

**FLORIDA BOARD OF GOVERNORS
NOTICE OF PROPOSED AMENDED REGULATION**

DATE: April 1, 2022

REGULATION NUMBER AND TITLE: 4.003, State University System Compliance and Ethics Programs

SUMMARY: To maintain the applicability and relevance of Board of Governors Regulations, the Office of Inspector General and Director of Compliance recently reviewed the Chapter 4 regulations for possible amendments. The proposed amendments:

- Remove obsolete language related to establishing compliance functions;
- Add a new requirement for quarterly updates to the Board of Governors Audit and Compliance Committee of any chief compliance officer vacancy of more than six months and the efforts to fill such vacancy;
- Add a new requirement for Board of Governors' approval before outsourcing the CCO function;
- Clarify, where applicable, reporting is to be to the Board of Governors Office through the Office of Inspector General and Director of Compliance;
- Clarify the annual reporting of program activities and effectiveness requirement;
- Add a new requirement to notify the Board of Governors Office, through the Office of Inspector General and Director of Compliance, of any issues of significant non-compliance; and
- Duplicate language from regulation 4.001, paragraphs (5) and (6) requiring university boards of trustees to adopt a regulation or regulations related to significant and credible allegations of fraud, waste, mismanagement, misconduct, and other abuses made against the university president, a board of trustees member, or chief compliance officer.

This regulation has been reviewed internally by Board Office staff and externally by appropriate university representatives through the established regulation development process. The Committee approved the regulation draft on March 29, 2022, and the Board of Governors approved it for notice of intent to amend. It will then be noticed on the Board's website for 30 days and presented to the Board of Governors for final approval consideration at the June 2022 meeting.

FULL TEXT OF THE REGULATION IS INCLUDED WITH THIS NOTICE.

AUTHORITY TO PROPOSE REGULATION(S): Section 7(d), Art. IX, Fla. Const.; BOG Regulation Development Procedure dated March 23, 2006.

THE BOARD OF GOVERNORS' OFFICIAL INITIATING THE PROPOSED REGULATION: Julie Leftheris, Inspector General and Director of Compliance

COMMENTS REGARDING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation on which you are commenting:

General Counsel, Board of Governors, State University System, 325 W. Gaines Street, Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

4.003 State University System Compliance and Ethics Programs

(1) Each board of trustees shall implement a university-wide compliance and ethics program (Program) as a point for coordination of and responsibility for activities that promote ethical conduct and maximize compliance with applicable laws, regulations, rules, policies, and procedures.

(2) The Program shall be:

(a) Reasonably designed to optimize its effectiveness in preventing or detecting non-compliance, unethical behavior, and criminal conduct, as appropriate to the institution's mission, size, activities, and unique risk profile; and

~~(b)~~ Developed consistent with the Code of Ethics for Public Officers and Employees contained in Part III, Chapter 112, Florida Statutes; other applicable codes of ethics; and the Federal Sentencing Guidelines Manual, Chapter 8, Part B, Section 2.1(b); and

~~(c)~~ (b) _____ Implemented within two (2) years of the effective date of this regulation.

(3) Each board of trustees shall assign responsibility for providing governance oversight of the Program to the audit and compliance committee ~~of the board responsible for audit and compliance established pursuant to Board of Governors Regulation 4.002(2)~~. The charter required by Board of Governors Regulation 4.002(2) shall address governance oversight for the Program.

(4) Each university, in coordination with its board of trustees, shall designate a senior-level administrator as the chief compliance officer. The chief compliance officer is the individual responsible for managing or coordinating the Program. Universities may have multiple compliance officers; however, the highest ranking compliance officer shall be designated the chief compliance officer. Nothing in this regulation shall be construed to conflict with the General Counsel's responsibility to provide legal advice on ethics laws.

(a) The chief compliance officer shall not be the same individual as the chief audit executive with the exception of New College of Florida and Florida Polytechnic University who may, due to fiscal and workload considerations, name the same individual as both chief audit executive and chief compliance officer.

(b) The board of trustees must provide quarterly updates to the Board of Governors Audit and Compliance Committee, through the Office of Inspector General and Director of Compliance (OIGC), of any chief compliance officer vacancy unfilled for six (6) months and describe efforts taken to fill such vacancy.

(c) The board of trustees must obtain Board of Governors' approval before outsourcing the function of the chief compliance officer.

(a)(d) The board of trustees must Adoptadopt a a regulation or regulation(s) as prescribed by Board of Governors Regulation 4.001, paragraphs (5) and (6),

regarding significant and credible allegations against the university president, board of trustees' member, or the chief compliance officer.

- (5) The chief compliance officer shall report functionally to the board of trustees and administratively to the president. ~~If the university has an established compliance program in which the chief compliance officer reports either administratively or functionally to the chief audit executive, then the university shall have five (5) years from the effective date of this regulation to transition the reporting relationship of the chief compliance officer to report functionally to the board of trustees and administratively to the president.~~
- (6) The office of the chief compliance officer shall be governed by a charter approved by the board of trustees and reviewed at least every three (3) years for consistency with applicable Board of Governors and university regulations, professional standards, and best practices. A copy of the approved charter and any subsequent changes shall be provided to the Board of Governors Office, through the OIGC.
- (7) The Program shall address the following components:
- (a) The president and board of trustees shall be knowledgeable about the Program and shall exercise oversight with respect to its implementation and effectiveness. The board of trustees shall approve a Program plan and any subsequent changes. A copy of the approved plan, and any subsequent revisions to the plan, shall be provided to the Board of Governors Office, through the OIGC.
 - (b) University employees and board of trustees' members shall receive training regarding their responsibility and accountability for ethical conduct and compliance with applicable laws, regulations, rules, policies, and procedures. The Program plan shall specify when and how often this training shall occur.
 - (c) At least once every five (5) years, the president and board of trustees shall be provided with an external review of the Program's design and effectiveness and any recommendations for improvement, as appropriate. The first external review shall be initiated within five (5) years from the effective date of this regulation. The assessment shall be ~~approved by~~provided to the board of trustees and ~~a copy provided to~~ the Board of Governors Office, through the OIGC.
 - (d) The Program may designate compliance officers for various program areas throughout the university based on an assessment of risk in any particular program or area. If so designated, the individual shall coordinate and communicate with the chief compliance officer on matters relating to the Program.
 - (e) The Program shall require the university, in a manner which promotes visibility, to publicize a mechanism for individuals to report potential or actual misconduct and violations of university policy, regulations, or law, and to ensure that no individual faces retaliation for reporting a potential or actual violation when

such report is made in good faith. If the chief compliance officer determines the reporting process is being abused by an individual, he or she may recommend actions to prevent such abuse.

- (f) The Program shall articulate the steps for reporting and escalating matters of alleged misconduct, including criminal conduct, when there are reasonable grounds to believe such conduct has occurred.
- (g) The chief compliance officer shall:
1. Have the independence and objectivity to perform the responsibilities of the chief compliance officer function;
 2. Have adequate resources and appropriate authority;
 3. Communicate routinely to the president and board of trustees regarding Program activities;
 4. Conduct and report on compliance and ethics activities and inquiries free of actual or perceived impairment to the independence of the chief compliance officer;
 5. Have timely access to any records, data, and other information in possession or control of the university, including information reported to the university's hotline/helpline;
 6. Coordinate or request compliance activity information or assistance as may be necessary from any university, federal, state, or local government entity;
 7. Notify the president, ~~or the administrative supervisor of the chief compliance officer,~~ of any unresolved restriction or barrier imposed by any individual on the scope of any inquiry, or the failure to provide access to necessary information or people for the purposes of such inquiry. In such circumstances, the chief compliance officer shall request the president remedy the restrictions. If unresolved by the president or if the president is imposing the inappropriate restrictions, the chief compliance officer shall notify the chair of the board of trustees audit and compliance committee ~~charged with governance oversight of the Program.~~ If the matter is not resolved by the board of trustees, the chief compliance officer shall notify the Board of Governors, through the OIGC; Office of Inspector General and Director of Compliance (OIGC);
 8. Report ~~at least~~ annually to the board of trustees on the activities and effectiveness of the Program and provide a copy of documentation of such report ~~the report~~ to the Board of Governors Office, through the OIGC. ~~Any Program plan revisions, based on the chief compliance officer's report shall be approved by the board of trustees. A copy of the report and revised plan shall be provided to the Board of Governors~~ Office, through the OIGC;
 9. Promote and enforce the Program, in consultation with the president and board of trustees, consistently through appropriate incentives and disciplinary measures to encourage a culture of compliance and ethics.

Failures in compliance or ethics shall be addressed through appropriate measures, including education or disciplinary action;

~~10.~~ Initiate, conduct, supervise, coordinate, or refer to other appropriate offices (such as human resources, audit, Title IX, or general counsel) such inquiries, investigations, or reviews as deemed appropriate; and in accordance with university regulations and policies; ~~and~~

~~10.~~ Submit final reports to appropriate action officials; and

11. Timely notify the Board of Governors office, through the OIGC, of any significant issues of non-compliance.

(h) When non-compliance, unethical behavior, or criminal conduct has been detected, the university shall take reasonable steps to prevent further similar behavior, including making any necessary modifications to the Program.

(8) The university shall use reasonable efforts not to include within the university and its affiliated organizations individuals whom it knew, or should have known (through the exercise of due diligence), to have engaged in conduct not consistent with an effective Program.

Authority: Section 7(d), Art. IX, Fla. Const., History: New 11-3-16; Amended mm-dd-yy