UNIVERSITY OF RICHMOND

Policy Manual

Policy #:	FIN-14001	**Policy Title:**	Post-Issuance Compliance Policy for Tax-Exempt Bonds
Effective:	06/19/2012	**Responsible Office:**	Office of Business Affairs
Date Approved:	06/19/2012	**Approval:**	Executive Vice-President & Chief Operating Officer
Replaces Policy Dated:	N/A	**Responsible University Official:**	Executive Vice-President & Chief Operating Officer

PURPOSE:

The University of Richmond's post-issuance compliance policy for tax-exempt debt is intended to provide a framework for ensuring that the University's tax-exempt debt is managed and used to advance the University's tax-exempt mission, and to comply with federal and state requirements regarding the issuance and ongoing management of tax-exempt debt.

SCOPE:

This policy applies to the University of Richmond and all of its Affiliates. As used in this policy, the term "Affiliates" means organizations or entities in which the University owns a controlling interest or has the right to elect the majority of the entity's governing board.

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14001.1 – Policy Statement

Tax-exempt bonds (TEBs) are obligations used by the University to finance the construction, acquisition or improvement of facilities, or the acquisition of eligible capital equipment. The tax-exempt status is retained throughout the life of the debt provided that applicable federal and state laws are satisfied. This status can be jeopardized, however, if certain federal income tax requirements are not satisfied during the entire period the TEBs are outstanding. Taxability of the interest on the TEBs to bondholders or other consequences can result from failure to comply with restrictions relating to arbitrage, timing and use of bond proceeds, and other compliance obligations. Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on the investment of debt proceeds and use of debt-financed property.

14001.2 — Organizational Responsibility

The Executive Vice-President & Chief Operating Officer (COO) has primary responsibility for ensuring and monitoring post-issuance compliance with TEB regulations. The COO is also responsible for approving certain project-level decisions potentially impacting TEB compliance.

The Controller's Office (Senior Associate Vice-President for Finance & Controller and Senior Associate Controller) is responsible for tracking and recording private use in TEB-financed facilities, in collaboration with Facilities, Foundation, Corporate and Government Relations, and other areas as required; tracking draws and expenditures of all debt proceeds, including issuance costs and working capital; and overseeing compliance with arbitrage yield restrictions and rebate requirements under the federal tax code.

14001.3 — Tracking of Proceeds

The University allocates debt proceeds to the various projects being funded with TEBs in accordance with the terms of the borrowing, *i.e.*, the University takes reasonable steps to ensure that the expenditures fall within the scope of the approved TEFRA notice, meet certain useful life requirements, occur within the appropriate timeframes, and the proceeds are not used to reimburse expenditures made before the date of issuance unless specific requirements are met. Eligible expenditures related to financed facilities are made in accordance with applicable University policies and procedures and are subject to the University's standard approval processes. The spending of proceeds toward eligible project costs is tracked along with the rate at which the proceeds are being spent.

All spending of TEB funds toward a financed project's costs is tracked by the Controller's Office and the sources of related capital funding (e.g., bond proceeds, equity or philanthropy) are identified. Donations restricted to a particular project are recorded as such by Advancement Services. The University's financial records reflect separately the allocation of donations or other equity and the allocation of borrowed funds to the particular projects. In addition, all other uses of bond proceeds, such as costs of issuance, are identified on an issue-by-issue basis and tracked separately to ensure that such costs do not exceed 2% of the net proceeds of such debt. A final allocation of expenditures for a bond-financed project is made when required, in accordance with applicable federal income tax regulations.

14001.4 — Investment and Expenditure of Proceeds

In order to maintain compliance with the rebate and arbitrage yield restriction rules, unexpended bond proceeds are invested by the bond trustee in a way that will establish fair market value for federal tax purposes. The Controller's Office will take steps, in consultation with counsel or other appropriate resources, to ensure that subsequent investments or reinvestments of bond proceeds are made in compliance with these rules.

14001.5 — Arbitrage Compliance

Federal tax law requires that the University rebate to the federal government amounts earned from the investment of bond proceeds at a yield in excess of the bond yield unless specific exceptions apply. The Controller's Office will monitor the University's compliance with these regulations either by retaining an outside consultant to calculate its rebate liability, if any, for each of its bond issues, or by utilizing internal financial, accounting and legal resources to perform the required calculations. The Controller's Office will ensure that the calculations are performed at the proper intervals (including upon the retirement of a specified bond issue), review the calculations for obvious errors, coordinate the remittance and timely filing of any required rebate to the federal government, and retain the related records. This documentation will be maintained regardless of whether the calculations are performed internally or externally.

In addition, as part of that office's oversight responsibilities, the Controller's Office will monitor the spending of bond proceeds and take appropriate steps to qualify for a spending exception to the rebate requirements, as defined in the federal tax regulations, to the extent practicable.

14001.6 — Private Business Use

Each debt issue is subject to a limitation on the amount of private business use (PBU) permitted in the facilities funded by that issue. The applicable limit is 5% for qualified 501(c)(3) debt issuances. Because the use of bond proceeds to finance bond issuance costs is considered to be a PBU of those proceeds, the allowable PBU percentage must incorporate the costs of issuance financed with bond proceeds. The University's TEBs will lose their tax-exempt qualified status if this 5% threshold is exceeded.

Examples of private use include the following:

- Leases of TEB-financed property to non-University entities;
- Management or service contracts failing to meet the safe-harbor requirements defined in the regulations;
- Corporate sponsored research agreements failing to meet the safe-harbor requirements defined in the regulations;
- Activities generating unrelated trade or business income;
- Naming right arrangements involving relationships with for-profit entities.

It is the University's policy to evaluate the potential uses of TEB financed facilities at the time of the borrowing. If a potential PBU is contemplated at the time of the financing, it is the University's practice to include a layer of non tax-exempt debt, such as internal equity, to accommodate this potential activity and ensure continued compliance.

For potential PBU activities, the COO, in consultation with the Senior Associate Vice-President for Finance & Controller, Senior Associate Controller and legal counsel, if necessary, will make the final determination of whether the activity is allowable. Full information must be gathered prior to decision-making, including the details and location of the proposed activity, the financing structures of the facilities in question, and info1mation about other potential PBU in those facilities. Departments must share all information regarding the use of tax-exempt bond financed capital projects.

The proposed PBU activity may be approved only if:

- The capital project has enough equity (i.e., non tax-exempt debt) to allow the potential PBU to be fully allocable to equity; and
- Any allocation of potential PBU to equity must not utilize the majority of the equity funding available for that project.

At the time of TEB issuance, the University assesses and quantifies any potential PBU in capital projects, and confirms that the equity contributions to the respective projects will be sufficient to cover such potential use. After issuance, the Controller's Office reviews tax-exempt bond-financed capital projects annually, and calculates PBU by project and bond issue. This analysis is prepared annually.

Facilities is responsible for notifying the Controller's Office before there is a change in use of the project or facility financed with TEB. In the event such a change may result in excessive PBU for a bond issue, the University may elect to avail itself of federal tax regulations which provide for remedial action by redemption or defeasance of nonqualified bonds. Remedial action, when properly taken, preserves the tax exemption of interest on the bonds.

The University will seek the advice of legal counsel in the event remedial action may be required. To the extent a potential violation of PBU rules arises that cannot be rectified through remedial action, or in the event of a potential arbitrage violation, the University will seek the advice of counsel concerning potential alternatives, which may include approaching the Internal Revenue Service under the voluntary closing agreement program.

14001.7 — Maintaining Detailed Records

The University will comply with regulatory record retention requirements. University records relating to any TEB-related transaction are maintained in accordance with the University's record retention policy. Records and documentation evidencing the following will be maintained by the University:

- Board minutes and resolutions;
- Expenditure of debt proceeds;
- Use of debt-financed property;
- Sources of payment or security for the debt;
- Copy of the bond closing transcript(s), offering statements, derivative agreements and other relevant documentation delivered to the University in connection with closing of the issue of the bonds;
- Copy of investment records, arbitrage reports and the related underlying or supporting documents;

- Continuing annual disclosure statements.

The University will retain material TEB-related records for the life of the bond issue, including any issuances that directly or indirectly refund the original debt, plus three years. The requirements of this policy, as it relates to the retention of TEB-related records, will take precedence over any of the University's general record retention requirements that are less stringent.

Records are retained by various departments in various locations throughout the University in accordance with the University's published record retention policy. The Senior Associate Vice-President for Finance & Controller is responsible for identifying the documents to be retained, for training the responsible parties, and for maintaining an inventory indicating the location of all material TEB-related documents for the period such records are required to be kept.

14001.8 — Disclosures and Filings

The University will comply with the disclosure and filing requirements as stated in the bond documents, or as required under federal or state law. The University will file or cause to be filed all Form 990s (including Schedule K) and other tax and information returns required under the federal tax code within the time periods specified. The University will file or cause to be filed in a timely manner all financial-based and event-based disclosures, if applicable, required by the Municipal Securities Rulemaking Board as part of the Security and Exchange Commission's continuing disclosure requirements.

Related Policies:

None

Policy Background:

Approved 6/19/12

Updated 12/1/23 to reflect current titles

Policy Contacts:

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Senior Associate Controller