



Annual Report of the Financial Monitor

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Prepared for
The Cooper Union for the Advancement of Science and Art

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1 Introduction

The Amended Consent Decree (“the Consent Decree”) issued by the Supreme Court of the State of New York in December 2015 settling the legal action over the charging of tuition at The Cooper Union for the Advancement of Science and Art (“Cooper Union”) provided for the selection of a Financial Monitor to evaluate and report on the financial management of Cooper Union and its compliance with the Consent Decree. Among the duties assigned to the Financial Monitor in the Consent Decree are the preparation and issuance of an annual report (a) summarizing the financial condition of Cooper Union; (b) reporting on measures proposed by the Cooper Union Board of Trustees (“the Board”) and its committees relating to the Consent Decree, and opining on whether those actions were made in good faith and in the best interest of Cooper Union; (c) identifying any non-budgeted expenditures by Cooper Union exceeding \$100,000 and any non-budgeted contractual obligations of Cooper Union exceeding \$125,000 during the preceding twelve-month period; and (d) analyzing the Free Education Committee (“FEC”) Report, the feasibility of the Board’s strategic plan, and the practicality of Cooper Union’s returning to a full-tuition scholarship model that maintains Cooper Union’s strong reputation for academic quality within its Art, Architecture and Engineering programs at their historical levels of enrollment.

In July 2016, the Attorney General’s Office of the State of New York selected Kroll Associates, Inc. (“Kroll”) to serve as the Financial Monitor of Cooper Union. This is Kroll’s eighth Annual Report as Financial Monitor. In this report, we address each of the issues outlined above as required by the Consent Decree. Our analysis is informed by our having attended, since our appointment as Financial Monitor, every meeting of the Board (including executive sessions), and meetings of the FEC, the Audit Committee, the Finance and Business Affairs Committee, the Governance Committee, the Investment Committee, the Academic and Student Affairs Committee, and the Alumni Affairs and Development Committee. In addition, we have reviewed extensive financial information including Cooper Union’s audited financial statements, its Board approved budget, approved budget resolutions and amendments, and select accounting system records. Finally, we have reviewed Board resolutions relating to the Cooper Union bylaws.

As explained in more detail below, this past year Cooper Union has maintained its momentum in implementing the thoughtful and responsible plan it adopted in 2018 to improve Cooper Union’s financial condition and to return to a full-tuition scholarship model within the foreseeable future.

2 The Current Financial Condition of Cooper Union

The report of the FEC entitled, *Recommended Plan to Return to Full Tuition Scholarships* (“the FEC Report”), approved with revisions by the Board on March 14, 2018 (hereinafter, “the Board’s Plan” or “the Plan”), is Cooper Union’s roadmap to return to a full-tuition scholarship model. We discussed the FEC Report and the Board’s Plan at length in our prior reports. This year’s report is focused on Cooper Union’s continued progress against the Board’s Plan and the monitoring mechanisms used by Cooper Union to ensure compliance with the Plan.

Our assessment of Cooper Union’s current financial condition is based on our review of Cooper Union’s audited financial statements as of and for the year that ended June 30, 2023, as well as budget data provided by Cooper Union for fiscal years 2023 and 2024, and our assessment of Cooper Union’s progress against the Board’s Plan to return the institution to a full-tuition scholarship model. We also reviewed Cooper Union’s financial status as measured against the financial guardrails adopted in the Plan.

Cooper Union’s financial performance for the year ended June 30, 2023, demonstrated continued progress against the Plan. In 2022, Cooper Union’s financial performance was impacted by the continuing world-wide pandemic and the challenges presented by a substantial decline in the market value of Cooper Union’s investments and a dramatic increase in inflation.¹ In 2023, however, investment performance rebounded with a return of 7.3% and current use contributions exceeded budget by \$1.1 million.

The continued multi-year progress is due in large part to the structure of the Board’s Plan, which prioritized strengthening the long-term financial condition of Cooper Union so it could weather an unforeseen financial downturn, and the leadership and consistent commitment to the Plan exhibited by the Board and Cooper Union’s President Laura Sparks and her senior staff. Cooper Union experienced a modest increase in operating revenues of 1.0% over 2022 but was able to manage costs so that an operating margin of 8.4% was realized. This allowed continued allocation of funds for key priorities.

¹ We note that the financial impact of the pandemic was ameliorated in part by Cooper Union’s receipt of \$7.8 million in pandemic-related Federal program funds.

Cooper Union’s operating margin in 2023 continues to be extraordinary, albeit lower than in 2022 (10.3%), as we think a “normal” operating margin would be in the 2% to 4% range.

Cooper Union’s key priorities are intended to ensure a viable financial footing when Cooper Union returns to a full-tuition scholarship model by 2029. The priorities and the status of Cooper Union’s progress against those priorities are presented in the table below (amounts in thousands):

Key Initiative	Total Need	Funded at 6/30/2023	Forecast Funded at 2024 ²
Operating & Capital Reserve	\$152,000	\$129,576	\$140,485
Bridge Loan Bullet	\$39,000	\$9,477	\$11,621
Post-Retirement Health Insurance Reserve ³	\$48,000	\$2,500	\$3,000
Deferred Maintenance	<u>\$11,500</u>	<u>\$7,840</u>	<u>\$10,740</u>
Total	\$250,500	\$149,393	\$165,846

Collectively, these initiatives are 60% funded as of fiscal year 2023 (48% in 2022), and the forecast suggests over 66% funding by the end of fiscal year 2024. The funding status of these initiatives improved from 2022 to 2023, and Cooper Union’s financial performance continues to be ahead of the Plan and remains comfortably within the guardrails discussed later in this report. Both the recent operating margins and substantial market returns over most years have contributed to Cooper Union’s ability to secure funding for its key priorities.

2.1 Continued Improvement in Operating Results

Beginning in fiscal year 2019, Cooper Union has generated significant operating surpluses (excess of operating revenues over operating expenses), which reversed the persistent and substantial operating deficits (deficiency of operating revenues when compared to operating expenses) that had accumulated over many years. Between 2009 and 2018, based on its annual audited financial statements, Cooper Union had a cumulative operating deficit of \$181.1 million. In contrast, the cumulative operating surplus between 2019 and 2023 was \$68.0 million. Net tuition and fees for this period totaled about \$68.6 million. This indicates the cumulative surplus is insufficient to restore fiscal viability to Cooper Union without

² Based on approved fiscal 2024 budget.

³ This liability is volatile as market conditions cause fluctuations. The Plan sets aside \$500,000 each year. The projected liability on June 30, 2023, is \$39.9 million, an increase of \$5.9 million from 2022, related to changes in actuarial assumptions.

some continuing level of support from student revenues as of 2023. Continuing operating surpluses will be critical to Cooper Union's achieving a full-tuition scholarship environment, and the Board's Plan projects that surpluses will continue in the coming years. As of June 30, 2023, on a budget basis, the cumulative surplus is in excess of the Plan by \$11.2 million. This amount is significantly greater than the guardrails discussed in section 2.3, below.

We continue to believe a positive margin of at least 2% per year represents a sustainable operating performance. That margin, however, would be appropriate *after* restoring resources to a level appropriate for Cooper Union. Therefore, positive margins substantially higher than 2%, and at the levels suggested in the Board's Plan and achieved by Cooper Union in the past five years, are necessary if Cooper Union is to achieve normal standards of financial viability and health to support a return to a full-tuition scholarship model.

When comparing the operating results in the audited financial statements for 2023 of an \$8.2 million surplus to 2022 (\$9.9 million surplus), there were several significant events that contributed to the results in operating performance. The most notable of these events included:

- **Total operating revenues increased modestly by \$1.0 million or 1%.** The fiscal year 2022 results against budget were positively impacted by various Federal programs, including the conversion of Federal pandemic loans to grants and other Federal COVID assistance grants received of approximately \$7.8 million. The reduction in such Federal assistance in 2023 was offset by an increase in total investment returns utilized for operations of \$12.6 million.
- **Student revenues increased \$1.9 million** as a result of the growth of the student population over the prior year. This increase is partially offset by the increase in the discount rate for students. Cooper Union's commitment to the Plan to return to free tuition is reflected in the tuition scholarship rate which was 80.0% in 2023 against the Plan's target of 79.0%.
- **Maintaining expense levels in accordance with the Plan.** In 2023, expenses increased by \$2.8 million or 3.2%. Control over operating expenses is one of the secondary guardrails. Cumulative expenses under the Plan show a positive variance of \$8.9 million against the guardrail. This includes an overage in spending against the guardrail of \$1.5 million in 2023. When the Plan was approved, expense control was perceived to be a key element to the financial recovery. While still a critical element,

there are several pressures that will need to be assessed for their impact on the Plan going forward, including:

- The impact of inflation causing price levels to be higher than the Plan anticipated.
- The need for program renewal and expansion may make the targets in the Plan harder to achieve. As an example, a significant program has been proposed and will be implemented when sufficient funding sources are secured to ensure its success. This incremental spending may make staying within the operating expense guardrail difficult to achieve, even though the incremental costs would be funded by new revenues.

The Board's Plan and the deliberations of the various committees of the Board have acknowledged the need for incremental investment in curriculum renewal and increases in capital spending. With the passage of time and changing circumstances, however, the amounts allocated to these initiatives may need to be reassessed. The investment in capital in 2023 was \$7.2 million as compared to \$6.5 million in 2022, but both levels are below the annual depreciation expense, which averaged \$8.6 million for these two years. Depreciation expense is a reasonable proxy for the level of reinvestment in capital that an institution should make over a period of years. Cooper Union has begun tracking its reinvestment needs using two key industry standard ratios.

The budget for fiscal year 2024 anticipates a cash surplus of \$7.6 million. The forecast as of September 2023, however, indicates Cooper Union expects to exceed this goal in 2024 by \$2.0 million. The budgeted cash surplus for 2023 was \$4.3 million.⁴ The budget surplus will be applied to approved key priorities identified in the Plan, including: (a) operating and capital reserves; (b) debt principal repayment reserve; (c) post-employment health insurance obligation reserve; and (d) investment in deferred maintenance. The schedule showing the status of funding of these initiatives was presented earlier in this report. This is consistent with the Board's Plan to use the cash generated from budget surpluses to restore prior uses of funds and invest in initiatives identified in the Plan. We discuss the continued need to restore resources under the Balance Sheet Structural Issues section below.

⁴ Cooper Union has provided a reconciliation between the budget surplus of \$4.3 million and the surplus shown in the audited financial statements of \$8.2 million. Most of the difference represents converting from a cash-based budget to accrual accounting used in the financial statements as well as the classification of certain items out of unrestricted operating results in the budget but included in the results shown in the audited financial statements.

2.2 Balance Sheet Structural Issues

In our prior annual reports, we have discussed the need for Cooper Union to strengthen its overall financial condition. The need for this remediation is justified by the data contained in Cooper Union's Balance Sheet and the structural issues that data highlights. These issues continue to require attention even as Cooper Union has begun generating operating surpluses (both on a cash and accrual basis). The generation of operating surpluses allows the replenishment of resources that were consumed when Cooper Union financed past operating losses through consumption of available net assets, incremental debt, front loading of revenue from certain leased properties, and the creation of unfunded obligations for post-retirement benefits. Once these various items are funded, the operating surpluses anticipated to be generated will be available to support a return to a full-tuition scholarship model. The items referenced above include the following and have been discussed in our prior reports, but are significant enough to warrant repeating in this report:

- A bridge loan for \$58.8 million Cooper Union secured in June 2014, which has been used to cover some of the historical operating losses. Cooper Union will pay interest only on this loan until 2025. The loan will not be fully repaid at maturity requiring a refinancing of the remaining balance of \$39 million or a significant cash payment. The Board's Plan created a "debt retirement reserve" to ensure availability of resources at the contractual maturity of this loan. Since Cooper Union has met the cumulative financial targets contained in the Board's Plan, these resources have been funded thus far, with \$9.5 million reserved.
- Deferred revenue of \$104.2 million remaining on the balance sheet as of June 30, 2023, is comprised principally of agreements to lease certain properties for ninety-nine years to a third party. The deferred revenue represents the unamortized balances of these leases that Cooper Union entered into in 2004 and 2008. These leases previously provided cash to cover persistent operating losses. In the audited financial statements, the accretion of the deferred revenue will add to revenues each year but will provide no cash or other resources to the institution. This deferred revenue does not impact the cash-based financial model. The Board's Plan appropriately considers the impact of the deferred revenue in the computations of financial health.

- There is \$39.9 million (\$34.0 million in 2022) in postretirement benefit costs accrued that will consume cash in future periods, likely at increasing amounts as covered personnel retire.⁵ This obligation has consumed approximately \$1.5 million of cash in 2023 (\$1.4 million in 2022). The Board's Plan considers this obligation, including a factor for growth of the obligation over time. If discount rates increase or remain constant in the current environment, this may represent a cushion in the Plan for the amounts that will be required to liquidate this obligation. Further, health care costs trending at a different rate than planned would impact this obligation. The Plan projects providing liquid assets to support this liability in the projection period. Of the cash surpluses incurred thus far, \$2.5 million has been reserved for this obligation.
- From 2016 to 2023, the combined purchases of plant assets totaled \$31.8 million while depreciation and amortization totaled \$67.7 million, suggesting an under-investment in plant assets, which will need to be addressed in future periods. There is a plan for programmatic investments that began in 2019 and is expected to grow to \$3 million per year by 2025. We believe a portion of these programmatic investments will need to be used for capital in the related program areas. To better understand the relative position of capital, Cooper Union has added two ratios to the financial metrics currently in use:
 - A **Physical Asset Reinvestment Ratio**, which compares investment in plant to depreciation expense and shows a reinvestment rate in 2023 of 82% as compared to 76% in 2022. The threshold value over a longer period of time is 100%.
 - An **Age of Facilities Ratio**⁶, which compares accumulated depreciation to depreciation expense, and which shows an age of 20 years in 2023, 19 years in 2022, and 18 years in 2021, with a threshold value of 12 to 14 years.

These ratios help inform the Board on the status of the physical plant assets and may indicate the need for adjustments to the Board's Plan in future years. Bringing these

⁵ This liability changed from \$40 million in 2016 principally due to changes in the discount rate on the obligation increasing over that period. The liability balance can be expected to fluctuate based on changes in actuarial assumptions throughout the program period. Key assumptions include estimates of future health care costs and mortality estimates.

⁶ This ratio can overstate the age of facilities if fully depreciated assets are included in the accumulated depreciation amount.

ratios into line with threshold values would require substantial investment in future years, but the amounts and the specific investments would also need to be based on an assessment at a detailed level throughout the institution.

- Net plant assets were \$129.4 million in 2023 (\$131.0 million in 2022), while plant-related debt exceeds the asset balance. Total debt of \$200.2 million includes amounts related to loans to support past deficits. The depreciation of assets at a rate faster than the liquidation of debt, without a renewals and replacements reserve, further supports the conclusion that Cooper Union is under-investing in capital. Cooper Union began making principal payments on these loans during 2019. In 2023 principal payments were \$7.0 million, while in 2022 they were \$6.6 million. The contractual payment structure, however, will not fully service the principal on the largest loan by its maturity date, requiring the debt reserve fund contemplated by the Plan. Further, a significant prepayment penalty exists on this loan, making prepayment uneconomical and requiring this debt service reserve. As of June 30, 2023, the prepayment penalty would have been approximately \$20.4 million (approximately \$13.6 million as of February 2024).

The FEC Report addressed these issues, and the Board appropriately considered them in the design of the Board's Plan.

2.3 Financial Status Compared to the Guardrails

To ensure appropriate monitoring of financial progress against the Plan, the FEC developed interim measures that require activities in certain key areas to reach specific targets in the interim years leading up to the implementation of a full-tuition scholarship model. In each case, should the target be missed by 5% or more, the FEC would examine the causes and determine a recommended course of action to the Board. The guardrails and their status as of 2023 follow (amounts in thousands)⁷:

⁷ As presented at the September 21, 2023, quarterly Finance and Business Affairs Committee Meeting.

<u>Guardrail</u>	<u>Cumulative Value</u>	<u>Guardrail</u>	<u>Favorable (Unfavorable)</u>
<i>Primary Guardrail:</i>			
Net Surplus	\$73,233	\$58,959	\$14,274
<i>Secondary Guardrails:</i>			
Current Use Contributions	\$45,057	\$35,925	\$9,132
Operating Expenses	\$328,355	\$337,282	\$8,927
Cash and Investments	\$323,335	\$230,788	\$92,547

These guardrails are reviewed each quarter and reported to the Board to ensure appropriate transparency. The primary guardrail is considered the critical measure as it is the source of the funds needed to restore the balance sheet and provide the resources to ultimately return to a full-tuition scholarship model. The secondary guardrails act in support of the primary guardrail. In the case of the cash and investments guardrail, the primary driver of the results will be market conditions as the largest component of this measurement is dependent on external markets. The operating expense guardrail, while in a positive position currently, may prove difficult to maintain over the coming years as Cooper Union considers its needs for key items, such as curriculum investments and renewal, expanded student services, and further investment in physical plant beyond that specified in the Plan. We note that the favorable variance in the operating expenses guardrail in 2022 was \$10,440.

Philanthropic performance to date has demonstrated significant growth in philanthropy and the cumulative excess against the Plan guardrail in 2023 of \$9.1 million demonstrates the progress in this area. We would also note that this is measuring only current use funds, and Cooper Union has been successful in raising longer term funds, such as endowment, which totaled \$17.3 million from 2021 to 2023 combined. The Plan continues to be aggressive in the amount of philanthropy required, but the progress in recent years would suggest this risk has diminished.

2.4 Implications of Current Financial Condition on Future Activities

The Board’s Plan, when approved, was acknowledged as aggressive, but achievable. The activities of the current year appear focused on a structured, disciplined approach pursued in the context of long-term financial improvements. The focus of the Board and the FEC in 2023 continued to emphasize creating a

sustainable financial environment. After achieving a sustainable level of financial health, the focus can shift to creating an environment for a fiscally thriving institution, followed by a focus on moving to a tuition-free environment.

The Board's Plan appropriately projected a way forward to eliminate the structural operating deficits and to produce and grow financial resources to an appropriate level. With the positive operating performance of the past five years, the structural deficit would appear eliminated and the focus on restoring financial resources to allow a return to full tuition scholarships is reasonable. The most significant initiatives that move Cooper Union from large structural deficits to sustainable operating surpluses are the contractual changes in the lease agreement on the Chrysler Building (which increased rents starting from \$20.1 million in 2018 to \$32.5 million in 2019 through 2027), enhanced philanthropy, and the continuation of the current tuition plan, which moves to full-tuition scholarships over time by providing annual increments in scholarship levels.

The largest contractual challenge Cooper Union faces relates to the continuation of the revenue streams associated with the Chrysler Building, both in terms of the rental payments as well as the tax equivalency payments ("TEP"). While all payments are current as of June 30, 2023, the change in ownership of the Chrysler Building lease four years ago and the recent disruption in the New York City real estate market raises concerns that these primary revenue streams may undergo additional modifications from the Plan.

3 Measures Proposed by the Board of Trustees and its Committees

The Cooper Union Board has adopted a number of resolutions to the Cooper Union bylaws to comply with the various provisions of the Consent Decree. We believe that, in each instance, the Board acted appropriately, in good faith, and in the best interests of Cooper Union.

The Consent Decree states that the Cooper Union Board was required to amend the Cooper Union bylaws or approve resolutions making the changes recommended in the Consent Decree “at the earliest of the next quarterly Board of Trustee meeting following the entry of this Consent Decree or at the next quarterly Board of Trustees meeting following the election(s) of Alumni Trustee, Faculty Representatives or a Staff Representative, or sixty (60) days.” The Board complied with this requirement by adopting resolutions making the necessary changes to the Cooper Union bylaws on November 11, 2015. The Cooper Union bylaws were then further updated by the Board on December 9, 2020, and October 6, 2022, with no additions or modifications inconsistent with the Consent Decree. A comprehensive version of the amended “Bylaws as Adopted October 6, 2022” is available on the Cooper Union website.

The Consent Decree states, “that no Trustee who was a member of the Board of Trustees on October 6, 2006, shall be reappointed to the Board, and all who served on the Board as of October 6, 2006, shall have their terms expire as of December 7, 2016, and that no person shall be named Trustee Emeritus while this Consent Decree is in effect.” The Board complied with this requirement by passing a resolution stating that no Trustee Emeriti will be named during the duration of the Consent Decree. The only two Trustees who had served on the Board as of October 6, 2006, were not reappointed to, and do not currently serve on the Board. Furthermore, no Trustee Emeriti currently serves on the Cooper Union Board, or has been named since the Consent Decree was entered into.

The Consent Decree states that “at all times one (1) of the Alumni Trustees shall serve as either the Chair or Vice Chair of the Board of Trustees and have the responsibilities of Chair and/or Vice Chair of the Board of Trustees.” The Board complied with this requirement by adopting Section 3.01 of the amended bylaws. Moreover, Aftab Hussain, an alumnus of Cooper Union, was appointed at the Board of Trustee’s meeting in June 2021 and now serves on the Board as Vice Chair. Hussain’s term as Alumni Trustee concluded at the June 2023 Board of Trustee’s meeting and he was re-elected as Trustee for a four-year term. Lou

Manzione, also an alumnus of Cooper Union, currently serves as the Alumni Trustee Vice Chair. During the June 2023 Board of Trustees meeting Marshall Rafal, Ron Vogel, and Stephen Welby were elected as Alumni Trustees⁸ to the Board and Jadynd Hammond was elected as Student Trustee to the Board. During that June 2023 Board of Trustees meeting, the Chair also recognized the service of three departing Trustees: Shirley Yan, Robert Tan, and Ben Vinson, who was leaving to assume the role of President of Howard University.

The Consent Decree states that the Board should always include “two (2) Student Trustees, who shall be current students at Cooper Union, shall each serve two-year terms that are staggered, shall have voting power afforded to other Trustees on the Board, . . . shall be considered as members of the Board in determining whether a quorum is present, and shall be entitled to attend executive sessions of the Board” except for those meetings in which matters of academic governance, employment and personnel matters, or other conflict of interests issues are discussed. The Board complied with this requirement by adopting Section 1.03.2 of the amended bylaws. As part of the December 2020 amendments, the Board also removed Consent Decree language regarding the inaugural terms of the Student Trustees that was no longer applicable. Two students with staggered terms currently sit on the Board as Student Trustees.

The Consent Decree states that “at all times, the Board of Trustees shall have alumni representation pursuant to an agreement entered into by the Cooper Union Alumni Association (“CUAA”) and Cooper Union and approved by the Attorney General for the State of New York.” The Board complied with this requirement by adopting Section 1.03.1 of the amended bylaws. There are currently six Alumni Trustees serving on the Board.

The Consent Decree states that the Board must meet the requirements for confirming the nominations of Alumni Trustees outlined in the CUAA protocol attached to the Consent Decree as Exhibit A. The protocol states that the total number of Alumni Trustees sitting on the Board should equal one-third the total number of individuals sitting on the Board at the December meeting of the Board (rounded to the nearest whole number). This requirement is reflected in Section 1.03.1 of the amended bylaws. The protocol permits the one-third representation to be unbalanced for one Board meeting and entitles the CUAA to hold an election should the representation be unbalanced for two consecutive Board meetings.

⁸ Alumni Trustees as defined in the Consent Decree are those selected by the Cooper Union Alumni Association. Other Trustees, who happen to be alumni of Cooper Union but who were not elected by the Cooper Union Alumni Association, are thus not “Alumni Trustees” within the meaning of the Consent Decree.

As of January 2024, per the Cooper Union website, there were six Alumni Trustees of the twenty-one individuals sitting as Trustees and Chairs on the Board, which does not meet the one-third requirement. The Governance Committee of the Board is recommending an Alumni Trustee candidate for election to the Board at its February 22, 2024, meeting. The CUAA also plans to nominate and hold elections for additional Alumni Trustee candidates during the Spring semester, so that the Board should be at the required ratio of Alumni Trustees by the second calendar-year quarter of 2024, which would comply with the CUAA Protocol.

The Consent Decree states that four full-time faculty members, one from each of Cooper Union's four divisions, elected by the full-time faculty; one part-time faculty member elected by the part-time faculty; and one staff member elected by the staff shall serve as Faculty Representatives. The Board complied with this requirement by adopting Section 1.14 of the amended bylaws. There are currently only three Faculty Representatives serving, however, only one of which is a full-time faculty member from one of Cooper Union's four divisions, the Faculty of Humanities and Social Sciences. The representatives for the Schools of Architecture and Engineering both ended their terms in December 2023, but the faculties of both schools have selected new representatives who will be onboarded in time for the Board's upcoming quarterly meeting. The faculty of the School of Art has been without a representative since 2022, and still has not put forth a faculty member to serve in the role.

The Consent Decree states that the six Faculty Representatives shall serve one four-year term, shall be observers and advisers without voting power, shall not be counted towards a quorum, and shall "not be entitled to attend executive sessions." The Faculty Representatives shall "be entitled to observe all other sessions of the Board" except in which a conflict of interest may arise, shall be entitled "to receive any information or documents not designated as privileged, private, or confidential during an executive session, and may provide advice or information when solicited by the Board." The Board complied with this requirement by adopting Section 1.14 of the amended bylaws.

The Consent Decree states that "the Board shall make good faith efforts to recruit candidates who are experts, by training or profession, in the areas of higher-education, accounting, finance, law, non-profit governance, communications, management, or management-labor relations, or who have substantial fundraising-development experience or potential." The Board complied with this requirement. Each of the recently elected Alumni Trustees boast impressive professional histories and qualifications associated

with multiple areas specified in the Consent Decree, including governmental and industry experience in technology and product development, finance, legal, non-profit governance, and environmental sustainability. Their experience ranged from being the founder and CEO of a thermophysical engineering company, to a life sciences patent attorney at one of the industry's premier law firms, to the deputy director for national security in the White House Office of Science and Technology Policy.

The Consent Decree states that the respondents agreed to create a Free Education Committee “at the earliest of the next quarterly board meeting or sixty days following the entry of this Consent Decree.” The Board complied with this requirement when it created the FEC by resolution on November 11, 2015. The FEC Report was approved by the Board of Trustees on March 6, 2018, with amendments and is available on the committee’s website.⁹ The FEC continues to function as required by monitoring Cooper Union’s progress against the Board’s Plan.

The Consent Decree states that respondents were required to form a Governance Committee, “which shall assume the duties of the present Committee on Trustees.” In addition to those duties formerly assumed by the Committee on Trustees, the Governance Committee is also responsible for “ensuring that the Board (a) observes best practices of non-profit governance; (b) has a robust conflict of interest policy; (c) is provided with annual training on non-profit governance and the duties and responsibilities of trustees; (d) develops a governance structure for the schools within Cooper Union; and (e) understands the fiduciary duties and responsibilities of trustees.” Current members of the Governance Committee include the Alumni Vice Chair of the Board, three other Trustees, and one Student Trustee. Section 1.14 of the amended bylaws, however, stipulates that Cooper Union “shall establish a Governance Committee consisting of at least five (5) Trustees . . . at least two of which shall be Alumni Trustees.” It is anticipated that one of the new Alumni Trustees joining the Board either at the February or June meetings of the Board will be asked to serve on the Governance Committee.

The Board has taken steps to comply with the Consent Decree’s requirements concerning the Governance Committee. By resolution, the Board renamed the Committee on Trustees the Governance Committee. The resolution also expanded the Governance Committee’s responsibilities and codified them in Section 2.02.4 of the amended bylaws to mirror the requirements of the Consent Decree, as reflected above. The Board requires Trustees to execute conflict of interest forms on an annual basis, which are reviewed by

⁹ <https://cooper.edu/about/trustees/fec>

the chair of the Audit Committee. The Board also requires Trustees to attend an instructional session with outside legal counsel (who has extensive experience with non-profit institutions) to better understand their fiduciary and legal obligations as Trustees. Under the Consent Decree, this training must be annual. In 2017, the Board took the additional step of adopting a formal Code of Conduct to guide the behavior of Trustees and committee members, which is available to the public through the Cooper Union Board of Trustee page on the Cooper Union website. During 2019, the Code of Conduct for Trustees was amended to make it explicit that the obligations thereunder (specifically, the duty of confidentiality) extended beyond a Trustee's term. All Trustees are required to execute a statement acknowledging that they have read, understood, and agreed to abide by the Code of Conduct as a condition of serving on the Board. In addition, the Board adopted a Code of Conduct for Staff and Faculty Representatives and each of the Representatives were required to execute a statement acknowledging that they have read, understood, and agreed to abide by the Code of Conduct as a condition of serving in that position. Further, at its June 2023 Retreat, the Board completed required annual governance training, as well as additional training featuring a President Emeritus of another university who is a subject matter expert on higher education governance. The Consent Decree states that the Board shall make meeting minutes promptly available on Cooper Union's website. The Board complied with this requirement. Board meeting minutes are available on Cooper Union's website.¹⁰ The latest minutes published on the Cooper Union website are from the October 5, 2023, meeting, which are the most recently approved Board meeting minutes.¹¹

The Consent Decree states that the Board shall make "annual statements that outline fiscal year dollar-value and percentage-change performance of the non-real-estate investments in Cooper Union's endowment . . . along with disclosures of all fees paid directly by Cooper Union during the quarter and fiscal year to any investment advisers or fund managers, and the identity of the chief adviser or fund manager responsible for handling each investment." The Board generally reports on the performance of the non-real estate endowment at its quarterly meetings. During the October 5, 2023, Board Meeting information was provided regarding the value of Cooper Union's investment portfolio as of June 30, 2023, in comparison to the previous quarter and prior fiscal year. Additionally, the portfolio's returns, excluding private investment returns, through the first quarter of the current 2024 fiscal year were reported in relation to policy benchmarks. Kroll has been advised that the information for 2023 will be compiled, and thereafter posted to the Cooper Union website, once the final numbers as contained in the recently

¹⁰ See <https://cooper.edu/about/trustees/minutes-board-trustees-meetings>

¹¹ Board meeting minutes are approved at the next Quarterly Board meeting.

issued audited financial statements are reviewed by the Investment Committee at its next scheduled meeting.

The Consent Decree states that the Board shall “cause the information now provided on its website to be revised or deleted in response to notice from the Attorney General, prior to entry of this Consent Decree, identifying items that are alleged to be inaccurate and need to be clarified or revised.” The respondents complied with this requirement in 2015 by updating the Cooper Union website.

4 Identification of Non-Budgeted Expenditures and Obligations

Kroll's identification of non-budgeted expenditures by Cooper Union exceeding \$100,000 and non-budgeted contractual obligations exceeding \$125,000 was based upon our review of Cooper Union's financial information for the fiscal year ended June 30, 2023, correspondence with Finance and Administration senior staff, and information presented to the Board of Trustees and Finance and Business Affairs Committee. The financial information included the Board approved budget, accounting system reports, transaction details, and applicable supporting documentation. Cooper Union's annual budgeted operating expenses include unrestricted, temporarily restricted, endowment funds and other grants, as well as non-cash adjustments.¹²

The unrestricted funds represent Cooper Union's regular operating budget accounts that are associated with the organization's normal, everyday operating activities. The temporarily restricted funds are more generally used by specific schools and departments for certain operating expenditures, as well as select donor-designated activities outside of the scope of standard operations. The endowment funds have donor-imposed usage restrictions that remain attached in perpetuity. Other grant funding and expenditures are tracked separately by the respective projects, which can occur over multiple fiscal periods. The budgeted endowment expenditures represent endowment payout funds that the designated schools will utilize to fund normal, everyday operating activities. The non-cash items in the budget include depreciation, amortization, and a postretirement liability adjustment. Although budgeted and monitored, the postretirement adjustment is based entirely upon an annual valuation performed by an external actuary.

The total budget for unrestricted operating expenditures for the fiscal year ended June 30, 2023, was \$72.8 million, an increase from the unrestricted \$69.6 million budgeted total for fiscal year 2022. This represents a 4.61% increase in unrestricted operating expenditures, in comparison to unrestricted budget revenues that were forecasted to increase approximately 1.81% in the same fiscal year. Decreased real estate, graduate tuition, and other rental income revenues, as well as increased undergraduate

¹² Note that the terminology used in the audited financial statements is now "Net Assets without Donor Restriction" and "Net Assets with Donor Restriction." In this report we use the terminology used in the Board approved budget.

scholarships, contributed to the overall marginal revenue increase. The 2023 operating expenses budgeted for the temporarily restricted and endowment funds were \$2.9 million and \$1.9 million, respectively. Therefore, the total operating expense budget for unrestricted, temporarily restricted, and endowment funds for the fiscal year ended June 30, 2023, was \$77.7 million. The total for the “other” non-cash budgeted items, similar to fiscal year 2022, was \$9.6 million, which included \$8.5 million for total depreciation expense that is based on the Plan’s annual estimate and is not budgeted on an individual asset by asset basis.

The most substantial components of Cooper Union’s budgeted operating expenses, this year and historically, were debt servicing costs, faculty salaries and benefits, and facilities costs. To identify the non-budgeted actual expenditure deficits exceeding \$100,000, Cooper Union and Kroll analyzed budgeted departmental operating expenditure categories and corresponding cumulative budgeted expense variances. As detailed below, within five reporting segments and functionalities, there were seven instances of expense category deficits in excess of \$100,000, totaling approximately \$2.2 million. There were, however, offsetting savings in these categories, as well as budgeting surpluses in other categories, that resulted in total actual operating expenses of \$76.3 million, which when compared to the total budgeted operating expenses of \$77.7 million, resulted in a favorable actual expense surplus of approximately \$1.4 million.

Summary of Actual versus Budgeted Operating Expense Deficits in Excess of (\$100,000)

For the Fiscal Year Ended ("FYE") June 30, 2023

Ref. #	Reporting Segment	Category	Expense			
			Actual	Budgeted	Deficit	% Total
1	General & Administrative	Legal & Audit	\$ 2,008,762	\$ 1,332,000	\$ (676,762)	30.63%
2	Facilities	Utilities	1,657,910	1,264,000	(393,910)	17.83%
3	School of Engineering	Salaries & Wages	7,251,583	6,922,782	(328,801)	14.88%
4	School of Engineering	Benefits	1,839,402	1,577,697	(261,705)	11.85%
5	Safety	Security	1,599,456	1,350,000	(249,456)	11.29%
6	General & Administrative	Investment Advisors	461,729	290,000	(171,729)	7.77%
7	General & Administrative	Leases	1,106,911	980,000	(126,911)	5.74%
Total			\$ 15,925,753	\$ 13,716,479	\$ (2,209,274)	100.00%

Cooper Union's explanations for these identified expense budget deficits are summarized below:

(1) General and Administrative: Legal and Audit – Budgeted Deficit (\$676,762)

There were unanticipated legal and advisory fees in excess of \$1.4 million related to Cooper Union's real estate assets that resulted in a \$676,762 budget deficit. The real estate activity and general legal costs increased to more than \$2.0 million in comparison to the \$1.3 million that was originally budgeted. These real estate assets are critical to Cooper Union's long-term success and the legal and advisory fees were approved by the Board and, pursuant to the Consent Decree, recommended by the Financial Monitor as an "ex-budget" expenditure. If Cooper Union had not incurred these additional Board approved expenses, the total Legal and Audit actual expenditure variance would have been below the \$100,000 threshold.

(2) Facilities: Utilities – Budgeted Deficit (\$393,910)

There were increased utility expenses for most reporting segments resulting from significant increases in utility rates.

(3) School of Engineering: Salaries and Wages – Budgeted Deficit (\$328,801)

In prior fiscal years, there were budgeted provisions for faculty early retirement plans that are now being expensed in the current fiscal year. Therefore, there is a timing related, unfavorable expense deficit in the fiscal year 2023, which was a favorable budget variance in a prior period.

(4) School of Engineering: Benefits – Budgeted Deficit (\$261,705)

Benefit costs were unusually high for many reporting segments due to an increased number of employees exceeding the stop loss insurance levels.

(5) Safety: Security – Budgeted Deficit (\$249,456)

There were increased security costs in almost all reporting segments as Cooper Union heightened the security presence resulting from an increased crime level in New York City and around facility construction activities.

(6) General and Administrative: Investment Advisors – Budgeted Deficit (\$171,729)

The investment advisor and management fees have increased related to the Long-Term Investment Pool and a significantly larger investment portfolio than anticipated by the Plan.

(7) General and Administrative: Leases – Budgeted Deficit (\$126,911)

In fiscal year 2023, Cooper Union adopted ASC 842, the new lease accounting standard issued by the Financial Accounting Standards Board. The standard requires entities to recognize on the balance sheet certain leased assets with terms greater than 12 months and related liabilities for the rights and obligations created by the leases. The standard was established to reduce off-

balance sheet activities and enhance transparency into liabilities resulting from leasing arrangements. The amortization of the leases results in a non-cash difference versus the amount of rent budgeted on a cash basis, resulting in the negative, non-cash budget deficit for the year.

As in prior fiscal years and as noted above, these and other lesser individual budgeting deficits were either offset by budgeting surpluses within the respective departments, or by Cooper Union's overall favorable budgeted expense variance.

Regarding the identification of non-restricted individual contractual obligations of Cooper Union exceeding \$125,000, there were three such obligations entered into during the fiscal year ended June 30, 2023. Kroll reviewed available supporting documentation, verified the terms and nature of the services to be performed, and substantiated payment provisions concerning the vendors' obligations. The agreements and their respective fiscal year 2023 payments are summarized below:

Summary of Contractual Obligations in Excess of \$125,000

For the Fiscal Year Ended ("FYE") June 30, 2023

Ref. #	Name	Dated	Project	Contract Amount	Paid Amount	% Paid	Description
1	Henson Architecture	10/19/22	21 Stuyvesant Street Restoration Project	\$ 272,250	\$ 228,121	83.79%	Architectural services
2	Nucor Construction Corporation	02/17/23	Green Room Renovation Project	683,020	138,553	20.29%	Comprehensive restoration including demolition, masonry, carpentry, plumbing and electrical
3	Preserv Building Restoration Management, Inc.	02/24/23	21 Stuyvesant Street Restoration Project	1,191,895	267,319	22.43%	Restoration of façade, including roof, patio, and elevations
Total				\$ 2,147,165	\$ 633,993	29.53%	

5 The Free Education Committee Report

The FEC Report included a detailed description of the plan to return Cooper Union to a full-tuition scholarship model, which was subsequently adopted by the Board with revisions. We have reviewed the Board's Plan and its attendant risks and have commented on them in our prior reports. Summarized below is our review of Cooper Union's implementation of the Board's Plan over the past year.

5.1 The Board's Plan

The Board's Plan, if met, would allow Cooper Union to reinstitute full-tuition scholarships by fiscal year 2029. Cooper Union is focused on the implementation of the Plan, and the FEC is focused on monitoring Cooper Union's progress against the Plan. The FEC formally assesses progress against the Plan on a semi-annual basis.

The FEC uses a formal review document to determine if the Plan is on track or if any modifications are warranted. Examples of the review the FEC performs include determining whether: (a) current financial results are meeting the long-term financial goals of the Plan; (b) revenue initiatives are being implemented, such as reducing graduate scholarships, and increasing ancillary revenues and current use fundraising; (c) expense initiatives are being met; and (d) all active initiatives are on track, including space reduction, increasing summer dorm rentals, consideration of restructuring or refinancing debt, developing a capital campaign, and consideration of the bullpen items. The review entails assessing progress on the initiatives, determining if any initiatives are not meeting expectations, considering root causes of shortfalls against the Plan, and discussing potential remediation.

5.2 Risks to Achieving the Board's Plan

Summarized below are the risks to achieving the Board's Plan. These risks include risks discussed in our prior reports, which are repeated here due to their significance, as well as some newly identified risks. These risks can be categorized as external and beyond Cooper Union's direct control, and internal and capable of being actively managed.

5.2.1 External Risks

The FEC has identified several external risks in its deliberations over the past several years, including: (1) the economy and potential economic downturns, (2) reduction in the Tax Equivalency Payments (TEP) associated with changing economic conditions, (3) the impact of inflation on expense control, (4) uncertainty in investment markets, and (5) Federal and State tax and student aid policy. Each of these forces beyond the control of Cooper Union could have a substantial impact on Cooper Union's financial condition and might adversely affect the institution's timetable for a return to full-tuition scholarships. We believe, however, that the guardrails in the Board's Plan, if faithfully invoked and enforced, should provide adequate coverage for these issues as they occur. Support for this conclusion can be found in Cooper Union's management of the safety, academic programming, and financial challenges presented over the past several years by the COVID-19 Pandemic, the volatility of the investment markets, and increase in inflation, which demonstrated the resilience of the goals and guardrails the Board has put in place.

Added to the risks presented by the pandemic and economic downturn, Cooper Union is subject to an endowment tax on invested balances if certain conditions are met. This tax did not exist when the Plan was approved. In 2021 this tax was \$1.1 million and was recorded as a reduction in investment return. In 2022 and 2023, Cooper Union was not subject to the tax, but potentially could be in future years.

5.2.2 Internally Managed Risks

The Board's Plan also acknowledges various internal risks, including that a future Board or administration may decide that the Board's Plan is no longer a critical priority. We believe the FEC appropriately observed that this risk is mitigated in the early years by the presence of the Financial Monitor, and even when the term of the Monitor has expired, by the Consent Decree itself, which has imposed an ongoing requirement that, "At any time tuition is being charged . . . Cooper Union is required to make ongoing, good faith efforts to determine whether it is practical to return to a free-tuition model . . ." Furthermore, the Consent Decree requires that "[i]f it is practical to return to such a free-tuition model, Cooper Union must expeditiously develop and implement a plan to do so [and] maintain that model as long as it is practical."

The Consent Decree requires that the return to a free-tuition scholarship model must be pursued while maintaining Cooper Union’s “strong reputation for academic quality.” The FEC has undertaken efforts to assess the institution’s continuing academic quality, the Board’s Plan has made financial commitments to curriculum renewal, and Cooper Union has been investing in personnel, programs, and facilities. We believe, however, that the need for these investments will likely continue to increase in coming years.

Other risks that must be managed include certain contractual or legal rights that, if altered, would place substantial pressure on the financial health of Cooper Union. Many of these issues are addressed in the Board’s Plan, the most notable being the continuation of the TEP in the amounts forecasted, and the continuation of the contractual payments pursuant to the Chrysler Building lease. Revenue from the Chrysler Building lease and TEP totaled \$50.4 Million in 2023 (54.9% of budgeted revenues including endowment payout), \$51.8 million in fiscal year 2022 (53.6% of budgeted revenues including endowment payout), and is forecasted for \$51.1 million in fiscal year 2024 (53.8% of forecasted revenues including endowment payout). The overall decline in the amount of revenue from the Chrysler Building from 2021 through 2023 is related to higher vacancy rates which affected assessment values and correspondingly contributed to a reduction in the TEP. The modest increase forecasted for 2024 is based on an improvement in the TEP of about \$.6 million. The continuation of these payments is a key component of the Board’s Plan.

* * *

Cooper Union’s strong financial performance this past year despite the continued disruptions caused by the global pandemic and economic downturn has demonstrated the wisdom of the Plan adopted by the Cooper Union Board in 2018. The Plan was strategically designed to implement long-term financial improvements that would allow the school to weather an unforeseen financial downturn while continuing on the path to a return to a full-tuition scholarship model within the foreseeable future. Issues associated with the pandemic, volatility in the market value of investments, and inflationary pressures may well continue throughout the coming year, affecting all aspects of Cooper Union, but the steady leadership of Cooper Union’s Board and President Sparks and her staff provides confidence that the school will continue to manage the academic, health, and financial challenges it faces.

About Kroll

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