



Annual Report of the Financial Monitor

February 15, 2022

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

Status
Final Report

Private and Confidential

55 East 52nd Street, 17th Floor
New York, NY 10055

Contents

1	Introduction	2
2	The Current Financial Condition of Cooper Union.....	4
3	Measures Proposed by the Board of Trustees and its Committees	13
4	Identification of Non-Budgeted Expenditures and Obligations.....	19
5	The Free Education Committee Report.....	22

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 sixth 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.

This year, as a result of the ongoing global COVID-19 Pandemic, we have seen continued disruption of the expected and normal operations of Cooper Union. This disruption has consumed enormous attention and resources as Cooper Union has strived to maintain safety, academic programming, and fiscally responsible adherence to the Board’s strategic plan. As explained in more detail below, against these continuing headwinds, 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 18, 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 focuses 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, 2021, as well as budget data provided by Cooper Union for fiscal year 2022, 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, 2021 demonstrated impressive progress during an extraordinarily challenging year due to the continuing world-wide pandemic. We believe this progress was 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 prompt action and leadership exhibited by the Board and Cooper Union’s President Laura Sparks and her senior staff. Cooper Union experienced a rebound in operating revenues of about 12% over 2020 and was able to manage costs so that an operating margin of over 21% was realized. This allowed continued allocation of funds for key priorities.

The 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 status of progress against those priorities are presented in the table below (amounts in thousands):

Key Initiative	Total Need	Funded at 6/30/2021	Forecasted 2022
Operating & Capital Reserve	\$152,000	\$121,228	\$132,478
Bridge Loan Bullet	\$39,000	\$5,448	\$7,421
Post-Retirement Health Insurance Reserve ¹	\$48,000	\$1,500	\$2,000
Deferred Maintenance	<u>\$11,500</u>	<u>(\$364)</u>	<u>\$4,376</u>
Total	\$250,500	\$127,812	\$146,275

Collectively, these initiatives are 51% funded as of fiscal year 2021, and the forecast suggests over 58% funding by fiscal year 2022. This is ahead of the Plan and consistent with the results related to the guardrails discussed later in this report. Both the operating margins and substantial market returns have contributed to Cooper Union’s ability to secure these amounts.

Issues associated with the pandemic have continued in fiscal year 2022, affecting all aspects of Cooper Union, but the steady leadership of Cooper Union’s Board and President Sparks provides confidence that the school will continue to navigate through these unprecedented economic times. Included below is a discussion of the 2021 financial condition of Cooper Union.

A. 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 2021 was \$49.9 million. Net tuition and fees for this period totaled about \$38.7 million. This indicates a cumulative surplus, excluding net tuition and fees for the period, albeit clearly insufficient to restore fiscal viability for Cooper Union without some continuing level of support from student revenues. 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.

¹ This liability is volatile as market conditions cause fluctuations. The Plan sets aside \$500,000 each year.

The 2021 and 2020 audited financial statements disclosed cumulative Federal revenues associated with various programs to combat the pandemic of \$3.4 million while direct expenses associated with the pandemic were \$1.6 million. It was estimated at a Finance and Business Affairs Committee meeting, however, that the pandemic would negatively impact the 2021 budget by \$5.1 million, which includes significant lost revenues. The fiscal year 2022 results against budget suggest that various Federal programs, including the conversion of Federal pandemic loans to grants, will positively impact the 2022 results by about \$6.6 million with some other potential recoveries based on the specific requirements Cooper Union will need to meet related to the spending of the funds.

We continue to believe a positive margin of approximately 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 three 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 for 2021 (\$22.0 million surplus) to 2020 (\$11.7 million surplus), there were several substantial events that contributed to the improvement in operating performance. The most notable of these events included:

- **Total revenues increased \$11.5 million.** This was due principally to an increase in investment returns on non-endowed investments of \$12.7 million, which are the earnings resulting from approximately \$70 million of cash generated from the activities under the Plan. There was also a decline in student revenues of \$2.5 million. The decline in net tuition revenues of \$1.6 million is consistent with the Plan, which required an average increase in tuition discounts by 2% per year. The remaining decline in student revenue was related to the impact of the pandemic.
- **Maintaining expense levels in accordance with the Plan.** In 2021, expenses increased by \$1.1 million or 1.4%, including expenses related to the pandemic. Control over operating expenses is one of the secondary guardrails. 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:

- The impact of inflation causing price levels to be higher than the Plan anticipated.
- The need to restore compensation adjustments made during the pandemic as well as increases that may exceed the levels contemplated in the Plan.
- The continued increase in employee benefit costs, particularly health care (\$2.6 million increase in 2021).
- 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 2021 was \$4.0 million as compared to \$6.0 million in 2020, 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 2022 anticipates a cash surplus of \$6.5 million. The forecast as of September 2021 indicates this cash surplus is projected to grow to \$13.3 million for the year. The principal change is additional revenue from Federal programs of \$7.7 million. The budget surplus for 2021 was \$15.5 million.²

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

² Cooper Union has provided a reconciliation between the budget surplus of \$15.5 million and the surplus shown in the audited financial statements of \$22.0 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.

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 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.

B. Continued Improvement in 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 will 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 will allow 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 \$5.4 million reserved.
- Deferred revenue of \$100.7 million remaining on the balance sheet as of June 30, 2021 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 \$44.5 million (\$28.8 million in 2020) in postretirement benefit costs accrued that will consume cash in future periods, likely at increasing amounts as covered personnel retire.³ This obligation has consumed approximately \$1.2 million of cash in 2021. 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, \$1.5 million has been reserved for this obligation.
- From 2016 to 2021, the combined purchases of plant assets totaled \$18.1 million while depreciation and amortization totaled \$50.4 million, suggesting an under-investment in plant assets, which will need to be addressed in future periods. The Board's Plan includes funding of capital assets above current levels by amounts increasing to \$1 million above current levels per year by fiscal year 2022. While this amount will not fully fund the amounts necessary to maintain the current plant, there is also 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) a Physical Asset Reinvestment Ratio, which compares investment in plant to depreciation expense and which shows a reinvestment rate in 2021 of 47%, as compared to 68% in 2020 and 46% in 2019, while the threshold over a longer period of time is 100%; and (b) an Age of Facilities Ratio, which compares accumulated

³ 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.

depreciation to depreciation expense and which shows an age of 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 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 \$133.0 million in 2021 (\$137.5 in 2020, \$142.5 million in 2019, \$147.6 million in 2018 and \$154.2 million in 2017) while plant-related debt exceeds the asset balance. Total debt of \$219.5 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 2021, the principal payments were \$6.2 million (\$5.8 million in 2020). 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, 2021, the penalty would have been about \$55.4 million (the penalty at the beginning of February 2022 would have amounted to \$47.5 million). The volatility of this amount is related to changes in interest rates.

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

C. 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 2021 follow (amounts in thousands)⁴:

<u>Guardrail</u>	<u>Cumulative Value</u>	<u>Guardrail</u>	<u>Favorable (Unfavorable)</u>
<i>Primary Guardrail:</i>			
Net Surplus	\$51,366	\$35,142	\$16,224
<i>Secondary Guardrails:</i>			
Current Use Contributions	\$23,940	\$19,470	\$4,470
Operating Expenses	\$210,023	\$220,101	\$10,078
Cash and Investments	\$310,941	\$195,306	\$115,635

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 strong position currently, may prove difficult to maintain over the next eight years (the planned year to reach full-tuition scholarships) 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.

D. 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 2021 continued an emphasis on 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 impact of the pandemic in fiscal year 2022 will continue to challenge

⁴ As presented at the December 8, 2021, quarterly Board Meeting.

Cooper Union as program delivery, auxiliary revenues from students, and testing and cleaning costs will likely continue throughout the year, albeit at an expected level somewhat less than in 2021.

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 three 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 incremental initiative, not currently under contractual or legal obligation, that moves Cooper Union to large enough surpluses to allow the return to a full-tuition scholarship model is heavily dependent on incremental philanthropy, particularly current-use philanthropy.

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, the change in ownership of the Chrysler Building lease two 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, with no additions or modifications inconsistent with the Consent Decree.

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, Eric Hirschhorn, an alumnus of Cooper Union, serves on the Board as Vice Chair, having been reappointed as a Vice Chair in December 2020 at the annual Board of Trustee’s meeting. Mr. Stephen Gerard, also an alumnus of Cooper Union, served on the Board as a

Vice Chair, and also as an Alumni Trustee until his term expired at the June 2021 Board of Trustees meeting.⁵ During this meeting, Aftab Hussain, also an Alumni Trustee, was appointed to serve on the Board as Vice Chair. Additionally, Brickson Diamond was elected as Trustee to the Board, Lou Manzione was elected as Alumni Trustee to the Board, Shirley Yan was elected as Student Trustee to the Board, and Robert Tan was elected as Alumni Trustee to the Board in his capacity as the Cooper Union Alumni Association President.

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 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 seven 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 Cooper Union Alumni Association 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

⁵ Alumni Trustees as defined in the Consent Decree are those elected by the CUAA. There are other Trustees, who happen to be alumni of Cooper Union, who were not elected by the CUAA and are thus not “Alumni Trustees” within the meaning of the Consent Decree.

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 Board complied with this requirement. Further, the Board has interpreted the Protocol to mean that there will be two Alumni Trustee seating periods in December and June. A determination of the number of Alumni Trustees required to satisfy the one-third ratio will be determined prior to the Annual December meeting (based on the number of trustees expected to be appointed at that meeting) with the understanding that the Alumni Trustee(s) will be seated only if the total number of trustees expected to be appointed are, in fact, appointed. Further, the calculation of the one-third ratio will include any newly elected Alumni Trustee(s). At the end of the October 6, 2021 Board meeting there were twenty-one Trustees and seven of the Trustees sitting on the Board were Alumni Trustees, thereby satisfying the one-third requirement.⁶

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 six representatives serving, with at least one from each of the designated groups.

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. Additionally, the Board removed Consent Decree language regarding inaugural terms that was no longer applicable as part of the December 2020 amendments, which have not been further amended.

⁶ The protocol also has a provision for electing additional Alumni Trustees if the Board increases the number of Trustees during the year in a way that would leave the representation of Alumni Trustees below one-third of the Board for two consecutive Board meetings.

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. Five of the recently-elected trustees – Judy Freyer, Brickson Diamond, Lou Manzione, Maurice Cox, and Tim Ingrassia – each qualify for a position on the Board based on their experience in a number of the areas specified in the Consent Decree including higher education, finance, non-profit governance, management, and substantial fundraising-development experience.

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. Current members of the committee include two Alumni trustees, one Trustee, and one Student Trustee. The FEC Report was approved by the Board of Trustees on March 6, 2018 with amendments and is available on the committee’s website.⁷ 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.” Currently sitting on the Governance Committee are two Alumni Trustees and one Student Trustee, as stipulated in the Consent Decree.

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

⁷ <https://cooper.edu/about/trustees/fec>

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 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 2021 Retreat, the Board brought in a facilitator to lead a session on cultivating an inclusive environment on a rapidly evolving Board.

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.⁸ The latest minutes published on the Cooper Union website are from the October 6, 2021 meeting, which are the most recently approved Board meeting minutes.⁹

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

⁸ See <https://cooper.edu/about/trustees/minutes-board-trustees-meetings>

⁹ Board meeting minutes are approved at the next Quarterly Board meeting.

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. We have been advised that the information for 2021 will be compiled, and thereafter posted to the Cooper Union website, once the final numbers as contained in the recently 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, 2021, 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, and endowment funds, as well as "other" non-cash items.¹⁰

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 beyond standard operations. 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, 2021 was \$67.9 million, a decrease from the \$68.4 million budgeted total for fiscal year 2020. The fiscal year 2021 unrestricted operating expenditure budget was only marginally higher than the \$67.8 million budgeted total for fiscal year 2019 and less than the budgeted fiscal year totals of 2018 and 2017, which were \$68.6 million and \$69.3 million, respectively. The 2021 operating expenses budgeted for the temporarily restricted and endowment funds were \$2.1 million and \$1.3 million, respectively. Therefore, the total operating expense budget for unrestricted, temporarily restricted, and endowment funds for the fiscal year ended June 30, 2021, was \$71.2 million. The total for the "other" non-cash

¹⁰ 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.

items budgeted total 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.

Similar to recent fiscal years, the most substantial components of the budgeted operating expenses 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 two departments, there were two instances of expense category deficits in excess of \$100,000, totaling (\$455,598). There were, however, offsetting savings in these categories, as well as budgeting surpluses in other categories that resulted in total actual operating expenses of \$67.4 million, which when compared to the total budgeted operating expenses of \$71.2 million, resulted in a favorable actual expense surplus of \$3.8 million.

The Cooper Union for the Advancement of Science and Art
 Actual versus Budgeted Operating Expense Deficit Summary
 Fiscal Year Ended June 30, 2021

Ref#	Department	Expense Category	Actual	Budget	(Deficit)
1	Facilities	Materials & Maintenance	\$ 961,359	\$ 641,500	\$ (319,859)
2	Safety	Security	1,285,739	1,150,000	(135,739)
	Total		\$ 2,247,098	\$ 1,791,500	\$ (455,598)

Cooper Union’s explanations for these identified expense budget deficits are summarized below.

1. Facilities: Materials & Maintenance – Budget Deficit (\$319,859)

There were significant unanticipated costs related to the COVID-19 Pandemic, including additional equipment, masks, thermometers, testing services and kits. These costs, however, were funded by the Higher Education Relief Fund (“HEERF”), which negated the net expense category deficit. HEERF is federal funding that has been provided to support institutions of higher education to serve students and ensure that learning continues throughout the pandemic.

2. Safety: Security – Budget Deficit (\$135,739)

Additional security costs were incurred in connection with increased coverage necessitated by the demonstrations and civil unrest following the murder of George Floyd. Cooper Union sustained property damage, similar to many other facilities throughout New York City and the rest of the country. Augmented security was provided to better protect the interests of the institution, faculty and students.

As in prior fiscal years, these and other lesser individual budgeting deficits were either offset by surpluses within their respective departments or by Cooper Union’s overall favorable budgeted expense variance. Cooper Union, despite facing unprecedented challenges in its first complete fiscal year during the COVID-19 Pandemic, continued to adjust and improve operating results, financial structural issues, and budgeting processes in alignment with the design and implementation of the Plan. Once again, revenue shortfalls were anticipated, countered with appropriate expense reductions, and accurately accounted for during the fiscal year and its budgeting processes.

Regarding the identification of non-restricted individual contractual obligations of Cooper Union exceeding \$125,000, there were two such obligations entered into during the fiscal year ended June 30, 2021. 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 2021 payments are summarized below:

The Cooper Union for the Advancement of Science and Art
Contractual Obligations greater than \$125,000 Summary
Fiscal Year Ended June 30, 2021

Ref#	Name	Contract Date	Description	Contract Amount	Fiscal Year Paid Amount
1	Truline Construction Services, Inc.	5/19/2021	Retail Space Renovation	\$ 1,300,000	\$ 346,946
2	Urban Umbrella	3/12/2021	Design and Installation of Urban Umbrella	315,000	300,000
Total				\$ 1,615,000	\$ 646,946

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.

A. 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. In 2021, the FEC formally assessed 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. An example of a potential modification would be to move an initiative from the "bullpen" – which contains initiatives considered part of the overall Plan but held in reserve – to active consideration. Examples of the review the FEC performs include 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.

B. 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.

External Risks

The FEC Report identified several external risks, including: (1) the economy and potential economic downturns, (2) the impact of inflation on expense control, (3) uncertainty in investment markets, and (4) 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, if and when they occur. Support for this conclusion can be found in Cooper Union's management of the safety, academic programming, and financial challenges presented by the COVID-19 Pandemic, which demonstrated the resilience of the goals and guardrails the Board has put in place.

Added to the risks presented by the pandemic this year, Cooper Union is now subject to a recently passed endowment tax on invested balances, which did not exist when the Plan was approved. This tax is estimated at \$1.1 million and is recorded in 2021 as a reduction in investment return.

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."

We believe the most significant internal risk to the Board's Plan remains the long-term expectations for philanthropy. The level of philanthropy in the first years of the Plan have exceeded the targeted philanthropy, but there are substantial additional increases in the levels of philanthropy required by the Plan. While the targets established for the early years of the Plan would appear achievable within the context of existing resource allocations, the longer-term annual use funds that need to be raised to

meet the Plan’s future targets will require a substantial change in the sourcing and methodology of fundraising. Through fiscal year 2021, unrestricted philanthropy was cumulatively ahead of the guardrail by \$4.5 million.¹¹ If Cooper Union achieves its budgeted philanthropy target in fiscal year 2022, total contributions will be approximately \$5.4 million ahead of the guardrail. The Plan, however, has consistent increases in targeted philanthropy, which will likely prove challenging.

In addition, 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 \$53.5 million in fiscal year 2021 (61.9% of budgeted revenues including endowment payout) and is forecasted for \$51.8 million in fiscal year 2022 (54.2% of forecasted revenues including endowment payout). The decline is related to an estimated reduction in the TEP. The Board’s Plan is dependent on the continuation of these payments as well as the substantial increases planned in future years.

* * *

Cooper Union’s strong financial performance this past year despite the continued disruptions caused by the global pandemic 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 will undoubtedly continue throughout the coming year, affecting all aspects of Cooper Union, but the

¹¹ In addition to unrestricted contributions, Cooper Union raises restricted contributions, some of which are for current-use scholarships and operating funds and, as such, contribute to the Plan.

steady leadership of Cooper Union’s Board and President Sparks provides confidence that the school will continue to manage the academic, health, and financial challenges it faces.

About Kroll

Kroll is the world's premier provider of services and digital products related to governance, risk and transparency. We work with clients across diverse sectors in the areas of valuation, expert services, investigations, cyber security, corporate finance, restructuring, legal and business solutions, data analytics and regulatory compliance. Our firm has nearly 5,000 professionals in 30 countries and territories around the world. For more information, visit www.kroll.com.

55 East 52nd Street, 17th Floor
New York, NY 10055