STOCKTON UNIVERSITY

PROCEDURE

Tax Exempt Bond Compliance
Procedure Administrator: Assistant Vice President for Finance Authority: IRS Revenue Procedures 97-13 and 2007-47, Treasury Regulation §1.141-12, §1.145-2 Effective Date: January 12, 2015 Index Cross-References: VI-57.5 – Post Issuance Tax Exempt Bond Compliance Policy Procedure File Number: 6409 Approved By: Herman J. Saatkamp, Jr., President

Purpose

Outstanding tax exempt bonds must comply with the Internal Revenue Code ("Code") and regulations adopted thereunder ("Tax Rules"). The purpose of this procedure is to assist the University in fulfilling its obligations to comply with Tax Rules applicable to its Tax Exempt Bonds and its State Backed Bonds (which are the issuance by the New Jersey Educational Facilities Authority (the "Authority") of its Higher Education Technology Infrastructure Fund Bonds, Higher Education Equipment Leasing Fund Bonds, Higher Education Fund Capital Improvement Fund Bonds and Higher Education Facilities Trust Fund Bonds). The University recognizes that this compliance is an ongoing process, and that analysis of information and implementation of this procedure will require annual or more frequent monitoring and likely ongoing consultation with NJEFA and its bond counsel.

Organizational Responsibility

The AVP for Finance, as the Compliance Officer ("Officer"), has primary responsibility for post-issuance tax compliance to ensure and monitor post-issuance matters with respect to its State Backed Bonds and Tax Exempt Bonds (collectively the "Bond Issues"). The Officer has overall responsibility for carrying out all aspects of this procedure including providing information and training on implementing post-issuance compliance procedures, tracking expenditures, allocating sources of funding for a particular project between Grants funded from Bond Issues and other sources of money, identifying and monitoring private use and reviewing rebate reports, if requested by the Authority or another issuer (collectively the "issuer"), and keeping adequate records to support all of the foregoing. The Officer may delegate specific responsibilities to other staff members of the University as designated in this procedure and as may be modified or supplemented in the future.

The Controller's Office ("Accounting") shall separately track utilization of Grant proceeds and other sources of funding (i.e., other bonds, equity, other grants, contributions, etc.) for each project financed by each bond issue; prepare and review requisitions to assure that proceeds are expended on projects as approved by the Secretary of Higher Education of the State of New Jersey (the "Secretary") or other issuer and authorized in the applicable bond documents and requisitions; and confirm that reimbursement of pre-issuance costs are permissible and submit reviewed requisitions to the issuer.

Accounting in consultation with Facilities Management shall also determine when projects financed by Grants or Bond Issues are completed and/or placed in service and advise the issuer that such events have occurred. Accounting and Facilities will consult with the Officer if questions arise relating to the foregoing matters.

<u>Tracking Expenditures and Use of Bond-Financed Facilities</u>

Accounting shall maintain records regarding the use and allocation of bond issues and other sources for grant-financed facilities. Such records shall be maintained with respect to each bond series. Requisitions submitted to the issuer must be accompanied by copies of invoices for Contractor/Architect/Engineering bills and any other items over $10,000 before being approved**.**

Accounting and Facilities will monitor the application and use of grants and bond issues on an ongoing basis and inform the issuer of events relating to use of bond proceeds and financed facilities, which may result in private business use or other tax issues, and that must be analyzed for compliance with Tax Rules. Accounting and Facilities will work together to identify square footage or other measurements of private business use of financed facilities. The University will comply with the covenants and representations relating to the Grants and Bond Issues in the applicable bond documents and will cooperate with the issuer in obtaining necessary information, keeping records, seeking advice from bond counsel and undertaking any remediation, if necessary.

At least once every twelve months, the issuer is expected to send a certification, (Private Use Due Diligence Questionnaire), to the University regarding application and use of Grants and other matters and the Officer will coordinate with assigned individuals at the University to provide updated information about the use of the financed facilities and other matters and complete and return the certification and any supporting documentation (the "Annual Review Process"). The University will provide an annual certification to the issuer regardless of receipt of a form thereof from the issuer. The Officer will work with the issuer and/or bond counsel, if necessary, to assist in making a final allocation of expenditures for a Grant-financed project when required under the Code and applicable regulations.

Private Business Use and Private Payments

The Officer will maintain records of all private business use contracts and monitor private business use of bond-financed property and any private payments.

Bond Issues may lose tax-exempt status if private business use of bond proceeds and "private business payments" securing such Bond Issues exceed certain percentages which are described in the Tax Certificates signed by the University in connection with the Bond Issues. Unless approved in advance by the issuer, no private business use of the property financed by the Grants is permitted. The anticipated amount of private business use of a particular bond series is anticipated to be known at the time the bonds are issued. Any increase in private business use of Grant financed facilities by any Grantee must be analyzed for the applicable Bond Issue as a whole. Therefore, the Institution and each other Grantee must obtain permission from the issuer to increase any private business use of its Grant financed facilities, in order to assure that tax-exemption for the Bond Issue as a whole is preserved. The Institution will monitor and report the use of Grant-financed facilities as part the Annual Review Process. The University understands that failure to obtain such permission may result in loss of tax-exempt status of the Bond Issues and that it will be responsible to the issuer if its actions cause such treatment.

Special legal entitlements to property financed with the Bond Issues 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 business use in a University setting often include food service contracts, bookstore contracts, privately sponsored research and camp programs if they do not meet certain safe-harbors set out in IRS Revenue Procedures 97-13 and 2007-47, or exceptions in IRS regulations for short term and incidental use arrangements.

Specifically, since the HETI Program requires (and expects) no payments by the University, it is not anticipated that the private business payment test will be met for such a bond, but the issuer has requested the University to monitor private business use.

As required in the issuer’s bond documents and policies, the University will report and certify to the issuer at least annually with respect to the use of Grant-financed facilities, any additions or changes that may have occurred and cooperate with the issuer in determining whether an event has occurred that might adversely affect the tax-exempt status of the Bond Issues and in taking appropriate remedial action.

Record Retention

The issuer's Grant and other bond documents require the University to maintain all relevant records relating to its Bond Issues. The University 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, including any refunding issue, plus three years.

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

- Expenditures and requisitions;
- Investment of bond proceeds;
- Use of Grant-financed property; and
- Sources of payment or security for the Bond Issues.

The issuer will rely on the University for specific records relating to application of bond proceeds and use of projects and/or equipment financed by Grants received by the University.

Arbitrage and Rebate

Bond Issues will 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 or if funds are held or received by the University for the project or for debt service that are invested higher than such yield. The Code contains two separate sets of requirements that must be complied with to ensure that Bond Issues are not arbitrage bonds. They are:

- 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.

All unexpended bond funds are held and invested by the NJ Educational Facilities Authority (NJEFA). The NJEFA will engage the services of an Arbitrage Compliance Servicer, as necessary, to provide written reports to assist the issuer and the State Treasurer in monitoring yield on investments and calculating any rebate that may be due. The University will cooperate with the NJEFA and the Arbitrage Compliance Servicer to the extent necessary in order for the Arbitrage Compliance Servicer's calculations to be correct. If the Arbitrage Compliance Servicer provides a written report, it will be provided to the issuer and the State Treasurer and the University, to the extent necessary, to permit the University to comply with tax or other reporting requirements.

Continuity and Training

The Officer and those to whom he or she has delegated responsibilities 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 compliance with post-issuance tax requirements, the University will periodically consult with the issuer to determine whether this procedure should be modified to reflect changes relating to outstanding Bond Issues and any changes necessitated if the issuer issues additional State-Backed Bonds or Tax-Exempt Bond Issues.

Remedial Action

The issuer’s bond documents require that the University notify the issuer of events which may affect the permissible use and allocation of Bond proceeds and to cooperate with the issuer in seeking remedial action with respect to such events. The Officer is responsible for notifying the issuer of such events and cooperate with the issuer in seeking remedial action pursuant to Treasury Regulation §1.141-12, §1.145-2 or seeking a closing agreement with the IRS under its Voluntary Closing Agreement Program (VCAP).

Approval History:

	Date
President	01/12/15