

Ensuring Quality Trusteeship in Higher Education

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Historically and philosophically, lay governance is a part of our democratic tradition and brings the perspective of informed citizens to the heart of the university. By design, responsibilities rest *not* with academicians or experts of any kind, *not* with government employees or even elected officials, but with boards of trustees.

At their best, lay boards effectively set missions and policies, oversee and approve budgets and programs, select and review presidents, and ensure the overall financial and academic well being of their institutions. This is so because trustees have the legal and fiduciary obligation to do so. Trustees of public institutions typically have plenary authority granted to them by statute; trustees of private institutions have broad authority provided by their articles of incorporation and bylaws.

Active stewardship can make a real difference in what students know and do when they graduate, in access, cost-effectiveness, and in developing closer linkages between the priorities of the greater society and the universities that serve them.

However, experience shows that the full promise and actual practice of lay boards are often far apart. Some boards rubber stamp administrative recommendations, while others – working closely with administrators –exercise the independence needed to make tough choices. Some boards view themselves solely as cheerleaders, while others understand they should support as well as direct the university wisely. Some boards live with outdated bylaws and dysfunctional operations, while others regularly assess and improve their own board practices.

Like their counterparts in the corporate world, it is important for college trustees to find ways of better connecting the dots between the promise and the practice of oversight.

That is why this Roundtable is so important.

In convening this Roundtable, Sen. Grassley has outlined his interest in examining legislative reforms that will encourage and empower boards to have more oversight of their operations, with a specific focus on two federally-chartered organizations, the Red Cross and American University.

It is ACTA's belief that many boards understand their fiduciary obligations and are fulfilling their oversight responsibilities to the best of their abilities. Others, however, do not perform their duties and responsibilities to an acceptable standard. Senator Grassley and the Senate Finance Committee deserve our thanks for focusing seriously on best practices and lessons to be learned in higher education governance.

However, not all challenges deserve legislative solutions, and this is one of them. What is valuable, however, is exactly what is happening today -- holding hearings and roundtables to raise key issues and to make clear to college and university boards that they are expected to provide informed stewardship if they wish to retain the special benefits they receive under the law.

How can college and university boards – which hold plenary authority over their institutions – ensure active informed oversight?

The following outlines various measures, most of them voluntary, that can help ensure quality higher education governance.

Appointing Authorities Must Demand Informed Trustees

It is essential that appointing authorities understand the importance of informed and qualified trustees. Currently, there is much cynicism surrounding college and university trustees. In the public sector, they are said to be wealthy or uninformed hacks, unable to address the sensitive issues facing higher education. In the private sector, trustees are often hand-picked by the president, selected more for their ability to raise funds than their willingness to ask questions or bring special expertise. These perceptions and practices must be addressed by ensuring that trustees are engaged individuals who have the time and dedication necessary to tackle the many challenges facing higher education. Organizations such as ACTA can supply names of individuals for public and private governing boards who are prepared to shoulder these responsibilities.

In private boards, the governance committee should take seriously its role to recruit the most capable and highly committed board members. Constituent groups should be invited to offer suggestions. In recruiting, independence and judgment must be emphasized. Independence means trustees who are successful in their own careers, not dependent on any kind of favors from the university administration, with sufficiently strong characters to exercise their own best judgment. Judgment means experience, and, ideally, a diversity of experience -- legal, financial, governmental, business, civic, etc. – since many kinds of issues come before the board. Some but not all trustees may be alumni. Some but not all should have financial literacy. Some but not all may be residents of the area. Some should have been on other university boards; others should be chosen to bring a fresh perspective. When institutions have denominational ties, some may be active in church affairs, either clerical or lay.

The media must be encouraged to pay attention to the workings of public and private boards.

While boards should not conduct their business in the press, it is nevertheless critical that the media examine closely the workings of private and public boards. In the public sector, media focus will ensure that governors take their appointments seriously. In the private sector – as in the case of the American University – public attention can help expose questionable practices and stimulate corrective action. Higher education is a \$250 billion enterprise and, for that reason alone, warrants close scrutiny.

Trustees must be encouraged to hire presidents who will serve as agents of change. An era of accountability requires a new style of presidential leadership. Higher education is currently faced with substantial challenges – academic and financial. Board chairmen should be primed to insist that boards cast a wide net and find innovative leaders who are not afraid to question the status quo.

New approaches to searches should be explored so that trustees do not surrender their responsibilities to headhunters and large committees.

Higher education expert Clara Lovett describes headhunters as “know[ing] what sells... They will either steer the search in the direction of safe candidates ... or advance the candidates most likely to shine in the corporate boardrooms.... In either case, the search process often screens out, from the start, individuals who can think critically about their institutions, challenge the conventional wisdom of their constituents, and create new paradigms in education.” The end result is a process that often recycles the same candidates and significantly diminishes the input and role of trustees.

There are already two systems – CUNY and Cal State – that no longer utilize traditional “headhunters” to locate presidential candidates. Instead, they rely on internal staff for technical and administrative support with outside consulting provided at key points in the search process. This model should be promoted for boards that are interested in retaining control over the search rather than delegating significant authority to a search firm.

To retain control, trustees should also resist creating large Noah’s-ark like search committees. The presidential selection committee should consist solely or primarily of trustees and should be chaired by a trustee.

Effective boards understand the tradition of shared governance – the participation of faculty, and sometimes students, in developing policies that affect academic life – but don’t confuse the value of that tradition with their own ultimate authority and accountability.

While it is imperative that a variety of external constituencies (i.e., faculty, students, and community members) be included in the search and screening process, they need not sit on the search committee. Ongoing input and advice can and should be sought through communication channels that provide for systematic interaction with the community. One of the main causes of board/president conflict and dysfunction may, in fact, begin with boards that delegate too much of the presidential selection process to others who believe they must represent a certain viewpoint.

This kind of meaningful communication with constituencies is also important since it enables the search committee to remain small. Ideally, the size should be no fewer than five and no more than nine members. The larger the group, the more vetoes there are. The more vetoes there are, the more likely the final candidate will represent the lowest common denominator, that is mediocrity. There are simply too many constituencies to include without making the committee too large. And it is questionable to what extent one professor or one alumnus “represents” all faculty or alumni.

Once the selection process is completed, boards must also make it clear that they will annually evaluate and document the president’s performance, including use of institutional assets. Too often, presidential assessment is pro forma, limited, or sporadic, and fails to tie the president’s performance to the board’s strategic plans and priorities.

It is critical that boards buck the pressure to raise salaries higher and higher.

In the face of mounting tuition fees and static faculty salaries, trustees must rein in administrative compensation packages that rival those of for-profit corporations. The assumption that higher education administrators are unique talents worth any price is not true since there are many qualified applicants for each position.

By having an inclusive selection process, boards can grow the supply of eligible candidates. The current uncontrolled growth in expected compensation assumes a very limited pool of

experienced and eligible candidates from the academic world. But experience has shown that leaders in other areas – business, government, the military, or the professions – have often made outstanding university presidents. What they lack in academic background they often make up for their ability to “think outside the box.”

Boards must also be wary of contracts that tie consultants’ fees to the size of the president’s salary, an arrangement that surely undermines efforts to rein in compensation. There is also growing evidence that high level executives are being told to settle only for the most lucrative pay packages -- ones that contemplate golden parachutes even before certain performance thresholds are met. Boards must resist signing contracts that give presidents immense perks before actual evidence of performance and should insist on hiring their own compensation experts, not using those retained by the president.

There is a national need for enhanced trustee training. There are training programs for new college presidents and a similar and sustained program should be developed for trustees. In the wake of Sarbanes-Oxley and the growing demand to apply strict standards to nonprofit trustees, this kind of training is timely and important.

Colleges and universities are unique institutions, and academic culture is very different from the experience of most trustees. If they are to be successful in performing their fiduciary responsibilities, and encouraging beneficial changes, trustees need training in how to be effective leaders in the unique context of an academic institution.

Continuing education is certainly not a new concept, and it applies as much to appointed trustees as it does to lawyers, doctors and other professionals. It is imperative that lay trustees remain up to date on central issues in higher education and receive expert advice and information, not only from insiders, but from outside experts as well.

Mandated training on the state level can make this possible in the public sector. Ideally, the state will appropriate funds or authorize statutory reimbursement for trustees who receive this training. On the private side, boards should set aside funding each year for continuing education. Alternatively, substantial private or public resources must be identified to fund a vigorous sector-wide educational effort.

Liability insurers should be approached about giving premium discounts for boards that insist on continuing education.

Boards must adopt more effective university governance structures. Higher education structures must be examined regularly to ensure that they are responsive to needs in the 21st century. In North Carolina, for example, ACTA just called upon the legislature to confer full appointing authority on the governor for all institutional boards of trustees and to reduce the size of the UNC system Board of Governors from an unwieldy 32 to 15. In other states across the country, education leaders and policymakers are exploring ways to better align K-12 and higher education. State legislatures should hold hearings on such proposals and adopt an effective and accountable higher education system that dovetails efficiently with K-12.

Private boards should engage in a thorough governance review, ensuring that their size, structure and composition are designed to maximize effective governance and transparency. While one size does not fit all, boards which exceed 15 in number are more likely to be unwieldy and “nongoverning,” whose large numbers and diffuse “constituencies” vest power by default in the president, rather than the board.

And boards should insist on transparency. In response to a recent request, the University of California administration took six weeks to produce data on the chancellor's compensation. The media are now dedicating substantial resources to ascertain other high-level administrators' perks and bonuses -- kept secret not only from the public but also the trustees.

In their governing documents, trustees should insist that the *full board* set the pay level of the president, and also consider reviewing and approving the individual pay levels of high-level staff. At the same time, public and private trustees should annually post the compensation of highly paid employees and senior administrators. Since public funds and tuition dollars are the source of most compensation, the public, students and tuition payers have a right to know how their money is being spent. It is interesting to note that the New York Board of Regents once removed almost an entire college governing board for permitting enormous presidential compensation (of which the board was ignorant) on the grounds that it was their legal obligation to conduct adequate oversight. Courtney Leatherman, "New York Regents Vote to Remove 18 of 19 Adelphi U. Trustees," *The Chronicle of Higher Education*, Feb. 21, 1997.

Boards must insist on clear conflict of interest policies. While overlapping trustee activities can sometimes be valuable and informative, they can give rise to inappropriate transactions if the potential conflict is not disclosed. Accordingly, it is imperative the boards adopt clear conflict policies that ensure transparency in university operations.

Presidential leadership does not depend on being a member of the board.

Approximately 60 percent of all presidents of private colleges today have voting rights on the board. However, this status confuses the governance relationship. Presidents, after all, work for the board and frequently bring proposals to the board; sometimes presidents are also members of the faculty where various conflicts of interest can arise. Permitting the president to serve as a nonvoting ex officio member, or to attend board meetings upon the call of the board, can eliminate this problem. In this way, presidents will not be forced to vote on every issue, including controversial ones in which they have no stake.

Boards of trustees should insist on their own staff and budget. Currently, most boards of trustees have no staff and no budget. They are, for the most part, entirely dependent on the president's staff for support and for continuing education. It is not surprising that, given this fiscal arrangement, most boards are not independent.

To reverse this, it is imperative that boards receive funding that permits continuing education and allows for at least one staff person to be available solely to the board. This will give boards of trustees greater autonomy, make them less reliant on the institution for information and funding, and help provide greater independence. In the public sector, this is most likely addressed by state legislatures. Private boards can immediately set aside resources that allow independent information and support.

Boards of trustees should annually release public reports. *Institutional Report Cards.* Private and public governing boards should voluntarily disclose institutional objectives that identify key priorities and map out how they plan to measure progress toward accomplishing them. Already, a number of states are requiring institutions to file public report cards outlining their institutional progress.

Board Report Cards. College and university governing boards should also voluntarily publish annual board reports outlining such information as compensation of the president and all senior

administrative officials, whether conflict of interest policies are in place, board member attendance records, board compensation and reimbursement, if any, and the names and addresses of all trustees. Self-policing measures by the higher education community to increase transparency will obviate the need for legislative intervention.

The issues of increasing board member liability and establishing grantor standing should be engaged. It is perhaps time for scholars or others to reconsider the historic restriction on the standing of a university's co-owners. Judge Jose Cabranes, formerly a Yale trustee, has suggested that a limited but effective form of standing should be given to allow a cause of action against individual directors and the full board for the enforcement of the boards' fiduciary obligations. A minimalist approach might set a minimum monetary threshold for donor enforcement suits to screen out frivolous lawsuits.

Congress should closely examine the federal accreditation process and explore why regional accreditors have extended their oversight into university governance. The Southern Association of Colleges and Schools, for example, currently applies Comprehensive Standards of Institutional Mission, Governance, and Effectiveness during institutional accreditation reviews that vest the institution's CEO with "ultimate responsibility for and ... appropriate administrative and fiscal control over, the institution's intercollegiate athletics program ... and fundraising activities." Trustees are advised that presidential authority trumps governance and oversight in these areas.

In a recent case involving Auburn University, the regional accreditor which serves as the gatekeeper for all student aid funds, sanctioned the board for inappropriate meddling in administrators' affairs. While boards of trustees are not perfect and criticism was likely called for, this intervention raises a far bigger question that merits further examination: Why should federally-approved accreditors – who, almost without exception are university administrators and faculty members whose own interests may conflict with engaged and active trustees – have the ability to second guess boards with the ultimate legal and fiduciary responsibility for higher education governance?

While the system of accreditation evolved to assure educational excellence and competence, there is absolutely no indication that Congress intended it to reach into areas of governance -- controlled by statute, charters and bylaws. Congress should not allow board governance authority to be overridden in this way and should examine this practice thoroughly. According to former Senator Hank Brown in testimony before the Senate Health, Education, Labor & Pensions Committee, the accreditation process can be manipulated to reflect ideas injected by faculty and administrators. Federal mandates thus risk undermining, rather than promoting, active stewardship.

Congress should allow American University to heal itself. Higher education's effectiveness and vibrancy depend on its independence. In the case of American University (AU), Congress should terminate its federal charter since its activities are not uniquely response to a national need and allow it to reconstitute itself. By eliminating this special charter, Congress can underscore its dissatisfaction with AU's past governance practices while placing responsibilities for structural reorganization where they belong --in the hands of the governing board. Meanwhile, AU trustees should move forward with revised bylaws and governing documents that address governance problems of the past.

Board sizes at private and public colleges and universities currently range from as few as seven (Harvard) to as many as 32 (Penn State) and 60 (Notre Dame). In revising the bylaws, AU must

resist the notion that a larger board is a better board, and support a structure, size and composition that are designed to keep authority in the hands of trustees.

The current oversized American University board (up to 50 under the charter) diffuses responsibility and makes meaningful discussion difficult. It also mandates that certain limited constituencies hold a number of seats. AU should consider relying instead on the Trusteeship Committee to select its own mix of trustees to address institutional needs and priorities. Effective boards ideally are no smaller than 7 or greater than 15 in size, a size that permits trustees to tackle key issues and do so in an intensive way. A size of this range also allows for committee structures.

Some argue that larger boards are necessary to raise funds. Our experience shows that the goals of fund-raising and governance conflict. Accordingly, it is important that boards keep their eye on the ball – governance not fundraising – and remain small. There are other ways to structure development programs within the university.

Since there is no way to include every constituency in the board, the board must make clear that it will seek regular input from interested constituencies such as the faculty and student government by developing systematic venues for thoughtful input and communication. They should be invited to attend board meetings and provide counsel formally and informally to trustees.

Bylaws should provide for trustee term limits, and for removal of trustees for lack of attendance, misconduct, and conflicts of interest. They should also be revised to remove the president as a voting member of the board.

The board's committee structure, meanwhile, should be revised to mirror the institution's strategic priorities with the ability of the board to use ad hoc committees and special task forces as needs arise.

At a minimum, AU should:

Retain the Executive Committee, along with the Finance and Audit, under the express condition that their actions be reported and approved by the full board. Indeed, the Executive Committee should not constitute a quorum of the board. The audit committee (whose members should be financially literate) can be responsible for ensuring that policies are adhered to and conflicts of interest avoided, reviewing compensation (including the 990s) and publicly disclosing top administrative salaries each year.

Insist on an Academic Affairs Committee that will engage academic issues broadly, such as curriculum, academic freedom, graduation rates, and assessments. This committee can also be responsible for examining teaching and research performance and reporting publicly how performance is measured and faculty pay related to performance.

Retain a Trusteeship Committee that is charged with developing regular trustee training and orientation programs, conducting a regular board self-assessment, and overseeing an inclusive nomination process for potential and future trustees.

Specifically outline the full board's authority to hire and fire a president, undertake annual evaluations of the president, and review and approve the salaries of senior administrators.

Insist that the Board Secretary be an employee of the board, and not the president.

Require that the board meet annually at least four times with a fifth meeting reserved for a board retreat where trustees engage in strategic planning and a tangible system of accountability.

CONCLUSION

The Senate Finance Committee deserves thanks for convening a meeting to assess best practices and to identify the components of quality stewardship in higher education.

However, not all problems invite legislative mandates and this is one of them. The autonomy of our colleges and universities -- and their traditional self-governance -- have much to do with the excellence and diversity of higher education in America. It is, therefore, incumbent on higher education governing boards to ensure responsible governance and to do so in ways that are immediately transparent to parents, taxpayers and policymakers.

About ACTA

The American Council of Trustees and Alumni is a non-profit organization based in Washington, DC and dedicated to academic freedom, quality and accountability. ACTA has a network of over 12,000 alumni and trustees in all 50 states. ACTA has published: *Intellectual Diversity: Time for Action* (2005); *Politics in the Classroom* (2004); *The Hollow Core: Failure of the General Education Curriculum: A Fifty College Study* (2004); *Becoming an Educated person: Toward a Core Curriculum for College Students* (2003); *Degraded Currency: The Problem of Grade Inflation* (2003); *Teachers Who Can: How Informed Trustees Can Ensure Teacher Quality* (2003); *We the People: A Resource Guide* (2003); *Can College Accreditation Live Up to its Promise?* (2002); *Educating Teachers: The Best Minds Speak Out* (2002); *Restoring America's Legacy* (2002); *Losing America's Memory: Historical Illiteracy in the 21st Century* (2000); *The Intelligent Donor's Guide to College Giving* (1998); and *The Shakespeare File: What English Majors Are Really Studying* (1996).

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