



Alabama Community College System

Post-Issuance Continuing Disclosure Processes and Procedures

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Post-Issuance Continuing Disclosure Process and Procedures*

TABLE OF CONTENTS

I. Introduction	
a. Purpose	1
b. Goals and Benefits	1
c. College Officials' Liability	1
II. SEC Disclosure Requirements	
a. Primary Offering Disclosure	2
b. Continuing Disclosure	2
c. Voluntary Disclosure	3
III. Continuing Disclosure Compliance	
a. New Issue Official Statements	3
b. Continuing Disclosure	3
c. Disclosure Responsible Officer	4
d. Training	4
IV. Post-Issuance Continuing Disclosure Process	
a. Audited Financial Statements	5
b. Annual Financial Information and Operating Data	5
V. Records Retention	5
VI. Periodic Review of Process and Procedures	5
Exhibits	
A – MSRB/EMMA resources	
B – Sample Material Event Notices	
C – Financial Obligation Disclosures	

*Please note: This document does not address tax compliance issues related to bond issuance. These are unique to each situation.

Post-Issuance Continuing Disclosure Processes and Procedures

I. Introduction

a. Purpose

This Post-Issuance Continuing Disclosure Process and Procedures (Process) provides a process framework and establishes procedures for the Alabama Community College System (ACCS) compliance with primary and continuing disclosure requirements under federal securities laws for publicly traded bonds, notes, and other obligations (collectively, Obligations) issued by the Alabama Community College System Board of Trustees (BOT) on behalf of various Community Colleges (Colleges) and secured by certain revenues (Pledged Revenues). ACCS developed this Process to aid the Colleges in meeting their disclosure responsibilities under Securities and Exchange Commission (SEC) Rule 15c2-12 (Rule) and associated contractual undertakings relating to disclosure. This document also is intended to serve as an orientation and training guide for ACCS and College officials.

b. Goals and Benefits

Formalizing current continuing disclosure practices via written process and procedures is intended to further two key goals: i) compliance with applicable federal law and regulations; and ii) timely and cost-effective funding of the Colleges' long-term capital needs. In addition to promoting compliance, the benefits of timely and complete disclosure include:

- Providing transparency and enhancing credibility with investors, financial analysts and the general bond market.
- Ensuring access to public debt markets.
- Protecting and enhancing the credit rating of the BOT.
- Fostering liquidity for BOT securities.

c. Liability

The requirements imposed by SEC regulations can create risks for an issuer and those persons who oversee the disclosure process. While the prudent selection and use of experts can minimize liability and provide certain safeguards, the BOT and the Colleges have a level of responsibility for accurate and complete disclosure that cannot be completely delegated. Having a good understanding of the principles of disclosure will enhance Officials' ability to make the right decisions when dealing with their own facts and circumstances. The Colleges will endeavor to use best practices and uniform procedures, and attorneys, consultants or other experts, as necessary, to ensure primary and secondary disclosure is completed timely in full compliance with SEC regulations.

II. SEC Disclosure Requirements

a. Primary Offering Disclosure

Each time the BOT issues Obligations for a College in a public sale, the College is responsible for preparing a preliminary official statement (POS) and a final official statement (OS). The POS and OS are intended to provide requisite disclosure to the original purchasers of the Obligations.

b. Continuing Disclosure

Continuing disclosure information is intended to reflect the financial or operating condition of an issuer as it changes over time, as well as specific events occurring after issuance, that can have an impact on both the ability to pay amounts owed and the market value of the Obligation if bought or sold prior to maturity. ***Each publicly issued Obligation has its own continuing disclosure requirements, and not all types of continuing disclosure will apply***

Post-Issuance Continuing Disclosure Processes and Procedures

to each.

For each new issuance, SEC Rule 15c2-12(b)(5)(i) requires a written agreement or undertaking, to provide the following information to the Municipal Securities Rulemaking Board (MSRB) through their Electronic Municipal Market Access (EMMA):

- Annual financial information and operating data for the obligated person for whom financial information or operating data is presented in the final official statement;
- Audited financial statements for each obligated person covered by (b)(5)(i)(A) of the Rule;
- Notice of the occurrence of any of the following material events, within the meaning of the Rule, within 10 business days of knowledge of the occurrence of the event:
 1. Principal and interest payment delinquencies;
 2. Non-payment related defaults, if material;
 3. Unscheduled draws on any reserve fund reflecting financial difficulties;
 4. Unscheduled draws on credit enhancements reflecting financial difficulties;
 5. Substitution of credit or liquidity providers, or their failure to perform;
 6. Adverse tax opinions, 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, or other material events affecting the tax status of the Bonds;
 7. Modifications to rights of Bond holders, if material;
 8. Bond calls, if material and tender offers;
 9. Defeasances;
 10. Release, substitution or sale of property securing repayment of the Bonds, if material;
 11. Rating changes;
 12. Bankruptcy, insolvency, receivership or similar event with respect to the Board or the College;
 13. The consummation of a merger, consolidation, or acquisition involving the Board or 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;
 14. Appointment of a successor or additional trustee or the change of the name of a trustee, if material
 15. *Incurrence of a financial obligation of the Board or College, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Board or College, any of which affect security holders, if material; and

Post-Issuance Continuing Disclosure Processes and Procedures

16. *Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the Board or College, any of which reflect financial difficulties.

Items 15 and 16 were added for bonds issued after February 28, 2019 but item 16 relates to Financial Obligations outstanding at that time as well as to future Financial Obligations. See Exhibit C for further guidance concerning Financial Obligations.

In addition, the Rule effectively requires that notices be given of either:

- The failure to provide the Annual Information within the specified time; or
- Any change in the accounting principles applied in the preparation of the annual financial statements or in the fiscal year of the ACCS.

NOTE: The abovementioned list of required disclosures is subject to change in the event of additional amendments to the Rule and corresponding additions to future continuing disclosure agreements. It is ultimately the responsibility of the College to stay abreast of any reporting changes. However, any future changes will not affect the required disclosures for outstanding Obligations.

c. Voluntary Disclosure

Although the Rule prescribes certain annual information and event-based disclosures that must be filed, issuers may determine that additional information would be of interest to investors. To this end, ACCS Issuers may choose to voluntarily disclose other information to the MSRB that goes beyond the requirements of the Rule. This information may include, but is not limited to, items such as monthly financial reports, updates on issues that could affect the College's budgetary, financial, or economic position, annual/biennial budgets, and changes in rating outlooks.

III. Continuing Disclosure Compliance

a. New Issue Official Statements

For each public offering of Obligations, the Issuer must prepare or have prepared a POS and a final OS. The Issuer, along with its legal counsel and financial adviser, reviews and discusses necessary disclosure information in drafting the OS. At transaction closing, the Issuer provides a certification stating that the information contained in the OS, both as of its date and the date of closing, does not contain any untrue statement of material fact or omit to state any material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading. The Issuer may also include in such certification a statement that, to the best of its knowledge, there has been no material adverse change in the financial condition of the College from that set forth in or contemplated by the OS.

In connection with each issue, the BOT acting through the College, should retain legal counsel for assistance and advice regarding the College's disclosure responsibilities with respect to the POS and OS. This legal counsel may be the Bond Counsel for the issue or it may be separately engaged Disclosure Counsel.

Post-Issuance Continuing Disclosure Processes and Procedures

b. Continuing Disclosure

The Colleges are responsible for ensuring compliance with continuing disclosure requirements and accept responsibility at the time of issuance for ongoing compliance with the requirements set forth in each continuing disclosure agreement including the provision of required annual financial information and operating data, annual audited financial statements and material event notices. The ACCS will monitor all such continuing disclosure activities and will consult with the Colleges regularly and as needed to discuss possible disclosure events and ensure timely compliance with material event disclosure requirements.

Immediately after issuance of any publicly sold bonds the College will determine what annual financial information is required and when it is required to be filed and will, if appropriate, prepare a form of annual report that will meet those requirements.

c. Responsible Officer

Each College will designate an employee to serve as its primary Responsible Officer. In this role, the Responsible Officer files and disseminates the College's continuing disclosure information, material event notices, and voluntary notices to the EMMA system as required by the Rule and the College's continuing disclosure agreements.

The Responsible Officer shall maintain a current list for each fiscal year identifying each issue of Obligations of the College outstanding during such fiscal year. The list will include the name, original principal amount, date of issuance and Committee on Uniform Securities Identification Procedures (CUSIP) numbers for each such issue and the dates by which the annual financial information and operating data filings and the annual audited financial statements are required to be submitted to the MSRB through EMMA. Each list is to be accompanied by copies of the related continuing disclosure agreements.

The Responsible Officer shall register with EMMA and review the on-line process of filing with EMMA located at www.emma.msrb.org in order to submit the required information.

The Responsible Officer shall be knowledgeable and familiar with the provisions of each continuing disclosure agreement as to the type, format and content of the annual financial information and operating data to be included in each annual filing to be made thereunder and the timing requirements for the filing thereof.

d. Training

To ensure adequate resources to comply with the Rule, the ACCS shall develop a training process aimed at providing additional assistance in preparing required information. The training process shall be conducted at least annually and shall encompass a review of the EMMA submission process and an understanding of the timing requirements necessary for full compliance.

IV. Post-Issuance Continuing Disclosure Process

The Colleges will prepare and submit required annual disclosure for all of their respective Obligations. The annual disclosure requirements consist of annual financial information and operating data and annual audited financial statements as required by continuing disclosure agreements entered into by the Colleges pursuant to the Rule.

Approximately 30 days before the submission date for required filings established under each continuing disclosure agreement, the Responsible Officer shall initiate the process of preparing

Post-Issuance Continuing Disclosure Processes and Procedures

the financial and operating information required to be submitted thereunder. The Responsible Officer shall assemble the information available at that time and determine the scope of additional information to be required and also contact the Examiners of Public Accounts to establish a schedule for completion and submission for the audited financial statements.

On or before the submission date established under each continuing disclosure agreement, the Responsible Officer shall make the annual financial information and operating data filing together with the audited financial statements.

a. Audited Financial Statements

The audited financial statements of the College for the prior fiscal year, prepared in accordance with generally accepted accounting principles (GAAP) as promulgated from time to time by the Governmental Accounting Standards Board (GASB) must be filed on EMMA.

If the audited financial statements are not available at the time of the required filing, a Notice of Late Filing material event shall be filed. Some continuing disclosure language includes the requirement to file unaudited financial statements along with the material event notice. It is the responsibility of each college to be knowledgeable of the particulars of each issuance regarding continuing disclosure requirements. The audited financial statements shall be filed within ten business days of their receipt and acceptance.

b. Annual Financial Information and Operating Data

The annual financial information and operating data must be submitted within the timeframe required by the continuing disclosure agreement for the individual bond issuance and may include, but is not limited to, the following:

- i. Annual Financial Information – Revenues from various sources
- ii. Student Enrollment – includes total head count and full-time equivalents per semester
- iii. Tuition and Fees – includes Tuition per Credit Hour, Technology Fee, Facility Renewal Fee, Building Fee per Credit Hour and System Reserve Fee for both In-State and Out of State Students
- iv. Faculty and Staff – includes number of Faculty, Staff & Administration, and Total Full-Time and Part-Time per semester
- v. Debt Service – includes annual debt service for each issue and total annual debt service

It is important to determine what financial and operating data is required for a particular issue of Obligations. Any required information may be included in the audited financial statements (if timely filed) and otherwise can be in the form of an update to the information as presented in the Official Statement.

Although unlikely; in the event the financial information and operating data is not available for filing when due, a Notice of Late Filing material event will be filed if such is specified in the continuing disclosure agreement.

V. Records Retention

The Colleges shall maintain records with respect to the filings with the MSRB through EMMA, including, but not limited to, EMMA posting receipts showing the dates and nature or contents of all filings for each issue of Obligations of any BOT Issuer outstanding during each fiscal year. The EMMA filing receipts will be provided to the ACCS compliance monitor and

Post-Issuance Continuing Disclosure Processes and Procedures

should generally be kept for as long as the bonds are outstanding, plus ten years after the final redemption date of the bonds. For refunding bonds material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until 10 years after the final redemption of **both** bond issues. **Periodic Review of Process and Procedures**

These Process and Procedures shall be reviewed and updated periodically as new requirements are identified or improvements are made. Copies of any revised process and procedures will be distributed to the BOT Issuers as soon as possible after any revisions are made.

Post-Issuance Continuing Disclosure Processes and Procedures

Exhibit A

The EMMA Education Center, located on the MSRB website, provides educational resources about the municipal bond market for investors and state and local governments. It also provides instructional materials, videos and webinars on the process of making continuing disclosure filings to EMMA.

The following is a list of some of the sources of information to assist the Responsible Officer.

EMMA website	www.emma.msrb.org
MSRB Education Center	http://www.msrb.org/EducationCenter.aspx
Disclosing Information to Investors	http://www.msrb.org/EducationCenter/Issuers/Disclosing.aspx
SEC Rule 15c2-12	http://www.msrb.org/msrb1/pdfs/SECRule15c2-12.pdf
Creating an MSRB Account	https://gw.msrb.org/msrb1/control/registration/
Preparing to Submit	http://www.msrb.org/msrb1/pdfs/Financial-Disclosure-Preparing-to-Submit.pdf
Video – Submitting Disclosures	http://www.msrb.org/msrb1/Training-Tutorials.asp?section=1&video=0
Video - Creating/Controlling Groups	http://www.msrb.org/msrb1/Training-Tutorials.asp?section=1&video=2

Post-Issuance Continuing Disclosure Processes and Procedures

Exhibit B

Sample Material Event Notice (An electronic editable version of this document may be found at: <https://www.accs.cc/index.cfm/departments-services/fiscal-services/> under "Documents".)

NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT

Issuer: Alabama Board of Trustees

Obligor: [Community College]

Obligated Person: _____

Name(s) of Bond Issue(s): _____

Date(s) of Issuance: _____

Date(s) of Disclosure Agreement: _____

CUSIP Numbers: _____

NOTICE IS HEREBY GIVEN that the [Obligor] has not provided an [Annual Report] with respect to the above-named Bonds as required by the continuing disclosure agreement between the [Obligor] and the Alabama Board of Trustees. The [Obligor] anticipates that the Annual Report will be filed by

_____.

Dated: _____

[Obligated Person], as Disclosure
Responsible Officer, on behalf of the
[Obligor]

ACCS Board of Trustee Finance Committee received notification of Material Event via email on:

Date

Acknowledged: Jimmy H Baker, ACCS Chancellor

cc:

Post-Issuance Continuing Disclosure Processes and Procedures

Exhibit C

Disclosures Concerning Financial Obligations

The following information is intended to provide additional guidance with respect to “financial obligations” as that term is used in the 2019 Amendments to the continuing disclosure requirements of Rule 15c2-12 (the “Rule”). For further information, refer to the Adopting Release for the 2019 Amendments, found at <https://www.sec.gov/rules/final/2018/34-83885.pdf> (the “Adopting Release”).

REQUIRED DISCLOSURES

New Material Events:

- Incurrence of a *financial obligation* of the Board or College, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a *financial obligation* of the Board or College, any of which affect security holders, if material.
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a *financial obligation* of the Board or College, any of which reflect financial difficulties. *Note that this applies irrespective of whether the incurrence of the Financial Obligation has been disclosed.*

Unlike other material events under the Rule, these two events could require disclosure not only with respect to the College that is the party to or the beneficiary of a Financial Obligation but also any other College that has entered into a continuing disclosure undertaking after the effective date of the 2019 Amendments.

“Financial Obligation” includes:

- Debt obligation;
- Derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or
- Guarantee of a debt obligation or derivative instrument entered into in connection with or pledged as security or a source of payment for, an existing or planned debt obligation.

The term Financial Obligation **does not include** municipal securities for which a final official statement has been provided to the MSRB consistent with Rule 15c2-12 or ordinary operating liabilities incurred in the normal course of business.

The concept of a “debt obligation” as contemplated by the SEC would cover “the short-term and long-term debt obligations of an issuer or obligated person under the terms of an indenture, loan agreement, or similar contract.” Includes bank loans as well as any “financing lease” or other vehicle for borrowing money, although not a true lease of real or personal property under which the lessee pays rent for the current use of the property.

Post-Issuance Continuing Disclosure Processes and Procedures

Materiality

Materiality is determined upon the incurrence of each distinct financial obligation, taking into account all relevant facts and circumstances. It is up to the issuer or obligated person to determine materiality. While the ACCS may established certain threshold amounts, other terms of a financial obligation could make it “material” to the College or the ACCS, therefore all events must be reported for materiality evaluation.

Date a Financial Obligation is “Incurred”

The date a Financial Obligation is incurred is important in determining the time within which a filing on EMMA is required (10 days). SEC guidance is that the obligation is incurred on the date on it is legally enforceable against the obligated person. A line of credit, for instance, would be incurred when the note or bond is delivered even if no funds were drawn.

Events Reflecting Financial Difficulty

Includes defaults (not just “events of default”), acceleration, termination events (usually in the context of a derivative instrument), modification of terms or similar events, but only to the extent that they reflect financial difficulty. Thus a failure to make a payment on the date required could be a default, even if the debt obligation allows a grace period before it would be an “event of default”, if that failure occurs solely as a result of oversight and not for lack of adequate funds, that likely would not be included. A modification of terms to revise an interest rate or change the term might or might not be an event reflecting financial difficulty, depending on whether the change is part of a restructuring to avoid default.

PROCEDURES FOR NOTIFICATION OF EVENTS RELATED TO FINANCIAL OBLIGATIONS

1. Not later than April 15, 2021, each College (irrespective of whether it is currently subject to any continuing disclosure undertaking) will provide to ACCS a list of all loans and other obligations that could constitute an existing “Financial Obligation (as defined below).
2. On or before the date it enters into any Financial Obligation each College shall notify ACCS of such Financial Obligation and shall provide a copy of the relevant document(s).
3. Immediately upon occurrence, each College shall notify ACCS that, with respect to any Financial Obligation, there shall have occurred any of the following if they reflect financial difficulties:
 - a) Any default, other than a default which is technical and is immediately corrected;
 - b) Any acceleration or termination event;
 - c) Any modification of terms; or
 - d) Any similar event if it is a result of financial difficulty of the College.
4. As used in items 1 and 2, above, the term “Financial Obligation” shall have the meaning given that term in the Adopting Release and any subsequent guidance, and shall be liberally construed so as to ensure that the College notifies ACCS of any event that potentially could require disclosure under the Rule.

Post-Issuance Continuing Disclosure Processes and Procedures

5. Information and notices required of the Colleges under these procedures shall be provided via email to:

Sara Calhoun – sara.calhoun@accs.edu

With a copy to:

Bryan Helms – bryan.helms@accs.edu

6. Immediately upon receipt of any notice by a College as provided above, ACCS shall determine whether the event requires notice (i) with respect to any bonds issued for the benefit of the College or (ii) with respect to all bonds subject to the 2019 Amendments. In making its determination ACCS will establish whether the event is “material” to the College or to ACCS (as to the incurrence of a Financial Obligation) or whether the event reflects financial difficulty (as to the occurrence of any default, etc.):
 - a) Is the obligation a “financial obligation” within the meaning of the Rule, as evidenced by the Adopting Release or subsequent guidance?
 - b) Will the obligation exceed 1.0% of the net assets of the College adjusted to remove the liability impact of GASB 68 and 75, as of the end of the most recent fiscal year for which financial statements are available?
 - c) Will the obligation exceed 1.0% of the total net assets of ACCS institutions adjusted to remove the liability impact of GASB 68 and 75, as of the end of the most recent fiscal year for which financial statements are available?
 - d) Is the event one which requires notice as to all bonds which are subject to the 2019 Amendment or only as to the bonds (if any) issued with respect to the College?
 - e) Solely with respect to a default or other listed event, does it reflect financial difficulties?
7. ACCS will be responsible for filing a material event notice to the extent required and will notify each College with respect to which any filing is made.