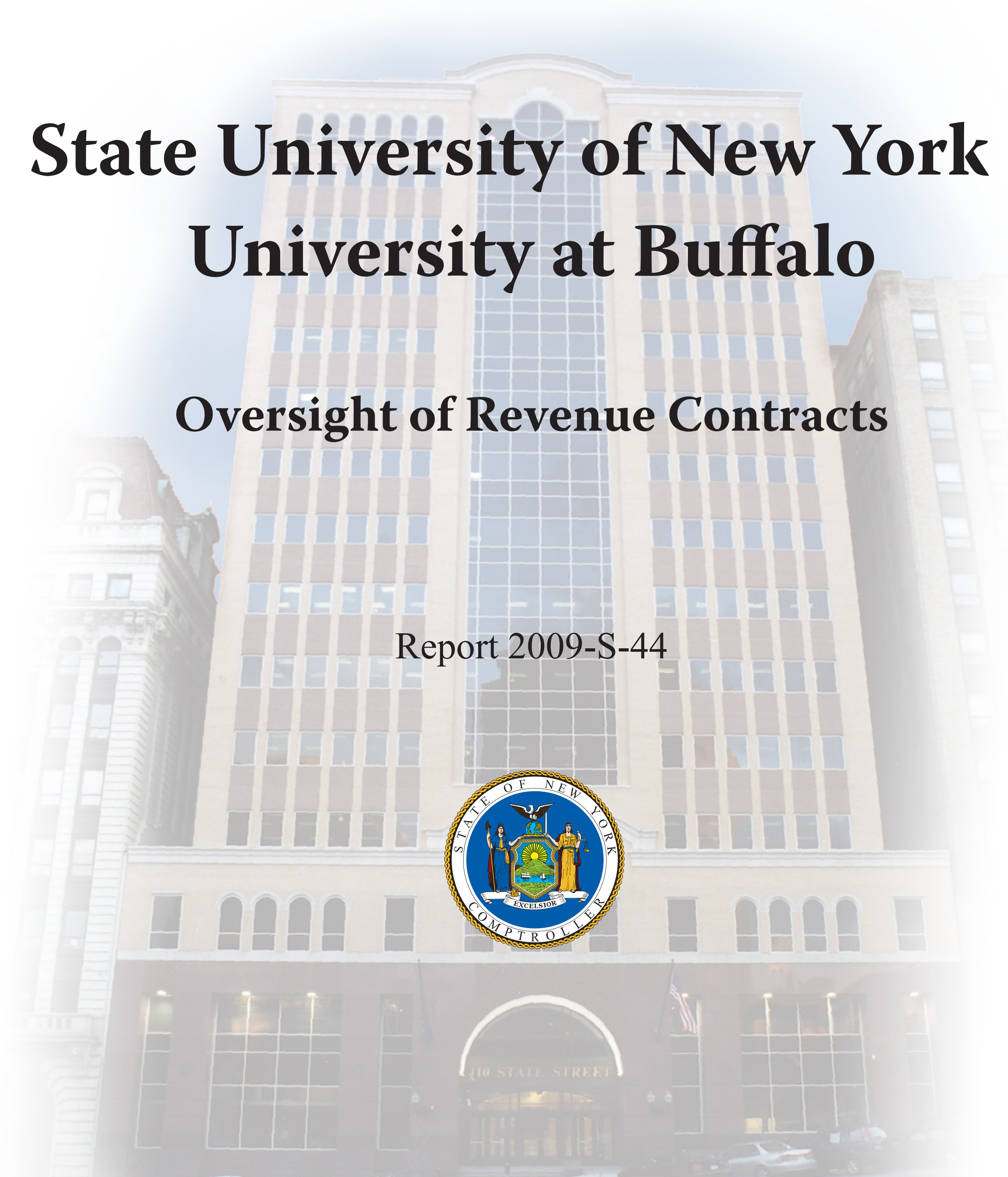
Office of the New York State Comptroller

Division of State Government Accountability

# State University of New York - University at Buffalo

## Oversight of Revenue Contracts

Report 2009-S-44





Thomas P. DiNapoli

# Table of Contents

# State of New York
# Office of the State Comptroller

**Division of State Government Accountability**

September 16, 2010

Nancy L. Zimpher, Ph.D
Chancellor
State University of New York
State University Plaza
Albany, NY 12246

Dear Dr. Zimpher:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Oversight of Revenue Contracts for the University at Buffalo. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller*
*Division of State Government Accountability*

State of New York
Office of the State Comptroller

# EXECUTIVE SUMMARY

## Audit Objective

The objective of our audit was to determine whether the State University of New York - University at Buffalo is maximizing all potential revenue opportunities and is monitoring its revenue contracts to ensure all entitled revenue is billed, collected, and promptly deposited in appropriate accounts.

## Audit Results - Summary

The State University of New York (SUNY) University at Buffalo (University) enters into contracts and agreements that generate revenue and cover certain expenses. They include contracts for research grants, campus services and hospital reimbursement for physician supervision at the University's Graduate Medical Education Office. For the period April 1, 2006 through July 31, 2009, the University collected $141 million from these revenue contracts and agreements.

We found that the University had not collected an estimated $14.47 million in revenue owed by affiliated hospitals to the University and to affiliated Medical Facility Practice Plan Corporations. We concluded that there may be additional revenue due from other University agreements.

Our audit report contains six recommendations.

In response to our audit, University officials advised they will not collect the amount due from the affiliated hospitals because this amount was subject to further review and the final reconciliations were not done. In addition, as of May 31, 2010, the current outstanding balance was $8.5 million. They also stated that the indirect cost rate on research grants was chosen so the University could be competitive with other research institutions. Therefore, they chose not to pursue a higher rate that potentially could have resulted in as much as $2.4 million of revenue.

This report, dated September 16, 2010, is available on
our website at: http://www.osc.state.ny.us.
Add or update your mailing list address by contacting us at (518) 474-3271 or
Office of the State Comptroller
Division of State Accountability
110 State Street, 11th Floor
Albany, NY 12236

# Introduction

**Background**

The State University of New York (SUNY), University at Buffalo (University) has a variety of contracts and agreements that generate revenue for the University and affiliated Faculty Practice Plan Corporations (Practice Plans) or help to defray certain costs. Practice Plans represent University physician faculty members who see patients at affiliated local hospitals. These Practice Plan members supervise medical and dental residents as part of their duties. For the period April 1, 2006 through July 31, 2009, the University earned $141 million from these contracts and agreements.

For example, the University's research grants, which provide reimbursement for indirect costs incurred in the support of funded activities, provide the largest portion of such revenue. During the three years ended June 30, 2009, 794 such grants generated over $90 million in revenue.

Other University and Practice Plan revenue agreements involve local hospitals that are affiliated with the University. During our audit period, three of seven hospitals affiliated with the University had revenue contracts with the University. All three of the contracts were overseen by the University Graduate Medical Education Office (GMEO). Two of the three contracts pertained to affiliated hospital reimbursement for the cost of supervision of medical and dental residents as well as the cost for program directors, coordinators, teachers etc. The reimbursable costs were budgeted at $45 million for the two years ended December 31, 2008. The third contract provides funding for a portion of the University's cost to operate the GMEO (as do provisions in the other two contracts). The four affiliated hospitals without revenue contracts also contributed toward funding the GMEO. In total, the funding provided by the four hospitals was $6 million for the three calendar years ended December 31, 2008.

In addition, the University also collected revenue from the following other contracts:

- One contract totaling $6.48 million with the Faculty Student Association for the operation of campus services such as food service, vending, and other auxiliary services.
- One contract totaling $279,154 which requires the Faculty Student Association to pay a commission to the University's Division of Athletics on sales for concession services provided at various events.

- Seven contracts totaling $267,228 with users of the University's fiber optic network.
- One contract totaling $51,981 with the Niagara Frontier Transportation Authority to rent a campus parking lot.

**Audit Scope and Methodology**

Our audit determined whether the University maximized all potential revenue opportunities and if it was monitoring its revenue contracts to ensure all entitled revenue was billed, collected and promptly deposited in appropriate accounts. Our audit period was April 1, 2006 through July 31, 2009.

To achieve our objective, we interviewed University, SUNY System Administration, Research Foundation and other officials. We also reviewed the contract revenue collection information submitted by the University to System Administration, as well as records maintained by the University related to contract revenue collection and deposit. We reviewed payments due and collected for all University revenue contracts. We reviewed in greater detail a random sample of five research grants. In addition, we sent confirmation letters to affiliated hospitals to verify the payments they made.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

**Authority**

Our audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

**Reporting Requirements**

A draft copy of this report was provided to University and SUNY System Administration officials for their review and comment. Their comments were considered in the preparation of this final report and are included at the end of this report along with the State Comptroller's comments addressing certain items in SUNY's response.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chancellor of SUNY shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

**Contributors to the Report**

Major contributors to this report were Carmen Maldonado, Roger C. Mazula, Wayne Bolton, Raymond Barnes, Nicole Van Hoesen, and Sue Gold.

# Audit Findings and Recommendations

**Maximizing Revenue**

The University must ensure that it collects all amounts due under the existing terms of revenue contracts and agreements. In addition, the University must ensure that the contracts and agreements include provisions to take advantage of all revenue opportunities.

We found that the University was collecting funds due through its research grants, which constitute the largest source of University revenue contracts/agreements. For example, we selected five grants entitling the University to obtain $17.4 million of indirect cost recoveries and found support that University collected this amount. However, we also found that the University had not collected on $14.4 million that was due from affiliation agreements and contracts and we found that the University needed to pursue potential opportunities.

*Uncollected Revenue*

The GMEO prepares a budget at the beginning of each calendar year to estimate the amounts hospitals will owe for services such as resident supervision, based on the planned number of residents rotating at each hospital during the year. These estimates are used to determine monthly billings to hospitals. After year end, the University must do reconciliations between budgeted and actual expenses and adjust final billings. The hospitals must agree with the reconciliations and final adjusted billing.

On July 31, 2009, the University performed the reconciliation for two of the contracted hospitals and determined that $45 million was due based on the two years ending December 31, 2008. However, the University had only billed and collected $23.4 million. University officials told us that there had been a dispute with the hospitals over how to apply methodologies in the contract and, as result, the University had not billed and collected all that it was owed. Following the reconciliations, an agreement was reached that the total billing for the two years should have been $37.6 million. Accordingly, negotiations were still necessary for the collection of $14.2 million from the hospitals.

(In response to our draft report, University officials reported that the majority, $13.1 million of the $14.2 million, is due to the Practice Plans and the remaining $1.1 million is due to the University. University officials also indicated that as of May 31, 2010, the hospitals had paid an additional $2.3 million, and $3.4 million of additional offsets had been negotiated. Therefore, of the $14.2 million, just $8.5 million was still outstanding and subject to continued negotiations. They report that the University received about $334, 006 of the initial $1.1 million.)

<u>Auditor's Comments:</u> We received no documentation regarding the offsets.

Also, although seven hospitals have responsibility for funding the University GMEO expenses, the University had not collected $215,929 owed from one hospital not covered by a contract. University officials need to enter into formal contracts with all of the hospitals to best ensure they will be able to bill and collect all amounts due. In addition, SUNY System Administration should work with University officials to ensure that all monies due to the University and the Practice Plans from affiliated hospitals are collected.

We also found that the University had not collected $4,573 from the Niagara Frontier Transportation Authority in connection with lighting fees and rent for a parking lot. The uncollected amount resulted because the University had not applied Consumer Price Index (CPI) adjustments for these items when it billed the Authority. University officials told us they waived the CPI adjustment because the Niagara Frontier Transportation Authority returned 160 parking spaces but continued to pay the full rent. However, they did not document this decision or formally modify the terms of the contracts.

Similarly, the University did not bill an additional $531 under one of its fiber optic contracts as a result of not applying CPI provisions of the related contract. For this same contract, the University did not bill for and collect on $1,175 of access charges which it was entitled to bill and collect on.

In response to our findings, University officials indicated that access charges were collected and CPI adjustments would be applied to the next billing cycle.

*Potential Revenue*

We found that five of the affiliated hospitals were not reimbursing the University and Practice Plans for items, including physician supervision, that was reimbursable under contracts with the remaining two affiliated hospitals. If these five affiliated hospitals had contracts with standard provisions similar to the two affiliated hospitals contracts, the University and Practice Plans would have obtained additional revenue over the three year period ending July 31, 2009. University officials stated that they expect contracts to be in place for all affiliated hospitals in the near future.

(In response to the draft audit report, University officials stated that agreements with these hospitals would be expected to yield a small amount due, if any.)

Auditor's Comments: In the absence of written agreements, we could not establish an actual amount due. On July 10, 2010, University officials informed us that they still have not established if there are any amounts owed from these hospitals.

The University receives reimbursement for indirect costs related to the use of its facilities or services in connection with research grants, some of which are federally funded. The reimbursement rate is based on a percentage of direct costs. We found that the University requested and obtained approval for a reimbursement rate of 58.5 percent. However, the maximum reimbursement rate the University costs could support is 64.12 percent. Had the University requested and obtained approval for the maximum reimbursement rate, it potentially would have realized an additional $2.4 million in the 2008-09 academic year.

According to University officials, the 58.5 percent is the highest rate for any public institution in the country and is one of the highest rates among all institutions including private ones. The officials also state that the rate was chosen to help the University remain competitive with other research institutions in obtaining sponsored research grants and that increasing the rate could result in fewer grants. We acknowledge that the University needs to balance the reimbursement rate with the ability to attract grant funding. However, we believe the University should perform a documented analysis to determine the optimal rate that ought to be sought to achieve the desired balance. Officials responded that they will re-examine all factors before the current rates expire in 2012.

(In response to the draft audit report, University officials stated that it is misleading to report the campus would realize an additional $2.4 million in cost recovery. They indicated that it is unreasonable to expect the federal government to approve a campus formulaic rate. They also said it is possible to speculate that a higher indirect cost rate could be negotiated and agreed to by the federal government.)

We noted that the payment terms of the Faculty Student Association (an organization affiliated with the University to support various University functions) contract contained no provision for CPI adjustments and, consequently, had remained the same since the 2004-05 academic year, with the exception of provisions for revenue from an exclusive beverage contract. If CPI adjustments had been included in this contract, as was done for other University contracts, the University would have collected an additional $492,238 of revenue for the three year period ending June 30, 2009.

University official explained that their intention is to try to keep prices low to enhance the student experience. They added that they tried to obtain more revenue by increasing the General Support Fee that the Faculty Student Association pays the University. In this regard, to increase revenue, they explained that in their 2009-10 contract negotiation with the Faculty Student Association, they changed from a fixed amount General Support Fee to an "assessment." based on six percent of revenue. However, University officials did not provide documentation supporting that the six percent assessment would result in more revenue than the fixed Fee. University officials state that, since the Faculty Student Association adjusts its prices annually after reviewing the CPI and other indicators, the percentage of sales assessment indirectly provides the University with a CPI adjustment.

**Recommendations**

1. Collect amounts due from affiliated hospitals as identified in this report.
2. Prepare formal modification to Niagara Frontier Transportation Authority revocable permit to document current payment provisions.
3. Ensure that all hospital affiliation agreement have formal contracts including standard provisions for recovering all costs that the University and Practice Plans are entitled to be reimbursed for.
4. Re-examine all factors before the current indirect cost reimbursement rate expires in 2012, to optimize the indirect cost reimbursement rate while maintaining the University's ability to competitively attract grant funding. Document the factors considered and reasons for decisions made.

   (In response to our draft audit report, SUNY-UB officials indicated they have always performed a very detailed level of analysis to support their negotiating position with the Federal government. As such, they do not agree with the recommendation.)

   <u>Auditor's Comments:</u> We did not question the level of detail to support the indirect cost rate. Our concern is that there is a potential for additional revenues if a higher indirect cost rate could be sought and obtained.

5. Train staff to ensure they are aware of CPI adjustments in contracts and revenue from these adjustments is collected, as appropriate.

6. Document the basis supporting the six percent assessment for the Faculty Student Association contract.

   (In response to our draft audit report, SUNY-UB officials replied they disagree that additional documentation of the fixed rate is warranted.)

   <u>Auditor's Comments</u>: SUNY-UB officials did not provide any documentation to support that the six percent rate resulted in more revenue than the fixed fee.

THE STATE UNIVERSITY *of* NEW YORK

*Monica Rimai*
*Senior Vice Chancellor and Chief Operating Officer*

*System Administration State University Plaza Albany, New York 12246*

*518 320 1281*
*fax - 518 320 1544*

*monica.rimai@suny.edu*
*www.suny.edu*

July 16, 2010

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street 21st Floor
New York, New York 10038

Dear Ms. Maldonado:

In accordance with section 170 of the Executive Law, we are providing our response to the draft report on the Office of the State Comptroller's audit of the University at Buffalo's Oversight of Revenue Contracts (OSC report 2009-S-44). The University collects contract revenue from a variety of sources including Graduate Medical Education, indirect costs for Federal grants, the Faculty Student Association, use of fiber optic network, rental of facilities, and others. The University strives to collect all the revenue it is due.

We concur with many of the findings and recommendations in the report and have taken action to address them. However, we continue to be concerned that the report significantly overstates the amount of revenue the University could collect, does not adequately acknowledge the unique environment in which the Graduate Medical Education program operates, shows a lack of understanding of the process for establishing indirect cost rates for government grants, and contains a number of inaccuracies. Our response is organized by each of the revenue streams included in the audit report, and the related recommendations for that revenue stream.

* Comment 1

Graduate Medical Education

The audit report continues to provide the impression that millions of dollars in revenue are not being collected by the University for Graduate Medical Education (GME), which is not true. While we agree that more timely resolution of GME negotiations with our affiliated health systems/hospitals is needed, reporting that $14.2 million is owed and needs to be collected under existing contracts is inaccurate. The $14.2 million relates to Graduate Medical Education and is based on a draft document and the amount owed is still being negotiated. The actual amount owed cannot be determined until after the negotiations are completed.

* Comment 1

* See State Comptroller's Comment on page 23.

Of the $14.2 million, $13.1 million is associated with the Faculty Practice Plans. Any funds that are collected would be remitted to the Practice Plan for payment of salaries and expenses of the Practice Plan and the revenues are not available to the University.

In addition, it is inappropriate to report that an additional $15.4 million could have been collected from five affiliated health systems/hospitals that did not have contracts with the University. Throughout the audit we have made it clear that most of the expenses for physician supervision for GME at these five health systems/hospitals were borne by the hospitals, and a significant portion of the resident and fellow supervision duties are conducted by volunteer faculty. Since the expenses were paid by the health systems/hospitals, the University does not expect to receive payment for these expenses. The University is not entitled to reimbursement from the health systems/hospitals since no expenses were incurred by the University. Therefore, agreements with these affiliates would be expected to yield a small amount due, if any; not $15.4 million as stated in the audit report.

*
Comment
1

The report also fails to recognize the unique relationship the University has with the Faculty Practice Plans and affiliated health systems/hospitals (UB is the only SUNY Health Sciences Center that does not have a University-owned hospital), and the changing health care environment in which contract negotiations with the affiliated health systems/hospitals take place. The report also incorrectly refers to these revenues as reimbursement of costs, rather than amounts that need to be negotiated with the affiliated health systems/hospitals. We have made significant progress over the past several years in getting agreements in place so that appropriate reimbursements are made to the entities that provide support for our GME programs, and we will continue to do so until agreements with all our affiliated health systems/hospitals are in place.

**Recommendation #1** – Collect amounts due from affiliated hospitals as identified in this report.

The University will ensure that any amounts that are determined to be due to the University or the Faculty Practice Plans, as a result of the negotiation process with our affiliated health systems/hospitals, are collected. The $215,929 referenced in the audit report as funding from one hospital for Graduate Medical Education Office expenses has been collected.

**Recommendation #3** – Ensure that all hospital affiliation agreements have formal contracts including standard provisions for recovering all costs that the University and Practice Plans are entitled to be reimbursed for.

We agree that formal contracts should be established and have made significant progress in achieving this over the past few years. These contracts include provisions for recovering all University and Faculty Practice Plan costs.

* See State Comptroller's Comment on page 23.

Niagara Frontier Transportation Authority

**Recommendation #2** – Prepare formal modification to Niagara Frontier Transportation Authority revocable permit to document current payment provisions.

We agree with this recommendation and will ensure that our contract with the Niagara Frontier Transportation Authority accurately reflects the current parking space allocation and payment terms.

Fiber Optic Contracts

**Recommendation #1** – Collect amounts due from fiber optic vendors as identified in this report.

We agree with this recommendation and have collected the $1,175 access charge. The $531 related to the CPI adjustment on one of the fiber optic contracts will be included in our next billing cycle.

**Recommendation #5** – Train staff to ensure they are aware of CPI adjustments in contracts and revenue from these adjustments is collected, as appropriate.

We agree with this recommendation and will expand the information we provide to individuals responsible for administering campus contracts to address CPI adjustments when applicable.

Facilities and Administrative Cost Recovery

This audit report section fails to recognize the work that was done both by the campus and by the Research Foundation in evaluating an appropriate cost recovery rate for the Campus, and in preparing for the negotiations with the Federal government that are required as part of the rate setting process. Reporting that the Campus could realize an additional $2.4 million in cost recovery by using a rate higher than the one negotiated with and approved by the Federal government is very misleading because acceptance of a campus' formulaic rate by the Federal government is a totally unreasonable expectation. While it is possible to speculate that a higher indirect cost rate could be used, it would have to be negotiated and agreed to by the Federal government. The fact that our Campus continues to have one of the highest rates for public universities across the country indicates the success of our efforts in preparing for, and negotiating with, the Federal government to maximize our recovery revenues.

**Recommendation #4** – Re-examine all factors before current indirect cost reimbursement rate expires in 2012 to optimize the indirect cost reimbursement rate while maintaining the University's ability to competitively attract grant funding. Document the factors considered and reasons for decisions made.

The Campus, in conjunction with the rate negotiators in the Research Foundation, has always performed a very detailed level of analysis to support our negotiating position with the Federal government. We do not agree that documentation, beyond what we have provided the auditors for our last rate negotiation process, is warranted.

Faculty Student Association Contract

**Recommendation #6 –** Document the basis supporting the six percent assessment for the Faculty Student Association contract.

The percentage of sales method for determining the Campus assessment to the Faculty Student Association (FSA) is the result of negotiations between the Campus and the FSA, and is consistent with our current contract with the FSA. We do not agree that documentation of the negotiation process, beyond what was already provided to the auditors, is warranted.

The final report should clarify these issues and put the findings and recommendations in perspective.

Sincerely,

Monica Rimai
Senior Vice Chancellor and
Chief Operating Officer

Copy: Chancellor Zimpher
President Simpson
Mr. Abbott
Mr. Dunn/Buffalo
Ms. Henderson/Buffalo
Mr. LeVine/Buffalo
Mr. McGrath
Mr. Nostaja/ Buffalo
Ms. Preston

# State Comptroller's Comment

1. We have modified our final report as appropriate to reflect comments that SUNY-UB provided in response to our draft audit report. However, our overall conclusion remains that more needs to be done to ensure revenue is maximized.