Higher Education Economics – Beyond Tuition

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Discussions about the rising cost of higher education almost invariably focus on tuition. But according to a 2014 database from the Integrated Postsecondary Education Data System (IPEDS) at the National Center for Education Statistics (NCES), tuition accounts for only 35 percent of the cost of attendance. Housing, food, transportation, health insurance, books, and more combine to place additional – and often unexpected – stress on family budgets.

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With our new Intelligent Rate™ and GradGuard™ solutions, Tuition Management Systems continues to uphold the mission that has guided our company since its founding more than 30 years ago – *to help students succeed and schools prosper.*

Sincerely,

Craig Lockwood
Managing Director of Product & Marketing, TMS

For more information on TMS, visit www.tuitionmanagementsystems.com.

*College Parents of America Survey of Risks and Concerns, June 2013.

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Introduction

Talk about the economics of higher education and most people think about tuition. That's not surprising, given the important, even dominant, role that tuition plays in the budgets of colleges, public and private alike.

But the decisions facing those who manage the finances of colleges and universities extend well beyond the sticker price on enrolling. College and university leaders must consider sources of revenue, how to judge colleges' economic health, how colleges collect the funds students owe, costs associated with maintaining good town-gown relations, intellectual property and so much more. In many cases, these non-tuition issues have major ramifications for the economic health of institutions.

This compilation includes articles on a range of these issues – and how different colleges and universities are handling them. *Inside Higher Ed* will continue to cover these issues, and we welcome your suggestions for future coverage.

--The Editors
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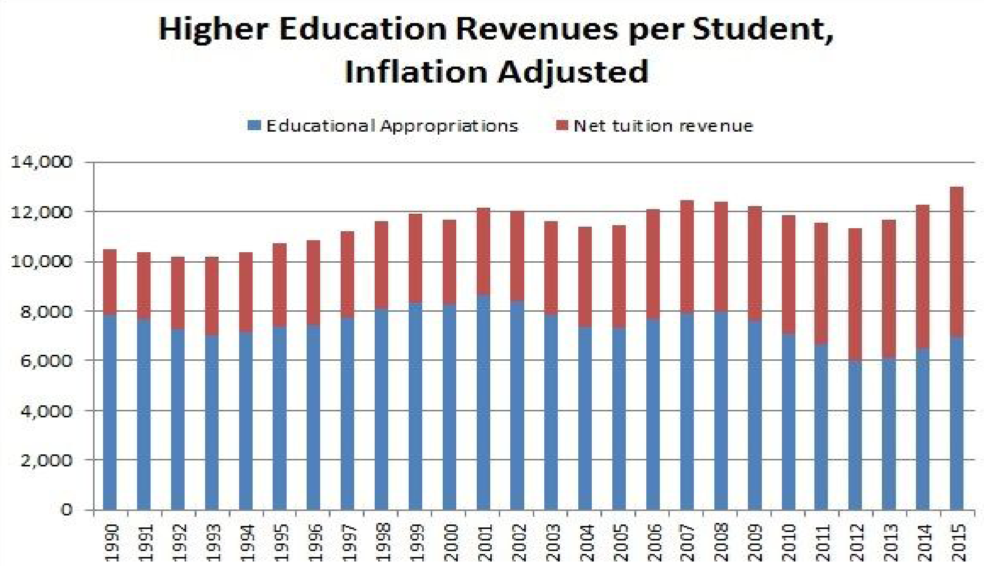
How to Count Higher Ed Costs

By Rick Seltzer

Critics say the Higher Education Cost Adjustment index leads to the wrong conclusions on state funding and policy.



Source: SHEEO, Andrew Gillen
Notes: Figures adjusted for inflation using the CPI-U. Educational Appropriations are defined as "state and local support available for public higher education operating expenses."

Critics are launching another salvo in a long-simmering debate over the underlying math used to gauge changes in higher education finances over time, arguing that a cost-adjustment index used in a closely watched report obscures true trends in revenue.

At issue is the Higher Education Cost Adjustment, an inflationary index developed by the State Higher Education Executive Officers Association and used in its annual State Higher Education Finance report. The index was designed to estimate inflation in the costs that colleges and universities pay. But its critics say that by focusing on what institutions spend, rather than on what students pay, the adjustment is out of step with the rising costs students face -- and actually hides a slight upward trend in revenue per student at colleges and universities.

The use of HECA has implications beyond numbers on a page, those critics say. Misreading revenue trends can have real effects on the policy choices made around state funding and tuition rates, leading decision makers to push the wrong levers when attempting to keep cost of attendance affordable. Others have argued that the cost index contributes to a feedback loop in which perceived higher costs prompt legislators to give colleges and universities more funds than are needed, which in turn allows the institutions to spend -- and charge -- more.

But HECA's defenders respond that the index is a tool like any other, one creating data for a specific context. A key part of their defense is that HECA is intended to show the financial pressures universities face, which by nature are different from those students at public colleges and universities experience. Further, they say HECA is not particularly out of step with the most widely known consumer inflationary measure, the Consumer Price Index.

In some ways, the two sides are talking past one another as they focus on different sides of the higher education financial equation. In other ways, the debate shows just how opaque and complex the relationship can be between higher education costs and tuition -- every expert seems to have their own take on the most important underlying factors.

What Is the Higher Education Cost Adjustment?

SHEEO developed HECA as an alternative to two other inflationary measures, CPI and the Higher Education Price Index. It was intended to account for differences in the costs colleges face and the consumer-oriented costs accounted for in CPI. At the same time, HECA tried to account for some criticisms lobbed at HEPI, which had drawn fire for being privately developed, being self-referential because it relied heavily on average faculty salaries, and being potentially costly to update and maintain.

Underpinning HECA are indexes developed and updated by the federal government. It's tilted heavily toward personnel costs under the reasoning that faculty and staff costs are the largest portion of higher education institutions' expenditures. A full 75 percent of HECA is the Employment Cost Index -- personnel costs -- and 25 percent is the Gross Domestic Product Implicit Price Deflator -- nonpersonnel costs. But HECA has also been criticized as being self-referential. It should not be used as a basis for increasing state funding, an argument goes, because it exaggerates what colleges and universities have to spend, making it more likely that state funding will appear to be falling behind costs.

The man leading the latest charge against HECA is Andrew Gillen, an independent higher education analyst and longtime critic of the cost adjustment. His basic argument starts with the idea that using HECA makes it harder to see a slight upward trend over time in institutions' revenue per student -- revenue from state and local appropriations combined with net tuition revenue. Adjusting using CPI shows that revenue per student reached an all-time high of $12,972 in the 2015 fiscal year, he said, surpassing a previous high of $12,440 in 2007. That's a larger margin than you get when adjusting for HECA, which shows revenue rising to $12,972 in 2015, up from $12,723 in 2007.

The all-time high came as state funding for higher education recovered somewhat from the recession, Gillen said. He rejected the idea that state funding per student is in long-term decline. His data show state appropriations per student lower in 2015 than they were before the recession but still increasing in recent years, keeping with a cyclical pattern that's established itself over previous economic cycles.

Further, tuition does not change in lockstep with state funding, Gillen said. He performed an analysis without HECA showing that every one-dollar decrease in state funding is only correlated with a seven-cent increase in tuition. If tuition were perfectly linked to state funding, the two indicators should change in a one-to-one ratio, he said.

Misreading the trends in revenue because of cost adjustments will lead to misdiagnosing the way costs are changing over time -- and misdiagnosing, in turn, the reasons tuition has been increasing, Gillen said. The common narrative is that declines in state funding have led to higher tuition, he said. But because his analysis shows state funding has cycled over time while revenue has crept up and tuition steadily increased, Gillen believes there has been too much emphasis on state funding. Increasing state funding is actually more likely to feed the trend of higher costs and tuition, he said.

So other elements of higher education finance need to be considered, Gillen said.

"That's really why I keep writing," he said. "If I'm wrong, then the way to keep tuition low is to keep increasing state funding. But if I'm right and you keep increasing state funding, that's not going to do anything to tuition. Tuition is going to keep going up."

Colleges and universities will raise all the money they can, and they will spend all the money they raise, Gillen said. Under his logic, an increase in state funding does nothing but increase the cap on what institutions can raise and spend.

Following Gillen's reasoning can lead to very different ideas for keeping tuition in check. He suggested finding ways to change the incentives colleges and universities face.

"There are two ways you can escape this problem of just feeding the trend," Gillen said. "Getting higher education to stop competing based on reputation -- compete based on value. Or cap revenue and start taking that away as colleges reach whatever is determined to be an adequate level."

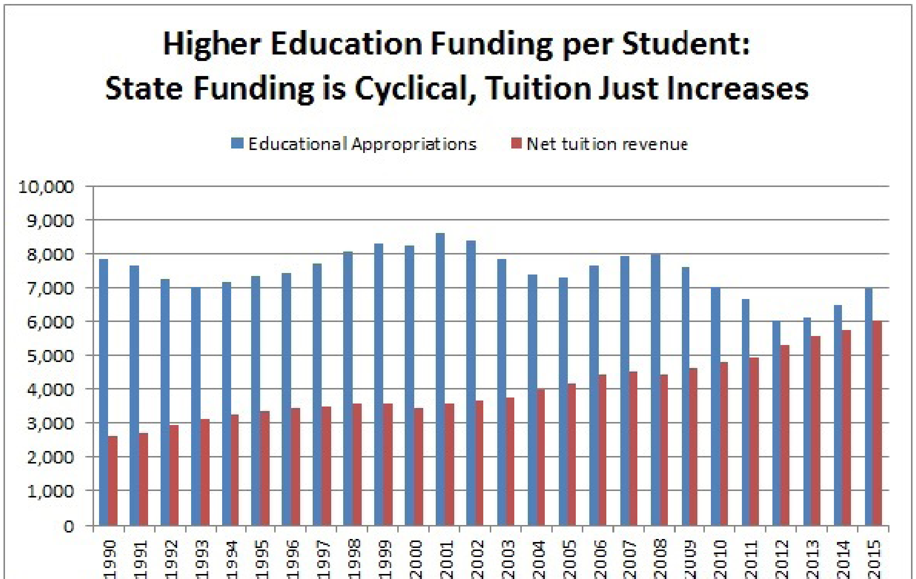
Countervailing Views

But many see the debate over cost indexes as a distraction from evaluating the trends in finance.

"This HECA versus CPI debate is a red herring, to be blunt," said Andy Carlson, a senior policy analyst at the State Higher Education Executive Officers association. "CPI versus HECA is just a nitpicky argument that distracts."

The two indexes have been tracking closely, and SHEEO discusses them in its report materials to provide transparency, Carlson said. CPI went up by 8.4 percent over the five years ending in 2015, according to SHEEO. By comparison, HECA increased by 9.8 percent.

Further, SHEEO created its report to look at finances from the educational provider perspective, Carlson said. HECA adjusts for the fact that most higher education costs are driven by salaries and benefits. Only a quarter of HECA is based on the cost of goods, and three-quarters is based on salaries for white-collar professionals. That's very different than CPI, designed to measure goods and services consumers purchase.



Source: SHEEO, Andrew Gillen
Notes: Figures adjusted for inflation using the CPI-U. Educational Appropriations are defined as "state and local support available for public higher education operating expenses."

"From my perspective, HECA makes perfect sense if you really want to focus on the revenue," Carlson said. "But if you really want to focus on tuitions and students and families, CPI is really a much more valuable measure."

"For every person who says we shouldn't use HECA, we've got somebody else who sharply depends on it," Carlson said. "An analyst can do both. They can pick the one that works best for them."

No inflationary measure is going to be perfect. Some might argue HECA is out of step with consumers, but university business officers could also claim it doesn't recognize some of the newest costs they face. It does not account for pensions or insurance cost increases, which are expenses institutions increasingly take on as they're shifted over from states, Carlson said.

He thinks some trends are apparent regardless of the index used.

"Whether you use CPI or HECA, it's clear on the state and local funding side that funding hasn't kept up with enrollment growth and with inflation," Carlson said, an opinion contrasting with Gillen's assertion that state funding is cyclical. "The reality is the share coming from tuition has increased significantly."

SHEEO experts haven't been the only ones to pick out trends regardless of inflationary measure.

Susan Dynarski is a professor of public policy, education and economics at the University of Michigan who studies the issue of college costs. In doing so, she wrote about CPI and HECA in October 2014. She found that under CPI, a consumer needed $1.97 in 2013 to buy what would have cost $1 in 1988. Under HECA, the split is $2.12 versus $1.

While that is a difference, it is also spread out over 25 years.

"It seemed like, most of the time, these things tracked together," Dynarski said.

Still, some say a special cost index for higher education sets up a feedback loop constantly pushing both prices and expenses upward.

'Feedback Loop'

"It's like a crutch," said Art Hauptman, an independent public policy consultant specializing in higher education finance. "It's a self-sustaining prophecy. Higher education prices go up faster, and therefore costs go up faster, and therefore the price index is higher."

Hauptman falls more in line with Gillen in the discussion over indexes and costs. One of his ideas is to stop focusing on what public institutions actually spend and focus more on what they should be spending. Set a realistic funding level per student in a given field, and allow institutions to decide how to best educate with it.

He views higher education as roughly analogous to the health care industry -- growth in health care costs only slowed when the money dried up, he said.

"Do you think costs are driving the prices or do you think prices are driving the costs?" he said. "If you think the underlying costs are driving the price, you sort of get into this argument. I don't believe it."

The index debate doesn't seem to have translated into discussions within college and university business offices, however. It's largely an academic argument, said Donald Heller, provost and vice president of academic affairs at the University of San Francisco.

Heller said he's not aware of any university that sets its tuition based on cost indexes -- nor is he aware of the indexes playing a key role in state appropriation deliberations. He did not sound surprised, however, that the index issue was sparking more debate.

"Every now and then it pops up," he said. "Generally, you have people in higher ed saying we need to use something other than the CPI because the CPI doesn't really reflect our cost structure, things we spend money on.

And then people on the other side of the debate say CPI makes more sense because when people go to pay for higher education, their lives are dictated by what they face when they have to buy things." ■

https://www.insidehighered.com/news/2016/06/28/higher-education-cost-adjustment-under-fire-again

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Credit Cards a Costly Option

By Emily Tate

Colleges increasingly accept credit cards as a form of tuition payment, but many experts wonder why.

It's becoming more and more common for colleges to accept credit cards as a form of tuition payment, but college and university finance officials say there's a cost to that convenience for students and families -- and it's not worth it.

About 85 percent of public and private colleges accept credit cards for tuition, according to a 2016 survey by CreditCards.com. Of those, more than half -- 57 percent -- charge a service fee.

The fees vary, but the most common is 2.75 percent of the amount charged to the card, the same review found. So, for example, if a student owes $4,500 in tuition this semester and decides to pay with a card, that student would have to pay an additional $123.75.

Oftentimes when families pay tuition with a credit card, they're doing it to rack up rewards points -- like frequent flier miles -- on their cards, said Ronald Ramsdell, founder of College Aid Consulting Services, which helps families reduce their out-of-pocket expenses for college tuition.

"That's a mistake," Ramsdell said. "[The fee] will not only wash out the benefits of a rewards program, but could cost even more than the value of that reward."

At his company, financial consultants advise all their clients to find another form of payment. Not only does the service fee cancel out the airline or hotel points added to the card, Ramsdell said, credit cards make it too easy for families to go into debt. With high interest rates and the tempting option to sign up for more cards, families who go that route often fall behind on payments and end up with bad credit scores.

"Credit cards should be the last resort," Ramsdell said. "You won't come out ahead."

College and university officials tend to agree. Thomas Schmidt,

associate director for the University of Minnesota's Office of Student Finance, said that for a long time, his office resisted accepting credit cards -- he considers it a "bad practice." But eventually, the demand from students and parents became too high to ignore.

"When we instituted credit cards, we didn't publicize at all that we were doing it. It wasn't something that we wanted to promote," Schmidt said. "It's not a good idea. We don't encourage people to do it."

The university has tried to make

the process as transparent as possible, Schmidt said.

Before the tuition is charged to their cards, users will go through several screens that clearly state a fee of 2.75 percent will be tacked on to the payment. It also shows exactly how much that fee will add to their total cost.

So if the student who owes $4,500 in tuition attends the University of Minnesota, he would clearly see -- before finalizing the payment -- that the amount charged to his credit card will be $4,623.75.

When they first added the option about 10 years ago, the credit card method was popular, Schmidt said, but before long, the numbers started to drop.

Today, credit card payments account for about 13 percent of all tuition transactions at the University of Minnesota, but they make up only about 5 percent of all tuition dollars paid.

This means that many families who pay with credit cards are only charging a portion of the tuition to the card and paying the rest with other methods.

The University of Colorado at Boulder also accepts credit cards -- an option that became available about three years ago, according to Greg Atkins, director of the bursar's office.

Throughout the payment process, Boulder's website will stop and ask users twice if they want to accept the associated fee of 2.75 percent, Atkins said.

Because the fee is absorbed by a third-party processor, the university has nothing to gain from disguising the costs associated with credit cards. The website is clear and up front about the fee so families can make an informed decision, Atkins said.

"It's a personal choice," he said. "If a family wants to make a payment through a credit card, that's up to th em." ■

https://www.insidehighered.com/news/2017/01/19/paying-tuition-credit-cards-comes-cost-0

Incubation's Unintended Consequences

By Rick Seltzer

New study indicates business incubators can have adverse impacts on research and innovation.

Business incubators are booming among universities lately, with many top research institutions establishing incubators and bragging about their ability to help move innovation out of the ivory tower and into the marketplace.

But new research published in the Strategic Entrepreneurship Journal shows that university-affiliated incubators aren't all they're cracked up to be when it comes to at least one key metric of innovation -- patents. Incubators' establishment is actually associated with a decrease in average patent quality and licensing revenue across the country's top research institutions.

That doesn't mean incubators over all saddle universities with a negative net impact, say the research's authors, Baylor University Entrepreneurship Professor Peter G. Klein and University of Bath Innovation and Entrepreneurship Associate Professor Christos Kolympiris. Instead, they say, their findings show that universities may be changing their mind-sets and incurring hidden costs when they start business incubators.

The findings drew skepticism from leaders at university incubators and technology transfer offices, who argued that patents aren't the only measure of innovation success at universities and incubators. Critics also pointed out that the findings do not necessarily hold true at all universities.

Klein and Kolympiris set out to examine the effect incubators have on U.S. research universities' innovation quality -- universities emphasizing incubators may be tilting their philosophy away from long-run, high-level teaching and research, Klein said. Universities want their faculty members and students to perform research and get patents, he said. At the same time, universities are increasingly trying to become technology and entrepreneurship hubs, helping to turn those patents into viable businesses. Meanwhile, many are also struggling with funding and trying to supplement their budgets with revenue from patent licensing.

Peter Klein, a professor at Baylor University

It's hard to examine innovation quality, however, so Klein and Kolympiris decided to use patents as a measure of innovation quality. They first analyzed more than 55,000 patents granted from 1969 to 2012 at U.S. universities largely in the Association of American Universities, examining forward citations -- the number of times a patent is cited by subsequent patents. They also analyzed licensing income.

If incubators complement high-quality research on campuses, one would expect patent quality and licensing revenue to improve once incubators are established, Klein said. But the authors found the opposite to be true.

They found a drop in innovation quality follows the creation of university-affiliated incubators. Then they found a reduction in licensing income after incubators were established.

Those results suggest university incubators compete for resources with technology transfer offices, the authors wrote. It also suggests they compete for resources with other campus programs and activities.

"To be honest, we weren't expecting to find the results we found," Klein said. "We went into it thinking we would document more positive effects."

The takeaway from the research is not necessarily that incubators are bad or that universities should not establish incubators, Klein said. It's that a university may incur hidden costs when it changes its mind-set by establishing an incubator.

"We think commercialization is great," Klein said. "I'm all about entrepreneurship and innovation, but I think we need to take a balanced perspective and realize that universities are complex coalitions of groups, and they have multiple objectives. It's not always possible to be all things to all persons."

Klein and Kolympiris had no way of observing the actual mechanisms involved in the changes they observed, Klein said. Klein's sense from talking to those working in technology transfer departments is that the symptoms observed may be a case of split priorities.

"It's not the incubator, per se, that is the driver," he said. "That's just a symptom of the university deciding, 'We're all about different things.'"

Universities, after all, do not have unlimited budgets. They may be able to raise funds for some new operations, but in many cases at least some money for incubators has to be diverted from somewhere else in an institution.

> "If this research helps to begin a conversation or deepen ongoing conversations about these issues -- what is a university for, what should universities do -- we think that's terrific."

So university budgets are reallocated. Resources that might have gone toward research might be funneled to application.

The authors said that their report is a look at top research universities on the whole -- the situation could be very different on individual campuses.

"We're saying that on average, this is the effect that we'll find," Kolympiris said. "It is possible that some universities will actually benefit from having an incubator. Quite a few would lose. The effect is the average effect."

Questioning the Findings

University leaders involved in technology transfer offices and incubators disagreed with some of the study's key premises. Brett Cornwell is executive director of Texas A&M Technology Commercialization, the technology transfer organization for the Texas A&M University System. It manages more than 900 patents.

Universities are all structured differently, so depending on a university's organizational structure, there might be very little connection between funding, incubation activity and patenting decisions, Cornwell said. But he added that patents aren't always a good proxy for innovations -- particularly where incubators are concerned.

In Cornwell's experience, young and unsophisticated technology commercialization programs emphasize patenting. Institutions with more sophisticated activities, including incubators, are usually more selective in what they patent.

"When you talk about having incubators and accelerators, almost by definition that means the university is getting closer to the market, thinking about market pull," Cornwell said. "That implies sophistication and sophisticated decision making about what you invest in and what you don't invest in."

Further, Cornwell questioned whether forward citations are always a marker of patent quality. The true quality of a patent is the value a company can derive from it, he said.

That value doesn't necessarily

show up in licensing income, either. Universities divide royalty monies between different parties like tech transfer offices and inventors. And incubation might lead to other benefits for a university, Cornwell said.

"At the end of the day, the university receives 35 percent of that top-line income," Cornwell said. "What was interesting is the same companies that were licensing the same tech for us and were paying the royalties had done about five times more sponsored research."

Economic development is an important part of many university incubators, according to Keith McGreggor, director of Georgia Tech's VentureLab start-up incubator.

"The economic development angle, which is at least a part of the university spinning things out, is predicated on jobs created and tax bases for revenue generated by the companies that try to spin out and stay local in the state," McGreggor said. "And that's not the same thing as measuring the impact of patents that are created."

McGreggor also wondered about equating income from patents to patent quality.

"If the university has a very progressive approach to pricing the intellectual property, say for the benefit of their own spinouts, then the measure of value of that wouldn't necessarily be reflective of that spinout's subsequent action," he said

McGreggor said he feels no tension between research and incubation at Georgia Tech. He hasn't seen a competition for resources.

"I don't think this is a zero-sum game with respect to resources allocated," McGreggor said. "I wonder how it will be when the entrepreneurship faculty encounter the technology licensing offices and the incubators, how that will change our landscape in coming years."

Texas A&M and Georgia Tech were both included in the innovation study. But they're not the only ones that pointed out incubators might have benefits beyond patents and royalties.

They can help recruit faculty and students, said Stacy Strauss, director of the Innovation Center at Ohio University (which is not an AAU member and was therefore not part of the study). "Students, if they know they have an opportunity for experiential learning outside the classroom, perhaps by being embedded within the staff of a biotech company -- that's a way the university can attract and retain a higher-quality student," Strauss said.

Klein and Kolympiris acknowledged those arguments. They are not saying incubators destroy value over all, Kolympiris said. Incubators can add many other forms of value, including prestige and connections to local communities.

The researchers freely admit that they are not measuring those other outcomes, Klein said.

"Maybe universities should have incubators, even if they have some possibly harmful effects on basic research," Klein said. "If this research helps to begin a conversation or deepen ongoing conversations about these issues -- what is a university for, what should universities do -- we think that's terrific." ■

https://www.insidehighered.com/news/2017/01/31/study-suggests-university-incubators-can-hurt-innovation-patent-revenue

Deferring a Key Battle for Wealthy Universities

By Rick Seltzer

Princeton agrees to pay millions to local taxpayers to get them to drop a lawsuit, but the principles could surface elsewhere -- and again at Princeton in six years.

When Princeton University announced it had settled litigation with area homeowners who had argued it is a profit-making institution in order to challenge its exemption from property taxes, it appeared to be paying millions of dollars to clear long-lingering uncertainty.

But the agreement, announced in October 2016, leaves key legal issues unresolved in New Jersey. Although the university did not admit its currently exempt property should be taxed, a court did not affirm its tax exemptions, either.

That could foreshadow additional challenges to research universities in the state -- challenges many think could be copied elsewhere in the country as taxpayers or revenue-strapped municipalities search for sources of cash. And the lawyer who filed the Princeton case says the homeowners he represented could bring another lawsuit in six years.

Within New Jersey, a key development in the case took leverage from Princeton University. A judge ruled that the burden of proof for tax-exempt status was on Princeton University, meaning it would have been required to prove itself qualified for property tax exemptions it was already receiving. That's a major difference from the homeowners bringing the suit having to prove that Princeton did not deserve tax breaks. It's also a potentially slow and expensive process for the university.

On a larger scale, it's not yet clear whether challenges to college and university tax exemptions will become common outside of New Jersey, although politicians have eyed the possibility in several states. But the Princeton settlement plainly fits into an era in which college and university finances, tax exemptions and operations are challenged from all sides.

The settlement comes more than five years after several residents sued Princeton over its tax-exempt status. Like other nonprofit institutions, Princeton is exempt from paying property taxes on much of its property. It does, however, pay taxes on some commercial properties that don't qualify for exemption -- like a movie theater it owns -- and on others it voluntarily keeps on the tax rolls, like graduate student housing. It also makes voluntary contributions to local municipal government.

Princeton University says it is the largest property taxpayer in the Borough of Princeton municipality, with an $11.1 million property tax bill. Residents, however, argued that they have had to pay more in taxes to compensate for money the university should be paying on exempt property. The lawyer representing them has said that Princeton's tax bill would be in the $30-40 million range if it paid taxes on all of its property.

In 2011, residents first filed their litigation to challenge Princeton's status as a nonprofit operation. Additional residents later joined the action, which claimed Princeton University earns millions of dollars in patent royalty income that is then distributed to faculty. The action also argued the university partakes in other commercial operations.

"It shares profit with faculty; engages in profit-seeking conduct through its patent, copyright and trademark licensing businesses; sells the use of its scientific and engineering facilities to outside commercial entities; maintains an industrial associates program and other programs in which it makes available its facilities to commercial use; operates venture capital businesses; operates retail businesses; operates a commercial real estate business and a residential real estate rental business; operates a profit-seeking hedge fund operation and other profit-based investment operations; operates a[n] office and hotel development business, private mortgage banking, commercial television, among other activities," one complaint from 2015 said.

"Since at least 2005 Princeton University has distributed approximately $150 million in profits to faculty above and beyond their normal compensation and continues to do so," it continued.

Princeton's Office of Technology Licensing and Intellectual Property reported patent license income rising from $95.9 million in 2010 to $115.2 million in the 2011 fiscal year, the last year in which it broke out the line in its annual research report. Most of the increase was credited to growth in sales of the anticancer drug Alimta, which is licensed to Eli Lilly and Co. Distributions to inventors rose from $28.9 million to $34.8 million.

Challenges to Research Universities

Many colleges periodically tussle with localities over whether a given building should be tax-exempt, based on operations there. But the breadth of the challenge to Princeton's status was unusual -- and therefore of concern to research universities nationwide.

Princeton maintained that it complies with federal law when faculty member research leads to patents that are then transferred to companies. It argued the cost of supporting research was beyond any revenue generated and pointed out that it pays substantial property taxes.

The university also argued that it provides services that would otherwise be picked up by municipal authorities, like collecting trash, employing police officers and keeping up private roads that are open to the public.

Still, Tax Court Judge Vito Bianco refused to dismiss the litigation, which ultimately pitted Princeton University and the Borough of Princeton, which granted the university tax-exempt status, against nearly 30 residents. Then in November of last year the judge said the university held the burden of proof. That raised major concerns at the university and for others in the New Jersey nonprofit space.

The Center for Non-Profits, a New Jersey state association of nonprofits that filed an amicus brief supporting the university, said it worried about opening the door to future challenges to nonprofits' tax exemptions.

"The center is deeply concerned that this standard, which appears to have little substantiation in existing case law, would make all nonprofit property owners highly vulnerable to challenges from disgruntled residents that would be extremely costly and time-consuming to defend, siphoning scarce resources," it wrote on the development.

Princeton University, meanwhile, anticipated going building by building to defend its property tax exemptions. It projected that process to take weeks, potentially pushing the trial's completion date into 2017.

Instead it opted to settle the case. The deal it reached, which was announced just three days before the suit was set to go to trial, will have the university paying $2 million in 2017 and $1.6 million per year for five subsequent years to fund payments to Princeton homeowners who receive benefits under New

Jersey's Homestead program for low- and moderate-income homeowners. The benefit will pay approximately $2,200 per homeowner. Some of the money will also go to a nonprofit organization providing need-based scholarships for graduates of Princeton High School who attend postsecondary institutions other than Princeton.

In addition, the university is set to contribute $416,700 per year from 2017 to 2019 to the Witherspoon Jackson Development Corp., a nonprofit organization that will direct the funds to housing and related needs for economically disadvantaged residents in Princeton. Plus, the university will make $3.48 million in annual voluntary payments to its local municipality in 2021 and 2022. That's the same amount it's set to contribute in 2020 under an existing seven-year agreement that had been set to end that year.

Princeton President Christopher L. Eisgruber said the university felt the settlement payments were a better use of funding than continuing litigation. The university declined to discuss in depth the process behind its decision to settle the case. But a spokesman, John Cramer, said it would have expected to have its property tax exemption eligibility confirmed had the case gone to trial.

"New Jersey's Constitution and decades of state policy establish that nonprofit educational institutions serve public purposes and are entitled to property tax exemption so they can devote their resources to their educational and research missions," Cramer said in an email. "This is exactly what Princeton does."

The lawyer representing the homeowners disagreed, though. Bruce Afran believes he would have won the case but took the settlement because it helped homeowners.

"The reason for starting this lawsuit, originally, was to stabilize the tax base, to protect the economically disadvantaged homeowners that live here," Afran said. "That's why we took this."

Afran will not rule out bringing similar lawsuits in the future, in New Jersey or elsewhere. The Princeton settlement covers a six-year time frame, but homeowners could return to court at the end of that period, he said. They might do so unless the university puts more money on the table.

"I don't know what will happen in six years," Afran said. "If Princeton's business commercialization continues to grow and there's no permanent solution, I am confident the litigation will begin again -- if not with me, then with someone else."

Afran insists he has no ill will toward the academic world or intent to challenge its existence. Princeton negotiated fairly, he said, adding that now Princeton is doing more to support its local tax base than most other comparable universities.

Afran rejected several arguments for the university keeping its tax-exempt status, including the argument that it pays property tax on some of its buildings that are deemed commercial.

"That's not the point," he said. "The point is they're running those out of their exempt buildings. The management comes through the university's executive staff. There's no way to segregate that, because the president himself is responsible for that management. So is the Board of Trustees."

How Precedential?

Major research institutions are vulnerable to similar challenges across the country, Afran believes. Smaller institutions that aren't trying to commercialize research have become different from large research institutions pursuing widespread commercialization, he said.

"This is going on in major research universities all over the country," Afran said. "There's virtually no way to segregate the academic science and the commercial science. They're all merged."

Universities inside and outside of New Jersey have followed the case with concern, according to John B. Wilson, president and CEO of the Association of Independent Colleges and Universities in New Jersey. Yet it remains to be seen whether others pick up on the settlement.

In large part, that's because the key question in the case has not been settled -- whether Princeton researchers receiving royalties from their research were equivalent to stockholders receiving dividends, Wilson said.

"What precedent it sets remains to be seen," he said.

In New Jersey, the settlement comes at a time of intense pressure from high property tax rates, tight municipal budgets and a trend toward tax-exemption litigation. The topic of tax exemption has grown in prominence since a 2015 case finding Morristown Medical Center was not entitled to a tax exemption on most of its property.

In that case, Bianco -- the same judge overseeing the Princeton case -- found the hospital did not meet the legal test for operating as a charitable nonprofit organization. The judge cited several reasons in his finding, including compensation levels similar to the for-profit sector, that private physicians earned income on hospital property and that the hospital was similar in function to for-profit hospitals. He also said the hospital did not show separation between for-profit and nonprofit activity.

The hospital later reached a settlement to pay property taxes on about a quarter of its property plus penalties over a decade. "New Jersey has kind of led the way in tax-exemption litigation," said Michael Paff, a New Jersey-based lawyer who specializes in real estate matters including property tax exemptions. "The decision of Morristown hospital, that's now snowballed into an issue where upwards of 35 other townships in New Jersey have filed litigation against their local hospitals. That's very concerning."

Different pieces of legislation have been drafted to address the state's trend of property tax legislation. They have yet to result in changes to the law.

New Jersey legislators passed a law this year that would have protected the state property tax exemption for nonprofit hospitals that have profit-making activities while requiring them follow a formula for making mandatory fees to local municipalities. Governor Chris Christie pocket vetoed the measure in January. Other legislation has been drafted to limit the ability of third parties like homeowners to challenge nonprofits' property tax exemptions, as happened in the Princeton case.

Without legislative changes, many worry about future suits against universities. In theory, those suits would not have to be won to have an impact. Legal action can provide leverage for parties trying to extract payment in lieu of tax, or PILOT agreements, from institutions to municipalities.

"I think in many ways, all these cases are tried in public opinion," said Daphne A. Kenyon, an economist and resident fellow in tax policy at the Lincoln Institute of Land Policy in Cambridge, Mass., who has studied PILOT agreements and is a former member of the New Hampshire Board of Education. "I think if I was the president of the university, I would make sure I was prepared for some cases like this and made sure I had my arguments stacked up and also made sure to keep town-gown relations cordial."

Keeping tax disputes amicable is a key recommendation, Kenyon said. She believes it is beneficial if institutions can come to agreements for the long term, which can reduce the relative cost of negotiations.

The situation in New Jersey might not set off a wave of litigation against colleges and universities around the country, Kenyon said. Legal differences could stand in the way.

"The property tax exemption for nonprofits goes back to the earliest history of our country, and it existed before we even had an income tax," Kenyon said. "When you look at it, the detail and the difference from state to state are mind-numbing."

Homeowners in many locations won't have the resources to bring a suit, either. The Princeton suit was only able to proceed because Eleanor Lewis, a public interest lawyer and former assistant commissioner of the New Jersey Department of Insurance, left money in her estate for the cause, Afran said.

Still, some worry that the debate has highlighted the notion that universities and nonprofits should pay their fair share of taxes toward municipal services.

That idea could put financial stress on small institutions while overlooking the contributions they make, said Linda Czipo, president and CEO of the Center for Non-Profits in New Jersey.

"Our concern is it completely disregards what nonprofits of all sizes and types do contribute to the well-being of localities and regions, whether it's economically or programmatically or socially," she said. "It's not a one-sided equation." ■

https://www.insidehighered.com/news/2016/10/21/princeton-settlement-leaves-door-open-future-tax-exemption-challenges

Carbon Neutral Quickly

By Rick Seltzer

Middlebury meets a tight deadline for going carbon neutral in part by using credits from forest preservation.

Middlebury College says it has become carbon neutral, meeting an aggressive goal set last decade and becoming one of just a handful of institutions to reach the sought-after sustainability status.

Its path, however, was not easy or without dispute.

The private liberal arts college in Vermont in December 2016 announced that it had met its target to become carbon neutral by 2016. President Laurie Patton told alumni about the milestone at a New York City holiday party. Trustees in 2007 adopted the goal, which does not call for the elimination of all carbon emissions. Instead, carbon neutrality means the campus balances the amount of carbon emissions it releases by offsetting or sequestering equivalent amounts.

Although only a few campuses have reported reaching carbon-neutral status -- among them the College of the Atlantic, Green Mountain College and Colby College -- Middlebury is perhaps the largest in the country to do so. At about 2,500 undergraduate students, Middlebury is not a huge institution, but it still had to sink significant time and resources into changing the way it uses energy. The carbon-neutral status covers Middlebury's main campus, nearby Bread Loaf Mountain Campus and a nearby ski area, but not its California campus.

Solar projects helped Middlebury reach a goal of carbon neutrality.

The college pumped $1.5 million into efficiency upgrades. In 2009 it built a $12 million heating facility burning gas from wood biomass that cut millions of gallons of fuel oil being burned. It also invested in solar-energy projects.

In addition, officials hoped to be able to count on a project to turn cow manure into fuel, but it has yet to materialize. So to cross the carbon-neutral finish line, the college is using carbon credits from preserving thousands of acres Middlebury owns at the Bread Loaf Mountain campus.

That move could provoke some debate on campus, as students have questioned the use of credits in the past. It wouldn't be the only debate over carbon neutrality. A pipeline project tied into a biomethane gas project has sparked fierce debate, and students have scrutinized everything from the existing biomass plant to student engagement in carbon neutrality.

Leaders say the preserved forest captures carbon and that they're protecting it from future development. They add that it allows them to avoid purchasing carbon credits from elsewhere.

The resolution trustees passed called for reaching carbon neutrality by changing the way Middlebury operates, said Jack Byrne, its director of sustainability integration. Offsets were intended as a last resort.

"We did our best to avoid having to buy other people's offsets," Byrne said. "And I think we're really pleased that we were able to create our own internal offsets, in effect, through conservation of this land. We can look at this as something we generated by our own actions, by conserving these lands."

Middlebury announced a deal in 2014 backed by a preservation fund to conserve 2,100 acres of Bread Loaf land in perpetuity. At the time, the preservation wasn't linked to carbon credits.

An argument can be made that Middlebury didn't actually change its practices by taking credit for preserving undeveloped Bread Loaf land. It's an argument that's already been talked about on campus, said David Allen, an assistant professor of biology who co-chairs Middlebury's Environmental Council, a student, staff and faculty body.

"I think the students will pick up on it," he said. "Some of them did mention it, even in the environmental council."

Students may feel that Middlebury did not exhaust every last feasible option for cutting its carbon footprint, Allen said. The council has debated whether credits generated at Middlebury are better than ones that would be purchased on a carbon credit market.

Still, there are indications that many students may not see the move as gaming the system. Michael Shrader, a junior studying economics and environmental studies who is the director of environmental affairs for Middlebury's Student Government Association, cautioned against seeing carbon neutrality as a clear-cut end goal. Middlebury appears to be meeting its goal using standard practices, he said.

> "From my perspective, it's maybe easier for a small school to get some behavioral changes passed. But to address how they buy and use energy can be challenging. They're not as in control about it, and they don't have as much of a say in the market."

"Obviously it would be much better if perhaps an institution was able to meet a goal like that without offsets or whatever questionable calculations," Shrader said. "But that's sort of unprecedented for an institution like Middlebury. We're going to keep working. Carbon neutrality is not an end."

Using land that the institution owns is different than simply gaming carbon credits, argued Nan Jenks-Jay, dean of environmental affairs. It shows a difference in the way the institution thinks about its land and a greater future commitment to environmental stewardship, she said.

Middlebury has restricted its future financial options by pledging to conserve the land. Real estate has value and can provide a boost in tight financial times.

"Colleges and universities tend to think about land as an asset," Jenks-Jay said. "They tend not to protect it, because it has value and trustees have fiduciary responsibility."

Middlebury's experience going carbon neutral also represents a study in timing. When the institution said it would pursue the goal in 2007, many other institutions were making similar pledges. Hundreds of campuses adopted the American College and University Presidents Climate Commitment in June of that year, pledging to reduce greenhouse gas emissions. By the next year, many institutions had already fallen behind in work under that commitment, missing a deadline for baseline reports on emissions.

Many other institutions laid out later timelines for carbon neutrality, setting goals in 2020 or 2050, Jenks-Jay said. Middlebury, with its nine-year timeline, was forced to move more quickly. It was also forced to put in consistent effort.

"I think the Middlebury experience shows something about the ability to sustain the commitment," Jenks-Jay said. "The piece that might be important is the ability to sustain the enthusiasm."

Every college pursuing carbon neutrality has followed a different path, said Janna Cohen-Rosenthal, climate programs director for Second Nature, a Boston-based nonprofit organization of which the American College and University Presidents Climate Commitment is a part. The commitment is now called the Climate Leadership Commitment.

The different paths included varying timelines and strategies for tackling carbon emissions. Few institutions set aggressive short-term targets like Middlebury did, Cohen-Rosenthal said. Some set ambitious targets to cut or offset emissions by a certain percentage over the short term but did not commit as strongly to a long-term path for reaching full neutrality.

Middlebury's size makes it an interesting study in institutionwide change. It faced both challenges and advantages.

"From my perspective, it's maybe be easier for a small school to get some behavioral changes passed," Cohen-Rosenthal said. "But to address how they buy and use energy can be challenging. They're not as in control about it, and they don't have as much of a say in the market."

It's also worth noting that Middlebury's efforts to cut its carbon footprint predate the presidents' climate commitments and even its own current president's tenure. The college traced interest in carbon neutrality back to 2001 when it drew up an environmental report recommending a carbon neutrality goal. The next year, Middlebury's environmental council plotted a carbon reduction initiative that resulted in a recommended reduction of greenhouse gas emissions of 8 percent below 1990 levels by 2012.

Students sought to go further, pushing for a carbon-neutral goal. The president at the time, Ron Liebowitz, listened to them and brought the idea before trustees.

Jon Isham, a professor of economics and environmental studies, taught courses in the early 2000s that helped lay the groundwork for the proposal that's credited with convincing the board to commit to carbon neutrality by 2016. Isham emphasized that the plan was led by students, while also giving Liebowitz credit for pushing the initiative.

Ultimately, though, students had to show that the idea was feasible and could make financial sense, posting a good internal rate of return.

"I think the truth is, when you crunched the numbers and compared the projected costs associated with fuel oil and wood chips, the IRR looked awfully good," Isham said. "The board wasn't going to end up spending without thinking they were making smart financial decisions."

Isham acknowledged that reaching carbon-neutral status does not make Middlebury perfect. Still, it created a better carbon footprint by burning wood instead of fuel oil, he said.

Middlebury argues burning locally sourced wood chips can contribute to carbon-neutral status because forests supplying the wood grow faster than wood is harvested -- absorbing more carbon than is emitted by burning.

The institution has also acknowledged the financial case behind the move. The energy-efficiency upgrades it made save 4.52 million kilowatt-hours per year, which would cost about $636,000 annually. The biomass plant that burns wood chips has been saving about $1 million or $2 million per year and has been operating long enough that it is approaching the break-even point, said Byrne, director of sustainability implementation.

The solar projects Middlebury invested in are also producing revenue, Byrne said. And the Bread Loaf forest preservation will produce enough carbon credits that it will be cash positive.

The campus has more to do even after the carbon-neutrality goal has been reached, according to Byrne. He plans to discuss future goals with faculty, staff and students.

"There are plenty of other challenges," Byrne said. "We hope to have more of a ripple effect." ■

https://www.insidehighered.com/news/2016/12/08/middlebury-meets-aggressive-carbon-neutrality-goal

How Colleges Are Keeping Up With Business Changes

By Doug Lederman and Rick Seltzer

Different strategies take stage at the National Association of College and University Business Officers' annual meeting.

MONTREAL -- College and universities' coping mechanisms are on full display in July 2016 as business officers fight a mix of financial pressures ranging from budget crunches to tuition discounting run amok to high levels of debt blocking necessary construction.

Strategies to tackle the problems are on display at the National Association of College and University Business Officers' annual meeting here. The conference comes as business officers increasingly believe that higher education is in a financial crisis, according to Inside Higher Ed's 2016 survey of the officials. But they also feel better than they have in previous years about their own institutions' futures.

That dichotomy is apparent in Montreal, where many sessions talk about the myriad challenges business offices face -- and the way institutions are tackling them.

Presidents' Hard Choices

The NACUBO meeting is filled with talk about strains and struggles, but usually in the abstract. At one session, two presidents discussed their institutions' travails and how they approached them while keeping faithful to their missions. Much of the focus was on hard decisions they had to make.

Lynn Pasquerella, who just finished a six-year stint at Mount Holyoke College and assumed the presidency of the Association of American Colleges and Universities, said the Massachusetts women's college was facing a structural deficit in the double-digit millions when she arrived in 2010. All of the recommendations for colleges like hers at the time, she said, were to go coed, create preprofessional programs and go into urban areas. "We had no graduate programs, no online courses and a rigid liberal arts curriculum in terms of its requirements," including a two-year language requirement, she said.

Mount Holyoke faithful didn't want to change many of those fundamental things, but others were not sustainable, Pasquerella said. Faculty members at the time were eligible for a yearlong sabbatical after every six semesters, or three years. So while most of Mount Holyoke's (wealthier) peers were spending under a million dollars a year on replacing professors on sabbatical, Mount Holyoke was spending $4 million.

So among the changes that Pasquerella and her team put in place were to extend to four years from three the period at which instructors qualified for a sabbatical. Faculty members were not happy, but in exchange, Mount Holyoke dropped the formal teaching load from 4.5 to four courses a year.

Other changes were controversial, too. While retaining the college's liberal arts focus was essential, Pasquerella sought to "open up" its curriculum, eliminating a program in Russian studies and adding one in data science. While some faculty members accused the college of "eviscerating the liberal arts and sciences and promoting the corporatization of higher ed," the president was able to counter that the decision was "faculty driven."

While consolidating the college's five residence-hall-located dining rooms into one central hall drew howls from students who would no longer be able to eat in their pajamas, data showed that students had already begun increasingly eating in the campus center. "The reality didn't at all match the rhetoric," she said.

Brian Johnson is another leader charged with bringing change to an institution with a storied history and tightly held traditions.

As the fifth president of Tuskegee University since 2010, Johnson in two years has eliminated free tuition for relatives of employees ("we had about 220 students walking around who were there for free"), increased the student activity fee from $50 to $500 a semester -- "more equivalent to the kinds of resources we were providing" -- and instituted online offerings that produced north of $900,000 in revenue this year.

Transparency about the data behind these decisions and the reasons for them have helped build support for sometimes hard-to-swallow changes, but more will be necessary, Johnson said.

"These have not helped us to turn the corner yet," Johnson said, "but we're getting there."

Public-Private Partnerships

Traditional sources of construction funds are in question as some state universities have drawn heavily on their bonding capacity and are receiving little in the way of new public money for major projects.

Many private institutions likewise find themselves searching for cash to fuel development, looking for ways to pull off increasingly complex construction projects without overtaxing their resources.

Enter public-private partnerships, or P3s. Broadly, the arrangements have the private sector contributing capital and expertise -- often in the form of construction and property management services -- in order to develop, operate and maintain infrastructure for publicly owned land. P3s are growing increasingly common around the world, but their market is just building in the U.S. higher education space, said Kevin Wayer, international director and co-president of the public institutions group of real estate giant JLL.

Wayer led a session on universities leveraging private dollars to drive their own building and development. Representatives from two of California's public institutions discussed their efforts to find new ways to fuel necessary building. But the session wasn't all about public universities -- Drexel University's senior vice president of corporate relations and economic development talked about his institution's Schuylkill Yards project, an effort to develop between 10 and 14 acres into a campus gateway project with between eight and 16 million square feet of mixed-use space -- from office to laboratory to retail. The project could take up to 25 years.

Drexel could probably have driven the development on its own, said that vice president, Keith Orris. But it would have taken longer while forcing the university to tie up its bonding resources and rely on its own expertise. Drexel is partnering with the Brandywine Realty Trust on the project.

"Most of us don't have multibillion-dollar endowments," Orris said. "These projects are so big and so important to our institutions that we definitely need the expertise that the market, the private sector, gives us."

While Drexel's efforts in Philadelphia could be slotted into the category of urban redevelopment, the University of California, Merced, has a different set of challenges on its hands. The newest institution in the University of California system is developing a second phase of its campus, currently envisioned at 1.2 million square feet, said Dan Feitelberg, vice chancellor for planning and budget. That comes as the university wants to roughly double enrollment to 10,000 full-time equivalents.

One focus was building what the university could maintain in the future, Feitelberg said. It followed a procurement process under a public-private partnership model.

"UC Merced is growing up in a different funding environment for public higher education than other campuses have in the past," Feitelberg said.

California State University Channel Islands, meanwhile, was faced with bond debt that made further development difficult, said John Gormley, campus architect and senior director of planning, design and construction. So it's moving to sell residential projects and then expanding space for faculty and staff members. It is receiving a lump sum payment and annual payments under 80-year ground leases.

State systems can be risk averse and hesitant to do anything but deliver capital projects under the model they know, meaning the relatively new P3s can be hard to push through, Gormley said. Meanwhile, some have criticized the arrangements because they can have institutions paying private companies for decades merely to use the facilities they wanted to build.

But the university representatives said benefits of the arrangements include experience, expertise and access to capital.

"We're giving up the full financial return," Gormley said. "But that also assumes we were going to be able to go out and get the money to build that. We were not going to be able to get that."

Boosting Enrollment

It's no secret that many colleges and universities would like to improve their books by boosting enrollment -- increasing enrollment was a top strategy named by chief business officers in the recent Inside Higher Ed survey.

How, exactly, they can boost enrollment was the topic of another NACUBO session. Business officers explained strategies in scholarships, development, international connections, experience programs and regional campuses.

The University of Utah worked to revamp its scholarship program with the aim of attracting and keeping different types of students. It wanted to attract top students, keep classes affordable and give students incentive to move toward graduation, said Cathy Anderson, associate vice president of budget and planning. The University of Rochester built a new College Town project, developing a brownfield next to campus to make it more attractive to students, said Holly Crawford, senior vice president for administration and finance at the university.

Wheelock College, a small college in Boston, offers a range of international programs to stretch its reach and attract higher-paying international students. It sends its faculty overseas to teach and brings foreign students to its campus. One of its programs, a language-immersion program, opens the door for students to matriculate at Wheelock or move to another U.S. university that may have been their original first choice, said Anne Marie Martorana, vice president and chief financial officer.

Michael Papadakis, deputy chief financial officer, treasurer and vice president of financial services and innovation at Ohio State University, talked about two strategies. First, Ohio State has a second-year experience program geared toward keeping students on campus as sophomores under the idea they will be more engaged and likely to move toward graduation. It offers students a $2,000 stipend for university-approved programs like study abroad or community service, although it required building more beds.

Ohio State also relies on its other campuses spread around the state and a community college partnership. Those regional campuses have taken on more importance as the flagship Columbus campus has become more selective, Papadakis said. Students can start at regional campuses and transfer to Columbus to finish their degrees. Those campuses, priced lower than Columbus, can save students money while also acting as feeders for Columbus transfers. And they help the university with the optics of being a selective institution that is still a land-grant university many expect to admit high levels of in-state students.

The different strategies came at a time when higher education demand has become more tepid, said Kenneth Rodgers, director of public finance ratings at S&P Global Ratings (formerly Standard & Poor's).

"Each institution recognized a need," he said.

Faculty Salaries

The University of Montevallo in Alabama tackled a complex and potentially charged issue head-on recently: adjustments to faculty salaries.

The small public university found itself at or near the bottom for faculty salaries in Alabama in 2011 and 2012. Salaries had increased little if at all in recent history.

To compound matters, Montevallo took a 25 percent state funding decrease since 2008 -- $6.1 million for an institution with an annual budget of approximately $62 million.

Montevallo had avoided furloughs in tough times, increased adjunct pay and kept up with other benefits. But it still decided it was time to do a salary study with the goal of making it to competitive nine-month salaries, said Provost and Vice President for Academic Affairs Suzanne Ozment.

"Our salaries were so low that we felt we had to get to market before we could do any other kinds of adjustments," she said.

Factors considered were years of service, discipline and salaries in the same field at other peer institutions. The effort eventually turned into a large data-crunching exercise.

Ultimately, 90 percent of faculty members qualified for a market adjustment. Those adjustments were made over two years starting in 2014 with a price tag of $756,336. Adding in some changes brought about by standardizing benefits and stipends for chairmanships brought the total investment to $1.14 million, with the largest individual increase being $22,213 -- to a faculty member in the college of business.

Administrators were very clear about who was getting how much. They said transparency in their process was important and that they shared as much data as possible -- including the data used to determine compensation levels elsewhere in the market.

The result is a significant improvement in the way faculty feel about their salary levels, administrators said. Some tensions still remain -- such as those who balk at high compensation for business faculty. But that seems to be more about existing fault lines than new ones.

"It is just a market reality," Ozment said. "It honestly has not created any more tension than we already had between the college of business and some of the humanities faculty. The people who were really, really upset about that had been for a long time."

As for the financial ramifications, administrators said the backing of trustees was key. Those trustees were on board because they wanted to offer competitive salaries. The university also had saved some money from retirements and operating budget cuts during the financial crisis. And it prioritized the salary adjustments, factoring it in when considering tuition.

"We knew something needed to be done," said DeAnna Smith, vice president for business affairs and treasurer.

"We knew if we didn't," Smith said, "we were going to lose the good faculty we had." ■

https://www.insidehighered.com/news/2016/07/19/business-offices-changing-many-ways

Intellectual Property Problems

By Rick Seltzer

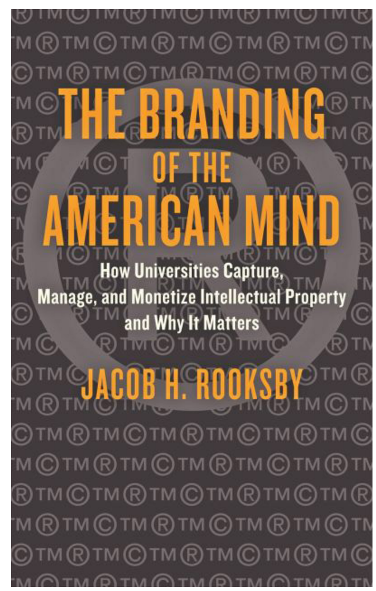
New book highlights intellectual property practices that the author says are dangerous for the public's interest in higher ed.

Look no further than apples for a study of intellectual property.

When the University of Minnesota several years ago was preparing to introduce a new variety of apple into the market, it decided against an open release that would have allowed the fruit to be widely grown -- which it had done with a previous blockbuster it developed, the Honeycrisp. Instead, the land-grant university opted to create a managed variety, choosing an exclusive licensee requiring anyone who wanted to sell the new apple on a large commercial scale to join a cooperative. Growers would have to pay royalties on the sale of the fruit. The university also owns a trademark for the new apple, called SweeTango. The tight control over the new apple's growth and distribution upset some small growers who felt the university was suddenly not filling its traditional role of widely distributing the products of its research. Many regarded the setup as a way for the university to maximize its own revenue.

The university, meanwhile, says introducing the apple as a managed variety helps with quality standards for the fruit consumers eat. Doing so also increased the chances of early and consistent royalty payments by giving a private entity -- in this case, the co-op -- an interest in marketing the new apple, bringing it to market quickly and making sure growers pay. A university spokesman also points out that it made allowances for in-state growers that want to grow and sell the apple independent of the national licensee. And he said the royalty payments the university collects provide more sustainable funding for its breeding programs.

The way the university handled the apple is one of many intellectual property cases studied by Ja-



cob H. Rooksby in his 2016 book, The Branding of the American Mind (Johns Hopkins University Press). Rooksby, associate dean of administration and an assistant law professor at Duquesne University, details the ways in which universities have used patents, trademarks, copyrights and trade secrets to become more protective of their intellectual property.

"Instead of embodying an open-knowledge commons, higher education risks becoming a propertied space where institutions predominantly view their identities through a commercial lens," Rooksby writes.

Rooksby argues that institutions do not have to take such a hard stance on locking down intellectual property but that they have been seduced by market forces, the potential for revenue and the very fact that legal protections are available. He fears the ramifications of overreach, writing that the public at large suffers when institutions spend time and money locking down too many private rights.

The book is a first step in exposing the choices colleges and universities make about their intellectual property, according to Rooksby. He proposes legal and policy reforms designed to help colleges and universities change their ways.

Rooksby answered questions about his book by email. The following exchange has been lightly edited for clarity.

Q: A major argument you make is that higher education institutions harm public interests with far-reaching intellectual property claims and aggressive enforcement practices. Is anyone doing intellectual property the right way right now, in your opinion?

A: Certainly some institutions have their priorities straight in this arena. For example, Carnegie Mellon University does an admirable job, I think, of balancing a commitment to commercialization with concern for the public good. The bigger problem I see is with institutions more modest in size and scope of research that attempt to emulate the tactics and approaches championed by some of the worst offenders, which I discuss in the book.

Higher education is very status driven, and we see it in the intellectual property realm as well. For some, there seems to be a belief that they must be zealous in their embrace of intellectual property, because their competitors are. That sense of competition hurts the public when the competitor they hold in esteem doesn't engage in practices that further the public's interest in higher education.

Q: One of the most memorable phrases in this book is about the "noxious enforcement temptations" that come from the increasingly common belief that everything protectable by trademark must be claimed. Do you think it's possible for institutions to continue claiming trademarks -- or other types of intellectual property, like copyrights or patents -- but enforce them in a way that is less problematic?

A: I do. The problem isn't necessarily the rights themselves. There are certainly trademarks, copyrights and patents that institutions should be owning, and I describe these areas of activity in the book. But there are many more instances when the decision whether to act to protect a piece of intellectual property is much more discretionary, and in some instances, even inadvisable. Enforcement in those zones is particularly problematic, and my book provides a litany of examples.

But if an institution has a legitimate interest in, say, a trademark, enforcement itself is not problematic. For example, I thought the recent trademark enforcement activity by University of Houston Law Center against South Texas College of Law -- which had changed its name to Houston College of Law and adopted a color scheme for its marketing very similar to the one used by its crosstown rival -- was entirely appropriate. The way that the University of Houston publicly defended its actions in that lawsuit -- creating a webpage devoted to the filings in the case and explaining its action -- was also admirable.

Q: Princeton University recently settled a lawsuit in which residents claimed that the university should not be exempted from local property taxes in part because it earned millions from patent royalties. Do you see the potential for spreading property tax lawsuits or any other direct negative consequence to universities that don't reform intellectual property practices?

A: I do think there is a real risk here for institutions. The more "commercial" they become in the eyes of the public, the more we are likely to see challenges like the one Princeton faced. There is no getting around the fact that intellectual property protection and enforcement are prime examples of the commercialization of higher education. While these activities are at times consistent with public mandates and the public's interest in higher education, the point of my book is to illustrate through vivid examples the potential for overreach and abuse that exists in this arena. If institutions aren't viewing their intellectual property activity as bearing on the public good, they risk prompting public outcry that their activities look more corporate than nonprofit, and that their tax treatment ought to be adjusted accordingly.

Q: Colleges and universities already face criticism for high tuition, and many are scrambling to find sources of revenue. Do you have any concern that intellectual property reforms could harm their streams of funding?

A: Some institutions and commentators have raised this issue -- that is, that revenue pressures justify their activities. Some members of institutional governing boards even approach all issues of intellectual property through this lens. The reality is that intellectual property presents an unreliable vehicle for revenue generation in higher education. Institutions will always be concerned about how they fund the pursuit of their missions, but intellectual property protection and enforcement takes a lot of money in its own right, and the payoffs are not always there.

For example, study upon study has shown that investment in patents does not correlate with commercialization success. And yet many believe that, "at least at this institution," it will. Similarly, not every trademark registration that an institution amasses will present a licensing opportunity. Certainly there is a market for athletics-related names and insignia, but brand protection and expansion typically costs an institution more than those efforts will ever generate in licensing revenue.

Q: Several proposals you make would have the effect of shifting control over licensing research and copyright of scholarly works away from institutions and to faculty members. But can we be assured that faculty members would be any more responsible than you see institutions as being?

A: In a word, no. As faculty become more entrepreneurial, their goals for how intellectual property gets used may closely align with the goals or practices of their institutions. But faculty as a body are certainly more flexible in their interest and ability to relinquish rights or refashion them when they no longer serve a purpose or are no longer needed to achieve the purpose that led to obtaining them. Institutions, on the other hand, act through offices and departments and bureaucracies, where things like patents and trademarks and copyrights are counted, and kept, and "protected."

No one wants to be the administrator who lets the next Gatorade walk out the door because they don't recognize the value of what they have. [Researchers at the University of Florida developed Gatorade, and as of 2015 the university had received $281 million in royalties on the sports drink since 1974.] So, institutional inertia and risk aversion mean that intellectual property rights have a way of accreting and then lingering in higher education well past their sell-by dates. These rights can last so long that they serve as logjams to others who may be able to put them to better uses. At the very least, I'd like to see institutions more frequently relinquishing rights back into the public domain, or not claiming them in the first instance, should they find that they have no need for them. To be fair, those actions happen at some institutions, but the practice is not nearly widespread enough. Faculty would be more likely to take such actions, particularly if they're having to shoulder the protection and enforcement costs themselves.

Q: You also call for the creation of a new position in provost offices to handle intellectual property issues. But you point out that current technology transfer offices fall victim to having large staffs that justify their existence by bearing down on intellectual property -- collecting, for instance, a high number of trademarks. Why wouldn't the same problems arise in the new positions you propose?

A: What I'm calling for is a reorchestration of our understanding of intellectual property rights in higher education. We need to move from viewing intellectual property as purely a legal or business matter, outside the realm of interest or aptitude for most faculty, to instead an area of activity that has real ramifications on the academic enterprise. Provost offices are ground zero for the policy issues that most directly touch on why the public subsidizes higher education and why parents and students go into debt to further their child's or their own career. Intellectual property bears directly on teaching and research, and yet academic decision makers are often left out of the conversation about how and when to protect intellectual property and then what to do with it.

Provost offices are the natural location to "bring IP in" to the academic conversation on campuses, as opposed to allowing intellectual property to be the sole province of legal and business decision making. People inhabiting the role or assuming the duties I propose in the book are more likely to be intellectual property neutrals than they are to be unflinching intellectual property advocates. That's because I think that most academics -- certainly ones who hold faculty status before pursuing administrative positions -- are more accustomed to playing a mediating role vis-à-vis the public good and their own institution than are nonacademic administrators whose career stability and advancement are inherently tied to business and the outcome of business decisions they make.

The point is, the reach of intellectual property goes behind just business, touching on matters of institutional policy and academic direction, so the decision making that drives intellectual property activity at colleges and universities ought to be adjusted accordingly.

We need people who understand the policy ramifications of intellectual property and whose job it is to ask the question "How does this proposed intellectual property activity further the public's interest in higher education?"

If there is no good answer, that should be answer enough for how the institution should act. ■

https://www.insidehighered.com/news/2016/12/05/qa-author-book-universities-intellectual-property-practices

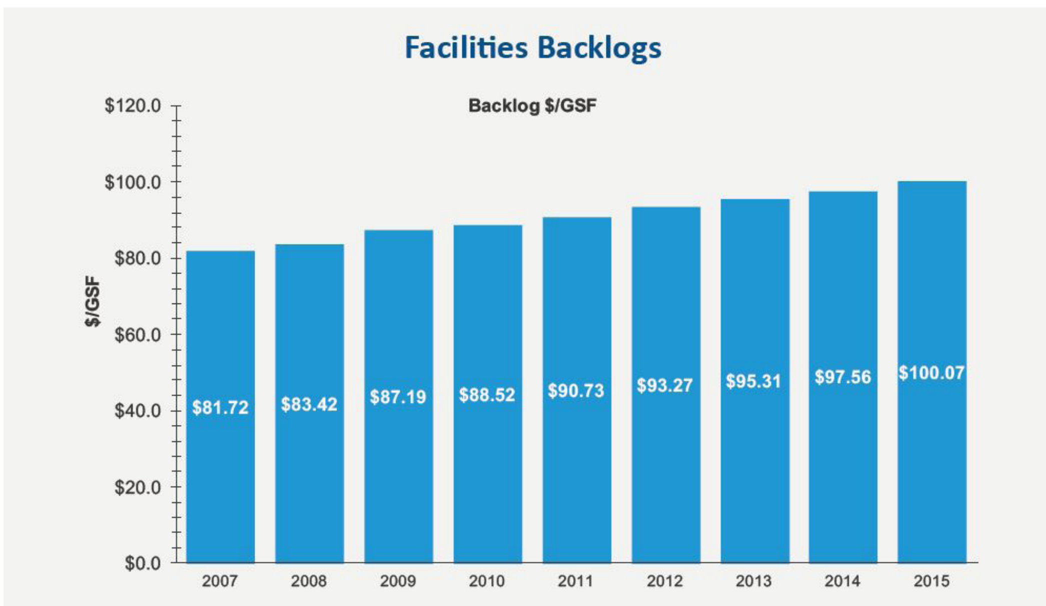
Facilities Backlog Grows

By Rick Seltzer

Colleges and universities continue to record a growing backlog in deferred facilities maintenance.

Colleges and universities continue to record a growing backlog in deferred facilities maintenance, according to a new report released in December 2016.

The campus facilities maintenance, modernization and infrastructure backlog averaged $100.07 per gross square foot in 2015, said the 2016 "State of Facilities in Higher Education" report, which has been released annually for four years by facilities data and consulting firm Sightlines. That's up from $97.56 in 2014 and $81.72 in 2007.



Public and private institutions posted significantly different backlogs. Backlogs were higher at public institutions, averaging more than $108 per gross square foot. They were lower at private institutions, averaging $88 per gross square foot. Private institutions tend to invest more in facilities maintenance and modernization.

Enrollment trends place different facilities pressures on institutions of different sizes, the report found. Many small institutions that recently borrowed money to renovate or build in a bid to attract more students are now facing enrollment declines.

They have seen enrollment drop by 3 percent since 2012 even though they've increased facilities development by 4 percent. Comprehensive institutions are opening new space just as they're hit by enrollment stagnation -- they increased their space by almost 14 percent cumulatively since 2012 but only posted a 1 percent enrollment increase over the same time period.

Meanwhile, research universities face another set of circumstances, with enrollment spiking 13 percent since 2007 compared to a slower expansion of space of between 8 percent and 9 percent.

Many campuses postponed capital investment in aging existing facilities as they put up new buildings, the report said.

Since 2007, capital invested in existing space has averaged $5 per gross square foot. Public institutions spent less -- $4.50 per gross square foot on average, versus $5.20 for private institutions.

More nonacademic space has been built than academic space in the last 100 years. In 1915, 70 percent of available space was built for academic purposes, compared to roughly 50 percent in 2015.

The report included data from 377 institutions in the United States and Canada collectively enrolling three million students. They had a collective 1.4 billion square feet of campus space. ■

https://www.insidehighered.com/quicktakes/2016/12/20/facilities-backlog-grows

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