Drafting a Code of Ethics

Carl Sniffen, Member USATF Ethics Committee

carlsniffen@gmail.com
503-577-8955
Drafting a Code of Ethics

Objectives:

• Why do you need a Code of Ethics (“COE”) and/or Conflicts of Interest (“COI”) provisions?

• What’s the difference between a COE and a COI? How about a Code of Conduct?

• Who is covered?

• Codes of Ethics are often aspirational in nature---intended to inspire and guide leadership and provide a more transparent means of doing business. Success is often the result of voluntary compliance not formal enforcement mechanisms.

Codes of Ethics and Conflicts of Interest policies evolve over time based upon experience. There are many possible individual variations both as to what you might choose to include in your Code
Objectives continued:

• The workshop won’t provide you with legal advice or answer all of your questions. It is intended to get you started, provide you with guidance and background, and examples to help you work within your Association to draft a Code that will meet your needs. Whatever you produce, have a local attorney, licensed in your jurisdiction work with you to get to the final product.

• What is included in a Code of Ethics/Conflicts of Interest policy?

• What works best for your association (simple models to complex models)?
Drafting a Code of Ethics

Objectives continued:

• Role of an Ethics Committee: advisory; recommendation; update COE; investigator; judge; executioner?

• Authority of an Ethics Committee

• Enforcement of Ethics Committee decisions or recommendations

• Due Process, Confidentiality-not absolute

• What is your Association’s capacity to investigate, enforce and/or sanction? Don’t create a policy that will exceed your capacity to undertake these tasks.
Drafting a Code of Ethics

Attachments to Help Guide You

• Attachment A: USATF Code of Ethics

• Attachment B: USATF Ethics Committee Investigation Policies and Procedures

• Attachment C: Draft Template for USATF Association Code of Ethics

• Attachment D: USATF Associations: Samples of Code of Ethics/Conflicts of Interest language (language found in Associations’ ethics policies, bylaws or regulations

• Attachment E: Draft Vendor Code of Conduct (not yet adopted or approved)---attached as a model of a type of Code which might benefit your Association.

• Attachment F: USATF Code of Ethics Conflict Reporting Statement

Within USATF, there are other codes of conduct relating to agents, national office staff, athletes, coaches, etc., each of which are available online and could serve as a good resource for Associations looking to draft such policies.
Drafting a Code of Ethics

What is it?-----a guideline to inspire, set expectations and requirements, educate, strive for voluntary compliance, set forth procedures for investigation and sanction

- “Because USATF operates in the public spotlight and is expected to conduct business on an ethical basis, we must ensure that our leadership never puts, nor is it perceived to have put, personal interests ahead of or in conflict with the interests of USATF. No Code of Ethics can substitute for each person's own internal sense of fairness, honesty, and integrity. Therefore, it is important that every person representing USATF support the values and principles that are critical to USATF's continuing tradition of excellence.”

- “It is of major importance to USATF that its leadership create a "tone at the top" that promotes ethical conduct throughout USATF.”

- “To ensure continued confidence in USATF leadership....”
Drafting a Code of Ethics

Why?

“The policies set forth in the following provisions are intended to guide the conduct and business activities and other matters involving, directly or indirectly, USATF. The Code of Ethics is intended to inspire all of us to be at our best, encourage voluntary compliance, disclosure of actual or potential conflicts, and informal resolution. The Code is not all inclusive, as not every expectation or circumstance respecting proper and ethical business conduct can be anticipated, however it should be used as a guide by all Board of Directors, independent contractors, volunteers, and chairs and members of committees, sub-committees, councils, task forces, and any other decision-making body of USATF when conducting business.”
Drafting a Code of Ethics

Why?

• Best practices
• IRS Form 990 wants to know about your “independent board of directors” and whether your nonprofit association maintains a conflicts of interest policy
• State law may require
• Promote transparency
• Promote honesty and integrity
• Minimize or neutralize conflicts of interest
• Set a tone to guide behaviors and achieve voluntary compliance
• Other reasons?
Drafting a Code of Ethics

Questions you should ask at the outset?

• What do we need for legal compliance?

• What do we need because it is the right or best thing to do?

• Do we need a code of conduct and a conflicts of interest policy?

• What problems or behaviors do we seek to avoid?

• Time and resources available to investigate, enforce or sanction?

• Who has the authority to receive complaints, investigate complaints, conduct hearings or impose and enforce sanctions?

• How does this fit with existing policies such as those dealing with grievances?
Drafting a Code of Ethics

Authority of an Ethics Committee

• Where is it stated: USATF Regulation 16G
• Who can serve on the Ethics Committee
• USATF Ethics Committee:
  • Review, recommend and maintain the COE
  • Provide education and training to members
  • Investigate Ethical Complaints and make Recommendations as to sanctions, enforcement, etc. No authority to enforce or make a final determination.
  • Render advisory opinions upon request
  • Monitor compliance with annual reporting requirements
  • Report to the Board/Governing Body
  • USATF Ethics Committee investigates and recommends sanctions/USATF Board must conduct any hearing
  • Strong emphasis on achieving voluntary compliance
Drafting a Code of Ethics

Definitions: what terms need to be defined to avoid confusion

- USATF Code of Ethics uses the concept of a “Responsible Person” to define who is subject to the Code of Ethics. The term includes Board and committee members, independent contractors and members of any decision making body of USATF.

- USATF Code of Ethics also include defined “Family Members.”

- USATF Code of Ethics uses the term “Transaction” to identify the types of agreements or relationships which give rise to conflicts of interest. In general, the areas conflict involve financial benefit available to Responsible Persons and Family Members as a result of their position of being a part of a decision making body that is not available generally to others.
Drafting a Code of Ethics

Code of Conduct

USATF’s Code of Ethics includes a Code of Conduct which is described as a “guide for the conduct of business and activities.” It lists “basic principles applicable to all “Responsible Persons,” including:

- Maintenance of honesty and integrity
- Exhibiting the highest degree of ethical standards
- Fair treatment of everyone and respect of basic human rights
- Right for freedom from physical, emotional or sexual harassment
- Prohibit attempts to direct or influence any Responsible Person to obtain a position or financial or other benefit from USATF
- Nepotism
- Fair play is mandatory
Drafting a Code of Ethics

Code of Conduct

USATF’s Code of Conduct is largely inspirational and aspirational. A number of principles listed (“highest degree of ethical standards”) may be difficult to enforce. Others guidelines and prohibitions might already exist elsewhere in an Associations Bylaws or Regulations.

Historically, most matters coming to the attention of the Ethics Committee relate to conflicts of interest rather than the code of conduct.

Is there value to separating matters heard by an Ethics Committee from those which might be the subject of pre-existing grievance policies and procedures?
Several years ago, the USATF Ethics Committee drafted a suggested model Code of Ethics for Associations. It is attached as a Schedule to this presentation. The model code of conduct is us similar to the USATF Ethics Code of Conduct.
Drafting a Code of Ethics


From the Model:

• Any one of the following circumstances shall create a Conflict of Interest. Transactions greater than $100 in the aggregate per year between the Association and a "Responsible Person." This prohibition also includes transactions greater than $100 in the aggregate per year between a Third Party and a “Responsible Person.” This includes any employment or payment for services with USATF. It also includes the receipt of anything of value greater than $100.

• A "Responsible Person" directing staff, volunteers, or Third Parties to help a "Responsible Person" or his or her "Family Members" or friends obtain benefits (financial or otherwise) or other preferential treatment for which he or she would not otherwise qualify.

• A "Responsible Person" soliciting or receiving gifts or favors in any form, including money, services, loans, travel, apparel, equipment, entertainment, hospitality, or promise or any other thing of value.

From the Model:

• Prohibition of use of confidential information and exertion of undue influence: During the time that a “Responsible Person” renders service to USATF, whether as a paid employee or as a volunteer, and for a period of at least five (5) years thereafter, such person shall not utilize any confidential information obtained during such period of service for his or her own benefit or for the benefit of any "Third Party."

• A "Responsible Person" or "Family Member" having an ownership or investment interest in excess of 5% of the equity value of any "Third Party."

The Model allows the Association Board to create exceptions to these provisions.

*Can you identify other areas that create potential conflicts that should be included?

*Should you distinguish actual conflicts from potential conflicts?
Announcing a Code of Ethics

Annual Disclosure

- Both the USATF Code of Ethics and the Model Association Code require written annual disclosures to be made on an annual basis. The failure to provide the annual disclosure can result in the suspension of the individual who doesn’t respond from participating in USATF or Association activities.
- Disclosures are required to be updated in the event of a material change during the year.
- Disclosure forms relate to employment or financial interests that might give rise to a “possible” conflict of interest.
- When in doubt, disclose.
- Who is required to disclose and to whom?
- A copy of the USATF Conflict Reporting Statement is included in the attachments by way of a model.
Drafting a Code of Ethics

Complaints/Violations

• How does one file a complaint and with whom?
• What happens then? Investigation, hearing, sanction?
• Timelines to complete investigation and recommendation?
• Who decides?
• USATF Ethics Committee investigates and recommends but does not conduct hearings. The Board may have a hearing.
• A copy of the USATF Ethics Committee Investigation Policies and Procedures is attached as an example.
The USATF Ethics Committee Investigation Policies and Procedures set forth four basic principles to guide the investigation:

- Confidentiality is neither absolute or strict. Rather, confidentiality exists to a degree that is consistent with the ability to conduct a full and fair investigation.
- Anonymous complaints are difficult for the Committee due to limited resources. The Committee is largely dependent upon the complaining party to provide testimony and evidence.
- The Committee encourages parties to resolve their disputes through informal means.
- Timeliness is valued. Absent extraordinary circumstances, a complaint must be filed within two years of the conduct or event.
Drafting a Code of Ethics

Complaints/Violations/Sanctions

- Declining financial benefit;
- Resignation or termination;
- Terminating a contractual arrangement;
- Other sanctions?

**How much process is due?**
**What do regulations and bylaws require?**
Common Association Conflicts Provision—Is it enough?

**Conflict of interest** - Any individual representing this Association, or who has a financial arrangement with USATF or this Association, or who is a member of any of its committees, shall not participate in the evaluation or approval of a contract with a supplier to furnish goods or provide services to USATF or this Association, if that individual directly or indirectly benefits financially, or otherwise receives any form of compensation from, or has any interest in, any supplier under consideration. The Board may require that such individuals disclose all financial interests that may influence the performance of their duties for USATF or this Association. Each individual referred to in the first sentence of this paragraph shall, upon learning that this Association is proposing to enter into an arrangement in which he or she has financial interest, promptly notify the President, in writing, of the existence of such interest, and the President shall, in turn, promptly disclose such interest to those bodies of USATF involved in considering entry into the arrangement. In the event of a violation of this provision, the Association shall have the right to recover such benefit or payment and to void the contract or transaction.
Questions?

Contact the USATF Ethics Committee or attend one of its educational sessions at each USATF annual meeting, or contact

Carl Sniffen
carlsniffen@gmail.com
503-577-8955

Thank you.