VPFI-001 Tax-Exempt Debt Compliance

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Status Final

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Policy Type VP Finance

Contact Office Treasurer (Office of the)

Oversight Executive
Vice President and Chief Financial Officer

Applies To Office of Treasury Management and Financial Reporting and Operations.

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Reason for Policy

The use of tax-exempt debt plays an important role in funding a significant portion of the University's capital projects. As a result, the University realizes the importance of complying with federal and institutional requirements regarding the issuance and ongoing management of its tax-exempt debt. The policy is intended to define compliance practices including compliance actions, records management, and process continuity within the Office of Treasury Management and Financial Reporting and Operations.

Definition of Terms

Post–Issuance Debt Compliance

Description

The activities undertaken following the issuance of tax-exempt debt to comply with federal guidelines. Failure to comply with federal guidelines could potentially render the interest of debt as taxable to investors.

Tax–Exempt Debt (Bonds) Issued by the University

Description

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

Tax–Exempt Debt Compliance (TEDC) Information Dashboard

Description

A data repository and reporting tool developed in-house for Tax Exempt Debt Compliance to assist with post-issuance debt compliance requirements.

Policy Statement

Tax-exempt bonds are valid debt obligations used by the University to finance construction of facilities. This tax-exempt status remains throughout the life of the debt provided that all applicable federal tax laws are satisfied. Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of debt proceeds and use of debt-financed property.

In order to maintain the debt status as tax-exempt, the University must comply with post-issuance debt requirements. Post-issuance compliance responsibilities include:

- Tracking that proceeds of a debt issuance are spent on qualified tax-exempt debt purposes;
- Maintaining detailed records of all expenditures and investments related to debt funds;
- Ensuring the project financed is used in a manner consistent with the legal requirements; and
- Providing necessary disclosure information regarding financial and operating status annually.

The University has implemented a TEDC information dashboard to manage post-issuance debt compliance.

1. **Debt Issuance Process:**
   Certain authorizations must be obtained by the Office of Treasury Management once projects and financing requirements are determined. Notable authorizations include:
   i. Declaration of Official Intent to Issue Tax Exempt Debt – The Board of Visitors of the University passes ‘an intent-to-issue’ resolution prior to the University issuing tax-exempt debt for a project.
   ii. State Authorization – If the debt issued is through a State authority additional State authorizations are required. A Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing and certain other requirements and more restrictive terms may also be required for non-governmental debt.
   iii. Legal Opinions – A legal opinion issued by legal counsel, who opines on authorization and affect on the tax-exempt status of the debt being issued.
   iv. Tax Certificate – This is also known as an Arbitrage Certificate and is provided to properly document the validity (and tax-exempt status) of the financing and to evidence compliance with applicable laws and regulatory requirements.
   v. Debt Pricing and Issuance Approval – Prior to issuing long-term debt, the Board of Visitors of the University passes a resolution approving pricing parameters and a member of the Board along with the Chief Financial Officer approves the issuance of debt within the pricing parameters.

2. **Proceeds Tracking:**
   The University allocates debt proceeds to the various projects being funded with the tax-exempt debt. The

spending of the proceeds toward eligible project costs is tracked along with the rate at which the proceeds are being spent. Debt proceeds used to pay issuance costs related to any debt are tracked by Treasury Management and Financial Reporting and Operations to ensure that such costs do not exceed 2% of the "net proceeds" of such debt. Total proceeds applied to projects are monitored to ensure that they do not exceed the total amount of debt funding authorized by the University's Board of Visitors for the project.

The Office of Treasury Management shall maintain information about any derivative agreements integrated with the debt for tax purposes, including all correspondence from the counterparty, and shall maintain records of all bid forms and results, recommendations of financial advisors, contracts and legal opinions related to all investment contracts, derivative agreements, and other investment products.

3. **Maintaining Detailed Records:**
   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.

   Additionally, all documentation pertaining to any investment of debt proceeds is retained.

   The University seeks to comply with regulatory records retention requirements. Federal regulations provide that records relating to a tax-exempt debt transaction should be retained for so long as they are material in the administration of any federal tax law. Therefore, it is recommended that material records be kept for the life of the debt, including any refunding of the debt, plus three years.

   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 the TEDC information dashboard. The TEDC information dashboard acts as the primary index source for books and records related to tax-exempt debt compliance. (See Section 6 below.)

4. **Private Business Use:**
   Each debt issuance is subject to a limitation on the amount of "private use" permitted in the facilities funded by that issuance. The applicable limit is 10% for governmental debt issuances and 5% for qualified 501(c)(3) debt issues on behalf of University-related Foundations. Compliance responsibilities of internal borrowers as it relates specifically to private use are detailed in policy *FIN-029, Use of Buildings Financed with Tax-Exempt Debt*.

5. **Disclosures and Filings:**
   Continuing Disclosure Requirements – Ongoing information on the University's financial condition must be provided to nationally recognized securities information repositories.

   Other required filings include:

   i. Tax Forms – Tax-exempt debt obligation issuers are required by the IRS to file the 8038 series of forms (8038, 8038-G, 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.
   ii. Continuing Disclosure Requirements – Ongoing information on the University's financial condition must be provided. Commitment must be made in the bond documents to provide secondary market disclosure. This is done via Appendix A.

iii. Statistics and filings required to be sent to the State for any debt issued through a State authority for the benefit of the University.
iv. Note Orders – Upon the beginning of a new tax program period, the University must file a new program order.
v. Arbitrage Certificates – Within five years of the anniversary of the debt issue to close out the issue, the University or a consultant, must calculate any arbitrage on the debt in a final accounting, and make any required rebate payment.

6. **Data Management:**
The University employs a TEDC information dashboard that allows Treasury Management and Financial Reporting and Operations to track and perform compliance activities related to post-issuance debt compliance. Both Treasury Management and Financial Reporting and Operations supply data that is used in the TEDC information dashboard.

Data residing in the TEDC information dashboard includes, but is not limited to:

Debt Series

Debt Refundings

Projects Funded

Filing Requirements

Documentation Responsibilities

Compliance team members

7. **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. a timeline of significant dates;
b. an annual private use questionnaire;
c. an annual meeting among financial personnel to review private use of facilities and compliance with this policy; and
d. a listing of individuals with primary and back-up responsibilities to monitor and continue compliance.

(Note: Information related to the items noted above, including the responsible office, is available through the TEDC information dashboard.)

8. **Responsibilities:**
   The ***University Treasurer*** is responsible for:

   - Maintaining pertinent debt information for post-issuance compliance.
   - Monitoring actions under this policy.
   - Providing oversight and coordination to assist with tax-exempt debt compliance.
   - Arranging regular meetings among appropriate individuals to review policy compliance.
   - Tracking draws and expenditures of all debt proceeds (including for costs of issuance and working capital) spend-down timelines, and use of other funds for the projects, including donations, operating revenue and other sources of equity.
   - Tracking debt proceeds used to pay costs of issuance.

   The ***Associate Vice President for Finance*** is responsible for monitoring private use in the financed facilities for compliance with the policy FIN-029: Use of Buildings Financed with Tax-Exempt Debt, representations made in the applicable tax certificate, and IRS laws and regulations.

Related Information

FIN-029: Use of Buildings Finances with Tax-Exempt Debt

Major Category Finance Policies for the Vice President for Finance area only

Next Scheduled Review Saturday, June 13, 2026

Revision History

Updated 6/13/23.

Approved By Vice President and Chief Financial Officer

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