

February 13, 2017

Honorable Mike Harmon  
Auditor of Public Accounts  
209 St. Clair Street  
Frankfort, KY 40601

RE: Corrective Action Plan in Response to the State Auditor's Examination of the Governance of the University of Louisville Foundation and its Relationship to the University of Louisville

## **INTRODUCTION**

On December 6, 2016, the University of Louisville Foundation ("Foundation" or "ULF") and the University of Louisville ("UofL" or "University") received a preliminary report from Mike Harmon, Auditor of Public Accounts, for the Commonwealth of Kentucky ("APA"). This report was titled: "Draft Examination of the Governance of the University of Louisville Foundation and its Relationship to the University of Louisville" (hereinafter "Preliminary Report"). On December 9, 2016, the University and the Foundation jointly submitted a response to this Preliminary Report. The recommendations and most of the findings of the APA were agreed with generally. On December 14, 2016, Mr. Harmon's Office released its Final Report (hereinafter "Report") to the public.

This Corrective Action Plan, submitted jointly by the Foundation and the University more specifically responds to the Report and outlines the Foundation and University's corrective action plans, if any, to each finding. We again thank the Auditors Office for their hard work on this matter. The Examination has and will continue to serve as a roadmap for future operations.

**Finding 1: Requests for documentation and other information were met with continued delays and unclear or inconsistent responses.**

### **Recommendations and Corrective Action Plans:**

1. ULF Board review policies and procedures to ensure accountability and transparency is a clear expectation of both officers and staff.

**Response:** We agree that officers and staff must understand all policies and procedures to ensure appropriate accountability and transparency.

**Action:** The Foundation hired a new Interim Executive Director to oversee the day-to-day operations of the Foundation. He, in conjunction with new Board leadership, is reviewing all policies and procedures. Current policies are being revised as necessary and new policies and procedures will be created where needed. To ensure that all operational expectations are clear, appropriate and meet the needs and expectations of our constituents, training will be provided to all ULF staff and Board Members to ensure a full understanding of policies and procedures. All policies and procedures will be reviewed annually.

**Start Date:** December 2016

**Target End Date:** July 2017

**Status:** 20% Completed

2. That all ULF employees receive training on Board Policies, Open Meetings and Open Records and professional ethics.

**Response:** We agree that all Foundation employees should receive training on Board Policies, Open Meeting and Open Records.

**Action:** An orientation on Foundation Bylaws, Open Meetings and Open Records has been completed and presented to the Foundation Board of Directors during its December 21, 2016 Board meeting. The same training was provided to Foundation staff on January 19, 2017. As new policies and procedures are finalized, they too will be reviewed with ULF employees.

**Start Date:** December 2016

**Target End Date:** June 2017

**Status:** 60% Completed

3. Review current operational processes and ensure records are organized to meet the accountability and transparency objectives of the ULF Board, including a budget to actual analysis for its operational costs.

**Response:** We agree that all processes should be reviewed and that all records should be maintained to meet accountability and transparency objectives.

**Action:** See number 1.1 above. The Foundation is preparing a line item budget for the upcoming fiscal year to ensure an ongoing budget to actual analysis is available to management as well as the Boards of ULF and the University. We also are working diligently to maintain records in a manner that is more readily producible.

**Start Date:** December 2016

**Target End Date:** July 2017

**Status:** 30% Completed

4. ULF consider creating an internal audit function reporting to the ULF Board or committee thereto.

**Response:** Due to the relatively small size of the Foundation staff, we have determined it would not be efficient to have an internal audit function. With enhanced governance, new leadership and a greater emphasis on training, we believe an external audit process is sufficient to ensure compliance with GAAP and our internal policies and procedures. Currently we have a services agreement with BKD LLP to provide this external audit support.

**Action:** Continue outsourcing audit function

**Start Date:** January 2017

**Target End Date:** Ongoing

**Status:** 100% Completed

**Finding 2: Administrative operations of the University and its Foundation were at times indistinguishable and led to ineffective governance.**

**Recommendations and Corrective Action Plans:**

1. UofL and ULF Boards discuss together, through designated committees of each board, the need and potential benefits and disadvantages of having the president of the UofL serve as the president of the Foundation.

**Response:** We agree that the President of the University should not also serve as the President of the Foundation.

**Action:** The Foundation and University already have taken steps to ensure the President of the University is not the President of the Foundation. Then Acting President Neville Pinto recused himself as President of the Foundation. Interim President Greg Postel has done the same. Then Foundation Chair Brucie Moore and Dr. Pinto hired an Interim Executive Director to run the day-to-day operations. A President cannot be appointed at the Foundation without the express approval of the Board of Directors, whose Chair has committed to not putting the University President in that role. As the Foundation's bylaws are updated this year, they will be affirmatively updated to prevent the University President from being the President of the Foundation.

**Start Date:** November 2016

**Target End Date:** June 2017

**Status:** 25% Completed

2. UofL and ULF Boards consider developing an MOU to establish an effective set of operational and governing policies. The MOU should be the result of a collaborative process between the two boards and should include a review of recommended principles and practices.

**Response:** We agree with this recommendation. An MOU will provide an opportunity for both University and Foundation leaders to examine how the Foundation can most effectively advance the mission of the University, develop a shared vision for the future partnership, and clarify mutual expectations and responsibilities. This will further ensure that regardless of leadership changes at either entity all parties understand respective roles and responsibilities.

**Action:** A joint work group comprised of members of each Board will be created to adopt the MOU. At its meeting on February 16, 2017, the University's Board of Trustees will charge an Ad Hoc Committee on Board Governance with responsibility for working with the Foundation on this MOU.

**Start Date:** February 2017

**Target End Date:** June 2017

**Status:** 10% Completed

3. UofL administration review its human resource processes and management structure to determine whether they are appropriate for its organization and whether they provide fair and consistent treatment of UofL personnel. After the review is complete, we recommend the administration update its personnel policies to be consistent with the approved changes. As part of this policy review, we recommend the UofL administration develop administrative policies to establish guidelines and parameters by which additional benefits such as vehicle and cellphone allowances may be awarded. This policy should be formalized in writing and approved consistent with UofL policy.

**Response:** A *University Administrative Policy Review and Approval Process* was developed in the fall of 2016. UofL HR is currently conducting a review of UofL HR policies consistent with this process.

**Action:** The University's Associate Vice President in Human Resources will lead the initiative to review/update all HR policies & procedures for administrators and staff and will work with the appropriate parties to reconcile the 'Red Book'. Priority will be given to policies that affect employee benefits and compensation. A project plan and timeline will be presented to the University's administration in the first quarter of 2017. The project plan will include implementation and communication plans. Additionally, a recommendation will be presented to the

University's administration on accountability, monitoring and reporting systems to ensure implementation and compliance.

**Start Date:** January 2017

**Target End Date:** November 2017

**Status:** 20% Completed

4. University administration involve its General Counsel when considering matters that will result in any legal agreements or arrangements transferring funds from the University to the Foundation, and in any matters that could appear to be noncompliant with existing agreements, regulations or laws.

**Response:** The Board of Trustees and University Administration agree.

**Action:** Administration for the University has put in place a procedure to ensure that the General Counsel's Office is asked to review documentation whenever fund transfers to the Foundation are planned in order to ensure legal compliance

**Start Date:** February 2017

**Target End Date:** Ongoing

**Status:** Ongoing

5. UofL Board, or a committee of its body, consider creating a policy to address the University's ability to transfer funds to the Foundation. We recommend any consideration of such a policy be discussed with the appropriate University administrators, including the University's General Counsel. If a policy is created, we recommend the policy is formalized in writing, approved by the full Board, and distributed to all appropriate University personnel.

**Response:** The Board of Trustees and University Administration agree.

**Action:** The Board of Trustees' new Ad Hoc Committee on Board Governance, once in place, will review this issue and recommend to the full Board the adoption of a policy outlining financial transactions with appropriate dollar thresholds that will require Board of Trustees' approval. Examples could include:

- Approval of all fund transfers, loans, lines of credit, investments from the University to any UofL Foundation entity exceeding \$250,000

**Start Date:** February 2017

**Target End Date:** June 2017; Ongoing after Board approval

**Status:** Ongoing

**Finding 3: Conflict among members of the UofL Board and the administration created an environment of distrust resulting in a dysfunctional governing climate affecting both the University and the Foundation.**

**Recommendations and Corrective Action Plans:**

1. UofL Board of Trustees operate in an atmosphere that welcomes open and forthright discussion of issues the University faces. Discussions at Board meetings should be civil and respectful even if there are disagreements.

**Response:** The Board of Trustees and the University administration agree.

**Action:** On January 7, 2017, the Kentucky General Assembly enacted new legislation transferring all authority, function and responsibility from the then active University of Louisville board of trustees to a newly created and established board of trustees. On January 17, 2017, the Kentucky Governor appointed 10 new members to the board of trustees, subject to confirmation by the State Senate. These ten new appointees join three constituent members representing the University's faculty, staff and students for a board with thirteen total members. The newly constituted board held its first meeting on January 21, 2017 and demonstrated its commitment to open, forthright, civil, and respectful discussion as it carried out its fiduciary responsibilities to the University, including the election of Board officers and the appointment of a new Interim President for the University.

In December of 2016, the University became a member of the Association of Governing Boards of Universities and Colleges, the leading higher education organization serving governing boards, trustees, and senior campus leaders. As an AGB member, the University, the trustees and the senior campus leaders will have access to extensive AGB resources discussing and fostering effective board governance. In addition, the new board members will benefit from an extensive board orientation program coordinated through Kentucky's Council on Postsecondary Education.

**Start Date:** January 2017

**Target End Date:** Ongoing.

**Status:** Ongoing

**Finding 4: Endowment funds totaling \$67 million, budgeted for use by the University, were loaned to the Foundation and an affiliate organization without prior notification to, or approval, by the UofL Board.**

**Recommendations and Corrective Action Plans:**

1. University refrain from loaning its funds to the Foundation and its affiliates.

**Response:** The Board of Trustees and University Administration generally agree.

**Action:** Future transfers between the entities will be governed by the Board of Trustees' policy to be adopted, as outlined in response to Finding 2.5 above.

**Start Date:** February 2017

**Target End Date:** June 2017; Ongoing after Board approval

**Status:** Ongoing

2. UofL Board consider revising its Short-Term Investment Guidelines policy to again require annual reporting on the status of short-term investment funds by the UofL Senior Vice President (SVP) for Finance and Administration.

**Response:** The Board of Trustees and University Administration agree.

**Action:** The University's Short-term Investment Policy was revised in the spring of 2016 with the provision that the Board of Trustees would be updated as requested. The University will reinstitute a routine reporting on short-term investments as part of overall financial reporting activity no less frequently than annually.

**Start Date:** February 2017

**Target End Date:** Ongoing

**Status:** Ongoing

3. University administration ensure any discussion involving "cash management strategies" and short-term investments be vetted by the SVP for Finance and Administration.

**Response:** The Board of Trustees and University Administration agree.

**Action:** The job description for the Chief Financial Officer should explicitly include setting direction and establishing supporting policies for cash management and short-term investments.

**Start Date:** Immediately - completed

**Target End Date:** Ongoing

**Status:** Ongoing

4. ULF Board and the UofL Board each establish a policy establishing criteria for reporting financial activity to each board. The policy should include criteria such as the type of activity, dollar threshold, and limitations. The policy established by each board should be formally documented in writing, along with details noting the purpose of the presentation, the frequency, the level of detail to be reported to the board, and who should present reports.

**Response:** We agree with this recommendation.

**Action:** The University and the Foundation will develop policies that establish criteria for reporting financial activity to their respective Boards. These policies will formalize in writing the following:

- Type of activity
- Dollar threshold
- Any limitations or exclusions
- Frequency
- Who will be responsible for said report

**Start Date:** February 2017

**Target End Date:** June 2017; Ongoing after Board approvals

**Status:** Ongoing

**Finding 5:** Action taken by the former UofL and ULF President to appoint an acting Chief Administrative Officer appears to violate ULF Bylaws.

**Recommendations and Corrective Action Plans:**

1. ULF Board and President abide by the ULF bylaws in all matters, including the appointment and compensation of ULF officers.

**Response:** We agree with this recommendation.

**Action:** We have provided training to the ULF Board on these requirements, have ensured that counsel for the Foundation is aware of these requirements, and will, through the work of the governance committee, ensure that, as new policies are created, at least one will specifically ensure no appointments, compensation or

policies can be effectuated without express Board and/or Executive Committee approval.

**Start Date:** December 2016

**Target End Date:** June 2017

**Status:** 30% Completed

2. ULF Board should ensure appropriate checks and balances are put into place to avoid situations in which a single individual has the ability to take actions beyond those authorized. As such, we recommend the ULF Board not knowingly approve, ratify, or allow its president to take actions that are in contravention of the bylaws.

**Response:** We agree with this recommendation.

**Action:** We have provided training to the ULF Board on these requirements, have ensured that counsel for the Foundation is aware of these requirements and will, through the work of the governance committee, ensure that, as new policies are created, at least one will specifically ensure no appointments, compensation or policies can be effectuated without express Board and/or Executive Committee approval.

**Start Date:** December 2016

**Target End Date:** June 2017

**Status:** 30% Completed

3. ULF Board designate a committee of its body to annually review the ULF bylaws to determine whether updates are needed. After the review is performed, the committee responsible for performing the review should report the review results to the full ULF Board.

**Response:** We agree with this recommendation.

**Action:** A governance committee of the Board will be re-constituted in light of Board member changes. This committee will work on revisiting and revising the current bylaws and overall governance of the Board. This will include an annual review of the same.

**Start Date:** December 2016

**Target End Date:** June 2017

**Status:** 20% Completed

**Finding 6:** The ULF Board compensated the former UofL President beyond the amount approved by the UofL Board and beyond the amount provided under the terms of his contract.

**Recommendations and Corrective Action Plans:**

1. ULF Board refrain from taking any actions that exceed its authority, such as increasing the President's university salary without an official recommendation from the UofL Board. Further, any offer from the ULF Board to assist beyond what was requested from the UofL Board should be considered and acted upon by the UofL Board in compliance with University Bylaws.

**Response:** We agree with this recommendation.

**Action:** The issue has been rendered moot by virtue of the President of the University no longer being able to serve as the President of the Foundation. We further have taken steps, as described in response to Finding 5.5.

**Start Date:** October 2016

**Target End Date:** Ongoing

**Status:** 100% Completed

2. ULF Board compensate its president in compliance with established contract terms.

**Response:** We agree with this recommendation.

**Action:** As discussed in response to Finding 5.5, we are developing more robust governance to ensure this is complied with.

**Start Date:** December 2016

**Target End Date:** June 2017

**Status:** 25% Completed

**Finding 7:** The University CFO was not included in meetings of the ULF Board Finance Committee in violation of its bylaws and in direct conflict with his contract with the Foundation.

**Recommendations and Corrective Action Plans:**

1. ULF Board structure its committees in accordance with the requirements established by its bylaws and that all ex officio members be properly notified of meetings. All committee members should review and be aware of their responsibilities.

**Response:** We agree with this recommendation.

**Action:** The soon to be revised bylaws will further ensure the requirements are clear and unmistakable and that they are complied with to ensure notice is properly provided.

**Start Date:** December 2016

**Target End Date:** June 2017

**Status:** 75% Completed

2. University CFO be appropriately involved in financial decisions directly affecting the University.

**Response:** We agree with this recommendation.

**Action:** The University CFO will be formally apprised of all Foundation Board meetings, all Finance Committee Board meetings and any other committee meetings that affect the University. The Foundation takes seriously its mission to support the University in its academic endeavors. No decisions may or will be made that could affect the University financially without first involving the University CFO.

**Start Date:** December 2016

**Target End Date:** Ongoing

**Status:** 100% Completed

**Finding 8:** ULF Board members do not receive an orientation despite the growing complexity of Foundation operations.

**Recommendations and Corrective Action Plans:**

1. ULF Board, in consultation with the Foundation administration, develop and implement a formalized orientation for new and returning board members. This orientation should provide members with a clear understanding of the Foundation and its affiliated entities, their role, as well as their legal and fiduciary responsibilities as board members.

**Response:** We agree with this recommendation.

**Action:** We already have begun this development work, which will continue for the remainder of fiscal year and be reviewed annually. All Board members will receive this orientation. Additionally, it is expected that any new Foundation

Board member will receive an orientation about the Foundation within 60 days of being appointed.

**Start Date:** December 2016

**Target End Date:** Ongoing

**Status:** 25% Completed

2. ULF Board consider having an independent party involved in the organization, structure, and content of the board orientation, with involvement from the board attorney to ensure topics such as legal agreements, conflicts of interests, open records and open meetings, and ethics are sufficiently covered.

**Response:** We agree it is important that all Foundation Board members can benefit from an orientation that includes topics such as legal agreements, conflicts of interest, open record and open meetings.

**Action:** Each of these topics was reviewed with counsel and then presented at the Foundation's December 21, 2016 Board meeting. They will be reviewed annually for necessary updates and reviewed annually with the Board.

**Start Date:** December 2016

**Target End Date:** Ongoing

**Status:** 25% Completed

3. Material for the orientation be written and formally presented as a manual to assist the orientation process and serve as a useful resource tool to board members. Because of the dynamic nature of the Foundation, the orientation should be reviewed periodically to ensure all materials are current and applicable. This orientation should be made mandatory for all new directors, and the materials should be available to all directors.

**Response:** We agree with this recommendation and are in the process of achieving this.

**Action:** As stated above, this will be completed no later than this fiscal year.

**Start Date:** December 2016

**Target End Date:** Ongoing

**Status:** 25% Completed

Again, we thank you for the invaluable work by your team. As we have said in the past, it is a new day, with new leadership at the University of Louisville and the University of Louisville Foundation. We look forward to continuing the work necessary to ensure the public confidence and trust in this important resource are fully restored.

A handwritten signature in black ink, appearing to read "Keith Sherman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dr. Greg Postel, Interim President  
University of Louisville

Keith Sherman, Interim Executive Director & COO  
University of Louisville Foundation