

**GUIDANCE SUPPLEMENTING**  
**CODE OF ETHICAL CONDUCT FOR MEMBER/DIRECTORS**

---

---

The purpose of the Code of Ethical Conduct for Members/Directors (the “Code”), in addition to meeting current legal requirements, is to ensure adherence to practices and procedures that promote honest and ethical conduct by Members/Directors, which, in turn, enhance public confidence in the Agencies. The purpose of this Guidance Supplementing the Code of Ethical Conduct for Members/Directors (the “Guidance”) is to :

- Assist Members/Directors in identifying and avoiding possible conflicts of interest and other improprieties under the Code; and
- Facilitate the honest, fair and open dealings by the Agencies with the public and those with whom the Agencies does business as required by the Code and the Agencies’ Governance Committee Charters.

Both the Code and this Guidance should be read in conjunction with all laws, rules, regulations and pronouncements governing the ethics requirements for unpaid Members/Directors of public authorities. These include pronouncements of the State Commission on Public Integrity.

**MEMBER/DIRECTOR CONFLICTS OF INTEREST**

Potential Member/Director Conflicts of Interest (“Conflicts”) cover a wide range of factual situations that cannot be fully contemplated or articulated in a single document. It is, therefore, incumbent upon the individual Member/Director to apply the requirements of the Code to his/her own circumstance with respect to a particular matter to ensure ethical conduct and compliance with the law.

For the purposes of the Code and this Guidance, established Conflicts have been organized into three classes -- “Class 1 Conflicts” through “Class 3 Conflicts” -- based on the manner in which the Code requires they be addressed.

1. **Class 1 Conflicts of Interest.** Certain activities have been determined to present conflicts of interest that are so incompatible with a Member/Director’s responsibilities that they are, per se, expressly prohibited. These activities are articulated in the Code as “Class 1 Conflicts.”

**A. Prohibition on Compensation and Acceptance of Anything of Value.** In determining whether a circumstance establishes a Conflict by virtue of the receipt of "compensation"

or "anything of value," the language of the Code prohibits acceptance by the unpaid Member/Directors of any of the following:

- 1) Any money, in any amount, whatsoever, including, but not limited to such things as gift certificates;
- 2) Gifts of value including, but not limited to:
  - a) Services;
  - b) Loans or grants;
  - c) Travel, free lodging, meals, refreshments, event tickets, hospitality or reimbursement for such an incurred expense;
  - d) Holiday gifts, candy and trinkets;
  - e) Employment, including employment for family of the Member/Director;
  - f) Special favors, promises or discounts;
  - g) Attendance at certain social functions sponsored by entities with which the Agencies do business, if the Agencies have not approved the Members/Director's attendance as an official representative of the Agencies fulfilling an Agency purpose.
- 3) The receipt of "compensation" and "anything of value" should be interpreted to include meals furnished by an entity in connection with working meetings or functions participated in by the Member/Director in their capacity as Member/Director, except that meals may be accepted when offered as part of an educational or informational event or widely-attended professional conference related to the Agencies' business.
- 4) The prohibition on "direct or indirect" receipt of compensation or anything of value may include receipt of such by family of the Member/Director, a firm or association in which the Member/Director is a part, or any third party receiving the same on behalf of the Member/Director.
- 5) Members/Directors can generally accept tickets to political fundraisers and charitable events and may be able to attend other social functions to which they were invited in their private capacity which might otherwise be prohibited if they were invited in their role as a Member/Director.

**B. Promoting the Interests of Others as Part of the Proper Discharge of a Member/Director's Responsibilities.** So long as Members/Directors are acting in connection with the proper discharge of their duty, Members/Directors are permitted to take the side of and represent constituent interests in their Member/Director capacity provided such representation is uncompensated and presents no other Conflict prohibited by the Code. The guiding principle in each of these situations should be the best interests of the Agencies and consistency with their purposes and goals.

***Example:*** A Member/Director is persuaded by a community group to advocate for more units for the handicapped in a project being financed by the Agencies or a Member/Director is persuaded, perhaps by a group of developers, to take the position that an Agency program should be extended into more regions of the State. Such advocacy by the Member/Director would be permissible; but it would be inappropriate for a Member/Director to agree to provide pro bono legal representation to the same community or developer group with respect to the matter because, even though it would be uncompensated, the responsibilities would cause the Member/Director to have conflicting duties of loyalty.

2. **Class 2 Conflicts of Interest.** Class 2 Conflicts arise when the personal, professional or business relationships of the Member/Director or other circumstances require mandatory disclosure and recusal from participating in decision-making with respect to a particular matter before the Board(s). Participation by a Member/Director with a Class 2 Conflict would, in all likelihood, materially damage the credibility of the Members/Directors and generate public suspicion of violation of the public trust, favoritism, undue influence and/or abuse of official position. The most obvious of these relationships and circumstances are listed in the Code. This listing, however, is not exhaustive and there may be other relationships that present such a clear Conflict that the Member/Director must recuse him/herself from consideration of a matter.

***Example:*** Absent extenuating circumstances, it is inappropriate for the Agencies to purchase goods or services from a business owned by a Member/Director even pursuant to a contract awarded through a competitive process. In the event that a Member/Director is a partner in a firm having a contract with the Agencies, it would be inappropriate for the Member/Director to vote on any matter relating to such a firm or to directly or indirectly accept any revenue from that firm's work for the Agencies.

3. **Class 3 Conflicts of Interest.** Class 3 Conflicts are Conflicts that require disclosure in almost all instances and, in addition, often require curtailment of participation by a Member/Director with respect to a particular matter before the Board(s). The Code describes a number of factual situations requiring disclosure and/or curtailment of participation. However, factual situations requiring mandatory disclosure and possibly curtailment of participation by a Member/Director with respect to a particular matter before the Member/Directors are so wide ranging and diverse that it is not possible to prescribe hard and fast rules in advance for all such situations. The identification of Class 3 Conflicts is thus necessarily and intentionally left open-ended with the applicable standard covering *any situations that could give rise to a conflict of interest under the law, or appear likely to give rise to a conflict of interest or the appearance of a conflict.* While a Member/Director is free

to follow the dictates of his or her own conscience, deference must be given to the opinions of relevant third parties such as the State Commission on Public Integrity, the Chairperson and the other Member/Directors. In addition, there often exists reasonably dispositive precedent reflecting the manner in which the Agencies have previously dealt with similar situations which should be given substantial consideration with respect to a particular matter.

***Example 1:** A Member/Director has his own independent business relationship with a vendor seeking a contract with the Agencies. If the proposed contract with that vendor is substantial and the vendor's business with the Member/Director is also substantial, there should be disclosure and curtailment on the Member/Director's participation. If, on the other hand, the proposed Agency contract is for telephone service with Verizon and the Member/Director and his family all have Verizon cell phones, neither mandatory disclosure nor curtailment of participation is required*

***Example 2:** Members/Directors have historically recused themselves when they have a family member employed by an entity involved in matters before the Members/Directors.*

#### **GUIDANCE FOR DISCLOSURE OF MEMBER/DIRECTOR CONFLICTS**

1. **Disclosures by Members/Directors of Potential Conflicts.** The following guidance is provided for Members/Directors disclosing potential Conflicts in connection with matters before the Members/Directors.
  - A. Conflicts requiring disclosure should be disclosed promptly after they are identified, which means as soon as practicable and before any possible Member/Director action is required or taken. The obligation to disclose is ongoing, and disclosure should be refreshed from time to time, e.g., when a matter is brought back before the Members/Directors after an interval of time.
  - B. When a Member/Director has determined to disclose a potential Conflict, the disclosure, if possible, should be made initially prior to the meeting of the Members/Directors to the Senior Vice President and Counsel and/or Chairperson. Eventually, disclosure should be made to all of the Members/Directors.
  - C. Disclosure by Members/Directors should be made in a manner that results in a written record. Inclusion of the disclosure in the minutes of the meeting is often sufficient to accomplish this objective.
  - D. Disclosure of a potential Member/Director Conflict to all the Members/Directors also serves as disclosure to all the Members/Directors of the Governance Committee who, as

Committee Members/Directors, are charged with evaluating and modifying the Agencies' Codes of Ethical Conduct and ethics procedures.

E. Disclosure should be made in a manner that minimizes the influence or appearance of influence that the disclosure may have upon the other Members/Directors' consideration of a particular matter. Where such consideration is a factor, it is recommended that the disclosing Member/Director discuss the manner in which the disclosure is to be made and its content with the Senior Vice President and Counsel.

2. **Additional Disclosures Required of Member/Directors:** The Members/Directors are subject to and must comply with the requirements for Annual Disclosure under §73-a of the *Public Officers Law*. Disclosure pursuant to §73-a alone is not sufficient disclosure for purposes of this Code of Conduct.

### **RECUSAL AND CIRCUMSCRIBED PARTICIPATION**

1. **Circumscribed Participation.** The following procedure should be followed in situations where there exists either: a Member/Director Conflict with respect to a matter pending before the Members/Directors requiring circumscribed participation; or a Conflict would be created without such circumscribed participation.
- A. A Member/Director who has a conflict on an item of business may be counted as present at a meeting for purposes of determining a quorum irrespective of whether that Member/Director will be allowed to vote on the particular item in question with respect to which there is a conflict. If, pursuant to recusal, the Member/Director is required to absent him/herself from the room during the meeting, it shall still be considered that a quorum is achieved.
- B. Generally, a Member/Director having a Conflict with respect to a particular matter before the Members/Directors for consideration shall fully recuse him/herself on the matter in question. Recusal means that the Member/Director shall not, with respect to a matter:
- 1) Attempt to influence any management decision;
  - 2) Participate in any Member/Director discussions or communications at official Board meetings, Board Committee meetings, Member/Director or staff discussions or in any other context (except to the extent required to determine whether a conflict exists and what steps should be taken to ameliorate the conflict);
  - 3) Vote (including voting on items which, through precedent or otherwise, would influence the matter's outcome);
  - 5) To the extent possible, receive materials with respect to the matter in question except
    - a) for such materials as the Senior Vice President and Counsel determines is appropriate, and
    - b) initial information necessary to identify the conflict;

- 6) Share, use or retransmit information acquired through the privilege of being a Member/Director;
- 7) Request changes in the minutes except changes to the language reflecting the Member/Director's recusal. (The Member/Director may vote to approve the minutes overall and have his/her vote counted for such approval.)

2. **Exceptions to the Requirement for Full Recusal.** In extenuating circumstances, subject to consultation with the Senior Vice President and Counsel, the requirement of full recusal may be waived. As a general proposition, however, the requirement of recusal can only be permissibly waived if the Member/Director's vote would not violate State Ethics Law as interpreted by the Commission on Public Integrity.

***Example 1:** A Member's recusal would incapacitate the vote of the Members/Directors due to an absence of sufficient Members/Directors to meet an affirmative vote requirement, and immediate action is required by the Board. A conflicted Member/Director would, nevertheless, be barred from voting on an Agency contract with a law firm where s/he is a partner because recusal would be required by the Commission on Public Integrity's interpretation of State Ethics law. However, if the Member/Director has a business relationship with the law firm unrelated to Agency business, e.g., it represents him/her in out-of-state real estate transactions, State Ethics Law would probably not require recusal by the Member/Director.*

- A. Extenuating Circumstances warranting consultation regarding the appropriateness of an exception to full recusal include:

- 1) The Member/Director's vote is required to meet the affirmative vote, and the Member/Director is voting with the majority; and
  - a) All other Members/Directors are voting unanimously (and any Member/Director not present says they would so vote); or
  - b) Without reconstitution, the Member/Directorship would be unable to meet the affirmative vote requirement, and action by the Agencies is required before such time as the Member/Directorship might change.
- 2) There is an emergency such that:
  - a) It is impossible to convene a meeting with sufficient Members/Directors to otherwise meet the affirmative vote requirement within the required time frame for action; and
  - b) It can be determined by communication with available Members/Directors that convening a meeting of Members/Directors without conflicts would not be possible

and that the Members/Directors, though not able to be present, would be in favor of the outcome that could be achieved by the Member/Director in question voting.

3) A Conflict would:

- a) Incapacitate the vote of the Members/Directors on a matter before them;
- b) Appear to have been strategically created by a party to benefit from such incapacity to vote; and
- c) The conflicted Member/Director's vote is against the interest of that party.

**ADDITIONAL ETHICAL CONSIDERATIONS AND REQUIREMENTS**

1. **Agencies Responsibilities to Bondholders.** As the Code notes, the duties of the Agencies (i.e., the organization itself) with respect to their bondholders are established by contract pursuant to its bond resolutions. In addition, in New York, good faith and fair dealing are implied in every commercial contract. The obligations of the Members/Directors themselves run to the Agencies (as opposed to the bondholders) and are essentially the same obligations that are enumerated throughout the Code. For example, the Code specifies that Members/Directors should act in the interest of the Agencies and the public and not use their position to secure unwarranted privileges for themselves. Thus, in the context of bond issuances, this general principle should be read to include (but not be limited to) a prohibition against Members/Directors utilizing information which is not publicly available to reap financial benefit. Of course, both the Agencies themselves, as well as the Members/Directors individually, are required to comply with all applicable federal, state and local laws (including, but not limited to, any applicable securities laws, which, among other things, address disclosure obligations).
2. **Fair, Open and Ethical Business Relationships.** The Agencies desire to conduct their business in a fair, open, honest and direct manner. To achieve these objectives the Agencies and their Members/Directors should: A. Select contractors and other suppliers in accordance with the letter and spirit of the Agencies' Procurement and Contract Guidelines providing for selection through fair and open competition based on quality, service and price; and B. Award Agency financing on a fair and equal-access basis and never furnish information to any private sector contractor/vendor/service provider, borrower or developer that affords them an unfair advantage.
3. **Employment of Relatives.** The Agencies should safeguard to avoid the hiring of relatives of Members/Directors under circumstances that could be viewed as nepotism or favoritism. To ensure compliance with this limitation, it is intended that the Agencies will adhere to a practice where relatives of active Members/Directors will not be employed on a permanent or

temporary basis unless a written waiver is first obtained from the President and Chief Executive Officer of the Agencies and provided to all of the Members/Directors specifying special factors necessitating the hiring and confirming that such employment is not in violation of any State ethics law or regulation and does not create the appearance of impropriety. A relative will be considered to be any of the following: a spouse, son, daughter, father, mother, sister, brother, aunt, uncle, niece, nephew, first cousin or grandparent by blood relationship or by marriage.

4. **Nondisclosure of Confidential or Privileged Information.** Members/Directors are prohibited from transmitting confidential, privileged or non-public information received by them by virtue of their position. This prohibition includes any private information of or relating to, client or Agency records, Agency employees, persons or firms with which the Agencies do business and/or other information obtained by virtue of the Member/Director's position. Members/Directors are referred to Section 74.3.c of the Public Officers Law in this area and should also take into account that they are subject to restrictions and prohibitions under federal securities laws, rules and regulations pertaining to insider trading.
5. **Lobbying.** The State lobbying law requires that the Agencies designate an employee to be contacted if and when any outside party contacts the Agencies to "influence" a procurement during the procurement process. It is intended that, in accordance with this provision of the Code, Members/Directors shall not be designated as the Agencies' contact person for this purpose. In order to comply with the State lobbying law, any contact by an outside party to a Member/Director having a purpose of influencing a procurement should be reported by such Member/Director to the Senior Vice President and Counsel. Such contacts, unless covered by an exception under the law, are considered impermissible contacts, since the designated staff person(s) are generally the only persons at the Agencies who may be contacted relative to a procurement in the restricted period relating to the procurement.
6. **Political Activity (Including Solicitation of Political Contributions).** The Agencies' policy that the activities of the Agencies be conducted in a manner free of politics should encompass the following considerations which are consistent with other guidance concerning appropriate conduct with respect to these matters:
  - A. Contributions to political parties or candidates on behalf of or in the name of the Agencies is strictly prohibited, and Agency funds may not be used for the purposes of making contributions to political parties or candidates or reimbursing them. The term "political contributions" includes, in addition to direct cash contributions, the donation of property or services and the purchase of tickets to political fundraising events.
  - B. Members/Directors should not use their position with the Agencies to solicit political contributions from Agency employees or any firm doing business with the Agencies for the purpose of supporting a political party or candidate.



- C. There should be a clear separation between any political or campaign activities conducted by Members/Directors in their personal capacity and the proper discharge of their duties as Members/Directors.
- D. Members/Directors should not engage in political or campaign activity on the Agencies' premises. The Agencies' resources, such as staff time, telephones, copy machines, computers and fax machines should not be used in the furtherance of political activity.
- E. Members/Directors who have been appointed by the Governor may not donate to or solicit donations for the Governor or Lieutenant Governor. Subject to the proscriptions outlined above, Members/Directors may otherwise participate in campaign fundraising committees and "committees to elect."
- F. Members/Directors may not serve, in a paid or unpaid capacity, as an officer of any political party or political committee, including as district leader, or member of a local, state or national political party committee.

7. **Compliance with State Ethics and Other Laws.** The Code does not supersede any requirements which may be applicable to any Member/Director by virtue of such Member/Director's status as a state officer or employee as defined in §73 of the *Public Officers Law*. The Members of HFA and AHC are directed to §43.3 of the *Private Housing Finance Law* which provides that for purposes of §§73 and 74 of the *Public Officers Law*, the Agencies shall be "State Agencies" and the Members shall be "Officers" of the Agencies for the purposes of those sections. The Directors of SONYMA are directed to § 2403 of the *Public Authorities Law*, and the Directors of MBBA and Members of TSFC are directed to § 2433 of the *Public Authorities Law*, which likewise make applicable §§73 and 74 of the *Public Officers Law*. Further, the Code, itself, specifically incorporates by reference the *Code of Ethics* of §74 with the prescription that the Members/Directors shall comply with it. Portions of *Public Officers Law* §74 are restated in pertinent part below. The outside interests or activities of Members/Directors shall not be deemed to be in conflict with the proper discharge of the Members/Directors' duties provided that the Member/Director has otherwise complied with the requirements of the Code.

### **VIOLATIONS**

A violation of the Code is not, per se, a violation of the State Ethics Laws or other State laws. In some respects the Code requires a higher standard and could be considered arguably stricter than the State Ethics Laws, as envisioned by the language of §2824.1 of the *Public Authorities Law*. A violation of the Code, however, can often also represent a violation of the State Ethics Law. Violations of the State Ethics Laws can result in the State Commission on Public Integrity taking action and making findings of noncompliance with the laws. Adhering to the Code minimizes the chance of inadvertent noncompliance with the State Ethics Laws. If the State Commission on Public Integrity finds that a provision of §73 is applicable and has been violated, the matter can

be referred to a prosecutor for punishment as a class "A" misdemeanor and, for certain violations, may impose fines up to \$40,000 and the value of any gift, compensation or benefit improperly received. If the State Commission on Public Integrity finds a violation of §74, the matter may result in fines or a civil penalty up to \$10,000 and the value of any gift, compensation or benefit improperly received. A serious violation of either the Code and/or the Ethics Laws may also result in the removal of the Member/Director for “inefficiency, neglect of duty or misconduct in office.”

**RESTATEMENT OF PUBLIC OFFICERS LAW §74**  
**CODE OF ETHICS APPLICABLE TO MEMBER/DIRECTORS**

1. *Rule with Respect to Conflicts of Interest.* No Member/Director should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.
  
2. *Standards.*
  - A. No Member/Director should accept other employment which will impair his independence of judgment in the exercise of his official duties.
  
  - B. No Member/Director should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.
  
  - C. No Member/Director should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.
  
  - D. No Member/Director should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.
  
  - E. No Member/Director should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.
  
  - F. A Member/Director should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.
  
  - G. A Member/Director should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.
  
  - H. A Member/Director should endeavor to pursue a course of conduct which

*will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.*

- I. *No Member/Director nor any firm or association of which such Member/Director is a Member/Director nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such Member/Director, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state Agencies in which such officer or employee serves or is employed.*
  
3. *Violations.* *In addition to any penalty contained in any other provision of law any such Member/Director who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. A Member/Director who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision two above shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of the gift, compensation or benefit received as a result of such violation. Any Member/Director who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision two of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation.*