

### **30: 10-1-17. Tax-Exempt Debt Compliance Policy**

#### **1.0 Policy Statement**

This policy defines compliance with federal laws relating to issuance and post-issuance monitoring and reporting requirements for tax-exempt debt issued for institutions or agencies (“Institutions”) under the governance of the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges (the “Board”). Pursuant to the terms of this Policy, the Vice President for Administration and Finance for each Institution shall: (i) develop internal procedures to monitor compliance as further described herein; (ii) assign a staff member to be responsible for compliance with this Policy; and (iii) immediately report potential violations or known variances to the Board.

By the adoption of this policy, the Board acknowledges the importance of full compliance with legal and regulatory disclosures related to its outstanding obligations. The Board is committed to the efficient management of its debt to preserve strong credit ratings, ensure continued market access, and promote investor confidence.

This Policy covers all obligations issued by the Board for capital projects, whether in the form of notes, bonds, capital leases or other obligations, as defined in federal and state law. Where applicable, the Policy also includes any obligations issued under the Oklahoma State Regents for Higher Education (“OSRHE”) Master Lease Program or through any third-party or conduit issuer. While most of the legal requirements described in this policy relate to debt that is exempt from federal income tax under the Internal Revenue Code (the “Code”), certain requirements may also apply to taxable obligations issued for authorized college and university purposes.

To assist Institutions with their compliance efforts, the Board has prepared “Debt Issuance and Management Guidelines.” This document is intended to: (i) inform Institutions of their responsibilities under applicable rules and regulations; (ii) provide guidance in the development of an efficient post-issuance compliance program; and (iii) identify additional sources of information and assistance.

#### **2.0 Verification of Tax-Exempt Status**

During the development of a debt issue, Institutions shall work with nationally recognized bond counsel to determine the tax-exempt status of the proposed debt. In most cases, debt issued for governmental purposes is exempt from federal income tax under the Code. However, in some cases, debt issues may be determined to be taxable. The Code provides specific requirements that must be satisfied to qualify for tax-exempt status.

**2.1 Tax Status.** The tax status of the proposed debt will be determined by bond counsel based on a review of facts and circumstances. Bond counsel shall provide a written opinion to the Institution regarding the tax status of the proposed debt issue.

**2.2 Management and Service Contracts.** Management and service contracts between Institutions and private parties, under which the private parties receive compensation for services provided with facilities or equipment funded with tax-exempt debt, may result in a proposed debt issue being taxable, or result in a loss of the tax-exempt status of an existing obligation, if circumstances meet the IRS private business test (certain safe harbors do exist). Bond counsel will examine any existing or proposed contracts related to any proposed debt issuance. Institutions shall consult with Board of Regents Legal Counsel prior to entering into any such contracts to determine whether such contracts may impact the tax-exempt status of outstanding debt.

**2.3 Research Agreements.** When Institutions enter into agreements for sponsored research where the sponsor benefits from the use of facilities or equipment funded with tax-exempt debt, circumstances may meet the IRS private business test, possibly resulting in a proposed debt issue being taxable, or a loss of the tax-exempt status of an existing obligation. As in the case of management contracts (see Section 2.2), safe harbors are defined in the applicable Code rules. Bond counsel will examine existing or potential research agreements related to any proposed debt issuance. Institutions with outstanding tax-exempt debt shall consult with Board of Regents Legal Counsel before entering into any such agreements related to facilities or equipment funded with tax-exempt debt.

### **3.0 Responsibilities at Time of Debt Issuance**

At the time of debt issuance, Institutions should work with their financial advisors, bond counsel and underwriters to provide for completion of the following actions.

**3.1 Bond Yield Calculation.** Institutions shall calculate the bond yield for all debt offerings in the manner prescribed by the IRS. This bond yield will be required for preparation of certain IRS filings (see Section 3.2) and for arbitrage calculations (see Section 5.0).

**3.2 Internal Revenue Service Filing.** Institutions shall comply with the information filing requirements under Section 149(e) of the Code. In most cases, the tax form required to be filed will be either IRS Form 8038G or IRS Form 8038GC, depending on the size and type of sale. The applicable form is required to be filed by the 15th day of the second calendar month following the quarter in which the debt was issued.

**3.3 Rule 15c2-12 – Primary Disclosure.** Securities and Exchange Commission (“SEC”) Rule 15c2-12 requires underwriters participating in primary (new) offerings of municipal securities of \$1,000,000 or more to obtain, review, and distribute to investors copies of an issuer’s official statement. All submissions of primary offering official statements and advance refunding documents shall be made pursuant to revised Municipal Securities Rulemaking Board (“MSRB”) Rule G-32.

Rule G-32 requires that the official statement or other offering document shall be filed with the MSRB’s Electronic Municipal Market Access System (“EMMA”) within one business day of receipt, but no later than the date of closing. The EMMA System is also the repository for Continuing Disclosure filings (see Section 4.0).

**3.4 Spend-down Election.** Generally, issuers of tax-exempt debt are required to rebate arbitrage earnings to the U.S. Treasury. Three exceptions exist to the arbitrage rebate regulations, if the issuer expends the proceeds quickly enough. Institutions should evaluate their funding needs prior to each issuance to determine if one of the three spend-down options is suitable for their transaction.

### **4.0 Continuing Disclosure and Other Monitoring Responsibilities**

SEC Rule 15c2-12 requires that an underwriter, prior to purchasing or selling bonds in connection with a covered debt offering, determine that the governmental issuer, and/or one or more obligated persons for whom financial or operating data is presented in the official statement, has undertaken in writing to provide required information to the EMMA System and to the appropriate state information depository (“SID”), if any.

**4.1** By the adoption of this policy, the Board requires each Institution for which debt has been issued to commit to full compliance with MSRB continuing disclosure requirements.

**4.2** Institutions shall develop an internal debt monitoring system to ensure that required secondary market disclosure materials are prepared in an accurate, complete, and timely manner and that such

materials are disseminated in the manner described in the continuing disclosure agreement for each series of outstanding debt. This effort shall include both the periodic reporting of information and the filing of "Rule 15c2-12 Event Notices" (as such events are defined in SEC Rule 15c2-12) within ten business (10) days of occurrence.

4.3 Institutions shall develop procedures to monitor annually the occupancy and use of facilities and equipment financed with tax-exempt debt to verify that such uses are eligible under applicable IRS rules. If the use of the asset changes while the debt remains outstanding, the tax-exempt status can be lost. Prior to any change in use of a capital facility or item funded with existing tax-exempt debt, Institutions shall coordinate with Board of Regents Legal Counsel to obtain an opinion from nationally recognized bond counsel (or tax counsel) that the proposed change does not affect the tax-exempt status of outstanding debt.

4.4 The Board recognizes that compliance with secondary market disclosure requirements and the monitoring of tax-exempt debt places additional responsibilities on staff. Institutions with outstanding debt must make available the additional training necessary to ensure that their employees understand and can implement an effective post-issuance compliance program.

### **5.0 Arbitrage Compliance Responsibilities**

All Institutions under the Board's governance shall comply with the provisions of Section 148 of the Code as they pertain to the monitoring, reporting and, if necessary, rebate of arbitrage earnings from the investment of the proceeds of tax-exempt debt. Each Institution shall establish procedures for the tracking of investment earnings from debt issue proceeds and shall retain an arbitrage compliance consultant to assist with the preparation of required reports. Institutions may seek the advice and assistance of the Oklahoma State Bond Advisor in the selection of their arbitrage consultant.

### **6.0 Record-keeping and Record-retention**

Institutions shall maintain all material records and documents related to each debt transaction to demonstrate compliance with the Code and applicable rules and regulations. These records shall be maintained in a manner that permits complete and timely access for as long as they are material. Records may be maintained in any format acceptable to the IRS. Consistent with IRS recommendations, Institutions are directed to keep all such records for as long as the tax-exempt debt is outstanding, plus three years. A longer retention schedule may be required for certain types of debt and/or in cases where specific state records management statutes or regulations apply.

6.1 **General Retention Requirements.** Although the records that must be maintained can vary depending on the type of debt transaction, the following are common to most tax-exempt debt offerings:

6.11 Basic records relating to the debt transaction, including but not limited to the trust indenture, resolutions, official statement, loan agreements, and bond counsel opinion;

6.12 Documentation evidencing expenditure of bond proceeds;

6.13 Documentation evidencing use of bond-financed property by public and private sources. This shall include copies of leases and management service contracts as well as joint ventures and sponsored research agreements;

6.14 Documentation evidencing all sources of payment or security for the bonds;

6.15 Documentation pertaining to any investment of bond proceeds. This shall include the purchase and sale of securities, State and Local Government ("SLG") subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, and guaranteed investment contracts;

6.16 All arbitrage rebate calculations, reports and payments/filings (including IRS Form 8038-T); and

6.17 Any other documentation material to the tax-exempt debt or the facility/equipment financed with such debt.

(Approved 02-24-12)