

# Chapter 415-200 WAC

## EMPLOYEE RETIREMENT BENEFITS BOARD

### WAC

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### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

415-200-020	Regular board meetings. [Statutory Authority: RCW 41.50.050(5), 41.50.086. WSR 08-10-025, § 415-200-020, filed 4/25/08, effective 5/26/08. Statutory Authority: RCW 41.50.086 and 41.50.050. WSR 96-23-025, § 415-200-020, filed 11/13/96, effective 12/14/96.] Repealed by WSR 10-01-146, filed 12/21/09, effective 1/21/10. Statutory Authority: RCW 41.05.050.
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#### WAC 415-200-030 Plan 3 external administrators.

The employee retirement benefits board may obtain external investment management services to assist with the provision of self-direct investment options. External administrator and investment management services will be obtained through competitive procurement processes to ensure the teachers' retirement system Plan 3, school employees' retirement system Plan 3 and the public employees' retirement system Plan 3 members receive quality services and competitive pricing. The department of retirement systems may select external administrators to assist with the administration of the defined contribution portion of Plan 3 systems.

[Statutory Authority: RCW 41.50.050(5) and 41.50.088. WSR 02-03-120, § 415-200-030, filed 1/23/02, effective 3/1/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-200-030, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.088 and 41.32.060. WSR 97-16-039, § 415-200-030, filed 7/30/97, effective 7/30/97.]

**WAC 415-200-040 Self-directed investment—Expenses paid by members.** RCW 41.34.060 allows members of the teachers' retirement system plan 3 and school employees' retirement system plan 3 to elect to self-direct their investments. Members electing to self-direct their investments must pay the expenses caused by the self-directed investment program.

(1) **Assessment of member expenses for self-directed investment.** Each month, the third-party administrator will allocate self-directed investment expenses to each participating member. The expenses allocated to members shall include:

- (a) External third party administrator costs;
  - (b) External investment manager and consultant costs;
- and
- (c) State investment board investment management operating expenses, in the case of investment options provided through the state investment board.

(12/21/09)

Each category of expense shall be expressed in terms of basis points. A basis point is equal to one-hundredth of one percent. The administrator will determine the participating member's monthly fee by multiplying the average monthly value of each participating member's self-directed account assets by the basis points for each expense category.

(2) **Adoption of expense charge.** The expense charges used to calculate self-directed investment fees for participating members shall be established in a memorandum of understanding, interagency agreement, and/or contract. Each expense charge shall be reviewed and approved at a regularly scheduled meeting of the employee retirement benefits board, with opportunity for public testimony. No expense charge may be included in a memorandum of understanding, interagency agreement, and/or contract until such charge has been approved by the employee retirement benefits board. No expense charge which has been approved may be changed unless such change has been approved by the board.

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-200-040, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.088 and 41.32.060. WSR 97-16-039, § 415-200-040, filed 7/30/97, effective 7/30/97.]

**WAC 415-200-050 Recusal of board members—Beneficial interest in transaction.** (1) When a member of the board is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific contract, sale, lease, purchase or grant;

(b) Recuse him or herself from the board vote on the specific contract, sale, lease, purchase or grant; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) The prohibition against discussion set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1) of this section, "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.

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Example: The board is composed in part of individuals who are employed by companies which provide investment options to retirement plans. The board is in the process of selecting investment options for the defined contribution portion of the Teachers' Retirement System Plan 3. A company which employs one of the board members has bid on the contract. The board member who is employed by the bidding company may use his general expertise to educate and provide general information to the board regarding investments and defined contribution retirement plans in general. The member is prohibited from participating in the board discussion and analysis implementing the criteria for selecting an investment company, and is prohibited from participating in the board vote to select the company.

Example: The board has a contract with an investment company to provide investment options for the defined contribution portion of Teachers' Retirement System Plan 3 (TRS Plan 3). The board's contract with the investment company is almost expired, and the board must seek proposals from investment companies for the next contract period. The board issues a request for proposal to various investment companies, including Investment Company "A." Approximately one year ago, a board member worked for Investment Company "A" and received compensation from that company. The board member subsequently retired. The board member is not required to recuse herself from selecting the investment company for TRS Plan 3. Investment Company "A" did not have a beneficial interest in the board's contract until it bid on the contract. Therefore, Investment Company "A" was not beneficially interested in the contract when the board member received the compensation. However, if the board member received compensation from Investment Company "A" after it bid on the contract, the board member would be required to disclose the fact that she received the compensation from the bidder, and to recuse herself from the board's specific discussion and the vote awarding the contract.

[Statutory Authority: RCW 41.50.086. WSR 98-01-109, § 415-200-050, filed 12/17/97, effective 1/17/98.]

**WAC 415-200-060 Recusal of board members—Beneficial interest in entity engaged in transaction with the board.** (1) When a member of the board either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual which is engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from the board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

Example: The board selects investment options for the deferred compensation program. The board currently has a contract with Investment Company "B" which allows program participants to purchase Company "B's" stock. The board is in the process of determining whether to renew Company "B's" contract. One of the board members owns fifty shares of Company "B" stock. That board member must recuse herself from the board's discussion and vote regarding whether to renew Company "B's" contract. The board member also must refrain from attempting to influence the remaining board members in their discussion and vote regarding the contract renewal.

Example: The board selects investment options for the deferred compensation program. The board is in the process of obtaining proposals from mutual fund companies to provide mutual fund options to program participants. Mutual Fund Company "C" bids on the contract. A board member owns one hundred shares of Mutual Fund "C," but does not have any management powers in the mutual fund company. The board member does not have a beneficial interest in Mutual Fund Company "C." RCW 42.52.010(4). The board member thus is not required to recuse himself from the board's discussion and vote on the mutual fund contract.

[Statutory Authority: RCW 41.50.086. WSR 98-01-109, § 415-200-060, filed 12/17/97, effective 1/17/98.]

**WAC 415-200-070 Recusal of board members—Disclosure of reason for recusal.** If recusal occurs pursuant to WAC 415-200-050 or 415-200-060, the member of the board shall disclose to the public the reasons for his or her recusal from any board action whenever recusal occurs. The board staff shall record each recusal and the basis for the recusal.

[Statutory Authority: RCW 41.50.086. WSR 98-01-109, § 415-200-070, filed 12/17/97, effective 1/17/98.]