

**THE UNIVERSITY OF WEST FLORIDA NOTICE OF
PROPOSED REGULATION AMENDMENT**

DATE: **January 28, 2019**

REGULATION TITLE AND NUMBER: *UWF/REG – 5.016 Direct Support Organizations*

PURPOSE AND EFFECT: UWF Regulation 5.016 has been amended to align with changes in Board of Governors Regulation 9.011 and Section 1004.28, Florida Statutes (2018).

SUMMARY: The proposed changes to this regulation provide the following:

- A UWF Direct Support Organization (DSO) is an organization seeking to receive, hold, invest and administer property and to make expenditures to, or for, the benefit of the University of West Florida as provided in Section, 1004.28, Florida Statutes.
- The President shall recommend that an organization operating to serve the best interests or missions of the University, in a manner consistent with the goals of the University that meets the requirements of Section 1004.28, Florida Statutes, be certified as a UWF DSO.
- To obtain certification as a DSO, the organization must be approved by the Board of Directors and must provide operating procedures and specific individual responsibilities of the DSO Board of Directors, committees and officers of the organization at the time of consideration by as a DSO.
- The DSO is allowed to use the property, facilities and personnel services of UWF to the extent permissible by applicable law, the conditions prescribed by regulations and internal management memoranda of UWF.
- The President of the University or his/her designee shall serve on the governing board and executive committee of the DSO.
- The UWF Board of Trustees shall approve all appointments to any DSO board other than the chair's representative(s) or the president or president's designee, including without limitation appointments through election by the organization's board to any DSO's board. The Chair's designee may not be the President of the University; nor may the Chair and President appoint the same person to represent both the Chair and the President on any one DSO board. The appointments of the chair and the President shall be effective immediately upon written notice to the DSO's board chair. All other appointments including any re-appointments, shall not be effective, and no person may assume or retain any position on a DSO board, until approved by the UWF Board of Trustees.
- A DSO shall prepare and submit to the President a quarterly expenditure plan. The Regulation currently requires the plan to be submitted no later than the first day of each quarter. The change requires the plan to be submitted no later than the tenth day of each

quarter.

- A DSO shall prepare, at least annually, a budget to be reviewed and approved by the organization's governing board, and presented by the President or designee to the UWF Board of Trustees for review and approval.
- The President of the University and the Chair of the UWF Board of Trustees may require and receive any records or data relative to the operations of a DSO from the organization or from its independent auditors, which must be made available upon request.
- Any purchase of good and services by a DSO in excess of two million dollars (\$2,000,000) (collectively "DSO Threshold Transactions") shall require the approval of the Board of Trustees; provided, however, that such approval is not required for DSO Threshold Transactions solely between a DSO and the University or between two or more DSOs.
- All DSOs shall comply with the UWF BOT Real Estate Policy, 10.02-06/18. This policy requires approval by the Board of Trustees for material real property transactions as defined therein including, but not limited to construction and renovation projects, acquisition of real property, gifts, leases and purchases or sale of real property.
- Any debt issued by a DSO is subject to the State University System Debt management Guidelines and all public-private partnership transactions involving a Direct Support Organization are subject to the State University System Public-Private Partnership Guidelines.
- Upon decertification of a DSO, all assets shall revert to the University and shall include a plan for disposition of the DSO's assets and liabilities. The change also requires the return of all University property and facilities as requested by the University.
- University personal services used by a DSO are subject to the remuneration requirements set forth in Section 1012.976, Florida Statutes.
- A DSO is prohibited from using state funds for travel expenses incurred by the DSO.
- A Direct Support Organization is prohibited from giving, either directly, or indirectly, any gift to a political committee as defined in Section 106.011, Florida Statutes, for any purpose.
- The organization shall comply with all other obligations required by law, including, but not limited to those required by Section 1004.28, Florida Statutes, and Board of Governors Regulation 9.011.
- In accordance with Florida Statute Section 267.1732, provisions governing Direct Support Organizations in Section 1004.28 and not provided in Section 267.1732 shall apply to the University of West Florida Historical Society.

AUTHORITY TO AMEND THE REGULATION: Article IX of the Florida Constitution and the Board of Governors Regulation Development procedure dated July 21, 2005; Section 1004.28, Florida Statutes; Florida Board of Governors Regulation 9.011.

NAME OF UNIVERSITY OFFICIAL INITIATING PROPOSED REGULATION AMENDMENT: Pamela E. Langham, General Counsel

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. In response, the University may solicit additional written comments, schedule a public hearing, withdraw or modify the proposed regulation amendment in whole or in part after notice, or proceed with adopting the regulation amendment. The comments must identify the regulation(s) on which you are commenting.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION: Gabby Rozier, Paralegal, Office of the General Counsel at grozier@uwf.edu, or 850-474-3420 or Office of the General Counsel, Building 10, 11000 University Parkway, Pensacola, Florida 32514.

THE FULL TEXT OF THE REGULATION: The full text of the proposed regulation is attached below this Notice. The full text of the proposed and existing regulation is posted on UWF's website at <https://uwf.edu/offices/board-of-trustees/regulations/> . In addition, the full text of the proposed regulation and current regulation are available upon request to the Office of the General Counsel, which can be contacted at 1.850.474.3420 or grozier@uwf.edu



Regulations

Number: UWF/REG – 5.016
Title: Direct Support Organizations

I. Certification of a University DSO

- A. A UWF Direct Support Organization is an organization seeking to receive, hold, invest and administer property and to make expenditures to, or for, the benefit of the University of West Florida as provided in Section 1004.28, Florida Statutes.
- B. The President shall recommend to the University of West Florida Board of Trustees that an organization **operating to serve the best interests or missions of the University, in a manner consistent with the goals of the University and meeting the requirements of Section 1004.28, Florida Statutes, be certified as a University of West Florida Direct Support Organization (“DSO”).**
- C. **To obtain certification as a DSO, the organization must be approved by the Board.** To be considered for certification, the Articles of Incorporation and Bylaws of the proposed DSO together must provide:
 - 1. **The operating procedures and specific individual responsibilities of the DSO Board of Directors, committees and officers of the organization;**
 - 2. The DSO is a Florida not for profit corporation under the provisions of Chapter 617, Florida Statutes, or the DSO will, upon certification by the UWF Board of Trustees, file for such incorporating with the Department of State.
 - 3. Any person employed by the DSO shall not be considered to be an employee of the University by virtue of employment by the DSO.
 - 4. The Chief Executive Officer of the DSO shall be selected by the President and shall report to the President or a designee reporting directly to the President.

5. Any amendments to the Articles of Incorporation or Bylaws shall be submitted by the President to the UWF Board of Trustees for approval prior to becoming effective.
6. If the DSO is decertified, all assets revert to the University.
7. The President or designee shall have the following authority and duties:
 - (a) Monitor and control the use of University resources by the DSO.
 - (b) Establish fundraising priorities that are consistent with the University's mission and ensure coordination of fundraising activities among all DSO's.
 - (c) Monitor and control the use of the University name by the DSO.
 - (d) Monitor compliance of the DSO with federal and state laws and rules and regulations of the Board of Trustees and the Board of Governors, as applicable;
 - (e) Recommend to the governing board of the DSO an annual budget.
 - (f) Review and approve quarterly expenditure plans.
 - (g) Approve contributions of funds or supplements to support intercollegiate athletics.
 - (h) Approve salary supplements and other compensation or benefits pay to the University faculty and staff from organization assets.

II. Authorization to use Property of University

Upon approval by the UWF Board of Trustees, a DSO is certified and authorized to use the property, facilities and personnel services of UWF, to receive, hold, invest or administer assets or property and to make expenditures for the benefit of the University **to the extent permissible by applicable law, the conditions prescribed by regulations and internal management memoranda of UWF.**

III. Chief Executive Officer

The Chief Executive Officer of the organization shall be selected and appointed by the President of the University. The Chief Executive Officer shall report to the President of the University or the President's designee.

IV. Board Appointments

- A. The Chair of the UWF Board of Trustees shall appoint at least one representative to the governing board and executive committee of the organization, and the President of the University or his/her designee ~~will~~ shall serve on the governing board and executive committee of the organization.
- B. The UWF Board of Trustees shall approve all appointments to any DSO board other than the chair's representative(s) or the president or president's designee, including without limitation appointments through election by the organization's board to any DSO's board. The Chair's designee may not be the President of the University; nor may the Chair and President appoint the same person to represent both the Chair and the President on any one DSO board. The appointments of the Chair and the President shall be effective immediately upon written notice to the DSO's board chair. All other appointments including any re-appointments, shall not be effective, and no person may assume or retain any position on a DSO board, until approved by the UWF Board of Trustees.

V. Finances

- A. Expenditure plan. Each DSO shall prepare and submit to the President or designee no later than the ~~first~~ tenth day of each quarter of the DSO's fiscal year a quarterly expenditure plan that delineates planned actions which would cause a commitment of University resources or represent a significant commitment of the resources of the DSO, including, but not limited to:
 - 1. Major fund raising events and campaigns and their purpose.
 - 2. Compensation and benefits to University employees and employees of the DSO.
 - 3. Capital projects, including land acquisition, construction, renovation or repair.
- B. Budget. A DSO shall prepare, at least annually, a budget to be reviewed and approved by the organization's governing board, and presented by the President to the UWF Board of Trustees for review and approval.
- C. UWF will report to the Legislature and the Board of Governors all transfers of state funds to each university DSO, using a format and instructions specified by the Chancellor of the Florida Board of Governors.
- D. Audit. Each DSO shall conduct its financial operation observing a fiscal year ending on June 30 of each year and shall cause a financial audit of its accounts and records to be conducted by an independent certified public accountant within 180 days of the close of each fiscal year as follows:

1. Audits shall be conducted pursuant to Section 1004.28, Florida Statutes and in accordance with rules adopted by the Auditor General pursuant to Section 11.45, Florida Statutes.
2. The President of the University shall submit the annual audit report to the UWF Board of Trustees, ~~to and~~ the Auditor General **and the Board of Governors for review** within nine months after the end of the fiscal year.
3. **The Chair of the UWF Board of Trustees and the President of the University may require and receive any records or data relative to the operations of a DSO from the organization or from its independent auditors, which must be made available upon request.**

E. Thresholds.

1. Goods and Services. Any purchase of goods or services by a DSO in excess of two million dollars (\$2,000,000) (collectively “DSO Threshold Transactions”) shall require the approval of the Board of Trustees; provided, however, that such approval is not required for DSO Threshold Transactions solely between a DSO and the University or between two or more DSOs.
2. Real Property Transactions. The UWF BOT Real Estate Policy, 10.02-06/18 (“Real Estate Policy”), requires approval by the Board of Trustees for material real property transactions as defined therein including, but not limited to construction and renovation projects, acquisition of real property, gifts, leases and purchase or sale of real property. All UWF DSOs shall comply with the Real Estate Policy.

- F. Issuance of Debt. Upon approval by the UWF Board of Trustees, a DSO is ~~further~~ authorized to issue revenue bonds or other forms of indebtedness in accordance with Section 1010.602 Florida Statutes, and to enter into agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities necessary and desirable to serve the needs and purposes of the University. **Any debt issued by a DSO is subject to the State University System Debt Management Guidelines and all public-private partnership transactions involving a Direct Support Organization are subject to the State University System Public-Private Partnership Guidelines.**

VI. Decertification

- A. The President of the University shall recommend to the UWF Board of Trustees that a DSO be decertified if the President determines that the organization is no longer serving the best interests of the University. In the event that a DSO is decertified, all assets shall revert to the University. The

recommendation for decertification shall include a plan for disposition of the organization's assets and liabilities and the return of all University property and facilities as requested by the University.

VII. Miscellaneous

- A. University personal services used by a DSO are subject to the remuneration requirements set forth in Section 1012.976, Florida Statutes.
- B. A DSO is prohibited from using state funds for travel expenses incurred by the DSO.
- C. A DSO is prohibited from giving, either directly, or indirectly, any gift to a political committee as defined in Section 106.011, Florida Statutes, for any purpose.
- D. The organization shall comply with all other obligations required by law, including but not limited to those required by Section 1004.28, Florida Statutes, and Board of Governors Regulation 9.011.

VIII. University of West Florida Historic Preservation, Inc.

- A. The University of West Florida Historic Preservation, Inc. is also governed by Florida Statute Sections 267.173 & 267.1732. To the extent the requirements in this regulation are in conflict with such statutes, the West Florida Historic Preservation, Inc. is exempt from complying with those requirements.
- B. In accordance with Florida Statute Section 267.1732, provisions governing direct-support organizations in section 1004.28 and not provided in section 267.1732 shall apply to the University of West Florida Historic Preservation, Inc.

History: *Specific Authority: Art. IX, Sec. 7, Fla. Constitution; BOG Regulations 1.001 and 9.011; Florida Statute § 1004.28. New 03-08-04; converted to UWF/REG 5.01607/21/05. Amended March 2019.*