

**THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES
FLORIDA BOARD OF GOVERNORS**

NOTICE OF PROPOSED REGULATION

REGULATION NO.: FIU-2508

REGULATION TITLE: Post-Tenure Faculty Review

SUMMARY: This new Regulation is established to comply with Florida Board of Governors (BOG) Regulation 10.003 and Florida Statutes Section 1001.706(6)(b). The Regulation substantially follows the BOG Regulation and includes sections outlining the purpose, timing and eligibility, review requirements, process requirements, and monitoring and reporting.

TEXT OF REGULATION: The full text of the Proposed Regulation can be viewed below and on the website of The Florida International University Board of Trustees, <http://regulations.fiu.edu/>. If you would like a copy of the Proposed Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, 305.348.2103.

AUTHORITY: Section 7(d), Art. IX, Fla. Const., Board of Governors' Regulation 10.003, Florida Statutes Section 1001.706(6)(b).

NAME OF PERSON INITIATING PROPOSED REGULATION: Dr. Elizabeth Bejar, Provost, Executive Vice President, and Chief Operating Officer.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED REGULATION MUST SUBMIT COMMENTS IN WRITING TO THE CONTACT PERSON LISTED BELOW. ALL WRITTEN COMMENTS MUST BE RECEIVED BY THE CONTACT PERSON WITHIN 14 CALENDAR DAYS OF THE DATE OF PUBLICATION OF THIS NOTICE.

CONTACT PERSON REGARDING THE PROPOSED REGULATION:

Eli Deville, Departmental Administrator, Office of the General Counsel,
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DATE OF PUBLICATION: August 14, 2023

THE FULL TEXT OF THE REGULATION IS PROVIDED BELOW:

FIU-2508 Post-Tenure Faculty Review

I. Purpose. The purpose of this Florida International University Board of Trustees (BOT) regulation is to comply with Florida Statutes Section 1001.706(6)(b) and the Florida Board of Governors Regulation (BOG) 10.003. The post-tenure review regulation will be intended to replace the sustained performance review policy of tenured faculty. This regulation outlines the process by which each tenured faculty member will undergo a comprehensive post-tenure review to accomplish the following goals:

- a. Ensure high standards of quality and productivity among the tenured faculty at FIU.
- b. Determine whether a faculty member is meeting the responsibilities and expectations associated with assigned duties in research, teaching, and service, including compliance with federal and state laws, BOG and BOT regulations and policies.
- c. Recognize and honor exceptional achievement and provide an incentive for retention as appropriate.
- d. Refocus academic and professional efforts and take appropriate employment action when appropriate.

II. Timing and Eligibility.

- a. Timing. Each tenured faculty member shall have a comprehensive post-tenure review of five (5) years of performance in the fifth year following the last promotion or the last comprehensive review, whichever is later. For faculty hired with tenure, the hire date shall constitute the date of the last promotion.
 1. In the first year following the effective date of the BOG Regulation 10.003 (i.e., March 29, 2023), a randomized cohort of twenty percent (20%) of tenured faculty will be evaluated in addition to faculty in the fifth year under II(a).
 2. In each of the second, third, fourth, and fifth years, following March 29, 2023, a randomized cohort of twenty percent (20%) tenured faculty who have not received a comprehensive review will be evaluated in addition to the faculty who are in the fifth year under II(a).
 3. Beginning with the sixth year following March 29, 2023, the process outlined in II(a) shall be followed.
- b. Eligibility.
 1. All tenured faculty are eligible for the post-tenure review except tenured faculty in administrative roles, such as department Chairs or directors.
 2. Tenured faculty in administrative roles (Chairs, directors or higher) shall be reviewed annually by their supervisors based on performance of all assigned duties, responsibilities, professional conduct, and, if applicable, non-compliance with federal and state law, BOG and BOT regulations and policies, and substantiated student complaints.

3. The timing of the comprehensive post-tenure review can be extended when there are extenuating, unforeseen circumstances (e.g., medical leave of absence). The Provost will report any exceptions that are granted as part of the Provost's report to the President and BOT regarding the outcomes of the comprehensive post-tenure review as described in Section VI.

III. Review Requirements.

- a. The comprehensive post-tenure review shall include consideration of the following.
 1. The level of accomplishment and productivity relative to the faculty member's assigned duties in research, teaching, and service, including clinical, and administrative assignments.
 2. The faculty member's history of professional conduct and performance of academic responsibilities to FIU and its students.
 3. The faculty member's non-compliance with federal or state law, and BOG and BOT regulations and policies.
 4. Unapproved absences from teaching assigned courses.
 5. Substantiated student complaints.
 6. Other relevant measures of faculty conduct as appropriate.
- b. The review shall not consider or otherwise discriminate based on the faculty members' political or ideological viewpoints.

IV. Process Requirements.

- a. The faculty member shall complete a university-designated dossier highlighting accomplishments and demonstrating performance relative to assigned duties and submit the dossier to the Chair.
- b. The faculty member's Chair shall review the completed dossier, the faculty member's personnel file, and other records related to professional conduct, academic responsibilities, and performance.
- c. The faculty member's Chair shall add to the dossier the following:
 1. Additional records related to professional conduct, academic responsibilities, and performance.
 2. A letter assessing the level of achievement and certification that the letter includes, if applicable, any concerns regarding professional conduct, academic responsibilities, and performance during the period under review.
 3. Relevant departmental guiding documents.
- d. The faculty member's Chair shall forward the dossier, including all records and the Chair's letter, to the Dean for review.
- e. The Dean shall review all materials provided by the faculty member's Chair.
- f. The Dean shall add to the dossier a brief letter assessing the level of achievement during the period under review. The letter shall include any concerns regarding professional conduct, academic responsibilities, and

performance. The letter shall also include the Dean's recommended performance rating using the following scale:

1. Exceeds expectations: a clear and significant level of accomplishment beyond the average performance of faculty across the faculty member's discipline and unit.
 2. Meets expectations: expected level of accomplishment compared to faculty across the faculty member's discipline and unit.
 3. Does not meet expectations: performance falls below the normal range of annual variation in performance compared to faculty across the faculty member's discipline and unit but is capable of improvement.
 4. Unsatisfactory: failure to meet expectations that reflect disregard or failure to follow previous advice or other efforts to provide correction or assistance, or performance involves incompetence or misconduct as defined in applicable university regulations and policies.
- g. The Dean shall forward the dossier to the Provost for review.
- h. The Provost shall review the dossier provided by the Dean.
- i. With guidance and oversight from the President, the Provost will rate the faculty member's professional conduct, academic responsibilities, and performance during the review period. The Provost may accept, reject, or modify the Dean's recommended rating. The Provost may request assistance from a university advisory committee in formulating an assessment. Each faculty member reviewed will receive one (1) of the following performance ratings, as defined above.
1. Exceeds expectations
 2. Meets expectations
 3. Does not meet expectations
 4. Unsatisfactory
- j. The Provost shall notify the faculty member, the faculty member's Chair, and the Dean of the outcome.

V. Review Outcomes

- a. For each faculty member who receives a final performance rating of "exceeds expectations" or "meets expectations," the Dean, in consultation with the Chair, shall recommend to the Provost appropriate recognition and/or compensation in accordance with the faculty member's performance and this regulation. The Provost shall make the final determination regarding recognition and/or compensation.
- b. For each faculty member who receives a final performance rating of "does not meet expectations," the Dean, in consultation with the Chair, shall propose a performance improvement plan (PIP) to the Provost.
 1. The plan must include a deadline for the faculty member to achieve the requirements of the PIP. The deadline may not extend more than twelve (12) months past the date the faculty member receives the PIP.

2. The Provost shall make final decisions regarding the requirements of each PIP.
3. Each faculty member who fails to meet the requirements of a PIP by the established deadline shall receive a notice of termination from the Provost.
- c. For each faculty member who receives a final performance rating of “unsatisfactory,” the Provost shall give the faculty member a notice of termination.
- d. Final decisions regarding post-tenure review for faculty members may be appealed under University procedures or the BOT-UFF collective bargaining agreement. The final decisionmaker shall review the final decision solely for the purpose of determining whether it violates a University policy or the applicable CBA and may not consider claims based on equity or substitute the final decisionmaker’s judgment for that of the University’s.

VI. Monitoring and Reporting

- a. The Provost shall report annually to the President and the BOT on the outcomes of the comprehensive post-tenure review process consistent with Florida Statutes Section 1012.91.
 1. Beginning January 1, 2024, and continuing every three (3) years thereafter, the University must conduct an audit of the comprehensive post-tenure review process for the prior fiscal year and submit a final report to the Board of Trustees by July 1st.
 2. The audit shall be performed by the University’s Chief Audit Executive or by an independent, third-party auditor (collectively the auditor) as determined by the Chair of the Board of Trustees.
 3. The auditor must provide the Board of Trustees with a report that includes the following:
 - i. The number of tenured faculty in each of the four performance rating categories as defined above.
 - ii. The University’s response in cases of each category.
 - iii. Findings of non-compliance with applicable federal and state laws, BOG and BOT regulations and policies.
 4. The BOT shall consider the audit report at the next regularly scheduled meeting BOT meeting after the report’s publication date.
 - i. The Provost or auditor must present the audit report to the Board of Trustees. The BOT shall not adopt the report as a consent agenda item.
 - ii. If the audit report shows that the University is in compliance with applicable federal or state laws, BOG or BOT regulations or policies, a copy of the adopted audit report shall be provided to the BOG consistent with BOG Regulation 1.001(6)(g).

- iii. If the auditor finds that the University is out of compliance with applicable federal state laws, BOG or BOT regulations or policies, the auditor must present the report to the BOG at its next regularly scheduled meeting.
- iv. Following the effective date of this regulation, the BOT shall not enter into any CBA that conflicts with this regulation.
- v. Nothing in this regulation is intended to prevent the BOT from instituting additional evaluation processes, criteria, or standards so long as they meet or exceed the requirements outlined in section 1001.706(6)(b), Florida Statutes, and this regulation.

Authority: Section 7(d), Art. IX, Fla. Const., Board of Governors' Regulation 10.003, Florida Statutes Section 1001.706(6)(b); New.