

THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES

NOTICE OF PROPOSED AMENDMENT

REGULATION NO.: FIU-1502
REGULATION TITLE: Direct Support Organizations.

SUMMARY: As a result of recent amendments to Section 1004.28, Florida Statutes, and corresponding revisions to Regulation 9.011 of the Florida Board of Governors (“BOG”), adding additional oversight mechanisms to University direct support organizations (“DSOs”), the University proposes to update its own DSO regulation – FIU Regulation 1502 -- by making several additions that would bring FIU into alignment with the amended Section 1004.28 and BOG Regulation 9.011. These changes include (i) requiring that the Chair of the University Board of Trustees (“BOT”) must appoint at least one representative to the governing body and the executive committee of each DSO; (ii) requiring that the BOT approve all appointments to any DSO governing body, other than the Chair’s representative(s) or the University President or his/her designee; and (iii) establishing thresholds for the approval of purchases of goods and services, the acquisition or lease of real property, and the construction or renovation of facilities, by any DSO.

TEXT OF REGULATION: The full text of the Proposed Amendment to 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 Amendment to Regulation, please contact Eli Deville, Departmental Administrator, Office of the General Counsel, (305) 348-2103.

AUTHORITY: Resolution of the Florida Board of Governors Regulation 1.001 and 9.011.

NAME OF PERSON INITIATING PROPOSED REGULATION: Carlos B. Castillo, General Counsel.

ANY PERSON SEEKING TO COMMENT ON THE PROPOSED AMENDMENT TO 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 AMENDED REGULATION: Eli Deville, Departmental Administrator, Office of the General Counsel, Florida International University, 11200 SW 8th Street, PC 511, Miami, FL 33199. Email: devillee@fiu.edu Fax: (305) 348-3272. Phone: 305-348-2103.

DATE OF PUBLICATION: January 30, 2019

THE FULL TEXT OF THE PROPOSED AMENDMENTS TO THE REGULATION ARE BELOW:

FIU-1502 Direct Support Organizations.

~~a.~~ 1. The President of the University (the “President”) may recommend to the Board of Trustees (the “BOT”) that an organization meeting the requirements of Florida law pertaining to Direct Support Organizations (~~“(a “DSO”)~~) be designated a DSO of Florida International University DSO, (the “University”). Upon approval by the ~~Board of Trustees~~BOT and the Board of Governors, (the “BOG”), a DSO shall be considered to be certified and authorized to use the property, facilities and personal services of the University, subject to the provisions of this regulation.

~~b.~~ 2. In order to be considered for certification as a DSO, an organization must fulfill the requirements of Florida law pertaining to DSOs, ~~the Board of Governors’ Regulations~~BOG regulations and must have Articles of Incorporation and Bylaws that together:

a. Provide that any amendments to the Articles of Incorporation or Bylaws must be submitted by the President ~~of the University and~~ to the ~~Board of Trustees~~BOT for approval prior to becoming effective;

b. Provide that the organization shall provide equal employment opportunities to all persons regardless of race, color, religion, gender, age, disability, marital status, sexual orientation, veteran’s status or national origin, or any other basis protected by law;

c. Prohibit the giving, directly or indirectly, of any gift to a political committee ~~or committee of continuous existence~~ as defined in ~~the~~Section 106.011, Florida Statutes ~~for any purpose other than those certified by a majority roll call vote of the organization’s governing board at a regularly scheduled meeting as being directly related to the educational mission of the University~~; and

d. Provide that an annual budget, which has been approved by its governing board and recommended by the President ~~of the University~~, is submitted to the ~~Board of Trustees~~BOT for review and approval. Such proposed budget shall be approved by the ~~Board of Trustees~~BOT no later than sixty (60) days after the first day of the fiscal year to which the proposed budget pertains. Each proposed budget shall include therein:

i. Expenditures for the construction of physical facilities; and

ii. Salary supplements, compensation and benefits provided to the President, University faculty, University staff, and DSO employees to be paid with assets of the DSO, which shall be specifically identified.

e. Provide that the University shall have the right to audit the books, records and operations of the organization as the University determines appropriate in the exercise of its oversight.

f. Prepare and submit to the President, no later than the first day of each quarter of the organization’s fiscal year, a quarterly expenditure plan that separately delineates

planned actions which would cause a commitment of University resources or which represent a significant commitment of the resources of the DSO, including:

i. Major ~~fund raising~~ fundraising events and campaigns and their purpose;

-ii. Compensation and benefits to University employees and employees of the organization;

-iii. Capital projects, including land acquisition, construction, renovation or repair; and

-iv. Other major commitments of the resources of the organization.

g. Have a financial audit of its accounts and records to be conducted by an independent certified public accountant after the close of each fiscal year. The audit report shall be submitted by the President ~~of the University~~ to the ~~Board of Trustees~~ BOT and the ~~Board of Governors~~ BOG no later than the end of the fourth month following the close of the organization's fiscal year.

i. Audits shall be conducted pursuant to the requirements of the Florida Statutes and in accordance with rules adopted by the Auditor General.

ii. The President ~~of the University~~ shall submit the annual audit report to the Auditor General and the ~~Board of Governors~~ BOG no later than nine (9) months after the close of the organization's fiscal year. –A DSO must also submit to the ~~Board of Governors~~ BOG its Federal Internal Revenue Service Application for Recognition of Exemption form and its federal Internal Revenue Service Return of Organization Exempt from Income Tax form.

h. Provide that the DSO assets be distributed for the benefit of the University as directed by the ~~Board of Trustees of the University~~ BOT if the organization is decertified as a DSO.

3. The Chair of the ~~Board of Trustees may~~ BOT (the "BOT Chair") shall appoint at least one representative to the governing body and, if any, the executive committee, of each DSO. In addition, the President ~~of the University~~ or a designee shall also serve on the governing body and, if any, the executive committee, of each DSO. The BOT shall approve all appointments to the governing body of each DSO, other than the BOT Chair's representative(s) or the President ~~of the University~~ or President's designee. The BOT Chair's designee may not be the President, nor may the BOT Chair and the President appoint the same person to represent both the BOT Chair and the President on the governing body of a DSO.

~~e.~~ 4. The President may also appoint other members of the University administration, faculty, student body or public to serve on the governing body and, if any, the

executive committee, of each DSO for terms designated by the President ~~of the University~~ as provided in the DSO's Articles of Incorporation and/or Bylaws.

~~d.~~ 5. The President ~~of the University~~ shall have the power to:

- a. Monitor and control the use of University resources by the organization;
- b. Control the use of the University name by the ~~DSO~~ DSOs; and
- c. Monitor compliance of the organization with federal and state laws.

6. The Director or Chief ~~Operating~~ Executive Officer of a DSO shall report to the ~~University~~ President or designee, who shall be a Vice President of the University or other Senior Officer reporting directly to the ~~University~~ President.

7. Additional Governance Oversight. Subject to any applicable provisions under Florida law, BOG regulations or other University rules or regulations, the following shall apply:

a. Purchases of Goods/Services. Any purchase of goods and services by a DSO, in one or a series of related transactions during a given fiscal year, with a total value:

i. greater than or equal to \$500,000 and less than \$1,000,000 shall be reported on a quarterly basis to the Finance and Facilities Committee of the BOT (the "Finance Committee").

ii. greater than or equal to \$1,000,000 and less than \$3,000,000, shall require the prior approval of the Finance Committee and thereafter reported to the BOT; *provided, however,* in the event no regular meeting of the Finance Committee is scheduled within thirty (30) days from the date such approval is requested, any such transaction(s) may be approved by the Chair of the Finance Committee and thereafter reported to the BOT.

iii. greater than or equal to \$3,000,000, shall require the prior approval of the BOT.

b. Real Estate Construction and Renovation.

i. The construction or renovation of facilities by a DSO, in one or a series of related transactions during a given fiscal year, (A) in an amount greater than or equal to \$500,000 and less than \$2,000,000, shall be reported on a quarterly basis to the Finance Committee; and (B) in an amount greater than or equal to \$2,000,000, shall require the prior approval of the BOT.

ii. Any change orders related to a facilities' construction or renovation project undertaken by a DSO, in one or a series of related transactions during a given fiscal year,

in an amount greater than or equal to fifty thousand dollars (\$50,000), shall require the prior approval of the BOT.

c. Real Estate Leases. Any lease of real property by a DSO shall require the prior approval of the BOT; *provided, however,* that any lease (i) with a term of less than five (5) years; (ii) for less than 5,000 square feet; or (iii) with a total value of less than \$500,000, must be approved by the Finance Committee.

d. Real Estate Acquisitions.

i. Any acquisition of real estate by a DSO (other than the FIU Foundation), in one or a series of related transactions during a given fiscal year, for an aggregate purchase price (A) less than \$2,000,000, shall be reported on a quarterly basis to the Finance Committee; and (B) greater than or equal to \$2,000,000, shall require the prior approval of the BOT.

ii. Any acquisition of real estate by the FIU Foundation, in one or a series of related transactions during a given fiscal year, for an aggregate purchase price greater than or equal to \$10,000,000, shall require the prior approval of the BOT.

e. To the extent that any University resources are requested and/or required in connection with DSO real estate construction and/or renovation, a DSO real estate lease, or DSO real estate acquisition (whether through a purchase, gift, or otherwise), BOT approval is required in accordance with BOT delegated authority requirements to the University.

f. All debt issued by a DSO is subject to the State University System (the "SUS") Debt Management Guidelines, and all public-private partnership transactions involving a DSO are subject to the SUS Public-Private Partnership Guidelines.

g. University personal services used by a DSO are subject to the remuneration requirements set forth in Section 1012.976, Florida Statutes.

h. A DSO is prohibited from using state funds for travel expenses incurred by the DSO.

8. The President ~~of the University~~ may recommend to the ~~Board of Trustees~~ BOT that an organization be decertified as a DSO if the President determines that the organization is no longer serving the best ~~interest~~ interests of the University. The recommendation for decertification shall include a plan for disposition of the organization's assets and liabilities.

~~All records of the organization other~~ 9. Other than the auditor's report, management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of private funds for travel, all records of the organization and any supplemental data requested by the ~~Board of Governors, the University Board of Trustees~~ BOG, the BOT, the Auditor General ~~or~~ and the Office of Program Policy Analysis and Government

Accountability shall be confidential and exempt from ~~the provisions of Florida's Public Records Laws.~~ [Section 119.07\(1\), Florida Statutes.](#)

Specific Authority Board of Governors Resolution dated January 7, 2003. History—New 5-8-03, Formerly 6C8-6.100, Amended 9-12-08, Amended 9-6-16-, [Amended \[\]-19.](#)