



## Memorandum

TO: Members of the Legislative Audit Committee

FROM: Sally Symanski, CPA  
State Auditor

DATE: October 22, 2010

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 revenue growth and spending limitations of TABOR. The Office of the State Auditor and the Legislative Audit Committee (Committee) are required to review whether such designations meet the requirements of a TABOR-exempt enterprise. In 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. In 2007, the Committee approved Colorado State University's request to combine its separate enterprises for the Fort Collins and Pueblo campuses into one enterprise.

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 2010 and their projected enterprise status for Fiscal Year 2011. Based on our review, one institution (Fort Lewis College) did not qualify as a TABOR-exempt enterprise for Fiscal Year 2010. It is projected that all institutions will qualify as a TABOR enterprise for Fiscal Year 2011. 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 College Assist 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



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to a life-time limitation of 145 credit hours. If students have already completed their baccalaureate degree under the COF program, they may receive stipend payments for an additional 30 undergraduate credit hours. The stipend payment for Fiscal Year 2010 was \$44 per credit hour, and for Fiscal Year 2011 is \$62 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 by 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.
- 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 2010, the initial appropriation for the College Opportunity Fund Program (including COF stipends for private institutions as provided for under statute) was \$535.0 million. Because of shortfalls in state revenues, the total COF appropriation was subsequently reduced to \$313.0 million. To make up for revenue shortfalls, the Governor's Office made federal State Fiscal Stabilization funds available to the State's higher education institutions from the American Recovery and Reinvestment Act of 2009. The COF Program appropriation to state institutions was \$184.9 million for COF stipends and \$127.4 million for fee-for-service contracts. Participating private institutions (i.e., University of Denver, Regis University, and Colorado Christian College) also received \$746 thousand of COF stipends.

For Fiscal Year 2011, the total amount appropriated for the College Opportunity Fund Program is \$536.1 million, of which \$535.3 million is for state institutions and \$830 thousand is for private institutions. The appropriation for state institutions consists of \$267.9 million for COF stipends and \$267.4 million for fee-for-service contracts.

The services to be purchased from higher education institutions through fee-for-service contracts and the appropriated amount of COF stipends for Fiscal Year 2011 are shown in the table on the following page.

**HIGHER EDUCATION LABOR ENTERPRISES  
FEE-FOR-SERVICE CONTRACT PURCHASES AND APPROPRIATED COF STIPENDS  
FISCAL YEAR 2011**

	<b>GRADUATE EDUCATION</b>	<b>RECIPROCAL AGREEMENTS AND VESTIBULE LABS (Note 1)</b>	<b>HIGH-COST SPECIALIZED EDUCATION (Note 2)</b>	<b>FEE-FOR- SERVICE TOTALS</b>	<b>COLLEGE OPPORTUNITY FUND (COF) STIPENDS</b>	<b>TOTAL</b>
ADAMS STATE COLLEGE	---	---	\$ 9,277,730	\$ 9,277,730	\$ 2,871,592	\$ 12,149,322
COLORADO COMMUNITY COLLEGE SYSTEM	---	\$ 2,304,600	\$ 16,477,652	\$ 18,782,252	\$ 99,351,900	\$118,134,152
COLORADO SCHOOL OF MINES	\$ 2,677,465	---	\$ 10,789,120	\$ 13,466,585	\$ 5,327,040	\$ 18,793,625
COLORADO STATE UNIVERSITY SYSTEM	\$ 13,007,012	---	\$ 61,448,360	\$ 74,455,372	\$ 39,164,656	\$113,620,028
FORT LEWIS COLLEGE	---	\$ 186,000	\$ 4,328,418	\$ 4,514,418	\$ 4,243,404	\$ 8,757,822
MESA STATE COLLEGE	\$ 701,802	---	\$ 9,222,756	\$ 9,924,558	\$ 9,963,834	\$ 19,888,392
METROPOLITAN STATE COLLEGE OF DENVER	---	---	\$ 6,382,826	\$ 6,382,826	\$ 33,395,742	\$ 39,778,568
UNIVERSITY OF COLORADO SYSTEM	\$ 51,655,693	---	\$ 52,102,129	\$103,757,822	\$ 55,346,160	\$159,103,982
UNIVERSITY OF NORTHERN COLORADO	\$ 6,810,000	\$ 1,257,200	\$ 11,463,358	\$ 19,530,558	\$ 15,646,320	\$ 35,176,878
WESTERN STATE COLLEGE OF COLORADO	---	---	\$ 7,323,487	\$ 7,323,487	\$ 2,568,660	\$ 9,892,147
TOTAL	\$ 74,851,972	\$ 3,747,800	\$188,815,836	\$267,415,608	\$ 267,879,308	\$535,294,916

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 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 programs that are high cost or specialized.

## **Final Enterprise Status for Fiscal Year 2010 and Projected Status for Fiscal Year 2011**

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 that is not required to be repaid.

During Fiscal Year 2010, none of the higher education institutions received any direct cash subsidies or contributions from local governments, and all but one (Metropolitan State College of Denver) received some financial support from the State. The table on page 5 shows the amount of revenue earned and state support received by the higher education enterprises for Fiscal Year 2010. This table shows that nine institutions received less than 10 percent of their total revenue from the State and thereby qualified for TABOR enterprise status. However, Fort Lewis College exceeded the 10 percent threshold and did not qualify. The amount of capital contributions received from the State caused the College to exceed the 10 percent limitation on governmental support. Even though Fort Lewis College as a whole did not qualify for TABOR-exempt status, certain auxiliary facilities or activities of the College do qualify as TABOR-exempt enterprises. Such auxiliary services are student and faculty operations and activities.

**HIGHER EDUCATION TABOR ENTERPRISE STATUS  
ACTUAL REVENUE AND STATE SUPPORT  
FISCAL YEAR 2010**

	TOTAL REVENUE	STATE SUPPORT GENERAL FUND APPROPRIATION	STATE SUPPORT CAPITAL APPROPRIATION (Note 1)	OTHER STATE SUPPORT	TOTAL STATE SUPPORT	STATE SUPPORT AS A PERCENTAGE OF TOTAL REVENUE (Note 2)
ADAMS STATE COLLEGE	\$ 45,288,143	---	\$ 345,347	---	\$ 345,347	0.8%
COLORADO COMMUNITY COLLEGE SYSTEM	\$ 569,413,513	\$ 3,625,022 (Note 3)	\$ 4,539,133	\$ 3,142,716 (Note 4)	\$ 11,306,871	2.0%
COLORADO SCHOOL OF MINES	\$ 180,949,287	---	\$ 800,509	\$ 527,657 (Note 4)	\$ 1,328,166	0.7%
COLORADO STATE UNIVERSITY SYSTEM	\$ 877,748,873	---	\$ 4,234,669	\$ 8,176,994 (Note 5)	\$ 12,411,663	1.4%
<b>FORT LEWIS COLLEGE</b>	<b>\$ 70,798,800</b>	---	<b>\$ 7,860,576</b>	<b>\$ 253,887 (Note 4)</b>	<b>\$ 8,114,462</b>	<b>11.5%</b>
MESA STATE COLLEGE	\$ 95,155,506	---	\$ 4,487,587	\$ 1,155,288 (Note 4)	\$ 5,642,875	5.9%
METROPOLITAN STATE COLLEGE OF DENVER	\$ 154,957,322	---	---	---	---	0.0%
UNIVERSITY OF COLORADO SYSTEM	\$2,582,535,048	---	\$ 8,792,315	\$ 31,627,995 (Note 6)	\$ 40,420,310	1.6%
UNIVERSITY OF NORTHERN COLORADO	\$ 182,843,004	---	\$ 727,006	\$ 906,332 (Note 4)	\$ 1,633,338	0.9%
WESTERN STATE COLLEGE OF COLORADO	\$ 46,962,474	---	\$ 652,428	\$ 1,647,105 (Note 4)	\$ 2,299,533	4.9%

Source: Amounts are from Fiscal Year 2010 unaudited financial statements. .

Note 1: Represents available capital funds used during Fiscal Year 2010 and may not equal capital funds appropriated for any one year.

Note 2: Institutions that receive 10 percent or more in state support do not qualify as a TABOR enterprise.

Note 3: Includes appropriations for Colorado First Customized Job Training and other programs. Distributions made to local school districts and other local entities for career and technical education programs are not considered state support.

Note 4: Represents state support received from annual lease payments for capital projects financed by State Certificates of Participation.

Note 5: Consists of \$6,300,000 of appropriations for wildfire preparedness and forest restoration and other forest related projects, and \$1,876,994 of state support received from annual lease payments for capital projects financed by State Certificates of Participation.

Note 6: Consists of a \$13,142,063 appropriation for annual lease payments for Fitzsimons Certificates of Participation, \$17,150,030 of appropriations primarily for various programs and operations of the Anschutz Medical Campus, and \$1,335,932 of state support received from annual lease payments for capital projects financed by State 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 2011. Based on current estimates, all institutions are projected to be under the 10 percent threshold for governmental support for Fiscal Year 2011.

The disqualification of an institution as a TABOR-exempt enterprise has several consequences. An adjustment to the TABOR base for the State is made to ensure comparability between the base and current year nonexempt revenue. The TABOR base is used to calculate the limit on fiscal year spending and the amount required to be refunded or the amount of excess revenue to be retained. 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 any higher education institution as a TABOR enterprise will not affect the amount of revenue that the State is allowed to retain during this time 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, which historically has been paid from General Fund resources.

Other consequences resulting from the loss of TABOR enterprise status include:

- The accounting burden for the institution, as well as other state departments doing business with the institution, is increased because of the need to change the categories of how revenues and expenses are recorded for TABOR purposes.
- The institution's sources of revenue available to pledge for the payment of principal, interest, and reserve requirements on revenue bonds is reduced. In addition to other sources of revenue that may be used, Section 23-5-103 (1), C.R.S., allows a higher education institution designated as a TABOR enterprise to pledge up to 10 percent of its tuition revenues for payment of bond debt and reserve requirements. Without TABOR enterprise status, an institution loses its ability to pledge up to 10 percent of its tuition for such purpose.

**HIGHER EDUCATION TABOR ENTERPRISE STATUS  
ESTIMATED REVENUE AND STATE SUPPORT  
FISCAL YEAR 2011**

	TOTAL REVENUE	STATE SUPPORT GENERAL FUND APPROPRIATION	STATE SUPPORT CAPITAL APPROPRIATION (Note 1)	OTHER STATE SUPPORT	TOTAL STATE SUPPORT	STATE SUPPORT AS A PERCENTAGE OF TOTAL REVENUE (Note 2)
ADAMS STATE COLLEGE	\$ 46,802,530	---	\$ 63,634	---	\$ 63,634	0.1%
COLORADO COMMUNITY COLLEGE SYSTEM	\$ 597,884,188	\$ 3,625,022 (Note 3)	\$ 909,151	\$ 1,763,525 (Note 4)	\$ 2,672,676	1.1%
COLORADO SCHOOL OF MINES	\$ 181,498,288	---	\$ 410,730	\$ 296,093 (Note 4)	\$ 706,823	0.4%
COLORADO STATE UNIVERSITY SYSTEM	\$ 888,123,059	---	\$ 1,384,955	\$ 6,753,269 (Note 5)	\$ 8,138,224	0.9%
FORT LEWIS COLLEGE	\$ 64,981,283	---	\$ 2,354,348	\$ 142,468 (Note 4)	\$ 2,496,816	3.8%
MESA STATE COLLEGE	\$ 80,719,850	---	\$ 403,170	\$ 648,286 (Note 4)	\$ 1,051,456	1.3%
METROPOLITAN STATE COLLEGE OF DENVER	\$ 145,043,782	---	---	---	---	0.0%
UNIVERSITY OF COLORADO SYSTEM	\$2,773,857,919	---	---	\$ 26,448,815 (Note 6)	\$ 26,448,815	1.0%
UNIVERSITY OF NORTHERN COLORADO	\$ 179,272,753	---	\$ 179,801	\$ 508,585 (Note 4)	\$ 688,386	0.4%
WESTERN STATE COLLEGE OF COLORADO	\$ 51,661,477	---	\$ 323,553	\$ 924,268 (Note 4)	\$ 1,247,821	2.4%

Source: Information provided by higher education institutions based on estimates for Fiscal Year 2011.

Note 1: Represents estimated capital funds to be used during Fiscal Year 2011 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.

Note 3: Includes appropriations for Colorado First Customized Job Training and other programs. Distributions made to local school districts and other local entities for career and technical education programs are not considered state support.

Note 4: Represents state support received from annual lease payments for capital projects financed by State Certificates of Participation.

Note 5: Consists of \$5,700,000 of appropriations for wildfire preparedness and forest restoration and other forest related projects, and \$1,053,269 of state support received from annual lease payments for capital projects financed by State Certificates of Participation.

Note 6: Consists of a \$9,694,676 appropriation for annual lease payments for Fitzsimons Certificates of Participation, \$16,004,485 of appropriations primarily for various programs and operations of the Anschutz Medical Campus, and \$749,654 of state support received from annual lease payments for capital projects financed by State Certificates of Participation.

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