

Contact: Joan Racki

ADDITION TO THE BOARD OF REGENTS POLICY MANUAL – CHAPTER 7

Action Requested: Approve, as a first and final reading, an addition to the Board of Regents Policy Manual on Post-Issuance Compliance Policies for Tax-Exempt Obligations.

Executive Summary: The Internal Revenue Service (IRS) has been urging issuers of tax-exempt obligations to adopt "written procedures" to help ensure their post-issuance compliance with the requirements of the Internal Revenue Code of 1986, as amended. Recent informal guidance from the IRS has made it very clear that detailed post-issuance compliance procedures should be an integral component of any issuer's bond program.

Recently, two specific questions about the issuer's post-issuance compliance procedures were added to Form 8038-G, which must be filed following the closing of any tax-exempt bond issue. Secondly, changes have been made to the Voluntary Closing Agreement Program (VCAP) of the IRS to give more favorable treatment to an issuer that has adopted post-issuance compliance procedures. (The objective of the VCAP is to encourage issuers and other parties to bond transactions to exercise due diligence in complying with applicable federal tax laws and to provide a vehicle to correct tax violations as expeditiously as possible.) Finally, the IRS has provided specific guidance, on its website, as to items that should be included in an issuer's policies / procedures.

Ahlers & Cooney, the Board's bond counsel, in consultation with the Board Office and the three universities, has drafted the proposed, attached policies related to post-issuance compliance for tax-exempt obligations for inclusion in the Board's Policy Manual.

Section 7.08K -Post-Issuance Compliance Policies for Tax-Exempt Obligations

1. General Policy

- a) The Board's objective is to ensure that tax-exempt obligations retain tax-exempt status pursuant to post-issuance requirements which include the following:
 - Tracking proceeds of a debt issuance to ensure dollars are spent on qualified tax-exempt purposes.
 - Maintaining detailed records of all expenditures and investments related to tax-exempt funds.
 - Monitoring that the financed project is used in a manner consistent with applicable legal requirements.
 - Providing required disclosure information on an annual basis.
- b) Each university shall adopt specific internal policies and procedures (copies of which shall be filed with the Board Office) with respect to matters involving: tax exempt debt issuance; proper use of tax exempt proceeds and bond financed assets; arbitrage and rebate compliance; record retention; advance refundings; and continuing disclosure obligations.

2. Compliance Coordinator:

- a) The vice president for finance at each university shall identify the coordinator of post-issuance compliance for tax-exempt obligations (the "Coordinator") who shall be accountable for post-issuance compliance at his/her particular university.
- b) The Coordinator will ensure such records are maintained as necessary to meet the requirements of this policy.
- c) The Coordinator will consult with the Regents bond counsel, rebate consultant, financial advisor, IRS publications and other resources as necessary to understand and meet the requirements of this policy.
- d) With the assistance of bond counsel, the Coordinator will monitor that training and information is obtained to adequately update all pertinent university staff regarding new developments and/or requirements for tax-exempt obligations.