#342

Report To
The Mississippi Legislature

Cash Management Review of the Central Office of the Board of Trustees of Institutions of Higher Learning

July 10, 1996

The IHL central office has engaged in cash management and reporting practices which reduce accountability to the Legislature for the expenditure of state funds. In FY 1995, the central office:

- drew $717,016 from the Treasury which it did not spend during the year of appropriation and did not return at the end of the year, in violation of Section 64 of the MISSISSIPPI CONSTITUTION;
- billed the universities $198,453 for expenditures which were the responsibility of the board, resulting in an understatement of system administration costs;
- commingled Treasury and special source funds, which hindered the Legislature's ability to determine that funds had been spent as intended under state law; and,
- did not report $20,219,108 in special fund revenues or $687,684 in special fund expenditures to the Legislature.

During 1996, IHL has taken corrective action by returning funds to the state Treasury and revising procedures which, along with PEER recommendations, should improve the oversight of state funds handled by the central office.

The PEER Committee

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

Cash Management Review of the Central Office of the Board of Trustees of Institutions of Higher Learning

July 10, 1996

The PEER Committee

Mississippi Legislature

The Mississippi Legislature

Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee

SENATORS
WILLIAM W. CANON
Chairman
HOB BRYAN
BOB M. DEARING
EZELL LEE
JOHNNIE E. WALLS, JR.

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1420

P. O. Box 1204
Jackson, Mississippi 39215-1204

Max Arinder, Ph.D.
Executive Director

REPRESENTATIVES
WILLIAM E. (BILLY) BOWLES
Vice Chairman
ALYCE G. CLARKE
Secretary
HERB FRIERSON
TOMMY HORNE
MARY ANN STEVENS

OFFICES:
Professional Building
222 North President Street
Jackson, Mississippi 39201

July 10, 1996

Honorable Kirk Fordice, Governor
Honorable Ronnie Musgrove, Lieutenant Governor
Honorable Tim Ford, Speaker of the House
Members of the Mississippi State Legislature

At its meeting of July 10, 1996, the PEER Committee authorized release of the report entitled **Cash Management Review of the Central Office of the Board of Trustees of Institutions of Higher Learning.**

Senator Bill Canon, Chairman

This report does not recommend increased funding or additional staff.

Table of Contents

Letter of Transmittal.....i

List of Exhibits v

Executive Summary.....vii

Introduction 1

Authority 1
Scope and Purpose.....1
Method 3
Overview 3

Background 6

Outline of IHL Central Office FY 1995 Receipts and Disbursements.....6
Board Responsibility for Central Office Organization and Disbursement of Funds.....6
Comparison of External Control over the IHL Central Office with the Control over Other State Agencies.....8

Drawdown of Funds from the State Treasury by IHL's Central Office.....11

The Central Office Did Not Return $717,016 in Unused State Funds to the Treasury at the End of FY 1995 as Required by Section 64 of the Constitution.....11
A Combination of Legal and Procedural Factors Allowed the Central Office to Draw Funds Without Proof That They Would Be Spent During the Appropriate Fiscal Year 13
In Spring 1996 DFA and the Central Office Began to Establish New Procedures to Improve Compliance with State Law 15

Allocation and Distribution of Funds by IHL's Central Office.....17

The IHL Central Office Billed $5.4 Million to Institutions in FY 1995 for Service Expenditures.....17
Nearly $200,000 of the Central Office's FY 1995 Service Expenditures Billed to Institutions Represented Costs Associated with Board Activities 18

Table of Contents (continued)

Records and Reports Generated by IHL's Central Office.....20

Commingling of State Treasury and Special Source Funds Hindered Monitoring of State Treasury Fund Expenditures.....20
Reimbursement of a Special Revolving Fund for Previous Year Expenditures with Current Year State Treasury Receipts.....21
Inability to Produce Appropriate Financial Reports Hindered Comparison of Legislative Appropriations with Receipts and Disbursements.....22
IHL's Level of Reporting to the Legislature Did Not Disclose the Full Amount of Central Office Spending.....23
IHL's Reports to the Legislature Did Not Reveal the Scope of Central Office Control over University Funds or the Level of Funding Available to the Central Office.....26

Conclusion 29

Recommendations.....30

Appendix A. IHL Central Office's Certification Statement for Drawdown of State Funds before April 1996 Revisions.....35

Appendix B. IHL Central Office's Certification Statement for Drawdown of State Funds After April 1996 Revisions.....36

Appendix C. Analysis of the Characterization of the IHL Central Office as an "Institution" by the Attorney General's Office.....37

Agency Response.....38

List of Exhibits

1. Comparison of Total FY 1995 Appropriations from the State Treasury to IHL and Amounts Received Into and Disbursed from the Central Office.....2

2. Receipts and Disbursements of the IHL Central Office Funds, Fiscal Year 1995 7

3. Comparison of External Controls Over Typical State Agencies and Over the IHL Central Office.....9

4. Schedule of FY 1995 Funds Not Lapsed to the State Treasury at August 31, 1995, by IHL Central Office Fund Account.....12

5. Calculation of the Estimated Cost of FY 1995 Attorney General Services Which the Board Overbilled the Universities.....19

6. Comparison of Special Source Expenditures to Special Fund Appropriations, Fiscal Year 1995.....24

7. Comparison of Actual FY 1995 Special Source Expenditures to Amounts Reported for FY 1995 in IHL's FY 1997 Budget Requests.....25

8. IHL Central Office Special Source Revenues Not Reported to the Legislature in FY 1995.....27

Cash Management Review of the Central Office of the Board of Trustees of Institutions of Higher Learning

Executive Summary

July 10 ,1996

Introduction

In response to legislative concerns regarding the cash management practices of the central office of the Board of Trustees of Institutions of Higher Learning (IHL), PEER sought to determine whether the accounting practices and external controls over the IHL central office ensure an adequate level of accountability for the public funds disbursed from that office.

Central office funds included in the scope of this review consist of $17,022,202 in funds disbursed under the direct control of the IHL staff, including $7,872,198 in general and Education Enhancement funds received for operations of the executive office Systems Administration, the University Research Center and Student Financial Aid, and $9,150,004 in Education Enhancement funds received into and spent from the central office in support of the institutions.

Overview

IHL's central office accounting and cash management practices did not ensure an adequate level of accountability for public funds received and disbursed during FY 1995, but the IHL central office has improved some procedures during 1996. In FY 1995 IHL was not fully accountable in the following areas:

- *Drawing funds from the state Treasury in compliance with state law*—The central office drew at least $717,016 from the Treasury which it did not spend during the year of appropriation and did not return at the end of the year, in violation of Section 64 of the MISSISSIPPI CONSTITUTION. Retaining the unspent state funds reduced accountability because the funds were maintained in a private bank account, available to be spent on special projects without oversight by the Legislature. In drawing the funds, the central office used the flexibility provided by MISS. CODE ANN. § 7-9-41, which allows IHL to draw the funds from the Treasury on a lump sum basis rather than have its expenditures pre-audited by DFA.

- *Allocation and distribution of funds to the institutions*—The central office's practice of contracting for services on a system-wide basis and billing universities for their share of the expenses allows IHL to manage and control system-wide expenditures. However, the central office sometimes bills the universities for expenditures which are the responsibility of the board, which results in an understatement of system administration costs and an overstatement of university expenditures. In FY 1995, this practice resulted in understating an estimated $198,453, or 7.5%, of IHL's system administration costs.

- *Maintenance of financial records to retain identity of state funds and facilitate comparison of appropriations and expenditures*—The central office has maintained its accounting records in a way that commingled state Treasury and special source funds, which hindered tracking of appropriations from receipt through expenditure. In addition, historical revenue and expenditure reports could not be obtained in a cash-basis format that could readily be compared to appropriations. These practices hindered the Legislature's ability to determine that Treasury funds were being spent as intended under state law.

- *Reporting practices to disclose total level of funding and expenditures*—IHL's central office did not report complete special fund revenue or expenditure information to the Legislature in FY 1995. In violation of MISS. CODE ANN. Section 27-103-123, IHL's central office excluded $20,219,108 in special funds receipts from its report to the Legislature on total FY 1995 central office revenue. IHL violated the same disclosure statute by excluding $687,864 in special source fund expenditures from its report of total central office spending. As a result, IHL did not make the Legislature aware of all rev-

enues available to the central office or of the scope of system-wide administrative functions which it has assumed. The Legislature needs this information in order to be fully informed when making funding decisions.

In the spring of 1996, the central office took steps to remedy past problems, as summarized below:

- The board returned $655,139 of the unspent FY 1995 funds to the Treasury on May 15, 1996, and central office staff expressed intentions of returning the remaining $61,877 to the Treasury before the end of FY 1996. IHL also returned $1,387,591 of Education Enhancement appropriations which IHL had drawn from the Treasury to build a tort liability reserve for the institutions but which exceeded recent estimates of actuarial requirements.

- DFA and the central office have begun to develop procedures to improve IHL's compliance with state law, including:

  — strengthening an IHL certification statement which accompanies central office draws from the Treasury and attests to their legality; and,

  — requiring the central office to provide documentation to substantiate that Treasury draws will be used to reimburse current year spending.

- Central office staff have created new accounts which, if used properly, will allow for the separate accounting by type of sources and uses of state Treasury appropriations in order to maintain identity of state funds.

Conclusion

In the past, the IHL central office has engaged in cash management, accounting, and reporting practices which reduced accountability to the Legislature for the expenditure of state funds. During 1996, IHL has taken corrective action and has returned a total of $2,042,730 in state funds to the Treasury.

The central office's revised procedures, along with the recommendations summarized below and detailed in the report, should improve the oversight and accountability for state funds handled by the central office.

Recommendations

Institutions of Higher Learning

1. The central office of IHL should:

   — review its procedures for billing universities, revise its billing methods to bill only for those costs which are the responsibility of the universities, adjust its budget to reflect the total costs which are the responsibility of the board, and present budget requests to the Legislature which represent the full costs of board activities;

   — maintain historical records of receipts and expenditures on a cash basis, including disbursements occurring in the lapse period, in order to facilitate reporting of state appropriations and related expenditures by type of appropriation for past years. (This recommendation could be implemented in conjunction with the central office's present accrual basis of accounting.);

   — report all expenditures and special fund revenues to the Legislature in the budget request form, including the transactions in the trust funds and central service accounts created to bill universities for central service expenditures;

   — return routinely all funds to the State Treasury which are received but not spent during a given fiscal year, as provided in Section 64 of the MISSISSIPPI CONSTITUTION;

   — along with guidance from the Department of Audit, direct the establishment and maintenance of accounting records for the cash balances of the Master Lease Purchase Program for each of the universities involved in the program; and,

   — in order to improve the audit trail of accounting transactions, seek to improve documentation of its journal entries to explain fully the purpose of the transaction.

2. The Board of Trustees of IHL should provide sufficient oversight to ensure that central office cash management and reporting practices are in compliance with the law, that the central office has spent funds in the appropriate

fiscal year, and that all funds received from the Treasury are returned at the end of each fiscal year if not spent.

Department of Finance and Administration

3. DFA should audit each month a scientific sample of the central office's claimed expenditures using the same pre-audit verification procedures as it does for other state agencies as required under CODE Section 7-7-33.

4. As a part of the revised funds-withdrawal procedures which DFA has required of the central office during 1996 and in the event of changes in personnel at either agency, DFA should provide in writing to IHL the specific types of accounting information required. DFA should also complete internal written policies for the routine process it will use in auditing a sample of the central office's expenditures and reviewing the quarterly central office statements which it has required IHL to provide.

5. In addition to the revised funds-withdrawal certification statements which DFA has required of the IHL central office, DFA should request a revision of the certification statements submitted for university draw downs, including a certification that the funds are being drawn in accordance with Section 64 of the CONSTITUTION and will be used to pay for valid claims of goods and services received by the university during the fiscal year of the appropriation.

Legislature

6. To hold the central office to the same standard as other state agencies, the Legislature should consider amending MISS. CODE ANN. § 7-9-41 to:

   — require that DFA pre-audit and verify all of the central office's expenditures as required for other agencies under CODE Section 7-7-33; and,

   — amend the current language which allows a change in procedures for IHL's withdrawals from the Treasury only upon the concurrence of the State Fiscal Officer and the institutions of higher learning. The language could be amended to state that the agreed-upon system of funds withdrawal "shall not be changed except on the approval of the State Fiscal Officer."

7. The Legislature should consider revising the language in the annual appropriations bill passed for the support of the institutions and the executive office of IHL in order to provide more guidance to DFA in its distribution of lump-sum Education Enhancement Fund appropriations made for the support of the institutions. The revised language could delineate which funds are intended to be spent from the central office in support of the institutions and which are intended to be spent directly by individual institutions.

For More Information or Clarification, Contact:

PEER Committee
P. O. Box 1204
Jackson, MS 39215-1204
(601) 359-1226
http://www.peer.state.ms.us

Senator William Canon, Chairman
Columbus, MS (601) 328-3018

Representative Billy Bowles, Vice-Chairman
Houston, MS (601) 456-2573

Representative Alyce Clarke, Secretary
Jackson, MS (601) 354-5453

Cash Management Review of the Central Office of the Board of Trustees of State Institutions of Higher Learning

Introduction

Authority

The PEER Committee conducted its review pursuant to MISS. CODE ANN. Section 5-3-57, et seq. (1972).

Scope and Purpose

In response to legislative concerns regarding the accounting and fund distribution practices of the central office of the Institutions of Higher Learning (IHL), PEER sought to determine whether the accounting practices and external controls over the IHL central office ensure an adequate level of accountability for the public funds disbursed from that office. Adequate accountability by the IHL central office should include:

- drawing funds from the state Treasury in a manner that ensures funds will be used at the time and in the manner specified by state law;

- allocating and distributing funds intended for use by the institutions and spending only those funds intended for use by the central office; and,

- maintaining accounting records and reporting revenues and expenditures in a manner which permits the Legislature and the public to compare IHL central office expenditures readily with appropriations.

The central office funds included in the scope of this review include the funds disbursed under the direct control of the staff of the Board of Trustees of State Institutions of Higher Learning. The review focuses primarily on Fiscal Year 1995, as it is the most recent year for which complete expenditure data is available. Exhibit 1 on page 2 outlines the appropriations which fall under the scope of this review and compares them to the total appropriations to the board.

In reviewing the IHL Board's accountability for its use of these funds, PEER examined IHL's practices and external oversight related to drawing down state Treasury funds for use by the central office, the allocation and distribution of these funds by IHL central office staff, and recordkeeping and reporting practices related to the use of funds by the IHL central office.

Exhibit 1

Comparison of Total FY 1995 Appropriations from the State Treasury to IHL and Amounts Received Into and Disbursed From the Central Office

Source and Purpose of the Appropriations of the 1994 Regular Session for FY 1995	Total Appropriations	Amounts Received Into and Disbursed from the IHL Central Office in FY 1995
House Bill 1872		
General Funds		
IHL General Support (1)	$227,116,731	$2,280,408
Including Teachers Corps ($200,000)		200,002
Education Enhancement Funds		
On- and Off-Campus Support of Institutions and Other Enhancement (Section 5)	35,693,980	8,950,001
Specific Line Items for Universities and Entities Affiliated with the Universities (Section 5)	12,535,400	
Executive Office (Section 5)	156,400	156,401
Senate Bill 3262		
General Funds		
University Research Center and MARIS	2,974,955	2,974,955
Education Enhancement Funds		
University Research Center	370,300	370,298
Senate Bill 3264		
General Funds		
Student Financial Aid (2)	2,090,137	2,090,137
Other Appropriations Bills		
General and Education Enhancement Funds		
University Medical Center	98,140,633	
Mississippi State University Veterinary Medicine and other programs	48,807,026	
Alcorn State University Agriculture	3,835,830	
Total	$431,721,392	$17,022,202

Notes:

(1) The bill appropriated 1% of total IHL appropriations to the Executive Office. Although the amount received by the central office slightly exceeds 1% of the general funds appropriated to institutions in H.B. 1872, the language in the bill may also be interpreted to consider amounts in other bills (e.g., the University Medical Center) to be part of total IHL appropriations.

(2) In the 1995 Regular Session, the Legislature also appropriated $19,979,500 for two new grant programs available for FY 1995 and 1996. No funds were disbursed during FY 1995.

SOURCE: FY 1995 appropriations bills of the Mississippi Legislature, IHL accounting records.

Method

In conducting this review, PEER:

- reviewed Mississippi statutes;
- interviewed personnel of the Institutions of Higher Learning and Department of Finance and Administration; and,
- reviewed and analyzed IHL central office financial records, reports, budget requests, and other documents.

Overview

IHL's central office accounting and cash management practices did not ensure an adequate level of accountability for public funds received and disbursed during FY 1995, but the IHL central office has improved some procedures during 1996. In FY 1995 IHL was not fully accountable in the following areas:

- *Drawing funds from the state Treasury in compliance with state law*--The central office drew at least $717,016 from the Treasury which it did not spend during the year of appropriation and did not return at the end of the year, in violation of Section 64 of the MISSISSIPPI CONSTITUTION. Retaining the unspent state funds reduced accountability because the funds were maintained in a private bank account, available to be spent on special projects without oversight by the Legislature. In drawing the funds, the central office used the flexibility provided by MISS. CODE ANN. § 7-9-41, which allows IHL to draw the funds from the Treasury on a lump-sum basis rather than have its expenditures pre-audited by the Department of Finance and Administration (DFA).

- *Allocation and distribution of funds to the institutions*--The central office's practice of contracting for services on a system-wide basis and billing universities for their share of the expenses allows IHL to manage and control system-wide expenditures. However, the central office sometimes bills the universities for expenditures which are the responsibility of the board, which results in an understatement of system administration costs and an overstatement of university expenditures. In FY 1995, this practice resulted in understating an estimated $198,453, or 7.5% of IHL's system administration costs.

- *Maintenance of financial records to retain identity of state funds and facilitate comparison of appropriations and expenditures*--

The central office has maintained its accounting records in a way that commingled state Treasury and special source funds, which hindered tracking of appropriations from receipt through expenditure. In addition, historical revenue and expenditure reports could not be obtained on a cash basis and readily compared to appropriations. These practices hindered the Legislature's ability to determine that Treasury funds were being spent as intended under state law.

- *Reporting practices to disclose total level of funding and expenditures*--IHL's central office did not report complete special fund revenue or expenditure information to the Legislature in FY 1995. As a result, IHL did not make the Legislature aware of all revenues available to the central office or of the scope of system-wide administrative functions which it has assumed. The Legislature requires this information in order to be fully informed when making funding decisions.

In the spring of 1996, the central office took steps to remedy past problems, as summarized below:

- The board returned $655,139 of the unspent FY 1995 funds to the Treasury on May 15, 1996, and central office staff expressed intentions of returning the remaining $61,877 to the Treasury before the end of FY 1996. IHL also returned $1,387,591 of Education Enhancement appropriations which IHL had drawn from the Treasury to build a tort liability reserve for the institutions but which exceeded recent estimates of actuarial requirements.

- DFA and the central office have begun to develop procedures to improve IHL's compliance with state law, including:

  -- strengthening an IHL certification statement which accompanies central office draws from the Treasury and attests to their legality; and,

  -- requiring the central office to provide documentation to substantiate that Treasury draws will be used to reimburse current year spending.

- Central office staff have created new accounts which, if used properly, will allow for the separate accounting by type of sources and uses of state Treasury appropriations in order to maintain identity of state funds.

In order to further improve accountability:

- DFA should audit each month a scientific sample of the central office's claimed expenditures.

- To hold the central office to the same standard as other state agencies, the Legislature should consider amending MISS. CODE ANN. § 7-9-41 to require that DFA pre-audit and verify all of the central office's expenditures as required for other agencies under Section 7-7-33.

- The central office should report to the Legislature the true cost of system-wide administration rather than billing universities for board costs and request funds sufficient to operate the central administrative office.

- The central office should develop appropriate financial reports on a cash basis maintained historically to improve the reporting of spending from the Treasury by year of appropriation.

- The central office should report comprehensive revenue and expenditure information to the Legislature and to DFA in the future.

In the past, the IHL central office has engaged in cash management, accounting, and reporting practices which reduced accountability to the Legislature for the expenditure of state funds. During 1996, IHL has taken corrective action and has returned a total of $2,042,730 in state funds to the Treasury. The central office's revised procedures, along with the report recommendations listed on page 30, should improve the oversight and accountability for state funds handled by the central office.

Background

Outline of IHL Central Office FY 1995 Receipts and Disbursements

During FY 1995, the central office accounted for receipts and disbursements in over forty separate funds for three types of operations: its internal budgeted operations, its central service operations, and the Mississippi Guarantee Student Loan Agency (Guarantee Agency). (See Exhibit 2 on page 7.)

In its internal budget, the central office received revenues from general fund and Education Enhancement state appropriations, federal grants, loan repayments, interest income, and other miscellaneous sources. As shown in Exhibit 2, at the end of FY 1995, the $9,411,836 in cash held for its budgeted programs consisted primarily of balances in its consolidated loan/scholarship funds and also included a $1,149,511 balance in a special projects fund. The cash in the special projects fund had accumulated primarily since 1989 from self-generated funds and interest income.

The central office also managed trust funds and central service funds on behalf of the universities for system-wide functions and expenditures, including tort liability claims, unemployment, and workers compensation funds. In its revolving fund, the central office disbursed central payments for costs such as Attorney General and educator liability expenditures and billed the universities for reimbursement into that fund, further described on page 17. The central office's handling of the master lease equipment program is also described on page 17.

In addition, the central office accounted for the operations of the Guarantee Agency, consisting of state employees who managed the federal program for guaranteeing student bank loans. Because the board privatized the Guarantee Agency in September 1994, the receipts and disbursements statement does not include a full year of operations.

Board Responsibility for Central Office Organization and Disbursement of Funds

The Board of Trustees of Institutions of Higher Learning (Board) is responsible for overseeing the operations of university systems across the state of Mississippi and also the operations of the IHL central office staff (central office).

Exhibit 2

Receipts and Disbursements of the IHL Central Office Funds Fiscal Year 1995 (a)

Central Office Receipts and Disbursements		
Beginning Cash		$12,392,723
Receipts		
State General Fund Revenues	7,545,502	
Education Enhancement Fund Revenues	5,076,700	
Other Receipts	4,824,482	17,446,684
Disbursements		(18,482,771)
Transfer of FY 1993 Asbestos Abatement General Funds to the Universities		(1,944,800)
Ending Cash		$9,411,836
Trust Fund and Central Service Receipts and Disbursements (b) (Includes Pay and Bill Function on Behalf of Universities)		
Beginning Cash		$5,608,005
Receipts		
Education Enhancement Fund Revenues (c)	4,400,000	
Other Receipts	9,156,971	13,556,971
Disbursements		(9,224,198)
Ending Cash		$9,940,778
Mississippi Guarantee Student Loan Agency Receipts and Disbursements		
Beginning Cash		$11,118,753
Receipts		9,628,992
Disbursements (Operations)		(9,190,666)
Disbursements of Funds in the Privatization Process		(11,557,079)
Ending Cash		$0

NOTES:

(a) Amounts are presented on a cash basis, adjusted to include FY 1995 disbursements and federal grant reimbursements occurring in the two-month year-end lapse period.

(b) Includes master lease purchase trust, fringe benefits, self-insured workers compensation, unemployment trust, and tort liability claims funds.

(c) Received into the Tort Liability Claims Fund

(d) This exhibit includes an analysis of unaudited financial records. The information is not presented in accordance with Generally Accepted Accounting Principles, but rather for management information purposes.

SOURCE: PEER analysis of IHL financial records.

The central office of the board consists of the:

- *System Administration*--the office of the Commissioner of the IHL Board and the central system administration of the universities, also known as the Executive Office;

- *University Research Center*--staff of the university research center (including economists and research staff and accounting, personnel and other administrative service staff) and Mississippi Automated Resource Information Center (MARIS), and operation and maintenance of the Education and Research Center building; and,

- *Student Financial Aid*--administration of programs which provide financial aid for post-secondary education.

MISS. CODE ANN. § 37-101-1 and Section 213-A of the MISSISSIPPI CONSTITUTION state that the university institutions "shall be under the management and control" of the IHL Board. In addition, Section 37-101-7 states that the board has the authority to appoint a Commissioner of Higher Education, approve the employment of all other board personnel, delegate duties to the Commissioner and all board personnel, and employ technical and professional contract services necessary to carry out the duties of the board.

Section 37-101-7 states that the "Commissioner of Higher Education shall maintain an office and be responsible to the board for the efficient functioning of the staff which the board may from time to time establish." This report focuses on the accountability for funds which the central office of the board receives from the State Treasury and disburses to vendors, grantees, and institutions. Therefore, the central office funds discussed in this report are funds under the direct control of the Commissioner and board staff which are handled by the three major divisions of the central office: System Administration, the University Research Center, and Student Financial Aid.

Comparison of External Control over the IHL Central Office with the Control over Other State Agencies

Most state agencies in Mississippi are subject to a number of external controls intended to promote accountability in their use of public funds. The IHL central office and the institutions operate with greater flexibility than most other state agencies in three major areas, as shown in Exhibit 3 on page 9. The Legislature does not apply the same restrictions to IHL in the appropriations process, the State Personnel Board has no control over the number of employee positions in the central office or the institutions, and an Attorney General's opinion that the IHL central office is an

institution has allowed DFA discretion over the expenditure controls of the agency under a lump-sum drawdown statute.

Exhibit 3

Comparison of External Controls Over Typical State Agencies and Over the IHL Central Office

	Typical State Agency	IHL Central Office
Appropriations language	restricted by major object of expenditure	lump-sum appropriations
Expenditure controls	pre-audit of expenditures (§ 7-7-33)	lump-sum draw downs (§ 7-9-41)
Employee staffing controls	State Personnel Board approval required for number, type and salaries of staff	no control by State Personnel Board (§ 25-9-107)

SOURCE: MISSISSIPPI CODE, appropriations bills.

Unrestrictive legislative appropriations--The Legislature writes IHL's appropriations bills to provide the central office and the universities with appropriations on a lump-sum basis. For example, each of the three major divisions within the central office, the University Research Center, Student Financial Aid, and the Executive Office/System Administration, receives one line-item appropriation of general funds. Although most other agencies' appropriations are restricted by major object of expenditure (e.g., salaries; travel; commodities; equipment; contractual services; and subsidies, loans and grants), the Legislature does not restrict the central office's appropriations. In addition, the Legislature does not restrict the number of employee positions which can be paid by general or special funds through the appropriation bill. Along with the exemption from State Personnel Board control, this allows a central office division such as the Student Financial Aid office, which makes loans and grants to students, to increase salary expenditures over the amount budgeted and reduce expenditures for loans and grants below the levels originally presented to

the Legislature. (See PEER report of May 14, 1996, entitled *A Review of Institutions of Higher Learning's Student Financial Aid Administrative Expenditures and the Post-Secondary Board's Enforcement of Residence Requirements for Grants*.)

Lack of pre-audit expenditure controls--MISS. CODE ANN. § 7-9-41 allows institutions of higher learning to draw funds from the state treasury on a lump-sum basis when the need for funds is documented in a manner acceptable to DFA. The section exempts the institutions from statutory provisions which require that DFA pre-audit each expenditure of state agencies for validity and disburse the payments directly to the vendor. Because a July 1989 Attorney General's opinion requested by the former IHL Commissioner stated that the central office is an institution and because institutions may draw lump sums from the state Treasury, DFA has allowed the central office to also draw funds on a lump-sum basis. The procedure results in less oversight of expenditures by DFA, although DFA has tightened restrictions on the central office as a result of its misuse of some FY 1995 state funds, as outlined on page 11.

No employee staffing controls by the State Personnel Board--Unlike most other state agencies, MISS. CODE ANN. § 25-9-107 does not require the IHL central office to obtain approval from the State Personnel Board (SPB) on the number, type, and salaries of its staff positions.

In addition to IHL, the State Board for Community and Junior Colleges, the Legislature and the judiciary branch are exempt from certain of the controls mentioned above (specifically, SPB oversight, and in the case of the Legislature, appropriation by major object). However, with the exception of IHL, no state agency is exempt from all of these restrictions.

Drawdown of Funds from the State Treasury by IHL's Central Office

Has the IHL central office complied with state law in drawing public funds from the state Treasury?

IHL has not fully complied with state law. The procedures agreed upon by the former IHL Commissioner and DFA in accordance with the lump-sum drawdown statute (MISS. CODE ANN. § 7-9-41) allowed the central office to draw funds without proof that they would be expended during the appropriate fiscal year. Under those procedures the central office drew funds from the Treasury which it did not spend during the year of appropriation and did not return at the end of the year, in violation of Section 64 of the Constitution. During calendar year 1996, DFA and the central office have begun to develop new procedures under Section 7-9-41 designed to improve external control and IHL's compliance with state law.

The Central Office Did Not Return $717,016 in Unused State Funds to the Treasury at the End of FY 1995 as Required by Section 64 of the Constitution

Section 64 of the MISSISSIPPI CONSTITUTION requires funds appropriated for state agencies to lapse to the state general fund if not spent by the agency during the fiscal year for which the funds are appropriated. The section specifically provides that:

> *No bill passed after the adoption of this Constitution to make appropriations of money out of the state treasury shall continue in force more than two months after the expiration of the fiscal year ending after the meeting of the Legislature at its next regular session; nor shall such bill be passed except by the votes of a majority of all members elected to each house of the Legislature.*

The Constitution refers to a two-month period subsequent to the end of each fiscal year which is known as the lapse period. To enforce the Constitution, DFA regulations allow agencies to disburse prior fiscal year state appropriations during this two-month lapse period (July and August) which the agencies have encumbered by June 30, the last day of the previous fiscal year.

However, the IHL central office did not return $717,016 in state funds which had been appropriated in Fiscal Year 1995 and drawn from the state Treasury, but not disbursed by the end of the FY 1995 lapse period. As shown in Exhibit 4 on page 12, the central office had drawn $655,139 in FY 1995 Education Enhancement funds and $61,877 in FY 1995 general funds

Exhibit 4

Schedule of FY 1995 Funds Not Lapsed to the State Treasury at August 31, 1995, by IHL Central Office Fund Account

IHL Fund Account	Education Enhancement Funds (1)	General Funds (2)	Total
System Administration/Executive Office			
System Administration Fund 2251	$187,241		
IHL Revolving Fund 3250	276,529		
Higher Education Center Fund 3002	44,447		
University Research Center			
Plant Improvements Fund 30091	146,922		
University Research Center Fund 2441		61,877	
Total	$655,139	$61,877	$717,016

NOTES:

(1) The Education Enhancement fund amounts represent net amounts of funds approved for ten projects by the IHL Board, drawn from the Treasury, but not spent during FY 1995.

(2) The General Fund amounts represent the University Research Center appropriations which were withdrawn from the Treasury but not spent during FY 1995.

SOURCE: PEER analysis of IHL records, appropriation bills.

which had not been spent by August 31, 1995. Assuring accountability for the funds requires that they be spent in the fiscal year intended by the Legislature. If agencies do not have the need to spend funds in the fiscal year received but retain the funds to spend in the following year, they have in effect escalated their budgets beyond the amounts represented to or intended by the Legislature. The unspent funds not returned to the state Treasury and placed in private checking accounts then become available to be spent on special projects which have no oversight by the Legislature.

At the request of legislative leadership, on May 15, 1996, eight and one-half months following the end of the lapse period, the board returned the $655,139 to the state Treasury, along with $1,387,591 in additional unobligated cash balances maintained at the central office, for a total of $2,042,730 returned. (The $1,387,591 represented a portion of $4,400,000 in FY 1995 Education Enhancement appropriations allocated by the board to fund a reserve for the Tort Claims Fund, as shown in Exhibit 2 on page 7. A February 1996 actuarial report found that the Tort Claims Fund had reserves in excess of actuarial needs.) In addition, an IHL assistant commissioner stated to PEER that the central office planned to return to the state Treasury by the end of FY 1996 the $61,877 in general funds identified by PEER as funds appropriated for use in FY 1995.

In an earlier violation of Section 64 of the MISSISSIPPI CONSTITUTION, the central office did not return $2,000,000 in funds appropriated for asbestos abatement to be spent during Fiscal Year 1993. House Bill 1445 of the 1992 regular session appropriated $2,000,000 of general funds to "be used for asbestos abatement efforts deemed to be the most critical for the fiscal year beginning July 1, 1992, and ending June 30,1993." Although the central office did not disburse any of the funds during Fiscal Year 1993, the office did not return them to the state Treasury at the end of that year. The central office held the funds in a trust account through Fiscal Year 1995, disbursing only $50,000 during Fiscal Year 1994. In FY 1995, the central office disbursed the remaining $1,950,000 to the eight state universities, the Gulf Coast Research Laboratory, the University of Mississippi Medical Center and to itself ($5,200) based upon a calculated funding formula. Because the Legislature intended for the funds to be spent on the most critical needs of FY 1993, delaying disbursement of the funds for two years raises the question of whether the needs remained critical.

A Combination of Legal and Procedural Factors Allowed the Central Office to Draw Funds Without Proof That They Would Be Spent During the Appropriate Fiscal Year

IHL was able to retain funds not expended according to the Constitution because of a combination of factors which reduced oversight of the agency, as follows:

- IHL's statutory ability to draw funds from the state Treasury on a lump-sum basis;

- agreements with the Department of Finance and Administration permitting IHL to draw funds from the Treasury without providing documentation of the use of the funds; and,

- IHL's use of a certification statement that was neither specific nor complete.

Lump-sum funds-withdrawal statute established for institutions--MISS. CODE ANN. § 7-9-41 allows institutions of higher learning to draw funds from the state Treasury on a lump-sum basis when the need for funds is documented in a manner acceptable to DFA. The section exempts the institutions (along with the Department of Human Services for service recipient payments) from statutory provisions which require that DFA pre-audit each expenditure for validity and disburse the payments directly to the vendor. (See Background, page 6.)

Attorney General's opinion regarding the central office as an institution--In July 1989 the Attorney General's office issued an opinion which said that the central office was an institution and could therefore draw lump sums from the state Treasury, as do the state higher education institutions established as such by law. Classification of the IHL central office as an institution contributed to IHL's violation of Section 64 by exempting the IHL central office from external controls that otherwise would have prevented the central office from spending funds in the wrong fiscal year. (See Appendix C on page 37 for an analysis of the Attorney General's office classifying the IHL central office as an institution.)

Lack of drawdown documentation--Section 7-9-41 requires that DFA and IHL agree on the method of withdrawal of funds from the State Treasury. In June 1992, DFA agreed to the IHL central office's request to waive documentation of a detailed listing of expenditures which previously had accompanied each request for lump-sum withdrawal. Under the revised method of withdrawal, DFA required the IHL Commissioner to certify to the legality of the expenditures. By agreeing to allow the procedures, DFA permitted IHL to draw Treasury funds without the assurance that they would be disbursed for expenditures incurred during the year or that unused funds would be returned to the state Treasury.

Incomplete certification statement of legal funds withdrawal--The IHL certification statement devised under the agreement between IHL and DFA in 1992 did not require IHL to certify that the funds being withdrawn from the Treasury were to be used to pay current fiscal year expenditures. The certification should have included a list of items to be paid with the requested funds and the date of obligation for each item; included assurances that the money would be used for the expenditures listed; and stated that the obligations were incurred in the same fiscal year as the

appropriation under which the central office requested the funds. Because the statement in effect took the place of the pre-audit process and was used as a substitute for what other agencies do, the statement should have strongly conveyed the significance of the process and to hold board staff accountable by alerting them to the requirements of the laws under which the funds were drawn. As shown in Appendix A on page 35, in the drawdown statements used from Fiscal Year 1993 through March 1996, the commissioner certified that "all purchases and expenditures which are covered by the reimbursement for the month of. . .were made in accordance with state law and the appropriations for the institutions of higher learning. Documentation for all salaries, accounts, bills, contracts and claims for the month. . .are on file at the Board office." The statement implied that IHL was requesting funds in order to be reimbursed for expenditures already made and that IHL had documentation on file to prove the expenditures were proper. However, by drawing 1/12 of its funds each month, the IHL central office routinely drew down funds without reference to specific expenditure records on file at the central office and therefore offered no proof that the actual expenditures had been made. In addition, the statement was not specific enough and did not include detailed conditions of the drawdown and therefore did not hold the individuals preparing or signing the certification fully accountable for their proper use. In fact, the central office provided statements to DFA certifying compliance with state law despite the fact that the office withdrew $717,016 in violation of Section 64 of the MISSISSIPPI CONSTITUTION.

In Spring 1996 DFA and the Central Office Began to Establish New Procedures to Improve Compliance with State Law

During March through June of FY 1996, DFA and central office personnel began to draft new drawdown procedures to improve compliance with state law. Specifically, DFA required the central office to provide a listing of accounts payable or invoices received including amount, vendor name, invoice date, transaction date, document number, and account description, (e.g., travel, legal fees, office equipment). The new external control procedures are stronger than the previous procedures because:

- The IHL Assistant Commissioner of Finance and Administration must certify that the list of accounts payable provided to DFA with the drawdown request are "true and legal in accordance with state law and the appropriation for IHL" and that the "goods and services were received during this fiscal year and have not been covered by previous requests for funds drawn from the State Treasury." (See Appendix B on page 36 for a copy of the revised certification statement.)

- DFA personnel review invoice dates listed in the drawdown request to gain assurance that all expenditures have been incurred in the current budget year.

As part of the revised procedures, DFA has reviewed some of the original purchase documentation related to the April and May 1996 drawdown requests and has denied payment for some of the claims which were for a prior fiscal year. As of June 25, 1996, DFA was still in the process of developing the specific procedures it will use on a routine monthly basis for reviewing a sample of purchase documentation for claimed expenditures to gain assurance on the validity of the expenditures.

Allocation and Distribution of Funds by IHL's Central Office

Does the IHL central office's practice of billing universities for service expenditures made from the central office result in an accurate representation of the cost of system administration?

The IHL central office's practice of contracting for services on a system-wide basis and billing universities for their share of the expenses allows for the central office to manage and control system-wide expenditures. However, the central office sometimes bills the universities for expenditures which are the responsibility of the board, which results in an understatement of system administration costs and an overstatement of university expenditures. In FY 1995, this practice resulted in a 7.5% understatement of IHL's system administration costs.

The IHL Central Office Billed $5.4 Million to Institutions in FY 1995 for Service Expenditures

MISS. CODE ANN. § 37-101-1 states that the institutions "shall be under the management and control" of the Board of Trustees of IHL. Because the IHL Commissioner is authorized by the Legislature under Section 37-101-7 to "recommend such changes as will increase efficiency and economy in the operation of each institution," it would follow that the central office has the authority to bill universities for their portion of central office service expenditures when the central handling of those expenditures will increase efficiency.

During FY 1995, the central office reported to PEER that it paid $5,427,347 in expenditures incurred by the central office which it then billed to the universities or to its tenants for reimbursement. The largest portion of the billed amount reported by the central office totaled $4,584,384 for the Master Lease Equipment Purchase Program. (Certain universities are parties to Certificates of Participation issued to lease/purchase equipment. The central office receives monthly payments from the universities which it then sends to the trustee to satisfy the master lease agreement payments. MISS. CODE ANN. § 37-101-15 (h) states that the "board shall have the power to contract, on a shared-savings, lease or lease-purchase basis, for energy efficiency services and/or equipment.")

Other expenses paid and billed included university research center phone and postage charges, educator's legal liability coverage for instructors, and blanket fleet automobile premiums.

Nearly $200,000 of the Central Office's FY 1995 Service Expenditures Billed to Institutions Represented Costs Associated with Board Activities

However, PEER determined that for at least two of the central office expenditures, the central office had billed universities for expenditures which were actually the responsibility of the board. The central office billed the University of Mississippi for costs of searching for and hiring the new chancellor of the university, including $55,441 in FY 1995 and $4,335 in FY 1996. As cited in MISS. CODE ANN. § 37-101-15 (f), the "board shall have the power and authority to elect the heads of the various institutions of higher learning." Therefore, the board billed the university for a service which was the duty of the board itself to perform. The central office has also billed Alcorn State University for a portion of the costs of its presidential search ($36,016) and plans to bill the University of Southern Mississippi for its presidential search which is currently underway.

The central office also has billed the universities for a number of years for costs of maintaining an office and staff of the Attorney General's office at the IHL central office. The three attorneys currently on staff at the central office handle legal matters for the board and for all institutions. However, in FY 1995, the central office billed the universities for the full amount of the $295,314 paid to the Attorney General's office under its contract with the board, even though approximately fifty percent of the business conducted by the Attorney General's staff in FY 1995 (an estimated $148,025 or 2,612 billable hours) was conducted for board activities in overseeing the universities. Because the $148,025 in services had been requested by the board, or represented expenditures associated with board activities, the Attorney General's office billed these hours to the IHL Board, as would be appropriate. The board paid the $10,052 in office expenses of the Attorney General's staff for FY 1995, which were required by the contract and which represented three percent of the $305,366 in total costs associated with the contract. The IHL central office passed ninety-seven percent of the board's expenses to the universities by requesting and receiving reimbursement to the central office account.

As a result of the over-billing, in FY 1995 the costs of the system administration budget of the central office were at least $198,453 higher than reflected in its statement of expenditures, or 7.5% of the total system administration budget. (See Exhibit 5 on page 19.) Therefore, the over-billing of universities and under-billing of the central office resulted in the under-reporting of the cost of system-wide administration. The central office should report to the Legislature the true cost of system-wide administration and request funds sufficient to operate a central administrative office, rather than billing the universities to pay for its operations.

Exhibit 5

Calculation of the Estimated Cost of FY 1995 Attorney General Services Which the Board Overbilled the Universities

	Billable Hours of Attorneys at IHL's Central Office	Percentage of AG (1) Billable Hours
Billed to the Universities	2,599	49.9%
Billed to the Board (2)	2,612	50.1%
	5,211	100.0%

	IHL's Allocation of the Total Cost of the FY95 AG Contract	Total Cost Times Percentage of Billable Hours	Amount Over or (Under) Billed
Universities	$295,314	$152,302	**$143,012**
Board	$0		
Total AG's Contract	$295,314		
AG expenses paid by Board	$10,052	$153,064	($143,012)
Total central AG expenses	$305,366	$305,366	

Calculation of Percentage of FY 1995 System Administration Costs Which are Under-represented

$143,012	Central Office AG Costs Paid by the Universities
55,441	Chancellor Search Fees Paid by the University of Mississippi Which are the Responsibility of the Central Office
$198,453	Amount Overbilled to Universities During FY 1995
$198,453	Amount of System Administration Costs Paid by the Universities
2,280,408	Total FY95 System Administration General Fund Appropriations
156,401	Total FY95 Executive Office Education Enhancement Fund Appropriations
$2,635,262	Total Spent for System Administration from Public and University Funds in FY 1995
7.5%	Percent by Which System Administration Costs of the IHL Central Office are Under-represented ($198,453 Divided by $2,635,262)

NOTES: (1) Office of the Attorney General

(2) Amounts "billed to the board" by the Attorney General's office may be related to issues that affect the universities but are for legal services requested by board staff. The total hours included 695 hours related to the Ayers case which were billed to the Governor's office for recordkeeping purposes but requested and paid by the board.

SOURCE: Legal service contract between the Office of the Attorney General and the Board of Trustees of IHL, IHL accounting office records, billing records of the Attorney General's office.

Records and Reports Generated by IHL's Central Office

Has the central office maintained its financial records in a way that maintains the identity of state Treasury funds and that readily permits determination of whether appropriated funds are used as the Legislature intended?

The central office has maintained its accounting records in a way that commingled state Treasury and special source funds, which has hindered tracking of appropriations from receipt through expenditure. For instance, the central office placed FY 1995 public funds into a special revolving fund, reimbursing itself for previous year expenditures. IHL also did not maintain its accounts in a way that permitted historical revenue and expenditure information to be obtained on a cash basis and readily compared to appropriations. During calendar year 1996, the central office staff have taken initial steps to improve accountability by creating separate accounts which, if used properly, will allow for the separate accounting by type of sources and uses of state Treasury appropriations.

Commingling of State Treasury and Special Source Funds Hindered Monitoring of State Treasury Fund Expenditures

State agencies whose expenditures must be pre-audited by DFA must request disbursement of cash from funds kept in the state Treasury. Cash to cover each agency's expenditure authority is held in the Treasury, instead of being placed into agency bank accounts to pay bills. In lieu of transferring cash to agency accounts, DFA's pre-audit process produces warrants made out to specific vendors for payment of agency bills. One way in which DFA controls expenditures is by separating the disbursements by type through Treasury funds according to language in the appropriation bill.

The central office is not subject to these external controls. Instead, the central office receives the funds in a lump sum from the state Treasury and disburses the funds to vendors from its private bank accounts. In the past, the central office has placed the Treasury fund appropriations into accounts with special source funds. This practice resulted in commingling of different types of state general and Education Enhancement funds and special source funds. The funds lost their identity and the use of the funds could not be easily traced in the account records.

For example, the $717,016 in FY 1995 general and Education Enhancement funds which should have lapsed at August 31, 1995, were commingled with special source funds. Specifically, the $61,877 in general funds which should have lapsed were deposited into the University Research Center fund 2441, which also received Education Enhancement funds and deposits of special source funds. The $655,139 in Education

Enhancement funds which should have lapsed were deposited into two different funds:

- the consolidated higher education/System Administration fund 2251 which received general and Education Enhancement funds and transfers from other special source funds; and,

- the revolving fund 3250 used primarily for paying central service expenditures and billing universities for reimbursement.

The central office's procedure of combining special and Treasury fund receipts into various funds would make it less readily apparent that Treasury funds had not been spent from a particular fund unless the sources and uses of the funds were reviewed in detail. As mentioned above, the central office's plan to separate the accounting for the sources and uses of state Treasury appropriations by type will improve accountability and maintain the identity of the state funds.

Reimbursement of a Special Revolving Fund for Previous Year Expenditures with Current Year State Treasury Receipts

As a result of IHL's flexibility in drawing and disbursing public funds, the central office placed FY 1995 public funds into a special revolving fund, reimbursing itself for previous year expenditures. Originally, the central office created the revolving fund to disburse state-wide system administration expenditures on behalf of the universities and to receive reimbursements from the universities, not to receive and expend state appropriations. Nevertheless, the central office recorded in its books that at the end of FY 1994, the revolving fund was due funds from the state Treasury in reimbursement for amounts paid for *Ayers* legal expenses. Subsequently, the central office deposited FY 1995 Education Enhancement appropriations into the revolving fund and used them to reduce the "due from state treasury" account, instead of recording FY 1995 revenue.

The net amount of FY 1994 *Ayers* legal expenditures the central office reimbursed with FY 1995 appropriations totaled $276,529. The central office had paid the $276,529 in FY 1994 with self-generated funds on hand during that year. The reimbursement transaction was an attempt to replenish its operating account with public funds. (Under normal circumstances, a state agency would request deficit appropriations from the Legislature to cover unexpected costs if it did not have enough cash on hand to pay for agency needs. In this situation, the central office had ample cash in an account outside the state Treasury to cover the FY 1994 costs.) This accounting transaction violated Section 64 of the Constitution, which prohibits spending one year's appropriations in another year.

The central office returned the $276,529 which should have lapsed to the Treasury at August 31, 1995, as part of the $655,139 paid to the Treasury

on May 15, 1996. (See page 11 for a discussion of Section 64 violations and the amount paid to the Treasury.)

The central office's stated intentions of maintaining fund accounts which account only for receipt and disbursement of state funds without commingling of other fund sources and DFA's request for quarterly reports of central office account transactions will allow DFA to monitor more closely the expenditure of state funds than in the past. As cited in Section 7-9-41, DFA has the authority to require IHL to provide reports of all general and special funds, as follows:

> *In all cases where such lump-sum payments are authorized and paid as provided in this section, the proper officer or officers of the state institutions of higher learning shall make such additional reports to the State Fiscal Officer in the manner and at such times as he may require. Such reports shall also include other funds coming into the possession of or for the use and benefit of the state institutions of higher learning, whether such funds are regularly handled through the State Treasury or not.*

Inability to Produce Appropriate Financial Reports Hindered Comparison of Legislative Appropriations with Receipts and Disbursements

The central office's financial reporting system does not allow a timely comparison of the Legislature's directives for spending with the actual disbursement of funds. The central office maintains its books on an accrual basis due to Generally Accepted Accounting Principles which require universities to account for their revenues and expenditures on an accrual basis. This basis is different from the cash/budgetary basis which would more readily accommodate producing management information showing receipt and disbursement of state appropriations. The central office's computer system has allowed for generation of historical accrual-basis reports but has not been programmed to generate historical reports on a cash basis (showing receipts and disbursements by account type relating to each year of appropriation, including treasury receipts such as the $276,529 discussed on page 21; total subsidy, loans and grants disbursements by fund; and disbursements during the lapse period). The central office reports its operations on a cash basis in the legislative budget report using current financial information at the time of the report; however, its computer-generated programs are not programmed to maintain that information on an historical basis. PEER recommends that the central office devise relevant reports to maintain the historical cash basis information in order to allow ongoing monitoring of actual revenues and expenditures with state appropriations.

Has the IHL central office provided sufficient information to the Legislature to permit the Legislature to assess comprehensively the level of funding and expenditures of the central office?

IHL's central office did not report complete special fund revenue or expenditure information to the Legislature in Fiscal Year 1995. As a result, IHL did not make the Legislature aware of all revenues available to the central office or of the scope of system-wide administrative functions which it has assumed. For instance, during Fiscal Year 1995, the IHL central office spent $1,709,068 more in special source funds than appropriated by the Legislature in its three central office budgets, $687,864 of which it did not report as FY 1995 expenditures in its subsequent budget requests. The central office also did not report $9,156,971 in central office receipts from universities which it expended on their behalf and did not report that the Guarantee Agency received $9,628,992 in special funds before its privatization on September 30, 1994.

IHL's Level of Reporting to the Legislature Did Not Disclose the Full Amount of Central Office Spending

The central office did not report complete special fund expenditure information to the Legislature. During Fiscal Year 1995, the central office spent $1,709,068 more in special source funds than appropriated by the Legislature in the three central office legislatively approved budgets. (See Exhibit 6 on page 24.) Because the central office has been characterized as an institution in an Attorney General's opinion (see page 14 for discussion) and because the Mississippi Supreme Court in *Allain V. Board of Trustees* 387 So. 2d 89 (Miss. 1980) has held that the Legislature does not have control of institutions' spending of self-generated funds, the central office is not required to obtain approval from DFA in escalating spending of special source funds which are self-generated. (The Executive Director of DFA is given authority to escalate budgets in MISS. CODE ANN. § 7-7-40.)

Of the $1,709,068 spent in excess of special fund appropriations, the central office did not report $687,864 in its budget requests. (See Exhibit 7 on page 25.) By not disclosing the $687,864 in the budget request, IHL violated MISS. CODE ANN. § 27-103-123, which requires the disclosure in the overall budget of "the estimated amount of all expenditures to be made or obligations to be incurred payable from general or special funds during the then current fiscal year."

The central office also did not report that the Mississippi Guarantee Student Loan Agency spent $9,190,666 in special funds for operations before its privatization on September 30, 1994, as shown in Exhibit 6. (IHL had historically reported the existence of the Guarantee Agency to the Legislature by disclosing the one hundred percent special fund Guarantee Agency employees in the organization chart of its student financial aid

Exhibit 6

Comparison of Special Source Expenditures to Special Fund Appropriations
Fiscal Year 1995

	Special Source (Non-Treasury) Expenditures	Amount Appropriated for Expenditure	Expenditures in Excess of the Amount of the Appropriations	Appropriation Bill Number
System Administration-Related	$2,394,890	(1)		H.B. 1872
University Research Center-Related	200,988	40,438 (2)	160,550	S.B. 3262
MARIS	134,807	265,938		S.B. 3263
Student Financial Aid-Related	3,521,821	1,973,303	1,548,518	S.B. 3264
Mississippi Guarantee Student Loan Agency	9,190,666	(3)	N/A	
Total	$15,443,172		**$1,709,068**	

NOTES:

(1) The appropriation bill included a lump-sum amount for the entire university system and did not specify a limit for the central office.

(2) Total special fund appropriation of $410,738 less $370,300 in Education Enhancement appropriations = $40,438.

(3) IHL had traditionally not reported the Guarantee Agency expenditures, which were not a part of the appropriations process, in the budget request.

SOURCE: Appropriation bills, legislative budget requests and IHL accounting records.

Exhibit 7

Comparison of Actual FY1995 Special Source Expenditures to Amounts Reported for FY 1995 in IHL's FY1997 Budget Requests

	Actual Special Non-Treasury Expenditures	Reported in FY 1997 budget request		Reported in FY 1997 budget request	Spending in Excess of Amount Reported
		Federal	Other	Total	
Appropriation Budgets:					
System Administration/ Executive Office Budget					
Office of Literacy, MCNCS, JTPA (1), and Title II Eisenhower grants (a)	$1,632,734	$1,623,038		$1,623,038	(a)
Other Special Funds (2)	762,156		180,175	180,175	581,981
University Research Center Budget					
SCORP grant	197,569	197,569		197,569	0
Plant Improvement	3,419				3,419
MARIS (a)	134,807		127,612	127,612	(a)
Student Financial Aid Budget					
Consolidated Loan Scholarship Fund (Loan Repayment) (3)	2,487,880		2,477,486	2,477,486	10,394
Various Grants and Scholarships (a) (b)	941,871	779,617	75,000	854,617	(a) (b)
Student Financial Aid Special Fund	92,070				92,070
TOTAL	$6,252,506				**$687,864**
Not Included in Appropriations or Budget Request:					
Mississippi Guarantee Loan Agency	$9,190,666				$9,190,666
Total	$15,443,172				

NOTES:

(a) Differences are attributable to timing differences between disbursements and amounts obligated but not disbursed at the time of reporting or differences between the cash and accrual basis of accounting.

(b) The difference included $71,568 in grant amounts actually disbursed but not reported.

(1) Mississippi Commission for National and Community Services and Job Training Partnership Act.

(2) Sources of expenditures not reported include the Ayers implementation, collection services, Harrison Award, Commonwealth, Rural Development Council, and MCNCS Conference funds and a portion of the University Systems Special Projects fund.

(3) Includes Lender of Last Resort and Consolidated Loan Scholarship Fund

SOURCE: PEER analysis of IHL records and budget requests.

budget request. However, IHL had not reported the related revenues and expenditures in the budget request.)

IHL also did not report $9,224,198 in central office disbursements which represent expenditures of the universities and not of system administration. (The "Trust Fund and Central Service" section of Exhibit 2 on page 7 outlines the disbursements.) As explained on page 17, the central office manages some of the administrative expenditures of the universities by contracting system-wide for the expenditure and then billing universities for their share of the costs. The $9,224,198 represents pass-through expenditures already reported in the universities' budget requests. By not reporting the related revenues into the central office outlined in the following section, IHL did not make the Legislature aware of the central office's control over universities' administrative expenditures.

IHL's Reports to the Legislature Did Not Reveal the Scope of Central Office Control over University Funds or the Level of Funding Available to the Central Office

Section 27-103-123 also requires the disclosure in the overall budget of:

- *. . .all special funds receipts already collected and available in the current fiscal year, and an estimate of all special funds which will be collected or otherwise will become available, by the end of the then current fiscal year*; and,

- *the estimated aggregate amount of special funds, if any, which will be available during the succeeding fiscal year, including any balances which will be on hand at the close of the then current fiscal year.*

The Legislative Budget Office's instructions for completing the legislative budget reports also give detailed directions for disclosing the statutorily required information.

Despite the statutory requirements, the central office did not report $20,219,108 in special fund receipts of the central office during FY 1995, as outlined below and in Exhibit 8 on page 27:

- $1,222,924 in revenue to the central office from sources outside the university system, some of which was available to be spent in lieu of state appropriations;

- $210,221 in transfers to system administration from special funds closed by the central office which were also funds available to be spent in lieu of state appropriations;

Exhibit 8

IHL Central Office Special Source Revenues Not Reported to the Legislature in FY 1995

Revenue from Outside Sources		
Available for Expenditure from the Central Office Budgets for Purposes Not Designated by the Funding Source:		
University Systems Special Projects (primarily trust income)	$41,147	
Interest Income on FY93 Asbestos Abatement appropriations	101,359	$142,506
Available for Expenditure Only for Designated Purposes:		
Higher Education Center (Phil Hardin grant)	11,428	
Mississippi Commission for National and Community Services conference	10,190	
Harrison Award Interest Income	135	
Mississippi Rural Development Council	30,000	51,753
Partially available for Student Financial Aid or University Research Center Budget Expenditures:		
University Research Center billing for tenant services (e.g., telephone, printing, postage) (a)	171,643	
Student Financial Aid's Lender of Last Resort program revenues (b)	857,022	1,028,665
Total Revenues from Outside Sources Not Reported in the Legislative Budget Request		$1,222,924
Transfers from Central Office Internal Funds to the Executive Office Fund		
Available for Expenditures from the Central Office Budget:		
Transfers from Guarantee Agency, MIS grant fund, and Collections Services Fund	205,021	
Transfer from Asbestos Abatement Fund (original source was FY93 general fund appropriations)	5,200	210,221
Central Office Service Fund Expenditures (Reimbursed from Universities to Pay for System-Wide Expenditures)		
Master Lease Purchase Trust	4,737,296	
IHL Self-Insured Workers Comp Fund	2,447,823	
IHL Unemployment Trust Fund	750,267	
IHL Tort Liability Trust Fund	401,431	
IHL Revolving Fund (Billings to universities for various services)	820,154	9,156,971
Mississippi Guarantee Student Loan Agency (Privatized September 1994) (c)		9,628,992
Total Unreported Revenue		$20,219,108

NOTES:

(a) The portion representing billing of IHL divisions would not be available for the University Research Center budget.

(b) Only the year-end cash balance remaining after termination of the program ($220,891) would be available for Student Financial Aid administration or programs.

(c) IHL had historically not reported these amounts, which were not a part of the appropriations process.

SOURCE: PEER analysis of unaudited IHL accounting records.

- $9,156,971 reimbursed from universities to pay for central service expenditures administered by the central office; and,

- $9,628,992 in guarantee agency receipts.

Also, the central office reported $1,905,748 as revenues into certain funds which were not actually received, including the consolidated loan/scholarship fund ($1,808,179). These inaccuracies in over- and under-reporting resulted because the central office used a different basis of reporting than that required in the "Instructions for Preparation of Fiscal Year 1997 Budget Request" document. The central office reported only the amount of revenues which were needed to pay for the special fund expenditures instead of the total amount of actual revenues. The result was either under- or over-reporting of revenues. In the case of the consolidated loan/scholarship fund, the revenues into the fund were less than the expenditures from the fund, yet the central office reported the amount spent from the fund as revenues. The result was that the true sources and uses of funds and cash balances were not reported.

IHL personnel have stated that in the past the central office did not report full operations because the former IHL Commissioner's policy was not to disclose funds which he considered to be "self-generated." However, under MISS. CODE ANN. § 27-103-107 and 27-103-109, the Legislative Budget Office has authority to require full reporting by IHL in any form deemed necessary, including reports of assets, liabilities, receipts, disbursements, encumbrances, and fund balances.

Conclusion

External controls over cash are important to safeguard and promote accountability for state funds. The Legislature has enacted statutes to protect public funds including public purchasing laws, fiscal controls, and budget and financial reporting.

In meeting the goal of stewardship of state funds, a reasonable policy objective would be to create controls for all state agencies that maximize their capacity for meeting legitimate state needs. Law and regulations should therefore provide an appropriate level of external controls while ensuring the necessary flexibility to meet the needs they were created to address (e.g., system administration needs). In establishing controls over specific agencies, an "appropriate level of control" could be the standard controls placed on other agencies, modified to address any specific flexibility concerns related to the mission of the agency.

To meet flexibility needs of certain public entities, the Legislature enacted the lump-sum drawdown statute, MISS. CODE ANN. § 7-9-41, to apply to the institutions of higher learning and to the Department of Human Services in the area of service recipient payments only. The statute appears to have been enacted as a practical method for these entities located across the state and away from the Department of Finance and Administration to carry on their fiscal affairs. Regardless of what may have been the original intent of this section, the IHL central office has, through interpretation of statutes by the Attorney General, agreements with DFA allowed under this CODE section, and lump-sum appropriation language, managed to obtain limited external cash management controls.

Because the central office carries on a role similar to that of other state agencies, including regulatory and program functions, and is not located away from the hub of state government as are the universities and the public welfare service providers, the central office would not appear to need more flexibility than the typical state agency. As a result, this report recommends an amendment to Section 7-9-41 to clarify that the central office is not an institution and should therefore be subject to pre-audit of its expenditures by DFA, as is the typical state agency under MISS. CODE ANN. Section 7-7-33. Regardless of the resolution of this policy issue, this report includes recommendations that should improve oversight of central office cash management under the current statutes.

Recommendations

Institutions of Higher Learning

1. IHL should return routinely all funds to the State Treasury which are received but not spent during a given fiscal year, as provided in Section 64 of the MISSISSIPPI CONSTITUTION.

2. IHL should report all special fund accounts to the Legislature in the Mississippi legislative budget request (MBR) form, including full revenues, expenditures, and cash balances as required in the instructions formulated by the Legislative Budget Office so that IHL will comply with requirements for formulation of an overall budget as outlined in MISS. CODE ANN. § 27-103-123, 135, and 127. IHL's disclosure should also include full reporting of transactions in all central service funds such as the Master Lease Purchase program and the revolving fund to inform the Legislature of the full scope of billing of universities for central service expenditures.

3. The Board of Trustees of IHL should provide sufficient oversight to ensure that central office cash management and reporting practices are in compliance with the law, that the central office has spent funds in the appropriate fiscal year, and that all funds received from the Treasury are returned at the end of each fiscal year if not spent.

4. IHL should maintain historical records of receipts and expenditures on a cash basis, including disbursements occurring in the lapse period, in order to facilitate reporting of state appropriations and related expenditures by type of appropriation for past years and related cash balances.

   [NOTE OF CLARIFICATION: IHL appears to have misinterpreted this recommendation to mean that PEER recommends a change from the accrual to the cash basis of accounting, as listed in its response on pages 41 and 42. On the contrary, this recommendation could be implemented in conjunction with the central office's current accrual basis of accounting by programming the computerized accounting system to produce cash-basis as well as accrual-basis reports. Further explanation for this recommendation is found on page 22 of the report.]

5. In order to improve the audit trail of accounting transactions, the central office should seek to improve documentation of its journal entries by:

   -- always attaching copies of information to the journal entry form which will fully explain the purpose of the transaction; and,

-- including not only the transaction date on the journal entry form, but also the date of the preparation of the transaction to improve historical information for audit purposes.

6. The central office should review its procedures for billing universities, revise its billing methods to bill only for those costs which are the responsibility of the universities, adjust its budget to reflect the total costs which are the responsibility of the board, and present budget requests to the Legislature which represent the full costs of board activities.

7. In conjunction with guidance from the Department of Audit, IHL should direct the establishment and maintenance of accounting records for the cash balances of the Master Lease Purchase Program for each of the universities involved in the program.

Department of Finance and Administration

8. During Spring 1996, DFA required the central office to provide a list of expenditures to DFA with a monthly certification statement in drawing state funds from the Treasury. IHL developed a special report in meeting DFA's request for monthly information. To supplement its general letter of request for information in March 1996 and to provide a reference in the event of changes in personnel at DFA and IHL, DFA should provide in writing to IHL and the Legislative Budget Office the specific types of accounting information which it has determined will be required monthly and at year-end.

   DFA should also finalize and complete internal written policies for:

   -- the process it will use in auditing a sample of purchase documentation for central office expenditures (performed in order to gain assurance on the validity of the claims for expenditures listed in the drawdown documents), and

   -- a method of reviewing quarterly central office statements which it has required IHL to provide.

9. Unless or until the Legislature requires DFA to pre-audit the central office expenditures by amending MISS. CODE ANN. § 7-9-41 as described in the recommendations below, the Department of Finance and Administration should develop a method of auditing a sample of the listed expenditures which the central office provides with its drawdown documentation. DFA should conduct a monthly audit of a scientific sample of purchase documentation to gain a high level of confidence that the central office's listed expenditures are valid and made in the correct fiscal year. On the chosen sample of expenditures, DFA should conduct on a post-audit basis the same pre-audit

verification procedures as it does for other state agencies as required under MISS. CODE ANN. § 7-7-33.

10. Because the certification statements provided by the central office to DFA in withdrawing treasury funds for universities are also general and not specific, DFA should request a revision of the certification statements submitted for university drawdowns. Currently, the central office budget officer signs on behalf of the IHL commissioner when drawing funds for the universities. In addition to these signatures, the responsible financial personnel at each university should sign the statements. The university officers should certify that the funds their university is receiving are being drawn in accordance with Section 64 of the CONSTITUTION and that funds drawn will be used to pay for valid claims of goods and services received by the university during the fiscal year of the appropriation.

Legislature

11. The Legislature should consider amending MISS. CODE ANN. § 7-9-41 (2) to amend the current language which allows a change in procedures for IHL's withdrawals from the Treasury only upon the concurrence of the State Fiscal Officer and the institutions of higher learning. The language could be amended to state that the agreed-upon system of funds withdrawal "shall not be changed except on the approval of the State Fiscal Officer." This would allow the State Fiscal Officer to correct problems without gaining the consent of parties who may in the future attempt to use the lump-sum drawdown provisions to avoid general fund spending limitations.

12. The Legislature should also consider amending MISS. CODE ANN. § 7-9-41 for lump-sum withdrawals from the Treasury to state that the central office of the institutions of higher learning is not an institution for the purposes of the CODE section. This would require that the central office purchases, including those of System Administration, the University Research Center, MARIS, and Student Financial Aid, be pre-audited by the Department of Finance and Administration, as outlined in MISS. CODE ANN. § 7-7-33, as are the purchases of most other state agencies.

13. The Legislature should consider revising the language in the annual appropriations bill passed for the support of the institutions and the executive office of the Board of Trustees of IHL in order to provide more guidance to DFA in its distribution of lump-sum Education Enhancement Fund appropriations made for the support of the institutions. The revised language could delineate which funds are intended to be spent from the central office in support of the institutions and which are intended to be spent directly by individual institutions. For instance, as in the case of Section 6 of Senate Bill 3061

of the Regular Session of 1996 which provided for a lump sum of $23,723,495 for the on-campus and off-campus support of eight institutions, language could be added for clarification purposes in one of the following ways depending upon legislative intent:

-- "Of the amount of funds appropriated for on-campus and off-campus support of the eight institutions, $X may be received by the central office from the Treasury and distributed to the universities or to vendors for projects in support of the universities which are approved by the Board;" or

-- "Of the amount appropriated for on-campus and off-campus support, all funds must be received directly by the universities based on a funding formula approved by the Board."

Although the board's legislative budget requests for "Special Projects Consolidated" may outline the board's intent for use of a portion of the Education Enhancement funds for system-wide projects, revised language would provide DFA with more direct authority for distribution of the funds.

Appendix A

IHL Central Office's Certification Statement for Drawdown of State Funds before April 1996 Revisions

INSTITUTIONS OF HIGHER LEARNING

July 14, 1994

Office of Commissioner

GENERAL STATEMENT OF EXPENDITURES

AS COMMISSIONER FOR THE MISSISSIPPI INSTITUTIONS OF HIGHER LEARNING, I DO HEREBY CERTIFY THAT ALL PURCHASES AND EXPENDITURES WHICH ARE COVERED BY THE REIMBURSEMENT FOR THE MONTH OF JULY WERE MADE IN ACCORDANCE WITH STATE LAW AND THE APPROPRIATIONS FOR THE INSTITUTIONS OF HIGHER LEARNING. DOCUMENTATION FOR ALL SALARIES, ACCOUNTS, BILLS, CONTRACTS AND CLAIMS FOR THE MONTH AS REFERENCED IN SECTION 7-9-41, MISSISSIPPI CODE OF 1972 AS AMENDED, ARE ON FILE AT THE BOARD OFFICE AND THE RESPECTIVE UNIVERSITIES.

COMMISSIONER

3825 Ridgewood Road • Jackson, Mississippi 39211-6453 • (601) 982-6611

Appendix B

IHL Central Office's Certification Statement for Drawdown of State Funds after April 1996 Revisions

INSTITUTIONS OF HIGHER LEARNING

Office of Finance and
Administration

Dr. Edward L. Ranck, Executive Director
Department of Finance and Administration
Post Office Box 267
Jackson, Mississippi 39205

Dear Dr. Ranck:

The following certification is provided related to the attached drawdown of state funds:

I hereby certify that the representations above and on the attached listing of current accounts payable is true and legal in accordance with state law and the appropriation for IHL. All goods and services were received during this fiscal year and have not been covered by previous requests for funds drawn from the State Treasury. Documentation for the attached list of accounts payable for all salaries, bills, contracts and claims as referenced in Section 7-9-41, Mississippi Code of 1972 as amended, is on file at the Board Office.

Jim Rhodes 4/22/96

Jim Rhodes Date
Assistant Commissioner of Higher Education
Institutions of Higher Learning

JR:kc

Attachments

Appendix C

Analysis of the Characterization of the IHL Central Office as an "Institution" by the Attorney General's Office

As discussed on page 14, the Attorney General's opinion dated July 17, 1989, stated that three divisions of the IHL central office were institutions and could therefore be allowed lump-sum withdrawal status. DFA requested a second opinion on the issue, dated September 20, 1989, which concurred with the first opinion. The opinion cited MISS. CODE ANN. § 37-101-1, which names the eight institutions of higher learning in Mississippi, and states that those institutions and "any other of like kind which may be hereafter established by the state; shall be under the management and control of a board of trustees." The opinion stated that:

> *. . .in determining whether an entity is considered to be "of like kind" as contemplated by Section 37-101-1, the prevailing factor is whether the Board has "management and control" over the particular entity. Accordingly, since the Board of Trustees has management and control over the University Research Center, System Administration and the Education and Research Center, said entities may be allowed lump-sum withdrawal status.*

PEER believes that the consideration of whether the board has management and control over the central office is not the prevailing factor and should not be used as the sole test of whether the central office divisions are of like kind and should therefore be considered as institutions. Other factors such as the functions and characteristics of the institutions should be the prevailing factors. In a comparison of the central office divisions and the institutions, the central office would be found to be lacking in the functions and characteristics of the educational institutions, including the primary function of teaching, and therefore could not be considered to be institutions.

Further, the 1989 Attorney General's opinions confuse functions with institutions. An institution is a separate and distinct legal entity, such as the eight institutions of higher learning provided for in Section 213-A of the MISSISSIPPI CONSTITUTION. A function, such as management and control, is merely an activity of a body which may or may not be an institution. If it had been the intention of the framers of Section 213-A to make the Board of Trustees an institution, they would have done so by listing the Board of Trustees along with the separate institutions.

Agency Response

MISSISSIPPI

INSTITUTIONS OF HIGHER LEARNING

Office of Commissioner

July 9, 1996

Mr. Max Arinder
Executive Director
PEER Committee
222 North President Street
Jackson, MS 39201

Dear Mr. Arinder:

Enclosed is the Mississippi Board of Trustees of Institutions of Higher Learning's Response on the Cash Management Review of the Central Office of the Institutions of Higher Learning. The Board has already addressed many of the recommendations included in this report and implemented changes in procedures in conjunction with the Department of Finance and Administration.

In regard to the recommendations concerning returning routinely all funds to the State Treasury which are received but not spent during a given fiscal year, the Board agrees and has already approved, based on new guidelines and legislative requests, allocation of certain sums to the State Treasury, Jackson State University and the eight public institutions. In regard to the recommendation concerning reporting all special fund accounts to the Legislature on the MBR, the FY1998 budget request will include all financial resources and activities. In regard to the recommendation requesting a revision of the certification statement submitted for university drawdowns, this has been done and is in place.

We are asking for reconsideration on the proposed findings in relation to prescribing a cash basis of accounting for the Board as opposed to its current system which is on an accrual basis as well as reconsideration of the other points addressed in our response. Thank you for your consideration of our response.

Sincerely,

Thomas D. Layzell
Commissioner

Enclosure

3825 Ridgewood Road • Jackson, Mississippi 39211-6453 • (601) 982-6623

BOARD OF TRUSTEES OF
STATE INSTITUTIONS OF HIGHER LEARNING

RESPONSE TO PEER COMMITTEE RECOMMENDATIONS

In conducting the review, PEER sought to determine whether the accounting practices and external controls over "the IHL central office ensure an adequate level of accountability for the public funds disbursed from that office."

In conducting this review (See page 1 of PEER Report.), PEER:

1. Reviewed Mississippi statutes;
2. Interviewed IHL and Department of Finance and Administration personnel;
3. Reviewed and analyzed IHL central office records, reports, budget requests and other documents.

PEER staff limited their review to FY 1995 cash management activities and did not question cash management procedures of prior years.

In FY 1995 the Board was operating under procedures and guidelines that had been prescribed by the Attorney General, the State Auditor and the Department of Finance and Administration.

A July 1989 Attorney General's opinion stated that the University Research Center, System Administration and the Education and Research Center budgets are under the direct management and control of the Board of Trustees of State Institutions of Higher Learning and are thereby "Institutions of Higher Learning" within the meaning of the statute and could be allowed lump sum withdrawal status. This authority was again upheld on reconsideration.

In January of 1990, the State Auditor was requested to determine whether the Board of Trustees was deemed an "Institution of Higher Learning" and he did so. The State Auditor found as follows:

> "...it is our finding and recommendation that the State Institutions of Higher Learning be deemed an Institution of Higher Learning."

The annual audit by the State Auditor has been conducted by the College and University Division of the State Auditor's Office since 1990. These audits have not revealed any financial exceptions, findings, or other financial concerns of the type mentioned in PEER's recommendations. The Board has been found in compliance with the standards of the American Institute of Certified Public Accountants (AICPA) and the National Association of College and University Business Officers (NACUBO).

In June of 1992, the Department of Finance and Administration agreed to allow IHL to waive documentation of a detailed listing of expenditures to accompany each request for lump sum withdrawal.

In FY 1995, the Board was functioning pursuant to the above mentioned established guidelines. Now those administrative guidelines have changed and the Board has adopted and implemented the new guidelines.

PEER makes note that the Board of Trustees is not subject to Personnel Board purview. The existing system that this constitutional Board operates under allows the Board to carry out its statutory duty as mandated by Section 37-101-7 as follows:

> "The trustees shall authorize the employment of such other personnel as may be required from time to time to carry out the functions of the board and may assign to the personnel so employed such functions and duties and may delegate to the commissioner or other personnel such powers of the board as may be necessary to accomplish the purposes for which the board was established. All such personnel shall be employed by the commissioner with the approval of the board and shall hold office at the pleasure of the commissioner."

It would be detrimental to the State if the Board were to be placed under the State Personnel system because the Board of Trustees would not have the flexibility to meet the needs of the system, and the employees would then have property rights they otherwise do not have. To place the hiring and termination of personnel as well as their compensation under the State Personnel Board would place this authority in an agency that has no experience in the higher education arena and could once again expose the Board and the institutions to accreditation consequences. The constitutional status of the Board was "designed to remove politics as far from it as possible." [See Van Slyke v. Board of Trustees, 613 So.2nd 872, 877 (1993)].

In conclusion, most, if not all, of the recommendations contained in this review are based on events that occurred during a year of transition in the Office of the Commissioner which is charged with the day-to-day operations of the Board pursuant to Section 37-101-7 of the Mississippi Code of 1972, as amended. PEER staff found no discernible pattern of failure to comply with State law and additional procedures have already been implemented by the Board to ensure that its cash management procedures meet administrative guidelines. Therefore, PEER's recommended changes and statutory amendments are unnecessary. If

there arises a need in the future for additional guidelines, any new procedures can be handled administratively.

PEER RECOMMENDATIONS TO THE INSTITUTIONS OF HIGHER LEARNING

PEER RECOMMENDATION

1. IHL should return routinely all funds to the State Treasury which are received but not spent during a given fiscal year, as provided in Section 64 of the MISSISSIPPI CONSTITUTION.

IHL RESPONSE

The Board agrees with this recommendation. In FY 1995 the Board was operating pursuant to guidelines from the Attorney General's Office, the State Auditor and DFA. However, in FY 1996 in accordance with new guidelines and legislative requests, the Board has already approved the allocation of the following:

1. **$2,042,730 to the State Treasury**
2. **$1,130,077 to Jackson State University**
3. **$968,498 to the eight public institutions for system-wide admission standards in accordance with the Ayers decree.**

PEER RECOMMENDATION

2. IHL should report all special fund accounts to the Legislature in the Mississippi legislative budget request (MBR) form, including full revenues, expenditures, and cash balances as required in the instructions formulated by the Legislative Budget Office so that IHL will comply with requirements for formulation of an overall budget as outlined in Miss. Code Ann.§ 27-103-123, 135, and 127. IHL's disclosure should also include full reporting of transactions in all central service funds such as the Master Lease Purchase program and the revolving fund to inform the Legislature of the full scope of billing of universities for central service expenditures.

IHL RESPONSE

The Board agrees with this recommendation. The Fiscal Year 1998 budget request will include all financial resources and activities.

PEER RECOMMENDATION

3. The Board of Trustees of IHL should provide sufficient oversight to ensure that central office cash management and reporting practices are in compliance with the law, that the central office has spent funds in the appropriate fiscal year, and that all funds received from the treasury are returned at the end of each fiscal year if not spent.

IHL RESPONSE

The Board has and continues to provide sufficient oversight to ensure that the Board's cash management and reporting practices are in compliance with state law and administrative guidelines. The incidents focused on in PEER's report clearly are not practices as that term is commonly defined. The funds questioned were dedicated to objects authorized by law.

Therefore, the PEER staff's assertion that the Board has not provided sufficient oversight to ensure that all of the Central Office's cash management and reporting practices are in compliance with state law is unfounded.

PEER RECOMMENDATION

4. IHL should maintain historical records of receipts and expenditures on a cash basis, including disbursements occurring in the lapse period, in order to facilitate reporting of state appropriations and related expenditures by type of appropriation for past years and related cash balances.

IHL RESPONSE

The Board disagrees with PEER's recommendation prescribing a cash basis of accounting for the Board as opposed to its current system which is on an accrual basis.

Miss. Code Ann., Section 7-7-21(a) requires the State Department of Audit to "identify and define for all public offices of the state and its subdivisions generally accepted accounting principles as promulgated by nationally recognized professional organizations." In 1990, the State Auditor made a finding and determined the Board to be an "institution." Therefore, the State Department of Audit applied the standards of the American Institute of Certified Public Accountants (AICPA) and the National Association of College and University Business Officers (NACUBO) to the Board's financial functions.

The annual audit by the State Auditor has been conducted by the College and University Division of the State Auditor's Office since 1990. These audits have not revealed any financial exceptions, findings, or other financial concerns of the type mentioned in PEER's recommendations. The Board has been found in compliance with AICPA standards and NACUBO standards.

PEER's recommendation for the Board to change from an accrual basis of accounting to a cash basis of accounting would create the following problems:

1) The Board would be in noncompliance with NACUBO and AICPA standards, or a dual set of records would have to be maintained to meet NACUBO and AICPA standards and the standards proposed by PEER.

2) A cash basis of accounting is not considered Generally Accepted Accounting Principles (GAAP) and could result in a qualified or adverse audit opinion.

3) Conversion would be time consuming, expensive and inefficient.

As of March, 1996, the Board has modified its accounting practice by establishing separate accounts for state funds and implementing additional procedures between DFA and the Board.

PEER RECOMMENDATION

5. In order to improve the audit trail of accounting transactions, the central office should seek to improve documentation of its journal entries by:

   a. always attaching copies of information to the journal entry form which will fully explain the purpose of the transaction;

   b. Including not only the transaction date on the journal entry form, but also the date of preparation of the transaction to improve historical information for audit purposes.

IHL RESPONSE

The Board attaches copies of information to the journal entry form which fully explain the purpose of the transaction.

The State Auditor requires the Board to comply with American Institute of Certified Public Accountants (AICPA) and the National Association of College and University Business Officers (NACUBO) standards.

The annual audit by the State Auditor has been conducted by the College and University Division of the State Auditor's Office since 1990. These audits have

not revealed any financial exceptions, findings, or other financial concerns of the type mentioned in PEER's recommendations. The Board has been found in compliance with AICPA standards and NACUBO standards.

Furthermore, all journal entries are, in fact, stamped in the system with the origination date of the journal entry also known as the "activity date."

PEER RECOMMENDATION

6. The central office should review its procedures for billing universities, revise its billing methods to bill only for those costs which are the responsibility of the universities, adjust its budget to reflect the total costs which are the responsibility of the Board, and present budget requests to the Legislature which represent the full costs of Board activities.

IHL RESPONSE

The Board agrees that its budget request for the Board should reflect all sources and uses of funds in order to fully disclose all financial activities. However, the Board does not agree that changes need to be made in regard to the billing of central service costs to the universities. PEER is suggesting that functionally there is a clear distinction between university costs and Board costs when, in fact, all functions of the Board are conducted on behalf of and for the benefit of the universities. In the case of the university division of the Attorney General's Office, it is impossible to separate services rendered to the Board on behalf of the institutions from those rendered directly to the institutions. The difference indicated in Exhibit 5 of the PEER Report is due to the billing numbers established by the Attorney General's Office computer system when, in reality, virtually everything done for the Board is for the benefit of one or more institutions. For example, time billed to the Board when the Board has its monthly meeting is billed to a 250 "catchall" number although the areas specifically addressed by the Attorney General's Office at the meeting affect one or more institutions. Also, the Commissioner may call a meeting with the Attorney General's Office to seek legal guidance concerning a particular institution, but the time would be billed to the same 250 number. In summary, the division of time and/or costs based on a numerical computer assignment is a flawed concept and should not be the basis for the conclusions reached. Also note that Note (3) of Exhibit 5 is incorrect. Many times the Attorney General's Office "requests" the meeting or action, not the Board or its staff. The Ayers hours were not "requested" by the Board. These were hours that were required due to the litigation and appeal.

PEER states in their report that the Board billed the University of Mississippi for the cost of their Chancellor search; billed Alcorn State University for a portion of the cost of its Presidential search; and is planning to bill the University of Southern Mississippi for its Presidential search. Since the individual university is the primary beneficiary of these functions, it follows that the university should bear the burden of the cost. If the Board does not bill the universities for the costs of these functions, then the Board would have to permanently set aside monies which could be used for other purposes. It cannot be determined when the need for a Presidential search will occur; therefore, it is more efficient to bill the individual institution on an "as needed" basis.

PEER RECOMMENDATION

7. In conjunction with guidance from the Department of Audit, IHL should direct the establishment and maintain accounting records for the cash balances of the Master Lease Purchase Program for each of the universities involved in the program.

IHL RESPONSE

The Board disagrees with PEER's recommendation to record balances maintained in the Master Lease/Purchase trust accounts. The cash balances maintained by the trustee represent the monthly lease/purchase payments by the respective institutions. The lease/purchase payments are held by the trustee in Redemption Trust accounts for periodic debt service payments. These funds are held on behalf of the bondholders by the trustee and are therefore not an asset of the Board or the participating institutions and consequently do not warrant recording as a cash balance by the institutions. Each year since the program was created, the State Department of Audit has audited the funds that flow through the Board and the Trust Funds and these audits have not revealed exceptions, findings, or other financial concerns of the type mentioned in PEER's recommendations.

PEER RECOMMENDATIONS FOR ACTION BY THE DEPARTMENT OF FINANCE AND ADMINISTRATION

PEER RECOMMENDATION

1. During Spring 1996, DFA required the central office to provide a list of expenditures to DFA with a monthly certification statement in drawing state funds from the Treasury. IHL developed a special report in meeting DFA's request for monthly information. To

supplement its general letter of request for information in March 1996 and to provide a reference in the event of changes in personnel at DFA and IHL, DFA should provide in writing to IHL and the Legislative Budget Office the specific types of accounting information which it has determined will be required monthly and at year-end.

DFA should also finalize and complete internal written policies for:

-- the process it will use in auditing a sample of the central office's expenditures (perform in order to gain assurance on the validity of the claims for expenditures listed in the drawdown documents), and

-- a method of reviewing quarterly central office statements which it has required IHL to provide.

IHL RESPONSE

The Board opposes this recommendation.

In a Department of Finance and Administration letter dated March 12, 1996, the Board was requested to :

a. Provide a quarterly report of all funds (cash and investments);
b. Separate Board drawdowns of state funds from university drawdowns and provide supporting documentation;
c. Retain the identity of source of funds between Board units; and
d. Maintain separate accounts for each appropriation bill.

These procedures, as prescribed by DFA, were implemented by the Board in Spring, 1996 (PEER Report page 2). It is important to recognize that the Board of Trustees is a Constitutionally created Board, as opposed to a statutorily created entity, and therefore, by virtue of its constitutional nature, does in fact have autonomy, different characteristics than a state agency, and different powers than a state agency. DFA should not have decisional authority over Board funds as this is putting a statutory agency in control of a constitutional body. However, the Board remains willing to continue to cooperate with DFA as it has in the past to develop and implement procedures that are appropriate.

PEER RECOMMENDATION

2. Unless or until the Legislature requires DFA to pre-audit the central office expenditures by amending Miss. Code Ann. § 7-9-41 as described in the recommendations below, the

Department of Finance and Administration should develop a method of auditing a sample of the listed expenditures which the central office provides with its drawdown documentation. DFA should conduct a monthly audit of a scientific sample of purchase documentation to gain a high level of confidence that the central office's listed expenditures are valid and made in the correct fiscal year. On the chosen sample of expenditures, DFA should conduct on a post-audit basis the same pre-audit verification procedures as it does for other state agencies as required under Miss. Code Ann. § 7-7-33.

IHL RESPONSE

The Board opposes this recommendation.

Initially, there has been no allegation by PEER, nor any documentation, that any expenditure was not "valid." In a Department of Finance and Administration letter dated March 12, 1996, the Board was requested to :

a. **Provide a quarterly report of all funds (cash and investments);**
b. **Separate Board drawdowns of state funds from university drawdowns and provide supporting documentation;**
c. **Retain the identity of source of funds between Board units; and**
d. **Maintain separate accounts for each appropriation bill.**

These procedures, as prescribed by DFA, were implemented by the Board in Spring, 1996 (PEER Report page 2). It is important to recognize that the Board of Trustees is a Constitutionally created Board, as opposed to a statutorily created entity, and therefore, by virtue of its constitutional nature, does in fact have autonomy, different characteristics than a state agency, and different powers than a state agency. DFA should not have decisional authority over Board funds as this is putting a statutory agency in control of a constitutional body. However, the Board remains willing to continue to cooperate with DFA as it has in the past to develop and implement procedures that are appropriate.

PEER RECOMMENDATION

3. Because the certification statements provided by the central office to DFA in withdrawing treasury funds for universities are also general and not specific, DFA should request a revision of the certification statements submitted for university drawdowns. Currently, the central office budget officer signs on behalf of the IHL commissioner when drawing funds for the universities. In addition to these signatures, the responsible financial personnel at each university should sign the statements. The university officers should certify that the funds their university is receiving are being drawn in accordance with Section 64 of the Constitution and that funds drawn will be used to pay for valid

claims of goods and services received by the university during the fiscal year of the appropriation.

IHL RESPONSE

The Board agrees with this recommendation.

PEER recommends that the responsible financial personnel at each university should sign certification statements. This is already being done. Further, an amended certification statement is in place. The certification statement sets forth as follows:

"As Chief Financial Officer for the (University's name), I do hereby certify that all purchases and expenditures which are covered by the reimbursement for the month of _____ were made in accordance with state law and with Section 64 of the Constitution and the funds drawn will be used to pay for valid claims of goods and service received by (University's name) during the fiscal year of the appropriations for the Institutions of Higher Learning. Documentation for all salaries, accounts, bills, contracts and claims for the months as referenced in Section 7-9-41, Mississippi Code of 1972 as amended, are on file at the Board and the respective universities."

PEER RECOMMENDATIONS FOR LEGISLATIVE ACTION

PEER RECOMMENDATION

1. The Legislature should consider amending Miss. Code Ann. § 7-9-41, (2) to amend the current language which allows a change in procedures for IHL's withdrawals from the Treasury only upon the concurrence of the State Fiscal Officer and the institutions of higher learning. The language could be amended to state that the agreed-upon system of funds withdrawal "shall not be changed except on the approval of the State Fiscal Officer." This would allow the State Fiscal Officer to correct problems without gaining the consent of parties who may in the future attempt to use the lump sum drawdown provisions to avoid general fund spending limitations.

IHL RESPONSE

The Board opposes this recommendation. Since 1990 the Board has conducted business and maintained its financial records in accordance with the State Auditor's advice and consent. State audits have been performed and have disclosed

no audit exceptions, findings, or other financial concerns of the type mentioned in PEER's recommendations. It is not appropriate for DFA to have decisional authority over Board funds as this is putting a statutory agency in control of a constitutional body. There are already statutes in place which provide checks and balances. Further, as of March 12, 1996, additional procedures have been put in place in the current process between DFA and the Board.

The Board of Trustees is a constitutionally created Board as opposed to a statutorily created entity, and therefore, by virtue of its constitutional nature, has certain constitutional powers and does in fact have autonomy, different characteristics than a state agency, and different powers than a state agency. The Board is constitutionally and statutorily charged with the authority and the responsibility for the management and control of the state institutions of higher learning. The constitutional status of the Board was designed to remove politics as far from it as possible. To impair the Board's authority and flexibility may be in violation of the Constitution and may raise questions which would lead to accreditation problems. However, the Board, in cooperation with other entities, continues to develop and implement procedures that are appropriate.

PEER RECOMMENDATION

2. The Legislature should also consider amending Miss. Code Ann. § 7-9-41 for lump sum withdrawals from the treasury to state that the central office of the institutions of higher learning is not an institution for purposes of the code section. This would require that the central office purchases, including those of System Administration, the University Research Center, MARIS, and Student Financial Aid, be pre-audited by the Department of Finance and Administration, as outlined in Miss. Code Ann. § 7-7-33, as are the purchases of most other state agencies.

IHL RESPONSE

IHL opposes this recommendation.

The Board is a constitutional body created by the people of this state and has constitutional powers. In exercising these constitutional powers, the flexibility that lump sum authority affords needs to be left intact. Likewise, the Board is not a typical state agency due to its constitutional nature.

Lump sum status for the Board was granted by an original Attorney General's opinion dated July 17, 1989 and upheld on reconsideration dated September 20, 1989.

The evolution of the lump sum status to the various budgets under the jurisdiction of the Board began in FY 1986. Mississippi Code Annotated, Section 7-9-41, was amended in 1984. Prior to the 1984 amendment, various budgets of the institutions of higher learning had been allowed to withdraw funds in lump sums.

The 1984 amendment of Section 7-9-84 changed the words "In certain cases..." to "In the case of the state institutions of higher learning...". The effect of this language was to restrict agencies of the state who could apply for lump sum withdrawal of funds to the institutions of higher learning. In FY 1986, nineteen budgets, under the direct management and control of the Board, received lump sum withdrawal status.

The Student Financial Aid Division, an office at the Board of Trustees of State Institutions of Higher Learning, was awarded lump sum withdrawal status later in FY 1986 by action of the State Fiscal Management Board.

The July 1989 Attorney General's opinion stated that the University Research Center, System Administration and the Educational and Research Center budgets are under the direct management and control of the Board of Trustees of State Institutions of Higher Learning and are thereby "Institutions of Higher Learning" within the meaning of the statute and could be allowed lump sum withdrawal status. This authority was again upheld on reconsideration.

Lump sum status needs to remain intact for the following reasons:

1. **The uniqueness of this constitutional Board requires flexibility of lump sum status in order to carry out its duties and responsibilities and to function efficiently, expeditiously, and effectively.**

2. **DFA should not have decisional authority over Board funds as this is putting a statutory agency in control of a constitutional body.**

3. **It allows the Board to implement centralized services resulting in cost savings to the Universities, e.g. the Master Lease/Purchase Program, automobile liability insurance, workers compensation, general liability insurance, educators legal liability, and unemployment compensation.**

4. **It allows the Board to disburse student financial aid proceeds to educational institutions in a timely manner.**

The Board has not always been a constitutional entity. At one time it was a purely statutory creature. In 1943, the Board of Trustees was established as a

constitutional entity so that Mississippi's institutions of higher learning would be free of political interference.

Section 213-A of the Constitution specifically places the "management and control" of the Institutions of Higher Learning under the Board of Trustees. This is in accord with the principles announced by the Mississippi Supreme Court that the delegation of plenary power denies contrary power. See City of Jackson v. Miss. State Building Commission, 350 So.2d63, 66 (1977) and Allain v. Board of Trustees of State Institutions of Higher Learning, 387 So.2d 89 (1980). Therefore, statutes creating the Department of Finance and Administration and delineating its powers and duties do not override the powers created by the Constitution.

As of March 1996, additional procedures have been requested by DFA and have been implemented by IHL. These procedures are as follows:

1. **A quarterly report, beginning March 31, 1996, of all funds (bank accounts) and other financial instruments (certificates of deposit, etc.) including location, account number and legislative authority is prepared and submitted to DFA. After the initial report, the following categories are included: previous balance, all transactions since the preceding report, and current balance.**

2. **Requests for drawdowns from the Treasury for Education Enhancement Funds and General Funds for the units under the Board are now submitted separately from the universities. Board unit drawdowns are supported by a schedule of accounts payable, and supportable by payrolls payable, invoices or other appropriate documentation.**

3. **All fund identity is retained according to original source (i.e. General Fund, Education Enhancement Fund, etc.) that involve transactions between and among units that are under the control of the Board.**

4. **The Board has implemented treating the restriction in Section 4. (1)(b) and the line items on lines 233-234 and 279-280, Senate Bill 3195 Laws of 1995 each as separate funds, identifiable and auditable throughout the fiscal year. Other accounts have been established and DFA has been notified of their location and identity.**

PEER RECOMMENDATION

3. The Legislature should consider revising the language in the annual appropriations bill passed for the support of the institutions and the executive office of the Board of Trustees of IHL in order to provide more guidance to DFA in its distribution of lump sum Education Enhancement Fund appropriations made for the support of the institutions.

The revised language could delineate which funds are intended to be spent from the central office in support of the institution and which are intended to be spent directly by individual institutions. For instance, as in the case of Section 6 of Senate Bill 3061 the Regular Session of 1996 which provided for a lump sum of $23,723,495 for the on-campus and off-campus support of eight institutions, language could be added for clarification purposes in one of the following ways depending upon legislative intent:

-- "Of the amount of funds appropriated for on-campus and off-campus support of the eight institutions, $X amount may be received by the central office from the Treasury and distributed to the universities or to vendors for projects in support of the universities which are approved by the Board;" or

-- "Of the amount appropriated for on-campus and off-campus support, all funds must be received directly by the universities based on a funding formula approved by the Board."

Although the Board's legislative budget requests for "Special Projects Consolidated" may outline the Board's intent for use of a portion of the Education Enhancement funds for system-wide projects, revised language would provide DFA with more direct authority for distribution of the funds.

IHL RESPONSE

The Board opposes this recommendation.

There is no need to consider revising the language in the annual appropriations bill to provide DFA with more guidance or direct authority for distribution of funds since to do so would clearly conflict with the constitutional authority of the Board as established by Section 213-A.

Section 213-A of the Constitution specifically places the "management and control" of the Institutions of Higher Learning under the Board of Trustees. Statutes creating the Department of Finance and Administration and delineating its powers and duties do not override the powers created by the Constitution. This is in accord with the principles announced by the Mississippi Supreme Court that the delegation of plenary power denies contrary power. See City of Jackson v. Miss. State Building Commission, 350 So.2d63, 66 (1977) and Allain v. Board of Trustees of State Institutions of Higher Learning, 387 So.2d 89 (1980).

PEER Staff

Director

Max Arinder, Executive Director
Ava Welborn

Administration and Support Division

Steve Miller, General Counsel and Controller

Shirley Anderson
Thelisa Chapman
Louwill Davis
Sam Dawkins
Ann Hutcherson
Larry Landrum
Mary McNeill
Bonita Sutton

Evaluation Division

James Barber, Division Manager
Kathleen Sullivan, Division Manager

Mitchell Adcock
Michael Boyd
Ted Booth
Katherine Stark Frith
Barbara Hamilton
Kevin Humphreys
Kelly Lockhart
Joyce McCants
David Pray
Pam Sutton
Linda Triplett
Larry Whiting