

**UNIVERSITY OF CENTRAL ARKANSAS  
BOARD POLICY**

Policy

Number: 608

Subject: Tax-exempt Bond Issues – Post Issuance Compliance

Date Adopted: 06/25/12 Revised: \_\_\_\_\_

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**1. Statement of Purpose**

This Post-Issuance Compliance Policy (“policy”) sets forth specific policies of the University of Central Arkansas (“university”) designed to monitor post-issuance compliance of tax-exempt obligations (“obligations”) issued by the university, with applicable provisions of the Internal Revenue Code of 1986, as amended (“code”), and regulations promulgated thereunder (“Treasury regulations”).

This policy documents practices and describes various procedures and systems designed to identify, on a timely basis, facts relevant to demonstrating compliance with the requirements that must be satisfied subsequent to the issuance of obligations in order that the interest on such obligations continue to be eligible to be excluded from gross income for federal income tax purposes. The federal tax law requirements applicable to each particular issue of obligations will be detailed in the arbitrage or tax certificate prepared by bond counsel and signed by officials of the university with respect to that issue. This policy establishes a permanent, ongoing structure of practices and procedures that will facilitate compliance with the requirements for individual borrowings.

**2. General Policies and Procedures**

The following policies generally relate to procedures and systems for monitoring post-issuance compliance.

- a. The vice president of finance and administration or his or her designee (the “compliance officer”) shall be responsible for monitoring post-issuance compliance issues.
- b. The compliance officer will coordinate procedures for record retention and review of such records.
- c. All documents and other records relating to obligations issued on behalf of the university shall be maintained by or at the direction of the compliance officer.
- d. The compliance officer will review post-issuance compliance procedures and systems on a periodic basis, but not less than annually.

### **3. Issuance of Obligations - Documents and Records**

With respect to each issue of obligations, the compliance officer will:

- a. obtain and store a closing binder and/or CD or other electronic copy of the relevant and customary transaction documents (the “transcript”).
- b. confirm that bond counsel has filed the applicable information report (e.g., Form 8038, Form 8038-G, Form 8038-CP) for such issue with the IRS on a timely basis.
- c. be aware of options for voluntary corrections for failure to comply with post-issuance compliance requirements (such as remedial actions under Section 1.141-12 of the Treasury regulations and the Treasury’s Tax-Exempt Bonds Voluntary Closing Agreement Program) and take such corrective action when necessary and appropriate.
- d. coordinate receipt and retention of relevant books and records with respect to the investment and expenditure of the proceeds of such obligations with other applicable staff members of the university.

### **4. Arbitrage**

The following policies relate to the monitoring and calculating of arbitrage and compliance with specific arbitrage rules and regulations.

The compliance officer will:

- a. confirm that a certification of the initial offering prices of the obligations with such supporting data, if any, required by bond counsel, is included in the transcript.
- b. confirm that a computation of the yield on such issue from the university’s financial advisor or bond counsel (or an outside arbitrage rebate specialist) is contained in the transcript.
- c. maintain a system for tracking investment earnings on the proceeds of the obligations.
- d. coordinate the tracking of expenditures, including the expenditure of any investment earnings. If the project(s) to be financed with the proceeds of the obligations will be funded with multiple sources of funds, confirm that the university has adopted an accounting methodology that separately maintains each source of financing and monitors the actual expenditure of proceeds of the obligations.
- e. maintain a procedure for the allocation of proceeds of the issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

This procedure shall include an examination of the expenditures made with proceeds of the obligations within 18 months after each project financed by the obligations is placed in service and, if necessary, a reallocation of expenditures in accordance with Section 1.148-6(d) of the Treasury regulations.

- f. monitor compliance with the applicable “temporary period” (as defined in the code and Treasury regulations) exceptions for the expenditure of proceeds of the issue, and provide for yield restriction on the investment of such proceeds if such exceptions are not satisfied.
- g. ensure that investments acquired with proceeds of such issue are purchased at fair market value.
- h. avoid formal or informal creation of funds reasonably expected to be used to pay debt service on such issue without determining in advance whether such funds must be invested at a restricted yield.
- i. consult with bond counsel prior to engaging in any post-issuance credit enhancement transactions or investments in guaranteed investment contracts.
- j. identify situations in which compliance with applicable yield restrictions depends upon later investments and monitor implementation of any such restrictions.
- k. monitor compliance with six-month, 18-month or 2-year spending exceptions to the rebate requirement, as applicable.
- l. procure a timely computation of any rebate liability and, if rebate is due, file a Form 8038-T and arrange for payment of such rebate liability.
- m. arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the code and Treasury regulations), if applicable.

## **5. Private Activity Concerns**

The following polices relate to the monitoring and tracking of private uses and private payments with respect to facilities financed with the obligations.

The compliance officer will:

- a. maintain records determining and tracking facilities financed with specific obligations and the amount of proceeds spent on each facility.
- b. maintain records, which should be consistent with those used for arbitrage purposes, to allocate the proceeds of an issue and investment earnings to expenditures, including the reimbursement of pre-issuance expenditures.

- c. maintain records allocating to a project financed with obligations any funds from other sources that will be used for otherwise non-qualifying costs.
- d. monitor the expenditure of proceeds of an issue and investment earnings for qualifying costs.
- e. monitor private use of financed facilities to ensure compliance with applicable limitations on such use. Examples of potential private use include:
  - i. sale of the facilities, including sale of capacity rights;
  - ii. lease or sub-lease of the facilities (including leases, easements or use arrangements for areas outside the four walls, e.g., hosting of cell phone towers) or leasehold improvement contracts;
  - iii. management contracts (in which the university authorizes a third party to operate a facility, e.g., cafeteria) and research contracts;
  - iv. preference arrangements (in which the university permits a third party preference, such as parking in a public parking lot);
  - v. joint-ventures, limited liability companies or partnership arrangements;
  - vi. output contracts or other contracts for use of utility facilities (including contracts with large utility users);
  - vii. development agreements which provide for guaranteed payments or property values from a developer;
  - viii. grants or loans made to private entities, including special assessment agreements; and
  - ix. naming rights arrangements.

Monitoring of private use should include the following:

- i. procedures to review the amount of existing private use on a periodic basis; and
- ii. procedures for identifying, in advance, any new sale, lease or license, management contract, sponsored research arrangement, output or utility contract, development agreement or other arrangement involving private use of financed facilities and for obtaining copies of any sale agreement, lease, license, management contract, research arrangement or other arrangement for review by bond counsel.

If the compliance officer identifies private use of facilities financed with tax-exempt debt, the compliance officer will consult with the university's bond counsel to determine whether private use will adversely affect the tax status of the issue and if so, what remedial action is appropriate. The compliance officer should retain all documents related to any of the above potential private uses.

## **6. Qualified Tax-Exempt Obligations**

If "qualified tax-exempt obligations" are issued on behalf of the university in any year, the compliance officer shall monitor all tax-exempt financings (including lease purchase arrangements and other similar financing arrangements) to assure that the \$10,000,000 "small issuer" limit is not exceeded.

## **7. Reissuance**

The following policies relate to compliance with rules and regulations regarding the reissuance of obligations for federal law purposes.

The compliance officer will identify and consult with bond counsel regarding any post-issuance change to any terms of an issue of obligations which could potentially be treated as a reissuance for federal tax purposes.

## **8. Record Retention**

The following policies relate to retention of records relating to the obligations issued.

The Compliance Officer will:

- a. coordinate with staff regarding the records to be maintained by the university to establish and ensure that an issue remains in compliance with applicable federal tax requirements for the life of such issue.
- b. coordinate with staff to comply with provisions imposing specific recordkeeping requirements and cause compliance with such provisions, where applicable.
- c. coordinate with staff to generally maintain the following:
  - i. the transcript relating to the transaction (including any arbitrage or other tax certificate and the bond counsel opinion);
  - ii. documentation evidencing expenditure of proceeds of the issue;
  - iii. documentation regarding the types of facilities financed with the proceeds of an issue, including, but not limited to, whether such facilities are land, buildings or equipment, economic life calculations and information regarding depreciation.

- iv. documentation evidencing use of financed property by public and private entities (e.g., copies of leases, management contracts, utility user agreements, developer agreements and research agreements);
  - v. documentation evidencing all sources of payment or security for the issue; and
  - vi. documentation pertaining to any investment of proceeds of the issue (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received by the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- d. coordinate the retention of all records in a manner that ensures their complete access to the IRS.
  - e. keep all material records for so long as the issue is outstanding (including any refunding), plus seven years.

## **9. Continuing Disclosure**

Under the provisions of SEC Rule 15c2-12 (the “rule”), underwriters are required to obtain an agreement for ongoing disclosure in connection with the public offering of securities in a principal amount in excess of \$1,000,000. Unless the university is exempt from compliance with the rule as a result of certain permitted exemptions, the transcript for each issue of obligations will include an undertaking by the university to comply with the rule. The compliance officer of the university will monitor compliance by the university with its undertakings, which may include the requirement for an annual filing of operating and financial information and will include a requirement to file notices of listed “material events.”