

Metrorail Safety Commission

March 13, 2018

Agenda Item # 4 – Action

Adoption of MSC Policies

Background	<p>Federal statutory (49 USC §5329) and regulations (49 CFR Part 674) requires the MSC to adopt the following policies to guide its functioning as a State Safety Oversight Agency (SSOA). Staff with the assistance of the MSC's legal counsel has developed the following policy document:</p> <p>A. <u>Conflicts of Interest Policy</u> to identify, document, eliminate, or sufficiently mitigate legal or financial conflicts. The policy will affect the way Board members and employees that interact with WMATA. Upon adoption, members of the Commission will have up to five working days to sign and submit their signed copies acknowledgement of the Conflicts of Interest Policy.</p> <p>B. <u>Freedom of Information Act (FOIA) Policy</u> to adhere to the transparency and public access provisions of the Freedom of Information Act ("FOIA") codified at 5 U.S.C. § 552(a)-(d) and (g). The MSC is not subject to state freedom of information laws.</p> <p>C. <u>An Open Meetings Policy</u> to conduct and dispose of all meetings in accordance with the Government in the Sunshine Act codified at 5 U.S.C. § 552b ("Sunshine Act"). The MSC is not subject to state open meeting laws.</p>
Issues	None
Staff	
Recommendation	Receive briefing from staff and adopt Resolutions - MSC 02-2018 (Conflicts of Interest Policy); MSC 03-2018 (Freedom of Information Act Policy) and MSC 04-2018 (Open Meetings Policy).

**CONFLICTS OF INTEREST POLICY FOR
METRORAIL SAFETY COMMISSION**

1. PURPOSE

The Metrorail Safety Commission (the “Commission”) has been set up as the state safety oversight authority of the Washington Metropolitan Area Transit Authority (“WMATA”) by its signatory jurisdictions, the District of Columbia, Maryland and Virginia.

The purpose of this Conflicts of Interest Policy (this “Policy”) for the Commission is to set forth policies and procedures for identifying, documenting, eliminating, or sufficiently mitigating instances where the Commission is not legally or financially independent from WMATA as required by Federal transit law at 49 U.S.C. § 5329, as may be amended from time to time, and the federal regulations promulgated thereunder at 49 C.F.R. Part 674. This Policy is closely based on guidance issued by the Federal Transit Administration (“FTA”), and is intended to supplement, but not replace, Federal transit law at 49 U.S.C. § 5329 and any other applicable state and federal conflict of interest laws applicable to the Commission and WMATA.

2. GENERAL APPROACH

The Commission recognizes the importance of integrity and independence for the safety and security of public transportation. Because of this, the Commission will identify, document, and eliminate instances of legal or financial conflicts. If a conflict cannot be eliminated, the Commission will take appropriate steps to mitigate such conflict, including make appropriate disclosures. In addition, the Commission will document significant decisions relating to any conflict of interest findings, conclusions, and recommendations and work to identify, minimize, mitigate, and disclose conflicts.

3. IDENTIFYING CONFLICTS OF INTEREST

The Commission will continually identify any legal or financial conflicts of interest.

- a. To ensure independence, unless a waiver has been obtained from the FTA, the Commission will not:
 - i. employ any individual who concurrently provides services to WMATA; or
 - ii. hire a contractor who concurrently provides services to WMATA.
- b. To ensure legal independence, the Commission will:
 - i. be a separate legal agency from WMATA;
 - ii. maintain a separate reporting relationship from WMATA;
 - iii. have no shared board members, shared activities or shared

- supervisory streams with WMATA; and
- iv. not have a vested legal or organizational interest in the success of WMATA or any of its activities, events or projects.
- c. To ensure financial independence:
 - i. the Commission will not receive direct funding from WMATA to conduct its state safety oversight program;
 - ii. the Commission will not fund WMATA through grants, assistance, subsidies, or other programs or activities;
 - iii. the Commission will not fund public transportation in the signatory jurisdictions, including non-rail modes, such as bus, community transportation, and other forms of public transportation;
 - iv. the Commission will not share funding streams and reporting relationships with other offices or divisions with WMATA or any agency that funds WMATA or supports public transportation in the signatory jurisdictions; and
 - v. the Commission will not be financially vested in WMATA and its success.

4. PROCEDURES FOR ADDRESSING CONFLICTS

Because all conflicts cannot be delineated in this Policy, the Commission will act proactively to identify and mitigate conflicts of interest. Examples of some procedures for addressing conflicts are listed below.

a. Disclosure of Conflict

If after review, the Commission identifies an actual or possible conflict of interest, the Commission will formally document and disclose such conflict to the public, the FTA, any applicable governing authorities (such as funding sources, regulatory authorities or executives of the signatory jurisdictions), and any other stakeholders or constituents through formal written letters or memorandum or notices. Example disclosures are attached as Attachment A. The notice will include all material facts about the real or perceived conflict of interest and how safety issues can be affected by such conflict of interest. The Commission will timely make such disclosures and will not postpone them simply because actions to eliminate or mitigate are planned. Additionally, the Commission may include in the disclosure any plans to eliminate or mitigate the conflict.

b. Elimination of Conflict

After a real or perceived conflict of interest has been identified, the Commission will consider whether action can be taken to entirely eliminate the conflict either immediately or in the long-term, including by methods such as resignation, reorganization, and change of personnel or responsibilities, and disclose such action.

c. Mitigation of Conflict

The preferred action is to eliminate conflicts immediately. When this cannot be done, the Commission will develop longer-term plans for eliminating the conflict. Where conflicts of interest cannot be fully eliminated, or during an interim period where longer-term plans to eliminate conflicts are being implemented, the Commission will take all reasonable actions to mitigate such conflicts, including by methods such as recusal, use of outside experts, self-certification (example form in Attachment B), and restructuring.

5. DOCUMENTATION

If a conflict is present, the Commission will diligently document all decisions, actions, and inactions regarding the conflict. The Commission will keep at its principal place of business and open for inspection during normal business hours documentation of determinations (such as the inability to eliminate a conflict, recusals, weight given to outside experts, etc.), actions taken or not taken, and explanations of conflicts. Such documentation will include the names of the persons involved in the decisions, the nature of the conflict of interest, any action taken to determine whether a conflict of interest was present, actions taken to eliminate or mitigate the conflict, any alternatives considered, any other decisions made in connection with the conflict, and a record of any votes taken in connection with the decisions.

6. ANNUAL REVIEWS

On no less than an annual basis, the Commission will conduct a formal review of this policy and other FTA guidance materials on conflicts of interest to consider whether any new conflicts exist or whether any action can or should be taken with respect to conflicts that have been identified. A form to document these formal reviews is attached as Attachment C.

7. ADOPTION OF THIS POLICY AND ANNUAL STATEMENT

Each director, committee member, manager, and employee of the Commission with board-delegated powers will initially (upon adoption of this Policy or upon hire, appointment, or grant of such decision-making powers), and annually thereafter, sign a

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statement that affirms that such person:

- has received a copy of this Policy,
- has read and understands this Policy,
- has agreed to comply with this Policy, and
- understands that the Commission is subject to Federal transit law at 49 U.S.C. § 5329 and is required by law to be legally and financially independent from WMATA.

An example of such statement is attached as Attachment D.

LIST OF ATTACHMENTS

- Attachment A: Example Disclosures of Conflict to the FTA and the Executive Branches of DC, MD and VA and Example of Notice to the Public
- Attachment B: Self-Certification
- Attachment C: Documentation of Annual Reviews
- Attachment D: Form of Statement

Attachment A

Example Disclosures of Conflict

Form of Letter to the FTA and Executive Branches of DC, MD and VA

[Letterhead]

[Date]

The Honorable [_____]
Mayor of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Ave., N.W.
Washington, DC 20004

The Honorable [_____]
Governor of Maryland
100 State Circle
Annapolis, MD 21401

The Honorable [_____]
Governor of Virginia
111 E. Broad St.
Richmond, VA 23219

[Ms. Angela Dluger
Deputy Associate Administrator
Office of Safety and Oversight
Federal Transit Administration
1200 New Jersey Avenue, SE
Washington, DC 20590]

Re: Notice Regarding Financial Conflict of Interest of the Commission and WMATA

Dear Mayor [____], Governor [____], and Governor [____] and [Ms. Dluger]:

The State Safety Oversight provisions of Federal transit law at 49 U.S.C. § 5329 require that the Metrorail Safety Commission (the “Commission”) be financially independent from the Washington Metropolitan Area Transit Authority (“WMATA”). The Commission and WMATA both receive budgets and grant funds from the [_____]. This structure creates a financial conflict of interest whereby the Commission may have conflicting goals when making decisions relating to the safety and security of WMATA. For example, [insert examples scenario where the Commission and WMATA would have conflict].

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The Commission is aware of the conflict of interest inherent in the current structure of the Commission and WMATA, and understands the implications for the safety of public transportation. We are currently considering options for eliminating or mitigating this risk. We will provide notice of any action taken by the Commission and WMATA to remedy the situation. We welcome any feedback that you may have regarding the best course of action to take forward.

Sincerely,

The Metrorail Safety Commission

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Example Disclosures of Conflict

Form of Notice to Public

NOTICE

To: All Interested Parties

From: The Metrorail Safety Commission

Date:

Subject: Notice Regarding Financial Conflict of Interest of Commission and WMATA

The State Safety Oversight provisions of Federal transit law at 49 U.S.C. § 5329 require that the Metrorail Safety Commission (the “Commission”) be financially independent from the Washington Metropolitan Area Transit Authority (“WMATA”). The Commission and WMATA both receive budgets and grant funds from [_____]. This structure creates a financial conflict of interest whereby the Commission may have conflicting goals when making decisions relating to the safety and security of WMATA. For example, [insert examples scenario where the Commission and WMATA would have conflict].

The Commission is aware of the conflict of interest inherent in the current structure of the two organizations, and understands the implications for safety of public transportation. We are currently considering options for eliminating or mitigating this risk. We will provide notice of any action taken by the Commission and WMATA to remedy the situation. We welcome any feedback that you may have on the best course of action to take forward.

Attachment B

Self-Certification

The State Safety Oversight provisions of Federal transit law at 49 U.S.C. § 5329 require that the Metrorail Safety Commission (the “Commission”) be financially independent from the Washington Metropolitan Area Transit Authority (“WMATA”). The Commission and WMATA both receive budgets and grant funds from [_____]. This structure creates a financial conflict of interest whereby the Commission may have conflicting goals when making decisions relating to the safety and security of WMATA. For example, [insert examples scenario where the Commission and WMATA would have conflict].

The undersigned hereby certifies that:

1. He/she is a member of the Board of Directors of the Commission;
2. He/she has maintained professional judgment, honesty and integrity in all actions and decisions involving the abovementioned conflict; and
3. He/she has taken all actions with respect to WMATA without consideration of the conflicting goals and interests created by such structure (that is, as though the decision had been made by an entirely independent third party concerned only with the needs of WMATA and its passengers).

Signed: _____

Name: _____

Date: _____

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Attachment C

Documentation of Annual Review

Meeting of the Metrorail Safety Commission Regarding Conflicts of Interest

Date: _____

Time: _____

Location: _____

Persons in Attendance:

The State Safety Oversight provisions of Federal transit law at 49 U.S.C. § 5329 require that the Metrorail Safety Commission (the “Commission”) be financially independent from the Washington Metropolitan Area Transit Authority (“WMATA”).

The Commission and WMATA have previously identified a financial conflict of interest due to the fact that the Commission and WMATA both receive budgets and grant funds from [_____]. This structure creates a financial conflict of interest whereby the Commission may have conflicting goals when making decisions relating to the safety and security of WMATA. For example, [insert examples scenario where the Commission and WMATA would have conflict]. The Commission and WMATA are taking actions to eliminate or mitigate the effects of such conflict.

After discussion amongst the persons in attendance, the Commission has not identified further legal or financial conflicts of interest at this time.

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Attachment D
Form of Statement

The undersigned:

- is the _____ of the
Metrorail Safety Commission;
- has received a copy of the Joint Conflicts of Interest Policy of the Commission;
- has read and understands the policy;
- hereby agrees to comply with the policy; and
- understands that the Commission is subject to Federal transit law at 49 U.S.C. § 5329 and
is required by law to be legally and financially independent from WMATA.

Signed: _____

Name: _____

Title: _____

Date: _____