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Correspondence Memorandum

Date: May 18, 2018
To: Deferred Compensation Board
From: Lucas Strelow, Policy Advisor, Office of Policy, Privacy & Compliance
Laura Patterson, Policy Analyst, Office of Policy, Privacy & Compliance
Subject: Board Policies Update

ETF requests the Deferred Compensation Board (Board) approve the following policies for incorporation into the Board Governance Manual.

ETF will periodically present new and updated policies to the Board to maintain compliance, improve consistency and enhance the Board's governance foundation. Additionally, ETF will periodically make necessary non-substantive updates to the polices and will keep the Board apprised of any changes.

We have identified two new policies in need of Board approval. Copies of the new policies are attached.

Policies for Approval:

Communications Policy (Attachment A)

The Communications Policy is based on communications policies adopted by the Retirement Boards and the Group Insurance Board. The policy contains basic principles for Board members in different communications scenarios to assist in complying with open meetings laws, to avoid inadvertent conflicts of interest and to promote decorum during Board meetings. This policy helps to ensure that in communications with each other and participants in the program, Board members operate within their legal and fiduciary bounds.

Reviewed and approved by Steve Hurley, Director, Office of
Policy, Privacy, and Compliance

Electronically Signed 6/1/18

Board	Mtg Date	Item #
DC	6.14.18	7

Conflict of Interest Policy and Resignation Procedure (Attachments B and C)

The Conflict of Interest Policy outlines the legal requirements Board members must abide by to ensure that their private interests do not conflict with their fiduciary duties to the Wisconsin Deferred Compensation Program. "Conflicts of Interest" are explained in the attached policy, along with the procedure for Board members to disclose such conflicts. Resignation from the Board may be required if a Board member fails to disclose a conflict or has a significant ongoing conflict. The Board may decide if a conflict of interest exists, and whether a Board member may participate in discussion or vote on the issue. Finally, the policy advises that Board members avoid situations that may be perceived as conflicts of interests.

Staff will be at the Board meeting to answer any questions.

Attachment A: Communications Policy

Attachment B: Conflict of Interest Policy

Attachment C: Resignation Procedure



Deferred Compensation Board

Adopted:
Revised:

Communications Policy

Purpose

This policy is intended to ensure that communications by the Deferred Compensation Board (Board) members are handled appropriately and in a manner that best serves the benefit programs administered by the Department of Employee Trust Funds. Board members are expected to be professional and courteous in all communications. Communications by Board members shall be consistent with their fiduciary duty to represent the interests of the beneficiaries of the public employee trust fund and the proper administration of benefits.

Communication Between Board Members at Board Meetings

Board members should communicate in an open and constructive manner during meetings of the Board and committees. Board members should refrain from private communication when discussing Board or ETF business during open meetings, for example via email, text or instant message, to prevent a violation of Wisconsin's Open Meetings law.¹ When a quorum of the Board or a committee of the Board meets and discusses Board business, the meeting must be open to the public and held only after proper notice is given² and be recorded with proper minutes. However, the Board may conduct certain business in closed session in accordance with Wisconsin's Open Meetings laws.³

Communication Between Board Members Outside of Board Meetings

Any Board member may contact the Chair, or in his or her absence, the Vice-Chair, regarding issues of interest or concern. Board members are to contact the Board Chair or the ETF Secretary if they wish to have specific issues discussed by the Board so that these items can be added to the Board meeting agenda.

Board members must not engage in mass or sequential email exchanges with other Board members relating to Board or ETF business. The Wisconsin Attorney General strongly discourages governmental bodies from using electronic mail to communicate about issues within the body's realm of authority because of the risk of conducting a "meeting" or "convening of members" in violation of Open Meetings laws.⁴

Informal gatherings of Board members for social purposes are not considered public meetings under the Wisconsin Open Meetings law or this policy.⁵ If Board issues were to be discussed at an informal gathering however, the character of the gathering may

¹ [Wis. Stats., Ch 19, Subchapter V.](#)

² [§ 19.84, Stats.](#)

³ [§ 19.85, Stats.](#)

⁴ [§ 19.82\(2\), Stats.](#)

⁵ [§ 19.82\(2\), Stats.](#)

change to a public meeting. As a result, please take caution in discussing Board business outside of a formal Board meeting.

Communication Between the ETF Secretary (or Designee) and the Board

Notice and information for special and regularly scheduled quarterly Board meetings will be sent to all Board members before the meetings. The ETF Secretary shall communicate with the Board between meetings when issues arise that require their immediate attention and consideration and may communicate other issues of interest to the Board.

Communication Between a Board Member and ETF Staff

If a Board member needs information related to benefits administration, the primary contacts are the ETF Secretary or Deputy Secretary. Board members may contact ETF Board Liaisons directly regarding meeting schedules, travel arrangements, reimbursements and other administrative matters.

Communication Between Third-Parties and the Board (Directly or Through ETF)

To ensure adequate time for distribution, communication should be received by ETF through the ETF Board Liaison at least 24 hours prior to a meeting, in accordance with Board correspondence procedures posted on ETF's website. Board members shall forward to the Board Liaison any materials received directly from third parties.

Any correspondence to the Board received by ETF will be directed to the applicable Board without edit or redaction. All correspondence will be reviewed by ETF staff and Board members will be informed that the correspondence includes individual personal information, and, if applicable, protected health information that may be protected from disclosure by state or federal law. ETF will review and, as necessary, redact personal information from the correspondence prior to any posting of the material on the ETF website.

Board members shall safeguard and keep confidential any personal information received from third parties, as per the Board's Privacy of Personal Information Policy.

Materials Provided by an Attendee to the Board at an Open Meeting

While ETF procedures provide that materials be submitted to ETF at least 24 hours prior to a Board meeting, Board members may receive materials from third party attendees at an open Board meeting. Board members and attendees shall transfer any such materials directly to the Board Liaison. If there are sufficient copies, the Board Liaison may disseminate the information to the Board. If there are not sufficient copies to be disseminated at the meeting, the Board Liaison will distribute the information as correspondence prior to the next Board meeting.

Communication Between a Board Member and a Service Provider or Vendor

If a Board member is contacted by anyone with a future interest in doing business with ETF or the Board, the Board member should refer the individual to the ETF Secretary.

The Secretary may refer the matter to the appropriate ETF staff or other advisors to evaluate the business inquiry or solicitation.

When a Board member discusses ETF or Board business with a vendor outside of a Board meeting, that Board member's independence may be perceived as compromised and could result in the Board member's disqualification from formal consideration of any related matters by the Board.

Presentations to External Groups

If a Board member is asked to make a presentation to external groups, the Board member must indicate that he or she is not speaking on behalf of the Board, unless the Board member has specifically been authorized to do so by the Board. Board members shall be respectful of the Board, its policies and its decisions in all external communications, even if the Board member disagrees with the Board's decision. The Board should speak with a single voice on ETF or Board issues for the benefit of all participants.

To ensure accuracy of materials prepared by Board members for publication or general distribution related to the Wisconsin Retirement System, and to ensure the WRS is not inadvertently placed at risk, Board members are encouraged to provide such materials to the ETF Secretary for review prior to distribution or publication.

Discussion of Benefits and other Communication Between a Board Member and WRS Member

Board members are discouraged from counseling others about eligibility or benefits. When a Board member discusses business with a member outside of a Board meeting, that Board member's independence may be compromised and could result in the member's disqualification from subsequent formal consideration of any related matters by the Board. Counseling and providing specific benefit information to others is outside the scope of Board member duties and responsibilities. Board members should either relay the benefits inquiries to the ETF Secretary or encourage the person to contact ETF directly.

Communication Between a Board Member and the Media

The ETF Secretary and the Board Chair are the only two individuals authorized to speak on behalf of ETF or the Board. The primary media contact is the ETF Secretary or the Secretary's designee. The ETF Secretary may designate another staff person as a spokesperson, depending on the topic of inquiry by the press. When a statement from the Board is required, the Board Chair will serve as the spokesperson. If the Board Chair is unavailable, the Vice-Chair will serve as the spokesperson.

For ETF internal use:

Adopted*	Deferred Compensation Board Reviewed or Revised	Group Insurance Board Reviewed or Revised	Retirement Boards (ETF, TR, WR) Reviewed or Revised
		05/16/2018	12/03/2009

*Individual Board policies may vary.



Deferred Compensation Board

Adopted:
Revised:

Conflict of Interest Policy

A Deferred Compensation Board (Board) member shall not let his or her private interests interfere with the Board member's fiduciary duty to the Wisconsin Deferred Compensation Program.

Conflict of Interest

A conflict of interest can arise when a Board member has a direct or indirect personal or financial interest in a matter that interferes with the Board member's fiduciary duty to the beneficiaries of the Wisconsin Deferred Compensation Program to act in good faith on behalf of the program and not for the Board member's own interest or for the interest of others.

Disclosure of Actual and Potential Conflicts

All actual and potential conflicts of interest must be promptly disclosed.

A conflict can exist, but the nature of the conflict can be such that, in the Board member's estimation, the conflict does not interfere with the Board member's fiduciary duty and would not require disclosure, recusal or other measures. However, it is the Board's policy that proactive disclosure of all potential conflicts will support and promote the welfare of the Wisconsin Deferred Compensation Program.

Therefore, a Board member shall promptly disclose to the Board Chairperson any personal or outside interest, relationship or responsibility (financial, professional or otherwise) held by the Board member regarding any matter that is or will be presented for the Board's discussion or consideration. The Board Chairperson will obtain advice from the Board's legal counsel regarding the potential conflict.

All Board members have a duty to promptly report any actual or potential conflict of interest of which the Board member becomes aware, whether such conflict resides with the Board member or with another Board member.

If the Board Chairperson has an actual or potential conflict of interest, the Chairperson shall promptly disclose the matter to the Secretary of the Department of Employee Trust Funds. The ETF Secretary will obtain advice from the Board's legal counsel regarding the potential conflict.

All disclosures shall be made in writing and as soon as possible after the conflict is known to the Board member.

Recusal

Any Board member with an interest, relationship or responsibility that conflicts with the Board member's fiduciary responsibility to the Wisconsin Deferred Compensation Program shall recuse himself or herself from any discussions, negotiations, appeal hearings and any votes on the issue that gave rise to the conflict and, if necessary, from the Board meeting or applicable part thereof.

Resignation

If a Board member fails to disclose a substantial conflict of interest, or has a continuing and irreconcilable conflict of interest that impedes the Board member's ability to carry out his or her fiduciary responsibility to the Wisconsin Deferred Compensation Program, resignation from the Board or from the conflicting interest may be required by Board action. Resignations shall be made per the Board Member Resignation Procedure.

Board Action

For any potential conflict, the Board, with the abstention of the interested Board member, may decide whether a conflict of interest exists and whether such Board member may participate in any discussion or vote on the issue that gave rise to the potential conflict. No such decision is necessary if the Board member has already recused himself or herself from the discussions and vote on each issue that gave rise to the conflict.

Avoiding the Appearance of a Conflict of Interest

Board members should be mindful not to put themselves into situations that can be perceived by others as a conflict of interest. Even the perception of a conflict of interest can erode the public's confidence in specific Board decisions.

Selected Statutory References

Wis. Stat. § 40.01 (3) Compatibility of Trustee Responsibilities. Membership on the employee trust funds board, group insurance board, deferred compensation board, Wisconsin retirement board and the teachers retirement board shall not be incompatible with any other public office. The board members and the employees of the department shall not be deemed to have a conflict of interest in carrying out their responsibilities and duties in administering this chapter, or taking other appropriate actions necessary to achieve the purposes of this chapter, solely by reason of their being eligible for benefits under the benefit plans provided under this chapter. However, any board member or employee of the department is expressly prohibited from participating in decisions directly related to a specific benefit, credit, claim or application of the person and from participating in negotiations or decisions on the selection of actuarial, medical, legal, insurance or other independent contractors if the board member or employee of the department has a direct or indirect financial interest in or is an officer or employee or is otherwise associated with the independent contractor.

Wis. Stat. § 19.46 Conflict of Interest Prohibited; Exception. (1)

Except in accordance with the commission's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

- (a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
- (b) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

(3) This section does not prohibit a state public official from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit a state public official from taking official action with respect to any proposal to modify state law or the state administrative code.

Wis. Stat. § 946.13 Private Interest in Public Contract Prohibited

(1) Any public officer or public employee who does any of the following is guilty of a Class I felony:

- (a) In the officer's or employee's private capacity, negotiates or bids for or enters into a contract in which the officer or employee has a private pecuniary interest, direct or indirect, if at the same time the officer or employee is authorized or required by law to participate in the officer's or employee's capacity as such officer or employee in the making of that contract or to perform in regard to that contract

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some official function requiring the exercise of discretion on the officer's or employee's part; or

- (b) In the officer's or employee's capacity as such officer or employee, participates in the making of a contract in which the officer or employee has a private pecuniary interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion on the officer's or employee's part.

Adopted*	Deferred Compensation Board Reviewed or Revised	Group Insurance Board Reviewed or Revised	Retirement Boards (ETF, TR, WR) Reviewed or Revised
		5/16/2018	3/18/2010

*Individual Board policies may vary.



Deferred Compensation Board

Adopted:
Revised:

Procedures for Board Member Resignation

The Conflict of Interest Policy specifies recusal for temporary conflicts, but requires resignation for failure to disclose a substantial conflict of interest or if a substantial conflict is continuing, irreconcilable and impedes the exercise of fiduciary duty.

Wisconsin law provides that the Governor, with confirmation by the Senate, appoint all members of the Deferred Compensation Board (Board). The resignation process for Board members is as follows:

- In writing, notify the Board Chairperson and the ETF Secretary (via the Board Liaison). Include the reason for resignation, if possible, and the expected effective date of the resignation.
- In writing, notify the Governor's Office, with a courtesy copy to the Board Chairperson and the ETF Secretary.