

3.2.3—Board Conflict of Interest (July 31, 2017 Report)

The governing board has a policy addressing conflict of interest for its members.

Compliance Partial Compliance Not in Compliance

SACSCOC COMPLIANCE ASSESSMENT

A recent article by the Kentucky Center for Investigative Reporting, "Oversight on Conflicts of Interest," cited by the *Chronicle of Higher Education* included copies of completed conflict of interest statements that have raised additional questions about University of Louisville's ongoing compliance with the *Principles of Accreditation*. In particular, the report raises questions about the institution's implementation and enforcement of its conflict of interest policy.

In light of these circumstances, and in accordance with the SACSCOC's policy and procedures, I am requesting that the institution prepare a report that explains and documents the extent of its compliance with the following standard of the *Principles of Accreditation*:

- Comprehensive Standard 3.2.3. (Conflict of Interest)

In documenting the institution's ongoing compliance, along with any other items supporting the institution's case for compliance, please include a complete roster of all current members of the UofL Board of Trustees and the UofL Foundation Board of Directors along with a biographical sketch or resume for each, and copies of all conflict of interest statements, signed and dated, submitted by Board members. Please note any overlap in the membership for the two Boards on the rosters. [Although the rosters have been submitted previously, their inclusion with the other items of information outlined above will be important to supporting a thorough review.] In accordance with SACSCOC's policy on procedures dealing with the receipt of unsolicited information as outlined in "Unsolicited Information," I am authorizing an expansion of the scope of the Special Committee scheduled to visit your institution on September 19-21, 2017, to include review of Board conflict of interest.

BACKGROUND

The University of Louisville (UofL) is in compliance with Comprehensive Standard 3.2.3.

UofL has a policy addressing conflict of interest for members of the university's Board of Trustees, as well as other related policies and procedures.

Since the first meeting of the university's new Board of Trustees in January 2017, the Board has worked with resolve to complement UofL's longstanding institutional conflict of interest policies and procedures with updated policies and processes that reflect current best practices. On February 16, 2017, the Board appointed an Ad Hoc Committee on Governance with a broad portfolio that included reviewing and strengthening the Board's existing Bylaws and other governance documents and university polices, with respect to conflict of interest and other issues [1].

The Kentucky General Assembly adopted new legislation in January 2017 that reconstituted the Board of Trustees of the University of Louisville [2]. That legislation reduced the number of trustees appointed by the Governor from seventeen to ten, requested that nominations to the new Board of Trustees be submitted to the Governor by the Governor's Postsecondary Education Nominating Committee, and required that the new Governor-appointed Board members be confirmed by the Kentucky State Senate.

Pursuant to this legislation, the Governor's Postsecondary Education Nominating Committee met in early January 2017 and, in keeping with its statutory obligations [3], submitted the names of thirty nominees to the Governor, after reviewing their qualifications and references and carrying out other screening activities, including requiring each potential nominee to complete a "University Boards and Council of Postsecondary Education Conflict of Interest Questionnaire" [4]. From this set of thirty nominees, the Governor appointed ten members to the UofL Board of Trustees on January 17, 2017. Nine of the ten new trustees were sworn in on January 21, 2017, joining three

continuing trustees (the chair of the university's faculty senate, the chair of the staff senate, and the student body president). One individual appointed by the Governor to the university Board of Trustees resigned from the Board in February 2017 because an escalation in his personal business activities left him with insufficient time to devote to his Board responsibilities. The thirteenth member of the Board of Trustees was appointed by the Governor on July 13, 2017 and took office on July 20, 2017. A roster of the thirteen current members of the Board of Trustees, together with a biographical sketch for each, is provided [5]. Each of the members appointed on January 17 completed a conflict of interest form [6] and, as part of the Board's annual meeting on July 20, 2017, the current members reviewed and reaffirmed the accuracy of their statements [7].

Board of Trustee Action

Since January 2017, the new UofL Board of Trustees has made the review and strengthening of its governance processes, including those related to conflict of interest, a top priority. The university's new Board of Trustees has devoted substantial time and effort since January 2017 to reviewing and updating Board policies, including Board conflict of interest policies, to ensure that they reflect current best practices and recent, related state regulations. In accomplishing this work, the Board has engaged in repeated discussions of Board policy governing trustee conflicts of interest. The new Board's goal was to have revised policies and best practices in place by the July 1, 2017 start of the new fiscal year, and the Board has met this goal.

When new members are appointed to the Board of Trustees, the university's Boards Liaison sends a new member welcome packet [8] that includes a conflict of interest statement. The liaison requests board members complete, sign, and return the conflict of interest statement, as well as the Oath of Office, Individual Representation Agreement, and Proof of Receipt.

On February 16, 2017, the new Board of Trustees appointed an Ad Hoc Committee on Governance ("Governance Committee") to review the recent Kentucky General Assembly legislation related to state institutions [9] and propose revisions to the BOT Bylaws [10] (which includes the Board's conflict of interest policies) and Chapter 1 of *The Redbook* [11] (the university's governance document) to align with revised state requirements. The Governance Committee held its first meeting on March 9, 2017, with the goal of having updated Board Bylaws (including a section on trustee conflicts of interest [12]) that would go into effect by the July 1, 2017 start of the university's next fiscal year.

On May 18, 2017, the revised Bylaws proposed by the Governance Committee were adopted by the full Board of Trustees, effective June 1, 2017 [13]. The revised Bylaws include the Board's conflicts of interest policy and a new Board Statement 1.3 affirming the Board's intention to maintain a robust policy on conflicts of interest [14].

On June 15, 2017, the Board of Trustees took the next step and adopted processes for implementing its conflict of interest policies. Specifically, the Trustees approved revisions to *The Redbook*, including the policy to start each meeting of the Board of Trustees, effective July 1, 2017, with the Board Chair issuing a statement reminding all Trustees that it is their

responsibility to review the meeting agenda and to disclose any conflict of interest or appearance of conflict of interest they have with respect to any matter coming before the Board of Trustees at the meeting [15].

UofL Policies and Procedures Related to Conflict of Interest

The university's policies and procedures related to Conflict of Interest are provided below and reflect the revisions completed by the Governance Committee.

- Institutional Conflict of Interest Policy. The university's Institutional Conflict of Interest Policy applies to institutional officials, including Trustees [16]. The Institutional Conflict of Interest Policy was first adopted in 1983 and last revised in 2013. Its corollary document, "Addressing Institutional Conflicts of Interest," was adopted in January 2011 and last revised November 2015 [17]. These policy documents apply to conflict of interest situations involving the institution as a whole as well as Institutional Officials. It is the policy of the University of Louisville to ensure its transactions are conducted with integrity. This Conflict of Interest policy and its associated procedures outline the guiding principles and procedures utilized by the University of Louisville to identify and manage conflicts of interest that present a significant risk to the actual or perceived objectivity of transactions conducted in the name of the University of Louisville.

As described in the "Addressing Institutional Conflicts of Interest" policy document, potential institutional conflicts typically arise in one of four areas:

- a) when an entity that has an academic, business, clinical or research relationship with the Institution also donates a gift to the Institution;
- b) when the Institution owns equity in an entity and the entity has an academic, business, clinical, or research relationship with the Institution;
- c) when the Institution licenses an invention to an entity that also has an academic, business, clinical, or research relationship with the Institution; and
- d) when an Institutional Official has an external and/or professional relationship with an entity and the entity has an academic, business, clinical or research relationship with the Institution.

Board members receive the university's Institutional Conflict of Interest policy in their new board member materials, and the policy is provided to members as part of the Board's Annual Meeting, together with an acknowledgement document that each Trustee is asked to sign and date.

- Conflict of Interest Statements. When new members are appointed to the Board of Trustees, the university's Board Liaison sends a new member welcome packet that includes a conflict of interest statement [18]. The liaison requests board members complete, sign, and return the conflict of interest statement along with other requested materials. Signed Conflict of Interest Statements for the current board are provided [19]. The Board has assigned the Governance Committee the responsibility for developing a process for evaluating the signed Conflict of Interest Statements and following up on any conflicts identified in the review.

- Board of Trustees Bylaws, Section 5.1, Conflict of Interest. Section 5.1 of the Board's Bylaws outlines the guidelines for board members regarding known conflicts of interest.

“All Trustees shall disclose any known conflict of interest and shall avoid participating in any decision or advocating any subject matter before the Board in which the Trustee, a business in which the Trustee is an owner or an employee, or a member of the immediate family of a Trustee has a conflict of interest. When a Trustee learns that a business transaction presents a conflict of interest, that Trustee must make an immediate, full disclosure to the Board of his or her interest in the subject. The Trustee shall not participate in any discussion of or decision on the issue. Disclosures are necessary for business transactions which would result in conflict of interest. Failure of a Trustee to make a disclosure shall void any resulting agreement at the option of the University. University remuneration to a faculty or staff Trustee and financial aid to a student Trustee shall not be considered a financial or other conflict of interest. Conflicts of interest shall be dealt with in accordance with state statutes.” [20]

- The Redbook, Section 1.1.3. In order to strengthen its process for addressing conflict of interest issues, on June 15, 2017 the Board of Trustees approved important new conflict of interest procedures. Specifically, the Trustees voted to start each meeting of the Board of Trustees, effective July 1, 2017, with the Board Chair issuing the following statement reminding all Trustees that it is their responsibility to avoid conflicts of interest and to make

any conflicts of interest known before involvement in the voting of the Board on any items related to the conflict.

“As Chair, it is my responsibility to remind all members of the Board of their responsibility to avoid conflicts of interest and appearances of conflict of interest. Each member has received the agenda and related information for this Board of Trustees’ meeting. If any Board member knows of any conflict of interest or appearance of conflict of interest with respect to any matter coming before the Board of Trustees at this meeting, please identify the conflict or appearance of conflict at this time.” [21].

- University of Louisville Board of Trustees Bylaws, Ethics Statement (Policy Statement 1.1).

The Board’s Ethics statement, originally adopted in 2005, reads as follows:

“In all matters entrusted to the Board of Trustees of the University of Louisville, the Board, individually and collectively, is committed: to carry out its responsibilities in accordance with the laws of the Commonwealth; to act with care and make informed decisions; to comply with University policies applicable to the Board of Trustees; to refrain from actions which put a Trustee's personal or professional interests in conflict with that of the University and to abstain from any action or vote where appropriate; and, to avoid the use of Trustee appointment to obtain any private benefit. Further, neither the Chair of the Board nor a majority of Trustees shall have a contractual, employment, or personal financial interest in the University” [22].

- UofL Code of Conduct. In November 2009, the Board approved and adopted the university's Code of Conduct [23], which applies to the institution, its board members, and all other university community members. The code addresses guiding principles and standards of conduct, including transparency, integrity, ethical considerations, objectivity, and impartiality in decision-making. The UofL Code of Conduct holds all members of the university to the following standards of conduct:

- Act ethically and with integrity
- Be fair and respectful to others
- Manage responsibly
- Protect and preserve university resources
- Promote a culture of compliance
- Preserve academic freedom and meet academic responsibilities
- Ethically conduct teaching and research
- Avoid conflicts of interest and commitment
- Carefully manage public, private, and confidential information
- Promote health and safety in the workplace

- Board Bylaws, Policy Statement 1.3, Freedom from Undue External Influence. This policy statement was approved by the Board at its May 18, 2017 meeting and states in part that

“the Board will maintain a robust policy on conflicts of interest in adherence with applicable state law, will educate Trustees through various means on their obligations

in responding to an actual or perceived conflict of interest, and will review Board conflict of interest policies periodically to ensure that they remain up-to-date” [24].

The Board undergoes an orientation to its roles and responsibilities as Trustees, including addressing conflict of interest. Conflict of interest policies are included in the New Member packets, mentioned in meetings, and provided when members are asked to sign Conflict of Interest statements. State legislation requires that the Board attend orientation sessions [25]. At the May 18, 2017, Board meeting, Dr. Robert L. King, the President of the Kentucky Council on Postsecondary Education (CPE), conducted a Board orientation in which he shared that the Board’s fiduciary duty includes an obligation to put the university’s needs above their own, to avoid self-dealing, and to have no conflicts of interest that would interfere with their board role [26]. Additional education on the board’s fiduciary responsibilities was conducted at the Board’s Annual Meeting on July 20, 2017 [27].

That all members of the Board of Trustees are fully aware of their responsibilities to avoid conflict of interest and are following university policy related to conflict of interest is evidenced by the fact that at two meetings this year trustees have abstained from votes because of the potential for a perceived conflict of interest [28] [29]. In the first case, the Board was voting to authorize the Interim President to negotiate the terms of a revised sports arena lease. Two trustees abstained because they had been involved a decade earlier in the original bond financing of that arena. In the second case, during the executive session of the Board meeting a trustee abstained from discussing litigation that involved matters handled not by him but by one or two other attorneys in the 190+ person law firm of which he is a partner.

Procedures for Reviewing Conflict of Interest

In addition to reviewing and revising its policies related to conflict of interest, the Governance Committee's scope included the development of a more comprehensive process for conflict of interest review.

As mentioned earlier, the new Board of Trustees is working to bring all of its policies and practices in line with best practices. After reviewing conflict of interest policies at peer institutions, the Governance Committee Chair recommended and the Board approved at its June 15, 2017 meeting, the following process for reviewing actual or potential trustee conflicts of interest (as outlined in the revisions to *The Redbook*). As of July 1, 2017,

All trustee conflict of interest statements or similar disclosure documents and any conflict of interest or appearance of a conflict of interest identified by a trustee, whether at a meeting or otherwise, shall be referred to the Board's governance committee for review. If a determination is made that further action is needed, a recommendation for further action will be communicated to the involved trustee(s) and to the Board Chair. If a member of the governance committee has a substantial interest in the matter that has been disclosed, then the matter may instead be referred for review and recommendation to the Board's Executive Committee or to an ad hoc committee of no less than three members of the Board of Trustees. [30]

At its meeting on July 17, 2017, the Governance Committee's first meeting since the July 1, 2017 effective date of the Board's new conflicts of interest procedures, the Governance Committee began its discussion on the process for reviewing Conflict of Interest statements. Governance committee members have been provided copies of the forms that were completed by Board members after their appointment and asked to review the disclosure forms and advise the Committee Chair of all questions and concerns in preparation for a full discussion at the next meeting of the Governance Committee. At the August meeting the committee will start their process for reviewing the forms certified at the July 20 meeting of the Board of Trustees.

Per SACSCOC request in its July 5, 2017 letter, the university is providing the following materials:

- A roster of all current members of the UofL Board of Trustees, with a biographical sketch for each [31].
- UofL Board of Trustees conflict of interest statements [32].

UofL Foundation (ULF)

While Comprehensive Standard 3.2.3 appears to apply only to the university's Board of Trustees, SACSCOC, in its letter dated July 5, 2017, also requested information about the UofL Foundation (ULF), its board members, and the conflict of interest statements submitted by them. The university has secured that information from the ULF and is happy to include it with this submission.

By way of background, the ULF is a Kentucky nonprofit corporation that exists separate and apart from the university. It has its own Articles of Incorporation, Bylaws, and Board of Directors. It is not subject to the university's control, but it exists to further the university's charitable and educational purposes and has been recognized by the Internal Revenue Service as a tax-exempt charity under Section 501(c)(3) of the Internal Revenue Code. The ULF maintains its own conflict of interest process, and the university is not involved in managing the ULF process.

Like the university, the ULF has undergone significant change in the past year. Fourteen of the fifteen members of the ULF board of directors joined the board for the first time during the past twelve months. In accordance with the ULF Bylaws [33], four university Trustees plus the university's Interim President currently serve as voting members on the ULF board--all new to their Foundation roles since January 2017. The overlap in directors/trustees helps assure that the interests of the university and the ULF are aligned, given that the ULF was formed in 1970 exclusively to further the charitable and educational purposes of the university.

Per SACSCOC request in its July 5, 2017 letter, the university is providing the following materials for the ULF:

- A roster of all current members of the ULF Board of Directors, with a biographical sketch for each [34].
- A roster identifying UofL Board of Trustees who also serve on the ULF Board of

Directors [35].

- ULF Board of Directors conflict of interest statements [36].

SUMMARY

The University of Louisville is in compliance with Comprehensive Standard 3.2.3. The university has a Conflict of Interest policy and other related policies that apply to the university's Board of Trustees and that outline the guiding principles and procedures used by UofL to identify and manage conflicts of interest. Since January 2017, the university's new Board of Trustees has made the review and strengthening of its governance processes, including those related to conflict of interest, a top priority, with the goal of having revised policies and best practices in place by the July 1, 2017 start of the new fiscal year. The Board has met its goal and has established revised conflict of interest policies and procedures that are consistent with best practices for colleges and universities. Following the Board's approved procedures, the Board's Governance Committee is responsible for certifying the Conflict of Interest Statements of Board members and providing follow-up on any concerns.

[1] Board of Trustees' Ad Hoc Committee on Governance Charge
3_2_3_fn01.pdf

[2] Senate Bill 12, Reconstitution of UofL Board of Trustees
3_2_3_fn02.pdf

[3] KRS 164.005, Governor's Postsecondary Education Nominating Committee
3_2_3_fn03.pdf

[4] University Boards and CPE Conflict of Interest Questionnaire
3_2_3_fn04.pdf

[5] Roster of UofL Board of Trustees with Bios
3_2_3_fn05.pdf

[6] UofL Board of Trustees' Signed Conflict of Interest Forms, Members Appointed January 2017
3_2_3_fn06.pdf

[7] UofL Board of Trustees' Signed Conflict of Interest Forms, July 20, 2017
3_2_3_fn07.pdf

[8] Sample New Board Member Packet
3_2_3_fn08.pdf

[9] Background to the Reorganization of UofL Board of Trustees
3_2_3_fn09.pdf

[10] Revisions to Board of Trustees Bylaws
3_2_3_fn10.pdf

[11] Revisions to Chapter 1 of *The Redbook*
3_2_3_fn11.pdf

[12] Board of Trustees Governance Committee Minutes, March 9, 2017
3_2_3_fn12.pdf

[13] Board of Trustees Minutes, May 18, 2017, Adoption of Revised Bylaws
3_2_3_fn13.pdf

[14] Board Bylaws, Statement 1.3, Freedom from Undue External Influence
3_2_3_fn14.pdf

[15] Board of Trustees Minutes, June 15, 2017, Approval of Revisions to *The Redbook*
3_2_3_fn15.pdf

[16] Institutional Conflict of Interest Policy
3_2_3_fn16.pdf

<https://sharepoint.louisville.edu/sites/policies/library/SitePages/Administration/Institutional%20Conflict%20of%20Interest%20Policy.aspx>

[17] Addressing Institutional Conflict of Interest Policy
3_2_3_fn17.pdf

<https://sharepoint.louisville.edu/sites/policies/library/SitePages/Administration/Addressing%20Institutional%20Conflicts%20of%20Interest%20Policy.aspx>

[18] Board of Trustees Conflict of Interest Certification Form in New Member Packet
3_2_3_fn18.pdf

- [19] Board of Trustees Signed Conflict of Interest Statements
3_2_3_fn19.pdf
- [20] Board of Trustees Bylaws, Section 5.1, Conflict of Interest
3_2_3_fn20.pdf
- [21] *The Redbook* 1.1.3, Voting by the Board/Conflict of Interest
3_2_3_fn21.pdf
- [22] Board of Trustees Bylaws, Ethics Statement (Policy Statement 1.1)
3_2_3_fn22.pdf
- [23] UofL Code of Conduct
3_2_3_fn23.pdf
<http://louisville.edu/compliance/ico/code>
- [24] Board of Trustees Bylaws, Statement 1.3, Freedom from Undue External Influence
3_2_3_fn24.pdf
- [25] KRS 164.020, CPE Orientation of the Board
3_2_3_fn25.pdf
- [26] Board of Trustees Minutes, May 18, 2017, CPE Orientation
3_2_3_fn26.pdf
- [27] Board of Trustees Education in Fiduciary Responsibilities, July 20, 2017
3_2_3_fn27.pdf
- [28] Board of Trustees Minutes, May 18, 2017, Abstaining
3_2_3_fn28.pdf
- [29] Board of Trustees Minutes, June 15, 2017, Abstaining
3_2_3_fn29.pdf
- [30] Board of Trustees Minutes, June 15, 2017, Approval of Revisions to *The Redbook*
3_2_3_fn30.pdf
- [31] Roster of Current Members of the UofL Board of Trustees with Bios
3_2_3_fn31.pdf
- [32] UofL Board of Trustees Signed Conflict of Interest Statements
3_2_3_fn32.pdf
- [33] ULF Bylaws
3_2_3_fn33.pdf

[34] Roster of Current Members of the ULF Board of Trustees with Bios
3_2_3_fn34.pdf

[35] Overlap of ULF Board of Directors and UofL Board of Trustees
3_2_3_fn35.pdf

[36] ULF Board of Directors Conflict of Interest Statements
3_2_3_fn36.pdf