

**SUMMARY AND RECOMMENDATION
INTRODUCTION AND FINAL ADOPTION
NEW SBHE POLICY 308.1**

Summary

In response to fraud cases such as Enron and Worldcom, a new Statement of Auditing Standard 109 was adopted in 2006. SAS 109 requires that auditors assess the control environment and risk of material misstatement of an organization's financial statements when performing an audit. In doing so, auditors must review such things as management philosophy, integrity and ethical values of management and governing boards and relevant operating policies, procedures and training. As a result of SAS 109, the SAO office has since 2006 focused more on review of areas such as fraud awareness training, codes of conduct and structures of accounting and internal audit departments. In 2008 and 2009 audits, the SAO recommended several steps to increase awareness of risk and minimize risk and related potential fraud. The NDUS and its institutions have already taken action responsive to several recommendations and other steps are underway. For example, the NDUS now has a fraud hotline, there is fraud awareness training for NDUS employees and NDSU and UND internal audit staff reporting has been re-aligned.

One SAO recommendation is that the SBHE and NDUS institutions adopt a comprehensive Code of Conduct. Responding to that recommendation, the administrative affairs council recommends a new SBHE Policy 308.1, setting forth a Code of Conduct for the SBHE and university system. The code is consistent with the Committee of Sponsoring Organization of the Treadway Commission (COSO) standards. The policy includes a requirement that the system office and each institution adopt an equivalent code of conduct and new employees must agree to comply with the code. In addition, all "benefitted" employees (generally, employees employed in regular positions at least one-half time) must annually certify that they have reviewed and agree to comply with the code.

The academic and student affairs councils had an opportunity to comment on Policy 308.1. The chancellor's cabinet reviewed the policy at a June 2, 2010 meeting and presidents support the administrative affairs council recommendation. In order to implement the code without delay, it is recommended that the SBHE waive the second meeting requirement and immediately approve the recommended policy.

Recommendation

I recommend that according to SBHE Policy 330, the SBHE waive the second meeting requirement and immediately approve second reading and final adoption of attached new Policy 308.1 following introduction and first reading, effective immediately.



William Goetz, Chancellor

Date of Meeting: June 17, 2010

**NORTH DAKOTA STATE BOARD OF HIGHER EDUCATION
POLICY MANUAL**

SUBJECT: GOVERNANCE AND ORGANIZATION **EFFECTIVE:**

Section: 308.1 Officer and Employee Code of Conduct

1. Introduction and Application.

This Officer and Employee Code of Conduct governs the State Board of Higher Education and its members and establishes minimum standards for all NDUS officers and employees. The Board and entire NDUS are committed to uphold the highest ethical and professional standards. All Board members and NDUS officers and employees must, at all times, comply with all applicable laws, regulations, policies and procedures. Activities that achieve results unlawfully or in violation of applicable policies or procedures or by unethical behavior - including, but not limited to, payments for illegal acts, indirect contributions, rebates, or bribery - are not tolerated and must be reported. All conduct must meet or exceed minimum standards established by law.

The Board has established its Beliefs and Core Values in SBHE Policy 100.5 and in SBHE Policy 100.6, the Board sets forth Authority and Responsibility of the Board, including its Guiding Principles. SBHE Policies 100.5 and 100.6 establish a foundation or framework for Board action and conduct of its members and NDUS officers and employees; this Code of Conduct reinforces and supplements those policies.

2. General Conduct.

The Board supports an environment that is free of discrimination or harassment. All Board members, officers and employees are expected to conduct themselves in a businesslike manner. Unlawful consumption of alcoholic beverages or use of illegal drugs, being at work while under the influence of alcohol or drugs, disruptive behavior, unlawful gambling, unauthorized use of public property or resources and other unauthorized activities that disrupt the efficient and economical administration of the NDUS, are prohibited. Violation of applicable laws or policies governing possession and use of alcoholic beverages or drugs, including the Drug Free Workplace Act, SBHE Policy 615 or applicable system office or institution policies, are prohibited. Likewise, sexual or other harassment (including actions contributing to a hostile work environment) in violation of federal or state law or SBHE Policy 603.1, is prohibited.

3. Conflicts of Interest.

All Board members, officers and employees are expected to perform their duties conscientiously, honestly, and in accordance with the best interests of the NDUS. All Board members, officers and employees must comply with applicable federal and state laws. Board members, officers and employees may not unlawfully use their position or the knowledge gained as a result of their position for private or personal advantage. All Board members, officers and employees are responsible for their own actions. Any individual who has concerns or questions regarding a perceived or potential conflict or regarding application or interpretation of federal or state law or SBHE policy is encouraged to communicate with a superior or with legal counsel.

4. Outside Activities and Employment.

Board members, officers and employees share responsibility for good public relations, especially at the community level. Their readiness to help with religious, charitable, educational, and civic activities brings credit to the NDUS and is encouraged. However, officers and employees must comply with applicable federal and state laws, policies in Section 611 of the SBHE Manual and related system office and institution policies. At all times, employees must avoid outside activities that create an excessive demand upon their time and attention, thus depriving the NDUS of their best efforts in fulfilling their job duties or that create a conflict of interest, or an obligation, interest, or distraction that interferes with the independent exercise of judgment in the NDUS' best interest.

5. Relationships With Clients and Suppliers; Conflicts of Interest.

Board members are not NDUS employees and may have other full or part-time employment and other professional, civic and personal responsibilities and activities, in addition to their part-time service as Board members. Nevertheless, Board members must be familiar with and comply with applicable laws governing conflict of interest that apply to Board members and should strive to avoid other activities that create an obligation, interest or distraction that interferes with the independent exercise of judgment in the best interest of the NDUS. They should avoid investing in or acquiring a financial interest for their own accounts in any business organization that has a contractual relationship with the NDUS or NDUS institution, or that provides goods or services to the NDUS, if such investment or interest could influence or create the impression of influencing their decisions in the performance of their duties.

6. Gifts, Entertainment and Favors; Kickbacks and Secret Commissions.

Excluding only *de minimus* contributions, such as purchase of a meal at reasonable value as part of a conference or other event with no conditions attached to such purchase and as permitted under applicable federal and state laws, Board members, officers and employees may not accept entertainment, gifts, or personal favors that could influence, or appear to influence, decisions in favor of any person or organization with whom or with which the NDUS or NDUS institution has, or is likely to have, business dealings. Similarly, Board members, officers and employees may not accept any other preferential treatment under circumstances that because of their position with the NDUS, the preferential treatment may influence or be perceived as influencing their official conduct. Board members, officers and employees may not receive payment or compensation of any kind from any source for NDUS duties and responsibilities, except as authorized under applicable law or NDUS pay policies. Specifically, the acceptance of "kickbacks" or commissions in any form from vendors, suppliers or others is prohibited.

7. NDUS Funds and Other Assets.

Board members, officers and employees who have access to NDUS funds and other assets in any form must follow the prescribed procedures for recording, handling, and protecting money and other assets as detailed in applicable NDUS procedure manuals or other explanatory materials. Any person who has information concerning possible fraud or dishonesty shall immediately report such information to a superior or to legal counsel.

Board members, officers and employees responsible for spending or approving expenditure of

NDUS funds or incurring any reimbursable expenses must comply with all applicable laws and policies and use good judgment on behalf of the NDUS to ensure that good value is received for every expenditure. NDUS funds and all other assets are for NDUS purposes only and not for personal use or benefit. NDUS or other public equipment, supplies and other property or assets may not be used for private or personal use, except as authorized under SBHE Policy 611.5 or other applicable law or policy.

8. NDUS Records and Communications.

Accurate and reliable records of many kinds are necessary to meet NDUS legal and financial obligations and to manage the affairs of the NDUS. NDUS books and records must reflect in an accurate and timely manner all business transactions. Board members, officers and employees responsible for accounting and recordkeeping must fully disclose and record all assets and liabilities and exercise diligence in enforcing these requirements. Board members, officers and employees must not make or engage in any false record or communication of any kind, whether internal or external, including, but not limited to, false expense, attendance, enrollment, financial, or similar reports and statements, or false advertising, deceptive marketing practices, or other misleading representations.

9. Dealing with Outside People and Organizations.

Board members, officers and employees must take care to separate their personal roles from their NDUS positions when communicating on matters not involving NDUS business. They may not use NDUS identification, stationery, supplies, and equipment for personal or political matters. When communicating publicly on matters that involve NDUS business, Board members, officers and employees may not represent that they speak for the NDUS, unless that is one of their duties or they are otherwise authorized to do so. When dealing with anyone outside the NDUS, including public officials, Board members, officers and employees must take care not to compromise the integrity or damage the reputation of the NDUS or any institution.

10. Prompt communications.

In all matters involving communication with NDUS students, customers, suppliers, government authorities, the public and others, Board members, officers and employees must endeavor to make complete, accurate, and timely communications and respond promptly and courteously to all proper requests for information and complaints.

11. Privacy, Confidentiality and Open Records.

Board members, officers and employees must at all times comply with applicable laws, regulations and SBHE policies concerning privacy, confidential records, access to open records and records retention.

12. Reporting Suspected Violations; Procedures for Investigating Reports.

Officers and employees shall report suspected violations of this Code to their superior, some other senior manager or administrator or legal counsel. In addition, the NDUS shall maintain a fraud hotline and suspected violations may be reported by use of that hotline. Any officer or employee who makes a report in good faith shall be protected against retaliation of any kind; any

officer or employee who retaliates or attempts retaliation in response to a good faith report shall be subject to dismissal or other discipline. Failure to report known or suspected violations is in itself a violation and may lead to dismissal or other disciplinary action.

Board members who have information concerning a possible violation of this Code or are uncertain about application or interpretation of any legal requirement should report the matter to the chancellor, legal counsel or the attorney general.

Alleged violations of this Code involving NDUS officers or employees shall be investigated by the appropriate NDUS officer. All officers and employees shall cooperate in investigations of alleged violations. A violation of this Code is cause for dismissal or other appropriate disciplinary action, in addition to any criminal or other civil sanctions that apply.

13. Institution Codes.

The NDUS office and each NDUS institution shall adopt and implement a Code of Conduct consistent with this Code and Committee of Sponsoring Organization of the Treadway Commission (COSO) standards. NDUS office and institution codes shall include:

- a. A statement of the organization's values;
- b. The people or groups of people affected;
- c. A brief description or list of key behaviors that are accepted and not accepted;
- d. How to identify and resolve conflicts of interest;
- e. How to report violations and to whom;
- f. Consequences of violating the Code;
- g. Consequences of failure to report known or suspected violations; and
- h. How reports will be investigated.

The NDUS office and each institution shall require that each new employee review the Code of Conduct and sign a statement certifying the employee has read and agrees to comply with the Code. Further, all benefitted employees are required to annually certify in writing or electronically that they have read and are in compliance with the Code of Conduct.

HISTORY: New policy.