

## **Stevens Institute of Technology**

### ***Statement of Procedures Relating to Tax-Exempt Bond Compliance***

The University has issued tax-exempt bonds to finance many of its facilities and other capital projects. Tax-exempt bonds are subject to many detailed rules set forth in the Internal Revenue Code and Treasury Regulations, including limitations on “arbitrage” and “private business use.” Bond counsel is generally engaged to review and confirm compliance with these rules as of the issue date. Many rules, however, continue to apply throughout the entire term of the bond issue. The University is required to comply with these rules following issuance of the bonds to ensure their continued tax-exempt status. Thus, the University is instituting the following procedures to ensure compliance with the federal tax rules relating to tax-exempt bonds following their issuance.

#### **I. Responsibility for Maintaining Compliance**

The Chief Financial Officer or his or her designee shall be responsible for overseeing compliance with the post-issuance bond requirements. Such person is hereafter referred to as the “Bond Compliance Coordinator.” The Bond Compliance Coordinator shall use his or her best judgment to determine how best to monitor compliance, and shall consult with the General Counsel’s office and such other members of the University staff as appropriate to ensure compliance.

#### **II. Annual Private Business Use Compliance Surveys and Schedule K to Form 990**

Following the close of each fiscal year, the Bond Compliance Coordinator will conduct a survey of the uses of bond-financed property to determine the amount of private business use of each outstanding bond issue for that year. The Bond Compliance Coordinator will prepare a “Building Questionnaire” for each building that was financed in whole or in part with tax-exempt bonds. The Building Questionnaire is given to the VP - Facilities, who will confirm whether the space usage information (including information concerning management and service contracts, leases, and space rentals) provided in response to the prior year’s questionnaire is still accurate, and if not, will provide any necessary updates. For any facilities that were not addressed by a prior-year questionnaire, the VP - Facilities will provide a description of the use of space in the facilities. The Bond Compliance Coordinator will review this information to identify private business uses of bond-financed space and, as necessary to make this determination, obtain copies of relevant contracts. The Bond Compliance Coordinator will refer to the description of the relevant legal standards in making this determination and may consult the General Counsel’s office as deemed appropriate.

In addition, the Bond Compliance Coordinator will ask the Executive Director of Sponsored Research to identify any sponsored research contracts for the fiscal year in question that may give rise to private business use. The Executive Director of Sponsored Research will refer to IRS Revenue Procedure 2007-47 as well as any other applicable information in making this determination.

The Bond Compliance coordinator will also consult with the Finance Department to identify any arrangements that may be regarded as an “unrelated trade or business” for the fiscal year in question (regardless of whether or not the arrangement in fact gives rise to unrelated business taxable income).

To the extent private business use arose from any arrangement, the Bond Compliance Coordinator will gather any information necessary to identify and/or allocate the bond-financed space to private business use. For example, if a noncompliant sponsored research contract is performed in the same space as other compliant research contracts, the Bond Compliance Coordinator will obtain from the Executive Director of Sponsored Research data as to the revenue derived from the noncompliant contract, and data as to the revenues derived from all the contracts performed in that space, from which the Bond Compliance Coordinator makes a proportional allocation.

If any arrangements are not clearly categorized as private business use or compliant, or if it is unclear how mixed-use property should be allocated to private business use, the Bond Compliance Coordinator will discuss the issue with the General Counsel’s office.

The Bond Compliance Coordinator will then calculate the amount of private business use of each of the University’s outstanding bond issues for the fiscal year. The purpose of these calculations is to confirm the University’s continued compliance with the limitations on private business use, and to permit the University to meet its Form 990 reporting obligations. More specifically, the University is required to report information concerning certain of its outstanding bond issues on Schedule K to the Form 990 on an annual basis. The Bond Compliance Coordinator will provide the appropriate personnel with the information necessary to prepare Schedule K (including private business use percentages).

### **III. Screening Proposed Arrangements for Private Business Use**

Before the University enters into any arrangement that may give rise to private business use, the arrangement is reviewed to make sure that entering into the arrangement would not cause a violation of the private business use rules. The types of proposed arrangements that are reviewed include leases, management and service contracts, sponsored research agreements, potential unrelated trades or businesses, partnerships, joint ventures and naming rights agreements. Responsibility for screening these proposed arrangements is assigned to particular individuals at the University designated by the General Counsel.

If the screener believes that a proposed arrangement will, or possibly could, give rise to private business use, the screener will refer the proposal to the Bond Compliance Coordinator. If the Bond Compliance Coordinator (in consultation with counsel as necessary) determines that no private business use would arise, the arrangement may proceed. If the Bond Compliance Coordinator determines that private business use would arise under the arrangement as then proposed, he or she will recommend appropriate steps to promote the best interests of the University. Such steps (“corrective steps”) may include: requiring that the arrangement be modified to eliminate the private business use (for example, by fitting the arrangement within the IRS “safe harbor” guidance); taking “remedial action” as permitted under the Treasury Regulations to cure any private business use resulting from the arrangement; re-allocating the sources of funding of the facility at issue to the extent permitted by the Treasury

Regulations; or determining that the amount of private business use generated by the arrangement is immaterial and will not cause the applicable limitation on private business use to be exceeded. In no event may the Bond Compliance coordinator approve, or the University enter into, a proposed arrangement that would cause the limitation on private business use for a given bond issue to be exceeded.

Even if a given arrangement would not cause the applicable limitation on private business use to be exceeded, if the amount of private business use generated by the arrangement would be material, the Bond Compliance Coordinator will ordinarily recommend that one of the corrective steps described above be undertaken. Only in rare and unusual cases will the Bond Compliance Coordinator authorize such an arrangement to be entered into without a corrective step, and shall consult with the General Counsel's office before providing any such authorization.

#### **IV. Rebate**

Federal tax law requires the University (through the bond issuer) to "rebate" to the federal government any amounts earned from the investment of bond proceeds at a yield in excess of the bond yield, unless an exception applies. The University retains an outside rebate computation consultant (currently NJEFA) to calculate its liability, if any, for rebate for each of its bond issues. The Bond Compliance Coordinator is responsible for maintaining the relationship with the consultant, providing the consultant with the documentation it requires, making sure the consultant prepares calculations at the required intervals (including upon the retirement of a given bond issue), reviewing the consultant's calculations for obvious errors, coordinating with the issuer to remit any required rebate to the federal government, and retaining appropriate records. The Bond Compliance Coordinator is also responsible for monitoring the spending of bond proceeds and taking appropriate steps to qualify for a "spending exception" to rebate, to the extent practical.

#### **V. Correction**

If the Bond Compliance Coordinator, in consultation with the General Counsel's office, determines that there has been a violation of the private use or rebate rules that cannot be remediated under applicable regulations, then the Bond Compliance Coordinator shall take the necessary steps to correct such violation through the voluntary closing agreement program.

#### **VI. Source of Debt Service Payments; Gifts**

To avoid creating a "sinking fund" that is subject to restriction on the yield at which it may be invested, payments of principal and interest on the University's tax-exempt bonds are derived from current revenues (including current gifts), not directly or indirectly from the University's endowment or other set-aside funds. The Chief Financial Officer is responsible for maintaining accounting and cash flow practices that will satisfy this requirement.

Whenever a gift is received that bears a close relationship to bond-financed capital costs (e.g., because it is designated for a bond-financed project, received through a fundraising campaign that focuses on

the project, or otherwise), the gift should generally be (i) used to pay capital costs of the project not financed with bond proceeds, or (ii) deposited into the debt service fund for the issue within 30 days of being received and entirely used for the next payment of debt service on the bonds. If these approaches are not feasible (for example, because the amount of the gift exceeds the amount of the next debt payment, or there are insufficient other capital costs to which the cost of the gift may be applied), counsel should be consulted, who can advise whether in this situation the gift will need to be yield-restricted. The Development staff is responsible of alerting the Bond Compliance Coordinator whenever a gift is received that may bear a close relationship to a facility (other than gifts received pursuant to a pre-approved fundraising campaign), and the Bond Compliance Coordinator will ensure that the gift is applied in a manner consistent with these procedures.

## **VII. Other Rules Regarding Investment and Expenditures of Bond Proceeds**

Federal tax law places many restrictions on the type of expenditures that may be financed with tax-exempt bond proceeds, including, among other things, that the expenditures fall within the scope of the “TEFRA” public notice and approval, meet certain useful life requirements, not be used for more than a minimal amount of issuance costs, be made within certain deadlines, and not be used to reimburse expenditures made before the issuance date unless certain requirements are satisfied. The University’s expectations as to the expenditure of bond proceeds are set forth in the tax certificate executed on the date of issuance of each bond issue, which bond counsel uses to evaluate compliance with these rules as of such date. The Bond Compliance Coordinator will make sure that the University’s actual expenditure of proceeds of each bond issue will not deviate materially from the expectations and limitations stated in the tax certificate for the issue without consulting beforehand with counsel.

The Bond Compliance Counselor is responsible for making sure that, for each bond-financed project, bond proceeds are allocated to expenditures for the project within the period ending on earliest of the following (the “Permitted Allocation Period”): (i) 18 months after the placed-in-service date of the project (or the payment of the expenditure in question, if later), (ii) five years (plus 60 days) after the issue date of the bonds, or (iii) 60 days after the retirement of the bonds.

This means that, before the end of the Permitted Allocation Period for a given project, the Bond Compliance Coordinator should take two steps: (i) make sure the University actually spends bond proceeds (and equity or taxable debt proceeds, if applicable) on the project expenses in a manner that can be documented (e.g., through requisitions, invoices and canceled checks), and (ii) prepare an allocation certificate that summarizes the total expenditures of bond proceeds and equity or taxable debt proceeds on the project, and that allocates the equity or taxable debt to any private business uses of the project.

## **VIII. Record Retention**

Section 501(c)(3) borrowers are required to maintain sufficient records to demonstrate that their bonds have satisfied the requirements for tax-exempt status. Under current IRS policy, these records generally should be maintained for the entire term of the bond issue (and the term of any refunding issue), plus three years.

Borrowers typically find compliance with these rules to be very challenging. A broad range of matters can in principle bear on the tax-exempt status of an issue, and the amount of records required to fully document all such matters may be vast. Certain matters may not readily lend themselves to documentation in the first place - for example, establishing that a given facility was not subject to private business use for a particular period. Bond issues often are outstanding for many decades, and it can be difficult over such a long period to assure that records will remain pristine. There is little IRS guidance addressing the scope of record retention requirement, and no IRS guidance at all on whether more streamlined retention strategies may be employed to make the task manageable for section 501(c)(3) borrowers.

Nevertheless, as stated before, the University is committed to preserving the tax-exempt status of its outstanding 501(c)(3) bond issues. The University will strive to maintain records of the type, in the manner, and for the length of time required under federal tax law to establish the tax-exempt status of its bond issues.

To this end, the Bond Compliance Coordinator maintains a list of key records that generally should be retained. For each category of records, the list identifies the individuals responsible for maintaining the records. These individuals are designated through consultation between the Bond Compliance Coordinator and the identified individuals. Certain records (such as the bond transcript) are maintained centrally by the Bond Compliance Coordinator in the Finance Office, while other records are maintained by the departments in which the responsible individuals work. Regardless of where held, the records should be maintained for the entire period required by federal tax law. Records may be stored in either hard copy or electronic format. If in electronic format, the federal tax guidelines pertaining to electronic recordkeeping (Revenue Procedure 97-22) should be satisfied.

The Bond Compliance Coordinator monitors IRS guidance and other developments in the law relating to record retention (based on contacts with counsel, attendance at conferences or other means) and, in consultation with the General Counsel, shall modify these procedures in accordance with any such guidance and developments.

With respect to records relating to tax-exempt bonds, these procedures supersede any of the University's general record retention procedures that may be less stringent.

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