3354:2-40-01 Post-Issuance Tax-Exempt Debt Compliance Policy.

(A) Purpose

(1) This policy provides a framework for complying with federal regulations relating to the post-issuance monitoring of tax-exempt debt. The policy identifies compliance areas and defines practices for College departments involved with tax-exempt debt compliance so that they understand and are able to carry out their roles.

(B) Organizational Responsibility

(1) The Treasurer has primary responsibility for ensuring and monitoring post-issuance compliance with tax-exempt debt regulations, but these functions may be delegated to others as he/she deems appropriate.

(C) Expenditure of Debt Proceeds

(1) Debt proceeds can only be used for eligible project costs in accordance with applicable federal law and the restrictions of the debt documents. Debt proceeds shall only be disbursed for project costs, capitalized interest, and issuance costs.

(2) All contracts for debt-financed capital expenditures are approved by the Treasurer, or in his/her absence, his/her designee. All purchase orders are approved in accordance with the College's purchasing policy.

(3) All spending of funds for a capital project, as well as sources of funds for such expenditures (e.g., debt proceeds, State capital funds, College funds) are to be identified and tracked separately in the College's accounting system. If more than one debt issue is involved, activity is recorded on an issue-by-issue basis.

(D) Investment of Debt Proceeds

(1) All debt proceeds will be invested in accordance with the bond documents and the College's investment policy. To ensure liquidity, investment maturities will be staggered to match the project's draw schedule.

(2) Yield restriction requirements may apply if debt proceeds are not spent within the allowable temporary period, which is three years for capital projects funding. Bond counsel will be consulted if it appears that debt proceeds will not be spent within the allowable temporary period.

(E) Private Business Use

(1) The use of a facility financed with tax-exempt debt by any person or entity that is not a state or local government entity may result in private business use of the property.

(2) Pursuant to the Private Business Use test, the tax-exempt status of a debt issuance is jeopardized if more than 10% of the proceeds are used for Private Business Use.

(3) Generally, most Private Business Use in a tax-exempt financed facility arises from the following types of arrangements:

a. Ownership: A sale or transfer of ownership to a non-governmental person or entity of tax-exempt financed property.

b. Leases: Any arrangement where the College leases a tax-exempt financed property to a non-governmental person or entity.

c. Management Contracts: Any arrangement whereby a non-governmental person or entity actively manages the operations of a tax-exempt financed property, or any portion or any function thereof.

d. Sponsored Research Agreements: Any research that is sponsored by a non-governmental person (including the federal government). The rules for determining when sponsored research is not considered a "bad use" are set forth in IRS Revenue Procedure 2007-47.

e. Other Actual or Beneficial Use: Any other arrangement that conveys special legal entitlements for beneficial use of tax-exempt financed property.

(4) The College generally complies with these provisions by limiting Private Business Use of its facilities. The checklist found in Exhibit A will be used to monitor Private Business Use of College facilities, and bond counsel will be consulted if potentially impermissible use is identified.

(F) Spending Requirements and Arbitrage Rebate

(1) There are restrictions on the timing of the expenditure of debt proceeds. Generally, proceeds must be spent within three years of debt issuance. If it appears that all proceeds will not be spent within the three year period, bond counsel will be consulted.

(2) Tax rules require borrowers to calculate and pay or "rebate" to the U.S. Government any "arbitrage profit" earned on the investment of debt proceeds

prior to their expenditure. Arbitrage is earned when the proceeds of a debt issue are used to acquire investments that earn a yield higher than the yield on the debt issued. There are several rebate exceptions if debt proceeds are spent promptly.

(3) As a general rule, the College will seek to finance construction projects when proceeds will be spent within two years, and thus, attempt to meet the two year spending rebate exception. The two year spending exception requires that proceeds be spent as follows:

a. 10% within 6 months of issue date

b. 45% within 12 months of issue date

c. 75% within 18 months of issue date

d. 100% (less "reasonable retainage") within 24 months of issue date

(4) In cases where no rebate exception applies, the College will calculate the amount of any rebate due, and will remit payment to the Internal Revenue Service along with IRS Form 8038-T. Generally, such payments are due within 60 days after the end of the fifth bond year. Bond counsel or other outside firms may be used to assist with the calculation.

(G) Continuing Disclosure

(1) In connection with the issuance of debt, the College may sign one or more Continuing Disclosure Agreements ("CDAs"). The CDAs require the College to file certain annual financial and operating information with the Electronic Municipal Market Access System ("EMMA") maintained by the Municipal Securities Rulemaking Board. The CDAs also require the College to disclose through EMMA certain "material events," such as bond defaults and rating changes, as provided under SEC Rule 15c2-12.

(2) The College will comply with all continuing disclosure requirements, and will file all reports required by CDAs, including event disclosures, within the time periods specified.

(H) Record Retention

(1) It is the College's policy to retain all records relating to tax-exempt debt financings for the time required to comply with IRS regulations. Currently, records must be retained for the life of the debt plus three years. This policy supersedes any other record retention policy of the College.

(2) Generally, records refer to all documents, reports, accounts and certifications relating to the:

a. Issuance of tax-exempt debt

b. Investment of debt proceeds

c. Expenditure and allocation of debt proceeds

d. Use of debt-financed property

e. Disclosure and other filing requirements

(I) Remedial Action

(1) In the event that a change in use may result in the transfer of ownership of debt-financed property to a non-governmental person or entity, the College will consult with bond counsel about the possibility of utilizing rules under Treasury Regulation 1.141-12 which provide for "remedial action."

(J) Training

(1) The Treasurer, or his/her designee, will develop training materials for employees in departments that are impacted by this policy.

(K) Policy Review

(1) The Treasurer, or his/her designee, will review this policy at least biannually, and will recommend changes needed to ensure the College's compliance with all applicable laws and regulations.

Exhibit A

Private Business Use Contract Review Worksheet

Contracting Parties: ____

Agreement Not Subject to Private Use Limitation

_____ Relates solely to construction of bond-financed facility

_____ Relates to property that was not financed with proceeds of a bond issue

_____ Does not relate to use or function of property

_____ Includes incidental services only (janitorial or similar services)

_____ Compensation consists solely of reimbursement of actual expenses incurred by service provider

Agreement Satisfies Safe Harbors for Management/Service Contracts

_____ Service provider is not an agent or related party, and

_____ Payments are reasonable in amount and are not based in whole or in part on share of net profits, and

_____ Compensation meets one of the following sets of criteria:

- _____ at least 95% periodic fixed fee; maximum term of 15 years
- _____ at least 89% periodic fixed fee; maximum term of 10 years
- _____ at least 50% periodic fixed fee, 100% capitation fee, or combination; maximum term of 5 years; terminable without penalty or cause after 3 years
- _____ per unit fee or combination periodic fixed fee and per unit fee; maximum term of 3 years; terminable without penalty or cause after 2 years
- _____ percentage of fees charged or combination of per unit fee and percentage of gross revenues or expenses (but not both); maximum term of 2 years; terminable without penalty or cause after 1 year; and one of the following must apply:
  - _____ service provider primarily provides services to third parties
  - _____ agreement involves a facility during an initial start-up period for which there have been insufficient operations to establish a reasonable estimate of the amount of annual gross revenues and expenses

Agreement Requires Further Review by Bond Counsel

_____ Ownership (including agreement that transfers title at end of the term)

_____ Lease, license or any other agreement which creates exclusive or priority rights to use any portion of a bond-financed property or which creates an economic benefit for the third-party user

_____ Agreement with governmental entity or 501(c)(3) organization

_____ Research agreement

_____ Management or services contract falling outside safe harbors listed above

Reviewer: ______________________________

Date: __________________________________

Replaces: 3354:2-40-01

Effective: 10/03/2013

CERTIFIED ELECTRONICALLY

Certification

03/11/2015

Date

Promulgated Under:	111.15
Statutory Authority:	3354
Rule Amplifies:	3354
Prior Effective Dates:	10/3/2013