

## Compliance Components – General Counsel

Separate compliance components that constitute discrete issues to be addressed in developing a convincing argument for compliance in the Compliance Certification are underlined for each applicable requirement and standard. A narrative that addresses and documents some, but not all, of the compliance components is incomplete.

**Suggestions:** The “suggestions” provided below are guides to developing and documenting a narration that thoroughly addresses these compliance components.

**Excerpts citing noncompliance:** The “excerpts” are provided to assist Applicants and Candidates in identifying typical shortcomings in the narratives and documentation presented in support of an institution’s assertion of compliance; taken from reports developed by SACSCOC review committees, these excerpts are all part of some committee’s explanation of its finding of noncompliance.

### Core Requirements:

- 2.1 The institution has degree-granting authority from the appropriate government agency or agencies. (**Degree-granting Authority**)

**Suggestion:** *Explain exemptions or unusual circumstances concerning approval.*

**Suggestion:** *Remember to include approvals in foreign countries, if appropriate.*

**Suggestion:** *If the expiration date on a letter or document signed by the appropriate agency or agencies is approaching, explain the status of the institution’s bid for renewal.*

- 2.2 The institution has a governing board of at least five members that is the legal body with specific authority over the institution. The board is an active policy-making body for the institution and is ultimately responsible for ensuring that the financial resources of the institution are adequate to provide a sound educational program. The board is not controlled by a minority of board members or by organizations or interests separate from it. Both the presiding officer of the board and a majority of other voting members of the board are free of any contractual, employment, or personal or familial financial interest in the institution.

**Suggestion:** *Describe the means by which the board ensures that financial resources are adequate to provide a sound educational program.*

**Suggestion:** *Create a table that indicates for each board member whether or not that individual has a contractual, employment, personal, or familial financial relationship with the institution; provide details of those relationships.*

**Excerpt citing noncompliance:** “Due to the role of the Congregation in the governance of the institution, the possibility of control by a minority of the Board and by a separate entity arises. Furthermore, an apparent contractual or employment interest by the Chairman of the Board of Directors is not in compliance with this Core Requirement.”

**[Notice that the remainder of this standard is applicable ONLY to military institutions.]**

A military institution authorized and operated by the federal government to award degrees has a public board on which both the presiding officer and a majority of the other members are neither civilian employees of the military nor active/retired military. The board has broad and significant

influence upon the institution's programs and operations, plays an active role in policy-making, and ensures that the financial resources of the institution are used to provide a sound educational program. The board is not controlled by a minority of board members or by organizations or interests separate from the board except as specified by the authorizing legislation. Both the presiding officer of the board and a majority of other voting board members are free of any contractual, employment, or personal or familial financial interest in the institution. **(Governing Board)**

- 2.3 The institution has a chief executive officer whose primary responsibility is to the institution and who is not the presiding officer of the board. **(Chief Executive Officer)** *(See Commission policy "Core Requirement 2.3: Documenting an Alternative Approach.")*

## **Comprehensive Standards:**

### **3.2 Governance and Administration**

- 3.2.1 The governing board of the institution is responsible for the selection and the periodic evaluation of the chief executive officer. **(CEO evaluation/selection)**

***Suggestion:** Consider providing indirect documentation of the CEO's evaluation through references to Board minutes.*

***Excerpt citing noncompliance:** "The Bylaws of the institution lack clarity regarding the authority, responsibilities, and roles of the religious order, the Chairman of the Board, and the Board of Trustees in the selection of the President. The College has not provided clear evidence that the Board selects the President of the institution."*

- 3.2.2 The legal authority and operating control of the institution are clearly defined for the following areas within the institution's governance structure. **(Governing board control)**
- 3.2.2.1 institution's mission;
  - 3.2.2.2 fiscal stability of the institution
  - 3.2.2.3 institutional policy, including policies concerning related and affiliated corporate entities and all auxiliary services; and

***Excerpt citing noncompliance:** "The Committee has determined that the institution is not in compliance with CS 3.2.2.3 inasmuch as the authority over significant institutional policies is held by the religious order rather than by the Board of Trustees."*

- 3.2.2.4 related foundations (athletic, research, etc.) and other corporate entities whose primary purpose is to support the institution and/or its programs.

***Suggestion:** Provide mission statements for the foundations and entities in 3.2.2.4.*

***[Institutions should describe their relationships with state boards, system boards, and parent corporations, as appropriate.]***

***Excerpt citing noncompliance:** "Although the institution has no foundations, two entities are identified as providing support to the institution: the Alumni Association and the Athletic Fund. The Compliance Certification did not provide adequate information concerning legal authority and operating control over these two organizations."*

- 3.2.3 The board has a policy addressing conflict of interest for its members. **(Board conflict of interest)**

*For four standards – CS 3.2.3 (Board conflict of interest), CS 3.2.5 (Board dismissal), CS 3.7.5 (Faculty role in governance), and FR 4.5 (Student complaints) – institutions must explicitly document implementation and enforcement of the required policy in addition to publication.*

*Excerpt citing noncompliance: “The Board of Directors approved a Conflict of Interest Policy that appropriately defines and addresses conflicts of interest for directors and executive administrators. Directors and executive administrators must complete and sign an “Annual Employee and Board Member Conflict of Interest Disclosure Form” and an “IRS Form 990 Annual Disclosure Questionnaire” annually. A newly established Conflict of Interest Committee manages the process for the Board of Directors (Bylaws, Article VI, Section 8). The narrative of the Compliance Certification indicates that signed examples of the two forms are provided as evidence of implementation, but the linked document did not include those signed forms.”*

- 3.2.4 The governing board is free from undue influence from political, religious, or other external bodies and protects the institution from such influence. **(External influence)**

*Excerpt citing noncompliance: “The Bylaws of the Board of Trustees give the religious order what appears to be undue influence, if not controlling or governing powers, over the Board, including the appointment and removal of Board members, the selection or dismissal of the President, the approval of capital and operating budgets, the approval of the institution’s strategic and long-range plans, and the approval of policies to meet the institution’s annual and long-range objectives and plans (Article II, Section 2).”*

- 3.2.5 The governing board has a policy whereby members can be dismissed only for appropriate reasons and by a fair process. **(Board dismissal)**

*For four standards – CS 3.2.3 (Board conflict of interest), CS 3.2.5 (Board dismissal), CS 3.7.5 (Faculty role in governance), and FR 4.5 (Student complaints) – institutions must explicitly document implementation and enforcement of the required policy in addition to publication. [The “appropriate reasons” should be identified and the “fair process” fully described.]*

*Excerpt citing noncompliance: “Policy regarding the dismissal of members of the Board is stated in one sentence in the Bylaws. The Compliance Certification states that the Conflict of Interest Policy could apply, but that policy does not address dismissal of a Board member. The possible reasons for dismissal are not stated, nor is the process for dismissal provided. Therefore, without a more definitive dismissal policy, the Committee has determined that the institution is not in compliance with this Comprehensive Standard.”*

- 3.2.6 There is a clear and appropriate distinction, in writing and practice, between the policymaking functions of the governing board and the responsibility of the administration and faculty to administer and implement policy. **(Board/administration distinction)**

- 3.2.11 The institution’s chief executive officer has ultimate responsibility for, and exercises appropriate administrative and fiscal control over, the institution’s intercollegiate athletics program. **(Control of intercollegiate athletics)**

*Suggestion: Attack this standard from both sides. From the CEO’s perspective, use the job description, calendar of meetings, and record of actions to show “responsibility” and “control.” From the intercollegiate athletics perspective, use job descriptions, budgeting processes, and policies/procedures to show the flow through the CEO.*

*[Institutions that do not have intercollegiate athletics should mark this standard “Not applicable.”]*

- 3.2.12 The institution's chief executive officer controls the institution's fund-raising activities exclusive of institution-related foundations that are independent and separately incorporated. **(Fund-raising activities)**

*Excerpt citing noncompliance:* "According to the "Solicitation Policy," all solicitations for money or other gifts for the institution require the prior approval of both the President of the institution and the Executive Director of the Foundation for Excellence in Education. In addition, the President of the College and the Vice President of Institutional Advancement must approve all solicitation materials in association with the Executive Director. The President's control in both of those instances is shared with Foundation for Excellence in Education, effectively giving the foundation a veto power that could limit the President's authority."

- 3.2.13 Any institution-related foundation not controlled by the institution has a contractual or other formal agreement that

- (1) accurately describes the relationship between the institution and the foundation and
- (2) describes any liability associated with that relationship.

In all cases, the institution ensures that the relationship is consistent with its mission.

**(Institution-related foundations)**

*[Institutions that do not have related foundations should mark this standard "Not applicable."]*

*Excerpt citing noncompliance:* "The institution has described in considerable detail grants received from its two related foundations and has fully disclosed the nature of those grants. The Compliance Certification, however, has neither described nor documented the contractual relationship and possible liabilities involved in the relationship between the foundations and the institution."

- 3.2.14 The institution's policies are clear concerning ownership of materials, compensation, copyright issues, and the use of revenue derived from the creation and production of all intellectual property. These policies apply to students, faculty, and staff. **(Intellectual property rights)**

*For all standards that require a policy, institutions must document publication of the policy in appropriate institutional documents.*

*Excerpt citing noncompliance:* "The Compliance Certification does not address how the policy is disseminated to students."