

## **AGENDA**

Negotiated Rulemaking Committee on Compliance Monitoring

November 19, 2013

9:30am

Lone Star Room, 2.140

Texas Higher Education Coordinating Board

1200 E. Anderson Lane

Austin, TX 78752

- I. Introductions
- II. Consideration of Facilitator
- III. Brief Overview of the Negotiated Rulemaking Process: What it is, What it's not
- IV. Overview of Roles and Responsibilities
  - Role of Facilitator
  - Role of Sponsor Agency
    - Technical and administrative support
  - Role of Committee Members
    - Representative role
    - Commitment to negotiate in good faith
- V. Procedural Issues
  - A. Discussion and Consideration of Ground Rules
  - B. Discussion and Consideration of Definition of Consensus
- VI. Discussion of Draft Rules Language, Policies and Procedures on Compliance Monitoring
- VII. Consideration of Draft Rules Language, Policies and Procedures on Compliance Monitoring

Senate Bill 215

Applicable Provisions Relating to Compliance Monitoring and  
Negotiated Rulemaking

SECTION 29. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.0331 to read as follows:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board shall engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008, Government Code, when adopting a policy, procedure, or rule relating to:

(1) an admission policy regarding the common admission application under Section 51.762, a uniform admission policy under Section 51.807, graduate and professional admissions under Section 51.843, or the transfer of credit under Section 61.827;

(2) the allocation or distribution of funds, including financial aid or other trusteed funds under Section 61.07761;

(3) the reevaluation of data requests under Section 51.406; or

(4) compliance monitoring under Section 61.035.

SECTION 30. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.035 to read as follows:

Sec. 61.035. COMPLIANCE MONITORING. (a) The board, in

consultation with affected stakeholders, shall adopt rules to establish an agency-wide, risk-based compliance monitoring function for:

(1) funds allocated by the board to institutions of higher education, private or independent institutions of higher education, and other entities, including student financial assistance funds, academic support grants, and any other grants, to ensure that those funds are distributed in accordance with applicable law and board rule; and

(2) data reported by institutions of higher education to the board and used by the board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(b) For purposes of this section, student financial assistance includes grants, scholarships, loans, and work-study.

(c) After considering potential risks and the board's resources, the board shall review a reasonable portion of the total funds allocated by the board and of data reported to the board. The board shall use various levels of monitoring, according to risk, ranging from checking reported data for errors and inconsistencies to conducting comprehensive audits, including site visits.

(d) In developing the board's risk-based approach to compliance monitoring under this section, the board shall

consider the following factors relating to an institution of higher education or private or independent institution of higher education:

(1) the amount of student financial assistance or grant funds allocated to the institution by the board;

(2) whether the institution is required to obtain and submit an independent audit;

(3) the institution's internal controls;

(4) the length of time since the institution's last desk review or site visit;

(5) past misuse of funds or misreported data by the institution;

(6) in regard to data verification, whether the data reported to the board by the institution is used for determining funding allocations; and

(7) other factors as considered appropriate by the board.

(e) The board shall train compliance monitoring staff to ensure that the staff has the ability to monitor both funds compliance and data reporting accuracy. Program staff in other board divisions who conduct limited monitoring and contract administration shall coordinate with the compliance monitoring function to identify risks and avoid duplication.

(f) If the board determines through its compliance

monitoring function that funds awarded by the board to an institution of higher education or private or independent institution of higher education have been misused or misallocated by the institution, the board shall present its determination to the institution's governing board, or to the institution's chief executive officer if the institution is a private or independent institution of higher education, and provide an opportunity for a response from the institution. Following the opportunity for response, the board shall report its determination and the institution's response, together with any recommendations, to the institution's governing board or chief executive officer, as applicable, the governor, and the Legislative Budget Board.

(g) If the board determines through its compliance monitoring function that an institution of higher education has included errors in the institution's data reported for formula funding, the board:

(1) for a public junior college, may adjust the appropriations made to the college for a fiscal year as necessary to account for the corrected data; and

(2) for a general academic teaching institution, a medical and dental unit, or a public technical institute, shall calculate a revised appropriation amount for the applicable fiscal year based on the corrected data and report that revised

amount to the governor and Legislative Budget Board for consideration as the basis for budget execution or other appropriate action, and to the comptroller.

(h) In conducting the compliance monitoring function under this section, the board may partner with internal audit offices at institutions of higher education and private or independent institutions of higher education, as institutional resources allow, to examine the institutions' use of funds allocated by, and data reported to, the board. To avoid duplication of effort and assist the board in identifying risk, an internal auditor at an institution shall notify the board of any audits conducted by the auditor involving funds administered by the board or data reported to the board. The board by rule may prescribe the timing and format of the notification required by this subsection. The board by rule shall require a private or independent institution of higher education to provide to the board the institution's external audit involving funds administered by the board. The private or independent institution of higher education's external audit must comply with the board's rules for auditing those funds.

(i) The board may seek technical assistance from the state auditor in establishing the compliance monitoring function under this section. The state auditor may periodically audit the board's compliance monitoring function as the state auditor

considers appropriate.

(j) In this section:

(1) "Desk review" means an administrative review by the board that is based on information reported by an institution of higher education or private or independent institution of higher education, including supplemental information required by the board for the purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the board during a site visit.

(2) "Site visit" means an announced or unannounced in-person visit by a representative of the board to an institution of higher education or private or independent institution of higher education for the purposes of compliance monitoring.

## CHAPTER 1. AGENCY ADMINISTRATION

### SUBCHAPTER A. GENERAL PROVISIONS

#### Section

- 1.1. Dates for Regular Quarterly Meetings of the Board
- 1.2. Authority of the Commissioner to Interpret Rules
- 1.3. Educational Data
- 1.4. Rules of Order
- 1.5. Coordinating Board Committees
- 1.6. Advisory Committees
- 1.7. Petition for the Adoption of Rules
- 1.8. Historically Underutilized Business (HUBs) Program
- 1.9. Training for Members of Governing Boards and Board Trustees
- 1.10. Administration of the Open Records Act
- 1.11. Protest Procedures for Resolving Vendor Protests Relating to Purchasing Issues
- 1.12. Foreign Travel
- 1.13. Internal Auditor
- 1.14. Negotiated Rulemaking
- 1.15. Authority of the Commissioner to Propose Board Rules
- 1.16. Contracts for Materials and Services
- 1.17. Authority of the Commissioner to Provide Direct Supervision of the Education Research Centers
- 1.18. Operation of Education Research Centers
- 1.19. Education and Training of Board Administrators and Employees

1.1 – 1.13 (No change.)

1.14. Negotiated Rulemaking

(a) Definitions. The following words and terms, when used in this rule, shall have the following meaning:

(1) Alternative Dispute Resolution coordinator – An agency employee appointed under Chapter 1, Subchapter B, Rule 1.22.

(2) Board or agency– Texas Higher Education Coordinating Board

(3) Commissioner – The Commissioner of Higher Education

(4) Consensus – The negotiated rulemaking committee has reached consensus on a matter only if the agreement is unanimous, unless the committee has unanimously agreed to define consensus in another manner. The absence or silence of a member at the time the final



consensus vote is taken is equivalent to agreement. If consensus is achieved, negotiated rulemaking committee members may not thereafter withdraw their agreement.

(5) Institutions of higher education – As defined in Texas Education Code Section 61.003

(6) Private or independent institutions of higher education – As defined in Texas Education Code Section 61.003

(b) If the Assistant Commissioner whose Division has jurisdiction over the subject matter of the rule or rules to be adopted concludes that the agency may benefit from negotiated rulemaking, he or she shall request that the agency's Alternative Dispute Resolution (ADR) coordinator assist in determining whether it is advisable to proceed under the procedures established in Chapter 2008 of the Texas Government Code.

(1) Scope and Purpose. This rule also implements Texas Education Code Sections 61.0331, 61.0572, 61.058, and 61.07761 which require the Board to engage in negotiated rulemaking with institutions of higher education in accordance with the procedures established in Texas Government Code Chapter 2008 when adopting a policy, procedure, or rule relating to:

(2) the transfer of credit under Texas Education Code Section 61.827 or admission policies regarding:

(A) the common admission application under Texas Education Code Section 51.762;

(B) uniform admissions under Texas Education Code Section 51.807; or

(C) graduate and professional admissions under Texas Education Code 51.843; or

(3) the reevaluation of data requests under Texas Education Code Section 51.406;

(4) compliance monitoring under Texas Education Code Section 61.035;

(5) the standards for cost, efficiency, space need, and space use under Texas Education Code Sections 61.0572 and 61.058 in regards to:

(A) new construction, rehabilitation, repair of buildings and facilities at institutions of higher education; and

(B) the purchases of improved real property added to institutions of higher education's educational and general buildings and facilities inventory; or

(6) the allocation (including the allocation methodologies and related procedures) or distribution of funds, including financial aid or other trusteed funds under Texas Education Code Section 61.07761, to institutions of higher education and private or independent institutions of

higher education. For rulemaking on this issue, the Board shall engage in negotiated rulemaking with both institutions of higher education and private or independent institutions of higher education, as applicable.

(A) With the exception of sections 1.14(a), (b), and (d)(3)-(4), this rule and the procedures set forth herein apply only to those matters, as set forth in (b-1), in which the Board is required to engage in negotiated rulemaking.

(B) In matters other than those addressed in (b-1), the Board retains the right to engage in negotiated rulemaking in accordance with the procedures established in the Texas Government Code, Chapter 2008.

(c) Appointment of Convener. The ADR coordinator will appoint an agency employee to serve as the convener to assist in negotiated rulemaking. The convener may not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the convener.

(d) Duties of Convener. (1) The convener will assist the ADR coordinator in identifying institutions of higher education (and private or independent institutions when rulemaking under 1.14(a)(5) is considered) and other stakeholders (such as students, state agencies, and accreditors) who are likely to be affected by the proposed rule(s), including identifying institutions and other stakeholders who may oppose the issuance of rule(s). The convener will discuss with institution representatives and other stakeholders whether they are willing to participate in negotiated rulemaking, which issues a negotiated rulemaking committee should address, and whether there are other institutions or persons the convener needs to identify who may be affected by the proposed rule(s).

(2) Where the Board is required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator the outcome of the above discussions.

(3) Where the Board is not required to engage in negotiated rulemaking, the convener shall report to the ADR coordinator on the relevant considerations regarding negotiated rulemaking, including, but not limited to:

(i) the number of identifiable interests that would be significantly affected by the proposed rule(s),

(ii) the probable willingness and authority of the representatives of affected interests to negotiate in good faith,

(iii) the probability that a negotiated rulemaking committee would reach a unanimous or a suitable general consensus on the proposed rule(s),

(iv) the adequacy of Board, institution, and citizen resources to participate in negotiated rulemaking, and

(v) the probability that the negotiated rulemaking committee will provide a balanced representation between affected stakeholder interests.

(4) Where the Board is not required to engage in negotiated rulemaking, the convener shall also recommend to the ADR coordinator whether negotiated rulemaking is appropriate.

(5) The report and recommendations of a convener are public information and available on request to any member of the public.

(e) Publishing Notice of Proposed Negotiated Rulemaking. To initiate negotiated rulemaking, the Commissioner will publish a notice of intent to establish a negotiated rulemaking committee to prepare proposed rules. Such notice will be published both in the *Texas Register* and on the Board's website. The ADR coordinator will consider all comments received by the close of the comment period pursuant to the notice of intent. The notice of intent will include:

(1) a statement that the Board intends to engage in negotiated rulemaking;

(2) a description of the subject and scope of the rule(s) to be developed;

(3) a description of the known issues to be considered in developing the rule(s);

(4) a list of the interests likely to be affected by the proposed rule(s);

(5) a list of the individuals the ADR coordinator proposes to appoint to the negotiated rulemaking committee to represent the Board and affected interests (each committee will include at least one agency staff representative);

(6) a request for comments on the proposal to engage in negotiated rulemaking, including a description of the issues the commenter believes will need to be addressed in developing the rule(s), as well as on the proposed membership of the negotiated rulemaking committee; and

(7) a description of the procedure through which an institution or person who will be significantly affected by the proposed rule(s) may, before the ADR coordinator appoints members to the negotiated rulemaking committee, apply for membership on the committee or nominate another to represent the institution's or person's interests on the committee (before nominating an individual to the committee, the nominator should confirm that the potential nominee can and will make the necessary time commitment to the negotiations).

(f) Appointment of Negotiated Rulemaking Committee Members. After considering comments and nominations received in response to the notice of proposed negotiated rulemaking, the ADR coordinator will appoint members to a negotiated rulemaking committee to serve until the proposed rule(s) (if any) is adopted by the Board. The ADR coordinator will appoint members to the committee with a goal of providing adequate and balanced representation for the affected interests while keeping the size of the committee manageable. The ADR coordinator

shall select individuals with demonstrated expertise or experience in the relevant matters under negotiations and who reflect the diversity of the identifiable interests which could be significantly affected by the proposed rule(s). An individual selected to serve on the committee will be expected to represent the interests of his or her entity, organization or group, and participate in the negotiations in a manner consistent with the goal of developing proposed rules on which the committee will reach consensus.

(g) Costs of Participating in Negotiated Rulemaking.

(1) The Board will provide appropriate administrative support to the negotiated rulemaking committee. Except as provided below, a member of a negotiated rulemaking committee is responsible for the member's own costs in serving on the committee. However, if:

(A) The member certifies that he or she (or the entity, organization or group which the member represents) lacks sufficient financial resources to participate as a member of the committee and provides any requested proof of same; and

(B) The ADR coordinator determines that the member's service on the committee is necessary for the adequate representation of an affected interest,

(C) then, the Board may pay a member's reasonable travel and per diem costs related to the member's service on the committee at the rate set in the General Appropriations Act for state employees.

(2) The costs of the negotiated rulemaking facilitator described in subsection (h) shall be borne equally, on a pro rata basis, by all entities represented on the negotiated rulemaking committee, unless the negotiated rulemaking committee unanimously agrees to a different cost allocation; or the facilitator is an employee of the Board, in which event the costs of the facilitator shall be borne by the Board.

(h) Appointment of Negotiated Rulemaking Facilitator. The ADR coordinator will appoint a negotiated rulemaking facilitator who will utilize alternative dispute resolution skills to attempt to arrive at a consensus on a proposed rule(s). The ADR coordinator may appoint a Board employee or contract with another state employee or private individual to serve as the facilitator. The ADR coordinator's appointment of the facilitator is subject to the approval of the negotiated rulemaking committee and the facilitator serves at the will of the committee. The ADR coordinator will appoint the facilitator utilizing, among other things, the following criteria:

(1) The facilitator must possess the qualifications required for an impartial third party under Civil Practice and Remedies Code Section 154.052(a) and (b);

(2) The facilitator is subject to the standards and duties prescribed by Civil Practice and Remedies Code Sections 154.053(a) and (b) and has the qualified immunity prescribed by Civil Practice and Remedies Code Section 154.055, if applicable;

(3) The facilitator will not be the person designated to represent the Board on the negotiated rulemaking committee on substantive issues related to the rulemaking; and

(4) The facilitator will not have a financial or other interest in the outcome of the rulemaking process that would interfere with the person's impartial and unbiased service as the facilitator.

(i) Duties of Negotiated Rulemaking Committee and Facilitator. The facilitator will preside over meetings of the negotiated rulemaking committee and assist the members of the committee to establish procedures for conducting negotiations and will utilize alternative dispute resolution skills to encourage a consensus on the proposed rule(s). The facilitator may not, however, compel or coerce the members to reach a consensus.

(j) Consensus and the Negotiated Rulemaking Committee's Report. If the negotiated rulemaking committee reaches a consensus, the committee will draft and send a report to the Board that contains the text of the proposed rule(s). If the committee determines that only a partial agreement on a proposed rule(s) has been reached, the committee will draft and send a report to the Board that describes the partial agreement achieved, lists the unresolved substantive issues, and includes any other information or recommendations of the committee. The committee's report is public information. If consensus is not achieved, the Board shall determine whether to proceed with proposed rule(s). If the Board decides to proceed with proposed rule(s), the Board may use language developed during the negotiations or develop new language for all or a portion of the proposed rule(s).

(k) Proposed Rulemaking under the APA. If the Board decides to proceed with rulemaking after receipt of the negotiated rulemaking committee's report, the Board shall initiate rulemaking under the regular Administrative Procedures Act (APA) procedures, as prescribed in Texas Government Code Chapter 2001, Subchapter B. In addition to the APA's requirements regarding the contents of notice of proposed rulemaking, the notice will also state that:

(1) the Board used negotiated rulemaking in developing the proposed rule, and

(2) the negotiated rulemaking committee report is public information and the report's location at which it will be available to the public.

All published proposed rules will conform to the agreements resulting from consensus, if any, achieved through negotiated rulemaking (as reflected in the negotiated rulemaking committee's report).

(l) Confidentiality of Certain Records and Communications. Civil Practice and Remedies Code (CPRC) Sections 154.053 and 154.073 apply to the communications, records, conduct, and demeanor of the facilitator and the members of the negotiated rulemaking committee as if the negotiated rulemaking were a dispute being resolved in accordance with CPRC Chapter 154. In the negotiated rulemaking context, the Texas Office of the Attorney General, subject to review by a Travis County district court, decides in accordance with CPRC Section 154.073(d) whether a communication or material subject to Section 154.073(d) is confidential, excepted from required disclosure, or subject to required disclosure. Notwithstanding CPRC Section 154.073(e):

(1) a private communication and a record of a private communication between a facilitator and a member or members of the committee are confidential and may not be disclosed unless the member or members of the committee, as appropriate, consent to the disclosure; and

(2) the notes of a facilitator are confidential except to the extent that the notes consist of a record of a communication with a member of the committee who has consented to disclosure in accordance with subdivision (1).

(m) The Board hereby delegates to the Commissioner the responsibilities and authority set forth in this section.

# TEXAS HIGHER EDUCATION COORDINATING BOARD INTERNAL POLICIES AND PROCEDURES FOR COMPLIANCE MONITORING

## 1-1 PURPOSE

The purpose of this manual is to guide the Compliance Department in the discharge of its role and responsibilities, as defined by the THECB Board, and in accordance with statutory requirements and professional standards. It guides compliance staff in the efficient and effective performance of their assigned duties. It serves as a reference to others having an interest in the compliance function at the Texas Higher Education Coordinating Board (THECB).

Specifically, this manual was developed to achieve the following objectives:

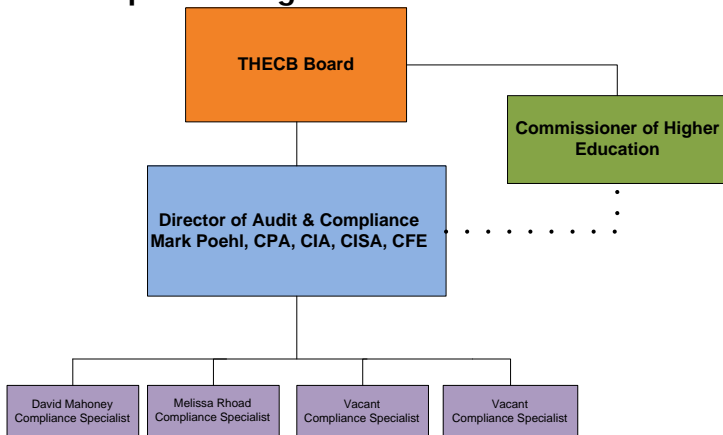
- To aid in the efficient and effective use of compliance resources by standardizing routine procedures;
- To provide written documentation for review of the compliance function by entities external to the compliance function (e.g., state auditors, peer review groups, agency management);
- To provide standards for the measurement of compliance work performance and to enhance quality assurance;
- To provide evidence of compliance with applicable regulations and standards;
- To provide a tool for training and development of compliance staff.

Suggestions and recommendations concerning this manual are welcome and should be submitted to the Director.

## 1-2 MISSION

The mission of Compliance Monitoring at THECB is to ensure the proper use of the agency's funding and the accuracy of data used for funding and policy making, through a risk based approach.

## 1-3 Compliance Organization Chart



## **1-4 Compliance Department Staff**

### **Director, Internal Audit and Compliance**

**Mark Poehl, CPA, CIA, CISA, CFE**

[mark.poehl@thehb.state.tx.us](mailto:mark.poehl@thehb.state.tx.us)

**512-427-6161**

Mark joined the Coordinating Board in 2012 and has 24 years of state government audit experience. Mark's work experience includes 19 years in higher education internal audit at the Texas A&M University System, as well as 4 years as Audit Director with the Texas Health and Human Services Commission Office of Inspector General.

At the Office of Inspector General, Mark managed the second largest audit department in Texas state government. At the Texas A&M University System, Mark led audit teams performing a wide range of engagements focused on business, academic, research and technology operations. Mark is the past President of the Texas Association of College and University Auditors. He also led numerous internal audit peer reviews of higher education audit functions in Texas and Oregon, and he served as a volunteer peer review team member on other engagements conducted by the Institute of Internal Auditors.

Mark is a graduate of Texas A&M University with a BBA in Accounting. He is a Certified Public Accountant, Certified Internal Auditor, Certified Fraud Examiner, and Certified Information Systems Auditor.

### **Compliance Specialist**

**David Mahoney**

[david.mahoney@thehb.state.tx.us](mailto:david.mahoney@thehb.state.tx.us)

**512-427-6493**

David joined the Coordinating Board in 2013 and has 25 years of state government audit experience. David's work experience includes 5 years as Manager with the Texas Health and Human Services Commission Office of Inspector General.

At the Office of Inspector General, David managed the Subrecipient Financial Review Unit. At the Office of Inspector General, David led audit teams performing a wide range of engagements focused on health related operations.

David is a graduate of Hardin Simmons University with a BBA in Accounting.

### **Compliance Specialist**

**Melissa Rhoad**

[melissa.rhoad@thehb.state.tx.us](mailto:melissa.rhoad@thehb.state.tx.us)

**512-427-6496**

Melissa joined the Coordinating Board in 2012 and has 17 years of regulatory compliance program experience, primarily related to financial matters, of which 14 years have been with Texas state agencies. Melissa's work experience includes program administration, project planning, legal research, litigation support, field investigations, and their respective professional documentation methods.



Melissa is a graduate of the University of Houston, with a B.S. in Technology, with honors, and started her career with E.F. Hutton & Company as a Registered Representative (RR) formerly of the National Association of Securities Dealers and Automated Clearing House Accredited Professional (AAP). She went on to earn her national certification in post-graduate Legal Studies, with honors, approved by the American Bar Association via the University of San Diego, School of Law (CLA), is a Certified Licensed Investigator (CLI), and a certified Project Management Professional (PMP).

## **2-1 THECB Ethics Policy**

All THECB employees are required to adhere to the CB Ethics Policy, Chapter E-Ethics and Standards of Conduct Policy at

[http://cbnet/EmpRef/Policy/SubChapters.cfm?Chapter\\_ID=5](http://cbnet/EmpRef/Policy/SubChapters.cfm?Chapter_ID=5)

Additionally, THECB has an Ethics site, located at

<http://cbsp42/sites/GeneralCounsel/Pages/Ethics.aspx>

All the THECB employees received Ethics-related training during orientation. A violation of these standards of conduct may constitute a state or federal crime, as well as a violation of these policies. An employee should refer questions regarding the policies on ethics or standards of conduct to the Office of General Counsel (OGC).

## **2-2 Professional Conduct**

Audits are to be conducted in a dignified and professional manner. Employees are to be accorded courteous, dignified treatment under all circumstances and not be given cause for antagonism.

Working arrangements for conducting an audit should cause the least possible disruption to the operations or activity involved. Efforts will be made to minimize inconvenience to the operating staff in the examination of documents and records in regular use by them.

## **2-3 Auditor Independence**

Independence and objectivity are closely linked. An independent viewpoint and objective attitude are essential to the successful conduct of audits. Independence entails objective consideration of facts and unbiased judgment in carrying out audits and forming conclusions. Objectivity is a fundamental audit requirement. All significant and pertinent information should be developed, whether advantageous or disadvantageous to the client, and given full and impartial consideration in reaching conclusions. The forming of conclusions should be delayed until all pertinent evidence has been gathered.

Each Compliance Specialist signs an Independence Statement at the beginning of each fiscal year. This statement documents the specialist's ability to be objective, fair, and impartial while conducting audit work. It also provides an expectation the specialists will uphold the principles outlined in the GAGAS Ethical Principles.

Compliance Specialists are required to notify the Director as soon as any possible impairment is identified.

## 2-4 Open Records

Audit records and documentation may be excluded from the general requirements of the Texas Open Records Act. General Counsel will be consulted for determinations on a case by case basis.

Draft reports and audit work papers will not be made available to anyone unless specifically authorized by the Director. Final reports are a matter of public record.

Compliance Specialists include the following statement after the signature block on all e-mails that are related to audit projects.

[CONFIDENTIAL – GOVERNMENT CODE §552.116 – This information is part of the audit working papers of Texas Higher Education Coordinating Board, Office of Internal Audit and Compliance. These working papers are protected from disclosure under §552.116 of the \*Texas Government Code\* and may not be shared, released, or otherwise disclosed. If you have received the message in error, please advise the sender by reply E-mail and delete the message.](#)

## 2-5 Professional Certifications

The pursuit of professional certifications is highly encouraged by the Director. Certification is recognized as an integral part of the development of staff of the Compliance Department. The knowledge gained from preparation for these certifications is beneficial to the effectiveness of the entire compliance function and its contribution to THECB.

1. All staff members are encouraged to obtain certification relevant to their professional development. Time off is allowed to sit for exams. Study time to prepare for an exam is not allowed unless approved by the Director.
2. A Review Course may be paid for by the Department if the Course qualifies for Continuing Professional Education and with prior approval by a Director.

## 2-6 Professional Organizations

The Compliance Department has a commitment to being involved in professional organizations relevant to the furtherance of compliance. Professional organizations allow an employee to network and obtain contacts in their particular field. Some professional organizations of relevance to compliance and higher education are listed below.

- American Institute of Certified Public Accountants (AICPA)
- Association of College & University Auditors (ACUA)
- Information Systems Audit & Control Association (ISACA)
- Institute of Internal Auditors (IIA)
- Association of Certified Fraud Examiners (ACFE)
- Texas Society of CPAs (TSCPA)

- National Society of Compliance Professionals
- Society of Corporate Compliance and Ethics

## **2-7 Dress Code**

Staff members are required to maintain a professional appearance.

## **2- 8 Compliance Department Time Reporting**

Compliance Specialists are required to complete the Timekeeping Sheet on a weekly basis. This form records the amount of hours spent on each audit project for each audit phase and hours expended in various categories of direct/administrative/indirect time.

## **2-9 Leave**

Staff members are responsible to follow agency policies and procedures - Chapter C. Policy on Leave Benefits and Related Pay Practices, located at [http://cbnet/EmpRef/Policy/SubChapters.cfm?Chapter\\_ID=3](http://cbnet/EmpRef/Policy/SubChapters.cfm?Chapter_ID=3)

## **2-10 Flextime and Work Hours**

Regular attendance is an essential function of employment. Staff members are permitted to work flex schedules. Flexible office working hours are between 6:00 a.m. and 6:00 p.m. However, upon approval of the Director, employees may work adjusted schedules. The Director is responsible for ensuring the needs of the Department are met when establishing individuals' office working hours.

## **2-11 Comp Time**

Staff members are responsible to follow agency policies and procedures - Chapter C. Policy on Leave Benefits and Related Pay Practices, 2-Policy on Overtime, C-Exempt Employees, located at [http://cbnet/EmpRef/Policy/SubChapters.cfm?Chapter\\_ID=3](http://cbnet/EmpRef/Policy/SubChapters.cfm?Chapter_ID=3)

## **2-12 Audit Travel**

Staff members are responsible for completing the required forms for travel reimbursement, in accordance with THECB travel policy, located under agency intranet at <http://cbnet/BSS/AP5travel.htm>.

## **2-13 Remote Access**

Staff members are responsible to follow agency policy, HH-07 Mobile Computing Devices, E Mobile Devices, Networking and Remote Access, located under agency intranet at <http://cbsharepoint/sites/intranet/its/ISS%20Policy/ISS%20Policy%20Landing%20Page.pdf>

## **2-14 Records Retention**

Staff members are responsible to follow agency policy, located under <http://cbnet/Forms/>, *THECB Record Retention Schedule (under Commissioner's Office Section)*.

## **2-15 Information and Computer Security**

Staff members are responsible to follow agency policies and procedures, Chapter HH- Information Solutions and Services Policies at <http://cbsharepoint/sites/intranet/its/ISS%20Policy/ISS%20Policy%20Landing%20Page.pdf>

## **2-16 Use of State-owned property**

Staff members are responsible to follow agency policies and procedures, Chapter HH- Information Solutions and Services Policies, which mentioned about acceptable usage of electronic mail, mobile devices, network infrastructure.... at <http://cbsharepoint/sites/intranet/its/ISS%20Policy/ISS%20Policy%20Landing%20Page.pdf>

## **2-17 Employee Performance Evaluations**

The Compliance Department follows agency policies and procedures, Chapter DD-01, *Employee Performance Appraisal Process* at <http://cbnet/EmpRef/Policy/>.

## **3-1 Risk Assessment**

Risk assessments are performed to develop the risk-based approach to compliance monitoring. Risk assessment is performed as specified in SB 215, 83<sup>rd</sup> Legislature Regular Session. Factors specified in legislation include:

1. The amount of student financial assistance or grant funds allocated to the IHE by the Board
2. Whether the IHE is required to obtain and submit an independent audit
3. The IHE's internal controls
4. The length of time since the IHE's last desk review or site visit
5. Past misuse of funds or data misreported by the IHE
6. Regarding data verification, whether the data reported to the Board by the IHE is used for determining funding allocations
7. Other factors considered appropriate by the Board

The Director provides an overview of the risk assessment process to the Commissioner before presenting the annual compliance audit plan to the Committee on Agency Operations at the July Board meeting for review and approval. The risk assessment must be performed annually; however, because conditions change, priorities determined through the risk assessment process may be reviewed and updated throughout the year.

### **3-1-1 Project Risk Assessment**

During the planning phase of each audit, a risk assessment is performed to identify high risk activities in the activity being audited. The purpose of project risk assessments is to identify the highest risk activities, and processes in the area under review and assist compliance specialists

to refine the scope and objectives of the project. Risk is defined as the probability something will adversely affect the achievement of desired results or objectives. As such, there are two categories of risk to be considered when performing a risk assessment:

- Inherent risk - the susceptibility of a program or system to a material shortcoming without taking into consideration internal or management controls.
- Control risk - risk the internal or management control system will not detect or prevent material errors and irregularities in achieving desired results, goals or objectives.

If staff discover significant risks during fieldwork that were not considered during planning, they should consult with the Director.

### **3-3 Audit Process<sup>1</sup>**

#### **3-3-1 Project/Audit Assignment**

Planning must be performed to determine the appropriate resources to achieve project objectives. The assignment of staff to a project is based on an evaluation of the nature and complexity of the project, time constraints, and available resources. The Director meets with compliance specialists and assigns work. The team leader prepares the audit assignment working paper and obtains approval from the director (either hard signature or sign off in Teammate).

#### **3-3-2 Setting Up Project**

Team leaders are responsible for setting up projects in Teammate as well as in H drive (<H:\Agency\Compliance>). When setting up projects, team leaders must set the project number and title under "List of Compliance Projects and Numbers" spreadsheet located at <H:\Agency\Compliance\CM-Adm>. After setting the project, team leaders should notify the team members.

#### **3-3-3 Use of Teammate and Agency Network Drive**

Team leaders are responsible for monitoring the team's use of Teammate. This should be limited to holding original (final version) documents. All the documents should be retained under network drive (<H:\Agency\Compliance>). If a document is too big to handle in Teammate, it should be kept under network drive.

#### **3-3-4 Pre-Planning and Administrative Work**

Compliance Specialists must use and document the Administrative and Pre- Planning Procedures located in Teammate and network drive. Upon initial assignment to the project, several items must be completed, including:

- Annual signed Statement of Independence of each team members

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<sup>1</sup> All the working papers templates can be found in respective folder under network drive at <H:\Agency\Compliance\FORMS>

- Initial Team Meeting to provide project orientation and discuss project goals and objectives, if needed
- Research to obtain background information about the project by querying at the internet/intranet.
- Develop preliminary objective(s) and scope
- Send notification memo. Notification memo should include the audit name, preliminary scope and objectives, assigned Team Leader, request for primary point of contact from the client, estimated timelines for completing work, and plans for an entrance conference. The memo should be drafted by the team leader and sent by the Director. The notification should be emailed to the IHE President and other IHE personnel, as appropriate.

### Audit Resources

The Director will evaluate the nature and complexity of the assignment, time constraints, and available resources. If the knowledge, skills or other resources available of the compliance specialist(s) are inadequate for the proper performance of the assignment, the Director will consider the following options:

- Seek internal agency expertise from all staff levels
- Obtain outside resources such as assistance from the Texas State Auditor's office
- Obtain additional training to obtain the knowledge, skills, and disciplines to adequately perform the audit work
- Postpone the project until resource needs are met

If the Director determines that audit resources are inadequate to properly conduct the audit, the Commissioner and the Chair of the Agency Operations Committee will be notified and be consulted as to what further actions will be appropriate.

### **3-3-5 Planning Work**

Proper planning of audits helps ensure that major business risks are adequately considered and addressed during the audit, including those identified during the Annual Risk Assessment. Planning requires thorough definition of objectives and how they can be attained while establishing a balance between the audit scope and objectives, time frame, and staff availability to ensure optimum use of resources.

#### SCOPE/OBJECTIVE

Audit objectivities are broad statements that define the intended audit accomplishments. Audit procedures are the work methods used to attain audit objectives. Together, audit objectives and audit procedures define the scope of work to be performed. The primary objectives of compliance are to ensure:

- The reliability and integrity of information
- Compliance with policies, plans, procedures, laws and regulations

GAGAS, Chapter 6 states, "Auditors must adequately plan and document the planning of the work necessary to address the audit objectives."

Other audit objectives may be developed based on the results of the preliminary survey. Audit objectives and procedures should address the risks associated with audited activity. Objectives will depend on the type of audit to be performed.

Planning Steps, not limited to:

- Schedule and conduct the entrance conference meeting
- Document the entrance conference notes, presentation and attendee sign in sheet in Teammate
- Obtain background information, conduct interviews, as necessary, and document
- Perform project related risk-assessment, identify high risk areas, and finalize audit objectives and scope
- Consider the possibility of fraud, waste and abuse in the context of the specific audit objectives
- Gather data for review and analysis
- Conduct internal End of Planning meeting with the Director and other compliance staff members to review risk assessment, solidify scope/objectives, get approval on the fieldwork audit program, summarize in writing any issues already developed, as well as those that may become issues during fieldwork, review budget to actual hours, and amend scope/objectives and/or amend budget, as necessary
- Communicate any amended audit objectives and scope to the client
- Document overall planning summary memo, as needed.

BACKGROUND INFORMATION

Background information on the audit area should be gathered and reviewed. Background information may continue to develop throughout the audit and can be gathered before, during and after the preliminary survey. Such items may include:

- Mission statements, goals, and plans of the audit project
- Organizational information such as names of key employees, job descriptions, policy and procedures manuals, and details about any recent changes
- Work flow chart
- Budget, operating, and financial information

- Prior audit reports and work papers
- Prior compliance results
- Results of other audits, completed or in process
- Technical, legal or other authoritative literature applicable to the audit project.

Any unusual items or potential concerns arising from the background review should be documented in the audit work papers and any limitations or effects on audit scope arising from the initial review of background information should be explained.

#### ENTRANCE CONFERENCE

An entrance conference will be held with the management responsible for the activity under review. The compliance specialist at this meeting shall discuss, as applicable, the following:

- The planned audit objectives and scope of work
- An overview of the audit process
- Logistical requirements
- The timing of audit work
- The process of communicating throughout the audit, including the work methods, time frames and individuals who will be responsible
- The operations of the activities being audited
- The concerns and requests of IHE management
- Description of compliance reporting procedures and follow-up process
- The audit periods covered and estimated completion dates.

The entrance conference will be used to solicit any input from client/management that might affect the completion of the audit. The entrance conference should be conducted in a professional, open atmosphere and should result in the development of mutual respect between the client and the compliance function. After the entrance conference is concluded, the results and conclusions of the meeting will be summarized in a work paper. The primary purpose of the work paper should be to provide evidence of the meeting, provide a basis for further planning, and to help insure there are no miscommunications between the compliance monitoring function and IHE management. The entrance conference can be done by phone or email on a case by case basis depending on the specific circumstances.

#### PROCESS FLOWCHART

A process flowchart is a diagram that shows a step-by-step progression through a procedure or system by using connecting lines and a set of conventional symbols. A flowchart:



- Portrays graphically the actual sequence of events and flow of data
- Permits a more comprehensive understanding of a system or procedure
- Produces a more thorough identification of strength and weaknesses of a system or procedure
- Helps ensure that the compliance specialist has considered the entire system
- Allows a quick overview of the client's systems or procedures

Flowcharting can be time-consuming, so the compliance specialist should evaluate the cost-benefit relationship between the effort required and the expected results. Whenever flowcharts are developed, standard flowcharting symbols will be used and clearly labeled (TYPICALLY in MS Visio).

### **3-3-6 Fieldwork**

Fieldwork is a systematic process of gathering evidence about the project area or activity under review, then objectively assessing to determine if established criteria are being followed. The results obtained during fieldwork are communicated to management in the audit report.

A field work program is developed based on the results in planning phase. The fieldwork program should be discussed with the Director and be approved during the planning phase. Key aspects of fieldwork may include:

- Interviewing appropriate internal or external personnel
- Conducting surveys of the activity being reviewed
- Evaluating controls in place to determine control weaknesses, which create or increase risk
- Reviewing operations, activities, and/or transactions to determine if they are in compliance with laws and regulations
- Informally discuss issues or concerns as a team, and with the client (throughout fieldwork as issues come to our attention) in the End of the Fieldwork Meeting. During End of Fieldwork meeting, present written synopsis of issues to client and solicit feedback; recap any information still needed from client.

Fieldwork must be documented thoroughly in Teammate. The number and content of fieldwork procedure summaries will vary depending upon the audit. Teams should work with the team leader if they find the procedure summaries are not producing sufficient or appropriate audit evidence.

### **AUDIT EVIDENCE**

Audit evidence should be sufficient, appropriate, competent, relevant, and useful to provide a reasonable basis for the auditors' issues, conclusions, and recommendations. Appropriateness includes whether the evidence is relevant, reliable, and valid. Sufficiency includes whether enough evidence was obtained.

Various techniques can be used to obtain audit evidence, such as tests of transactions, analysis, computation, verification, observations, inquiry, and discussion. In evaluating evidence, auditors should use sound judgment when determining whether they have obtained and analyzed all pertinent evidence necessary to achieve specific audit objectives. Audit issues, if any, should be summarized in the finding sheet under the reporting phase.

### WORKING PAPERS

Properly prepared working papers are both a tool to aid in the accomplishment of the audit function, and a systematic record of the work performed and the information obtained. They are the basis for report preparation and provide written substantiation of audit findings. They are a measure, in part, of how audit responsibilities are carried out, and furnish a basis for development of plans and programs for subsequent audits.

The nature and requirements of the audit assignment will govern the type and content of working papers. Common to all audit reports is the requirement to record all significant and relevant information in an orderly manner. The following characteristics for comprehensive working papers will be adhered to as basic and minimum requirements:

- Relevant-directly related to the audit objectives
- Titled-Note project name and number
- Descriptive-Contain the purpose of the work paper
- Clear-Source of the information used, examined, reviewed, observed, or who you interviewed to gain evidence
- Complete

Care should be taken to insure that information recorded is accurate and reliable. Information obtained verbally should be corroborated with other evidence.

Most importantly, the working papers must be prepared in such a manner as to provide a clear record of what was done in the audit and to provide support for everything contained in the audit report. Only pertinent papers of thick publications will be included as a working paper. Working papers are documented in Teammate.

### **3-3-7 Reporting**

The report is the official document by which management is apprised of audit results. Reports are created outside of the Teammate environment to allow compliance specialists flexibility in the layout and presentation. Once released, audit reports become public documents.

Reports must be presented in a clear and convincing manner in order to provide management with information to clearly understand the issues, risks, and recommendations.

The client is kept informed throughout the audit of any pending issues. End of Fieldwork meetings occur on all projects and are an additional mechanism for such communications.

The Exit Conference with client personnel is used to present the written draft/unsigned report and to solicit feedback. A Draft Audit Report issued to the IHE President and other relevant personnel is sent thereafter, providing a two week response timeframe if audit issues exist (or longer timeframe for response at the discretion of the Director).

The final report is issued electronically to the IHE President and other relevant IHE personnel, the AOC chair, Board Chair and Vice Chair and other relevant Board personnel. Final reports are presented to the AOC at the regular quarterly meeting.

All reports must be routed, reviewed and approved in accordance with the Quality Control Form and Form should be retained in Teammate. Staff should retain appropriate documents along with draft report with management response, draft report and final report with cross-reference and without cross-reference in Teammate. The final signed report without cross-reference should be saved in PDF format in Teammate.

### Audit Observations

An audit observation is generally the auditor's work paper documentation of reportable conditions.

The five elements included in the finding sheets:

1. Condition – (What does exist)

This is a statement of what actually exists: specifically, how the current condition deviates from what should exist, or how it is in some way deficient. It should be simply and clearly stated. Remember that the condition should be based on facts supported by the work papers. Hyperlinks are to be added here to support for the condition.

2. Cause – (Why the difference exists)

There are times when the condition and cause are closely related. Look closely at what is "causing" the condition. Understanding why the difference exists or occurred will help the client correct it. Ask the client to explain why the difference exists and how they may have prevented the difference.

3. Criteria – (What should exist)

Use authoritative references developed during the planning phase of the audit, ensuring that all criteria have been discussed and validated with the client.

4. Effect – (The consequence of the difference)

The statement should center on the consequences that the organization might encounter due to the existing condition.

5. Recommendation – (What action is needed)

The auditor's recommendation may include suggested actions for clients to resolve reported conditions.

Observations should be reviewed by both the Team leader and the Director by having both sign off as Reviewer in Teammate.

## EXIT CONFERENCE

In completing fieldwork, an exit conference should be held with the person in charge of the organizational unit audited and relevant client staff. The appropriate Executive Staff should also be provided the opportunity to attend. During this conference reasonable efforts are made to develop a clear understanding by both parties of the findings and recommendations of the audit. Working papers should fully document the closing discussions of the exit conference.

## Audit Report Category

Reports are categorized using the professional judgment of the Director, for the benefit of the Agency Operations Committee. Categorization is based on the level of finding(s) contained within the report – 1, 2, and 3.

- **Category 3 Reports** - These reports contain observations that, either individually or collectively, pose a significant risk for negative reputational or financial consequences. Executive Management and board attention is specifically directed to these reports.
- **Category 2 Reports** - These reports contain some observations. While the noted observations require management attention, if addressed timely they do not pose a significant risk for negative reputational or financial consequences.
- **Category 1 Reports** - These reports contain no reportable observations, or only minor observations.

## **3-3-8 Wrap-Up**

Wrap-up activities refer to tasks which must be completed to finalize a project. Steps may be added as needed, but as a minimum the following must be performed:

- Ensure all the procedure steps, working papers, coaching notes are signed off by the 1st level reviewer and ensure 2<sup>nd</sup> level reviewer reviewed key documents.
- Complete the Quality Control Form and retain in Teammate.
- Finalize the project in Teammate to keep it under library and to prevent any future edit/modification.

## **3-4 Audit Follow-Up**

Audit follow-ups are usually performed within one year after an audit report's release. Depending upon implementation dates in the original audit report, the Compliance Division's workload, and other factors, follow-ups may be conducted outside this timeframe. Follow-up activities should continue until all audit recommendations are satisfactorily resolved, or responsible management accepts the risk of not taking actions.

An audit recommendation is considered satisfactorily resolved if one of the following occurs:

- Management implements the audit recommendation

- Management implements an alternative measure that materially addresses the underlying condition of risk
- Management declines to implement the audit recommendation and accepts the resulting risks (a statement to that effect is to be included in the follow-up report) and the acceptance of risk is to be brought to the Board's attention
- Director determines further follow-up is not cost effective.

Appropriate personnel should be notified in advance of any follow-up activity planned. The scope of follow-up work should be limited to the original audit issues, but may include additional issues or concerns identified as a result of work performed. If significant changes have occurred which negate or outdate a significant portion of the original recommendation, staff should discuss with the Director to determine whether follow-up work would still be beneficial.

#### Audit Follow-up

Procedures for conducting an audit follow-up are as follows:

- Set up project in Teammate as well as in network drive.
- Document signed Statement of Independence.
- Review original corrective action plans to confirm corresponding implementation dates have passed.
- The Director will send a memorandum to the Commissioner/President of the institution, cc to other appropriate management requesting the status of implementing audit recommendations.
- Allow the management/client sufficient time to respond to the information request/update, depending on the number of prior issues and their complexity
- Verify and document corrective actions taken on previously reported items, and report results using standard reporting mechanisms described elsewhere in these procedures

### **3-5 Quality Assurance and Improvement Program (QAIP)**

The Compliance Department provides for an ongoing monitoring and periodic assessment of work through various levels of work paper review as well as both internal and external Quality Assurance Reviews (QAR).

The Compliance Department maintains a quality assurance and improvement program to evaluate and monitor operations of the compliance function and provide reasonable assurance to various stakeholders that the Compliance function:

- Performs work in accordance with generally accepted government auditing standards (GAGAS) promulgated by the Comptroller General of the United States.

- Operates in an effective and efficient manner; and
- Is perceived by stakeholders as adding value and improving audit operations.

### **3-5-1 Supervisory Review**

#### Compliance Department Activities

The Director provides ongoing monitoring and periodic assessments of the compliance department's processes, procedures, and projects.

#### Audit Projects

The Director assigns the projects to the project lead and provides guidance and oversight, throughout the project as needed. Staff work under limited supervision. Major project milestones are discussed with and approved by the Director. These milestones include but are not limited to the following:

- Entrance conference – all engagements, but this can be done by phone or email on a case by case basis – depending on the specific circumstances,
- Internal end of planning meeting – solidify scope/objectives; sign off on the fieldwork portion of audit procedures; summarize in writing any issues already developed, as well as those that may become issues during fieldwork; review budget to actual hours and amend scope/objectives or amend budget, as necessary.
- External end of planning meeting – present issues to date, discuss the focus of our fieldwork with the client
- Fieldwork – execute steps agreed to at end of planning; informally discuss issues or concerns as a team, and then with the client (throughout fieldwork as issues come to our attention)
- End of fieldwork – Present written synopsis of issues to client and solicit feedback; recap any information still needed from client; schedule exit conference
- Exit conference – present written draft of unsigned report and solicit feedback; discuss reporting process
- Draft report – provide 2 week response timeframe and request written IHE management responses to report recommendations
- Final report – issue to IHE President and other relevant personnel, AOC Chair, Board Chair, Board Vice Chair, Commissioner, and other appropriate Board management officials; send electronically on date the report is signed
- AOC meeting – include reports on agenda; list reports in priority order

### **3-5-2 Working Paper Review**

The Compliance Department performs two levels of working paper review where possible. The first-level review is performed by a compliance specialist other than the preparer of the working

paper, after each audit phase is completed. All working papers must be signed off by the preparer before commencing review of the working papers for that audit phase. The second level review of the working papers is performed by the Director at the time that the draft report is prepared, but prior to sending the draft report to the client.

### **3-5-3 Reporting Quality Control (QC) form**

The Compliance Department completes the Reporting QC Form for each audit project and a pdf is maintained in teammate.

### **3-5-4 Internal Reviews**

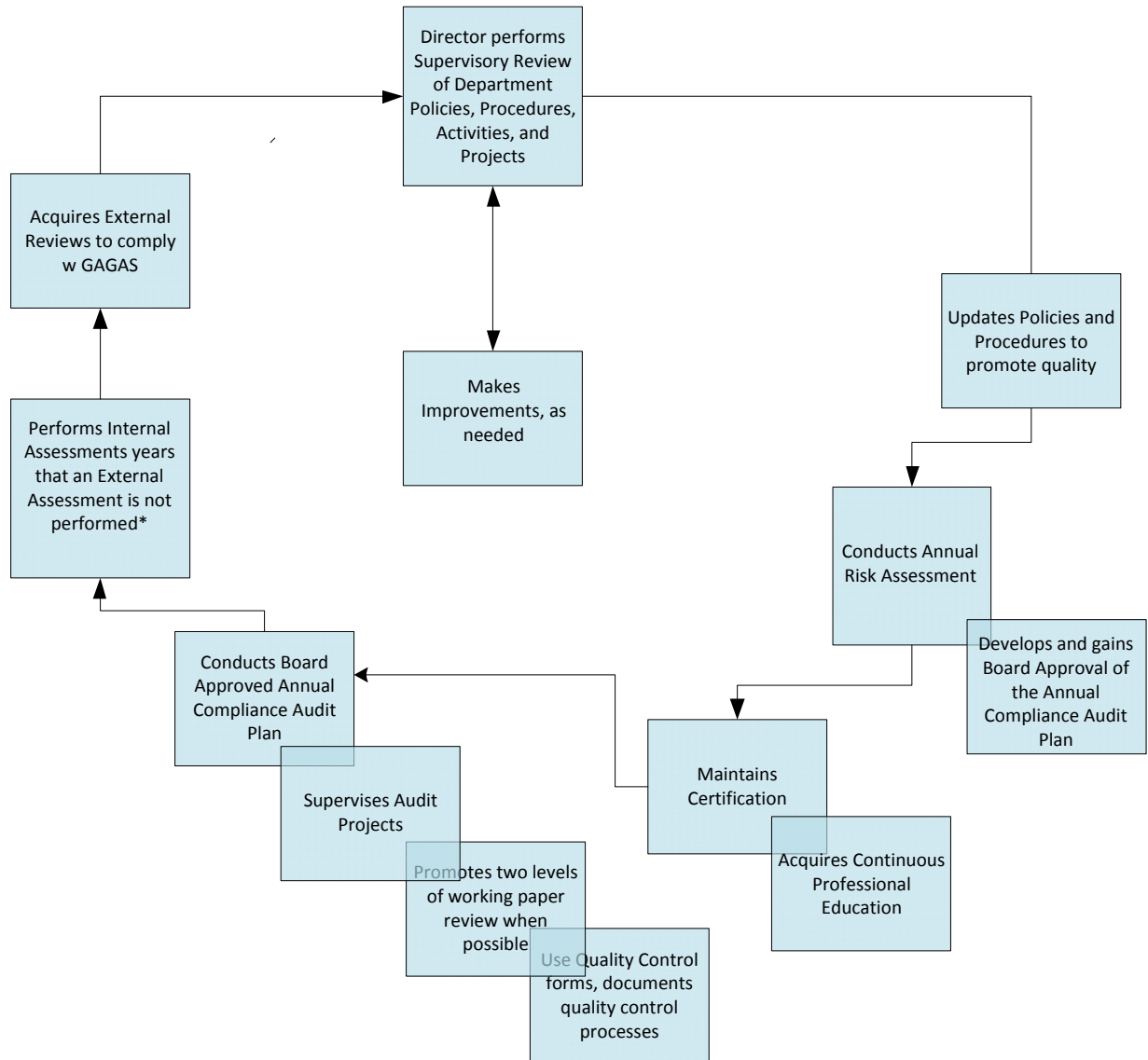
The Director guides the staff and team leaders in conducting periodic reviews (self-assessments) to assess quality of audit work performed, compliance with professional standards, audit effectiveness, and compliance with department policies and procedures. In addition to that, audit policies and procedures are reviewed on an on-going basis to ensure they support applicable auditing standards; rules and regulations, relevant and useful trainings are provided to the audit staff; supervision, project management, two levels of working paper review where possible, and the completion and review of quality control checklists/forms are performed.

Internal reviews are conducted annually, in each of the years not scheduled for review by external review. Results of internal reviews are provided to executive management and the AOC.

### **3-5-5 External Reviews**

In accordance with GAGAS, external (peer) reviews are conducted at least once every five years. External reviews are performed by auditors independent of the department, and a formal report is issued which includes an opinion of compliance with professional standards.

# Quality Assurance and Improvement Program





### **3-6 Coordination**

The Director coordinates activities with other internal and external providers of assurance and consulting services to ensure proper coverage and minimize duplication of efforts.

#### **3-6-1 Coordination with External and Other Auditors**

Audit activities are coordinated to the extent practical with external and other auditing entities. These entities include, but are not limited to, the Federal Government, the State Auditor's Office, the Office of Inspector General, and other higher education institutions' internal auditors.

#### **3-6-2 Coordination with Coordinating Board Internal Audit**

Compliance Specialists coordinate with Board Internal Auditors on preparing and/or making amendments to the annual audit plan to avoid duplication of effort and to promote efficiency.

### **4-1 Generally Accepted Government Auditing Standards (GAGAS)**

THECB Compliance Monitoring Department conducts its work in accordance with GAGAS.

#### **4-1-1 Risk Assessment and Annual Plan**

Risk assessment is required by Generally Accepted Government Auditing Standards. The Annual Compliance Audit Plan is based on risk assessment and is consistent with applicable legislation.

#### **4-1-2 Quality Assurance Reviews**

The GAGAS requires the department to follow quality assurance review in accordance with Chapter 3.

### **4-2 Professional Standards**

The GAGAS requires compliance auditors to follow applicable standards.

#### **4-2-1 Definition of Performance Audit**

Performance audits are defined as audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria.

#### **4-2-1 Ethical Principles**

GAGAS, Chapter 1 provides the foundation, discipline, and structure, as well as the climate of ethical principles that influence the application of GAGAS.

#### **4-2-2 Continuing Professional Education (CPE)**

Staff are required to adhere to the CPE standards established by the Comptroller General of the United States, Chapter 3, General Standards, Continuing Professional Education <http://www.gao.gov/govaud/govaudhtml/index.html>. Generally Accepted Government Auditing Standards (GAGAS) requires auditors obtain at least twenty-four hours of CPE every two years in subjects directly related to government auditing, the government environment, or the specific or unique environment in which THECB operates. The type and number of hours of annual auditor training should be based on the Director's professional judgment. Staff should attend any other agency and/or agency program related training (CPE or Non-CPE) as directed by the Director.

## Draft Rule Language on Compliance Monitoring

(a) Definitions. The following words and terms, when used in this rule, shall have the following meaning:

(1) Board – The Texas Higher Education Coordinating Board.

(2) Commissioner – the Commissioner of Higher Education, the Chief Executive Officer of the Board.

(3) Public Institution of Higher Education – defined in Texas Education Code, Section 61.003.

(4) Private or Independent Institution of Higher Education - defined in Texas Education Code, Section 61.003.

(5) Student Financial Assistance - includes grants, scholarships, loans, and work-study.

(6) Desk review - an administrative review by the board that is based on information reported by an institution of higher education or private or independent institution of higher education, including supplemental information required by the board for the purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the board during a site visit.

(7) Site visit - an announced or unannounced in-person visit by a representative of the board to an institution of higher education or private or independent institution of higher education for the purposes of compliance monitoring.

(b) Purpose. The agency-wide, risk-based compliance monitoring function is established for:

(1) funds allocated by the board to institutions of higher education, private or independent institutions of higher education, and other entities, including student financial assistance funds, academic support grants, and any other grants, to ensure that those funds are distributed in accordance with applicable law and board rule; and

(2) data reported by institutions of higher education to the board and used by the board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(c) After considering potential risks and the board's resources, the board shall review a reasonable portion of the total funds allocated by the board and of data reported to the board. The board shall use various levels of monitoring, according to risk, ranging from checking reported data for errors and inconsistencies to conducting comprehensive audits, including site visits.

(d) The board's risk-based approach to compliance monitoring shall consider the following factors relating to an institution of higher education or private or independent institution of higher education:

(1) the amount of student financial assistance or grant funds allocated to the institution by the board;

(2) whether the institution is required to obtain and submit an independent audit;

- (3) the institution's internal controls;
- (4) the length of time since the institution's last desk review or site visit;
- (5) past misuse of funds or misreported data by the institution;
- (6) in regard to data verification, whether the data reported to the board by the institution is used for determining funding allocations; and
- (7) other factors as considered appropriate by the board.

(e) The annual compliance audit plan that results from the board's risk assessment shall be presented to the board's Agency Operations Committee each July, seeking approval of the plan for the following fiscal year. Significant changes to the annual plan that may occur during each fiscal year, shall be presented at the next scheduled Agency Operations Committee meeting, for ratification.

(f) The board shall train compliance monitoring staff to ensure that the staff has the ability to monitor both funds compliance and data reporting accuracy. Program staff in other board divisions who conduct limited monitoring and contract administration shall coordinate with the compliance monitoring function to identify risks and avoid duplication.

(g) If the board determines through its compliance monitoring function that funds awarded by the board to an institution of higher education or private or independent institution of higher education have been misused or misallocated by the institution, the board shall present its determination to the institution's governing board, or to the institution's chief executive officer if the institution is a private or independent institution of higher education, and provide an opportunity for a response from the

institution. Following the opportunity for response, the board shall report its determination and the institution's response, together with any recommendations, to the institution's governing board or chief executive officer, as applicable, the governor, and the Legislative Budget Board.

(h) If the board determines through its compliance monitoring function that an institution of higher education has included errors in the institution's data reported for formula funding, the board:

(1) for a public junior college, may adjust the appropriations made to the college for a fiscal year as necessary to account for the corrected data; and

(2) for a general academic teaching institution, a medical and dental unit, or a public technical institute, shall calculate a revised appropriation amount for the applicable fiscal year based on the corrected data and report that revised amount to the governor and Legislative Budget Board for consideration as the basis for budget execution or other appropriate action, and to the comptroller.

(i) In conducting the compliance monitoring function, the board may partner with internal audit offices at institutions of higher education and private or independent institutions of higher education, as institutional resources allow, to examine the institutions' use of funds allocated by, and data reported to, the board. To avoid duplication of effort and assist the board in identifying risk, an internal auditor at an institution shall notify the board of any audits conducted by the auditor involving funds administered by the board or data reported to the board. **The board by rule may prescribe the timing and format of the notification required by this subsection.**

(j) Private or independent institutions of higher education must provide to the board the institution's external audit involving funds administered by the board. The private or independent institution of higher education's external audit must **comply with the board's rules under this subchapter for auditing those funds.**

(k) The board may seek technical assistance from the state auditor in establishing the compliance monitoring function. The state auditor may periodically audit the board's compliance monitoring function as the state auditor considers appropriate.

# ISSUE 5

## *The Coordinating Board's Limited Monitoring of Funding and Data Fails to Ensure Their Appropriate Use and Accuracy.*

### Background

In 2011, the Coordinating Board disbursed almost \$910 million to more than 100 colleges and universities in Texas. About \$725 million, or 80 percent of these funds, supports student financial aid, both grants and loans, and \$185 million, or 20 percent, funds a variety of academic grants to institutions of higher education. The agency also collects, analyzes, and reports on a substantial amount of data from these institutions that is critical to the planning and funding of higher education in Texas.

The agency monitors institutions' funding and data to a varying extent with different staff throughout the agency, but does not currently have any centralized system for compliance monitoring across agency programs. The agency's internal auditor also plays a role in auditing selected institutions' use of financial aid and reported enrollment data, and the State Auditor has audited a portion of enrollment data.

### Findings

#### **The Coordinating Board does not sufficiently monitor the funds it disburses to institutions to ensure their appropriate and effective use, putting state funds at risk.**

A key component of any effective funding program is regular monitoring and assessment of the funding recipients' compliance with statute, rule, and program guidelines. Even with good controls in place and the absence of fraud, funds administration is subject to human error, putting state funds at risk of misuse. However, the Coordinating Board does not have a process in place to routinely monitor institutions' use of financial aid and other grants it administers.<sup>1</sup>

In 2009, the State Auditor's Office (SAO) audited state-funded financial aid at seven institutions of higher education and recommended that the Coordinating Board improve its monitoring of financial aid to institutions.<sup>2</sup> Rather than establishing an ongoing monitoring system, the Coordinating Board directed its Internal Auditor to audit certain institutions' compliance with statute, rules, and regulations.

The agency's internal audits revealed weak internal controls at certain institutions that allowed state funds to be awarded to ineligible students. These students did not meet various program requirements, such as financial need, selective service registration, enrollment in an undergraduate degree program, completion of the recommended high school program, or satisfactory academic progress. Agency audits also found that some institutions did not return unused funds promptly to the Coordinating Board. These findings clearly indicate the potential for similar problems at other institutions.

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*Audits of certain institutions revealed that state funds were awarded to ineligible students.*

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From 2008 to 2012, the Coordinating Board's Internal Auditor uncovered more than \$365,000 in misallocated state funds, as detailed in the chart, *Coordinating Board Financial Aid Audits Finding Noncompliance*. Despite continuing to find problems in these isolated audits, the Coordinating Board did not take steps to establish a more routine and ongoing monitoring system to ensure institutions' proper use of financial aid and grant funds.

***Coordinating Board Financial Aid Audits Finding Noncompliance, FYs 2009–2012***

<b>Fiscal Year</b>	<b>Audited Institution</b>	<b>Finding</b>	<b>Misused Funds</b>
2009	Southwestern University	Financial aid funds awarded to ineligible students.	\$97,144
2010	Prairie View A&M University	Financial aid funds awarded to ineligible students.	\$10,340
2011	Jarvis Christian College	Undisbursed financial aid funds not returned to the Coordinating Board. Financial aid funds awarded to ineligible students.	\$240,401
2011	Concordia University	Financial aid funds awarded to students for which the university could not provide documentation showing their eligibility.	\$16,297
2012	Texas Tech University	Financial aid funds awarded to an ineligible student.	\$3,040
<b>Total</b>			<b>\$367,222</b>

In comparison to financial aid, the funds the Coordinating Board flows to institutions for grants for academic support and college readiness involve less money and therefore less risk. However, monitoring is still key to ensuring the proper use and effectiveness of these grants. The agency performs some monitoring of these funds, but it is inconsistent across different programs. For example, more than half of these funds are federal Perkins Grants, which staff monitors closely, including site visits at least every four years, because federal rules require such monitoring to receive the funds. For other grants, the agency performs some basic contract monitoring, but its efforts rely on progress reports from institutions, and staff rarely performs site visits to verify the information.

To ensure effective monitoring of the funds the agency disburses to institutions, certain basic standards should be met. For student financial aid, the Coordinating Board allocates funds to institutions that, in turn, allocate funds to students participating in financial aid programs. Compliance monitoring should address questions such as whether students are receiving the services they should and whether taxpayer funds are going only to eligible students.

For grant programs, monitoring should assess whether funding recipients are accurately reporting progress in achieving the expected outcomes and whether recipients are making only allowable expenditures. All programs should return unused funds promptly. Monitoring can vary from desk reviews

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*Despite finding problems, the agency did not establish more routine monitoring of institutions.*

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of progress reports and expenditure documents to site visits to directly check the recipient's accounting systems, case files, and databases. The textbox, *Compliance Monitoring Standards*, outlines key best practices for effective monitoring.<sup>3</sup>

### **Compliance Monitoring Standards**

- **Consistent Over Time.** Ensures problems are found and helps to prevent problems from developing.
- **Consistent Across the Agency.** Ensures monitoring is done similarly across different programs.
- **Transparent.** Ensures monitored entities know what criteria the agency is using to monitor their activities.
- **Risk-based.** Ensures level of monitoring — reporting, desk reviews, or site visits — is based on the level of risk involved, such as the amount of funding and/or the effectiveness of the recipient's own internal controls.
- **Educational.** Ensures monitoring assesses the recipient's need for, and provision of, technical assistance.
- **Thorough.** Ensures recipients are required to correct deficiencies, with follow-up to ensure corrective action was taken.
- **Proactive.** Ensures problems are translated into improvements in guidelines to prevent them from occurring again.

Compliance monitoring is a common function among state agencies administering large amounts of funds. For example, the Texas Department of Housing and Community Affairs' compliance monitoring ensures that entities receiving nearly \$1 billion in mostly federal multifamily housing assistance adhere to program guidelines. Compliance monitoring staff review housing developers' eligibility for funds and ongoing compliance with program requirements after housing projects are built. The Department conducts desk reviews of annual reports submitted by properties in its portfolio, and makes site visits at least once every three years, or more often if indicated based on risk.

### **The State's monitoring of the accuracy of critical data that institutions report to the Coordinating Board is insufficient and fragmented, increasing risk to higher education funding and planning.**

The Coordinating Board does not have a process in place to routinely monitor the critical data that is self-reported by institutions in Texas, and the limited level of monitoring that does exist is split between the Coordinating Board and SAO. Monitoring to ensure the accuracy of data is a critical function of any agency that relies heavily on data to drive its key decisions and funding. The Legislature, institutions, and the public rely on the agency for timely and accurate information about higher education in Texas.

Enrollment data compiled by the Coordinating Board is of particular importance. The Legislature uses this data to allocate state resources equitably among public institutions of higher education. In fiscal year 2012, formula funding for public higher education totaled \$3.8 billion across

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*Compliance monitoring is a common function among state agencies administering large amounts of funds.*

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104 institutions.<sup>4</sup> The textbox, *Higher Education Formula Funding*, breaks these appropriations out by type of institution. Enrollment data, generally measured by class hours, determines between 75 and 100 percent of formula funding, depending on the type of institution.<sup>5</sup>

### **Higher Education Formula Funding – FY 2012**

Type of Institution	Formula-funded Appropriation
General Academic Institutions and State Colleges	\$2,189,600,000
Community Colleges	\$866,100,000
Health-Related Institutions	\$767,500,000
<b>Total</b>	<b>\$3,823,200,000</b>

The State's long-range plan for higher education, *Closing the Gaps by 2015*, depends significantly on data reported by institutions, as the plan is both driven and measured by enrollment and graduation rates. The Coordinating Board also uses data to develop new policy recommendations. For example,

the agency collects information on students requiring developmental education to evaluate and recommend new college readiness and remediation strategies. Without careful monitoring of this data, the State risks making key decisions on the basis of inaccurate information. Should the Legislature begin funding institutions based on outcomes, in addition to enrollment, the accuracy of other data, including graduation rates and developmental education hours, will become even more important.

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*Without careful monitoring, the State risks making key decisions based on inaccurate data.*

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As a result of recent legislative changes, the responsibility for monitoring enrollment data reported for use in formula funding is now split between the Coordinating Board and SAO. Until fiscal year 2012, the Legislature relied on the State Auditor to help verify the accuracy of enrollment data. Between fiscal years 2008 and 2012, SAO audited eight public four-year universities and 11 community colleges.<sup>6</sup> However, a rider in the General Appropriations Act for fiscal years 2012 and 2013 shifted this responsibility to the Coordinating Board for public community colleges.<sup>7,8</sup> Thus, ensuring the accuracy of the community college portion of this data will now rely on the Coordinating Board. Neither the Coordinating Board nor SAO is directed to conduct ongoing, routine monitoring of enrollment data; both agencies perform full audits of a limited selection of institutions. Two separate entities responsible for auditing different types of institutions also does not ensure consistent audit methodologies across types of institutions.

The Coordinating Board uses a software program to check for errors and variation in enrollment data from year to year, and may request written explanations from institutions, but staff does not verify discrepancies through desk audits or site visits. The agency's Internal Auditor conducted audits of enrollment data in seven of its 23 audits of institutions between fiscal years 2008 and 2012, uncovering problems in reported enrollment data at five institutions, four of which resulted in inaccurate formula funding. The Coordinating Board secured refunds for \$2.2 million in funding from institutions that had misreported past enrollment data. The chart on the following page, *Coordinating Board Enrollment Data Audits Finding Noncompliance*, details the results of these audits. These findings, while

limited, indicate the potential for similar problems at other institutions. In addition to its new rider responsibilities, these findings indicate a clear need for the Coordinating Board to develop a new system of ongoing and regular monitoring of institutions' enrollment data.

***Coordinating Board Enrollment Data Audits Finding Noncompliance, FYs 2008–2010***

<b>Fiscal Year</b>	<b>Audited Institution</b>	<b>Finding</b>	<b>Misused Funds</b>
2008	Navarro College*	Special funds appropriated for class hours at a new campus were actually taught online.	\$1,500,000
2008	Houston Community College*	Excess class hours reported, resulting in formula funding overpayment.	\$119,708
2009	Galveston College*	Excess class hours reported, resulting in formula funding overpayment.	\$588,873
2009	Houston Community College	Class rosters did not match reported for-credit class hours, resulting in inaccurate formula funding.	N/A**
2010	Texas Woman's University	Class rosters did not match reported for-credit class hours, resulting in inaccurate formula funding.	N/A**
<b>Total</b>			<b>\$2,208,581</b>

\* Joint audit with the Special Investigations Unit of the State Auditor's Office.

\*\* The size of the samples used and error rates found did not allow the Coordinating Board to pursue refunds.

In comparison, the Texas Education Agency (TEA) monitors the accuracy of average daily attendance data reported by more than 1,200 school districts and charter schools to identify potential reporting errors, because the agency uses that data as the primary factor in its allocation of state funds for public education. TEA staff reviews one-third of reported attendance data and, when variance is found, conducts either a desk or on-site audit of the school district or charter school to determine the cause of the discrepancy, and ultimately requests refunds of any funds allocated based on inaccurate data. The agency uses a risk-based approach to auditing, with half of its audits determined by staff's initial data analysis and the other half determined by the school districts that had the highest numbers of funding adjustments based on misreported data in the previous year. In fiscal year 2011, TEA's school attendance monitoring resulted in a return of \$7.5 million in misallocated state funds. In contrast to its role in higher education, SAO does not routinely audit school districts or charter schools to ensure accurate attendance data reporting, but has audited TEA's monitoring of average daily attendance reporting.<sup>9</sup>

**The Coordinating Board’s reliance on its internal audit office to audit institutions diverts the office from its core mission and could impair its ability to independently review all aspects of the agency’s operations.**

The Legislature recognized the risks associated with the Coordinating Board’s functions and in 1989 amended the agency’s statute to require the governing board to appoint an internal auditor who reports directly to the Board.<sup>10</sup> The agency also comes under the general requirements of the Texas Internal Auditing Act, as an agency with a budget of more than \$10 million and staff of more than 100.<sup>11</sup> In 2007, an outside management audit of the Coordinating Board made recommendations to strengthen the agency’s internal controls, including recommending increasing resources for internal audit commensurate with the level of risk involved in agency activities.<sup>12</sup>

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*From 2009 to 2012, audits of institutions made up 28 percent of internal audit’s workload.*

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However, instead of focusing on the agency’s own internal controls, the Coordinating Board often uses its Office of Internal Auditor to perform audits of institutions of higher education. Compliance monitoring of institutions is not central to the mission of an internal auditor, and can present conflicts for its internal work. Compliance monitoring at institutions is a Coordinating Board function that should be evaluated by internal audit. If the internal auditor is also involved in performing these duties, it can compromise the auditor’s ability to independently evaluate the effectiveness of the agency’s monitoring. In fact, the Texas Internal Auditing Act specifically requires that “a state agency provide for the auditor to be free of all operational and management responsibilities that would impair the auditor’s ability to review independently all aspects of the agency’s operation.”<sup>13</sup>

Use of internal audit staff for work such as compliance monitoring also distracts from their core function. From 2009 to 2012, the internal audit office conducted 23 audits of institutions. The chart, *Coordinating Board Internal Audits*, shows these audits made up 28 percent of the total internal audits for those years. While these compliance audits are useful for uncovering problems at particular institutions, the Board should not rely on its Internal Auditor to regularly find such problems.

**Coordinating Board Internal Audits, FYs 2009–2012**

Fiscal Year	Audits of Institutions	Audits of the Agency’s Operations	Other	Total
2009	4	6	7	17
2010	5	3	6	14
2011	10	6	10	26
2012	4*	12	9	25
Total	23 (28%)	27 (33%)	32 (39%)	82 (100%)

\* Two of these audits are planned, not completed.

The Coordinating Board is also beginning to use its internal audit function to audit the effectiveness of its own programs. While program effectiveness can sometimes be a part of an internal audit function, it should not duplicate other effectiveness reviews or be done at the expense of internal audit's primary audit functions. In fiscal year 2012, the Coordinating Board's Internal Auditor plans to perform audits on the effectiveness of two programs, although the agency's research and evaluation staff already spends significant time and resources reviewing these same programs to ensure they are achieving desired outcomes.<sup>14</sup> By conducting duplicative effectiveness reviews, rather than looking at whether Coordinating Board programs have adequate internal controls, internal audit could miss larger agency problems.

## Recommendations

### *Change in Statute*

#### **5.1 Require the Coordinating Board to establish a risk-based, agency-wide compliance monitoring function to help ensure the proper use of its funding and the accuracy of its data.**

This recommendation would statutorily require the Coordinating Board to create a compliance monitoring function for grant and loan funds flowing out of the agency and self-reported data coming into the agency, including enrollment data from public universities and state colleges currently subject to audit by SAO. This recommendation would eliminate the need for enrollment data audit requirements in rider, and consolidate monitoring and audits of enrollment data from all types of institutions at the Coordinating Board.

The compliance monitoring function would be required to conduct regular monitoring of financial aid, the largest category of state funds flowing through the Coordinating Board to institutions of higher education, to ensure that state funds go to eligible students. The monitoring function should also review the use of academic support grants, and any other grants, including college and career readiness and success efforts, allocated to institutions and other entities.

The new monitoring function would review financial aid and grant reporting by institutions for inconsistencies and conduct more comprehensive audits, possibly including site visits, of a more limited amount of the total dollars administered by the Coordinating Board, according to risk. In setting up its monitoring function, the Coordinating Board should determine a reasonable amount of funds and criteria for selection of institutions to review within its resources.

The Coordinating Board should also routinely verify key data reported by institutions of higher education, and should conduct more comprehensive data audits of institutions for which variance in reported data is found. The agency should focus on data presenting the highest risks to the State, such as enrollment data used for formula funding, but should also look at other types of data reported by institutions and used by the Coordinating Board for funding or policymaking.

The Coordinating Board should cross-train monitoring staff so that all staff can monitor both funds compliance and data reporting accuracy. Program staff in various divisions currently conducting limited monitoring and contract administration could continue to perform these duties, but should coordinate with the new monitoring function to identify risk and avoid duplication.

The agency would be required to develop written policies and procedures that guide monitoring across programs and that include various levels of monitoring from checking reported data for errors to on-site inspections, depending on risk. The Coordinating Board should develop a risk-based approach to compliance monitoring, prioritizing factors including, but not limited to:

- the amount of money the institution receives;
- whether the institution is required to obtain and submit an independent audit;
- the institution's internal controls;
- the length of time since the institution's last desk review or site visit;
- past misuse of funds or misreported data; and
- for data reporting specifically, whether the data is used for determining funding allocations.

If the monitoring function finds misused funds, the Coordinating Board should request institutions refund the misallocated funds to the Coordinating Board for remittance to the state treasury or directly to the treasury, as appropriate. If the monitoring function finds errors in reported enrollment data, the Legislative Budget Board should work with the Legislature to direct whether, and to what extent, appropriations would be reallocated between legislative sessions, or whether this authority could be delegated to the Coordinating Board.

The Coordinating Board's monitoring function could partner with internal audit offices at institutions, as institutional resources allow, in examining institutions' use of state funds and data reported to the Coordinating Board. To avoid duplication of effort and help the Coordinating Board identify risk, internal auditors at institutions should notify the Coordinating Board of any audits they conduct involving funds administered by the Coordinating Board or data reported to the agency.

In setting up and implementing the compliance monitoring function, the Coordinating Board should seek technical assistance from SAO, when necessary. Under this recommendation, SAO, at its discretion, would audit the Coordinating Board's new monitoring function to ensure that it is adequately designed to review use of financial aid funds and reported data by institutions and to take appropriate action when necessary. Thus, instead of auditing institutions biennially to ensure that they report enrollment data accurately, the State Auditor would periodically audit the Coordinating Board's monitoring of institutions' reported data.

Monitoring how institutions use state funds and report critical data would allow the Coordinating Board to better ensure that state dollars are distributed to eligible students and institutions, and that misallocated funds are returned to the State or reallocated for eligible use by others.

### ***Change in Appropriations***

#### **5.2 The Sunset Commission should recommend that the Legislature use existing state funds and increase the Coordinating Board's full-time equivalent cap for the new compliance monitoring function.**

To fund the monitoring function established by Recommendation 5.1, the Sunset Commission should recommend a change in appropriations that designates for compliance monitoring a small portion of General Revenue used previously for financial aid and formula funding for institutions. As the funds most at risk, the administrative costs of monitoring should come from these two sources before

allocation to institutions. The Legislature often uses a limited amount of grant funds or other allocated funds to pay for the administration of state funds. While using these fund sources for administration represents a real reduction of money to institutions and financial aid, the estimated cost of monitoring represents a tiny fraction of the total funds in need of oversight. The Sunset Commission should also recommend an increase of four full-time equivalents (FTEs) to perform the new monitoring function.

### ***Management Action***

#### **5.3 The Coordinating Board's Office of Internal Auditor should prioritize its core functions over other duties that divert its focus or impair its ability to independently evaluate the agency's operations.**

This recommendation would direct the Coordinating Board's internal audit office to focus its resources on audits of agency operations over other types of audits, such as audits of institutions of higher education. This would enable the internal audit office to focus more on fulfilling its core mission of ensuring that the Coordinating Board has adequate internal controls to minimize risks to the State.

For financial aid and other grants flowing through the Coordinating Board, the internal auditor would audit those programs and the new monitoring function established under Recommendation 5.1. The Internal Auditor would no longer conduct routine audits of institutions of higher education, and would only perform audits of institutions when significant risk warrants the Internal Auditor's involvement. The internal audit office should coordinate with the new monitoring function established under Recommendation 5.1 to identify risk, and should coordinate with other divisions to avoid duplication. The Internal Auditor should not conduct effectiveness audits of Coordinating Board programs unless larger areas of internal risk have been addressed.

### **Fiscal Implication**

These recommendations would not result in a net fiscal impact to the State, as additional costs would come from financial aid and institutional formula funding.

Compliance monitoring would have an estimated annual cost of \$310,910 and would require an increase in the agency's FTE cap to add four additional full-time staff. Two staff would be funded by the financial aid disbursed by the Coordinating Board, and two would be funded by the formula funding appropriated to institutions based on data reported to the Coordinating Board. Because the costs for a monitoring function are administrative costs to the two types of state funds at risk, student financial aid and institutional formula funding, the costs would come from these sources prior to allocation to institutions. Half of the monitoring costs, \$155,095, would come proportionally from financial aid programs subject to monitoring, resulting in a slight reduction to the funding available to institutions for student financial aid. The other half of the monitoring costs would come from the general revenue portion of each type of institutional formula funding, divided proportionally, prior to awarding institutional formula allocations.

In fiscal years 2008 to 2011, the limited monitoring of institutions conducted by the agency's Internal Auditor recovered \$2.57 million, an average of about \$640,000 per year. A regular and more comprehensive monitoring function would likely recover additional funds, but the amount would vary depending on the monitoring results. Changes to the agency's internal audit office would not have a significant fiscal impact, as any savings in travel costs from internal audit staff not travelling to institutions would be redirected toward travel costs for the agency's new monitoring function.



- .....
- 1 Staff collects and reviews independent audits of private universities receiving Tuition Equalization Grants.
  - 2 Texas State Auditor's Office, *An Audit Report on Selected State-Funded Student Financial Aid Programs at Seven Higher Education Institutions and the Higher Education Coordinating Board* (November 2009), accessed October 28, 2012, <http://www.sao.state.tx.us/reports/main/10-015.pdf>.
  - 3 Texas Comptroller of Public Accounts, "Monitoring Performance," Chap. 7 in *Contract Management Guide*, accessed January 8, 2012, <http://www.window.state.tx.us/procurement/pub/contractguide/chapter7/MonitoringPerformance.pdf>.
  - 4 The \$3.8 billion figure does not include \$474.7 million in patient income in formula funding strategies that is in addition to the formula funding.
  - 5 Legislative Budget Board, *Financing Higher Education in Texas: Legislative Primer*, (Austin: Legislative Budget Board Staff, 2011), pp. 7, 16, and 22.
  - 6 The State Auditor's Office audited eight public universities and eight public community colleges in its enrollment audits in fiscal year 2009 and conducted special investigations, in collaboration with the Coordinating Board's Internal Auditor, at another three community colleges.
  - 7 Rider 8, p. III-200; Section 9, pp. III-212, III-213; and Section 18, p. III-241, Article 3 (S.B. 1.), Acts of the 81st Legislature, Regular Session, 2009 (the General Appropriations Act).
  - 8 Rider 8, p. III-197, Article 3 (H.B. 1), Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act).
  - 9 Texas State Auditor's Office, *An Audit Report on the Texas Education Agency's Monitoring of Average Daily Attendance Reporting* (September 2009), accessed January 9, 2011, <http://www.sao.state.tx.us/reports/main/10-001.pdf>.
  - 10 Section 61.029, Texas Education Code.
  - 11 Chapter 2102, Texas Government Code.
  - 12 Deloitte & Touche, LLP, *Internal Control Assessment of the Texas Higher Education Coordinating Board*, (Austin: Deloitte & Touche, LLP, 2007).
  - 13 Section 2102.007(b)(2), Texas Government Code.
  - 14 Texas Higher Education Coordinating Board Office of Internal Audit, *Annual Audit Report 2011*, (Austin: Texas Higher Education Coordinating Board, 2011), p. 2; Texas Higher Education Coordinating Board, *Consolidated Annual Program Evaluation Report THECB Funded Programs Fiscal Year 2010*, accessed October 28, 2012, <http://www.theeb.state.tx.us/reports/PDF/2130.PDF?CFID=22300284&CFTOKEN=44155719>, pp. 10–11, 17–18. The Coordinating Board's Research and Evaluation staff has reviews in progress on two Board programs that the internal auditor plans to audit in 2012: the Texas Pathways Project and Developmental Education Demonstration Projects: Community Colleges and Universities.

# RESPONSES TO ISSUE 5

## Overall Agency Response to Issue 5

Agree. (Raymund Paredes, Ph.D., Commissioner of Higher Education – Texas Higher Education Coordinating Board)

## Recommendation 5.1

*Require the Coordinating Board to establish a risk-based, agency-wide compliance monitoring function to help ensure the proper use of its funding and the accuracy of its data.*

### Agency Response to 5.1

Agree. (Raymund Paredes, Ph.D., Commissioner of Higher Education – Texas Higher Education Coordinating Board)

### For 5.1

Leslie Helmcamp, Policy Analyst – Center for Public Policy Priorities, College Forward, La Fe Policy Research and Education Center, Texas NAACP, and RAISE Texas, Austin

### Against 5.1

None received.

### Modification

1. Direct the agency to request the State Auditor's Office to audit institutions the program staff judges to be "at-risk" of problems, instead of building a new compliance apparatus at THECB. (Carol McDonald, President – Independent Colleges and Universities of Texas, Austin)

## Recommendation 5.2

*The Sunset Commission should recommend that the Legislature use existing state funds and increase the Coordinating Board's full-time equivalent cap for the new compliance monitoring function.*

### Agency Response to 5.2

Disagree. The THECB strongly disagrees with taking funds away from institutions through the formulas and from students through financial aid dollars. Instead, the THECB recommends that new funds be appropriated to the agency's operating budget to implement these recommendations. (Raymund Paredes, Ph.D., Commissioner of Higher Education – Texas Higher Education Coordinating Board)

**For 5.2**

None received.

**Against 5.2**

None received.

**Recommendation 5.3**

*The Coordinating Board's Office of Internal Auditor should prioritize its core functions over other duties that divert its focus or impair its ability to independently evaluate the agency's operations.*

**Agency Response to 5.3**

Agree. (Raymund Paredes, Ph.D., Commissioner of Higher Education – Texas Higher Education Coordinating Board)

**For 5.3**

None received.

**Against 5.3**

None received.

## COMMISSION DECISION

Adopted Recommendations 5.1 through 5.3.

## GROUND RULES FOR NEGOTIATED RULEMAKING

### I. GOAL

To reach consensus on the language of a proposed rule

### II. REACHING DECISIONS

- A. Use of Consensus. Negotiations will be conducted with the intent of reaching a consensus decision.
- B. Consensus. Unless the Committee members agree unanimously to another definition at the outset of the process:

*Consensus means that all Committee members concur in the decision because their major interests have been taken into consideration and addressed in a satisfactory manner. While committee members may differ in their acceptance of individual terms of the agreement, all committee members can support the final agreement given the trade-offs and current circumstances.*

Committee members can reach consensus without embracing each element of the agreement with the same fervor as other members. Some parties may strongly endorse a particular solution while others may accept it as a workable agreement.

### III. AGREEMENT

- A. Final Product/Proposed Rule. The Committee intends for its final work product to be the text of a proposed rule. If the Committee reaches consensus on a proposed rule, the agency will accept the proposed rule as its draft with the recommendation that it be published in the Texas Register as drafted.
- B. Failure to Reach Consensus. If the Committee is unable to reach consensus on a proposed rule, then the Committee will draft a report that specifies the issues on which consensus was reached, the issues that remain unsolved, and any other information that the Committee considers important.
- C. Support of Agreement. The Committee members agree not to take any action to inhibit the adoption or implementation of a rule that conforms to the consensus proposal of the Committee. Furthermore, members agree to advocate for the consensus rule to their membership and to other policy makers both during and after the negotiated rulemaking process. If a member fails to keep this agreement, all other members agree to submit comments to the agency, any other relevant state officials, government bodies, or Courts, stating that:
  - 1. All members concurred in the proposed rule; and
  - 2. All members supported approval of the final rule that conforms to the consensus proposal of the Committee.

## IV. COMMITTEE MEETINGS

### A. Meeting Attendance

1. The same Committee members listed at the end of this document need be present at each full meeting of the Committee.
2. Scheduled meetings will proceed even if some members are absent.
3. Absent members are responsible for updating themselves in the proceedings of missed meetings.
4. Substitutes may stand in for absent members and express their views and provide information but may not be involved as decision-makers.
5. After the negotiations have begun, additional members may join the Committee only with the concurrence of the Committee.

### B. During the Meetings

1. Meetings will be open to the public. However, participation in negotiations will be limited to Committee members and invited experts.
2. Visitors are requested to respect the process and abide by these ground rules. This request will be stated at the beginning of each meeting.
3. Visitors who wish to comment during the negotiations may do so through the following avenues:
  - a. Channel comments through one of the Committee members;
  - b. Submit written comments to the Committee members; or
  - c. Submit comments through the website, if available.Further, a Committee member may invite a member of the audience to speak, as that member sees fit. Initial comments should be limited to three minutes and may be extended at the Committee's request.
4. The proceedings of the Committee will not be electronically recorded, but the facilitator may prepare draft summaries of the meetings for the convenience of the members. Such summaries shall not be approved by the Committee, and they are not to be construed to represent the official position of the Committee or any member on what transpired at a Committee meeting. Summaries will note issues discussed, any outcome to discussions, requests for data, and any other action items.

### C. Caucuses

1. The facilitator may at any time request a confidential caucus with specific members or groups of members to attempt resolution of a specific issue.
2. Any member may request a caucus at any time to consult with other members, but such caucuses are to be used sparingly. The caucusing members will be asked to move into the hallway or another meeting area to conduct the caucus. The length of caucuses will be determined at the discretion of the facilitator who may serve as a mediator during such caucuses.

- D. Stakeholder Representatives. Individual members acknowledge that they have been named to the Committee as the representative of all others in their stakeholder class, and not just themselves. To this end, the members pledge to communicate with other members of their organization or stakeholder class to ensure that the deliberations reflect the viewpoints of the stakeholder class as a whole.

## **V. NEGOTIATING**

- A. All members agree to act in good faith in all aspects of these negotiations. Members agree to speak openly and commit to addressing each other's concerns and needs. Members may not use other members' specific offers, positions, or statements made during the negotiations for any purpose outside the negotiation.
- B. All members commit to share relevant information, which if excluded, would damage the credibility or outcome of the consensus. Members will make every effort to provide requested information reasonably in advance of scheduled meetings.
- C. All members will endeavor to tailor their statements during meetings to ensure the opportunity for all members to participate fully on issues in which they have an interest. Members agree to speak one at a time and allow each other a reasonable opportunity for uninterrupted comments. All members will refrain from personal attacks.
- D. Any Committee member may withdraw from the negotiations at any time without prejudice. The remaining Committee members will then decide whether to continue the negotiations.

## **VI. COMMUNICATIONS**

- A. When communicating with the press, Committee members agree to limit their statements to expressions of their own interests. Inquiries from the press may be referred to the facilitators. If the Committee decides to issue a press statement, the Committee will agree on the language of the press statement.
- B. In all communications outside of the Committee, including those to the press, members may give information concerning issues raised and actions taken but agree to refrain from attributing views or positions to a particular group or individual, even if that party withdraws from negotiations

COMMITTEE MEMBERS

Castille, Philip: \_\_\_\_\_

Dontes, Arnim: \_\_\_\_\_

Elizondo, Laura: \_\_\_\_\_

Ellis, Bill: \_\_\_\_\_

Finely, Michelle: \_\_\_\_\_

Galyean, Paul: \_\_\_\_\_

Gibson, Dana: conference call \_\_\_\_\_

Hallmark, James: \_\_\_\_\_

Hamner, Mark: \_\_\_\_\_

Hoekstra, Jonathan: \_\_\_\_\_

Holda, Bill: conference call \_\_\_\_\_

Jenkins, Robert: \_\_\_\_\_

Liebman, Paul: \_\_\_\_\_

Martinez, Cecilia: \_\_\_\_\_

McKown, Johnette: \_\_\_\_\_

Orsag, David: \_\_\_\_\_

Persson, Katherine: conference call \_\_\_\_\_

Poehl, Mark: \_\_\_\_\_

Rogers, Jesse: \_\_\_\_\_

Russell, James Henry: conference call \_\_\_\_\_

Serrata, William: conference call \_\_\_\_\_

Sharp, Kelvin: conference call \_\_\_\_\_

Smith, Terry S.: \_\_\_\_\_

Snider, Larry D.: \_\_\_\_\_

Streeter, Carrie: \_\_\_\_\_

Turner, Kim: \_\_\_\_\_

Walker, Anne: \_\_\_\_\_

Welch, Denise: \_\_\_\_\_