Post -Issuance Policies and Procedures for Tax-Exempt Bond Obligations

Introduction
This Post-Issuance Compliance Policies and Procedures (this "Policy and Procedures") sets forth specific policies and procedures of Brown University (the "University") designed to ensure the University complies with applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations promulgated thereunder (the "Treasury Regulations") applicable to tax-exempt bonds (the "Bonds") issued to finance University facilities.

It is the University’s policy to fulfill all requirements that must be satisfied subsequent to the issuance of Bonds in order that interest on such obligations be, or continue to be, or would be but for certain provisions of the Code, excludable from gross income for federal income tax purposes.

It is the University's policy to comply with all applicable laws, regulations and contracts applicable to Bonds, including all Applicable Federal Law, to ensure that interest on the Bonds remains exempt from federal income tax. Unless otherwise approved by the University’s legal counsel, the University shall comply with the guidelines with respect to management contracts set forth in Revenue Procedure 97-13 and the guidelines with respect to research agreements set forth in Revenue Procedure 2007-47, as the same may be amended and supplemented from time to time.

Policy Statement
This Policy and Procedures shall be communicated to all University administrators and staff with responsibility or control over any aspect of the Bond issuance, the investment or expenditure of Bond proceeds and the use of Bond-financed assets, including but not limited to those who manage, direct or influence the following:

1. The pre-issuance process and decision-making, including identification of eligible projects;
2. The expenditure of Bond proceeds and other University funds for project costs;
3. The investment of Bond proceeds and other University funds;
4. The use of all facilities and other assets financed or refinanced by Bonds, including use by the University or by third parties pursuant to leases, management agreements, service agreements, sponsored research agreements, fee-for-use or other arrangements;
5. The sale or other disposition of any facilities or other assets financed or refinanced by Bonds;
6. The creation and retention of documentation relating to expenditure of Bond proceeds, the use and disposition of Bond-financed assets, Arbitrage and tax return filings; and
7. The recording and reporting of financial transactions related to Bonds.

Definitions
Applicable Federal Law – Includes the Code and the Treasury Regulations, including Sections 145 through 150 of the Code and the related Treasury Regulations (Note: IRS Publication 4077: Tax-Exempt Bonds for 501(c)(3) Charitable Organizations Compliance Guide provides guidance and explanation for most areas of tax-exempt financing relevant to the University.

Arbitrage – Earnings from investment of Bond proceeds in excess of the amount that would have been
earned had the funds been invested at the Bond yield, adjusted for certain expenses (i.e., investment yield higher than the Bond yield).

**Private Business Use** – Examples of Private Business Use include (1) the University's use of Bond-financed property in an unrelated trade or business, and (2) the use of Bond-financed assets by parties other than the University or certain other charitable organizations, including use by third parties pursuant to leases, management or service contracts that do not meet Internal Revenue Service ("IRS") requirements, certain sponsored research arrangements, and any other arrangements that provide third parties with special legal entitlements to use or occupy (or otherwise benefit from) Bond-financed property. Generally, no more than five percent (5%) of Bond proceeds may be used for Private Business Use. The use of Bond proceeds is generally determined based on the use of the Bond-financed property. The use of Bond proceeds to pay Bond issuance costs (typically, up to two percent (2%) of Bond proceeds) is considered Private Business Use, so other allowable Private Business Use may be as low as three percent (3%) of Bond proceeds.

In addition, the following categories of activities might be PBU if they result in private business users using University property that has been acquired or improved with Tax Exempt Bond proceeds:

1) Sale of University property
2) Lease of University property
3) Use of University property
4) Management contracts
5) Utility output contracts
6) Sponsored research agreements, material transfer agreements, and corporate researchers working at the University
7) Technology transfer and licensing agreements
8) Clinical trial agreements
9) Unrelated trade or business activities by the University
10) Naming rights
11) Joint ventures, partnerships and limited liability companies’ agreements
12) Other actual or beneficial use of, or economic benefit from, University property

**Tax Certificate** – The agreement signed by the University at the closing of a Bond issuance in which the University makes certain representations, warranties and covenants relating to its 501(c)(3) status, the expected use of the Bond proceeds, the tax eligibility of the projects and the University’s operations.

**Responsibilities**
The University’s Director of Treasury Operations shall have primary responsibility for monitoring the University’s compliance with post-issuance federal tax requirements for Bonds, and for implementing/overseeing procedures necessary to ensure such compliance. The Director of Treasury Operations will work closely with the Tax Manager and shall communicate this Policy and Procedures to all appropriate University personnel. The Director of Treasury Operations may modify the detailed policies and procedures described herein as necessary to promote compliance with Applicable Federal
The Director of Treasury Operations works within the Controller’s office and reports directly to the Assistant Vice President/University Controller under the Executive Vice President of Finance and Administration.

**Procedures**
The University shall abide by the following policies, and shall implement the following procedures, to ensure that interest on Bonds remains tax-exempt:

**Expenditures of Bond Proceeds**

- Bond proceeds, including investment earnings thereon, shall be disbursed only for project costs, capitalized interest (i.e., interest payments during project construction), Bond issuance costs and other purposes expressly allowed under the Bond documents. All Bond-financed property must be owned by the University.
- If the University intends to reimburse itself from Bond proceeds for project costs paid prior to issuance of the Bonds, the University shall adopt a declaration of official intent to reimburse project costs. The University shall consult with nationally recognized bond counsel to ensure the declaration of intent meets the requirements of Applicable Federal Law.

**Final Allocation of Bond Proceeds**
Promptly after the final expenditure of Bond proceeds, the Director of Treasury Operations shall prepare a written report documenting the allocation of Bond proceeds (including interest earnings thereon) and other University funds to project expenditures (the “Final Allocation”). In all cases, the Final Allocation shall be completed within 18 months after the later of the date Bond proceeds are expended or the date the project is placed in service, but not later than 5 years after the Bonds were issued. It is recommended that the University consult with nationally recognized bond counsel in connection with the Final Allocation of Bond proceeds. Reminders should be placed in appropriate calendars to ensure Final Allocation of Bond proceeds are made timely.

**Private Business Use of Bond-Financed Property**

- **General:** No more than five percent (5%) of Bond proceeds may be used for Private Business Use, and such use may occur only in accordance with the Tax Certificate and Applicable Federal Law. The use of Bond proceeds is generally evaluated, for Private Business Use purposes, based on the use of Bond-financed assets. Bond issuance costs paid from Bond proceeds are counted against the 5% limit. The following uses of Bond-financed property shall require the Director of Treasury Operation’s prior approval:
  - use in connection with any activity that is not substantially related to the University's tax-exempt educational or research purposes (i.e., unrelated trade or business use);
  - use by third parties (i.e., other than the University), including but not limited to leases, licenses, fee-for-use or other arrangements;
  - management or service contracts under which the manager or service provider's compensation is based, in whole or in part, on income from operation from the facility; and
  - any other use that could potentially be considered Private Business Use under Applicable Federal Law.
- **Sponsored Research:** Sponsored research in Bond-financed facilities may, under certain circumstances, constitute Private Business Use of Bond proceeds allocated to those facilities. All agreements with third parties who sponsor research in Bond-financed facilities shall comply with applicable IRS safe harbor requirements (currently, IRS Revenue Procedure 2007-47) or shall be approved by the Director of Treasury Operations after consulting with nationally recognized bond counsel.
• **Annual Measurement of Private Business Use:** The Director of Treasury Operations shall maintain a record of all Bond financed property, including the amount of Bond proceeds allocated to each asset, which shall be based on the Final Allocation of Bond proceeds described above. The Director of Treasury Operations shall annually review all uses of Bond financed property and determine the percentage of Private Business Use of Bond-financed property. The Director of Treasury Operations shall maintain records of all Private Business Use, if any, of Bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that any Private Business Use is within permissible limits under Applicable Federal Law.

**Change of Use**
Any significant change in the use of Bond-financed property must be reported to the Director of Treasury Operations prior to implementation. The Director of Treasury Operations shall determine whether the proposed new use may constitute Private Business Use. If the use may be Private Business Use, the Director of Treasury Operations shall consult with counsel for tax advice on whether that use or arrangement, if put into effect, will be consistent with the restrictions on Private Business Use and, if not, whether any "remedial action" permitted under the Code may be taken by the University as a means of enabling that use.

**Sale or Disposition**
Any sale or other disposition of Bond-financed property must be reported to the Director of Treasury Operations prior to execution of any agreement of sale or other agreement of disposition. The Director of Treasury Operations shall determine whether the Bond-financed property has any remaining useful life in accordance with the Tax Certificate and Applicable Federal Law, and if so, consult with nationally recognized bond counsel as to the requirements of Applicable Federal Law applicable to the sale or other disposition and the appropriate "remedial action" permitted by the Code that must be undertaken by the University as a result of the potential sale or other disposition of the Bond-financed property.

**Investment of Bond Proceeds; Arbitrage and Rebate**

• Prior to expenditure for project costs, Bond proceeds shall be invested solely in compliance with Applicable Federal Law and the Tax Certificate. The University may invest Bond proceeds at a yield in excess of the Bond yield only during the applicable "temporary period" (as defined in the Code and the Treasury Regulations), and shall provide for yield restriction on the investment of such proceeds after the applicable temporary period. The University shall ensure that investments acquired with proceeds of an issue are purchased at "fair market value," as defined in Treasury Regulations.

• The Director of Treasury Operations shall determine whether the Bonds are eligible for an Arbitrage rebate exception. If the Bonds are not exempt from Arbitrage rebate, the Director of Treasury Operations shall compute the amount of Arbitrage earnings, and make all required rebate payments to the IRS, on each computation date required by Applicable Federal Law. The Director of Treasury Operations shall consider retaining an arbitrage rebate service provider to prepare arbitrage rebate calculations.

**Reissuance**
Before modifying any Bond terms, the University shall consult with nationally recognized bond counsel to determine whether the proposed modification could potentially be treated as a "reissuance" of those Bonds for federal income tax purposes.

**Filing of Returns and Arbitrage Review**
Upon issuance of the bonds, the University will review the tax certificate to determine if there are any specific arbitrage rebate requirements for the bond issue in addition to the statutory requirements. At a
minimum, unless certain exceptions apply, a rebate calculation is required at the end of the fifth bond year, at the end of every fifth bond year thereafter, and upon retirement of the bond. The University will be responsible for ensuring that arbitrage requirements are fulfilled. The University will work with nationally recognized bond counsel to prepare and file any returns with the IRS relating to Arbitrage rebate in a timely manner. The University will confirm with bond counsel that the information report required to be filed upon issuance of Bonds (e.g., Form 8038) was filed with the IRS on a timely basis.

Special circumstances with regards to a bond issue may require more detailed monitoring of arbitrage rebate requirements. These circumstances include: 1.) Monitoring expenditures prior to semi-annual target dates for six-month, 18-month and 24-month spending exceptions. 2.) For advance refunding escrows, confirming that any scheduled purchases of State and Local Government series obligations (SLGs) are made on scheduled dates. 3.) More frequent computations based on an agreement with bond trustee may be required.

**Record Retention**

Unless otherwise permitted by future Treasury Regulations or IRS guidance, written records (which may be in electronic form) will be maintained with respect to each Bond issue for as long as those Bonds (and any Bonds issued to refinance those Bonds) remain outstanding, plus three to six years depending on the Tax Regulatory Agreement of the series. For refundings, the record retention period includes the original issuance. The records to be maintained shall include:

- basic records relating to the Bond issuance including the official transcript of proceedings;
- documentation evidencing expenditure of Bond proceeds including, but not limited to, purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of Bond issuance costs, and records of “allocations” of Bond proceeds to reimburse the University for project expenditures made before the Bonds were actually issued;
- records showing the specific assets financed with Bond proceeds (including assets to which Bond proceeds are allocated pursuant to the Final Allocation described above);
- information, records and calculations showing that, with respect to each Bond issue, the University was eligible for one of the Arbitrage rebate spending exceptions or, if not, that the Arbitrage rebate amount, if any, was calculated and timely paid to the IRS;
- documentation evidencing use of Bond-financed property by public and private entities (including copies of leases, management contracts and research agreements);
- records showing that special use arrangements, if any, affecting Bond-financed property made by the University with third parties, if any, are consistent with applicable restrictions on Private Business Use of property financed with proceeds of tax-exempt Bonds;
- records of any sale or disposition of Bond-financed property, including terms of sale, and documentation of any “remedial action” undertaken as a result of the sale or other disposition; and
- documentation pertaining to any investment of proceeds of the issue, including the purchase and sale of securities, calculations for each class of investments and actual investment income received and Arbitrage rebate calculations.

The purpose of the foregoing record retention policy is to enable the University to readily demonstrate to the IRS, upon an audit of any Bond issue, that the University has fully complied with all Applicable Federal Law requirements that must be satisfied after the issue date of the Bonds so that interest on those Bonds continues to be tax-exempt under the Code.

**Consultation with Nationally Recognized Bond Counsel**

The Director of Treasury Operations shall consult with qualified legal counsel as appropriate to resolve questions relating to potential Private Business Use of Bond-financed assets, Final Allocation of Bond proceeds, Arbitrage rebate and other matters relating to compliance with Applicable Federal Law.
Corrective Actions
Upon discovering any violation of Applicable Federal Law including, but not limited to, excess Private Business Use, violation of Arbitrage restrictions or sale of Bond-financed assets, the Director of Treasury Operations shall promptly consult with legal counsel to determine appropriate remedial action to correct such violation. If remedial action is not available, the University will undertake to remedy the violation through the IRS Voluntary Closing Agreement Program (VCAP).

Continuing Disclosure
Under the provisions of SEC Rule 15c2-12 (the "Rule"), Participating Underwriters (as defined in the Rule) are required to determine that issuers and obligated persons (such as the University) have entered into written Continuing Disclosure Agreements to make ongoing disclosure in connection with Offerings subject to the Rule. Unless the University is exempt from compliance with the Rule or the continuing disclosure provisions of the Rule as a result of certain permitted exemptions, the bond transcript for each issue of bonds will include a Continuing Disclosure Agreement executed by the University.

In order to monitor compliance by the University with its Continuing Disclosure Agreements, the Director of Treasury Operations will, if and as required by such Continuing Disclosure Agreements:

- Assist in the preparation or review of annual reports ("Annual Reports") in the form required by the related Continuing Disclosure Agreements.
- Maintain a calendar, with appropriate reminder notifications, listing the filing due dates relating to dissemination of Annual Reports, which annual due date is generally expressed for Brown as January 31 following the end of the University’s fiscal year (the "Annual Report Due Date"), as provided in the related Continuing Disclosure Agreements.
- Ensure timely dissemination of the Annual Report by the Annual Report Due Date, in the format and manner provided in the related Continuing Disclosure Agreements, which may include transmitting such filing to the Municipal Securities Rulemaking Board ("MSRB") through the Electronic Municipal Market Access ("EMMA") System at www.emma.msrb.org in the format prescribed by the MSRB.
- Monitor the occurrence of any "Listed Event" (as defined in the Continuing Disclosure Agreements) and timely file notice of the occurrence of any such Listed Event in the manner provided under the Continuing Disclosure Agreements. To be timely filed, such notice must transmitted within 10 business days (or such other time period as set forth in the Continuing Disclosure Agreements) of the occurrence of such Listed Event.
- Ensure timely dissemination of notice of any failure to perform under a Continuing Disclosure Agreement, if and as required by the Continuing Disclosure Agreement.
- Respond to requests, or ensure that another representative of the University responds to requests, for information under the Rule.
- Monitor the performance of any dissemination agent(s) engaged by the Issuer to assist in the performance of any obligation under the Continuing Disclosure Agreements, including checking the MSRB EMMA site on or before January 15 of each year to confirm the posting of the Annual Report and immediately after the filing of a Listed Event filing under the appropriate Bond issues.

Policy Owner Approved by AVP and University Controller, and EVP for Finance & Administration
Contact(s)
Kathleen Morrissey
Director of Treasury Operations
Kathleen_Morrissey@brown.edu
401-863-3407