

UNIVERSITY OF FLORIDA

**Tax-Exempt Debt Guidelines
Pre- and Post-Issuance
Compliance**

Updated June 2016

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University of Florida

Tax-Exempt Debt Guidelines

Pre- and Post-Issuance Compliance

I. Purpose

The University, as a public institution, has the ability to issue debt in the form of notes, bonds and leases to finance capital projects. In the vast majority of instances, interest paid on such debt is exempt from being taxed as income to the recipient (tax-exempt debt). It is the policy of the University to comply with all federal tax rules and regulations related to the issuance of tax-exempt debt. These requirements arise from specific bond covenants found in the bond documents for a particular issuance, Federal tax law, and State laws and regulations (including the Florida Board of Governors' Debt Management Guidelines), and include federal tax documentations and filing regulations, yield restriction limitations, arbitrage rebate requirements, use of proceeds, and recordkeeping requirements.

Given the increasing complexity of these laws and regulations in relation to tax-exempt debt, the University created the following guidelines (the "Guidelines"), which are intended to explain the practices that the University follows to remain in compliance with applicable requirements related to tax-exempt debt. The Guidelines set forth herein apply to any University facilities and equipment financed with tax-exempt debt, including, but not limited to, facilities financed with tax-exempt bonds issued by University Direct Support Organizations (DSO) and equipment financed with tax-exempt lease-purchase transactions. The term "Borrower" as used in this document means either the University of Florida or University Direct Support Organizations. Although it is a University-wide responsibility to ensure compliance regarding tax-exempt debt, the Vice President and Chief Financial Officer (CFO) is ultimately accountable for such compliance. To this end, the CFO's office will supplement these Guidelines with a "desk manual" that will detail more specific processes and internal responsibilities regarding tax-exempt debt.

These Guidelines affirm the commitment of the University to make all reasonable efforts to adhere to sound financial management practices, obtain the lowest cost of capital given the University's risk parameters, preserve the University's credit rating, and comply with all the requirements related to debt issuance (both pre- and post-issuance).

II. Organizational Responsibility

The President has assigned the responsibility for tax-exempt debt compliance to the University's CFO. The term "CFO" in this document refers to the CFO for the University of Florida or his/her delegated staff, specifically the University Controller. The CFO, and delegated staff, carry the responsibility of ensuring that the University's tax-exempt debts are, and will remain, in compliance with federal tax law and any other applicable laws, regulations, or requirements. In order to ensure compliance, the CFO will consult with other departments within the University, as well as third-party professionals, as necessary.

III. Use of Debt Financing

The University of Florida, in pursuit of its missions, purchases and/or constructs assets. Some of these assets are funded by the State of Florida, while others may be funded by donations, grants or other sources.

Another source of financing is debt financing, which allows the University to borrow funds and pay for the asset(s) over time instead of paying for it at the time of purchase. There are numerous considerations as to how to pay for an asset and whether to issue debt. These decisions must be made in consultation with the CFO, the University's Board of Trustees, the Board of Governors, the State of Florida Division of Bond Finance and outside advisors.

The University has access to a variety of forms of public debt. Debt financings vary in terms of maturity, taxable and tax-exempt status, interest rates, fixed or variable interest, etc. The University may work with outside advisors and the Division of Bond Finance to evaluate all types of financing options and structures.

Except under defined exceptions, the Florida Board of Governors (BOG) must approve any University of Florida issued debt, which is broadly defined under the BOG's Debt Management Guidelines. These Debt Management Guidelines set parameters pertaining to debt, identify best practices, and set forth a BOG approval process for University debt, and can be found at <http://www.flbog.edu/about/regulations/guidelines.php>. In addition, because the BOG views certain types of public-private partnerships as creating University debt, the BOG has created its Public-Private Partnership Guidelines to provide a structure for the University to use in evaluating, and seeking BOG approval for, certain transactions with private third parties that will result in the construction of facilities for the use and/or benefit of the University. If the University is issuing debt that requires participation of the State of Florida Division of Bond Finance (DBF), the BOG and DBF typically coordinate and work closely to ensure the University meets the BOG's Debt Management Guidelines.

IV. Closing of Debt Issuances

- A. Tax Certificate. The University's counsel, with assistance from the CFO and other professionals associated with the financing, shall prepare a Tax Certificate in connection with each tax-exempt debt issued for the benefit of the University, to be executed by the appropriate representatives at closing. The Tax Certificate shall serve as the operative document for purposes of establishing the University's reasonable expectations as of the date of issuance of a tax-exempt debt, as well as provide a summary of the applicable tax rules for the issuance. The University, in consultation with counsel, will review the Tax Certificate prepared for each of the University's tax-exempt debt prior to the closing of the issue.

The Tax Certificate shall be included as part of the transcript for each University tax-exempt debt issuance, and the University shall maintain a copy of the final executed version of the Tax Certificate in accordance with the recordkeeping provisions of these Guidelines. In addition, the Tax Certificate will clearly state whether equity or non-bond proceeds have been used to finance the subject asset and will indicate the proposed use of the non-bond moneys.

- B. Internal Revenue Service (IRS) Form 8038 – Tax-Exempt Bonds. The University's counsel, with assistance from the CFO and other professionals associated with the financing, shall prepare an IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues, in connection with each tax-exempt debt issuance issued to benefit the University, which will be reviewed by all involved parties prior to closing. Each IRS Form 8038 prepared for a tax-exempt debt issuance will be filed with the IRS no later than the 15th day after the 2nd calendar month after the close of the calendar quarter in which the tax-exempt obligation to which such form relates is issued.

The IRS Form 8038 will be included as part of the record for each borrower's tax-exempt governmental debt issuance, and in all events the University shall keep a copy of the final executed version of IRS Form 8038 in accordance with the recordkeeping provisions of these Guidelines.

V. Use of Debt Proceeds – Tax-Exempt Bonds

- A. **Overview.** Private Business Use ("PBU") occurs when certain users are given use of a tax-exempt financed University asset, either in a direct or indirect manner. Private business users include corporations or other business entities, and governmental entities other than the fifty states and their subdivisions (the Federal Government is "private business user" unless certain safe harbors provisions are met).

The University routinely reviews, and will continue to review, third-party uses of its tax-exempt debt financed asset for PBU. In addition, the University will continue to consult regularly with its counsel regarding the applicable federal tax limitations imposed on the University's outstanding tax-exempt debt issuances and whether arrangements with third parties give rise to private business use of the financed projects. For these purposes, the CFO's office will monitor all uses of the University's tax-exempt debt financed facilities, including but not limited to uses pursuant to a management contract, operating agreement, license, lease, sublease, naming rights agreement, research agreement, clinical trial agreement, and joint venture or partnership arrangement.

Prior to the University entering into any arrangement involving a facility for which tax-exempt debt is outstanding, and which gives rise to private business use, the University CFO office and General Counsel office will consult with bond counsel regarding the arrangement and whether such arrangement impacts the tax-exempt status of the University's outstanding debt.

- B. **Allocation.** Within 60 days of the date the construction or acquisition of the asset financed with the proceeds of tax-exempt bonds is completed, or as soon thereafter as reasonably possible, the University will perform a compliance review and interim allocation of proceeds used to finance the subject asset to establish that proceeds were expended in accordance with the terms and provisions set forth in the Tax Certificate. Within 18 months after either the expenditure is made or the asset is placed in service, whichever date is later, the University will make a final allocation of bond proceeds, investment earnings, and non-bond proceeds used to finance the project.
- C. **Private Business Use Categories.** Special PBU rules apply in the following categories of use, and it is the responsibility of the CFO to review, monitor, and consult with counsel and other involved parties as needed regarding these categories to ensure compliance:
- a. Renovations to property leased to the University
 - b. Leases/uses of University Property
 - c. Management contracts, e.g. food service, auxiliary operations, etc.
 - d. Utility output contracts
 - e. Sponsored research agreements
 - f. Clinical trial agreements
 - g. Material transfer agreements
 - h. Corporate researchers working at the University
 - i. Unrelated trade or business activities

- j. Naming rights
- k. Other actual or beneficial use of University property.

It is imperative for the University to work with Bond and Tax Counsel before the issuance of the bonds to disclose how the asset which is being financed with tax-exempt debt is being used, and to reasonably assure that the bonds will not incur private use implications. If there are anticipated PBU problems, the University can consider funding a portion of the asset construction or acquisition with taxable debt, equity, or private donations.

- D. Remedial Actions. Remedial action rules contained in Treasury Regulations Section 1.141-12, provide the University with the ability, in certain circumstances, to voluntarily remediate violations for the private use tests or private loan financing test. Although the University intends that none of its tax-exempt debt issuances will require the application of the remedial action rules, prior to taking any action that would cause one or more of its outstanding tax-exempt debt issuances to, absent a remedial action, violate the private business use tests or private loan financing test, the University will consult with its counsel regarding the applicability of the remedial action rules to such action and the ability to remediate the impacted tax-exempt debt issuance.

VI. Arbitrage Limitations Imposed on Debt Issuances

- A. Overview. The Internal Revenue Code (Section 148 and the Regulations thereunder) provides that interest on bonds is not exempt from tax if the bonds are arbitrage bonds. To prevent the classification of its bonds as arbitrage bonds the University must generally comply with two legal requirements relating to arbitrage:
 - a. Bonds are classified as arbitrage bonds if the issuer expects to invest the proceeds of the bonds at a yield that is materially higher than the yield on the bonds. Exceptions permit unrestricted investment during a temporary period.
 - b. Any arbitrage (earnings in excess of bond yield) must be rebated to the federal government (or restricted as to yield) unless the exceptions to arbitrage rebate apply.
- B. Arbitrage Rebate Monitoring. The University will review outstanding tax-exempt debt issuances, and will perform calculations as needed to determine whether the University owes an arbitrage rebate payment or yield reduction payment to the Internal Revenue Service (IRS), including whether the tax-exempt debt issuance qualifies for an exception to the arbitrage rebate rules. In addition, the University will adhere to any specific restrictions set out in the Tax Certificate.
- C. Arbitrage Rebate Exceptions. When the CFO calculates whether the University owes arbitrage rebate, the arbitrage rebate exceptions contained within the applicable Tax Certificate shall be applied.
- D. Payment of Arbitrage Rebate and Yield Reduction Liability. In the event the University owes an arbitrage rebate or has accrued a yield reduction payment liability to the IRS, the University will submit IRS Form 8038-T (Arbitrage Rebate Yield Reduction and Penalty in Lieu of Arbitrage Rebate), to be prepared by the CFO, along with payment in the amount equal to the arbitrage rebate or yield reduction payment liability the amount calculated in accordance with the Tax Certificate related to the debt issue. The completed Form 8038-T, together with full payment, shall be filed with the IRS at the required address.

- E. Yield Restriction Limitations. Each Tax Certificate prepared for tax-exempt debt issuances shall contain the appropriate yield restriction investment limitations, including the applicable investment limitations for debt issuance proceeds and any temporary periods during which the University may invest proceeds of the debt issuance at an unrestricted yield.

The CFO will be responsible for ensuring that the University complies with the yield restriction limitations outlined in the Tax Certificate for any tax-exempt debt issuance, including any exceptions to yield restrictions, will maintain all records related to these calculations, and will file any applicable returns with the IRS.

- F. Expenditure of Tax-Exempt Debt Proceeds. The policy of the University is to expend tax-exempt debt proceeds as promptly as possible within the confines of these Guidelines and the Tax Certificate related to a particular debt issuance. **For these purposes, it is the University's policy not to finance projects using the proceeds of tax-exempt debt when the University expects that the tax-exempt debt proceeds will not be fully spent within (3) years of the date of issue of the debt. It is the policy of the University that the use of tax-exempt bond proceeds will be limited to project costs, capitalized interest and bond issuance costs, and not for working capital costs.**
- G. Verification Agent. The University shall retain a third-party verification agent for each of its advance refunding bond issues. The verification agent will verify the arbitrage yield on tax exempt debt issuances, the arbitrage yield investments acquired as part of the refunding escrow established using gross proceeds of the tax-exempt debt issuance, and the sufficiency of the refunding escrow.
- H. Establishment of Advance Refunding Escrows and Trustee Responsibilities. The University will deposit tax-exempt debt proceeds (and any other amounts) to be used to advance refund prior borrower debt into one or more separate escrow trust accounts established with the trustee selected for the transaction. Working with University counsel, and in accordance with the documentation prepared for the refunding transaction, the University will impose primary responsibility for initiating actions required to be taken with respect to the refunding escrow (including the reinvestment of amounts within the escrow and disbursing funds from the escrow) on the trustee. In the event of an omission on the part of the trustee, an error in the documentation or procedures establishing the escrow, or an investment to be acquired as part of the refunding escrow is not available for purchase, the University will consult with University counsel in a timely manner, to determine the impact, if any, on the tax-exempt status of the bond issue and actions to be undertaken by the University to ensure the continuing tax-exempt status of the obligations.
- I. Acquiring Investments for Advance Refunding Escrows. It is the policy of the University to maximize the investment return on all investments acquired with tax-exempt bond proceeds and to acquire such investments at fair market value. When funding deposits to advance refunding escrows using tax-exempt debt proceeds, it is the University's policy to acquire United States Treasury Securities – State and Local Government Series (SLGS), or other securities purchased on the open market in accordance with the terms of the University's bond documents.

In the event the University chooses to fund an advance refunding escrow using securities purchased on the open market, the University will retain a third-party investment bidding agent to solicit bids from providers of qualifying securities in accordance with the limitations described in the "3-Bid" safe harbors set forth in Treasury Regulations Section 1.148-5(d)(6).

- J. Interest Rate Hedges. The University will engage a third-party financial advisor for all interest rate hedges entered into by the University, whether or not any such hedge is acquired through a direct negotiation with the provider or obtained through a bidding process. In all cases, the University will obtain the appropriate certifications from its financial advisor and/or the provider to establish fair market value of the product. In addition, the University will consult with counsel regarding all interest rate hedging transactions related to an outstanding or prospective debt issuance prior to the date on which the interest rate hedging transaction is entered into.

VII. Accounting for Debt Proceeds

- A. Overview. Except as otherwise described below and in the Tax Certificate entered into by the University in connection with a tax-exempt debt issuance, it is the policy of the University to apply a “direct tracing” method of accounting for and allocating its tax-exempt debt.
- B. Investment of Proceeds. Proceeds of the University’s capital borrowings shall be held in a State of Florida Special Purpose Investment Account (SPIA), and shall be invested pursuant to the arbitrage restrictions set forth in each Tax Certificate.
- C. Expenditure of Debt Proceeds on Capital Projects. Proceeds are requisitioned for capital projects pursuant to the guidelines established in each Trust Agreement entered into in connection with each tax-exempt debt issuance. The University is responsible for processing invoices with respect to capital projects and for supervising the requisition process. All invoices and records of payment are retained by the University in accordance with the recordkeeping provision of these Guidelines. In addition, the University shall maintain an active ledger, updated with each payment of expenditure from tax-exempt debt proceeds, which for each outstanding debt issuance shows:
- a. The name and date of issue of the tax-exempt debt to which the proceeds relate
 - b. The projects financed with the proceeds of the issue
 - c. The authorized amount of proceeds to be used to finance each project
 - d. The amount of proceeds of the debt issuance used to date to finance each project
 - e. The amount of unspent proceeds of the debt issuance to be used to finance each project
 - f. The amount of non-bond proceeds used to finance any portion of the Project
 - g. The date on which the debt proceeds related to each project were fully expended

VIII. Recordkeeping

- A. Overview. Various sections of the IRS Code and Regulations require the retention of the records necessary to substantiate compliance with federal tax requirements applicable to tax-exempt debt. The University is aware of its ongoing recordkeeping responsibilities associated with all tax-exempt debt issuances, and is familiar with the IRS Frequently Asked Questions related to the recordkeeping requirements for tax-exempt debt. Each Tax Certificate shall provide a description of the records to be maintained by or on behalf of the University, and the period of time such records must be maintained.
- B. Means of Maintaining Records. For each financing, documentation will be prepared and retained in a permanent “transaction file” regarding the various vendor selections, the decision process for sizing and structure, the method of bond sale, and investment decisions. These records may be maintained in paper and/or electronic form. It is the policy of the University to maintain as many of its records electronically as feasible.

- C. Transcript and Use of Debt Proceeds. The University shall maintain, or cause to be maintained, all records relating to the tax-exempt status of its tax-exempt debt issuances and the qualification of debt and the representations, certifications and covenants set forth in its respective Tax Certificates **until the date 3 years after the last outstanding obligation of the issue to which such records and Tax Certificate relate has been retired**. The records that must be retained include, but are not limited to: (1) basic records and documents relating to the obligations (including the transcript, which shall include, among other records, the Tax Certificate, Internal Revenue Service Form 8038, verification report, authorizing resolution(s), trust indenture, loan agreement, record of public approval, and the opinion of bond counsel), (2) documentation evidencing the expenditure of debt proceeds, (3) documentation evidencing the use of debt financed projects by public and private sources, including copies of all arrangements described in Part IV of these Guidelines, (4) documentation evidencing all sources of payment or security for the debt issuance; and (5) documentation pertaining to any investment of debt proceeds (including the purchase and sale of securities, SLGS subscriptions, yield calculations for each class of investments, actual investment income received from the investment of proceeds, guaranteed investment contracts, and rebate calculations).
- D. Investment Records. The University shall maintain detailed records with respect to every investment acquired with proceeds of its tax-exempt debt, including the: **(1) purchase date, (2) purchase price, (3) information establishing fair market value on the date such investment became allocated to gross proceeds of the debt, (4) any accrued interest paid, (5) face amount, (6) coupon rate, (7) periodicity of interest payments, (8) disposition price, (9) any accrued interest received, (10) disposition date, and (11) broker's fees paid (if at all) or other administrative costs with respect to each such non-purpose investment**. The University shall maintain all such records until the date three years after the last outstanding obligation of the issue to which such records and non-purpose investments relate has been retired.
- E. Arbitrage Rebate and Yield Reduction Payment Records. The University and applicable departments shall maintain all records of arbitrage rebate payment and yield reduction payment calculations performed by the arbitrage rebate monitor (irrespective of whether the University owed any amount to the Internal Revenue Service), and records related to any arbitrage rebate payments or yield reduction payments made to the Internal Revenue Service, including the calculations performed by the arbitrage rebate monitor substantiating such payments, together with the Internal Revenue Service Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, that accompanied all such payments, until the date 3 years after the last outstanding obligation of the issue to which such records and rebate payments relate has been retired.
- F. Overpayment of Arbitrage Rebate Records. In the event the University has overpaid to the United States an arbitrage rebate or yield reduction payment liability, the University shall maintain all records of such arbitrage rebate payments or yield reduction payments, including calculations performed by the arbitrage rebate monitor, together with the Internal Revenue Service Form 8038-R, Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, that accompanied the request for a recovery of such overpayment until the date 3 years after the last outstanding obligation of the issue to which such records and rebate overpayments relate has been retired.
- G. Other Records. In addition to the records described above, the University will maintain the following records, to the extent applicable to a particular tax-exempt debt offering, until the date 3 years after the last outstanding obligation of the issue to which such relate has been retired: (1) minutes and resolutions authorizing the issuance of, or the reimbursement of expenditures using proceeds of, the financing, (2) appraisals, demand surveys and feasibility studies related to financed

or refinanced property, (3) documentation relating to any third-party funding for a project to which tax-exempt debt proceeds will be applied (including government grants), (4) records of any Internal Revenue Service audit(s) or compliance check(s), or any other Internal Revenue Service inquiry related to the debt.

- H. Applicability of Recordkeeping Requirement in the Event of a Refunding. In the event the University issues tax-exempt debt to retire prior University debt, the University shall maintain all of the records described in this Part VII with respect to the refunded debt until the date that is three years after the last outstanding tax-exempt obligation of the issue the proceeds of which were used to retire the refunded debt has been retired. For example, if the University issues tax-exempt obligations in 2009 (the “2009 Bonds”) to refund tax-exempt obligations issued in 2004 (the “2004 Bonds”), the University will maintain the records described in this Part VII with respect to the 2004 Bonds until the date three (3) years after the date the last outstanding 2009 Bond has been retired. If the 2004 Bonds themselves refunded prior University debt, the University shall also maintain records related to such prior University debt for the same period of time.

IX. Voluntary Closing Agreement Program

The University is aware of its ability, pursuant to IRS Notice 2008-31, to request a voluntary closing agreement with the IRS to correct failures on the part of the University to comply with the federal tax rules related to tax-exempt debt issuances.

X. Continuing Disclosure Practices

Under the provisions of Security and Exchange Commission Rule 15c2-12 the University must file its annual financial statements and other financial and operating data for the benefit of its holders of publicly-issued debt within 180 days of the close of the fiscal year.

The University will provide financial statements, official statements, and periodic financial information under the designated repository, currently the Electronic Municipal Market Access System (“EMMA”) created by the Municipal Securities Rulemaking Board. Any notice of material events as specified in the offering document will also be filed under EMMA. Instructions for such filings and notices will be set out in the bond or other debt closing documents. If the debt is issued through the Division of Bond Finance, they can assist in this annual filing.

In addition, the University will continue to consult regularly with its counsel regarding the federal tax rules applicable to its outstanding tax-exempt debt and changes to the federal tax law, and the University will regularly update these Guidelines to reflect such changes.

XI. Summary of Responsibilities

1. The CFO shall be the primary contact on debt issuance, and all University units and DSO’s must first consult with the CFO in order to initiate any debt-financed transaction.
2. The CFO has designated the University Controller’s Office as the primary contact for the Florida Division of Bond Finance and rating agencies, as well as the University office responsible for all SEC Annual Disclosure Reports.
3. For all debt issuances, the CFO shall document in writing the PBU calculations, conduct periodic monitoring to ensure that PBU requirements are being complied with, and maintain documentation of the same.

4. The CFO will identify and track all post-issuance compliance requirements, as detailed in the bond or other debt documents and will ensure that those requirements are met.
5. The CFO will take and maintain a complete inventory of the various debt outstanding at the University and the facilities or assets to which such debt relates.
6. The CFO will maintain a database of required debt payments and ensure those payments are made on a timely basis.
7. The CFO will reasonably ensure compliance with the recordkeeping requirements related to all debt.
8. The CFO will ensure compliance with the Florida Board of Governors Debt Management Guidelines.
9. The CFO will maintain and update these Guidelines as necessary.