

Post Issuance Tax-Exempt Bond Compliance

ROWAN UNIVERSITY POLICY

Title: *Post-Issuance Tax-Exempt Bond Compliance*

Subject: *Accounting Services*

Policy No: *FIN: 2015:12*

Applies: *University-Wide*

Issuing Authority: *President*

Responsible Officer: *Senior Vice President for Finance and CFO*

Adopted: *12/01/2015*

Last Revision: *09/30/2016*

Last Reviewed: *11/30/2022*

I. PURPOSE

This policy provides the general guidelines and procedures the University follows to remain in compliance with Internal Revenue Service (IRS) requirements pertaining to Tax-Exempt Bonds (TEBs), as well as with the documents executed by the University in connection with the issuance of TEBs by the New Jersey Educational Facilities Authority (NJEFA), Gloucester County Improvement Authority (GCIA) and Camden County Improvement Authority (CCIA) for the benefit of the University.

II. ACCOUNTABILITY

Under the direction of the President, the Senior Vice President for Finance and CFO shall implement this policy and the Controller and AVP of Finance shall ensure compliance with the policy.

III. APPLICABILITY

This policy is applicable to anyone who is involved with the expenditure of and accounting for tax exempt bond proceeds as well as those that are involved with any aspects of private business use.

IV. DEFINITIONS

1. CCIA - Camden County Investment Authority
2. GCIA - Gloucester County Investment Authority
3. IRS - Internal Revenue Service
4. NJEFA - New Jersey Educational Facilities Authority
5. PBU - Private Business Use - use in a trade or business carried on by or for the benefit of any Non-Exempt Person. Private business use does not include the use of a facility by a member of the general public where the facility is open to the public and the user has no special legal entitlement to the use of the facility.
6. Sponsored Programs - those projects and/or activities which are originated and conducted by members of the faculty or, in some instances, by staff members. Such programs are supported wholly or in part by external restricted funds awarded to the University.
7. TEB - Tax Exempt Bonds - A bond usually issued by municipal, county, or state governments whose interest payments are not subject to federal and, in some cases, state and local income tax.
8. Trade or Business – any activity carried on by a Non-Exempt Person other than an individual acting as a member of the general public.
9. UBTI - Unrelated Business Taxable Income - the tax placed on the income derived from unrelated business activities of an otherwise tax-exempt entity.
10. UTB - Unrelated Trade or Business - any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501.

11. VCAP - Voluntary Closing Agreement Program – program to assist governmental issuers in resolving violations of the federal tax laws applicable to their tax-exempt bonds, tax credit bonds, or direct pay bonds (tax-advantaged bonds).

V. REFERENCES

1. IRS issued guidance relating to Tax Exempt Bonds Post-Issuance Compliance “[TEB Post-Issuance Compliance: Some Basic Concepts](#)”:
2. IRS issued Treasury Regulation 1.141-12 - Change in Use Rules https://www.irs.gov/PUP/taxexemptbond/07%20teb%20phi%2017-change%20in%20use%20sg.pdf?_ga=1.220449374.732736244.1475263729

VI. POLICY

1. The use of tax-exempt debt plays an important role in funding a significant portion of the University’s capital projects. The University recognizes its legal obligation to ensure that this tax-exemption is used responsibly. TEBs are debt obligations, the proceeds of which are used by the University to finance construction of all or a portion of its facilities. The University has an obligation to maintain the tax-exempt status of the TEBs remains throughout the life of the bonds. However, this status can be lost if certain applicable federal income tax requirements are not satisfied during the entire period the TEBs are outstanding. Taxability of the interest on the TEBs or other lesser consequences can result from failure to comply with restrictions relating to arbitrage, timing and use of bond proceeds, and other aspects of bond issue.
2. Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of debt proceeds and use of debt-financed property; compliance responsibilities require:
 - a. Tracking bond proceeds spending for qualified purposes;
 - b. Maintaining detailed records of the expenditure and investment of the proceeds of the TEBs;
 - c. Ensuring the project financing is used in a manner consistent with the federal income tax requirements; and,
 - d. Providing necessary disclosure information regarding financial and operating status.
3. RESPONSIBILITIES
 - a. The Senior Vice President for Finance and CFO approves certain project - level decisions impacting TEB compliance.
 - b. The Controller and AVP of Finance monitors and documents:
 - i. post-issuance compliance with TEB regulations.
 - ii. expenditures of all debt proceeds, including for cost of issuance and working capital.
 - iii. private use in the financed facilities.
 - iv. contracts that potentially could be considered Private Business Use.
 - c. The Office of Sponsored Programs (OSP) is responsible for research contracts.
 - d. University Advancement is responsible for corporate and foundation research agreements.
 - e. The Senior Director of Procurement is responsible for all other contracts.
4. The University allocates debt proceeds to the various projects being funded with the TEBs. All contracts for bond-financed capital expenditures are approved by the Senior Vice President for Finance and CFO, or in his absence, his designee. All purchase orders are approved in accordance with the University’s Purchasing Policy.
5. The Accounting Services Department records all spending of the funds toward a financed project’s costs and identifies the sources of the capital expenditures (e.g., bond proceeds, equity or donations).
 - a. All donations restricted to a particular project are recorded by University Advancement and the Accounting Services Department. The records separately reflect the allocation of donations or other equity and the allocation of borrowed funds to the particular projects.
 - b. All other uses of bond proceeds such as costs of issuance or deposits to reserve funds are identified on a bond issue-by-issue basis.
 - c. A final allocation of expenditures for a bond-financed project is made when required under the applicable federal income regulations.
6. PRIVATE BUSINESS USE OF BOND-FINANCED PROPERTY

- a. The use of a facility financed with TEBs by any person or entity that is (1) not a state or local governmental entity, or (2) an entity described in section 501(c)(3) of the Code which is exempt from tax under section 501(a) of the Code, other than a 501(c)(3) entity that is using any portion of the financed facilities in an unrelated trade or business (a "Non-exempt Person"), may be considered a private business use (PBU) of the bond-financed property.
- b. The University's TEBs will lose their tax-exempt qualified status if more than 10% of the net proceeds of the bond issuance are used for any PBU or the ownership of any bond-financed property is transferred to any person other than a 501(c)(3) or state or local governmental entity.
- c. Because the use of bond proceeds to finance bond issuance costs is a PBU of those proceeds, the allowable PBU percentage includes the cost of issuance financed with bond proceeds.
- d. The private business use (PBU) of TEB - financed property includes (see Attachment 1):
 - i. Sale or Other Transfer of Ownership of Bond-Financed Property
 - ii. Leases/Rentals of Bond-Financed Property
 - iii. Management Contracts
 - iv. Sponsored Research Agreements
 - v. Unrelated Trade or Business (UTB) Activities
 - vi. Naming Rights
 - vii. Other Actual or Beneficial Use of University Property

7. RECORD RETENTION

- a. The University will retain all records for the length of time required to comply with IRS TEB regulations. Currently, records of TEB issuances and related post-issuance compliance documentation must be maintained for the life of the bond, plus any refunding, plus three years.
- b. Basic records relating to any debt transaction will be maintained, as well as documentation evidencing the:
 - i. Expenditures of bond proceeds;
 - ii. Use of debt-financed property; and
 - iii. Sources of payment or security for the bonds.
- c. The Accounting Services department is responsible for identifying the documents to be retained, for identifying and training the person responsible for retaining each type of document, and for maintaining records showing the responsible person and the exact location of the records (either physical or electronic). No employee shall discard or destroy any information identified in the inventory during the period such records are required to be maintained.

8. ARBITRAGE AND REBATE

- a. TEBs lose their tax-exempt status if they are classified as "arbitrage bonds." In general, arbitrage is earned when the gross proceeds of a bond issue are used to acquire investments that earn a yield that is "materially higher" than the yield on the bonds issued. The Internal Revenue Code contains the following two separate sets of requirements that must be complied with to ensure that TEBs are not arbitrage bonds:
 - i. Yield Restriction requirements, which generally provide that in the absence of an applicable exception, bond issue proceeds may not be invested at a yield in excess of the bond yield; and
 - ii. Rebate requirements, which generally provide that when arbitrage is earned on an issue in excess of permitted amounts, the excess earnings must be paid to the U.S. Department of Treasury, even if an exception to the yield restriction requirements applies.
- b. The NJEFA, GCIA and CCIA have engaged the services of an Arbitrage Compliance Servicer to provide written reports to assist the University in monitoring yield on investments and calculating any rebate that may be due. The University will cooperate with the NJEFA, GCIA and CCIA and Servicers' to review the yield on investments as reported by the Servicer and to ensure the accuracy of the Servicer's calculations of possible rebate liability. If the Servicer provides a written report that rebate is due, the University will make any required payments to the IRS.

9. CREDIT ENHANCEMENT OR OTHER AGREEMENTS RELATING TO BONDS

- a. The University will consult with the NJEFA, GCIA and/or CCIA prior to the extension or alteration of any credit enhancement relating to the University's TEBs. The University will also consult with NJEFA, GCIA and/or CCIA prior to investing bond proceeds in guaranteed investment contracts or derivative products which relate to TEBs.

10. DISCLOSURES AND FILINGS

- a. The University will comply with continuing disclosure requirements as stated in the bond documents. The University will consult with the NJEFA, GCIA, CCIA, counsel and its auditors, as appropriate, to ensure the accuracy of all information relating to tax-exempt debt.

11. TRAINING AND CONTINUITY

- a. University staff responsible for complying with requirements applicable to TEBs will be trained by the Accounting Services department on the purpose and importance of this policy and the details of the particular staff member's responsibilities.
- b. To ensure there is continuity in compliance with post-issuance debt requirements, the University has established a calendar (see Attachment 4) of significant dates for the annual review of private use of facilities and for compliance with this policy.

12. REMEDIAL ACTION

- a. The Senior Vice President for Facilities is responsible for notifying the Senior Vice President for Finance and CFO before there is a change in use of any facility financed with tax-exempt debt.
- b. If the change in use results in the transfer of ownership of bond-financed property to a non-exempt person during the measurement period or in excessive PBU for a bond issue, the University may avail itself of rules under Treasury Regulation 1.141-12 which provide for "remedial action," including the redemption or defeasance of nonqualified bonds, or application of disposition proceeds to other qualifying capital expenditures.
- c. The University will seek the advice of the NJEFA, GCIA and/or CCIA and bond counsel in the event remedial action may be required.
- d. To the extent a potential violation arises that cannot be corrected through remedial action, or in the event of a potential arbitrage violation, the University will seek the advice of NJEFA, GCIA and/or CCIA and bond counsel concerning its alternatives, which may include approaching the Internal Revenue Service under the Voluntary Closing Agreement Program (VCAP).

VII. ATTACHMENTS

- 1. Attachment 1 – Private Business Use of Bond-Financed Property

ATTACHMENT 1

PRIVATE BUSINESS USE OF BOND-FINANCED PROPERTY

The use of a facility financed with TEBs by any person or entity that is (1) not a state or local governmental entity, or (2) an entity described in section 501(c)(3) of the Code which is exempt from tax under section 501 (a) of the Code, other than a 501(c)(3) entity that is using any portion of the financed facilities in an unrelated trade or business (a "Non-exempt Person"), may be considered a private business use (PBU) of the bond-financed property.

The University's TEBs will lose their tax-exempt qualified status if more than 10% of the net proceeds of the bond issuance are used for any PBU or the ownership of any bond-financed property is transferred to any person other than a 501(c)(3) or state or local governmental entity. Because the use of bond proceeds to finance bond issuance costs is a PBU of those proceeds, the allowable PBU percentage includes the cost of issuance financed with bond proceeds.

The private business use (PBU) of TEB financed property includes:

- 1. Sale or Other Transfer of Ownership of Bond-Financed Property

- a. The transfer of ownership of any portion of the property financed with TEBs to any Non-exempt Person is both a PBU, and is directly prohibited by the Internal Revenue Code, if it occurs prior to the earlier of the end of the expected economic life of the property, or the latest maturity date of any TEBs financing (or refinancing) the property (the "measurement period").
- b. The Senior Vice President for Finance and CFO will assure that ownership of property financed with TEBs will not be transferred prior to expiration of the applicable measurement period.

2. Leases/Rentals of Bond-Financed Property

- a. Requests to use university facilities that are tax-exempt financed must be submitted to the Senior Vice President for Finance and CFO for review and approval under the following conditions:
 - i. Use of a University facility by one or more Rowan University employees to operate a trade or business not owned or operated by the university, or
 - ii. Use of any facility by individuals not employed by the university or by non-Rowan University and nongovernmental organizations (private parties).
- b. Exempted from the requirement to submit to the Accounting Services for review and approval are rental and facility use arrangements that meet the following stipulations:
 - i. The university facility use or rental arrangement with an external (non-Rowan University) party is for no more than 50 days of total use, e.g., every Saturday and Sunday for 15 weeks, totaling 30 days of use (the days of use do not have to be consecutive days), and
 - ii. Fair market value is charged for the use of space. To determine whether fair market value is being charged for the use of the space, each Rowan University department handling a facility use negotiation is to consult with the Director of Accounting Services.
 - iii. There may be a provision in the rental or use agreement to automatically renew for additional periods of 50 days or less of total use as long as either party has the right to not renew.
 - iv. Long-term leases (over 50 days) for use of Rowan University facilities by parties other than the University must be reviewed by General Counsel and the Senior Vice President for Finance and CFO. The University will consult with bond counsel when needed prior to any long-term use of TEB facilities by outside parties. This policy only applies to facility use by non- Rowan University parties in a Rowan University facility that is tax-exempt financed. A list of facilities financed with tax-exempt bonds is located in Attachment 2 of this document.
 - v. The Accounting Services Department is responsible for maintaining a list of the University facilities leased to third parties. The department also maintains a schedule detailing space, length of rental or use and amount received for each such rental use. The University reviews such records with the appropriate parties, which may include bond counsel, on at least an annual basis. If a use is determined to constitute PBU, the University may consult with bond counsel.

3. Management Contracts

- a. A management contract is defined by the IRS as a management, service or incentive payment contract with a service provider under which the service provider provides services involving all or a portion of any function of a facility. Examples would include food service and bookstore, where the outside company has an ongoing presence in or control of the facility. Exemptions include contracts that are solely incidental to the primary exempt purpose for which the facility is used, including janitorial services and office equipment repair.
- b. The General Counsel and the Finance Division are responsible for identifying whether any management contract might constitute PBU. Any permitted PBU contracts will be tracked by the Accounting Services department.

4. Sponsored Research Agreements

- a. The Office of Sponsored Programs will screen federal and state research agreements to determine if agreements are PBU. University Advancement will screen corporate and foundation research agreements to determine if agreements are PBU. Any PBU agreement must be approved by General Counsel and the Senior Vice President for Finance and CFO. The Accounting Services department will track any PBU contracts.

5. Unrelated Trade or Business (UTB) Activities

- a. Use of bond proceeds or bond-financed property by a 501(c)(3) organization in an unrelated trade or business activity is treated as private business use for tax-exempt bond purposes. An activity rises to the level of a trade or business only if it is carried on in a regular and continuous manner, is considerable in scope, and is entered into with the intent of realizing a profit. The fact

that an activity does not actually produce a net profit in a given year is not sufficient to exclude it from the definition of trade or business.

- b. The determination of whether an activity is UBT is determined based on a “facts and circumstances” analysis by the Finance Division.
- c. The Accounting Services Department will monitor revenues for unrelated business taxable income (UBTI) and/or PBU.

6. Naming Rights

- a. If the University enters into a contractual agreement giving a party legal entitlement to name a tax-exempt bond-financed facility, or portion thereof, after a for-profit entity, such contract may give rise to PBU with respect to the named space. The following naming opportunity will not be treated as PBU: if a facility is named for an individual or nonprofit entity whose name does not overlap with the name of a for-profit entity with which the person or nonprofit is associated.
- b. University Advancement will identify all naming opportunities that do not fall within the exclusion described above and will refer them to the Accounting Services department for review and approval prior to any final decision or the execution of any enforceable agreement. Any approved PBU naming opportunities will be tracked by the Accounting Services department.

7. Other Actual or Beneficial Use of University Property

- a. Any other arrangement that conveys special legal entitlements for beneficial use of the University property or that creates priority rights to the use or capacity of a facility must be reported to the Accounting Services department. The Accounting Services department, in conjunction with the General Counsel if appropriate, will determine if the use constitutes PBU. Those activities deemed to be PBU will be tracked by the Accounting Services department.