

**Sussex County Community College**

**Policy No. 102.7**

**Area: Administration**

**Adopted: April 28, 2014**

**102.7 State Backed Bonds Policy**

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**Description:** Post-Issuance Compliance Policies and Procedures of Sussex County Community College, Newton, New Jersey Related to Certain Bonds Issued by the New Jersey Educational Facilities Authority Pursuant to Financing Programs for Institutions of Higher Education Sponsored by the State of New Jersey

The Secretary of Higher Education of the State of New Jersey (the "Secretary") has awarded Sussex County Community College Newton, New Jersey (the "Institution") funds for projects or equipment leases pursuant to one or more of the following programs: Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 *et seq.* ("CIF"); the Higher Education Equipment Leasing Fund Act, N.J.S.A. 18A:72A-40 *et seq.* ("ELF"); the Higher Education Technology Infrastructure Fund Act, N.J.S.A. 18A:72A-59 *et seq.* ("HETI"); and the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 *et seq.* ("HEFT" and together with CIF, ELF and HETI, the "State-Backed Programs"). The funds for projects or equipment leases awarded pursuant to these State-Backed Programs are referred to herein collectively as "Grants". The Grants are disbursed to the institutions of higher education ("Grantees") from proceeds of tax-exempt bonds (the "State-Backed Bonds") issued by the New Jersey Educational Facilities Authority (the "Authority" or "NJEFA") pursuant to the applicable State-Backed Programs. The debt service on these State-Backed Bonds is payable by the State of New Jersey (the "State") subject to appropriation by the New Jersey Legislature. A Grantee that receives funds pursuant to the CIF or ELF Programs is required to reimburse the State for a portion of the debt service paid by the State on the CIF Bonds or ELF Bonds. However, Grantees that receive funds pursuant to the HETI or HEFT Programs have no obligation to reimburse the State for any debt service on HETI Bonds or HEFT Bonds.

- 1) Because the State-Backed Bonds are issued as tax-exempt bonds, the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and regulations adopted thereunder (collectively, "Federal Tax Law Requirements") must be satisfied during the term of the State-Backed Bonds by each Grantee in order for the tax-exempt status of such State-Backed Bonds to be maintained. As a Grantee that has received proceeds of State-Backed Bonds, the Institution understands that it has an obligation to comply with these Federal Tax Law Requirements throughout the term of any State-Backed Bonds, which may be longer than the term of a Grant. Pursuant to a Grant or Lease Agreement with the Authority, the Institution has agreed to adopt these Post-Issuance Compliance Policies and Procedures (the "Policy") in

order to assist it in fulfilling its obligations to comply with Federal Tax Law Requirements applicable to the State-Backed Bonds. The Institution recognizes that this compliance is an ongoing process, and that analysis of information and implementation of this Policy will require annual or more frequent monitoring and likely ongoing consultation with NJEFA and its bond counsel. Further policies and procedures may be identified from time to time by NJEFA with respect to outstanding or future State-Backed Bonds from which this Institution receives a Grant and the Institution will take all necessary steps to ensure compliance with such policies and procedures.

## **Policy**

### **I. Organizational Responsibility**

The SCCC Vice President Finance & Operations (the “Compliance Officer”) has primary responsibility for post-issuance tax compliance to ensure and monitor post-issuance matters with respect to State-Backed Bonds.

The Compliance Officer has overall responsibility for carrying out all aspects of this Policy including providing information and training on implementing post-issuance compliance policies, tracking expenditures, allocating sources of funding for a particular project between Grants funded from State-Backed Bond proceeds and other sources of money, identifying and monitoring private use and reviewing rebate reports, if requested by the Authority, and keeping adequate records to support all of the foregoing. The Compliance Officer may delegate specific responsibilities to other officers, employees and agents of this Institution as designated in this Policy and as may be modified or supplemented in the future.

The SCCC Finance Department shall: separately track utilization of Grant proceeds and other sources of funding (i.e., other bonds, equity, other grants, contributions, etc.) for each project financed by each issue of State-Backed Bonds; prepare and review requisitions to assure that proceeds are expended on projects as approved by the Secretary and authorized in the applicable bond documents and requisitions; and confirm that reimbursement of pre-issuance costs are permissible and submit reviewed requisitions to the NJEFA. The SCCC Finance Department in consultation with SCCC Facilities Management shall also determine when projects financed by Grants are completed and/or placed in service and advise the Authority that such events have occurred. The SCCC Finance Department/Facilities Department, as applicable, will consult with the Compliance Officer if questions arise relating to the foregoing matters.

### **II. Tracking Expenditures and Use of Bond-Financed Facilities**

The SCCC Finance Department shall maintain records regarding the use and allocation of Grants funded from State-Backed Bonds proceeds and other sources for Grant-financed facilities. Such records shall be maintained with respect to each series of State-Backed Bonds. The Authority’s Accounting Department shall maintain copies of approved requisitions and copies of invoices.

Requisitions submitted to the Authority must be accompanied by copies of invoices for Contractor/Architect/Engineering bills and any other items over \$10,000 before being approved.

The SCCC Finance Department and Facilities Department will monitor the application and use of Grants on an ongoing basis and inform the Authority of events relating to use of bond proceeds and financed facilities, which may result in private business use or other tax issues, and that must be analyzed for compliance with Federal Tax Law Requirements. The SCCC Finance Department and the Facilities Department will work together to identify square footage or other measurements of private business use of financed facilities. The Institution will comply with the covenants and representations relating to the Grants and the State-Backed Bonds in the applicable bond documents and will cooperate with the Authority in obtaining necessary information, keeping records, seeking advice from bond counsel and undertaking any remediation, if necessary.

At least once every twelve months, the Authority is expected to send a certification to the Institution regarding application and use of Grants and other matters and the Compliance Officer will coordinate with assigned individuals at the Institution to provide updated information about the use of the financed facilities and other matters and complete and return the certification and any supporting documentation (Annual Review Process). The Institution will provide an annual certification to the Authority regardless of receipt of a form thereof from the Authority. The Compliance Officer will work with the Authority and/or bond counsel, if necessary, to assist in making a final allocation of expenditures for a Grant-financed project when required under the Code and applicable regulations.

### **III. Private Business Use and Private Payments**

The Institution's SCCC Finance Department in conjunction with the Facilities Department, which will maintain records of all private business use contracts, will monitor private business use of bond-financed property and any private payments.

State-Backed Bonds may lose tax-exempt status if private business use of bond proceeds and private business payments securing such State-Backed Bonds exceed certain percentages which are described in the Tax Certificates signed by the Institution in connection with the issuance of the State-Backed Bonds. Unless approved in advance by the Authority, no private business use of the property financed by the Grants is permitted. The anticipated amount of private business use of a particular series of State-Backed Bonds is anticipated to be known at the time the State-Backed Bonds are issued. Any increase in private business use of Grant financed facilities by any Grantee must be analyzed for the applicable State-Backed Bond issue as a whole. Therefore, the Institution and each other Grantee must obtain permission from the Authority to increase any private business use of its Grant financed facilities, in order to assure that tax-exemption for the issue of State-Backed Bonds as a whole is preserved. The Institution will monitor and report the use of Grant-financed facilities as part the Annual Review Process. The Institution understands that failure to

obtain such permission may result in loss of tax-exempt status of the State-Backed Bonds and that it will be responsible to the Authority if its actions cause such treatment.

Special legal entitlements to property financed with State-Backed Bonds can give rise to private business use. Special legal entitlements include leases of financed property, management contracts, sponsored research agreements, naming rights, licenses of facilities for use by cell phone service providers, energy providers and the like. Typical examples of private business use in a college setting often include food service contracts, bookstore contracts, privately sponsored research and camp programs if they do not meet certain safe-harbors set out in IRS Revenue Procedures 97-13 and 2007-47, or exceptions in IRS regulations for short term and incidental use arrangements.

Since the HETI and HEFT Programs require (and expect) no payments by the Institution, it is not anticipated that the private business payment test will be met for such bonds, but the Authority has requested the Institution to monitor private business use.

As required in the Authority's bond documents and policies, the Institution will report and certify to the Authority at least annually with respect to the use of Grant-financed facilities, any additions or changes that may have occurred and cooperate with the Authority in determining whether an event has occurred that might adversely affect the tax-exempt status of the State-Backed Bonds and in taking appropriate remedial action.

#### **IV. Record Retention**

Authority Grant and other bond documents require the Institution to maintain all relevant records relating to State-Backed Bonds. The Authority will also retain documents it receives directly from the Institution or third parties. These documents include closing transcripts, agreements, including investment agreements, to which the Authority is a party, bank statements, rebate reports and requisitions. Both the Institution and the Authority shall maintain records for the length of time required to comply with IRS regulations. Currently, records of issuance and related post-issuance compliance documentation must be maintained for the life of the bond issue, including any refunding issue, plus three years.

Basic records relating to State-Backed Bonds include the transcript as well as documentation evidencing the:

- Expenditures and requisitions;
- Investment of bond proceeds;
- Use of Grant-financed property; and
- Sources of payment or security for the State-Backed Bonds.

The Authority will rely on the Institution for specific records relating to application of bond proceeds and use of projects and/or equipment financed by Grants received by the Institution.

## **V. Arbitrage and Rebate**

State-Backed Bonds will lose their tax-exempt status if they are classified as “arbitrage bonds.” In general, arbitrage is earned when the gross proceeds of a bond issue are used to acquire investments that earn a yield that is “materially higher” than the yield on the bonds issued or if funds are held or received by the Institution for the project or for debt service that are invested higher than such yield. The Code contains two separate sets of requirements that must be complied with to ensure that State-Backed Bonds are not arbitrage bonds. They are:

- Yield Restriction requirements, which generally provide that in the absence of an applicable exception, bond proceeds may not be invested at a yield in excess of the bond yield; and
- Rebate requirements, which generally provide that when arbitrage is earned on an issue in excess of permitted amounts, unless an exception is met, the excess earnings must be paid to the U.S. Department of Treasury, even if an exception to the yield restriction requirements applies.

The NJEFA will engage the services of an Arbitrage Compliance Servicer, as necessary, to provide written reports to assist the Authority and the State Treasurer in monitoring yield on investments and calculating any rebate that may be due. The Institution will cooperate with the NJEFA and the Arbitrage Compliance Servicer to the extent necessary in order for the Arbitrage Compliance Servicer's calculations to be correct. If the Arbitrage Compliance Servicer provides a written report, it will be provided to the Authority and the State Treasurer and the Institution, to the extent necessary, to permit the Institution to comply with tax or other reporting requirements.

## **VIII. Continuity and Training**

The Compliance Officer and those to whom he or she has delegated responsibilities will receive periodic training regarding the tax and other requirements applicable to State-Backed Bonds. Such training will cover the purposes and importance of these procedures.

To provide for continuity of compliance with post-issuance tax requirements, the Institution will periodically consult with the Authority to determine whether this Policy should be modified to reflect changes relating to outstanding State-Backed Bonds and any changes necessitated if the Authority issues additional State-Backed Bonds.

## **IX. Remedial Action**

Authority bond documents require that the Institution notify the Authority of events which may affect the permissible use and allocation of State-Backed Bond proceeds and to cooperate with the Authority in seeking remedial action with respect to such events. The Compliance Officer is responsible for notifying the Authority of such events and cooperate with the Authority or other issuers (as applicable) in seeking remedial action pursuant to Treasury Regulation §1.141-12, §1.145-2 or seeking a closing agreement with the IRS under its Voluntary Closing Agreement Program(VCAP).