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Memorandum

TO: Members of the Legislative Audit Committee

FROM: Sally Symanski, CPA
State Auditor

DATE: October 18, 2007

RE: Higher Education TABOR Enterprise Status

Under Section 23-5-101.7, C.R.S, a higher education governing board may designate its respective institution(s) as an enterprise for purposes of Article X, Section 20, of the Colorado Constitution (Taxpayer's Bill of Rights or TABOR). Entities that meet the definition of a TABOR enterprise are exempt from the growth and spending limitations of TABOR. The Office of the State Auditor and the Legislative Audit Committee are required to review whether such designations meet the requirements of a TABOR-exempt enterprise. In August 2004, the Legislative Audit Committee reviewed and approved the designation of the University of Colorado as a TABOR enterprise for Fiscal Year 2005. In 2005, the Committee reviewed and approved the designation of ten additional higher education institutions as TABOR enterprises for Fiscal Year 2006.

Final determination of enterprise status is made at the end of each fiscal year after final financial information is known. This memo provides the final enterprise status of the institutions for Fiscal Year 2007 and their projected enterprise status for Fiscal Year 2008. Based on our review, all of the institutions that have been designated as TABOR-exempt enterprises qualified for enterprise status for Fiscal Year 2007. However, it is projected that three of the institutions will not qualify as a TABOR enterprise for Fiscal Year 2008. We provide some background information below and our analysis of enterprise status begins on page 4.

Background: Fee-For-Service Contract Purchases and College Opportunity Fund Stipends

The General Assembly passed Senate Bill 04-189 during the 2004 Legislative Session, which changed the process for funding postsecondary education. The Bill established the College Opportunity Fund (COF) as a trust fund to provide financial assistance to eligible undergraduate college students through stipend payments. To obtain the stipend, an eligible undergraduate student must apply for the stipend and be admitted to a state or private participating institution of higher education. Once this is accomplished, an institution requests CollegeAssist to provide the stipend payment to the institution so the funds can be applied against the student's in-state tuition cost. Qualified students receive stipend payments on a credit hour basis for undergraduate instruction up to a life-time limitation of 145 credit hours. If students have already completed their baccalaureate degree, they may receive stipend payments for an additional 30 undergraduate credit hours.

The stipend payment for Fiscal Year 2007 was \$86 per credit hour, and for Fiscal Year 2008 is \$89 per credit hour.

Senate Bill 04-189 also directed the Colorado Commission on Higher Education (Commission) to acquire educational services from state institutions of higher education. On behalf of the Commission, the Department of Higher Education was authorized to enter into fee-for-service contracts with higher education governing boards to purchase such services. The Bill, as amended in subsequent years, authorized the purchase of the following services:

- Educational services in rural areas or communities in which the cost of delivering the educational services is not sustained by the amount received in student tuition.
- Educational services required of the Commission to meet its obligations under reciprocal agreements (i.e., agreements for obtaining waivers of the nonresident differential in tuition rates for Colorado residents attending higher education institutions in other states in exchange for Colorado institutions waiving the nonresident differential in tuition rates for residents of the other states).
- Graduate school services.
- Educational services that may increase economic development opportunities in the State, including courses to assist students in career development and retraining. Beginning with Fiscal Year 2008, the Department of Higher Education decided not to purchase economic development and preservation services but purchase other services instead.
- Specialized educational services and professional degrees including, but not limited to, the areas of dentistry, medicine, veterinary medicine, nursing, law, forestry, and engineering.

For Fiscal Year 2007, the General Assembly appropriated \$581,473,896 to the College Opportunity Fund for COF stipends and the acquisition of educational services. Participating private institutions (i.e., University of Denver and Regis University) were appropriated \$774,000 for COF stipends. Of the \$580,699,896 appropriated for state institutions, \$313,860,811 was designated for COF stipends and \$266,839,085 was for fee-for-service contracts.

For Fiscal Year 2008, the total amount appropriated to the College Opportunity Fund for state and private institutions increased about 8 percent to \$628,568,032. The appropriation for COF stipends for participating private institutions was \$934,500. Of the \$627,633,532 appropriated for state institutions, \$326,132,490 was for COF stipends and \$301,501,042 was for fee-for-service contracts.

The services purchased from higher education institutions and the appropriated amount of COF stipends for Fiscal Year 2008 are shown in the table on the following page.

**HIGHER EDUCATION ENTERPRISES
FEE-FOR-SERVICE CONTRACT PURCHASES AND APPROPRIATED COF STIPENDS
FISCAL YEAR 2008**

	GRADUATE EDUCATION	RECIPROCAL AGREEMENTS AND VESTIBULE LABS (Note 1)	HIGH-COST SPECIALIZED EDUCATION (Note 2)	FEE-FOR- SERVICE TOTALS	COLLEGE OPPORTUNITY FUND (COF) STIPENDS	TOTAL
ADAMS STATE COLLEGE	\$ 4,190,646	---	\$ 5,663,394	\$ 9,854,040	\$ 3,770,040	\$ 13,624,080
COLORADO COMMUNITY COLLEGE SYSTEM	---	\$ 2,067,399	\$ 26,220,937	\$ 28,288,336	\$ 104,020,530	\$132,308,866
COLORADO SCHOOL OF MINES	\$ 1,898,532	---	\$ 12,603,039	\$ 14,501,571	\$ 7,235,700	\$ 21,737,271
COLORADO STATE UNIVERSITY SYSTEM	\$ 24,684,575	\$ 24,767	\$ 57,845,957	\$ 82,555,299	\$ 51,234,630	\$133,789,929
FORT LEWIS COLLEGE	---	\$ 224,280	\$ 4,599,795	\$ 4,824,075	\$ 6,829,860	\$ 11,653,935
MESA STATE COLLEGE	\$ 693,486	---	\$ 9,595,764	\$ 10,289,250	\$ 12,087,090	\$ 22,376,340
METROPOLITAN STATE COLLEGE OF DENVER	---	---	\$ 3,948,770	\$ 3,948,770	\$ 40,696,140	\$ 44,644,910
UNIVERSITY OF COLORADO	\$ 60,543,217	---	\$ 61,367,893	\$121,911,110	\$ 73,075,230	\$194,986,340
UNIVERSITY OF NORTHERN COLORADO	\$ 9,178,085	---	\$ 8,660,975	\$ 17,839,060	\$ 23,317,110	\$ 41,156,170
WESTERN STATE COLLEGE OF COLORADO	---	\$ 18,690	\$ 7,470,841	\$ 7,489,531	\$ 3,866,160	\$ 11,355,691
TOTAL	\$101,188,541	\$ 2,335,136	\$197,977,365	\$301,501,042	\$ 326,132,490	\$627,633,532

Source: Services purchased is based on information provided by the Department of Higher Education. COF stipends are based on Long Bill appropriations.
 Note 1: Reciprocal agreements involve the waiver of the nonresident differential in tuition rates for out-of-state students attending Colorado colleges in exchange for the same waiver for Colorado students attending college in other states. Vestibule labs provide instruction and guidance at community colleges for students to obtain skills for degree completion and career development.
 Note 2: This includes engineering programs, medical programs, courses at rural community colleges, and other educational programs that are high cost.

Final Enterprise Status for Fiscal Year 2007 and Projected Status for Fiscal Year 2008

To qualify as an enterprise, the Taxpayer's Bill of Rights (TABOR) requires an entity "to be a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of its annual revenue in grants from all Colorado state and local governments combined." During our review of TABOR enterprise designations in 2004 and 2005, we found that the State's higher education institutions possess the characteristics of a government-owned business and have the authority to issue revenue bonds. Regarding the limitation on receipt of governmental support from state and local grants, TABOR does not define what is meant by "grants." The General Assembly through enabling legislation (Section 23-5-101.5 (2) (b) (I), C.R.S.) defines a grant to be any direct cash subsidy or other direct contribution of money from the State or any local government which is not required to be repaid.

None of the higher education institutions receive any direct cash subsidies or contributions from local governments, and all but one (Metropolitan State College of Denver) receive some financial support from the State. The table on page five shows the amount of revenue earned and state support received by the higher education enterprises for Fiscal Year 2007. As can be seen from this table, all of the institutions received less than 10 percent of their total revenue from the State for Fiscal Year 2007 and thereby qualified for TABOR enterprise status.

It should be noted that three of the institutions received economic development and preservation funds through fee-for-service contracts for Fiscal Year 2007. Adams State College received \$1,179,287, Fort Lewis College received \$3,921,993, and Western State College of Colorado received \$970,119 of such funds. As part of our review of fee-for-service contracts in 2005, we determined that the receipt of such funds constitutes state support. The reason is that the economic development and preservation services provided cannot be specifically identified or measured. Even though state statute allows for the purchase of educational services that may increase economic development opportunities, we are unable to determine that the value of such services is essentially equal to the purchase price in the contract. The Department of Higher Education decided to discontinue purchasing economic development and preservation services for Fiscal Year 2008 and purchase other services instead.

**HIGHER EDUCATION ENTERPRISE STATUS
ACTUAL REVENUE AND STATE SUPPORT
FISCAL YEAR 2007**

	TOTAL REVENUE	STATE SUPPORT GENERAL FUND APPROPRIATIONS	STATE SUPPORT CAPITAL CONTRIBUTIONS (Note 1)	OTHER STATE SUPPORT	TOTAL STATE SUPPORT	STATE SUPPORT AS A PERCENTAGE OF TOTAL REVENUE
ADAMS STATE COLLEGE	\$ 36,990,220	---	\$ 524,208	\$ 1,179,287 (Note 2)	\$ 1,703,495	4.6%
COLORADO COMMUNITY COLLEGE SYSTEM	\$ 424,837,954	\$ 24,260,944 (Note 3)	\$ 4,595,569	---	\$ 28,856,513	6.8%
COLORADO SCHOOL OF MINES	\$ 123,694,344		\$ 5,230,116	---	\$ 5,230,116	4.2%
COLORADO STATE UNIVERSITY SYSTEM	\$ 788,769,081	---	\$ 8,245,695	\$ 3,250,000 (Note 4)	\$ 11,495,695	1.5%
FORT LEWIS COLLEGE	\$ 54,465,585	---	\$ 198,754	\$ 3,921,993 (Note 2)	\$ 4,120,747	7.6%
MESA STATE COLLEGE	\$ 59,053,591	---	\$ 421,310	---	\$ 421,310	0.7%
METROPOLITAN STATE COLLEGE OF DENVER	\$ 118,233,561	---		---	\$ -0-	0.0%
UNIVERSITY OF COLORADO	\$2,101,086,121	---	\$ 7,782,896	\$ 13,129,629 (Note 5)	\$ 20,912,525	1.0%
UNIVERSITY OF NORTHERN COLORADO	\$ 153,295,208	---	\$ 5,593,925	---	\$ 5,593,925	3.6%
WESTERN STATE COLLEGE OF COLORADO	\$ 33,105,639	---	\$ 677,506	\$ 970,119 (Note 2)	\$ 1,647,625	5.0%

Source: Amounts are from Fiscal Year 2007 unaudited financial statements.

Note 1: Represents available capital funds used during Fiscal Year 2007 and may not equal capital funds appropriated for any one year.

Note 2: Consists of economic development and preservation funds included in the Fiscal Year 2007 Fee-For-Service contract.

Note 3: Includes appropriations of \$20,635,922 for the Colorado Vocational Act and \$3,625,022 for other programs. It excludes \$23,303,953 of appropriations that are passed through the System to local junior district colleges and area vocational schools.

Note 4: Represents Fiscal Year 2007 appropriation to the Wildfire Preparedness Fund. These funds are available to the Colorado State Forest Service for wildfire prevention, preparedness, and mitigation.

Note 5: Consists of annual debt service payments for Fitzsimons Certificates of Participation.

The table on page 7 shows the estimated amount of revenue to be earned and state support to be received by higher education enterprises for Fiscal Year 2008. Based on current projections, three of the institutions (i.e., Adams State College, Mesa State College, and Western State College of Colorado) are projected to exceed the 10 percent threshold for governmental support for Fiscal Year 2008. The primary reason is the increase in capital contributions to be provided by the State to these institutions. As a result, the institutions as a whole will not qualify for TABOR-exempt status for Fiscal Year 2008. However, each institution will retain certain facilities or activities which qualify as TABOR-exempt enterprises. Such facilities or activities could include student housing, recreational facilities, and bookstores.

The disqualification of the institutions as a TABOR-exempt enterprise will have several consequences. An adjustment to the TABOR base for the State will need to be made in Fiscal Year 2008 to ensure comparability between the base and current year nonexempt revenue. Because of the passage of Referendum C in 2005, which allows the State to retain all revenue in excess of TABOR spending limits for Fiscal Years 2006 through 2010, the disqualification of higher education institutions as TABOR enterprises will have no effect on the amount of revenue that the State is allowed to retain during this period. However, beginning in Fiscal Year 2011, the State will again be required to refund revenue collected in excess of applicable limits. If a higher education institution does not qualify as a TABOR enterprise and it experiences a more rapid rate of growth in revenue than allowed under TABOR, the institution could contribute disproportionately to any required taxpayer refund.

Several other immediate consequences identified by the affected institutions are:

- An increased accounting burden for the institution as well as other state Departments doing business with the institution to track and record transactions as being either exempt or nonexempt for TABOR purposes.
- Limitation on the institution's ability to issue revenue bonds. Without enterprise status, an institution cannot pledge 10 percent of its tuition and fees for payment of bond debt.

The Department of Higher Education (Department) has recognized the significant impact capital appropriations can have on an institution's TABOR enterprise status. The potential impact is greater for institutions with relatively small budgets where capital appropriations can more easily cause the institutions to lose their TABOR enterprise status. The Department has taken some steps to address this issue. As previously mentioned, the Department did not purchase economic development and preservation services through fee-for-service contracts for Fiscal Year 2007 and instead focused on buying more services for high-cost programs. In November 2006, the Colorado Commission on Higher Education reconvened the Task Force on Alternative Funding for Capital Construction and Controller Maintenance to investigate alternative funding sources for capital projects and address the effect capital funding has on an institution's TABOR enterprise status. One potential solution that the Task Force has explored is to fund capital projects through Certificates of Participation (COP) debt. By issuing COP debt, only the annual debt service payment would count toward the institution's limit on governmental support, as opposed to the amount of capital appropriations used in a given year.

**HIGHER EDUCATION ENTERPRISE STATUS
ESTIMATED REVENUE AND STATE SUPPORT
FISCAL YEAR 2008**

	TOTAL REVENUE	STATE SUPPORT GENERAL FUND APPROPRIATIONS	STATE SUPPORT CAPITAL CONTRIBUTIONS (Note 1)	OTHER STATE SUPPORT	TOTAL STATE SUPPORT	STATE SUPPORT AS A PERCENTAGE OF TOTAL REVENUE (Note 2)
ADAMS STATE COLLEGE	\$ 47,710,668	---	\$ 7,137,533	---	\$ 7,137,533	15.0%
COLORADO COMMUNITY COLLEGE SYSTEM	\$ 441,831,472	\$ 24,833,341 (Note 3)	\$ 10,736,258	---	\$35,569,599	8.1%
COLORADO SCHOOL OF MINES	\$ 139,814,325	---	\$ 6,576,992	---	\$ 6,576,992	4.7%
COLORADO STATE UNIVERSITY SYSTEM	\$ 883,475,117	---	\$ 14,249,500	\$ 3,250,000 (Note 4)	\$17,499,500	2.0%
FORT LEWIS COLLEGE	\$ 55,681,093	---	\$ 2,974,114	---	\$ 2,974,114	5.3%
MESA STATE COLLEGE	\$ 78,420,845	---	\$ 12,897,386	---	\$12,897,386	16.4%
METROPOLITAN STATE COLLEGE OF DENVER	\$ 118,233,561	---		---	\$ -0-	0.0%
UNIVERSITY OF COLORADO	\$2,117,107,066	---	\$ 15,077,274	\$ 13,145,713 (Note 5)	\$28,222,987	1.3%
UNIVERSITY OF NORTHERN COLORADO	\$ 159,555,560	---	\$ 2,100,000	---	\$ 2,100,000	1.3%
WESTERN STATE COLLEGE OF COLORADO	\$ 38,566,698	---	\$ 5,160,128	---	\$ 5,160,128	13.4%

Source: Information provided by higher education institutions based on estimates for Fiscal Year 2008.

Note 1: Represents estimated capital funds to be used during Fiscal Year 2008 and may not equal capital funds appropriated for any one year.

Note 2: Institutions that receive 10 percent or more in state support are projected to not qualify as a TABOR enterprise in Fiscal Year 2008.

Note 3: Includes appropriations of \$21,208,319 for the Colorado Vocational Act and \$3,625,022 for other programs. It excludes \$25,273,124 of appropriations passed through to local junior district colleges and area vocational schools.

Note 4: Represents Fiscal Year 2008 appropriation to the Wildfire Preparedness Fund. These funds are available to the Colorado State Forest Service for wildfire prevention, preparedness, and mitigation.

Note 5: Consists of annual debt service payments for Fitzsimons Certificates of Participation.

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