



# **HIGHER EDUCATION LOANS BOARD**

## **CONFLICT OF INTEREST POLICY**

**JULY 2017**

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## **1. Definitions**

- a. Addressing Conflict of interest – the process of identifying and implementing strategies and practices to minimise the risks associated with the disclosed conflict of interest.
- b. Disclosure – Sharing the existence, nature, and relevant facts of conflict of interest or lack of it with the relevant person, Committee or Board.
- c. Employee - any person engaged by HELB as an employee, whether permanent or on fixed term basis.
- d. Family Member- Refers to individuals related by blood, adoption, marriage and step family member and includes the following:
  1. Spouse or partner in a civil union recognized by law
  2. Partner in a committed, personal relationship;
  3. Parent;
  4. Son or daughter,
  5. Siblings, adopted
  6. Father-in-law
  7. Mother-in-law;
  8. Brother-in-law
  9. Sister-in-law;
  10. Son-in-law
  11. Daughter-in-law;
  12. Grandparent;
  13. Grandchild.
  14. Any other person who can be traced to the family tree.

“Policy” means this Conflict of Interest Policy;

## **2. Preamble**

Conflicts of interest commonly arise and need not present a problem if they are openly and effectively managed. It is a requirement that all forms of conflicts of interest be avoided and if they must arise, they should not conflict with the obligations of HELB. Accordingly, Board Members and Staff have an obligation to act in the best interest of the institution. To this end, Board Members and Staff should deal with their private affairs and carry out their official duties in a manner that will prevent actual, foreseeable and perceived conflicts of interest from affecting decision making. Conflict of interest prejudices an individual's ability to perform his or her duties and responsibilities objectively.

## **3. Policy Statement**

Higher Education Loans Board (HELB) is committed to conducting business in an environment that is values-based to ensure that the Board and Staff judgement and decision making is not influenced by undue personal interests.

## **4. Purpose**

The policy sets forth the relevant principles, rules and procedures in respect to effective recognition, disclosure, evaluation and resolution of conflict of interest with a view to protecting integrity and managing associated risks by creating awareness and understanding.

## **5. Objective**

HELB aims to ensure that Board Members and Staff are aware of their obligations to disclose conflicts of interest that they may have, and to comply with this policy as well as legal and regulatory frameworks to ensure that conflicts of interests are effectively managed to avoid any appearance of impropriety.

## **6. Scope**

This Policy applies to Board Members and Staff at all levels, including individuals hired on a part-time, fixed term basis or as individual consultants.

## **7. Guiding Principles**

At all times Board Members and Staff are expected to conduct themselves ethically by upholding and being seen to uphold highest ethical standards in a manner which will bear the closest scrutiny. They will be responsible for seeking guidance before embarking on activities which may be considered to be conflict of interest. This is geared towards enhancing public confidence in HELB's integrity, objectivity and impartiality as guided by the listed legal and general principles. HELB core values which are professionalism, integrity, courtesy and equity shall also apply.

- 7.1 The National Values and Principles provided for under Article 10 of the Constitution;
- 7.2 Principles of Leadership and integrity as enshrined in Article 73 of the Constitution.
- 7.3 The Values and Principles of Public Service as provided for under Article 232 of the Constitution;
- 7.4 Principles of the Leadership and Integrity Act;
- 7.5 Principles of the Public Officer Ethics Act;

The listed principles seek to promote integrity, transparency, honesty, accountability, fairness, equity and trust and generally provide for mechanisms for ensuring visibility and consistent application of measures to recognise, prevent and deal with conflict of interest when they arise.

## **8. Definition of Conflict of Interest**

Conflict of interest arises when one's personal interests, real, potential or perceived affect that person's objectivity and discretion or the discretion of another person in performing official duties or making decisions or acting in the best interest of the institution which they represent. Conflict of interest may be financial or non-financial.

## **9. Extent of Personal Interest**

There are two forms of personal interest, direct and indirect.

- 9.1 Direct personal interests are interests that directly accrue to the person himself or herself.
- 9.2 Indirect personal interests are interests that accrue to the person but through parties or may accrue to third parties only through the influence of the person. Such third parties are family members, friends, business associates, organisations where the person or people associated with him or her have shares or are connected to the organisation in someone way or the other.

## **10. Uncertainty on Existence of Conflict of Interest**

Conflicts of interest are often obvious but where there is uncertainty on whether a conflict of interest exists, the person concerned should:

- 10.1 Seek opinion from the chairmen of the respective committees of supervisors as the case may be.

10.2 Where applicable and with necessary approval, seek external advice

10.3 Refer to any available information on the subject

### **11. Parties to Disclose to**

Due to diversity of conflicts of interest as well as diversity of the people involved, disclosure shall be made as below:

11.1 The Chairman of the Board shall disclose conflict of interest to the Board or the Principal Secretary of the Parent Ministry.

11.2 A Board member with conflict of interest shall disclose to a respective Board Committee or the Full Board. Where such a member is of the view that he cannot disclose to the Board organs, disclosure shall be made to the respective Chairmen.

11.3 The Chief Executive Officer shall disclose conflict of interest to the Board Committees or the respective Chairmen

11.4 Depending on the prevailing circumstances, Staff shall disclose conflict of interest to their supervisors, departmental heads, divisional heads or the Chief Executive Officer or Management Committee.

### **12. Overall Responsibility**

Board Members and Staff are responsible for managing conflicts of interest in order to ensure that decision making is not influenced by conflicting interests.

### **13. Prevention Responsibility**

HELB supports organisational culture in which people freely take responsibility for both “self-declaring” conflict of interest and respectively, raising conflicts of interest faced by others in the organisation.

### **14. Responsibilities of the Board**

The Board shall be responsible for:

14.1 Establishing a system for identifying, disclosing and managing conflicts of interest;

14.2 Monitoring compliance with this policy;

14.3 Recusing themselves from discussions or decision making on matters where they are conflicted;

14.4 comply with the policy;

14.4 Effecting sanctions;

14.5 Reviewing the policy as need arises.

## **15. Responsibilities of the Chief Executive Officer**

The Chief Executive Officer shall be responsible for:

- 15.1 Rule on disputes concerning the application of this Policy to HELB employees;
- 15.2 Receive reports from departmental heads on possible breaches and taking appropriate action;
- 15.3 Determine actions required as a result of confidential disclosures by Employees;
- 15.4 Make annual report on overall policy application and compliance;
- 15.5 Oversee implementation of the policy;
- 15.6 Comply with the policy.

## **16. Responsibilities of Employees**

Staff will be responsible for:

- 16.1 familiarizing themselves with the Policy (awareness ;)
- 16.2 complying with the decision of the Board or the Chief Executive Officer as necessary;
- 16.3 Declaring conflict of interest;
- 16.4 Reviewing annually their obligations under the Policy and applicable laws;
- 16.5 Recusing themselves from any discussion or decision making process on any matter in respect of which they would be in a conflict of interest;
- 16.6 Seek advice where they may be conflicted;
- 16.7 Furnish reports as appropriate;
- 16.8 Ensure effective implementation of the policy;
- 16.9 Comply with the policy.

## **17. Sanctions**

If the Board has reason to believe that a person subject to the policy has failed to comply with it, it shall investigate the circumstances. Where it is established that the person failed to disclose a conflict of interest, the Board shall take action against the person.

## **18. Conflict of Interest Situations**

Conflict of interest may be actual, potential or perceived.

- 18.1 Actual conflict of interest occurs where there is real or existing conflict.
- 18.2 Potential conflict of interest is present where someone is in a situation that may result into a conflict of interest.
- 18.3 Perceived conflict of interest exists where there is a situation that would appear to third parties as if there is a conflict even where such conflict of interest may not exist.



The three situations are subject to disclosure.

## **19. Identification and Disclosure of Conflicts of Interest**

Disclosure of conflict of interest must be made as soon as the affected Board Member or staff identifies that there may be a conflict of interest. The disclosure shall be recorded in a register kept for that purpose. To this end, conflict of interest registers for Board members and that for staff shall be maintained. Board Members shall be required to declare conflict of interest at each Board meeting by signing the register. The declaration shall be minutes as well. Staff shall be required to make disclosure at any time the identification is made. All disclosures shall be in writing.

## **20. Evaluation of Conflict of Interest**

- 20.1 Disclosure provides transparency to actual, potential or perceived conflict of interest. To fully mitigate the risk, the conflict of interest disclosed must be evaluated by the person, Management, Board Committee or the Board as the case may be.
- 20.2 Evaluation will be guided based on the nature of the person concerned, his/her position and scope of decision making authority, the substantiality of the relationship, the pervasiveness of the conflict of interest and whether additional measures are required to protect the integrity and reputation of the person and HELB.
- 20.3 In evaluating conflict of interest, the person, Management, Board Committee or the Board shall be expected to:
  - 20.3.1 Where necessary, avoid conflicts of interest;
  - 20.3.2 Identify and disclose any conflicts of interest;
  - 20.3.3 Treat the information disclosed with appropriate confidentiality and without bias;
  - 20.3.4 Where necessary provide for an alternative disclosure mechanism if additional restrictions on disclosure are required;
  - 20.3.5 Fairly evaluate the conflict of interest situation disclosed including the risk to the business interests and reputation as well as the risk and reputation to the disclosing person.
  - 20.3.6 Where applicable, seek guidance from appropriate functions e.g. Legal, Corruption Prevention Committee, Integrity Assurance Committee and any other relevant person, committee or body;
  - 20.3.7 Make pragmatic decisions to address the conflict of interest to minimise the risk to HELB and protect personal interests of the disclosing person;
  - 20.3.8 Retain proper documentation of the whole process;

- 20.3.9 Comply with this policy;
- 20.3.10 Address breaches to the policy where applicable;
- 20.3.11 Effect sanctions where appropriate.

## **21. Resolution of Conflicts of Interest**

Upon the disclosed conflict of interest being identified and evaluated, mitigation measures shall be put in place as per the provisions below:

- 21.1 Once the conflict of interest has been appropriately disclosed, the Board, Committee or Management or person, excluding the disclosing member and any other conflicted member shall decide whether or not those conflicted members should:
  - 21.1.1 Vote or be part the consensus process where applicable;
  - 21.1.2 Participate in deliberations;
  - 21.1.3 Be present in the room during deliberations and decision making;
  - 21.1.4 Resign from the Board (Where the conflict is so significant such that it prevents the member from effective, regular discussions for a long period of time)
  - 21.1.5 Whether the conflict needs to be avoided or simply documented;
  - 21.1.6 Whether the conflict will realistically impair the disclosing person's capacity to impartially participate
  - 21.1.7 Consider alternative options to avoid the conflict e.g. transfer activity to 3<sup>rd</sup> party or remove individual from affected duties;
  - 21.1.8 Consider the possibility of creating an appearance of improper conduct that might impair confidence in or reputation of HELB or the person;
  - 21.1.9 Consider if the person can relinquish the private interest.
- 21.2 Resolution shall be based on circumstances of each individual situation but must be in compliance with this policy, legal frameworks and regulatory requirements.
- 21.3 Approval of any action shall require the agreement of at least a majority of the Board members present and voting or being in consensus (excluding the any conflicted Member.)
- 21.4 All decisions under a conflict of interest will be minuted. The record shall include:
  - 21.4.1 Nature and extent of the conflict;
  - 21.4.2 An outline of the discussion;
  - 21.4.3 Action taken to manage the conflict (Resolution)
  - 21.4.4 All other documentation on the matter must be in writing and shall be kept safely.

21.5 A member who has a conflict of interest shall not be involved in the managing, monitoring, administration or overseeing implementation of an activity in which the conflict of interest exists.

## **22. Applicable Conflict of Interest.**

Areas of conflict of conflict of interest shall be as contained in the schedule which schedule may be amended from time to time.

## **23. Prevention Mechanism**

Framework for prevention and effective management of conflict of Interest will be established e.g. recusal, meeting procedures and identification of “at risk” areas.

## **24. Offence**

It is acknowledged that there are instances when conflict of interest can be a criminal offence. To this end, where there is reason to suspect that a criminal offence may have been committed, the matter shall be referred to the respective institutions for appropriate action.

## **25. Precautionary and Disciplinary Measures**

Failure to comply with this policy may lead to organizational as well as individual risks leading to organisational or individual sanctions.

## **26. Monitoring Mechanisms**

There shall be Management, Internal as well as external oversight institutions to detect and recommend appropriate action for non-compliance. Complaint mechanism to deal with allegations of non-compliance shall be developed. This will include but shall not be limited to clear rules and procedures for whistle blowing and protection of whistle blowers.

## **27. Protection from Personal Liability**

Any Board Member or Employee shall not be rendered personally liable for conflict of interest for doing anything if such a thing is done in good faith for the purpose of executing any provision of HELB Act or any other written law or regulations or is generally part of duties and responsibilities assigned.

## **28. Appeal**

Any person who is not satisfied with the way in which a disclosed conflict of interest was evaluated and resolved may appeal to the next organ or person.

## **29. References and Legal Requirements**

The Duty to declare conflicts of interest is not only in keeping with good governance practices but is also a legal obligation. Those bound by this policy must therefore apply the most recent editions of the following documents among others.

- 29.1 The Constitution;
- 29.2 The Leadership and Integrity Act;
- 29.3 The Public Officers Ethics Act;
- 29.4 The Public Procurement and Asset Disposal Act;
- 29.5 Anti-Corruption and Economic Crimes Act;
- 29.6 Ethics and Anti-Corruption Commission Act;
- 29.7 International standards , including the United Nations Convention Against Corruption(UNCAC), the AU Convention on Preventing and Combating Corruption and the OECD Guidelines for managing conflict of Interest in the Public Service
- 29.8 State Corporations Act;
- 29.9 The Higher Education Loans Boards Act;
- 29.10 Mwongozo Code of Governance for State Corporations;
- 29.11 The Higher Education HR policy and Code of conduct;
- 29.12 Government Circulars as issued from time to time.

## **30. Disclaimer**

Every care has been taken in preparing the policy to avoid errors and omissions. In the event of any errors being discovered, an amendment shall be issued in that respect and no person shall be allowed to benefit from such error.