

**SUBJECT: APPROVAL OF REVISED CODE OF ETHICS FOR MEMBERS OF THE WMATA BOARD OF DIRECTORS AND AMENDMENT OF BOARD PROCEDURES**

**2013-05  
RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

WHEREAS, The Board of Directors is committed to continuing to improve the governance of the Authority; and

WHEREAS, Pursuant to Resolution #2011-38, the Board of Directors approved a Code of Ethics for Members of the WMATA Board of Directors ("Code of Ethics" or "Code") to ensure a commitment to strict avoidance of actions, in private financial relationships and in official conduct, that create conflicts of interest or the appearance of conflicts of interest; and

WHEREAS, The Board commissioned a review of its Code of Ethics by the Cadwalader firm and the Governance Committee considered revisions to that Code based on recommendations by Cadwalader and others; and

WHEREAS, Pursuant to Resolution #2013-02, the Board of Directors approved revised Bylaws, which in pertinent part established an Executive Committee to strengthen Board governance and perform responsibilities assigned by the Board Chair; and

WHEREAS, The Governance Committee has recommended that the Code of Ethics should be revised to clarify and expand the definition of Indirect Financial Interest; detail the bases and process for recusal; clarify the means to obtain advisory opinions regarding the application of the Code to specific circumstances; clarify and stress the restrictions upon solicitation and upon acceptance of gratuities; restrict Board Members involvement in Authority matters that may create the appearance of nepotism; establish the position of an ethics officer and the duties of that officer; and require prospective contractors to disclose interests that may pose a conflict for Board Members; and

WHEREAS, The Governance Committee has further recommended that the Board Chair assign the Executive Committee the responsibilities to receive reports of conflicts of interest, notices of recusal and reports of Code violations, and to designate an Ethics Officer; and

**Motioned by Mr. Dyke, seconded by Mrs. Hudgins**

**Ayes: 8 - Mr. Downs, Mr. Downey, Mr. Nichols, Mrs. Hudgins, Mr. Dyke, Ms. Bowser, Mr. Acosta and Mr. Barnes**

WHEREAS, The Governance Committee has further recommended updating the forms attached to the Code of Ethics to conform to the revised Code of Ethics; now, therefore be it

*RESOLVED*, That the Board of Directors approves the attached revised Code of Ethics for Members of the Board of Directors, and attached forms, which supersede all prior Codes of Ethics; and be it further

*RESOLVED*, That staff shall develop and implement within 180 days all policies, procedures and contact provisions necessary to comply with the requirements of the Code of Ethics, including the third-party disclosures in Article IV, Section B, and a requirement to make a regularly-updated compilation of these disclosures available to Board Members; and be it further

*RESOLVED*, That to ensure effective ethics oversight the Board Chair shall assign the Executive Committee the responsibilities to receive reports of conflicts of interest, notices of recusal and reports of Code violations, and to designate an Ethics Officer; and be it further

*RESOLVED*, That Procedures Section X, Part B is hereby revised in accordance with the revised Code of Ethics as follows:

Allegations of misconduct by a Board Member or by the Inspector General shall be reported to the Executive Committee. If the allegation is against any member of the Executive Committee, that member shall be excluded from review of the allegation. Except as authorized by the Executive Committee or the Audits and Investigations Committee, the WMATA Office of Inspector General will not investigate these types of allegations. The Executive Committee shall convene an executive session to determine appropriate action. If the Committee determines that the allegations are of a criminal nature, it shall refer them to an appropriate prosecutor. For non-criminal allegations, the Committee may refer specific allegations of misconduct to outside legal counsel or obtain other external investigative assistance; and be it finally

*RESOLVED*, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



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Carol B. O'Keeffe  
General Counsel

## **CODE OF ETHICS FOR MEMBERS OF THE WMATA BOARD OF DIRECTORS**

### **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.

The Bylaws of the WMATA Board of Directors requires the Board to maintain and periodically update the Rules contained in this Code of Ethics. 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, including those related to Joint Development projects. 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.

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 received by a Member, Household Member or Business Associate for services provided to a Party when that income exceeds three percent (3%) of the Member's, Household Member's or Business Associate's gross income, respectively, for the current or preceding fiscal year. Gross income means all income from any source, as defined by the Internal Revenue Service.

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

K. "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 soliciting; from accepting certain Gratuities; from the use of a Board Member's official position; from decisions involving relatives; and from Employment after serving as a Board Member. They prohibit certain actions, and provide procedures for disclosure, obtaining advisory opinions, 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:
  - (a) the Board Member,
  - (b) a Household Member, or
  - (c) 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.

E. Recusal and Advisory Opinions.

1. Before Participating in a matter, a Board Member shall notify the members of the Executive Committee of 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 Board Member shall recuse himself 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 (see Section H.6 for additional bases for recusal). The Board Member shall notify the Executive Committee using the form in Attachment C, and the Board minutes shall reflect the nature of the conflict of interest and the reason for the recusal on the matter.

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 himself or herself and report the situation to the Executive Committee.

3. Board Members may seek verbal or written guidance from the Ethics Officer regarding the application of this Code of Ethics to specific questions or situations encountered by Members (see Article V).

4. No Board Member shall be found to have violated this Code of Ethics if the alleged violation followed from good faith reliance on a written opinion from the Ethics Officer that was made after a full and accurate disclosure by the Member of all material facts.

F. Non-Solicitation.

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

2. Board Members and Household Members may not solicit 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 communication or other widely-distributed 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 communication or other widely-distributed means that may incidentally be addressed to or include WMATA employees.

4. Provided all of the foregoing are satisfied, a Member or Household Member may solicit bona fide religious, charitable and political contributions. A Member 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 contribution is offered in an effort to influence the Member's action upon an Authority matter or offered as a reward for the Member's action upon an Authority matter.

G. Limits Upon Gratuities.

1. Board Members and Household Members may not accept 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 a calendar year; 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. Board Members and Household Members may not accept a Gratuity where it can be reasonably inferred that the Gratuity is offered in an effort to influence the Member's action upon an Authority matter or offered as a reward for the Member's action upon an Authority matter.

H. 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 and to the extent necessary to fulfill the Board Member's public responsibility;

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;

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 spouse, child, sibling, parent, aunt, uncle, first cousin, nephew or niece ("qualifying relative," which includes persons related by law or consanguinity, and domestic partners). If the Board considers a matter involving employment of a qualifying relative or a Financial Transaction with a Party in which a qualifying relative has a Direct Financial Interest, that Board Member shall notify the Executive Committee and recuse himself or herself from that consideration.

I. 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 Employment with any private third Party to work on a matter in which the Board Member has Participated.

J. Each Board Member shall disclose, on the form in Attachment B, each contact with a WMATA contractor or bidder in which the Member has a Direct or Indirect Financial Interest during the Initiation and Pre-Award Phases of the Procurement Process. Forms will be kept on file for one year 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.

#### Article IV. Submission of Disclosure 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 D 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.

C. Board Members shall disclose to the Board any known or suspected violations of the Code of Ethics.

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.

#### Article V. Ethics Officer.

A. The Executive Committee shall designate an Authority employee to serve as the Ethics Officer, who shall continue in that position until the designation is rescinded by the Executive Committee.

B. The Ethics Officer is responsible for:

1. reviewing annual Disclosures of Affiliations and Financial Interests submitted by Members;
2. discussing potential conflicts of interest with Members;
3. advising Members about the application of this Code of Ethics to specific questions or situations presented by Members, including providing written opinions; and
4. preparing ethics training materials for Members and providing annual ethics training sessions to Members.

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

A. The Board is responsible for interpreting and enforcing these rules.

B. Specific allegations of misconduct shall be reported to any member of the Executive Committee and shall be addressed as provided in Procedures Section X.

C. Any Board Member who willfully violates any provision of Article III, Section B (Compact § 10), 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 (Compact § 10), 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.



## 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 (**Household Members**); 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

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

4. I \_\_\_\_\_ have, or a **Household Member** \_\_\_\_\_ has a real property interest located within the WMATA Transit Zone other than an interest in the primary residence that we occupy. If checked, provide the location/address of the interest below.

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5. List any situations of which you are aware and believe may create an appearance of a conflict of interest.

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WMATA Board of Directors

DISCLOSURES OF AFFILIATIONS AND FINANCIAL INTERESTS

C. Non-Solicitation. (Article III.F)

Please complete if applicable:

I  have solicited bona fide religious, charitable or political contributions. If checked, explain below, including whether the solicitation was consistent with the law of your jurisdiction and the basis on which it cannot be reasonably inferred that the contribution was offered in an effort to influence your action upon an Authority matter or as a reward for your action upon an Authority matter.

Multiple horizontal lines for text entry.



WMATA Board of Directors

DISCLOSURES OF AFFILIATIONS AND FINANCIAL INTERESTS

D. Gratuities. (Article III.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**. Do not list **Gratuities** received at widely attended gatherings (as excluded by Article III.G.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**. Do not list **Gratuities** received at widely attended gatherings (as excluded by Article III.G.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 ETHICS OFFICER

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:

Four horizontal lines for listing conflicts or items for review.

SIGNATURE

DATE

PLEASE SUBMIT COMPLETED FORM TO THE ETHICS OFFICER



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

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\_\_\_\_\_

SIGNATURE	DATE
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\*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 EXECUTIVE COMMITTEE.**



WMATA Board of Directors

NOTIFICATION OF RECUSAL

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

TO: EXECUTIVE COMMITTEE

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

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

Description of Conflict of Interest: \_\_\_\_\_  
\_\_\_\_\_

Reason for Recusal: \_\_\_\_\_  
\_\_\_\_\_

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.

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

\_\_\_\_\_  
Signature

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

