|  |  |
| --- | --- |
|  | Rutgers, The State University of New Jersey  Post Issuance Compliance Policy  November 2010 |

Table of Contents

|  |  |
| --- | --- |
| I. Purpose of Policy 2  II. Scope of Policy 2  III. Debt Issuance Process 2  IV. Proceeds Tracking …………... 2  V. Maintaining Detailed Records 3  VI. Private Business Use 3  VII. Disclosure and Filings 4  VIII. Data Management 4  IX. Continuity and Ongoing Review 4 |  |
|  |  |

I. Purpose of Policy

|  |
| --- |
| The University recognizes that tax-advantaged debt is a perpetual component of the University’s capitalization due in part to its substantial cost benefits. Therefore, the University has managed the debt portfolio to maximize its utilization of tax-advantaged debt relative to fully taxable debt whenever possible. In all circumstances, however, the individual projects continue to be identified and tracked to ensure compliance for all tax and reimbursement purposes. The University realizes the importance of complying with federal, state and institutional requirements regarding the issuance and ongoing management of its tax-advantaged obligations.  The policy and procedures outlined herein are intended to define the compliance practices, including actions, records management and process continuity, within various business units under the Office of the Senior Vice President for Finance and Administration. |

II. Scope of Policy

|  |  |
| --- | --- |
|  | This policy relates to all tax-advantaged debt obligations issued by the University. Although the Senior Vice President for Finance and Administration has ultimate responsibility for monitoring the University’s compliance with post-issuance tax requirements, various tasks are assigned to the Vice President for Finance and Associate Treasurer, the Controller, the Tax Director and the Senior Manager of Plant Funds.  Goals and Objectives |

III. Debt Issuance Process

|  |  |
| --- | --- |
|  | Certain authorizations must be obtained by the Office of the Senior Vice President for Finance and Administration.   * 1. Board of Governors (with Resolution of the Board of Trustees concurring with Resolution of the Board of Governors) authorizing projects to be implemented and that these projects may be financed through debt obligations   2. Board of Governors (with concurrence from the Board of Trustees) Reimbursement Resolution where necessary   3. State Authorization – if the debt is to be issued through a State Authority   4. Legal Opinions from Bond Counsel   5. Arbitrage (Tax) Certificate   6. Tax Due Diligence Questionnaire |

IV. Proceeds Tracking

|  |  |
| --- | --- |
|  | The University allocates debt proceeds to the various projects being funded with the tax-advantaged debt.   * 1. Plant Accounting, working with Facilities, Tax and Treasury Operations tracks the spending of the proceeds for eligible project costs along with the rate at which the proceeds are spent. The University has the ability to use another allocation provided the allocation takes place no later than 18 months after the date the expenditure is paid or the project to which the expenditure relates is placed into service, whichever is later, but not more than 60 days after the five year anniversary date.   2. Compliance with arbitrage yield restrictions and rebate requirements as required by section 148 of the Internal Revenue Code (the “Code”) are monitored through the “Rebate Arbitrage Reports” prepared by Bond Counsel through their financial services division. These reports will include:      1. Purchases and sales of investments made with debt proceeds      2. Earnings on investments made with debt proceeds      3. Expenditures made with debt proceeds and earnings from investments made from debt proceeds      4. Information showing, where applicable, that the University was eligible to be treated as a “small issuer” in respect to bonds issued in that calendar year      5. Calculations sufficient to demonstrate to the Internal Revenue Service upon an audit of a debt issue that, where applicable, the University has complied with an available spending exception to the arbitrage rebate requirements in respect to the debt issue      6. Calculations sufficient to demonstrate to the Internal Revenue Service upon an audit of a debt issue for which an available spending exception to the arbitrage rebate requirements was applicable, that the rebate amount, if any, was calculated and timely paid with Form 8038-T timely filed with the Internal Revenue Service      7. Records showing that investments held in yield-restricted advance refunding or defeasance escrows for debt, and investment made with unspent proceeds after the expiration of the applicable temporary periods, were not invested in higher-yielding investments   3. Plant Accounting tracks issuance costs that are paid from bond proceeds to ensure such costs do not exceed 2% of the “net proceeds” of such debt, where applicable.   4. Plant Accounting monitors total proceeds spent on projects to ensure they do not exceed the project costs authorized by the Board Resolutions.   5. Treasury Operations shall maintain information about any derivative agreements integrated with the debt for tax purposes, including all correspondence from the counterparty, and shall maintain records of all bid forms and results, recommendations of financial advisors, contracts and legal opinions related to all investment contracts, derivative agreements and other investment products. |

V. Maintaining Detailed Records

|  |  |
| --- | --- |
|  | Records relating to any debt transactions are maintained and retained in compliance with applicable regulatory records retention requirements. These requirements provide that records relating to tax-advantaged debt transactions should be retained so long as they are material in the administration of any federal tax law. Therefore, it is recommended that material records be kept for the life of the debt, including any refunding of the debt, plus three years. Material records are defined as documentation evidencing the:   * 1. Official Transcripts of Proceedings for the original debt issuance   2. Expenditure of debt proceeds   3. Uses of debt financed property   4. Sources of payment or security for debt   5. Investment of bond proceeds   6. Rebate Arbitrage Calculations along with copies of the timely filed Form 8038-T and evidence of timely payment of any rebates due   7. Evidence of any use arrangements which result in private use of property financed with proceeds from the debt issuance other than qualified private activity bonds |

VI. Private Business Use

|  |  |
| --- | --- |
|  | Each tax-advantaged debt issuance is subject to the limitation on the amount of “private use” permitted in the facilities funded by the debt issuance. The applicable limit under section 141 of the Code is 10% for related private business uses and 5% for unrelated or disproportionate private business uses for governmental debt issuances, subject to a cap per debt issuance of $15 million. Private use is defined to mean the use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in a trade or business activity, and the United States of America and any federal agency, as a result of ownership of the property or use of the property under a lease, management or service contract (except for certain “qualified” management or research contracts). “naming rights” contracts, “public-private partnership” arrangements, or any similar arrangement that provides special legal entitlements for the use of tax-advantaged debt financed property.  Compliance with section 141 of the Code is monitored by the Tax Director. Compliance procedures include the calculation of the private use percentage of bond proceeds on an annual basis for the life of each outstanding bond. Private use calculations utilize capitalized project costs recorded and bond proceeds allocated which are maintained on the University’s official books and records by University Accounting. Procedures include periodic reviews of the Rutgers Space Management department’s recorded designation of each facility for amount of space and type of use by each University department and designation as lab, office, instruction, research, administration or common areas. Procedures include on-site visits, annual questionnaires, review of floor plans, review of square footage allocations for each type of use, and review of the mixed uses of each facility. Immediately upon determining a nonqualified bond status, debt will be remediated in accordance with the requirements under Regulations section 1.141-12 of the Code. |

VII. Disclosure and Filings:

|  |  |
| --- | --- |
|  | 1. Ongoing information on the University’s financial condition must be provided to nationally recognized securities information repositories (through EMMA) – the form of this disclosure will imitate the tables provided in Appendix A 2. Tax forms required by the IRS including the 8038 series forms 3. Forms as required by the State for any debt issued through a State authority for the benefit of the University 4. Rebate Arbitrage Reports will be filed with the Trustee in accordance with the schedule as required in section 148 of the Code |

VIII. Data Management

|  |  |
| --- | --- |
|  | The University employs a debt management system provided by the University’s financial advisor to track and maintain information on the debt issued by the University. |

IX. Continuity and Ongoing Review

|  |  |
| --- | --- |
|  | To provide continuity of compliance with post issuance debt requirements, the University has implemented:   * 1. Quarterly review of the spending on projects financed through tax-advantaged debt issuance   2. Debt Compliance Schedule with key dates noted   3. Annual Private Use Questionnaire |