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# UHHS P&P

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University Hospitals Health System  
Policy & Procedure Manual

## Physician Loans and Loan Guaranties

### SCOPE

This Policy applies to University Hospitals Health System, Inc. and all of its wholly-owned entities (collectively, “UHHS”), including all UHHS employees, medical staff members and, wherever appropriate, others who provide services to UHHS.

### PURPOSE


To provide a clear and unambiguous business standard to address situations in which a physician or physician group requests a loan from UHHS or that UHHS guarantee a loan from a third party lending institution.

### DEFINITIONS


- I. **Audit Committee** means the Audit and Organizational Integrity Committee of University Hospitals Health System, Inc.
- II. **Physician** means a physician or a physician’s immediate family member (i.e., spouse, natural or adoptive parent, child, sibling, step-parent, step-child, step-brother, step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, and the spouse of a grandparent or grandchild), or any entity that is controlled by a physician or a physician’s immediate family member.
- III. **UHHS Authorized Representative** means the person with signing authority for an agreement involving a loan to a Physician or the guarantee of a loan to a Physician by a third-party lender, in accordance with the UHHS policy on Contract Execution (F-24).

### POLICY

- I. All transactions or arrangements involving a Physician who seeks a loan from UHHS or requests that UHHS guarantee a loan to the Physician from an independent third-party lender will be managed and documented in accordance with this Policy.

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- II. This Policy does not apply to recruitment arrangements under which amounts forwarded to recruited Physicians may be converted to a loan, in accordance with the UHHS policy on Physician Recruitment Activities and Agreements (PT-3).
- III. UHHS generally will not loan money to a Physician or agree to guarantee a loan to a Physician by a third-party lender.
- IV. Exceptions to the general policy against loans and loan guarantees for Physicians may be considered on a case-by-case basis for special or unique circumstances and only upon obtaining approval from the Audit Committee.
- V. The decision regarding whether a Physician is eligible to be considered for a loan or loan guarantee under this Policy must not be determined in a manner that takes into account, directly or indirectly, the volume or value of referrals to UHHS by the Physician or any other business generated between the Physician and UHHS, or with the intention to induce referrals or business otherwise generated between the Physician and UHHS.
- VI. The terms and conditions of any loan or loan guarantee covered by this Policy must be commercially reasonable even if the Physician seeking the loan or guarantee were to make no referrals to UHHS.
  - A. Any loan issued to a Physician in accordance with this Policy must be (i) offered on commercially reasonable terms, including, but not limited to, an interest rate that is consistent with the fair market value interest rate that would be charged by a commercial lender for a similar loan to a similarly situated borrower, measured as of the commencement date of loan, (ii) documented in a written agreement, and (iii) guaranteed by a third party or secured by a negotiable promissory note and a security agreement, or subject to a similar mechanism, to assure payment in the event of default by the Physician.
  - B. Any loan guarantee provided by UHHS on behalf of a Physician in accordance with this Policy must be (i) offered on commercially reasonable terms, including payment by the Physician to UHHS of an amount consistent with the fair market value of UHHS's services in guaranteeing the loan, and (ii) documented in a written agreement that provides for sufficient and adequate recourse against the Physician in the event the Physician defaults and UHHS is forced to repay any outstanding amounts under the loan to the third-party lender.
- VII. All documents leading up to, or associated with, a formal, binding agreement with a Physician are subject to this Policy. This includes non-binding letters of intent, letter agreements and memoranda of understanding.
- VIII. Side agreements or arrangements (whether written or oral) not covered by the primary written agreement are prohibited, unless they are made as formal amendments or additional agreements reviewed by the UHHS Law Department and signed by both parties.

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- IX. In all arrangements subject to this Policy, payments must be consistent with the terms of the agreement and performance of all of the terms of the agreement is required.

## **PROCEDURE**

- I. A UHHS Authorized Representative who receives a request from a Physician to enter into a loan or loan guarantee arrangement shall present, or cause his or her designee to present, a written proposal including (A) all material terms (e.g., term of loan, maximum loan amount, interest rate, guarantee fee, security required), (B) fair market value justification for the interest rate or guarantee fee, and (C) all other material facts and circumstances related to UHHS's relationship with the Physician, to the Audit Committee for review and approval prior to taking any further action on the proposed arrangement. The UHHS Authorized Representative or his or her designee shall copy the UHHS Senior Vice President and General Counsel, the Vice President Audit and Organizational Integrity and the UHHS Senior Vice President and Chief Financial Officer on any proposal submitted.
- II. Any proposed loan or guarantee arrangement with a Physician shall be permitted only upon approval of the Audit Committee, in accordance with this Policy. In addition, if the proposed arrangement is with a Physician who is a disqualified person, as defined in 26 C.F.R. § 53.4958-0 et seq., or in a common medical practice with a disqualified person, the Audit Committee shall approve the arrangement only in accordance with applicable procedures adopted by such committee.
- III. In addition, the UHHS Authorized Representative or his or her designee (who shall be at least a Senior Vice President) must certify in writing to the Audit Committee, on a form provided by the UHHS Law Department, that:

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- (1) All relevant information concerning the proposed arrangement and the Physician are disclosed in the proposal to the Audit Committee for consideration in its determination regarding whether UHHS should enter into the arrangement;
  - (2) Except as disclosed, there are no other financial arrangements, written or oral, with the Physician;
  - (3) The interest rate to be charged to the Physician or the fee to be paid by the Physician to UHHS as compensation under a loan guarantee arrangement will represent the fair market value of the arrangement;
  - (4) The determination regarding whether to enter into a loan or guarantee arrangement with the Physician was not determined in a manner that relates, directly or indirectly to the volume or value of referrals or other business generated between the Physician and UHHS, or with the intention to directly or indirectly induce referrals or other business from the Physician to UHHS;
  - (5) The terms of the arrangement set forth in the proposal are commercially reasonable, even if no referrals were made to UHHS by the Physician; and
  - (6) Any other condition determined by the UHHS Law Department as necessary for the proposed arrangement to satisfy applicable legal requirements.
- IV. The Audit Committee shall approve or reject the proposed arrangement. The Audit Committee's approval may be conditioned upon specified changes to the terms of the proposed arrangement.
- V. Upon the approval of the Audit Committee, the UHHS Authorized Representative or his or her designee forwards the proposal and the certification form, including all of the terms and other parameters required by the Audit Committee to the UHHS Law Department.
- VI. The UHHS Law Department and Organizational Integrity Department will analyze the proposed arrangement for compliance with all applicable legal requirements. The UHHS Law Department must approve the agreements as to form.
- VII. The UHHS Authorized Representative or his or her designee shall not make a commitment (whether written or oral) to a Physician regarding the terms of a proposed arrangement until such terms have been reviewed and approved by both the Audit Committee and the UHHS Law Department.
- VIII. If, at any time, it appears that there have been discussions or memoranda indicating an intent to obtain or reward referrals by way of an agreement or arrangement, the agreement or arrangement will not be approved.

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- IX. Upon receiving the agreement and any other documents approved as to form from the UHHS Law Department, the UHHS Authorized Representative may sign the agreement on behalf of UHHS and present the agreement to the Physician for signature.
- X. The UHHS Authorized Representative or his or her designee forwards an original of the signed agreement to the UHHS Law Department and a copy of the agreement to the UHHS Finance Department, and retains a copy for his or her records.

**SEE ALSO**

In the UHHS P&P:

- F-24, Contract Execution
- F-30, Contracts
- PT-3, Physician Recruitment Activities and Agreements

**REFERENCES**

- 42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.952;
- 42 U.S.C. § 1395nn; 42 C.F.R. § 411.357;
- 26 U.S.C. § 4958; 26 C.F.R. §§ 53.4958-0 – 53.4958-8

<b>APPROVALS</b>	
 _____ CHIEF EXECUTIVE OFFICER	<u>7/18/05</u> _____ Date
 _____ SENIOR VICE PRESIDENT	<u>7/18/05</u> _____ Date