



Delaware Auditor of Accounts
GASB Entity Determination Analysis Memo
Delaware Technical & Community College Educational Foundation
June 30, 2015

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Blended Component Unit

Governmental Accounting Standards Board (GASB) Statements No. 14, 34, and 61 establish standards for defining and reporting on a government's reporting entity. Management is responsible for determining the reporting entity while preparing the government's financial statements. The Office of Auditor of Accounts (AOA) performed the analysis below to assess the State's reporting entity for audit purposes.

To complete our entity determination analysis, AOA reviewed the following:

- GASB 14, *The Financial Reporting Entity*
- GASB 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments* (GASB 34 amended GASB 14, ¶9, 11, ¶12, ¶19, ¶42, ¶44, ¶50 –¶52, ¶54, ¶58, ¶60, ¶63, ¶65, ¶73, ¶74, ¶78, and ¶131 and superseded GASB 14, ¶45–47, 49, 56, and ¶57)
- GASB 39, *Determining Whether Certain Organizations Are Component Units*
- GASB 61, *The Financial Reporting Entity: Omnibus an amendment of GASB Statements No. 14 and No. 34*
- *AICPA Audit and Accounting Guide – State and Local Governments*, Chapter 3: The Financial Reporting Entity
- *GASB 2011-2012 Comprehensive Implementation Guide*, Chapter 4: The Financial Reporting Entity
- *14 Del. C., Education*
- *Amended and Restated Trust Agreement of the Delaware Technical and Community College Educational Foundation (the Foundation)*
- *Internal Revenue Service Determination Letter* dated March 18, 1969
- *December 31, 2014 Foundation Audited Financial Statements*
- *June 30, 2014 State of Delaware Comprehensive Annual Financial Report (CAFR)*

1. The PCU is legally separate. (¶ 15)¹

According to GASB, an organization has separate legal standing if it is created as a body corporate or a body corporate and politic, or if it otherwise possesses the corporate powers that would distinguish it as being legally separate from the primary government.

Generally, corporate powers give an organization the capacity to have a name; the right to sue and be sued in its own name without recourse to a state or local governmental unit; and the right to buy, sell, lease, and mortgage property in its own name.

The corporate powers granted to a separate organization are enumerated in its corporate charter or in the legislation authorizing its creation. A special purpose government (or any other organization) that is *not* legally separate should be considered, for financial reporting purposes, part of the primary government that holds the corporate powers.

¹ Paragraph references are from GASB 14, as amended by GASB 61.



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Application to the Delaware Technical & Community College Educational Foundation (the Foundation)

The Foundation is a Trust organized on November 13, 1968 and is legally separate from the State of Delaware. The Trust agreement establishes the name of the Foundation as the "Delaware Technical and Community College Educational Foundation" (Section 1.1 of the Trust Agreement).

The Trustees have the authority to commence or defend suits or legal proceedings whenever, in their judgment, any interest of the Foundation requires it. Further, the Trustees may represent the Foundation in all suits or legal proceedings insofar as such suits or proceedings relate to any property forming part of the trust fund or to the administration of the Trust owned by the Foundation (Section 8.2k of the Trust Agreement).

Section 8.2 of the Trust agreement also states that the Foundation may sell any securities or other assets owned by the Foundation in addition to their ability to exchange, mortgage, or lease any assets of the Foundation.

Trust Agreement and Other Applicable Criteria Excerpts are as follows:

Internal Revenue Service Determination Letter

The Internal Revenue Service Determination Letter dated March 18, 1969 states that the Foundation is a 501(c)(3) organization with a charitable and educational purpose. The letter is effective for the accounting period ended December 31, 1969.

The Amended and Restated Trust Agreement of the Delaware Technical and Community College Educational Foundation

ARTICLE I – NAME, LOCATION, AND FISCAL YEAR OF THE FOUNDATION

Section 1.1 Name. The name of the charitable foundation established hereby shall be "Delaware Technical and Community College Educational Foundation" ("the Foundation").

ARTICLE VIII – ADMINISTRATIVE POWERS OF THE TRUSTEES

Section 8.2 With respect to any and all securities and other assets of the Foundation the Trustees (and at their discretion, the Administrative Trustee) are hereby authorized and empowered, in their discretion but subject to the limitations of this Agreement:

- a. To sell any securities or other assets owned by the Foundation at such time or times and upon such terms and conditions as the Trustees deem appropriate. Such sales may be public or private, for cash or credit, or partly for cash and partly for credit, and may be made without notice or advertisement of any kind, and without the approval of any court whatsoever.
- b. To exchange, mortgage, or lease any assets of the Foundation and to convey, transfer, or dispose of any such assets on such terms and conditions as the Trustees deem appropriate.



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- c. To exercise all voting rights pertaining to any securities; and to consent to or request any action on the part of the issuer of any such securities; and to give general or specific proxies or powers of attorney with or without power of substitution.
- d. To consent to, or participate in, amalgamations, reorganizations, recapitalizations, consolidations, mergers, liquidations, or similar transactions with respect to any securities, and to accept and to hold any other securities issued in connection therewith.
- e. To deposit any securities in any voting trust, or with any protective or like committee, or with a trustee or with depositaries designated thereby, any to pay or agree to pay part of the expenses or assessments levied with respect to any securities so deposited.
- f. To exercise subscription rights or conversion privileges with respect to any securities held by the Foundation.
- g. To collect and receive any and all money and other property of whatsoever kind or nature due or owing or belonging to the Foundation and to give full discharge or acquittance therefor; and to extend the time of payment of any obligation at any time owing to the Foundation.
- h. To cause any securities or other property to be registered in the name of "Delaware Technical and Community College Educational Foundation" or in the name or names of nominees without disclosing the ownership of the Foundation.
- i. To make, execute, acknowledge and deliver any and all deeds, leases, assignments bills of sale or other instruments with respect to real or personal property.
- j. To retain, manage, operate, repair, and improve any real or personal property.
- k. To settle, compromise, or submit to arbitration any claims, debts, or damages due or owing to or from the Foundation; to commence or defend suits or legal proceedings whenever, in their judgment, any interest of the Foundation requires it; and to represent the Foundation in all suits or legal proceedings in any court of law or equity or before any other body or tribunal, insofar as such suits or proceedings relate to any property forming part of the trust fund or to the administration of the Trust owned by the Foundation.
- l. Generally to do all such acts, execute all such instruments, take all such proceedings and exercise all such rights and privileges with relation to any securities or other assets owned by the Foundation and constituting a part of the Trust as if the Trustees were the absolute owners thereof.

3. *The PG appoints the majority of the PCU's board. (§22-24)*

According to GASB, if a primary government appoints a simple majority of the organization's governing board, it usually has a voting majority. However, if financial decisions require the approval of more than a simple majority, the primary government is not accountable for the organization.



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For purposes of determining whether accountability exists, a primary government's appointment authority should be substantive. In some cases the appointment authority of a primary government's officials may be limited by a nomination process. For example, state statutes or local ordinances may require a primary government to select its appointees from a slate of candidates provided by one or more individuals or groups other than the primary government's officials or appointees. A primary government's appointment authority is not substantive if the number of candidates is severely limited by the nominating process, for example, if a primary government must select three appointees from a single slate of five candidates. Additionally, a primary government's appointment authority may not be substantive if its responsibility is limited to confirming appointments made by individuals or groups other than the primary government's officials or appointees.

In most instances, legal provisions for appointment of an organization's officials also provide for continuing appointment authority. However, in the absence of continuing appointment authority, the ability of a primary government to unilaterally abolish an organization also provides the basis for ongoing accountability. Thus, a primary government that creates an organization (creation is tantamount to the initial appointment of the governing body) is accountable for the organization if the primary government can unilaterally abolish it. A primary government is considered to be accountable for an organization as long as continuing appointments are made by the primary government, even if those appointments are made by a subsequent administration.

Application to the Foundation

The General Trustees of the Foundation shall consist of the Trustees of the College and the President of the Delaware Technical and Community College (DTCC) (Section 4.2a of the Trust Agreement). The DTCC trustees are appointed by the Governor with the consent of the majority of the members elected to the Senate (14 Del. C. §9103(b)). The Foundation's Trust Agreement also allows for the General Trustees to elect, by a majority vote, Special Trustees to enhance the resources of the Foundation (Section 4.3a). The General and Special Trustees shall together constitute the Board of Trustees of the Foundation; however, a quorum for the conduct of business shall consist of five General Trustees.

Code and Trust Agreement Excerpts are as follows:

The Amended and Restated Trust Agreement of the Delaware Technical and Community College Educational Foundation

ARTICLE IV – THE TRUSTEES

Section 4.2 The General Trustees.

- a. Membership and Term. The General Trustees shall consist of the Trustees of the College (including the Chairman) and the President of the College. The terms of each shall be coextensive with their service on the Board of Trustees of the College or as President of the College, as the case may be, including any holdover period. Once a General Trustee has concluded his or her service as a member of the Board of Trustees of the College, or as President of the College, his or her term as a General Trustee hereunder shall automatically and immediately expire, without further action by the Trustees.



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- b. Removal and Resignation. The foregoing notwithstanding, any General Trustee may be removed from office at any time, with or without notice, by a majority of the General Trustees currently serving and any General Trustee may resign at any time.
- c. Written Notice of Changes in Membership. Written notices of changes in the membership of the General Trustees shall be provided to the General Trustees, the Special Trustees, and the Administrative Trustee. In the case of new General Trustees, the written notice shall affirmatively indicate that the new General Trustee has accepted the position and duties of General Trustee and shall be executed by the new General Trustee. In the case of removal, the written notice shall indicate that the action was taken by a majority of the General Trustees and shall be signed by the General Trustees voting in favor or removal. In the case of resignation, the written notice shall be signed by the resigning General Trustee.

Section 4.3 The Special Trustees.

- a. Membership and Term. The General Trustees may, by majority vote, elect Special Trustees. Special Trustees shall serve for a term of three years and may be reelected to an unlimited number of terms. Such Special Trustees shall hold positions in the community that would enable them to enhance the resources of the Foundation.
- b. Removal and Resignation. Special Trustees may be removed from office at any time by a majority vote of the General Trustees, with or without cause. Special Trustees may resign at any time.
- c. Written Notice of Changes in Membership. Written notices of changes in the membership of the Special Trustees shall be provided to the General Trustee, Special Trustees, and the Administrative Trustee. In the case of new Special Trustees, the written notice shall affirmatively indicate that the new Special Trustee has accepted the position and duties of Special Trustee and shall be executed by the new Special Trustee. In the case of removal, the written notice shall indicate that the action was taken by a majority of the General Trustees and shall be signed by the General Trustees voting in favor or removal. In the case of resignation, the written notice shall be signed by the resigning Special Trustee.

Section 4.4 The Board of Trustees; Chair, Vice Chair.

The General and Special Trustees shall together constitute the Board of Trustees of the Foundation. The Chairman of the Board of Trustees of the College shall be the Chair of the Board of Trustees for the Foundation. The Chair shall preside over meetings of the Board of Trustees and shall set the agenda for meetings of the Board of Trustees. The Chair may appoint committees of the Board of Trustees, authorized to investigate or supervise matters and make recommendations to the Board of Trustees. The Vice Chair of the Board of Trustees of the College shall be the Vice Chair of the Board of Trustees of the Foundation and shall be authorized to act in the Chair's place at meetings of the Board of Trustees when the Chair is absent, or otherwise when the Chair is unable to act.



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Section 4.6 Actions by the Trustees

- d. Quorum. A quorum for the conduct of business by the Trustees shall consist of five General Trustees.

14 Del. C. §9103. Board of Trustees – Composition; qualifications; chair; appointment; term; compensation; vacancy; quorum.

- (a) The Board shall consist of 7 trustees.
- (b) The trustees shall be appointed by the Governor by and with the consent of a majority of the members elected to the Senate.

6. *There is a financial benefit/burden relationship. (§ 27-33) AND The PG cannot impose its will on the PCU. (§25-26)*

Financial Benefit to or Burden on a Primary Government

According to GASB, *an organization can provide a financial benefit to, or impose a financial burden on, a primary government in a variety of ways.* The benefit or burden may result from legal entitlements or obligations, or it may be less formalized and exist because of decisions made by the primary government or agreements between the primary government and a component unit. If a primary government appoints a voting majority of an organization's officials or if the organization is fiscally dependent on the primary government *and* there is a potential for those organizations either to provide specific financial benefits to, or to impose specific financial burdens on, the primary government, the primary government is financially accountable for those organizations. An organization has a financial benefit or burden relationship with the primary government if, for example, *any one* of these conditions exists:

- a. The primary government is legally entitled to or can otherwise access the organization's resources.
- b. The primary government is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, the organization.
- c. The primary government is obligated in some manner for the debt of the organization.

Exchange transactions between organizations and the primary government should not be considered manifestations of a financial benefit or burden relationship. In an exchange transaction, such as a purchase or sale of goods or services, each participant (the government or its employees rather than the citizenry) directly receives and sacrifices value. For example, funding by a primary government for higher education is not equivalent to purchasing educational services and would be considered a manifestation of a financial burden on the primary government.

The effect of the financial benefits or burdens on the primary government can be either direct or indirect. A direct financial benefit or burden occurs when the primary government itself is entitled to the resources



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or is obligated for the deficits or debts of the organization. An indirect benefit or burden exists if one or more of the primary government's component units is entitled to the resources or is obligated for the deficits or debts of the organization. For purposes of this Statement, a financial benefit or burden relationship exists if the primary government is either directly or indirectly entitled to the resources or is either directly or indirectly obligated for the deficits or debts of an organization.

Legally Entitled to or Can Otherwise Access the Organization's Resources. The ability to access the resources of an organization—not necessarily whether there was an actual transaction during the period—is the important factor for determining when a primary government is entitled to an organization's resources. However, the ability to access the resources of an organization should be judged in light of the organization as a going concern; that is, a residual interest in the net assets of an organization in the event of dissolution is not equivalent to being entitled to its resources. If a primary government appoints a voting majority of an organization's officials *and* is legally entitled to or can otherwise access the organization's resources, the primary government is financially accountable for that organization.

Resources may flow from a component unit to a primary government for several reasons. Some organizations may operate activities, such as off-track betting or lotteries, for the principal purpose of generating net revenues that are accessible to the primary government. These organizations provide financial benefits to the primary government. Other organizations may operate activities (for example, public utilities) for the purpose of providing basic public services and charge rates sufficiently high to also provide a financial benefit to the primary government. These benefits may be characterized as "payments in lieu of taxes" or "contributions," or they may simply be amounts remitted on request of the primary government. These organizations also provide financial benefits to the primary government.

Legally Obligated or Has Otherwise Assumed the Obligation to Finance the Deficits of, or Provide Financial Support to, the Organization. A primary government may be obligated to finance the deficits of, or provide financial support to, an organization in different ways. It could be legally obligated to do so, or it may choose to do so for a variety of reasons. If a primary government appoints a voting majority of an organization's officials *and* is legally obligated or has otherwise assumed the obligation to finance the deficits of, or provide financial support to, that organization, the primary government is financially accountable for that organization. The following are examples of financial burdens assumed by a primary government in support of certain organizations:

- a. Some organizations provide public services financed by user charges that are not expected to be sufficient to sustain their operations. This situation often results from providing services such as mass transit, higher education, and healthcare. In these cases, public policy may dictate that a state or local government provide financial support to the organization to increase the availability and affordability of the service to a broader segment of the citizenry. Examples of support include annual appropriations to help meet operating expenditures/expenses, periodic capital grants, and direct payment of capital expenditures or debt service.
- b. A primary government may assume an obligation to finance the deficits of an organization. These deficits may or may not be expected to recur annually. A financial burden exists if the primary government is obligated to finance an organization's deficits even though there has not been, and may never be, a deficit to subsidize.



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Some organizations' operations are fully or partially funded by revenues generated through tax increment financing. Legally separate development or redevelopment authorities sometimes receive the incremental taxes that result from a tax increment financing arrangement. When this is done, *a taxing government temporarily waives its right to receive the incremental taxes from its own levy*. The incremental taxes instead are remitted to the separate organization. For purposes of this Statement, this type of tax increment financing should be considered evidence of an obligation to provide financial support to an organization (a financial burden), regardless of whether the primary government collects the taxes and remits them to the organization or the incremental taxes are paid directly to the organization.

Obligated in Some Manner for the Debt of an Organization. An obligation for the debt of an organization is similar to the notion that a primary government may be obligated for future operating deficits. The obligation can be either expressed or implied. A primary government is obligated in some manner for the debt of an organization if (a) it is legally obligated to assume all or part of the debt in the event of default or (b) it *may* take certain actions to assume secondary liability for all or part of the debt, *and* the government takes, or has given indications that it will take, those actions. Conditions that indicate that a primary government is obligated in some manner include:

- a. The primary government is *legally obligated* to honor deficiencies to the extent that proceeds from other default remedies are insufficient.
- b. The primary government is *required* to temporarily cover deficiencies with its own resources until funds from the primary repayment source or other default remedies are available.
- c. The primary government is *required* to provide funding for reserves maintained by the debtor organization, or to establish its own reserve or guarantee fund for the debt.
- d. The primary government is *authorized* to provide funding for reserves maintained by the debtor organization or to establish its own reserve or guarantee fund *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)
- e. The primary government is *authorized* to provide financing for a fund maintained by the debtor organization for the purpose of purchasing or redeeming the organization's debt, or to establish a similar fund of its own, *and* the primary government *establishes* such a fund. (If a fund is not established, the considerations in subparagraphs f and g may nevertheless provide evidence that the primary government is obligated in some manner.)
- f. The debtor government explicitly indicates by contract, such as the bond agreement or offering statement that, in the event of default, the primary government *may* cover deficiencies although it has no legal obligation to do so. That is, the bond offering statement may specifically refer to a law that authorizes the primary government to include an appropriation in its budget to provide funds, if necessary, to honor the debt of the organization.
- g. Legal decisions within the state or previous actions by the primary government related to actual or potential defaults on another organization's debt make it *probable* that the primary government will assume responsibility for the debt in the event of default.



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If a primary government appoints a voting majority of an organization's officials *and* is obligated in some manner for the debt of that organization, the primary government is financially accountable for that organization.

Imposition of Will

A primary government that is accountable for an organization because it appoints a voting majority of that organization's governing body frequently has the ability to affect that organization's operations. Sometimes, however, based on the provisions of law or contract, the primary government has little influence over the organization's operations. Certain conditions indicate the primary government's ability to affect the day-to-day operations of an organization. These conditions are referred to in this Statement as a government's ability to impose its will on an organization. If a primary government appoints a voting majority of an organization's officials *and* has the ability to impose its will on the organization, the primary government is financially accountable for that organization.

A primary government has the ability to impose its will on an organization if it can significantly influence the programs, projects, activities, or level of services performed or provided by the organization. The existence of any one of the following conditions clearly indicates that a primary government has the ability to impose its will on an organization:

- a. The ability to remove appointed members of the organization's governing board at will.
- b. The ability to modify or approve the budget of the organization.
- c. The ability to modify or approve rate or fee changes affecting revenues, such as water usage rate increases.

Application to the Foundation

The Foundation provides a financial benefit to Delaware Technical and Community College (DTCC), which is a part of primary government. Based on the Foundation's financial statements for the period ended December 31, 2014, more than half of the Foundation's expenses went to support DTCC.

In regard to the remaining financial benefit/burden criteria, our research identified the following information:

1. The General Trustees hold title to all property, funds, and other assets of the Foundation. (Article IV, Section 4.8)
2. Based on the Foundation's December 31, 2014, financial statements, most revenues are derived from donations, investment income, and special events. DTCC does not provide revenue to the Foundation.
3. A legal opinion obtained from AOA's Deputy Attorney General advised that there is no statutory language to suggest that the State of Delaware is legally obligated for the debt of the Foundation.



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The State cannot impose its will on the Foundation.

- a. Any General Trustee may be removed from office at any time, with or without notice, by a majority of the General Trustees currently serving. (Article IV, Section 4.2 a and b) The Governor appoints the trustees, but does not have the authority to remove appointed members at will.
- b. Section 10.2 of the Trust Agreement states that the President of the College is authorized to manage all of the business of the Foundation, under the supervision and direction of the Trustees. The President's responsibilities include the distribution and payment of scholarships, loans, grants, and student financial aid and the distribution and payment of funds for the purpose of assisting the College.

Trust Agreement Excerpts are as follows:

The Amended and Restated Trust Agreement of the Delaware Technical and Community College Educational Foundation

ARTICLE IV – THE TRUSTEES

Section 4.8 Title to the Assets of the Foundation.

The General Trustees shall hold title to all property, funds, and other assets of the Foundation.

Section 4.2 The General Trustees.

- a. Membership and Term. The General Trustees shall consist of the Trustees of the College (including the Chairman) and the President of the College. The terms of each shall be coextensive with their service on the Board of Trustees of the College or as President of the College, as the case may be, including any holdover period. Once a General Trustee has concluded his or her service as a member of the Board of Trustees of the College, or as President of the College, his or her term as a General Trustee hereunder shall automatically and immediately expire, without further action by the Trustees.
- b. Removal and Resignation. The foregoing notwithstanding, any General Trustee may be removed from office at any time, with or without notice, by a majority of the General Trustees currently serving and any General Trustee may resign at any time.

ARTICLE X – OFFICERS

Section 10.1 The President.

The President of the College shall be the President, Secretary, and Treasurer of the Foundation.



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Section 10.2 Powers and Duties of the President of the Foundation.

The business of the Foundation shall be managed by the President, under the supervision and direction of the Trustees. Subject to the supervision and direction of the Trustees, and subject to the restrictions of this Trust Agreement, the President is authorized to manage all of the business of the Foundation, of whatever nature, including without limitation: the distribution and payment of scholarships, loans, grants, and student financial aid; the distribution and payment of funds for the purpose of assisting the College, its Board of Trustees and officers and any of its College Campuses established within the State of Delaware to carry out the College's objects and purposes, powers and duties as authorized by law; the appointment or hiring of such assistants, administrative and clerical personnel, consultants, accountants, attorneys, and contractors as deemed necessary to carry on the business of the Foundation; the approval and payment of the expenses of the Foundation and its Trustees and; the maintenance of appropriate minutes, records, and books of account for the Foundation. The President shall have such further duties and responsibilities as may be assigned by the Trustees.

The President shall make periodic reports to the Trustees regarding the operations of the Foundation, in such form and with such content as may be requested by the Trustees.

7. The CU meets the blending criteria of ¶53, a, b, or c.

According to GASB, a component unit should be included in the reporting entity financial statements using the blending method in any of these circumstances:

- a. The component unit's governing body is substantively the same² as the governing body of the primary government *and* (1) there is a financial benefit or burden relationship between the primary government and the component unit, as described in paragraphs 27–33, or (2) management of the primary government has operational responsibility for the component unit. Management of a primary government has operational responsibility for a component unit if it manages the activities of the component unit in essentially the same manner in which it manages its own programs, departments, or agencies.

Management, for purposes of this determination, consists of the person(s), below the level of the governing board, responsible for the day-to-day operations of the primary government (for example, a county executive or city manager).

² "Substantively the same" means sufficient representation of the primary government's entire governing body on the component unit's governing body to allow complete control of the component unit's activities. To illustrate, the board of a city redevelopment authority may be composed entirely of the city council and the mayor, serving ex officio. The primary government is, essentially, serving as the governing body of the component unit. On the other hand, the board of a public housing authority composed of the city mayor and two council members (from a total of ten) ordinarily would not be substantively the same as the city's governing body. This criterion will rarely, if ever, apply to a state government because of the impracticality of providing sufficient representation of the state's entire governing body.



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- b. The component unit provides services entirely, or almost entirely, to the primary government or otherwise exclusively, or almost exclusively, benefits the primary government even though it does not provide services directly to it. The essence of this type of arrangement is much the same as an internal service fund—the goods or services are provided to the government itself rather than to the citizenry. Usually the services provided by a blended component unit are financing services provided solely to the primary government. For example, a building authority may be created to finance the construction of office buildings for the primary government. However, a component unit that provides services to more than just the primary government should also be blended if the services provided to others are insignificant to the overall activities of the component unit. Other component units that should be blended are those that exclusively, or almost exclusively, benefit the primary government by providing services indirectly; for example, a component unit that provides services on behalf of the primary government to its employees rather than directly to the primary government itself.
- c. The component unit's total debt outstanding, including leases, is expected to be repaid entirely or almost entirely with resources of the primary government. Repayment generally occurs through a continuing pledge and appropriation by the primary government to the component unit that, in turn, pledges those appropriation payments as the primary source of repayment for its debt.

Application to the Foundation

Based on review and consideration of all of the guidance above, we conclude the following regarding the criteria of paragraphs 53(a) through (c):

- a. The governing body of the Foundation (Board of Trustees) is not substantially the same as that of the State. All seven members of the Board of Trustees are appointed by the Governor; however, none of the Trustees are required to be a cabinet secretary of the State (14 Del. C. §9103).
- b. Article III of the Trust Agreement states that the Foundation shall be operated exclusively for educational purposes and describes permitted activities, which include making contributions, gifts, grants, or other financial assistance to DTCC, as well as providing financial assistance to students of DTCC. Therefore, since DTCC is part of the primary government, the Foundation provides services entirely to the primary government or otherwise exclusively benefits the primary government even though it does not provide services to it.
- c. Based on review of the 2014 financial statements, the Foundation has \$63,262 worth of debt. Debt of the Foundation would not be expected to be repaid with the resources of the primary government.



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Code and Trust Agreement excerpts are as follows:

The Amended and Restated Trust Agreement of the Delaware Technical and Community College Educational Foundation

Article III – Objects and Purpose of the Foundation, Beneficiaries of the Foundation

Section 3.1 Educational Purposes.

The Foundation is organized and shall be operated exclusively for educational purposes as hereafter described, provided that such educational purposes shall always be construed to mean and be limited to such educational purposes as come within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or comparable provision of any later Code revision) and its definition of organizations exempt from Federal income tax.

Section 3.2 Permitted Activities.

- a. To make contributions, gifts, or grants or otherwise render financial aid and assistance by paying over or applying sums of money or other assets of the Foundation to or for the benefit of the Board of Trustees of Delaware Technical and Community College, an agency of the State of Delaware (hereinafter the “College”), so long as said organization is and remains exempt from the payment of Federal income taxes under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, said organization having been created by Act of the General Assembly of Delaware, 55 Laws of Delaware Chapter 374, effective June 9, 1966, and later amendments thereto, all as set forth in 14 Delaware Code Chapter 91 as amended; said contributions, gifts, or grants, to be made for the purpose of assisting the College, its Board of Trustees and officers and any of its College Campuses established within the State of Delaware to carry out the College’s objects and purposes, powers and duties as authorized by law including, but not limited to, the providing of financial aid to students of the College, or providing of training and equipment for use in the educational mission of the College.



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