



A REPORT  
TO THE  
MONTANA  
LEGISLATURE

FINANCIAL-RELATED AUDIT

*Montana State  
University  
(All Campuses)*

*For the Two Fiscal Years Ended  
June 30, 2009*

SEPTEMBER 2009

LEGISLATIVE AUDIT  
DIVISION

09-13

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# LEGISLATIVE AUDIT DIVISION

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September 2009

The Legislative Audit Committee  
of the Montana State Legislature:

This is our report on the financial-related audit of Montana State University (all campuses) for the two fiscal years ended June 30, 2009. The financial-related audit focuses on compliance with federal requirements of the Research and Development and Student Financial Aid federal assistance programs. Tests of controls and compliance over requirements for these programs constitute an integral part of the testing required to support the Single Audit Report for the two fiscal years ended June 30, 2009. We also test compliance with selected state laws, university policies, and state accounting procedures.

This report includes recommendations to improve compliance with university policies regarding criminal background checks and overtime reporting, to enhance controls in the Perkins Loan program, to limit computer access to that needed for specific business purposes, and to comply with statutory limits on nonresident fee waivers.

We thank the president and university staff for their assistance and cooperation during the audit.

Respectfully submitted,

*/s/ Tori Hunthausen*

Tori Hunthausen, CPA  
Legislative Auditor



## TABLE OF CONTENTS

Figures and Tables.....	ii
Appointed and Administrative Officials .....	iii
Report Summary .....	S-1
<b>CHAPTER I – INTRODUCTION.....</b>	<b>1</b>
Audit Objectives.....	1
Background.....	1
Montana State University Funding.....	3
Prior Audit Recommendations.....	4
<b>CHAPTER II – FINDINGS AND RECOMMENDATIONS.....</b>	<b>5</b>
Employment Hiring Process .....	5
Criminal Background Checks.....	5
Selective Service Registration .....	6
Overtime.....	7
Negative Cash Balances .....	8
Advance of Perkins Loan Funds.....	9
Computer System Access .....	10
Perkins Loan Servicer.....	10
New Employee Access.....	11
Nonresident Student Tuition Waivers.....	11
<b>CHAPTER III – DISCLOSURE ISSUE.....</b>	<b>13</b>
Investment of Public Funds.....	13
<b>UNIVERSITY RESPONSE .....</b>	<b>A-1</b>
Montana State University (All Campuses) .....	A-3
Office of the Commissioner of Higher Education .....	A-7

## FIGURES AND TABLES

### Figures

Figure 1 Montana University System Organizational Chart..... 1

### Tables

Table 1 Montana State University Full-Time Equivalent Employees ..... 2

Table 2 Student FTE by Resident Status ..... 3

Table 3 Student FTE by Academic Level..... 3

Table 4 Negative Cash Balances at Montana State University..... 8

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## REPORT SUMMARY

### Montana State University (All Campuses)

We performed a financial-related audit of Montana State University (all campuses), for the two fiscal years ended June 30, 2009. This report contains six recommendations relating to hiring process, overtime documentation, negative cash balances, inter-entity loan from Perkins Loan Fund, computer user access controls, and nonresident student tuition waivers.

The listing below serves as a means of summarizing the recommendations contained in the report, the university's response thereto, and a reference to the supporting comments.

#### Recommendation #1.....6

We recommend the university:

- A. Perform criminal background checks at MSU–Bozeman for all positions for which they are required by campus policy.

University Response: Concur.....A-4

- B. Implement a procedure at MSU–Bozeman to ensure job applicants have registered for selective service as required by state law.

University Response: Concur.....A-4

#### Recommendation #2.....8

We recommend the university implement procedures at MSU–Bozeman to detect and prevent overtime charges not documented according to university policy.

University Response: Concur.....A-4

#### Recommendation #3.....9

We recommend the university:

- A. Seek more timely reimbursement of Restricted Fund payments at MSU–Northern;

University Response: Concur.....A-4

- B. Obtain approved inter-entity loans at MSU–Northern, if necessary, to limit negative cash balances to seven working days as required by state law.

University Response: Concur.....A-4

Recommendation #4..... 10

We recommend the university:

- A. Limit disbursements of Perkins Loan Funds at MSU–Northern to allowable purposes listed in federal regulations; and

University Response: Concur.....A-5

- B. Reimburse \$8,837 of lost interest earnings to the Perkins Loan Fund at MSU–Northern.

University Response: Concur.....A-5

Recommendation #5..... 11

We recommend the university:

- A. Implement control procedures at MSU–Bozeman to limit access to loan servicer information to those with a specific business need.

University Response: Concur.....A-5

- B. Review computer system access granted to new hires to ensure it is appropriate for their job duties.

Recommendation #6..... 12

We recommend the university limit nonresident fee waivers to two percent of enrollment of the previous year as required by state law.

University Response: Partially Concur.....A-6

# Chapter I – Introduction

## Audit Objectives

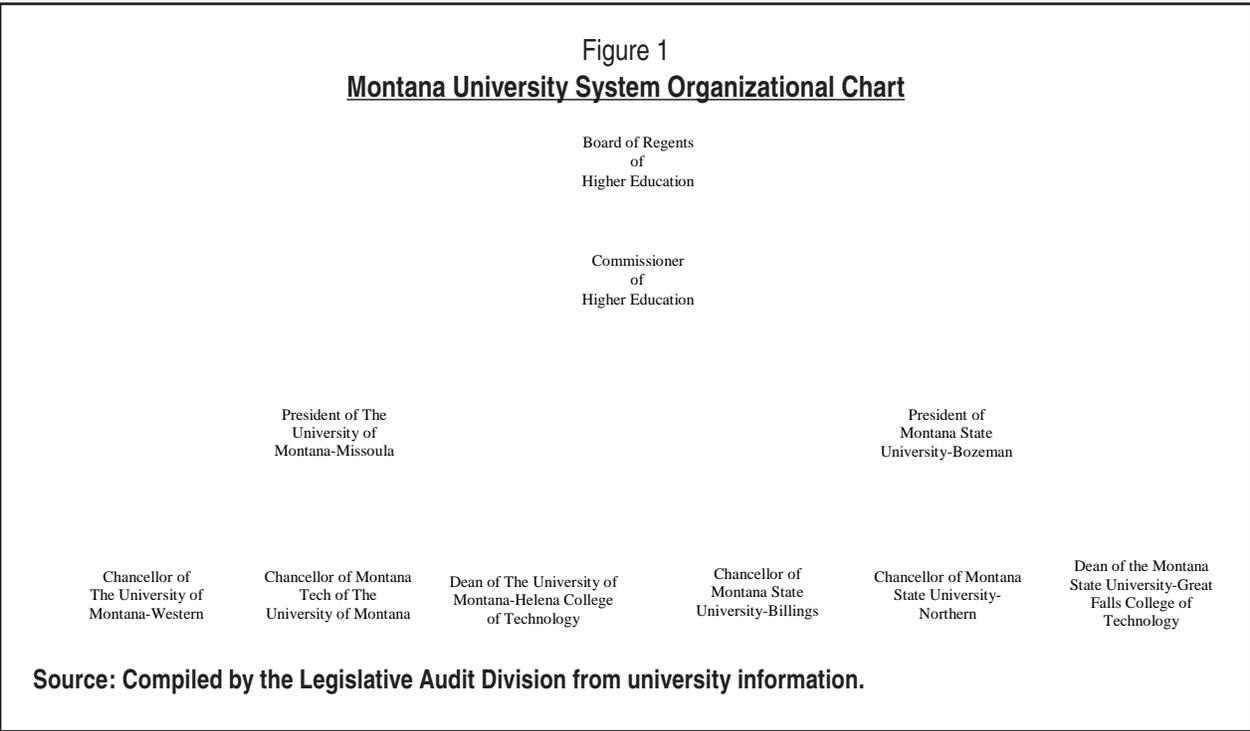
We performed a financial-related audit of Montana State University (all campuses) for the two fiscal years ended June 30, 2009. The objectives of the audit were to:

1. Determine whether the university complied with selected federal regulations applicable to student financial aid and research and development grants.
2. Determine whether the university complied with selected state laws and regulations applicable to university operations.
3. Provide university management with recommendations for improvements in its internal and management controls.
4. Determine the implementation status of the prior audit recommendation.

In accordance with §5-13-307, MCA, we analyzed the cost of implementing the recommendations made in this report. The report sections disclose the cost, if significant, of implementing the recommendation. Other areas of concern deemed not to have a significant effect on the successful operation of university programs are not specifically included in the report, but have been discussed with management.

## Background

The Board of Regents of Higher Education approved the current Montana University System structure in January 1994. The following chart illustrates the organization of the Montana University System.



Montana State University consists of four campuses:

- ◆ Montana State University-Bozeman (MSU–Bozeman)
- ◆ Montana State University–Billings (MSU–Billings)
- ◆ Montana State University–Northern (MSU–Northern)
- ◆ Montana State University–Great Falls-College of Technology (MSU–GF CoT)

All campuses are accredited by the Northwest Commission on Colleges and Universities. The four campuses of Montana State University provide undergraduate and graduate academic and two-year vocational-technical programs to students.

The Agricultural Experiment Station (AES) comprises an integral element of the university’s academic and research program. MSU Extension, Fire Services Training School, and AES provide outreach and continuing education to people in the communities of Montana.

Montana State University reported employee full-time equivalent (FTE) positions of 3,972.92 for fiscal year 2007-08. Of these positions, 1,217.48 FTE were contract faculty positions. The following table shows actual fiscal year 2007-08 FTE employees by campus and type.

Agency	Contract Faculty	Contract Administrative	Contract Professional	Classified	Graduate Assistants	Part-Time & Other	Total
MSU–Bozeman	701.56	32.71	408.49	1034.25	196.39	347.52	2720.92
MSU–Billings	204.11	28.12	85.01	212.67	6.88	37.74	574.53
MSU–Northern	84.54	6.13	55.94	58.00		38.22	242.83
MSU–Great Falls College of Technology	63.51	6.00	30.78	50.50		10.22	161.01
Agricultural Experiment Station	66.44	0.66	45.07	69.19	9.82	10.98	202.16
Extension Service	96.10	1.29	12.73	38.76		9.39	158.27
Fire Services Training School	1.22		5.91	2.25	0.10		9.48
<b>Total</b>	<b>1217.48</b>	<b>74.91</b>	<b>643.93</b>	<b>1465.62</b>	<b>213.19</b>	<b>454.07</b>	<b>4069.20</b>

**Source: Compiled by the Legislative Audit Division from Office of the Commissioner of Higher Education “MUS Operating Budgets 2009.”**

The following tables show Montana State University student FTE enrollment for fiscal years 2007-08 by residential status and academic level.

Table 2  
**Student FTE by Resident Status**  
For Fiscal Year 2007-08

Campus	Resident	Nonresident	WUE	Total
MSU-Bozeman	7,851	2,317	299	10,467
MSU-Billings	3,764	132	258	4,154
MSU-Northern	978	51	66	1,095
MSU-Great Falls	1,144	66	3	1,213

Source: Compiled by the Office of Commissioner of Higher Education.

Table 3  
**Student FTE by Academic Level**  
For Fiscal Year 2007-08

Campus	Underclassmen	Graduate	Two-Year	Total
MSU-Bozeman	9,552	915		10,467
MSU-Billings	3,152	296	706	4,154
MSU-Northern	1,033	62		1,095
MSU-Great Falls			1,213	1,213

Source: Compiled by the Office of the Commissioner of Higher Education.

## Montana State University Funding

The Montana legislature sets the state support for the Montana University System. The legislature appropriates general fund and six-mill levy revenues in a lump sum for the educational units. The Board of Regents (board) then allocates the lump sum appropriation to the various programs and educational units funded by the lump sum appropriation. Personnel from the Commissioner of Higher Education's office said the board's formula that allocates state funds to the educational units is based upon resident enrollment, an analysis of faculty salaries in states with similar per capita income, the academic program offerings of the university, the necessary support expenditures, board priorities, and the amount of state funds available. The Commissioner of Higher Education's office calculated state support for resident students at 43 percent of the anticipated cost of their education in fiscal year 2008-09.

## **Prior Audit Recommendations**

Our office performed the financial-related audit of Montana State University (all campuses), for the two fiscal years ending June 30, 2007. Of the five recommendations addressed to the university by our prior report, the university implemented four recommendations and did not implement one. The recommendation to expedite criminal background checks, which was not implemented, is discussed on page 5.

## Chapter II – Findings and Recommendations

### Employment Hiring Process

The Human Resources Department administers the personnel and payroll processes at MSU–Bozeman. An integral part of this responsibility is coordination of the hiring process for all departments on campus. The following paragraphs discuss ways in which the university can improve timeliness of criminal background checks and effectiveness of monitoring compliance with state law requirements related to selective service registration.

### Criminal Background Checks

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**The university did not complete criminal background checks required by its policy for some of its new employees.**

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MSU–Bozeman personnel policy and procedures require that criminal background checks be initiated by Personnel and Payroll Services for certain positions. The policy specifies that the university perform a background check on the final candidate for safety or security sensitive classified positions such as police officers, cashiers, residence hall custodians, and preschool teachers. Under the policy, the hiring authority may employ the finalist with prior approval from Personnel and Payroll Services with the explicit understanding continued employment is contingent upon receipt of acceptable results from the criminal background check.

In our prior audit, we recommended that the university expedite criminal background checks at MSU–Bozeman for all positions which require them. Personnel reported that the recommendation was implemented as of December 31, 2007. However, we found three instances where MSU–Bozeman had not performed background checks for resident hall custodian positions. As of January 15, 2009, the university had not conducted a required background check for a residence hall custodian who began working on October 8, 2007. In a second case, an individual previously employed by the university in another capacity started work as a residence hall custodian on July 28, 2008. As of January 23, 2009, six months later, the university had not completed the required background check for this employee. For a third custodian, the employee started work February 18, 2008, but the university did not complete the required background check until May 8, 2008, almost three months later.

By not completing the criminal background checks, the university increases the risk of hiring employees with a criminal record of actions posing risks to the persons and property of students or the university. By not completing the check during the four month probationary period for custodians, as required by policy, the university takes

on liability for not exercising due care in hiring as well as the added cost of terminating an employee who has attained permanent status.

A human resources administrator said MSU–Bozeman revised policies and hired additional personnel in 2007 to address the background check issue, but said there had been some problems during the implementation. After we discussed the three cases with management we noted that human resources personnel demonstrated the capability to perform timely criminal background checks by completing the background checks within two weeks for the two employees discussed above that had not been checked.

## **Selective Service Registration**

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**The university can improve its process for documenting compliance by new employees with selective service registration requirements.**

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Section 2-15-130(1), MCA, restricts the Montana University System from employing an individual who has knowingly failed to comply with the registration requirements of the federal Military Selective Service Act. MSU–Bozeman provides new employees with a form where they can check off their selective service status. Because only some people have to register for selective service, a blank in the registration box is not necessarily an indicator of noncompliance. Therefore, it is necessary for university personnel to determine whether the selective service registration requirement applied to the applicant in order to ensure compliance with state law. A human resources administrator said university personnel could not determine from the documentation on the form whether the applicant should have registered for selective service and the selective service box should have been marked. As a result, a review of forms used in the hiring process was initiated in April 2009 to develop a process that documents whether those who should have registered did in fact do so, the administrator said.

---

### **RECOMMENDATION #1**

*We recommend the university:*

- A. *Perform criminal background checks at MSU–Bozeman for all positions for which they are required by campus policy.*
  - B. *Implement a procedure at MSU–Bozeman to ensure job applicants have registered for selective service as required by state law.*
-

## Overtime

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### **The university paid overtime to employees whose time records did not document all hours worked, as required by university policy.**

---

MSU–Bozeman personnel policies require employees to report all hours actually worked and any leave taken each pay period on their timesheets. Calculation of the 40 hour week for employees eligible for overtime is based on time in a pay status, including any holiday, annual leave, and sick leave. Supervisors have the responsibility of reviewing each employee's individual monthly timesheets and verifying that any extra hours worked, whether overtime or compensatory time, were in fact approved and closely match the employee's original request, and that all hours reported reflect the actual time that an employee worked or used leave.

We reviewed overtime for January through March 2009, and made inquiries regarding eight employees in different departments who charged ten or more hours of overtime per pay period. Of the eight examined, the timesheets of three employees did not support the overtime charged in compliance with university policy, as described below.

- ◆ A College of Education, Health and Human Development employee has a full-time job as a field placement specialist, placing student teachers with schools. The employee also provides lunch hour coverage for the student testing services, which is documented and paid at her overtime rate. In addition, the employee administers the testing services' weekend tests and is paid 16 hours of overtime per month. The timesheets do not include the specific hours and days worked for weekend testing services.
- ◆ An Intercollegiate Athletics employee is paid nine hours of overtime each week in addition to her regularly scheduled full-time job for services rendered to an athletics fundraising group. The actual overtime hours worked are not documented. The fundraising group reimbursed the department \$6,000 per year for the employee's overtime. We estimated the actual costs exceeded the reimbursement by \$1,750.
- ◆ All overtime eligible Admissions employees have a regular 40-hour work week, Sunday through Saturday. These employees record time on an exception basis only, meaning only sick or vacation time used or overtime earned is recorded. Because actual time worked each day is not recorded on timesheets, it is impossible to determine whether overtime hours claimed and paid were actually earned.

A Human Resources (HR) officer said the office reviews an overtime report monthly and confirms the validity of overtime charged in excess of 40 hours with department personnel. HR relies on departments to review time records as required by policy and does not review timesheets for compliance. The current overtime review does not

verify overtime charges at the level of detail necessary to detect and correct the type of noncompliance found during the audit.

### **RECOMMENDATION #2**

*We recommend the university implement procedures at MSU–Bozeman to detect and prevent overtime charges not documented according to university policy.*

## **Negative Cash Balances**

**The university had negative cash balances in Restricted and Loan Funds for more than seven business days.**

Section 17-2-107(7)(b), MCA, limits to seven working days the time that a fund or subfund of a university unit can have a negative cash balance. Section 20-25-201(2), MCA, defines the Montana State University unit of the Montana University System. We found six instances in the Restricted Fund and two instances in the Loan Fund in the period from July 1, 2007 to June 30, 2009, where cash remained negative more than seven business days. In each of these instances, negative balances at Montana State University-Northern caused the balance to remain negative for more than seven days. The table below summarizes these occurrences:

Table 4  
**Negative Cash Balances at Montana State University**  
 July 2007 through June 2009

Fund	Number of Working Days Negative	Start Date	Average Negative Cash Balance
Restricted	15	July 20, 2007	\$14,392.69
Restricted	72	August 21, 2007	\$346,185.87
Restricted	80	January 7, 2008	\$303,475.81
Restricted	12	June 3, 2008	\$52,028.01
Restricted	85	August 25, 2008	\$651,834.23
Restricted	102	January 5, 2009	\$740,380.37
Loan	38	August 23, 2007	\$23,121.33
Loan	75	January 15, 2009	\$14,486.12

**Source: Compiled by the Legislative Audit Division from Statewide Accounting, Budgeting, and Human Resources System data.**

The Restricted Fund at MSU includes federal financial aid, scholarships from gifts and endowment income, and research grants from federal, state, and private sources. The negative balances in the Restricted Fund resulted when disbursements were made prior to obtaining inter-entity loans to cover the cash shortfalls, a financial manager said. Under §17-2-107(2)(b), MCA, such loans must be approved by the Commissioner of Higher Education. According to the manager, the MSU–Northern Foundation, which manages scholarship payments, frequently does not reimburse the university until three to four months after they are billed for the scholarship disbursements. Agreements for quarterly reimbursement of certain federal grants also contribute to the length of negative cash periods. The negative cash balances in the Loan Fund occurred when MSU-Northern advanced Loan Fund resources to cover a deficit in its Plant Fund.

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### ***RECOMMENDATION #3***

*We recommend the university:*

- A. *Seek more timely reimbursement of Restricted Fund payments at MSU–Northern;*
  - B. *Obtain approved inter-entity loans at MSU–Northern, if necessary, to limit negative cash balances to seven working days as required by state law.*
- 

## **Advance of Perkins Loan Funds**

### **Making loans to other university funds is not an allowable use of Perkins Loan Funds.**

---

MSU–Northern advanced cash from its Perkins Loan Fund to its Plant Fund during fiscal years 2007-08 and 2008-09. Federal regulations list permissible uses of Perkins Loan Funds. Providing loans or advances to other funds is not among the allowable uses of Perkins Loan Funds. In addition, federal regulations also require institutions participating in the Perkins Loan Program to invest program funds in an investment account consisting predominately of low-risk, income-producing securities, such as obligations issued or guaranteed by the United States. The Short Term Investment Pool (STIP), administered by the Board of Investments, satisfies the conditions of this requirement. We estimate MSU–Northern lost \$8,837 during the July 1, 2007 to June 30, 2009 period by advancing money to other funds rather than investing it in STIP. We question the lost interest as an unallowable cost to the Perkins Loan Program.

**RECOMMENDATION #4**

We recommend the university:

- A. Limit disbursements of Perkins Loan Funds at MSU–Northern to allowable purposes listed in federal regulations; and
  - B. Reimburse \$8,837 of lost interest earnings to the Perkins Loan Fund at MSU–Northern.
- 

**Computer System Access**

Montana State University-Bozeman uses computer systems to administer its financial aid operation. To protect university assets, the university has procedures to limit the access of each employee to the minimum level needed to perform their job. The following two sections discuss situations where individuals had access in excess of that needed to do their jobs.

**Perkins Loan Servicer**

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**The university's computer access controls did not detect an unknown party with access to the computer system of the Perkins loan servicer.**

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MSU–Bozeman contracts with an outside firm to service Perkins loans, perform due diligence, and meet certain federal compliance requirements of the Perkins Loan Program. We found that one of the nine people with general processing access to the loan servicer's computer system was not a current employee of MSU–Bozeman. Furthermore, no university or loan servicer personnel knew who the person was or why he would have access to the loan servicer's data base.

Access to a computer system should be limited to those with a specific business purpose for access. A user with general processing access has the capability to make adjustments to students' loan accounts and has access to confidential borrower information. We found that neither MSU–Bozeman Financial Aid nor the Loan Service Center had procedures to review and evaluate user access to the loan servicer system. When informed of the situation, university personnel removed the access of the unknown individual.

## New Employee Access

**MSU–Bozeman’s access review process did not limit access of a new hire to the level needed for the job duties.**

We reviewed the level of access of financial aid employees to various datasets in the university’s computer system at MSU-Bozeman. In one instance, we noted that an employee had access to change certain student registration data, as well as student financial aid data. Financial aid management said that the ability to change registration data is not necessary to perform financial aid duties and could enable the employee to impact the financial aid eligibility of a student by changing registration status.

A systems analyst said assignment of the student registration security class occurred during the transition of a previous employee from financial aid to another department at MSU-Bozeman. The registration access was given to a newly hired employee who replaced the employee who had needed the access for her new job. Although the approval process for system access involves a review by management within the user group and a computer system security group, the review did not detect the inappropriate level of access. After we discussed the situation with financial aid management, the access to change student registration data was deleted.

### ***RECOMMENDATION #5***

*We recommend the university:*

- A. *Implement control procedures at MSU–Bozeman to limit access to loan servicer information to those with a specific business need.*
- B. *Review computer system access granted to new hires to ensure it is appropriate for their job duties.*

## Nonresident Student Tuition Waivers

**Montana State University exceeded the limit on fee waivers for nonresident students set in state law.**

Section 20-25-421(2), MCA, generally limits waivers of tuition for nonresident students for each university unit to two percent of the full-time equivalent enrollment at that unit during the preceding year. Montana State University, consisting of the Bozeman, Billings, Northern, and Great Falls campuses, issued nonresident tuition waivers to 2.55 percent of the previous year enrollment in fiscal year 2007-08. We

estimate the cost of excess waivers at \$1,430,864 for fiscal year 2007-08. Although MSU exceeded the limit as a unit, only MSU-Bozeman exceeded the two percent limit at the campus level. Financial management said MSU has sought to increase nonresident enrollment in recent years because nonresidents cover more than their actual tuition costs, thereby subsidizing costs associated with resident students.

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***RECOMMENDATION #6***

*We recommend the university limit nonresident fee waivers to two percent of enrollment of the previous year as required by state law.*

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## Chapter III – Disclosure Issue

### **Investment of Public Funds**

The university administers endowments gifted from third parties. The principal portion of an endowment is nonexpendable, but is available for investment. Earnings must be used as specified by the donor. The university's endowment-related investments totaled \$7,637,994 at June 30, 2008, and \$7,693,020 at June 30, 2009. Of these endowment-related investments, the Montana State University Foundation managed \$6,672,326 at June 30, 2008, and \$6,731,585 at June 30, 2009, under contract with Montana State University. These funds are held in an investment pool that owns corporate stocks and bonds, treasury bonds, money market funds and other types of securities. The Board of Investments managed the remaining endowment funds in its Short Term Investment Pool, holding balances of \$965,668 and \$961,435 at June 30, 2008, and 2009, respectively.

Article VIII, Section 13, of the Montana Constitution governs the investment of public funds and directs the legislature to provide for a unified investment program. Codified in §17-6-201, MCA, the law requires that public funds be invested through the Board of Investments unless otherwise provided by law. Article X, Section 10 of the Montana Constitution requires state university funds to be invested under such regulations as may be provided by law.

Governance and control of the Montana University System is given to the Board of Regents in Article X, Section 9 of the Montana Constitution. The Board of Regents was granted the full power, responsibility and authority to supervise, coordinate, manage and control the university system. A 1975 Attorney General's opinion provides guidance on the application of certain legislative enactments, including investment statutes to the university. The opinion indicates the requirements of the unified investment program apply to the investment of university funds. However, the opinion does not specifically address endowment funds. It is unclear whether endowments from third parties are public funds for the purposes of Article VIII, Section 13 of the Montana Constitution. Because of this lack of clarity, we requested an Attorney General's opinion on the matter. We make no recommendation regarding the university's endowment-related investment practices at this time.



MONTANA STATE  
UNIVERSITY  
(ALL CAMPUSES)

UNIVERSITY RESPONSE



RECEIVED  
SEP 10 2009  
LEGISLATIVE AUDIT DIV.

September 10, 2009

Ms. Tori Hunthausen  
Legislative Auditor  
Legislative Audit Division  
Room 160, State Capitol  
P.O. Box 201705  
Helena, MT 59620-1705

Dear Ms. Hunthausen:

Enclosed you will find Montana State University's responses to the recommendations outlined in the narrative segment of its Financial-Related Audit Report for the two fiscal years ended June 30, 2009.

Montana State University appreciates the Legislative Audit Divisions' efforts in regards to this audit, and its identification of areas for continued improvement.

Sincerely,

  
Geoffrey Gamble  
President

GG/sm  
Enclosure

**Office of the President**

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**MONTANA STATE UNIVERSITY**  
**Response to Legislative Audit Division Recommendations**  
**Financial-Related Audit for the Two Fiscal Years Ended June 30, 2009**

**RECOMMENDATION #1**

*We recommend the university:*

- A. *Perform criminal background checks at MSU–Bozeman for all positions for which they are required by campus policy.*
- B. *Implement a procedure at MSU–Bozeman to ensure job applicants have registered for selective service as required by state law.*

**A. MSU-Bozeman concurs with the recommendation.**

MSU-Bozeman has already implemented procedures to ensure that criminal background checks are performed for all positions for which they are required by campus policy.

**B. MSU-Bozeman concurs with the recommendation.**

MSU's administrative information system is scheduled to be upgraded in October 2009. MSU anticipates using additional functionality in this upgrade to track Selective Service registration. The current, recently implemented, practice is manual tracking of Selective Service documentation. The manual tracking process will be the contingency plan if the upgrade does not provide anticipated functionality.

**RECOMMENDATION #2**

*We recommend the university implement procedures at MSU–Bozeman to detect and prevent overtime charges not documented according to University policy.*

**MSU-Bozeman concurs with the recommendation.**

MSU-Bozeman Human Resources department is currently implementing Web time entry; an electronic timekeeping function within the administrative information system. This functionality will provide a consistent electronic format for recording hours worked, including overtime. Part of the implementation plan includes training, not only on using the software, but also on the correct procedures for recording and approving time in accordance with the recently revised policies.

**RECOMMENDATION #3**

*We recommend the university:*

- A. *Seek more timely reimbursement of Restricted Fund payments at MSU-Northern;*
- B. *Obtain approved inter-entity loans at MSU-Northern, if necessary, to limit negative cash balances to seven working days as required by state law.*

**MSU-Northern concurs with the recommendation.**

MSU-Northern understands the importance of compliance with Section 17-2-107(7)(b), MCA, which limits to seven working days the time that a fund or subfund of a university unit can have

a negative cash balance. Although cash is monitored on a daily basis, a misunderstanding of the statute resulted in certain funds having negative cash while overall cash was positive.

MSU-Northern will formally communicate the need for timely reimbursement for Foundation scholarships expended. Additionally, efforts will be made to incorporate monthly, rather than quarterly, reimbursement into future grant proposals.

MSU-Northern will use approved inter-entity loans as necessary to prevent negative cash from exceeding the seven day limit.

**RECOMMENDATION #4**

*We recommend the university:*

- A. Limit disbursements of Perkins Loan Funds at MSU–Northern to allowable purposes listed in federal regulations; and*
- B. Reimburse \$8,837 of lost interest earnings to the Perkins Loan Fund at MSU-Northern.*

**MSU-Northern concurs with the recommendation.**

MSU-Northern is currently using Perkins Loan funds only as allowable by Federal regulations and has discontinued the practice of using the fund’s available balance to record inter-entity loans.

MSU-Northern will transfer \$8,837 to the Perkins Loan fund to replace calculated lost interest earnings.

**RECOMMENDATION #5**

*We recommend the university:*

- A. Implement control procedures at MSU-Bozeman to limit access to loan servicer information to those with a specific business need.*
- B. Review computer system access granted to new hires to ensure it is appropriate for their job duties.*

**A. MSU-Bozeman concurs with the recommendation.**

MSU-Bozeman has implemented control procedures to review access to loan servicer information.

**B. MSU-Bozeman concurs with the recommendation.**

MSU-Bozeman’s computer security group will work to ensure that existing protocol for granting system access to new hires is followed by conducting additional training on the proper procedures for determining user access. The computer security group will also continue perpetually reviewing existing system access.

In addition, MSU-Bozeman Financial Aid has implemented additional control procedures to review computer system access for their employees.

**RECOMMENDATION #6**

*We recommend the university limit nonresident fee waivers to two percent of enrollment of the previous year as required by state law.*

**MSU partially concurs with the recommendation.**

MSU does not concur with the LAD's finding that MSU has violated § 20-25-421(2), MCA. The reason for nonconurrence is that § 20-25-421, MCA, enacted in 1971, was effectively repealed in 1972 by the adoption of Article X, § 9, of the new Montana Constitution, which conferred full management and control of the university system on the Montana Board of Regents. See, e.g. Schaefer, Hugh V., "The Legal Status of the Montana University System Under the New Constitution," *Montana Law Review*, Vol. 35, No. 2, Summer 1974, p. 207, in which Mr. Schaefer expressly designates § 20-25-421, MCA, as repealed by implication by the new constitution. Mr. Schaefer's article was favorably referenced by the Montana Supreme Court in 1975 in *Board of Regents v. Judge*, as addressing the impact of the 1972 constitutional provision. Other state and national authorities support the principle that it is within the regents' sole authority to set student tuition and fees.

We concur in part with the LAD finding because Board of Regents' Policy 940.13 adopts the same nonresident tuition waiver limitation as the statute, and MSU has exceeded this limit. To the extent of the dollar amount cited in the LAD report, MSU is out of compliance with regents' policy. The campuses, the regents and the commissioner have been engaged in considering whether changes are necessary to the regents' policy on tuition waivers. This issue was first raised to the regents at their May 2007 meeting. The commissioner's office is aware that the campuses are adopting nonresident waiver programs designed to enhance both nonresident attendance and resident affordability.

When § 20-25-421, MCA was first enacted, the primary source of funding for the university was state general funds. Because at that time nonresident students were partially supported by state funding, the intent of the legislature and the Board of Regents, in setting limitations on nonresident waivers, was to limit the number of nonresident students benefitting from the state's funding of higher education. Four decades later, funding for the university system is very different. Now, tuition revenues from nonresident students subsidize the cost of education for resident students. MSU's program was adopted to improve recruitment of nonresident students and, on the whole, resulted in increased tuition income. The decrease in general fund revenue may warrant a reconsideration of the regents' limitation on nonresident tuition waivers. MSU will work with the commissioner's office and the board of regents to ensure that MSU maintains a nonresident tuition policy which complies with regents' policy.



# MONTANA UNIVERSITY SYSTEM

A-7

RECEIVED

SEP 10 2009

LEGISLATIVE AUDIT DIV.

September 9, 2009

Tori Hunthausen  
Legislative Auditor  
Legislative Audit Division  
PO Box 201705  
Helena MT 59620-1705

Dear Ms. Hunthausen:

Please see the response below from the Office of the Commissioner of Higher Education to the Montana State University financial-related audit for the two fiscal years ended June 30, 2009. We appreciate the opportunity to respond to the disclosure issue.

### Response to Chapter III: Disclosure Issues

The Montana Supreme Court, in *Board of Regents v. Judge*, 1975, issued in the same year but after the 1975 AG opinion cited in the LAD Report, ruled that donated funds are private funds beyond the authority of the legislature to appropriate. The Court further held that the regents' constitutional authority is subject only to the power of legislative appropriation and the public policy of the state. Given the regents' "full control" over university system funds and the court's limitations on legislative control of these funds, only an express provision of the Montana Constitution can supersede regents' authority over private funds donated to the university.

The campus practice of contracting with campus-affiliated foundations, for investment of university donations, is a long-standing practice which pre-dates the 1975 AG opinion. Board of Regents' policy specifically authorizes the campuses to contract with the foundations for investment of donated funds, and Montana State University is in compliance with policies relating to accounting and investment of such funds. These policies are based on the regents' firm belief that this practice is permissible under the Montana Constitution.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Stearns".

Sheila M. Stearns  
Commissioner of Higher Education

C: President Geoff Gamble

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Sheila M. Stearns  
Commissioner of Higher Education