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DEREK S. HANSEL  
*Executive Director*

**MINUTES OF THE MEETING OF THE  
NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
HELD AT 103 COLLEGE ROAD EAST, PRINCETON, NEW JERSEY  
ON TUESDAY, SEPTEMBER 25, 2012**

The meeting was called to order at 9:13 a.m. by Chairman Jacobs. The New Jersey Educational Facilities Authority gave notice of the time, place and date of this meeting via fax and email on June 8, 2012, to The Star Ledger, The Times and the Secretary of State and by posting the notice at the offices of the Authority in Princeton, New Jersey. Pursuant to the New Jersey Open Public Meetings Act, a resolution must be passed by the New Jersey Educational Facilities Authority in order to hold a session from which the public is excluded.

**AUTHORITY MEMBERS PRESENT:**

Roger B. Jacobs, Esq., Chairman  
Joshua Hodes, Treasurer  
Andrew P. Sidamon-Eristoff, State Treasurer (represented by Steven Petrecca)  
Rochelle Hendricks, Secretary of Higher Education (represented by Gregg Edwards)

**AUTHORITY MEMBERS ABSENT:**

Ridgeley Hutchinson, Vice Chairman

**STAFF PRESENT:**

Derek S. Hansel, Executive Director  
Marie P. Mueller, Controller  
Sheryl Stitt, Director of Legislative Strategy and Public Communications  
Katherine Newell, Esq., Director of Risk Management  
Jennifer Soyka, Esq., Project Manager  
Debra Paterson, Sr. Risk Manager  
Nichole Doxey, Communications Specialist  
Jamie O'Donnell, Accountant  
Sheila Toles, Exec. Assistant/Human Resources Specialist

**ALSO PRESENT:**

Brett Tanzman, Esq., Governor's Authorities Unit  
Clifford Rones, Esq., Deputy Attorney General

**ITEMS OF DISCUSSION**

**1. Adoption of Resolution Consenting to Entry into an Intercreditor Agreement for NJEFA Revenue Refunding Bonds, Rider University Issue, 2012 Series A**

Ms. Newell reported that this resolution relates to the Authority's 2012 Series A bonds that were issued for Rider University earlier this year. She reported that the University is permitted under the bond documents to incur additional debt secured on a parity with the 2012 Series A bonds secured by tuition and fees. PNC Bank will be providing a new line of credit to the University in the maximum amount of \$7 million which will be secured on a parity with the 2012 Series A bonds as permitted. In order to define the rights and remedies of the trustee for the bonds and PNC Bank as parity secured creditors, they will enter into an Intercreditor Agreement. The resolution consents to the Intercreditor Agreement.

Mr. Edwards moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
CONSENTING TO THE EXECUTION AND DELIVERY OF AN INTERCREDITOR  
AGREEMENT RELATING TO THE AUTHORITY'S REVENUE REFUNDING BONDS,  
RIDER UNIVERSITY ISSUE, 2012 SERIES A

The motion was seconded by Mr. Petrecca and passed unanimously.

The adopted resolution is appended as Exhibit I.

**2. Adoption of Resolution Consenting to Entry into a Line of Credit Agreement by Felician College of Lodi**

Ms. Newell reported that in 2006 the Authority issued variable rate bonds directly to Capital One (then TD Bank) for Felician College and that the bonds were swapped to a fixed rate by the bond purchaser. Currently, the College wishes to replace a prior \$4.5 million line of credit that is secured by a second lien on the College's Rutherford campus with a new \$5 Million line of credit to be used for general capital needs, which will also be secured by a second lien on the Rutherford campus. The resolution consents to the line of credit provided that Capital One, as bond holder and swap provider, also consent.

Mr. Hodes moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
CONSENTING TO ENTRY BY FELICIAN COLLEGE OF LODI INTO A LINE OF  
CREDIT AGREEMENT

The motion was seconded by Mr. Edwards and passed unanimously.

The adopted resolution is appended as Exhibit II.

**3. Resolution Adopting the Authority's Post Issuance Compliance Policy for Tax-Advantaged Obligations**

Ms. Newell reported that over the past 5 to 7 years, the Internal Revenue Service (IRS) has increased audit activity for tax-exempt and other tax-advantaged bonds and has encouraged issuers to adopt post issuance compliance policies to aid in satisfying tax

requirements that continue after bonds are issued. The Authority has conducted a few conferences to educate colleges and universities about post issuance requirements and has implemented various post issuance compliance policies as the IRS has made announcements describing and adding to requirements of the policies. Ms. Newell advised that the Post Issuance Compliance Policy is a consolidation, in one document, of the comprehensive policies the Authority has adopted to satisfy IRS standards. Ms. Newell explained that the resolution approves the Policy, authorizes all necessary action to implement it and authorizes the Executive Director to make changes in the Policy to conform to changes in law and IRS announcements, and to make changes deemed necessary to make following the Policy more efficient.

Mr. Hansel noted that Ms. Newell has worked diligently on the Policy and agreed with Ms. Newell that it represents a consolidation and a formalization of procedures the Authority had been following and that the resolution is formally adopting those policies. Mr. Hansel thanked Ms. Newell for her hard work in concluding the Policy.

Mr. Hodes moved the adoption of the following entitled resolution:

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
APPROVING THE "NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
POST-ISSUANCE COMPLIANCE POLICY FOR TAX-ADVANTAGED  
OBLIGATIONS

The motion was seconded by Mr. Petrecca and passed unanimously.

The adopted resolution is appended as Exhibit III.

4. **Next Meeting Date**

Mr. Jacobs reminded everyone that the next scheduled Authority meeting would be on Tuesday, October 23, 2012 at 9:00 a.m. at the Authority's offices and requested a motion to adjourn.

Mr. Edwards moved that the meeting be adjourned at 9:23 a.m.; the motion was seconded by Mr. Hodes and passed unanimously.

Respectfully submitted,



Derek S. Hansel  
Secretary

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
CONSENTING TO THE EXECUTION AND DELIVERY OF AN INTERCREDITOR  
AGREEMENT RELATING TO THE AUTHORITY'S REVENUE REFUNDING  
BONDS, RIDER UNIVERSITY ISSUE, 2012 SERIES A

WHEREAS, the New Jersey Educational Facilities Authority (the "Authority") was created as a public body corporate and politic of the State of New Jersey pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), *N.J.S.A.* 18A:72A-1 *et seq.* (the "Act"); and

WHEREAS, on April 4, 2012, at the request of Rider University (the "University"), the Authority issued its Revenue Refunding Bonds, Rider University, 2012 Series A in the original principal amount of \$52,020,000 (the "Bonds"); and

WHEREAS, the Bonds were issued under and secured by a Trust Indenture dated as of April 1, 2012 (the "Indenture") between the Authority and The Bank of New York Mellon, as Trustee (the "Trustee"); and

WHEREAS, in connection with the issuance of the Bonds, the Authority and the University entered into a Loan Agreement dated as of April 1, 2012 (the "Loan Agreement") pursuant to which the Authority loaned the proceeds of the Bonds to the University and pursuant to which the University is obligated, among other things, to pay amounts sufficient to pay interest and principal on the Bonds in repayment of such loan, all as set forth in the Loan Agreement; and

WHEREAS, the obligations of the University under the Loan Agreement are secured by a Mortgage and Security Agreement dated as of April 1, 2012 (the "Mortgage"); and

WHEREAS, pursuant to the Mortgage, the obligations of the University are secured *inter alia*, by a lien on Tuition and Fees (as defined in the Mortgage); and

WHEREAS, pursuant to in Section 3.8 of the Mortgage, Section 4 of the Loan Agreement and acknowledged in Section 2.16 of the Indenture, the University may incur additional debt secured by a parity or subordinate lien on Tuition and Fees; and

WHEREAS, the University has advised the Authority that it expects to obtain a line of credit from PNC Bank, National Association ("PNC Bank") in the maximum principal amount of \$7,000,000 (the "Line of Credit") which will be secured by a parity lien on Tuition and Fees; and

WHEREAS, the University has advised the Authority that PNC Bank and the Trustee will enter into an Interc Creditor Agreement to evidence such parity lien and to set forth the respective rights of the holders of the Bonds and PNC Bank in connection with the Line of Credit and the Bonds (the "Interc Creditor Agreement"); and

WHEREAS, the University has requested the Authority to consent to the execution and delivery of the Intercreditor Agreement by the Trustee in connection with the Line of Credit; and

NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY, AS FOLLOWS:

**Section 1. Acknowledgement and Consent.**

The Authority hereby consents to the execution and delivery of the Intercreditor Agreement by the Trustee in substantially the form presented at this meeting with such changes therein as may be authorized by the Chair, Vice Chair, Executive Director, Director of Risk Management, Secretary and any Assistant Secretary of the Authority (each an "Authorized Officer") with such changes as are accepted by the Authorized Officer providing the consent with the advice of the Attorney General of New Jersey provided that the Authority and the Trustee receive an opinion of counsel to the University that the execution and delivery of the Intercreditor Agreement by the Trustee is permissible under the Indenture.

**Section 2. Prior Action Ratified; All Other Necessary Action Authorized.**

Any and all prior actions taken by the Authority in connection with the Line of Credit and the execution and delivery by the Trustee of the Intercreditor Agreement are hereby ratified and confirmed. The Authorized Officers, are each hereby authorized and directed to undertake any and all actions necessary to effect the consent of the Authority to the execution and delivery of the Intercreditor Agreement by the Trustee and to execute and deliver any other consents, agreements, documents, certificates, directions and notices as may be necessary, advisable, or appropriate to effect such consent and the taking of any such action, and the execution and delivery of each such consent, agreement, documents, certificates, directions and notices shall be conclusive evidence of the approval thereof by the Authorized Officer taking such action and of its necessity, advisability or appropriateness.

**Section 3. Effective Date.**

This Resolution shall take effect in accordance with the provisions of the Act.

\_\_\_\_\_ Mr. Edwards \_\_\_\_\_ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by \_\_\_\_\_ Mr. Petrecca \_\_\_\_\_ and upon roll call the following members voted:

**AYE:** Roger B. Jacobs  
Joshua Hodes  
Andrew Sidamon-Eristoff (represented by Steven Petrecca)  
Rochelle Hendricks (represented by Gregg Edwards)

**NAY:** None

**ABSTAIN:** None

**ABSENT:** Ridgeley Hutchinson

The Chair thereupon declared said motion carried and said resolution adopted.

RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES  
AUTHORITY CONSENTING TO ENTRY BY FELICIAN COLLEGE OF LODI INTO  
A LINE OF CREDIT AGREEMENT

WHEREAS, the New Jersey Educational Facilities Authority (the "Authority") was created as a public body corporate and politic of the State of New Jersey pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), *N.J.S.A. 18A:72A-I et seq.* (the "Act"); and

WHEREAS, on June 30, 2006, at the request of Felician College of Lodi (the "College"), the Authority issued its Revenue Refunding Bonds, Felician College Issue, 2006 Series I in the original principal amount of \$11,445,000 (the "Bonds"); and

WHEREAS, the Bonds were issued under and secured by a Trust Agreement dated as of June 30, 2006 (the "Trust Agreement") between the Authority and The Bank of New York (now known as The Bank of New York Mellon), as Trustee (the "Trustee"); and

WHEREAS, in connection with the issuance of the Bonds, the Authority and the College entered into a Loan Agreement dated as of June 30, 2006 (the "Loan Agreement") pursuant to which the Authority loaned the proceeds of the Bonds to the College and pursuant to which the College is obligated, among other things, to pay amounts sufficient to pay interest and principal on the Bonds in repayment of such loan, all as set forth in the Loan Agreement; and

WHEREAS, the Bonds were sold to North Fork Bank, now known as Capital One, N.A. (the "Purchaser"); and

WHEREAS, in connection with the issuance of the Bonds, the College entered into a swap agreement with North Fork Bank, now known as Capital One, N.A., as swap provider (the "Swap Provider") pursuant to an ISDA Master Agreement dated June 23, 2006 and the schedules and confirmations related thereto (the "Swap Agreement"); and

WHEREAS, the College entered into a Master Trust Indenture (the "Master Trust Indenture") and a First Supplemental Indenture to the Master Trust Indenture (the "First Supplemental Indenture", and together with the Master Trust Indenture, the "Master Indenture") each dated as of June 30, 2006, by and between the College and North Fork Bank, as master trustee (the "Master Trustee"); and

WHEREAS, pursuant to the First Supplemental Indenture, the College issued (i) the 2006 Series A Note (the "2006 Series A Note") in favor of the Trustee to evidence the obligations of the College pursuant to the Loan Agreement with respect to the 2006 Bonds, (ii) the 2006 Series B Note (the "2006 Series B Note") in favor of the Purchaser to evidence the obligations of the College pursuant to the Revolving Line of Credit Agreement dated as of June 30, 2006 (the "Original Line of Credit"), and (iii) the Swap

Agreement – 2006 Series I Bonds in favor of the Swap Provider to evidence the obligations of the College under the Swap Agreement (the “Swap Obligation”); and

WHEREAS, the 2006 Series B Note and the Original Line of Credit are no longer outstanding; and

WHEREAS, the 2006 Series A Note and the Swap Obligation (collectively, the “Outstanding Master Indenture Obligations”) are secured on a parity basis under the Master Indenture by: (i) a mortgage on the College’s Rutherford Campus (the “Mortgage”), (ii) a security agreement on certain other personal property of the College, and (iii) an assignment of leases and rents made by the College in favor of the Master Trustee for the benefit of the holders of the Notes); and

WHEREAS, in 2009, with the consent of the Purchaser, the Swap Provider and the Authority, the College entered into a \$4,500,000 Line of Credit with The Provident Bank (the “Construction Line of Credit”) for the purpose of making funds available to pay construction costs for a new educational facility in the event the College did not receive pledges at the expected times and amounts, and which is secured by second lien on the College's Rutherford Campus pursuant to a second mortgage by the College in favor of The Provident Bank (the “Second Mortgage”); and

WHEREAS, the College has informed the Authority that it did not find it necessary to draw on the Construction Line of Credit but now wishes to replace the Construction Line of Credit with a new \$5,000,000 Line of Credit with Provident Bank under the terms and conditions outlined in Exhibit A hereto (the “New Line of Credit”) to provide funds for the College’s general capital improvement purposes; and

WHEREAS, the New Line of Credit will be secured by second lien on the College's Rutherford Campus pursuant to a second mortgage by the College in favor of The Provident Bank, and the existing Second Mortgage will be discharged; and

WHEREAS, the College has informed the Authority that it is a condition to issuance of the New Line of Credit by Provident Bank that the Purchaser and the Swap Provider consent to the New Line of Credit; and

WHEREAS, pursuant to Section 4.2 of the Loan Agreement, the College has agreed that, so long as the Bonds are outstanding, the College will not incur any additional debt (whether or not related to the Bonds) without the prior written consent of the Authority; and

WHEREAS, the College has requested that the Authority consent to entry by the College into the New Line of Credit; and

WHEREAS, the Authority has determined that it is in the best interest of the College and its students to consent to entry by the College into the New Line of Credit.



NOW, THEREFORE, BE IT, AND IT HEREBY IS, RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY, AS FOLLOWS:

**Section 1. Consent to Entry Into the New Line of Credit.**

The Authority, in accordance with the Trust Indenture and the Loan Agreement, hereby consents to entry by the College into the New Line of Credit substantially under the terms and conditions set forth in Exhibit A with such changes therein as may be authorized by the Chair, Vice Chair, Executive Director, Deputy Executive Director, Director of Project Management, Secretary and any Assistant Secretary of the Authority (each an "Authorized Officer") with the advice of counsel to the Authority provided that the Purchaser and the Swap Provider consent to entry by the College into the New Line of Credit.

**Section 2. Prior Action Ratified; All Other Necessary Action Authorized.**

Any and all prior actions taken by the Authority in connection with the entry by the College into the New Line of Credit are hereby ratified and confirmed. The Authorized Officers, are each hereby authorized and directed to undertake any and all actions necessary to effect the consent of the Authority to entry by the College into the New Line of Credit and to execute and deliver any other consents, agreements, documents, certificates, directions and notices as may be necessary, advisable, or appropriate to effect such consent and the taking of any such action, and the execution and delivery of each such consent, agreement, documents, certificates, directions and notices shall be conclusive evidence of the approval thereof by the Authorized Officer taking such action and of its necessity, advisability or appropriateness.

**Section 3. Effective Date.**

This Resolution shall take effect in accordance with the provisions of the Act.

\_\_\_\_ Mr. Hodes \_\_\_\_ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by \_\_\_\_ Mr. Edwards \_\_ and upon roll call the following members voted:

**AYE:** Roger B. Jacobs  
Joshua Hodes  
Andrew Sidamon-Eristoff (represented by Steven Petrecca)  
Rochelle Hendricks (represented by Gregg Edwards)

**NAY:** None

**ABSTAIN:** None

**ABSENT:** Ridgeley Hutchinson

The Chair thereupon declared said motion carried and said resolution adopted.

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**RESOLUTION OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
APPROVING THE "NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY  
POST-ISSUANCE COMPLIANCE POLICY FOR TAX-ADVANTAGED  
OBLIGATIONS"**

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**WHEREAS,** The New Jersey Educational Facilities Authority (the "Authority") was created as a public body corporate and politic of the State of New Jersey pursuant to the New Jersey Educational Facilities Authority Law (being Chapter 72A of Title 18A of the New Jersey Statutes, as amended and supplemented), *N.J.S.A. 18A:72A-1 et seq.* (the "Act") to provide a means for New Jersey public and private colleges and universities to construct facilities through the financial resources of a public authority empowered to sell tax-advantaged obligations; and

**WHEREAS,** In connection with enforcement activities, the Internal Revenue Service ("IRS") has encouraged issuers of tax-advantaged bonds to adopt policies and procedures in order to facilitate compliance with federal tax rules and has provided guidance to issuers regarding matters to be addressed in such policies and procedures; and

**WHEREAS,** The IRS asks issuers to disclose in filings related to the issuers' tax-advantaged bonds whether the issuers have written post-issuance compliance policies and procedures; and

**WHEREAS,** The IRS has established a program pursuant to which issuers may correct deficiencies in compliance under which penalties for noncompliance may be reduced if an issuer has adopted written post-issuance compliance procedures which satisfy certain IRS guidelines; and

**WHEREAS,** The Authority has previously implemented post-issuance compliance policies and procedures following IRS guidelines and wishes to consolidate these policies and procedures in the "New Jersey Educational Facilities Authority Post-Issuance Compliance Policy For Tax-Advantaged Obligations" in order to make compliance more efficient and clarify the relationship of the Authority with the colleges and universities for which the Authority issues such Obligations; and

**WHEREAS,** The staff has advised the Members that it is advisable to approve and implement the Policy;

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY EDUCATIONAL FACILITIES AUTHORITY, AS FOLLOWS:**

- Section 1.** The Authority hereby approves and adopts the “New Jersey Educational Facility Post Issuance Compliance Policy for Tax-Advantaged Obligations” (the “Policy”) in the form attached hereto as Exhibit A.
- Section 2.** The Authority hereby authorizes and directs the Executive Director to amend the Policy in order to comply with changes in law and in post-issuance compliance policies and procedures announced by the IRS. The Executive Director is also authorized to amend the Policy as the Executive Director determines will make implementation of the Policy more efficient from an administrative standpoint.
- Section 3.** The Authority hereby authorizes and directs the Executive Director to take all necessary and appropriate action to implement the Policy.
- Section 4.** All prior actions taken in developing and implementing the Authority’s post issuance compliance policies and procedures and in consolidating them in the Policy are hereby ratified and confirmed.
- Section 5.** This Resolution shall take effect in accordance with the provisions of the Act.

\_\_\_ Mr. Hodes \_\_\_ moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by \_\_\_ Mr. Petrecca \_\_\_ and upon roll call the following members voted:

**AYE:** Roger B. Jacobs  
Joshua Hodes  
Andrew Sidamon-Eristoff (represented by Steven Petrecca)  
Rochelle Hendricks (represented by Gregg Edwards)

**NAY:** None

**ABSTAIN:** None

**ABSENT:** Ridgeley Hutchinson

The Chair thereupon declared said motion carried and said resolution adopted.

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## New Jersey Educational Facilities Authority

### Post-Issuance Compliance Policy For Tax-Advantaged Obligations

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### Purpose

This Post-Issuance Compliance Policy (the "Policy") sets forth policies of the New Jersey Educational Facilities Authority (the "Authority") designed to monitor compliance of tax-advantaged obligations issued by the Authority (the "Obligations")<sup>1</sup> with (a) applicable provisions of the Internal Revenue Code of 1986 as amended (the "Code") and regulations promulgated thereunder ("Treasury Regulations"), (b) requirements of the U.S. Securities and Exchange Commission (the "SEC") and the Municipal Securities Rulemaking Board ("MSRB") under SEC Rule 15c2-12 (the "Rule") regarding secondary market disclosure filings relating to the Obligations, and (c) contractual agreements relating to the Obligations.

The Authority recognizes that compliance with applicable provisions of law is an ongoing process, necessary during the entire term of the Obligations. Accordingly, analysis of information and implementation of this Policy will require continual monitoring and likely, ongoing consultation with bond counsel. Further policies and procedures may be identified from time to time by Authority staff in consultation with bond counsel.

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### Financing Program

The New Jersey Educational Facilities Authority (the "Authority") was created pursuant to Chapter 271 of the Public Laws of 1967, *N.J.S.A. 18A:72A-1 et seq.*, as amended and supplemented (the "Act"), to provide a means for New Jersey public and private colleges and universities (the "Institutions") to

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<sup>1</sup> For purposes of this Policy, Obligations include (a) obligations the interest on which is excludable from gross income for federal income tax purposes pursuant to the Code and Treasury Regulations, and (b) obligations the interest on which is not excludable from gross income for federal income tax purposes, but federal law otherwise requires such obligations to satisfy requirements of the Code and Treasury Regulations applicable to tax-exempt obligations.

construct facilities through the financial resources of a public authority empowered to sell taxable and tax-exempt bonds, notes and other obligations. The Authority also, from time to time, issues bonds for various purposes that are secured by a contract with the State Treasurer to pay principal of and interest on such bonds subject to appropriations being made, from time to time, by the New Jersey State Legislature.

The Authority finances and refinances various types of educational facilities projects for the Institutions, including but not limited to, the acquisition and construction of residential, academic and auxiliary service facilities, renovation and rehabilitation of existing educational facilities.

The obligations issued by the Authority are special and limited obligations of the Authority and are not a debt or liability of the State of New Jersey or of any political subdivision thereof other than the Authority, and are not a pledge of the faith and credit of the State of New Jersey or of any such political subdivision thereof. The Authority has no taxing power. The obligations issued by the Authority are payable solely from amounts received by the Authority under the bond documents and amounts on deposit in certain funds established under the bond documents. Certain state-backed bond programs for higher education and public library facilities provide that debt service will be paid by the State Treasurer pursuant to a contract between the Authority and the State Treasurer, subject to annual appropriation by the Legislature.

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## **Policy Statement**

After Obligations are issued, the compliance process includes a focus on use and investment of proceeds of the Obligations and includes:

- Tracking bond proceeds spending for qualified and nonqualified purposes;
- Maintaining detailed records of expenditures and investments;
- Ensuring that the facilities financed are used in a manner consistent with legal and tax requirements;
- Providing necessary disclosure information regarding financial and operating status.
- Maintaining adequate records.

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## **Policy Sections**

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### **I. Organizational Responsibility**

The Executive Director has overall responsibility for post-issuance compliance for Obligations issued by the Authority and may delegate such responsibilities to a "Compliance Officer" who will have primary responsibility for post-issuance compliance to ensure and monitor post-issuance matters with respect to Obligations. The Compliance Officer shall initially be the Director of Risk Management and the Executive Director shall be responsible for assuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

In the case of Obligations for which the Authority must review and approve requisitions, the Authority's Accounting Department shall review requisitions to assure that proceeds are expended on projects as authorized in the applicable bond documents, that reimbursement of pre-issuance costs are permissible, and to determine when projects are completed and/or placed in service (including for Build America Bonds). Where required by bond documents, the Accounting Department shall also direct investment of proceeds, review monthly bank statements from trustees or custodians and engage a Rebate Service Provider for each issue of Authority obligations and provide copies of written reports to the Institution and the Compliance Officer. Accounting will consult with the Compliance Officer if questions arise relating to the foregoing matters.

The Compliance Officer shall work with the Institutions to provide information and training on developing and implementing post-issuance compliance policies, tracking expenditures, allocating sources of funding between proceeds and other funds, identifying and monitoring private use and reviewing rebate reports.

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## **II. Tracking Expenditures**

The Authority's bond documents shall require the Institutions to maintain records regarding the use and allocation of bond proceeds and other sources of funding for financed facilities. In cases where the Institution submits requisitions to the Authority, the Authority's Accounting Department shall maintain copies of approved requisitions and copies of invoices. Requisitions must be accompanied by copies of invoices for Contractor/Architect/Engineering bills and any other items over \$20,000 before being approved.

For bonds issued after 2011, the Authority's bond documents will also require the Institutions to monitor the application and use of bond proceeds on an ongoing basis and to inform the Authority of events relating to use of bond proceeds and financed facilities which may result in private use or other issues which must be analyzed for compliance with federal tax law. The documents will also require the Institutions to cooperate with the Authority in seeking advice from bond counsel and remediation, if necessary. For Obligations with open trustee held accounts, the Authority will require the Institutions to review use and investment of bond proceeds with the Authority at least once a year until the final allocation is made. The Compliance Officer will work with the Institutions and bond counsel, if necessary, to assist in making a final allocation of expenditures for a bond-financed project when required under the Code and applicable regulations. For Obligations for which a final allocation has been made, the Authority will send an annual questionnaire to the Institutions, asking for updated information about use of financed facilities and other appropriate matters.

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### **III. Private Business Use**

Private business use refers to the use of bond-financed property in a trade or business by any person other than a state or local governmental entity in the case of an Institution that is a state college or a 501(c) (3) entity or a state or local governmental entity, or by a 501(c) (3) entity in an unrelated trade or business entity in the case of an Institution that is a 501(c) (3) entity. The Authority's Obligations will lose their tax advantaged status if more than a specified percentage<sup>2</sup> of the proceeds (in the case of state colleges) or net proceeds<sup>3</sup> (in the case of 501(c)(3) institutions) of the bond issuance are used for any private business use and are repayable or secured by "private business payments". Because the IRS considers the use of bond proceeds to finance bond issuance costs of 501(c)(3) entities as PBU, the allowable PBU percentage is reduced by the cost of issuance percentage<sup>4</sup>.

Special legal entitlements to property financed with Obligations 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 use in a college setting often include food service contracts, book store contracts, private research and summer camps. Exceptions exist to private business use for short term and incidental use arrangements.

The Authority's bond documents will require the Institutions to consult with the Compliance Officer when contracts or arrangements that might involve private use are entered or modified and to maintain copies of relevant contracts and arrangements. The Compliance Officer will seek the advice of bond counsel where appropriate. The Compliance Officer will confirm as part of the annual review referred to in Section II that the requirements relating to private business use are met.

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### **IV. Record Retention**

Authority bond documents will require the Institutions to maintain all relevant records relating to Authority Obligations. In addition, the Authority will retain documents it receives directly from the Institutions or third parties. These documents include closing transcripts, investment and other agreements to which the Authority is a party, bank statements, rebate reports and requisitions if the foregoing documents are provided to the Authority. Both the Institutions and

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<sup>2</sup> The specified percentage is in the case of state colleges, 10%, unless the private business use is unrelated or disproportionate to the governmental use, in which case the limit is reduced to 5% and in the case of 501(c) (3) entities, 5%.

<sup>3</sup> Under IRC section 150(a)(3), "net proceeds" means the proceeds of the issue (which under IRS Regulation 1.141-1 generally means the sale proceeds plus investment proceeds less proceeds held in a reserve fund.

<sup>4</sup> IRC Section 147(g) limits the amount of bond proceeds that may be applied to finance the costs associated with the issuance of qualified 501(c)(3) bonds to 2% of the proceeds of the bond issue.



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, plus any refunding, plus three years per IRS regulations.

Basic records relating to Obligations include the transcript as well as documentation evidencing the:

- Expenditures and investment of bond proceeds;
- Use of debt-financed property; and
- Sources of payment or security for the bonds.

The Authority will rely on the Institutions for specific records relating to application of bond proceeds and possible private business use. The Authority will provide a Post Issuance Compliance Checklist at the closing of each new issue of Obligations to each Institution which will assist the Institution in identifying the specific department of thereof with responsibility for aspects of post issuance compliance monitoring and record keeping requirements. The Post Issuance Compliance Checklist will identify classes or other sources of training and manners of record retention (whether physical or electronic). No employee of the Authority or an Institution shall discard or destroy any information identified in the inventory during the period such records are required to be maintained.

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## **V. Arbitrage and Rebate**

Obligations lose their tax advantaged 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. The Code contains two separate sets of requirements that must be complied with to ensure that Obligations are not arbitrage bonds. They are:

- Yield Restriction requirements, which generally provide that in the absence of an applicable exception, bond issue 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 Institutions in monitoring yield on investments and calculating any rebate that may be due. The Compliance Officer will work

with the Accounting Department and each Institution and Servicer to review the yield on investments as reported by the Servicer and to ensure the accuracy of the Servicer's calculations of possible rebate liability. If the Servicer provides a written report that rebate is due, the Institution will make any required payments to the IRS .

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## **VI. Credit Enhancement or Other Agreements Relating to Bonds.**

Authority bond documents will require the Institutions to notify the Compliance Officer of any extension or alteration of any credit enhancement relating to an Institution's tax-exempt debt or of any changes to other agreements relating to Authority Obligations such as guaranteed investment contracts or derivative products. The Compliance Officer will work with the Institutions to assure that any changes meet post-issuance compliance requirements. The Compliance Officer will also monitor information relating to the ratings of the Institutions and counterparties to such agreements to assure that provisions of such agreements are fulfilled.

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## **VII. Disclosures and Filings**

For Obligations to which SEC Rule 15c2-12 applied, the Authority requires each Institution to enter into Continuing Disclosure Agreements with the trustee for the applicable Obligations. Pursuant to these Agreements, the Institutions agree to comply with continuing disclosure requirements under SEC Rule 15c2-12. In addition, the Authority will require in bond documents, or will request, as applicable, copies of reports sent to credit providers and insurance companies and other parties to transactions, information about the condition and use of buildings and compliance with covenants of the borrowers including financial covenants.

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## **VIII. Continuity and Training**

The Compliance Officer will receive periodic training regarding the tax and other requirements applicable to Obligations and provide periodic training to staff with responsibilities relating to the procedures set forth above. Such training will cover the purposes and importance of these procedures. The Compliance Officer will also interact with and train or provide information about training to applicable representatives of the Institutions.

To provide for continuity of compliance with post-issuance debt requirements, the Authority will periodically review this policy to assure that it comports with current law.

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## **IX. Remedial Action**

Authority bond documents will require that the Institutions notify the Authority of events which may affect the permissible use and investment of bond proceeds and to cooperate with the Authority in seeking remedial action with respect to such events. The Compliance Officer, either directly or through workshops and conferences will interact with the Institutions to inform them about private use, changes in use and other events which could necessitate remedial action pursuant to Treasury Regulation 1.141.-12 or seeking a Voluntary Closing Agreement (VCAP).