



POLICY

Title: Post-Issuance Compliance Policy
For Tax-Exempt and Tax-Credit Bonds

About This Policy

Responsible Official:	Vice President for Finance and Treasurer	Approval Authority:	President
Policy Number:	4.15.2	Effective Date:	March 18, 2019
Revision History:	V.4.15.1 effective January 6, 2015		
Questions concerning the daily operational interpretation of this policy should be directed to the following (in accordance with the policy elaboration and procedures):			
Title(s)/Department(s):		Contact Information:	
University Controller		(802) 656-8356	

Policy Statement

It is the University's policy to comply with all laws, regulations and contracts applicable to tax-exempt and tax-credit bonds (the "Bonds") issued to finance University facilities, including all Applicable Federal Law. It is also the University's policy to fulfill all requirements that must be satisfied subsequent to the issuance of Bonds in order that interest on such obligations be, or continue to be, or would be but for certain provisions of the Code, excludable from gross income for federal income tax purposes or that the University receive the Tax Credit Subsidy with respect to such obligations, as applicable.

Reason for the Policy

The Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder (the "Treasury Regulations") contain numerous requirements that must be met by the University after its tax-exempt bonds are issued in order for interest on the bonds to remain tax-exempt. Additionally, numerous tax-credit Bonds, including Build America Bonds, are subject to the same or similar requirements in order for the University to continue to receive the federal subsidy toward interest payments (the "Tax-Credit Subsidy"). Further, the Securities and Exchange Commission requires the issuer of the securities to provide certain disclosures on an annual basis. The University has adopted this Post-Issuance Compliance Policy for

tax-exempt and tax-credit bonds (the "Policy") in order to meet all tax requirements under the Code, and to meet all continuing disclosure requirements.

The University recognizes that compliance with the applicable provisions of the Code and the Treasury Regulations, and with the continuing disclosure obligation set forth by the Securities and Exchange Commission, is an on-going process, necessary during the entire term of the Bonds and is an integral component of the University's debt management. Accordingly, the implementation of this Policy will require ongoing monitoring and, more than likely, ongoing consultation with legal counsel.

Applicability of the Policy

This Policy applies to all University officials, faculty and staff with responsibility or control over any aspect of the Bond issuance, the investment or expenditure of Bond proceeds and the use of Bond-financed assets, including but not limited to those who manage, direct or influence the following:

1. The pre-issuance process and decision-making, including identification of eligible projects;
2. The expenditure of Bond proceeds and other University funds for project costs;
3. The investment of Bond proceeds and other University funds;
4. The use of all facilities and other assets financed or refinanced by Bonds, including use by the University or by third parties pursuant to leases, management agreements, service agreements, sponsored research agreements, fee-for-use or other arrangements;
5. The sale or other disposition of any facilities or other assets financed or refinanced by Bonds;
6. The creation and retention of documentation relating to expenditure of Bond proceeds, the use and disposition of Bond-financed assets, Arbitrage and tax return filings;
7. The recording and reporting of financial transactions related to Bonds; and
8. Compliance with the continuing disclosure requirements.

The Vice President for Finance shall make this Policy available to all applicable University personnel. The Vice President for Finance may modify the detailed policies and procedures described herein as necessary to promote compliance with Applicable Federal Law.

Definitions

Applicable Federal Law: Includes the Code and the Treasury Regulations, including Sections 103 and 141 through 150 of the Code and the related Treasury Regulations (Note: [IRS Publication 4079: Tax-Exempt Governmental Bonds Compliance Guide](#) provides guidance and explanation for most areas of tax-exempt financing relevant to the University. The report of the Advisory Committee on Tax Exempt and Government Entities, entitled: [After the Bonds are Issued: Then What?](#), is also a useful resource for explanation of Applicable Federal Law).

Arbitrage: Earnings from investment of Bond proceeds in excess of the amount that would have been earned had the funds been invested at the Bond yield, adjusted for certain expenses (i.e., investment yield higher than the Bond yield).

- Bond Counsel:** External legal counsel nationally recognized in the area of municipal finance retained by the issuer to give the traditional bond counsel opinion in regard to the issuance. The issuer may retain Bond Counsel for ongoing consultation.
- Bond Indenture:** The contract between a bond issuer and a bond holder.
- Bond Trustee:** A financial institution with trust powers, such as a commercial bank or trust company, given fiduciary powers by a bond issuer to enforce the terms of a bond indenture. A trustee ensures that bond interest payments are made as scheduled, and protects the interests of the bondholders if the issuer defaults.
- Continuing Disclosure Agreement:** The legal document executed by the issuer of the securities, or other obligor, at closing that stipulates the issuer's formal ongoing disclosure obligation under Securities and Exchange Commission Rule 15c2-12 (the "Rule"), which requires the underwriter of an issue of municipal securities to obtain a commitment by the issuer of the securities to provide this ongoing disclosure.
- EMMA:** Electronic Municipal Market Access (EMMA) system is the MSRB's electronic database that provides free access to municipal disclosures, market data and education to investors and interested parties. Issuers are required to fulfill their annual continuing disclosure agreement requirements by posting such information to [EMMA](#).
- Listed Event:** Municipal bond issuer information considered to be significant by a reasonable investor. Listed events required to be disclosed by bond issuers via EMMA are defined by the specific Continuing Disclosure Agreement associated with a bond issuance.
- MSRB:** The Municipal Securities Rulemaking Board (MSRB) is a regulating body that creates rules and policies for investment firms and banks in the issuing and sale of municipal bonds, notes and other municipal securities in the United States.
- Private Business Use:** Examples of Private Business Use include the use of Bond-financed assets by third parties pursuant to leases, management or service contracts that do not meet Internal Revenue Service ("IRS") requirements, certain sponsored research arrangements, and any other arrangements that provide third parties with special legal entitlements to use or occupy (or otherwise benefit from) Bond-financed property. As an issuer of governmental bonds, generally, no more than ten percent (10%) of the University's Bond proceeds may be used for Private Business Use. However, for use that is "unrelated or disproportionate" to the University's use, the 10% permitted de minimis amount is reduced to 5%, and for larger Bond issues an overall cap of \$15 million may apply. The use of Bond proceeds is generally determined based on the use of the Bond-financed property.
- Tax Certificate:** The agreement signed by the University at the closing of a Bond issuance in which the University makes certain representations, warranties and covenants relating to the expected use and investment of the Bond proceeds, the tax eligibility of the projects and the University's operations.
- Underwriter:** A company or other entity that administers the public issuance and distribution of securities from a corporation or other issuing body. An underwriter works closely with the issuing body to determine the offering price of the securities, buys them from the issuer and sells them to investors via the underwriter's distribution network.

Procedures

General

It is the University's policy to comply with all applicable laws, regulations and contracts applicable to Bonds, including all Applicable Federal Law, to ensure that interest on the Bonds remains exempt from federal income tax, or that the University continues to receive the Tax Credit Subsidy, as applicable. Unless otherwise approved by the University's legal counsel, the University shall comply with the guidelines with respect to management contracts set forth in Revenue Procedure 2017-13 (applicable to contracts entered into on or after January 17, 2017), or Revenue Procedure 1997-13 and IRS Notice 2014-67 (which may be applied to contracts entered into before August 18, 2017 that are not materially modified or extended on or after August 17, 2017) and the guidelines with respect to research agreements set forth in Revenue Procedure 2007-47, as the same may be amended and supplemented from time to time.

Responsibility for Monitoring Post-Issuance Tax Compliance

Responsibility. The Board of Trustees of the University ("the Board") has final responsibility for monitoring and enforcing post-issuance compliance under this Policy. The Board has designated the University's Vice President for Finance and Treasurer ("the Vice President for Finance") as the primary official responsible for effecting this Policy. The Vice President for Finance, as primary official, is authorized and directed to take all necessary action to ensure University officials, faculty and staff comply with this Policy.

Professional Financial Service Providers. The University recognizes that the requirements under the Code for post-issuance compliance are numerous and complex, and as such, outside resources, including use of professional financial service providers, may be necessary to properly comply with this Policy. The Vice President for Finance may execute and deliver any agreements or documents with qualified professional financial services provider(s) that the Vice President for Finance deems necessary, in compliance with other existing University policies, to ensure compliance with this Policy.

Detailed Policies and Procedures

The University shall abide by the following policies, and shall implement the following procedures, to ensure that interest on Bonds remains tax-exempt, or that the University continues to receive the Tax Credit Subsidy, as applicable:

1. Expenditures of Bond Proceeds.
 - a. At the issuance of the Bonds, the University must have reasonably expected to spend at least 85% of all proceeds that were expected to be used to finance improvements (which proceeds would exclude proceeds in the reserve fund or for any non-project purpose) within three years of issuance. Other limitations or adjustments may be set out in the Tax Certificate. The University must also have incurred or have reasonably expected to incur, within six months after issuance of the Bonds, binding obligations to unrelated parties involving an expenditure of not less than 5% of such amount of Bond Proceeds, and that completion of the project and allocations of Bond Proceeds to costs would proceed with due diligence. Meeting all these requirements will allow the University to invest these project-related Bond Proceeds at an unrestricted yield for three years.
 - b. Bond proceeds, including investment earnings thereon, shall be disbursed only for project costs, capitalized interest (i.e., interest payments during project construction), Bond issuance costs and other purposes expressly allowed under the Bond documents. The Vice President for Finance or Controller shall approve monthly requisitions to reimburse actual

project expenses incurred, plus capitalized interest and cost of issuance, as applicable, as prepared by Treasury professionals, for submission to Bond Trustee.

- c. If the University intends to reimburse itself from Bond proceeds for project costs paid prior to issuance of the Bonds, the University shall adopt a declaration of official intent to reimburse project costs. The University shall consult with Bond Counsel to ensure the declaration of intent meets the requirements of Applicable Federal Law.
 - d. If a person discovers that an expenditure deadline has not been met, such person should promptly notify the Vice President for Finance who will consult with Bond Counsel to determine the appropriate course of action with respect to such unspent Bond proceeds. Special action may need to be taken with such unspent Bond proceeds, including yield restriction, or redemption of Bonds.
2. Final Allocation of Bond Proceeds. Promptly after the final expenditure of Bond proceeds, the Vice President for Finance shall prepare a written report documenting the allocation of Bond proceeds (including interest earnings thereon) and other University funds to project expenditures (the "Final Allocation"). In all cases, the Final Allocation shall be completed within 18 months after the later of the date Bond proceeds are expended (as determined by Treasury professionals) or the date the project is placed in service (as determined by Director of Capital Planning and Management), but not later than 5 years after the Bonds were issued. It is recommended that the University consult with Bond Counsel in connection with the Final Allocation of Bond proceeds. Treasury professionals shall place reminders in appropriate calendars, at the time of bond issuance, to ensure Final Allocation of Bond proceeds are made timely.
3. Private Business Use of Bond-Financed Property.
- a. General. Ongoing monitoring will be done to ensure that there is no more than the permitted amount of Private Business Use described in the Tax Certificate in connection with the Bonds. In general, the permissible amount of Private Business Use is no more than the lesser of (i) 10% or (ii) \$15 million of the sale proceeds of an issue of Bonds used for Private Business Use. For purposes of the above, the 10% limit shall be reduced to 5% for Private Business Use, which is either unrelated or disproportionate to the governmental use financed by the Bonds. The following uses of Bond-financed property shall require the Vice President for Finance's prior approval:
 - i. use by third parties (i.e., other than the University), including but not limited to leases, licenses, fee-for-use or other arrangements;
 - ii. management or service contracts under which the manager or service provider's compensation is based, in whole or in part, on income from operation from the facility (refer to Revenue Procedures 2017-13, and 1997-13, and IRS Notice 2014-67 safe harbor requirements); and
 - iii. any other use that could potentially be considered Private Business Use under Applicable Federal Law.
 - b. Sponsored Research. Sponsored research in Bond-financed facilities may, under certain circumstances, constitute Private Business Use of Bond proceeds allocated to those facilities. All agreements with third parties who sponsor research in Bond-financed facilities shall comply with applicable IRS safe harbor requirements (currently, IRS Revenue

Procedure 2007-47) or shall be approved by the Vice President for Finance after consulting with Legal Counsel.

- c. Annual Measurement of Private Business Use. The Vice President for Finance, in collaboration with the Director of Capital Planning and Management, shall maintain a record of all Bond financed property, including the amount of Bond proceeds allocated to each asset, which shall be based on the Final Allocation of Bond proceeds described above. The Vice President for Finance shall annually review all uses of Bond financed property and determine the percentage of Private Business Use of Bond-financed property. The Vice President for Finance shall maintain records of all Private Business Use, if any, of Bond-financed property, including electronic copies of the pertinent leases, contracts or other documentation, and the related determination that any Private Business Use is within permissible limits under Applicable Federal Law.
4. Change of Use. Any significant change in the use of Bond-financed property must be reported to the Vice President for Finance prior to implementation. The Vice President for Finance shall determine whether the proposed new use may constitute Private Business Use. If the use may be Private Business Use, the Vice President for Finance shall consult with counsel for tax advice on whether that use or arrangement, if put into effect, will be consistent with the restrictions on Private Business Use and, if not, whether any "remedial action" permitted under the Code may be taken by the University as a means of enabling that use.
5. Sale or Disposition. Any sale or other disposition of Bond-financed property other than due to normal wear, tear or obsolescence must be reported to the Vice President for Finance prior to execution of any agreement of sale or other agreement of disposition. The Vice President for Finance shall consult with Bond Counsel as to the requirements of Applicable Federal Law applicable to such sale or other disposition and the appropriate "remedial action" permitted by the Code that must be undertaken by the University as a result of the potential sale or other disposition of the Bond-financed property.
6. Tax-Credit Subsidy

Responsibility. The Vice President for Finance, working in conjunction with any contracted professional financial service provider and/or Bond Counsel, shall perform all necessary actions prior to completing and filing the required Tax-Credit Subsidy forms to ensure the tax-credit Bonds meet all Code requirements, including:

- a. ensuring, to the extent applicable, all documents set forth in the Records Retention section are being properly retained;
- b. ensuring the tax-credit bond proceeds have been and are being used in the manner, time and for the purposes set forth in the applicable Tax Certificate and/or Bond indenture; and
- c. ensuring, to the extent applicable, the use of the tax-credit Bond proceeds meet all private activity bond restrictions.

Filing. The Vice President for Finance, working in conjunction with Bond Trustee, shall make all necessary filings (e.g. IRS Form 8038-CP) and perform all related actions to ensure the University receives payments for its tax-credit bonds.

7. Investment of Bond Proceeds; Arbitrage Rebate Calculation and Reporting.
 - a. Prior to expenditure for project costs, Bond proceeds shall be invested solely in compliance with Applicable Federal Law and the Tax Certificate. The University may invest Bond proceeds at a yield in excess of the Bond yield only during the applicable "temporary period" (as defined in the Code and the Treasury Regulations), and shall provide for yield restriction on the investment of such proceeds after the applicable temporary period. The University shall ensure that investments acquired with proceeds of an issue are purchased at "fair market value," as defined in Treasury Regulations.
 - b. The University, working with Bond Trustee in its role as arbitrage rebate service provider, shall determine whether the Bonds are eligible for an Arbitrage rebate exception. If the Bonds are not exempt from Arbitrage rebate, the University shall compute the amount of Arbitrage earnings, and make all required rebate payments to the IRS, on each computation date required by Applicable Federal Law.
8. Reissuance. Before modifying any Bond terms, the University shall consult with Bond Counsel and/or Bond Trustee to determine whether the proposed modification could potentially be treated as a "reissuance" of those Bonds for federal income tax purposes.
9. Filing of Returns. The University will work with Bond Trustee, in its role as arbitrage rebate service provider, to prepare and file any returns with the IRS relating to Arbitrage rebate in a timely manner. The University will confirm with Bond Counsel that the information report required to be filed upon issuance of Bonds (e.g., Form 8038-G) was filed with the IRS on a timely basis.
10. Record Retention. Unless otherwise permitted by future Treasury Regulations or IRS guidance, written records (which may be in electronic form) will be maintained with respect to each Bond issue for as long as those Bonds (and any Bonds issued to refinance those Bonds) remain outstanding, plus three years. The records to be maintained by the responsible office(s) shall include:
 - a. basic records relating to the Bond issuance including the official transcript of proceedings;
 - b. documentation evidencing expenditure of Bond proceeds including, but not exceptions or, if not, that the Arbitrage rebate amount, if any, was calculated and timely paid to the IRS;
 - c. documentation evidencing use of Bond-financed property by public and private entities (including copies of leases, management contracts and research agreements);
 - d. records showing that special use arrangements, if any, affecting Bond-financed property made by the University with third parties, if any, are consistent with applicable restrictions on Private Business Use of property financed with proceeds of tax-exempt Bonds;
 - e. limited to, purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of Bond issuance costs, and records of "allocations" of Bond proceeds to reimburse the University for project expenditures made before the Bonds were actually issued;
 - f. records showing the specific assets financed with Bond proceeds (including assets to which Bond proceeds are allocated pursuant to the Final Allocation described above);
 - g. information, records and calculations showing that, with respect to each Bond issue, the University was eligible for one of the Arbitrage rebate spending

- h. records of any sale or disposition of Bond-financed property, including terms of sale, and documentation of any “remedial action” undertaken as a result of the sale or other disposition; and
- i. documentation pertaining to any investment of proceeds of the issue, including:
 - i. the solicitation and all responses received from the bidding of any GICs,
 - ii. information with respect to any investment agreements, including certificates of deposit and GICs,
 - iii. United States Treasury Securities-State and Local Government Series subscription information and
 - iv. records of investment activity sufficient to permit calculation of arbitrage rebate or demonstration that no rebate is due.

The purpose of the foregoing record retention policy is to ensure that the University has adequate records to allow all applicable University personnel to monitor issues with respect to the Bonds over time and to enable the University to readily demonstrate to the IRS, upon an audit of any Bond issue, that the University has fully complied with all Applicable Federal Law requirements that must be satisfied after the issue date of the Bonds so that interest on those Bonds continues to be tax-exempt under the Code.

11. Consultation with Bond Counsel. The Vice President for Finance shall consult with Bond Counsel as appropriate to resolve questions relating to potential Private Business Use of Bond-financed assets, Final Allocation of Bond proceeds, Arbitrage rebate and other matters relating to compliance with Applicable Federal Law.
12. Corrective Actions. Upon discovering any violation of Applicable Federal Law including, but not limited to, excess Private Business Use, violation of Arbitrage restrictions or sale of Bond-financed assets, the Vice President for Finance shall promptly consult with legal counsel to determine appropriate remedial action to correct such violation. If remedial action is not available, the University will undertake to remedy the violation through the IRS Voluntary Closing Agreement Program (VCAP).
13. Continuing Disclosure. Under the provisions of SEC Rule 15c2-12 (the “Rule”), Participating Underwriters (as defined in the Rule) are required to determine that issuers and obligated persons (such as the University) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with Offerings subject to the Rule. Unless the University is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, the bond transcript for each issue of bonds will include a Continuing Disclosure Agreement executed by the University.

In order to monitor compliance by the University with its Continuing Disclosure Agreements, Treasury professionals will, if and as required by such Continuing Disclosure Agreements:

- a. Prepare annual reports (“Annual Reports”), to be reviewed and authorized by the Vice President for Finance, in the form required by the related Continuing Disclosure Agreements.
- b. Maintain a calendar, with appropriate reminder notifications, listing the filing due dates relating to dissemination of Annual Reports, which annual due date is generally expressed

for the University of Vermont as 180 days following the end of the University's fiscal year (December 27 based on a June 30 fiscal year end) (the "Annual Report Due Date"), as provided in the related Continuing Disclosure Agreements. If the independent auditor's report is not available and/or the audited financial statements are not accepted by the Board of Trustees by that date, unaudited financial statements should be filed by the due date, then the audited financial statements should be filed when available.

- c. Ensure timely dissemination of the Annual Report by the Annual Report Due Date, in the format and manner provided in the related Continuing Disclosure Agreements, which may include transmitting such filing to the MSRB through the EMMA System in the format prescribed by the MSRB.
- d. Monitor the occurrence of any "Listed Event" (as defined in the Continuing Disclosure Agreements) and timely file notice of the occurrence of any such Listed Event in the manner provided under the Continuing Disclosure Agreements. A summary of listed events is included in Exhibit A to this policy. To be timely filed, such notice must be transmitted within 10 business days (or such other time period as set forth in the Continuing Disclosure Agreements) of the occurrence of such Listed Event.
- e. Ensure timely dissemination of notice of any failure to perform under a Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreement.
- f. Respond to requests, or ensure that another representative of the University responds to requests, for information under the Rule.

Monitor the performance of any dissemination agent(s) engaged by the Issuer to assist in the performance of any obligation under the Continuing Disclosure Agreements, including checking the MSRB EMMA site on or before December 15 of each year to confirm the posting of the Annual Report and immediately after the filing of a Listed Event filing under the appropriate Bond issues.

Forms/Flowcharts/Diagrams

- None

Related Documents/Policies

- [Facilities and Ground Use](#)
- [Use of University Research Facilities and Equipment by External Users](#)

Regulatory References/Citations

- [Revenue Procedure 2017-13](#)
- [Revenue Procedure 97-13](#)
- [Revenue Procedure 2007-47](#)

Training/Education

Training/education related to this policy is as follows:

Training Topic:	Federal Tax Law Regarding Tax-Exempt and Tax-Credit Bonds		
Training Audience:	Vice President for Finance	Delivered By:	Bond Counsel
Method of Delivery:	In-Person	Frequency:	At Least Annually

Required Training Topic:	Tax-Exempt and Tax-Credit Bonds: REQUIRED		
Required Training Audience:	<p><u>Group A:</u> All Officials, Faculty and Staff of Departments Which Benefit From Tax-Exempt Bond Proceeds and Bond-Finance Property</p> <p><u>Group B:</u> Designated Staff in Departments Receiving Bond Proceeds or Using Bond-Financed Property After Policy Effective Date</p>	Delivered By:	Vice President for Finance
Method of Delivery:	On-Line	Frequency:	<p><u>Group A:</u> Biennial</p> <p><u>Group B:</u> At The Time of Issuance</p>

The Vice President for Finance is authorized to determine, from time to time, any additional education or training regarding federal tax compliance necessary for officials, faculty or staff to ensure compliance with this Policy.

Effective Date

Approved by the President March 20, 2019

Exhibit A: Listed Events

The following are Listed Event(s) that are subject to reporting as described in Section 13(d) of this Policy, under the heading of Continuing Disclosure.

1. principal and interest payment delinquencies;
2. non-payment related defaults, if material;
3. unscheduled draws on debt service reserves reflecting financial difficulties;
4. unscheduled draws on credit enhancements reflecting financial difficulties;
5. substitution of credit or liquidity providers, or their failure to perform;
6. adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
7. modifications to rights of holders of the Bonds, if material;
8. Bond calls, if material, and tender offers (the giving of notice of regularly scheduled mandatory sinking fund redemption shall not be deemed material for this purpose;
9. defeasances;
10. release, substitution, or sale of property securing repayment of the Bonds, if material;
11. rating changes;
12. bankruptcy, insolvency, receivership or similar event of the University (refer to further notation in the Continuing Disclosure Agreement(s));
13. the consummation of a merger, consolidation, or acquisition involving the University or the sale of all or substantially all of the assets of the University, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
14. appointment of a successor or additional Trustee or the change of the name of the Trustee, if material.
15. incurrence of a financial obligation of the Borrower or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the Borrower or obligated person, any of which affect security holders, if material; and
16. default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the Borrower or obligated person, any of which reflect financial difficulties.