
Division of Finance, Stevens Institute of Technology

**Post-Issuance Compliance Policies and Procedures Related to Tax Exempt Financings
(Including Certain Grants/Leases From the New Jersey Educational Facilities Authority
Pursuant to Financing Programs for Institutions of Higher Education Sponsored by the
State of New Jersey)**

**Responsible Officers/Employees: Chief Financial Officer and Vice President for Finance,
Associate Vice Presidents for Finance**

Adopted: May 31, 2024

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Purpose

Stevens Institute of Technology (the "Institution") has previously worked with the New Jersey Educational Facilities Authority (the "Authority" or "NJEFA") to support the issuance by NJEFA of tax-exempt bonds to support Stevens' projects ("Stevens Tax-Exempt Bonds").

In addition, the Secretary of Higher Education of the State of New Jersey (the "Secretary") has awarded the Institution funds for capital projects or equipment leases pursuant to one or more of the following programs: Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 *et seq.* ("CIF"); the Higher Education Equipment Leasing Fund Act, N.J.S.A. 18A:72A-40 *et seq.* ("ELF"); the Higher Education Technology Infrastructure Fund Act, N.J.S.A. 18A:72A-59 *et seq.* ("HETI"); and the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 *et seq.* ("HEFT" and together with CIF, ELF and HETI, the "State-Backed Programs"). The funds for capital projects or equipment leases awarded pursuant to these State-Backed Programs are

referred to herein collectively as "Grants". The Grants are disbursed to the institutions of higher education ("Grantees") from proceeds of tax-exempt bonds (the "State-Backed Bonds") issued by the Authority pursuant to the applicable State-Backed Programs. The debt service on these State-Backed Bonds is payable by the State of New Jersey (the "State") subject to appropriation by the New Jersey Legislature. A Grantee that receives funds pursuant to the CIF or ELF Programs is required to reimburse the State for a portion of the debt service paid by the State on the CIF Bonds or ELF Bonds. Grantees that receive funds pursuant to the HETI or HEFT Programs have no obligation to reimburse the State for any debt service on HETI Bonds or HEFT Bonds.

Both Stevens Tax-Exempt Bonds and the State-Backed Bonds (together, the "Tax Exempt Bonds") are issued as tax-exempt bonds and, therefore, are subject to the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and regulations adopted thereunder (collectively, "Federal Tax Law Requirements") which must be satisfied during the term of such Bonds in order for the tax-exempt status of such Bonds to be maintained. The Institution understands that it has an obligation to comply with such Federal Tax Law Requirements, with respect to each of the projects which the Institution has funded with Tax-Exempt Bonds. In order to comply with applicable IRS rules with respect to the Tax-Exempt Bonds, the Institution is adopting these Post-Issuance Compliance Policies and Procedures (the "Policy"). The Institution recognizes that this compliance is an ongoing process, and that analysis of information and implementation of this Policy will require annual or more frequent monitoring and likely ongoing consultation with counsel to Stevens, and NJEFA and its bond counsel. Further policies and procedures may be identified from time to time by NJEFA with respect to outstanding or future State-Backed Bonds from which the Institution received a Grant and the Institution will cooperate with NJEFA to ensure compliance with such policies and procedures.

Policy Sections

I. Organizational Responsibility; Delegation

In order to ensure the tax-exempt status of the Tax-Exempt Bonds and facilitate continuing compliance with the Federal income tax requirements, the Institution has appointed its Associate Vice President for Finance to act as the Tax Compliance Officer (the "Tax Compliance Officer") who will have the primary responsibility to monitor the Institution's compliance with the Federal Tax Requirements for the Tax Exempt Bonds.

The Tax Compliance Officer has overall responsibility for carrying out all aspects of this Policy including providing information and training on implementing post-issuance compliance policies, tracking expenditures, allocating sources of funding for a particular project between Tax Exempt Bond proceeds and other sources of money, identifying any potential impermissible

private use of tax exempt funded projects and reviewing rebate reports and keeping adequate records to support all of the foregoing.

The Tax Compliance Officer may delegate specific responsibilities to other officers, employees and agents of this Institution, as determined by such Officer to be necessary or appropriate to fulfill the purposes and requirements of this Policy, as such Policy may be modified or supplemented in the future.

The Division of Finance shall: separately track utilization of Tax-Exempt Bond proceeds and other sources of funding (i.e., other bonds, equity, other grants, contributions, etc.) for each project financed by each issue of Tax-Exempt Bonds; prepare and review requisitions to ensure that Tax-Exempt Bond proceeds are expended on projects as approved by the applicable documents and requisitions; confirm that reimbursement of pre-issuance costs are permissible; and submit reviewed requisitions to the NJEFA as required. The Division of Finance in consultation with appropriate departments including without limitation the Division of Facilities and Campus Operations and Division of Information Technology shall also determine when projects financed by Tax-Exempt Bond proceeds are completed and/or placed in service and advise the Authority that such events have occurred as required. The Division of Finance in partnership with the appropriate Departments will consult with the Tax Compliance Officer if questions arise relating to the foregoing matters.

II. Tracking Expenditures of Tax-Exempt Bond Proceeds and Use of Tax-Exempt -Bond Financed Facilities

Stevens' Division of Finance shall maintain records regarding the use and allocation of Tax-Exempt Bond proceeds and other sources of funding used for tax exempt -financed facilities. Such records shall be maintained with respect to each issue of Tax-Exempt Bonds. The Authority's Division of Finance shall maintain copies of approved requisitions and copies of invoices. Requisitions submitted to the Authority must be accompanied by copies of invoices for Contractor/Architect/Engineering bills and any other required items before being approved.

The Division of Finance will monitor the application and use of Tax-Exempt Bond proceeds on an ongoing basis. The Division of Finance will inform the Authority of events relating to (A) the use of Grant proceeds in connection with financed facilities which may result in private business use or other tax compliance issues that must be analyzed by the Authority for compliance with Federal Tax Law Requirements relating to the State-Backed Bonds, and (B) the use of other Tax-Exempt Bond financed facilities in the event that the Division of Finance determines that such use would exceed the private business use permitted by applicable law.

The Tax Compliance Officer's analysis will include use of internal resources including the Institution's private use tool and its Office of General Counsel, consultation with its bond counsel as appropriate and other resources which the Institution may determine to be necessary

or appropriate to analyze such proposed actions and the tax-exempt status of the Tax-Exempt Bonds, such as:

1. **Change of ownership of the financed property** -- if the ownership of any portion of the Tax-Exempt Bond financed property is transferred to a third party prior to the earlier of the end of the expected economic life of the property, or the latest maturity date of any bond of the issue financing (or refinancing) the property;

2. **Private business use of the Tax-Exempt Bond Financed Property** if any portion of the Tax-Exempt Bond Financed property will be used by anyone other than a State or local governmental unit or a 501(c)(3) organization acting in furtherance of the Institution's exempt purpose (an "Exempt Person") or members of the general public who are not using the property in the conduct of a trade or business. Private business use is, for example, certain uses by a person as an owner, lessee, purchaser of the output of facilities under a "take and pay" or "take or pay" contract, purchaser or licensee of research (other than as provided below), a manager or independent contractor under certain management or professional service contracts or any other arrangement that conveys special legal entitlements including an arrangement that conveys priority rights to the use or capacity of the financed property, for beneficial use of the property financed with proceeds of tax-exempt debt or an arrangement that conveys a special economic benefit);

3. **Unrelated trade or business** -- if any portion of the Tax-Exempt Bond Financed property is to be used by any 501(c)(3) organization (including by the Institution) in an unrelated trade or business (i.e., a trade or business not substantially related to the 501(c)(3) purpose or purposes of the Institution which meets the IRS definition of unrelated trade or business);

4. **Leases of the Bond Financed Property** -- if any portion of the Tax-Exempt Bond Financed Property is to be leased, or otherwise subject to an agreement which give possession of any portion of the Tax-Exempt Bond Financed Property to anyone, other than an Exempt Person;

5. **Private Loans Bond Proceeds** -- if any portion of the proceeds of the Tax-Exempt Bonds (including any investment earnings thereon) are to be re-loaned by the Institution;

6. **Naming rights agreements for the Tax-Exempt Bond Financed Property** -- if any portion of the Tax-Exempt Bond Financed Property will become subject to a naming rights agreement, other than a "brass plaque" dedication;

7. **Research using the Tax-Exempt Bond Financed Property** -- if any portion of the Tax-Exempt Bond Financed Property will be used for the conduct of research under the sponsorship, or for the benefit of, any organization other than (a) for an Exempt Person or (b) for the conduct of research that falls outside of Rev. Proc. 2007-47 or is otherwise determined by the Institution to constitute private use;

8. **Management agreement or service agreement** -- if any portion of the Tax-Exempt Bond Financed Property is to be used under a management contract or professional service contract (e.g., a food service provider, a medical group, manager of facilities) that falls outside the parameters of Rev. Proc. 2017-13 or its predecessors, as applicable, other than a contract for services that are solely incidental to the primary function of Tax-Exempt Bond Financed Property, such as janitorial services or office equipment repair;

9. **Sinking fund or pledge fund** -- if the Institution, or any organization related to the Institution, identifies funds which are expected to be used to pay debt service on the Tax-Exempt Bonds or secure the payment of debt service on such Bonds, other than those funds or accounts described in the bond documents for such Bonds.

As soon as the Institution becomes aware of a possible instance of private business use with respect to a tax-exempt-financed facility, the Division of Finance in partnership with the appropriate Stevens Offices and Divisions will work together to identify the nature and extent of such potential private business use, including, for example, the square footage or other measurements of private business use of the affected financed facilities. The Institution will comply with the covenants and representations in the applicable Tax-Exempt Bond documents (including the Institution's Grant or Lease Agreements and Tax Certificates). The Institution will cooperate with the Authority as described above to the extent necessary to collect information, keep records, seek advice from bond counsel and undertake any remediation.

At least once every twelve months, the Authority is expected to send a certification form to the Institution regarding the application and use of Grants and related matters. The Tax Compliance Officer will coordinate with assigned individuals at the Institution to provide updated information about the use of the Tax-Exempt Bond financed facilities and other matters and will promptly complete and return the certification form and any supporting documentation (the "Annual Review Process"). The Institution will provide an annual certification to the Authority regardless of receipt of a form therefore from the Authority. The Tax Compliance Officer will work with the Authority and/or bond counsel, if necessary, to assist in making a final allocation of expenditures for a Tax-Exempt Bond financed project when required under the Code and applicable regulations.

III. Private Business Use and Private Payments

Stevens' Division of Finance, in partnership with the appropriate Divisions (which will maintain records of all permitted private business use contracts (if any)), will monitor the use of Tax-Exempt Bond financed property to identify any potential impermissible private business use of such property and any payments being made or anticipated to be made by private parties for the purpose of using such property for private business use.

Tax-Exempt Bonds may lose their tax-exempt status if there is non-permitted "private business use" of Tax-Exempt Bond-funded projects and "private business payments" with respect to such use, in excess of certain permitted amounts, as described in the Tax Certificate(s) signed by the Institution in connection with the issuance of the Tax-Exempt Bonds. **Unless approved in advance by the Authority, no private business use of any projects or property funded by the State-Backed Bonds is permitted.** Therefore, the Institution must obtain permission from

the Authority before allowing any private business use of its Grant -financed facilities. The **only** exception to this is if, prior to the issuance of the State-Backed Bonds, the Institution had disclosed to the Authority and was approved to have an amount of private business use of its Grant-financed facility. Any potential increase in any previously disclosed and approved private business use of Grant financed facilities, and any potential new private business use of a Grant-financed facility, must be approved in advance by the Authority.

IV. Record Retention

The Institution shall maintain all relevant records relating to the expenditure of Tax-Exempt Bond proceeds (including but not limited to invoices and requisitions, with all necessary backup documentation) and relating to the use of facilities financed with Tax-Exempt Bonds. Both the Institution and the Authority shall maintain records for the length of time required to comply with IRS regulations. Currently, records relating to the issuance of tax-exempt bonds and related post-issuance compliance documentation must be maintained for the life of the bond issue, including any refunding issue, plus three years.

The Internal Revenue Service has advised organizations that are conduit borrowers of the proceeds of tax-exempt bond issues, such as the Institution, that they have post-issuance recordkeeping responsibilities that are necessary to satisfy the expanded Form 990 filing requirements and to satisfy the Internal Revenue Service in the event of any future audit of the Bonds. In order to satisfy the recordkeeping requirement, the Tax Compliance Officer shall create and maintain, or cause to be created and maintained, records of:

1. Purchases or sales of investments made with bond proceeds (including amounts treated as “gross proceeds” as a result being part of a sinking fund or pledge fund) and receipts of earnings on those investments;
2. The final allocation of the proceeds of the Tax-Exempt Bonds to expenditures;
3. Information, if applicable, that will be sufficient to demonstrate to the Internal Revenue Service upon an audit of the Tax-Exempt Bonds that such Bonds have complied with one or more available spending exceptions to the arbitrage rebate requirement with respect of the Bonds;
4. Information and calculations, when applicable, that will be sufficient to demonstrate to the Internal Revenue Service, upon an audit of the Tax-Exempt Bonds, for which an exception to the arbitrage rebate requirement was not applicable, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of such Bonds was calculated and timely paid with Form 8038-T timely filed with the Internal Revenue Service;

5. Information and records showing that (a) investments held in yield-restricted advance refunding or defeasance escrows for Bonds, and (b) investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments;

6. Information and records regarding any use of Bond proceeds to make or finance a loan to any person other than an Exempt Person;

7. Information and records regarding the continued use and ownership of the Tax-Exempt Bond Financed property; and

8. Information and records regarding any use arrangements, affecting the Tax-Exempt Bond Financed Property, which results in private business use of any portion of such property.

V. Arbitrage and Rebate

Tax-Exempt bonds will lose their tax-exempt status if they are classified as “arbitrage bonds.” In general, arbitrage is earned when the gross proceeds of a bond issue are used to acquire investments that earn a yield that is “materially higher” than the yield on the bonds. Arbitrage may also arise if Tax-Exempt Bond funds received and held by the Institution for a project are invested prior to being expended, or if the Institution invests other funds that are earmarked to pay a portion of the debt service on its Tax-Exempt Bonds or the State-Backed Bonds. The Code contains two separate sets of requirements that must be complied with to ensure that Tax-Exempt Bonds (including the State-Backed Bonds) are not arbitrage bonds. They are:

- Yield Restriction requirements, which generally provide that in the absence of an applicable exception, bond proceeds (and amounts being held to pay debt service) may not be invested at a yield in excess of the bond yield; and
- Rebate requirements, which generally provide that when arbitrage is earned on an issue in excess of permitted amounts, unless a rebate exception is met, the excess earnings must be paid to the U.S. Department of Treasury.

The NJEFA will engage the services of an Arbitrage Compliance Servicer, as necessary, to provide written reports to assist the Authority and the State Treasurer in monitoring yield on investments and calculating any rebate that may be due. The Institution will cooperate with the NJEFA and the Arbitrage Compliance Servicer to the extent necessary in order for the Arbitrage Compliance Servicer's calculations to be correct. If the Arbitrage Compliance Servicer provides a written report, it will be provided to the Authority and the State Treasurer and to the Institution, to the extent necessary, to permit the Institution to comply with tax or other reporting requirements. The Institution will take such other steps as may be necessary or appropriate to comply with IRS arbitrage requirements with respect to the Tax-Exempt Bonds.

VIII. Continuity and Training

The Tax Compliance Officer and those to whom he or she has delegated responsibilities pursuant to this Policy will receive periodic training regarding the tax-related and other requirements applicable to Tax-Exempt Bond financing. Such training will cover the purposes and importance of these procedures.

To provide for continuity of compliance with post-issuance tax requirements, the Institution will periodically consult with its bond counsel and the Authority to determine whether this Policy should be modified to reflect changes in law or otherwise relating to outstanding Tax-Exempt Bonds (including the State-Backed Bonds) and any changes necessitated if the Authority issues additional State-Backed Bonds.

IX. Remedial Action

In the event that remedial action is required to be taken, the Tax Compliance Officer shall consult with the Institution's counsel and cooperate with the Authority in seeking remedial action pursuant to the applicable Treasury Regulations relating to tax-advantaged bonds or in seeking a closing agreement with the IRS under its Voluntary Closing Agreement Program (VCAP).

