

**MEMORANDUM**

**To** Banking Committee  
**From:** Board Office  
**Subject:** Change of Use - Roy J. and Lucille A. Carver Biomedical Research Building (SUI)  
**Date:** April 12, 2004

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**Recommended Action:**

Recommend that the Board adopt A Resolution (see G.D. 3) authorizing and providing for the reissuance of \$1,870,000 University of Iowa Facilities Corporation qualified 501(c)(3) bonds, Series 2004, for the purpose of constructing and equipping the Roy J. and Lucille A. Carver Biomedical Research Building.

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**Executive Summary:**

The Board is requested to adopt a resolution related to the reissuance of bonds due to a change in use of the Roy J. and Lucille A. Carver Biomedical Research Building (CBRB), currently under construction at the University of Iowa.

In September 2002, the University of Iowa Facilities Corporation issued, on behalf of the Board of Regents, \$17,000,000 of tax exempt bonds to provide partial funding for construction of the facility.

Since the University wishes to change the use of portions of the CBRB to sponsored research activities (i.e., "private use") and not relocate the Carver College of Medicine's administrative offices (i.e., "governmental use") as approved by the Board in February 2004, it will be necessary to comply with the Internal Revenue Code's "Change in Use Rules" to maintain the tax exempt status of the \$17,000,000 of bonds previously issued for the CBRB.

A change in use to permit a portion of the facility to be used for a "qualified purpose" such as use by an entity organized under section 501(c)(3) of the Internal Revenue Code will preserve the tax exempt status of the bonds previously issued, provided certain conditions are satisfied, including public notice and a hearing.

The University plans to reallocate space to an entity (Howard Hughes Medical Institute), which is organized under 501(c)(3) of the Internal Revenue Code.

Public notice was given and a hearing held on March 15, 2004; there were no attendees.

The proposed resolution is necessary to approve the designation of the "qualified 501(c)(3) bonds." While the bonds will be reissued for tax purposes, no proceeds will result from this transaction.

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**Background:**

Initial Project  
Scope / Design

In March 2001, the Board approved the schematic design for the Roy J. and Lucille A. Carver Biomedical Research Building (CBRB); the design included a total of seven levels with the administrative units of the Carver College of Medicine to be located on Level 1, and research laboratory space to be located on the remaining levels.

The project is currently under construction with an anticipated completion date of March 2006.

Revised Project  
Scope / Design

Due to the increasing demand for research space, the University requested and the Board approved in February 2004, the conversion of space which was to be constructed as the Level 1 administrative office space into research laboratories and support space.

The Board also approved in February 2004 a revised budget of \$42,790,000, an increase of \$2,059,000 to fund the additional design services and construction costs associated with the modified project scope.

Financing

The project is being financed by the sale of bonds by the University of Iowa Facilities Corporation, which was incorporated in 1967 as a not-for-profit supporting organization of the University of Iowa Foundation to assist in maintaining, developing, increasing, and extending the facilities and services of the University.

Taxable and Tax-  
Exempt Bonds

Most of the sponsored research activity to be undertaken in the CBRB will be for "private use" as the term is defined by U.S. Internal Revenue Service rules. Thus, there are taxable and tax-exempt components of the financing. The taxable components relate to the "private use" activity and the tax-exempt components relate to education ("governmental use").

In the fall of 2002, an allocation of space between the research and educational components of the facility showed that approximately 65% of the space would be devoted to research and 35% of the space would be devoted to education, including the administrative units. The proceeds from the tax-exempt bonds cannot exceed the allocation of space devoted to education (“governmental use”).

Based upon this allocation, the Series 2002A Bonds (single tax-exempt [exempt from federal, but not state taxes] in the amount of \$17,000,000) and the Series 2002B Bonds (taxable in the amount of \$8,000,000) were sold in September 2002.

The calendar year 2004 bond issuance schedule approved in November 2003 includes the sale in August 2004 of an additional taxable bond issue of \$25,000,000 to complete the project.

Internal Revenue Service – Private Activity	Under the Internal Revenue Service “private activity” rules pertaining to tax-exempt bonds, up to 10% of each tax exempt bond issue can be expended for private usage (i.e., a safe harbor).
Internal Revenue Service – On Behalf	Although the Facilities Corporation issues the bonds, they are deemed by Internal Revenue Service rulings to be issued “on behalf” of the Board of Regents and the State of Iowa. Therefore, the Board of Regents needs to approve the sale and terms of the bonds.
Bond Structure	<p>The bond structure for the University of Iowa Facilities Corporation bond issue differs from the structure used for Board of Regents bonds.</p> <ul style="list-style-type: none"><li>• The Corporation issues the debt and leases the facility to the Board for use by the University during the terms of the bonds.</li><li>• The University’s lease obligation with the Corporation is an absolute and unconditional obligation of the University of Iowa. Lease payments are to be sufficient to pay the interest and principal on the bonds; supplemental rents are equal to administrative and trustee expenses.</li><li>• Upon retirement of the bonds, the facility will be conveyed to the University.</li></ul>

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**Analysis:**

Change in Use	<p>The approved change in the first floor use of the facility would alter the anticipated distribution of space from the originally envisioned allocation of 65% research and 35% governmental to a lower percentage of governmental use.</p>
Internal Revenue Code's "Change in Use Rules"	<p>The Internal Revenue Service Code's "Change in Use Rules" provides a mechanism to maintain the tax exempt status of the \$17,000,000 of bonds previously issued for the CBRB.</p> <p>One of the actions which can be taken is to provide that the facility or a portion of it be used in a different, but "qualified purpose" (tax-exempt) such as use by a "qualified 501(c)(3) entity."</p>
Reexamination of Usage	<p>Due to the Internal Revenue Service requirements and in an attempt to stay within the 10% safe harbor, the University reexamined the projected staffing assignment for CBRB and concluded that there are five potential scenarios for the possible distribution of private and governmental use of the space.</p> <p>The University factored usage by a 501(c)(3) entity into its calculations for each of the five scenarios and will be considering this as "good use" to support compliance with the 10% safe harbor.</p> <p>Using the most conservative scenario from a tax exempt compliance perspective, the University provided to Ahlers &amp; Cooney, the Board's bond counsel, supporting calculations using dollars, square footage and dollar per square foot methodologies to ensure that the 10% safe harbor will be satisfied.</p>
Designation of "Qualified 501(c)(3) Bonds"	<p>The Howard Hughes Medical Institute is the contemplated 501(c)(3) entity, and it is expected that it will occupy approximately 11% of the educational (tax-exempt) square footage in the facility.</p> <p>An allocation of 11% of the \$17,000,000 tax-exempt bonds already issued would permit \$1,870,000 of these bonds to be designated as "qualified 501(c)(3) bonds."</p>
Public Hearing	<p>Section 147(f) of the Internal Revenue Code requires that a public hearing be held prior to the issuance of qualified 501(c)(3) bonds. A hearing was held on March 15, 2004 after notice of such in the <i>Des Moines Register</i>; no comments were received.</p> <p>These bonds would be treated as being reissued on the date of final action by the University of Iowa Facilities Corporation. The Facilities Corporation plans to act on the requested change on April 23, 2004.</p>