

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

Report No. 2020-152
March 2020

UNIVERSITY OF WEST FLORIDA



Sherrill F. Norman, CPA
Auditor General

Board of Trustees and President

During the period January 2018 through December 2018, Dr. Martha D. Saunders served as President of the University of West Florida and the following individuals served as Members of the Board of Trustees:

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Kishane Patel ^a through 4-13-18
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^a Student Body President.

^b Trustee position vacant 1-7-18, through 2-8-18.

^c Faculty Senate Chair.

^d Trustee position vacant 1-1-18, through 2-8-18.

The team leader was Christy L. Johnson, CPA, and the audit was supervised by Kenneth C. Danley, CPA.

Please address inquiries regarding this report to Jaime N. Hoelscher, CPA, Audit Manager, by e-mail at jaimehoelscher@aud.state.fl.us or by telephone at (850) 412-2868.

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UNIVERSITY OF WEST FLORIDA

SUMMARY

This operational audit of the University of West Florida (University) focused on selected University processes and administrative activities and included a follow-up on findings noted in our report No. 2017-081. Our operational audit disclosed the following:

Finding 1: The University subsequently withdrew amounts for additional administrative costs totaling \$2.395 million from the Complete Florida Plus Program without apparent legal authority. In addition, during the 2017-18 fiscal year, the University did not maintain personnel activity reports or other records to support the purpose for and value of Program salary and benefit costs totaling \$11.9 million.

Finding 2: University rules and records supporting University property, facilities, and personal services used by the University direct-support organizations could be improved.

Finding 3: Some unnecessary information technology user access privileges existed that increased the risk that unauthorized disclosure of sensitive personal information of students may occur.

BACKGROUND

The University of West Florida (University) is part of the State university system of public universities, which is under the general direction and control of the Florida Board of Governors (BOG). The University is directly governed by a Board of Trustees (Trustees) consisting of 13 members. The Governor appoints 6 citizen members and the BOG appoints 5 citizen members. These members are confirmed by the Florida Senate and serve staggered 5-year terms. The Faculty Senate Chair and Student Body President also are members.

The BOG establishes the powers and duties of the Trustees. The Trustees are responsible for setting University policies, which provide governance in accordance with State law and BOG Regulations. The University President is selected by the Trustees and confirmed by the BOG. The University President serves as the Executive Officer and the Corporate Secretary of the Trustees and is responsible for administering the policies prescribed by the Trustees for the University.

FINDINGS AND RECOMMENDATIONS

Finding 1: Complete Florida Plus Program

State law¹ provides that the Complete Florida Plus Program (Program) was created at the University of West Florida to:

- Facilitate degree completion for the State's adult learners through the Complete Florida Degree Initiative.

¹ Section 1006.735, Florida Statutes, and Chapter 2014-56, Laws of Florida.

- Provide information regarding and access to distance learning courses and degree programs offered by public postsecondary education institutions within the State.
- Coordinate with the Florida College System and the State University System to identify and provide online academic support services and resources when the multi-institutional provision of such services and resources is more cost effective or operationally effective.
- Administer the Florida Academic Library Services Cooperative (Cooperative) established in State law² and consult with the chancellors of the Florida College System and the State University System regarding the implementation and operations of the Cooperative.

The Program received an annual appropriation in the General Appropriations Act (GAA)³ for each of the 2016-17, 2017-18, and 2018-19 fiscal years. Appropriations made in the GAA are limited by the GAA to the pertinent fiscal year. Accordingly, authority articulated in proviso must also be limited to the pertinent fiscal year.⁴ Proviso pertaining to each Program appropriation provided that, from the appropriated funds, administrative costs shall not exceed 5 percent, and the University withdrew varying amounts for administrative costs from the Program during those fiscal years. However, according to University records, the University subsequently withdrew additional amounts for prior year administrative costs totaling \$2.395 million from Program funds carried forward from previous years.⁵

According to University personnel, the amounts subsequently withdrawn represented previously incurred administrative costs that could have been withdrawn but were not. Specifically, University personnel indicated that, during the first few years of the Program, the University incurred but did not withdraw Program funds for all allowable administrative costs as significant time was required to incorporate the Program into the University's accounting, information technology, and other operational systems. University personnel also indicated that they believed withdrawing funds for the administrative costs from previous GAA fiscal year appropriations was allowed because universities are authorized to carryforward funds and such authorization did not restrict the use of carryforward funds. In addition, University personnel indicated that "the proviso language clearly does not impose a time limit on the collection of indirect administrative costs" and that the total amounts withdrawn for administrative costs have not exceeded 5 percent of total Program appropriations since the Program's inception. Notwithstanding this response, the University's authority to withdraw Program funds for administrative costs was limited to the year of appropriation. Therefore, the University's legal authority to withdraw amounts for prior year administrative costs totaling \$2.395 million from Program funds carried forward is not apparent.

Additionally, University records indicate that during the 2017-18 fiscal year the University incurred Program salary and benefit costs totaling \$11.9 million for 136 University employees, including 125 employees whose salary and benefits were totally funded by the Program. As part of our audit, we examined the job descriptions for 10 of the 125 employees in positions totally funded by the Program. We found that 8 of the 10 employees were primarily assigned Program job duties but could be assigned

² Section 1006.73, Florida Statutes.

³ Chapters 2016-66, 2017-70, and 2018-9, Laws of Florida.

⁴ Article 3, Section 12 of the State Constitution, *Mildred Henry v. Agency for Health Care Administration*, Department of Administrative Hearings (DOAH) Case No. 93-5311RE (October 11, 1993) (Citing *Chiles v. United Faculty of Florida*, 615 So.2d 671 (Fla. 1993)).

⁵ Section 1011.45, Florida Statutes (2018), and Board of Governors Regulation 9.007, *State University Operating Budgets* (2018).

other duties and that the assignments of the other 2 employees included job duties that were not specific to the Program. In response to our inquiries, University personnel indicated the University did not require Program employees to maintain personnel activity reports⁶ or other records to support Program salary and benefit costs. However, absent such records, there is an increased risk that Program costs may be incurred for services that are not for Program purposes.

In October 2019, the University Board of Trustees and the State University System of Florida Board of Governors contracted with a certified public accounting (CPA) firm to help determine, in part, whether administrative costs incurred by the Program exceeded the 5 percent set by the proviso in the GAA and whether direct labor charges to the Program reflect a reasonable percent of effort and type of work performed for the Program. As of January 2020, the results of the CPA firm services had not been finalized.

Recommendation: The University should document the authority for and allowability of the administrative costs totaling \$2.395 million or restore that amount to the Program. In addition, University procedures should be established to require employees to maintain personnel activity reports or other records to support the purpose for and value of Program services and to demonstrate the propriety of the salary and benefit costs charged to the Program.

Follow-Up to Management's Response

Management's response stated that "F.S. 1011.45 and BOG Regulation 9.007 provide the University with clear authority for recovering the administrative costs due to the University from carryforward funds" and "neither of the case laws cited by the Auditor General to support the position that the General Appropriation Act only provides authority for spending in a particular year is relevant to this situation." While the response factually distinguished the legal references, it misconstrues the propositions for which the cases were cited.

Section 1011.45, Florida Statutes, and BOG Regulation 9.007 do not provide express authority for the University to use carryforward funds for prior year Program administrative costs. Chiles v. United Faculty of Florida supports the proposition that authority to make expenditures identified in an appropriations act lasts only as long as the pertinent fiscal year. This is because the Legislature is prohibited by Article 3, Section 12 of the Florida Constitution from passing substantive law in an appropriations act (see Brown v. Firestone, 382 So. 2d 654 [Fla. 1980]). Mildred Henry v. Agency for Health Care Administration not only demonstrates solid legal analysis as noted by the University, but also that entities appropriated funds through the General Appropriations Act, such as the Agency for Health Care Administration and the University, may not rely on authority expressed in previous Acts during a different fiscal year. Furthermore, that case illustrates that, had the Legislature intended to create continuing authority for the University to withdraw additional amounts for prior year administrative costs, authority would have been expressly provided in the statutes related to carry forward use or the Program. Consequently, we continue to recommend the University document the authority for and allowability of the administrative costs totaling \$2.395 million or restore that amount to the Program.

⁶ Personnel activity reports reflect an after-the-fact distribution of the actual activity of each employee who worked on multiple activities or, for those employees who worked solely for the Program, periodic certifications signed by the employee or supervising official with firsthand knowledge of the work performed by the employee, confirming that the employee worked solely for the Program.

Finding 2: Direct-Support Organizations

To promote accountability over University property, facility, and personal services use, it is important that public records prescribe the conditions for such use, document appropriate approval before the use occurs, and demonstrate appropriate use. Such records help document authorization for the use, demonstrate the reasonableness of the value associated with that use, and enhance government transparency.

State law⁷ provides that a direct-support organization (DSO) is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to, or for the benefit of, the University. Additionally, State law⁸ authorizes the University Board of Trustees (Trustees) to permit the use of University property, facilities, and personal services by a DSO, and requires the Trustees to prescribe by regulation any condition with which a DSO must comply for such use. Trustee regulations⁹ provide that, upon approval by the Trustees, a DSO is certified and authorized to use University property, facilities, and personal services, to receive, hold, invest or administer assets or property, and to make expenditures for the benefit of the University to the extent permissible by applicable law, the conditions prescribed by regulations, and University internal management memoranda.

In 2001, the Florida Legislature transferred the management and historic preservation responsibilities of the Historic Pensacola Preservation Board (HPPB) from the Department of State to the University. At that time, the HPPB was renamed the West Florida Historic Preservation, Inc. (WFHP) and, in accordance with State law,¹⁰ the WFHP was designated as a DSO to assist the University in carrying out these responsibilities. The WFHP operates under an agreement with the University that provides, in part, for University employees to assist the WFHP in carrying out its duties under the agreement. University personnel indicated that State appropriations received during the 2018-19 fiscal year for salaries and plant operations and maintenance related to the WFHP totaled \$1.4 million. In addition to the WFHP, the Trustees have approved the University of West Florida Foundation, Inc. (Foundation) and UWF Business Enterprises, Inc., as DSOs that routinely receive and use charitable contributions for the benefit of the University.

As part of our audit, we examined University records supporting DSO use of University property, facilities, and personal services. In response to our request, University personnel provided records that showed, during the 2018-19 fiscal year, the estimated value of DSO use of University buildings totaled \$229,000; 125 University employees provided an estimated \$3.2 million in personal services to the DSOs, including \$1.3 million funded by State appropriations for the WFHP; and \$680,000 was paid by the WFHP and the Foundation for use of the University personal services. However, University personnel indicated that the University did not maintain documentation supporting the actual time and effort of 38 employees who provided less than 100 percent of their work effort for the DSOs. In addition, the University did not execute Trustees-approved agreements or maintain other University records to evidence the basis for

⁷ Section 1004.28(1)(a)2., Florida Statutes.

⁸ Section 1004.28(2)(b), Florida Statutes.

⁹ Regulation 5.016, *Direct Support Organizations*.

¹⁰ Section 267.1732, Florida Statutes.

the DSO payments. Without such agreements, there is an increased risk of misunderstanding between the Trustees and a DSO and for over or under payments to occur.

We also noted that University records associated with DSO use of University property, facilities, and personal services could be improved by obtaining:

- The Trustees' approval of the anticipated DSO use and the estimated value of the associated University resources before the use occurs.
- Confirmations and other documentation from DSO management affirming that University resources were used only for purposes approved by the Trustees.

In response to our inquiries, University personnel indicated that:

- State law and Trustee regulation permit the use of University property, facilities, and personal services by DSOs, and that no violations of law have occurred in providing University resources to the DSOs.
- The University receives annual funding appropriations from the Florida Legislature to carry out its historic preservation responsibilities and providing University resources to the WFHP is necessary to fulfill those responsibilities.
- The Trustees are adequately informed of DSO activities since DSO budgets are annually approved by the Trustees, a Trustee serves on the executive Board of each DSO, quarterly reports of DSO activities are presented to the Trustees, and DSO audit reports presented to the Trustees include notes to the financial statements that include information about University resources provided to the DSOs.
- The value of DSO resources provided to the University far exceeds the value of University resources provided to the DSOs.

Notwithstanding the veracity of this response, approvals by the Trustees and documentation affirming approval of the anticipated use and the actual use of University resources would provide additional assurance that DSO use of University resources is consistent with the Trustees' intent and enhance transparency for such use.

Recommendation: We recommend that:

- **The University document University employee actual time and effort provided to the DSOs to support the purpose for and value of such services and the distribution of applicable personal service costs among specific University and DSO activities for employees who work on more than one activity.**
- **The Trustees enter into agreements with DSOs to establish the basis for any DSO payments.**
- **The University document the Trustees' consideration and approval of DSO anticipated use of University resources, at least on an annual basis, before the use occurs. To enhance government transparency, Trustees-approved documentation should identify the positions of the employees who will provide personal services, the square footage of the areas in University buildings that will be used by the respective DSOs, and the value of such use.**
- **The University obtain confirmations and other documentation from DSO management affirming that University resources were used only for purposes approved by the Trustees.**

Finding 3: Information Technology User Access Privileges – Sensitive Personal Student Information

The Legislature has recognized in State law¹¹ that social security numbers (SSNs) can be used to acquire sensitive personal information, the release of which could result in fraud against individuals or cause other financial or personal harm. Therefore, public entities are required to provide extra care in maintaining such information. Effective information technology (IT) access controls limit user access privileges to only those system functions and information necessary for the performance of assigned job duties. Periodic reviews of user access privileges help ensure that only authorized users have access and that the access privileges provided to each user remain appropriate.

According to University personnel and records, the University established a unique identifier, other than the SSN, to identify each student and maintained student information, including SSNs, in the University IT system. Access to student SSNs should only be granted for the performance of administrative, supervisory, or instructional responsibilities that serve a legitimate educational purpose in accordance with applicable Florida Statutes and Federal laws. The University collects and uses student SSNs pursuant to State law for various purposes, such as to register newly enrolled students and to comply with Federal and State requirements related to financial and academic assistance. Student SSNs are also maintained so the University can provide student transcripts to other universities, colleges, and potential employers based on student-authorized requests. The University indefinitely maintains records containing the SSNs of prospective students who apply for entrance into the University but do not enroll. However, although we requested, records were not provided to evidence the public purpose served for indefinitely maintaining these records.

To help protect student information from unauthorized disclosure, modification, or destruction, all employees with IT system access are required to sign an understanding of confidentiality form and receive training on records confidentiality. The University established procedures to require applicable supervisors and security administrators to document approval of employee access to sensitive data and for periodic reviews of user access privileges to the sensitive personal information of students to ensure that the access was based on a demonstrated need. However, according to University personnel, the University did not maintain records documenting the reviews.

As of May 2019, University personnel indicated that the University IT system contained sensitive personal information, including SSNs, for 199,618 former, 102,588 prospective, and 14,652 current students, and a total of 120 individuals had IT user access privileges to the information. As part of our audit, we examined University records supporting user access privileges to sensitive personal information of students for 30 selected University IT system users. We found that 4 IT system users, including certain department directors, had unnecessary access to former, prospective, and current student information and 8 other IT system users, including certain Controller Office personnel, had unnecessary access to prospective student information. In response to our inquiry, University personnel indicated that they removed the unnecessary access for the 4 IT system users who had the ability to view sensitive personal information of former, prospective, and current students. University personnel also indicated that the

¹¹ Section 119.071(5)(a), Florida Statutes.

IT system did not differentiate former, prospective, and current students, although individuals did not always need access to information for all three types of students.

The existence of unnecessary access privileges increases the risk of unauthorized disclosure of sensitive personal information and the possibility that such information may be used to commit a fraud against University students or others.

Recommendation: To ensure that sensitive student information is properly safeguarded, the University should:

- Document the public purpose served for indefinitely maintaining that information for prospective students who do not enroll in the University. Absent such, the University should discontinue the practice of indefinitely maintaining such information.
- Document periodic reviews of assigned IT user access privileges to determine whether such privileges remain necessary and timely remove any inappropriate or unnecessary access privileges detected.
- Upgrade the University IT system to include a mechanism to differentiate former, prospective, and current student information or otherwise limit access privileges to only that needed for each type of student.

PRIOR AUDIT FOLLOW-UP

The University had taken corrective actions for findings included in our report No. 2017-081.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from March 2019 through January 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of this operational audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and safeguarding of assets, and identify weaknesses in those controls.

- Determine whether management had taken corrective actions for findings included in our report No. 2017-081.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, weaknesses in management's internal controls; instances of noncompliance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included transactions, as well as events and conditions, occurring during the audit period of January 2018 through December 2018 and selected University actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these records and transactions were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of management, staff, and vendors and, as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed University information technology (IT) policies and procedures to determine whether the policies and procedures addressed certain important IT control functions, such as access security and user authentication.
- Evaluated University procedures for maintaining and reviewing employee access to IT data and resources. We examined access privileges to selected critical functions within the finance and human resources applications during the audit period for 27 employees to determine the appropriateness and necessity of the access based on the employees' job duties and user account functions and the adequacy with regard to preventing the performance of incompatible duties.

- Evaluated University procedures for protecting the sensitive personal information of students, including student social security numbers (SSNs). From the population of 120 employees who had access privileges to sensitive personal information of students during the audit period, we examined University records supporting the access privileges granted to 30 employees to determine the appropriateness and necessity of the access privileges based on the employees' assigned job responsibilities.
- Reviewed application security settings to determine whether authentication controls were configured and enforced in accordance with IT best practices.
- Evaluated the appropriateness of the University comprehensive IT disaster recovery plan effective during the audit period and determined whether it had been recently tested.
- Reviewed the internal audit function to determine whether the University followed professional requirements and provided for peer review of reports issued. For internal audits, we determined whether audit reports were properly completed and submitted to the Trustees.
- Examined University records supporting textbook adoptions for 2,201 course sections offered during the Fall 2018 Semester to determine whether the University textbook affordability procedures complied with Section 1004.085, Florida Statutes.
- Determined whether the Board established investment policies and procedures as required by Section 218.415, Florida Statutes, and whether University investments during the audit period complied with those policies and procedures. Also, we determined whether any investment income was properly allocated to the funds that generated the investment income.
- Examined University records to determine whether the Trustees had prescribed by rule, pursuant to Section 1004.28(2)(b), Florida Statutes, the conditions with which the DSOs must comply in order to use University property, facilities, and personal services and whether the Trustees documented consideration and approval of anticipated property, facilities, and personal services provided to the DSOs and the related costs.
- Examined University fee schedules to determine that the University had the authority for assessing such fees, the University separately accounted for the fees, and the fees did not exceed the limits established in Section 1009.24, Florida Statutes, and Board of Governors Regulations 7.001 and 7.003.
- Examined University records to determine whether compensation paid to the President did not exceed the limits established in Section 1012.975(3), Florida Statutes. Additionally, we reviewed University records supporting the reasonableness of the President Emeritus position compensation.
- From the population of \$45.1 million in expenses other than salaries, benefits, and purchasing card (P-card) transactions during the period July 1, 2018, through December 31, 2018, examined University records relating to 30 general expenses totaling \$1.2 million to determine whether selected expenses were reasonable, correctly recorded, adequately documented, for a valid University purpose, properly authorized and approved, and in compliance with applicable laws, rules, contract terms, and University policies.
- From the population of 37,457 P-card transactions totaling \$16.2 million during the audit period, examined University records supporting 33 selected P-card transactions totaling \$19,178 to determine whether the P-card program was administered in accordance with University policies and procedures and transactions were not of a personal nature.
- Examined P-card records for the 39 cardholders who separated from University employment during the audit period to determine whether the University timely canceled the cardholders' P-cards.

- Evaluated University records supporting the only major construction project with a construction management entity guaranteed maximum price contract of \$16.2 million to determine whether the University adequately monitored the selection of subcontractors; verified subcontractor licenses; and negotiated, monitored, and documented the reasonableness of general conditions costs.
- Evaluated University procedures to ensure compliance with the Florida Department of Economic Opportunity grant provisions for awarding subcontracts and reporting grant activities for the period January 1, 2017, through December 31, 2018.
- Examined University records supporting administrative cost withdrawals from Complete Florida Plus Program funds carried forward from prior fiscal years to determine the legal authority for the withdrawals. Additionally, we examined University records supporting Program salary and benefit costs incurred during the 2017-18 fiscal year to determine whether the University maintained personnel activity reports or other records to support the purpose for and value of Program services and to demonstrate the propriety of the salary and benefit costs charged to the Program.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each University on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE



Office of the President
11000 University Parkway
Pensacola, FL 32514-5750

March 3, 2020

Ms. Sherrill F. Norman, CPA
Auditor General
State of Florida
Claude Denson Pepper Building, Suite G74
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Ms. Norman:

This is the University of West Florida's acknowledgement of and response to the preliminary and tentative findings and recommendations, as transmitted by your correspondence of February 7, 2020. The responses relate to your operational audit on the:

University of West Florida
For the Audit Period January 1, 2018 – December 31, 2018

Auditor General Finding 1a: The University subsequently withdrew amounts for additional administrative costs totaling \$2.395 million from the Complete Florida Plus Program without apparent legal authority.

Auditor General Recommendation 1a: The University should document the authority for and allowability of the administrative costs totaling \$2.395 million or restore that amount to the Program.

UWF Response to Finding 1a:

The University had clear authority from F.S. Section 1011.45 and BOG Regulation 9.007 to withdraw amounts for prior administrative costs for the Program totaling \$2.395 million from University carryforward funds.

The CFPP appropriation was included as part of the University's E&G base budget. Each June 30, the remaining fund balance rolled into the University's carryforward funding in accordance with F.S. Section 1011.45 which authorizes universities to carry forward unexpended amounts into future years. From 2003 through the period in question, Section 1011.45, Florida Statutes, "End of Year Balances," states:

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“Unexpended amounts in any fund in a university current year operating budget shall be carried forward and included as the balance forward for that fund in the approved operating budget for the following year.”

In accordance with this Statute, all unexpended funds from the University’s E&G base budget were carried forward. The Board of Governors created Regulation 9.007 “State University Operating Budgets” to provide direction for Universities in the allowable uses of carry forward funding. This regulation does not prohibit the use of carryforward funds to provide for administrative overhead fees.

Nothing in the language of the General Appropriations Act’s line items for these Program administrative expenses altered or revoked the carryforward authority set forth in F.S.1011.45.

Further, in routine interactions with the BOG financial staff since the University took on administration of CFPP, including the preparation of budget worksheets, expenditure analyses and scenarios for potential carryforward reductions, BOG financial staff consistently treated all University carryforward funds as one unit, subject to BOG Regulation 9.007. The University was never informed of any distinction between CFPP carryforward funds and other carryforward funds.

Additionally, it is clear that the Legislature intended for the University to be compensated for expenses incurred in administering CFPP because it made provisions for this each year within the Act. During CFPP’s transition to UWF, central administrative staff were dealing with the complications of assimilating the CFPP’s accounting, personnel and information technology systems into the University’s which caused a delay in collecting the fees.

It should also be noted that there are \$1.8 million in allowable administrative costs that the University did not collect from CFPP. This demonstrates UWF’s commitment to and investment in the Program. A sense of fairness seems to dictate that these sacrifices be taken into consideration when weighing the various outcomes of this audit.

The University asserts that F.S. 1011.45 and BOG Regulation 9.007 provide the University with clear authority for recovering the administrative costs due to the University from carryforward funds.

Review of Case Law Cited by the Auditor General

As the legal review presented below demonstrates, neither of the case laws cited by the Auditor General in their finding support the position that the General Appropriations Act only provides authority for spending in a particular year. Section 1011.45 of the Florida Statutes has long authorized state universities to carry forward unexpended amounts. Nothing in the language of the General Appropriations Act’s line items for the years in question altered or revoked the carryforward authority set forth in F.S. 1011.45.

Reliance on Chiles v. United Faculty of Fla., 615 So.2d 671 (Fla. 1993), as support for the position the Auditor General has taken is misplaced. We agree, in concept, that the General Appropriations Act sets the annual spending authority for each item in the appropriations bill. However, in Chiles, a separate statute authorizing a continuing appropriation was not at issue. Chiles involved the interplay of the Legislature’s appropriation powers and other constitutional provisions pertaining to impairment of contracts and the right to work. In Chiles, the Florida Supreme Court held that the legislature’s unilateral modification and abrogation of an agreement, which had been funded,

violated employees' rights to collectively bargain and constituted a constitutionally impermissible impairment of contract.

In Chiles, the faculty union is a third party seeking to enforce a contract against the state. In this matter, the question is about the internal budgeting processes of an instrumentality of the state. There is no contract or agreement at issue. There is also no competing constitutional power at issue. In this matter, the plain language of the General Appropriations Act must be interpreted and evaluated alongside a valid existing statute.

Similarly, reliance on the Division of Administrative Hearings Order, Mildred Henry, Petitioner v. Agency for Health Care Administration, Respondent, No. 93-5311RE, 1993 WL 944021, (October 11, 1993) to conclude the University was not authorized is misplaced. While DOAH orders have limited precedential value, Henry actually supports the University's position of the correct way to analyze the authority question.

The ultimate question being analyzed in Henry was whether the agency was authorized to take the actions it took just like in this case. Henry involved a third party, Ms. Henry, seeking to stop the State of Florida from requiring her to make certain copayments for Medicaid prescribed drug services. Ms. Henry successfully challenged the validity of rules implemented by the agency requiring the copayments which had been a response to a reduction in legislative appropriations affecting Medicaid benefits. The hearing officer reviewed language from the appropriations acts over multiple years as well as applicable substantive statutes and ultimately determined, applying the canon of statutory construction applicable in this situation, that the agency was not authorized to take the actions it did to reduce benefits based on the existing statutes. Henry is instructive in terms of how the hearing officer analyzed the authority question. The hearing officer looked to an existing statute on the books to interpret the authority question, just as is required in this matter. However, beyond that, because the Henry proceeding involved analyzing an entirely different set of statutes and a third party claim against the state, the fact that the hearing officer concluded the agency's action was not authorized is not relevant to this matter.

In conclusion, neither of the case laws cited by the Auditor General to support the position that the General Appropriations Act only provides authority for spending in a particular year is relevant to this situation.

Auditor General Finding 1b. In addition, during the 2017-18 fiscal year, the University did not maintain personnel activity reports or other records to support the purpose for and value of Program salary and benefit costs totaling \$11.9 million.

Auditor General Recommendation 1b. In addition, University procedures should be established to require employees to maintain personnel activity reports or other records to support the purpose for and value of Program services and to demonstrate the propriety of the salary and benefit costs charged to the Program.

UWF Response to Finding 1b:

Neither Florida Statutes nor the General Appropriation Act require that the Program maintain personnel activity reports.

Sections 1006.73 and 1006.735, Florida Statutes, and each year's General Appropriations Act are all silent on the requirement to maintain personnel activity records. The finding describes this risk as "Program costs may be incurred for services that are not for Program purposes" and it specifically refers persons who may not allocate 100% of their time to the Program, yet are paid by the Program. We will consider alternatives available to address this risk and request that the BOG adopt a regulation that governs time and effort reporting for activities such as CFPP.

Auditor General Finding 2: University rules and records supporting University property, facilities and personal services used by the University direct-support organizations could be improved.

Auditor General Recommendations 2:

- The University document University employees' actual time and effort provided to the DSOs to support the purpose for and value of such services and the distribution of applicable personal service costs among specific University and DSO activities for employees who work on more than one activity.
- The Trustees enter into agreements with DSOs to establish the basis for any DSO payments.
- The University document the Trustees' consideration and approval of DSO anticipated use of University resources, at least on an annual basis, before the use occurs. To enhance government transparency, Trustees-approved documentation should identify the positions of the employees who will provide personal services, the square footage of the areas in University buildings that will be used by the respective DSOs and the value of such use.
- The University obtain confirmations and other documentation from DSO management affirming that University resources were used only for purposes approved by the Trustees.

UWF Response to Finding 2:

The University's activities and processes are in compliance with Section 1004.28, Florida Statutes "Direct Support Organizations," Board of Governors Regulation 9.011 "University Direct Support Organizations and Health Services Support Organizations," and UWF Regulation 5.016 "Direct Support Organizations," which require accountability and transparency of a DSO's use of university property, facilities and personnel services; however, the University will collaborate with the Board of Trustees and DSO administration to identify potential enhancements to our processes and documentation retained, such as those recommended.

Auditor General Finding 3: Some unnecessary information technology user access privileges existed that increased the risk that unauthorized disclosure of sensitive personal information of students may occur.

Auditor General Recommendations 3: To ensure that sensitive student information is properly safeguarded, the University should:

- Document the public purpose served for indefinitely maintaining that information for prospective students who do not enroll in the University. Absent such, the University should discontinue the practice of indefinitely maintaining such information.

- Document periodic reviews of assigned IT user access privileges to determine whether such privileges remain necessary and timely remove any inappropriate or unnecessary access privileges detected.
- Upgrade the University IT system to include a mechanism to differentiate former, prospective, and current student information.

UWF Response to Finding 3:

We agree that additional steps can be taken to strengthen security over sensitive information.

- a. "General Records Schedule G5 For Public Universities and Colleges" provides guidance for the retention of records. The guidance provided for "Admission Records: Denied/Unregistered Students" clarifies that these records are to be retained for five years. We acknowledge the importance of purging confidential data in order to protect the privacy of individuals and will adapt our procedures to ensure that the applications of students who are not ultimately registered at the University will be purged from the Banner Student Module after five years.
- b. UWF has documented a procedure for the periodic review of IT access privileges. Security Administrators in the departments are assigned this responsibility. Although many Security Administrators routinely conduct these reviews, some have not retained documentation as evidence. They will be reminded of the need to document their reviews of IT access.
- c. The Banner Student Module has the capability to differentiate between former, prospective and current students; however, our system security cannot technically be scoped to these populations, nor is there an appropriate system upgrade available. To mitigate the risk of confidential data being inadvertently disclosed, we currently employ the use of technical controls ("Business Profiles") that limit the capability to view full SSN's in Banner to those employees who have a business need.

We find the Auditor General provides constructive assistance to us, as we strive to maintain an acceptable level of accountability.

Sincerely yours,

Martha D. Saunders, Ph.D.
President

- cc: Mr. David E. Cleveland, UWF BOT Chairman
 Mr. Robert Jones, UWF BOT Audit & Compliance Committee (Chair)
 Mr. Dick Baker, UWF BOT Audit & Compliance Committee
 Mr. Robert Sires, UWF BOT Audit & Compliance Committee
 Dr. George Ellenberg, Provost/Executive Vice President
 Ms. Betsy Bowers, Vice President, Finance and Administration
 Dr. Kimberly McCorkle, Vice Provost
 Ms. Pamela E. Langham, General Counsel
 Ms. Kim LeDuff, Vice President, Academic Engagement and Student Affairs
 Mr. Howard Reddy, Vice President for University Advancement
 Mr. Daniel Lucas, UWF Foundation Chief Financial Officer

Dr. Ed Ranelli, UWF Business Enterprise, Inc. Chief Executive Officer
Mr. Robert Overton, Executive Director, West Florida Historic Trust
Ms. Melanie Haveard, Chief Technology Officer
Mr. Geissler Golding, ITS Director
Mr. Jeffrey Djerlek, Associate Vice President/Controller
Ms. Angie Jones, Director, Procurement
Ms. Jamie Sprague, Associate Vice President, Human Resources
Ms. Shana Gore, Executive Director, Enrollment Management and Services
Ms. Cynthia Talbert, Interim Director, Internal Auditing & Management Consulting

