



BOISE STATE UNIVERSITY

University Policy 6300

Compliance with Tax-Exempt and Build America Bonds

Effective Date

September 2013

Responsible Party

Chief Financial and Operating Officer and Vice President for Finance and Operations, (208) 426-1200

Treasury and Real Estate Services, (208) 426-2079

Tax Reporting Department, (208) 426-1235

Scope and Audience

This policy applies to all tax-exempt and qualified Build America Bond (“Build America Bond”) debt issuances.

Additional Authority

Internal Revenue Code of 1986, as amended, and related U.S. Treasury Regulations (the Code)

1. Policy Purpose

To ensure compliance with federal statutes and regulations regarding Tax-Exempt Bonds and Build America Bonds.

2. Policy Statement

This policy facilitates compliance with the requirements of the Code necessary to retain the status of tax exempt and Build America Bonds (collectively, the “bonds”) issued by Boise State

University. To maintain the status of the bonds, the university must comply with post-issuance debt requirements. Post-Issue Debt Compliance responsibilities include:

- Tracking to ensure proceeds of a debt issuance are spent for qualified purposes;
- Maintaining detailed records of all expenditures and investments related to debt funds;
- Ensuring the debt-financed project is used in a manner consistent with the legal requirements;
- Tracking compliance with the requirements and covenants listed in the tax certificates and agreements relating to the bonds; and
- Providing necessary disclosure information regarding financial and operating status annually.

3. Definitions

3.1 Arbitrage Bonds

Bonds initially issued on a tax-exempt basis or designated as Build America Bonds that are formally deemed by the Internal Revenue Service (IRS) to violate federal arbitrage regulations, rendering the interest taxable and includable in the bondholder's gross income or ineligible for the federal interest subsidy relating to Build America Bonds.

3.2 Post-Issue Debt Compliance

The activities undertaken following the issuance of tax-exempt debt or Build America Bonds to comply with federal guidelines. Failure to comply with federal guidelines could transform the debt into an Arbitrage Bond.

3.3 Private Activity Bonds

Bonds issued by or on behalf of local or state government for the purpose of financing (1.) the project of a private user, or (2.) a project of the University, all or a portion of which gives rise to private business use within the meaning of, and in excess of the limits contained in, the Code. Private Activity Bonds are not tax-exempt or eligible for the federal interest subsidy relating to Build America Bonds.

3.4 Tax-Exempt Bonds and Build America Bonds Issued by the University

Debt issued and managed (1.) by the University or (2.) by any authority at the request of the University and for which the University pays its pro-rata share of the debt service

4. Tax-Exempt Bonds (TEB) and Build America Bonds

- a. Maintaining the tax-exempt status of TEB or the qualification of bonds as Build America Bonds requires continuing compliance with certain covenants and agreements contained in the Revenue Bond Resolutions and in the University's tax certificate for each bond series.
- b. The university's primary obligations are to avoid taking (or failing to take) any action that would cause a TEB or Build America Bond to be "Arbitrage Bonds" or "Private Activity Bonds" within the meaning of the Code and as defined in this policy.

5. Debt Issuance Process

Certain authorizations must be obtained by the university once project and financing requirements are determined. Notable authorizations include:

5.1 Declaration of Official Intent to Issue Tax-Exempt Debt

The Idaho State Board of Education (SBOE) must approve an intent-to-issue resolution prior to the University issuing tax-exempt or Build America Bond debt for a project.

5.2 Legal Opinions

An opinion issued by legal counsel, who opines on authorization for, and the tax-exempt or Build America Bond status of, the debt being issued.

5.3 Tax Certificate

Also known as an Arbitrage Certificate, this is provided to properly document the validity (and tax-exempt or Build America Bond status) of the debt and to evidence present as well as future compliance with applicable laws and regulatory requirements.

5.4 Debt Pricing and Issuance Approval

Prior to issuing long-term debt, the SBOE approves bond terms and the Chief Financial and Operating Officer and Vice President for Finance and Operations approves the issuance of debt.

6. Proceeds Tracking

- a. The university allocates debt proceeds to various bond-funded projects. Spending of the proceeds toward eligible project costs is tracked along with the rate at which the proceeds are being spent.

- b. Build America Bond proceeds (including investment earnings on proceeds) are tracked by the university's treasury department to ensure such proceeds are used to pay capital costs or the costs of issuing bonds that do not exceed 2% of the proceeds of such debt. Proceeds from tax-exempt debt are tracked to ensure compliance with tax covenants and Code requirements.
- c. Total debt proceeds applied to projects are monitored to ensure they do not exceed the total amount of debt funding authorized by (1) the Idaho State Board of Education for the project, or (2) changes approved by the Chief Financial and Operating Officer and Vice President for Finance and Operations.
- d. The University treasury department must maintain information about any derivative agreements integrated with or incurred in connection with the debt for tax purposes. This information will include counterparty correspondence; bid forms; results and recommendations of financial advisors; and contracts and legal opinions related to investment contracts, derivative agreements, and other investment products. Prior to entering into any derivative agreements with respect to the bonds, the University will also consult with General Counsel and bond counsel as to whether such agreement is authorized.

7. Record Maintenance

7.1 General

- a. Basic records relating to any debt transaction are maintained as well as documentation evidencing the:
 - Expenditure of debt proceeds;
 - Use of debt-financed property; and
 - Sources of payment or security for the debt.
- b. All documentation pertaining to any investment of debt proceeds (and the investment earnings on proceeds) is retained by the Treasury Department.

7.2 Specific Retention

- a. The university complies with regulatory records retention requirements. Each of the records required for bond compliance will be maintained for as long as the debt relating to such records (including refunding bonds) is outstanding, plus three (3) years.

- b. Records are retained by various departments in various locations throughout the University. The records, their locations, and individuals responsible for the data are available through a treasury-maintained database; the database is the primary index source for books and records related to bond compliance.
- c. The Treasury Department will maintain the following records for each series of bonds:
- (i.) Closing Transcripts: A complete closing transcript of all documents, certificates, and legal opinions delivered in connection with the issuance of the bonds, as provided by bond counsel at the time of closing.
 - (ii.) Final Bond Sizing Documents provided by broker.
 - (iii.) Investments and Arbitrage Rebate Data.
 - (iv.) All documents relating to the investment and disbursement of bond proceeds, including:
 - Bank account statements showing: (1.) the disbursements of all bond proceeds; (2.) all investment earnings thereon; and (3.) payment of debt service on bonds.
 - Other statements showing all investment activity of each account that holds bond proceeds;
 - Copies of all investment contracts, requests for bids, bid responses, bidding agent or broker's certificates and other documentation to establish the acquisition at a fair market value of (1.) all investments of bond proceeds and moneys for the payment of debt service, and (2.) any swaps, options, or other financial derivatives entered into with respect to any bonds;
 - Copies of any subscriptions for the purchase of U.S. Treasury Obligations of the State and Local Government Series (SLGS); and
 - All calculations of arbitrage rebate liability that is or may become due with respect to any series of bonds (including supporting documentation showing that no arbitrage rebate is due), together with any account statements or cancelled checks showing the payment of any rebate amounts to the U.S. Treasury together with any applicable IRS Form 8038-T.
 - (v.) All other documents related to bond issuance, letters of credit, or credit enhancement.

(vi.) Documents evidencing all other sources of payment or security for the bonds.

8. Private Business Use

Each series of bonds is generally subject to a limitation on the amount of “private use” permitted in the facilities funded by that issuance. The applicable limit is generally 10% for governmental debt issuances and 5% for qualified § 501(c)(3) debt issues on behalf of University-related foundations.

- a. Copies of all Boise State contracts with respect to the use of property acquired or financed with the proceeds of bonds by any person (including the federal government) other than a State or a political subdivision of a State must be reviewed, filed and maintained by the University’s legal department. Such contracts must include, without limitation, management contracts (for example, food services contracts or any other agreement under which a nongovernmental entity or the federal government provides services within, or involving all or part of any function of, bond-financed facilities), leases, naming rights agreements, and any other arrangement that provides for the actual or beneficial use by any such person of the properties and facilities acquired or financed with bond proceeds. Agreements that may generate private business use must be reviewed by the treasurer.
- b. The treasurer, in consultation with the Director of Tax Compliance, will review any agreements that provide for private business use of property financed with bonds.
- c. Prior to the sale or disposal of any bond-financed property, approval of both the Director of Tax Compliance and treasurer must be obtained. In the event any property is sold or otherwise disposed of in a manner contrary to the related tax certificates or agreements, the sale or disposition may require remedial actions to prevent the bonds from becoming Private Activity Bonds. In accordance with such tax certificates and agreements, the university will promptly contact bond counsel if a sale or other disposition of bond-financed property is considered by the University.

9. Arbitrage Compliance

- a. The treasurer will consult with the Director of Tax Compliance at least annually to determine what actions are necessary to comply with the arbitrage restrictions and arbitrage rebate requirements of the Code. Taking into account any applicable exemptions from the arbitrage rebate requirement for each series of bonds, temporary periods, yield restrictions, or spend down requirements; the treasurer must compute the accrued arbitrage rebate amount with respect to each series of bonds at least annually, or as otherwise may be prescribed by bond document requirements. The treasurer is responsible for the timely

payment to the U.S. Treasury of all arbitrage rebate installments and payments (including yield reduction payments if applicable) when due (generally, 1.) every fifth year, and 2.) within sixty (60) days of the final payment of all principal and interest on the bonds, as further described in the tax agreements relating to the bonds).

- b. If and to the extent any bond proceeds are or become subject to a yield restriction requirement, the treasurer will be responsible for investing such proceeds not in excess of the permitted yield and for making any yield reduction payments to the U.S. Treasury as are necessary to maintain the status of the affected bonds.

10. Disclosures and Filings

10.1 Disclosure Requirements

Information regarding the university's financial condition must be provided annually to nationally recognized securities information repositories. Other required filings include:

10.1.1 Tax Forms

Tax-exempt debt obligation issuers and issuers of Build America Bonds are required by the IRS to file the 8038 series of forms (8038, 8038-G, 8038-B, 8038-T, and 8038-R). Where qualified §501(c)(3) debt is issued for a University foundation, the foundation is required to report such debt on IRS Form 990, Return of Organization Exempt from Income Tax, including a Schedule K.

10.1.2 Continuing Disclosure Requirements

Certain material events must be reported on a case-by-case basis or annually as outlined in each bond document appendix.

10.2 Arbitrage Certificates

Within five (5) years of the anniversary of the debt issue (to close out the issue) and within sixty (60) days of retirement or refunding of the bonds, the University must calculate any arbitrage on the debt in a final accounting, and make any required rebate payment.

11. Continuity and Ongoing Review

To provide for continuity of compliance with post-issuance debt requirements, the university has included as part of its routine monitoring and review:

- A timeline of significant dates;

- An annual private use questionnaire;
- An annual meeting among financial personnel to review private use of facilities and compliance with this policy; and
- A listing of individuals with primary and back-up responsibilities to monitor and continue compliance.

12. Reporting

- a. At least annually, the Treasurer shall report to the Chief Financial and Operating Officer and Vice President for Finance and Operations, the university's compliance with the requirements of this policy, any accrued arbitrage rebate liability of the University, arbitrage rebate payments made to the U.S. Treasury, and any other matters affecting the tax-exempt or Build America Bond status of interest on any bonds.
- b. The Director of Tax Compliance may respond to IRS examinations and the Office of General Counsel may hire experienced legal counsel to assist in the response to the examination.

13. Data Management

- a. Various departments within the university maintain records related to post issue debt compliance. Treasury will maintain the database specifying the specific department responsible for these records.
- b. Data residing in the database along with the responsible department includes, but is not limited to:
 - Debt series
 - Debt refunding
 - Projects funded
 - Filing requirements
 - Documentation responsibilities
 - Compliance team members

14. Other Procedures Relating to Build America

The University will ensure that none of the maturities of its Build America Bonds are issued with more than a de minimis amount of premium, as required by the Code. This will be achieved by consulting with the purchaser of the bonds and bond counsel and obtaining certifications of the purchaser of the bonds with respect to the issue price of the bonds and an opinion of bond counsel with respect to the status of the bonds as Build America Bonds.

Revision History