PACIFICA
LAW GROUP

T 206.245.1700
1191 2nd Avenue, Suite 2000
Seattle, WA 98101-3404
pacificalawgroup.com

MEMORANDUM

Privileged and Confidential Attorney-Client Communications

To: University of Oregon, Oregon State University, Portland State University

Date: January 12, 2018

Re: Limits to University Tuition-Setting Authority

We serve as bond counsel to the University of Oregon, Oregon State University and Portland State University. We have been asked to consider the potential implications of additional procedural requirements proposed by legislators to limit the universities' tuition setting authority in light of the universities' bond authority and outstanding obligations.

Under ORS 352.102, the Board of Trustees of each university is vested with broad powers to determine tuition, subject only to the following limitation: if the proposed total resident undergraduate tuition and mandatory enrollment fees increase more than five percent from the prior year, this increase must also be approved by HECC or the Legislative Assembly. All other tuition decisions are not subject to external approvals. The Board of Trustees of each university also has broad powers to "use in any manner and expend all revenue derived from tuition and mandatory enrollment fees" for university purposes, including payment of debt service on university bonds. See ORS 352.102.

Pursuant to statutory authority, the University of Oregon and Oregon State University have pledged legally available revenues, including tuition revenue, to the payment of university bonds. On April 1, 2015, the University of Oregon issued $50,000,000 of its General Revenue Bonds, 2015A (the "UO 2015 Bonds"), its inaugural issue, and on May 19, 2016, the University of Oregon issued $60,000,000 of its General Revenue Bonds, 2016A (the "UO 2016 Bonds"). The University of Oregon is proceeding to an issue of General Revenue Bonds, 2018, anticipated to close in January 2018 (the "UO 2018 Bonds"). On May 7, 2015, Oregon State University issued its inaugural general revenue bonds (in the amount of $51,115,000) (the "OSU 2015 Bonds"), on August 25, 2016 issued $40,165,000 of its General Revenue Bonds, 2016A and $7,095,000 of its General Revenue Bonds, 2016B (Federally Taxable) (together the "OSU 2016 Bonds"), and on October 31, 2017 issued $72,705,000 of its General Revenue Bonds, 2017 (Federally Taxable) (the "OSU 2017 Bonds" and together with the UO 2015 Bonds, UO 2016 Bonds, UO

2018 Bonds, OSU 2015 Bonds, OSU 2016 Bonds and OSU 2017 Bonds, the "University Bonds"). Portland State University has not issued revenue bonds to date.

The Official Statement (which is the prospectus delivered to bond investors) for the University Bonds described the Universities' broad statutory authority to set and expend tuition, and disclosed that student tuition represents, in each case, a significant part of the legally available revenue pledged to pay the bonds. The Universities' bond ratings reflect the broad pledge of all legally available revenues, including tuition.

When determining credit worthiness, the bond ratings agencies have taken into consideration, among other factors, whether public universities have local tuition-setting authority. For example, in February 2016, Moody's undertook a review of the Louisiana public universities for potential downgrade following expiration of local tuition-setting authority. Moody's noted in a May 10, 2016 report on the University of Louisiana at Monroe (rated A2, with a negative outlook) that its "negative outlook reflects expectations of ongoing state funding pressure as a result of the state's rapidly deteriorating revenue as well as uncertainty about the impact of potential changes to the State of Louisiana's scholarship aid program and the expiration of the university's tuition setting authority at the end of FY 2016. Inability to grow student generated revenue through tuition increases will hinder the university's flexibility to offset operating appropriation stagnation or cuts due to the state's continued structural imbalance." The report further noted as one of two factors that could lead to an upgrade: "Enhanced autonomy from the state to set tuition and fees." See also, McNeese State University (rated A3, negative outlook, May 11, 2016).

Likewise, Moody's released a comment titled "US Public Higher Education: Washington State Public Universities Lose Tuition-Setting Authority" on July 9, 2015 in response to Washington legislative action. The comment noted: "the governor and legislature of the State of Washington (Aa1 stable) enacted legislation that revokes public universities' authority to set their own undergraduate resident tuition rates. The move is credit negative for these universities over the long term, because it limits their financial flexibility, particularly their ability to adapt to future declines in state funding. In the short term, the universities will benefit from an increase in higher education funding in the fiscal (FY) 2016 and 2017 biennial budget. New legislation greatly diminishes ability to raise revenue. Tuition-pricing flexibility is a public university's primary means of weathering reductions in state appropriations."

On December 5, 2017, Moody's issued a report entitled "Higher education – US 2018 outlook changed to negative as revenue growth moderates." Among the concerns noted in the negative outlook report: "Public universities will have lower growth in net tuition revenue, 2%-3%, as they face increasing political constraints, including state limits on raising tuition."

The UO 2015 Bonds, UO 2016 Bonds and UO 2018 Bonds are rated Aa2 (Stable) by Moody's Investor Service and AA- (Stable) by Standard & Poor's. The Moody's report on UO 2015 Bonds noted that the Board of Trustees "has complete tuition and fee setting authority for graduate and non-resident undergraduate students and for up to 5% rate increases for undergraduate resident students (higher increases must be approved by the HECC or legislature)." Oregon State University's rating report from

Moody's Investor Service (which rated the bonds Aa3 (Stable)) similarly noted that the "university has strong pricing power and moderate flexibility to increase tuition. Net tuition revenue has grown a solid average of 8.4% per year in FYs 2012-14, indicating strong student demand. The university has full authority to raise non-resident and graduate tuition and fees, but any undergraduate resident tuition increases beyond 5% must be approved by the recently established Higher Education Coordinating Commission, which is comprised of members appointed by the Governor and approved by the State Senate."

Now that University Bonds have been issued, these Universities are obligated to provide continuing disclosure to bond owners, including annual information regarding tuition for each fiscal year. If a limitation on tuition-setting authority, or the non-availability of a portion of tuition revenue to pay debt service, results in a change in the University of Oregon's or Oregon State University's bond rating, that University is required to provide prompt (within 10 business days) notice of this change to its bond investors.

As discussed above, the universities' broad authority under current law was disclosed to investors and ratings agencies, and the ratings agencies took note of the universities' tuition setting and spending authority under current State law. The universities are required to provide disclosure regarding tuition in their next annual report to bond investors, or more immediately if the legislative action affects their bond rating.

Other state legislation to restrict the tuition-setting authority has triggered ratings agency comment and review for potential downgrade action. Based on this precedent, legislation to further restrict the tuition setting authority of the universities could result in comparable comment and review. Any resulting downgrade would be required to be reported to bondholders and could affect the universities' cost of capital for future projects.