

## CONFLICT OF INTEREST POLICY

### Article I

#### Purpose

The purpose of the conflicts of interest policy is to protect Operation Breakthrough, Inc.'s (OBI) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of OBI. This policy is intended to supplement but not replace any applicable laws or rules governing conflicts of interest applicable to nonprofit and charitable corporations, or to specific grants or funding sources. Specifically, the rules regarding conflicts of interest in administering Community Development Block Grant (CDBG) funded activities are attached hereto as Appendix A and incorporated by reference. In any matter which involves CDBG funded activities, the rules in Appendix A shall apply.

### Article II

#### Definitions

##### 1. Interested Person

Any 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.

##### 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 OBI has a transaction or arrangement, or
- b. a compensation arrangement with OBI or with any entity or individual with which OBI has transaction or arrangement, or
- c. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which OBI is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.

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 appropriate board or committee decides that a conflict of interest exists.

## **Article III**

### **Procedures**

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

In connection with any actual or possible conflicts of interest, an interested person must disclose the existence and nature of his or her financial interest and must be given the opportunity to disclose all material facts to the directors and members of committees with board delegated powers considering the proposed transaction or arrangement.

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

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

#### **3. Procedures for Addressing the Conflict of Interest**

- a. An interested person may make a presentation at the board or committee meeting, but after such presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.
- b. the chairperson of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the board or committee shall determine whether OBI can obtain a more advantageous transaction or arrangement with reasonable efforts 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 attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested directors: whether the transaction or arrangement is in OBI's best interest and for its own benefit and whether the transaction is fair and reasonable to OBI and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

#### **4. Violations of the Conflicts of Interest Policy**

- a. If the board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action, including censure and/or expulsion.

## **ARTICLE IV**

### **Records of Proceedings**

The minutes of the board and all committees with board-delegated powers shall contain

1. 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.
2. 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 alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

## **Article V**

### **Annual Statements**

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

- a. has received a copy of the conflicts of interest policy,
- b. has read and understands the policy,
- c. has agreed to comply with the policy,
- d. and understands that OBI is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

## **Article VI**

### **Periodic Reviews**

To ensure that OBI operates in a manner consistent with its charitable purposes and that it does not engage in activities that could jeopardize its status as an organization exempt from federal income tax, annual reviews shall be conducted. The reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable and are the result of arm's-length bargaining.
- b. Whether acquisitions of services result in impermissible private benefit.

- c. Whether partnership and joint venture arrangements conform to written policies, are properly recorded, reflect reasonable payments for goods and services, further OBI's charitable purposes and do not result in inurement or impermissible private benefit.

In conducting the periodic reviews provided for in Article VII, OBI may, but need not, use outside advisers. If outside experts are used their use shall not relieve the board of its responsibility for ensuring that periodic reviews are-conducted.

## APPENDIX A

### Subpart K, 570.611 CDBG Conflict of Interest Rules.

- a. **Applicability.**
1. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 84.42, respectively, shall apply.
  2. In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to [570.202](#); or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to [570.203](#), [570.204](#), [570.455](#),\* or [570.703\(i\)](#)).  
\* (The published regulation inadvertently refers to 570.455 which was removed when streamlined regulations were published on March 20, 1996.)
- b. **Conflicts prohibited.** The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.
- c. **Persons covered.** The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.
- d. **Exceptions.** Upon the written request of the recipient, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it has satisfactorily met the threshold requirements of (d)(1) of this section, taking into account the cumulative effects of paragraph (d)(2) of this section.
1. **Threshold requirements.** HUD will consider an exception only after the recipient has provided the following documentation:
    - i. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

- ii. An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.
2. Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:
- i. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
  - ii. Whether an opportunity was provided for open competitive bidding or negotiation;
  - iii. Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - iv. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;
  - v. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;
  - vi. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  - vii. Any other relevant considerations.

[53 FR 34456, Sept. 6, 1988; 53 FR 41330, Oct. 21, 1988, as amended at 57 FR 27120, June 17, 1992; 60 FR 56916, Nov. 9, 1995]

**APPENDIX II**

**Conflict of Interest Policy Acknowledgment**

**(check all that apply)**

- As a member of the Board of Directors**
- Member of a committee with board-delegated powers**
- Officer**

**of Operation Breakthrough, Inc., I acknowledge the following:**

1. I have received, read, and understand the written policies of OBI regarding conflicts of interest.
2. I agree to comply with this policy.
3. I understand the importance of full and prompt disclosure of any matters that may lead to a conflict of interest.
4. I understand that OBI is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name, Printed

\_\_\_\_\_  
Date