✦✦ MEMORANDUM ✦✦

To: Louisiana Board of Ethics
From: Tracy M. Barker
Re: Late Filing of Personal Financial Disclosure Statements
Date: February 2, 2016

The following proposed procedures are for handling waiver requests of late filed personal financial disclosure statements. These procedures will outline how the staff handles the waiver requests as well as the how the staff will come to a recommendation of a waiver or suspension of any late fees assessed.

LATE FEE ASSESSMENTS:

Tier 1: $500 per day, $12,500 maximum

Tier 2: $100 per day, $2,500 maximum

Tier 2.1: $50 per day, $1,500 maximum

Tier 3: $50 per day, $1,500 maximum

WAIVER REQUESTS:

➜ The staff will only docket all waiver requests that are **timely** filed with the Board.

➜ Rule 1207 of the Boards Rules indicate that waivers are considered timely if they are received by the staff, in writing, within 20 days of the late filer's receipt of the late fee order.

➜ Section 1157.2 of the Louisiana Code of Governmental Ethics provides authority for the Board's waiver of late filing fees based upon "Good Cause."

"Good Cause" is defined in §1157.2 as follows: *"**any actions or circumstances which**, in the considered judgment of the Board, **were not within the control of the late filer** and which were the direct cause of the late filing."*

➜ If the report that is subject of the late fee order has **not** been filed, the staff will recommend to **decline** to waive the late and advised the late filer that the Board will not consider a re-consideration of the waiver unless the report has been filed.

➜ Discretion remains with the Board to waive part or all of a late filing fee assessed in connection with a personal financial disclosure statement.

A. **RECOMMENDATION TO *SUSPEND* A FINE:**

➜ The staff will consider recommending a **suspension of the late fees,** for those persons who meet the following criteria:

1. The waiver request is timely filed with the Board,
2. The late filer has no other late filings with an assessed fine,
3. **If an appointed member of a board or commission, including a charter school board and it involves their final report**, and
3. Good cause is shown in support of the waiver request.

Tier 1 (Maximum $12,500):

1. If between 1 and 45 days late[1], **suspend all of the fine**.
2. If between 46 and 91 days late, **suspend all but $500**.
3. If between 92 and 137 days late, **suspend all but $700**.
4. If between 138 and 183 days late, **suspend all but $1,000**.
5. If between 184 and 230 days late, **suspend all but $1,500**.
6. If 231 or more days late, **suspend all but $2,000**.

Tier 2 (Maximum $2,500):

1. If between 1 and 45 days late, **suspend all of the fine**.
2. If between 46 and 91 days late, **suspend all but $250**.
3. If between 92 and 137 days late, **suspend all but $500**.
4. If between 138 and 183 days late, **suspend all but $750**.
5. If between 184 and 230 days late, **suspend all but $1,000**.
6. If 231 or more days late, **suspend all but $1,250**.

Tier 2.1 (Maximum $1,500):

1. If between 1 and 45 days late, **suspend all of the fine**.
2. If between 46 and 91 days late, **suspend all but $250**.
3. If between 92 and 137 days late, **suspend all but $450**.
4. If between 138 and 183 days late, **suspend all but $650**.
5. If between 184 and 230 days late, **suspend all but $850**.
6. If 231 or more days late, **suspend all but $1,050**.

Tier 3 (Maximum $1,500):

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[1] Days counted from expiration of 7 day business period following receipt of a notice of delinquency.

1. If between 1 and 45 days late, **suspend all of the fine**.
2. If between 46 and 91 days late, **suspend all but $200**.
3. If between 92 and 137 days late, **suspend all but $400**.
4. If between 138 and 183 days late, **suspend all but $600**.
5. If between 184 and 230 days late, **suspend all but $800**.
6. If 231 or more days late, **suspend all but $1,000**.

All suspensions are made based on future compliance with the disclosure requirements under the Code. ~~**Any portion not suspended shall be paid within 30 days of receipt of the new Late Fee Order. Failure to pay the portion not suspended within 30 days of receipt of the new Late Fee Order, results in the original late fee assessed becoming due and owing.**~~ **Any portion not suspended shall be paid within 20 days of receipt of the new Late Fee Order. Failure to pay the portion not suspended within 20 days of receipt of the new Late Fee Order, results in the original late fee assessed becoming due and owing.**

➜ If the filer demonstrates a material financial hardship, the staff may recommend the waiver or suspension of up to the entire late fee, irrespective of prior late filings. Supporting documentation **shall** be submitted with the waiver request.

B. **SPECIAL CONSIDERATIONS:**

➜ A late fee assessed against a Tier 2 filer in connection with a failure to timely amend a pfd because the filer reported his public income by category rather than by specific dollar amount will be **waived** for a first offense pursuant to a timely waiver request. Any other late amendments will be considered under the waiver guidelines set forth above.

➜ A late fee assessed against a Tier 3 filer in connection with a failure to timely amend a pfd because the filer failed to report his public income by specific dollar amount will be **suspended** for a first offense pursuant to a timely waiver request. Any other late amendments will be considered under the waiver guidelines set forth above.

➜ A late fee assessed against a Tier 2.1 or Tier 3 filer in connection with a failure to timely file their pfd the year following the termination of their office will be **suspended in its entirety**, if the filer only has one other late filing with an assessed late fee.

WAIVER RECONSIDERATION REQUESTS:

- ➜ The staff will consider *waiver reconsideration requests* that are filed with the Board if they are:

  1. Filed, in writing, ~~within 30 days~~ **within 20 days** of ~~the mailing~~ receipt of the Board's decision of the waiver request, and

  2. Present new facts and/or evidence regarding the late filing, and

- ➜ The staff will only consider **one** waiver reconsideration request per late filing penalty.

- ➜ The staff will then make a recommendation based upon its established waiver guidelines as outlined above.

AUTHORITY TO RESCIND BASED ON RULE 1204C:

Rule 1205B of the Rules of the Louisiana Board of Ethics provides that an automatic late fee shall not be assessed, or if assessed shall be rescinded by the staff, if the person required to file the report did not file the report for any of the following reasons which **occurred on the due date or during the seven days prior to the date the report was due**. The staff is authorized to rescind such late fee if one of the following reasons occurred during the time the notice of delinquency was received:

1. Death of a person required to file or the person regularly responsible, or a death in their immediate family, as defined by R.S. 42:1102(13);

2. Serious medical condition, in the considered judgment of the staff, which prevented the person required to file or the person regularly responsible from filing the report timely; or

3. A natural disaster, an act of God, force majeure, a catastrophe, or such other similar occurrence.

UNTIMELY WAIVER REQUESTS OR UNTIMELY REQUESTS FOR RECONSIDERATION

The Board will not be presented with an untimely waiver request or an untimely request for reconsideration for their consideration except under extraordinary circumstances as determined by the staff that shall include supporting documentation. Staff shall not be required to seek supporting documentation if not initially included with the untimely request.