



# Whistle-blower Determination and Investigation Policy

<b>Policy Number</b>	2-010
<b>Responsible Authority</b>	Chief Audit Executive
<b>Initiating Authority</b>	Vice President and Executive Chief of Staff
<b>Effective Date</b>	6/8/2018
<b>Date of Origin</b>	6/8/2018

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## APPLICABILITY/ACCOUNTABILITY

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This policy applies to all members of the university community, including direct support organizations (DSOs), who are current or former university employees or applicants for employment, as well as current or former employees of a university contractor.

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## POLICY STATEMENT

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The university is committed to identifying and protecting whistle-blowers in accordance with the Whistle-blower's Act (Sections 112.3187-112.31895, Florida Statutes). It is the intent of the Whistle-blower's Act to prevent agencies or independent contractors from taking retaliatory or adverse personnel action against an employee who reports violations of law which create a substantial and specific danger to the public's health, safety, or welfare, or relate to gross waste of public funds, gross mismanagement, malfeasance, misfeasance, Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

All university and DSO employees are responsible for promptly referring any potential whistle-blower complaints they receive from a known individual to University Audit for determination of whistle-blower status. Although anonymous complaints do not qualify for whistle-blower status, any anonymous complaints alleging fraudulent activity as outlined in university policy 2-800.1, Fraud Prevention and Detection, should also be promptly referred to University Audit for disposition.

When a whistle-blower investigation is necessary, University Audit is responsible for performing the investigation into the whistle-blower complaint and will refer other claims that do not meet the definition of a whistle-blower complaint to the appropriate department for investigation. For example, the UCF Office of Nondiscrimination & Accommodations Compliance (ONAC) would

investigate allegations of discrimination against a protected class. Any investigation into a whistle-blower complaint performed in whole or in part by another university department or external third party will be coordinated under the supervision of the Chief Audit Executive (CAE) in accordance with Section 7 of the Florida Board of Governors (BOG) Regulation 4.002 (State University Chief Audit Executives) which states:

*“Each chief audit executive shall initiate, conduct, supervise, or coordinate investigations that fall within the purview of the chief audit executive’s office and be designated by their board of trustees as the employee to review statutory whistleblower information and coordinate all activities of the university as required by the Florida Whistle-blower’s Act. Investigative assignments shall be performed in accordance with professional standards issued for the State University System. All final investigative reports shall be submitted to the appropriate action officials, board of trustees, and the Board of Governors if, in the chief audit executive’s judgment, the allegations are determined to be significant and credible. Such reports shall be redacted to protect confidential information and the identity of individuals, when provided for by law.”*

At all times including after an investigation is closed, the name and identity of a whistle-blower must remain confidential to the extent provided in law and must not be shared with anyone who is not directly involved in performing the whistle-blower investigation or listed in any document, memo, or report used to gather information or outline investigation results. Failure to promptly refer applicable complaints or additional information to University Audit for whistle-blower determination or not maintaining confidentiality of a whistle-blower’s identity may negatively affect the university’s compliance with the Whistle-blower Act and increases the risk of potential litigation against the university. It is a misdemeanor of the first degree for a person to willfully or knowingly disclose information or records made confidential under the Whistle-blower Act and the disclosure of such information may result in disciplinary action, up to and including termination, for the responsible parties.

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## DEFINITIONS

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**Adverse personnel action.** The discharge, suspension, transfer, or demotion of an employee, or the withholding of bonuses, reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.

**Gross mismanagement.** A continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct, which may have a substantial adverse economic impact.

**Gross neglect of duty.** Intentionally, knowingly, or deliberately failing to perform a duty, or repeatedly performing the duty negligently after reprimand or in disregard of the university’s interest, and of which the neglect is not due to inefficiency or inability.

**Independent contractor.** A person, other than an agency, engaged in any business and who enters into a contract, including a provider agreement, with an agency.

**Malfeasance.** An act that is illegal.

**Misfeasance.** An act that is not illegal, but is improperly formed or carried out.

**Whistle-blower.** Any member of the university community, including employees of direct support organizations, who are current or former university employees or applicants for employment, or current or former employees of a university contractor and who submit a whistle-blower complaint.

**Whistle-blower complaints.** Complaints relating to a) claims of a violation of any federal, state, or local law, rule or regulation which presents a substantial and specific danger to the public's health, safety, or welfare, or b) suspected or actual Medicaid fraud, or c) a suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, or gross neglect of duty.

**Whistle-blower determination.** The review and analysis of allegations brought forth in a complaint to determine whether the complaint meets or does not meet statutory requirements for designation as a whistle-blower complaint. This determination is performed prior to initiating significant investigative activity.

**\*Definitions were adapted from the Whistle-blower Act, Whistle-blower Determination Protocol, and university policies and procedures.**

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## PROCEDURES

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### A. Whistle-blower Determination

1. All potential whistle-blower complaints where the complainant is known (not anonymous) should be referred promptly upon receipt to University Audit for determination of whistle-blower status. This includes, but is not limited to, complaints that originate via the university's IntegrityLine or in Human Resources (HR), Office of Nondiscrimination & Accommodations Compliance, Office of Research and Commercialization, and University Compliance, Ethics, and Risk. For complaints made against the CAE or University Audit staff, the chair of the UCF Board of Trustees will assign another office or third party to perform the whistle-blower determination.
2. University Audit will use the Whistle-blower Determination Protocol established by the Executive Office of the Governor, Office of the Chief Inspector General, as the primary guideline for granting and communicating whistle-blower status. University Audit will also use this protocol as a guideline for the issuance of notifications related to the whistle-blower determination.
3. Any party that initially received the complaint should promptly inform University Audit if they obtain additional information from the complainant. This additional information could potentially impact the complainant's whistle-blower status if received prior to the completion of the determination process.

## B. Whistle-blower Investigation

1. For complaints determined by University Audit to be whistle-blower complaints, University Audit will notify the party that initially received the complaint that the complainant was granted whistle-blower status. University Audit will also notify the university's Office of the General Counsel of the whistle-blower status without disclosing the identity of the whistle-blower and University Audit's intention to perform a whistle-blower investigation in accordance with the Whistle-blower's Act and its related timeline requirements. University Audit will also notify the whistle-blower that whistle-blower status was granted.
2. For complaints determined not to meet the definition of a whistle-blower complaint, University Audit will notify the party that initially received the complaint of the complaint disposition and refer the complaint to the appropriate department for investigation.
3. Prior to the start of the investigation into a whistle-blower complaint, University Audit will identify and document any allegations that will or should be investigated by another university department. University Audit will clearly document and communicate the assignment of allegations to an investigating department. University Audit will also provide guidance, when needed, and oversee investigative work of those departments through regular and frequent communication and meetings as needed.
4. To the extent possible, investigative work performed on whistle-blower complaints by departments other than University Audit or external third parties should leverage the departments' previously developed internal processes and procedures for conducting investigations. University Audit will provide guidance and feedback if there are mutual concerns or potential process gaps where use of these internal policies may not fully address the expectations of the UCF Board of Trustees or Florida Board of Governors relating to whistle-blower investigations. As appropriate, University Audit will review the work performed by other departments in conjunction with these investigations.

When the investigation into a whistle-blower complaint (regardless of the department(s) performing the work) is completed, University Audit will create a consolidated final investigative report relating to the whistle-blower complaint that includes the results from all participating university departments or external third parties unless otherwise directed by law or due to other extenuating circumstances. Any final report(s) issued will include relevant responses provided by the whistle-blower. To comply with the intent of Section 7 of Florida BOG Regulation 4.002 (State University System Chief Audit Executives) and section 112.3189 (6)(b), Florida Statute, University Audit will submit the final report(s) to the whistle-blower, applicable university departments, and governing bodies such as the Florida Chief Inspector General, Board of Governors Office of Inspector General or UCF's Board of Trustees. As necessary, additional documentation (such as process improvement memos) will be created and distributed to relevant departments in lieu of sending them the full report.

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**RELATED DOCUMENTS**

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[Whistle-blower's Act \(Sections 112.3187-112.31895, Florida Statutes\)](#)

[Whistle-blower Determination Protocol, Executive Office of the Governor, Office of the Chief Inspector General](#)

[Board of Governors regulation 4.002 State University System Chief Audit Executives](#)

[UCF Policy 2-800.1 Fraud Prevention and Detection](#)

[Standards for Complaint Handling and Investigations for the State University System of Florida](#)

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**CONTACTS**

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<b>POLICY APPROVAL</b> <b>(For use by the Office of the President)</b>	
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President or Designee: 	Date: <u>6/8/18</u>