

## COMPLIANCE FUNCTION

### *Background*

On March 18, 2015, the BOG issued 4 proposed regulations related to the audit and compliance functions of the universities for review and feedback. Over the next year and a half, the BOG held workshops and meetings with the audit and compliance functions of the universities within the SUS. The proposed regulations were revised as a result of input from the stakeholders and final regulations were issued on November 3, 2016. Regulation 4.003, State University System Compliance and Ethics Program, requires each board of trustees to implement a university-wide compliance and ethics program (Appendix A).

### *Current Status of FAMU's Compliance Program*

In Resolution 14-05, adopted June 30, 2005, the board of trustees adopted the Comprehensive University-wide Compliance Program as proposed by the President to evidence the University's commitment to compliance through implementation of the Code of Conduct and the creation of an Office of Audit and Compliance, compliance committees and liaisons with the responsibility for overseeing, monitoring, and assuring the enforcement of the University's compliance program and efforts.

Section 5.C. of the audit committee's charter includes the following provisions relating to its responsibility for compliance

1. Review the effectiveness of the system for monitoring compliance with laws and regulations and the results of management's investigation and follow-up of any non-compliance or fraudulent activities.
2. Obtain regular updates from management and legal counsel regarding compliance matters that may have a material impact on the University's operations, financial statements, programs or compliance policies.
3. Review and approve procedures for the receipt, retention, and treatment of complaints regarding financial or operational matters.
4. Review the findings of any examinations by state and federal regulatory agencies.
5. Review the programs and policies of the University designed by management to assure compliance with applicable laws and regulations and monitor the results of compliance efforts.
6. Review results of the University's monitoring and enforcement of compliance with University standards of ethical conduct and conflict of interest policies

The University has implemented compliance in much the same way as other SUS universities. Compliance activities have generally included compliance as part of all audits, considering compliance risks in the annual risk assessment, consulting on compliance issues through management requests, performing compliance-related investigations, and participation in the SUS Compliance consortium.

### *Changes to Current Compliance Program*

To implement the compliance program pursuant to the provisions of the new BOG Regulation 4.003, the following items need to be considered:

- Clarify Reporting Structure
  - Determine whether the compliance function should continue to report to The division of Audit & Compliance (DAC)
  - Determine whether compliance officers (e.g., Title IX, athletics, Research, etc.) should be either direct reports or dotted line reports to the chief compliance officer
- Determine if investigative responsibilities for compliance function should include
  - Conducting investigations
  - Retaliation excluding Whistleblower
  - Non-Compliance with laws, rules, & regulations

A proposed University Compliance and Ethics Charter (Appendix B) is included for informational purposes. The proposed charter includes the provisions required by the BOG Regulation. A final charter will be presented in June for approval.

### **OPERATIONAL AUDIT UPDATE**

#### *Background*

- Every 3 years, the Auditor General performs an operational audit of the university's operations. The audit period covered is from April 2015 through June 2016. We received Preliminary and Tentative findings from the Auditor General (external legislative auditor) on March 2, 2017.
  - The university is required to provide a written corrective action plan within 30 days.
  - The corrective action plan will be incorporated in the final report.
- We are developing the corrective action plan to address the findings.

#### *Overview of Findings*

**Finding 1:** The University's intercollegiate athletic programs continued to experience cash deficits for the 2015-16 fiscal year.

**Finding 2:** Prior to payment, University personnel did not compare construction management entity (CME) pay requests with applicable subcontractor invoices, bids, and contracts or document comparisons of CME pay requests with the costs in the guaranteed maximum price (GMP) contracts.

**Finding 3:** University procedures need improvement to ensure that subcontractors, used by CMEs for GMP projects, are selected using a competitive selection process and that documentation of the selection process is maintained.

**Finding 4:** University controls over negotiating and monitoring CME general conditions costs need

improvement.

**Finding 5:** Supervisors did not always document review and approval of exempt employees' time worked.

**Finding 6:** Controls over the University Purchasing Card Program could be improved.

**Finding 7:** University employee travel expense reimbursement requests and related support were not always timely submitted for processing.

**Finding 8:** The University needs to enhance procedures related to the collection of student receivables.

**Finding 9:** University textbook affordability procedures could be enhanced. A similar finding was noted in our report No. 2014-108.

**Finding 10:** Certain information technology access controls need improvement.

**Management observations on the findings:**

- Ten findings, three of which relate to construction
- Categorization of the findings:
  - 2 High (# 1 & 9)
  - 2 Moderate (# 5 & 10)
  - 6 Low (# 2, 3, 4, 6, 7, 8)
- Two repeat findings - # 1 & 9
  - Both have been reported in the prior 2 operational audits
  - Reporting to the Legislature of the repeat findings is required
  - The Legislature can take actions, such as requiring reports be submitted up to withholding funds
- Findings # 2-3 Construction Administration
  - Findings generally related to non-compliance with University procedures
  - Unsupported costs related to construction totaled only \$9,100
- Finding # 6 – P-Card Administration
  - Corrective action plan already implemented
    - P-card compliance transferred to Procurement
    - P-Card compliance officer position established to track and monitor P-card reconciliations and supporting documentation
  - P-card purchases that did not have adequate supporting documentation (invoices) totaled \$48,027
    - Three of the employees are still employed with the University
      - Documentation has already been obtained for charges totaling \$6,200
      - The employees have been requested to provide the support. If not provided, the amount can be recovered by deductions from paychecks
    - One employee no longer employed by the University – the undocumented charges were withheld from their last paycheck
- Finding # 7 Travel Reimbursements

- There was no unsupported travel expense reimbursements– only late submission per University procedures

#### **PROCESS FOR FOLLOW-UP OF AUDIT FINDINGS**

Follow up audits are completed for significant audit findings resulting from assurance engagements and may be completed for other engagements, such as Investigations, as deemed necessary. Our office has made continuous improvements to our follow up process.

- A database is used to track the status of implementation of findings, including the expected implementation date of corrective actions.
- Correspondence is sent to the responsible employees to obtain an updated status for implementation of corrective action.
- Follow up audits are completed for significant findings.
- Beginning in 2016-17, reports are being provided to the President and senior leadership team on the status of implementation of corrective actions. The status of findings is periodically reported to the audit committee.

#### **EXTERNAL AUDIT OF RATTLER BOOSTERS**

The firm of Ernst & Young has been hired to perform the audit; however, to date, the Booster organization has not provided the requested information.

## APPENDIX A

### 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 noncompliance, unethical behavior, and criminal conduct, as appropriate to the institution's mission, size, activities, and unique risk profile;
  - (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) 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 committee of the board responsible for audit and compliance. 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. 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.
- (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.
- (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 shall be provided to the Board of Governors.

(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 the board of trustees and a copy provided to the Board of Governors.

(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:

- Have the independence and objectivity to perform the responsibilities of the chief compliance officer function;
- Have adequate resources and appropriate authority;
- Communicate routinely to the president and board of trustees regarding Program activities;
- Conduct and report on compliance and ethics activities and inquiries free of actual or perceived impairment to the independence of the chief compliance officer;
- 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;
- Coordinate or request compliance activity information or assistance as may be necessary from any university, federal, state, or local government entity;
- 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 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 Office of Inspector General and Director of Compliance (OIGC);

Report at least annually on the effectiveness of the Program. 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;

1. 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;
2. 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
3. Submit final reports to appropriate action officials.

(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.

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## APPENDIX B

### DRAFT UNIVERSITY COMPLIANCE AND ETHICS CHARTER

#### **Purpose and Mission**

University Compliance and Ethics (C&E) Office provides oversight and guidance to university-wide ethics and compliance activities, and fosters a culture that embeds these disciplines in all university functions and activities. C&E is designed to promote greater coordination of and consistency among individual University compliance programs, covering a wide variety of requirements related to academics, athletics, human resources, research, health care, information technology, and numerous administrative functions.

The mission of C&E is to support the University's mission and strategic plan by proactively partnering with faculty, staff and management to:

- Ensure compliance risks are identified, prioritized and managed appropriately;
- Establish a control environment, level of accountability, and ethical framework that promotes commitment to the highest standards of ethics, integrity, and lawful conduct by promoting adherence to all applicable federal, state, and local laws, regulations, as well as standards and internal policies and protocols;
- Provide general compliance training to employees and faculty and guidance to managers;
- Provide an avenue for anonymous reporting of potential non-compliance or unethical behavior
- Develop effective policies and procedures to promote compliance and ethical behavior

#### **Reporting Structure and Independence**

In 2005, the Florida A&M University Board of Trustees (BOT) approved Resolution 14-05 adopting a university-wide compliance program as the foundation of the Internal control and compliance environment. In support of the compliance program, the BOT maintains an internal audit and compliance function that is an integral component of the governance structure. The Division of Audit and Compliance (DAC) provides insight on the mitigation of business risk to assist the BOT and University management in the effective discharge of their responsibilities as they relate to the University policies, processes, programs, information systems, internal controls, and management reporting.

DAC is managed by the Vice President of Audit and Compliance who oversees both the audit and compliance functions. The compliance function of DAC is the University Compliance and



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Ethics Office. C&E is managed by the Chief Compliance & Ethics Officer. The Chief Compliance & Ethics Officer reports administratively and functionally to the Vice President of Audit and Compliance. Additionally, the Chief Compliance & Ethics Officer has free and unrestricted access to the University President and BOT Audit Committee.

The chief compliance and ethics officer and staff shall have organizational independence and objectivity to perform their responsibilities and all activities of the office shall remain free from influence. Therefore, the Chief Compliance & Ethics Officer and staff will not perform or be responsible for any audit duties.

## **Authority**

The Compliance & Ethics Office has the authority to review or investigate all areas of the university, including schools, colleges, administrative departments, auxiliary enterprises, and support organizations. Reviews and investigations shall not be restricted or limited by management, the president, or the Board of Trustees. Accordingly, C&E is authorized to:

- Have unrestricted and timely access to records, data, personnel, and physical property relevant to performing compliance reviews and investigations, and to allow for appropriate oversight and guidance related to compliance, ethics, and risk mitigation efforts.
- Allocate resources, establish schedules, select subjects, determine scopes of work, and apply the techniques required to accomplish objectives;
- Obtain the essential assistance and cooperation of personnel in areas of the University where reviews and investigations are performed, as well as other specialized services from within or outside the University; and
- Have free and unrestricted access to the University President and Board of Trustees.

Documents and records obtained for the above purposes will be handled in compliance with applicable laws, regulations, and university policies and procedures. As required by law, C&E will comply with public records requests.

The chief compliance and ethics officer will notify the Vice President of Audit and Compliance and request remediation 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. If unresolved by the Vice President of Audit and Compliance, the chief compliance and ethics officers will take additional remediation steps as outlined in Florida Board of Governors Regulation 4.003.

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## **Organizational Oversight**

The Board of Trustees will:

- Approve the charter of the Compliance & Ethics Office. The charter will be reviewed at least every three years for consistency with applicable Board of Governors and university regulations, professional standards, and best practices. Subsequent changes will be submitted to the Board of Trustees for approval. A copy of the charter and any subsequent changes will be provided to the Board of Governors;
- Approve the annual Program Plan;
- Receive communications from the Chief Compliance and Ethics Officer on the compliance activity's performance relative to its plan and other matters;
- Approve all decisions regarding the performance evaluation, appointment, removal, and annual compensation and salary adjustment of the Chief Compliance and Ethics Officer. The CAE is appointed by and reports administratively and operationally to the Vice President of Audit and Compliance;
- Make appropriate inquiries of management and the Chief Compliance and Ethics Officer to determine whether there is inappropriate scope or resource limitations; and
- Ensure the Compliance & Ethics Office has appropriate staff and resources in which to fulfill its duties and responsibilities.

## **Duties and Responsibilities**

The duties and responsibilities of the Chief Compliance and Ethics Officer and staff include projects and activities that fulfill the requirements for an effective compliance and ethics program as required by Chapter 8 of the Federal Sentencing Guidelines and Board of Governors Regulation 4.003. The following elements define the duties and responsibilities of the office:

1. Compliance
  - Assisting management with the identification and prioritization of compliance risks;
  - Assisting management with the development of mandatory risk management plans for compliance high risks;
  - Ensuring that compliance high risks are being properly managed by the designated responsible parties;
  - Promoting compliance awareness through effective training and education activities;
  - Providing compliance advisory services to management, faculty, and staff;
  - Evaluating emerging compliance trends in higher education and government and implementing best practices;
  - Performing internal monitoring, investigations, and compliance reviews; and
  - Enforcing and promoting standards through appropriate incentives and

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disciplinary guidelines, including the revising and developing of policies and procedures.

## 2. Ethics

- Establishing a control environment, level of accountability, and ethical framework that promotes commitment to the highest standards of ethics, integrity, and lawful conduct;
- Performing internal monitoring, investigations, and ethic reviews; and
- Promoting ethics awareness through effective training and education activities.

## 3. Retaliation

- Providing all employees with an opportunity to report issues of potential retaliation for the reporting of wrong doing; and
- Conduct investigations into claims of retaliation and other applicable state and federal laws relating to retaliation that are not covered by whistleblower protection or the Office of Equal Opportunity Programs.

The Chief Compliance and Ethics Officer and staff will:

1. Provide oversight of compliance and ethics activities;
2. Work closely with Internal Audit to assess and prioritize which compliance areas present the greatest risk and need for attention, based on regulatory environment and complexity, overlap with University strategic plans, and consequences of non-compliance;
3. Develop an annual Program plan based on the requirements for an effective program. The Program plan and subsequent changes will be provided to the board of trustees for approval. A copy of the approved plan will be provided to the board of governors.
4. Provide training to university employees and Board of Trustees' members regarding their responsibility and accountability for ethical conduct and compliance with applicable laws, regulations, rules, policies, and procedures. The Program plan will specify when and how often this training will occur.
5. Obtain an external review of the Program's design and effectiveness at least once every five years. The review and any recommendations for improvement will be provided to the president and Board of Trustees. The assessment will be approved by the Board of Trustees and a copy provided to the Board of Governors.
6. Identify and provide oversight and coordination of compliance partners responsible for compliance and ethics related activities across campus and provide communication, training, and guidance on the Program and compliance and ethics related matters.
7. Administer and promote the Florida A&M University Compliance and Ethics Hotline, an anonymous mechanism available for individuals to report potential or actual misconduct and violations of university policy, regulations, or law, and ensure that no

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individual faces retaliation for reporting a potential or actual violation when such report is made in good faith.

8. **Maintain and communicate the university's policy on reporting misconduct and protection from retaliation and ensure the policy articulates the steps for reporting and escalating matters of alleged misconduct, including criminal conduct, when there are reasonable grounds to believe such conduct has occurred.**
9. **Communicate routinely to the president and the board of trustees regarding Program activities. Annually report on the effectiveness of the Program. Any Program plan revisions, based on the chief compliance and ethics officer's report, shall be approved by the Board of Trustees. A copy of the report and revised plan will be provided to the Board of Governors.**
10. **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 and ethics will be addressed through appropriate measures, including education or disciplinary action.**
11. **Initiate, conduct, supervise, coordinate, or refer to other appropriate offices such inquiries, investigations, or reviews deemed appropriate in accordance with university regulations and policies, state statutes, and/or federal regulations.**
12. **Make necessary modification to the Program in response to detected non-compliance, unethical behavior, or criminal conduct and take steps to prevent its occurrence.**
13. **Assist the university in its responsibility to use reasonable efforts to exclude 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.**
14. **Coordinate or request compliance activity information or assistance as necessary from any university, federal, state, or local government entity. Oversee and coordinate external inquiries into compliance with federal and state laws and take appropriate steps to ensure safe harbor in instances of non-compliance.**
15. **Maintain a professional staff with sufficient size, knowledge, skills, experience, and professional certifications**
16. **Utilize third-party resources as appropriate to supplement the department's efforts**
17. **Perform assessments of the program and make appropriate changes and improvements**

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Members of the University community having responsibility for a specific area of compliance must ensure the following:

1. Oversight of compliance in their specific functional areas;
2. Adherence to the University's compliance policies;
3. Implementation of corrective action as necessary, arising from compliance reviews and/or investigations;
4. Completion of self-assessments to evaluate their individual compliance efforts against a list of criteria necessary to have an effective compliance program; and
5. Immediate notification to the Chief Compliance and Ethics Officer of any realized or suspected compliance or ethics violations within their functional area.

## Professional Standards

Compliance and Ethics Office activities will be governed by adherence to the *Florida Code of Ethics*; the *Code of Professional Ethics for Compliance and Ethics Professionals*; and the *U.S. Federal Sentencing Guidelines'* criteria for an effective compliance program. Investigation activities will be governed by adherence to professional standards issued for the State University System.

\_\_\_\_\_  
Chief Compliance & Ethics Officer

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Date

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Chief Audit Executive

\_\_\_\_\_  
Date

\_\_\_\_\_  
President

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Date

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Audit Committee Chair

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Date