Section III.C.1. Debt Management
Tax-Exempt Bond Post-Issuance Compliance Procedures

These procedures supplement and clarify Section III.C.1 of the Lone Star College District Policy Manual last revised by the Board of Trustees on **June 3, 2010**—setting out the College's policies regarding debt management.

These procedures apply to any obligations to which Sections 103 and 141 through 150 of the Internal Revenue Code of 1986 (the "Code") are applicable, whether or not such obligations are in fact tax-exempt. For example, these procedures will be followed with respect to any issue of tax credit bonds to which such sections of the Code apply. The College will modify or amend these procedures in the future to comply with any requirements set forth in subsequent rulings and other advice published by the Internal Revenue Service (the "Service" or the "IRS"), as such authorities may apply to the College or its obligations.

The Policy Manual controls when a conflict arises between it and the procedures below. These procedures were last updated on **August 10, 2016**. The notice and comment period was open online to the public from **April 28, 2016** to **June 27, 2016**.

1. General. These procedures maintain and evince compliance with federal tax laws applicable to the College's bond financings. These procedures specifically create duties and obligations regarding general recordkeeping and record retention, timely tax return filings, proper use of bond proceeds and bond-financed property, arbitrage, and reissuance requirements, and appropriate corrective action.

2. Responsible Parties. The College acknowledges that as the issuer of debt obligations subject to the Code, it is responsible for post-issuance compliance with respect to such debt obligations. The College's Chief Financial Officer has general oversight of the post-issuance compliance of bond financings. In addition, the following parties are responsible for the duties as described.

2(a) Administration and Finance Responsible Parties.

The **Chief Financial Officer** / Vice Chancellor of Administration and Finance oversees all of the College's financial functions and is ultimately responsible for all of the subordinate functions of the administration and finance division. The **Associate Chief Financial Officer** is likewise a subordinate officer of the Chief Financial Officer with responsibility for all of the subordinate functions of the administration and finance division. The Associate Chief Financial Officer is also responsible for the cataloging and storage of various financial records of the College.

The Office of Administration and Finance also employs other subordinate officers with responsibility for specific functions detailed in these procedures. The **Associate Vice Chancellor of Accounting** is a subordinate officer of the Office of Administration and Finance responsible for all of the College's accounting functions. The **Associate Vice Chancellor for Administration and Finance** is a subordinate officer of the Office of Administration and Finance responsible for banking, cash management, investment, and certain of the College's debt administration activities.

2(b) Facilities and Construction Responsible Parties. The Vice Chancellor of Facilities and Construction oversees all operational aspects of bond-financed facilities including the subordinate departments of Major Project Design and Construction, Real Estate and Strategic Planning, and Facility Operations. The Vice Chancellor of Facilities and Construction is ultimately responsible for all operational aspects of his or her subordinate departments.

2(c) Joint Responsibility for Compliance. Responsible parties in the Administration and Finance Division and the Facilities and Construction Division will coordinate efforts to ensure that any actions taken with respect to a bond-financed facility will be in compliance with the requirements of the Code. The College will provide training and/or make available educational materials regarding compliance requirements (e.g., private use requirements) to the officers responsible for the oversight of bond-financed facilities. The in-person training is mandatory for every officer previously specifically listed in this subsection.

3. General Recordkeeping and Record Retention. General record retention duties are the responsibility of the Chief Financial Officer, who shall maintain a copy of the following documents on file at all times: (1) audited financial statements, and (2) reports of any examinations by the Internal Revenue Service of the College's financings.

With respect to each issue of obligations, the Chief Financial Officer will retain the following for the life of the obligations (including the life of any obligations issued to refund the original debt) plus three years:

- Bond transcript, including authorizing documents, offering document, the federal tax certificate and certificates regarding issue price;
- Minutes and resolution(s) authorizing the issue;
- Any formal elections (e.g., election to employ an accounting methodology other than specific tracing);
- Records relating to the payment of debt service (including credit enhancement);
- Documentation relating to investments and arbitrage compliance, as described in "Arbitrage – Yield Restriction and Rebate - Recordkeeping" below;
- Documentary evidence of when and for what purpose the bond proceeds were expended, as described in "Expenditures of Bond Proceeds - Recordkeeping" below;
- Any grant requests or fundraising materials and documentation of grants or fundraising receipts relating to projects that also may be financed, in whole or in part, with bond proceeds;
- Any agreement of a type described in "Private Business Use – Special Legal Entitlements" that relates to a bond-financed facility;
- Bond paying agent/trustee statements;
- Rebate compliance reports;

- Related IRS filings (e.g. Form 8038-T Rebate);
- IRS correspondence regarding such issue; and
- Other documentation (including written advice of bond counsel) material to the particular requirements applicable to the tax status of the financing.

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in an organized, accessible format that preserves the accuracy of such documents. Any of the records required by these procedures shall be constantly kept up to date and internally producible within five working days of any request—unless the Chancellor authorizes further delay in writing to the CFO.

4. Return Filings. The Chief Financial Officer will be responsible for the timely filing of the Form 8038-G information report (or such other series 8038 form as may be applicable to a specific issue of bonds) with the Service, which filing may be completed by bond counsel after the issuance of the obligations (through the Office of the General Counsel). The College must file a separate Form 8038-G for each issue of bonds not later than the 15th day of the second calendar month after the close of the calendar quarter in which the bonds are issued.

5. Expenditure of Bond Proceeds. The Chief Financial Officer is responsible for oversight of the expenditure of bond proceeds, including monitoring (i) whether such expenditures are timely made for the purposes for which the bonds were authorized to qualify for the rebate exceptions set forth in the Code and IRS Regulations and (ii) whether investments of unexpended Bond proceeds continue to qualify for temporary period exceptions to yield-restriction requirements. Bond counsel may be consulted (through the Office of the General Counsel) regarding allocation of expenditures between each Bond issue to ensure timely expenditure of Bond proceeds.

Additionally, the Chief Financial Officer will monitor compliance with the requirement of IRS Regulations that proceeds of a bond issue are to be allocated to expenditures by the later of 18 months after the expenditure was made or the date the project is placed in service (and in no event, later than 60 days after (i) the fifth anniversary of the issue date or (ii) retirement of the issue).

With respect to the reimbursement of any expenditure paid prior to the date of issue of the bonds, the Chief Financial Officer will monitor compliance with the requirement of IRS Regulations that such reimbursement allocation to bond proceeds is made not later than 18 months after the later of (i) the date the original expenditure is made or (ii) the date the project is placed in service, but in no event more than three years after the original expenditure is paid. Furthermore, the Chief Financial Officer will monitor compliance with the requirement of IRS Regulations that such reimbursement allocation is for the reimbursement of expenditures paid on or after 60 days prior to the date of a reimbursement resolution (including for this purpose a bond order).

The College will retain the following for the life of the obligations plus three years in regards to every bond issue:

- Documentation of allocation of bond proceeds to expenditures (e.g., allocation of bond proceeds for expenditures for the construction, renovation, or purchase of facilities);
- Documentation of allocations of bond proceeds to bond issuance costs;
- Copies of all requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks related to bond proceeds spent during the construction period;
- Copies of all contracts entered into for the construction, renovation, or purchase of bond-financed facilities;
- Records of expenditure reimbursements incurred prior to issuing bonds for bond-financed facilities;
- List or schedule of all bond-financed facilities or equipment;
- Depreciation schedules, if any, for bond-financed depreciable property; and
- Documentation of any purchase or sale of bond-financed assets.

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents. Any of the records required by these procedures shall be constantly kept up to date and internally producible within five working days of any request—unless the Chancellor authorizes further delay in writing to the CFO.

6. General Private Business Use Procedures. To confirm that the Bonds serve governmental purposes rather than providing proscribed benefits to nongovernmental persons engaged in "private business" activity, it must be determined whether the College expects that there will be any private business use of the proceeds of the bonds.

Private business use exists if proceeds of the issue or the property to be financed by the bond proceeds are used directly or indirectly by any nongovernmental person in that person's trade or business. Private business use may occur due to arrangements (typically contractual) that give nongovernmental persons special legal entitlements with respect to the use of bond-financed property (including a sale or other transfer of bond-financed property to a nongovernmental person).

Further, a bond issue is considered to have private security or payments if the payment of the debt service of an issue is either (a) secured directly or indirectly by property or payments derived from private business use or (b) to be derived from payments for a private business use. The tax-exempt status of governmental bonds may be jeopardized if both (a) the private business use associated with an issue of bonds exceeds ten percent (or five percent, if the use is unrelated or disproportionate to governmental use) of the proceeds of an issue and (b) the private security or payments associated with an issue exceeds five percent (or ten percent, in certain circumstances) of the proceeds of such issue. Finally, no more than five percent of the proceeds of an issue of bonds may be used to make loans to one or more nongovernmental persons, including arrangements that allow one or more nongovernmental persons to defer payments that they are obligated to make with respect to the financed property or the bonds.

The College's Administration and Finance Division will coordinate with the Facilities and Construction Division by communicating with one another the private business use restrictions and requiring that all activity that may give rise to private business use be communicated to the Chief Financial Officer in advance of such use. The Chief Financial Officer is responsible for tracking trade or business activity by third parties as it relates to each issue of obligations and will monitor such activity no less frequently than every business quarter and, in any event, upon being notified of any new activity that will give rise to increased trade or business activity with a third party.

7. Special Legal Entitlements that Can Create Private Business Use. A special legal entitlement that can create private business use can arise from arrangements that convey ownership rights, leasehold rights, management rights (e.g., priority rights to use the facility), or other similar rights. Recognizing that a special legal entitlement may give rise to private business use, each time the Facilities and Construction Division, or any other Division, intends to enter into one of the following, the CFO will determine in writing if such agreement relates to any bond-financed facility:

- Management and other service contracts
- Research agreements
- Naming rights contracts
- Ownership
- Leases
- Subleases
- Leasehold improvement contracts
- Joint venture arrangements
- Limited liability corporation arrangements
- Partnership agreements
- Non-contractual use of bond-financed office space and/or parking facilities by any nongovernmental person
- Any other contract conferring a special legal entitlement or special economic benefit comparable to ownership

If such an agreement relates to a bond-financed facility, the CFO will take measures designed to preserve the intended federal income tax status of that issue of Bonds—including rejection of any proposed transaction. Such measures may include ensuring that such agreement falls into an applicable exception under the private business use rules, making a determination that private use will not exceed the applicable limit or such other action as may be recommended by bond counsel, including taking remedial actions with respect to the issue of Bonds whose federal tax status is implicated. Because the Chief Financial Officer is ultimately responsible for the defense of the tax-exempt nature of the bond issue, the decision whether to reject such a proposed transaction resides initially with the CFO, but may be overturned in writing by the Chancellor.

8. Payments of the Bonds. The trustee/paying agent for the bonds shall determine the amount of principal and interest payable on each payment date for the bonds. Periodically, and no less frequently than annually, the Chief Financial Officer will review the amount of the interest payments to verify that proper payments of interest have been made.

9. Arbitrage Yield Restriction & Rebate. The Chief Financial Officer is responsible for monitoring the College's compliance with the yield restriction requirements of section 148(a) of the Code and the rebate requirements of section 148(f) of the Code. Such monitoring includes, but is not limited to:

- Tracking the allocation of bond proceeds to expenditures for compliance with any temporary period and spending exceptions, no less frequently than every fiscal year;
- Ensuring that any forms required to be filed with the IRS relating to arbitrage and any payments required pursuant thereto are filed in a timely manner; and
- Ensuring that "fair market value" is used with respect to the purchase and sale of investments.

Compliance with IRS investment rules will require that the College be able to account for, in terms of dates and amounts, all uses (including disbursements and investment activity) of particular categories of bond-related money. The Chief Financial Officer will account for all of the following disbursements: monies in the project fund, debt service fund and any other fund into which proceeds of the obligations have been deposited, including any reserve fund. In doing so, the Chief Financial Officer will use any reasonable consistently applied accounting method to account for gross proceeds, investments, and expenditures of an issue.

10. Additional Arbitrage Recordkeeping. With respect to each issue of obligations, the CFO will retain the following for the life of the obligations plus three years:

- Documentation for allocations of investments and calculations of investment earnings
- Documentation for investments of the bond proceeds related to:
    - a) Investment contracts (e.g., guaranteed investment contracts)
    - b) Credit enhancement transactions (e.g., bond insurance contracts)
    - c) Financial derivatives (e.g., swaps, caps, etc.)
    - d) Bidding of financial products
- Documentation regarding arbitrage compliance, including:
    - a) Computation of bond yield
    - b) Computation of rebate and yield reduction payments
    - c) Form 8038-T, Arbitrage Rebate, Yield Reduction, and Penalty in Lieu of Arbitrage Rebate
    - d) Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*

Documents may be retained as hard copies or in an electronic format (in accordance with Revenue Procedure 97-22, 1997-1 C.B. 652), so long as such documents are retained in organized, accessible format that preserves the accuracy of such documents. Any of the records required by these procedures shall be constantly kept up to date and internally producible within five working days of any request—unless the Chancellor authorizes further delay in writing to the CFO.

11. Reissuance. Prior to making any changes to the terms of an obligation, including its underlying security, the CFO will consult with bond counsel (through the Office of the General Counsel) to determine whether such change will result in the reissuance of such obligation for federal tax law purposes. If it is determined that a change will result in a reissuance, the College will take such action, including the recalculation of yield, the filing of a new Form 8038-G and the payment of rebate obligations, as is necessary to maintain the tax status of the bonds.

12. Corrective Action. Reports regarding the aforementioned compliance policies, with respect to any issue of bonds, will be made by the party given responsibility for such area to the Chief Financial Officer no less frequently than annually. At such time, the Chief Financial Officer will determine whether any corrective action is required with respect to the applicable issue.

A corrective action may be required if, for example, it is determined that bond proceeds were not properly expended, the College is not in compliance with the arbitrage requirements imposed by the Code, or the College has taken a deliberate action that results in impermissible private business use (e.g., sale of bond-financed property). If the College determines or is advised that corrective action is necessary with respect to any issue of its obligations, the College will, as may be applicable, in a timely manner:

- Seek to enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31 (or any successor notice thereto);
- Take remedial action described under Section 1.141-12 of IRS Regulations adopted pursuant to the Code (or any successor regulation thereto); and/or
- Take such other action as recommended by bond counsel (through the Office of the General Counsel).

Effective Date: August 10, 2016

Dr. Stephen C. Head, Chancellor
Lone Star College