

## **CODE OF ETHICS FOR MEMBERS OF THE WMATA BOARD OF DIRECTORS<sup>1</sup>**

### Article I. Policy and Scope.

Public funds must be expended in a manner that assures the highest degree of confidence and public trust in WMATA. It is imperative that Board Members in their private financial relationships and in their official conduct strictly avoid engaging in actions that create conflicts of interest or the appearance of a conflict of interest. It is likewise imperative that Board Members act impartially in their official conduct by avoiding any actions that might result in favored treatment or appearances thereof toward any individual, private organization, consultant, contractor or potential consultant or contractor. Each Board Member has a duty to place the public interest foremost in any dealings involving WMATA.

These Rules shall govern the conduct of all Members of the Board of Directors in all their activities relating to their positions as Board Members. They also apply to all individuals, corporations and other entities that have an Actual or Prospective Business Relationship with the Authority. These Rules do not supersede or abrogate any laws, rules or regulations of the United States or of the applicable state or local governing body represented by the Members of the Board of Directors.

### Article II. Definitions.

Capitalized terms in this Code of Ethics are defined as follows:

A. "Actual or Prospective Business Relationship with the Authority" means any actual or prospective arrangement whereby an individual, corporation or other entity has entered into or has offered or proposed to enter into or has decided to offer or proposed to enter into a Financial Transaction with the Authority that obligates the Authority to purchase, sell, lease, transfer, receive or convey any interest in real or personal property; to construct or improve any facility; or to furnish or obtain services including personal and/or consulting services.

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<sup>1</sup> With exceptions as noted, the revisions in this redline are verbatim as provided by Cadwalader. One exception, for instance, is the definition of Indirect Financial Interest, Art .II.I, which is based on the motion passed by the Governance Committee on 1/24/13. Other exceptions occur when Cadwalader made a recommendation but did not provide new language. All exceptions are notes in the footnotes. Footnotes also summarize Cadwalader's explanation for its recommendation, present the purpose of the original language (where necessary for context), and list the policy question(s) presented by Cadwalader's recommendations.

B. "Board Member" or "Member" means a Director or Alternate of the Board of Directors of the Washington Metropolitan Area Transit Authority.

C. "Business Associate" means a person who is engaged with a Board Member in a venture expected to result in a benefit to the Board Member or any of the Board Member's Household Members in the form of money or other thing of value.

D. "Direct Financial Interest" means an ownership interest in a Party that constitutes three percent (3%) or more of that Party's total equity or an equivalent economic interest. The following are excluded from "Direct Financial Interest": checking or savings accounts, money market accounts and other demand deposits; IRAs or similar investments; government bonds; certificates of deposit; publicly traded mutual funds; and government pensions or other income received pursuant to a government retirement program (civilian or military).

E. "Employment" or "Employed" mean full-time, part-time, regular or temporary work for compensation and includes work as an independent contractor, but does not include government employment. Employment shall be deemed to exist if there is a regular relationship with a business, even if there is no relationship at the time a matter is before the Board.

F. "Financial Transaction" means any arrangement from which a Party anticipates receiving or transferring money or any other thing of value including, but not limited to, arrangements for purchase, sale, lease or other transfer or conveyance of any interest in real or personal property; construction or improvement of any facility or property; and procurement of services, both personal and consulting.

G. "Gratuity" means any gift, favor, entertainment, hospitality, meal, transportation, loan or other tangible item or any intangible benefits (i.e., discounts, passes or similar consideration) offered to a Board Member or Household Member because of the Member's position on the WMATA Board of Directors for which the Member or Household Member did not pay fair market value and that is not offered to the public generally.

H. "Household Member" means a spouse, domestic partner, dependent child, any relative over whose financial affairs the Board Member has legal or actual control or any person who resides in a Board Member's household on other than a temporary basis.

I. "Indirect Financial Interest" means income ~~earned received~~ by a Member, Household Member or Business Associate ~~or by a Member on behalf of an entity~~ for services provided to a Party when that income exceeds three percent (3%) of the Member's, Household Member's or Business Associate's ~~or entity's~~ gross income,

~~whichever income is less~~ respectively, for the current or preceding fiscal year. Gross income means all income from any source, as defined by the Internal Revenue Service.<sup>2</sup>

K. "Participate" means vote, address, discuss or otherwise attempt to influence a decision of the Board of Directors or any action undertaken by WMATA staff.

L. "Party" means an individual, corporation, partnership or other legal entity.

### Article III. Prohibited Conflicts.

A. These Rules address several types of conflicts: those arising under the Compact; from Direct and Indirect Financial Interests in a Party with an Actual or Prospective Business Relationship with the Authority; from Direct and Indirect Financial Interests in a Party or a Prospective Party to Financial Transactions; from accepting or soliciting Gratuities; from the use of a Board Member's official position; and from Employment after serving as a Board Member. These Rules also proscribe situations that create an appearance of a conflict, such as between a Member's duty to WMATA and her duty to her jurisdiction, elected position, or private interests and relationships without regard to financial interests.<sup>3</sup> They prohibit certain actions, and provide

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<sup>2</sup> After considering the Cadwalader recommendation for the definition of Indirect Financial Interest, the Governance Committee passed a motion at its January 24, 2013 meeting to adopt this revision.

<sup>3</sup> Cadwalader Recommendation: More specifically describe the non-financial conflicts that may arise. CR 16. Note: Cadwalader did not propose this specific language. Instead it is taken from the following on page 16: "Conflicts of interest can exist in various forms, such as conflicts between a Board Member's duty to WMATA and the Board Member's duty to his or her jurisdiction, elected position, or private non-monetary interests. These types of conflicts are not mentioned in the Code of Ethics and are not discussed with any specificity in the requirement to report potential conflicts. The definition should broadly define conflicts of interest and also provide examples of potential conflicts that are not solely financial. For comparative purposes, it is notable that both the Chicago Transit Authority ('CTA') and the Metropolitan Transportation Authority ('MTA') codes of ethics define conflicts of interest in terms of relationships between specific individuals and entities. A WMATA Board Member could have a relationship that gives rise to a conflict of interest or the appearance of a conflict even when the Board Member holds no direct or indirect financial interest in the matter. Financial conflicts lie at the heart of many conflicts of interest, but the definition in the Code of Ethics should be expanded to include conflicts that arise from relationships that the Board Member has with specific individuals and entities in situations where something other than a financial interest is at stake." Main Policy Issue: Does including duty to jurisdiction and elected position interfere with Members' ability to fulfill their Compact roles as jurisdictional representatives? Other: See part E below regarding procedures when faced with the appearance of conflicts of interest. Code of Ethics Redline for 2/14/13 Governance Committee Meeting Page 3

procedures for disclosure, recusal and enforcement.

B. Compact Prohibitions. Under the Compact, Board Members shall not:

“be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party”;

“in connection with services performed within the scope of [their] official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to [them] by the Authority”; or

“offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in [their] employment with the Authority.”

Compact § 10.

C. Restricted Financial Interests in a Party. No Board Member or Household Member may singly or in combination, have a Direct Financial Interest in a Party with an Actual or Prospective Business Relationship with the Authority.

D. Voting/Participation Restrictions.

1. A Board Member shall not Participate in a WMATA Financial Transaction if:

- (~~ia~~) the Board Member,
- (~~ib~~) a Household Member, or
- (~~ic~~) a Business Associate

has a Direct or Indirect Financial Interest in a Party or prospective Party to that Financial Transaction.

2. A Board Member shall not Participate in a WMATA Financial Transaction if the Board Member or a Household Member is Employed by a Party or prospective Party to that Financial Transaction.

~~3. Board Members are also expected to report to the Chair any situation other than conflicts identified in the prior sections of this Article of which they are aware~~

~~and believe may create an appearance of a conflict of interest, and to recuse themselves from Participating.~~<sup>4</sup>

E. Avoiding the Appearance of a Conflict of Interest.<sup>5</sup>

1. Before participating in a matter, a Board Member shall report to the Ethics Committee any situation that creates or may create on the Board Member's part, a conflict of interest or the appearance of a conflict of interest. A conflict of interest is not limited to a conflict that is financial in nature; the conflict may arise from interests that are personal or institutional in nature. A Board Member shall recuse him or herself from any matter that he or she knows, should know, or reasonably believes, creates a conflict of interest or the appearance of a conflict of interest. If unsure, before participating in the matter the Board Member may seek non-binding guidance from the Ethics Committee as to whether the appearance of a conflict of interest exists. The Board Meetings and Board Minutes shall disclose the nature of the conflict of interest and the reason for the recusal on the matter.<sup>6</sup>

<sup>4</sup> Cadwalader Recommendation: This provision is too vague, provide guidance to identify other types of conflicts. CR 16. Also, Cadwalader is concerned about leaving this determination in the hands of the Members themselves. CR 15. Original Purpose: Former D.3 was intended to broadly capture other potential conflicts whether real or just the appearance, and require recusal in all instances. It was based on the belief that Members are most familiar with their interests, and thus required Members to identify conflicts and recuse themselves.

<sup>5</sup> Cadwalader Recommendation: Clarify former D.3 by specifying that conflicts other than financial in nature are personal or institutional. Incorporate independent Ethics Committee in determining whether the Member must recuse him or herself—on a voluntary and non-binding basis—rather than leaving it to the Member to recuse him or herself. Require public disclosure regarding recusal. CR 15-16. Establish an independent Ethics Committee comprised of members of the community to offer guidance and review allegations of misconduct. CR 29. Main Policy Issue: To which person (e.g. Chair) or entity (e.g. internal or external panel) should Members report potential conflicts? Similarly, which person or entity should be responsible for providing ethics guidance to Members? Other: Note that to establish an Ethics Committee a section regarding its composition, powers and procedures should be added to the Code of Ethics—using CR 30-31 as a guide—and the Board Procedures would also need to be revised (not shown).

<sup>6</sup> Other: Note that while the Member may consult with the Ethics Committee, the Cadwalader revision does not address when recusal is required, for conflicts recognized in advance, or who decides.



4.2. If a situation that creates, or may create, a conflict of interest, or the appearance of a conflict of interest, arises after the Board Member has participated in a matter, the Board Member shall immediately recuse him or herself and report the situation to the Ethics Committee. If the Board Member seeks guidance from the Ethics Committee as to whether the appearance of a conflict of interest exists, the Board Member shall remain recused from the matter until guidance is issued.<sup>7</sup>

#### EF. Gratuities and Solicitation.

~~1. Except as provided in subsection E.3 below, a Board Member or Household Member shall not solicit or accept anything of value from a Party with an Actual or Prospective Business Relationship with the Authority.~~<sup>8</sup> A Board Member or Household Member may not solicit, in connection with the Board Member's position at the Authority, a Gratuity or anything of value.<sup>9</sup>

2. A Board Member or Household Member may not accept a Gratuity or anything of value from a Party that has an Actual or Prospective Business Relationship

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<sup>7</sup> Other: Note the following considerations: a) whether to count votes prior identifying a conflict; b) whether Members are required to report to the Ethics Committee, as implied by the first sentence, or report at their discretion, as implied by the second sentence; and c) whether, as stated in the second sentence, the requirement to remain recused applies only when the Ethics Committee is considering whether an appearance of conflict exists, as opposed to an actual conflict and as opposed to whether recusal is required.

<sup>8</sup> Cadwalader Recommendation: The interactions between former E 1-3 are confusing. Original Purpose: Former E 1 was intended to broadly prevent soliciting anything of value, and state a general rule against unsolicited gratuities unless pursuant to an exception below. "Anything of value" is broader than "Gratuity," in that there does not need to be a connection to WMATA-related duties. Main Policy Issue: None; clarification.

<sup>9</sup> Cadwalader Recommendation: Prevent solicitation of gratuities from any party, not just one with an actual or prospective business relationship. CR 17-18. Main Policy Issue: None; clarification. Other: Note, revised provision limits prohibition to solicited gratuities, leaving unsolicited for other provisions. Also, because the entire clause is conditioned on a connection to the Board member's position (incorporated in the Gratuity definition but not in the undefined phrase "anything of value"), this prohibition is narrower than the former provision. In other words, under the revised provision, Members may solicit something of value, not a gratuity, provided doing so is not in connection with the Board Member's position. Previously, this was prohibited. This may be consistent with Member expectations.

with the Authority.<sup>10</sup>

23. A Board Member or Household Member may not accept ~~an unsolicited Gratuity or anything of value~~ when it could reasonably be inferred that the Gratuity was ~~intended-offered in an effort~~ to influence the Board Member or was ~~intended-offered~~ as a reward for any action on the Member's part.<sup>11</sup>

34. Unless otherwise prohibited by rule 1-3 in this section or any other part of this Code of Ethics, a Board Members or Household Member may accept an unsolicited Gratuitiesy with a value of \$75 or less, provided:

- (ia) ~~whose value is \$75 or less, provided~~ the cumulative value of Gratuities from a single source in any calendar year ~~is~~ does not exceed \$200 ~~or less~~; or
- (#b) when the Gratuity:
  - (i) ~~is given at a conference, gathering, or other participating in widely-attended events that are~~ is given at a conference, gathering, or other participating in widely-attended events that are open to the public; and
  - (ii) ~~is given in exchange for participating in the event or is given as a part of the regularly-scheduled program for gatherings and conferences, such as those held by the American Public Transportation Association and similar organizations.~~ is given in exchange for participating in the event or is given as a part of the regularly-scheduled program for gatherings and conferences, such as those held by the American Public Transportation Association and similar organizations. the event; and
  - (iii) ~~is given by the event itself and not some other Party;~~ is given by the event itself and not some other Party; and
  - (iv) ~~is given to other similarly-situated participants.~~<sup>12</sup> is given to other similarly-situated participants.

<sup>10</sup> Cadwalader Recommendation: Separately address parties with an actual or prospective business relationship in order to clarify interaction of former E1-3, and that prohibition on accepting Gratuities/anything of value from such parties applies whether solicited or unsolicited. CR18. Main Policy Issue: None; clarification.

<sup>11</sup> Cadwalader Recommendation: Clarify interaction of former E1-3 and expand to Household Members. CR18. Main Policy Issue: Whether to extend to Household Members the prohibition against accepting a Gratuity intended to influence or reward.

<sup>12</sup> Cadwalader Recommendation: Expand to Household Members, limit conference gratuities to \$75 (eliminating the former distinction between small gratuities and larger gratuities at conferences), and add controls upon acceptable gratuities at conferences. Cadwalader finds that this provision created confusion regarding solicited gratuities. CR18-19. Original Purpose: Former E3 was intended to permit accepting small unsolicited Gratuities, not otherwise prohibited, and larger unsolicited Gratuities that are commonly offered to attendees of major transit-related events that Members attend to enhance their knowledge and experience. Main Policy Issue: With the \$75 limit and the requirement that the Gratuity comes from the Code of Ethics Redline for 2/14/13 Governance Committee Meeting

~~4. The restriction on the receipt of Gratuities shall not apply to the solicitation or acceptance of bona fide religious or charitable donations, or political contributions by a Board Member or a Household Member provided, with respect to political contributions to or for the benefit of a Board Member or a Household Member, the contribution has been reported in accordance with the law of the Board Member's jurisdiction.~~<sup>13</sup>

5. A Board Member or Household Member shall not personally solicit the Authority, any WMATA employee, or any Party that has an Actual or Prospective Business Relationship with the Authority for any support or financial assistance ~~for~~ any political party, candidate, or committee for any political, charitable, or other purpose ~~from the Authority or any WMATA employee~~. This prohibition is not intended to preclude solicitations of the general public by mass mailing or other ~~similar~~ anonymously directed solicitations that may incidentally be addressed to or include WMATA employees or Parties that have an Actual or Prospective Business Relationship with the Authority.<sup>14</sup>

6. A Board Member shall not Participate in any matter where the Board Member or a Household Member has accepted or solicited a campaign contribution, or a religious or charitable contribution, from a Party with an Actual or Prospective Business

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event itself, Member's will in effect be unable to attend corporate-sponsored events at conferences. Will this eliminate an appearance of conflict of interest, and if so does that outweigh the benefit of such events to the Members?

<sup>13</sup> Cadwalader Recommendation: This broad exception for political and charitable activities allows the appearance of conflicts of interest. CR19. Original Purpose: Former E4 was intended to provide Board Members, who often hold public office and/or are active in non-profits, latitude to solicit and accept donations, provided the donations were reported as required by law. The provision did not require reporting these activities to the Board, nor recusal. Main Policy Issue: Whether an exception for religious and/or political contributions is needed, considering that by Compact design Members are typically political officials or community leaders.

<sup>14</sup> Cadwalader Recommendation: Expand to Household Members and Parties with an Actual or Prospective Business Relationship with the Authority; clarify mass mailing exception. CR20. Main Policy Issue: Similar to previous provision. Whether expanding the prohibition upon solicitation to any Party with an Actual or Prospective Business Relationship—such as a prospective real estate developer of which the Board member may not be aware—is compatible with Members' political roles.



Relationship with the Authority. The Board Member shall report any campaign contributions or religious and charitable contributions, offered to the Board Member or Household Member but not accepted, from a Party with an Actual or Prospective Business Relationship with the Authority.<sup>15</sup>

FG. Use of Official Position. Board Members shall not use, nor give the appearance that they are using, their official position with the Authority in a manner inconsistent with their responsibilities to the Authority. Board Members shall not:

1. use or permit others to use information not generally available to the public obtained from the Authority through the Board Member's official position with the Authority to further the Direct or Indirect Financial Interests of a Board Member, any Household Member, a Member's Business Associate, or any Party to any actual or prospective Financial Transaction with the Authority, excluding the Federal government and governmental entities within the Transit Zone;

2. disclose or permit others to disclose to anyone outside the Authority information obtained through their official position with the Authority and not generally available to the public except where during an official meeting of a public body and to the extent necessary-required to fulfill the Board Member's public responsibility as a public official. Board Members who wish to disclose information obtained through their official position with the Authority and not generally available to the public for any other reason shall obtain advance approval from the Ethics Committee;<sup>16</sup>

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<sup>15</sup> Cadwalader Recommendation: Require recusal whenever a Board Member or Household Member solicits or accepts a donation. Report offered contributions when from a Party with an Actual or Prospective Business Relationship with the Authority. CR19. Note that the new recusal requirement will limit the involvement of Board Members who hold political office in Authority matters. Main Policy Issue: Again, whether these restrictions are compatible with Members' political roles. Other: Note that there is some conflict between this provision and the prohibition on accepting anything of value from Parties with an Actual or Prospective Business Relationship with the Authority, and the elimination of the political & religious contribution exception. It is unclear whether these are prohibited, in which case acceptance would imply misconduct, or whether these merely prohibit Participation in matter.

<sup>16</sup> Cadwalader Recommendation: Clarify and limit basis for nondisclosure exception, while permitting Members to consult with regard to any other basis for disclosure. CR22. Note: Cadwalader did not propose this specific language. Instead, these revisions are designed to effect Cadwalader's comments. Main Policy Issue: Whether to continue the broad exception permitting Members to share non-public information where necessary to fulfill their other official duties, or make that exception narrower, more objective and only with prior approval.

3. use WMATA property other than for authorized purposes, nor seek assistance from other WMATA personnel, while in duty status, to assist them in connection with business enterprises (including self-employment, home-based businesses, consulting, purchase or sale of real estate or other professional services) or personal matters (non-WMATA matters including a Board Member's social, religious or educational interests);

4. offer money or anything of value for or in consideration of obtaining an appointment or privilege in the Board Member's official position with the Authority; or

5. receive compensation from WMATA except for reimbursement for necessary expenses incurred incident to the performance of their duties.

6. take part in or advocate for any hiring, employment or contracting decision relating to a Household Member. If the Board considers a matter involving an employment of a Household Member or a Financial Transaction with a Party in which a Household Member has a Direct Financial Interest, that Board Member shall notify the Chairman and recuse him or herself from that consideration.<sup>17</sup>

<sup>17</sup> Cadwalader Recommendation: Explicitly prohibit nepotism, like MTA and CTA do. Note: Cadwalader did not propose language; instead, these revisions are based on Cadwalader's recommendation to adopt a provision similar to MTA & CTA:

MTA: Section 4.09 Nepotism in Hiring and Contracting

No person who has served as a Board Member shall take part in any hiring or employment decision relating to a family member. If such matter arises, the Board Member must notify the Chairman and recuse themselves from any discussions or decisions related to that matter.

No person who has served as a Board Member shall take part in any contracting decision: (1) relating to a family member: or (2) relating to any entity in which a family member is an officer, director or partner, or in which a family member owns or controls 10% or more of the stock of such entity. If such matter arises, the Board Member must notify the Chairman and recuse themselves from any discussions or decisions related to that matter.

CTA: 2.14 Nepotism.

(a) No officer or employee shall employ, advocate for employment, or supervise, in any CTA department in which said officer or employee serves or over which he/she exercises authority, supervision, or control, any person

(i) who is a relative of said officer or employee, or

(ii) in exchange for or in consideration of the employment of any of said officer's or employee's relatives by any other officer or employee.

(b) An officer or employee does not violate this section when a relative exercises his or her rights under a collective bargaining agreement and thereby becomes employed in a CTA

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7. offer to vote on a matter in exchange for another Board Member's vote on a matter from which the first Board Member is recused.<sup>18</sup>

GH. Post WMATA Service Restrictions. Board Members shall not, for a period of one year following the end of their term or effective date of their resignation, accept

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department in which said officer or employee serves or over which he or she exercises authority, supervision or control, if:

(i) the officer or employee promptly discloses the existence of the relationship to his or her supervisor; and

(ii) the officer or employee refrains from having any personal involvement in the review or approval of any terms or conditions of the relative's employment; and

(iii) management makes reasonable efforts to ensure that the officer or employee shall not exercise authority, supervision or control over said relative.

(c) No officer or employee shall exercise contract management authority where any relative of the officer or employee is employed by or has contracts with persons doing CTA work over which the CTA officer or employee has or exercises contract management authority if a relative of the officer or employee will perform any part of the contract, or will derive an economic benefit from the contract, or if any relative exercises contract management authority over the contract.

(d) No officer or employee shall use or permit the use of his position to assist any relative in securing employment or contracts with persons over whom the employee or officer exercises contract management authority. The employment of or contracting with a relative of such an officer or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a CTA contract shall create a rebuttable presumption that said employment or contract was obtained in violation of this Ordinance.

Main Policy Issues: Whether to adopt an anti-nepotism provision, and if so whether it should also cover relatives beyond Household Members (e.g. parents (by blood or law), non-dependent children, in-laws, siblings (by blood or law), whether or not these reside with the member or have their finances controlled by the member).

<sup>18</sup> Cadwalader Recommendation: Strengthen ethics by prohibiting trading votes with another Member who is ineligible to vote on a matter. CR23. Note: New provision modified only so far as to match the context of part G. Original from Cadwalader: "No Board Member shall offer his or her vote on a matter in exchange for another Board Member's vote on a matter from which the first Board Member is recused." Main Policy Issue: Whether to adopt a vote-trading prohibition, and if so, how broad should it be? For example, should Cadwalader's recommendation be expanded to prevent, a) trading votes with another Member who is otherwise ineligible to vote (e.g. alternate); or b) trading votes between the WMATA Board and another public body?

Employment with any private third Party to work on a matter in which the Board Member has Participated. Thereafter and until the expiration of two years following the end of their term or effective date of their resignation, a Board Member shall seek guidance from the Ethics Committee before accepting Employment with any private third Party to work on a matter in which he or she Participated.<sup>19</sup>

~~H~~. No Party shall have, nor seek to have, an Actual or Prospective Business Relationship with the Board or the Authority if to do so would create a violation by a Board Member of the provisions of Sections B or C of this Article. No Party shall induce or seek to induce ~~a Board Member any Party~~ to violate ~~the provisions of Section D of this Article any section of this Code of Ethics.~~<sup>20</sup>

~~I~~J. Each Board Member shall disclose, on the form in Attachment B, each contact with a WMATA contractor or bidder during the procurement process or joint development process within one business day of such contact in which the Member has a Direct or Indirect Financial Interest during the Initiation and Pre-Award Phases of the Procurement Process. The disclosure shall include the subjects discussed during the contact. If the contract occurred before award, the Board Member shall be prohibited from Participating in the matter. Forms will be kept on file for ~~one~~ five years beyond the date of the financial closeout of the ~~procurement~~ contract, at which time they shall be destroyed unless otherwise instructed by the filing Board Member.<sup>21</sup>

<sup>19</sup> Cadwalader Recommendation: Require consultation between one and two years from separation. CR24. Note: Cadwalader did not propose language. This revision is based on Cadwalader's recommendation and reference to MTA two-year and lifetime bans. Main Policy Issue: Whether to extend the period in which Members may be restricted from accepting post-service employment.

<sup>20</sup> Cadwalader Recommendation: Apply to any Party and expand to violations of any provision of the Code of Ethics. CR22. Main Policy Issue: None, clarification.

<sup>21</sup> Cadwalader Recommendation: Require disclosure regardless of financial interest. Expand to all contracting activities. Require rapid disclosure to enhance separation between contracting staff and Board. Increase retention because questions about propriety may linger beyond a year. CR25. Note: The one-day requirement may be difficult for Members who have many duties outside those to the WMATA Board. Also note that this revision would require corresponding changes to Attachment B (not shown). Main Policy Issue: Whether to require disclosure regardless of financial interest, expand reporting to all contracting activities, require rapid disclosure to enhance separation between contracting staff and Board, and increase retention because questions about propriety may linger beyond a year—all as recommended by Cadwalader. Whether to, in addition to the Cadwalader recommendations, adopt a prohibition against members seeking to influence active contact negotiations (i.e. prevent such influence rather than require reporting).



Article IV. ~~Submission of Disclosures Form.~~

A. Upon appointment, a Board Member shall submit a statement in substantially the form provided in Attachment A disclosing potential conflicts of interest of the Board Member, Household Members and Business Associates. The statement shall be available for public review in the office of the Board Secretary. Each Board Member shall annually submit a new signed statement by April 30. Each Board Member shall also submit a new signed statement whenever significant relevant changes have occurred.

B. Any Party with an Actual or Prospective Business Relationship with the Authority shall, prior to bidding on, proposing on or entering into a Financial Transaction, file a statement in substantially the form provided in Attachment [ ] disclosing all interests that Board Members have in that Party or in the Financial Transaction, of which the Party has knowledge or should have knowledge.<sup>22</sup>

C. Board Members shall disclose to the Board any known or suspected violations of the Code of Ethics by any Party.<sup>23</sup>

D. Any Party may report a known or suspected violation of the Code of Ethics via the Office of Inspector General Hotline and may make the report anonymously.

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<sup>22</sup> Cadwalader Recommendation: Require these parties to submit a disclosure statement as a check on Member Disclosures. CR24. Note: Cadwalader did not propose language; instead, these revisions are a paraphrasing of Cadwalader’s recommendation. Further note that “should have knowledge” is from Cadwalader, but will be difficult to enforce (alternative: “of which the Party has knowledge or can obtain knowledge with a reasonable effort”). Also note that the disclosure form would need to be developed, and will be similar to Attachment B, Disclosure of Contacts with Bidders and Contractors. Main Policy Issue: Whether to adopt a requirement for prospective contractors to disclose Member interests, as a cross-check on Member disclosures.

<sup>23</sup> Cadwalader Recommendation: Ensure transparency in Board operations and provide further check upon written disclosures. CR24. Note: Cadwalader did not propose language; instead, these revisions are a paraphrasing of Cadwalader’s recommendation. In keeping with Cadwalader recommendation, new provision requires disclosure to Board, which is unclear in application (alternative: “shall disclose to the Chair”). Main Policy Issue: Whether to adopt a provision requiring Members to report violations by other Members and parties.

Information regarding the Hotline is available on WMATA's website, [http://www.wmata.com/about\\_metro/inspector\\_general/](http://www.wmata.com/about_metro/inspector_general/).<sup>24</sup>

#### Article V. Recusal.<sup>25</sup>

If a Board Member is precluded by these Rules or by other applicable laws or regulations from Participating in a matter, the Board Member shall so notify the Chair and request, using the form in Attachment C, that the Board's ~~official records minutes~~ reflect that the Board Member is recused from Participating in the matter to which the prohibition applies.<sup>26</sup>

#### Article VI. Interpretation; Ethics Allegations; and Disqualification and Sanctions.

A. The Board is responsible for interpreting and enforcing these rules. It may seek general guidance regarding interpretation from the General Counsel.

B. Specific allegations of misconduct shall be reported to the Ethics Committee Board Chair, or to the Vice-Chair if the allegations relate to the Board Chair, and shall be addressed as provided in Procedures Section X.<sup>27</sup>

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<sup>24</sup> Cadwalader Recommendation: Announce the hotline in the Code of Ethics and permit anonymous reports. CR26-27. Note: Cadwalader did not provide this language; instead, the revision captures Cadwalader's intent. Main Policy Issue: None, clarification.

<sup>25</sup> Cadwalader Recommendation: Group Articles V– VIII under "Administration." CR 12. (Not shown.) Note: Article V is largely redundant with Cadwalader's recommendation for Art. III.E Main Policy Issue: None, clarification.

<sup>26</sup> Cadwalader Recommendation: Provide succinct statement of the reason for recusal in the minutes, e.g. "Board Member Smith is recused from the matter for having an Indirect Financial Interest in one of the bidders on the contract." CR 24-25. Note: The requirement to record the reason for recusal, and post online, should be added to Board Procedures section V (not shown). Main Policy Issue: None, clarification.

<sup>27</sup> Cadwalader Recommendation: Create an Ethics Committee "authorized to review allegations of misconduct by Board Members as well as by the Inspector General." CR 29. Note: Cadwalader did not propose this language, but that it is sensible in light of its recommendations regarding an Ethics Committee. Also note that to completely effect Cadwalader's recommendations regarding an Ethics Committee, a section regarding its composition, powers and procedures should be added to the Code of Ethics—using CR30-31 as a guide—and the Board Procedures sections IX & X should also need to be revised (not shown). Main Policy Issue: To which person (e.g. Chair) or entity (e.g. internal or external panel) should Members

Code of Ethics Redline for 2/14/13 Governance Committee Meeting Page 14

C. Any Board Member who willfully violates any provision of Article III, Section B, hereof, shall, at the discretion of the Board, forfeit the Board Member's position with the Authority. The Board shall provide the Board Member notice and an opportunity to be heard, in writing and in person, directly or through counsel, before taking official action to cause the Board Member to forfeit the position.

D. Any Financial Transaction, to which the Authority is a party, made in contravention of Article III, Section B hereof, may be declared void by the Board. The Board shall provide notice and an opportunity to be heard, in writing and in person, directly or through counsel, to any Party whose Financial Transaction with the Board or the Authority is considered to contravene these sections before taking action to void the transaction.

Article VII. Severability.

The provisions of this Code of Ethics shall be severable and if any phrase, clause, sentence or provision is declared invalid, the validity of the remainder shall not be affected thereby.

Article VIII. Effective Date; Duration; Amendment.

These Rules shall become effective when adopted by the Board and shall remain in effect unless and until amended or revoked by the Board in accordance with § 8 of the Compact.

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report potential conflicts? Similarly, which person or entity should be responsible for providing ethics guidance to Members? (See Art. III.D.3.)



## WMATA Board of Directors

## DISCLOSURES OF AFFILIATIONS AND FINANCIAL INTERESTS

All Board Members are required to submit a statement regarding financial Interests, outside employment and gratuities upon appointment, by April 30 of each year, and at such other times that significant relevant changes have occurred. Throughout the rest of this form, terms defined by the Code of Ethics for Members of the WMATA Board of Directors are in **bold**.

The interests of a spouse, domestic partner, dependent child, any relative over whose financial affairs you have legal or actual control and any other person who resides in your household; of **Business Associates**; and of an organization which employs or is about to employ any of the above are included in determining whether there is a reportable conflict.

The following are excluded from the definition of **Direct Financial Interest** and need not be disclosed:

- (a) checking or savings accounts, money market accounts and other demand deposits;
- (b) IRA's or similar investments;
- (c) government bonds;
- (d) certificates of deposit;
- (e) publicly traded mutual funds; and
- (f) government pensions or other income received pursuant to a government retirement program (civilian or military).





WMATA Board of Directors

DISCLOSURES OF AFFILIATIONS AND FINANCIAL INTERESTS

**PART I – BACKGROUND INFORMATION**

Type or print your first name and middle initial	Last name	Jurisdiction
<input type="text"/>	<input type="text"/>	<input type="text"/>

**PART II – ACTIVITIES AND INTERESTS**

A. Restricted Financial Interests in a Party. (Article III.C)

Please check all that apply:

1. I \_\_\_\_ have, or a **Household Member** \_\_\_\_ or **Business Associate** \_\_\_\_ has a financial interest in a **Party** to an **Actual or Prospective Business Relationship with the Authority.**
2. If that financial interest is a **Direct Financial Interest** \_\_\_\_ or an **Indirect Financial Interest** \_\_\_\_, as defined Articles II.D and II.I of the Code of Ethics (including exceeding the 3% thresholds), explain below.

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**WMATA Board of Directors**

**DISCLOSURES OF AFFILIATIONS AND FINANCIAL INTERESTS**

**B. Voting/Participation Restrictions. (Article III.D)**

Please check all that apply:

1. I  have, or a **Household Member**  or **Business Associate**  has a financial interest in a **Party** or prospective **Party** to a **WMATA Financial Transaction**.
2. If that financial interest is a **Direct Financial Interest**  or an **Indirect Financial Interest** , as defined Articles II.D and II.I of the Code of Ethics (including exceeding the 3% thresholds), explain below.

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3. I  have, or a **Household Member**  has non-governmental, non-WMATA **Employment** with a **Party** or a prospective **Party** to a **WMATA Financial Transaction**. If checked, explain below.

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WMATA Board of Directors

DISCLOSURES OF AFFILIATIONS AND FINANCIAL INTERESTS

C. Gratuities and Solicitation. (Article III.EF & G)

List each **Party** with an **Actual or Prospective Business Relationship with the Authority** that, during the past 12 months, furnished you with any **Gratuity** ~~or from which you solicited any Gratuity~~. Do not list **Gratuities** received at widely attended gatherings (as excluded by Article III.E-3G.2).

NAME OF SOURCE	TYPE OF GRATUITY	VALUE

List each **Party** with an **Actual or Prospective Business Relationship with the Authority** that, during the past 12 months, furnished a **Household Member** with any **Gratuity** ~~or from which he or she solicited any Gratuity~~. Do not list **Gratuities** received at widely attended gatherings (as excluded by Article III.E-3G.2).

NAME OF SOURCE	TYPE OF GRATUITY	VALUE





**WMATA Board of Directors**

**DISCLOSURES OF AFFILIATIONS AND FINANCIAL INTERESTS**

**PART III – CERTIFICATION AND RECEIPT**

I certify that the statements I have made are true, complete, and correct to the best of my knowledge.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**RECEIVED BY BOARD SECRETARY:**

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**PART IV - REVIEW BY GENERAL COUNSEL**

To be completed only if the Board Member answered affirmatively to any question above.

I have examined this statement and any attachments, and

I find no conflicts.

I recommend Board review of the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

***PLEASE SUBMIT COMPLETED FORM TO THE BOARD SECRETARY AND ~~BOARD~~ CHAIREXECUTIVE COMMITTEE.***



**WMATA Board of Directors**

**DISCLOSURES OF CONTACTS WITH BIDDERS AND CONTRACTORS**

Identify each WMATA bidder or contractor in which you have a **Direct** or **Indirect Financial Interest** with whom you have had contact during the Initiation and Pre-Award Phases of the Procurement Process.\*

NAME OF CONTRACTOR	NATURE OF FINANCIAL INTEREST	DATE OF CONTACT

Subject(s) Discussed and Disposition, if any \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

\*Initiation and Pre-Award Phases of the Procurement Process means that period beginning on the earliest date upon which an identifiable, specific action is taken by the Board for a particular procurement and ending upon award. Such actions shall include approvals by the Board or by Committees acting on behalf of the Board of any plan or budget which specifically authorizes an identifiable procurement, the drafting of specifications, statements of work or development of procurement requests therefore, or Board issuance of directives or taskings requiring that such actions be undertaken.

**PLEASE SUBMIT COMPLETED FORM TO THE BOARD SECRETARY AND ~~BOARD~~ CHAIR EXECUTIVE COMMITTEE.**



WMATA Board of Directors

NOTIFICATION OF RECUSAL

DATE: \_\_\_\_\_

TO: ~~BOARD CHAIR~~ EXECUTIVE COMMITTEE

FROM: Type or print your first name and middle initial      Last name      Jurisdiction

_____	_____	_____
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SUBJ: RECUSAL FROM \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Please accept this notice that I am precluded by the Code of Ethics, Article III, \_\_\_\_\_, of the WMATA Board of Directors, or other applicable laws or regulations, from participating in the above-referenced matter.

I request that the WMATA Board of Directors' ~~official records~~ minutes reflect that I am recused from participating in the above-referenced matter, the nature of the conflict of interest and the reason for recusal.

\_\_\_\_\_  
Signature

**PLEASE SUBMIT COMPLETED FORM TO THE ~~BOARD CHAIR~~ EXECUTIVE COMMITTEE AND BOARD SECRETARY.**

## **ETHICS PROVISIONS REGARDING GRATUITIES AND SOLICITATION**

### Introduction

The Cadwalader Report makes apparent that the "Gratuities and Solicitation" section of Code of Ethics, III.E, should be revised to more clearly present the Board's original intent and to adopt several of the Cadwalader recommendations. Article III.E suffers somewhat from mixing provisions regarding non-solicitation on the one hand, with provisions regarding limits upon gratuities on the other. The use of double-negatives in Article III.E also causes confusion. The Cadwalader recommendation, while making valuable improvements, is also problematic. For instance, it makes inconsistent use of the defined and narrow term, "Gratuities," and the broader "anything of value." The proposal that follows attempts to clarify the current provision, in part by separating non-solicitation and limits upon gratuities, and adopt the improvements recommended by Cadwalader while avoid some pitfalls in that recommendation. After the proposal is a redline of the Cadwalader recommendation, followed by the current provision.

### Proposal

*The following provides a redline of the current Code of Ethics provisions with proposed revisions.*

#### ~~EF. Gratuities and Non-Solicitation.~~

1. ~~Board Members and Household Members may not solicit Gratuities.~~

~~2. Except as provided in subsection E.3 below, a Board Members or and Household Members shall may not solicit or accept anything of value from a Party with an Actual or Prospective Business Relationship with the Authority. This prohibition is not intended to preclude solicitations of the general public by mass mailing or other similar anonymously-directed solicitations means that may incidentally be addressed to or include Parties with an Actual or Prospective Business Relationship with the Authority.~~

~~3. Board Members and Household Members may not solicit anything of value from the Authority or any WMATA employee. This prohibition is not intended to preclude solicitations of the general public by mass mailing or other anonymously-directed means that may incidentally be addressed to or include WMATA employees.~~

~~4. The restriction on the receipt of Gratuities shall not apply to the Provided all of the foregoing are satisfied, a Member or Household Member may solicitation or acceptance of bona fide religious or, charitable donations, or and political contributions by a Board A Member or a Household Member provided, with respect to political~~



~~contributions to or for the benefit of a Board Member or a Household Member, the contribution has been reported in accordance may accept such contributions only to the extent consistent with the law of the Board Member's jurisdiction and where it cannot reasonably be inferred that the Gratuity contribution was intended is offered in an effort to influence the Board Member's action upon an Authority matter or was intended offered as a reward for any the Member's action upon an Authority matter.~~

~~5. A Board Member shall not personally solicit any support or financial assistance for any political party, candidate, or committee for any political, charitable, or other purpose from the Authority or any WMATA employee. This prohibition is not intended to preclude solicitations by mass mailing or other similar anonymously directed solicitations.~~

### G. Limits Upon Gratuities

1. ~~Except as provided in subsection E.3 below, a Board Members or and Household Members shall may not solicit or accept anything of value a Gratuity from a Party with an Actual or Prospective Business Relationship with the Authority.~~

2. Notwithstanding the foregoing paragraph, Board Members and Household Members may accept unsolicited Gratuities:

- a. whose value is \$75 or less, provided the cumulative value of all Gratuities from a single source does not exceed \$200 in ~~any~~ calendar year ~~is \$200 or less~~; or
- b. when participating in widely-attended events that are open or part of the regularly-scheduled program for gatherings and conferences, such as those held by the American Public Transportation Association and similar organizations.

3. ~~A Board Members and Household Members may not accept an unsolicited Gratuity when where it could can be reasonably be inferred that the Gratuity was is offered in an effort intended to influence the Board Member's action upon an Authority matter or was intended offered as a reward for the Member's any action on the Member's part upon an Authority matter.~~

## Cadwalader Recommendation

*The following provides a redline of the current Code of Ethics provisions with revisions recommended by Cadwalader.*

### EF. Gratuities and Solicitation.

1. ~~Except as provided in subsection E.3 below, a Board Member or Household Member shall not solicit or accept anything of value from a Party with an Actual or Prospective Business Relationship with the Authority. A Board Member or Household Member may not solicit, in connection with the Board Member's position at the Authority, a Gratuity or anything of value.~~

2. A Board Member or Household Member may not accept a Gratuity or anything of value from a Party that has an Actual or Prospective Business Relationship with the Authority.

23. A Board Member or Household Member may not accept an unsolicited Gratuity or anything of value when it could reasonably be inferred that the Gratuity was intended offered in an effort to influence the Board Member or was intended offered as a reward for any action on the Member's part.

34. Unless otherwise prohibited by rule 1-3 in this section or any other part of this Code of Ethics, a Board Members or Household Member may accept an unsolicited Gratuities with a value of \$75 or less, provided:

(ia) ~~whose value is \$75 or less, provided the cumulative value of Gratuities from a single source in any calendar year is~~ does not exceed \$200 or less; or

(#b) when the Gratuity:

(i) ~~is given at a conference, gathering, or other participating in widely-attended events that are~~ is open to the public; and

(ii) ~~is given in exchange for participating in the event or is given as a part of the regularly-scheduled program for gatherings and conferences, such as those held by the American Public Transportation Association and similar organizations.~~ the event; and

(iii) is given by the event itself and not some other Party; and

(iv) is given to other similarly-situated participants.

~~4. The restriction on the receipt of Gratuities shall not apply to the~~

~~solicitation or acceptance of bona fide religious or charitable donations, or political contributions by a Board Member or a Household Member provided, with respect to political contributions to or for the benefit of a Board Member or a Household Member, the contribution has been reported in accordance with the law of the Board Member's jurisdiction.~~

5. A Board Member or Household Member shall not personally solicit the Authority, any WMATA employee, or any Party that has an Actual or Prospective Business Relationship with the Authority for any support or financial assistance ~~for~~ to any political party, candidate, or committee for any political, charitable, or other purpose ~~from the Authority or any WMATA employee~~. This prohibition is not intended to preclude solicitations of the general public by mass mailing or other ~~similar~~ anonymously directed solicitations that may incidentally be addressed to or include WMATA employees or Parties that have an Actual or Prospective Business Relationship with the Authority.

6. A Board Member shall not Participate in any matter where the Board Member or a Household Member has accepted or solicited a campaign contribution, or a religious or charitable contribution, from a Party with an Actual or Prospective Business Relationship with the Authority. The Board Member shall report any campaign contributions or religious and charitable contributions, offered to the Board Member or Household Member but not accepted, from a Party with an Actual or Prospective Business Relationship with the Authority.

## **Current Code of Ethics Provision – Solicitation and Gratuities**

### **E. Gratuities and Solicitation.**

1. Except as provided in subsection E.3 below, a Board Member or Household Member shall not solicit or accept anything of value from a Party with an Actual or Prospective Business Relationship with the Authority.

2. A Board Member may not accept an unsolicited Gratuity when it could reasonably be inferred that the Gratuity was intended to influence the Board Member or was intended as a reward for any action on the Member's part.

3. Board Members may accept unsolicited Gratuities:

- (i) whose value is \$75 or less, provided the cumulative value of Gratuities from a single source in any calendar year is \$200 or less; or

(ii) when participating in widely-attended events that are open or part of the regularly-scheduled program for gatherings and conferences, such as those held by the American Public Transportation Association and similar organizations.

4. The restriction on the receipt of Gratuities shall not apply to the solicitation or acceptance of bona fide religious or charitable donations, or political contributions by a Board Member or a Household Member provided, with respect to political contributions to or for the benefit of a Board Member or a Household Member, the contribution has been reported in accordance with the law of the Board Member's jurisdiction.

5. A Board Member shall not personally solicit any support or financial assistance for any political party, candidate, or committee for any political, charitable, or other purpose from the Authority or any WMATA employee. This prohibition is not intended to preclude solicitations by mass mailing or other similar anonymously directed solicitations.