New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Oversight of Campus Foundations

State University of New York

Report 2016-S-93

February 2018

Executive Summary

Purpose

To determine if the State University of New York's System Administration is providing sufficient oversight of campus foundations to make certain the campus foundations conduct their activities in accordance with applicable laws, rules, and regulations. The audit covers the period July 1, 2013 through October 12, 2017.

Background

The State University of New York's (SUNY) State-operated campuses are authorized to contract with foundations, which are private, not-for-profit corporations, to support fundraising efforts, real property management, or other activities and functions that are not specifically vested with the campus. Generally, foundations receive and manage donations and make these resources available to the campus to support approved programs and activities.

SUNY's Board of Trustees grants oversight responsibility of the campus foundations to the University Controller's Office (UCO) and the Office of the University Auditor (OUA). Both OUA and UCO are part of SUNY's System Administration (SSA). OUA is responsible for conducting periodic audits of the foundations, while UCO is responsible for ensuring the foundations have the required contracts with the campuses and for reviewing the foundations' annual audited financial statements, management letters, and corrective action plans.

As of June 30, 2015, SUNY's 30 campus-related foundations had net assets totaling $2.1 billion. Two foundations, Stony Brook Foundation, Inc. (SBF) and University at Buffalo Foundation, Inc. (UBF), controlled $1.1 billion, more than half of the total foundation assets. This report includes our examination of SSA's oversight of the foundations, as well as our review of certain SBF and UBF operations.

Key Findings

We identified certain deficiencies in SSA's oversight of the campus foundations and in certain areas of the foundations' operations.

- 10 of the 30 foundations were operating without the required contracts with the campuses while continuing to oversee and manage donations and resources (totaling $1.6 billion) on behalf of those campuses.
- 16 of the foundations have not been audited by OUA since at least 2007.
- SSA does not routinely obtain or review certain available documentation that could be used to assess risk, such as the foundations' policies and IRS Form 990, which provide details on an organization's governance, finances, and activities.
- Certain foundations have not established required policies and procedures for key business functions, or their policies are inadequate or contain questionable provisions. For instance:
    - SBF lacked an agency account policy, despite maintaining a significant agency account balance of about $40 million as of June 30, 2015. (Agency accounts are used to receive and disburse non-State funds [from sources such as student activity fees and student club fees] for activities for students, faculty, and others.)

- ◦ Neither SBF nor UBF had documented policies and procedures for obtaining contracted services, including provisions for competitive bidding. During the course of the audit, we identified contracts that were not competitively procured.
- ◦ SBF's and UBF's payroll-related policies lacked provisions to ensure the compensation they were funding was justified. We also identified two individuals who were working for the University at Buffalo but were compensated by UBF – and not the University at Buffalo – while also receiving a State pension. UBF paid these individuals $118,696 and $119,565, respectively. If these individuals were paid by the University at Buffalo, they would have been subject to the limitations in the Retirement and Social Security law on the annual compensation of retirees who return to public employment.

Key Recommendations

- Work with campuses to ensure all foundation contracts are executed on a timely basis.
- Routinely evaluate relevant, available information, such as the foundations' IRS Form 990s and their policies and procedures, to assess risk in the foundations' operations. Incorporate identified risks into the audit planning process and consider performing audits that address high-risk areas.
- Ensure all foundations have thorough policies and procedures that adequately address all areas specified in the Guidelines for Campus-Related Foundations.
- Review the questionable expenditures identified by our audit and determine whether they are reasonable and consistent with the foundations' mission to support campus programs and activities. Advise the foundations to take corrective measures to resolve the identified deficiencies, as warranted.

Other Related Audits/Reports of Interest

State University of New York: Oversight of Campus-Related Foundations (2006-S-96)
State University of New York: Selected Procurement and Contracting Practices (2014-S-19)

State of New York
Office of the State Comptroller

Division of State Government Accountability

February 26, 2018

Kristina M. Johnson, Ph.D.
Chancellor
State University of New York
State University Plaza
Albany, NY 12246

Dear Chancellor Johnson:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Oversight of Campus Foundations*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The State University of New York's (SUNY) State-operated campuses are authorized to contract with foundations, which are private, not-for-profit corporations, to support fundraising efforts, real property management, or other activities and functions that are not specifically vested with the campus. Generally, foundations receive and manage gifts (donations) and make these resources available to the campus to support approved programs and activities. As of June 30, 2015, SUNY's 30 campus-related foundations had net assets totaling $2.1 billion, with foundations at ten campuses controlling about 84 percent of these funds.

SUNY's Board of Trustees grants oversight responsibility of the campus foundations to the University Controller's Office (UCO) and the Office of the University Auditor (OUA). Both OUA and UCO are part of SUNY's System Administration (SSA). OUA is responsible for conducting periodic audits of the foundations, while UCO is responsible for reviewing the foundations' annual audited financial statements, management letters, and corresponding corrective action plans, and ensuring the foundations have the required contracts with the campuses. In 2008, SUNY's Board of Trustees updated the Guidelines for Campus-Related Foundations (Guidelines) to clarify the role of these foundations. The Guidelines were recently updated in 2016 to require whistleblower policies and to expand coverage to affiliates (foundation-formed entities that assist in meeting specific needs).

The five-page Guidelines provide basic requirements for foundations and list key business areas where foundations are required to establish policies (see the Exhibit for an excerpt of the 2016 Guidelines). The Guidelines require a formal contract between the campus and the foundation that establishes, among other items, the services the foundation will provide. In addition, the Guidelines require that foundations:

- Ensure that the proceeds of campus fundraising are appropriately recorded, credited, acknowledged, and administered based on legal requirements and donor stewardship parameters; and
- Submit their financial statements and management letters to SSA annually.

This report includes our examination of SSA's oversight of the foundations and our review of selected Stony Brook Foundation, Inc. (SBF) and University at Buffalo Foundation, Inc. (UBF) operations. As of June 30, 2015, SBF and UBF controlled $1.1 billion, more than half of the total $2.1 billion in foundation assets. SBF's and UBF's contracts with their campuses expired on February 28, 2015 and June 30, 2014, respectively. OUA last audited SBF in 2007. OUA was in the process of completing an audit of UBF during our audit fieldwork. (As of March 2017, OUA had essentially completed its audit fieldwork and was in the process of writing its preliminary audit findings. OUA expected to have its audit report finalized by May or June 2017; however, as of the end of our audit period of October 12, 2017, OUA's audit report of UBF was not finalized. We were provided with a verbal overview of OUA's findings, but were not provided with OUA's written audit findings.)

Audit Findings and Recommendations

We found that SSA should improve its oversight of campus foundations. For example, SSA did not ensure each campus had an active contract with its foundation – 10 out of 30 foundations were operating without contracts while continuing to oversee and manage gifts and resources on behalf of the campuses. Meanwhile, 16 foundations have not been audited by OUA since at least 2007. In addition, we found that SSA does not obtain or review certain available documentation that could be used to assess risk in the foundations' operations. Moreover, when we looked at certain elements of foundation operations, we identified deficiencies that indicate more effective oversight by SSA is needed. For instance, we determined certain foundations have not established the required policies and procedures for key business functions, or their policies were inadequate or contained questionable provisions. We also identified certain questionable foundation expenses. We made four recommendations to SUNY aimed at strengthening SSA oversight.

Expired Contracts

The Guidelines require a formal contract between the foundation and the campus. The contract authorizes the foundation to operate on campus, and is generally in effect for a term of up to ten years. SSA developed a model contract for the foundations and campuses to use, which includes exhibits that outline the services the foundation will provide and the resources that will be provided by the campus to the foundation. Further, the model contract includes a provision stating that the foundation will act in accordance with the Guidelines.

As part of SSA's oversight of the foundations, UCO tracks the status of the contracts and notifies the foundations nine months prior to the expiration to provide them with reasonable time to negotiate and finalize a renewal. However, we determined that UCO does not ensure contracts are renewed timely. We found that of the 30 foundations, 10 were operating without active contracts with the campuses they support (including UBF, one of the largest foundations, whose contract was expired over three years), as shown in the following table.

Foundations With Expired Contracts as of August 31, 2017

Campus	Foundation Name	Contract Number	Contract Begin Date	Contract End Date	Months Elapsed Since Contract Expiration	Date Last Audited By OUA	Assets as of June 30, 2015
SUNY Downstate Medical Center	The Health Science Center at Brooklyn Foundation, Inc.	C550033	5/8/2006	5/17/2011	75	Prior to 2007	$139,247,814
University at Buffalo	University at Buffalo Foundation, Inc.	C001151	7/9/2009	6/30/2014	38	Audit in progress as of Oct. 2017	$723,192,897
SUNY Polytechnic Institute	Institute of Technology Foundation at Utica/Rome, Inc.	C000758	1/1/2010	12/31/2014	32	Prior to 2007	$6,314,780
Stony Brook University	Stony Brook Foundation, Inc.	C001495	3/1/2010	2/28/2015	30	2007	$383,268,718
University at Albany	The University at Albany Foundation, Inc.	C004014	7/1/2011	6/30/2016	14	2007	$75,664,703
Upstate Medical University	Upstate Medical University Foundation, Inc.	C502998	7/1/2011	6/30/2016	14	Prior to 2007	$90,078,615
SUNY Potsdam	Potsdam College Foundation, Inc.	C000534	9/1/2011	8/31/2016	12	Prior to 2007	$35,060,685
SUNY Cortland	Cortland College Foundation, Inc.	C000571	12/1/2011	11/30/2016	9	2008	$39,745,245
Buffalo State	Buffalo State College Foundation, Inc.	C100864	12/15/2011	12/14/2016	8	Prior to 2007	$49,461,304
Purchase College	Purchase College Foundation, Inc.	C030112	3/1/2012	2/28/2017	6	Audit in progress as of Oct. 2017	$72,172,242

Subsequent to the completion of our audit fieldwork, we were informed by SSA officials that six of the expired contracts had been renewed (SUNY Polytechnic Institute, University at Albany, Upstate Medical University, SUNY Potsdam, SUNY Cortland, and Purchase College). However, during the time period subsequent to our audit fieldwork and prior to the issuance of our audit report, two additional contracts expired (SUNY Old Westbury and SUNY Oswego), leaving the total number of expired contracts at six. Note: SUNY Downstate Medical Center, which had been operating without a contract for over six years, entered into an interim contract on 10/20/2017, which expired two months later on 12/31/2017.

According to SSA officials, there was concern on the part of the foundations that, by entering into a contract before the 2016 Guidelines were formalized, foundations and campuses would be forced to repeat the process again shortly thereafter. In addition, SSA officials stated that the model contract must sometimes be adapted to fit unique foundation and campus relationships, which can create delays. Also, affirmative action clauses required by SUNY's University-wide

Procurement Office as an exhibit to the model contract as of January 15, 2016 created additional concern. Despite the noted concerns, we observed that 16 of the 30 foundations had approved amendments to their contracts that subjected them to the 2016 Guidelines and a revised version of the aforementioned exhibits, while the other 14 foundations did not.

SSA officials stated they lack recourse for foundations that are operating without a contract. Officials added that they continually contact foundations for status updates on contract negotiations, and have even developed interim contracts to help bridge the gap created by the 2016 Guidelines, without success. While the primary mission of the foundations (per their organizing documents, by-laws, and restrictions as 501(c)3 tax-exempt organizations) is to support the campuses, the lack of active contracts creates concerns including, but not limited to:

- The foundations continue to operate without contractual authority and approval while managing over $1 billion in net assets;
- The foundations were not required to abide by the affirmative action clauses incorporated in the model contract (affirmative action requirements were removed from the model contract in May 2017); and
- The foundations are not bound by the changes in the 2016 Guidelines, which include requirements for the foundations' affiliates and a whistleblower policy.

Audit Risk Assessments

As part of SSA's oversight of the foundations, OUA conducts periodic audits. OUA officials said that its auditing activities have been limited by competing priorities and a lack of resources. Since 2007, OUA completed audits of 12 foundations and, at the time of our audit, had another two in progress. Consequently, 16 foundations have not been audited by OUA since at least 2007.

We believe OUA could enhance its risk assessment processes. Risk assessment involves assessing the risk and possible effects of fraud and an entity's noncompliance with provisions of laws, regulations, contracts, and policies and procedures so that tests can be developed to examine those areas with the greatest risk of fraud and noncompliance. According to OUA officials, OUA generally completes detailed and comprehensive audits (including evaluating large sample sizes in some cases). OUA does not routinely use certain readily available information to assess risk at the foundations and identify potential high-risk areas for more refined, targeted audit work.

OUA's decision to audit a foundation is based primarily on factors including: reviews of the foundations' financial statements and management letters, concerns or issues identified by UCO, and the date OUA last audited a foundation. If, for instance, OUA required foundations to submit their policies and procedures for review, it could assess foundations' levels of compliance and identify potential high-risk areas (e.g., payroll, procurement, contracting) and target them for audit. Such an approach might allow OUA to conduct more audits and cover a broader range of foundations.

Policies and Procedures

The Guidelines require the foundations to have policies for key business functions, including: cash receipts and disbursements, gift acceptance, spending, investment management, procurement (including travel expenses and credit cards), payroll, inventory, agency accounts, and conflicts of interest. Additional guidance is provided on OUA's website regarding good business practices, internal controls, governance, and specific information that should be included in the foundations' policies.

Thorough policies and procedures help establish sound internal controls that help ensure funds are used in ways that support approved programs and activities. We requested the policies of two of the largest foundations, SBF and UBF, to determine if they maintained the policies required by the Guidelines, and if they were adequate and being followed. We found that, for both foundations, either they were lacking some of the required policies or their policies were inadequate or contained provisions for approving questionable expenses, such as retirement parties. In addition, we determined both foundations were not consistently following their own policies and procedures.

Agency Accounts

Foundations are authorized to administer agency accounts. Agency accounts are used to receive, hold, and disburse non-State funds for approved activities for students, faculty, staff members, and appropriately recognized organizations. These accounts hold funds received from numerous sources such as student activity fees, orientation fees, child care center fees, and student club fees. Up-to-date, comprehensive written policies and procedures for the administration of agency accounts are critical to help ensure the funds within these accounts are adequately safeguarded, that receipts are credited to the appropriate agency account, that disbursements are properly authorized, and that the accounts, overall, are administered in accordance with SUNY guidelines.

SBF maintains agency accounts in a custodial/fiscal agent capacity and, as such, SBF should have a policy to manage these accounts, as required by the Guidelines. We determined SBF lacked an agency account policy despite maintaining a significant agency account balance of about $40 million as of June 30, 2015.

Competitive Procurement

The Guidelines require foundations to develop policies in the area of procurement. However, the Guidelines do not require that these procurement policies address processes for approving and engaging in contracts for goods and services, such as competitive bidding. The Guidelines are brief – only five pages – and list key business areas where foundations are required to establish policies (see Exhibit).

Competition helps to ensure procurements are made on the most favorable terms and that funds are appropriately used to support campus programs and activities. In addition, a competitive process helps ensure a fair, open process and avoids favoritism and questionable related-party transactions. However, we found that neither foundation had documented policies and procedures for obtaining or funding contracted services. We reviewed eight of SBF's contracts from fiscal year 2014-15 and found that four were not competitively procured. The four contracts, which included lobbying services, fundraising, and entertainment, totaled more than $357,000 and were based on referrals or longstanding business relationships.

We requested bid documentation from UBF relating to four contracts that were in effect during our audit period totaling $780,627 (for audit, legal, real estate, and investment services). UBF provided a summary spreadsheet of the bids it received for these contracts, and it appeared there was selection criteria in selecting a vendor for the audit, real estate, and investment services, but not for the legal services. UBF was unable to provide the actual bids from the vendors for these contracts, even though its own record retention policy requires the foundation to maintain these documents for a period of seven years.

Payroll

Both foundations provide a significant amount of funding to the campuses for salaries and other forms of compensation, some in addition to State salaries. We sampled 50 individuals compensated by UBF for fiscal year 2014-15 and found that in addition to a State salary, 20 were paid nearly $1.8 million by UBF. Four of these individuals each received salaries exceeding $100,000 from both the University at Buffalo and UBF. For example, one individual received a State salary of $351,438 while also receiving $308,453 from the foundation.

We determined both foundations had policies that required some form of approval by an authorized signatory for expenses related to salaries, bonuses, and other forms of compensation. These policies applied to the 50 individuals we sampled from UBF, and we determined the required approvals were obtained for these individuals. However, neither foundations' payroll-related policies included provisions to ensure the compensation they were funding was justified – or benefited the campus, such as provisions that require the foundations to review information from the campuses that documents the justification for the compensation.

In a judgmental sample of 19 of the 50 individuals, whose foundation compensation totaled $1,683,909, we found insufficient justification (maintained by the campus, and not reviewed by UBF) for the compensation for two individuals whose total salary and fringe benefits amounted to $239,743. One individual received a State pension of $76,192 while also receiving $118,696 in compensation from UBF for the same position. The supporting documentation UBF provided did not show any reasonable justification – it consisted of an email from the employee stating they wanted to retire from State service (State payroll), but continue in their current position and have their compensation funded by UBF. We also note that this individual was younger than 65 when they began collecting their pension, and was thus subject to the $30,000 Retirement and Social Security law limitation on annual compensation for retirees who return to public employment. However, these limits did not apply in this case because the individual was compensated by UBF, rather than the University at Buffalo.

For the other individual, no employee agreement was provided and only a generic, one-page job description was given months after the initial audit request was made. Further, we note that, on the copy of the description provided to us, the employee's name was handwritten on it, on what appeared to be a Post-It Note that was attached to the original document. Therefore, there is little assurance the compensation received by this individual, which totaled $121,046, was necessary and justified. Foundation officials stated the campus decides the basis for compensating individuals and the foundation limits their review to ensuring the required approvals are in place. The foundation does not review employee agreements or other evidence to ensure the basis of the compensation appropriately supports campus programs and activities.

We also identified a University at Buffalo Division Director who received compensation and fringe benefits totaling $119,565 from UBF, while also receiving a State pension of $120,610. This individual also began collecting pension benefits before the age of 65 and therefore would have been subject to the $30,000 limitations of the Retirement and Social Security law if the individual was being paid by the University at Buffalo.

Certain Non-Personal Service Foundation Expenses and Corresponding Policies

Both UBF and SBF had policies and procedures related to travel, disbursements, and other types of expenses, including provisions to ensure that an expense was consistent with the donor's intent. Some policies and procedures required supporting documentation for expenses, including itemized or original receipts, brochures, or invitations, as well as justification for the expense.

We tested a sample of expenses reported by both foundations and found some expenditures that were not consistent with the foundations' mission to support campus programs and activities or were not compliant with their policies and procedures.

- UBF provided funding for a donor recognition dinner ($16,276), a retirement party ($10,340), a class reunion ($6,854), and a graduation party ($5,518), totaling $38,988.
- UBF had travel and conference expenses totaling $6,380 that did not have supporting documentation, as required by its policies. These expenses included restaurant meals that were not supported by original receipts and that exceeded the required federal per diem rate; and reimbursement to an individual for attending a dental conference in Germany – the expense was not supported by the required documentation, such as a conference brochure, invitation, or agenda.
- SBF provided funding for two retirement parties totaling $5,154.
- SBF had other expenses totaling $3,301 that lacked required documentation. These expenses included a dinner meeting ($420) and a business-class flight ($2,881). According to SBF policies, travelers are expected to use the lowest-priced available, appropriate, coach-class airfare. First class or business class may be used only when no reasonable alternative is available.

UBF officials provided us with a copy of Policy for Officers of the University at Buffalo and the University at Buffalo Foundation, Inc. Regarding the Use of University at Buffalo Foundation Funds. We determined that this policy includes provisions that allow certain types of questionable expenses to be reimbursed, such as retirement parties and chartered flights. Although both foundations provide funding for dinners and parties, we question whether these types of expenses are consistent with the foundations' mission to support approved programs and activities.

When expenditures are not fully supported, the person approving them may be unable to determine if the expenses are appropriate and benefit the campus. Therefore, alumni and other benefactors cannot be adequately assured their gifts and donations are used for approved programs and activities.

SSA should routinely obtain and review policies and procedures for the foundations to assess risk and identify potential audits, especially if required key policies are lacking, inadequate, or contain questionable provisions. We also encourage SSA to be more proactive in ensuring that foundations' policies and procedures are thorough and clear, including stating what expenses are not allowable, as well as the processes to ensure policies and procedures are followed and that funds are used in ways that support approved programs and activities.

IRS Form 990 Review

We found that SSA is not consistently obtaining each foundation's IRS Form 990 ("Return of Organization Exempt From Income Tax"), which provides details on an organization's finances, activities, and governance. Although OUA obtained select IRS Form 990s as part of its 2016-17 audit selection process, and reviewed those from foundations that were under audit, OUA officials stated they do not routinely obtain or review these forms. We discovered some situations where using IRS Form 990s to corroborate other information provided by the foundations would have alerted SSA to areas of risk.

Housing Loans

We reviewed SBF's 2014-15 IRS Form 990 and found that SBF reported two housing loans of $300,000 each, made to the Executive Director of the foundation (for his service as Vice President of University Advancement) and to the Provost/Senior Vice President of Academic Affairs. After reviewing additional documentation, we found that, despite being classified as housing "loans," there is no requirement for repayment, barring a leave of service. The loans are forgiven over a five-year period at a rate of $60,000 each year, at which time the amount forgiven becomes taxable income to the loan recipients. To effectively make this amount tax free to the recipients, SBF paid each recipient additional amounts (which are also taxable income) to cover the taxes due on both the amount forgiven and the payments to cover the taxes due (commonly known as a tax gross-up). The total cost to SBF for the loan forgiveness and tax gross-up over the course of our audit period was $1,055,664.

In addition to the annual housing loan forgiveness and tax gross-up, we discovered that both individuals received other forms of compensation from both SBF and Stony Brook University. SBF reported on its 2014-15 IRS Form 990 that the Executive Director was compensated a total of $185,109 in base compensation, bonus, loan forgiveness, and tax gross-up ($6,000, $36,261,

$60,000, and $82,848, respectively). The Executive Director also holds the title Vice President of University Advancement, for which he was compensated $399,725 by the campus. In total, SBF's Executive Director received compensation totaling $584,834 from the foundation and university. Meanwhile, the Provost/Senior Vice President of Academic Affairs received an annual State salary from Stony Brook University of $419,687 as well as an additional $238,909 from the foundation, as reported by SBF on its 2014-15 IRS Form 990. SBF's compensation of $238,909 included $110,000 in base salary, loan forgiveness of $60,000, and the tax gross-up of $68,909, for a total compensation of $658,596 ($238,909 + $419,687). Routinely using IRS Form 990 as an additional resource could help SSA identify and follow up on potentially excessive foundation transactions and determine whether they are consistent with the foundation's mission to support campus programs and activities.

Conflict of Interest Disclosures

Each foundation is overseen by a board of directors, which is responsible for ensuring the foundation operates in accordance with its mission and all legal requirements. The board is responsible for governance and oversight of the foundation's affairs, personnel, and properties and for issuing necessary policies.

We identified other information on IRS Form 990 that could be used by SSA for verification purposes. Foundations are required to submit to SSA an annual conflict of interest disclosure. On the 2015 conflict of interest disclosure, SBF did not report an affiliation between an SBF board member, who served on the foundation's investment committee, and a firm that provides investment services to SBF. However, on IRS Form 990, SBF reported investments that were held with the board member's investment firm. If SSA reviewed SBF's IRS Form 990, it could have identified and questioned the discrepancies between the conflict of interest disclosure and IRS Form 990.

Because of the discrepancies we identified, we reviewed other SBF disclosures and noted that another SBF board member made a disclosure related to this firm on the "Annual Conflict of Interest Statement and Form 990 Disclosure Questionnaire" that the board member submitted to SBF, yet SBF reported to OUA on its annual conflict of interest disclosure that there were no conflicts of interest reported by its board members. These conflicts should have been disclosed to OUA, forwarded to SUNY's Board of Trustees, and made public.

Also, during our review of SBF's committee meeting minutes, we noted that there was no record of any recusals by the board members who disclosed conflicts, which would be required by SBF policy if any decisions concerning the related firm were made. SBF maintains the position that no related decisions were made, and we did not uncover any evidence to the contrary (we note that the documentation we reviewed contained redactions in certain areas). However, it would be prudent for foundations to prevent the appearance of and/or an actual conflict of interest by being more thorough in their reporting and, likewise, for SSA to use all resources available in reviewing the reported information.

Recommendations

1. Work with campuses to ensure all foundation contracts are executed on a timely basis.

2. Routinely evaluate relevant, available information, such as the foundations' IRS Form 990s and their policies and procedures, to assess risk in the foundations' operations. Incorporate identified risks into the audit planning process and consider performing audits to address high-risk areas.

3. Ensure all foundations have thorough policies and procedures that adequately address all areas specified in the Guidelines.

4. Review the questionable expenditures identified by our audit and determine whether they are reasonable and consistent with the foundations' mission to support campus programs and activities. Advise the foundations to take corrective measures to resolve the identified deficiencies, as warranted.

Audit Scope, Objective, and Methodology

To determine if SSA is providing sufficient oversight of campus foundations to make certain the campus foundations conduct their activities in accordance with applicable laws, rules, and regulations. The audit covers the period July 1, 2013 through October 12, 2017.

We audited the activities of SSA to determine whether it is providing sufficient oversight of campus foundations for the period July 1, 2013 through October 12, 2017. To accomplish our objective and assess related internal controls, we reviewed SUNY's Board of Trustees' guidelines, prior audits of campus foundations by SSA, as well as foundation contracts. We visited UBF and SBF, whose combined fund balances totaled $1.1 billion and accounted for more than half of the $2.1 billion held by 30 SUNY foundations. (We reviewed the 2015 IRS Form 990s to obtain this information, which at the time of our review, had the most up-to-date information.) We interviewed foundation officials, and reviewed foundation policies and procedures, financial records, and board meeting minutes. We judgmentally selected 119 transactions totaling $1,942,917 of $22,764,551 from discretionary expenses we considered high risk, such as Travel, Conferences, Conventions and Meetings, and Other. We tested these transactions to determine if they were adequately supported, consistent with the foundations' mission to support campus programs and activities, and in compliance with applicable policies and procedures. We also chose a judgmental sample of 50 individuals of 1,398 compensated by UBF to determine if the payments were consistent with the foundation's mission to support campus programs and activities. We selected this sample based on risk, such as compensation level received from the foundation and other sources (State). From the 50, we judgmentally selected 19 individuals based on their job title and the amount of compensation paid by UBF to determine if there was appropriate justification for UBF's compensation.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Office of Operations. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to SUNY officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of the report. In SUNY's response, officials disputed several of our findings and conclusions. Our rejoinders to SUNY's comments are included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chancellor of the State University of New York shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefore.

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Vision

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Mission

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Exhibit

The following excerpt is from the 2016 Guidelines for Campus-Related Foundations.

II. Accountability, Compliance and Reporting

The Foundation and each of its Affiliates must operate in accordance with sound business practices and at a minimum, must:

- Obtain the respective Board's approval of the annual budget and the audited financial statements.
- Cause an appropriate official of the Foundation to provide periodic fiscal reports to the Foundation Board for its review.
- Develop, administer, and communicate written policies and procedures for all key business functions. These policies and procedures should, at a minimum, cover the following areas: (i) cash receipts and disbursements, (ii) gift acceptance, (iii) spending, (iv) endowment funds management, including asset allocation, the selection of investment managers and the spending formula, (v) investment management, (vi) procurement (including travel expenses and credit cards), (vii) payroll, (viii) inventory, (ix) agency accounts, (x) conflicts of interest and (xi) whistleblowers. Such policies shall ensure that disbursements are reasonable business expenses that support the campus, are consistent with donor intent, are adequately documented, and do not conflict with the law. If the Foundation or any of its Affiliates engages a third-party (e.g. an auxiliary service corporation) to provide administrative support services, each must ensure that this third-party has in place, to the extent applicable, the written policies and procedures enumerated above.
- Comply with all applicable laws, including the Non-profit Revitalization Act of 2013, each as amended from time to time.
- Establish and maintain a system of internal controls designed to provide reasonable assurance of the achievement of objectives, reliability of financial reporting, safeguarding of assets, effectiveness and efficiency of operations, and compliance with laws and regulations.
- Ensure that the proceeds of campus fundraising are appropriately recorded, credited, acknowledged and administered based on legal requirements and donor stewardship parameters.
- Adhere to principles as defined in the "Donor Bill of Rights" and the Association of Fundraising Professionals' "Code of Ethical Principles and Standards of Professional Practice."
- Adhere to all applicable legal requirements and University procedures when providing fiscal, administrative, and investment functions to the auxiliary services corporations, alumni associations, student government associations and/or the chief administrative officer's fund.
- Ensure appropriate student and faculty participation when assuming the responsibilities of the auxiliary service corporation.

Foundations and their Affiliates are prohibited from engaging in the following activities:

- Instructional and credit-bearing programs;
- Sponsored research programs (Sponsored research programs are to be administered by The Research Foundation for The State University of New York ("Research Foundation")); and
- Activities that generate revenue from the use of State property (e.g., cell tower leases and pouring rights); or
- Those that are prohibited by law, policy or regulation.

Agency Comments and State Comptroller's Comments

SUNY The State University of New York

Office of the Chief Financial Officer

State University Plaza
Albany, New York 12246

www.suny.edu

January 8, 2018

Ms. Andrea Inman
Division of State Government Accountability
Office of the State Comptroller
110 State Street
Albany, New York 12236

Dear Ms. Inman,

In accordance with Section 170 of the Executive Law, we are providing our comments to the draft audit report on the State University of New York Oversight of Campus Foundations (2016-S-93). The State University of New York (SUNY) System Administration and campuses have a responsibility to the public to provide affordable high quality education and campus-related foundations have a significant role in assisting SUNY and its campuses in meeting that responsibility. These foundations are separately incorporated, not-for-profit organizations with independent governing boards, and are audited annually by independent certified public accountants.

Foundations support and promote the activities and programs of SUNY campuses by providing a variety of activities such as support, advice and counsel regarding fundraising, gift and grant management; developing and managing real property; and providing a strong base of private-sector support. Philanthropy provides financial aid and scholarships to students in need; advances the campuses' research and academic mission; and helps compete for student and faculty talent. Support provided by the foundations to SUNY have a lasting impact on students who receive scholarships, professors given new research tools, and students taught by highly ranked professors. During 2015-16 the foundations received over $320 million in gifts. These gifts along with earnings from foundation assets are used to support students and campus programs.

The Office of the State Comptroller (OSC) staff worked for over a year on this audit which included an audit scope of over 4 years and site visits for several weeks at both the University at Buffalo Foundation (UBF) and the Stony Brook Foundation (SBF). While we are appreciative of the comprehensive audit work done by OSC, we are concerned that the draft report is not fair and balanced.

State Comptroller's Comment 1 – As SUNY officials are aware, we experienced significant delays on this audit. From the onset, foundations were hesitant to provide information. Certain requested information was not provided while other information took an inordinate amount of time to receive. For example, SBF would not provide us with its

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investment manager agreements, and then took nearly six weeks to provide a listing of its investment managers. Further, after almost two months of requests and delays, not only were we provided board minutes that had been heavily redacted, but auditors were only allowed to review them on site. We disagree that the report is not fair and balanced. Following are our State Comptroller's Comments that address SUNY's concerns.

- The Draft Audit Report does not accurately portray or acknowledge the numerous oversight activities by SUNY and others including the foundations' board of directors, independent auditors, campus officials, and the New York State Attorney General.

  State Comptroller's Comment 2 – Throughout our report, we cited most of these oversight activities. We remind SUNY officials that the objective of our audit was to assess the oversight activities of SUNY System Administration.

- The Draft Audit Report cites $57,030 in questioned expenditures (UBF - $45,368 and SBF- $11,662) but does not provide any context other than in the section "Audit Scope, Objective, and Methodology." As such, it is not clear that the $57,030 in questioned expenditures represents only 3% of the sampled "higher risk" expenditures of $1.9 million (or 0.25% of the discretionary expenses from which the samples were selected). Furthermore, many of the expenses questioned are in fact reasonable and customary philanthropy expenses.

  State Comptroller's Comment 3 – The $57,030 cited in SUNY's response represents our testing of a limited sample, totaling $1,942,917, of certain non-personal service expenses. We did not extrapolate the expenses we questioned to the population of expenses funded by SBF and UBF. As SUNY officials acknowledge, our sampling methodology is reported in the section of our report entitled "Audit Scope, Objective, and Methodology." Additionally, we reviewed samples of other expenses, such as payroll. In total, we found more than $2.6 million in foundation expenses that were questionable, not consistent with the foundations' mission to support campus programs and activities, and not compliant with policies or procedures.

- The Draft Audit Report does not acknowledge that the activities of the two foundations audited by OSC were substantially compliant with SUNY Guidelines and applicable laws, rules, and regulations and that the expenses reviewed were generally appropriate, adequately documented, properly authorized, and consistent with the foundation's mission.

  State Comptroller's Comment 4 – The focus of our audit was SUNY System Administration's oversight activities. Based on our sample testing of foundation activities, while we found the two foundations were compliant with some policies and guidelines, they were not compliant with all of them.

- The Draft Audit Report includes exceptions that are based on OSC substituting its judgement for what is required by SUNY Guidelines or law and without a clear understanding of the reasonable and customary practices in philanthropy.

State Comptroller's Comment 5 – The criteria auditors used included, but was not limited to, foundation guidelines, policies and procedures of both SUNY and the foundations, OUA guidance, the foundations' mission to support approved campus programs and educational activities, and the Nonprofit Revitalization Act of 2013. Further, all reasonable and customary practices in philanthropy referenced should be included in the aforementioned policies and procedures.

- The Draft Audit Report does not distinguish when expenditures are made from donor gifts and when expenditures are made from unrestricted funds such as investment income. The Draft Audit Report takes exception to a few expenditures and concludes that alumni and other benefactors cannot be adequately assured their gifts and donations are used for approved programs and activities. This statement is misleading and implies inappropriate use of donor funds, which OSC acknowledged in meetings with SUNY they did not find any such incident occurring. As discussed, unrestricted funds were used for the types of expenditures cited in the Draft Audit Report. Furthermore, one such event costing approximately $10,000 raised over $50,000 in donations. The Draft Audit Report should be clarified to indicate that these activities were paid from unrestricted funds and not conclude that alumni and other benefactors cannot be adequately assured their gifts and donations are used for approved programs and activities.

State Comptroller's Comment 6 – Whether expenditures are paid from unrestricted funds (which originate from donor funds) or restricted funds, ultimately expenditures need to be consistent with the foundations' mission to support campus programs and activities. Additionally, SUNY officials are assuming the $50,000 in donations was contingent on the $10,000 retirement celebration and, absent the party, would not have been made. Also see State Comptroller's Comment 3.

In addition, we are concerned that the Draft Audit Report contains a number of factual errors and other areas that need clarification to present a clear and complete presentation of the facts. Our specific comments to the findings and recommendations of the report follow.

System Administration Oversight of Foundation

The Draft Audit Report generally concludes that SUNY needs more effective oversight, but fails to acknowledge that SUNY and the foundations engage in a number of activities to help ensure the foundations operate in accordance with sound business practices, comply with SUNY Guidelines and laws, and utilize their resources to support students and campus programs. These activities include:

- providing updated guidelines for campus-related foundations,
- verifying compliance with the model contract requirements,
- reviewing the required audited financial statements,

- conducting periodic audits of the foundations,
- providing assistance and guidance to the chief advancement officers,
- requiring foundations to report conflict of interest transactions,
- requiring foundations to report fundraising information, and
- following up on identified issues.

The Draft Audit Report also does not acknowledge activities by others that enhance SUNY's oversight:

- oversight and accountability provided by the boards of directors of the foundations,
- annual independent audits of the foundations financial statements,
- internal control systems and audit activities of the campuses,
- oversight of compliance with regulatory requirements and filings with the Charities Bureau of the New York State Attorney General's Office and the Internal Revenue Service (IRS), and
- OSC review and approval of the foundation and campus contracts.

SUNY believes that System Administration oversight activities of the foundations are satisfactory and the Draft Audit Report should more accurately reflect all of the on-going activities. This statement is supported by the results of the audit which identified some improvement opportunities, but did not report any incident of significant non-compliance or misuse of funds.

See State Comptroller's Comment 2.

Errors within the Draft Audit Report

1. Page 5 -The Draft Audit Report states that the 30 foundations had "assets" of $2.1 billion as of June 30, 2015. This number is incorrect. The $2.1 billion represents "net assets" of the 30 foundations.

   State Comptroller's Comment 7 – We modified our report to clarify net assets total $2.1 billion.

2. Page 5 - The Draft Audit Report states that the SUNY Board of Trustees granted oversight responsibility of the foundations to the Office of the University Controller (OUC) and the Office of the University Auditor (QUA). This statement is incorrect. The Board of Trustees did not grant oversight responsibility to any office within System Administration. The Board of Trustees approved Guidelines for Campus-related Foundations (Guidelines) that the foundations are expected to comply with, but primary oversight responsibility for the foundations rest with their boards. Nonetheless, System Administration engages in a number of activities, as noted in the report, to help ensure the foundations operate in accordance with sound business practices;

comply with the Guidelines and applicable laws, rules, and regulations including the enhanced 2013 Non-Profit Revitalization Act; and utilize their resources to support students and campus programs.

State Comptroller's Comment 8 – The SUNY Board of Trustees' Guidelines specifically assign the offices of the University Auditor and University Controller oversight over certain accountability, compliance, and reporting requirements of the foundations. Further, we were told on December 28, 2016 by SSA officials that their authority to provide oversight of the foundations is established by the SUNY Board of Trustees and their Guidelines.

3. Page 5 - The Guidelines were initially established in 1975, not 2008 as the Draft Audit report indicates. The Guidelines have been updated several times over the past 4 decades to further strengthen the requirements and keep current with changes in the law.

   State Comptroller's Comment 9 – We modified our report to clarify that the Guidelines were updated in 2008.

4. Page 8 - The Draft Audit Report states that System Administration officials lack recourse for foundations that are operating without a contract. This statement is incorrect. First and foremost, SUNY considers the foundations our partners and we have a long standing relationship with the foundations. All parties are working in a good faith effort to finalize the contracts. If there was ever an issue which we were not able to mutually resolve, SUNY could prohibit the foundation from using the SUNY name and trademark. Furthermore, foundations with expired contracts have voluntarily complied with the terms and conditions of the expired contracts, including, without limitation, periodic submission of financial and other required information to System Administration.

   State Comptroller's Comment 10 – On May 25, 2017, SSA officials told us they lack the ability to "hold the foundations' feet to the fire to get the contracts." As shown on page 7 of our report, multiple foundations have been operating without contracts for extensive periods of time – over six years in one case.

5. Page 8 - The Draft Audit Report states the OUA does not routinely use readily available information to assess risk at the foundations. This statement is not accurate. OUA conducts a comprehensive risk assessment which includes (1) reviewing all readily available information such as 990s, audited financial statements, filings with the Attorney General's Charities Bureau, prior internal audit reports, internal control reviews, and any external audit reports; (2) conducting internet searches for unusual activity or complaints; (3) interviewing System Administration officials, foundation officials, campus officials, and external auditors.

State Comptroller's Comment 11 – According to SSA officials, these activities are part of their standard comprehensive audit work, and not routinely assessed for audit planning purposes when selecting foundations for audit. Further, on page 15 of their response, SUNY officials state they believe that reliance on the audited financial statements is adequate for assessing potential risks associated with the foundations. We maintain that SSA does not routinely use certain relevant, available foundation information (such as IRS Form 990s, unredacted board and committee minutes, and policies) for periodic assessments of foundations and their activities. Such risk assessments (before audits of foundations are selected and engaged) are an efficient use of limited audit resources as they can aid in the selection of foundations and high-risk foundation activities for targeted audit work.

6. Page 8 - The Draft Audit Report states foundations with expired contracts "are not required to abide by the affirmative action clauses incorporated in the new model contract." This statement is incorrect as there is no affirmative action clause required in the model contract.

   State Comptroller's Comment 12 – The model contract which SSA officials provided during the audit fieldwork contained requirements for Exhibit A-1 SUNY Affirmative Action Clauses. This model contract was in effect for part of the audit scope. The affirmative action requirement was subsequently removed from the model contract. We modified our report to reflect that change.

Clarification Needed in the Draft Audit Report

1. Page 8 - The Draft Audit Report states that foundations with expired contracts are not bound by the requirements for the whistleblower policy incorporated into the 2016 Guidelines. This statement is misplaced as the Nonprofit Revitalization Act of 2013 requires the foundations to have a whistleblower policy. As such, foundations are required to have a whistleblower policy regardless of the status of their contracts. Both foundations reviewed by the auditors have had a whistleblower policy since 2010 (UBF) and 2014 (SBF).

   State Comptroller's Comment 13 – SUNY's response is misleading. According to the Nonprofit Revitalization Act of 2013 (Act), most of the foundations and their affiliates did not meet the criteria in the Act that requires a whistleblower policy (such as number of individuals employed by the corporation and annual revenue amounts). Therefore, we maintain that it is important to have active contracts in place.

2. Page 8 - The Draft Audit Report states that if SUNY required foundations to submit their policies and procedures for review, the information could be used to assess foundations' level of compliance and identify potentially high risk areas. This should be clarified. We do not believe it would be cost effective to

collect all the policies and procedures from all the foundations given our experience and the results of OSC's audit that shows the foundations audited substantially complied with the requirement for policies and procedures in the 11 areas specified in the Guidelines. Furthermore, effective for the 2016-2017, each foundation must annually certify compliance with the Guidelines.

State Comptroller's Comment 14 – We don't believe collecting 11 required policies from 30 foundations is burdensome. The policies we reviewed were in electronic format for easy review (and storage). Our initial review of SBF's policies quickly determined they lacked an agency account policy despite maintaining an agency account balance of about $40 million. As our report states, both foundations were lacking some of the required policies or their policies were inadequate or contained provisions for approving questionable expenses. Further, requiring each foundation to certify compliance with the Guidelines is not a substitute for reviewing the policies and assessing their adequacy.

3. Page 9 - The Draft Audit Report claims foundations were not consistently following their own policies and procedures. This statement should be clarified as the foundations reviewed did in fact materially comply with their respective policies and procedures. The Draft Audit Report only shows a few instances of not following a policy: (1) a record retention policy for a few transactions (even though the cited record retention policy does not require certain documents as described by the auditors as missing be maintained for seven years) and (2) documenting certain transactions (even though the examples cited had most of the required documentation and was only missing one item such as a requisition form). The required policies appear to have been followed.

   State Comptroller's Comment 15 – Our audit found the foundations did not consistently follow policies and procedures. SUNY's response indicates that policies were materially followed. However, we note that all policies should be followed. If a policy is not necessary, it should not be included. We reviewed samples of transactions and did not extrapolate those findings to the population of transactions. Therefore, we did not determine if foundations materially complied with policies and procedures. Further, UBF's record retention schedule for the category "contracts" is seven years and, according to the policy, includes "all types of records relating to that category."

4. Page 9 - While the Draft Audit Report's generic description of the types of funds that can be held in an agency account is correct, many of the examples provided such as "student activity fees" do not apply to SBF as the report would suggest. A majority of the agency accounts held by SBF are for various campus related entities such as the Alumni Association of the State University of New York at Stony Brook and the University Hospital Auxiliary, Inc.

State Comptroller's Comment 16 – To help define agency accounts, we provided generic, descriptive information of the types of funds that are generally held in agency accounts.

5. Page 12 - The Draft Audit Report questions UBF for having a policy (Officer Expense Policy) that allows for chartered flights. However, it does not acknowledge that the policy states that these situations are for "exceptional and unusual circumstances" and, as a result, may be "reasonable and necessary." Furthermore, the OSC auditors did not identify any expenses related to chartered flights in its targeted review of travel expenditures. UBF also indicated that since the policy in question was established there have been no chartered flights.

   State Comptroller's Comment 17 – SUNY officials are incorrect. While we didn't cite two round-trip charter flights totaling about $106,000 in our draft audit report, we did identify them in our targeted review of travel expenditures. Further, these charter flights occurred while the Policy for Officers of the University at Buffalo and the University at Buffalo Foundation, Inc. was in effect. According to the Executive Director of UBF, this policy applies to all travelers reimbursed by UBF.

6. Page 12 -The Draft Audit Report incorrectly states that the Executive Director of SBF received a housing loan. The housing loan was in fact provided prior to the individual becoming the Executive Director of SBF and was related to his position as Vice President of Advancement for the campus. As such, the loan was granted to the Vice President of Advancement and any reference to the individual's title as Executive Director should be removed from any discussion pertaining to the housing loan.

   State Comptroller's Comment 18 – Our report is not incorrect. The recipient of the housing loan was the Executive Director of SBF for more than 4½ years of the 5-year loan period. Further, SBF reported the housing loan on its IRS Form 990 as having been made to the "Executive Director." The individual held the sole position of Vice President of University Advancement for the first few months of the loan, and subsequently also held the Executive Director position. Accordingly, page 12 of our report accurately indicates the housing loan was made "for his service as Vice President of University Advancement."

<u>Detailed Response to the Draft Audit Report</u>

(Page 6) Expired Contracts

System Administration has been working diligently with the foundations and campuses on this matter. As previously discussed with the auditors, there were many factors which played a role in delaying the renewal of the contracts. These included waiting for the adoption of new guidelines, getting consensus from OSC and the Attorney General on model contract language, and the uniqueness of certain "foundation and campus" relationships. To date, of the 10 outstanding foundation contracts noted by OSC, System Administration has received 8 signed contracts and only two contracts remain unsigned. If nothing else, System Administration's role in working with the foundations and the campuses demonstrates more oversight, rather than less or inadequate oversight as the Draft Audit Report suggests.

State Comptroller's Comment 19 – As the table on page 7 indicates, as of August 31, 2017, ten foundations had expired contracts, some of which had been expired for years. Subsequent to the completion of our audit fieldwork, SSA officials provided an update on the status of the foundation contracts, leaving the total number of expired contracts at six, not two as indicated in SUNY's response. We updated the table note on page 7 of our report accordingly, and are pleased officials took swift actions in response to our audit.

(Page 8) Audit Risk Assessments

The Draft Audit Report states that OUA could enhance its risk assessment process by using certain readily available information to assess risk. OUA conducts multiple risk assessments to determine (1) which areas to audit, (2) which campuses or related entities to select, and (3) the scope and audit area for each engagement. As noted, OUA uses all readily available information in conducting its risk assessments.

State Comptroller's Comment 20 – OUA does not use all relevant, readily available information in conducting risk assessments for audit planning purposes. See State Comptroller's Comment 11.

The Draft Audit Report is critical regarding the number of foundation audits conducted by OUA but does not acknowledge the audits conducted by OSC. In fact, OSC had audited the policies and procedures of 15 campus-related foundations and conducted reviews of expenditures at 5 of these foundations during 2008. Consequently, 22 of the 30 foundations, or 73 percent of the foundations had one or more audits by OUA and/or OSC in the last 9 years and that is in addition to the required annual financial statement audits of each foundation by independent auditors in accordance with the Non-Profit Revitalization Act.

State Comptroller's Comment 21 – Page 2 of this report does acknowledge the OSC audit issued on September 17, 2008. We remind officials that the scope of that audit was July 1, 2004 through December 31, 2006, more than 11 years ago. Further, the focus of that audit was SSA's oversight of the foundations and included a review of certain foundation policies and selected expenditures. More importantly, prior to 2008 (which pertained to the scope of that audit), the Guidelines did not contain provisions for required policies and procedures. We also note the Guidelines have been updated twice since that OSC audit. Lastly, OUA should be cautious if it is suggesting it is building certain external entities into its internal control structure.

(Page 9) Policies and Procedures

With regard to the foundations' policies and procedures, the Draft Audit Report states that one or both foundations audited by OSC:

1) Were lacking some of the required 11 policies. The Draft Audit Report should be clarified to indicate that only one foundation (SBF) was missing one policy. Furthermore, the auditors did not have any findings or recommendations related to the actual use or management of the agency accounts. As such, the Draft Audit Report has no basis to suggest that such a lack of policy implies agency accounts may not be adequately safeguarded, that receipts may not be credited to the appropriate agency account, or that disbursements may not be properly authorized.

   State Comptroller's Comment 22 – SUNY officials are incorrect. As our report states on page 10, we found neither SBF nor UBF had documented policies and procedures for obtaining or funding contracted services. On page 10 of SUNY's response, officials agree with this and state, "the foundations did not have written procedures related to contracted services." Further, SBF lacked an agency account policy despite maintaining an agency account balance of about $40 million. OUA provides Audit Guidance for Agency Account Administration, which states campus-related organizations administering agency accounts should have up-to-date comprehensive written policies and procedures for the administration of agency accounts. Further, according to the guidance, campus-related organizations administering agency accounts act as fiduciary agents for any funds held in such a capacity. As such, these campus-related organizations have an obligation to the agency account holders to ensure all funds are adequately safeguarded, receipts are credited to the appropriate agency account, and disbursements are properly authorized and in accordance with the agency account agreement. We question how this can be adequately ensured without first establishing written policies and procedures for handling such accounts.

2) Had inadequate or incomplete policies and procedures because (a) the two foundations did not have a procedure related to contracted services and (b) their payroll policies did not ensure that compensation paid to campus employees was justified or benefitted the campuses. Our response to each is as follows:

   (a) Although the foundations did not have written procedures related to contracted services, one foundation (UBF) was able to demonstrate via a summary spreadsheet that competitive bidding did take place for contracted services and that these contracted services were presented to, discussed, and approved by the Foundation Board or one of its committees. For the other foundation (SBF), 4 of the 8 contracts reviewed were competitively bid. We do however take exception to the Draft Audit Report's suggestion that there were related party transactions associated with the four other contracts. The foundations are subject to Sections 715 and 715-a of the NPCL for which the foundations are required to undertake specified review and approval processes prior to entering into any "related party transaction." Most importantly, we dispute the implication that the audit uncovered any unfavorable transaction, misuse or waste of foundation assets or "questionable related party transactions." SUNY submits that this portion of the Draft Audit Report should be eliminated.

State Comptroller's Comment 23 – SUNY officials' assertions pertaining to suggested related-party transactions are incorrect. On pages 9-10 of our report, we state, "a competitive process helps ensure a fair, open process and avoids favoritism and questionable related-party transactions." This statement is widely accepted and is recognized in SUNY's Purchasing and Contracting Procedures, which states, "the practice of competitive bidding, whether formal (sealed bids or proposals) or informal (quotations), not only tends to assure reasonable prices, but also guards against favoritism, improvidence and fraud, and should therefore be used to the extent practicable, as provided herein."

(b) Foundation funding supports the operations of campus departments. The source of these funds is generally unrestricted (such as earnings from investment income) or may be restricted for the general use by a specific department. The foundations' responsibility for these funds is to ensure that the appropriate campus officials are signing-off on the transactions; that funds are used in accordance with donor restrictions, if any; that the department has adequate funding within its foundation account for the requested disbursement; and the use of funds is allowable. In concert with the foundations' required processes, campuses determine and document whether the amount of compensation is warranted, justified, benefits the campus, and is properly authorized. Requiring both the foundation and campus to obtain and document the justification of the amount of compensation and benefit to the campus is redundant.

State Comptroller's Comment 24 – The foundations, not the campuses, are charged with ensuring the assets they manage benefit the campuses. In doing so, the foundations should be ensuring all expenses they help fund, including those that involve compensation, are properly authorized and justified to benefit the campuses. Foundations are required to have policies that ensure disbursements are reasonable expenses that support the campuses, are consistent with donor intent, and are adequately documented. In their procedures, foundations should include requirements for obtaining and documenting justification for all types of expenses, including compensation. We remind officials that the foundations require justification for other expenses. We also remind officials that our review identified questionable payroll expenses.

(c) The Draft Audit Report discloses the salaries for a variety of individuals but does not come to any conclusion regarding whether or not the salaries were justified and appropriate. For example, the Draft Audit Report indicates that an individual received a salary from the State and the foundation, totaling over $600,000. The Draft Audit Report fails to show that this particular individual holds a senior level position in the medical school. The individual's salary is comparable to others in similar titles at other medical schools. Furthermore, in order to hire the most highly qualified and talented individuals, campuses must be able to provide salaries that are competitive with their peers. As such, utilizing foundation funds to augment State salaries for certain individuals in order to achieve a comparable level of pay is considered an allowable and appropriate use of foundation funds as it helps to support the mission of the campuses.

State Comptroller's Comment 25 – SUNY's response indicates the individual's salary is comparable to others in similar titles at other medical schools. During our review, we requested justification for this individual's salary, and we were not provided any documentation to support that the individual's salary was comparable to others in similar titles at other medical schools.

The Draft Audit Report also cited two examples where former campus employees retired and collected their pensions and then subsequently were put on the UBF payroll and provided service to the campus. While this is not a violation of the New York State Retirement and Social Security Law, the campus will review this practice for appropriateness.

3) Contained questionable provisions for allowing certain expenses such as retirement events and chartered flights. Retirement events recognize outstanding employee service and enhance employee campus morale. One of the retirement events questioned in the Draft Audit Report actually raised $50,000. In the case of chartered flights, as previously discussed, chartered flights are for "exceptional and unusual circumstances" and, as a result, may be "reasonable and necessary." More importantly, there are no prohibitions by the IRS or other regulatory bodies that would disallow these types of expenditures. Furthermore, the OSC auditors did not identify any expenses related to chartered flights in its targeted review of travel expenditures.

State Comptroller's Comment 26 – As previously noted in State Comptroller's Comment 6, SUNY officials are assuming the $50,000 in donations was contingent on the retirement event. Also, as discussed in State Comptroller's Comment 17, we did review two chartered flights in our targeted sample of travel expenditures.

With regard to the sample of foundation expenditures reviewed by OSC, the Draft Audit Report (page 11) states that $57,030 in expenditures (UBF - $45,368 and SBF- $11,662) were not consistent with the foundations' mission to support campus programs and activities. We disagree and offer the following:

Page | 12

- The Draft Audit Report questioned a donor recognition dinner, a retirement event, a class reunion, and a graduation party, totaling $38,988 at UBF. However, each of the expenses were appropriate, in accordance with the foundations' policies and procedures, and properly authorized by an appropriate campus official. Furthermore, donor recognition dinners, alumni gatherings for a retiring campus officer, class reunions and school sponsored graduation parties are all-well established practices among colleges and universities for donor cultivation and development and are essential to the fundraising process. Holding these events often leads to larger donations in the future which are then used to support campus programs and activities. For example, the retirement reception resulted in over $50,000 in donations for the UB Law School. It is not appropriate for OSC to substitute its judgement in place of the Board.

  State Comptroller's Comment 27 – Officials state these expenses were fundraising events; however, they were not categorized as fundraising activities. (Rather, they were categorized as social events such as dinners, reunions, and parties.) Further, the funds used for these events were restricted funds intended to support education activities. Therefore, it appears they were not consistent with the foundation's mission to support campus programs and activities. Once again, SUNY officials are assuming the $50,000 in donations was contingent on the retirement event.

- The Draft Audit Report questions $6,380 in travel expenses at UBF because there was not adequate supporting documentation. We disagree with this assessment and offer the following:

  - The $3,696 in meal reimbursements were approved by an appropriate authorized signor, supported by a signed credit card receipt or a hotel invoice showing room and meal charges, a brief explanation of the business purpose of the expenditure, and in most cases a list of attendees. The OSC auditors indicated that the lack of documentation was an itemized receipt showing what the meal consisted of (such as soup, salad, and beverage). Had the individuals chosen the per diem method of reimbursement recognized by OSC, they would not have had to provide an itemized receipt. It should also be noted that in most cases it can be shown that the meal charges that were reimbursed were below the allowable per diem rate. SUNY believes that the amount of documentation associated with these reimbursements is adequate to show the reasonableness and purpose of the expense.

    State Comptroller's Comment 28 – UBF did not follow its policies because it did not have the required receipts. Absent receipts, UBF was required to stay within the federal per diem, which it did not do.

  - The $2,684 in travel reimbursements (airfare, hotel, taxi) to a dental conference were approved by an authorized signor, supported by receipts and invoices, and included a brief explanation of the business purpose of the expenditure. OSC indicated that the reimbursement was missing a brochure or agenda from the conference. While missing an agenda, the other documentation clearly supports the transaction and as such should not be questioned.

State Comptroller's Comment 29 – SUNY is incorrect in its assertion that this expense was appropriately supported. Per UBF's Conference/Seminar policy, the expense was not supported by the required supporting documentation such as an invitation, agenda, or conference brochure. Further, the UBF business office also questioned the lack of documentation supporting this expense.

- The Draft Audit Report questioned $5,154 for two retirement events at SBF. As noted previously, these events are a well-established practice among colleges and universities for donor cultivation and development and are essential to the fundraising process. Holding these events often leads to larger donations in the future and generates significant fundraising dollars which are then used to support the education purposes for the benefiting unit and the foundations mission to support campus programs and activities. Furthermore, the Draft Audit Report fails to recognize certain facts that would add context to the expenses. For example, one of the retirement funded events honored a former Associate Vice President who devoted 38 years of service to the campus, serving in various capacities, and was attended by students, faculty and staff, and benefactors of the campus and the foundation. Furthermore, foundation funds are judiciously used for this purpose and generally only for honoring long-term and outstanding employees.

  State Comptroller's Comment 30 – As stated on page 12 of our report, we question whether retirement parties are consistent with the foundations' mission to support approved programs and activities.

- The Draft Audit Report questioned $3,301 in expenses for a dinner ($420) and a business class airline ticket ($2,881) at SBF. Documentation related to the dinner included a list attendees and an original receipt. As such, this expenditure appears to be adequately documented and should not be questioned in the Draft Audit Report. The business class airline ticket was for travel to Kenya. The foundation's Travel and Expense Policy states that "business class may be used when no reasonable alternative is available." The foundation contends that a coach class ticket for travel to Kenya is not a "reasonable alternative" given the length of the flight and therefore approved the business class ticket. It should also be noted that it appears that the U.S. General Services Administration Travel Rules and Regulations would have allowed for this trip to be taken utilizing business class given the length of the flight was beyond 14 hours. As such, this expenditure appears to be adequate and should not be questioned in the Draft Audit Report.

  State Comptroller's Comment 31 – Regarding the dinner expense, SBF officials agreed they were not in compliance with their policy. Regarding the airline ticket, SUNY's response cites federal regulations as criteria. However, in comparison, Stony Brook University's policy states the lowest-cost coach fare or equivalent must be obtained. SBF policy states travelers are expected to use the lowest-priced available, appropriate coach-class airfare; first class or business class may be used when no reasonable alternative is available. SBF policy does not provide for the exception noted in SUNY's response and contradicts Stony Brook University's policy.

- The Draft Audit Report questioned $3,207 for a departmental year-end retreat for faculty, staff, and students that did not have the required supporting documentation such as a requisition form. However, the Draft Audit Report incorrectly states that "the funding was provided without required supporting documentation such as a requisition form." In fact, the funding was provided as a payment against a purchase order as well as a requisition form. In addition, OSC was provided with an agenda and an invoice as supporting documentation related to the expense for the 70 individuals at the retreat. Therefore, this expense included the required supporting documentation and was funded in accordance with SBF policies. As such, this finding should be removed from the Draft Audit Report.

  State Comptroller's Comment 32 – Based on additional documentation SUNY provided subsequent to our draft report, we removed this item from the final report.

(Page 12) IRS Form 990 Review

The Draft Audit Report states System Administration does not routinely use readily available information to assess risk at the foundations and specifically refers to the IRS Form 990. It should be noted that much of the information contained in the IRS 990 (including the housing loans later referenced in this section) are included in the audited financial statements. System Administration collects and reviews all audited financial statements of the foundations. Furthermore, the IRS Form 990 is not always readily available and may take up to several months and in some cases more than a year after the period ended before they are available. As such, SUNY believes that its reliance on the audited financial statements is adequate for assessing potential risks associated with foundations. No new information was gleaned from OSC's review of the IRS Form 990 that System Administration was not already aware of.

State Comptroller's Comment 33 – As SUNY officials acknowledge in their response, not all of the information in the IRS Form 990 is in the audited financial statements. The financial statements do not provide the same level of detail as the IRS Form 990s. Additionally, contrary to SUNY's statement, we did glean new information from the IRS Form 990. For instance, at the time we brought the housing loans (identified from the IRS Form 990) to their attention, SUNY officials stated they were not aware of the loans. SUNY should routinely evaluate relevant, available information, such as the foundations' IRS

Form 990s, their policies and procedures, and unredacted board and committee minutes, to assess risk in the foundations' operations.

The housing loans, noted in this section of the Draft Audit Report, were provided to the individuals at the Campus' request in order to attract, recruit and retain highly qualified candidates needed to achieve strategic campus initiatives in a competitive marketplace. These strategic goals included successfully completing an aggressive $600 million capital fundraising campaign (the largest in SUNY history) and competing for the re-award ofthe contract under which the campus has co-managed and operated Brookhaven National Laboratory since 1998. The compensation packages for the two individuals in question were carefully considered and determined necessary to attract the caliber of candidates needed for these positions. The compensation was properly authorized and fully disclosed on the 990. SUNY submits that these expenses are in furtherance of the Foundation's mission to support the Campus.

State Comptroller's Comment 34 – As stated on pages 12-13 of our report, the two individuals were compensated more than $1.2 million annually. Further, as stated, the total loan forgiveness amounted to more than $1 million over the course of our audit period for the individuals. As noted in State Comptroller's Comment 33, SUNY officials were unaware of these loans. We again urge SUNY officials to identify foundation transactions such as these, and determine whether they are excessive and consistent with the foundations' mission to support approved programs and activities.

(Page 13) Conflict of Interest Disclosures

The Draft Audit Report provides commentary on conflicts of interest but does not result in a recommendation. This includes highlighting two conflicts of interest that were disclosed on IRS form 990, but was not reported to System Administration. However, System Administration was aware of the conflicts and reached out to the foundation to confirm the conflict still existed. The foundation indicated there was a conflict, that the non-reporting was an oversight, and that the board member did not partake in any discussions or votes related to the conflict.

State Comptroller's Comment 35 – Audit Recommendation 2 addresses obtaining available, relevant information to identify and assess risk. Such relevant information could include IRS Form 990s and unredacted board and committee minutes. If conflict of interest disclosure forms are not filled out accurately, as we found in our audit, this information is available on IRS Form 990 and the minutes. We urge SSA to use all available resources in reviewing conflict of interest forms from the foundations.

The Draft Audit Report states that there were "no recusals" for board members with conflicts, but also concludes that it did not encounter any evidence suggesting a need for a recusal as there were no votes or discussions related to the reported conflicts. It appears the Draft Audit Report is attempting to cite an irregularity when the fact of the matter is, there were no discussions or votes related to the reported conflicts, and as such, there would not be a need for a board member to recuse themselves. SUNY believes this commentary should be removed from the report.

State Comptroller's Comment 36 – As noted on page 13 of our report, the board minutes we reviewed were redacted. Therefore, we were unable to determine whether board members with conflicts should have recused themselves from related discussions and votes.

Recommendations (Page 14)

1. ***Work with campuses to ensure all foundation contracts are executed on a timely basis.***

   System Administration has and will continue to work with the foundations and the campuses to help ensure their contracts are executed on a timely basis.

2. ***Routinely evaluate relevant, available information, such as the foundations' IRS Form 990s and their policies and procedures, to assess risk in the foundations' operations. Incorporate identified risks into the audit planning process and consider performing audits to address high-risk areas.***

   System Administration has and will continue to review all readily available information when conducting risk assessments of foundations and for audit planning purposes.

3. ***Ensure all foundations have thorough policies and procedures that adequately address all areas specified in the Guidelines.***

   OUA has and will continue to assess the foundations policies and procedures when auditing foundations.

4. ***Review the questionable expenditures identified by our audit and determine whether they are reasonable and consistent with the foundations' mission to support campus programs and activities. Advise the foundations to take corrective measures to resolve the identified deficiencies, as warranted.***

   Based on the foundations' explanations and documents received for the expenditures cited, System Administration concludes that the expenditures appear reasonable and necessary, and are consistent with the foundations' mission to support the campuses. System Administration will continue to advise the foundations on identified improvement opportunities.

OSC, OUA, and independent certified public accountant's audits have shown that the foundations are substantially in compliance with the Guidelines and that gifts are being handled in a fiduciary manner and consistent with donor intent. While some improvement opportunities were identified, we are not aware of any incidents of significant non-compliance or misuse of funds.

System Administration does conduct an appropriate level of monitoring and activities to provide a reasonable level of assurance that foundations are compliant with the Guidelines and operate in the best interest of SUNY. System Administration in completing its "oversight" also relies on the monitoring and activities that is provided by other organizations including the foundations' independent CPAs, IRS, OSC, the New York State Attorney General's Charities Bureau, and foundation board members.

Where the Report has identified opportunities for improvement, SUNY will consider the recommendations and make the necessary improvements. SUNY appreciates OSC's comprehensive audit work.

State Comptroller's Comment 37 – Our audit report and State Comptroller's Comments support the need for SSA to take additional steps to enhance its oversight of the foundations by fully implementing our recommendations. As illustrated in our report, foundations are operating with expired contracts, lacking required policies, and using foundation funds for questionable activities.

If you have any questions, please contact me at (518) 320-1193.

Sincerely,

Eileen McLoughin
Senior Vice Chancellor for Finance and Chief Financial Officer

Copy: Chancellor Johnson
Mr. Porter
Mr. Abbott
Mr. McGrath
Mr. Bailey/Stoney Brook Foundation
Mr. Schneider/University at Buffalo Foundation
Mr. Panico/Stony Brook
Ms. Kearney-Saylor/University at Buffalo