

**Title**

Policy for Post Bond Issuance Federal Tax Compliance

**Sec. 1 Purpose**

This policy will govern the procedures for compliance of federal tax law with respect to U. T. System's applicable Bonds issued through the Permanent University Fund (PUF) and Revenue Financing System (RFS) debt programs.

**Sec. 2 Principles**

Each University of Texas System institution and System Administration shall follow the procedures and monitoring requirements of this policy to ensure compliance with federal tax law governing tax-exempt debt issued by the U. T. System.

**Sec. 3 Authority**

*Texas Education Code, [Chapter 55](#), including Section [55.13](#), Texas Education Code, [Chapter 65](#), including Section [65.461](#), and Texas Government Code, [Chapter 1371](#), including Section [1371.056](#)*, authorize the Board of Regents (Board) of The University of Texas System (U. T. System) to issue bonds. The Board is required by the terms of Section 103 and 141 through 150 of the *Internal Revenue Code of 1986*, as amended, and the U.S. Treasury Regulations (Code and Regulations) promulgated thereunder, to preserve the tax-exempt status of its bonds subsequent to their issuance.

**Sec. 4 Designation of Responsibility**

The U. T. System's Office of Finance and Office of General Counsel will be responsible for ensuring implementation of this policy.

4.1 The Office of Finance and the Office of General Counsel will identify and ensure that appropriate U. T. System staff receives training in compliance with this policy.

4.2 The Chief Business Officer at each U. T. System institution will identify and ensure that appropriate staff receives training in compliance with this policy.

4.3 The U. T. System's Associate Vice Chancellor for Finance is responsible for maintaining the integrity of this policy and will ensure its review not less than annually from the initial date of execution, with revisions made as necessary.

4.4 The U. T. System's Associate Vice Chancellor for Finance will consult Bond Counsel if it is determined that a condition exists or will exist that may be in

violation of this policy and/or the Code and Regulations, to determine what corrective or remedial action should be taken, if any.

### **Sec. 5 Issuance of Obligations**

The U. T. System's Associate Vice Chancellor for Finance and other appropriate System staff will ensure that immediately following the issuance of tax-exempt debt, the following occurs:

- 5.1 A closing binder and/or CD or other electronic copy of relevant and customary transaction documents is saved and stored properly.
- 5.2 Confirm that Bond Counsel has filed the applicable information (e.g., IRS Form 8038-G, or any successor form) with the IRS on a timely basis.
- 5.3 Coordinate the receipt, record, and retention of relevant books and records with respect to investment and expenditure of the Bond proceeds.

### **Sec. 6 Issue Price**

When issuing tax-exempt obligations, the U. T. System's Associate Vice Chancellor for Finance and other appropriate System staff will review the calculations used to determine Issue Price and ensure that the following occurs:

- 6.1 Establish Issue Price. Bond Counsel will work with the lead underwriter to prepare appropriate certifications of the underwriter in order to establish the Issue Price of the tax-exempt bonds in accordance with the Code and Regulations. Bond Counsel will verify that the lead underwriter has offered all of the Bonds to members of the public in a bona fide initial offering at a price which, on the date of such offering, was reasonably expected by the lead underwriter to be equal to the fair market value of such maturity.
- 6.2 Secondary Market Trading. A review of secondary market trading activity to identify trading practices after the date of sale, but prior to delivery, to gauge whether the bonds were sold at an issue price, which did not constitute a market price. This review may be accomplished through the use of both written and electronic resources, including the Municipal Securities Rulemaking Board's Electronic Municipal Market Access System (<http://www.emma.msrb.org>).

### **Sec. 7 Arbitrage Compliance**

The U. T. System's Associate Vice Chancellor for Finance or appropriate System staff will ensure the following are met with regards to the investment and expenditure of tax-exempt Bond proceeds, in accordance with applicable Code and Regulations:

7.1 Bond Proceeds Expenditure. The construction, renovation, or acquisition of any facilities financed with the proceeds of tax-exempt Bond proceeds will have been subject to the proper due diligence from appropriate System and institutional staff. The due diligence process will confirm that binding contracts exist for the expenditure of at least five percent (5%) of the proceeds of the Bonds within six (6) months of the date of delivery of the Bonds.

7.2 Timing of Bond Proceeds Expenditure. 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.

7.3 Investment of Bond Proceeds. 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.

7.4 Escrow Agent Monitoring. 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.

7.5 Proper Documentation. Quarterly approval of the six-year Capital Improvement Program constitutes the official action of the Board to signify its intent 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.

7.6 Application of Excess Investment Earnings. 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.

7.7 Facility Completion and Use. Monitor the date upon which facilities that were financed with Bond proceeds are substantially complete and available to be used for their intended purpose.

## **Sec. 8 Private Business Use Compliance**

According to the Code and Regulations, if more than 10% of Bond proceeds are used for Private Business Use, the tax-exempt status of the Bonds may be in jeopardy. Private Business Use may include, but is not limited to the following: leases, management contracts, physician contracts, sponsored research, naming rights, parking agreements, unrelated trade, or business. The U. T. System's Associate Vice Chancellor for Finance or other System staff will work to ensure compliance with the Code and Regulations applicable to Private Business Use.

8.1 Educate Appropriate Staff. Because of the decentralized management of space assignment at the U. T. System institutions, the U. T. System's Office of Finance and Office of General Counsel or other appropriate System staff will identify and coordinate the education of appropriate staff at each U. T. Institution as to what are appropriate uses of tax-exempt Bond proceeds and what may constitute Private Business Use.

8.2 Identify and Report Private Business Use. Coordinate with identified staff at U. T. institutions to monitor whether, at any time during which the Bonds are outstanding, any person, other than the applicable institution, its employees and agents, or members of the general public, has a right to use the facility whereby use may be defined as Private Business Use with respect to any portion of the facilities.

8.3 Private Business Use Database. Maintain a Private Business Use database, updated not less than annually with input from identified U. T. institution staff of the buildings and specific Bond issues from which the proceeds were derived and whether Private Business Use is occurring.

8.4 When Private Business Use Occurs. Determine, in the cases where there is Private Business Use occurring, if the Private Business Use is below the threshold (including issuance costs from the Bonds) as defined by the Code and Regulations.

8.5 Disposal of Facilities. Determine whether, at any time tax-exempt Bonds are outstanding, facilities financed with Bonds are sold or otherwise disposed of.

8.6 Records Retention. Coordinate with each U. T. System institution to maintain records with regards to allocation and expenditure of proceeds for facilities financed with tax-exempt debt.

## **Sec. 9 Records Retention**

The U. T. System Office of Finance or other appropriate System staff will maintain all records relating to the investment and expenditure of the proceeds of the Bonds for a period ending three (3) years after the complete extinguishment of the Bonds as required by the Code and Regulations. The Chief Business Officer at each U. T. System institution is responsible for maintaining invoice documentation supporting capital expenditures, including Library, Equipment, Repair and Rehabilitation ("LERR") and Faculty Science and Technology Acquisition and Retention ("STARS") expenditures, of the proceeds of tax-exempt bonds for a period ending three (3) years after the complete extinguishment of the Bonds as required by the Code and Regulations. If any portion of the Bonds is refunded with the proceeds of another series of tax-exempt bonds, the U. T. System's Associate Vice Chancellor for Finance will maintain or instruct

Appropriate Parties to maintain all of such records until three (3) years after the refunding bonds are completely extinguished. Such records may be maintained in paper or electronic format.

### **Definitions**

**Appropriate Parties** – Includes staff at U. T. System offices as well as staff at U. T. System institutions. This may include staff within the U. T. System Office of Facilities Planning and Construction.

**Bond Counsel** – An attorney or law firm that prepares the legal opinion for a municipal bond issue.

**Bonds** – For the purpose of this document, Bonds are referred to herein as the bonds or notes issued by the Board of Regents of The University of Texas System through the Permanent University Fund and Revenue Financing System debt programs.

**Escrow** – A financial instrument held by a third party on behalf of the other two parties in a transaction. The funds are held by the escrow service until it receives the appropriate written or oral instructions or until obligations have been fulfilled. Securities, funds, and other assets can be held in escrow.

**Escrow Agent** – An entity that has fiduciary responsibilities in the transfer of property from one party to another. Typically associated with selling or buying a home or other property, the escrow agent will secure the property and examine documents to make sure that the terms of the sale are met on each end, serving both the buyer and seller in the transaction.

**Escrow Agreement** – A certificate provided by an approved bank that guarantees the indicated securities are deposited at that particular bank. For example, an investor who writes a call option and can present an escrow agreement is considered covered. Therefore, the investor doesn't need to meet margin requirements.

**Issue Date** – The settlement date on which the bonds are delivered to investors.

**Issue Price** – The price at which an issuer's bonds are sold to the market for the first time, which might be at par or at a premium or discount. When they begin to be traded, the market price may be above or below the issue price.

**Private Business Use** – As defined by the Code, Section 141(b)(6)(A), not more than ten percent of the proceeds of tax-exempt bonds may be used (directly or indirectly) in a trade or business carried on by any person other than a governmental unit.

**Applicable Law and Regulation**

[Internal Revenue Code Sec. 103](#) - Interest on State and Local Bonds, Political Subdivision

[Internal Revenue Code Sec. 141](#) - Private Business Use Tests, Government Use, Management Contracts

[Internal Revenue Code Sec. 145](#) - Qualified 501(c)(3) Bonds

[Internal Revenue Code Sec. 147](#) - Public Approval Requirements and Reasonable Economic Life

[Internal Revenue Code Sec. 148](#) - Arbitrage, Reasonable Expectations-Artifice or Device, Investment Property, Required Rebate to the U.S., Small Government Unit...

[Internal Revenue Code Sec. 149](#) - Advance Refundings, Bonds Must be Registered to be Tax Exempt, Exceptions, Federally Guaranteed Bond Not Exempt

[Internal Revenue Code Sec. 150](#) - Definitions and Special Rules, General Rules, Change in Use of Facilities

**Responsible System Administration Office(s)**

Office of Finance

**Contact Information**

Questions or concerns should be directed to the [Office of Finance](#).

**Dates Approved, Amended, or Reviewed**

March 21, 2013

March 5, 2018