



ERRORS OF OMISSION

**Transparency and Disclosure
of Trustee Conflicts of Interest
at Leading Private Colleges and
Universities in Massachusetts**

A SPECIAL ISSUE BRIEF
APRIL 2012



Executive Summary

This special issue brief provides an analysis of the transparency of related party business transactions at leading private, nonprofit institutions of higher education in the Commonwealth of Massachusetts. Specifically, it examines disclosures by colleges and universities of their business relationships with firms affiliated with trustees who sit on their boards. These kinds of relationships can divide the loyalty of directors and compromise the board's independent stewardship, particularly over financial decisions. Despite the potential threat that business transactions with trustee-affiliated firms pose to the integrity of college boards, they are widespread among the Massachusetts colleges and universities in this study.

As nonprofit public charities, private colleges and universities are legally required to disclose potential conflicts of interest that arise from such transactions to state and federal authorities and, through those disclosures, to the broader public as well. These transparency requirements are in place to enable authorities and the public to hold universities accountable and to ensure that they are operating in the public interest. However, in a majority of cases reviewed in this study, errors and omissions in reporting raise questions about the quality of information that schools are providing to the public and the effectiveness of the current transparency system.

A review of the two most recently available years' federal and state filings by the 20 wealthiest private Massachusetts colleges and universities generated the following findings:

- **Business relationships between schools and their trustees are widespread;** 70 percent of the schools in this study reportedly had at least one trustee affiliated with a firm doing business with the school—far greater than the national average of 25 percent.
- **86 percent of the schools reporting potential trustee conflicts in this study provide disclosures of business transactions with related parties that appear to be in some measure erroneous, problematic or substantially incomplete.** This problematic reporting raises basic questions about the identity of the interested persons, the nature of the transactions or the amount of money at stake.
- **Schools often report information to the IRS that differs markedly from that reported to the state Attorney General.**
- Schools fall into three general categories:
 - **The worst offenders:** four schools (20 percent of the total), including Boston University, Harvard University, Tufts University and Williams College, provided substantially problematic responses that raise major questions in both state and federal filings for 2009 and 2010.
 - **Uneven reporters:** eight schools (40 percent of the total), including Babson College, Bentley University, Berklee College of Music, Boston College, Clark University, College of the Holy Cross, MIT, and Worcester Polytechnic Institute provided responses of uneven quality across state and federal filings on questions of business transactions with trustee-related parties and interested persons. In some filings, their disclosures appear to be complete, but in other cases they raise questions.
 - **No major flags:** only two schools (10 percent of this study's sample), Brandeis University and Northeastern University, provided substantially clear responses on their filings.
 - Additionally, six other schools did not report any trustees with affiliations to businesses engaged in related-party transactions.
- **The greatest number of trustees reported as “interested persons” or “related parties” work in financial services. Indeed, at Boston College and Williams College, five or more trustees were reported as working with firms providing investment services to the college,** yet in each case the college provided incomplete information about the size of the investments, the amount of fees paid for those services, or the name of the trustees implicated.
- **Harvard University fails to disclose a widely reported business relationship** between Harvard Management Company (HMC), the university's endowment manager, and an investment firm affiliated with an HMC board member.

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70 percent of the schools in this study reportedly had at least one trustee affiliated with a firm doing business with the school—far greater than the national average of 25 percent.

Introduction

Public concern about conflicts of interest, excessive executive compensation and opaque investments at nonprofit colleges and universities has grown in recent years. Charles Ferguson's Academy Award-winning documentary *Inside Job* revealed widespread, undisclosed appearances of conflicts of interest among academic economists from leading universities who routinely receive large outside payments from the financial services industry. Less attention has been paid to conflicts of interest among college trustees who serve on boards with legal and ethical "fiduciary" duties of loyalty to and of care for an institution.¹ A 2010 investigation by *The Chronicle of Higher Education* found that one in four private colleges does business with trustee-affiliated companies and raised questions about how these conflicts are being handled.² Investigations conducted by researchers at Tellus Institute have identified poorly disclosed instances of apparent conflicts of interest among trustees affiliated with investment firms that manage money for the colleges on whose boards they sit.³ The Institute's 2010 report "Educational Endowments and the Financial Crisis" stimulated fresh scrutiny of potential conflicts at schools such as Dartmouth College, where more than half a dozen trustees have had affiliations with investment firms managing money for the college's endowment.⁴ It also encouraged state legislators to file legislation now pending in the Massachusetts State House that would strengthen the reporting requirements for private colleges in areas such as business transactions among interested parties, high pay packages, investment and property holdings, third-party sources of compensation, and the value of nonprofit tax exemptions.⁵

This study therefore expands upon the Institute's previous research on the crisis of stewardship among college trustees at prominent New England colleges during the financial crisis and supplements our recent analysis of disclosures of executive compensation at the 20 wealthiest private colleges in Massachusetts.⁶ Our focus here is on the state of transparency and disclosure of business transactions between colleges and firms affiliated with

their trustees. We review the two most recently available years' state and federal filings by the 20 most well-endowed Massachusetts private colleges and universities and evaluate the quality of their responses to straightforward questions about business transactions with related parties and interested persons.

Our findings are sobering. Whereas 25 percent of private colleges were recently found to have business ties with trustees in a nationwide investigation of more than 600 schools by *The Chronicle of Higher Education*, we identified at least 70 percent of the 20 wealthiest Massachusetts private colleges as engaging in business transactions with trustees (Figure 1). For 86 percent of the schools reporting business transactions with a trustee-affiliated firm, their disclosures raised questions because they appeared incomplete, inconsistent, riddled with errors, or simply unclear. Only two schools appeared to provide substantially responsive answers to questions about trustee conflicts on both federal and state filings in ways that did not raise red flags.

FIGURE 1
Leading Massachusetts Colleges Reporting Business Transactions with Trustee-Affiliated Firms

INSTITUTION
Babson College
Bentley University
Berklee College of Music
Boston College
Boston University
Brandeis University
Clark University
College of the Holy Cross
Harvard University
MIT
Northeastern University
Tufts University
Williams College
Worcester Polytechnic Institute

For 86 percent of the schools reporting business transactions with a trustee-affiliated firm, their disclosures raised questions because they appeared incomplete, inconsistent, riddled with errors, or simply unclear.

In response to Congressional concerns about potential abuses of tax-exemption by nonprofit organizations, the US Internal Revenue Service recently revised the tax return that nonprofits are required to complete (IRS Form 990, the Return of Organization Exempt from Income Tax). The changes, introduced in 2008, required greater disclosure of information related to, among other things, compensation and conflicts of interest and business relationships among directors and highly paid officers, employees and contractors. We primarily analyze colleges' responses to Schedules L and O on IRS Form 990, related to transactions with "interested persons."⁷ As exempt organizations, nonprofit colleges and universities are required to disclose any "business transactions involving interested persons" by itemizing on the IRS Form 990 the transactions, specifying the name of the trustee or employee involved, his or her position with the school, the amount of money involved, a description of the transaction, and whether the trustee or employee shared in the schools' revenues.

Colleges in Massachusetts must also report "related party transactions" to the Massachusetts Attorney General's Not-for-Profit Organizations/Public Charities Division. On the Massachusetts Form PC, colleges are required to answer several questions regarding the nature of any related party transactions and to attach a schedule of them detailing "the name and address of the related party, the nature of the transaction, the value or amounts involved in the transaction, and the procedure followed in authorizing the transaction."⁸ We analyzed these business transaction disclosures for the two most recent fiscal years for which filings were readily available: 2009 and 2010.⁹

Related Party Business Transactions

A summary of our broad analysis of disclosures across state and federal filings is presented in Figure 2, where we distinguish among three broad states of transparency concerning related party business transactions between colleges and their trustees: broadly responsive (✓), no disclosure reported (N.D.), and problematic or in some way questionable (?). Only two schools appeared to provide broadly responsive answers to questions across both state and federal filings for both 2009 and 2010: Brandeis University and Northeastern University. Six schools (30 percent of the total reviewed) reported no trustee-related business transactions: Amherst College, Lesley University, Mount Holyoke College, Olin College of Engineering, Smith College, and Wellesley College.

FIGURE 2
Transparency of Related-Party Business Transactions

INSTITUTION	Mass. Form PC		IRS Form 990	
	2009	2010	2009	2010
Amherst College	N.D.	N.D.	N.D.	N.D.
Babson College	✓	✓	?	?
Bentley University	✓	?	✓	✓
Berklee College of Music	?	N.D.	?	N.D.
Boston College	✓	✓	?	?
Boston University	?	?	?	?
Brandeis University	✓	✓	✓	✓
Clark University	?	?	?	✓
College of the Holy Cross	?	?	✓	✓
Harvard University	?	?	?	?
Lesley University	N.D.	N.D.	N.D.	N.D.
MIT	✓	✓	✓	?
Mount Holyoke College	N.D.	N.D.	N.D.	N.D.
Northeastern University	✓	✓	✓	✓
Olin College of Engineering	N.D.	N.D.	N.D.	N.D.
Smith College	N.D.	N.D.	N.D.	N.D.
Tufts University	?	?	?	?
Wellesley College	N.D.	N.D.	N.D.	N.D.
Williams College	?	?	?	?
Worcester Polytechnic Institute	✓	✓	?	?

For the other 60 percent of schools in our study, various problems arose in the course of their state or federal filings. Four schools presented problematic responses across each of the filings we reviewed; we consider them the worst offenders: Boston University, Harvard University, Tufts University, and Williams College. The other eight schools in our sample are uneven reporters that appear responsive in some respects but raise questions in others.

The disclosures by the worst offenders are problematic across the board, but the kinds of errors, omissions, and obfuscation found in them occur frequently among the uneven reporters in our sample. Boston University, one of the worst offenders, provides a case in point when it comes to the clear identification of trustees who are interested persons because of their affiliation with firms doing business with the university. Although the IRS Form 990's Schedule L asks schools to list the name of the interested person involved in business transactions, BU fails to name three trustees who are considered interested persons. Instead, as Figure 3 shows, the university refers to the companies with which the university does business as the interested persons (Barnes & Noble College Bookstores, Dell, Inc., and Blue Cross Blue Shield of Massachusetts), leaving the trustee unidentified by name. Based on research on the board's composition, we assume that John Battaglino, Senior Vice President of Barnes & Noble College Booksellers, Ronald Garriques, former President of the Global Consumer Group at Dell, and Cleve Killingsworth, Jr., former Chairman and CEO of Blue Cross Blue Shield of Massachusetts, are the interested persons that went unnamed by the university in these particular examples.¹⁰ Babson College, Boston College, Tufts University, and Williams College were among the other schools that omitted the names and titles of interested persons among their trustees on their Forms 990 and listed only the name of the entity with which the school transacted business.

On its state filing for 2010, BU provided even less information by responding with what appears to be legal boilerplate from the university's general

FIGURE 3
Boston University's 2009 Business Transactions with Interested Persons Disclosed to the IRS

(A) NAME OF INTERESTED PERSON	(B) RELATIONSHIP	(C) AMOUNT	(D) DESCRIPTION OF TRANSACTION	(E) YES NO
BARNES & NOBLE COLLEGE BOOKSTORES	TRUSTEE OF BU	1,663,894.	PURCHASES OF SUPPLIES & BOOKS	X
DELL, INC.	TRUSTEE OF BU	1,599,540.	COMPUTER & EQUIPMENT SERVICES	X
BLUE CROSS BLUE SHIELD OF MA	TRUSTEE OF BU	59,560,052.	EMPLOYEE HEALTH INSURANCE	X
JOHN BATTAGLINO, JR.	SON OF BU TRUSTEE	167,240.	EMPLOYMENT COMPENSATION	X
JENNIFER BATTAGLINO	DAUGHTER IN LAW OF BU TTE	33,221.	EMPLOYMENT COMPENSATION	X
ANDREA MERCURIO	DAUGHTER OF EXECUTIVE VP	59,410.	EMPLOYMENT COMPENSATION	X
ANTONIO MERCURIO	BROTHER OF EXECUTIVE VP	87,357.	EMPLOYMENT COMPENSATION	X
JOHN R SILBER	PRESIDENT EMERITUS OF BU	166,000.	ANNUITY	X

SOURCE: Boston University, IRS Form 990, Schedule L, Part IV, for FY 2009

FIGURE 4
Excerpt of Boston University's 2010 Business Transactions with Related Parties Disclosed to the Massachusetts Attorney General

From time to time, the University may engage in business or financial relationships with for-profit entities with which a University trustee or officer is affiliated. In many cases the University's relationship with the entity pre-dates the individual's become a trustee or officer. As noted above, under the University's conflict of interest policy, each such relationship is subject to the prior review and approval of the independent Audit Committee and is entered into on an arms-length basis (including, where appropriate, competitive bidding or an independent appraisal) and for good and sufficient consideration, following a determination by the Audit Committee that the relationship is in the best interest of the University. All such relationships and other reportable transactions involving the sum of \$10,0000 or more are listed on the attached schedule.

SOURCE: Boston University, MA Form PC, Question 24 Attachment, for FY 2010

conflict of interest policy statements. Instead of reporting specific business transactions or financial relationships in which trustees or employees are implicated as "related parties," the university simply reports, as Figure 4 highlights, that "[f]rom time to time, the University may engage in business or financial relationships with for-profit entities with which a University trustee or officer is affiliated." Although it claims that "[a]ll such relationships and other reportable transactions involving the sum of \$10,0000 [sic] or more are listed on the attached schedule," no such schedule accompanied BU's 2010 Form PC.¹¹

Harvard University, including its affiliated investment management company Harvard Management Company ("HMC"), joins Boston University among the worst offenders in transparency for similarly failing to identify by name the board members involved in related party transactions with the university. The university does not disclose potential conflicts

related to the management of its \$32 billion endowment on the university's primary tax filings, under the official name of "President and Fellows of Harvard University," but rather on an entirely separate filing by HMC, the entity responsible for managing the endowment and other assets.¹² Yet even HMC's IRS Form 990 failed to identify by name interested persons sitting on HMC's board. Instead HMC reported SunGard Data Systems, which provided more than \$1.5 million in "technical services" to the university, as the name of the interested person, noting only that "DIRECTOR IS CHAIRMAN OF THE BOARD."¹³ Although the university does not identify the director by name, the reference is to HMC director Glenn Hutchins, co-founder and co-chief executive of the private equity firm Silver Lake, who also serves as Chairman of the Board of SunGard Data Systems. Hutchins sits on SunGard's board in that capacity because SunGard is a portfolio company owned by his firm Silver Lake. Despite this undisclosed private-equity ownership

stake, the university makes no effort to explain the nature of this relationship.¹⁴

Even more problematic than this ambiguous language in HMC's Form 990, however, is HMC's failure to disclose the potential conflict of interest resulting from the university's widely reported investments with Greylock Partners, where HMC director William W. Helman serves as a partner. Harvard has reportedly been invested in Greylock venture capital funds since the 1970s, and Helman is a long-standing member of HMC's board.¹⁵ Helman is no stranger to these sorts of conflicts; he is also among the numerous trustees of Dartmouth College affiliated with firms managing multi-million-dollar sums for that college's endowment.¹⁶ Harvard's failure to list such a potential conflict of interest in its federal filings raises questions about what other business transactions involving Harvard officers and trustees and HMC directors have been similarly omitted. Without more robust disclosure requirements related to college investments, the public is unable to assess whether additional appearances of conflicts exist among trustees affiliated with financial services firms.

As for Harvard's state filings, they provide even less information than what is found on the IRS Form 990. The Harvard Management Company's Forms PC outline, in general terms, several business transactions with related parties but, unlike the federal IRS filings, HMC's reports to the Massachusetts Attorney General fail to provide the values of any of the transactions or the names of interested persons. In addition, rather than providing the information requested on compensation to related parties in the Form PC question 24(H), excerpted in Figure 5 below, Harvard simply refers the reader to a series of tables found separately in HMC's IRS Form 990. The opaque character of Harvard's disclosures, with multiple university-affiliated entities making separate reports, creates obstacles to transparency that the university only magnifies by providing incomplete information on reported related party transactions.

Unlike Harvard and BU, Williams College clearly identifies on its state filings eight trustees affiliated with firms engaged in related-party transactions with the school. Five of these trustees are identified as principals at firms providing investment services

FIGURE 5

Harvard Management Company's 2009 Business Transactions with Related Parties Disclosed to the Massachusetts Attorney General

24(C)

Harvard Management Company, Inc. financed certain fixed assets using loans from Harvard University.

24(F)

Harvard Management Company, Inc. provides office space and supplies to Diversified International Timber Holdings, a related party, the value of the office space and supplies provided are reimbursed to Harvard Management Company, Inc. at fair market value.

24(G)

Harvard Management Company, Inc. purchased services such as archiving services and employee training through Harvard University and acquired technical services from Sungard Data Systems, Inc., an organization of which a board member serves as Chairman of its Board of Directors.

24(H)

See Form 990, Part VII-A.

SOURCE: Harvard Management Company, MA Form PC, Question 24 Attachment, for FY 2009

FIGURE 6

Williams College's 2009 Business Transactions with Related Parties Disclosed to the Massachusetts Attorney General

LINE 24 (g) -		
NAME	COMPANY	SERVICE PROVIDED
GREGORY AVIS	TRUSTEE IS A PARTNER AT SUMMIT PARTNERS	INVESTMENT
E. DAVID COOLIDGE	TRUSTEE IS VICE CHAIRMAN OF WILLIAM BLAIR & CO	INVESTMENT
MICHAEL EISENSEN	TRUSTEE IS A PARTNER AT CHARLESBANK CAPITAL PARTNERS, LLC	INVESTMENT
WILLIAM OBENDORF	TRUSTEE IS A PARTNER AT SPO PARTNERS	INVESTMENT
MORTON SCHAPIRO	TRUSTEE IS ALSO A TRUSTEE AT STERLING AND FRANCINE CLARK ART INSTITUTE TRUSTEE IS ALSO ON THE BOARD OF NCAA TRUSTEE IS ALSO ON THE BOARD OF MARSH MCCLELLAN	RESEARCH TOURNAMENTS CONSULTING
ROBERT SCOTT	TRUSTEE IS A FORMER OFFICER AT MORGAN STANLEY	UNDERWRITING
SARAH WILLIAMSON	TRUSTEE IS A PARTNER AT WELLINGTON MGMT CO	INVESTMENT
KELI KAEGI	TRUSTEE'S SPOUSE IS A PARTNER AT WILLIAMSTOWN MEDICAL ASSOCIATES	HEALTHCARE

SOURCE: Williams College, MA Form PC, Question 24 Attachment, for FY 2009

FIGURE 7

Williams College's 2010 Business Transactions Involving Interested Persons Disclosed to the IRS

Part IV Business Transactions Involving Interested Persons.					
Complete if the organization answered "Yes" on Form 990, Part IV, line 28a, 28b, or 28c.					
(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No
STEPHANIE BOYD	SPOUSE OF AN OFFICER	130,722.	WILLIAMS COLLEGE EMPLOYEE		X
WILLIAMSTOWN MEDICAL	SPOUSE OF AN OFFICER	138,117.	MED SRVC PROVIDED TO STUDENTS		X

SOURCE: Williams College, IRS Form 990, Schedule L, Part IV, for FY 2010

to the college. Although Williams provided a table listing the names, related companies, and services the trustees' firms provided the college (Figure 6), the College nevertheless provided no information on the amount of the transactions. For those trustee-affiliated firms providing investment services, no disclosure is made about the size or the nature of the investments, nor the amount of fees paid to the firms for those services. Even more problematic is the fact that none of these very same related party transactions reported in state filings was disclosed in the College's IRS Form 990. As Figure 7 highlights, not a single trustee or trustee-related firm is reported in the section devoted to business transactions involving interested persons.

Although BU, Harvard, and Williams are among the worst offenders because each of their filings raises questions, other errors, omissions, and opacity are found in one or more of the filings of the eight schools that were uneven reporters in 2009 and 2010. The College of the Holy Cross, for example, provided a general description in its report to the Massachusetts Attorney General's Office of a related party transaction with an unnamed investment partnership with ties to an unnamed trustee. (see Figure 8). The college reported that investment management fees associated with the partnership amounted to more than \$120,000, yet the reported value of the investment is only \$23,721, far less than the fees generated by the investment.

Even if this results from some sort of typographical error, it seems problematic that the college failed to proofread the description of such a significant transaction. As it happens, Holy Cross reported a business transaction with the same amount of fees on its federal IRS 990 Form, identifying “R. Atchinson” as the trustee and Adage Capital Management as the firm. Robert Atchinson is managing director of Adage Capital Management, a prominent Boston-based hedge fund, which he co-founded in 2001 with seed capital from his former employer, Harvard Management Company. The IRS Form 990 does not clarify the size of the investment Holy Cross has made in Atchinson’s fund, but it does proceed to list two additional business transactions with trustee John Fisher’s firm Federated Fund Advisory Company and a construction firm, Fontaine Brothers, Inc., which received a multi-year, multi-million-dollar contract to do campus renovation projects and is affiliated with trustee Sarah Fontaine. Only by cross-referencing the federal and state filings can one begin to grasp more clearly the potential nature of the conflict, yet even with cross-references Holy Cross does not clearly disclose the value of the investment the College has made in hedge funds affiliated with trustees like Adage.

Berklee College of Music was a similarly uneven reporter. While the college identified trustees involved in related party transactions, it provided none of the information required on the value of the transactions.

On its 2009 Form PC, excerpted in Figure 9 below, Berklee refers to insurance purchased by the college from Lynch Associates/TBG Financial, with which two trustees, William Lynch, III, and Allan T. McLean, are associated. Yet the amount of commissions paid to the firm remains undisclosed. The college went on to report that a third trustee, Michael Dreese, the CEO of Newbury Comics, is affiliated with a firm that also purchased insurance from the same trustee-affiliated firm, highlighting the kind of interlocking relationships that could undermine independent stewardship when it comes to basic financial decisions for the college.

Like BU, Boston College did not specify by name the trustees who were interested persons involved in business transactions with the school on its IRS Form 990, as Figure 10 shows. Because the college does identify the trustees with business ties by name in its filing to the Massachusetts Attorney General, we were ultimately able to identify the trustees. BC’s case also highlights the predominance of trustees with affiliations to finance. Indeed, no school in our study had more trustees involved in investment-related business transactions for these two reporting years than Boston College. Six of the reported transactions were with financial services firms affiliated with board members. Trustees Robert Morrissey and Mario Gabelli are both affiliated with Gabelli’s hedge-fund group GAMCO, which manages money for the BC endowment, while

FIGURE 8

College of the Holy Cross’s 2009 Business Transactions with Related Parties Disclosed to the Massachusetts Attorney General

Question 24g

The College has an investment in a limited partnership of which a member of the Board of Trustees is the managing director. The limited partnership provides investment management services for a portion of the College’s domestic equity portfolio. The investment in the limited partnership was approved by the Investment Committee in accordance with the College’s conflict of interest policy that was adopted by the Board of Trustees.

As of June 30, 2009 the College had invested \$23,721 in the partnership which is included in the College’s long-term investment portfolio. Management fees were \$120,954.

trustees Charles Clough, David O'Connor, and Michaela Murphy Hoag are all affiliated with funds in which the school has also apparently invested. Peter Lynch is the BC trustee affiliated with Fidelity Investments, which manages portions of the college's retirement plans, yet the value of the assets

managed is not specified in these disclosures. As with the many problematic disclosures discussed in this report, the limited information included in BC's federal filing raises as many questions as it answers.

FIGURE 9

Berklee College of Music's 2009 Business Transactions with Related Parties Disclosed to the Massachusetts Attorney General

William Lynch III, and Allan T. McLean are Trustees of the College and are associated with Lynch Associates / TBG Financial. The College purchased insurance coverage from Lynch Associates / TBG Financial. Insurance is underwritten by Met Life. The College paid insurance premiums to Met Life who in turn paid commissions to Lynch Associates / TBG Financial. All transactions were conducted at arm's-length and in the ordinary course of business.

Michael Dreese, a member of the Board of Trustees, is also the CEO of Newbury Comics. Newbury Comics has purchased insurance coverage from Lynch Associates / TBG Financial.

SOURCE: Berklee College of Music, MA Form PC, Question 24 Attachment, for FY 2009

FIGURE 10

Boston College's 2010 Business Transactions with Interested Persons Disclosed to the IRS

<u>ATTACHMENT 8</u>				
<u>SCHEDULE L, PART IV</u>				
(A) NAME OF INTERESTED PERSON	(B) RELATIONSHIP	(C) AMOUNT	(D) DESCRIPTION OF TRANSACTION	(E) YES NO
FIDELITY INVESTMENTS	TRUSTEE IS AN OFFICER	1,150,773.	INVESTMENT FEES	X
BOSTON COACH	TRUSTEE IS AN OFFICER	2,579,175.	BUS CONTRACT	X
GAMCO	2 TRUSTEES AS DIR&OFFICER	437,221.	INVESTMENT	X
TCV PARTNERS	TRUSTEE'S SPOUSE AS OFF.	250,520.	INVESTMENT	X
MASSMUTUAL/OPPENHEIMER	TRUSTEE IS A DIRECTOR	591,433.	INVESTMENT	X
STATE STREET	TRUSTEE'S SPOUSE AS OFF.	253,016.	CUSTODIAN FEES	X
HIGHRISE CAPITAL	TRUSTEE IS A DIRECTOR	142,807.	INVESTMENT	X
MICHAEL F. MCKENZIE	SON OF TREASURER	43,993.	EMPLOYEE AT BOSTON COLLEGE	X
MARIE SANNELLA	SISTER OF TRUSTEE	104,798.	EMPLOYEE AT BOSTON COLLEGE	X
CLOUGH CAPITAL	TRUSTEE IS CHAIRMAN & CEO	241,340.	INVESTMENT FEES	X
EMC	TRUSTEE IS A BOARD MEMBER	361,267.	VENDOR	X

SOURCE: Boston College, IRS Form 990, Schedule O for FY 2010

Conclusions

Based on our review of state and federal disclosures of trustee conflicts of interest by the 20 most well-endowed private colleges and universities in Massachusetts, two main conclusions can be drawn. First, leading private Massachusetts colleges do far more business with firms affiliated with their trustees than private colleges do on average nationwide. *The Chronicle of Higher Education* has identified roughly one in four private colleges as engaged in such related party transactions, whereas we have found that 70 percent of the 20 wealthiest schools in Massachusetts report trustee

Given the kinds of divided loyalties one routinely observes between private gain and public purpose, it should come as little surprise that the financial crisis proved simultaneously to be a stewardship crisis on far too many campuses.

relationships with firms with which schools conduct business. A disproportionate number of these related party transactions are among trustees working for investment firms managing their schools' money, including hedge funds, private equity firms and others working in the most opaque corners of the capital markets where transparency is viewed more as a threatening source of competitive disadvantage than a public virtue. Given the kinds of divided loyalties one routinely observes between private gain and public purpose, it should come as little surprise that the financial crisis proved simultaneously to be a stewardship crisis on far too many campuses.¹⁷

For the overwhelming majority of schools that do engage in business with their trustees' firms, the second conclusion to be drawn is that the current transparency system is simply not working. As Archon Fung, Mary Graham, David Weil, and Elena Fagotto of the Harvard Kennedy School have argued, "[e]ffective transparency systems require careful design, attentive enforcement, and periodic maintenance and repair."¹⁸ Given the enhanced reporting requirements in the recently redesigned federal filings, policymakers and the public are clearly demanding fuller disclosure of potential sources of conflicts of interest among trustees of tax-exempt, nonprofit institutions. Although the information requested of schools remains relatively minimal, most schools in our study did not consistently follow the most basic reporting instructions.

Our findings highlight the clear need for "attentive enforcement" of the new IRS filing requirements, and at the state level it seems high time for "periodic maintenance and repair" of what is evidently a broken system. State and federal authorities grant nonprofit colleges the generous benefits of tax exemption because the institutions must serve public purposes. Disclosure mechanisms are meant to provide basic forms of public accountability. When trustees benefit privately—whether directly or indirectly—from their nonprofit board service, the public, which grants those benefits of tax exemption and ultimately bears its costs, has a right to know the full extent of those arrangements. Currently, only a small fraction of schools has provided adequate information for the public even to begin to understand the precise nature and extent of potential trustee conflicts. If colleges and universities want to maintain the public's trust and support, then at a minimum they need to disclose their business ties with trustees much more transparently than the majority of them has done in recent years.

Endnotes

- 1 Throughout this study, we use the term “trustee” interchangeably with the term “director,” although each institution may use different titles to refer to members of its governing board.
- 2 Paul Fain, Thomas Bartlett, and Marc Beja, “Divided Loyalties,” *The Chronicle of Higher Education*, March 14, 2010, available at <http://chronicle.com/article/Divided-Loyalties-Conflicts/64629> (accessed April 14, 2012).
- 3 Joshua Humphreys, et al., “Educational Endowments and the Financial Crisis: Social Costs and Systemic Risks in the Shadow Banking System (A Study of Six New England Schools),” Tellus Institute, May 2010, available at <http://www.tellus.org/publications/files/endowmentcrisis.pdf> (accessed January 15, 2012).
- 4 Rick Jurgens, “Dartmouth’s Conflicted Guardians? College, Alumni Leaders Profit from Investments,” *Valley News*, October 31, 2010, available at <http://www.vnews.com/guardians/20101031a.html> (accessed November 9, 2010); and id., “Dartmouth Told to Disclose Fees,” *Valley News*, August 3, 2011, available at <http://www.vnews.com/guardians/20110803.html> (accessed January 15, 2012).
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- 6 Humphreys, “Educational Endowments and the Financial Crisis”; and Catie Ferrara, Joshua Humphreys and Bryant Mason, “Academic Excess: Executive Compensation at Leading Private Colleges and Universities in Massachusetts,” Tellus Institute, September 2011, available at <http://www.tellus.org/publications/files/issue-brief-exec-comp-201109.pdf> (accessed January 15, 2012).
- 7 IRS Form 990 Schedule L, available at <http://www.irs.gov/pub/irs-pdf/f990sl.pdf> (accessed October 25, 2011).
- 8 Mass. Attorney General’s Office Form PC, available at <http://www.mass.gov/ago/docs/nonprofit/form-pc-fillable.pdf> (accessed April 9, 2012).
- 9 Because the fiscal year of most colleges runs parallel to the academic year, typically ending on June 30th of each year, all references to years in this study will be to the fiscal year ending June 30th (e.g., when we refer to the year 2009, we mean the IRS Form 990 filed for the period July 1, 2008–June 30, 2009). Some schools, such as Boston College, end their fiscal year on May 31st.
- 10 Battaglini has retired from the board and has become trustee emeritus. Garriques subsequently left Dell to become Chairman and CEO of GEE Holdings. As for Killingsworth, he abruptly resigned as CEO of Blue Cross Blue Shield of Massachusetts in 2010 and collected \$8.6 million in compensation upon his departure. See Robert Weisman, “Blue Cross CEO Got \$8.6 million in Exit Deal,” *Boston Globe*, March 2, 2011, available at http://www.boston.com/business/healthcare/articles/2011/03/02/blue_cross_ceo_got_86m_in_exit_deal (accessed April 4, 2012); and lists of the BU trustees and trustees emeriti at <http://www.bu.edu/trustees/boardoftrustees> (accessed April 4, 2012).
- 11 Boston University, Mass. Form PC, Question 24 Attachment, for FY 2010.
- 12 Harvard is among several schools that have established various related organizations that file separate state and federal returns, creating a broad network of documentation to review. The most comprehensive analysis and discussion of potential conflicts would require review not only of each college or university’s filings but also those of each of its related organizations, which for Harvard alone number well over 200.
- 13 Harvard Management Company, IRS Form 990, Schedule L and Schedule O, for FY 2009.
- 14 “Glenn Hutchins,” available at <http://www.silverlake.com/employee.php?page=team&id=7> (accessed October 25, 2011). HMC’s 2010 Form 990 improved somewhat upon the quality of its disclosure by explaining less cryptically that “HMC Director is Chairman of the SunGard Board of Directors,” but it still fails to identify Hutchins by name. Harvard Management Company, IRS Form 990, Schedule L, Part IV, for FY 2010.
- 15 For references to Harvard’s investment in Greylock Partners, see Scott Kirsner, “As Facebook Heads Toward an IPO, Let’s Look at the Company’s Boston Connections,” *Boston Globe*, February 1, 2012, available at http://www.boston.com/business/technology/innoeco/2012/02/on_the_verge_of_its_ipo_filing.html (accessed March 9, 2012); and “Greylock Partners,” Vault, available at <http://www.vault.com/wps/portal/usa/companies/company-profile/Greylock-Partners?companyId=9516> (accessed March 9, 2012). See also Charles Waite, “Charles Waite: Greylock Capital,” in *Done Deals: Venture Capitalists Tell Their Stories*, ed. Udayan Gupta (Harvard Business Review Press, 2000), 223–237.
- 16 Humphreys, et al., “Educational Endowments and the Financial Crisis,” 40–42.
- 17 We discuss this stewardship crisis more fully in Humphreys, et al., “Educational Endowments and the Financial Crisis.”
- 18 Archon Fung, Mary Graham, David Weil, and Elena Fagotto, “From Food to Finance: What Makes Disclosure Policies Effective?” Taubman Center Policy Briefs, PB-2005-3, Harvard University (April 27, 2005), 4.

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About Tellus Institute

Tellus Institute is a nonprofit, interdisciplinary think tank in Boston pursuing a "Great Transition" to a future of enriched lives, environmental sustainability and social equity. For more information, please visit www.tellus.org.



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