STEPHEN F. AUSTIN
STATE UNIVERSITY

Office of the General Counsel

POLICY SUMMARY FORM

Policy Name: Post Bond Issuance Federal Tax Compliance

Policy Number: 3.5

Is this policy new, being reviewed/revised, or deleted? Review/Revise

Date of last revision, if applicable: 4/15/2015

Unit(s) Responsible for Policy Implementation: Vice President for Finance and Administration

Purpose of Policy (what does it do): This policy identifies the compliance areas related to tax-exempt bond financing and affirms the university's intent to fulfill all requirements in these areas during the post-issuance period. It also identifies the Post-Issuance Bond Compliance Procedures as the authoritative resource for compliance activities.

Reason for the addition, revision, or deletion (check all that apply):

☒ Scheduled Review ☐ Change in law ☐ Response to audit finding

☐ Internal Review ☐ Other, please explain:

Please complete the appropriate section:

Specific rationale for new policy:

Specific rationale for each substantive revision: Updated to reflect current requirements.

Specific rationale for deletion of policy:

Additional Comments:

Reviewers:

Judi Kruwell, Director of Financial Services
Danny Gallant, Vice President for Finance and Administration
Damon Derrick, General Counsel

Post Bond Issuance Federal Tax Compliance

Original Implementation: April 14, 2015
Last Revision: ~~None~~ *July 24, 2018*

Purpose

This policy identifies the compliance areas related to tax-exempt bond financing and affirms the university's intent to fulfill all requirements in these areas during the post-issuance period. It also identifies the Post-Issuance Bond Compliance Procedures as the authoritative resource for compliance activities.

Definitions

Bond proceeds *are paid to the university by the purchaser or underwriter of a new issue of tax-exempt obligations to finance a project for which the securities were issued.*

Arbitrage *is the investment gain made by investing the proceeds of tax-exempt bonds in taxable investments.*

Private business use *includes any trade or business activity, directly or indirectly, using bond-financed property which is carried on by any person or entity other than a governmental unit.*

General

The Board of Regents ~~, Stephen F. Austin State University~~ (the "board") has issued and will issue from time to time bonds, notes or other tax-exempt obligations (collectively, the "bonds") on behalf of Stephen F. Austin State University (the "university"). The board is required by the terms of Section 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended ("code"), and the U.S. Treasury Regulations promulgated thereunder ("regulations"), to preserve the tax-exempt status of its bonds subsequent to their issuance. ~~Further, the code and the regulations impose record retention requirements on the board with respect to its bonds.~~

~~The purpose of this policy is to describe action to be taken in order to comply with bond covenants including applicable code provisions and regulations and also to specify who is responsible for such action.~~

Expenditure and Allocation of Bond Proceeds

Bond proceeds may only be used for eligible project costs in accordance with applicable federal and state laws and restrictions of the bond documents. The spending of bond proceeds and related investment earnings must be monitored *to* help *ensure they are used for* eligible project costs and *qualified purposes.*

Spending Requirements and Arbitrage Rebate~~ARBITRAGE~~

Restrictions exist as to the timing of the expenditure of bond proceeds. Generally, proceeds must be spent within three years of bond issuance, although there are several rebate exceptions if bond proceeds are spent promptly. If it appears that all proceeds will not be spent within a three-year period, bond counsel should be consulted.

Tax rules generally require borrowers of tax-exempt debt to calculate and pay, or "rebate", to the IRS any "arbitrage profit" earned on the investment of bond proceeds prior to their expenditure. The appropriate university staff, consultants(s), or other appropriate persons will maintain procedures to ensure the required arbitrage calculations are performed and the necessary (if any) IRS tax forms are filed.

~~With respect to the investment and expenditure of the proceeds of bonds, the vice president for finance and administration will instruct the appropriate staff, consultant(s) or other appropriate person(s) to:~~

~~require that the construction, renovation or acquisition of any facilities to be financed with the proceeds of bonds proceed with due diligence and that binding contracts for the expenditure of at least five per cent (5%) of the proceeds of the bonds be entered into within six (6) months of the date of delivery of the bonds ("issue date");~~

~~monitor to ensure that at least eighty-five percent (85%) of the proceeds of the bonds to be used for the construction, renovation or acquisition of any facilities are expended within three (3) years of the issue date;~~

~~ensure that the yield on the investments of any proceeds of the bonds be restricted to the yield on the bonds for any period beyond three (3) years of the issue date;~~

~~monitor all amounts deposited into a sinking fund or fund (e.g., a debt service fund or interest and sinking fund) to assure that the maximum amount invested at a yield higher than the yield on the bonds does not exceed an amount equal to the debt service on the bonds in the succeeding twelve (12) month period plus a carryover amount equal to one-twelfth (1/12) of the principal and interest payable on the bonds for the immediately preceding twelve (12) month period;~~

~~ensure that no more than fifty percent (50%) of the proceeds of the bonds are invested in an investment with a guaranteed yield for four (4) years or more;~~
~~assure that the maximum amount of any reserve fund for the bonds invested at a yield higher than the yield on the bonds will not exceed the lesser of (i) ten percent (10%) of the principal amount of the bonds, (ii) one hundred twenty-five percent (125%) of the average annual debt service on the bonds measured as of the issue date, or (iii) one hundred percent (100%) of the maximum annual debt service on the bonds as of the issue date;~~

~~monitor the actions of the escrow agent holding any escrow funded with bond proceeds to ensure compliance with the applicable provisions of the escrow agreement, including with respect to reinvestment of cash balances;~~

~~document by official action of the board, such as a reimbursement resolution, any intent of the board to reimburse with the proceeds of the bonds any amount expended prior to the issue date for the acquisition, renovation or construction of the facilities;~~

~~ensure that the applicable information return (e.g., IRS Form 8038-G, or any successor form) is timely filed with the Internal Revenue Service ("IRS"); and~~

~~assure that, unless excepted from rebate and yield restriction under Section 148(f) of the Internal Revenue Code of 1986, excess investment earnings are computed and paid to the U.S. government at such time and in such manner as directed by the IRS (i) at least every five (5) years after the issue date and (ii) within thirty (30) days after the date the bonds are retired.~~

~~PRIVATE BUSINESS USE~~*Private Business Use*

IRS tax rules limit private business use of a building financed with tax-exempt financing. ~~With respect to the use of any facilities financed or refinanced with the proceeds of the bonds, t~~*To help ensure compliance with the limitation of private business use,* ~~he vice-president for finance and administration will instruct~~ the appropriate university staff ~~, consultant(s), or other appropriate person(s) to~~*will* implement and *monitor university procedures to comply with IRS rules regarding private business use of facilities financed with tax exempt bonds.*

~~(a) monitor the date on which the facilities are substantially complete and available to be used for their intended purpose;~~

~~(b) monitor whether, at any time during which the bonds are outstanding, any person, other than the university, its employees and agents or members of the general public, has any contractual right (such as a lease, purchase, management or other service agreement) with respect to any portion of the facilities;~~

~~(c) monitor whether, at any time the bonds are outstanding, any person, other than the university, its employees and agents or members of the general public, has a right to use the output of the facilities (e.g., water, gas or electricity);~~

~~(d) monitor whether, at any time the bonds are outstanding, any person, other than the university, its employees and agents or members of the general public, has a right to use the facilities to conduct or to direct the conduct of research;~~

~~(e) determine whether, at any time the bonds are outstanding, any person, other than the university, has a naming right for the facilities or any other contractual right granting an intangible benefit;~~

~~(f) determine whether, at any time the bonds are outstanding, the facilities are sold or otherwise disposed of; and~~

~~(g) take such action as is necessary to remediate any failure to maintain~~

~~compliance with the covenants contained in the resolutions authorizing issuance of the bonds related to the public use of the facilities.~~

~~RECORDS RETENTION~~*ecords Retention*

~~The vice president for finance and administration and designated university staff will maintain or cause to be maintained all~~*The university will retain* ~~records~~*all records* relating to the investment and expenditure of the proceeds of the bonds and the use of any facilities financed or refinanced thereby for *the period of time required by federal and state laws.* ~~a period ending three (3) years after the complete extinguishment of the bonds.~~ If any portion of the bonds is refunded with the proceeds of another series of tax-exempt bonds, ~~the responsible person will maintain or cause to be maintained all of such records until three (3) years after the refunding bonds are completely extinguished.~~ *the university will also maintain such records for the period required by federal and state laws.* Such records may be maintained in paper or electronic format *and must be indexed. This policy supersedes any other documented retention policies in regards to records pertaining to tax-exempt bond issues. Guidelines and responsibility for records retention is detailed in the Post Issuance Bond Compliance Procedures.*

~~CONTINUING DISCLOSURE~~*Continuing Disclosure*

The ~~vice president for finance and administration or designated university staff~~ *university* will remain in compliance with the Security and Exchange Commission rule 15c2-12 *which requires*~~by~~ *the* ~~filing~~*filing of certain* ~~its~~ ~~annual~~ financial ~~statements and other financial~~ and operating *information*~~data~~ *with the Electronic Municipal Market Access System (EMMA) which is maintained by the Municipal Securities Rulemaking Board (MSRB). This information is* for the benefit of bondholders*, and must be filed* within 180 days of the close of the fiscal year.

In addition to annual financial information, the university is required to file a Material Event Notice within ten business days of any of the following occurrences:

- *Principal and interest payment delinquencies;*
- *Non-payment related defaults;*
- *Unscheduled draws on debt service reserves reflecting financial difficulties;*
- *Unscheduled draws on credit enhancements reflecting financial difficulties;*
- *Substitution of credit or liquidity providers, or their failure to perform;*
- *Adverse tax opinions, IRS notices, or material events affecting the tax status of the security;*
- *Modifications to rights of security holders;*
- *Release, substitution, or sale of property securing repayment of the securities, if material;*
- *Bond calls, if material, and tender offers;*
- *Defeasances;*
- *Rating changes;*
- *Bankruptcy, insolvency, receivership, or similar event;*
- *Merger, consolidation, or acquisition of the issuer, if material; and/or*
- *Appointment of a successor or additional trustee or name change of a trustee, if material.*

The vice president for finance and administration is responsible for responding to inquiries by investors, rating agencies, and other outside parties relating to the status of projects, the financial condition of the university, and any other events that may affect investors.

~~**RESPONSIBLE PERSON**~~***Responsible Person***

The vice president for finance and administration and/or designated staff will ~~receive appropriate training on federal tax requirements for post-issuance compliance applicable to bonds~~*develop, maintain, and enforce p~~.~~rocedures to ensure continuing compliance.*

Cross Reference: I.R.C. §§ 103, 141-150; 17 C.F.R. § 240.15c2-12

Responsible for Implementation: Vice President for Finance and Administration

Contact for Revision: Vice President for Finance and Administration

Forms: None

Board Committee Assignment: Finance and Audit