financial Interest

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

- a.) An ownership or investment interest in any entity with which the RTFH has entered into, or proposes to enter into, any transaction or arrangement;  
DOCS 2759149.1
- b.) A compensation arrangement with the RTFH or with any entity or individual with which the RTFH has entered into, or proposes to enter into, any transaction or arrangement; or
- c.) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the RTFH entered into or proposes to enter into any transaction or arrangement.

**2.1.** However, notwithstanding the above and consistent with California Corporations Code Section 5233 regarding self-dealing transactions, a financial interest shall not include:

- a.) The compensation, typically director and officer stipends/per diems and reimbursement of expenses, of a director as a director or officer of the RTFH;
- b.) A transaction which is part of a public or charitable program of the RTFH if it: (i) is approved or authorized by the RTFH in good faith and without unjustified favoritism; and (ii) results in a benefit to one or more directors or their families because they are in the class of persons intended to be benefited by the public or charitable program; or
- c.) A transaction, of which the interested director has no actual knowledge, and which does not exceed the lesser of 1 percent of the gross receipts of the RTFH for the preceding fiscal year or one hundred thousand dollars (\$100,000).

Compensation includes direct and indirect remuneration, as well as gifts totaling \$250 or more during the previous 12 months.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the Board or applicable committee determines that a conflict of interest is present.

### **III. PROCEDURES**

#### **1. Duty to Disclose**

In connection with any transaction, discussions or resulting decisions or arrangement to which the RTFH is a party, where there is an actual or potential conflict of interest, an interested person must disclose the existence and nature of his or her financial interest to the directors and, if applicable, members of committees with board-delegated powers considering the proposed transaction or arrangement.

For example, a director would disclose the existence and nature of any financial interest in connection with a transaction or arrangement between the RTFH and the director, or between the RTFH and the member agency that the director represents.

#### **2. Determining Whether a Conflict of Interest Exists**

After disclosure of the financial interest and all material facts, and after any discussion with the potentially interested person, the Board, or Governance committee if applicable, must make a determination whether an actual conflict of interest exists. The disinterested directors or applicable committee members shall determine on a case-by-case basis whether the disclosed interest constitutes an actual conflict of interest. Guidance for determining case-by-case will come for the 24 CFR especially

for HEARTH these areas must be considered:

- Organizational conflict of interest (in 24 CFR part 578.95(c)),
- CoC board conflict of interest (in 24 CFR part 578.95(b)),
- Other conflict of interest requirements (in 24 CFR part 578.95(d)),
- Factors to consider when providing exceptions (in 24 CFR part 578.95 (d) (2)),
- Consider procurement of property and services (in 24 CFR part 578.95 (a)).

Among other matters, the HEARTH Act requires a collaborative process among member stakeholders for development and approval of HUD applications, and establishing funding priorities, with ultimate determinations made by the Board. At the same time, the HEARTH Act restricts directors from participation and influencing decisions concerning an award of a grant or other financial benefits to the organization the director represents. Because a key purpose of the HEARTH Act is to increase collaboration between service providers, the intent of the conflict regulation contained therein should be limited to prohibiting a director from deliberating and voting on formal action (i.e., “decisions”) of the Board when that action concerns an award of a grant or other financial benefits to the organization the director represents.

### **3. Procedures for Addressing a HEARTH Act Conflict of Interest**

- a) A director who represents a member agency may discuss and collaborate with and among stakeholders, and participate in committee or Board discussions concerning the development and approval of HUD applications, the establishment of funding priorities, and other matters of interest and responsibility of the RTFH.
- b) However, if and when the Board or committee has a formal action on its agenda whereby a decision will be considered and acted upon that involves the award of a grant or other financial benefit to a member agency, any director representing that organization shall, at or prior to that meeting, disclose that relationship and publicly recuse himself or herself from any and all discussion or participation in that action. The meeting minutes shall reflect that disclosure and recusal.

### **4. Procedures for Addressing a Non-HEARTH Act Conflict of Interest**

- a) If the Board or Governance committee, if applicable, determines after a financially interested person’s disclosure that a conflict of interest is present, the interested person may make a presentation at the board or committee meeting about the conflict and respond to any inquiry regarding factual information related to the transaction or arrangement.

The interest person shall recuse himself or herself from participating in any discussion, deliberation or vote concerning whether to enter into the transaction or arrangement.

- b) The chairperson of the board or Governance committee may, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c) After exercising due diligence appropriate for the circumstances, the board or Governance committee shall determine whether the RTFH can obtain with reasonable efforts a more advantageous transaction or

arrangement from a person or entity that would not give rise to a conflict of interest.

- d) If a more advantageous transaction or arrangement is not reasonably possible under circumstances that would not produce a conflict of interest, the board or committee shall determine by a majority vote of the disinterested members whether the transaction or arrangement is in the RTFH's best interest, for the RTFH's own benefit, and whether the transaction or arrangement is fair and reasonable to the RTFH. In conformity with the above determination, the board or committee shall make its decision as to whether to enter into the transaction or arrangement.

Notwithstanding the foregoing, compliance with the any of the approval procedures set forth in California Corporations Code Section 5233 regarding self-dealing transactions shall constitute compliance with this Policy. Further, directors representing the RTFH's member agencies may participate in discussions pertaining to grants or awards to the member agency in a manner that is consistent with the HEARTH Act.

#### **5. Violations of the Conflict of Interest Policy**

- a) If the board or committee has reasonable cause to believe a director has failed to disclose actual or possible conflicts of interest, it shall inform the director of the basis for such belief and afford the director an opportunity to explain the alleged failure to disclose.
- b) If, after considering the director's response and after making further investigation as warranted by the circumstances, the board or committee determines that the director has failed to disclose an actual or possible conflict of interest, it shall take appropriate censure or other corrective action.

#### **IV. RECORDS OF PROCEEDINGS**

The minutes of meetings of the Governance Board and all committees with board delegated powers shall contain:

- a) The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the board's or committee's decision as to whether a conflict of interest in fact existed.
- b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any proposed alternatives, and a record of any votes taken in connection with the transaction or arrangement

#### **V. COMPENSATION**

A director who receives compensation, directly or indirectly, from the RTFH for services may not vote on matters pertaining to that director's compensation, except for compensation of a director as a director or officer of the RTFH (e.g., per diem, reimbursement).

## **VI. ANNUAL STATEMENTS**

Each director, principal officer and member of a committee with board delegated powers shall annually sign a statement that affirms such person:

- a) Has received a copy of the Conflict of Interest Policy;
- b) Has read and understands the Policy;
- c) Disclosed in writing any Conflict of Interest;
- d) Has agreed to comply with the Policy; and
- e) Understands that the RTFH is charitable and in order to maintain its federal tax exemption it must engage primarily in activities that accomplish one or more of its tax-exempt purposes.

## **VII. PERIODIC REVIEWS**

The Governance Committee of the Board, shall periodically consider whether and how this Policy should be revised or amended to ensure that the RTFH operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status. For example, the periodic reviews shall, at a minimum, include the following subjects:

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

## **VIII. USE OF OUTSIDE EXPERTS**

When conducting the periodic reviews as provided for in Article VII, the RTFH may, but is not required to, use outside advisors. If outside experts are used, their use shall not relieve the Governance Board of its responsibility for ensuring periodic reviews are conducted.