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February 28, 2018

Joe Chrisman, Auditor
Legislative Audit Bureau
22 East Mifflin Street, Suite 500
Madison, WI 53703

Dear Auditor Chrisman,

Thank you for the opportunity to respond to the Legislative Audit Bureau's (LAB) evaluation of the relationships between University of Wisconsin System (UWS) institutions and affiliated foundations.

As you are aware, LAB's audit began in March 2017. Even before the LAB audit started, we had already begun to make internal changes to review and update our oversight of primary fundraising and real estate foundation relationships. As indicated in your audit, we have made significant progress on this front. Further, we are continuing our efforts to ensure the ongoing integrity, efficiency, and transparency of these organizations.

As our state and federal elected officials, the LAB, and UWS stakeholders recognize and appreciate, foundations play a central role in supporting the educational and research successes of our campuses and the communities we serve. Indeed, Wisconsin's widely respected public institutions of higher education would not exist in the same form without the generous financial support of our alumni and community friends. Their investment in affiliated fundraising organizations is a testament to their pride in the caliber of UW institutions and, more importantly, speaks to their trust that these foundations will be good stewards of the dollars they receive.

The foundations and organizations that are the subject of this audit provide scholarships, fund academic programs and research, and allow the UW System to develop the opportunities that make our campuses globally competitive and locally valued. This funding also reduces the need to rely on funding from public coffers. Some of these funds are designated by donors to establish endowments that will support students and help the university recruit and retain outstanding talent for many years to come. We, like you and your team, recognize the importance of ensuring these organizations operate effectively so they can continue to nimbly support the campuses and communities we call home.

The following pages provide an overview of our response to your team's work of nearly a year, which confirms the UW-Oshkosh issues identified and resolved by the Board of Regents were isolated incidents. I am pleased this audit did not find illegal or inappropriate loans or guarantees at any other foundation or organization such as those identified at UW-Oshkosh.

The UW System will continually strive to ensure transparency, while maintaining the important philanthropic relationships necessary to support our universities and students. I value the knowledge gained from our ongoing internal process, as well as the recommendations included in your audit.

Sincerely,

A handwritten signature in black ink that reads "Ray Cross".

Ray Cross, President

LAB AUDIT CONCLUSIONS

- I. **UWS and the Board of Regents established appropriate standards for campus relationships with foundations.** In 2017, the UW System and UWS Board of Regents proactively set auditing standards, Memoranda of Understanding (MOUs), operating agreements, and Regent policy to govern the relationships between UW institutions and primary affiliated and real estate foundations. **The LAB found these to be appropriate standards, and UWS will ensure these policies are adhered to and refined as needed.**

- In March 2017, the UW System proactively announced additional accountability and transparency measures related to foundation financial transactions before the Legislative Audit Committee. These accountability requirements were designed and enacted without LAB recommendation or legislative action because we recognize the importance of maintaining the integrity of these essential organizations.

The UW System and Board of Regents will continue to establish and enforce policies and rules, as well as continue to actively monitor oversight of foundation relationships.

These measures were underway – but not yet completed – before the LAB began its review.

- ✓ UW System President Cross issued a *Foundation Principles, Best Practices, and Requirements* document to UW campuses in April 2017. Institutions were required to sign a new MOU with their primary affiliated foundation by November 2017 that incorporated the provisions outlined. (*Note: UW-Oshkosh was excluded from this requirement due to pending litigation.*)
 - ✓ In [June 2017](#), the Board of Regents approved the UW System’s Office of Internal Audit Fiscal 2018 Audit Plan. This will include an audit of financial transactions with foundations, and measure compliance against the newly established foundation principles and guidelines. These findings will be reported to the Board of Regents this fall. This internal audit will address LAB’s concerns about compliance with newly adopted policies, and enable the Board of Regents to refine our internal policies and procedures as needed.
 - ✓ In addition, the Board of Regents codified these new accountability measures in [Regent Policy Document 21-9](#) in December 2017. The purpose of the policy is to ensure that UW institutions and their primary fundraising foundation and any real estate foundation operate effectively and responsibly, consistent with the reasonable expectations of both public and private interests, on behalf of UW System and its institutions.
- The accountability and transparency improvements the UW System has been implementing were utilized as the standard by LAB in its audit:
 - ✓ Throughout the various time periods referenced in the report, the LAB retroactively uses the standards announced in early 2017, but not yet implemented until November 2017.
 - ✓ The UWS was compared to 19 other universities as LAB states in the report: “*We contacted 43 universities in other states to determine how they govern their relationships with fundraising foundations and obtained information from 19 of them.*”
 - ✓ By using the UW System’s own standards, and comparing the UWS to other states, the LAB clearly indicates acceptance of the UWS reporting requirements and foundation relationship principles.

II. The LAB found the financial transactions between UW institutions and foundations to be appropriate.

- **No illegal guarantees or loans.** A key purpose of the LAB audit was to identify if any illegal guarantees or loans were issued at other UW institutions like those made by two former employees of UW-Oshkosh, who are the subjects of civil legal action pursued by the UW System and Board of Regents.

One abundantly clear conclusion from the audit is that LAB did not identify illegal guarantees or loans at other UW institutions such as those allegedly executed by the former Chancellor and Vice Chancellor/Chief Business at UW-Oshkosh under the former administration. This confirms the findings of the UW System's internal review.

- ✓ LAB audited the independent, primary affiliated fundraising and real estate foundation transactions as requested by the Legislative Audit Committee in March 2017, which are also detailed in the [UW System's Review of Foundation Financial Transactions report](#).
- ✓ LAB found the financial transactions between UW institutions and foundations to be appropriate.

III. The UWS and the Board of Regents should have the opportunity to address campus relationships with affiliated organizations before LAB imposes criteria and standards for such affiliates.

- ✓ As noted in the UWS exit interview on February 19, 2018, LAB did not identify or establish a materiality threshold for its audit as typically considered best practice by the *International Standards on Auditing* or the *Governmental Accounting Standards Board (GASB)*.
- ✓ In addition to its audit of primary fund-raising and real estate foundations, LAB expanded its audit to review any affiliated organization associated with the UW's research and comprehensive institutions. LAB included small internal entities, such as a center on campus created to serve students that may only generate around \$1,000 in revenue and gifts to the UWS.
- ✓ Since responsibility for the System rests with the Board of Regents, the Board should decide the criteria for affiliated organizations and the oversight of such organizations before LAB decides what those organizations are and what standards of oversight apply.

IV. UW System Administration and UW institutions were cooperative with LAB throughout the year-long review process.

- Given our ongoing, long-term relationship and discussions with LAB, it was disappointing that UWS Administration or institutional staff were characterized as uncooperative. As LAB knew, and expressly acknowledged to the Audit Committee at the onset of this audit, parts of their requests would have to be answered by the foundations, which are independent, private organizations.
- ✓ LAB acknowledges its authority scope in the report, which is defined in [Wis. Stat. 13.94](#), by saying: *"During this evaluation, we did not contact any affiliated organizations, in part, because our statutory authority does not generally extend to records maintained by private entities." [emphasis added]*

Indeed, the Attorney General's 1994 Plache Opinion noted that foundations *"...are an integral part of a robust university. But they cannot be regarded as legal arms or agents of the university itself. Although the university cannot delegate its functions or accountability to these independent bodies, it may accept their beneficence. See sec. 20.285(5)(j), Wis. Stats."*
- Furthermore, LAB recognizes its statutory limitation regarding private foundations as recently exhibited in the [January 2018 State Fair Park audit](#). In that instance, LAB relied only on publicly available documents, such as IRS Form 990's.

- While recognizing this statutory limitation on LAB's authority, LAB also creates the impression that UW employees were somehow a hindrance to information sought by auditors, namely, (1) Foundation Board minutes, and (2) donor information.
- ✓ Although LAB's statutory authority does not extend to private entities, the UW System facilitated meetings to help LAB gather information deemed confidential under state law as LAB requested. ***See the attached November 17, 2017, letter from Finance Vice President Sean Nelson to Joe Chrisman.***

V. The UW System agrees with many of the LAB recommendations. We have already implemented, or are in the process of implementing, policies aligned with the vast majority of LAB's recommendations.

- Assign a unique vendor identification number to each affiliated organization in its accounting system and ensure these numbers are consistently used.
 - ✓ As part of an accounting system upgrade that began in May 2017, the UWS Office of Finance is already consolidating each UW institution's vendor list into one centralized vendor file that can be utilized by all campuses and System Administration. UWS expects to implement the new vendor ID numbers in October 2018, and can report on its progress to the Audit Committee.
- Require UW institutions to amend operational agreements to correct issues of noncompliance with the Board of Regents policy, require each chancellor to certify compliance with this policy, and assess memoranda of understanding and operational agreements to ensure policy compliance.
 - ✓ UW institutions have submitted updated foundation MOUs in accordance with the UW System principles and guidelines document.
 - ✓ The UW System will detail rent or in-kind office space in operating agreements as a subset of the larger affiliated foundation MOU. These operating agreements will be reviewed regularly as part of routine audit proceedings.
 - ✓ The UW System will require chancellors to sign attestations certifying compliance with the [Board of Regents Policy 21-9](#).
- Work with the Board of Regents to establish a policy governing the relationships between UW institutions and affiliated organizations that are not primary fundraising or real estate foundations.
 - ✓ The UW System will define "affiliated organizations" beyond the associated primary fundraising and real estate foundations. *Note: the UWS will continue to submit affiliated organizations to the LAB each year as part of the Office of Finance's annual financial statements compilation. LAB currently audits those lists annually.*
 - ✓ The UW System will work with the Board of Regents to establish a new policy that assesses operating agreements. The operating agreements will define space costs, as well as personnel time as appropriate.
 - ✓ In its report, LAB spent a considerable amount of time detailing the UW-Oshkosh Business Success Center as an example of a non-primary affiliated organization. LAB acknowledges the issues were resolved by the [dissolution of the entity](#) as outlined in the UWS foundation transaction review report issued in October 2017. That dissolution occurred because of proactive UWS leadership.

- Work with the Board of Regents to rectify an inconsistency between a policy and a policy statement, and prohibit all UW employees from serving as voting members of the boards of directors of primary fundraising and real estate foundations.
 - ✓ While it is common and reasonable for university officials to be foundation board members because of their connection to the university, effective November 1, 2017, officials must be ex-officio and non-voting members of the foundation board. This arrangement helps reinforce independence by ensuring that university officials have no voting control over the governance of the foundation.
- Require UW employees to track the amount of time they work for affiliated organizations and provide them with guidance and training, provide UW institutions with guidance on identifying affiliated organizations and require them to annually report information about their relationships with affiliated organizations, determine whether the reported information complies with the Board of Regents policy, and annually review payments to affiliated organizations.
 - ✓ As noted previously, the UW System will define “affiliated organizations” beyond the associated primary fundraising and real estate foundations. The UW System and Board of Regents will then determine how to best incorporate these considerations into Board policy subject to those decisions. UWS will also consider how to best provide guidance and training to the appropriate employees engaged in work with primary affiliated and real estate foundations.
 - ✓ As noted in the [UWS foundation transaction review report issued in October 2017](#), affiliated foundations will now have more stringent reporting standards and all foundations will be required to provide a more detailed annual financial report. This will better capture potential payments to the affiliated foundation that might happen outside of the state or the institution’s accounting process. According to the Foundation Principles, foundations that receive annual contributions of \$300,000 - \$500,000 must have their annual financial report reviewed by an independent Certified Public Accountant (CPA). Foundations that receive annual contributions of more than \$500,000 must submit an independent audit each year. For FY 2017, this will result in all four-year UW institutions, two two-year UW institutions, and two real estate foundations providing audited financial reports. UW System financial staff will review each financial report to consider their general financial health and identify any possible transactions between the foundation and UW institution. Additionally, UW System financial staff will review each statement for materiality, to determine whether each foundation should be captured in the UW System annual financial report.
- Annually assess relationships with affiliated organizations and determine whether any changes are necessary.
 - ✓ As LAB acknowledges in its report, *“The Board of Regents policy requires a foundation to be separate and legally independent from its corresponding UW institution.”* The UWS appreciates this recommendation and will continually evaluate the best approach to assessing these relationships subject to Board decisions related to affiliated organizations.
- **For Legislative Consideration:** require certain UW employees to annually file statements of economic interests (SOEs) with the Wisconsin Ethics Commission.
 - ✓ As the LAB notes in its report, *“We reviewed the statements of economic interests filed by 98 UW employees who were required to file them from January 2017 through mid-July 2017. The Ethics Commission indicated that all UW employees who were statutorily required to file statements of economic interests during this time period did so.”* [emphasis added] Additionally, the BOR recently adopted ethics [policy 2-4](#), which includes additional requirements for Regents that go beyond what is required in state law.
 - ✓ It appears that LAB did not take into account the existing ethics requirements under [UWS-8](#) for those employees who are not public officials.

- ✓ The UWS agrees that certain UW employees would benefit from additional requirements instituted through Board of Regent policy that would expand the use of outside activities reporting and the filing of similar types of information found in an SOE. These measures will be taken to provide additional transparency and accountability.
- **For Legislative Consideration:** define UW employees who also work for affiliated organizations to be state public officials.
 - ✓ We do not recommend any statutory change to require UW employees to be designated as state public officials where there has not been a definition established for what constitutes an “affiliated organization.” As noted above, the Board proposes to develop a policy to address affiliated organizations, and can address any concerns related to reporting, ethics, or conflicts of interest in such a policy.
 - ✓ Additionally, existing Board of Regents [Code of Ethics policy 20-22](#) applies to all UW System employees, and along with the proposed Board policy described above, is more than sufficient to cover this recommendation without seeking legislative change. The policy recognizes that faculty, academic staff, and limited appointees are subject to UWS-8 of the Wisconsin Administrative Code, and that university employees who are state public officials will remain subject to Subchapter III of Wis. Stat. Chapter 19. University Staff are subject to the University Staff Code of Ethics set forth in section III below which was closely modeled after Chapter ER-MRS 24 of the Wisconsin Administrative Code, the Code of Ethics for classified state employees.



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November 17, 2017

Joe Chrisman, Auditor
Legislative Audit Bureau
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Dear Auditor Chrisman,

Thanks to you and members of your staff for a productive conversation on November 5, 2017, regarding the status and direction of the Legislative Audit Bureau's audit of the University of Wisconsin System relationships to certain affiliated organizations. We appreciated the recognition that our institutions and their respective affiliated foundations have been overwhelmingly responsive to your requests from the onset of the audit in March.

We also appreciated the opportunity to share the concerns foundations have raised about distributing confidential donor information during the LAB review. We will all continue to assist you in achieving your objectives while protecting this sensitive information.

President Cross shared your letter following that meeting (dated November 6), which highlights various information that is still pending from several campuses. As we discussed, we will proceed with the mutually acceptable solution to arrange for a physical in-person review of non-redacted foundation board minutes.

This will ensure that LAB has the information it needs related to the relationship between institutions and foundations, while also protecting the privacy and confidentiality of donors, which is information typically redacted pursuant to the balancing test under state law (Wis. Stat. 19.36(1)(a)) when fulfilling public record requests submitted to the UW. Of course, the LAB has additional statutory authority when conducting audits. In speaking with Dean Swenson earlier today, we are working together to complete the review of foundation minutes within the next two to three weeks.

Thank you again for the opportunity to move forward in an efficient, cooperative manner.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "SPN", written over a light blue horizontal line.

Sean P. Nelson