STOCKTON UNIVERSITY

PROCEDURE

Tax-Exempt Bond Compliance
Procedure Administrator: Controller Authority: N.J.S.A. 18A:64-8; IRS Revenue Procedures 2007-47 and 2016-44, Treasury Regulation §1.141-12, §1.145-2 Effective Date: January 12, 2015; November 20, 2023 Index Cross-References: VI-57.5 – Post Issuance Tax Exempt Bond Compliance Policy Procedure File Number: 6409 Approved By: Dr. Joe Bertolino, President

Purpose

The University finances a portion of its capital needs through the issuance of tax-exempt bonds (TEBs) and recognizes that it must satisfy requirements imposed by federal tax law to maintain the tax-exempt status of these bonds. In addition, the University may receive funding for certain projects and equipment through grants made from proceeds of bonds issued by the New Jersey Educational Facilities Authority (NJEFA) which are referred to as state-backed TEBs, to which the University also has post-issuance compliance obligations.

The purpose of this procedure is to assist the University in fulfilling its obligation to comply with federal tax law applicable to its stand-alone and state-backed TEBs (collectively the "bond issues"). The University recognizes that this compliance is an ongoing process, necessary during the entire term of the bond issues. Post-issuance compliance begins when the TEBs are issued and provides for a continuing focus on investments of bond proceeds and use of bond-financed property.

Organizational Responsibility

The Vice President for Administration & Finance and Chief Financial Officer has primary responsibility to ensure post-issuance compliance and monitor post-issuance matters with respect to the University's bond issues, which includes providing information and training on implementing these procedures.

The Office of Fiscal Affairs is responsible for tracking draws and expenditures, including cost of issuance, ensuring bond proceeds are expended on projects as authorized in the applicable bond documents, preparing requisitions, allocating sources of project funding between bond issues and other sources, identifying and monitoring private use, reviewing arbitrage reports, and maintaining adequate records to support all the foregoing.

Fiscal Affairs, in consultation with Facilities & Operations, shall also determine when projects financed by bond issues are complete and/or placed in service and will advise the issuer of such events.

Tracking Expenditures and Use of Bond-Financed Facilities

Fiscal Affairs shall maintain records regarding the use and allocation of debt proceeds and other sources for projects funded with bond issues. Such records shall be maintained with respect to each bond series. Requisitions for reimbursement should include supporting documentation as required by the issuer.

Fiscal Affairs will monitor the use of bond proceeds on an ongoing basis and inform the issuer of events relating to use of bond proceeds, which may result in private business use or other issues, which must be analyzed for compliance with federal tax law. The University will comply with the covenants in the related bond issue documents and will cooperate with the issuer in seeking advice from bond counsel and remediation, if necessary.

The University will review use and investment of bond proceeds with the issuer at least once a year until the final allocation of expenditures for bond financed project is made. The Vice President for Administration & Finance and Chief Financial Officer and Fiscal Affairs will work with the issuer and/or bond counsel, if necessary, to assist in making a final allocation of expenditures for a bond-financed project when required under the Internal Revenue Code and applicable regulations.

The University will respond to questionnaires and certifications sent by the issuer with respect to the bond issues and provide updated information about the use of the financed facilities and other appropriate matters.

Private Business Use and Private Payments

Under Internal Revenue Code (IRC) Section 141(b), if the bond issue exceeds the limit of the private business use test and also exceeds the limit of the private security or payment test, the issue no longer qualifies as a governmental bond issue and may lose tax-exempt status.

- A TEB exceeds the limit of the private business use test if more than 10% of the proceeds of an issue are to be used for any private business use. Use of bond proceeds or bond-financed property in a trade or business by any entity other than a state or local governmental entity or a 501(c)(3) entity that is exempt from tax is considered private business use for tax-exempt bond purposes.
- A TEB exceeds the limit of the private security or payment test if more than 10% of the proceeds of the bond issue is (under the terms of the issue or any underlying arrangement) directly or indirectly (1) secured by any interest in property used or to be used for a private business use or payments in respect of the property, or (2) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

State-backed TEBs issued by the NJEFA provide separate grants for educational projects or equipment to each of several New Jersey's public and private institutions of higher education. Because more than one institution receives funds from a single state-backed issue, the NJEFA will determine at the time of issuance, as documented in the tax covenants of the bond issue documents, if the applicable percentages referenced (above) in connection with stand-alone TEBs is available to each participating institution.

Special legal entitlements to bond-financed property includes 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, as set forth in bond documents and arbitrage certificates. Typical examples of private business use in a university setting often include food service contracts, bookstore contracts, certain research agreements, and dorm or summer event use, if they do not meet certain safe harbors under IRS Revenue Procedure 2017-13 or IRS regulations for short term and incidental use arrangements.

Fiscal Affairs will obtain all private business use contracts to monitor and maintain a record of private business use of bond-financed property and any private payments. As required in the bond issuer's documents, the University will report and certify to the bond issuer about the use of bond-financed facilities and any additions or changes that may have occurred and cooperate with the bond-issuer in determining whether there is a private business use that may adversely affect the tax-exempt status of the bonds and take appropriate remedial action.

Record Retention

The University must retain records of bond issuance and related post-issuance compliance for the life of the bond, including any refunding issue, plus three years after the final redemption date of the bonds. This requirement follows IRS regulations and is subject to change.

Retainable records generally include transcript documents executed in connection with the bond issuance, expenditures and requisitions, investment of bond proceeds, use of bond-financed property, and sources of payment or security for the bond issue.

Arbitrage and Rebate

TEBs lose 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.

- Yield restriction requirements, which generally provide that in the absence of an applicable exception, bond 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.

In accordance with the bond closing documents, the issuer or the University will engage with a specialist for arbitrage compliance services to provide written reports to assist in monitoring yield on investments and calculating any rebate that may be due for its bond issues. The University will review the reports for accuracy and pay any rebate or yield reduction payment that is due.

Continuity and Training

The Vice President for Administration & Finance and Chief Financial Officer and those to whom responsibilities have been delegated will receive periodic training regarding the tax and other requirements applicable to the bond issues. Such training will cover the purposes and importance of these procedures. To provide for continuity of post issuance tax-exempt bond compliance, the University will periodically review this procedure to ensure compliance with current law.

Remedial Action

The issuer’s bond documents require that the University notify the issuer of events which may affect the permissible use and investment of bond proceeds and to cooperate with the issuer in seeking remedial action with respect to such events. The Vice President for Administration & Finance and Chief Financial Officer is responsible for notifying the issuer of such events and will cooperate, as necessary, with the issuer in seeking remedial action pursuant to Treasury Regulation §1.141-12, §1.145-2 or a closing agreement with the IRS under its Voluntary Closing Agreement Program.

Review History:

	Date
Procedure Administrator	06/22/2023
Divisional Executive	08/18/2023
General Counsel	10/02/2023
Cabinet	11/02/2023
President	11/20/2023