

# PERFORMANCE AUDIT REPORT

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## The Pennsylvania State University

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June 2017



Commonwealth of Pennsylvania  
Department of the Auditor General

Eugene A. DePasquale • Auditor General

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EUGENE A. DePASQUALE  
AUDITOR GENERAL

June 21, 2017

Dr. Eric J. Barron  
President  
Pennsylvania State University  
201 Old Main  
University Park, PA 16802

Dear Dr. Barron:

Enclosed is our performance audit of The Pennsylvania State University (PSU). We conducted our audit under authority granted by Section 403 of The Fiscal Code, 72 P.S. § 403, and in accordance with applicable generally accepted government auditing standards, as issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our performance audit had five objectives as follows:

1. Determine the extent to which recommendations contained within the Department of the Auditor General's November 2012 special report titled, *Recommendations for Governance Reform at the Pennsylvania State University After the Child Sex Abuse Scandal* and its supplement with legislative and procedural guidelines, have been appropriately implemented.
2. Determine the extent to which the university's board of trustees' governance structure (including board composition, compensation, and responsibilities), and state-related status conform with best practices for higher education institutions for promoting transparency, accountability, and continuance of the university's mission.
3. Determine the extent to which the university complies with all legal and/or policy and procedural requirements regarding state and federal background clearances for employees or others affiliated with the university.

4. Determine the extent to which the university has developed and implemented policies and procedures to fully comply with federal and state laws (including, among others, the federal “Clery” Act and the state Act 104 of 2010) relating to sexual violence prevention and response, sexual assault prevention, dating violence education, and the protection of minors.
5. Determine the extent to which tuition and fee cost drivers have been appropriately identified, monitored, and controlled by the university.

Our audit period was January 1, 2013, through March 31, 2017, unless otherwise indicated, with updates through the report date. We offer nine findings and 23 recommendations to improve PSU’s operations. While this report discusses all of our findings in detail, the following three matters deserve distinction here.

We found that PSU has made changes to its governance structure in the wake of the “Sandusky scandal.” We believe more changes are needed, including reducing the size of the Board of Trustees (Board), and improving transparency and accountability to Pennsylvania’s taxpayers by including PSU under the state’s Right-to-Know-Law, and the Public Official and Employee Ethics Act. Implementing these recommendations will require statutory changes, and we encourage PSU to work with the General Assembly to ensure these vital reforms occur.

We are also concerned about PSU’s failure to ensure that all employees who have contact with children through PSU-operated youth camps have statutorily required clearances on file. Our testing found an error rate that exceeded seven percent. This error rate is poor for any institution, but for PSU and its attempts to recover from the child sex abuse scandal caused by Jerry Sandusky, it is unacceptable.

Finally, we are concerned about the increasing cost of PSU’s tuition. We found PSU’s tuition is growing at rates that exceed the consumer price index. While decreasing state support contributes to PSU’s need to raise its tuition rates, so too does PSU’s failure to adequately control its expenses. Our report discusses a troubling trend in which nonresident students have been accepted at higher rates than Pennsylvania residents at University Park, PSU’s primary and most desirable campus. While PSU is adamant that it never intentionally accepts nonresidents over residents, and we found no evidence to suggest otherwise, we caution that such practices are in effect at other public universities, like PSU. We believe it is imperative for PSU’s Board to become more engaged in monitoring and lowering its tuition cost drivers. We recommend that PSU do so through a dedicated task force tasked with developing a targeted plan to address cost containment and providing transparency via a “digital dashboard.”

Dr. Eric J. Barron

June 21, 2017

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In closing, we thank PSU for its cooperation and assistance during the audit. We will follow up at the appropriate time to determine whether and to what extent all recommendations have been implemented.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene A. DePasquale". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Eugene A. DePasquale  
Auditor General

A Performance Audit

The Pennsylvania State University

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## Executive Summary

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The Pennsylvania State University (PSU) is one of the best-known and largest higher education institutions in Pennsylvania and is Pennsylvania's only land-grant institution. PSU, Temple University, the University of Pittsburgh, and Lincoln University constitute what are known collectively as Pennsylvania's "state-related institutions." The commonwealth supports these institutions by providing an annual state appropriation from taxpayer dollars.

Our performance audit of PSU presents nine findings centered on the following three issue areas as explained further in *Appendix A – Objectives, Scope, and Methodology*:

- 1) **Governance**, which includes a follow-up to the weaknesses highlighted in our 2012 special report on PSU's governance.
- 2) **Campus security**, to include specifically PSU's compliance with the federal crime reporting law, known as the "Clery Act" and PSU's compliance with conducting certain required background checks under state law.
- 3) **Tuition affordability**, and the extent to which PSU is appropriately identifying and controlling tuition cost drivers.

In total, we present 23 recommendations to improve PSU's operations. We discussed our results with PSU's management, and they were provided with an opportunity to respond to our audit report. PSU's response is shown in its entirety beginning on page 74.

Listed below are the key points from each issue area. Additional summary information is located at the beginning of each issue area.

### **Issue Area 1 – Transparency and accountability reforms are needed to fully address PSU governance concerns.**

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#### **Key points from pages 11 to 30...**

- ❖ During November 2011, PSU was rocked by a child abuse sex scandal involving Jerry Sandusky, a former football coach. This scandal continues to have a lasting impact on PSU, its Board of Trustees (Board), its administration, its alumni, as well as all Pennsylvanians. One of the outcomes from this scandal was the "Freeh report" issued by an independent special counsel hired by the Board to further investigate the circumstances surrounding Sandusky's crimes. The Freeh report revealed weaknesses in PSU's governance, and specifically in matters related to the Sandusky scandal.

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- ❖ In late 2012, following the wake of PSU’s scandal and the Freeh report, we issued a special report highlighting nine conditions that undermined effective governance with PSU’s Board. Our report included 30 recommendations, most of which involved suggested statutory changes to PSU’s governance.
- ❖ Of the nine conditions we identified in 2012, seven involved organizational matters pertaining to the Board, including the President of the University and the Governor’s status on the Board. Of those seven conditions, PSU has taken action to resolve three conditions and has partially resolved the other four conditions.
- ❖ The two conditions not related to organizational matters pertaining to the Board remain unresolved and are summarized below:
  - Size of PSU’s Board. In 2012, we recommended reducing the size of PSU’s Board from 32 voting members based on best practices recommended by higher education experts. PSU has since taken the opposite position and increased its Board size to 36 voting members (with an additional two nonvoting members for a total of 38 members). We continue to believe a smaller board would benefit PSU’s governance, as would an improved constituency selection process for “business and industry” representatives on PSU’s Board. PSU disagrees.
  - Transparency and accountability to Pennsylvania’s taxpayers. We strongly believe that PSU and the General Assembly must work harder to eliminate the special dispensations given to PSU, its Board, and its affiliates. Specifically, PSU should not be exempted from the good governance safeguards of the Commonwealth’s Right-to-Know Law and the Public Official and Employee Ethics Act (Ethics Act). These exclusions were present in 2012 and should be removed as soon as possible. PSU disagrees with our findings and believes it is already sufficiently transparent and accountable.

## Issue Area 2 – Campus Security

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### Key points from pages 31 to 49...

- ❖ The “Clery Act” is a federal law that requires universities to report certain crime and fire statistics. The United States Department of Education (USDE) conducted a comprehensive review of PSU’s compliance with the Act and found that during the period between 1998 and 2011, PSU failed to comply with the Clery Act. USDE imposed a \$2.4 million fine on PSU, the largest fine ever imposed for Clery Act noncompliance. PSU also submitted to a five-year monitoring period by the USDE. Today, we found PSU is continuing to improve Clery-related activities, but additional administrative improvements and additional training is needed. PSU agreed, and it is

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implementing a new data system to allow a new uniform reporting system. Additional training opportunities are being pursued through PSU's involvement with the National Association of Clergy Compliance Officers and Professionals.

- ❖ Act 104 is a state law requiring PSU to offer sexual violence awareness training. In a positive finding, we found that PSU fully complied with Act 104 requirements.
- ❖ In a test of PSU's compliance with its internal policy regarding standard background checks, we randomly selected 76 employees and found an error rate of 3.9 percent. Using that 3.9 percent error rate from our sample and extrapolating these results to the total population of 24,384 employees hired between January 1, 2016, and December 31, 2016, would project that 962 employees did not have a standard background check completed prior to their employment.
- ❖ The results of our second test, compliance with obtaining statutorily required clearances under the Child Protective Services Law (CPSL), revealed more alarming errors. We randomly selected 76 youth camps and found six camps in which at least one clearance was missing for at least one individual associated with the camp, for an error rate of 7.9 percent. Using the 7.9 percent error rate from our sample and extrapolating these results to the total population of 732 camps held during the period from January 1, 2016, to December 31, 2016, would project that 57 youth camps had at least one individual missing at least one of the three required clearances. In our opinion, this error rate is poor for any university, but for PSU, it is particularly concerning considering the issues emanating from the Sandusky scandal.
- ❖ PSU acknowledged the errors we identified. PSU is implementing policy and procedural changes to improve its performance. Among these changes, PSU expects to have a new human resource system that will include improved recordkeeping and centralization of the hiring and background check process in place by December 2017.

### Issue Area 3 – Tuition Affordability

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#### Key points from pages 50 to 72...

- ❖ PSU's tuition has grown at rates that exceed common economic indicators, such as the consumer price index (CPI). PSU's tuition is the highest of its Big10 peer public research universities. PSU's Board is responsible for setting tuition rates, and tuition is one of the primary revenue sources for the University.
- ❖ In our review, we found that PSU's expenses are outpacing its revenues. As expenses continue to outpace revenue, PSU will need to find additional revenue to meet its expenses. The most likely source of this revenue will be from tuition because state

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subsidies have remained relatively flat as the commonwealth deals with its own budget issues.

- ❖ Previous strategic planning initiatives have targeted tuition affordability, but not from the perspective of identifying and controlling PSU's cost drivers. Despite these actions, in the past 15 years, PSU's tuition increases have grown substantially. In our opinion, PSU has a tuition problem—simply put, it is too expensive and we believe its Board must be more aggressive in controlling its tuition cost drivers.
- ❖ Other trends are also apparent, including an increase in the number of nonresidents (including international students) to PSU's campuses. While not a strategic decision by the University, this trend could make sound business sense because to attend PSU's Main campus (University Park), nonresidents pay tuition of \$34,183, compared to residents who pay \$19,347. In essence, nonresidents help to subsidize the cost of resident tuition. As a means of bolstering revenue, other public universities from other states are accepting nonresidents at higher acceptance rates than residents.
- ❖ Our analysis of PSU's acceptance rates at University Park showed that in 11 of the last 16 years, including the last seven consecutive years, nonresidents had higher acceptance rates than Pennsylvania residents. PSU stated that it has never intentionally favored nonresident students over Pennsylvania residents in the recruitment and acceptance process in order to increase revenue or otherwise. While we concur that PSU has no specific policy or strategic directive that favors nonresident students in the acceptance process, this condition could be a consequence of not adequately controlling expenses. The trend of increasing acceptance rates for nonresidents should be a concern for PSU's Board because any admission preference should be to residents, whose taxpayer-provided support is intended to benefit.
- ❖ PSU, its Board, and specifically the Finance Committee, need to more closely monitor tuition cost drivers to ensure that annual tuition increases do not exceed projected increases to the CPI. The Board could demonstrate its intent to control tuition cost increases by adopting a board policy that limits tuition increases to no greater than the annual CPI. We also recommend that the Board draw from the expertise of its business members by developing a task force dedicated to lowering and controlling the cost drivers that impact tuition.
- ❖ PSU indicated that it will share the recommendations with its Board, but believes that adopting a policy that holds tuition increases to no greater than the CPI is unrealistic because the commonwealth's subsidy has not kept pace with the CPI; thus, according to PSU "...there is significant pressure on the tuition component of the budget to cover inflationary increases." PSU's response underscores our very point about its ever-increasing expenses—simply put, PSU must do a better job of controlling all its expenses, instead of pushing these costs onto students and their families through large tuition increases.

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## Introduction and Background

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### Introduction

The Department of the Auditor General, under the direction of Auditor General Eugene A. DePasquale, conducted this performance audit of The Pennsylvania State University.<sup>1</sup> Our audit had five audit objectives, which are defined further in *Appendix A – Objectives, Scope, and Methodology*. Our audit centered on three focus areas: (1) Reforms made to PSU’s governance structure; (2) campus safety, to include compliance with obtaining necessary background clearances; and (3) tuition affordability.

We conducted our audit work under the authority of Section 403 of the Fiscal Code<sup>2</sup> and in accordance with *Government Auditing Standards* as issued by the Comptroller General of the United States.<sup>3</sup> In the sections that follow, we have provided relevant background material about the Pennsylvania State University as well as other information applicable to the audit.

### Background

#### History of Penn State

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Penn State’s genesis can be traced to 1855 and the passage of Act 50, which established a college for the education of youth in science and agriculture.<sup>4</sup> This “college”—named the Farmers’ High School of Pennsylvania<sup>5</sup>—opened four years later with 69 students on 200 acres in Centre County, Pennsylvania.

In 1862, President Abraham Lincoln signed the Morrill Act to give free land (hence known as, “Land Grant”) to states if they supported at least one public college to provide affordable education in fields like agriculture, engineering, and mining. Those fields were critical to the technological growth of a nation whose schools, until then, focused mostly on non-technical studies. Pennsylvania received 780,000 acres of federal land under the Morrill Act.<sup>6</sup>

During the 1880s, the college expanded its curriculum to match the Land-Grant Act's broad mandate. From that time onward, curriculums in engineering, the sciences, the liberal arts, and

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<sup>1</sup> Throughout this report, we refer to The Pennsylvania State University as Penn State, PSU, or the University.

<sup>2</sup> 72 P.S. § 403.

<sup>3</sup> Government Auditing Standards, December 2011 revision, issued by the Comptroller General of the United States, United States Government Accountability Office, Washington D.C.

<sup>4</sup> Penn State’s Charter (updated May 2013) provides that this state-related institution of higher education is an “instrumentality of the Commonwealth to perform the essential governmental functions of education.” <https://trustees.psu.edu/pdf/charter.pdf>, pg. C-1 (accessed May 4, 2017).

<sup>5</sup> 24 P.S. § 2531 *et seq.*

<sup>6</sup> The state legislation needed to accept the conditions of the federal grant of acreage was enacted by Act 227 of 1883. See 24 P.S. § 2571 *et seq.*

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more began to flourish. In the early 1900s, Penn State introduced cooperative extensions and additional outreach in programming, extending the reach of its academic mission.<sup>7</sup>

In the 1930s, Penn State embarked on the development of a series of undergraduate “branch” campuses, primarily to meet the needs of students who were location-bound during the Great Depression. Those campuses were predecessors of today's system of 24 Commonwealth Campuses.<sup>8</sup>

Penn State began offering advanced-degree work in 1922 with the formation of the Graduate School. By 1950, Penn State had won international distinction for investigations in dairy science, building insulation, diesel engines, acoustics, and other specialized fields.<sup>9</sup>

In 1967, perhaps one of Penn State’s biggest evolutionary events occurred when it established a college of medicine and a teaching hospital in Hershey, Pennsylvania. This facility has since transformed into a world-class facility of its own right, with distinction in research, cancer treatment, and transplant surgeries. The facility also operates a children’s hospital.

In 1989, the Pennsylvania College of Technology in Williamsport became an affiliate of Penn State,<sup>10</sup> and in 2000, Penn State and the Dickinson School of Law merged. In 2015, two Penn State law schools, known as Dickinson Law (in Carlisle, Pennsylvania) and Penn State Law (on the University Park campus) operate within the Penn State system.

### **Penn State Today**

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One-hundred and sixty-two years after its founding, Penn State operates the largest university (public or private) in Pennsylvania. The university considers itself one campus, geographically distributed with 24 total campuses. The “main campus” or “University Park” is located in State College, Pennsylvania, with 23 other campuses distributed as follows:

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<sup>7</sup> Refer to <http://www.psu.edu/this-is-penn-state/our-history> (accessed March 2, 2017).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> 24 P.S. § 2510-501 *et seq.*; Section 504 (relating to Status) of the Pennsylvania College of Technology Act, 24 P.S. § 2510-504, states as follows: “The Pennsylvania College of Technology is granted the benefits and responsibilities of the status of The Pennsylvania State University as a State-related institution and as an instrumentality of the Commonwealth of Pennsylvania...”

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### PSU Campuses



Source: Pennsylvania State University.

According to Penn State, “nine of every ten Pennsylvanians live within 30 miles of a Penn State campus.”<sup>11</sup> From the humble beginnings of the Farmers’ High School in 1855 with 69 students, Penn State has since grown to a university enrollment of 99,133 students (Fall 2016).

### PSU Enrollment – Fall 2016

	Undergraduate	Grad/Med/Law	Total
<b>University Park</b>	41,359	5,902	47,261
<b>Other Locations</b>	35,408	3,053	38,461
<b>World Campus (Online)</b>	7,919	5,492	13,411
<b>Total</b>	84,686	14,447	99,133

Source: Developed by the Department of the Auditor General from information provided by the Pennsylvania State University. This information is presented for background purposes only and is extracted from the best available source, the PSU Common Data Set.

During the Fall 2016 semester, 68.8 percent of Penn State’s students were Pennsylvania residents, and 31.2 percent were non-residents or international students. As discussed later, PSU enrollment for nonresident students has been significantly increasing.

<sup>11</sup> <http://www.sgps.psu.edu/Information/ourhist.htm> (accessed August 31, 2016).

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#### University Governance

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Penn State's governing structure includes a Board of Trustees (BOT)<sup>12</sup> with 36 voting members and 2 nonvoting members, which has complete responsibility for the oversight and welfare of the university, including the interests of its students, faculty, staff, and alumni. In the exercise of this responsibility, the Board is guided by the policies and duties that follow:<sup>13</sup>

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#### PSU BOT Governance General Policies and Duties

1. The authority for day-to-day management and control of the University, and the establishment of policies and procedures for the educational program and other operations of the University, shall be delegated to the President, and by him/her, either by delegation to or consultation with the faculty and the student body in accordance with a general directive of the Board.

This delegation of authority requires that the Board rely on the judgment and decisions of those who operate under its authority. However, this reliance of the Board must be based upon its continuing awareness of the operations of the University. Therefore, the Board shall receive and consider thorough and forthright reports on the affairs of the University by the President or those designated by the President. It has a continuing obligation to require information or answers on any University matter with which it is concerned.

Finally, upon request the Board shall advise the President on any University matter of concern to him/her.

2. The Board of Trustees shall carry out certain responsibilities as a Board, without delegation. These responsibilities are:
  - The selection of the President of the University.
  - The determination of the major goals of the University and the approval of the policies and procedures for implementation of such goals.
  - The review and approval of the operating and capital budget of the University.
  - Such other responsibilities as law, governmental directives, or custom require the Board to act upon.
3. The Board of Trustees shall inform the citizens of the Commonwealth of Pennsylvania of the University's performance of its role in the education of the youth of Pennsylvania.
4. The Board of Trustees shall assist the President in the development of effective relationships between the University and the various agencies of the Commonwealth of Pennsylvania and the United States of America which provide to the University assistance and direction.

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*Source: Pennsylvania State University, "Role of the Board of Trustees in University Governance," accessed at <https://trustees.psu.edu/governance.html>, March 3, 2017. This information is presented for background purposes only and is extracted from the best available source.*

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<sup>12</sup> Throughout this report, the PSU Board of Trustees are referred to as the Board or BOT.

<sup>13</sup> According to PSU, the statement on the general policies of the BOT was initially approved by the BOT on June 11, 1970 and underwent subsequent amendments, the most recent being January 19, 1996.

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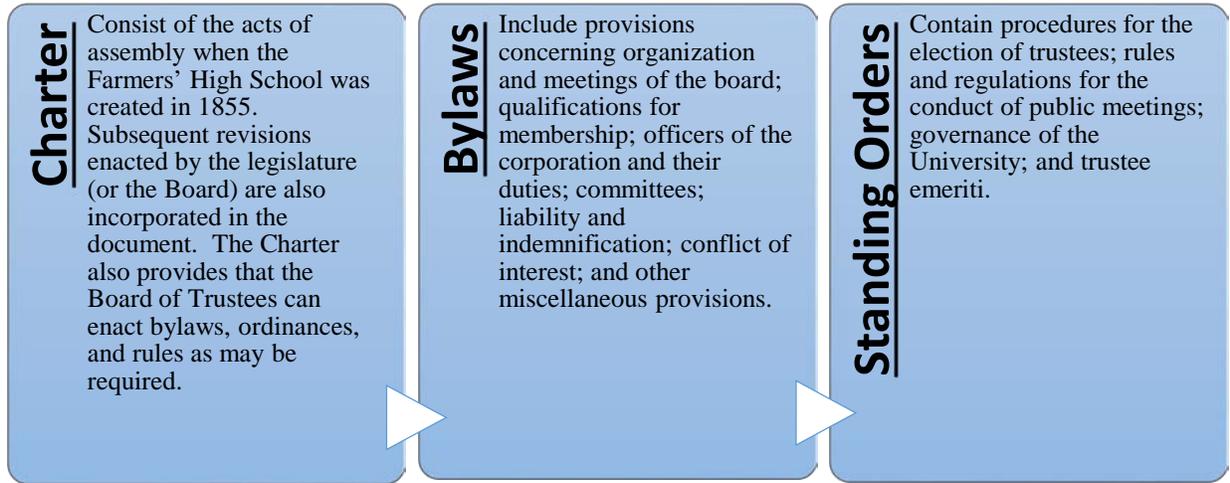
#### PSU Charter, Bylaws, and Standing Orders

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PSU's governance is ordered around three primary documents: the charter, the bylaws, and the standing orders. Collectively, these documents provide a framework for how the BOT organizes itself and conducts university business. The exhibit that follows illustrates the interplay of these three governance documents.<sup>14</sup>

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#### PSU Governance-Related Documents



*Source: Developed by Department of the Auditor General Staff from information obtained from the Pennsylvania State University. This information is presented for background purposes only and is extracted from the best available source, <https://trustees.psu.edu/charter.html>.*

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#### PSU Tuition and Fees

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Listed below are Penn State's Pennsylvania resident tuition and fees for 2016.

<b>Campus</b>	<b>Tuition<sup>a/</sup></b>	<b>Housing and Fees<sup>b/</sup></b>	<b>Total<sup>c/</sup></b>
<b>University Park (Main)</b>	\$19,347	\$12,490	\$31,837
<b>Abington</b>	\$14,521	\$1,230	\$15,751
<b>Altoona</b>	\$15,277	\$12,788	\$28,065
<b>Beaver</b>	\$13,627	\$11,108	\$24,735
<b>Berks</b>	\$15,277	\$13,348	\$28,625
<b>Brandywine</b>	\$13,942	\$1,230	\$15,172
<b>Dubois</b>	\$13,627	\$1,199	\$14,826
<b>Erie</b>	\$15,277	\$12,356	\$27,633
<b>Fayette</b>	\$13,627	\$1,199	\$14,826
<b>Greater Allegheny</b>	\$13,627	\$11,102	\$24,729

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<sup>14</sup> <https://trustees.psu.edu/charter.html>.

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<b>Harrisburg</b>	\$15,277	\$12,916	\$28,193
<b>Hazleton</b>	\$13,942	\$11,544	\$25,486
<b>Lehigh Valley</b>	\$13,942	\$1,230	\$15,172
<b>Mont Alto</b>	\$13,627	\$11,575	\$25,202
<b>New Kensington</b>	\$13,627	\$1,199	\$14,826
<b>Schuylkill</b>	\$13,942	\$1,199	\$15,141
<b>Scranton</b>	\$13,942	\$1,199	\$15,141
<b>Shenango</b>	\$13,457	\$1,161	\$14,618
<b>Wilkes-Barre</b>	\$13,627	\$1,161	\$14,788
<b>World Campus</b>	\$13,942	\$252	\$14,194
<b>York</b>	\$13,942	\$1,230	\$15,172

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Notes:

a/ Represents the average academic year tuition (i.e., two semesters) for freshman, sophomore, junior, and senior students for all majors. Generally, freshman and sophomore students are charged less than junior and senior students. Additionally, certain majors, e.g., business, engineering, and nursing, charge a higher tuition rate.

b/ Includes the average of available residence plans, meal plans, and related fees for each campus. Some campuses do not have residence facilities. Not included are textbook fees and/or other related personal expenses.

c/ Because of the variance in tuition, housing, and fees from student to student, each student's cost may be more or less than the total average calculated here.

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*Source: Developed by Department of the Auditor General Staff from information obtained from the Pennsylvania State University. This information is presented for background purposes only and is extracted from the best available source, <https://tuition.psu.edu/>.*

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## Issue Area 1 - Transparency and accountability reforms are needed to fully address PSU governance concerns.

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### Issue Summary - Findings 1.1 and 1.2

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During November 2011, the Pennsylvania State University (PSU) was rocked by a child sexual abuse scandal that involved Gerald Sandusky, a former PSU high-level assistant football coach.<sup>15</sup> Today, few citizens are unfamiliar with these disturbing events or the ongoing impact it has had on PSU.

In 2012, in the wake of PSU's scandal, then Auditor General Jack Wagner commenced a special report that reviewed PSU's governance structure. The report identified nine governance-related conditions that undermined effective governance at PSU. The report presented 30 recommendations for improvement of those conditions, which included a legislative roadmap for reform at PSU.

Since that report, PSU's Board<sup>16</sup> has undertaken substantial reforms. For example, of the nine conditions we identified in 2012, PSU has fully resolved three conditions and partially resolved four conditions. The Board appears to want to continue its reformation and improve the governance of Pennsylvania's largest, publically funded research university. Going forward, these are positive signs of improvement, but more work remains to be done.

One unresolved condition is the size of PSU's Board. In 2012, we recommended reducing the size of the Board from its 32 voting members. PSU has since taken the opposite position and increased its Board size to 36 voting members.<sup>17</sup> We continue to believe a smaller board would benefit PSU's governance, as would an improved constituency selection process for "business and industry" representatives on PSU's Board.

In another unresolved condition area—transparency and accountability to Pennsylvania's taxpayers—we believe PSU and the General Assembly should eliminate the special dispensations given to PSU, its Board, and its affiliates. Specifically, PSU should not be exempted from the good governance safeguards of the Commonwealth's Right-to-Know Law and the Public Official and Employee Ethics Act (Ethics Act).<sup>18</sup> These exclusions were present

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<sup>15</sup> "November 4, 2011 - The grand jury report is released. November 5, 2011 - Sandusky is arraigned on more than 40 criminal counts.

<sup>16</sup> We refer to the Pennsylvania State University's Board of Trustees as the Board or BOT.

<sup>17</sup> Pursuant to the PSU Charter, "[t]he number of trustees of said institution shall be fixed at thirty-eight." This includes the President of PSU and the Governor of the Commonwealth as *ex officio* non-voting members of the Board. While our 2012 special report had recommended the complete elimination of the President from the Board, PSU did follow through on our recommendation regarding the Governor by making him/her an *ex officio* non-voting member of the Board. See PSU Charter, November 2014, page C-2. See <https://trustees.psu.edu/charter.html>.

<sup>18</sup> Please note that the Governor as an *ex officio* non-voting member of the Board and the *ex officio* voting members of the Board including the Secretary of Education, the Secretary of Agriculture, and the Secretary of Conservation

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in 2012, and they have become even more important today. Finally, the PSU Board must amend its current Standing Orders<sup>19</sup> to encourage the forthright exchange of debate among its membership, both privately and publically.

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#### **Finding 1.1 – What has PSU done to date: Some reforms were implemented for previous weaknesses we identified, but others have been ignored or PSU has taken contrary action.**

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In 2012, we released a special report which identified nine conditions that were detrimental to effective governance at PSU (see Appendix B for more information on the finding areas). To rectify those weaknesses, we offered 30 recommendations to fix the identified conditions.<sup>20</sup>

As part of our current audit procedures, we reevaluated PSU’s performance in implementing our recommendations. To PSU’s credit, significant steps were taken to correct some previous weaknesses. These steps included, but were not limited to, the following:

- A “Governance Committee” was formed to review other universities’ governance models.
- PSU retained a “national expert” in corporate governance to aid in an internal governance review.
- The major governing documents of the university—the Charter, Bylaws, and Standing Orders were all revised.
- Board committees were revised and reorganized.

We evaluated the extent to which these steps corrected the governance weaknesses we previously identified. More importantly, we evaluated the extent to which the conditions that were identified in 2012 are still present today, and whether discernable action had been taken to resolve the conditions.<sup>21</sup> We found areas where PSU had corrected the weakness; however, in other areas, the same conditions still exist or, as in the case of the size of the Board, PSU went in

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and Natural Resources must comply with the Ethics Act and the Statement of Financial Interest (SFI) filing requirement by virtue of their public positions.

<sup>19</sup> Refer to the *Background* section of this report for additional information about PSU’s Charter, Bylaws, and Standing Orders.

<sup>20</sup> It should be noted that not all of our recommendations were specific to PSU, some of the recommendations required action by the General Assembly.

<sup>21</sup> The recommendations we presented in 2012 were targeted to correct specific governance weaknesses that we identified. As stated above, some of the recommendations could only have been implemented by the General Assembly, as full implementation would have required statutory changes, which were beyond PSU’s control.

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the opposite direction of our recommendation. PSU now has 36 voting members even though we had reasonable governance expert advice that the optimal board size was 15 trustees.<sup>22</sup>

#### 2012 Special Report - Findings and Conclusions

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Listed below are the nine conditions that we identified as impeding effective governance at PSU. For each of those conditions, we list the actions PSU has taken to remedy the condition, as well as our opinion as to whether the condition has been resolved, partially resolved, or unresolved.

##### 1. University president standing. **Resolved.**

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Previously, PSU's president was a voting member of the Board and an executive officer of the Board (Secretary); thus, making the position overly powerful and potentially making the Board subordinate to the President. Our recommendation was to remove the president as a board member. Revisions to PSU's charter removed the president as a voting member of the Board; however, the president continues to serve as an *ex officio*, non-voting member of the Board. Further, revisions were made that removed the university president as the Board secretary (an officer of the Board). The Board secretary is now an elected position.

Although PSU did not fully implement our recommendation—i.e., the president is still a member of Board, albeit *ex officio*—arguably, removing the president as a voting member meets the intent of our recommendation (i.e., the president no longer has the same influence). Furthermore, at least one university governance expert we contacted in our 2012 report noted, “The president serves at the pleasure of the board. Therefore, the president should be an *ex officio, non-voting member* of the board available at the board's call.”<sup>23</sup> (Emphasis added.)

Finally, it should be noted that there is little uniformity when comparing PSU's presidential authority to its peer, other state-related universities. For example, the University of Pittsburgh's President serves as a voting member of its Board. Conversely, Temple University's President is neither a voting member, nor a member of the Board in any capacity (i.e., *ex officio* or otherwise). Finally, Lincoln University's President serves as an *ex officio*, but voting member of the Board.

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<sup>22</sup> See pages 35-36 of our prior report citing to the Institute for Effective Governance of American Council of Trustees and Alumni and the Association of Governing Boards of Universities and Colleges.

<sup>23</sup> Email from the Vice President of Policy, *American Council of Trustees and Alumni*, September 10, 2012.

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#### 2. Governor's status on Board. **Resolved.**

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PSU's Charter was amended to remove the Governor as a voting member of PSU's Board. The Governor now serves as an ex officio, non-voting member of Board. Further, PSU's Bylaws were amended to require the Governor, Lieutenant Governor, Attorney General, Auditor General, or State Treasurer to wait a period of five years after they leave their public positions before they are eligible to serve on PSU's Board.

#### 3. Board of Trustees size/Business and industry representatives. **Unresolved.**

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Our 2012 report was clear on this issue: PSU's Board, with 32 voting members was too large for effective, engaged governance, and its membership should be reduced. To that end, we called on the General Assembly to change PSU's enabling legislation so that it would be bound to our recommendations statutorily; thus, PSU would be unable to amend its board size through a modification of its Charter and/or Bylaws.

The General Assembly did not act on our recommendation. In the intervening years, as part of PSU's 2014 internal governance reforms, PSU has amended its Charter and Bylaws. In contradiction to our recommendation to reduce the Board from the 32 voting members in existence in 2012 to 21 voting members with one nonvoting member (refer to *Appendix B* for more information), PSU **increased** the Board size to 36 voting members with two ex officio, non-voting members for a total of 38 members.

In discussions with PSU's Counsel, we learned that PSU took this action after deliberative analysis on how best to engage trustees.<sup>24</sup> As part of those discussions, Counsel noted that there was a desire to increase board involvement on committees. PSU engaged a consultant on this issue, and a review of other peer institutions was also conducted, which included other state-related universities. The result being this: increasing board size, while simultaneously expanding its committee roles and responsibilities, would lead to better trustee engagement.

We still disagree. As was the case in 2012, we continue to advocate that PSU's Board is too unwieldy for effective governance—and especially so now that it has expanded its size. University governance experts from the American Council of Trustees and Alumni (ACTA) confirm that an “optimal” board size is 12-15 members.<sup>25</sup> Those experts stated, “The size should be manageable to ensure a meaningful dialogue among the trustees who are all fiduciaries. Effective boards are no smaller than seven or greater than 15 in size, a

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<sup>24</sup> These discussions were facilitated by the governance consultant and occurred during a governance retreat attended by PSU Board members.

<sup>25</sup> “Best Practices in University Governance,” Institute for Effective Governance of the American Council of Trustees and Alumni, March 3, 2006, pg. 2. It is interesting to note that PSU's original legislation enacted by Act 50 of 1855 provided that the “the management and government of a board of trustees, of whom there shall be thirteen, and seven of whom shall be a quorum, competent to perform the duties hereinafter authorized and required.” See 24 P.S. § 2532.

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size that permits trustees to address key issues and do so in an intensive way.” Further, the Association of Governing Boards of Universities and Colleges (AGB) provided in 2012 that a board of 12-15 members would be optimal and that “extremely large boards of 30 members...tend to defer their executive committees and members [do] tend to be less involved in important issues...”<sup>26</sup>

We acknowledge that there is no “one size fits all” for public universities. Clearly, PSU is a unique and diverse institution, which has had to endure a significant crisis caused by the fallout from the Sandusky scandal. Nonetheless—even removing those events from consideration—we believe reducing PSU’s Board membership to 21 voting members (as was recommended in 2012) with one nonvoting member would be an important first step to reduce the continued stretch of its membership. Ultimately, we believe the Board should work toward a board size that is more in line with ACTA and AGB’s ideals.

On the matter of PSU’s Board business and industry representation, the issue remains as it was presented in 2012.<sup>27</sup> As such, PSU continues to select its business/industry representation, rather than allowing representatives from those groups to make their own appointments. This arrangement is peculiar given that PSU does not select representation for the other constituency groups (i.e., alumni and agricultural groups). Therefore, to ensure consistency in the selection process, PSU should ensure that business and industry groups are afforded an opportunity to appoint members to the Board, rather than the Board selecting these members.

#### 4. Quorum size. **Resolved.**

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A quorum is the number of trustees that need to be present to conduct university business. Ordinarily, a quorum is a majority of voting members; however, in 2012 we found that PSU only required 13 members to be present, which was not a majority of the voting members. PSU has since amended its Bylaws to reflect that a quorum shall represent the majority of the voting members of the Board in office.<sup>28</sup>

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<sup>26</sup> Ibid., page 35.

<sup>27</sup> As pointed out in our 2012 report, based on a board resolution from 2002, PSU made an amendment to their articles of incorporation that changed the language of its Corporate Charter from “Six trustees shall be elected representing business and industry endeavors” to “Six trustees representing business and industry endeavors shall be elected by the **Board of Trustees.**” [Emphases added.] This 2002 change had the impact of overturning Centre County court decrees regarding the six trustees elected to represent “County Industrial Interests” that had been in place for 125 years since 1875. The delegates elected represented “Engineering, Mining, Manufacturing Societies and Associations”, which is in keeping with First Morrill Act that provided for required “learning as are related to...the mechanic arts.” 7 U.S.C. § 304.

<sup>28</sup> PSU, *Amended and Restated Bylaws*, Section 2.07 “Quorum”, adopted May 6, 2016.

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#### 5. PSU employed trustees and/or employees became trustees. **Partially Resolved.**

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In 2012, we found that trustees became employees and employees became trustees. This practice, in turn, promoted reasonable perceptions of insider influence, which presented threats to transparency and accountability. Following the Sandusky scandal, PSU was rightfully scrutinized regarding the role of insiders and their influence.

In order to remedy this “revolving door” issue, we recommended that PSU’s Bylaws be amended to allow for a five-year “time out” period before former trustees may be employed by the university, or that employees may become trustees.

PSU amended its Bylaws to reflect this requirement; however, a special exception was included that allows the Board to waive this restriction for trustees who seek employment with the university. Consequently, while we acknowledge action by PSU to remedy this issue, allowing the Board to override the restriction is contradictory to the initial intent of the requirement.

#### 6. Right-to-Know Law and Ethics Act. **Unresolved.**

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In 2012, we recommended that PSU should actively work with the General Assembly to include itself and its Board in the provisions of the Right-to-Know Law (RTKL) and the Public Official and Employee Ethics Act (Ethics Act) as if PSU was an entity as defined in these good government laws<sup>29</sup>—with exceptions for intellectual property and proprietary research. Although its Charter provides that PSU is “an instrumentality of the Commonwealth to perform the essential governmental functions of education”<sup>30</sup>, PSU has long resisted its inclusion in these laws, and it continues to do so today. As discussed in Finding 1.2 that follows, PSU’s continual resistance to hold itself to these common-sense good-governance statutory provisions obscures its proclaimed reformations.

Additionally, Penn State receives many benefits from its status, including being our state’s sole land-grant institution, receiving annual non-preferred state appropriations, capital project funds, and other grants from the Commonwealth, maintaining the ability to offer its employees the option of getting public pension benefits. We continue to hold that in light of the funding bestowed upon PSU by Pennsylvania’s taxpayers and its other

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<sup>29</sup> Please see the definition of “state-affiliated entity” in the RTKL, 65 P.S. § 67.102, and the definition of “governmental body” in the Ethics Act, 65 Pa.C.S. § 1102. It is important to note that all state-affiliated entities as defined in the RTKL are included in the definition with the explicit exclusion of the state-related institutions. The definition of “governmental body” in the Ethics Act, includes the following: “Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof or any agency performing a **governmental function.**” (Emphasis added.)

<sup>30</sup> See also 24 P.S. § 2510-504 pertaining to the Pennsylvania College of Technology as it relates to PSU.

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privileges, a governance structure that includes conformance to these transparency and accountability-intended laws is needed.

#### 7. Board transparency and accountability. **Partially resolved.**

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During our 2012 review, we found that by all appearances, PSU had not welcomed governance transparency and, in fact, had impeded it. Our 2012 report recommended changes to PSU's Bylaws and Standing Orders to improve public access to PSU's Board. The significant recommendations we made included increasing the public's access to meeting agendas, expanding the hotline for reporting issues directly to the Board, and removing provisions within PSU's Standing Orders that restricted trustee openness and transparency.

PSU has made noticeable changes with respect to openness of Board meetings, including an amendment to PSU's Standing Orders to require meeting agendas to be available at least five days in advance of the meeting (with notice that they are subject to change). PSU's Board also makes its agenda, meeting minutes, and video/audio of public meetings available from its web site.<sup>31</sup>

In an unusual move; however, the Board in November 2016 discontinued live streaming of its public comment period. PSU Counsel noted that this move was made to ensure conformance with its Standing Orders, which require that only public comments that are germane to the Board's current agenda may be presented to the Board. PSU Counsel noted that, in the past, individuals had violated PSU's Standing Order and made comments about "the private activities, lifestyles and beliefs of individuals employed by or associated with the University." According to PSU Counsel, because of these repeated infractions, PSU made the move to stop posting the comments in real-time, and now post only those comments that comply with the Board's rules and policies on public comment as set forth in the standing orders. In the end, we can see merits to both sides of this argument; however, in the interest of greater public accountability, we believe it best if PSU were to continue its practice of live streaming full coverage.

On the issue of the hotline, in 2013 PSU created a new Office of Ethics and Compliance to better oversee compliance-related matters. That office has assumed responsibility for managing PSU's hotline. PSU's Board oversees aspects of the Office of Ethics and Compliance and received updates on the status of PSU's hotline via the Board's *Audit and Risk* and *Legal and Compliance* committees. To ensure proper reporting through the hotline, in 2014, PSU also established policies that prohibit the retaliation against employees who make a good faith effort to report wrongdoing and implemented a code of responsible conduct, which requires reporting of wrongdoing, misconduct, or

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<sup>31</sup> This information can be found at <https://trustees.psu.edu/meetings.html>.

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violations.<sup>32</sup> Accordingly, we believe these efforts are positive reformations that should improve the problem areas we identified.

Nonetheless, of continued concern—and as discussed further in Finding 1.2—is PSU’s reluctance to adopt our 2012 recommendation regarding the openness of Board member views. In fact, PSU amended its Standing Order VIII related to “Governance of the University” in May 2013 and added language contrary to the intent of our 2012 recommendation.

#### 8. Term limits for Board members. **Partially resolved.**

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In 2012, we reported that PSU had established term limits for Board members, but it had not applied those limits equally, resulting in some trustees having served for decades. PSU’s Bylaws were poorly worded on this matter making it difficult to determine to which trustees the limitation applied.

We recommended that the Board clarify its Bylaw language so that all members (to include current members, officers, and appointed positions) be held to terms that do not exceed a maximum of nine years. PSU did enact term limit reforms, but it extended the term limit to 12 years—not the nine years that we recommended. Further, the Bylaws gave special exemption to the Board Chair, which allows that any time served in that position does not count toward his/her term limit. As a result, the Chair can exceed the 12-year term limit for as long as he/she is in office. According to PSU counsel, Board members debated these issues during various governance planning meetings and concluded the following:

“Term limits” are ultimately decided by the relevant electorate (the alumni with respect to the nine alumni elected trustees and the various county agricultural societies with respect to the six “ag” trustees), and by the Governor (with respect to the six gubernatorial appointed trustees), such that the actual term limits of more than two-thirds of the members of the Board were not within the University’s or the Board’s control.

With respect to the exemption for the Chair, it had generally been the custom and practice (although not codified anywhere) that although elected for a one year term, an individual would serve as vice chair for a two or three year period and then succeed to the Chair and serve a two or three year period in that role. When the Bylaws were amended, the Board considered what the appropriate outcome should be in a situation where an individual was in the middle of his or her tenure as chair or vice chair at a time when they arrived at the end of their permitted term. It was determined that in the case of the chair, an exception was appropriate, for sake of continuity, to permit that individual to stay on the Board beyond the 12 year term limit so that he or she could continue to serve as chair. It was also determined that it was not necessary or appropriate to make that same exception for the Vice Chair, so the amended Bylaws removed that exception.

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<sup>32</sup> See PSU Policy AD67, “Disclosure of Wrongful Conduct and Protection from Retaliation,” effective date: March 25, 2014, and Policy AD88, “Code of Responsible Conduct,” effective date: September 16, 2014.

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When comparing PSU to its peer, state-related institutions, little conformity is observed on term limits. On the one hand, the University of Pittsburgh and Lincoln University hold board members to two, four-year terms; thus allowing a maximum eight years on the board. On the other hand, Temple University holds its members to a twelve-year maximum term limit.

Owing to the disparity in term limits when making these comparisons, we are encouraged that PSU took action to impart shorter and better-defined term limits than were in place in 2012. Despite that action, we continue to believe that nine years, with no special provision for time spent as Chair, would ensure that PSU's Board benefits from the infusion of fresh membership; thus, warding off the possibility that its membership may stagnate.

#### **9. Emeritus status/trustee expenses. Partially resolved.**

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In 2012, we found that PSU awarded “emeritus status” to retired trustees and staff.<sup>33</sup> This issue became particularly troubling because Gerald Sandusky was awarded emeritus status by exception based on the then-president's recommendation and the then-provost's approval. With emeritus status, Sandusky then had access to university facilities, including the football building where he committed at least one of his crimes. On another related matter, we also found that PSU did not disclose trustee-related costs (for active or emeriti members) for its Board meetings.

With respect to emeritus eligibility for staff, PSU revised its policy in 2015. The revision does not eliminate the ability of the president to award emeritus status on an exception basis, as we recommended; however, the policy does now require the president to notify the Board's human resources subcommittee about the exception.

Regarding trustee emeritus status, PSU continues to award the status to retired Board members. According to PSU representatives, the Governance Committee reviewed this issue and felt it was appropriate to award emeritus status to trustees as a way of recognizing service to the Board. To that end, the Board did amend its Standing Order IX, and amended the criteria so that it is no longer automatic. Further, term limits were added for emeriti members and other restrictions were put in place that does not give emeritus trustees full access to the Board.

Finally, on the matter of trustee-related expenses, PSU still does not report expenses per trustee, either by active or emeriti members. PSU reported to us that instead of releasing per trustee expenses, it instead reports aggregated board meeting expenses to its

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<sup>33</sup> Emeritus status is an honorary title conferred upon individuals. It is used in academia to distinguish professors or others for services they have provided to the university.

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Governance subcommittee. While tracking this information is an improvement, PSU needs to promote improved accountability and transparency and release this information publically for each of the trustees, active or retired.

#### **Finding 1.2 – PSU and its Board need to improve the transparency and accountability provided to Pennsylvania’s taxpayers.**

PSU is the Commonwealth’s largest public research institution, of which Pennsylvania’s taxpayers provide substantial annual support through, as noted earlier, annual non-preferred state appropriations, capital project funds, and other grants from the Commonwealth. Despite this ongoing public financial aid, PSU has thwarted common sense measures intended to improve the public’s trust. Transparency and accountability to Pennsylvania’s taxpayers, as well as consistency with other public universities in the United States, continue to be major issues for the reasons that follow:

- PSU continues to advocate against its inclusion under the state’s Right-to-Know Law.
- PSU does not support its inclusion under the state’s Ethics Act.
- PSU requires all trustees to validate Board decisions publically, even when trustees may have dissenting views.

#### **PSU and the Right-to-Know Law.**

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PSU is one of four “state-related” universities.<sup>34</sup> All four of these universities are instrumentalities of the Commonwealth within the state’s higher education system.<sup>35</sup> Despite PSU having state-related status, and despite it receiving hundreds of millions of dollars in taxpayer provided support, the General Assembly excluded PSU (and the three other state-related

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<sup>34</sup> There are four state-related universities: Pennsylvania State University, Temple University, the University of Pittsburgh, and Lincoln University. State-related universities should not be confused with **state-owned** universities. There are 14 state-owned universities that fall within the purview of the State System of Higher Education. These universities (all of whose official names end in “of Pennsylvania”) are as follows: Bloomsburg University, California University, Cheyney University, Clarion University, East Stroudsburg University, Edinboro University, Indiana University, Kutztown University, Lock Haven University, Mansfield University, Millersville University, Shippensburg University, Slippery Rock University, and West Chester University. With the exception of Indiana University of Pennsylvania which was known as a university prior to the creation of the state system, these institutions originated as “state normal schools” and teachers colleges.

<sup>35</sup> Unlike the three other state-related universities which are designated as “instrumentalities of the Commonwealth within the Commonwealth system of higher education” by statute, the purpose of Penn State is to operate as “an instrumentality of the Commonwealth to perform the essential governmental function of education” as provided for in its Corporate Charter. See 24 P.S. §§ 2510-2, 202, and 402.

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universities) from the standard provisions of the state’s Right-to-Know law (RTKL), a law designed to give the public access to public information.<sup>36</sup> By way of comparison, all 14 of Pennsylvania’s “state-owned” universities are subject to the RTKL.

Effective January 1, 2009, the state’s RTKL requires each affected Commonwealth agency<sup>37</sup> to have an open records officer to handle information requests. The major provision of the state’s RTKL is that agencies now must presume that all documents in its possession are public records, and the agency now has the burden to prove, with legal citation, why access should be denied.<sup>38</sup>

It should be noted that when the General Assembly initially considered RTKL legislation, PSU and the three other state-related universities were included in the legislation. Exempting these universities occurred only after the state-related universities, led by PSU, argued for their exclusion.

For example, at hearings before the Senate State Government Committee on June 4, 2007, PSU’s then president testified that, if passed, the legislation would have a “profound negative impact” on the state-related schools. With regard to PSU specifically, he protested that the university “receives a very small portion of its budget from the state—less than 10 [percent]—yet these proposals would open up the entire university to open records....”<sup>39</sup>

After those hearings, the law was amended to exempt PSU and the other state-related universities from most of the RTKL mandates. The only provisions of RTKL impacting PSU (and other state-related universities) are as follows:<sup>40</sup>

- Information contained in Form 990 of the IRS (except for individual donor information).
- The salaries of all officers and directors.
- The highest 25 salaries paid to employees.

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<sup>36</sup> See 65 P.S. § 67.101 *et seq.*

<sup>37</sup> The definition of “Commonwealth agency” under the RTKL includes a “state-affiliated entity” and an organization established by, among others, a statute which performs or is intended to perform an essential governmental function. See 65 P.S. § 67.102.

<sup>38</sup> Pennsylvania Office of Open Records, “RTKL FAQs,” accessed at <http://www.openrecords.pa.gov/RTKL/About.cfm>, December 12, 2016.

<sup>39</sup> Testimony of Graham B. Spanier, PSU President, Pennsylvania Senate State Committee, *PLC Committee News* (subscription service), June 4, 2007.

<sup>40</sup> 65 P.S. § 67.1501 *et seq.* This information is available from PSU’s web site at:

<http://controller.psu.edu/controllers-office/public-reports>. PSU notes that, “In complying with the Right to Know Law, financial information regarding employees is required for public disclosure. Among the employees listed within the filing, only the compensation of University officers is paid from funds provided principally by tuition and/or Commonwealth appropriation. The compensation of the other employees is provided from self-supporting entities (PSU’s Milton S. Hershey Medical Center or Intercollegiate Athletics) that do not use funding from Commonwealth appropriations or student tuition.”

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More recently, the General Assembly, through Senate Bill 411 of 2015-2016 legislative session (SB 411), attempted to take action to revise the state's RTKL, a provision of which would have expanded required reporting requirements for PSU and the other state-related institutions. The revisions would have expanded certain definitions, which would have included PSU's campus police departments, but still would have generally exempted state-related universities from the RTKL.<sup>41</sup>

The four state-related institutions provided written testimony supporting the inclusion of campus police as a local agency, as well as the expanded reporting requirements for state-related institutions.<sup>42</sup> This legislation did not pass the General Assembly.

While we are pleased that PSU supports, at a minimum, more increased public reporting about its operations, we continue to advocate that PSU should be further subject to the RTKL, just like universities under the state system of higher education.

We asked PSU why it continues to disagree with our recommendation. In response to our inquiry, PSU legal counsel noted to us that, "The University does not believe that it is appropriate to make the Right-to-Know Law applicable to the University and its affiliates as if the University was a state agency." As to the specifics of PSU's argument, PSU referred us to the testimony offered about SB 411. That testimony included the following:<sup>43</sup>

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

To be clear, we have never argued that PSU (and its board) should be subject to the RTKL as a state/commonwealth agency. Instead, we argued that the General Assembly should retain Chapter 15 of the RTKL, but add pertinent and specific references to PSU (and the other state-related institutions) in Chapter 15 that would strengthen their transparency and accountability.<sup>44</sup>

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<sup>41</sup> Senate Bill 411, introduced February 5, 2015, of the 2015-16 legislative session. A more specific companion bill, Senate Bill 412, which pertained to state-related institutions, was also introduced. Both bills have since *sine die* as of November 30, 2016.

<sup>42</sup> House State Government Committee, "Written testimony on behalf of Lincoln University, PSU, Temple University, and the University of Pittsburgh," March 22, 2016.

<sup>43</sup> *Ibid.*, page 4.

<sup>44</sup> As noted earlier, Chapter 15 of the RTKL requires state-related institutions to report certain information on salaries and related information about their officers, directors, and employees, as well as information contained in the IRS Form 990 (excluding individual donor information). See 65 P.S. § 67.1501 *et seq.*

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In addition, we recommend that the General Assembly consider amendments based on other states' RTKLs that include broader exclusions of PSU's intellectual property, proprietary research, and trade secrets. We made this recommendation in 2012, in part, because PSU so strenuously denied (and continues to deny) that it should be subject to the RTKL beyond the present and more recent proposed revisions (under SB 411) of Chapter 15.

The distinctions for why PSU should be better defined under the RTKL are numerous. Consider the points that follow:

1. PSU is “an instrumentality of the Commonwealth *to perform the essential governmental functions of education within the Commonwealth system of higher education,*” which is somewhat unlike Temple University, the University of Pittsburgh, and Lincoln University.<sup>45</sup> (Emphasis added.)
2. PSU is a land-grant institution; thus, it is at least implied to be eligible for certain types of federal funding not available to other institutions.
3. PSU's Agricultural Extensions are paid for by the federal (and state) governments originated under the land-grant acts and service all Pennsylvania communities.
4. Unlike and in stark contrast to the three other state-related universities, Penn State's employees have the option<sup>46</sup> of getting pension benefits<sup>47</sup> covered by the State Employees' Retirement Code<sup>48</sup> or the Public School Employees' Retirement Code.<sup>49</sup> Interestingly, Penn State employees have had this long

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<sup>45</sup> Temple, Pitt, and Lincoln's statute/charters only refer to them as instrumentalities of the Commonwealth with no reference to “the performance the essential governmental functions of education within the Commonwealth system of higher education.”

<sup>46</sup> See also 24 P.S. § 2510-504, relating to the status of the Pennsylvania College of Technology, which provides, in part, as “The Pennsylvania College of Technology is granted **the benefits and responsibilities of the status of The Pennsylvania State University as a State-related institution and as an instrumentality of the Commonwealth of Pennsylvania.** Without limiting the generality of this status, specifically, the following benefits shall be available:...(3) Employees of the Pennsylvania College of Technology **shall be eligible for membership in the State Employees' Retirement System** of Pennsylvania or the alternate retirement program under 71 Pa.C.S. Part XXV (relating to retirement for State employees and officers). Employees of the Pennsylvania College of Technology...[previously] participated in the Public School Employees' Retirement System **shall be eligible to continue to participate in the Public School Employees' Retirement System** of Pennsylvania under 24 Pa.C.S. Part IV (relating to retirement for school employees).” [Emphases added.]

<sup>47</sup> See also *Pennsylvania State University et al. v. State Employees' Retirement Board*, 594 Pa. 244, 250, 935 A.2d 530, 533 (2007). The Pennsylvania Supreme Court observed that the Penn State's employees are “eligible but not for but not required, to participate in the retirement plan operated and administered by SERS.” In other words, Penn State's employees are permitted to join SERS or PSERS, but are not mandated to do so. The definition of “State Employee” under the State Employees' Retirement Code includes employees of the “Pennsylvania State University....” 71 Pa.C.S. § 5102(1)(iv). Please note that Penn State employees often choose SERS' pension benefits over PSERS' benefits.

<sup>48</sup> 71 Pa.C.S. § 5102(1)(ii) and (iv).

<sup>49</sup> 24 Pa.C.S. § 8102.

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standing option of state retirement system membership since 1935<sup>50</sup> and the option of public school retirement system membership with the written permission of its board since 1957.<sup>51</sup>

5. PSU's functions are identical to the state-owned institutions (PASSHE), which **are** covered by the RTKL.
6. PSU annually receives state funding and other forms of support from the Commonwealth.
7. PSU's mission gives preference for educating students from Pennsylvania (example: in-state tuition is discounted).
8. PSU's BOT includes members appointed by, and to represent, the Commonwealth.
9. PSU's medical center was founded, in part, by grants from the federal government.<sup>52</sup>
10. PSU presents itself to students and the public as being publically funded.

Our opinion as to the appropriateness of PSU's inclusion under the RTKL is not alone. According to a representative from the Student Press Law Center,<sup>53</sup> Pennsylvania is one of only **two** states that provides special exemptions from its open records laws.<sup>54</sup> According to this same representative,

In every other state, public universities stand on the same footing as city or county governments or state executive agencies, meaning that their complete budgets, their internal correspondence and so forth are all obtainable by way of freedom-of-information requests. Pennsylvania is thus, alongside Delaware, an outlier in denying the public access to the basic information about internal university operations that would be available at any other comparable public institution.

Further, an expert in public university governance from the Association of Governing Boards of Universities and Colleges' noted to us the following:

[Penn State's] "state-related" university designation is very unique and there is no other state of which I am aware that does so in statute. The type of status it can possibly be likened to is that

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<sup>50</sup> See Act 173 of 1935. The language of Section 1 of Act 173 provides as follows in the former code's definition of public employee: "all officers and employees of the Pennsylvania State College paid on a yearly or monthly basis, other than those paid wholly Federal funds." Please note that the institution was not called Penn State until 1954.

<sup>51</sup> See Acts 167 and 168 of 1957.

<sup>52</sup> <http://www.pennstatehershey.org/web/cancer/research/history>.

<sup>53</sup> The Student Press Law Center (SPLC) is an advocate for student First Amendment rights, for freedom of online speech, and for open government on campus. The SPLC provides information, training and legal assistance at no charge to student journalists and the educators who work with them.

<sup>54</sup> The other nonconforming state is Delaware.

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certain states have established some of their public universities within their state constitutions. However, I believe that all of these public universities, whether established by their state's constitution, by statute, or merely by charter, are fully subject to their state's open records laws and ethics acts.

Given the above, we are even more hard-pressed to accept PSU's arguments that it deserves special dispensation from the public's right to know how its taxpayer-funded university operates.

#### **PSU does not support its inclusion under the Public Official and Employee Ethics Act.**

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Pennsylvania's Public Official and Employee Ethics Act (Act)<sup>55</sup> provides that "public office is a public trust and that any effort to realize personal financial gain through public office, other than compensation provided by law, is a violation of that trust."<sup>56</sup> A key provision of the Act is a requirement for certain employees and public officials to submit an "annual financial disclosure," known officially as a *Statement of Financial Interests* form.

The State Ethics Commission administers and enforces the provisions of the Act, including maintaining all annual financial disclosures (Statements of Financial Interests). To that end, the Commission prescribes, develops, accepts, and reviews those statements to ensure they are available to the public. Violators of the Act are subject to financial penalties.

As we reported in 2012, despite PSU being an instrumentality of the Commonwealth to perform the essential government function of education, PSU's BOT members and employees are not subject to the Act.<sup>57</sup> They are not subject to the Act because PSU does not meet the definition of "governmental body" in the Act, just as employees and board members do not fit the definition of a public official.<sup>58</sup> By way of comparison; however, all Pennsylvania "state-owned" university trustees *are* covered under the Act and are required to file the annual disclosure statements with the State Ethics Commission.

PSU opposes its inclusion under the State Ethics Act, noting to us the following:

The University does not believe that it is appropriate to make the Public Official and Employee Ethics Act applicable to the University and its affiliates as if the University was a state agency. The University believes that the conflict of interest provision of its Bylaws...together with other University policies...are adequate to provide the same or better protections as set forth in the Ethics Act.

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<sup>55</sup> 65 Pa.C.S. § 1101 *et seq.* (Act 93 of 1998, as amended).

<sup>56</sup> 65 Pa.C.S. § 1101.1(a).

<sup>57</sup> The other three state-related institutions (Lincoln, Temple, and University of Pittsburgh) are also not covered under the Act.

<sup>58</sup> 65 Pa C.S. § 1102.

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While PSU may believe its Bylaws provide adequate protections to provide the same or better protections of the Ethics Act, we disagree due to the fact that the Ethics Act holds the weight of law, while the Bylaws do not.

As we noted in Finding 1.2, PSU has amended its Bylaws and internal policies. With respect to conflicts of interest, PSU now requires each trustee to complete and sign an annual “Right to Know Law Questionnaire” and a “Conflict of Interest Disclosure and Certification Questionnaire.” The questionnaires require members to disclose any financial interests and whether the member had a conflict of interest as defined in PSU’s Bylaws.<sup>59</sup> A summary report of these documents is then posted to PSU’s web site.<sup>60</sup>

We reviewed PSU’s disclosure requirements against the provisions contained in the Ethics Act. As previously stated, the guiding principle of the Ethics Act is that “public office is a public trust and any effort to realize personal financial gain through one’s public office other than compensation provided by law is a violation of that trust.”<sup>61</sup>

The clarity of this guiding principle is what informs the clarity of the subsequent parts of the statute. Specifically, this clarity gives public officials and public employees the acumen by which they should conduct themselves.

In contrast, the PSU Bylaws offer no guiding principle in the Conflict of Interest section. The definitions of the provisions are not concise. It is difficult to read, understand, and apply. The effect of this obfuscation is easily recognizable: the less clear the parameters, the easier it is to avoid accountability for and transparency about conflicted transactions and dealings.

To exemplify the weakness of PSU’s Bylaws compared to the State Ethics Act, according to PSU’s Bylaws, a “conflict of interest exists when a reasonable observer, having knowledge of all of the relevant facts and circumstances, would conclude that a Trustee has an actual or apparent conflict of interest in a matter related to the University.” To these points; however, consider the questions that follow:

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<sup>59</sup> Under Article VIII, section 8.01 of PSU’s *Amended and Restated Bylaws*, a conflict of interest exists “when a reasonable observer, having knowledge of all of the relevant facts and circumstances, would conclude that a Trustee has an actual or apparent conflict of interest in a matter related to the University. In addition to financial conflicts of interest, a conflict of interest includes a situation in which a Trustee, family member or related entity has an interest that may lead the Trustee to act in a way that is incompatible with or a breach of the Trustee’s fiduciary duty to the institution or use such Trustee’s role to achieve personal gain or benefit or gain or benefit to family, friends or associates.”

<sup>60</sup> See <https://trustees.psu.edu/pdf/BOT%20RTK%20Disclosure%20Summary%205%209%202016.pdf> (accessed December 21, 2016). According to Section 8.03 of PSU’s *Amended and Restated Bylaws*, the actual annual disclosures are only available to the public upon request.

<sup>61</sup> 65 Pa.C.S. § 1101.1(a).

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- What defines a reasonable observer?
- How does a reasonable observer ensure that he/she has “all of the relevant facts and circumstances” to make a conclusion—and especially so, given that PSU is currently exempt from RTKL?
- What penalties exist for failure to disclose a conflict?
- If a reasonable observer identifies a conflict, who adjudicates that issue and in what venue?

Unlike the State Ethics Act, PSU’s Bylaws provide no relief to these important questions. As for further reasoning why PSU should be subject to the State Ethics Act, consider these points:

- PSU is an entity performing a governmental function—i.e., publically funded higher education.
- The Pennsylvania General Assembly created and has modified Penn State’s governance authority; therefore, it is not a private entity.
- Given the substantial influence of PSU and its affiliates as an economic engine to the Commonwealth, it is essential that, at a minimum, its Trustees operate without influence from their personal pecuniary concerns.

To be clear, PSU *is* a public university, and as such, its BOT is responsible to the Commonwealth’s taxpayers.<sup>62</sup> This point is emphasized by research conducted by the American Council of Trustees and Alumni, who state, “Although public trustees may think that their main job is to advocate and raise money for their institutions, it is incumbent upon the governor to ensure that they understand their fiduciary obligation is to represent the taxpayers.”<sup>63</sup>

In summary, trust in public officials to represent the interests of the Commonwealth is a tenant of good governance. Further, the phrase “trust but verify” is a well-conceived notion toward due diligence and protecting one’s interests. The Commonwealth’s Ethics Act, with the regulatory enforcement from the State Ethics Commission, provides a necessary layer of assurance toward that end. We are not questioning the integrity of PSU’s trustees, but taxpayers deserve greater transparency and accountability protections as a result of their investment in PSU.

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<sup>62</sup> The State Ethics Commission’s last ruling relating to PSU is almost 30 years old. (*See McQuaide*; August 20, 1980.) The ruling provided, in part, that the BOT members were not required to comply with the Ethics Act because the legislature did not expressly provide that Penn State be included within the coverage of the act. We believe that it is high time for the General Assembly to take note of the Commission’s long standing observation about this deficiency of the act or in the alternative, we kindly request that the Commission consider revisiting its 1980 ruling. *See* <http://www.ethicsrulings.state.pa.us/weblink/DocView.aspx?id=43294&searchid=8129aceb-74bf-43e3-ba35-8f9230a85055&dbid=0>.

<sup>63</sup> American Council of Trustees and Alumni, “Governance for a New Era: A Blueprint for Higher Education Trustees,” August 2014.

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#### **PSU requires all trustees to validate BOT decisions publically, even when trustees may have dissenting views.**

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With respect to openness and transparency, our 2012 report took issue with PSU Standing Orders that seemingly were designed to place “expectations” on trustee actions. In particular, these orders emphasized unity in the Board’s actions and in following prescribed channels for trustee engagement with the University.

Our 2012 recommendation with respect to openness and transparency were aimed at increasing trustee engagement, thereby improving overall governance. Specifically, we recommended that the Standing Order be amended as follows:

Members of the board of trustees are granted access to university operations, and are encouraged to speak freely with all students, faculty, staff, and alumni to obtain a better understanding of university operations and to make more informed assessments of university performance.

PSU has since revised these Standing Orders, but in a way contrary to our recommendation and in a manner that further seeks to diminish dissent and engagement. Specifically, PSU amended Standing Order VIII in May 2013, to include the “Expectations of Membership” on PSU’s Board. This language includes 13 general expectations, one of which includes an expectation as follows:<sup>64</sup>

Speak openly, freely and candidly within the Board and publically support decisions reached by the Board; it being recognized and understood that once the Board of Trustees, as the governing body of the University, makes a decision, it can be counterproductive and potentially damaging to the University for individual Trustees to publically criticize or attempt to subvert such decision.

When we asked PSU management about this change to its Standing Orders, they noted the following:

The Board amended its “Expectations of Membership” (including the cited provision) in May 2013 and is currently considering further changes to reflect the mutual expectations Trustees have of each other in connection with the conduct of their responsibilities as trustees. The issue of openness and transparency, in particular has been the subject of many Governance Committee discussions over the past several years.

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<sup>64</sup> PSU Standing Order VIII, Section (1)(d)(v).

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PSU further cited research conducted by the Association of Governing Boards, which noted that,<sup>65</sup>

[A]n effective board, even when sharply divided speaks with one voice. It would be an unusual and rather dull board within which critical and complex issues provoked no contention... While board deliberations may take place in public meetings, once decisions are made, it is the special task of the board chair to ensure that the board speaks publically with a single voice and that board members confine their difference to the boardroom.

More recently, in November 2016, the PSU Board again sought to modify this section of its standing order by introducing language that included, but was not limited to, “civility and respect” of fellow Trustees, and “refrain from public criticism of decisions reached by the Board.” These actions were; however, tabled until February 2017. During that Board meeting, the issue was again discussed, but no formal action was taken to adopt the change. Instead, the matter was referred back to committee for further discussion and review.

We continue to take issue with PSU’s changes to its Standing Orders and the basis by which it seeks conformity in its action. In our estimation, PSU’s most recent reforms are threats to transparency and accountability, and thus, may impede effective governance. For example, while we acknowledge the reasonableness of majority rule, PSU’s “unity expectation” becomes entirely unreasonable when it seeks to silence the dissenting view from the public.

Transparency by definition requires openness and full disclosure to all information, including dissenting viewpoints. Consequently, when PSU seeks to mandate that all trustees must “publically support” decisions, it is attempting to influence public perception that all trustees agree and are in harmony with decisions made by the majority. In reality, a trustee is a fiduciary, and a fiduciary duty is the highest standard of care.<sup>66</sup> As such, trustees have a responsibility to stand in trust for the institution and the public. Trustees are responsible for the overall health and wise use of university resources,<sup>67</sup> as such they should be as fully engaged as possible and not silenced in any way.

In support of our position, we cite best practices from the American Council of Trustees and Alumni, and its Institute for Effective Governance, which advocates that trustees be “well-informed” and “develop as many sources of information as possible.”<sup>68</sup> According to these higher education governance experts, PSU should continue to adhere to the recommendations we

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<sup>65</sup> This passage was taken from an email response provided by PSU management. The excerpt is originally taken from the Association of Governing Boards, “Effective Governing Boards: A Guide for Members of Governing Boards of Public Colleges, Universities, and Systems,” published 2010. See <http://agb.org/store/effective-governing-boards-guide-members-governing-boards-public-colleges-universities-and-sys> (accessed January 3, 2017).

<sup>66</sup> Cornell University Law School, Legal Information Institute, accessed at [https://www.law.cornell.edu/wex/fiduciary\\_duty](https://www.law.cornell.edu/wex/fiduciary_duty).

<sup>67</sup> American Council of Trustees and Alumni, Institute for Effective Governance, “The Basics of Responsible Trusteeship,” August 2016, page 1.

<sup>68</sup> Ibid, page 3.

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cited in 2012 and seek additional ways to garner trustee involvement and not silence dissent. As these experts state,<sup>69</sup>

The campus administration is [the trustee's] chief source [of information]—but may reflect only one point of view. Listen to other campus and community constituencies. Visit the campus, chat with students, faculty, and subscribe to the college newspaper. Do not get involved in individual complaints or grievances, but listen and learn.

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### Recommendations for Issue Area 1

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We recommend that PSU:

1. Reduce the membership of its Board to 21 voting members.
2. Permit “Business and Industry” constituency groups to appoint their trustees.
3. Remove the exception within its Bylaws that permits the Board to override the five year “time out” restriction by which PSU employees may become trustees and/or trustees may become PSU employees.
4. In conjunction with the reduction in the size of its membership, impart term limits so that members cannot serve beyond nine years, with no special provision for time spent as Board chair.
5. Continue to allow unedited live streaming of its Board meetings, including the public comment period.
6. Post expense information for its trustees online. This information should show “per trustee” expenses, to include active and emeriti trustees.
7. Support legislative amendments to include aspects of PSU’s operations under the Commonwealth’s RTKL.
8. Support legislative amendments to include PSU’s BOT members and its employees under the State Ethics Act.
9. Modify the “Expectations of Membership” clause that requires all trustees to validate Board decisions publically, even when trustees may have dissenting views. Board members should be encouraged to express their opinions on matters impacting the university without fear that doing so will jeopardize their standing.

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<sup>69</sup> Ibid.

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#### Issue Area 2 - Campus Security.

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#### Issue Summary - Findings 2.1 through 2.4

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As mentioned in the previous issue area, the “Sandusky crisis” has continued to have a lasting impact on PSU. One recent fallout from the crisis was a comprehensive review conducted by the United States Department of Education (USDE),<sup>70</sup> which concluded that between 1998 and 2011, PSU had substantially not complied with the Clery Act,<sup>71</sup> a federal law mandating, specific crime statistic reporting by institutions of higher education. In its final report, the USDE identified 11 findings and imposed a \$2.4 million fine on PSU, the largest ever for Clery-related non-compliance violations.<sup>72</sup> PSU accepted the imposed fine and has consented to a five-year monitoring period.<sup>73</sup>

PSU is continuing to improve its Clery-related practices and policies, but based on our audit procedures more improvement is needed. For example, PSU campus police continue to operate under a fragmented and disjointed organizational structure whereby each Commonwealth campus operates independently and uses a different incident reporting system. Further, based on selected interviews we conducted, we found that while campus police officers were now more aware of Clery Act reporting requirements, most believed additional training would greatly benefit them in performing their respective job duties.

We also reviewed PSU’s compliance with Act 104 of 2010, which is a state mandate that requires all higher education institutions to offer sexual violence awareness training<sup>74</sup> and a follow-up program for all first year students.<sup>75</sup> On a positive note, after reviewing PSU’s Act 104 sexual violence awareness module, we found that it fully complied with all requirements under Act 104.

Within this issue area, we also conducted a two-part test of PSU’s compliance with conducting all required background checks under the Child Protective Services Act (CPSL).<sup>76</sup> The first test

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<sup>70</sup> See <https://www.ed.gov/news/press-releases/us-department-education-levies-historic-fine-against-penn-state-over-handling-sexual-misconduct-incidents>.

<sup>71</sup> 20 U.S.C. § 1092(f).

<sup>72</sup> Previously, the largest fine ever imposed on an institution of higher education was a fine of \$350,000 imposed on the Eastern Michigan University.

<sup>73</sup> In addition, USDE’s Office of Civil Rights has initiated a review of PSU’s compliance with provisions related to institutions of higher education within Title IX, which generally prohibits discrimination on the basis of sex in all federally funded education programs and activities and protection from harassment and sexual violence.

<sup>74</sup> 24 P.S. § 20-2003-G(a).

<sup>75</sup> 24 P.S. § 20-2004-G. The “follow-up” program for new students includes: “(1) Lecturers relating to sexual violence prevention and awareness. (2) Institutional activities relating to sexual violence prevention and awareness. (3) Videos and other educational materials relating to sexual violence prevention and awareness.”

<sup>76</sup> 23 Pa.C.S. § 6301 *et seq.*

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involved PSU's compliance in obtaining background checks of employees<sup>77</sup> before they begin employment with the University, a requirement of PSU's human resources policy. The second test involved PSU's compliance in obtaining statutorily required background clearances for individuals who have direct access to minors via youth camps held in PSU facilities.<sup>78</sup> This latter test was especially significant, given the issues surrounding Jerry Sandusky, a now convicted pedophile, who had access to PSU facilities and conducted several football youth camps.

Regarding our first test, we found for a statistical sample of 76 employees, PSU failed to collect the required background checks for three employees, or a 3.9 percent error rate.

The results of our second test, compliance with obtaining statutorily required clearances, revealed more troubling errors. Using the same statistical approach to a randomly selected sample of 76 youth camps, we found six camps in which at least one clearance was missing for one individual associated with a camp, or an error rate of 7.9 percent.

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#### **Finding 2.1 – Clery Act Compliance – the US Department of Education found lapses, some of which continue today.**

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During November 2011, as the public learned of the events and fallout from the Jerry Sandusky crisis, a lesser-known action was also begun. That action was the initiation of a campus crime program review, which was brought forth by the United States Department of Education (USDE), through its Federal Student Aid Clery Compliance Team. The USDE initiated its review to assess PSU's compliance with the federal Clery Act during the period 1998-2011.

The Clery Act is intended to provide students, parents, employees, prospective students and employees, and the public in general, with important information about public safety issues occurring on college campuses.<sup>79</sup> All college campuses must report Clery data as a condition of participation in Title IV, Federal student financial aid programs. In 2014-15, PSU received more than \$550 million in Title IV federal student financial loans/grants.

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<sup>77</sup> 23 Pa.C.S. § 6344(a.1)(2)(i). This section applies to "School employees not governed by the provisions of the Public School Code of 1949" which would be encompassed within the definition of the CPSL's Institution of higher education" including a state-related institution.

<sup>78</sup> Ibid. The definition of "School employee" includes "**An individual** who is employed by a school or **who provides a program, activity or service sponsored by a school...**" (Emphasis added.) See 23 Pa.C.S. § 6303. Any individual "applying for or holding a paid position as an employee with a program, activity or service, as a person responsible for the child's welfare or having direct contact with children" is covered under 23 Pa.C.S. § 6344(a)(5) as a non-school sponsored program, activity or service.

<sup>79</sup> The Act is known formally as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) in Section 485(f) of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1092(f).

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In order to meet Clery Act requirements, universities must properly tabulate and notify interested parties about reportable crime events. USDE describes the Clery Act requirements as follows:<sup>80</sup>

The Clery Act requires institutions to produce and distribute an Annual Security Report (ASR) containing its campus crime statistics. Statistics must be included for the most serious crimes against persons and property that occur in buildings or on grounds that are owned or controlled by the institution or recognized student organizations as well as on adjacent and accessible public property.

These crimes are deemed to have been reported anytime such an offense is brought to the attention of an institution's campus police or security department, a local or state law enforcement agency of jurisdiction, or another campus security authority (CSA). There are several categories of CSAs. These include any institutional employee with safety-related job functions, such as a security desk receptionist in a residence hall or an attendant that controls access to a parking facility. Anyone designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources and Alternative Dispute Resolution professionals, are also CSAs. Finally, the law confers CSA status on any official that has significant responsibilities for student life or activities, such as residential life staff, student advocacy and programming offices as well as athletic department officials and coaches. At most institutions, the largest group of CSAs will fall into the last of these categories.

The breadth of USDE's review of PSU's Clery compliance cannot be overstated, as it was arguably one of the most extensive reviews ever conducted of any university. USDE representatives we interviewed stated their efforts took several years to complete and involved exhaustive examination of PSU's publications, written agreements, incident reports, investigative reports, arrest records, and disciplinary files, as well as PSU's policies, practices, procedures, and programs related to Clery Act compliance. Included in this review was consideration of findings from the "Freeh report,"<sup>81</sup> as well as the findings and recommendations from our 2012 special report (see Issue Area I).

On November 6, 2016, USDE released its 242-page program review to the public. The results exposed a lack of knowledge about Clery Act compliance from PSU staff and administrators, which the USDE found, in turn, led to a systemic failure within PSU to build the appropriate administrative capability to comply with the Clery Act. As reported by USDE investigators, "In regard to Penn State's administration of its compliance with the Clery Act, [USDE] has determined the university delegated nearly all responsibility to the PSU [police department], while simultaneously providing scant funding and no training for many years to support PSU PD compliance efforts."<sup>82</sup>

As we reported in our 2012 special report, the entrenched attitudinal and governance failures that were present at PSU "pre-Sandusky" likely contributed to these failures. For example, the overly

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<sup>80</sup> USDE, *Final Program Review Determination – Pennsylvania State University*, November 3, 2016, page 2.

<sup>81</sup> Shortly after the Sandusky scandal was made public, PSU created an internal investigative task force. The task force contracted with the firm of Freeh, Sporkin, and Sullivan, LLP, to serve as the special investigative counsel and to investigate all issues and circumstances related to the Sandusky crisis. This law firm released the results of its investigation, known informally as the "Freeh Report", on July 12, 2012.

<sup>82</sup> USDE, *Final Program Review Determination – Pennsylvania State University*, November 3, 2016, page 40.

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strong deference to the university president by the PSU Board of Trustees (BOT) likely contributed to board disengagement about important compliance-related matters. In turn, PSU failed to build the appropriate administrative capability to ensure Clery Act requirements were met. Other contributing weaknesses that were present at PSU are highlighted in the exhibit that follows:<sup>83</sup>

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<sup>83</sup> Note: USDE's program review reported 11 actual findings. The statements listed in the exhibit are USDE's observations that contributed to PSU's lapses in adequately complying with the law.

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#### Climate and Governance Weaknesses that Adversely Affected PSU's Safety and Crime Prevention/Awareness Programs

- 1. Failure to establish adequate control environment.** As the University grew, PSU's BOT failed to create an adequate control environment and was ill-equipped to effectively and consistently oversee University operations, especially on matters of compliance, governance, and risk management. Stated simply, in too many cases, there was no one "at the switch" to provide timely and effective oversight regarding Clery Act compliance and campus safety operations.
- 2. Poor leadership.** The Board was overly deferential to senior management, including the President's Council. USDE's evidence suggests that the Board was willing to abide by a lax set of standards and rules. With regard to the Sandusky matters, senior management failed to inform the Board of events that threatened to destabilize the University and the Board failed to inquire about these same events, even as credible information began to emerge in the press and from law enforcement officials.
- 3. Poor resource planning.** PSU failed to commit sufficient resources to Clery Act compliance, the PSU campus police, and campus safety operations generally. In the ranking of priorities, public safety initiatives did not receive the attention that they deserved, in spite of the fact that the University has been and continues to be well-funded.
- 4. Coordination between PSU offices lacking.** PSU failed to establish clear paths of communication and systems of coordination to ensure the effective compilation, disclosure, and dissemination of crime statistics and supporting documentation, especially where CSAs were concerned.
- 5. Poor administrative oversight.** PSU's most senior officials failed to provide sufficient managerial oversight of those individuals and offices charged with Clery Act responsibilities.
- 6. Failure to create appropriate support system.** PSU failed to establish a system that ensured standardization, custody, and control of important records needed to comply and document compliance with the Clery Act.
- 7. Background checks not completed.** PSU repeatedly failed to follow its own policies and procedures on child protection and the conduct of mandatory background checks.
- 8. Failure to adhere to established policies.** PSU also failed to adhere to its own internal processes when the Department of Intercollegiate Athletics took the lead in negotiating Sandusky's retirement package and, in the process, fed unnecessary and presumptively inaccurate speculation that certain benefits were granted for inappropriate purposes.
- 9. Poor control over athletic program.** PSU did not exercise adequate control over its intercollegiate athletic programs, especially the football program. These failures resulted in the imposition of serious sanctions by the National Collegiate Athletic Association (NCAA) and in some cases, undermined the PSU's ability to effectively hold student-athletes accountable for violation of its Community Standards, Penn State's label for its student code of conduct. Specifically concerning the Clery Act, USDE's investigation indicates that these failures also manifested themselves in the attitudes and behaviors of some student-athletes and some crime victims as well, resulting in decreased crime reporting and compromised campus safety.

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*Source: Developed by Department of the Auditor General staff from the USDE's Final Program Review Determination – Pennsylvania State University, November 3, 2016, page 8. This information is presented for background purposes only and is extracted from the best available source, the US Department of Education.*

USDE's work concluded with a \$2.4 million fine levied against PSU—the largest fine ever imposed for Clery Act noncompliance. By way of comparison, prior to the imposition of the PSU fine, the largest fine ever imposed for Clery Act noncompliance was \$350,000, which was imposed against the Eastern Michigan University. PSU accepted the totality of the fine and has also agreed to a subsequent five-year monitoring period by USDE.<sup>84</sup>

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#### **Looking forward: Improvements have been made, but more administrative capability improvements are necessary to ensure Clery Act compliance.**

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To PSU's credit, since the Sandusky scandal and USDE's investigation, improvements have been made. Of notable actions that should lead to improved Clery Act compliance, we found the following:

- PSU hired two individuals who are dedicated specifically for Clery Act compliance.<sup>85</sup> PSU was one of the first universities to have personnel dedicated solely for this responsibility.
- Surprisingly, prior to 2012, PSU had no formal policy outlining its responsibilities for compliance with the Clery Act. PSU has since adopted and amended Policy AD74, *Compliance with Clery Act*. This document now provides the framework to ensure Clery Act compliance.
- Prior to the establishment of policy AD74, PSU lacked an adequate capacity for identifying CSAs—designated campus personnel who have a Clery reporting responsibility.<sup>86</sup> In fact, prior to 2012, PSU was hard-pressed to provide any documentation as to who was designated as a CSA. PSU, through policy AD74, has now clearly delineated its CSAs, who now exceed more than 4,000 individuals system-wide.

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<sup>84</sup> Although the USDE's review of PSU's compliance with the *Clery Act* has been concluded, representatives we spoke with from the USDE's Office for Civil Rights indicated that it was also conducting an investigation of PSU's compliance with Title IX. This investigation is ongoing and is being conducted concurrently with the post Clery Act monitoring. It should be noted that *Government Auditing Standards* require that we avoid interfering with ongoing investigations or legal proceedings. As such, our audit did not include Title IX compliance matters. Refer to *Appendix A – Objectives, Scope, and Methodology* for more information.

<sup>85</sup> PSU indicated that a third person will be hired to aid in monitoring its Clery Act compliance.

<sup>86</sup> This includes an institution's campus police or security department, a local or state law enforcement agency of jurisdiction, or another campus security authority.

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- PSU centralized the availability of Clery Act information through a “one-stop” website. From this website, all Clery-related information can be located, including online reporting forms, annual reports, and timely warnings. Information is segregated by PSU campus making it easier to access.
- In 2014, PSU adopted an emergency messaging system, “PSUAlert” to issue timely warnings and emergency notifications, a key requirement of the Clery Act. In addition to information posted online, PSU uses text messages and mass emails to notify interested parties.
- Because of USDE’s investigation, PSU has agreed to a five-year review period by which the university’s Clery-related activities will be closely monitored. PSU has a significant incentive to adhere to USDE’s guidance, as it could potentially lose more than \$500 million in federal aid, if it fails to comply.

Despite these enhancements, we found areas where PSU needs to improve. As part of our audit procedures, we selected six campuses and met with the applicable individuals responsible for Clery Act compliance.<sup>87</sup> The focus of our meetings was to ascertain how each campus complied with the Clery Act, as well as to identify any system-wide improvements that may be necessary.

#### Data System Improvements Needed

During our interviews at PSU’s Main campus (University Park), we learned that the Clery Act Compliance Coordinator, who is based at University Park, is responsible for the final tabulation and reporting for each PSU campus’ annual security report (ASR). This process is no small feat given that more than 20 different campuses are required to publish an ASR. To that end, during our interviews at the selected commonwealth campuses, we found that with respect to campus police incident reporting—which is the primary means by which Clery-reportable events are recorded—each campus uses a different incident tracking system. As a result, this lack of standardization unnecessarily complicates the annual tabulation process and creates additional confusion over what incidents need to be reported.

We acknowledge that the Clery Act does not require PSU to have just one type of reporting system across commonwealth campuses. However, given the problems identified by the USDE, it would be prudent for PSU to implement more effective and efficient standardization and uniformity over this capacity by establishing a common system across all campuses. In fact, we are surprised that PSU continues to lack a common data system.

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<sup>87</sup> As discussed in the background section of this audit report, PSU has 24 commonwealth campuses. We excluded the Dickinson Law School, the Hershey Medical Center, and the College of Technology from review. The campuses we selected were University Park, Hazelton, Berks, Beaver, Erie, and Harrisburg. We selected these campuses because they are the larger campuses in the PSU system and each has on-campus housing; thus, a greater potential for Clery-related offenses.

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The lack of a standardized system became apparent to us as we reviewed daily crime logs (a Clery Act requirement) at each campus. According to the USDE *Handbook for Campus Safety and Security Reporting*, “the purpose of the daily crime log is to record all **criminal incidents** and **alleged criminal incidents** that are reported to the campus police or security department (emphasis included).”<sup>88</sup> It is important to note the bold emphasis highlighted by the USDE. Accordingly, by definition the requirement applies to all criminal incidents; therefore, not every incident needs to be reported, and the incidents are not limited to just Clery reportable crimes.<sup>89</sup> The reason for this distinction is clear—end users should be able to identify criminal incidents quickly.

Despite this guidance, we found confusion exists over the specificity of this Clery Act requirement. For example, at the PSU-Harrisburg campus, the daily crime logs were overly detailed and captured all policing incidents—even routine events. One example: officers regularly provided transportation for PSU employees to the local airport. Clearly, such activity is not a criminal incident, although it does raise the question why these employees required personal shuttle service from the campus police. However, when we went to the PSU-Berks campus and asked to review their daily crime log, we found mostly blank pages. The reason: campus officers correctly noted that they queried their incident system to report only criminal incidents.

In subsequent interviews with PSU administrators, we were informed that PSU has executed a contract for a new central records system and is currently in an 18-month implementation and conversion process.<sup>90</sup> When completed, the new system will promote uniform crime reporting across all PSU campuses. The system will further centralize Clery reporting information so that compliance staff at PSU Main campus have real time access to the information. The system will also eliminate the confusion over daily crime log reporting.

### Training

As reported in the USDE report and the Freeh investigation report, prior to 2007, and up through 2012, PSU had serious problems with Clery Act compliance. A key factor to this non-compliance was PSU’s unawareness for the requirements of the law. In fact, as reported in the USDE report, “PSU police department officials were entirely unaware of the CSA requirement and several other requirements of the Clery Act until at least 2007 when the Crime Prevention Officer (CPO), who was tasked with leading the Clery compliance effort starting in 1991 was

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<sup>88</sup> USDE, *The Handbook for Campus Safety and Security Reporting*, 2016 Edition (*Handbook*), page 127.

<sup>89</sup> The USDE provides an example of this distinction. If a student tells the security office that he lost his wallet in the parking lot behind a dorm, it is not a criminal incident, and there is no requirement to record it in the log. However, if a student tells the security office that his wallet was stolen from his dorm room, this is an alleged criminal incident, which must be recorded in the daily log.

<sup>90</sup> The system will be implemented in two phases. Phase I covers University Park, Altoona, and Dubois. Phase II covers all other campuses.

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finally provided some training.”<sup>91</sup> Consequently, for 16 years PSU officials charged with Clery Act compliance never received any training on how to comply with the law.

Training is a key aspect of any employee development program. Indeed, one would expect that at public university, where learning and development are at the forefront of the university mission, training would be especially appreciated. At PSU, in the case of Clery compliance, it was not. For example, after the CPO returned from his Clery training and reported his concerns about lack of Clery awareness and the need for the university to invest resources to fix the issues, the response he received from the administration was, “we really do not have the money.”<sup>92</sup> We too heard similar comments in our interviews. One senior management official, who joined PSU’s administration prior to the Sandusky scandal, noted that upon his arrival at PSU he had concerns about PSU’s Clery compliance. These concerns arose because before his appointment at PSU he was employed at another Big Ten university, and he consequently had experience with Clery compliance requirements there. During our interview, this individual noted to us that when he inquired to another senior administrator about PSU’s Clery program, that administrator responded as follows: “I’m not sure of the specifics. Campus police handle that—and they do a good job. You too will come to learn how well they do it here at Penn State.” As we know now, with respect to training about Clery compliance, improvements were needed.

During our interviews at campus facilities, we heard similar stories about the need for more training on Clery requirements. For example, at PSU-Berks, the officers we met with exhibited a high level of comprehension about the Clery Act; however, these officers still expressed a desire for more training so that they could continue to develop their Clery knowledge. This belief was echoed by others as well. At the PSU-Hazleton campus, we learned that one officer has even gone so far as to attend Clery trainings on his own time, because he too was concerned about Clery compliance.

In the end, Clery compliance ultimately depends on the effectiveness of its employees to meet the letter of the law or, more importantly, the requirements of the USDE *Handbook*. PSU has dedicated and capable employees, but they require additional administrative capabilities to aid their efforts. Undoubtedly, USDE will continue to keep PSU and its Clery compliance program “under the microscope;” therefore, PSU must dedicate the appropriate resources to ensure a uniform incident data system is deployed University-wide. To this point, we noted that during the period January 1, 2013, through October 31, 2016, no internal audits were conducted related to Clery compliance.<sup>93</sup> Given that USDE’s initial review is complete, PSU should reinstate this internal audit function to ensure it meets Clery requirements. Further, PSU must establish an improved Clery training program that meets the needs of all employees responsible for Clery compliance.

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<sup>91</sup> USDE, Final Program Review Determination – Pennsylvania State University, November 3, 2016, page 119.

<sup>92</sup> Ibid.

<sup>93</sup> PSU officials noted that no internal audits were conducted due to the pendency of the USDE investigation.

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#### **Finding 2.2 – PSU meets statutory requirements to provide sexual violence awareness training.**

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Article XX-G of the Public School Code (Act 104 of 2010)<sup>94</sup> relates to sexual violence awareness educational programs<sup>95</sup> and requires all Pennsylvania institutions of higher education to establish a sexual violence awareness education-training program. The law mandates specific topics that must be covered, including but not limited to the following:

- A discussion of sexual violence.
- Sexual consent and sexual rights.
- Drug and alcohol facilitated sexual violence.
- Risk education.
- How to obtain campus assistance.
- The possibility of pregnancy and sexual diseases.
- Assurance of confidentiality.

As part of our audit procedures, we reviewed PSU’s Act 104 training—Penn State AWARE—Sexual Assault Awareness learning module. PSU requires that all incoming first year students (regardless of age) complete the module prior to arriving on campus.<sup>96</sup>

PSU provided the audit team with usernames and passwords to access the training. The program was about 45 minutes long and included a mix of videos and a PowerPoint presentation with voice over.<sup>97</sup> The training began with a pre-survey, which offered various statements about sexual violence and asked students to respond using the Likert Scale<sup>98</sup> to measure responses. The training continued with a male and female student, who narrated most of the presentation. Representatives from PSU’s Center for Women Students and PSU’s University Health Services also presented detailed information about sexual violence awareness. After the presentation was over, students are then asked to complete a post-survey, which contained the same questions as the pre-survey.

Overall, we found that PSU’s AWARE training module met the sexual awareness training requirements of Act 104.

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<sup>94</sup> 24 P.S. § 20-2001-G *et seq.*

<sup>95</sup> 24 P.S. § 20-2003-G.

<sup>96</sup> Act 104 only requires PSU to offer the training; therefore, PSU cannot mandate that students complete the training.

<sup>97</sup> Users log on to AWARE at <http://edge.psu.edu/firstyear/>.

<sup>98</sup> Used mainly in training course evaluations and market surveys, Likert scales usually have five potential choices (strongly agree, agree, neutral, disagree, strongly disagree) but sometimes go up to ten or more. The final average score represents overall level of accomplishment or attitude toward the subject matter.

See <http://www.businessdictionary.com/definition/Likert-scale.html>.

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#### **Finding 2.3 – PSU hired employees without completing a required background check.**

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Many employers require their prospective employees to complete a background check as a precondition of employment. Background checks are a “best practice” that help to protect an employer’s business interests, minimize risk, create a safe work environment, and assist human resource personnel in making sound employment decisions.

To the above points, PSU developed an internal policy—HR 99—regarding background checks. Under this policy, depending on whether the employee has access to children as part of their job duties, one of two types of background checks are used. For employees, who do not have access to children, a **standard** three-part background check is required, which includes the following:

- ✓ A social security number verification.
- ✓ A misdemeanor and felony criminal history check.
- ✓ A National Sex and Violent Offender Registry check.

For employees who do have access to children—a **child protective services (CPS)** background check is required in lieu of the standard background check. The CPS check is required under the provisions of the Child Protective Services Law<sup>99</sup> and includes the following:<sup>100</sup>

- ✓ A PA State Police criminal background check.
- ✓ PA Child Abuse History Clearance.
- ✓ Federal FBI (fingerprint) Background Check.

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#### **Standard Employee Background Check Process**

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Under PSU Policy HR99, any individuals age 16 or older who are engaged in any work capacity, on any PSU premises, must complete a standard background check.<sup>101</sup> This standard background check must be completed prior to the employee’s first day of work with PSU.<sup>102</sup> PSU contracts with a third-party vendor to perform the standard background check.<sup>103</sup>

Upon a provisional job offer, PSU human resources staff enter the candidate’s name and email address into the system. The system then generates an email form that is sent directly to the

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<sup>99</sup> See 23 Pa.C.S. § 6301 *et seq.*; in particular, see also 23 Pa.C.S. § 6344(a.1)(2)(i).

<sup>100</sup> PSU compliance with obtaining these checks is discussed in the finding that follows.

<sup>101</sup> PSU, Policy HR99, *Background Check Process*, Initial effective date: July 5, 2012, rev. February 19, 2016, page 1.

<sup>102</sup> *Ibid.*, page 3. HR99 allows the PSU, Office of Human Resources, Talent Acquisition Division to approve exceptions to this rule. According to a PSU HR representative, PSU has allowed some employees to start working before their standard background check was completed. These exceptions were for students who were working in food services. PSU allowed the exceptions because the employees were needed immediately.

<sup>103</sup> During our audit period, PSU used two different vendors to complete standard background checks.

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candidate's email address. The candidate then enters personal information, such as social security number, current address, previous addresses, self-disclosed criminal record information, and other relevant personal information. Using this self-disclosed, user-specific information, the vendor checks numerous online databases and generates a final report for PSU human resource staff to evaluate.<sup>104</sup>

According to PSU policy, the existence of a criminal conviction will not result in automatic disqualification.<sup>105</sup> PSU considers other factors in its suitability evaluation, including:<sup>106</sup>

- Nature and gravity of the offense(s).
- Time since conviction, completion of sentence or any other remediation.
- Degree of relevance to the position for which the candidate is being considered.
- Discrepancies between the background check and what the candidate self-reported.

#### **PSU did not ensure all employees received background checks prior to their hire date.**

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We conducted a test to verify that PSU conducted background checks on employees prior to their first day of employment. To complete our test, we obtained a listing of all employees hired during the period January 1, 2016, through December 31, 2016. We excluded employees from the Hershey Medical Center/School, Penn State Law Schools, and Pennsylvania College of Technology. The list provided by Penn State (excluding the campuses mentioned) totaled 24,384 employees and included their job title, start date, and the campus to which they were hired.<sup>107</sup>

Next, we chose to follow a statistical sampling technique to help frame our testing selection procedures. Under this technique, we determined an appropriate sample size of 76 employees based on a 90 percent confidence level, 3 percent tolerable deviation rate, and zero expected deviations. In other words, we would expect to see that PSU had completed standard background checks for all employees prior to their hire date.

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<sup>104</sup> Under PSU Policy HR99, this information is used solely to evaluate the candidates' eligibility to be engaged in the required work capacity. It is not used to discriminate on the basis of race, color, national origin, ancestry, religious creed, gender, disability or handicap, age, genetic information, veteran's status, gender identity or sexual orientation.

<sup>105</sup> PSU Policy HR99, *Background Check Process*, Initial effective date: July 5, 2012, rev. February 19, 2016, page 5.

<sup>106</sup> Ibid.

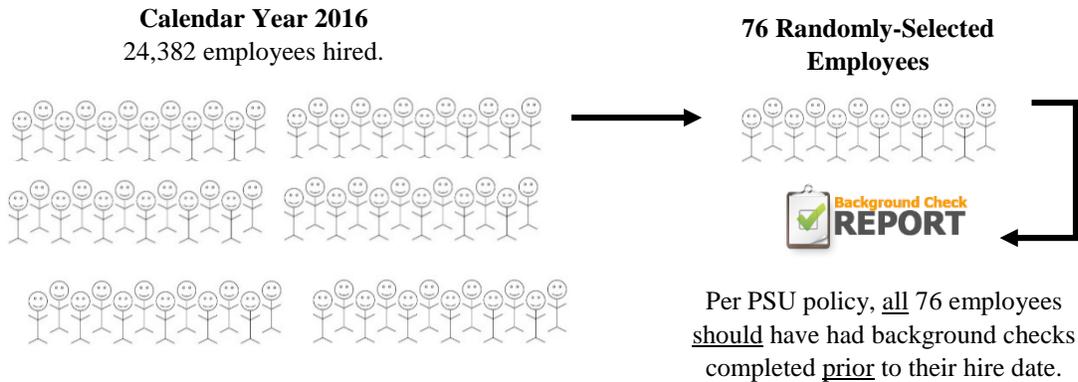
<sup>107</sup> *Government Auditing Standards* require us to assess the reliability of data provided to us. We determined the data to be of undetermined reliability because of cost-prohibitive procedures necessary for site visits to geographic locations of various source systems and/or unavailable hard copy source documentation. We received some assurance from PSU management that the data was complete and accurate to the best of their knowledge in a management representation letter. Although this determination may affect the precision of the numbers we present, there is sufficient evidence to support the reasonableness of the data in total to support our findings, conclusions and recommendations. See also *Appendix A – Objectives, Scope, and Methodology*.

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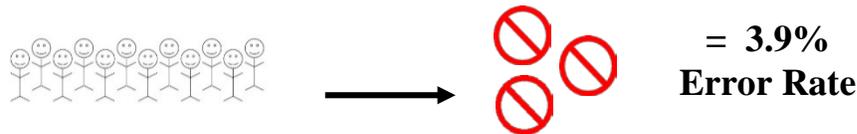
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Of the 76 employees we randomly selected, after reviewing the applicable employee files, we found that three employees, or 3.9 percent of our statistical sample, did not have any background checks conducted. Our results are highlighted in the exhibit that follows:

#### What should be...



#### Our actual test results...



**Out of the 76 employees sampled, 3 background checks were not completed.**

*Source: Developed by Department of the Auditor General staff.*

Using the 3.9 percent error rate from our sample, extrapolating these results to the total population of 24,384 employees hired between January 1, 2016, and December 31, 2016, would project 962 employees not having standard background checks completed.<sup>108</sup>

In response to these errors, we asked PSU officials for an explanation as to how these errors could have occurred. PSU officials noted that, “hiring at the University is a decentralized process, including the process for requesting and obtaining [standard] background information. Due to the high volume of wage payroll and graduate hires, the hiring units were not able to provide a specific reason for the breakdown in controls for the individuals.”<sup>109</sup>

<sup>108</sup> In statistical terms, because we found three employees hired without a background check, the maximum error rate for the entire population is 8.6 percent at a 90 percent confidence level. For projection purposes, we used the actual error rate that we found instead of the statistically calculated maximum error rate which also factors a 3 percent tolerable deviation rate.

<sup>109</sup> After being made aware of these occurrences, PSU obtained the necessary background check for one employee; however, the other two employees were no longer with the University.

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In the end, PSU's failure to not complete standard background checks for all its newly hired employees increases the likelihood that employees with potentially disqualifying backgrounds may be hired into positions for which they are not eligible. For example, a potential employee with a retail theft conviction generally would not be the best candidate for a position involving cash transactions.

#### **Finding 2.4 – Statutorily required background checks for certain individuals who had direct contact with children through PSU-operated youth camps were not completed.**

In Finding 2.3, we discussed PSU's HR 99 "background" policy, which requires background checks for employees. As previously mentioned, that policy requires one of two types of background checks: either a standard background check, or if the employee has direct contact with children, a child protective services (CPS) background check. CPS checks are required under the Child Protective Services Act<sup>110</sup> and include the following:

- ✓ A PA State Police criminal background check.
- ✓ PA Child Abuse History clearance.
- ✓ Federal FBI (fingerprint) background check.

CPS checks are a valuable tool in protecting children from sexual predators; however, these tools are only effective if a) criminal incidents, including suspected child abuse are properly reported to authorities, and b) the checks are obtained prior to the employees' contact with minors.

For most institutions, obtaining CPS checks for employees might seem a customary and routine human resource activity. At PSU, however, CPS reviews are an especially focused activity because—as we now know—at the highest-levels of PSU's administration, PSU failed to report suspected child abuse, and subsequently failed to protect children from the sexual predation of Jerry Sandusky.<sup>111</sup>

Since the events with Sandusky, PSU has taken steps to improve its child protection-related compliance activities. In addition to PSU's HR99, other policies were implemented including: requiring reporting of suspected child abuse, disclosure of wrongful conduct, and procedures for minors involved in youth camps. Regarding this latter policy, PSU also established a "Youth Program Coordinator" (YPC) to further its compliance regarding youth camps held on PSU facilities.

During the course of our audit, we met with PSU's YPC and discussed PSU's ongoing efforts to improve its compliance. We were informed that all youth camps—whether conducted in-house

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<sup>110</sup> See 23 Pa.C.S. § 6301 *et seq.*; 23 Pa.C.S. § 6344(a)(5) as a non-school sponsored program, activity or service.

<sup>111</sup> *Pennlive*, "Tim Curley, Gary Schultz plead guilty in Sandusky cover-up case," March 13, 2017. See also, Centre Daily Times, "Former Penn State president Graham Spanier found guilty of child endangerment," March 24, 2017.

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by PSU personnel, or externally by groups wanting to use PSU facilities, must abide by PSU's policies, which includes obtaining the necessary CPS background checks for individuals associated with the camp. The YPC noted that a database application is used as a tool to help track youth camp compliance and that during calendar year 2016, 732 camps were held on PSU's various campuses.<sup>112</sup>

#### **PSU's "Youth Camp Indemnification Form"—not an acceptable substitute for ensuring compliance with CPS requirements.**

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PSU officials noted that, in general, it does not prefer to have external groups operate youth camps using its facilities, i.e., camps in which non-PSU personnel are involved. PSU's preference is to have only its employees involved in youth camps on PSU campuses. PSU officials indicated that by having its employees involved with youth camp operations they are better able to ensure compliance with its various policies.

With regard to external camps, in which non-PSU employees are involved, we inquired how PSU ensured compliance with its child protection policies, and HR99 specifically. PSU officials noted that an "indemnification form" is used that requires the camp's organization officer to attest that they will comply with all PSU policies, which by extension would include the requirement to obtain necessary CPS checks for all individuals associated with the camp.

We also inquired as to what extent PSU conducted audits to ensure that these external groups are obtaining the appropriate CPS checks for their members. PSU officials stated that no auditing or monitoring is conducted to ensure that CPS checks are completed for external camps. As such, PSU merely relies upon the indemnification form and its "release of liability" provisions as its compliance tool. Due to the lack of documentation obtained by PSU for external camps, we could not perform procedures to evaluate whether the external groups obtained the appropriate CPS checks for their members.

Given the historical events involving Sandusky—and his ability to operate football camps on PSU campuses and facilities with disregard to PSU's policy and procedures—PSU must not allow past digressions to repeat. To this point, PSU must ensure that no youth camp operators use PSU facilities without the statutorily required CPS checks completed.

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<sup>112</sup> *Government Auditing Standards* require us to assess the reliability of data provided to us. We determined the data to be of undetermined reliability because of cost-prohibitive procedures necessary for site visits to geographic locations of various source systems and/or unavailable hard copy source documentation. We received some assurance from PSU management that the data was complete and accurate to the best of their knowledge in a management representation letter. Although this determination may affect the precision of the numbers we present, there is sufficient evidence to support the reasonableness of the data in total to support our findings, conclusions and recommendations. See also *Appendix A – Objectives, Scope, and Methodology*.

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#### PSU failed to obtain CPS-required clearances for several individuals involved in youth camps.

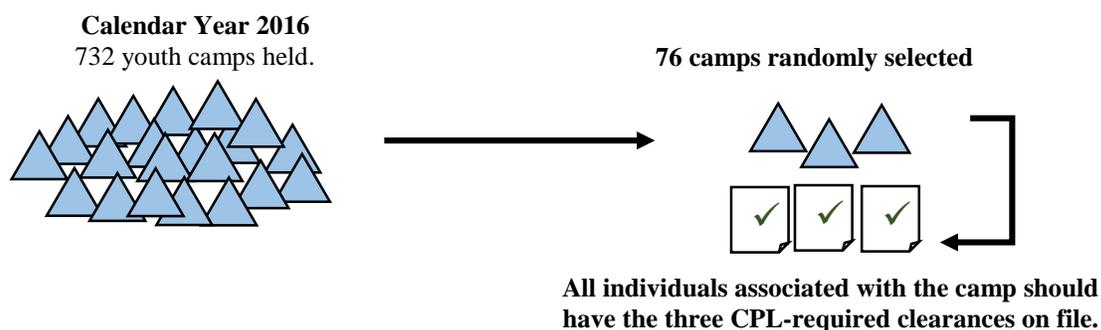
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Owing to the significance of youth camps on PSU's campuses, we tested PSU's compliance with the requirement to obtain CPS background checks. We applied the same statistical considerations we used for our test of standard background clearances to the total population of 732 youth camps held on PSU campuses during calendar year 2016.<sup>113</sup> In the end, we randomly selected 76 camps for review. The 76 selected camps were from 14 different campuses, and 30 of the 76 were from University Park specifically. The camps included a mixture of academic and sports-related activities.

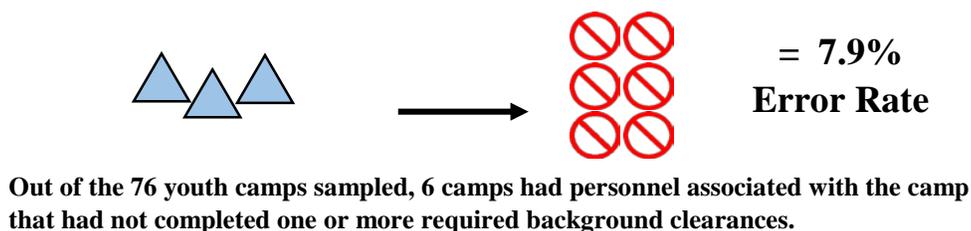
During our testing, we reviewed personnel files for the employees associated with the 76 selected camps at the various campuses and human resources units. We reviewed the employee files for all three clearances. If at least one clearance was missing for one individual associated with a camp, we determined the camp was out of compliance. As with our test of standard background checks, based on our factored statistical considerations, we expected to find no instances of non-compliance. Our methodology and results are shown in the exhibit that follows:

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#### What should be...



#### Our actual test results...



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Source: Developed by Department of the Auditor General staff.

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<sup>113</sup> We applied a 90 percent confidence level with a 3 percent tolerable deviation rate, and zero expected deviations. Refer to *Appendix A – Objectives, Scope, and Methodology*.

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Our testing revealed that six camps, or 7.9 percent of our statistical sample, had a least one individual associated with the camp that was missing one or more required CPL clearances. Using the 7.9 percent error rate from our sample, extrapolating these results to the total population of 732 camps held during the period from January 1, 2016, to December 31, 2016, would project that 57 youth camps had at least one individual missing at least one of the three required clearances.<sup>114</sup>

We presented our test results to PSU officials, who disputed some of our results. PSU officials explained that in two instances, employees were hired on a “provisional” status, which is permitted under the Child Protective Services Law.<sup>115</sup> We concur with PSU’s conclusion regarding provisional status; however, that section of the law also requires the employer to obtain a written statement from the employee that he/she is eligible for employment. We asked PSU to provide us with documentation for these potential provisional eligible employees. PSU officials stated that after reviewing their files they were unable to locate the requested documentation. Because failure to document the provisional eligibility status is also a violation of the Child Protective Services Law, we continue to hold that these employee hires were non-compliant.

In another instance, PSU officials stated that the person who lacked appropriate clearances did not in fact work at the youth camp. While this would explain the individual’s lack of appropriate clearances on file, it does not explain why he was listed as having worked at the camp when he did not—a related break down of internal control over the documentation of personnel associated with youth camps.

Regarding other non-obtained clearances, PSU officials acknowledged the failure and indicated that a breakdown in communication between the involved HR offices was the likely cause for this lapse. PSU officials noted that greater scrutiny will be placed on records submitted by individuals and that, “best practices discovered from this review will be shared with all PSU HR strategic partners to reinforce the importance of compliance with the clearance process.”

The failure to obtain CPL-required clearances for all individuals associated with youth camps and the failure to produce accurate rosters of individuals who actually worked at the camps reveal a breakdown of internal controls governing PSU’s internal policies and practices. Without these clearances, PSU is not ensuring that it is: 1) complying with the Child Protective Services Law, and 2) not potentially exposing children to individuals who have disqualifying clearances.

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<sup>114</sup> In statistical terms, because we found 6 of the 76 camps sampled out of compliance, the maximum error rate for the entire population is 13.5 percent at a 90 percent confidence level. For projection purposes, we used the actual error rate that we found instead of the statistically calculated maximum error rate, which also factors a 3 percent tolerable deviation rate.

<sup>115</sup> See 23 Pa.C.S. § 6344(m).

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#### Recommendations for Issue Area 2

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We recommend that PSU:

1. Implement a standard incident management system across all Commonwealth Campuses. The system must effectively aid PSU in the uniform tracking of Clery-reportable incidents. Further, users must receive training on the system to ensure it is used effectively and efficiently to support Clery-related responsibilities.
2. To aid in Clery compliance at each commonwealth campus, ensure that only “criminal incidents” and “alleged criminal incidents” are reported in each respective campus’ daily crime log.
3. In concert with the above, ensure that employees and any other individuals associated with Clery compliance receive sufficient and regular training on all aspects of the law and the USDE’s *Handbook*.
4. Routinely conduct internal audits over Clery Act responsibilities.
5. In order to ensure that students are completing PSU’s Act 104 module, consider implementing a requirement that students may not register for future classes until the module has been completed.
6. Re-evaluate the internal controls and procedures related to standard background checks to ensure that no employees are hired without first clearing a standard background check.
7. In addition to obtaining “indemnification forms” for camp operators who wish to use PSU facilities, conduct periodic reviews of those organizations to ensure that affiliated individuals are obtaining the required child protective clearances.
8. Revise its policies and procedures over youth camps so that compliance officials are:
  - a. Able to produce accurate and complete rosters of individuals working with the camp.
  - b. Able to identify from the roster which individuals do not have the statutorily required child protective clearances on file.
  - c. Able to validate that employee statements exist for employees hired on a “provisional” status in accordance with the Child Protective Services Law.

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- d. Able to ensure that “provisional status” individuals obtain the necessary background clearances within 30 days.<sup>116</sup>

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<sup>116</sup> Under the CPSL, an individual is allowed to remain in provisional status for 90 days; however, because most youth camps operate for a short time and during the summer months, we believe that 30 days is a reasonable best practice to follow.

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#### Issue Area 3 - Tuition Affordability.

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#### Issue Summary – Findings 3.1 through 3.3

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**B**enjamin Franklin wisely said, “An investment in knowledge always pays the highest return.” Presumably, Franklin’s return on investment theory rings true today; however, an obstacle facing many students is the skyrocketing cost of higher education. Too often, the high cost of obtaining a college degree is unattainable for many students or results in burdensome student loan debt for students and their families.

The cost paradigm driving the growing expense of higher education is intricate and not easily explained by any specific factor. Nonetheless, at the root of the problem is the interplay between a university’s revenues and its cost drivers. Along these lines, tuition, the fee charged for providing college-level instruction, is the primary revenue generator for most universities, including PSU. How a public university sets its annual tuition fee is a complex and difficult process. That process must factor projected costs, projected student enrollments, as well as expected state appropriation support.<sup>117</sup> These factors are often unknown and can vary from year to year. In the end, because tuition is the primary revenue generator for the university, tuition must be set at a level to cover the university’s costs (i.e., expenses). At PSU, that responsibility ultimately lies with the Board of Trustees, which approves tuition and fees each year.

Tuition affordability is a key objective for public universities. To aid this objective, public universities receive support from their respective state governments to control tuition increases. In exchange for state support, taxpayers expect that tuition cost drivers will be appropriately identified and held to a minimum. In this manner, if costs are truly held to a minimum, then by relationship tuition should also be held to reasonable increases. Ultimately then, the taxpayers’ investment (i.e., state support) will be maximized for the benefit of its residents. In addition, because public universities are in fact public institutions, there is an added need for tuition cost drivers to be controlled in a manner that is both clear and instantly recognizable.

In our opinion, PSU has a tuition problem—simply put, it is too expensive and we believe its Board must be more aggressive in controlling its tuition cost drivers. PSU’s tuition is the highest of its public Big Ten peers; in fact, PSU has one of the highest tuition rates of any public research university in the country.<sup>118</sup> But more concerning, as we found in our audit work, over the past several years, PSU’s tuition has grown at alarming rates—far outpacing the Consumer Price Index (CPI)—and almost any other economic measure. This fact should be a very real and growing concern to Pennsylvanians because it means that Pennsylvania’s largest public

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<sup>117</sup> With respect to PSU and state support, during the last four years (2013-2016), Pennsylvania taxpayers provided PSU with \$1.1 billion in state support.

<sup>118</sup> It should be noted that the University of Pittsburgh’s tuition slightly exceeds PSU’s. The University of Pittsburgh, along with Temple University, Lincoln University and PSU, are all state-related universities.

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university, which was founded for Pennsylvania’s residents<sup>119</sup> and is heralded as a cost effective option for Pennsylvania students, may become out of reach for far too many. Such an outcome could have devastating effects for the preparedness of Pennsylvania’s future workforce.

PSU is a large and complex institution, and there are no easy fixes to PSU’s tuition problem. Declining state support—as a revenue source—and increasing costs for pensions—as an expense, are cited as contributing factors to PSU’s high tuition rates. Regardless of the cause, over the past four years, the net effect of these varying factors is this: total operating expenses have grown by 9.9 percent; while PSU’s total operating revenues have grown by only 6.7 percent. In other words, PSU’s financial model is out of balance, and in light of this imbalance, PSU has had to increase tuition revenue—as its primary revenue source, rather than making severe cuts to reduce expenses so that revenue and expenses are in alignment.

PSU is aware of these problems, and it has attempted measured means of austerity to control its expenses. Through PSU’s previous strategic planning efforts, it has identified college affordability as an objective goal, but attaining that goal fell short due to circular and ill-defined strategies to control the growth of tuition.

Nonetheless, costs continue to grow, and while state support dollars have increased in recent years, for the past several decades state support as a percentage of PSU’s General Funds Budget has declined steadily. Other trends are also apparent including an increase in the number of nonresidents (including international students) to PSU’s campuses. While not a strategic decision by the University, this approach may make sound business sense because to attend PSU’s Main campus (University Park), nonresidents pay tuition of \$34,183, compared to residents who pay \$19,347.<sup>120</sup> In essence then, nonresidents help to subsidize the cost of resident tuition.

There is a significant downside to this business model—when costs continue to outpace revenues an incentive to accept nonresidents over residents develops. Subsequently, with an influx of nonresident students, it then becomes increasingly difficult for residents to attend PSU, even though taxpayers continue to help fund the University. Our analysis of PSU’s acceptance rates at University Park showed that in 11 of the last 16 years, including the last seven consecutive years, nonresidents had higher acceptance rates than Pennsylvania residents.

The obvious concern is that residents may be denied an opportunity to attend the PSU college or campus of their choice. Perhaps more troubling is that a partiality for nonresident acceptance would be completely contrary to PSU’s legislative history<sup>121</sup> and its mission as a land-grant

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<sup>119</sup> It is clear that the Pennsylvania General Assembly intended for PSU to be mostly for the benefit of students residing within the state and its various counties, as well as their parents and residents as taxpayers. *See* 24 P.S. § 2543 (relating to Admission of pupils) which states as follows: “The admissions to said school [then called the “Farmer’s High School of Pennsylvania”], **from the several counties**, shall be in proportion to their number of **taxables** respectively, if such number shall apply.” (Emphasis added.) (Act 658 of 1857.)

<sup>120</sup> Based on fall 2016 tuition rates. Does not include fees, or room and board.

<sup>121</sup> 24 P.S. § 2531 *et seq.* (Act 50 of 1855.)

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institution.<sup>122</sup> Any admission preference should be to residents, whose taxpayer-provided support is intended to benefit.<sup>123</sup>

In summary, PSU, its Board, and specifically the Finance Committee, need to more closely monitor tuition cost drivers to ensure that annual tuition increases do not exceed projected increases to CPI. The Board could demonstrate its intent to control tuition cost increases by adopting a board policy which limits tuition increases to no greater than CPI. The Board should also draw from the expertise of its business members by developing a task force dedicated to lowering the cost drivers that impact tuition.

#### **Finding 3.1 – PSU’s tuition has outpaced the tuition at its Big Ten peers and it continues to exceed the Consumer Price Index.**

For the 2016 academic year, attending PSU’s Main campus (University Park) costs a Pennsylvania resident, on average, \$19,347 in tuition.<sup>124</sup> This figure does not include fees, room and board, books, or other related expenses. Nonresidents (i.e., students from other states or international students) pay even higher tuition. Nonresident tuition, on average, is \$34,183.<sup>125</sup>

With its 24 commonwealth campuses and large student population, PSU is clearly a unique and large university. Despite PSU’s uniqueness, we felt it was important to provide a comparative analysis of PSU’s resident tuition to other public universities. PSU is a member of the Big Ten Conference (Big Ten), which has comparable public research institutions. All Big Ten universities (except Northwestern University) receive taxpayer funds, and some, like PSU, are land-grant universities.<sup>126</sup>

It is important to note that some universities include fees as part of their tuition. In order to make an “apples to apples” comparison, we included similar fees where applicable. For example, PSU includes approximately \$1,000 in fees for technology, health services, etc. Listed below is a comparison of the main campus, resident tuition rates for the Big Ten for the 2016-2017 academic year.

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<sup>122</sup> See 24 P.S. § 2571 (relating to Acceptance of lands donated). The General Assembly accepted of the land donated by the U.S. Congress and pledged to support for the land-grant mission in 1863. (Act 227 of 1863.) See also <http://www.aplu.org/library/the-land-grant-tradition/file>.

<sup>123</sup> To be clear, PSU has no specific policy or strategic directive that gives nonresident students preference over residents.

<sup>124</sup> This figure represents an average of all tuitions to attend PSU’s Main campus. For example, freshmen and sophomore students pay less than junior and senior students, and certain majors like nursing, business, and engineering pay more than the standard tuition.

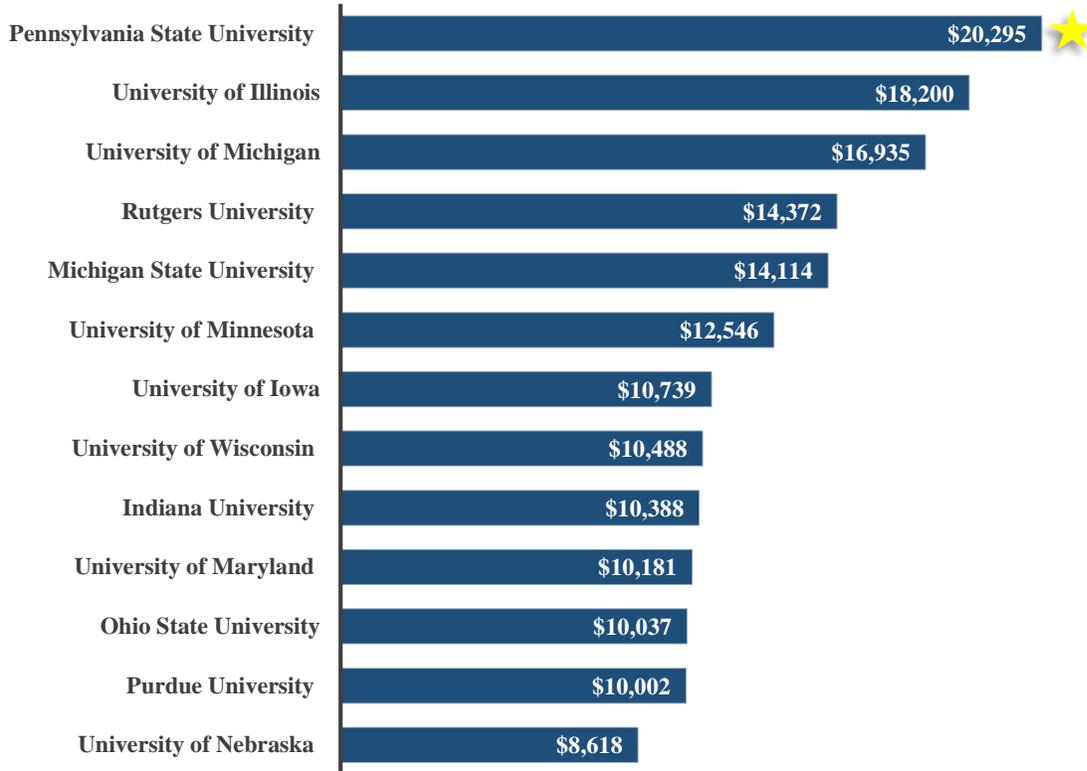
<sup>125</sup> Ibid.

<sup>126</sup> While Northwestern University is member of the Big Ten Conference, it is a private university and does not receive state assistance; consequently, we removed it from our comparison. Northwestern’s tuition is higher than that of PSU’s resident or nonresident tuition.

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#### Public Big Ten Resident Tuition Rates 2016-2017 Academic Year



*Source: Developed by Department of the Auditor General Staff. This information is presented for background purposes and is deemed to be from the most reliable source available, university web sites.*

It is clear that PSU's resident tuition is significantly higher than the rest of the public Big Ten universities. PSU often notes that not all students attend all four years at University Park's campus, which is the most expensive of all its campuses. In fact, most undergraduate students participate in a 2+2 plan, whereby a student's first 2 years are spent at a (lower priced) commonwealth campus, and the final 2 years are completed at University Park.

In our analysis, for the 2016 academic year, we found that the commonwealth campuses charged tuition rates that ranged from \$13,457 to \$15,277 depending on the campus location.<sup>127</sup>

<sup>127</sup> PSU commonwealth campus tuition rates are tiered. For the 2016 academic year Tier Two (Altoona, Berks, Erie and Harrisburg) average tuition was \$15,277. Tier Three (Brandywine, Hazleton, Lehigh Valley, Schuylkill, Worthington-Scranton, and York) average tuition was \$13,942. Tier Four (Beaver, DuBois, Fayette, Greater Allegheny, Mont Alto, New Kensington, and Wilks-Barre) average tuition was \$13,627. Abington and Shenango have their own tuition rates, Abington's average was \$14,521 and Shenango's average was \$13,457. These rates exclude fees, and are the averages for each tier (some majors pay different tuition rates).

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Nonetheless, even the lower tuition rates at the commonwealth campuses are above many of the tuition/fee rates for the comparison of public Big Ten universities.

While the commonwealth campuses are a good option for students who do not want to pay the higher tuition rate at University Park, it should be noted that not all degrees can be completed at the commonwealth campuses. Consequently, students may end up having to pay the higher tuition rate at University Park for at least two years to complete their degree.

Looking beyond Big Ten comparisons, according to a March 2016, *U.S News and World Report* article, PSU nearly topped the list of the most expensive public colleges for in-state students. According to their research, the top 10 schools are as follows:

Most Expensive Public Colleges for Undergraduate, In-State Students (2015-2016 Tuition/Fees)		
1.	University of Pittsburgh	\$18,192
2.	Maine Maritime Academy	\$17,668
3.	Pennsylvania State University (University Park)	\$17,514
4.	Colorado School of Mines	\$17,383
5.	College of William and Mary	\$16,919
6.	Virginia Military Institute	\$16,536
7.	Pennsylvania College of Technology	\$15,900
8.	University of Illinois (Urbana-Champaign)	\$15,626
9.	Temple University	\$15,096
10.	University of Virginia	\$14,526

*Source: Developed by Department of the Auditor General Staff. This information is presented for background purposes and is from a reliable source, the U.S. News and World Report website.*

### Over the past 30 years, PSU's tuition has grown by 535 percent.

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It is generally expected that all things will cost more as time passes, but at PSU, the cost of tuition has grown at an alarming and exponential rate. For example, from 1985-86 through 2015-16, resident tuition has grown by 535 percent—far exceeding common economic measures. More concerning is that within the last 10 years alone, tuition has grown by 52 percent. These increases are significant for a public, state-funded research university—and they are especially concerning for the students and families who want to attend PSU in the future.

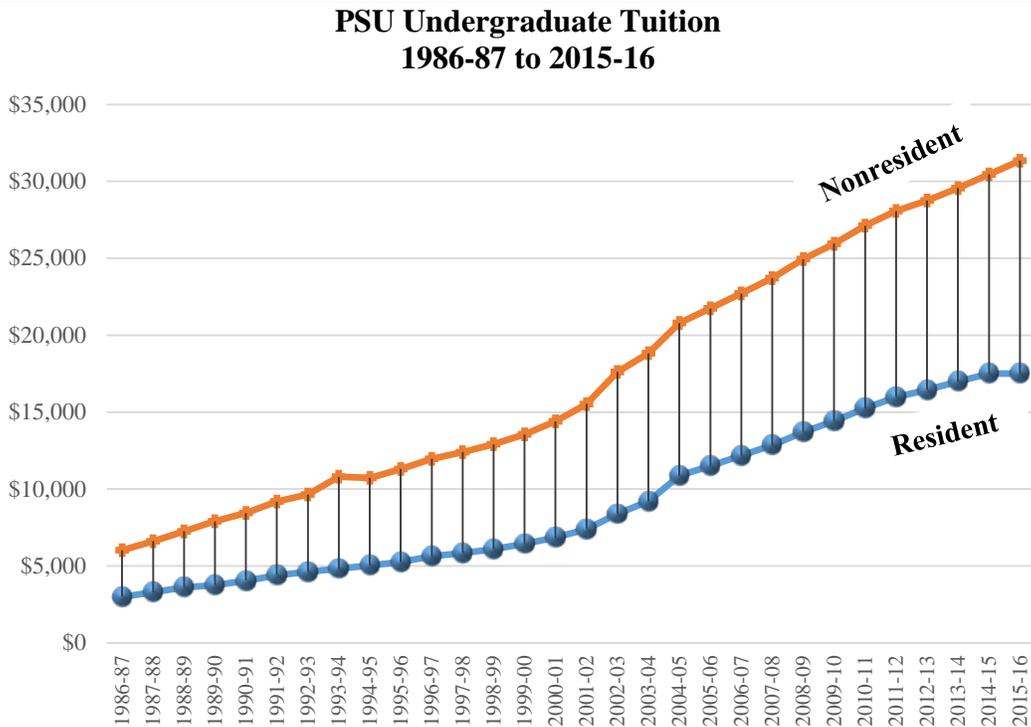
The exhibit below, charts the rise in PSU's undergraduate tuition for both resident and nonresident students for the past 30 years. From this exhibit, interesting details emerge, for example:

- With the exception of 1994-95, nonresident tuition has increased every year.
- With the exception of last year, PSU's resident tuition has increased every year—on average about 6.4 percent.
- Tuition increases started a more steadied upward climb beginning in 2002-03.

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- The cost differential between resident tuition and nonresident tuition has significantly increased.



Note: The tuition rates presented are in normal dollars, meaning it is unadjusted for inflation.

Source: Developed by Department of the Auditor General staff. This information is collected from the best reliable source, the "Instructional Output and Faculty Costs of the State-Related and State-Owned Universities" reports published by the Pennsylvania Joint State Government Commission.

While the above exhibit demonstrates the growth of PSU's tuition, the exhibit that follows provides the necessary comparative context to see just how expensive attending PSU is becoming relative to other costs. Listed on the following page, is a comparison of PSU's rate of increase of resident tuition to that of the Consumer Price Index (CPI), the cost of health care, and the average tuition for attending a school within the Pennsylvania State System of Higher Education (PASSHE). As shown in the exhibit, since 2003, PSU has exceeded all of those comparative measures.

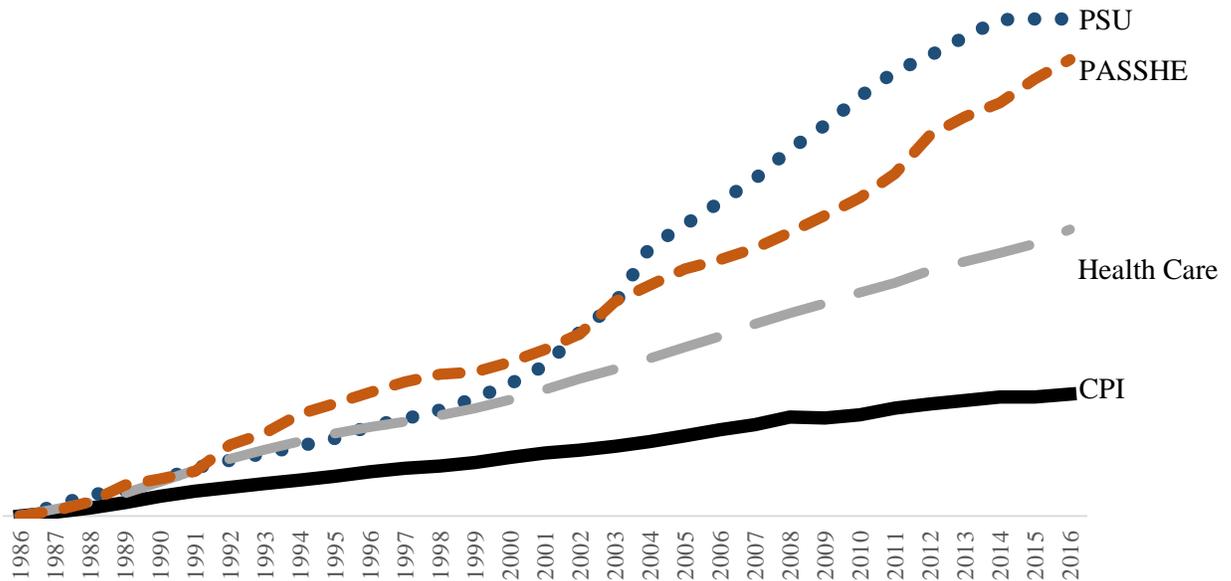
Of particular note is the extent to which the rate of growth of PSU's tuition has exceeded that of the CPI.<sup>128</sup> CPI is the most widely used measure of inflation; therefore, it provides a reasonable basis to measure the cost increase of goods and services over time.

<sup>128</sup> The U.S. Department of Labor, Bureau of Labor Statistics, develops the Consumer Price Index. The CPI is the most widely used measure of inflation and is sometimes viewed as an indicator of the effectiveness of government economic policy. It provides information about price changes in the Nation's economy to government, business, labor, and private citizens and is used by them as a guide to making economic decisions. In addition, the President,

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#### PSU Resident Tuition Rate of Growth Compared to: Consumer Price Index, PASSHE, and Health Care Prices



Source: Developed by Department of the Auditor General staff. This information is presented for background purposes and is collected from the best reliable sources including the following: the “Instructional Output and Faculty Costs of the State-Related and State-Owned Universities” reports published by the Pennsylvania Joint State Government Commission and the US Department of Labor, Bureau of Labor Statistics.

The bottom line is that PSU has the highest tuition among its peer universities and one of the highest tuition/fee rates in the country for a public university. Further, for the past 20 years, PSU’s tuition has continued to grow at a rate exceeding that of the CPI. Although, there are no easy answers to this phenomenon, throughout the rest of this issue area we will discuss some contributing factors, as well as what may be some dire consequences for future Pennsylvanians wishing to attend PSU.

#### **Finding 3.2 – PSU’s strategic plan lacked a holistic approach toward controlling tuition at ALL campuses.**

We have demonstrated the rising cost of PSU’s tuition, some of which can be explained by inflation. However, as we also presented, PSU’s tuition has grown at a much faster rate than inflation—thus, there are other factors at play. Before addressing these reasons, understanding the interplay between revenues and expenses is helpful.

Congress, and the Federal Reserve Board use trends in the CPI to aid in formulating fiscal and monetary policies. See [https://www.bls.gov/cpi/cpiadd.htm#2\\_3](https://www.bls.gov/cpi/cpiadd.htm#2_3).

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#### **PSU operating revenue and expenses.**

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At PSU, revenue is generated primarily from tuition, but also from things like gifts, investment income, auxiliary enterprises (e.g., room and board, athletics, etc.), research grants, contracts, projects, and state support from the annual appropriation—to name just a few. On the expense side, broad expenditure categories are used to track and report expenses. These categories include, but are not limited to, instruction, research, academic support, etc.

In any business, revenues must balance expenses; otherwise, the entity would operate at a loss. This is clearly not the case at PSU because revenues generally exceed expenses, so it is able to meet its costs. Of course, as we saw in the previous section, this balancing is largely because of increases in PSU's tuition.

We reviewed PSU's operating revenues and expenses for the four most recent years (2013-2016). The results are shown as follows:

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#### PSU Operating Revenues and Expenses <sup>1/</sup> by Reporting Category 2013-2016 (in thousands)

	2013	2014	2015	2016	Percent Change 2013-2016
Tuition and fees	\$1,447,129	\$1,500,618	\$1,590,361	\$1,626,279	12.4%
PA appropriation	258,451	259,951	259,951	274,969	6.4%
Contracts/Grants/Projects	790,574	804,400	749,530	754,540	-4.6%
Gifts/Pledges/Endowment	160,469	217,818	166,746	170,599	6.3%
Other investment income	100,686	114,023	116,127	87,273	-13.3%
Auxiliary enterprises	354,979	382,464	403,731	422,510	19.0%
Other sources	<u>303,731</u>	<u>309,289</u>	<u>320,164</u>	<u>309,169</u>	<u>1.8%</u>
<b>Total operating revenue</b>	<b>\$3,416,019</b>	<b>\$3,588,563</b>	<b>\$3,606,610</b>	<b>\$3,645,339</b>	<b>6.7%</b>

	2013	2014	2015	2016	Percent Change 2013-2016
Instruction	\$1,098,236	\$1,154,117	\$1,241,297	\$1,292,541	17.7%
Research	807,894	780,107	767,808	799,859	-1.0%
Public service	81,840	78,546	77,551	85,376	4.3%
Academic support	316,047	330,301	346,434	378,506	19.8%
Student services	155,224	158,555	169,103	180,238	16.1%
Institutional support	367,156	304,787	366,273	333,573	-9.1%
Auxiliary enterprises	<u>325,677</u>	<u>343,782</u>	<u>358,359</u>	<u>394,369</u>	<u>21.1%</u>
<b>Total operating expenses</b>	<b>\$3,152,074</b>	<b>\$3,150,195</b>	<b>\$3,326,825</b>	<b>\$3,464,462</b>	<b>9.9%</b>

**Net difference between  
revenue and expenses**      \$ 263,945   \$ 438,368   \$ 279,785   \$ 180,877

Notes:

<sup>1/</sup> Does not include expenses for the Hershey Medical Center, Penn State School of Law, or the Penn College of Technology. We excluded these business sectors to highlight PSU's primary undergraduate enterprises.

*Source: Developed by Department of the Auditor General staff. The information was obtained from PSU and is of undetermined reliability, as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.*

As shown above, over the past four years, PSU's expenses have increased by nearly 10 percent; yet, its revenues have grown by just 6.7 percent. It should be noted that these are isolated comparisons and do not include total revenues from PSU's health service business interests, which are substantial. Nonetheless, in looking at just expenses, we see that in just a four-year period, there have been double-digit increases in costs for instruction, academic support, and student services. Spending in these categories is at the core of how PSU meets its educational mission. For example, instruction expenses, the largest expense category for PSU, have grown by 17 percent. Expenses in this area are directly related to providing instruction to students. Similarly, academic support has grown by 19 percent. PSU's Board must address clear measures to control costs in this area.

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While the above analysis represents only a four-year window of revenues and expenses, the trend of expenses outpacing revenues foreshadows a troubling problem for PSU. With tuition already one of the highest of any public university—and taxpayer-funded support dwindling—PSU may quickly reach a tipping point where revenues have been maximized.<sup>129</sup> PSU offers a brand for which some students will always want to attend regardless of tuition costs; however, for many students (and their families) if costs continue to escalate, required tuition increases will make PSU cost prohibitive. PSU may then begin to lose market share to other educational institutions with more affordable alternatives. If that were to occur, PSU will have reached the tipping point, and its costs will outpace the rate at which it can generate enough revenue to meet its expenses.<sup>130</sup>

Fortunately, PSU is aware of this problem. In fact, PSU representatives noted to us the following as a means of controlling its costs:

As part of our effort to monitor and control costs over the past several decades, Penn State has cut and reallocated funds within the budget rather than pass along all of the cost increases to our students or to the citizens of the Commonwealth. Penn State continues to strive for efficiencies in our operations in ways that support and advance the quality of a Penn State education.

Efforts to limit increases to tuition and fee by implementing administrative cost efficiencies, programs to extract budget savings, and to slow the rate of growth in our major cost drivers are an integral part of our budget planning. In support of access and affordability, it is imperative for us to contain costs while ensuring the quality of our academic and support programs and to use technology and other strategies to adapt our business processes to achieve operational efficiencies...These opportunities have led to the discontinuation of academic programs and majors, the merger of academic departments, and shared administrative positions by campuses.

Targeted expenses reduction initiatives have been implemented within specific units that needed to make swift budget adjustments in responses to enrollment challenges or direct appropriation reductions.

PSU highlighted several cost reduction, containment, and efficiency initiatives including, but not limited to, the following:

- Voluntary retirement incentives and related post-retirement institutional changes.
- Reductions in employee benefits.
- Energy saving initiatives.
- Restructuring budget priorities.

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<sup>129</sup> Although taxpayer support increased during this four year period, the state appropriation as a percentage of PSU's General Funds Budget has decreased from 62 percent in 1970-71 to just 14 percent in 2016-17.

<sup>130</sup> By way of further reference, PSU noted to us that in the past five years ongoing costs driven by mandated employer contributions to the State Employees Retirement System (SERS), as well as decreased support via the annual appropriation have impacted PSU's budget by \$96 million in annual recurring cost increases and revenue loss.

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In spite of these stated initiatives, expenses still increased by nearly 10 percent from 2013 to 2016. From our perspective, these initiatives were natural reactions to PSU's immediate need to cut spending rather than proactive plans to make tuition more affordable.

Accordingly, if PSU is going to control its costs—and by relationship its ever increasing tuition—it is obvious that a long-term strategic planning focus is necessary for PSU's educational enterprise. In addition, PSU's Board needs to become more active in monitoring the growth of its tuition cost drivers.

In the past, PSU has convened a tuition task force to “consider realistic projections of a range of tuition increase options that may be necessary over the next five years to support the continued competitiveness of the University as a premier institution.”<sup>131</sup> We think PSU should reinvigorate a similar task force, to include Board members and with a focus not on “realistic projections of a range of tuition increase options,” but instead with a focus on lowering tuition cost drivers.

#### **PSU's past strategic plan provided little guidance to help keep tuition increases in check.**

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At any organization, strategic planning is a quintessential part of successful financial management. Within the public higher education environment, as budgets continue to be constrained, strategic planning is particularly important because it provides the road map to achieve the university's intended goals and objectives.

While having a strategic plan is important, it is not a panacea for an institution's woes. In fact, having a strategic plan—with bad goals or unclear objectives—may be as harmful as having no plan at all. According to a report issued by the Rand Corporation, a nonprofit institution that helps improve policy and decision-making through research and analysis, the importance of strategic planning in higher education is clear:

There is wide consensus that strategic planning, if implemented properly, offers universities a solid approach to achieve goals... Specifically, strategic planning methods can help guide senior management, as well as empower middle managers, while aligning their everyday activities to the institution's broad aims.<sup>132</sup>

Because of the significance of strategic planning, we reviewed PSU's two most recent strategic plans: *Priorities for Excellence* (2009-2014) and *Our Commitment to Impact* (2016-2020).<sup>133</sup>

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<sup>131</sup> PSU, “Report of the Tuition Task Force,” April, 2002, page 1. The University's Tuition Task force was created in July 2001. The task force recommended greater tuition pricing differential between upper and lower division students, as well as an increased differential between University Park and commonwealth campuses.

<sup>132</sup> Goldman, Charles A., and Salem, Hanine (2015) *Getting the Most Out of University Strategic Planning: Essential Guidance for Success and Obstacles to Avoid*. Retrieved from The Rand Corporation Website: [http://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE157/RAND\\_PE157.pdf](http://www.rand.org/content/dam/rand/pubs/perspectives/PE100/PE157/RAND_PE157.pdf), page 1.

<sup>133</sup> PSU's current strategic plan can be found here: <http://strategicplan.psu.edu/>.

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PSU's current plan, *Our Commitment to Impact*, is still in the implementation phase; therefore, we could not evaluate its effectiveness. PSU's previous plan, *Priorities for Excellence*, covered the remainder of our audit period; therefore, we evaluated portions of the plan for applicability to control PSU's tuition cost drivers, and by extension, making PSU an affordable option for Pennsylvanians.<sup>134</sup>

*Priorities for Excellence: The Penn State Strategic Plan 2009-10 through 2013-14* discussed seven goals for the university:

- Goal 1: Enhance Student Success.
- Goal 2: Advance Academic Excellence and Research Prominence.
- Goal 3: Realize Penn State's Potential as a Global University.
- Goal 4: Maintain Access/Affordability and Enhance Diversity.
- Goal 5: Serve the People of the Commonwealth and Beyond.
- Goal 6: Use Technology to Expand Access and Opportunities.
- Goal 7: Control Costs and Generate Additional Efficiencies.<sup>135</sup>

Obviously, *Goal 4: Maintain Access/Affordability and Enhance Diversity*, touched on the aspects with which we were most concerned. Within this goal, PSU established various "strategies" which provide specific details PSU intended to pursue. Within this specific goal, PSU identified five strategies as follows:

- Strategy 4.1: Position the commonwealth campuses for access and affordability.
- Strategy 4.2: Invest selectively in capital improvements and student services at the campuses.
- Strategy 4.3: Allocate additional funds from tuition for need-based student aid.
- Strategy 4.4: Sustain investment in *For the Future: The Campaign for Penn State Students*.
- Strategy 4.5: Build on the *Framework to Foster Diversity*.

We reviewed PSU's goal and strategies to see how it may have guided PSU's decision-making regarding tuition affordability. An initial concern we identified was that despite PSU's holistic operational philosophy, in terms of affordability and accessibility to PSU's main campus (University Park), we found that PSU observed a stark division between University Park and the commonwealth campuses. This was an odd occurrence given that PSU frequently describes itself as "one campus, geographically distributed."<sup>136</sup>

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<sup>134</sup> PSU did not have a strategic plan that covered the 2015-16 academic year.

<sup>135</sup> While this goal addresses costs such as health care, competitive salaries, and outreach spending, similarly to Goal 4, Goal 7 did not discuss tuition affordability.

<sup>136</sup> See also <http://strategicplan.psu.edu/foundations/enabling-access-to-education/>.

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For example, the plan noted the following:

Incoming students represent a wider range of high school preparation and socioeconomic backgrounds at the [commonwealth] campuses than at University Park. Although the commonwealth campuses certainly attract excellent students, they also fulfill the University's mission of providing access statewide for students who are somewhat less prepared for college level work, and whose family incomes are often much lower. The average family income for students at the commonwealth campuses in 2005-06 was \$25,000 lower than for students at University Park.

It is widely understood that students who come from lower socioeconomic backgrounds are generally less prepared for college than their peers from more affluent socioeconomic backgrounds.<sup>137</sup> As noted above, PSU's strategic plan acknowledges this precept by highlighting the performance gap between incoming students to University Park versus the commonwealth campuses. Consequently, in strong contrast to PSU's "one campus, geographically distributed" philosophy—when it comes to incoming freshmen enrollment—PSU's strategic plan defines a distinct education gap: a main campus, catering to higher performing students from a higher socioeconomic status, and several other campuses primarily catering to students of lower economic status and who are potentially less prepared for the rigors of Main campus.

While the above is a stunning observation from a university strategic plan, PSU's first strategy to meet its goal was equally troubling. Instead of addressing the high cost of tuition—and fixing the disparity between University Park and the commonwealth campuses—PSU's tactic was to "position the commonwealth campuses for access and affordability." The plan was silent as to how to control the disparity between University Park and the commonwealth campuses.

The plan does acknowledge that tuition at University Park may make it difficult for some students to attend, but again PSU's strategic plan only offers the solution of attending a commonwealth campus:<sup>138</sup>

Tuition to attend University Park for four or more years of a degree program is becoming prohibitive for many students from lower or lower middle income families. Relatively lower tuition at the Commonwealth campuses will protect access and maintain a financially healthy University.

With PSU's ever-growing tuition increases, we disagree that just lower and lower middle-income families are priced out of University Park. According to the United States Census Bureau, the

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<sup>137</sup> "Increasing College Opportunity for Low-Income Students: Promising Models and a Call to Action." (January 2014) *The White House*.

[https://obamawhitehouse.archives.gov/sites/default/files/docs/increasing\\_college\\_opportunity\\_for\\_low-income\\_students\\_report.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/increasing_college_opportunity_for_low-income_students_report.pdf).

<sup>138</sup> PSU, *Priorities for Excellence 2009-10 through 2013-14*, page 30.

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2011-2015 median household income for Pennsylvania was \$53,599.<sup>139</sup> With tuition continuing to increase annually we would argue many Pennsylvanians have simply been priced out of University Park. Again, this plan did nothing to address why University Park is so expensive or how to keep tuition cost drivers under control to prevent the ongoing tuition increases.

While this gap is a significant concern for Pennsylvania in terms of developing a well-educated workforce, it is devastating for students who want the experience of attaining a four-year University Park education. As we documented in the preceding finding, PSU's tuition is already one of the highest among its peers. We believe the commonwealth campuses should not be the only perceived option for students simply because of their socioeconomic status.

The plan also discussed the 2+2 enrollment model, which allows students to begin their first two years at a commonwealth campus and finishing their degree at University Park. This opportunity is ideal for students to ease into college life while saving money; however, the university again failed to address the cost of University Park, which is where tuition for two of the 2+2 years will be spent.<sup>140</sup>

Looking beyond PSU's first strategy, in strategy 4.3, "Allocate Additional Funds from Tuition for Need-Based Student Aid," PSU again addresses its affordability strategic goal without addressing the underlying problem, which is the trend of significantly increasing operating expenses. PSU notes that, "[college] costs are becoming a more significant problem for families of moderate income levels but insufficient net worth to support comfortably their or their children's education."<sup>141</sup> As a side note, it is interesting to highlight the difference in PSU's terminology. For example, whereas tuition affordability in strategy 4.1 was a "threat to low and lower-middle income students," in strategy 4.3, growing college costs are also now a threat "moderate" income students.

In response to its affordability problem, PSU continues with its strategy by stating the following:<sup>142</sup>

As tuition has increased in recent years, Penn State has allocated additional funding for need-based student financial aid each year, including funds to match Trustee Scholarships that are awarded to high achieving students with high needs... This pattern of setting aside some of the additional revenue from tuition increases for more need-based student aid must be continued and expanded when the financial condition of the University's budget permits.

Consequently, in a "putting the cart before the horse" strategy, instead of addressing affordability across the board by controlling tuition cost drivers, PSU rationalizes its tuition increases as an

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<sup>139</sup> "Quick Facts – Pennsylvania." *The United States Census Bureau*.  
<https://www.census.gov/quickfacts/table/PST045215/42>.

<sup>140</sup> PSU, *Priorities for Excellence 2009-10 through 2013-14*, page 29.

<sup>141</sup> *Ibid*.

<sup>142</sup> *Ibid*, page 32.

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opportunity to distribute additional funds for need-based tuition assistance. The circular nature of this argument likely explains some of PSU's past inability to effectively limit tuition increases.

In its strategic plan, PSU also notes how efficient the university is compared to its peers in Pennsylvania and around the nation.<sup>143</sup> However, we would expect a university who prides itself on research and innovation to apply those principles to the financial management of its own institution. We would expect PSU to be a leader in strategic planning, but to date, the results have been nominal as PSU has one of the highest tuition rates for a public university in the country. While we understand the labor-intensive workforce that makes up PSU and the costs associated with employees, this is an issue facing many business sectors; yet their costs are not completely outpacing all other consumer measurement indicators, as is the case with PSU.

The Commonwealth of Pennsylvania continues to face its own budget issues, which presents a clear and present danger to the state's ability to provide any increased support to PSU. We are aware of the impact decreasing state appropriations has had on all of Pennsylvania's public universities. At times strategic planning requires making tough decisions that might not always be popular, but PSU cannot continue to plan into the future that students will be able to pay tuition increases that exceed the Consumer Price Index. Simply stated, PSU can no longer afford to "kick the can down the road." It needs a strategic plan that provides real direction and is free from indistinctness. If PSU fails to consider these realities now, it only needs to look to PASSHE to see the effects of decreasing support from the state, decreasing enrollment, and increasing costs.<sup>144</sup>

To the above point, going forward, if PSU is going to thwart potentially severe cuts to its operational stability, it will be critically imperative for PSU's Board to become more engaged in controlling tuition to no greater than that of the CPI—and ideally, below that index. While we acknowledge PSU's heretofore intentions to control tuition cost drivers has likely helped to hold tuition increases, especially in the more recent years, the simple fact, as evidenced by the continued growth of its tuition beyond CPI, is that those initiatives are not enough. In our estimation, the Board of Trustees must become more engaged in controlling the growth of tuition.

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<sup>143</sup> Ibid, page 44.

<sup>144</sup>PASSHE has recently faced various challenges at many of its 14 universities, including declining enrollments and revenue. As a result, PASSHE commissioned a consultant to conduct a strategic review of the system, which is currently underway. See *Inside Higher Ed*, "Mergers haven't been part of Pennsylvania public higher ed's past. Might the future be different?", March 27, 2017.

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**Finding 3.3 – From 1990 through 2016, at PSU’s University Park campus, the number of resident students decreased by 12 percent, while nonresident and international students increased by 95 percent and 310 percent, respectively. PSU’s expansion of nonresident enrollment threatens accessibility for Pennsylvania residents.**

Throughout this issue area we have discussed a significant problem at PSU—the sky-rocketing growth in tuition. There is no simple explanation for this occurrence, but it ultimately rests with PSU’s need for sufficient revenue to cover its expenses. To that point, we have seen that within the last several years, expenses are outpacing revenues, and PSU has not adequately planned for these occurrences. There are effects to these revenue/expense conditions, the most obvious of which is that PSU is simply becoming too expensive for many Pennsylvania families.

There are other effects as well—one of which is that as PSU seeks more revenue to meet expenses—it then becomes increasingly favorable for PSU to accept nonresidents over Pennsylvania residents. The reasoning behind this occurrence is simple: a nonresident’s tuition is nearly twice that of a resident’s. Factor in the fact that a nonresident is also more likely to require room and board, and it is easy to see how PSU could maximize its revenue by increasing nonresident enrollments. Stated simply, it costs PSU no more to educate a nonresident student over a resident student; yet, PSU charges nearly twice as much for a nonresident student.<sup>145</sup>

This situation is not unique to PSU. In fact, some public universities have been criticized for an apparent favorability towards nonresident students over resident students. Most notable was the University of California system, a public, land-grant university with multiple campuses. In 2016, the California State Auditor conducted an audit of the system and found that “in response to reduced state funding, [the University of California] has made substantial efforts to enroll more nonresident students who pay significantly more annual tuition and mandatory fees than resident students.”<sup>146</sup> The public attention from the audit and pressure from the state legislature ultimately led the trustees to consider a policy to cap nonresident enrollment at 20 percent.<sup>147</sup>

A *U.S. News and World Report* article noted the commonality of the increasing nonresident trend, highlighting a few other public universities who have adopted this technique.<sup>148</sup> In particular, the University of Alabama, University of Michigan, and University of Iowa all recently had nonresident enrollment that surpassed resident enrollment. In fact, the University of

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<sup>145</sup> PSU explained that resident tuition reflects the actual cost of educating the student, less subsidies provided through, in part, the annual state appropriation, as well as other revenue sources, including support from nonresident student tuition.

<sup>146</sup> <https://www.auditor.ca.gov/pdfs/reports/2015-107.pdf>.

<sup>147</sup> <http://www.latimes.com/local/lanow/la-me-ln-uc-limit-nonresident-students-20170306-story.html>.

<sup>148</sup> <https://www.usnews.com/news/articles/2016-04-01/colleges-look-to-out-of-state-students-amid-state-funding-shortages>.

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Michigan went so far as to declare that this trend was in part a “conscious decision to shift the in-state/out-of-state ratio among the undergraduates.”<sup>149</sup>

Similarly, as of the current academic year, the University of Oregon was nearly split, with 51 percent of students being residents.<sup>150</sup> Research conducted about this trend found it to be especially prevalent at public *research* universities.<sup>151</sup> As previously mentioned, PSU is Pennsylvania’s only land-grant university. PSU’s admission policy reflects the mission to serve the Commonwealth under this special designation. Contained in PSU’s University Bulletin is a Statement of Basic Academic Admission Policies which states:

The primary responsibility of the University is to **residents of the Commonwealth of Pennsylvania**. Consequently, within limits expressed from time to time by the Board of Trustees of the University, **preference shall be given to Pennsylvania residents** in the various admissions processes.<sup>152</sup>

Per its own policy, PSU is to prioritize Pennsylvania residents over nonresidents throughout the admissions process; consequently, we sought to determine how preferential PSU was for residents over nonresidents.

#### **Since 1990, Pennsylvania student enrollment has decreased at PSU’s main campus, while nonresident student enrollment increased.**

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PSU’s main campus (University Park) is the largest campus and also the campus with the greatest demand to attend. University Park is home to PSU’s National Collegiate Athletic Association (NCAA) Division I athletics, which increases University Park’s popularity. For the Fall 2015 semester, University Park received 53,471 undergraduate applications as opposed to 29,966 total undergraduate applications across all of PSU’s commonwealth campuses.<sup>153</sup> University Park offers the most majors and programs. Additionally, because the majority of majors offered by PSU cannot be completed at a commonwealth campus, PSU offers the 2+2 Program. As previously discussed, this program allows students to complete their first two years of study at a commonwealth campus and then finish the remaining two years at University Park.

After reviewing PSU’s enrollment data for University Park, it is evident that there was an increase in enrollment among nonresident and international students and a corresponding

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<sup>149</sup> [http://www.mlive.com/news/ann-arbor/index.ssf/2015/02/u-m\\_out-of-state\\_residents.html](http://www.mlive.com/news/ann-arbor/index.ssf/2015/02/u-m_out-of-state_residents.html).

<sup>150</sup> <https://registrar.uoregon.edu/statistics/enrollment-reports>.

<sup>151</sup> Jacquette, Ozan and Bradley R. Curs. (2015) Creating the Out-of-State University: Do Public Universities Increase Nonresident Freshman Enrollment in Response to Declining State Appropriations? *Research in Higher Education*. 56: 535-565.

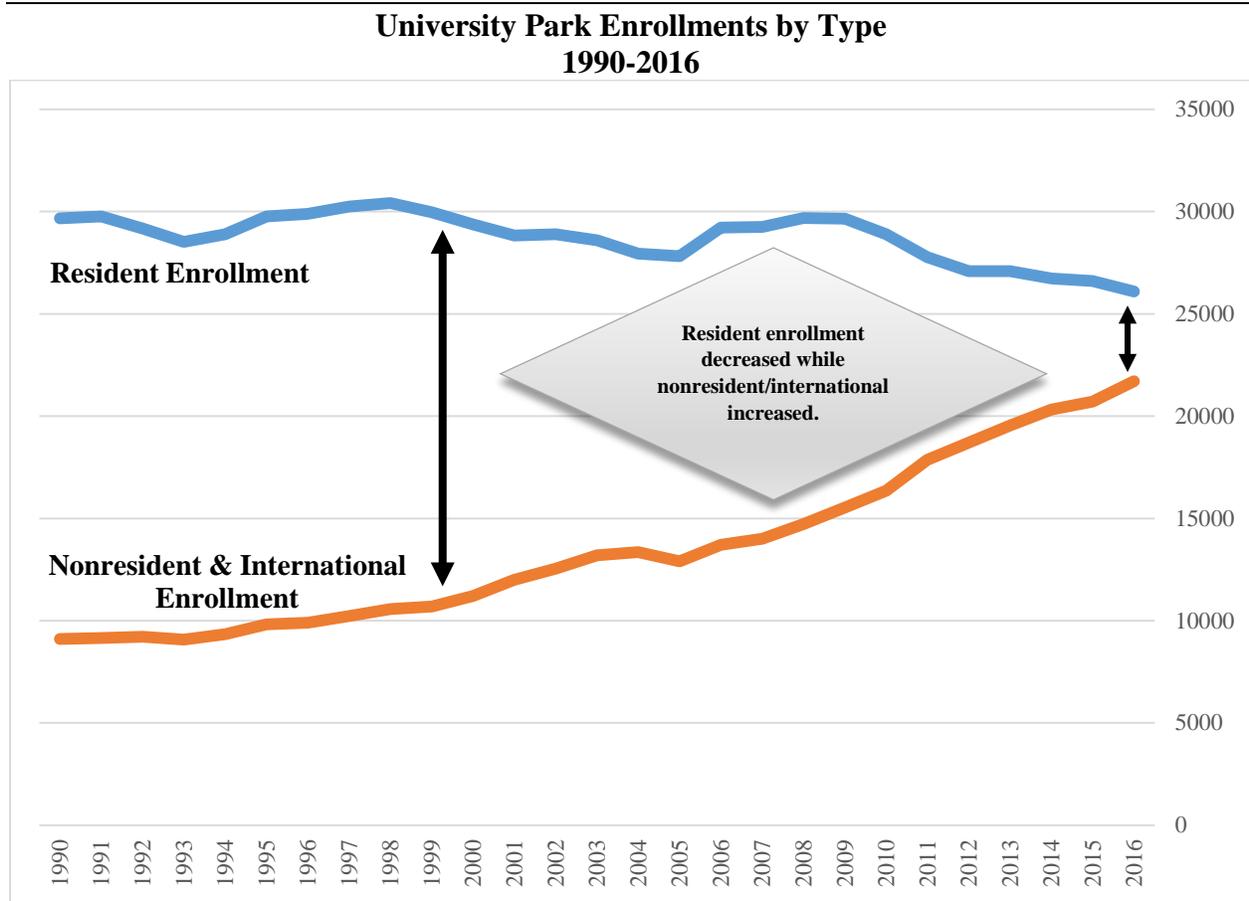
<sup>152</sup> Emphases added. <http://bulletins.psu.edu/undergrad/generalinformation/Admission1>.

<sup>153</sup> The number of applications includes the following campuses: Abington, Altoona, Beaver, Berks, Brandywine, DuBois, Erie, Fayette, Greater Allegheny, Harrisburg, Hazleton, Lehigh Valley, Mont Alto, New Kensington, Schuylkill, Shenango, Wilkes-Barre, Worthington Scranton, and York.

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decrease in resident students. This includes the entire student population at University Park at all levels of study. In comparing University Park data from 1990 through 2016 we found that the number of resident students decreased by **12** percent, while nonresident and international students increased by **95** percent and **310** percent, respectively. The exhibit that follows highlights this trend:



*Source: Developed by Department of the Auditor General staff. The information was obtained from PSU and is of undetermined reliability, as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.*

Consistent with the above trend, the ratio (i.e., the percentage) between resident, nonresident, and international students also shows a decrease in resident students and an increase in nonresident and international students at University Park. In academic year 1990-91, residents made up 76.5 percent of the student population at University Park. By academic year 2015-16, residents were just 56.2 percent of the student population at University Park.

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#### Ratio of Students at University Park by Residency Status 1990 – 2015

Year	Resident	Nonresident	International
1990	76.5%	18.8%	4.7%
1995	75.2%	19.7%	5.1%
2000	72.4%	20.9%	6.7%
2005	68.3%	24.1%	7.6%
2010	63.9%	26.2%	9.9%
2015	56.2%	28.8%	15.0%

*Source: Developed by Department of the Auditor General staff. The information was obtained from PSU and is of undetermined reliability, as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.*

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#### **Since 2000, nonresident students were accepted to PSU’s University Park campus at higher acceptance rates than resident students.**

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University acceptance rates are calculated as the number of students that were accepted divided by the number of students who applied. Acceptance rates are one method used to highlight the competitiveness of a university. Because PSU is a land-grant institution and further because of its internal “Statement of Basic Academic Admission Policies,” which is to give preference to Pennsylvania residents, we expected to see acceptance rates that favored residents. When we reviewed admissions data for PSU, and particularly at University Park, we found that nonresident students had higher acceptance rates in 11 of the 16 recent years. This trend has also accelerated, with nonresident acceptance rates exceeding resident acceptance rates in each of the last seven years through 2015.

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#### University Park Acceptance Rates by Residency Status 2000-2015

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##### *Who Was More Likely to Get Accepted to PSU's Main Campus?*

	Nonresident %	Resident %	International % <sup>a/</sup>
2000	45.6	50.8	46.7
2001	58.0	56.8	56.9
2002	56.2	57.9	53.8
2003	56.0	54.8	49.7
2004	60.5	57.2	51.9
2005	60.0	64.0	57.6
2006	56.9	59.8	54.6
2007	50.0	49.5	53.9
2008	50.0	53.3	48.9
2009	54.9	48.4	46.7
2010	58.3	52.8	44.5
2011	59.1	51.1	35.1
2012	61.0	57.0	31.6
2013	64.3	62.1	29.4
2014	59.7	55.0	25.3
2015	60.4	53.0	28.8



*In 11 out of 16 recent years, Penn State's data indicated **nonresidents** were accepted to PSU's main campus at higher rates than Pennsylvania residents.*

Notes:

<sup>a/</sup> The significant decrease in international student acceptance rates is due to the high number of applications received. For example, in 2000 PSU's main campus received 972 international applications; by 2016, that number increased to 11,255 international applications. International enrollment continued to increase during that same period; however, the demand (in applications) is the cause for a decrease the acceptance rates.

*Source: Developed by Department of the Auditor General staff. The information was obtained from PSU and is of undetermined reliability, as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.*

There are many factors that determine acceptance at PSU such as high school performance, class rank, standardized test scores (i.e., SAT or ACT), personal (essay) statement, and activities list.<sup>154</sup> We acknowledge that viewing the acceptance rates alone without getting a full picture of the actual students accepted may not tell the entire story. We are merely pointing to the trend as a whole, and the fact that it presents a troubling situation for Pennsylvania residents.

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<sup>154</sup> <http://admissions.psu.edu/apply/statistics/>.

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#### **Similar trends existed across the commonwealth campuses.<sup>155</sup>**

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The enrollment data for the commonwealth campuses indicated trends similar to the trend shown at University Park. From academic years 1990-91 to 2016-17 resident students enrolled at the commonwealth campuses decreased by 11.6 percent while nonresident and international students increased by 120.0 percent and 2,755.2 percent, respectively. While this was the trend collectively across the campuses, it is important to note that some campuses saw substantial growth in total number of enrolled students, while other campuses saw a substantial decrease in all students. The shifts in enrollment at the commonwealth campuses may be caused by campus locations and the local economies of the communities/regions near the campuses.

The ratios of students enrolled at the commonwealth campuses also show the drop in resident student enrollment compared to the increase in nonresident and international enrollment.

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#### **Ratio of Students at Commonwealth Campuses by Residency Status**

<b>YEAR</b>	<b>RESIDENT</b>	<b>NONRESIDENT</b>	<b>INTERNATIONAL</b>
<b>1990</b>	94.8%	5.0%	0.2%
<b>1995</b>	94.5%	5.1%	0.4%
<b>2000</b>	92.6%	6.6%	0.8%
<b>2005</b>	90.5%	8.5%	1.0%
<b>2010</b>	88.5%	10.0%	1.5%
<b>2015</b>	84.2%	10.7%	5.1%

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*Source: Developed by Department of the Auditor General staff. The information was obtained from PSU and is of undetermined reliability, as noted in Appendix A. However, this data is the best data available. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our findings, conclusions, and recommendations.*

The acceptance rates at the commonwealth campuses also favored nonresident students in 15 of the 16 years we reviewed; however, the favorability was not as drastic as seen at University Park. It should be noted that the commonwealth campuses are less competitive than University Park. For example, for the Fall 2015 semester, 84.9 percent of residents who applied to a commonwealth campus for undergraduate studies were accepted, compared to 85.5 percent of nonresidents and 83.1 percent of international students.

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<sup>155</sup> When we reference the commonwealth campuses and the entire student population we are referring to Abington, Altoona, Beaver, Berks, Brandywine, Carlisle, DuBois, Erie, Fayette, Great Valley, Greater Allegheny, Harrisburg, Hazleton, Hershey, Lehigh Valley, Mont Alto, New Kensington, Schuylkill, Shenango, Wilkes-Barre, Worthington Scranton, and York. When we refer to the incoming undergraduate class we reviewed data for Abington, Altoona, Beaver, Berks, Brandywine, DuBois, Erie, Fayette, Greater Allegheny, Harrisburg, Hazleton, Lehigh Valley, Mont Alto, New Kensington, Schuylkill, Shenango, Wilkes-Barre, Worthington Scranton, and York.

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Overall, the trends at the commonwealth campuses were not as distinct as University Park. Due to how varied the commonwealth campuses are, there may be inconsistencies in combining them together for analysis; nevertheless, the trend still raises the question of whether PSU favors nonresident applicants over resident applicants.

#### **The effects of a decreasing resident population at PSU could be detrimental to Pennsylvania.**

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In a meeting we had with PSU's executives, they acknowledged the increasing numbers of nonresident students at PSU's campuses. These officials noted a benefit to PSU, which is that by increasing nonresident students these students then, in effect, "subsidize" resident tuition. These officials stated that it is not PSU's intention to accept more nonresidents than Pennsylvania residents because PSU does seek to fulfill their mission as Pennsylvania's only land-grant university.

The most recent data from 2016 shows that 54.6 percent of students at University Park were resident students. Consequently, PSU is getting close to a 50:50 ratio of resident to non-resident students at its main campus. We acknowledge that there is a positive academic benefit associated with a diverse student body including students with different perspectives from other states and countries.<sup>156</sup>

One effect is how this trend could impact Pennsylvania's low-income and historically underrepresented racial/ethnic minority students. For example, student recruitment from outside Pennsylvania would likely yield students from more affluent families who are able to afford the increased cost of nonresident tuition. Generally, these students are from better performing high schools and have higher academic credentialing than that of other historically underrepresented students, who likely come from a lower economic status. Subsequently, as the balance moves toward nonresidents, all Pennsylvanians are at risk of being disadvantaged, and especially so for those from a lower economic status.

In fact, recent research published in the *Journal of Higher Education* found similar concerns with research universities. According to the researchers who studied institution-level panel enrollment models, the growth in the proportion of nonresident students was associated with a decline in the proportion of low-income students.<sup>157</sup> The research concluded with the following:<sup>158</sup>

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<sup>156</sup> We acknowledge that more analysis would need to be completed to definitively conclude that PSU is prioritizing nonresident students; however, the trends pointing to that were alarming.

<sup>157</sup> Jaquette, Ozan, Bradley R. Curs and Julie R. Posselt. (September/October 2016) "Tuition Rich, Mission Poor: Nonresident Enrollment Growth and the Socioeconomic and Racial Composition of Public Research Universities." *The Journal of Higher Education*, Vol. 87, No. 5, page 635.

<sup>158</sup> Ibid, page 663.

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The changing student composition of research universities is more than an outcome of neutral organizational efforts aimed at financial survival or of striving for academic excellence, because institutions' apparently 'rational' behaviors have disparate impact across race and class. Public research universities have increasingly relied upon nonresident students in recent decades, and in many cases have broadened their notion of 'public' from state taxpayers and their families to national and international stakeholders. *Yet, in their eagerness today to connect with the public beyond the state's borders, they may be losing sight of the public at their doorstep.* (Emphasis added.)

We caution PSU to take heed of this research. While using nonresidents to subsidize the resident tuition may be viewed as a smart business decision, it is not without a cost—underrepresentation of low-income and historically underrepresented racial/ethnic minority students. PSU must remain committed to its primary mission as a public, land-grant university for Pennsylvania residents.

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### Recommendations for Issue Area 3

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We recommend:

1. PSU ensure current and future strategic plans address tuition affordability specifically for all Pennsylvanians by setting innovative, clear, and measurable goals and objectives.
2. PSU apply the holistic operational philosophy ("one campus, geographically distributed") to all areas of the university, including affordability and accessibility to the main campus.
3. PSU remain committed to its long-standing foundation as a public state university and its mission as a public land-grant university by prioritizing Pennsylvania residents throughout the recruitment and acceptance process.
4. Business members on PSU's Board should offer their expertise to help advise the University on how to effectively control and or lower tuition cost drivers.
5. The Board should create a task force dedicated to monitoring and lowering tuition cost drivers. This task force should work with PSU business staff to identify all cost categories that are projected to increase above the CPI, and then develop a targeted plan to address cost containment. The task force should share this information with the PSU community and the public via a "digital dashboard."
6. The Board should adopt a policy goal of prohibiting future tuition increases above the projected CPI for that year.

## **A Performance Audit**

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#### **Response from The Pennsylvania State University**

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We provided draft copies of our audit findings and status of prior findings and related recommendations to The Pennsylvania State University for its review. On the pages that follow, we included their response in its entirety. Following the agency's response is our auditors' conclusion.

## A Performance Audit

### The Pennsylvania State University

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PENNSSTATE



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May 25, 2017

***VIA FIRST CLASS MAIL AND EMAIL***

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

Re: The Pennsylvania State University Response to Performance Audit Report

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank T. Guadagnino', written over a printed name and title.

Frank T. Guadagnino  
Associate General Counsel and Audit Liaison

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

Attachment

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### The Pennsylvania State University

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

**MAY 25, 2017**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Issue Area 1 – Transparency and accountability

##### Recommendations:

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

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

Penn State has had more than 30 voting trustees for over a century. Starting with an initial board of thirteen members when the University was established as the Farmers High School of Pennsylvania in 1855<sup>3</sup>, the size of the Board increased to 23 members in 1875 and then to 32 members in 1905. While the composition of the Board has evolved over this period, the University's unique board structure has been held up as a model by independent experts in university governance.<sup>4</sup>

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

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

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<sup>2</sup> See 2017 Report at p.11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Issue Area 2 – Campus Security*

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

Today, Penn State has robust Clery training and collection processes in place. We have many initiatives, including 18 focused on fighting sexual assault and misconduct, with the creation of new positions, mandatory employee training, a universal hotline and many others. Part of our process includes regular evaluation of our efforts, the analysis of best practice and incorporation of learnings into our operations. For a list of Penn State's major efforts, visit [http://www.psu.edu/ur/newsdocuments/Actions\\_since\\_2011.pdf](http://www.psu.edu/ur/newsdocuments/Actions_since_2011.pdf)

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

#### **Recommendations:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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8. *Revise its policies and procedures over your camps so that compliance officials are:*
- a. *Able to produce accurate and complete rosters of individuals working with the camp.*
  - b. *Able to identify from the roster which individuals do not have the statutorily required child protective clearances on file.*
  - c. *Able to validate that employee statements exist for employees hired on a "provisional" status in accordance with the Child Protective Services Law.*
  - d. *Able to ensure that "provisional status" individuals obtain the necessary background clearances with 30 days.*

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

#### *Issue Area 3 – Tuition Affordability*

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

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

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

The University is piloting the following programs:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Recommendations:**

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

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

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<https://trustees.psu.edu/pdf/Penn%20State%20Strategic%20Plan%202016-2020%20-%20CoGLRP%20Review%2001-04-16.pdf>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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#### Auditors' Conclusion to The Pennsylvania State University's Response

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As listed in the preceding pages, PSU provided its response to our audit report. PSU's response highlights many of the reforms it has implemented since the Sandusky scandal. We acknowledge many of these reforms in the report. PSU agrees to submit our recommendations to the Board for consideration. On this front, we are pleased PSU management takes the audit report findings and recommendations seriously. On some matters; however, PSU disagrees. Our findings and recommendations stand as presented in the report. In response to arguments presented by PSU, we make the following conclusions.

#### Issue Area 1 - Governance

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##### *Board Size*

We continue to believe that PSU's Board is too large for effective governance, and a smaller board would contribute to more engaged governance. PSU highlights that other Pennsylvania state-related institutions also have large boards, and while we have not audited board governance structure at those institutions, on the surface we believe these boards are also too large. We are hard pressed to find any argument that increasing board size leads to better trustee engagement. As noted by university governance experts from the American Council of Trustees and Alumni, an optimal board size is 12-15 members.

##### *Board Selection*

PSU presents a historical reference as to why it uses varying selection processes for its trustees. Here too, we find it odd that different processes are necessary to ensure qualified applicants are nominated and elected to PSU's Board. This fact alone reaffirms the above point that PSU's Board is too large.

##### *Transparency and Accountability*

###### Right-to-Know Law

We continue to disagree with PSU's position. Put simply, PSU receives an annual appropriation from the commonwealth, which is derived from taxpayer dollars—and for this reason—PSU must be accountable to the taxpayers. We acknowledge that the current RTKL provides special reporting requirements for state-related institutions like PSU. However, this special dispensation is insufficient to quell the public's right to certain information about PSU, or any other state-related institution for that matter. Finally, that PSU would point to its mandated reporting requirements under the Clery Act as an example of its willingness to comply with public information reporting requirements—while on the heels of just receiving the largest ever fine imposed for Clery Act noncompliance—only reaffirms our position and resolve on this matter.

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#### Public Official and Employee Ethics Act

PSU which is an “instrumentality of the Commonwealth to perform the essential governmental functions of education” based on its corporate charter continues to believe that because it is not a state agency, the Ethics Act then does not apply to it. Further, PSU believes it has adequate provisions in place through its Bylaws and other university policies that “provide the same or better protections as set forth in the Act.” As we methodically described in the audit report, this argument falls well short, because no PSU Bylaw or policy will ever hold the significance, weight, and enforceability as the commonwealth’s Ethics Act.

It is important to note that PSU Board members, administrators, and employees would be well served by being made subject to the Ethics Act because the act provides more clear-cut ethics standards, such as how to address conflicts of interest and voting conflicts.<sup>159</sup> Furthermore, many other entities (such as authorities, commissions, or any agency performing a governmental function) other than state agencies are subject to the Ethics Act.<sup>160</sup>

#### **Issue Area 2 – Campus Security**

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PSU acknowledges the errors we identified and is anticipating that new data systems, to include specifically systems for human resources administration, and police incident reporting, along with new policies and procedures will improve its performance. As to the matter of PSU’s use of indemnification forms, PSU indicated it would consider our recommendations. On this matter, there should be no deliberation. PSU must implement the recommendations and ensure that outside groups that use PSU’s facilities are complying with the Child Protective Services Law. We will follow-up on the success of PSU’s initiatives in a future audit.

#### **Issue Area 3 – Tuition Affordability**

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PSU presents a number of cost saving initiatives that it has pursued. Any cost savings measures that help PSU in reducing its operating expenses are a good thing. Nonetheless, we highlight that PSU’s tuition has grown exponentially in recent years, and given the ongoing budget issues at the state level, it is simply unrealistic to expect that the commonwealth will be able to provide the necessary relief to PSU’s revenue/expense challenges. Our point is this: there appears to be little concern for minimizing expenses because the institution’s board believes it must keep pace with other universities. PSU must do more to control its expenses.

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<sup>159</sup> 65 Pa.C.S. § 1103(j).

<sup>160</sup> The definition of “Governmental body” under the act includes: “Any department, authority, commission, committee, council, board, bureau, division, service, office, officer, administration, legislative body or other establishment in the executive, legislative or judicial branch of a state, a nation or a political subdivision thereof or any agency performing a governmental function.” See 65 Pa.C.S. § 1102.

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As discussed in the audit report, with respect to nonresident acceptance/enrollment, there are precarious trends emanating from many public universities in how they are addressing the need for more tuition revenue. In plain language, when a nonresident student is paying nearly twice as much as a resident student (and also factor in that the nonresident student will bring additional revenue by way of room and board) it is not hard to see the attraction in wanting to increase nonresident enrollment by accepting more nonresident students. Further, it must be noted that acceptance rates are controlled by the university, where as enrollment is a decision of the student.

PSU management states that it has never *intentionally* favored nonresidents in the recruitment and acceptance process. We believe them; unlike some other public universities that publically acknowledge this business model, we found no evidence that indicated PSU's Board, administration, or staff had intentionally accepted nonresidents over residents at its most popular campus University Park, or elsewhere. Nonetheless, the facts are:

- Expenses are outpacing revenues.
- Nonresident tuition helps to subsidize resident tuition.
- Other public universities, like PSU, have acknowledged the trend in accepting nonresidents over residents as a novel way of increasing revenues.
- In 11 of the past 16 years, including the last seven consecutive years, acceptance rates at University Park favored nonresidents over residents.

This is a bad trend for PSU, the commonwealth, and especially any Pennsylvania resident who wants to attend PSU's main campus, University Park. Further, the above is the consequence of having a Board that is not more actively engaged in controlling its tuition cost drivers. For these reasons, we continue to assert and recommend that PSU immediately establish a task force dedicated to monitoring and lowering tuition cost drivers so that it will not ever need to intentionally resort to accepting nonresidents over residents.

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#### Appendix A – Objectives, Scope, and Methodology.

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The Department of the Auditor General conducted this performance audit in order to provide an independent assessment of governance, campus safety, and tuition costs at The Pennsylvania State University (PSU or Penn State).

We conducted this audit in accordance with applicable *Government Auditing Standards*, issued by the Comptroller General of the United States.<sup>161</sup> 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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

#### Objectives

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Our performance audit objectives were as follows:

1. Determine the extent to which recommendations contained within the Department of the Auditor General’s November 2012 special report titled, *Recommendations for Governance Reform at the Pennsylvania State University After the Child Sex Abuse Scandal* and its supplement with legislative and procedural guidelines, have been appropriately implemented. **[Issue Area #1]**
2. Determine the extent to which the university’s board of trustees’ governance structure (including board composition, compensation, and responsibilities), and state-related status conform with best practices for higher education institutions for promoting transparency, accountability, and continuance of the university’s mission. **[Issue Area #1]**
3. Determine the extent to which the university complies with all legal and/or policy and procedural requirements regarding state and federal background clearances for employees or others affiliated with the university. **[Issue Area #2]**
4. Determine the extent to which the university has developed and implemented policies and procedures to fully comply with federal and state laws (including, among others, the federal “Clery” Act and the state Act 104 of 2010) relating to sexual violence prevention and response, sexual assault prevention, dating violence education, and the protection of minors. **[Issue Area #2]**
5. Determine the extent to which tuition and fee cost drivers have been appropriately identified, monitored, and controlled by the university. **[Issue Area #3]**

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<sup>161</sup> *Government Auditing Standards*, December 2011 revision, issued by the Comptroller General of the United States, United States Government Accountability Office, Washington D.C.

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#### Scope

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This audit report presents information for the period of January 1, 2013, through March 31, 2017, unless otherwise indicated, with updates through the report date.

Penn State is responsible for establishing and maintaining effective internal controls to provide reasonable assurance of compliance with applicable laws, regulations, contracts, grant agreements, and administrative policies and procedures.

In conducting our audit, we obtained an understanding of relevant internal controls, including any information systems controls, if necessary, that we considered to be significant within the context of our objectives.

For those internal controls that we determined to be significant within the context of our audit objectives, we also assessed the effectiveness of the design and implementation of those controls as discussed in the methodology section that follows. Any deficiencies in internal controls that were identified during the conduct of our audit—and determined to be significant within the context of our audit objectives—are included in this report.

#### Methodology

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To address our audit objectives, we performed the procedures that follow:

- Reviewed all recommendations made in the Department of the Auditor General's November 2012 special report titled, *Recommendations for Governance Reform at the Pennsylvania State University After the Child Sex Abuse Scandal*.
- Obtained and reviewed all documentation and other evidence to determine the implementation status for all recommendations pertaining to Penn State.
- Obtained and reviewed Penn State's enabling statute, charter, board bylaws, and board standing orders as those documents pertain to the Board of Trustees' (Board) structure, composition, and member responsibilities.
- Interviewed Penn State officials regarding the Board's governance and oversight responsibilities and to confirm our understanding of the Board's roles and responsibilities.
- Obtained and reviewed the Association of Governing Boards of Universities and Colleges (AGB) standards and best practices for higher education intuitions for promoting transparency, accountability, and continuance of the university mission, including:

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- Reviewed the AGB's most recent version (2013) of its Conflict of Interest Principles and compared them to Penn State's Bylaws.
- Interviewed officials from the AGB regarding public universities subjectivity to Open Records and Ethics Acts.
- Obtained and reviewed any pertinent state laws and/or regulations related to best practices in governance, including:
  - Pennsylvania State Ethics Act.<sup>162</sup>
  - Pennsylvania Right-to-Know Law.<sup>163</sup>
- Obtained and reviewed the enabling statutes, charters, board bylaws, and board standing orders for the three other state-related universities, which are:
  - Lincoln University
  - Temple University
  - University of Pittsburgh
- Obtained and reviewed all Penn State policies and procedures regarding background clearances to ensure the policies and procedures comply with laws and regulations for employees and others affiliated with the university, including:
  - Penn State Human Resource (HR) Policy #99 - *Background Check Process.*
  - Penn State Administrative Policy #39 - *Minors Involved in University-Sponsored Programs or Programs Held at the University and/or Housed in University Facilities.*
- Interviewed Human Resource representatives regarding background check processes and procedures, including requirements outlined in HR Policy #99 - *Background Check Process.*
- Obtained and reviewed a data file containing a personnel listing of 24,384 Penn State employees hired campus-wide (excluding the Penn State Hershey Medical Center, Penn State Law Schools, and Pennsylvania College of Technology) for calendar year 2016. Refer to the section that follows regarding the reliability of this data.
- Using a statistical sampling approach, based on a 90 percent confidence level, 3 percent tolerable deviation rate, and zero expected deviations, randomly selected 76 employees to test if background clearances were actually completed as required in HR Policy #99.

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<sup>162</sup> 65 Pa.C.S. § 1101 *et seq.*, as amended (Act 93 of 1998).

<sup>163</sup> 65 P.S. § 67.101 *et seq.*

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- Obtained and reviewed a data file of 732 camps/youth programs hosted by Penn State campus-wide (excluding the Penn State Hershey Medical Center, Penn State Law Schools, and Pennsylvania College of Technology) in 2016. See section that follows regarding the reliability of that data.
- Using a statistical sampling approach, based on a 90 percent confidence level, 3 percent tolerable deviation rate, and zero expected deviations, selected a random sample of 76 camps/youth programs. The 76 selected camps were from 14 different campuses, with 30 of the 76 camps held at PSU' University Park (Main) campus specifically. The camps included a mixture of academic and sports-related activities.
- Verified that up to five of the camp/youth program administrators/counselors assigned to each camp had the required background clearances performed as required by the Child Protective Services Law and as outlined in HR Policy #99, including:
  - Pennsylvania State Police criminal background check.
  - Pennsylvania Child Abuse History clearance.
  - Federal FBI (fingerprint) background check.
- Determined whether each youth camp/youth program file, when required, contained a *University Release and Indemnification Agreement* form, which outlines the agreement for use of university facilities by non-university groups.
- Reviewed and determined the timeliness and consistency of Penn State's background clearances for employees and identified ways to improve the screening process.
- Identified all state and federal laws related to the campus safety and prevention of violence on college campuses, including:
  - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act).
  - Higher Education Act of 1965.
  - Public School Code (Act 104 of 2010).
  - Child Protective Services Law.
- Identified and reviewed Penn State Administrative Policy #74 - *Compliance with Clery Act*.
- Obtained and reviewed the findings and recommendations presented in the United States Department of Education (USDE) *Campus Crime Final Program Review Determination Report* issued to Penn State on November 3, 2016.

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- Discussed the results of USDE's program report with representatives from the USDE's Office of Federal Student Aid, Clery Act Compliance Team.
- Interviewed Penn State Clery Compliance Specialist and applicable Penn State commonwealth campus officials regarding Clery Act communications, requirements, policies, and procedures.
- Obtained and reviewed copies of Penn State mandated reporter training materials, regarding all trainings presented to applicable university officials, to ensure that employees were receiving training from Penn State on their mandated reporting responsibilities.
- Selected six Penn State campuses to visit and to interview the Penn State employee(s) responsible for the oversight and administration of the Clery Act at each respective campus. We selected campuses judgmentally based on factors including enrollment size, geographic distribution, and availability of on-campus housing. We specifically included on-campus housing as a selection criteria because those campuses likely have a higher potential for Clery-related incidents. The campuses we selected were: Harrisburg, University Park, Hazleton, Beaver, Erie, and Reading. Because we used judgment in selecting these campuses, our results should not be projected to a broader population of all campuses. However, we determined that the selection of these campuses would generate valid and reliable evidence to support our audit work.
- Obtained and reviewed Penn State Clery Act reports for each of the above campuses for the periods applicable within our audit scope.
- Obtained and reviewed all training materials from 2016 relating to Penn State's compliance with Act 104.
- Interviewed officials from the Centre County Women's Resource Center for insight related to the campus safety objective.
- Interviewed officials working in the Penn State Compliance Unit for insight related to the campus safety objective and information on the steps the university has taken since the USDE report was released.
- Interviewed the Penn State Vice President of Student Affairs in regards to Clery Act reporting and campus safety.
- Obtained and reviewed documentation that shows the extent to which Penn State is working to manage costs to ensure that a college education is affordable. This documentation included applicable cost saving initiatives undertaken by the university.

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- Conducted interviews with Penn State officials to discuss university funding streams, expenditures, tuition levels, and college affordability including:
  - Executive Vice President and Provost.
  - Senior Vice President for Finance and Business.
  - University Budget Officer.
  - Assistant University Budget Officer.
  - Director, Budget and Reporting.
  - Associate General Counsel.
- Calculated Penn State tuition rate increases from the 1986-87 school year through the 2015-16 school year.
- Compared Penn State tuition rates to other public universities located within the Big Ten Conference.
- Compared the rise in Penn State tuition rates to the rise in consumer price index (CPI), health care prices, and the PA State System of Higher Education.
- Obtained and reviewed Penn State operating budget information for fiscal years 2013-14 through 2016-17.
- Obtained and reviewed Penn State's state appropriation information for fiscal years 2013-14 through 2016-17.
- Obtained and reviewed Penn State's operating revenue and expense statements for fiscal years ended June 30, 2013, through June 30, 2016. PSU excluded the following business units from these statements: Penn State Hershey, Law Schools, and Penn College.
- Obtained and reviewed Penn State strategic plan, 2009-2014.
- Identified Board task forces that were specific to controlling tuition cost.
- Obtained and reviewed Penn State tuition costs and trends for Pennsylvania residents vs. nonresidents for the period 1990-2016.
- Obtained and reviewed Penn State acceptance and enrollment trends for Pennsylvania residents vs. nonresidents for the period 2000-2010.

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#### Data Reliability

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Electronic data that we obtained from Penn State and which we used as audit evidence in this report, included the following:

1. A spreadsheet listing 24,384 employees hired (system-wide) during calendar 2016. Information included in this data file included employee job title, start date, and the campus to which they were hired. This information was extracted from a Human Resource database centrally located at University Park.
2. A spreadsheet listing 732 youth camps conducted during calendar year 2016. This listing included the names of individuals and administrators associated with each camp or program. The information was extracted from a Human Resources database centrally located at University Park.
3. Financial information which included Penn State's operating revenues and operating expenses for the audit period. This information was extracted from PSU's accounting and budget system located at University Park.
4. Information related to PSU's tuition and fees, extracted from PSU's web site.
5. Application, acceptance, and enrollment data extracted from systems used to support PSU's admission's office.

Auditing standards require that we assess the completion and accuracy of the data provided to us. Assessing data reliability can be obtained in a number of ways, including reviewing existing information about the data; performing data testing; tracing to and from source documents; and reviewing selected information system controls. Data assessments allow auditors to conclude that the data is either: *sufficiently reliable*, *not sufficiently reliable*, or of *undetermined reliability* for use in the audit.

In order to provide assurance regarding the accuracy and completeness of the data, we performed the following procedures:

- We interviewed PSU officials with knowledge about the data to ensure that they would be able to extract electronic data necessary for our testing purposes.
- For data specific to camps and employees, we traced the 76-selected test items to supporting documentation.
- We obtained a "management representation letter" from Penn State officials, confirming that the data provided to us had not been altered and was a complete and accurate duplication of the data from its original source.

The General Accountability Office has issued data reliability assessment guidance stating that when certain factors are present such as: limited access to the data source; a wide range of data that cannot be examined with current resources; data limitations that prevent an adequate assessment; and, short time periods, auditors may consider the data to be of undetermined

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reliability. Many of these factors were present during our audit; consequently, we have determined that the above data is of undetermined reliability.<sup>164</sup>

Since our assessment of the data is that it is of undetermined reliability, our findings and conclusions are subject to that limitation. Although this determination may affect the precision of the numbers we present, there is sufficient evidence to support the reasonableness of the data in total to support our findings, conclusions and recommendations.

#### Other Data Used in this Report

Other data used in this report included the following:

1. Ranking of tuition costs at other public universities, Source: *US News and World Report*.
2. Pennsylvania's median household income 2011-2015, Source: US Census Bureau.
3. Consumer Price Index, Source: US Department of Labor, Bureau of Labor Statistics.
4. Historical data on tuition costs for PSU and PASSHE. Source: Pennsylvania Joint State Government Commission, Instructional Output and Faculty Salary Costs of the State-Related and State-Owned Universities.
5. Universities belonging to the Big Ten Conference, tuition and fees. Source: Applicable university websites.

With respect to the above items, because we did not have access to the original data sources, we could not conduct detailed testing of the data, a key aspect in completing data reliability assessments. In accordance with *Government Auditing Standards*, we have determined that this information is of undetermined reliability. However, because the data originated from reliable and best-known sources, we believe it to be reasonable for our limited purposes. Although this determination may affect the precision of the numbers we present, there is sufficient evidence to support the reasonableness of the data in total to support our findings, conclusions and recommendations.

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<sup>164</sup> This guidance is outlined in the GAO's, *Assessing the Reliability of Computer-Processed Data*, July 2009, External Version I.

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#### Appendix B – Additional Background Information on the Department of the Auditor General’s 2012 Special Report.

In November 2012, we issued a special report titled, *Recommendations for Governance Reform at the Pennsylvania State University*.<sup>165</sup> Our report offered 30 recommendations, and it was targeted for the audiences outlined in the exhibit that follows:

Governing Bodies	Role in PSU Governance
General Assembly	The General Assembly created PSU and, accordingly, only the General Assembly can make needed changes to PSU’s enabling statute, the Right-to-Know Law, and the Public Official and Employee Ethics Act. Pursuant to acts of the General Assembly, PSU not only got its start as a public institution <sup>166</sup> and has been receiving annually non-preferred appropriations but also obtain funds related to property the Commonwealth received under the federal “Morrill Act, <sup>167</sup> thereby becoming the <b>only</b> land-grant institution of higher education in the state.
Governor	The Governor serves as the chief executive of the Commonwealth overseeing all aspects of Pennsylvania government. The Governor also serves as a non-voting PSU Trustee with the authority to appoint an six voting trustees and appoints as cabinet secretaries all three of the ex officio voting members of the Board including the Secretary of Education, the Secretary of Agriculture, and the Secretary of Conservation and Natural Resources. Under its Charter, a state-related instrumentality of the Commonwealth, PSU performs the essential governmental functions of education within the Commonwealth system of higher education. <sup>168</sup>
Board of Trustees	The Board of Trustees of PSU serve as the corporate body <sup>169</sup> established by the charter with complete responsibility for the government and welfare of the University and all the interests pertaining thereto including students, faculty, staff, and alumni.
Others	Impact of Recommendations
State-Related Universities	Temple University, The University of Pittsburgh, and Lincoln University of Pennsylvania should act on our recommendations where applicable to their own institutions, in particular but not limited to the Right-to-Know Law and the Ethics Act, and to work with the General Assembly to act on the necessary reforms.
Public	State taxpayers should support our recommendations and insist on accountability and transparency from taxpayer-supported PSU.

Source: Developed by Department of the Auditor General staff from the *2012 Special Report on Recommendations for Governance Reform at PSU after the Child Sex Abuse Scandal*.

<sup>165</sup> A legislative supplement also accompanied the special report.

<sup>166</sup> Act 50 of 1855 and Act 227 of 1863. Further, Temple University, The University of Pittsburgh, and Lincoln University of Pennsylvania began as private institutions and were not transformed into public institution until 1965, 1966, and 1972, respectfully.

<sup>167</sup> U.S.C. § 301 *et seq.* (also known as the “First Morrill Act”).

<sup>168</sup> See PSU Charter, November 2014, p. C-1. See <https://trustees.psu.edu/charter.html>.

<sup>169</sup> PSU was designated as “a body politic and corporate in law” while the other three state-related institutions were merely designated as being “vested with all the powers and franchises of the institution.”

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#### 2012 Findings and Conclusions

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The 2012 report identified nine serious conditions related to PSU's governance, which were outlined in the conclusions that follow:

1. **University president status on BOT.** The university's president was a voting board member and an executive officer, making the presidency an overly powerful position. This unhealthy relationship was virtually unheard of among peer universities and caused the university president to be equal to trustees, instead of subordinate to the board.
2. **Governor's status on BOT.** As we reported in our 2012 report, the governor was a trustee whose vote on the board created conflict-of-interest questions because the governor could vote on projects funded through state monies that he/she approved as governor. Further, the governor could vote on any other PSU issue with its roots in the governor's decision-making.
3. **BOT size/business and industry representation.** In 2012, compared to other Big-Ten universities, the size of PSU's BOT was too big for effective governance. Among peer public Big 10 schools, PSU had the largest board. On average, public Big 10 schools had 11 voting members—PSU had 32. Experts who study university governance recommend board sizes that are no smaller than 7 and no larger than 15. Larger boards are more likely to default decision making to the university president or executive committee rather than to the trustees where it belongs.

Additionally, we found inconsistency in how PSU's BOT elected members to represent "business and industry" groups. Specifically, we found that in 2002 PSU allowed current BOT members to appoint these members, rather than delegates from the groups (representing engineering, mining, manufacturing, and mechanical societies and associations) electing the members to PSU's BOT. As we reported in 2012, this action had the effect of overturning Centre County court decrees that had been in place for 125 years, from 1875 to 2002.

4. **Quorum size.** A quorum is the number of trustees that need to be present to conduct university business. As we reported in 2012, in most cases, a quorum is represented by a majority of the voting members—which in PSU's case was 16. Here again, PSU differed from its peers and only required fewer than half (13) of the 32 trustees to constitute a quorum to transact business.
5. **PSU employed trustees and/or employees became trustees.** PSU allows insiders to lead and govern; with few restrictions, staff could become trustees and, with no restrictions, trustees can become staff. This revolving door of insiders did not represent a good governance practice as it promoted a culture of insider influence that squelched transparency and accountability.

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6. **Right-to-Know Law and Public Official and Employee Ethics Act.** PSU is largely excluded from the state's Right-to-Know Law and has historically opposed being included in it. In addition, neither employees nor trustees are subject to the state's Ethics Act, including the financial disclosure provisions, a key provision required of government officials. Consequently, on the one hand PSU has benefitted from the largesse of Pennsylvania's taxpayers for more than a century including optional public/school employees' pension benefits<sup>170</sup> - yet on the other hand, its officers and employees are not bound to the same expectations of other state tax dollars stewards.
7. **Board transparency and accountability.** During our 2012 review, we found that by all appearances, PSU had not welcomed governance transparency and, in fact, had impeded it. Our review highlighted actions taken by PSU's BOT which limited public participation, including not releasing meeting agendas timely, meeting minutes which were not fully documented, and restricted access to the BOT for student, faculty, and even other trustees.
8. **Term limits for BOT members.** PSU had established term limits for board members but had not applied those limits equally, resulting in some trustees having served for decades. PSU's Bylaws were poorly worded making it difficult to determine which trustees were really affected.
9. **Emeritus status/trustee expenses.** PSU can award emeritus status to retired trustees and staff. This issue became particularly troubling because Gerald Sandusky was awarded emeritus status by exception based on the then-president's recommendation and the then-provost's approval. With emeritus status, Sandusky had access to university facilities, including the football building where he committed at least one of his crimes. Emeritus status is also awarded to trustees, who then have restricted (non-voting) access to the board. Further, with regard to the trustee expenses, PSU does not report per trustee expenses, whether trustees are active or emeriti.

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<sup>170</sup> This is unlike Temple University, the University of Pittsburgh, and Lincoln University of Pennsylvania.

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#### Appendix C – Distribution List.

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This report was distributed to the following individuals:

**The Honorable Tom Wolf**  
Governor

**Mr. Ira M. Lubert**

Chairman of the Board of Trustees  
The Pennsylvania State University

**Dr. Eric J. Barron**

President  
The Pennsylvania State University

**Dr. Nicholas P. Jones**

Executive Vice President and Provost  
The Pennsylvania State University

**Mr. Frank Guadagnino**

Associate General Counsel/Audit Liaison  
The Pennsylvania State University

**The Honorable Randy Albright**

Secretary of the Budget  
Office of the Budget

**The Honorable Joseph M. Torsella**

State Treasurer  
Pennsylvania Treasury Department

**The Honorable Josh Shapiro**

Attorney General  
Office of the Attorney General

**The Honorable Sharon P. Minnich**

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