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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
RUSSELL SULLIVAN, DEMOCRATIC STAFF DIRECTOR

October 27, 2005

Thomas Gottschalk, Acting Chair of the Board  
Office of the President  
American University  
4400 Massachusetts Ave., NW  
Washington, D.C.

Dear Mr. Gottschalk:

I am deeply troubled by reports about the recent actions of the American University's ("AU") board of trustees in regards to payments to former president Mr. Benjamin Ladner related to Mr. Ladner's departure. The Finance Committee has been engaged in a bipartisan review of charities and reform of charities and it appears the AU board could be a poster child for why review and reform are necessary.

The Internal Revenue Code ("IRC") provides charities very special treatment. Most important is the exemption from income tax and the ability to receive tax-deductible contributions. It is therefore particularly troubling when an organization receives preferential tax treatment and then believes that it is proper to provide approximately \$3.75 million in payments to an individual who has reportedly failed to pay taxes on nearly \$400,000 in income (for the last three years) after the board terminated his employment. Such actions raise significant questions about what other things a charity that has such a cavalier attitude toward the tax laws might be doing, especially in light of escalating tuition increases.

To assist the committee its review of AU and the AU board's actions, the Committee requests the following.

1) IRC Section 4958 - Excess Benefit Transactions

a. Provide copies of Mr. Ladner's employment contract, deferred compensation and severance plans and any other compensation arrangements, including expense reimbursements.

b. Provide all material, discussion, legal opinions, compensation studies and analysis or other related items used by the AU board, compensation committee or other relevant governing body when making its decisions regarding Mr. Ladner's employment contract, deferred compensation and severance plans and any other compensation arrangements, including expense

reimbursements. Provide all material documenting AU's compliance with Internal Revenue Code (IRC) section 4958 with respect to these items, including but not limited to copies of minutes of meetings from AU's board, compensation committee or other relevant governing body as well resolutions or written actions regarding such transactions. Provide a copy of any settlement agreement or release of claims entered into with Mr. Ladner and explain how any amounts paid under such agreement were determined.

c. Identify consultants, accountants, lawyers and or other outside advisors used with respect to the items requested in "a" and "b" above, and include names, addresses and total fees paid.

d. Provide a list and brief description of all no-bid contracts issued by AU and its affiliates and subsidiaries over \$100,000 for last 11 years. Explain how no-bid contracts are awarded.

e. Provide copies of any conflicts of interest or similar policies as well as expense reimbursement and travel policies that have been adopted. Include an explanation of how the AU processes expenses and requests for reimbursement. Please explain what, if any, changes to these policies AU is considering. Explain whether such policies were followed and enforced with respect to Mr. Ladner

f. How did the board comply with its State law fiduciary duties in its actions regarding the hiring, retention, compensation of, and termination of, Mr. Ladner?

## 2) Board Governance & Transparency

a.. Discuss whether you believe that there is sufficient transparency regarding your highly compensated officers, directors, trustees and employees. What do you to ensure numbers are transparent historically and in the future. Do you believe there was adequate disclosure?

b. Provide descriptions of all transactions with disqualified persons (as defined in IRC section 4958(f)). Provide copies of legal opinions and minutes from board meetings discussing these transactions. Please provide this for the last three years for compensation, loans, property purchases/leases and services for over \$100,000.

c. I understand that the AU audit of Mr. Ladner was for the most recent three years. However, Mr. Ladner's tenure was for eleven years. Given the extraordinarily troubling findings from the audit of the most recent time period, please inform me of your plans to conduct a complete audit of the entire 11 years.

d. Provide your articles of incorporation, bylaws (in effect for past 11 years), application for exempt status, and the IRS determination letter. For the past 11 years, please provide a brief description of individuals who served on the boards, a short biography, qualifications, how the

board member was selected and how the board members serve the interests of the community.

### 3) Internal Revenue Service Filings

a. Please inform me of whether AU plans to amend its Form 990 for any year and whether it will be necessary for AU to amend Forms 990-T or 1120 of any affiliated or subsidiary organizations.

b. Provide copies of all Forms 990-T and 1120 of affiliates and subsidiaries of AU for the last three years. Please provide all copies of legal opinions provided, created or received by AU for the past three years that discuss unrelated business income tax ("UBIT") implications, including debt-finance income as well as Real Estate Investment Trusts (REIT).

c. Disclose the identity of all supporting organizations (as defined in IRC section 509(a)(3)) and provide copies of Forms 990s for such organizations for the most recent three years.

d. Provide all correspondence with the IRS for the past five years.

e. AU's 2003 Form 990 indicates \$180 million in tax-exempt bond liabilities. Please explain in detail what the proceeds were used for, and how soon after receipt bond proceeds were obligated.

f. Provide a copy of all work papers from KPMG audits for the last three years.

### 4) Executive Compensation

For the past three years for individuals listed in Part V of Form 990 "List of Officers, Directors, Trustees and Key Employees," and Part I "Compensation of the Five Highest Paid employees Other Than Officers, Directors and Trustees", please answer the following:

a. Explain how you established the amount of compensation and benefits.

b. Describe the nature of the components for each amount reported under compensation; contributions to employee benefit plans & deferred compensation; and, expense account and other allowances.

c. Describe the duties and responsibilities that each individual performed for you.

d. Do the amounts reported represent the total economic benefits each individual received from you for the year? If no, please explain what other benefits were received, including the fair market value of those benefits.

e. Did you establish the rebuttable presumption under section 53.4958-6 of the Foundation and Similar Excise Taxes Treasury Regulations as to the compensation and benefits reported for any of the individuals? If yes, please provide copies of all supporting documentation.

f. If the answer is no to "e" for any of the individuals, do you have documentation supporting the reasonableness of the compensation and benefits reported? If yes, please provide a copy of this documentation.

g. Did the AU board approve the amount of compensation and benefits reported? If yes, please provide a copy of the approval for each individual.

h. Did you have an employment contract or any other compensatory agreement with any of the individuals? If yes, please provide a copy of the contract or agreement.

i. Does the amount of compensation and benefits reported agree with the amount reported on each individual's Form W-2 or Form 1099? If no, please explain the difference.

j. Did any of these individuals use any property that you owned or leased (such as an automobile, aircraft, real estate, credit card, etc.) for any purpose other than to further the organization's exempt purposes? If yes, did you include the value of this usage in the amount of compensation and benefits reported? Was the value included on the individual's Form W-2 or Form 1099? If your answer to either of these questions is "No" please explain.

Thank you for your time and assistance. Please provide the answers to these questions by December 1, 2005. If you have any questions, please contact Mr. Dean Zerbe of my staff at (202) 224-4515.

Cordially yours,

  
Charles E. Grassley  
Chairman

cc: Senator Baucus