



May 25, 2017

VIA FIRST CLASS MAIL AND EMAIL


Pennsylvania Department of the Auditor General
Bureau of Performance Audits
302 Finance Building
Harrisburg, PA 17120

Re: The Pennsylvania State University Response to Performance Audit Report

Attached is the University's response to the Confidential Draft Report, dated May 2017, prepared by the Office of the Auditor General.

On behalf of the University, I would like to thank the Auditor General and staff for the opportunity to provide the University's perspective on the important issues identified in the Draft Report.

Sincerely,



Frank T. Guadagnino
Associate General Counsel and Audit Liaison

Cc: Eric J. Barron
Ira M. Lubert
Mark H. Dambly

Attachment

THE PENNSYLVANIA STATE UNIVERSITY
RESPONSE TO THE OFFICE OF THE AUDITOR GENERAL'S
DRAFT PERFORMANCE AUDIT REPORT

MAY 25, 2017

The University appreciates this opportunity to provide a response to the performance audit findings made by Auditor General DePasquale in his May 2017 draft performance audit report (the "2017 Report").

As a preamble to the University's specific responses to the governance recommendations made by Auditor General DePasquale in his May 2017 performance audit report (the "2017 Report"), the University submits the following summary of the actions taken by the University and its Board of Trustees (the "Board") over the past several years with respect to governance reform.

The University's governance has undergone substantial change over the past six years. After the most recent trustee elections, 33 of the Board of Trustees' 36 voting members will have joined the Board after November 2011. The President is beginning his fourth year in office, with an overwhelming majority of the members of his senior leadership team having been appointed after November 2011. And, in addition to these changes in the individuals holding senior leadership positions, the University's Charter, Bylaws and Standing Orders -- its principal governing documents -- have undergone very significant reform.¹

Within a few months after the events of November 2011, the Board established a new Committee on Governance and Long-Range Planning (the "Governance Committee"), one of four new standing committees established as part of an ongoing process of reform and revitalization that was voluntarily undertaken by the Board in furtherance of its efforts to improve oversight and performance of one of America's great universities. Almost immediately, steps were undertaken by the Board to begin to respond to the critiques and criticisms of the University's governance structure that the Board -- through self-examination-- and others, including the Office of the Auditor General in its November 2012 Special Report entitled "*Recommendations for Governance Reform at The Pennsylvania State University after the Child Sex Abuse Scandal*" (the "Wagner Report"), had identified.

At a special meeting held in January 2013, the Committee discussed a matrix of more than 30 recommendations that it had already adopted or would soon adopt, with notations on how the change was or would be made, and the source of the recommendation. This document served as the Governance Committee's playbook as it analyzed the many -- and sometimes conflicting -- recommendations from various sources.

¹ As an organization governed by the Pennsylvania non-profit corporation law, the Board of Trustees is authorized to adopt changes to its Charter, Bylaws and Standing Orders in accordance with such documents and applicable law.

Some of the significant governance reforms that were adopted by the Board between November 2011 and May 2013 in its first phase of post-November 2011 governance reform efforts included the following:

- A reduction of the previously existing 15 year term limit to 12 years for trustees elected for terms beginning July 1, 2013;
- The addition of four new standing committees, for a total of six, providing for greater oversight and engagement by trustees; in addition, new subcommittees were established;
- The expansion of committee membership to include faculty, staff and student representation on all but one committee; and
- Key staff positions, including the Vice President and General Counsel and the Chief Ethics and Compliance Officer, were specifically given a dual reporting line to the President (with respect to General Counsel), or the Senior Vice President for Finance and Business/Treasurer (with respect to the Chief Ethics and Compliance Officer) for administrative purposes and to the Board of Trustees for reporting purposes. These reporting relationships were modelled after the University's Director of Internal Audit, who reports directly to the Board of Trustees through its Committee on Audit and Risk, and to the Senior Vice President for Finance and Business/Treasurer, for administrative purposes.

Then, in May 2013, the Board of Trustees approved sweeping changes to its Charter, Bylaws and Standing Orders. Among other significant changes:

- With then Governor Corbett's support, the University's Charter was amended to make the President of the University and the Governor *ex-officio* non-voting members of the Board;
- The composition and method of selection of the Board's executive committee was changed;
- The waiting period for an employee to become eligible to be a trustee was extended from three years to five years, with a similar waiting period with respect to Commonwealth "row officers" also added;
- A process for the removal of a trustee in the event of a breach of his or her fiduciary duty to the University was added to the Bylaws;
- The quorum requirement was changed from 13 to a majority of the voting members then in office;

- All references that previously existed in the Bylaws with respect to consultation with the President of the University on committee and subcommittee appointments and committee and subcommittee agendas were deleted;
- A new provision was added to impose a five year term limit on committee chairs, with limited exceptions subject to a super-majority vote of the Board; and
- The provision making the President the *ex-officio* Secretary of the Board was deleted; with the Secretary becoming an elected position.

After the Board adopted these changes, it almost immediately commenced a process to review, consider and analyze additional proposals for governance reform with respect to which less consensus existed among members of the Board. After conducting a comprehensive search process, the Governance Committee engaged a nationally-recognized expert in corporate governance who facilitated a thorough review and analysis of the University's governance, focusing primarily on the issues of size, composition, selection methodologies and committee structure.

As part of this analysis, over the course of almost a twelve-month period,

- The governance consultant interviewed trustees, faculty, students, staff, alumni and others affiliated with the University;
- In January 2014, the Board held a retreat, facilitated by the consultant, at which governance issues were identified and discussed;
- The Governance Committee met to discuss the issues and requested that benchmarking be done on a peer group of 20 private and public universities identified by the Committee;
- Representatives of the Governance Committee undertook a series of meetings with legislative caucuses and representatives of the Governor;
- The Governance Committee met to review the benchmarking data compiled by the consultant and held breakout sessions to allow for small group discussions on four topics: board size, board composition, selection methodology and the role of the Governance Committee in identifying the qualifications, experience, diversity, and skill sets that would benefit the Board. The Committee also identified an additional 16 universities to be included in the benchmarking.
- In July 2014, the Governance Committee heard from representatives from the student body, faculty and the Penn State Alumni Association with respect to their requests that the Board add trustees from their respective groups. The Governance Committee invited members of the Committee to bring forward more formalized proposals for consideration at a special meeting to be held in August.

- At a special meeting in August 2014, the Governance Committee heard from the chief counsel for senate appropriations on behalf of Senator John Yudichak regarding governance reform. Governance Committee members put forth for discussion three separate governance reform proposals, each incorporating a variety of recommended governance reforms.
- At its September 2014 meeting, the Governance Committee reviewed the proposals (one of which was modified from the version presented at the August meeting) and voted, seven to one, in favor of recommending to the Board a proposal for governance reform.
- Finally, in November 2014, after discussion and an amendment of the proposal, the Board adopted the Governance Committee's proposal.

Among the significant changes approved by the Board in November 2014 were the following:

- The Charter and Bylaws were amended to provide for a total of 38 members of the Board, 36 voting members and 2 *ex-officio* non-voting members, with the new members being a trustee representing the student body, to be elected by the Board of Trustees; a trustee representing the faculty of the University, to be elected by the Board of Trustees; an *ex-officio* trustee representing the Penn State Alumni Association; and three at-large trustees to be elected by the Board of Trustees;
- A new subcommittee on risk was created;
- Changes were made to the Board's Standing Orders with respect to the process for electing "agricultural trustees" and processes for the nomination and election of the student trustee, academic trustee and at-large trustees were added.

Subsequent to this second wave of significant changes to the University's organizational documents, the Board approved a number of other changes and is in the process of considering further changes. A Committee on Compensation, which focuses on executive compensation issues, was created in January 2015 to increase the number of standing committees of the Board to seven. The Board approved the expansion of student and faculty membership on standing committees from four to six and made changes to the Bylaws that redefined and clarified the role of the Committee on Outreach, Development and Community Relations, to better reflect the intended role and responsibilities of that Committee.

As evidenced by the foregoing description the Charter, Bylaws and Standing Orders of the University are not static, nor have they been, and continue to evolve to meet the changing needs of the institution. Additional changes, including proposed changes to "Expectations of Membership" contained in the Standing Orders, are currently under consideration.

The University appreciates that the 2017 Report takes note of many of these governance reforms and submits the following responses to the Auditor General's recommendations with respect to University governance.

Issue Area 1 – Transparency and accountability

Recommendations:

1. Reduce the membership of its Board to 21 voting members.

As the 2017 Report appropriately notes, “[t]here is no ‘one size fits all’ for public universities.”² Public university boards are elected or appointed in a variety of ways ranging from having all members appointed by the Governor to having all members elected in a public election, with a number of other variations. “Apples to apples” comparisons, taking into account applicable state laws, the history and mission of different institutions, the size and scope of the institutions and other relevant factors, are difficult to make and not particularly illuminating.

Penn State has had more than 30 voting trustees for over a century. Starting with an initial board of thirteen members when the University was established as the Farmers High School of Pennsylvania in 1855³, the size of the Board increased to 23 members in 1875 and then to 32 members in 1905. While the composition of the Board has evolved over this period, the University's unique board structure has been held up as a model by independent experts in university governance.⁴

Since the University's founding, the Board of Trustees has overseen enormous change and growth from a simple school for farmers to a \$5 billion multi-campus, land-grant, public research university that educates students from around the world, and supports individuals and communities through integrated programs of teaching, research, and service.

While some may consider a different board size to be “ideal”, there is ample evidence that the size of the Board, in and of itself, is not and has not been an impediment to the success of the University in carrying out its land-grant mission. Rather, it is the University's view that the level of engagement, not the number, of trustees acting in the

² See 2017 Report at p.11.

³ Act of February 25, 1855 created the Farmers High School of Pennsylvania. The Act provided for 13 trustees, including the following ex-officio trustees (Governor, Secretary of the Commonwealth, President of the Pennsylvania State Agricultural Society and the “principal” of the institution. The other nine trustees were individually named in the Act, with their successors to be elected in classes of three by “the votes of the executive committee of the Pennsylvania State Agricultural Society and the votes of three representatives duly chosen by each county agricultural society in the Commonwealth which shall have been organized at least three months preceding the time of election...”

⁴ See, for example, “A Salute to Penn State's Trustees, by Tom Ingram, President Emeritus of the Association of Governing Boards of Universities and Colleges, published in the *Chronicle of Higher Education*, April 10, 2017.

University's best interests, that is paramount and that the current structure provides for an appropriate level of oversight, at an appropriate level of detail, by the Board. As previously communicated to the Auditor General's staff, the University believes that the enhanced committee and subcommittee structure that was put in place in early 2012 and subsequently amended provides a structure whereby all trustees are able to engage with the University at a level that enables them to fulfill their individual fiduciary duties to the institution.⁵

The University notes that the number of voting members of Penn State's Board of Trustees, thirty six, is identical to or fewer than the number of voting members of the boards of trustees of the Commonwealth's other state-related universities, the University of Pittsburgh (36 voting board members), Temple University (36 voting board members) and Lincoln University (39 voting board members). The University also notes that the number of voting trustees at its fellow state-related institutions was established by the Pennsylvania legislature, adding weight to the conclusion that 36 voting trustees is not an unreasonable or unwieldy number.

2. ***Permit "Business and industry" constituency groups to appoint their trustees.***

In 1875, the University's Charter was amended to provide for twelve trustees to be elected by a body of electors composed of the executive committee of the Pennsylvania State Agricultural Society, the managers of the Franklin Institute of Pennsylvania, three representatives duly chosen by each county agricultural society in the Commonwealth which shall have been organized at least three months preceding the time of election and "three representatives duly chosen by each association, not exceeding one for each county of the Commonwealth, which shall have for its principal object the promotion and encouragement of the mining and manufacturing interests of the Commonwealth and the mechanic and useful arts which, in like manner, shall have been organized at least three months preceding the time of election."

That election process remained in place until 1951, when the University's Charter was further amended to make clear that two trustees would be elected each year by delegates of organized agricultural interests and two trustees would be elected each year by the delegates representing "organized engineering, mining, manufacturing and mechanical societies and associations." That change effectively created the "agricultural trustee" and "industrial trustee" designations.

As reported to the Board of Trustees by an *ad hoc* committee of the Board in October 2002, over time the election process for "industrial trustees" had become dominated by a single entity, the Pennsylvania Manufacturers' Association ("PMA"). The *ad hoc* committee reported to the Board that in the 2002 election, only 75 delegates, representing only 33 of Pennsylvania's 67 counties, had participated in the election. It was especially

⁵ As noted above, prior to November 2011, the Board had three standing committees and one subcommittee. The Board now has seven standing committees and five subcommittees.

noteworthy that only five delegates were from organizations other than PMA. By contrast, the agricultural trustee election has been and remains a robust process, with 175 delegates from 85 different county agricultural societies and associations, representing 60 of Pennsylvania's 67 counties, participating in the elections that were held earlier this month.

The relative lack of interest and participation by "industrial societies" other than PMA led the Board of Trustees to conclude in 2002 that changes were required and as a result, the University's governing documents were amended to provide for a nomination process of candidates for "business and industry trustees" from a broader base. (The terminology was changed from "industry trustee" to "business and industry trustee" in 2002 to reflect the Commonwealth's evolving economy and to broaden the range of the breadth and depth of the candidate pool.)

The changes made in 2002 provided for the chair of the Board of Trustees to appoint a five-member Selection Group on Board Membership for Business and Industry Trustees. That selection group was to be composed of three seated or emeriti trustees representing business and industry endeavors excluding those standing for reelection; and two trustees from among those elected by the alumni, or elected by agricultural associations, or appointed by the governor. The selection group was charged with the responsibility to review the pool of candidates and recommend two candidates each year for membership on the Board of Trustees representing "business and industry" endeavors. The names and qualifications of the candidates were then submitted to the Board of Trustees for confirmation.

In November 2014, the Board of Trustees adopted further amendments to the governing documents to change the composition of the Selection Group such that only seated members of the Board were eligible to be members of the Selection Group, eliminating the role of emeriti trustees in the selection process.

Ultimately, then, it was the disparity between the interest and participation levels of the various agricultural societies and the engineering, mining, manufacturing and mechanical societies and associations that caused the need for change. The University believes, therefore, that there is no need to "ensure consistency" between the two processes, as suggested in the 2017 Report.

3. ***Remove the exception within its Bylaws that permits the Board to override the five year "time out" restriction by which PSU employees may become trustees and/or trustees may become PSU employees.***

There is no exception in the University's Bylaws to the provision that prevents a person who is employed by the University in any capacity from becoming a trustee for a period of five years after the July 1 coincident with or next following the last day on which such person was employed. The Bylaws do provide that an exception may be made with the approval of the Board to the general restriction that a trustee may not become employed

by the University before the fifth anniversary of the date on which such trustee last served in such capacity. At its May 2017 meeting, the Board considered this issue (for the first and only time since this provision of the Bylaws was put in place in 2013) and approved a waiver of this limitation on employment of a trustee to permit Trustee Allison Goldstein, a graduate student and Ph. D candidate appointed by the Governor in 2014 as the “student trustee,” to accept an academic position in the University’s Department of Education Policy Studies. In connection with its consideration of this matter, the Board was advised that the appointment had been offered after a competitive search process at a salary that is commensurate with that position and what other similarly-situated individuals would be offered. Trustee Goldstein properly recused herself from the deliberation and voting on this matter, which was approved unanimously by the Board.

The University believes that the requirement that the Board of Trustees take a public vote on any proposed exception to the limitation on trustee employment by the University before the end of the five year “time out” period provides sufficient checks and balances to mitigate against improper conflicts of interest or self-dealing. In addition, the University believes (and the Board of Trustees, by approving the waiver requested by Trustee Goldstein concurred) that such a waiver is appropriate under the right circumstances, as in this case.

Finally, the University notes that the exception granted to Trustee Goldstein is not inconsistent with the recommendation made in the Wagner Report, which focused on Trustees moving between board and “university management” positions. As noted above, Trustee Goldstein is taking an academic position, not a “management” position.

4. In conjunction with the reduction in the size of its membership, impart term limits so that members cannot serve beyond nine years, with no special provision for time spent as Board chair.

In January 2013, the Board held a retreat to discuss various recommendations with respect to the University’s governance structure that had, as of that date, been received by the Board. Those recommendations, which came from the Freeh Report, the Faculty Senate, the Middle States Commission on Accreditation and the Wagner Report, were placed on a matrix, together with some notes and observations from counsel that were intended to be helpful to the trustees as they discussed possible changes.

One such observation with respect to the issue of term limits indicated that the length of a single term of a trustee of a public institution of higher education is typically six years and that in 2010, less than half of all public institutions of higher education (41%) had policies that limited the number of consecutive terms a board member could serve. The source for that information was the Association of Governing Board’s 2010 publication *“Policies, Practices and Composition of Governing Boards of Public Colleges, Universities and Systems”*.

At the retreat, and at various times thereafter leading up to the adoption of the amended Bylaws, the Board discussed the relative merits of a twelve vs. nine year term limit. As indicated in the data provided by the Association of Governing Boards of Universities and Colleges ("AGB"), there is no single "right answer" to the question of the appropriate length of a term limit. Indeed, as evidenced by the data cited in the Wagner Report (5.7 year average length of term and average two consecutive terms --also based on data from the AGB), twelve years is well within the mainstream.

After significant debate, as noted in the 2017 Report, in May 2013 the Board of Trustees amended its Bylaws to reduce the previously existing 15 year term limit to 12 years for trustees elected for terms beginning July 1, 2013.

In connection with that debate, it was also noted that "term limits" are ultimately decided by the relevant electorate (the alumni with respect to the nine alumni elected trustees and the various county agricultural societies with respect to the six "agricultural" trustees), and by the Governor (with respect to the six gubernatorial appointed trustees), such that the length of service of more than two-thirds (21 of 32) of the voting members of the Board at that time were not within the University's or the Board's control.

At the current time, the Bylaws provide for the "student trustee" to serve a single two year term. Likewise, the immediate past president of the Penn State Alumni Association serves on the Board of Trustees only for a single two year term. Therefore, at the present time, the actual term of service of more than half (21 of 34) of the remaining voting trustees is not within the University's or the Board's control.

With respect to the exemption for the chair, it had generally been the historical custom and practice that although elected for a one year term an individual would serve as vice chair for three one year terms and then succeed to the chair and serve three one year terms in that role. When the Bylaws were amended, the Board considered what the appropriate outcome should be in a situation where an individual was in the middle of his or her tenure as chair or vice chair at a time when they arrived at the end of their permitted term. It was determined that in the case of the chair, an exception was appropriate, for sake of continuity, to permit that individual to serve beyond the twelve year term limit so that he or she could, if elected, serve for three one year terms as chair. It was also determined that it was not necessary or appropriate to make that same exception for the vice chair, so the Board acted to remove that exception.

5. *Continue to allow unedited live streaming of its Board meetings, including the public comment period.*

The Board of Trustees instituted a public comment period in September 2012 and has offered a public comment period at each of its regular meetings since then. The timing, process and procedures used in connection with the public comment period have evolved over time and are currently under review by a task force appointed by the Board's Committee on Outreach, Development and Community Relations. Recommendations of

that task force are expected to be presented to the Committee at its July 2017 meeting. The University staff liaison to the Committee has recommended to the chair of the task force that this recommendation be taken into consideration by the task force as it reviews the current policies and procedures and makes recommendations.

6. *Post expense information for its trustees online. This information should show “per trustee” expenses, to include active and emeriti trustees.*

As previously communicated to the Auditor General’s staff, expenses incurred by the University in connection with meetings of the Board of Trustees are reported to the Committee on Governance and Long-Range Planning on a regular basis. The University does not currently report “per trustee” expenses (active or emeriti) as such. The University notes that expenses incurred by trustees (both active and emeriti) are included in the aggregate meeting costs reported to the Committee and are made publicly available for review. The University staff liaison to the Committee has recommended to the Committee chair that the Committee take the Auditor General’s recommendation with respect to the publication of “per trustee” expenses into consideration at a future meeting.

7. *Support legislative amendments to include aspects of PSU’s operations under the Commonwealth’s RTKL.*

As previously communicated to the Auditor General’s staff, the University does not believe that it is appropriate to make the Right to Know Law applicable to the University and its affiliates as if the University was a state agency. As stated in the joint testimony submitted on March 22, 2016 to the House State Government Committee on SB 411, PN 1335 on behalf of Lincoln University, Penn State University, Temple University and the University of Pittsburgh:

“In 1863, when renaming the Farmer’s High School the Agricultural College of Pennsylvania and designating it as the state’s land grant institution – then again in the mid 1960’s when creating the Commonwealth System of Higher Education and for the first time giving Temple University, the University of Pittsburgh and Lincoln University their public mission – the General Assembly was careful not to make these heretofore private institutions into public agencies.

“The term of art “state related university” has come to signify institutions that are both instrumentalities of that Commonwealth, but not the Commonwealth itself. They have a public mission given to them by the state, and the funding that accompanies that mission, but are legally organized as nonprofit corporations regulated by Pennsylvania’s Non-Profit Corporation laws. As an integral part of the state’s higher education program, state related universities receive over \$500 million in state funding to provide substantial tuition discounts to over 100,000 Pennsylvania resident students, yet the appropriations for these schools must be enacted with separate appropriation bills that require a two thirds vote of both

chambers of the General Assembly because they are not state agencies and are not under the absolute control of the Commonwealth.

“The character of the state related universities is the product of careful consideration over many years by generations of legislators and governors. We last saw the evidence of that careful consideration when the General Assembly last updated the Right to Know law, and established four different approaches to public access and accountability for State and Local agencies, for the Legislature, for the Judiciary, and for the State Related Universities. What is considered a public record and how the public may access those records are different for each of those four categories.

“These four approaches were developed after careful review of the nature of those four types of institutions and their unique operating environments. The Right to Know law balances the public’s interest and those practical considerations, making all of these institutions fully accountable for the taxpayer resources invested in them, while defining the boundaries of appropriate access.

“While there are a number of areas where the Right to Know Law can be refined and clarified, as in SB411, the Legislature got it right when it thoughtfully maintained separate approaches to fulfilling the objectives of the law by utilizing the four different approaches to this important public accountability law. State related universities that require a two thirds vote to earn their appropriations and whose operations are overseen by independent boards of trustees (albeit with substantial Commonwealth representation) are, by definition, not state agencies. State related universities that have clearly defined limitations on how they use that appropriation so that it does not constitute an obligation of the Commonwealth are not state agencies. And state related universities that do not enjoy the legal protection of sovereign immunity afforded to all state and local agencies are clearly not state agencies.

“Given that these circumstances are the result of the careful consideration of many successive legislative sessions, administrations and constitutional conventions, it is most appropriate that state related universities remain in Chapter 15 of the Right to Know law, and that we work together to fine-tune the law, as we have done in SB 411 and HB 1094, to enhance public access to the extensive information disclosed by the state related universities detailing how Commonwealth dollars are spent and how state related universities continue to fulfill their public mission on behalf of the Commonwealth.”

The University is currently fully compliant with Chapter 15 of the Right to Know Law, which sets forth various reporting requirements applicable to the Commonwealth’s state-related institutions.

Finally, the University notes that many other publicly available reports about the University and its operations are voluntarily made public or are filed or made public pursuant to other applicable laws. For instance, the University publicly reports on an annual basis its audited financial statements, reports on the audit of federal award programs in accordance with Office of Management and Budget Uniform Guidance, a report (the “Stairs/Rhodes” Report) pursuant to the Pennsylvania School Code of 1949, reports on annual crime statistics pursuant to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, consumer information pursuant to the Higher Education Act of 1965 and a variety of other important information about the University.

8. *Support legislative amendments to include PSU’s BOT members and its employees under the State Ethics Act.*

As previously communicated to the Auditor General’s staff, the University is not a state agency and does not believe that it is appropriate to make the Public Official and Employee Ethics Act applicable to the University and its affiliates as if the University was a state agency. The University believes that the conflict of interest provisions in its Bylaws (including Section 8.13 thereof which applies to employees), together with other University policies, such as its policies on conflicts of interest, disclosure of conflicts of interest, review and approval requirements with respect to contracts with the University and Trustees, family members or related entities, rules regarding the acceptance of gifts and entertainment, institutional conflict of interest and others, are adequate to provide the same or better protections as set forth in the Ethics Act.

9. *Modify the “Expectations of Membership” clause that requires all trustees to validate Board decisions publically, even when trustees may have dissenting views.*

At its May 2017 meeting, after considerable deliberation on this issue, the Committee on Governance and Long-Range Planning adopted a resolution to recommend to the Board of Trustees that the Standing Orders be amended, among other things, to change subsection (v) of the Board’s “Expectations of Membership” to read as follows:

“Speak openly, freely and candidly within the Board, while being mindful that any public dissent from Board decisions must be done in the context of being trusted stewards of a public institution. Because a university is a free marketplace of competing ideas and opinions, its governance mandates open communication as well as principled, civil and respectful debate. At the same time, trustees must always protect and act in the best interest of the University, being cognizant that the tone and substance of their words reflect on the University that they are dedicated to serve and have consequences on its overall well-being.”

The consensus of the Committee was that this language reflects an appropriate balance between the need for trustees to be free to speak their mind in the board room, while at the same time acknowledging that public comments by trustees on university issues carry

weight and should be made only after reflecting on whether such comments are in the best interest of the University. This proposed change, together with other proposed changes to the Expectations of Membership, will be considered by the Board of Trustees at its July 2017 meeting.

Issue Area 2 – Campus Security

The safety and security of our University community is a priority and we are dedicated to full compliance with the Clery Act and the Drug Free Schools and Communities Act. The University aspires to be a national leader in Clery Act compliance and has significantly strengthened our programs since 2011. Penn State has held to strict compliance, particularly over the past five years, and remain committed to our operations and, in turn, the safety of our students, faculty, staff and visitors.

Today, Penn State has robust Clery training and collection processes in place. We have many initiatives, including 18 focused on fighting sexual assault and misconduct, with the creation of new positions, mandatory employee training, a universal hotline and many others. Part of our process includes regular evaluation of our efforts, the analysis of best practice and incorporation of learnings into our operations. For a list of Penn State's major efforts, visit http://www.psu.edu/ur/newsdocuments/Actions_since_2011.pdf

The University recognizes that Clery Act compliance cannot be an end unto itself, but is rather part of a broader culture of compliance. We will continue our numerous and vigorous efforts to create a culture of reporting, safety and accountability, and have integrated compliance at every level. Penn State appreciates that the 2017 Report notes with approval the many improvements that have already been made to its policies and procedures that are intended to help ensure Clery Act compliance. In response to the recommendations in this area, the University submits the following responses.

Recommendations:

- 1. Implement standard incident management system across all Commonwealth Campuses. The system must effectively aid PSU in the uniform tracking of Clery-reportable incidents. Further, users must receive training on the system to ensure it is used effectively and efficiently to support Clery-related responsibilities.***

As noted in the 2017 Report, the University has executed a contract for a new central records system and is currently in Phase 1 of an 18-month implementation and conversion process.⁶ When the new system is fully installed and all users trained, the system will promote uniform crime reporting across all Penn State campuses. The system will further centralize Clery reporting information so that compliance staff at the

⁶ Phase I of this project is covering the University Park campus, the Altoona campus and the DuBois campus. Phase II of the project will cover the remaining Commonwealth Campuses.

University Park campus will have real time access to the information. The system is also expected to help to eliminate confusion over daily crime log reporting.

2. ***To aid in Clery compliance at each commonwealth campus, ensure that only “criminal incidents” and “alleged criminal incidents” are reported in each respective campus’ daily crime log.***

It is important to note that in addition to the “Daily Crime Log” requirements referenced in the 2017 Report, the University Police “Daily Activity and Fire Log” is used to meet the “Fire Log” requirements for the Clery Act (See, Chapter 12 of the *Handbook for Campus Safety and Security Reporting*, 2016 Edition) and the Pennsylvania Uniform Crime Reporting Act (“UCR Act”) “Daily Log” requirements as is allowed by the U.S. Department of Education (See *Handbook*, page 5-2). The UCR Act requires that the “daily log” include ...

“(1) A report of each valid complaint and all reports of crimes received by the campus police or campus security officers and the responses thereto...”

University Police and Public Safety has interpreted this to include non-criminal complaints since the UCR Act specifies “...each valid complaint and all reports of crimes received by campus police.” [Emphasis added]

As described above, however, the University believes that the new campus records system is expected to standardize data inputs and help to eliminate confusion by standardizing reporting as among the various campus units.

3. ***In concert with the above, ensure that employees and any other individual associated with Clery compliance receive sufficient and regular training on all aspects of the law and the USDE’s Handbook.***

Each member of the Clery Compliance Office has participated in at least one of two nationally recognized training programs offered by Dolores Stafford and Associates or the Clery Center for Security on Campus. In addition, the University and each Clery Compliance staff member maintains membership in the National Association of Clery Compliance Officers and Professionals (NACCOP), participates in monthly phone meetings with colleagues across the Big 10 and participates in conferences for both organizations. This year, Police Records and Compliance Manager Tracie Bogus will be presenting at the Big 10 Clery Conference in June and will also participate in a panel discussion at the NACCOP conference in July.

Those individuals who have been designated as Campus Security Authorities (CSAs) by the University are required to take, annually, online CSA training. Additionally, the Clery Compliance Office provides annual training to the Board of Trustees and meets annually with key stakeholders across the University to provide training and guidance regarding crime classification and collection.

4. *Routinely conduct internal audits over Clery Act responsibilities.*

The University's Department of Internal Audit recently began an audit of the University's compliance with its Clery Act obligations. That internal audit is currently underway with field work targeted to be substantially completed prior to the end of the current fiscal year ending June 30, 2017. It is the intent of the Director of Internal Audit that similar internal audits will be conducted annually for each of the next two fiscal years ending June 30, 2018 and 2019. Subsequent to the fiscal year ending June 30, 2019, the determination of whether or not an audit of compliance with Clery Act requirements should be performed, will be made as part of the University's annual audit planning and risk assessment process.

5. *In order to ensure the students are completing PSU's Act 104 module, consider implementing a requirement that students may not register for future classes until the module has been completed.*

As the Auditor General noted in the 2017 Report, Act 104 requires the University to offer training on sexual assault awareness, which the University does through its "AWARE" learning module which is offered to all incoming first year students. The University does believe that all students -- especially incoming first year students -- should take advantage of this learning opportunity. Accordingly, the University will consider whether a mandatory requirement as suggested by the Auditor General is the best or most efficient way to ensure that all students are properly aware of the issues and risks associated with sexual assault.

6. *Re-evaluate the internal controls and procedure related to standard background checks to ensure that no employees are hired without first clearing a standard background check.*

The University's Office of Human Resources is in the process of moving to a new HR service delivery model which will include improved recordkeeping and centralization of the hiring and background check process within the HR Shared Services Center. The anticipated completion date for this project is December 2017. The University expects that the new HR service delivery model will enable the University to better track and control the background check process and minimize any chance that employees might be hired without first clearing the required background checks.

7. *In addition to obtaining "indemnification forms" for camp operators who wish to use PSU facilities, conduct periodic reviews of those organizations to ensure that affiliated individuals are obtaining the required child protective clearances.*

The University's Youth Programs Coordinator, Risk Management Officer and University counsel, together with other appropriate stakeholders, will consider this recommendation.

8. *Revise its policies and procedures over your camps so that compliance officials are:*

- a. Able to produce accurate and complete rosters of individuals working with the camp.***
- b. Able to identify from the roster which individuals do not have the statutorily required child protective clearances on file.***
- c. Able to validate that employee statements exist for employees hired on a “provisional” status in accordance with the Child Protective Services Law.***
- d. Able to ensure that “provisional status” individuals obtain the necessary background clearances with 30 days.***

The University is committed to creating a culture of safety for all youth participating in activities offered through the University. The University, through its Youth Programs Coordinator and established continual improvement protocols, is in the process of further reviewing its policies and procedures with respect to the operation of its youth programs in order to continue standardizing processes and forms, ensure consistency of reporting, enable the efficient review of youth program employee and volunteer rosters to check for proper background clearances and to make other improvements aimed at reinforcing the culture of safety within the University’s youth programs.

Issue Area 3 – Tuition Affordability

To fully realize Penn State’s land-grant mission, the University needs to keep a Penn State education accessible and affordable for the working families of Pennsylvania. Tuition continues to be among the University’s most pressing concerns, and with the partnership of the legislature and the support of Governor Wolf, the University has kept tuition increases as low as practically possible.

Over the past four years, the University has refocused itself on this imperative and launched several initiatives that build on its more traditional need-based student programs to provide the highest quality education at a cost that ensures access for Pennsylvania citizens. It targets four key areas:

1. Increase retention and graduation
2. Decrease total cost of a degree (time to degree is key)
3. Decrease rate of student borrowing
4. Decrease attrition due to finances - need-based students take longer to graduate, have lower retention rates and higher loan rates.

The University is piloting the following programs:

Pathway to Success Summer Start (PaSSS): This provides “at risk” students on 12 campuses opportunities to earn credits, while earning money by working in on-campus jobs during the

summer and fall. Initial assessment results suggest gains in: retention, math proficiency, GPAs, and credit accumulation.

World Campus PaSS: This is focused on first-time college and online students who are first generation, adult learners or have high financial need. This program will be launched in fall 2017 and includes: non-credit courses that address study skills, technology, financial literacy, career planning and student engagement, along with personalized mentoring and scholarships.

Student Transitional Experiences Program (STEP): The goal is to reduce time to graduation for students who transition from the Commonwealth Campuses to University Park by offering mentoring, career preparation and financial incentives for participation. It was previously limited to students in the Smeal College of Business, the College of Engineering and the College of Health and Human Development, but now includes all colleges.

Penn State Financial Literacy Center: This is designed to decrease the student borrowing rate, especially lifestyle borrowing, while increasing financial literacy. An online website provides students with access to financial security information and tools.

Digital Learning Initiative: A collaboration between World Campus, Eberly College of Science, and Commonwealth Campuses is designed to increase access to enrolled 'entrance to major' classes that are offered intermittently. It reduces the number of under-enrolled courses and section, and develops a sustainable model to expand courses.

Advising Enhancements: We are developing more efficient models to facilitate communication among academic advisors, instructors and students. Rolled out in 2016, Starfish is a new suite of academic and early progress reporting tools.

Assessment and Learning in Knowledge (ALEKS): This allows for adaptive math placement and provides modules to strengthen math skills.

Provision of enhanced levels of need-based financial aid is a priority for the institution, enabling us to help students and families receive relief from cost of attendance in ways that were not done previously. This aid helps not only Pell-eligible students, but students are not Pell-eligible but still come from families that are challenged financially. For example, Provost's awards totaling \$25 million are committed annually, up from \$20 million when this initiative was started five years ago. Chancellors' awards are also available to students attending Commonwealth campus locations. The Provost's Awards have been used successfully to increase diversity, and the program is being refined to maintain a high academic profile, enhance under-represented minorities, and improve under-enrolled colleges and campuses while improving retention. Additional scholarships have been directed to students with need, and Penn State is participating in additional programs including the "Raise.me" micro-scholarship Program.

In addition to these efforts and others, generating philanthropic support for scholarships is a core institutional priority, a foundation of the current strategic plan, and one of three pillars in the

current fundraising campaign with a goal of raising \$450 million, close to 30% of the campaign's total goal.

With respect to cost containment, for several decades, Penn State has cut and reallocated funds within the budget, and continues to strive for efficiencies in its operations in ways that support and advance the quality of a Penn State education. Annual requirements for every unit to identify recurring savings and efficiencies created an environment in which leaders continuously evaluate opportunities to reduce costs. In addition, rigorous, University-wide efforts such as the "Core Council" effort have aggressively and strategically identified opportunities for rationalization of academic offerings across the institution. These opportunities have led to the discontinuation of academic programs and majors, the merger of academic departments and shared administrative positions by campuses.

Targeted expense reduction initiatives have been implemented within specific units that needed to make swift budget adjustments in response to enrollment challenges or direct appropriation reductions. Last year, a voluntary retirement plan was offered to employees and was accepted by 587 faculty and staff, which will yield expected savings of \$12 to \$16 million. In addition, new initiatives have resulted in \$1.5 million in energy savings and \$3.5 million in procurement savings. An additional \$19.8 million in cost savings/budget reductions in the 2016-17 fiscal year include: restructuring post-retirement health care liability, capping/reducing the subsidy to World Campus and Outreach, administrative overhead and other tactical savings.

While cost reduction, cost containment and efficiency initiatives have been an integral part of Penn State's budget process, the University is also exploring increased revenue initiatives. These include: the creation of new professional masters programs; providing multiple seamless points of access through World Campus; monetizing intellectual property; new residence halls at Commonwealth Campuses to general additional enrollments; program investments and targeted advertising to increase enrollment at the Commonwealth Campuses; and cultivating lifelong learning through refresher courses and a subscription to professional content modules.

Recommendations:

- 1. PSU ensure current and future strategic plans address tuition affordability specifically for all Pennsylvanians by setting innovative, clear, and measurable goals and objectives.***

As previously communicated to the Auditor General's staff, the University's Strategic Plan for the five calendar years 2016 through 2020 is the result of a broad and inclusive two-year process that involved unit-level planning for 48 academic and administrative units across the University. In concert, this overarching institutional plan was developed, but it must be considered in the context of all the unit-level plans. In the institutional plan, we identify our direction at a macro level—citing specific goals for the University as a whole—and set a strong foundation for where we are headed; unit-level plans provide more specificity, as they should, and together with the institutional plan form a coherent plan structure. (The Strategic Plan is publicly available at

The concept of institutional strategic planning—especially for an institution as large and unique as Penn State: one University, geographically distributed—is not and cannot be a static, specific-goal-driven process. We must be adaptive and nimble, and use real-time information and developments as they become available to inform and guide us in the direction that is most effective for the University. Our University-wide document presents a strategic vision and direction, so it deliberately and purposely does not identify specific initiatives to undertake or means/metrics to assess/measure their success. Such assessment, along with more detailed objectives and tactics, will emerge and evolve University-wide—throughout campuses, colleges, departments, and units—as this strategic plan is operationalized during the next five years.

Meaningful and respected literature is replete with studies and assessments of strategic planning processes, including those for academic institutions. Many question the relevance of traditional planning, derived from its military origins, in favor of a more adaptive and distributed process such as the one adopted by us in this effort. Indeed, the reason many plans for universities have been considered ineffective has been their inability to properly capture what is core to our being: the discovery and dissemination of new knowledge through research teaching and service. We constrain this at our peril. Our plan must not just reflect this reality, but embrace it. This is a plan that does precisely that.

Uncertainties in externalities that have both direct and indirect impacts on available resources in most instances precludes specific, quantitative targets in favor of defining directions and our ability to make progress in those directions. For example, uncertainties in the level of appropriation, as well as major proposed changes in support for research and higher education in general in Washington make a more agile, dynamic and adaptive strategic plan approach and implementation even more necessary.

What is unwavering is the University's absolute commitment to maximize accessibility and to minimize the cost of attendance to our institution so that deserving students from all backgrounds and walks of life can continue to access a high-quality Penn State education.

2. ***PSU apply the holistic operational philosophy ("one campus, geographically distributed") to all areas of the university, including affordability and accessibility to the main campus.***

In a time when other state institutions nationally have seriously rebalanced their in-state to out-of-state ratio in favor of out-of-state students, Penn State remains absolutely and steadfastly committed to its role as an institution of higher education in Pennsylvania that serves the citizens of the Commonwealth. Unlike other states which maintain a system of public institutions, Penn State's "one campus, geographically distributed" model

means that no matter the campus location, students graduate with a degree from “The Pennsylvania State University”. A student who matriculates at any Penn State campus can graduate from any other Penn State campus (including University Park) provided that his or her desired program is available and the student meets entrance-to-major requirements. Our unique multi-campus structure enables us to provide access to a Penn State education in a manner that is flexible, accommodates the needs of students and their families, and provides choices in cost-of-attendance.

The tiered structure that Penn State has adopted for tuition, taking absolute advantage of our unique structure and fully leveraging our distributed infrastructure, enhances the University’s ability to provide affordable access and options for a Penn State education to families with widely different circumstances and different needs. *All students* are Penn State students, regardless of their campus choice, and the University’s structure and approach enables students who desire terminal degrees that are only obtainable at University Park to have a range of financial options available to them, facilitated by the ability to seamlessly transition from one campus to another.

3. *PSU remain committed to its long-standing foundation as a public state university and its mission as a public land-grant university by prioritizing Pennsylvania residents throughout the recruitment and acceptance process.*

The University takes its land-grant mission very seriously and has never intentionally favored non-resident students over Pennsylvania residents in the recruitment and acceptance process in order to increase revenue or otherwise. Twenty years ago, Penn State was a very good regional land-grant university. Today, we are a world renowned teaching and research enterprise with demand for admission from every region of the globe. Statistics provided by the University to the Auditor General’s staff bear this out. In 2000, applications for admission to the University Park campus from international students, non-resident students and Pennsylvania residents were 972, 13,312 and 14,625, respectively. By comparison, in 2015, those numbers had increased to 11,255, 24,763 and 17,453, respectively. Significantly, while the total number of enrolled non-resident students has increased with the growth in enrollment, the ratio of enrolled non-resident students to non-resident applications was flat, with 11.6% in 2000 and 11.2% in 2015. The ratio of enrolled international students to international applications actually decreased, from 14.1% in 2000 to 6.7% in 2015.

The statistics are similar when viewed from a University-wide perspective. In 2000, applications for undergraduate admission to Penn State from international students, non-resident students and Pennsylvania residents were 1,203, 18,654 and 31,675, respectively. By comparison, in 2015, those numbers had increased to 15,739, 33,067 and 34,631, respectively. Again, while the total number of enrolled non-resident undergraduate students increased with the overall growth in enrollment, the ratio of enrolled non-resident students to non-resident applications actually decreased, from 12.6% in 2000 to 11.6% in 2015. The ratio of enrolled international students to international applications also decreased, from 14.5% in 2000 to 8.4% in 2015.

A review of the admissions statistics from a different angle also demonstrates that there has not been any “bias” in favor of non-resident students, whether for the purpose of increasing revenues or otherwise. The University cannot control the number of applications received or the number of admitted students who actually enroll. It can and does, however, control the number of students who are admitted. In 2000, Penn State admitted 50.7% of the in-state resident applicants to University Park and 68.2% of in-state resident applicants University-wide. In 2015, Penn State admitted 52.9% of the in-state resident applicants to University Park and 68.8% University-wide. The numbers evidence that in 2015 Pennsylvania residents were actually admitted at a higher rate than in 2000, both at the University Park campus and University-wide.

Further, if one considers the trend of the ratio of the enrolled cohort by residency, one can better understand the impact of the growth in out-of-state and international application pools. Review of the ratio of the enrolled cohort by residency for the whole university indicates that more than two thirds (67.1%) of our entering freshman class in 2015 were Pennsylvania residents, down from four fifths (81.4%) in 2000. That represents, in 15 years, an absolute reduction of 542 students against a base of 11,051 (a 5% reduction.) This small reduction took place during a period of serious demographic challenges in the Commonwealth, with declining numbers of college-bound high school students, many of whom are aggressively recruited to institutions in other states. As noted above, in a time when other state institutions nationally have seriously rebalanced their in-state to out-of-state ratio in favor of out-of-state students, Penn State remains absolutely and steadfastly committed to its role as an institution of higher education in Pennsylvania that serves the citizens of the Commonwealth.

Just as the University has been careful not to base admission strategy on budgetary or revenue considerations to the detriment of Pennsylvanians, as some of our peers in other states have done, we must be cognizant of the fact that doing so in the opposite direction (i.e., strategically shifting the balance away from out-of-state students from our current state) and in the absence of increases in other revenue sources will ultimately result in higher tuition for Pennsylvania resident students because of the subsidy that out-of-state tuition provides.

4. ***Business members of PSU Board should offer their expertise to help advise the University on how to effectively control and or lower tuition cost drivers.***

University administration will make the members of the Board of Trustees aware of this recommendation.

5. ***The Board should create a task force dedicated to monitoring and lowering tuition cost drivers. This task force should work with PSU business staff to identify all cost categories that are projected to increase above the CPI, and then develop a targeted plan to address cost containment. The task force should share this information with the PSU community and the public via a “digital dashboard.”***

University administration will make the members of the Board of Trustees aware of this recommendation.

6. *The Board should adopt a policy goal of prohibiting future tuition increases above the projected CPI for that year.*

University administration will make the members of the Board of Trustees aware of this recommendation.

The University would like to note, however, that it believes that this suggestion is unrealistic for several reasons:

- For the upcoming year 2017-18 alone, the University is facing a \$12.9 million increase in its required contribution to the State Employee Retirement System (“SERS”). This single expense item equates to a tuition increase of more than 1%.
- The University’s mandatory contribution to SERS has increased from \$10 million in 2007-08 to nearly \$100 million in 2016-17. This single expense item translated into a tuition increase of more than 13% for Pennsylvania resident students.
- The University’s Commonwealth appropriation has not kept pace with the CPI. In fact, the University’s appropriation for 2016-17 is less than the appropriation for 2001-02. Had the University’s appropriation kept up with CPI over that period, the University would have received \$134 million of additional appropriations in 2016-17, which would have translated to a 19% tuition reduction for Pennsylvania resident students.
- The University relies on three principal sources of income to fund its General Funds budget: Tuition, State Appropriations and Other (mainly short-term investment income and indirect cost recoveries). When state appropriations are flat or declining, there is significant pressure on the tuition component of the budget to cover inflationary increases. If costs increase at the rate of the CPI, all sources of income must increase at the rate of CPI or else one part must increase at a higher rate.

The University also notes that it receives far less Commonwealth appropriation per full time student than the 14 state owned “PASSHE” schools or its fellow state related universities. According to the Joint State Government Commission Report published in February 2016, for the 2014-15 year appropriations per FTE student for the 14 state owned PASSHE schools, the University of Pittsburgh and Temple University were \$3,992, \$3,888 and \$3,497, respectively. By contrast, Penn State received only \$2,468 per FTE student for that year.

Finally, the University notes that tuition and state appropriations, as a percentage of the total general funds budget, have changed dramatically over the past half century. In 1970-71, state appropriation was 62% of the general funds budget, with tuition and fees counting for 32%. In 2016-17, state appropriations had fallen to only 14% of the general funds budget, with tuition and fees representing 79%.

The state-related institutions in Pennsylvania receive far less appropriation per student than peers in other states. Through appropriation, other states cover a higher proportion of the cost of education resulting in a need for that cost to be borne in Pennsylvania disproportionately by students and their families. Comparison of Penn State's nominal tuition relative to peers does not capture this difference in a manner that does not allow a direct comparison to provide the full picture. For example, Minnesota in 2015 had a direct state appropriation of \$625 million for approximately 30,000 undergraduates, a far different circumstance from that of Penn State.

An additional consideration is that peer (e.g. Big Ten) institutions generally receive higher levels of capital allocation for infrastructure investment and renewal than Penn State. This need for investment to maintain quality facilities has to be funded, in part, through borrowing, the cost of which drives additional budgetary burdens.

With tuition and fees representing almost 80% of the revenue stream, increases to keep up with inflationary and other cost increases are very difficult to avoid.