

Institute for Advanced Study Policy

Policy Title:	Post-Issuance Compliance Policy for Tax Exempt Obligations	Issue date:	July 1, 2014
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POLICY STATEMENT

After TEBs are issued, the compliance process focus on use and investment of proceeds of the TEBs and includes:

- Tracking spending of TEB proceeds for qualified and nonqualified purposes;
- Maintaining detailed records of expenditures and investments;
- Ensuring that the facilities financed are used in a manner consistent with bond documents and federal tax and other legal requirements and if not, proper remedial actions are utilized to maintain federal tax law requirements;
- Maintaining adequate records;
- Providing necessary disclosure information regarding financial and operating status.

REASON FOR POLICY

The Institute for Advanced Study (the "Institution") utilizes tax-exempt bonds to finance a portion of its capital needs and recognizes that, the Institution must satisfy requirements imposed by federal tax law in order to maintain the tax-exempt status of those bonds. The Institution also recognizes that it has undertaken various contractual obligations with respect to those bonds. This Post-Issuance Compliance Policy (the "Policy") sets forth policies and procedures of the Institution to monitor compliance of tax-exempt bonds (the "TEBs")¹ with applicable provisions of the Internal Revenue Code of 1986 as amended (the "Code") and regulations promulgated thereunder ("Treasury Regulations") and certain other legal obligations and contractual agreements relating to the TEBs. The TEBs utilized by the Institution may be issued by: the New Jersey Educational Facilities Authority ("NJEFA") to finance a project for the Institution ("Stand Alone Bonds") or by other authorized governmental issuers; and by the Institution. In addition, the Institution may receive funding for certain projects and equipment through grants made from proceeds of bonds issued by NJEFA (referred to as "State-Backed Bonds") pursuant to the within described "State-Backed Programs" with respect to which the Institution has post-issuance compliance obligations.

¹ Use of the term TEBs in this Policy refers to (a) obligations the interest on which is excludable from gross income for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended ("Code") and Treasury Regulations, and (b) obligations the interest on which is not excludable from gross income for federal income tax purposes, but provide certain tax advantages to the issuer/borrower or holder and which must satisfy requirements of the Code and Treasury Regulations applicable to tax-exempt obligations to achieve such advantages which are utilized by the Institution.

The Institution recognizes that compliance with applicable provisions of law is an ongoing process, necessary during the entire term of the TEBs. Accordingly, analysis of information and implementation of this Policy will require continual monitoring and likely, ongoing consultation with bond counsel. Further policies and procedures may be identified from time to time by Institution staff in consultation with bond counsel and NJEFA or other issuer.

POLICY SECTIONS

- I. Organizational Responsibility
- II. Tracking Expenditures and Use of Bond-Financed Facilities
- III. Private Business Use and Private Payments
- IV. Record Retention
- V. Arbitrage
- VI. Credit Enhancement and Other Applicable Agreements
- VII. Disclosure and Filings
- VIII. Continuity and Training
- IX. Remedial Action

POLICY TEXT

I. Organizational Responsibility

The Chief Fiscal Officer (the "Compliance Officer") has primary responsibility for post-issuance compliance to ensure and monitor post-issuance matters with respect to TEBs.

The Compliance Officer has overall responsibility for carrying out all aspects of this Policy including providing information and training on developing and implementing post-issuance compliance policies, tracking expenditures, allocating sources of funding between proceeds and other funds, identifying and monitoring private use and reviewing rebate reports and keeping adequate records to support all of the foregoing. The Compliance Officer may delegate specific responsibilities to other officers and employees of the Institution as designated in this Policy and as may be modified or supplemented in the future.

The Comptroller's Office shall track utilization of TEB proceeds and other sources of funding for TEB-financed projects, prepare requisitions and submit them to NJEFA, in the case of Stand-Alone and State-Backed Bonds and to any other issuer or trustee, as required by that issuer and submit requisitions to the applicable party in conformity to applicable bond documents and the Authority's (or other applicable party's) requirements. The Comptroller's Office shall review requisitions to assure that proceeds are expended on projects as authorized in the applicable bond documents, that reimbursement of pre-issuance costs are permissible, and to determine when projects are completed and/or placed in service. For TEBs issued by the Authority, the Comptroller's Office shall review monthly bank statements from trustees or custodians and review arbitrage report provided by the Rebate Service Provider engaged by the Authority for each Authority issue of TEBs. For TEBs issued by an issuer other than the Authority, the Comptroller's Office also invest TEB proceeds as required by bond documents. The Comptroller's Office employees will consult with the Compliance Officer if questions arise relating to the foregoing matters.

II. Tracking Expenditures and Use of Bond-Financed Facilities

The Institution's Comptroller's Office shall maintain records regarding the use and allocation of bond proceeds and other sources of funding for financed facilities. In cases where the Institution submits requisitions to the Authority, the Authority's Accounting Department shall maintain copies

of approved requisitions and copies of invoices. Requisitions submitted to the Authority for must be accompanied by copies of invoices for Contractor/Architect/Engineering bills and any other items over \$20,000 (for Stand-Alone Bonds) and \$10,000 (for State-Backed Bonds) before being approved.

The Institution will monitor the application and use of bond proceeds on an ongoing basis and to inform the Authority of events relating to use of bond proceeds and financed facilities which may result in private use or other issues which must be analyzed for compliance with federal tax law. The Comptroller's Office and the Facilities Department will work together to identify square footage or other measurement of private use of financed facilities. The Institution will cooperate with the Authority or other issuer in seeking advice from bond counsel and remediation, if necessary.

The Institution will review use and investment of bond proceeds with the Authority (and with any other issuer, as applicable) at least once a year until the final allocation is made. The Compliance Officer will work with the Authority, or other issuer and bond counsel, if necessary, to assist in making a final allocation of expenditures for a bond-financed project when required under the Code and applicable regulations. The Institution will respond to an annual questionnaire and certification sent by the Authority with respect to the Authority's Stand-Alone or State-Backed Bonds and provide updated information about the use of the financed facilities and other appropriate matters. The Institution will comply with similar procedures of other issuers, if any.

III. Private Business Use and Private Payments

Private Business Use, in the case of an Institution that is a 501(c) (3) entity arises if bond-financed property is used by any person other than a state or local governmental entity or by a 501(c)(3) entity in furtherance of its exempt function or is used by a 501(c) (3) entity in an unrelated trade or business.

The Institution's Comptroller's Office in conjunction with the Facilities Department (which will maintain records of all private use contracts) will monitor private use of bond-financed property.

The Authority's Stand-Alone TEBs will lose their tax advantaged status if more than a specified percentage² of the proceeds (in the case of public institutions) or net proceeds³ (in the case of 501(c)(3)) institutions of the bond issuance are used for any private business use and are repayable or secured by "private business payments". Because the IRS considers the use of bond proceeds to finance bond issuance costs of 501(c)(3) entities as PBU, the allowable PBU percentage is reduced by the cost of issuance percentage⁴.

The Authority's State-Backed TEBs are issued pursuant to the Higher Education Fund Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 *et seq.* ("CIF"); the Higher Education Equipment Leasing Fund Act, N.J.S.A.18A: 72A-40 *et seq.* ("ELF"); the Higher Education Technology Infrastructure Fund Act, N.J.S.A.18A:72A-59 *et seq.* ("HETI"); and the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A: 72A- 49 *et seq.* ("HEFT" and together with CIF, ELF and

² The specified percentage is in the case of state colleges, 10%, unless the private business use is unrelated or disproportionate to the governmental use, in which case the limit is reduced to 5% and in the case of 501(c) (3) entities, 5%.

³ Under IRC section 150(a)(3), "net proceeds" means the proceeds of the issue (which under IRS Regulation 1.141-1 generally means the sale proceeds plus investment proceeds less proceeds held in a reserve fund.

⁴ IRC Section 147(g) limits the amount of bond proceeds that may be applied to finance the costs associated with the issuance of qualified 501(c)(3) bonds to 2% of the proceeds of the bond issue.

HETI, the “State-Backed Programs”). An issue of State-Backed Bonds is issued by the Authority pursuant to an applicable State-Backed Program in amounts sufficient to provide separate grants for educational projects or equipment to each of several New Jersey’s public and private institutions of higher education (the “Institutions”). Because more than one Institution receives funds from a single State-Backed Issue, the Authority will determine at the time of issuance if the applicable percentages referenced in connection with Stand-Alone Bonds is available to each participating Institution or if a specific percentage of private use will be permitted only by specific Institutions that request private use of a bond-financed project prior to allowing such use.

The Institution will monitor private business use of the Authority's Stand-Alone Bonds and State-Backed Bonds in accordance with the Authority's applicable post-issuance compliance policies and will monitor private business use of

TEBs issued by other issuers in accordance with such issuer’s rules.

Special legal entitlements to property financed with TEBs can give rise to private business use. Special legal entitlements include leases of financed property, management contracts, sponsored research agreements, naming rights, licenses of facilities for use by cell phone service providers, energy providers and the like. Typical examples of private use in a college setting often include food service contracts, book store contracts, private research and summer camps if they don't meet certain safe-harbors set out in IRS Revenue Procedures 97-13 and 2007-47. In addition, IRS regulations provided exceptions to private business use for short term and incidental use arrangements.

The Authority’s bond documents and policies require the Institution to report and certify to the Authority annually about the use of TEB-financed facilities, any additions or changes that may have occurred and cooperate with the Authority in determining whether there is private business use that may adversely affect the tax-exempt status of the TEBs and take appropriate remedial action. The Institution will comply with post-issuance requirements as to private business use of other applicable issuers.

IV. Record Retention

Authority bond documents require the Institution to maintain all relevant records relating to Authority TEBs. In addition, the Authority will retain documents it receives directly from the Institution or third parties. These documents include closing transcripts, investment and other agreements to which the Authority is a party, bank statements, rebate reports and requisitions if the foregoing documents are provided to the Authority. Both the Institution and the Authority shall maintain records for the length of time required to comply with IRS regulations. Currently, records of issuance and related post issuance compliance documentation must be maintained for the life of the bond issue, plus any refunding, plus three years per IRS regulations. The Institution will also maintain all relevant documents for the required time period for TEBs issued by other issuers.

Basic records relating to Obligations include the transcript as well as documentation evidencing the:

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

The Authority will rely on the Institutions for specific records relating to application of bond proceeds and possible private business use.

V. Arbitrage and Rebate

TEBs lose their tax advantaged 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 Code contains two separate sets of requirements that must be complied with to ensure that Obligations 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, unless an exception is met, the excess earnings must be paid to the U.S. Department of Treasury, even if an exception to the yield restriction requirements applies.

For NJEFA Stand-Alone Bonds and State- Backed Bonds, the NJEFA will engage the services of an Arbitrage Compliance Servicer, as necessary, to provide written reports to assist the Authority and the Institution, in the case of Stand-Alone Bonds and the Authority, the State Treasurer and the Institution, to the extent necessary, in the case of State-Backed Bonds, in monitoring yield on investments and calculating any rebate that may be due. Where the Arbitrage Compliance Servicer provides a written report, it will be provided to the Authority, the State Treasurer and the Institution as applicable. The Institution will work with the Authority as necessary to ensure the accuracy of the Arbitrage Compliance Servicer’s report. For Stand Alone Bonds, the Institution will pay any rebate or yield reduction payment that is due.

The Institution will comply with the requirements of issuers other than NJEFA for other TEBs.

VI. Credit Enhancement or Other Agreements Relating to Bonds

Authority bond documents require the Institutions to notify the Compliance Officer of any extension or alteration of any credit enhancement relating to an Institution’s tax-exempt debt or of any changes to other agreements relating to Authority Stand-Alone Bonds such as guaranteed investment contracts or derivative products. The Compliance Officer will assure that any changes meet post-issuance compliance requirements. The Compliance Officer will also monitor information relating to the ratings of the Institution and counterparties to such agreements to assure that provisions of such agreements are fulfilled.

VII. Disclosures and Filings

For Stand-Alone Bonds to which SEC Rule 15c2-12 applies, the Authority requires the Institution to enter into Continuing Disclosure Agreements with the trustee for the applicable bonds. Pursuant to these Agreements, the Institution agreed to comply with continuing disclosure requirements under SEC Rule 15c2-12. In addition, the Authority requires in bond documents, or will request, as applicable, copies of reports sent to credit providers and insurance companies and other parties to transactions, information about the condition and use of buildings and compliance with covenants of the borrowers including financial covenants.

VIII. Continuity and Training

The Compliance Officer and those to whom he or she has delegated responsibilities will receive periodic training regarding the tax and other requirements applicable to TEBs. Such training will cover the purposes and importance of these procedures.

To provide for continuity of compliance with post-issuance debt requirements, the Institution will periodically review this policy to assure that it comports with current law.

IX. Remedial Action

Authority bond documents require that the Institution notify the Authority of events which may affect the permissible use and investment of bond proceeds and to cooperate with the Authority in seeking remedial action with respect to such events. The Compliance Officer is responsible for notifying the Authority of such events and cooperate with the Authority or other issuers (as applicable) in seeking remedial action pursuant to Treasury Regulation 1.141.-12, 1.145-2 or seeking a Voluntary Closing Agreement (VCAP).