Example 5. A bequeathed $100,000 to his wife and a piece of unimproved real estate of equivalent value to private foundation Z, of which A was the creator and a foundation manager. Under the laws of State Y, to which the estate is subject, title to the real estate vests in the foundation upon A’s death. However, the executor has the power under State law to reallocate the property to another beneficiary. During a reasonable period for administration of the estate, the executor exercises this power and distributes the $100,000 cash to the foundation and the real estate to A’s wife. The probate court having jurisdiction over the estate approves the executor’s action. Under these circumstances, the executor’s action does not constitute an indirect act of self-dealing between the foundation and A’s wife.

Example 6. Private foundation P owns 20 percent of the voting stock of corporation W. A, a substantial contributor with respect to P, owns 16 percent of the voting stock of corporation W. B, A’s son, owns 15 percent of the voting stock of corporation W. The terms of the voting stock are such that P, A, and B could vote their stock in a block to elect a majority of the board of directors of W. W is treated as controlled by P (within the meaning of subparagraph (5) of this paragraph) for purposes of this example A and B also own 50 percent of the stock of corporation Y, making Y a disqualified person with respect to P under section 4946(a)(1)(E). W makes a loan to Y of $1 million. The making of this loan by W to Y shall constitute an indirect act of self-dealing between P and Y.

Example 7. A, a disqualified person with respect to private foundation P, enters into a contract with corporation M, which is also a disqualified person with respect to P. P owns 20 percent of M’s stock, and controls M within the meaning of subparagraph (5) of this paragraph. M is in the retail department store business. Purchases by A of goods sold by M in the normal and customary course of business at retail or higher prices are not indirect acts of self-dealing so long as the total of the amounts involved in all of such purchases by A in any one year does not exceed $5,000.

Example 8. A bequeathed $100,000 to his wife and a piece of unimproved real estate of equivalent value to private foundation Z, of which A was the creator and a foundation manager. Under the laws of State Y, to which the estate is subject, title to the real estate vests in the foundation upon A’s death. However, the executor has the power under State law to reallocate the property to another beneficiary. During a reasonable period for administration of the estate, the executor exercises this power and distributes the $100,000 cash to the foundation and the real estate to A’s wife. The probate court having jurisdiction over the estate approves the executor’s action. Under these circumstances, the executor’s action does not constitute an indirect act of self-dealing between the foundation and A’s wife.

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(i) The leased space is in a building in which there are other tenants who are not disqualified persons,

(ii) The lease is pursuant to a binding lease which was in effect on October 9, 1969, or pursuant to renewals of such a lease;

(iii) The execution of the lease was not a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law) at the time of such execution, and

(iv) The terms of the lease (or any renewal) reflect an arm’s length transaction.

A lease or renewal of such lease is described in this subparagraph (3) only if it satisfies the requirements of §53.4941(d)–4(c) (1) and (2), applied without regard to the December 31, 1979 deadline described therein.

(c) Loans—(1) In general. Except as provided in subparagraphs (2), (3), and (4) of this paragraph, the lending of money or other extension of credit between a private foundation and a disqualified person shall constitute an act of self-dealing. Thus, for example, an act of self-dealing occurs where a third party purchases property and assumes a mortgage, the mortgagee of which is a private foundation, and subsequently the third party transfers the property to a disqualified person who either assumes liability under the mortgage or takes the property subject to the mortgage. Similarly, except in the case of the receipt and holding of a note pursuant to a transaction described in §53.4941(d)–1(b)(3), an act of self-dealing occurs where a note, the obligor of which is a disqualified person, is transferred by a third party to a private foundation which becomes the creditor under the note.

(2) Loans without interest. Subparagraph (1) of this paragraph shall not apply to the lending of money or other extension of credit by a disqualified person to a private foundation if the loan or other extension of credit is without interest or other charge.

(3) Certain evidences of future gifts. The making of a promise, pledge, or similar arrangement to a private foundation by a disqualified person, whether evidenced by an oral or written agreement, a promissory note, or other instrument of indebtedness, to the extent motivated by charitable intent and unsupported by consideration, is not an extension of credit (within the meaning of this paragraph) before the date of maturity.

(4) General banking functions. Under section 4941(d)(2)(E) the performance by a bank or trust company which is a disqualified person of trust functions and certain general banking services for a private foundation is not an act of self-dealing, where the banking services are reasonable and necessary to carrying out the exempt purposes of the private foundation, if the compensation paid to the bank or trust company, taking into account the fair interest rate for the use of the funds by the bank or trust company, for such services is not excessive. The general banking services allowed by this subparagraph are:

(i) Checking accounts, as long as the bank does not charge interest on any overwithdrawals,

(ii) Savings accounts, as long as the foundation may withdraw its funds on no more than 30-days notice without subjecting itself to a loss of interest on its money for the time during which the money was on deposit, and

(iii) Safekeeping activities.

See example (3) §53.4941(d)–3(c)(2).

(d) Furnishing goods, services, or facilities—(1) In general. Except as provided in subparagraph (2) or (3) of this paragraph (or §53.4941(d)–3(b)), the furnishing of goods, services, or facilities between a private foundation and a disqualified person shall constitute an act of self-dealing. This subparagraph shall apply, for example, to the furnishing of goods, services, or facilities such as office space, automobiles, auditoriums, secretarial help, meals, libraries, publications, laboratories, or parking lots. Thus, for example, if a foundation furnishes personal living quarters to a disqualified person (other than a foundation manager or employee) without charge, such furnishing shall be an act of self-dealing.

(2) Furnishing of goods, services, or facilities to foundation managers and employees. The furnishing of goods, services, or facilities such as those described in subparagraph (1) of this paragraph to a foundation manager in
recognition of his services as a foundation manager, or to another employee (including an individual who would be an employee but for the fact that he receives no compensation for his services) in recognition of his services in such capacity, is not an act of self-dealing if the value of such furnishing (whether or not includible as compensation in his gross income) is reasonable and necessary to the performance of his tasks in carrying out the exempt purposes of the foundation and, taken in conjunction with any other payment of compensation or payment or reimbursement of expenses to him by the foundation, is not excessive. For example, if a foundation furnishes meals and lodging which are reasonable and necessary (but not excessive) to a foundation manager by reason of his being a foundation manager, then, without regard to whether such meals and lodging are excludable from gross income under section 119 as furnished for the convenience of the employer, such furnishing is not an act of self-dealing. For the effect of section 4945(d)(5) upon an expenditure for unreasonable administrative expenses, see §53.4945–6(b)(2).

(e) Payment of compensation. The payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person shall constitute an act of self-dealing. See, however, §53.4941(d)–3(c) for the exception for the payment of compensation by a foundation to a disqualified person for personal services which are reasonable and necessary to carry out the exempt purposes of the foundation.

(f) Transfer or use of the income or assets of a private foundation—(1) In general. The transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing. For purposes of the preceding sentence, the purchase or sale of stock or other securities by a private foundation shall be an act of self-dealing if such purchase or sale is made in an attempt to manipulate the price of the stock or other securities to the advantage of a disqualified person. Similarly, the indemnification (of a lender) or guarantee (of repayment) by a private foundation with respect to a loan to a disqualified person shall be treated as a use for the benefit of a disqualified person of the income or assets of the foundation (within the meaning of this subparagraph). In addition, if a private foundation makes a grant or other payment which satisfies the legal obligation of a disqualified person, such grant or payment shall ordinarily constitute an act of self-dealing to which this subparagraph applies. However, if a private foundation makes a grant or payment which satisfies a pledge, enforceable under local law, to an organization described in section 501(c)(3), which pledge is made on or before April 16, 1973, such grant or payment shall not constitute an act of self-dealing to which this subparagraph applies so long as the disqualified person obtains no substantial benefit, other than the satisfaction of his obligation, from such grant or payment.

(2) Certain incidental benefits. The fact that a disqualified person receives an incidental or tenuous benefit from the use by a foundation of its income or assets will not, by itself, make such use an act of self-dealing. Thus, the public
recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private foundation to a section 509(a) (1), (2), or (3) organization will not be an act of self-dealing merely because such organization is located in the same area as a corporation which is a substantial contributor to the foundation, or merely because one of the section 509(a) (1), (2), or (3) organization’s officers, directors, or trustees is also a manager of or a substantial contributor to the foundation. Similarly, a scholarship or a fellowship grant to a person other than a disqualified person, which is paid or incurred by a private foundation in accordance with a program which is consistent with:

(i) The requirements of the foundation’s exempt status under section 501(c)(3),

(ii) The requirements for the allowance of deductions under section 170 for contributions made to the foundation, and

(iii) The requirements of section 4945(g)(1),

will not be an act of self-dealing under section 4941(d)(1) merely because a disqualified person indirectly receives an incidental benefit from such grant. Thus, a scholarship or a fellowship grant made by a private foundation in accordance with a program to award scholarships or fellowship grants to the children of employees of a substantial contributor shall not constitute an act of self-dealing if the requirements of the preceding sentence are satisfied. For an example of the kind of scholarship program with an employment nexus that meets the above requirements, see §53.4945–4(b)(5) (example 1).

(3) Non-compensatory indemnification of foundation managers against liability for defense in civil proceedings. (i) Except as provided in §53.4941(d)–3(c), section 4941(d)(1) shall not apply to the indemnification by a private foundation of a foundation manager, with respect to the manager’s defense in any civil judicial or civil administrative proceeding arising out of the manager’s performance of services (or failure to perform services) on behalf of the foundation, against all expenses (other than taxes, including taxes imposed by chapter 42, penalties, or expenses of correction) including attorneys’ fees, judgments and settlement expenditures if—

(A) Such expenses are reasonably incurred by the manager in connection with such proceeding; and

(B) The manager has not acted willfully and without reasonable cause with respect to the act or failure to act which led to such proceeding or to liability for tax under chapter 42.

(ii) Similarly, except as provided in §53.4941(d)–3(c), section 4941(d)(1) shall not apply to premiums for insurance to make or to reimburse a foundation for an indemnification payment allowed pursuant to this paragraph (f)(3). Neither shall an indemnification or payment of insurance allowed pursuant to this paragraph (f)(3) be treated as part of the compensation paid to such manager for purposes of determining whether the compensation is reasonable under chapter 42.

(4) Compensatory indemnification of foundation managers against liability for defense in civil proceedings. (i) The indemnification by a private foundation of a foundation manager for compensatory expenses shall be an act of self-dealing under this paragraph unless when such payment is added to other compensation paid to such manager the total compensation is reasonable under chapter 42. A compensatory expense for purposes of this paragraph (f) is—

(A) Any penalty, tax (including a tax imposed by chapter 42), or expense of correction that is owed by the foundation manager;

(B) Any expense not reasonably incurred by the manager in connection with a civil judicial or civil administrative proceeding arising out of the manager’s performance of services on behalf of the foundation;

(C) Any expense resulting from an act or failure to act with respect to which the manager has acted willfully and without reasonable cause.

(ii) Similarly, the payment by a private foundation of the premiums for an insurance policy providing liability insurance to a foundation manager for
expenses described in this paragraph 
(f)(4) shall be an act of self-dealing 
under this paragraph (f) unless when 
such premiums are added to other com-
penation paid to such manager the 
total compensation is reasonable under 
chapter 42. 
(5) Insurance allocation. A private 
foundation shall not be engaged in an 
act of self-dealing if the foundation 
purchases a single insurance policy to 
provide its managers both the non-
compensatory and the compensatory 
coverage discussed in this paragraph 
(f), provided that the total insurance 
premium is allocated and that each 
manager’s portion of the premium at-
tributable to the compensatory cov-
erage is included in that manager’s 
compensation for purposes of deter-
mining reasonable compensation under 
chapter 42. 
(6) Indemnification. For purposes 
of this paragraph (f), the term indem-
nification shall include not only reim-
bursement by the foundation for ex-
penses that the foundation manager 
has already incurred or anticipates in-
curring but also direct payment by the 
foundation for such expenses as the 
ex-
penses arise. 
(7) Taxable income. The determination 
of whether any amount of indemnifica-
tion or insurance premium discussed in 
this paragraph (f) is included in the 
manager’s gross income for individual 
income tax purposes is made on the 
basis of the provisions of chapter 1 and 
without regard to the treatment of 
such amount for purposes of deter-
milling whether the manager’s com-
pensation is reasonable under chapter 
42. 
(8) De minimis items. Any property or 
service that is excluded from income 
under section 132(a)(4) may be dis-
regarded for purposes of determining 
whether the recipient’s compensa-
tion is reasonable under chapter 42. 
(9) Examples. The provisions of this 
paragraph may be illustrated by the 
following examples:

Example 1. M, a private foundation, makes 
a grant of $50,000 to the governing body of N 
City for the purpose of alleviating the slum 
conditions which exist in a particular neigh-
borhood of N. Corporation P, a substantial 
contributor to M, is located in the same area 
in which the grant is to be used. Although 
the general improvement of the area may 
constitute an incidental and tenuous benefit 
to P, such benefit by itself will not consti-
tute an act of self-dealing. 
Example 2. Private foundation X estab-
lished a program to award scholarship grants 
to the children of employees of corporation 
M, a substantial contributor to X. After disclo-
sure of the method of carrying out such 
program, X received a determination letter 
from the Internal Revenue Service stating 
that X is exempt from taxation under sec-
tion 501(c)(3), that contributions to X are de-
ductible under section 170, and that X’s 
scholarship program qualifies under section 
4945(g)(1). A scholarship grant to a person 
not a disqualified person with respect to X 
paid or incurred by X in accordance with 
such program shall not be an indirect act of 
self-dealing between X and M.

Example 3. Private foundation Y owns vot-
ing stock in corporation Z, the management 
of which includes certain disqualified per-
sons with respect to Y. Prior to Z’s annual stockholder meeting, the management solic-
ts and receives the foundation’s proxies. The 
transfer of such proxies in and of itself shall 
not be an act of self-dealing.

Example 4. A, a disqualified person with re-
spect to private foundation S, contributes 
certain real estate to S for the purpose of 
building a neighborhood recreation center in 
a particular underprivileged area. As a con-
dition of the gift, S agrees to name the recre-
ation center after A. Since the benefit to A 
is only incidental and tenuous, the naming 
of the recreation center, by itself, will not be 
an act of self-dealing.

(g) Payment to a government official. 
Except as provided in section 
4941(d)(2)(G) or §53.4941(d)–3(e), the 
agreement by a private foundation to 
make any payment of money or other 
property to a government official, as 
defined in section 4946(c), shall consti-
tute an act of self-dealing. For pur-
pposes of this paragraph, an individual 
who is otherwise described in section 
4946(c) shall be treated as a government 
official while on leave of absence from 
the government without pay.

[T.D. 7270, 38 FR 9493, Apr. 17, 1973, as amend-
ed by T.D. 7338, 49 FR 3848, Jan. 31, 1984; T.D. 
8639, 60 FR 65568, Dec. 20, 1995]

§53.4941(d)–3 Exceptions to self-dealing.

(a) General rule. In general, a trans-
action described in section 4941(d)(2) 
(B), (C), (D), (E), (F), (G), or (H) is not 
an act of self-dealing. Section 4941(d)(2) 
(B), (C), and (H) provide limited excep-
tions to certain specific transactions, as 
described in paragraphs (b)(2), (b)(3),