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FAIRLEIGH DICKINSON UNIVERSITY

Post-Issuance Tax-Exempt Bond Compliance Policy

Responsible Office	Finance Division	Effective Date	March 7, 2012
Responsible Official	Sr. VP for Finance & COO	Last Revision	May 10, 2016

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Scope

This policy sets forth the University's methodology for ensuring continued post-issuance 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) for the benefit of the University.

Reason for the Policy

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. This policy provides the general guidelines and procedures the University follows to remain in compliance with federal income tax rules relating to TEBs. This policy is intended to define compliance practices including compliance actions, records management, and process continuity for University departments involved in TEB compliance.

Policy Statement

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 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.

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. Post-issuance compliance responsibilities include:

- Tracking bond proceeds spending for qualified purposes;
- Maintaining detailed records of the expenditure and investment of the proceeds of the TEBs;
- Ensuring the project financing is used in a manner consistent with the federal income tax requirements;
- Providing necessary disclosure information regarding financial and operating status.

Policy Sections

I. Organizational Responsibility

The Sr. Vice President for Finance and Chief Operating Officer (SVP F&COO) has primary responsibility for ensuring and monitoring post-issuance compliance with TEB regulations. The SVP F&COO is also responsible for approving certain project-level decisions impacting TEB compliance.

The Accounting Department is responsible for tracking draws and expenditures of all debt proceeds, including for cost of issuance and working capital.

The Finance Division is responsible for tracking and recording private use in the financed facilities.

The Vice President for Facilities & Auxiliary Services is responsible for monitoring and maintaining all contracts for bond-financed facilities.

II. Tracking Expenditures

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 Vice President for Facilities & Auxiliary Services, or in his absence, his designee. All purchase orders are approved in accordance with the University's Purchasing Policy & Procedures.

All spending of the funds toward a financed project's costs is tracked by the Accounting Department and the sources of such capital expenditures (*e.g.,* bond proceeds, equity or donations) are identified. All donations restricted to a particular project are recorded as such by Institutional Advancement and the Accounting Department. The records reflect separately the allocation of donations or other equity and the allocation of borrowed funds to the particular projects. In addition, 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. A final allocation of expenditures for a bond-financed project is made when required under the applicable federal income regulations.

III. Private Business Use

The use of a facility financed with TEBs by any person or entity that is not a state or local governmental entity, or 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 and 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 result in a private business use (PBU) of the bond-financed property. The University's TEBs will lose their tax-exempt qualified status if more than 5% of the net proceeds of the bond issuance are used for any PBU or the ownership any of 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.

PBU of TEB-financed property include the following categories:

1. **Sale or Other Transfer of Ownership of Bond Financed Property**
   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").

   The Vice President for Facilities & Auxiliary Services will assure that ownership of property financed with TEBs will not be transferred prior to expiration of the applicable measurement period.

2. **Leases of Bond Financed Property**
   Contracts for use of University facilities by parties other than the University are reviewed by General Counsel and the Finance Division. The University has provided bond counsel copies of all such contracts prior to the issuance of any TEBs to finance facilities used by outside parties. The University will consult with the NJEFA and bond counsel prior to any new, or expanded, use of such facilities by outside parties.

The Finance Division is responsible for maintaining a list of the University facilities leased to third parties. It 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 and the NJEFA, prior to the filing of Form 990 and 990T every year. If a use is determined to constitute PBU, the University will consult with NJEFA and bond counsel.

3. Management Contracts

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 use, including janitorial services and office equipment repair.

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 Finance Division.

4. Sponsored Research Agreements

The Grants Office will screen federal and state research agreements to determine if agreements are PBU. Institutional 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 Finance Division. The Finance Division will track any PBU contracts.

5. Unrelated Trade or Business (UTB) Activities

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. The term “unrelated trade or business” means any trade or business that is not substantially related to the organization’s charitable purpose (in this case, educational). 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.

The determination of whether an activity is UBT is determined based on a “facts and circumstances” analysis by the Finance Division.

The Accounting Department will monitor revenues for unrelated business taxable income (UBTI) for PBU and reporting on the IRS Form 990-T.

6. **Naming Rights**

   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.

   University Advancement will identify all naming opportunities that do not fall within the exclusion described above and will refer them to the Finance Division 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 Finance Division.

7. **Other Actual or Beneficial Use of University Property**

   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 Finance Division. The Finance Division, 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 Finance Division.

IV. Record Retention

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.

Basic records relating to any debt transaction will be maintained, as well as documentation evidencing the:

- Expenditures of bond proceeds;
- Use of debt-financed property; and
- Sources of payment or security for the bonds.

The Finance Division 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.

V. Arbitrage and Rebate

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 two separate sets of requirements that must be complied with to ensure that TEBs are not arbitrage bonds. They are:

- 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
- 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.

The NJEFA has 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 and such Servicer 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.

VI. Credit Enhancement or Other Agreements Relating to Bonds

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

VII. Disclosures and Filings

The University will comply with continuing disclosure requirements as stated in the bond documents. The University will file, or cause to be filed, all Form 990s and other tax returns within the time periods specified. The University will consult with the NJEFA, counsel and its auditors, as appropriate, to ensure the accuracy of all information relating to tax-exempt debt.

VIII. Continuity and Training

In furtherance of the policies set forth above the Vice President for Facilities & Auxiliary Services, the Senior Vice President for University Advancement, the Controller and the SVP F&COO will maintain a TEB Compliance Handbook and will take such steps as necessary to assure that the University staff responsible for complying requirements applicable to TEBs are trained to complete their responsibilities relating to the procedures set forth above. Such training will cover the purposes and importance of these procedures, as well as the details of the particular staff member's responsibilities.

To provide for continuity of compliance with post-issuance debt requirements, the University has included as part of its routine monitoring and review a calendar of significant dates, an annual review of private use of facilities, and review of compliance with this policy.

IX. Remedial Action

The Vice President for Facilities & Auxiliary Services is responsible for notifying the Finance Division before there is a change in use of any facility financed with tax-exempt debt. In the event such a change in use may result the transfer of ownership of bond financed property to a Non-exempt Person during the measurement 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.

The University will seek the advice of the NJEFA and bond counsel in the event remedial action may be required. 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 and bond counsel concerning its alternatives, which may include approaching the Internal Revenue Service under the Voluntary Closing Agreement Program (VCAP).

X. Acronyms

IRS-Internal Revenue Service
NJEFA-New Jersey Educational Facilities Authority
PBU-Private Business Use
SVP F&COO-Sr. Vice President for Finance & Chief Operating Officer
TEB- Tax Exempt Bond
UBTI-Unrelated Business Taxable Income
UTB- Unrelated Trade or Business
VCAP-Voluntary Closing Agreement Program