



## STATE OF COLORADO

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### Memorandum

TO: Members of the Legislative Audit Committee

FROM: Sally Symanski, CPA  
State Auditor

DATE: October 23, 2008

RE: Higher Education TABOR Enterprise Status

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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 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. 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 2008 and their projected enterprise status for Fiscal Year 2009. Based on our review, two institutions (Mesa State College and Western State College of Colorado) did not qualify as TABOR-exempt enterprises for Fiscal Year 2008. It is projected that three institutions (Adams State College, Fort Lewis College, and Mesa State College) will not qualify as a TABOR enterprise for Fiscal Year 2009. 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 under the COF program, they may receive stipend payments for an additional 30

undergraduate credit hours. The stipend payment for Fiscal Year 2008 was \$89 per credit hour, and for Fiscal Year 2009 is \$92 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. 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 2008, the General Assembly appropriated \$628,568,032 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 \$934,500 for COF stipends. Of the \$627,633,532 appropriated for state institutions, \$326,132,490 was designated for COF stipends and \$301,501,042 was for fee-for-service contracts.

For Fiscal Year 2009, the total amount appropriated to the College Opportunity Fund for state and private institutions increased 8.2 percent to \$679,947,644. The appropriation for COF stipends for participating private institutions was \$1,104,000. Of the \$678,843,644 appropriated for state institutions, \$343,286,040 was for COF stipends and \$335,557,604 was for fee-for-service contracts.

The services purchased from higher education institutions and the appropriated amount of COF stipends for Fiscal Year 2009 are shown in the table on the following page.

**HIGHER EDUCATION LABOR ENTERPRISES  
FEE-FOR-SERVICE CONTRACT PURCHASES AND APPROPRIATED COF STIPENDS  
FISCAL YEAR 2009**

	<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	\$ 4,829,273	---	\$ 5,973,136	\$ 10,802,409	\$ 3,806,040	\$ 14,608,449
COLORADO COMMUNITY COLLEGE SYSTEM	---	\$ 2,056,200	\$ 28,683,303	\$ 30,739,503	\$ 111,581,280	\$142,320,783
COLORADO SCHOOL OF MINES	\$ 2,821,212	---	\$ 12,986,254	\$ 15,807,466	\$ 7,429,920	\$ 23,237,386
COLORADO STATE UNIVERSITY SYSTEM	\$ 28,055,764	\$ 29,211	\$ 64,941,365	\$ 93,026,340	\$ 53,836,560	\$146,862,900
FORT LEWIS COLLEGE	---	\$ 231,840	\$ 5,416,810	\$ 5,648,650	\$ 7,087,680	\$ 12,736,330
MESA STATE COLLEGE	\$ 608,575	---	\$ 11,170,232	\$ 11,778,807	\$ 12,226,800	\$ 24,005,607
METROPOLITAN STATE COLLEGE OF DENVER	---	---	\$ 5,727,292	\$ 5,727,292	\$ 43,986,120	\$ 49,713,412
UNIVERSITY OF COLORADO	\$ 66,074,829	---	\$ 65,498,980	\$131,573,809	\$ 77,525,640	\$209,099,449
UNIVERSITY OF NORTHERN COLORADO	\$ 11,667,302	---	\$ 10,615,009	\$ 22,282,311	\$ 21,804,000	\$ 44,086,311
WESTERN STATE COLLEGE OF COLORADO	---	\$ 2,760	\$ 8,168,257	\$ 8,171,017	\$ 4,002,000	\$ 12,173,017
<b>TOTAL</b>	<b>\$114,056,955</b>	<b>\$ 2,320,011</b>	<b>\$219,180,638</b>	<b>\$335,557,604</b>	<b>\$ 343,286,040</b>	<b>\$678,843,644</b>

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 2008 and Projected Status for Fiscal Year 2009**

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.

During Fiscal Year 2008, 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 2008. As can be seen from this table, eight of the institutions received less than 10 percent of their total revenue from the State and thereby qualified for TABOR enterprise status. However, Mesa State College and Western State College of Colorado exceeded the 10 percent threshold and did not qualify. The amount of capital contributions received from the State caused the institutions to exceed the 10 percent limitation on governmental support.

**HIGHER EDUCATION TABOR ENTERPRISE STATUS  
ACTUAL 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	\$ 41,728,861	---	\$ 3,349,666	---	\$ 3,349,666	8.0%
COLORADO COMMUNITY COLLEGE SYSTEM	\$ 458,956,706	\$ 3,625,022 (Note 3)	\$ 8,049,916	---	\$ 11,674,938	2.5%
COLORADO SCHOOL OF MINES	\$ 141,506,733	---	\$ 3,187,378	---	\$ 3,187,378	2.3%
COLORADO STATE UNIVERSITY SYSTEM	\$ 873,103,893	---	\$ 28,465,274	\$ 3,400,000 (Note 4)	\$ 31,865,274	3.6%
FORT LEWIS COLLEGE	\$ 60,401,044	---	\$ 932,197	---	\$ 932,197	1.5%
<b>MESA STATE COLLEGE</b>	<b>\$ 79,698,843</b>	---	<b>\$ 12,559,062</b>	---	<b>\$ 12,559,062</b>	<b>15.8%</b>
METROPOLITAN STATE COLLEGE OF DENVER	\$ 126,734,413	---	---	---	\$ -0-	0.0%
UNIVERSITY OF COLORADO	\$2,144,073,194	---	\$ 18,838,264	\$ 21,642,807 (Note 5)	\$ 40,481,071	1.9%
UNIVERSITY OF NORTHERN COLORADO	\$ 156,992,487	---	\$ 1,697,154	---	\$ 1,697,154	1.1%
<b>WESTERN STATE COLLEGE OF COLORADO</b>	<b>\$ 38,677,936</b>	---	<b>\$ 4,347,829</b>	---	<b>\$ 4,347,829</b>	<b>11.2%</b>

Source: Amounts are from Fiscal Year 2008 unaudited financial statements.

Note 1: Represents available capital funds 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 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 to support career and technical education programs are not reported as state support.

Note 4: Represents a \$3,250,000 appropriation for the Wildfire Preparedness Fund and a \$150,000 appropriation for a Water Resources project.

Note 5: Consists of a \$13,131,462 appropriation for annual lease payments for Fitzsimons Certificates of Participation, and an \$8,511,345 appropriation from the Tobacco Litigation Settlement Health Education Fund for various programs and operations of the Anschutz Medical Campus.

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 2009. Based on current projections, three of the institutions (Adams State College, Fort Lewis College, and Mesa State College) are projected to exceed the 10 percent threshold for governmental support for Fiscal Year 2009. The reason is the amount of capital contributions to be provided by the State to these institutions. It should be noted that the state contributions projected to be used for capital projects may be affected by a delay on new capital construction projects announced by the Governor on September 25, 2008. The Governor requested the delay of spending Fiscal Year 2009 appropriations for projects that are in the design phase, planning phase, assessment phase, or preparation phase. Projects that are in mid-construction were allowed to continue. The delay is effective until January 31, 2009, although it could be extended. Even though the three institutions as a whole may not qualify for TABOR-exempt status 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 an institution as a TABOR-exempt enterprise has several consequences. An adjustment to the TABOR base for the State needs to be made 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 any higher education institution as TABOR enterprises 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.

Several other consequences also result from the loss of TABOR enterprise status:

- The accounting burden for the institution, as well as other state departments doing business with the institution, is increased to track and record transactions as being either exempt or nonexempt 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.

The General Assembly has taken some action to help address the effect of state capital appropriations on the TABOR enterprise status of higher education institutions. During the 2008 session, the General Assembly enacted legislation for the State to enter into lease-purchase agreements to finance various capital projects at higher education institutions. Senate Bill 08-218 and Senate Bill 08-233 provided for the State to use a portion of federal mineral leasing revenue to issue Certificates of Participation. Certificates of Participation allow investors to buy a share of the lease payments that the State makes on the projects after they are completed. The sale of \$231 million of Certificates of Participation was completed on October 23, 2008 to finance 12 construction and renovation projects at various college campuses. The General Assembly will appropriate monies to pay for the annual lease payment for the entire Certificates of Participation issue. Because only each enterprise's share of the annual lease payment for their project(s) will count toward their 10 percent limit on governmental support, it will be easier for institutions to maintain their enterprise status.

**HIGHER EDUCATION TABOR ENTERPRISE STATUS  
ESTIMATED REVENUE AND STATE SUPPORT  
FISCAL YEAR 2009**

	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)
<b>ADAMS STATE COLLEGE</b>	\$ 48,770,066	---	\$ 8,379,745	---	\$ 8,379,745	17.2%
COLORADO COMMUNITY COLLEGE SYSTEM	\$ 486,494,108	\$ 3,625,022 (Note 3)	\$ 13,679,733	---	\$17,304,755	3.6%
COLORADO SCHOOL OF MINES	\$ 149,847,344	---	\$ 4,782,236	---	\$ 4,782,236	3.2%
COLORADO STATE UNIVERSITY SYSTEM	\$ 909,129,518	---	\$ 24,377,000	\$ 4,250,000 (Note 4)	\$28,627,000	3.1%
<b>FORT LEWIS COLLEGE</b>	\$ 72,865,612	---	\$ 8,903,000	---	\$ 8,903,000	12.2%
<b>MESA STATE COLLEGE</b>	\$ 86,225,090	---	\$ 13,561,719	---	\$13,561,719	15.7%
METROPOLITAN STATE COLLEGE OF DENVER	\$ 134,939,466	---	---	---	\$ -0-	0.0%
UNIVERSITY OF COLORADO	\$2,299,461,845	---	\$ 17,888,000	\$ 32,086,404 (Note 5)	\$49,974,404	2.2%
UNIVERSITY OF NORTHERN COLORADO	\$ 167,928,886	---	\$ 4,500,000	---	\$ 4,500,000	2.7%
WESTERN STATE COLLEGE OF COLORADO	\$ 37,052,317	---	\$ 3,090,945	---	\$ 3,090,945	8.3%

Source: Information provided by higher education institutions based on estimates for Fiscal Year 2009.

Note 1: Represents estimated capital funds to be used during Fiscal Year 2009 and may not equal capital funds appropriated for any one year. The estimates may also be affected by a delay on new capital construction projects announced by the Governor on September 25, 2008.

Note 2: Institutions that receive 10 percent or more in state support are projected to not qualify as a TABOR enterprise in Fiscal Year 2009.

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 reported as state support.

Note 4: Represents a \$3,250,000 appropriation from the Wildfire Preparedness Fund and a \$1,000,000 appropriation for the Forest Restoration Pilot Project.

Note 5: Consists of a \$13,142,688 appropriation for annual lease payments for Fitzsimons Certificates of Participation, and an \$18,943,716 appropriation from the Tobacco Litigation Settlement Health Education Fund for various programs and operations of the Anschutz Medical Campus.

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