



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 ninth and final 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 continued implementing the 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. Despite the uncertainty caused by the default of the leaseholder of

the ground lease for the Chrysler Building and the termination of the lease, the fiscal discipline the Cooper Union Board and administration have exercised and the numerous fiscal controls they have adopted and implemented over the past six years provide some measure of confidence that Cooper Union will continue on its path to become a fiscally thriving institution enabling it to return to a full-tuition scholarship model. Although Kroll's engagement as Financial Monitor is completed with the issuance of this annual report, we expect the Cooper Union Board will continue to guide the school responsibly and successfully to a tuition-free 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 focuses on Cooper Union’s progress against the Board’s Plan and the monitoring mechanisms used by Cooper Union to ensure compliance with the Plan, as well as on a recent, significant event that presents a new challenge to Cooper Union’s continued progress toward its goal of returning to a full-tuition scholarship model within the foreseeable future.

Our assessment of Cooper Union’s current financial condition is based on our review of Cooper Union’s draft audited financial statements as of and for the year that ended June 30, 2024,¹ as well as on budget data provided by Cooper Union for fiscal years 2024 and 2025, 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, 2024, was clouded by the default of the leaseholder of the ground lease for the Chrysler Building and the termination of the lease (*see* section 2.4, below). Despite this adverse development at the end of the fiscal year, Cooper Union’s unrestricted operations generated an operating surplus of \$6.1 million. The budgeted surplus was \$7.6 million. The operating surplus shortfall is attributed to the delinquency in real estate revenues (\$4.1 million) and incremental investments in physical capital (\$665,000), partially offset by current use contributions exceeding budget (\$2.0 million). The performance of the investment portfolio, which had a net return of \$35.6 million, allowed for continued growth in Cooper Union’s fiscal strength. Cumulatively, investment returns exceed the Plan by \$86.0 million.

¹ As of the completion of this report, the audited financial statements have not been issued. Still pending are valuations of Cooper Union’s real estate assets.

The continued multi-year progress Cooper Union has made 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 or adverse event, and the leadership and consistent commitment to the Plan exhibited by the Board and Cooper Union’s former President Laura Sparks and her senior staff. Actual operating revenues increased 1% in 2024, but Cooper Union was able to manage costs so that an operating margin of 6.6% was realized. This allowed continued allocation of funds for key priorities. Cooper Union’s operating margin in 2024 continued to be extraordinary, albeit lower than in 2023 (8.4%), 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 6/30/2024
Operating & Capital Reserve	\$152,000	\$152,000
Bridge Loan Bullet	\$39,000	\$25,166
Post-Retirement Health Insurance Reserve ²	\$48,000	\$3,000
Deferred Maintenance	<u>\$11,500</u>	<u>\$11,405</u>
Total	\$250,500	\$191,571

Collectively, these initiatives are 76% funded as of fiscal year 2024 (60% in 2023). The funding status of these initiatives improved from 2023 to 2024 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.

With the issues related to real estate revenue, the 2025 budget anticipates an operating deficit of \$17.3 million. Should the 2025 financial results conform to that expectation, the funded status of priorities at June 30, 2025 will fall to 69.1%.

² This liability is volatile as market conditions cause fluctuations. The Plan sets aside \$500,000 each year. The projected liability on June 30, 2024, is \$41.7 million, an increase of \$1.7 million from 2023, related to changes in actuarial assumptions.

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 2024 was \$87.6 million. Net tuition and fees for this period totaled about \$81.8 million. The 2024 financial results mark the first time the cumulative surplus in this period exceeded the net tuition revenue. This indicates the cumulative surplus is still insufficient to restore fiscal viability to Cooper Union without some continuing level of support from student revenues as of 2024. 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, 2024, on a budget basis, the cumulative surplus was in excess of the Plan by \$4.3 million. Note that this was after the real estate revenue shortfall of \$4.3 million in 2024. This revenue shortfall continued into fiscal year 2025, and the resolution of this issue is currently the most significant financial challenge Cooper Union is facing (see section 2.4 for further discussion).

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 six 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 draft audited financial statements for 2024 of a \$19.6 million surplus to 2023 (\$8.2 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 substantially by \$18.4 million or almost 19%.** The fiscal year 2024 results against 2023 were positively impacted by:
 - **Investment returns utilized for operations increased by \$11.2 million** over 2023.

- **Contributions for operating purposes increased \$5.0 million**, continuing the overall growth of philanthropic support. This total exceeds the Plan’s guardrail, cumulatively, by almost \$12.1 million.
- **Student revenues decreased \$0.5 million** as a result of Cooper Union’s increased tuition scholarship rate, which was 80.7% in 2024 against the Plan’s target of 80%. After year-end Cooper Union received gifts that will ensure the senior classes will be tuition free going forward. This will result in the scholarship rate approaching 85% in 2025 with a target in the Plan of 83%.
- **Maintaining expense levels in accordance with the Plan.** In 2024, expenses increased by \$6.9 million or 7.7%. Control over operating expenses is one of the Plan’s secondary guardrails. Expenses exceeded the guardrail by \$1.8 million for the year, but are \$7.0 million below the guardrail cumulatively.
- **Salaries and benefits increased 4.9%** as a result of incremental hiring to support programming and salary adjustments.
- **Other expenses increased 68%** mostly to support issues associated with leasing and legal matters.

When the Plan was approved, expense control was perceived to be a key element of 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. 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 2024 was \$7.2 million, in 2023 it was \$7.2 million, and

in 2022 it was \$6.5 million. These levels are below the annual depreciation expense, which was \$9.4 million for 2024. 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 2025 anticipates a cash deficit of \$17.3 million.³ This is substantially driven by a planned shortfall of \$26.0 million from real estate revenues (as compared to the now-terminated lease contract). The actual cash surplus for 2024 of \$6.1 million 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.

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 consistently generated operating surpluses for the past 6 years (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:

³ Cooper Union has provided a reconciliation between the 2024 budget surplus of \$6.1 million and the surplus shown in the draft audited financial statements of \$19.6 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.

- 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 \$25.1 million reserved.
- Deferred revenue of \$98.7 million remaining on the balance sheet as of June 30, 2024 (\$104.2 million in 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 \$41.7 million (\$39.9 million in 2023) in postretirement benefit costs accrued that will consume cash in future periods, likely at increasing amounts as covered personnel retire.⁴ This obligation has consumed approximately \$1.8 million of cash in 2024 (\$1.5 million in 2023). 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, \$3.0 million has been reserved for this obligation.

⁴ 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.

- From 2016 to 2024, the combined purchases of plant assets totaled \$39.1 million while depreciation and amortization totaled \$77.1 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 of 77% in 2024, 82% in 2023, and 76% in 2022. The threshold value over a longer period of time is 100%.
 - An **Age of Facilities Ratio**,⁵ which compares accumulated depreciation to depreciation expense, and which shows an age of 19 years in 2024, 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 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 \$127.3 million in 2024 and \$129.4 million in 2023 (\$131.0 million in 2022), while plant-related debt exceeds the asset balance. Total debt of \$193.2 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 2024 principal payments were \$7.4 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 December 31, 2024, the prepayment penalty would be approximately \$18.4 million.

⁵ This ratio can overstate the age of facilities if fully depreciated assets are included in the accumulated depreciation amount.

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 (and now the Finance and Business Affairs Committee) would examine the causes and determine a recommended course of action to the Board.

In light of the recent default by the Chrysler Building leaseholder and termination of the ground lease (discussed in more detail in the next section), the 2025 budget assumes Cooper Union receives only subtenant rent from the Chrysler Building, which would yield a projected operating deficit of \$17.3 million. If, however, there is no revenue shortfall from the Chrysler Building, there would be a \$10.4 million surplus against the primary guardrail. Ultimately, revenue from the Chrysler Building will likely fall somewhere between these two scenarios. The guardrails and their projected status as of 2025 are reflected in the following chart (amounts in thousands)⁶:

<u>Guardrail</u>	<u>Cumulative Value</u>	<u>Guardrail</u>	<u>Favorable (Unfavorable)</u>
<i>Primary Guardrail:</i>			
Net Surplus	\$57,798	\$81,859	(\$24,061)
<i>Secondary Guardrails:</i>			
Current Use Contributions	\$68,324	\$57,327	\$10,997
Operating Expenses	\$455,881	\$461,220	\$5,339
Cash and Investments	\$334,010	\$268,058	\$65,952

These guardrails are reviewed each quarter by the Finance and Business Affairs Committee (previously also reviewed by the FEC) and reported to the Board to ensure appropriate transparency. The primary

⁶ As presented at the May 30, 2024, quarterly Finance and Business Affairs Committee Meeting.

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 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.

Philanthropic performance to date has demonstrated significant growth in philanthropy, and the cumulative excess against the Plan guardrail in 2025 of nearly \$11.0 million demonstrates the progress in this area. We would also note that this is measuring only current use funds, and Cooper Union has also been successful in raising longer term funds, such as endowment, which totaled \$19.7 million from 2021 to 2024. The Plan continues to be aggressive in the amount of philanthropy required, but the progress in recent years would suggest this risk has diminished.

As already mentioned above, whether the primary guardrail yields a net surplus or deficit in 2025 and the extent of the surplus or deficit will depend largely on developments with the Chrysler Building, discussed in more detail in the next section.

2.4 Current Real Estate Revenue Issues

Approximately five years ago, the Chrysler Building ground lease was sold and the new leaseholder assumed the contractual obligations under the ground lease with Cooper Union. Shortly after this change, the new leaseholder and Cooper Union entered into a renegotiation of the leasehold agreement. This negotiation continued in earnest into 2024, but without ultimate resolution. In June 2024, the leaseholder defaulted on payment of its rent and Tax Equivalency payments (“TEP”) due to Cooper Union under the ground lease, and the default continued into fiscal year 2025. Pursuant to the terms of the lease, and following the leaseholder’s failure to cure the default, Cooper Union issued a lease termination notice on September 13, 2024, and the termination became effective on September 27, 2024.

The former leaseholder filed a legal action to attempt to prevent Cooper Union from taking possession of the Chrysler Building and collecting rents from its subtenants. The court overseeing the case, however, granted Cooper Union’s motion allowing it to manage, operate, and control the building and collect rents

from the subtenants without interference from the former leaseholder during the pendency of the litigation.

Cooper Union has retained a respected property management firm to step in and manage the Chrysler Building and collect rents on behalf of Cooper Union. The full financial impact of the lease termination and ensuing litigation is at this point in time uncertain.

As we have detailed in our prior annual reports, Cooper Union has been building reserves and achieving revenue surpluses over the last six years as part of the Board's Plan to repair Cooper Union's balance sheet and return to a full-tuition scholarship model. The Board planned for a range of adverse scenarios, including a default on the Chrysler Building lease. Through increased fundraising, revenue generation, and expense management, Cooper Union has amassed reserves that will allow it to operate the school in the face of adverse events like the Chrysler Building default. That being said, revenue from the Chrysler Building represents the most significant component of Cooper Union's operational funding and any extended interruption in or diminution of that revenue stream must be closely assessed by the Cooper Union Board for its potential impact on the Plan to return to a full-tuition scholarship model.

2.5 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 focused on a structured, disciplined approach pursued in the context of long-term financial improvements. The focus of the Board and the FEC in 2024 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 recent default by the Chrysler Building leaseholder and termination of the lease, however, has at least temporarily disrupted the most important revenue stream supporting the Board's Plan. It will be important in the coming months for the Cooper Union Board and administration to stabilize the management and revenue stream from the Chrysler Building, and soberly evaluate whether any adjustments to the Board's Plan are warranted.

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 updated further 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 Trustees⁷ to the Board. During the February 2024 Board of Trustees meeting James Haywood Rolling Jr. was elected as Alumni Trustee to the Board. During the June 2024 Board of Trustees meeting Anna Brook and Avery Singer were elected as Alumni Trustees to the Board and Tre Brown was elected as Student Trustee to the Board. During the November 2024 Board of Trustees meeting, the Chair recognized the service of departing Trustee Brian Steinwurtzel.

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 eight 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. As of

⁷ 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.

December 2024, per the Cooper Union website, there were eight Alumni Trustees of the twenty individuals sitting as Trustees and Chairs on the Board, which exceeds the one-third requirement.

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 6 representatives serving, one from each of the designated constituent groups. The terms of two representatives conclude at the end of 2024. Elections are underway to replace these two seats prior to the first Board Meeting of 2025.

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.

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.⁸ The FEC continued to function in 2024 as required by monitoring Cooper Union's progress against the Board's Plan. The FEC's responsibilities have now been transferred to the Finance and Business Affairs Committee.

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

⁸ <https://cooper.edu/about/trustees/fec>

trustees; (d) develops a governance structure for the schools within Cooper Union; and (e) understands the fiduciary duties and responsibilities of trustees.” Section 1.14 of the amended bylaws 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.” Current members of the Governance Committee include the Chair and Alumni Vice Chair of the Board, three other Trustees, two of whom are Alumni Trustees, and one Student Trustee.

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 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 2024 Retreat, the Board completed required annual governance training, as well as additional training featuring a New York Times bestselling author on higher education.

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.⁹ The latest minutes published on the Cooper Union website are from the September 25, 2024, meeting, which are the most recently approved Board meeting minutes.¹⁰

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 September 25, 2024, Board Meeting information was provided regarding the value of Cooper Union’s investment portfolio as of June 30, 2024, 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 2025 fiscal year were reported in relation to policy benchmarks. Kroll has been advised that the information for 2024 will be compiled, and thereafter posted to the Cooper Union website, once the final numbers as contained in the 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.

⁹ See <https://cooper.edu/about/trustees/minutes-board-trustees-meetings>

¹⁰ Board meeting minutes are approved at the next quarterly Board meeting.

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, 2024, 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.¹¹

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.

4.1 Non-Budgeted Expenditures Exceeding \$100,000

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

¹¹ 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.

expense variances. As detailed below, within five reporting segments and functionalities, there were six instances of expense category deficits in excess of \$100,000, totaling approximately \$2.5 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 \$79 million, which when compared to the total budgeted operating expenses of \$78.9 million, resulted in an actual expense deficit of approximately \$100,000.

Summary of Actual v. Budgeted Operating Expense Deficits in Excess of \$100,000

For the Fiscal Year Ended June 30, 2024

Ref. #	Segment	Category	Actual	Budgeted	Deficit	% Over Budget
1	General & Administrative	Legal and Audit	\$2,747,882	\$1,120,000	\$(1,627,882)	134.35%
2	Facilities	Utilities	1,868,843	1,625,000	(243,843)	15.01%
3	Facilities	Compensation	2,062,281	1,831,833	(230,448)	12.80%
4	School of Art	Compensation	4,615,081	4,450,715	(164,366)	3.70%
5	Communications	Consultants	333,490	192,000	(141,490)	73.69%
6	Finance / HR	Recruiting	213,616	100,000	(113,616)	113.62%
	Total		\$11,841,193	\$9,319,548	(\$2,521,645)	27.06%

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

(1) General and Administrative: Legal and Audit – Budgeted Deficit (\$1,627,882)

There were unanticipated legal and advisory fees in excess of \$1.7 million related to Cooper Union's real estate assets. 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.

(2) Facilities: Utilities – Budgeted Deficit (\$243,843)

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

(3) Facilities: Salaries and Wages – Budgeted Deficit (\$230,448)

There were increased costs associated with higher overtime pay due to the level of repairs and maintenance, and increased costs associated with the on-campus demonstrations, as well as departmental reorganization costs.

(4) School of Art: Compensation – Budgeted Deficit (\$164,366)

Short term costs were incurred due to the overlap associated with the new dean and the associated dean appointments as well as a departmental reorganization.

(5) Communications: Consultants – Budgeted Deficit (\$141,490)

There were supplemental costs throughout the year associated with on-campus demonstrations. The overage was covered by other budget lines within the department.

(6) Finance / HR: Recruiting – Budgeted Deficit (\$113,616)

There were increased costs associated with filling open positions and replacements due to employee turnover. These costs were covered by a favorable salaries and wages variance of \$635,000 due to gaps in filling these positions.

As in prior fiscal years and as noted above, these and other lesser individual budgeting deficits were mainly offset by budgeting surpluses within the respective departments resulting in Cooper Union's overall budgeted expense variance of (\$100,000).

4.2 Non-Budgeted Contractual Obligations Exceeding \$125,000

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 ending June 30, 2024. 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 2024 payments are summarized below:

Summary Of Contractual Obligations in Excess of \$125,000 For the Fiscal Year Ended June 30, 2024

Ref. #	Name	Description	Contract Amount	Amount Paid	% Paid
1	Rubenstein	PR Consulting/Litigation Support	\$147,500	\$147,500	100%
2	Nu-Way Heating	Foundation Building 5 th Fl. Air Handling System Replacement	387,000	105,000	27.13%
3	Devine & Partners	Communications Consulting	147,950	147,950	100%
	Total		\$682,450	\$400,450	58.68%

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 and our assessment of the Plan going forward.

5.1 The Board's Plan

The Board's Plan, if met, would allow Cooper Union to reinstitute full-tuition scholarships for all undergraduate classes by fiscal year 2029. Cooper Union is focused on the implementation of the Plan, and the FEC, and now the Finance and Business Affairs Committee, have been focused on monitoring Cooper Union's progress against the Plan. Cooper Union's progress against the Plan is assessed on a semi-annual basis.

The FEC has followed a formal review procedure 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," which are financial options identified but not yet implemented. 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 Key Financial Metric: the Composite Financial Index

As part of the Plan, the FEC and the Board adopted the Composite Financial Index¹² (CFI) as the key financial metric for measuring Cooper Union's financial progress toward returning to a full-tuition scholarship model. Since its adoption, the CFI has been monitored at each meeting of the FEC.

The measure requires that before Cooper Union returns to a full-tuition scholarship model, it attains a CFI score of 4.0 (the range is -4 to 10), coupled with the reasonable expectation that future financial results would allow Cooper Union to remain at least at that CFI level for the foreseeable future. As of June 30, 2024, the CFI was 4.5 against a level of 0.5 projected by the Plan. This remarkable improvement demonstrates Cooper Union's strong commitment to and discipline in implementing the Plan since its adoption.

However, the substantial progress made represents a cushion against adversity, and the current real estate revenue crisis confronting Cooper Union is expected to absorb some of that cushion and reduce Cooper Union's CFI score below the 4.0 financial stability threshold. Thus, while the CFI has temporarily reached the goal established in the Plan, maintaining that level into the foreseeable future will be contingent upon Cooper Union's resolving the current issues with the Chrysler Building leasehold. There is no indication that the Cooper Union Board is contemplating prematurely returning to a full-tuition scholarship model while this uncertainty exists. As Financial Monitors, we concur that the Chrysler Building contingency creates enough of a risk that this is not the time to contemplate an early return to a full-tuition scholarship model.

* * *

Cooper Union's strong financial performance to date despite a variety of disruptions -- including the global pandemic, economic downturn, volatility in investment markets, increase in inflation, management of on-campus demonstrations, and issues with the Chrysler Building leasehold -- has proven 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 unforeseen financial downturns and adverse events while continuing on the path to a return to a full-tuition scholarship model within the foreseeable future. In our view, the steady leadership of Cooper Union's Board and administration provide confidence that the school will continue to manage the academic,

¹² From *Strategic Financial Analysis for Higher Education: Identifying, Measuring and Reporting Financial Risks, 7th Edition*. KPMG, Prager & Co., Attain Partners. 2010

health, and financial challenges it faces, and be in a position to return to a full-tuition scholarship model within the foreseeable future as contemplated by the Board's Plan.

About Kroll

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