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Chapter: Fiscal and Administrative Affairs

Modification No. 001

Subject: **Tax-Exempt Bond Compliance**

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- I. Montgomery College has participated in several municipal bond transactions involving revenue bonds secured, in part, by a pledge of lease payments to be made by the College under long-term leases. The College may in the future participate in financings or refinancings in which lease or similar College commitments are a part of the security for the bonds or in special cases, it may issue bonds itself.
- II. It is the policy of the College that the College shall comply with the disclosure requirements of all federal securities laws and regulations applicable to the bond issues in which the College participates, as well as with the contractual obligations under continuing disclosure agreements entered into by the College in connection with such bond issues and that the College shall establish procedures that (i) are reasonably designed to result in accurate, timely, and complete disclosures both at the time of bond issuance and thereafter, (ii) designate the officers and personnel that are responsible for making disclosure, (iii) require reports to the president if post-issuance disclosures are not timely made, and (iv) require regular training of personnel responsible for the disclosures.
- III. It is the policy of the College that the College shall comply with the requirements of the Internal Revenue Codes of 1986, as amended, and regulations of the Internal Revenue Service that are applicable to tax-exempt bond issues in which the College participates, as well as with the undertakings of the College in related bond documents and tax certificates and that the College shall establish procedures that (i) are reasonably designed to assure such compliance, (ii) designate the officers and personnel who are responsible for maintaining the records relating to each bond issue necessary to demonstrate compliance with the tax laws, for filing post-issuance reports and arbitrage calculations and, if necessary, making required rebate payments, and for complying with any applicable restrictions on the use of tax-exempt bond financed projects, (iii) require reports to the president if the College fails to comply with tax requirements relating to a bond issue, and (iv) require regular training of personnel responsible for tax compliance.
- IV. To the extent determined to be necessary or desirable by the president, the College will continue to engage on an as-needed basis the services of legal counsel, a financial advisor and a rebate consultant in connection with ongoing compliance matters related to tax-exempt bonds.
- V. This policy is not intended to replace existing reporting mechanisms for matters such as channels of communication for reporting suspected fraud and financial wrongdoing or other reporting obligations or mechanisms.
- VI. This policy of the College is intended to be applicable to all bond financings in which the College is involved either as a participant or a bond issuer.
- VII. The president is authorized to establish procedures necessary to implement this policy.

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Board Approval: October 20, 2014

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I. Definitions:

- A. Bond – any bond or similar obligation which is either issued by the College or secured in whole or in part by lease or other obligations of the College.
- B. Continuing Disclosure Agreement – a contractual obligation of the College that is entered into in connection with an issue of Bonds to provide disclosure about College Information after the date of issuance of the Bonds, usually in the form of a continuing disclosure agreement for each offering of Bonds.
- C. Code - the Internal Revenue Code of 1986, as amended.
- D. College Information - information about the College, its operations and finances, legal obligations, financial statements and other information material to the applicable Bonds that either (1) is contained in the Official Statement for an issue of Bonds and for which the College is responsible under the applicable bond purchase agreement or similar agreement or (2) is, under an applicable Continuing Disclosure Agreement, part of the College's undertaking for post-issuance disclosure obligations.
- E. Digital Assurance Certification (DAC) – a EMMA gateway agent who provides post-issuance securities and tax compliance services to municipal securities market participants.
- F. Disclosure - any information or communications reasonably likely to reach investors or the securities markets, including Official Statements containing College Information, filings made by the College with the MSRB, EMMA or the national repositories (whether required by Continuing Disclosure Agreements or made voluntarily), press releases which could reasonably be construed as intended for the financial markets, investor calls, rating agency presentations and other communications, and certain postings on the College's website.
- G. Electronic Municipal Market Access (EMMA) - the MSRB's electronic municipal market access system.
- H. IRS - the Internal Revenue Service.
- I. MSRB - the Municipal Securities Rulemaking Board.
- J. Official Statement - the preliminary and final official statements or other offering materials for an issue of Bonds that contain College Information.
- K. Reportable Events - the events set forth in Section IV.E below with respect to any Bonds.

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- L. Required Annual Disclosure - the annual audited financial statements of the College and an annual bond disclosure report containing the College Information specified in the Continuing Disclosure Agreements.
- M. Responsible Disclosure Officer - the officer described in Section II as having responsibility for Disclosures relating to Bonds and for carrying out the Procedures set forth in Sections II, III and IV of these Procedures. The Chief Financial Officer has been designated as the Responsible Disclosure Officer.
- N. Rule - Rule 15c2-12 under the Securities Exchange Act of 1934, as amended.
- O. Tax Certificate - a certificate, memorandum or other similar document prepared by the bond counsel with respect to a tax-exempt Bond issuance that identifies the applicable requirements of the Code and related regulations and other federal tax laws and sets forth such material facts and reasonable expectations of the College relevant to such requirements.
- P. Tax Compliance File - the tax-exempt obligation issuance compliance file or collection of files maintained by the College pursuant to Section V. D. below.
- Q. Tax Compliance Officer - the officer of the College designated in Section V.B as having responsibility for carrying out the Procedures set forth in Sections V, VI and VII. The Chief Financial Officer has been designated as the Tax Compliance Officer.
- II. Bond Offering Disclosures
- The Chief Financial Officer has been designated as the Responsible Disclosure Officer and shall be responsible for (i) assuring that Disclosures by the College in connection with the issuance of Bond are in compliance with federal securities laws and regulations, (ii) overseeing the compilation College Information contained in Official Statements prepared in connection with the offering and issuance of Bonds and (iii) overseeing other Disclosure obligations of the College undertaken in connection with such Bond issuance. In the carrying out of these responsibilities, the Responsible Disclosure Officer shall coordinate with, and be provided with assistance from, the General Counsel. The Responsible Disclosure Officer shall make available to the members of the Board of Trustee drafts of the preliminary Official Statement in substantially final form for review and approval by the Board of Trustees of such substantially final form of the preliminary Official Statement. The Responsible Disclosure Officer shall be responsible for certifying to the accuracy and completeness of all financial and other College Information contained in the Official Statement, including confirmation that there are no material differences in presentation of financial material in the Official Statements from the College's most recent audited financial statements, except such differences as may be necessary to update such audited financial statements or are disclosed in the Official Statement. The Responsible Disclosure Officer shall be responsible for Disclosures of the College made to rating agencies and any potential bond purchasers.
- III. Post –Issuance Continuing Disclosure
- A. Background: The Rule prohibits underwriters from purchasing and selling most municipal bond obligations unless the underwriter has reasonably determined

that the issuer of those obligations (or each obligated party) has made a contractual undertaking to provide certain disclosures prescribed in the Rule, including annual financial information, audited financial statements, and event notices.

- B. Generally: To facilitate compliance with the Rule, the College enters into a Continuing Disclosure Agreement for each offering of Bonds thereby contractually promising to provide the market with certain disclosures about College Information. The Continuing Disclosure Agreements can differ from each other, including the scope of the College Information and the deadline prescribed for the College's filing of annual financial information. Until the termination of the Continuing Disclosure Agreements, the College will adhere to the requirements set forth in these post-issuance Continuing Disclosure Agreements to ensure compliance with the College's continuing disclosure undertakings.
  - C. Responsibility: The Responsible Disclosure Officer and the General Counsel are responsible for negotiating the terms of each Continuing Disclosure Agreement. The Responsible Disclosure Officer is responsible for making Disclosures in order to comply with the terms of each Continuing Disclosure Agreement and reporting all failures to make required Disclosures to the President.
- IV. Annual Financial Information:
- A. Filing Responsibility: The Responsible Disclosure Officer will file or cause to be filed with the MSRB through EMMA not later than 270 days after the end of each fiscal year of the College the Required Annual Disclosure in accordance with each Continuing Disclosure Agreement.
  - B. Required Annual Disclosure: The Required Annual Disclosure shall be developed by the College and made available to the Responsible Disclosure Officer, who should provide a substantially final draft of the Required Annual Disclosure (with a description of any missing information) to the President at least 90 days before the submission date specified above.
  - C. Consultation: To the extent deemed necessary by the Responsible Disclosure Officer, the College will consult with the General Counsel and any outside counsel designated by the General Counsel regarding the Required Annual Disclosure report prior to filing the report with Digital Assurance Certification (DAC) to submit to the MSRB through EMMA.
  - D. Unavailability of Information: In the event that all or part of the Required Annual Disclosure is not completed in time to submit such financial statements to DAC to report to the MSRB through EMMA within the time required by the applicable Continuing Disclosure Agreement, the Responsible Disclosure Officer will notify the President and will file or cause to be filed a notice of such event with the MSRB through EMMA on or before the date required for submission of such Required Annual Disclosure, together with a statement to the effect that the unavailable portions of the Required Annual Disclosure is not available on the date of such filing, and submit such unavailable portion as soon as it becomes available.

E. Event Filings

1. Responsibility and List of Events: The Responsible Disclosure Officer will file or cause to be filed, in a timely manner not in excess of ten business days after the occurrence of a Reportable Event with the MSRB through EMMA notice of the occurrence of any of the Reportable Events with respect to any Bonds. Reportable Events are:
  - a. Principal and interest payment delinquencies;
  - b. Non-payment related defaults, if material;
  - c. Unscheduled draws on debt service reserves reflecting financial difficulties;
  - d. Unscheduled draws on credit enhancements reflecting financial difficulties;
  - e. Substitution of credit or liquidity providers, or their failure to perform;
  - f. Adverse tax opinions or events affecting the tax-exempt status of interest on the Bonds, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds;
  - g. Modifications to the rights of securities holders, if material;
  - h. Bond calls, if material, and tender offers;
  - i. Defeasances;
  - j. Release, substitution, or sale of property securing repayment of the Bonds, if material;
  - k. Rating changes;
  - l. Bankruptcy, insolvency, receivership or similar event with respect to the College;
  - m. The consummation of a merger, consolidation, or acquisition involving the College or the sale of all or substantially all of the assets of the College, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
  - n. Appointment of a successor or additional trustee or the change of name of a trustee, if material.
2. Timely Identification of Events: The Responsible Disclosure Officer, or his or her designee, will ask appropriate members of the College staff if they are aware of the occurrence of any of the Reportable Events or any other matters that they believe should be disclosed publicly in relation to the Bonds. The Responsible Disclosure Officer shall advise the appropriate College staff members that whenever any such staff member obtains knowledge of the occurrence of a Reportable Events, the staff member shall promptly report it to the Responsible Disclosure Officer

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3. Fiscal Year Changes: The Responsible Disclosure Officer will file or cause to be filed with the MSRB through EMMA a notice of any change to the College's fiscal year not later than the date on which the College makes public through the filing on EMMA any information in the then current fiscal year of the College.
  4. Consultation: To the extent deemed necessary or appropriate by the Responsible Disclosure Officer, the College will consult with General Counsel regarding any Reportable Event filing prior to filing it with the MSRB through EMMA
- F. MSRB Filings: The documents and notices required to be submitted to the MSRB shall be submitted through EMMA in an electronic format, and shall be accompanied by identifying information, in the manner prescribed by the MSRB, or in such other manner as is consistent with the Rule. The College shall reference the CUSIP prefix number for the Bonds or other obligations in any filing with the MSRB through EMMA.
  - G. Obligated Persons: The Responsible Disclosure Officer will ensure that other persons or entities that are under the College's control (such as tenants or contract parties) and are required to submit documents, information or notices to the MSRB in connection with Bonds are aware of their continuing disclosure obligations in connection with such Bonds.
  - H. Voluntary Filings: The Responsible Disclosure Officer shall evaluate whether an event which is not listed in any Continuing Disclosure Agreement as a Reportable Event is appropriate for disclosure by the College on a voluntary basis, based on investor demand or otherwise. Upon a determination that a voluntary notice should be filed, the Responsible Disclosure Officer shall, in consultation with the General Counsel, prepare a draft of such notice. The Responsible Disclosure Officer shall file such voluntary notice in the appropriate repositories once such notice has been approved by the Responsible Disclosure Officer and the General Counsel.
  - I. Press Releases: Press releases for the College are prepared by the College's Department of Advancement and Community Engagement. Any press release to be made which could reasonably be construed as intended for the financial markets shall be submitted by the Department of Advancement and Community Engagement to the Responsible Disclosure Officer and General Counsel for review and approval prior to its dissemination.
  - J. Investor Communications: The Responsible Disclosure Officer shall be responsible for overseeing the responses to all telephone, email and other inquiries from existing and potential investors in the Bonds. All College staff shall transfer such inquiries to the Responsible Disclosure Officer (or delegated staff under his or her supervision). Investors shall be directed to information provided on the College's website or shall be given a written response to any inquiry whenever practicable.
  - K. Rating Agency Communications: All information provided by the College or for the College at its direction to any rating agency providing a rating for the Bonds

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shall be reviewed for accuracy and completeness and approved by the Responsible Disclosure Officer.

V. Tax Compliance Procedures

- A. Background: The College recognizes the need to establish written procedures to monitor compliance with tax-exempt bonds requirements set forth in Sections 103 and 141-150 of the Code and to ensure that all nonqualified bonds of an issue of tax-exempt Bonds are remediated pursuant to the Code. The Procedures in Parts IV, V and VI establish a commitment to timely and completely comply with applicable requirements and proper documentation of such compliance. It is the expectation of the College that adherence to these Procedures will help to ensure that the College will meet the Code requirements applicable to tax-exempt Bonds. The advantages of written procedures are as follows:
1. promoting consistency and continuity in record keeping.
  2. identifying and training the College officials and staff having responsibility for implementing the actions described.
  3. identifying the objectives to be met by undertaking the actions described.
  4. demonstrating a commitment to initial and continued compliance with Code requirements for tax-exempt obligations.
- B. Tax Compliance Officer: The Chief Financial Officer of the College has been designated as the Tax Compliance Officer, who shall be responsible for the implementation of the procedures under Section V, VI and VII and shall report to the President any violations thereof that could reasonably be expected to adversely affect the tax-exempt status of Bonds and any remedial actions that are being considered.
- C. Tax-Exempt Obligations Issuance Compliance File: The Tax Compliance Officer is responsible for ensuring that the College's Foundation, who issues the bonds, establishes a Tax Compliance File (which may be a collection of files) for each tax-exempt Bond issuance. The Tax Compliance Officer will annually review the Tax Compliance File, and check it with respect to the College's compliance requirements. The Tax Compliance File shall include the following unless the Tax Certificate makes another financing participant responsible for compliance with the IRS requirement:
1. the Tax Certificate, including supporting certifications and analyses,
  2. copy of the completed Form 8038 or such other similar form required by the IRS, with proof of timely filing,
  3. a tickler sheet identifying rebate compliance dates for the tax-exempt obligation issue,
  4. copies of rebate compliance analyses and computations,
  5. Bond proceeds expenditure listing identifying the timing, amounts and purposes of tax-exempt obligation proceeds expenditures,
  6. Bond proceeds investment listing identifying the investment of tax-exempt obligation proceeds prior to their expenditure and the earnings from such investment,

7. copy of final Bond proceed allocation, showing final amounts and purposes of tax-exempt obligation proceeds expenditures,
8. project use listing showing, as applicable, the governmental agency having operational control over any tax-exempt Bond issuance funded project, and/or any entity using any tax-exempt Bond issuance funded project and location of related documentation, such as leases or management contracts, if any,
9. a remediation log, if applicable, identifying any change in use of tax-exempt Bond issuance financed projects, including any related supplemental tax certifications or other related documentation,
10. financing history log listing significant events relating to the Bond, including early redemption, refunding, defeasance or material modification to the tax-exempt obligation debt instruments or supporting documentation, and
11. IRS correspondence log, if applicable, listing any correspondence with the IRS with respect to the tax-exempt obligation issue.

#### VI. Compliance Activities

- A. Tax Certificate: The Tax Compliance Officer shall review and comply with tax-exempt Bond tax compliance requirements set forth in the Tax Certificate and any supporting or supplemental directions prepared by bond counsel. As requested, the Tax Compliance Officer will provide to bond counsel the material facts and reasonable expectations relevant to each issuance of tax-exempt so that bond counsel can prepare a Tax Certificate for the Bond issuance which identifies the applicable federal tax law requirements and sets forth such material facts and reasonable expectations of the College relevant to such federal tax law requirements. The Tax Certificate may include supporting certifications from the financial advisor, the bond purchaser or other participants to the financing. The Tax Compliance Officer will review the certifications set forth in the Tax Certificate and confirm their accuracy to the extent such facts and expectations are attributed to or within the knowledge of the College or its officials.
- B. Secondary Market Trading Activity, if applicable: To the extent required by the Tax Certificate, the Tax Compliance Officer shall require underwriters for Bonds to provide a "reoffering issue price" certification.
- C. Compliant Use and Timely Expenditure of Bond Proceeds: The College shall only issue Bonds or participate in the issuance of Bonds if the proceeds thereof that are to be used or controlled by the College are expected to be used for purposes permitted by the Tax Certificate.

#### VII. Tax-Exempt Obligations Post-Issuance Compliance Activities

- A. Record-keeping: The Tax Compliance Officer is responsible for ensuring that all Tax Compliance Files are maintained by the College's Foundation who issued the bonds for the life of the Bonds plus three years.
- B. Arbitrage: To the extent that the College controls investment of Bond proceeds, the Tax Compliance Officer will invest, and, when applicable, yield restrict tax-exempt Bond proceeds in accordance with the applicable Tax Certificate, and

timely determine and, when applicable, pay arbitrage rebate liability payments (or payments in lieu of rebate), in accordance with the Tax Certificate.

- C. Expenditure of Proceeds: To the extent that the College controls expenditures of Bond proceeds, the Tax Compliance Officer will expend, or cause to be expended, tax-exempt Bond proceeds for the projects and purposes stated in the Tax Certificate, or obtain verification by bond counsel that alternative expenditures are in compliance with applicable requirements. The Tax Compliance Officer may in the Tax Certificate acknowledge that current IRS regulations require a final allocation of proceeds to expenditures made or controlled by the College must be made no later than 18 months after the later of the date the expenditure is paid or the date such project is placed in service and, in any event, no later than 60 days after the fifth anniversary date of the subject issue of tax-exempt Bonds. The Tax Compliance Officer will timely allocate tax-exempt Bond proceeds to such expenditures in accordance with the Tax Certificate and establish and maintain a record of the final expenditure of tax-exempt Bond proceeds, such record to be included in the Tax Compliance File.
- D. Use of Tax-Exempt Bond Funded Projects: The Tax Compliance Officer will assure that the College uses tax-exempt Bond funded projects in accordance with the Tax Certificate, or obtain verification by bond counsel that alternative uses are in compliance with applicable requirements. The Tax Compliance Officer will establish and maintain a record of the use of such projects, such record to be included in the Tax Compliance File. In connection with the ownership, use or management of any such projects by another entity that is controlled by the College (including tenants, subtenants or licensees of the College), the Tax Compliance Officer will secure representations and/or agreements from such owner, user or manager that such projects are and will be used in accordance with the Tax Certificate and that facility will remain a qualified facility while continuously monitoring the use of the projects.
- E. Identification and Remediation of Violations: To the extent that the College exercises control over the following, the Tax Compliance Officer will (i) ensure compliance with requirements of the Code regarding the proper expenditure of Bond proceeds, proper investment of Bond proceeds and proper use of the tax-exempt Bond funded projects, and (ii) timely remediate any violations regarding the proper use of such projects in accordance with Code and IRS regulations, as applicable, or seek relief under the IRS voluntary compliance agreement program (VCAP) in appropriate circumstances. The Tax Compliance Officer shall require each owner, user and manager of any tax-exempt Bond funded project that is under its control undertake responsibility for timely notifying the College upon its discovery of any violation or noncompliance with its representations or certifications.
- VIII. Training and Other Matters
- A. Training: As long as there are Bonds outstanding, to the extent deemed necessary or appropriate by the Responsible Disclosure Officer or Tax Compliance Officer, as applicable, the General Counsel shall be consulted regarding the training of College staff about these Procedures. The General Counsel and Responsible Disclosure Officer shall be responsible for coordinating

regular training sessions for College staff and Board members about their obligations under the federal securities laws and regulations, the Code and IRS regulations, the Continuing Disclosure Agreements and Tax Certificates and other federal and state laws affecting the College's issuance of Bonds. Training shall be provided for general background and overview purposes and, as applicable, to update College staff and Board members concerning recent changes in applicable laws or regulations.

- B. Procedures Scope: The Procedures are intended to assist in compliance with the requirements of federal securities and tax laws (including the Code and the Rule) and Continuing Disclosure Agreements, respectively, to the extent described herein. These Procedures are not intended to address any other federal, state or local government requirement, or any contractual obligations, that may be applicable to the College.

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Administrative Approval: July 18, 2016