3354:1-20-07.1 Tax-Exempt Debt Compliance Procedure

(A) Tax-Exempt Debt

The use of tax-exempt debt plays an important role in funding a significant portion of the College's capital projects. As a result, the College realizes the importance of complying with federal and institutional requirements regarding the issuance and ongoing management of its tax-exempt debt. This procedure is intended to define compliance practices including compliance actions, records management, and process continuity within the Administration and Finance Department.

(B) Definitions

Post-Issuance Debt Compliance**:** The activities undertaken following the issuance of tax-exempt debt in order to comply with federal guidelines. Failure to comply with federal guidelines could potentially render the interest of debt as taxable to investors.

Tax-Exempt Debt (Bonds) Issued by the College**:** Debt issued and managed (1) by the College; or (2) by a State authority at the request of the College and for which the College pays its pro-rata share of the debt service.

(C) Maintaining Tax-Exempt Status

Tax-exempt bonds are valid debt obligations used by the College to finance construction of facilities, permanent improvements, and to receive funds in anticipation of the collection of tax receipts. This tax-exempt status remains throughout the life of the debt provided that all applicable federal tax laws are satisfied. Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of debt proceeds and use of debt-financed property.

In order to maintain the debt status as tax-exempt, the College must comply with post-issuance debt requirements. Post-issuance compliance responsibilities include:

(1) Tracking that proceeds of a debt issuance are spent on qualified tax-exempt debt purposes;

(2) Maintaining detailed records of all expenditures and investments related to debt funds;

(3) Ensuring the project financed is used in a manner consistent with the legal requirements; and

(4) Providing necessary disclosure information regarding financial and operating status annually.

(D) Debt Issuance Process

Before tax-exempt debt is issued, there are pre-issuance requirements to consider. These include:

(1) Creating a time schedule of projected expenditures to be paid with bond proceeds from the expected date of issuance. At the time of issuance, there needs to be a reasonable expectation that bond proceeds will be spent in a timely manner (generally 5% within 6 months and 85% within 3 years) and that the projects will proceed with due diligence.

(2) Creating a schedule setting forth the expected useful life of assets to be financed or refinanced. The tax rules generally provide that bonds should be structured so that their weighted average maturity (WAM) is less than 120% of the remaining weighted average life of the assets being financed.

(3) Certain authorizations must be obtained by the Administration and Finance Department once projects and financing requirements are determined. Notable authorizations include:

(a) Declaration of Official Intent to Issue Tax Exempt Debt – The College Board of Trustees passes a resolution authorizing the issuance of tax-exempt debt up to a specified limit prior to the College issuing tax-exempt debt for a project. This resolution also approves pricing parameters and interest rate maximums for the debt issuance.

(b) State Authorization – If student fees are pledged to secure bonds or notes, then the College must seek approval from the Ohio Board of Regents prior to issuing the debt.

(c) Legal Opinions – A legal opinion issued by bond counsel, who opines on authorization and the tax-exempt status of the interest on the debt being issued.

(d) Tax Certificate – This is also known as an Arbitrage Certificate and is provided evidence compliance with applicable laws and regulatory requirements related to the issue of tax-exempt debt.

(E) Proceeds Tracking

The College allocates debt proceeds to the various projects being funded with the tax-exempt debt. The spending of the proceeds toward eligible project costs is tracked along with the rate at which the proceeds are being spent. Debt proceeds used to pay issuance costs related to any debt are tracked by Treasury Management to ensure that such costs do not exceed 2% of the "net proceeds" of such debt. Total proceeds applied to projects are monitored to ensure that they do not exceed the total amount of debt funding authorized by the College's Board of Trustees.

The Treasury Management Department shall maintain information about any derivative agreements integrated with the debt for tax purposes, including all correspondence from the counterparty, and shall maintain records of all bid forms and results, recommendations of financial advisors, contracts and legal opinions related to all investment contracts, derivative agreements, and other investment products.

(F) Maintaining Detailed Records

Basic records relating to any debt transaction are maintained as well as documentation evidencing the:

(1) Expenditure of debt proceeds;

(2) Use of debt-financed property;

(3) Sources of payment or security for the debt; and

(4) Documentation pertaining to any investment of debt proceeds.

The College seeks to comply with regulatory records retention requirements. Federal regulations provide that records relating to a tax-exempt debt transaction should be retained for so long as they are material in the administration of any federal tax law. Therefore, material records will be kept for the life of the debt, including any refunding of the debt, plus four years.

(G) Private Business Use

Each debt issuance is subject to a limitation on the amount of "private use" permitted in the facilities funded by that issuance. The applicable limit is 10% for governmental debt issuances. To prevent violation of private business use limitations, the College will:

(1) Ensure that there are no dispositions of bond financed property without approval of the Administration and Finance Department and legal counsel;

(2) Verify that there are no changes in use of bond financed facilities without the approval of the Administration and Finance Department;

(3) Review management contracts relating to bond financed facilities to determine compliance with management contract safe harbor rules, provided by the IRS;

(4) Review and approve all leases associated with bond financed facilities; and

(5) Verify any naming rights associated with bond financed facilities do not violate private business use limitations.

(H) Disclosures and Filings

Continuing Disclosure Requirements – Ongoing information on the College’s financial condition must be provided to nationally recognized securities information repositories, including the Electronic Municipal Market Access (EMMA) filing site. Required annual EMMA filings include audited financial statements, additional annual information, and certain specified events, if material.
Other required filings include:

(1) Tax Forms – Tax-exempt debt obligation issuers are required by the IRS to file the 8038 series of forms (8038, 8038-G, 8038-T, and 8038-R).

(2) Continuing Disclosure Requirements – Ongoing information on the College’s financial condition must be provided. Commitment must be made in the bond documents to provide secondary market disclosure.

(3) Statistics and filings required to be sent to the State for any debt issued through a State authority for the benefit of the College.

(4) Arbitrage Certificates – Within five years of the anniversary of the debt issue, and every five years thereafter and on the maturity date of the issue in order to close out the issue, the College or a consultant engaged by the College, must calculate any arbitrage on the debt, and make any required rebate payment.

(I) Continuity and Ongoing Review

To provide for continuity of compliance with post-issuance debt requirements, the College has included as part of its routine monitoring and review:

(1) an annual private use questionnaire;

(2) an annual meeting among financial personnel to review private use of facilities and compliance with this policy; and

(3) a listing of individuals with primary and back-up responsibilities to monitor and continue compliance.

(J) Possible Compliance Issues

Upon discovering any possible non-compliance with the tax law requirements and covenants, it is the individual's responsibility to promptly inform the Administration and Finance Department and bond counsel, so they can evaluate remedial action options or voluntary settlements to preserve the tax-exempt status of the bonds.

(K) Responsibilities

The *Executive Vice President of Administration and Finance or designee* is responsible for:

(1) Maintaining pertinent debt information for post-issuance compliance;

(2) Monitoring actions under this policy;

(3) Providing oversight and coordination to assist with tax-exempt debt compliance; and

(4) Arranging regular meetings among appropriate individuals to review policy compliance.

The *Vice President of Finance and Business Services* is responsible for:

(1) Monitoring private use in the financed facilities for compliance with representations made in the applicable tax certificate, and IRS laws and regulations;

(2) Tracking draws and expenditures of all debt proceeds (including for costs of issuance and working capital) spend-down timelines, and use of other funds for the projects,

including donations, operating revenue and other sources of equity; and

(3) Tracking debt proceeds used to pay costs of issuance.

Effective date: July 13, 2012
Revision date: August 27, 2013
Procedure amplifies: 3354:1-20-07
See Attachment A

Attachment A: Checklist for Tax Exempt Bond Compliance

Cuyahoga Community College District

Administration and Finance Department

General Background

Federal tax laws impose a number of requirements for bonds issued by public colleges and universities to qualify as and maintain their status as tax-exempt bonds. Many of the tax law requirements applicable to tax-exempt bonds relate to circumstances and "reasonable expectations" at the time the bonds are issued, and other requirements relate to ongoing covenants throughout the term of the bonds. The tax law requirements are generally addressed in the tax compliance certificates or agreements executed at the time bonds are issued.

The procedures that follow are designed to supplement the tax compliance certificates and agreements executed in connection with the issuance of each series of bonds issued by Cuyahoga Community College (the "College") on or after April 2, 2009 in order to ensure post-issuance compliance by the College with the tax laws over the term of each series of bonds. The procedures also cover certain tax matters during the issuance of future bonds. The College's Department of Finance and Business Services ("Finance") is providing these written procedures to institutionalize the College's compliance with the tax law requirements across all of the different departments with responsibilities over bond proceeds and bond-financed facilities.

These procedures are not intended to take the place of the tax compliance documents for each series of bonds or to provide comprehensive coverage of all of the tax issues that are associated with tax-exempt bonds. These procedures should be revised or updated periodically to reflect any federal tax law changes which may become applicable to future bond issues. These procedures also contain post-issuance continuing disclosure requirements for bonds.

Objectives

- To provide procedures for tracking the use and allocation of bond proceeds.
- To provide procedures for tracking investment returns on bond proceeds to ensure compliance with yield restrictions.
- To provide procedures for periodically monitoring the use of bond-financed facilities.
- To provide standards and procedures for record retention with respect to the College's bonds.
- To provide procedures for the timely completion and filing of calculations and any payments with respect to rebate requirements.
- To provide procedures for the timely compliance with continuing disclosure requirements.

Procedures

REQUIREMENT	RESPONSIBLE PARTY	LOCATION
1. Pre-Issuance Considerations		
1.1 *Projected Use of Proceeds.* With respect to the issuance of new money bonds, identify the capital projects to be bond financed in accordance with the Sections 3345.12 and 3354.121 of the Ohio Revised Code. Create a time schedule of projected expenditures to be paid with bond proceeds from the expected date of issuance through the expected date of full expenditure of bond proceeds. At the time of issuance of bonds, there needs to be a reasonable expectation that bond proceeds will be spent in a timely manner (generally 5% within 6 months and 85% within 3 years) and that the projects will proceed with due diligence.	Vice President, Facilities Development and Operations	District Offices
1.2 *Declaration of Intent.* To the extent that bonds will be used to reimburse costs to be incurred prior to issuance of bonds, adopt a "declaration of intent" which includes a description of the projects and a maximum aggregate amount of bonds which is expected to be issued.	Vice President, Finance and Business Services	District Offices
1.3 *Useful Life.* Create a schedule setting forth the expected useful life of assets to be financed or refinanced with proceeds of each issue. The tax rules generally provide that bonds may not be outstanding longer than necessary, and therefore, bonds should be structured so that their weighted average maturity (WAM) is less than 120% of the remaining weighted	Executive Director, Accounting and Financial Operations	District Offices

average life of the assets being financed, which is a safe harbor for this purpose.		
1.4 *Obtain Comparable Pricing Data*. At the time of pricing of negotiated issuances, the College, its financial advisor or other representatives should identify primary market offerings and/or secondary market trades from issuers of comparable structure and credit quality. Pricing data from comparable credit transactions, along with other market factors, should be used to inform pricing negotiations.	Vice President, Finance and Business Services	District Offices
1.5 *8038 Filings*. Ensure that IRS Form 8038-G or 8038-B is filed for tax-exempt bonds, respectively. Obtain date-stamped copy of each filing.	Bond Counsel	Bond Transcript
2. Use of Proceeds		
2.1 *Expenditure of Proceeds*.		
2.1.1 Use of proceeds should be determined in advance in accordance with the debt procedure. Bond proceeds are to be used solely for capital expenditures, qualified costs of issuance, and current operating expenses related to TANs.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
2.1.2 Review and approve draw requests to ensure that each release of proceeds is for qualified capital expenditures in accordance with the debt procedure.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
2.1.3 Monitor spending of proceeds against reasonable expectations at issuance and against requirements for exceptions to	Vice President, Facilities Development and Operations &	District Offices

	rebate payments. See 1.1 and 3.1.	Vice President, Finance and Business Services	
2.1.4	For the reimbursement of any expenditures paid prior to the issuance of bonds, ensure that such expenditures are allowable reimbursements (generally, issuance costs, "preliminary expenditures" such as design and engineering and costs covered by a "declaration of intent". See *Declaration of Intent* above).	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
2.1.5	Ensure that a final allocation of each series of bond proceeds, including investment proceeds, to qualifying expenditures is made no later than 18 months after the later of (a) the date the expenditure was made; or (b) the date the financed property was placed in service, but not later than the earlier of (i) 5 years after the bonds were issued or (ii) 60 days after the bonds were retired. Otherwise, proceeds are allocated based on direct tracing method, i.e., draws for project expenditures. Final allocation is used primarily to allocate bond proceeds to qualified uses (e.g., to account for change in use or private business use) or to longer life assets.	District Director, Treasury Management	District Offices
2.1.6	For each bond financed facility, where possible, the total costs should be mapped to bond proceeds and non-bond proceeds. This enables allocation of bond proceeds to	Vice President, Facilities Development and Operations & Senior Accountant/Analyst for	District Offices

	qualified uses.	Capital and Construction	
2.2	*Investment of Proceeds*.		
2.2.1	Proceeds may be invested at a yield above the yield on the bonds during the "temporary period" for each category of proceeds. For the Project Fund, the temporary period is 3 years (based on an expected spend-down at the time of issuance). For the Debt Service Fund, the temporary period is 13 months.	District Director, Treasury Management	District Offices
2.2.2	Make sure that proceeds of a bond issue are not invested in investments with a yield above the bond yield after the end of the available temporary period.	District Director, Treasury Management	District Offices
2.2.3	Monitor spending against expectations for satisfaction of applicable requirements for temporary period. See 1.1 above and 2.2.5 below.	District Director, Treasury Management	District Offices
2.2.4	Ensure that investments acquired with bond proceeds (particularly GICs and other investment agreements) satisfy IRS regulatory safe harbors for establishing fair market value.	District Director, Treasury Management	District Offices
2.2.5	Ensure that any debt service funds meet the requirements of a *bona fide* debt service fund (generally, fund is depleted at least annually except for reasonable carry-over).	Vice President, Finance and Business Services	District Offices

3. Rebate.		
3.1 *Monitor Spend-Down Requirements for Exceptions to Rebate.* If there is potential for positive arbitrage during the applicable temporary periods, monitor spend-down requirements for exception to rebate payments. See the tax compliance certificates for the applicable 6 month, 18 month or 24 month spending exceptions and monitor the spending of proceeds prior to the semi-annual target dates for the applicable exception.	Vice President, Finance and Business Services & District Director, Treasury Management	District Offices
3.2 *Rebate Consultant.* Engage a rebate consultant for the College to perform rebate exception spending analysis and rebate calculations to ensure timely compliance and timely payments of rebate amounts. Coordinate with rebate consultant to make sure all applicable payments and IRS forms are filed in a timely manner. Rebates are due 60 days after the fifth anniversary of the bond issuance date and every five years thereafter and 60 days after retirement of all bonds of an issue.	Vice President, Finance and Business Services	District Offices
4. Use of Bond-Financed Facilities.		
4.1 *Disposition of Facilities.* Ensure that there is no disposition of bond financed property without approval of Finance and legal counsel.	Vice President, Finance and Business Services	District Offices
4.2 *Change in Use.* Ensure that there are no changes in use of bond-financed facilities to non-qualified uses (e.g., private use) without approval of Finance and legal counsel.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
4.3 *Research Contracts.* If applicable, all research contracts associated with	Vice President,	District Offices

	bond-financed facilities should be reviewed (where possible, in advance) to ensure compliance with private use restrictions on research facilities.	Facilities Development and Operations & Vice President, Finance and Business Services	
4.4	*Management Contracts.* All management contracts relating to bond-financed facilities should be reviewed (where possible, in advance) by Finance and legal counsel to determine compliance with the management contract safe harbor rules.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
4.5	*Leases.* Any lease of bond-financed facilities to non-College individuals or entities (private physicians, food service operations, vendors operating in bond financed facilities) should be reviewed (where possible, in advance) by Finance and legal counsel.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
4.6	*Naming Rights.* All naming rights agreements associated with bond-financed facilities should be reviewed.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
4.7	*Monitoring.* Compliance questionnaires are filled out for bond-financed facilities at least annually that describe use and identify any leases, management agreements or research agreements.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
5.	**Record Retention.**		
5.1	*Records of Disbursement.* For each bond issue, maintain in physical or electronic form all records and documents describing disbursement of proceeds while the bonds or any refunding bonds are outstanding and	Vice President, Finance and Business Services	District Offices

for three-years thereafter.		
5.2 *Records of Investment Income.* For each issue, maintain in physical or electronic form all records relating to investment receipts for all investments acquired with bond proceeds while the bonds are outstanding and during the 3 year period following maturity or redemption of the bond issue.	District Director, Treasury Management	District Offices
5.3 *Hedge and Swap Records.* Maintain records relating to all hedge and swap contracts.	Vice President, Finance and Business Services	District Offices
6. Ongoing Education.		
6.1 *Annual Education.* At least annually, facilities managers and development officers should have training on basic bond rules relating to uses of facilities.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices
6.2 *Responsible Person.* Ensure that persons responsible for these procedures are given training on details of procedures, and if there are transitions of responsible persons, new responsible person is given training on these procedures.	Vice President, Facilities Development and Operations & Vice President, Finance and Business Services	District Offices

7. Identify Possible Compliance Issues.		
7.1 Upon discovering any possible non-compliance with the tax law requirements and covenants, promptly inform Finance and legal counsel to evaluate remedial action options or voluntary settlements to preserve the tax status of the bonds.	Vice President, Finance and Business Services	District Offices
8. Continuing Disclosure Filings.		
8.1 File annually with EMMA and Bond Trustee "Annual Information" (as described in Continuing Disclosure Agreements for bonds) by 180 days after fiscal year end.	Executive Director, Accounting and Financial Operations	Disclosure Agreement in each Bond Transcript
8.2 File annually with EMMA and Bond Trustee audited financial statements when available.	Executive Director, Accounting and Financial Operations	Disclosure Agreement in each Bond Transcript
8.3 File notice to EMMA and Bond Trustee of (i) certain "Specified Events" (as described in Continuing Disclosure Agreement) if material, (ii) failure to file Annual Information and (iii) change in accounting principles used in financial statements.	Executive Director, Accounting and Financial Operations	Disclosure Agreement in each Bond Transcript