

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

DATE: November 9, 2023

REGULATION NUMBER AND TITLE: 9.016 Prohibited Expenditures

SUMMARY:

Senate Bill 266, signed by the Governor on May 9, 2023, prohibits a university or university direct-sport organization from expending any state or federal funds, regardless of source, to promote, support, or maintain any programs or campus activities that:

- (a) Violate section 1000.05 Florida Statute; or
- (b) Advocate for diversity, equity, and inclusion, or promote or engage in political or social activism, as defined by rules of the State Board of Education and regulations of the Board of Governors.

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: Rachel Kamoutsas, General Counsel & Corporate Secretary

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 St., Suite 1614, Tallahassee, Florida 32399, (850) 245-0466 (phone), (850) 245-9685 (fax), or generalcounsel@flbog.edu.

9.016 Prohibited Expenditures.

(1) Definitions

(a) For purposes of this regulation:

1. “Diversity, Equity or Inclusion” or “DEI” is any program, campus activity, or policy that classifies individuals on the basis of race, color, sex, national origin, gender identity, or sexual orientation and promotes differential or preferential treatment of individuals on the basis of such classification.
2. “Political or Social Activism” is any activity organized with a purpose of effecting or preventing change to a government policy, action, or function, or any activity intended to achieve a desired result related to social issues, where the university endorses or promotes a position in communications, advertisements, programs, or campus activities. Political or social activism does not include:
 - a. Authorized government relations and lobbying activities of the university concerning matters that directly affect the operations of the university or direct-support organizations of the university.
 - b. Endorsement or promotion of a position that encourages compliance with state or federal law, or Board of Governors guidance or regulation.
3. “Social Issues” are topics that polarize or divide society among political, ideological, moral, or religious beliefs.
4. “Any programs or campus activities” are activities authorized or administered by the university or a university’s direct-support organization(s) that involve:
 - a. Academic programs subject to review as outlined in sections 1001.706(5)(a) and 1007.25, Florida Statutes, other than classroom instruction;
 - b. Student participation, other than classroom instruction;
 - c. Hiring, recruiting, evaluating, promoting, disciplining, or terminating university employees or contractors.
5. “Student-led organization” is a student organization recognized by the university as an active and registered student organization that is comprised of student members with a faculty or staff advisor, including but not limited to organizations that receive activity and service fees pursuant to section 1009.24, Florida Statutes.
6. “Non-traditional Student” is an undergraduate student not pursuing higher education immediately or up to 2 years after graduating high school.
7. “State funds” are those funds provided to a university or direct-support organization for a university directly or indirectly by an

appropriation by the Florida Legislature. This includes financial aid provided to the university by or on behalf of a student attending the university if that financial aid is provided to the student via a state government aid or grant program.

8. "Federal funds" are those funds provided to the university or direct-support organization for a university directly or indirectly by an appropriation by Congress. This includes financial aid provided to the university by or on behalf of a student attending the university if that financial aid is provided to the student via a governmental aid or grant program.

a. State and federal funds do not include student fees to support student-led organizations notwithstanding any speech or expressive activity by such organizations which would otherwise violate this section, provided that the student fees must be allocated to student-led organizations pursuant to written policies or regulations of each state university, as applicable.

(2) A state university or state university direct-support organization may not expend any state or federal funds to promote, support, or maintain any programs or campus activities that:

- (a) Violate section 1000.05, Florida Statutes;
- (b) Advocate for diversity, equity, and inclusion as defined in this regulation; or
- (c) Promote or engage in political or social activism as defined in this regulation.

(3) A state university or state university direct-support organization advocates for DEI when it engages in a program, policy or activity that:

- (a) Advantages or disadvantages, or attempts to advantage or disadvantage an individual or group on the basis of race, color, sex, national origin, gender identity, or sexual orientation, to equalize or increase outcomes, participation or representation as compared to other individuals or groups; or
- (b) Promotes the position that a group or an individual's action is inherently, unconsciously, or implicitly biased on the basis of race, color, sex, national origin, gender identity, or sexual orientation.

(4) Student-led organizations may use university facilities notwithstanding any speech or expressive activity by such organizations which would otherwise violate section (2), provided that such use must be granted to student-led organizations pursuant to written policies or regulations of each state university, as applicable.

(5) Section (2) does not prohibit programs, campus activities, or functions required for compliance with general, state, or federal laws or regulations; for obtaining or retaining institutional or discipline-specific accreditation with the approval of the

Board of Governors; or for access programs for military veterans, Pell Grant recipients, first generation college students, nontraditional students, “2+2” transfer students from the Florida College System, students from low-income families, or students with unique abilities.

- (6) Section (2) does not prohibit expenditure of state or federal funds, so long as the expenditure is for ministerial or administrative activities of a program or campus activity that is not unique to that program or campus activity and that specific program or campus activity is otherwise supported by private funds.

- (7) A university shall designate a university official or officials who are responsible for compliance, oversight and adherence with the prohibited expenditure provisions of this regulation.

Authority: Section 7(d), Art. IX Fla. Const. §§ 1000.05, 1001.706, 1004.06, 1007.25, 1009.24, Fla. Stat. (2023); History – New XX- XX-XX.