



Document Name:	Conflicts of Interest Policy
Approved by	WMSC-R2020-11
Effective Date:	November 10, 2020

1. Purpose

The Washington Metrorail Safety Commission (WMSC) has been established as the state safety oversight agency with authority over the Washington Metropolitan Area Transit Authority (WMATA) by its Signatory jurisdictions, the District of Columbia, Maryland and Virginia. Capitalized terms not defined in this document are defined in the Compact.

This Conflicts of Interest Policy (Policy) sets forth procedures to maintain the WMSC’s legal and financial independence from WMATA, as required at 49 U.S.C. § 5329(e)(4)(A), as that statute may be amended from time to time, the federal regulations promulgated thereunder at 49 C.F.R. §§ 674.13 and 674.41, and § 23 of the Compact. This Policy is intended to supplement, but not replace, the requirements set forth at 49 C.F.R. part 674 or a successor regulation. The Policy also establishes requirements applicable to individual WMSC Members, Alternate Members, and executive-level WMSC staff to address conflicts of interest that may arise between any one of such individuals and the WMSC.

2. Prohibition Against Self-Dealing

A Member or Alternate Member of the Board may not provide goods or services under a contract with the WMSC or WMATA and may not occupy a position involving decision-making authority with any entity providing goods or services to the WMSC or WMATA, while serving on the Board.

3. Identifying Conflicts of Interest

The WMSC will continually evaluate whether any legal or financial conflicts of interest exist and eliminate any such conflicts.

- a. To ensure independence, the WMSC will not:
 - i. employ any individual who concurrently provides services to or is an employee of WMATA; or
 - ii. hire a contractor who concurrently provides services to WMATA.



- b.** To ensure legal independence, the WMSC will:
 - i. maintain a separate reporting relationship to all relevant federal, state, or local agencies from WMATA;
 - ii. have no shared board members, shared activities or shared supervisory streams with WMATA; and
 - iii. not have a vested legal or organizational interest in WMATA or any of its activities, events or projects.

- c.** To ensure financial independence:
 - i. the WMSC will not receive direct funding from WMATA to conduct its state safety oversight program;
 - ii. the WMSC will not fund WMATA through grants, assistance, subsidies, or other programs or activities;
 - iii. the WMSC 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 WMSC will not share funding streams or reporting relationships with other public agencies with (a) WMATA or (b) any agency that funds WMATA or supports public transportation in the Signatory jurisdictions; and
 - v. the WMSC will not be financially vested in WMATA in any regard.

4. Procedures for Addressing Conflicts

Because all conflicts cannot be delineated in this Policy, the WMSC will act proactively to identify and eliminate conflicts of interest. The WMSC generally anticipates the following procedures will apply to the identification and elimination of conflicts.

- a.** Disclosure
 - i. If any person alerts the WMSC to, or the Board identifies, a potential conflict of interest, the WMSC will document and disclose the conflict by written notice to the public, the FTA, the Signatory jurisdictions, and any other stakeholders or constituents, as appropriate to the circumstances, in the form attached as **Attachment A**. The disclosure notice will include all material facts about the actual or perceived conflict of interest and how the WMSC's SSO activities might be affected by such conflict of interest. The WMSC will timely make such disclosures promptly upon identifying any such conflict.



Additionally, the WMSC may include in the disclosure its proposed means to eliminate or mitigate the conflict.

- ii. If an employee of the WMSC is tasked with working on a matter that the employee worked on while previously employed by WMATA or a contractor to WMATA (i.e., if the employee was directly involved in, investigated, or reported on an incident subject to WMSC inspection, investigation or other inquiry), the employee must disclose to the WMSC CEO the nature and context of the employee's previous work at WMATA so that the WMSC can determine if the employee's prior role would potentially prevent the employee from impartially performing his or her SSO activities.
- b. Elimination of Conflict: After an actual conflict of interest has been identified, the WMSC will determine whether it can eliminate the conflict either immediately or in the long term, including by methods such as resignation or recusal of a Member or Alternate Member, reorganization, or change of personnel or responsibilities, and will disclose its proposed means of eliminating the conflict.
- c. Mitigation of Conflict: The preferred action is to eliminate conflicts immediately. When this is not possible, the WMSC 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 WMSC 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), or restructuring of commercial relationships.

5. Documentation

If an actual conflict exists, the WMSC will diligently document all decisions and actions regarding the conflict. The WMSC 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 titles (and, if relevant and necessary, the names) of the persons involved in the decisions, the nature of the conflict of interest, any action taken to determine whether the WMSC identified an actual conflict of interest, 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 action taken in connection with the decisions.

6. Annual Reviews

On no less than an annual basis, the WMSC will review this policy. The form on which to document such reviews is attached as **Attachment C**.

7. Adoption of this Policy and Annual Statement

- a.** Each Member, Alternate Member, and WMSC executive employee will, upon hire or appointment and annually thereafter, sign a 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 WMSC is required by federal law to be legally and financially independent from WMATA.
- b.** WMSC employees without decision-making executive authority will be provided with a copy of this policy upon hire and annually thereafter but will not be required to submit a signed copy.

The form of annual 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 Affirmation of Washington Metrorail Safety Commission Conflicts of Interest Policy



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

[Mr./Ms.
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 WMSC and WMATA

Dear Mayor [_____] , Governor [_____] , and Governor [_____] and
[Mr./Ms.] :

The statutory provisions governing State Safety Oversight at 49 U.S.C. § 5329 require



that the Metrorail Safety Commission (“WMSC”) be financially independent from the Washington Metropolitan Area Transit Authority (“WMATA”). The WMSC and WMATA [both receive budgets and grant funds from the [_____]]. This structure creates a financial conflict of interest whereby the WMSC may have conflicting goals when making decisions relating to the safety and security of WMATA. For example, [insert examples scenario where the WMSC and WMATA would have conflict].

The WMSC is aware of the conflict of interest inherent in the current structure of the WMSC and WMATA. We are currently considering options for eliminating or mitigating this risk. We will provide notice of any action taken by the WMSC 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 Washington Metrorail Safety Commission



Example Disclosures of Conflict Form of Notice to Public

NOTICE

To: All Interested Parties

From: The Washington Metrorail Safety Commission

Date:

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

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

We are currently considering options for eliminating or mitigating this risk. We will provide notice of any action taken by the WMSC 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 statutory provisions governing State Safety Oversight at 49 U.S.C. § 5329 require that the Washington Metrorail Safety Commission (WMSC) be financially and legally independent from the Washington Metropolitan Area Transit Authority (WMATA). The WMSC and WMATA both receive grant funds from [_____]. This structure creates a financial conflict of interest whereby the WMSC may have conflicting goals when making decisions relating to its safety oversight functions. For example, [insert examples scenario where the WMSC and WMATA would have conflict].

The undersigned hereby certifies that:

1. He/she is a member of the Board of Directors of the WMSC;
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 any potential conflicting goals or interests created by such structure.

Signed: _____

Name: _____

Date: _____



Attachment C

Documentation of Annual Review

Meeting of the Metrorail Safety WMSC Regarding Conflicts of Interest

Date: _____

Time: _____

Location: _____

Persons in Attendance:

The statutory provisions governing State Safety Oversight at 49 U.S.C. § 5329 require that the Washington Metrorail Safety Commission (WMSC) be financially and legally independent from the Washington Metropolitan Area Transit Authority (WMATA).

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

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



Attachment D

Affirmation of Washington Metrorail Safety Commission Conflicts of Interest Policy

The undersigned:

- is a [Member] [Alternate Member] [executive employee] _____ of the Washington Metrorail Safety Commission (WMSC);
- has received a copy of the Conflicts of Interest Policy of the WMSC;
- has read and understands the policy;
- hereby agrees to comply with the policy; and
- understands that the WMSC is subject to Federal law pursuant to 49 U.S.C. § 5329 and is required by statute to be legally and financially independent from WMATA.

Signed: _____

Name: _____

Title: _____

Date: _____