



VCU

VIRGINIA COMMONWEALTH UNIVERSITY

Developing a Post-issuance Tax Exempt Bond Compliance Policy

VCU PRESENTERS

Patricia Perkins, Assistant Vice President of Finance and
University Controller

Kevin Davenport, Treasurer and Director of Treasury Services

Brian Winston, Assistant Controller, Tax and Accounting
Services

AGENDA

- I. Overview
- II. Key Components
- III. Initial Steps
- IV. Drafting the Policy Document
- V. Implementation Considerations
- VI. Concluding Thoughts

ABOUT VCU



- Richmond, VA
- 30,000+ students
- Public, urban, research
- Academic medical center
- Decentralized
- Debt profile (6/30/12):
 - Aa2 (Moody's) / AA (S&P)
 - \$470 mm bonds outstanding
 - TEB's > 85% of outstanding debt
- 200+ buildings

SESSION EXPECTATIONS

Practices and solutions are those of VCU

- Circumstances or approaches at each of your schools may differ

This is not a technical session

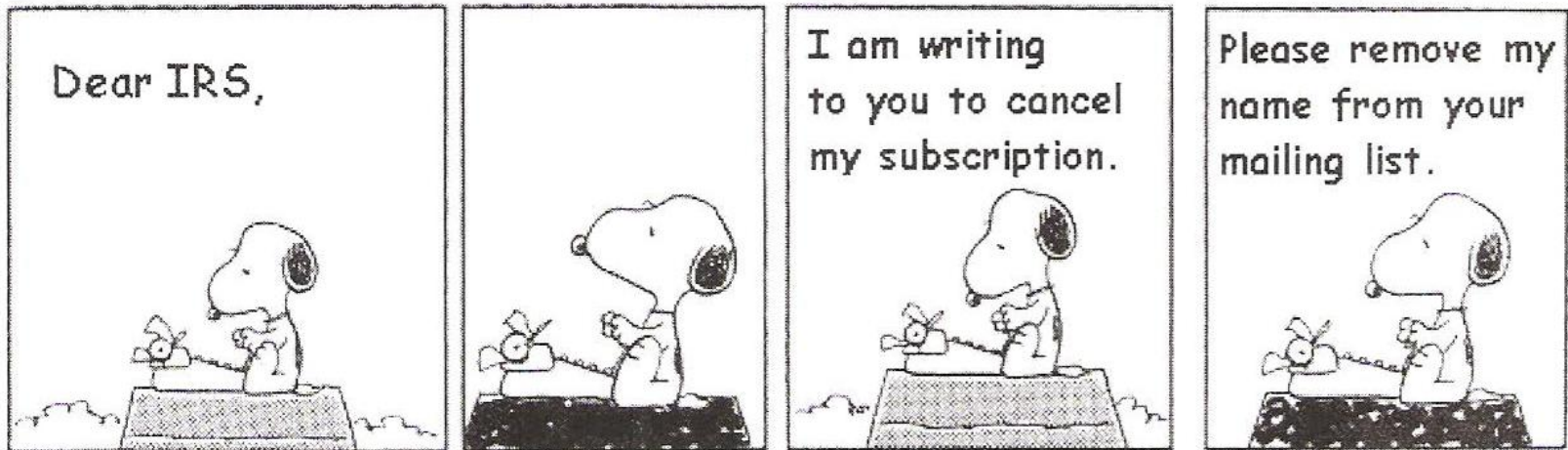
- Consult your bond counsel for legal or tax advice

WHAT IS POST-ISSUANCE COMPLIANCE?

Compliance with applicable IRS regulations related to tax-exempt financings with a continued focus on:

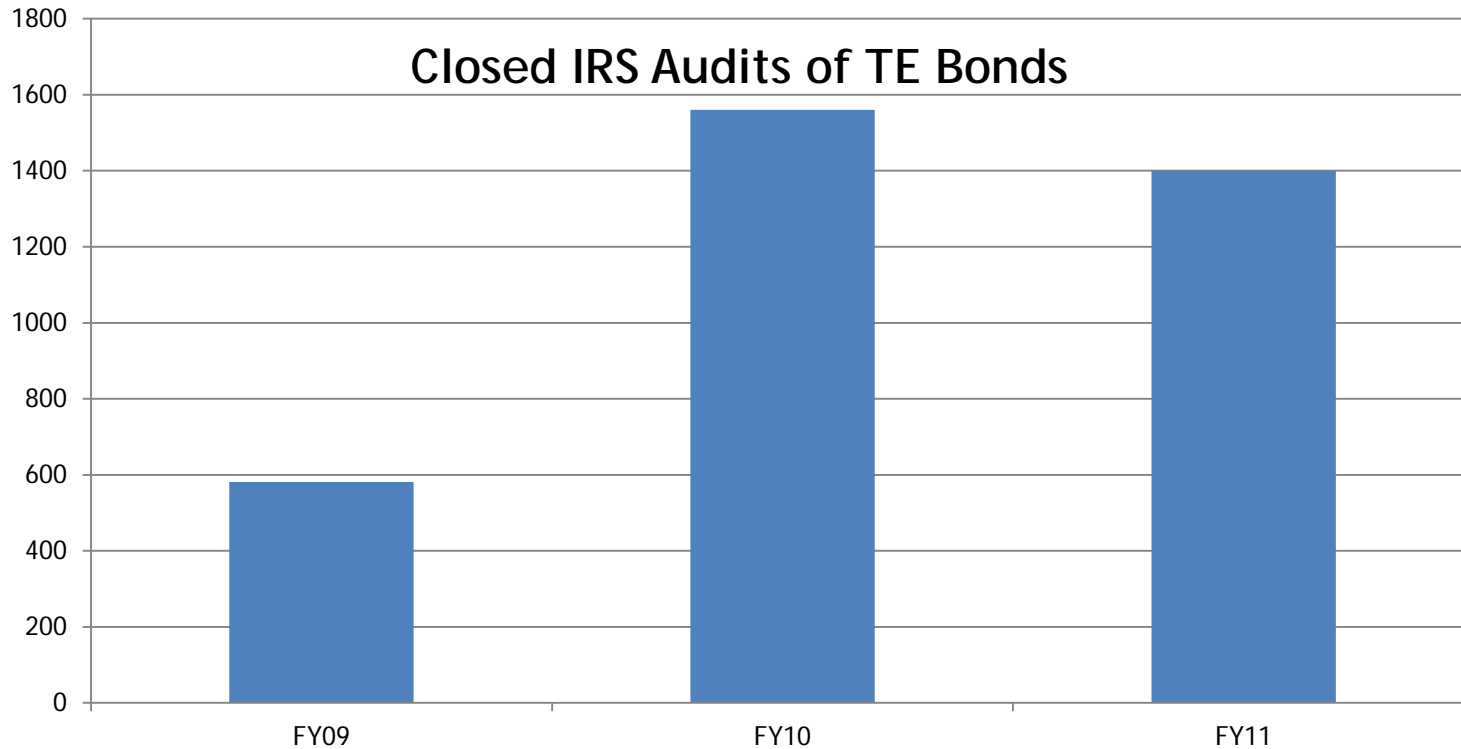
- Spending and investing of bond proceeds
- Use of tax-exempt financed property
- Annual disclosure requirements
- Record retention

WHY HAVE A POLICY?



WHY HAVE A POLICY?

Increased IRS Focus



WHY HAVE A POLICY?

- Be prepared for the IRS
- Reduce anxiety associated with potential IRS audit
- Gives you significant advantages in dealing with the IRS

CONSEQUENCES OF NON-COMPLIANCE

- Retroactive loss of tax-exempt status
- Significant liability to the IRS or bondholders
- Reputational damage
- Inability to access future tax-exempt bond markets
- Credit rating downgrades

OTHER REASONS TO ADOPT A POLICY

- Promotes an internal awareness throughout your entire campus
- Assign responsibilities to positions and units
- Help mitigate risks by identifying issues and potential problems early
- Offers continuity, even with staff turnover

AGENDA

I. Overview

II. Key Components

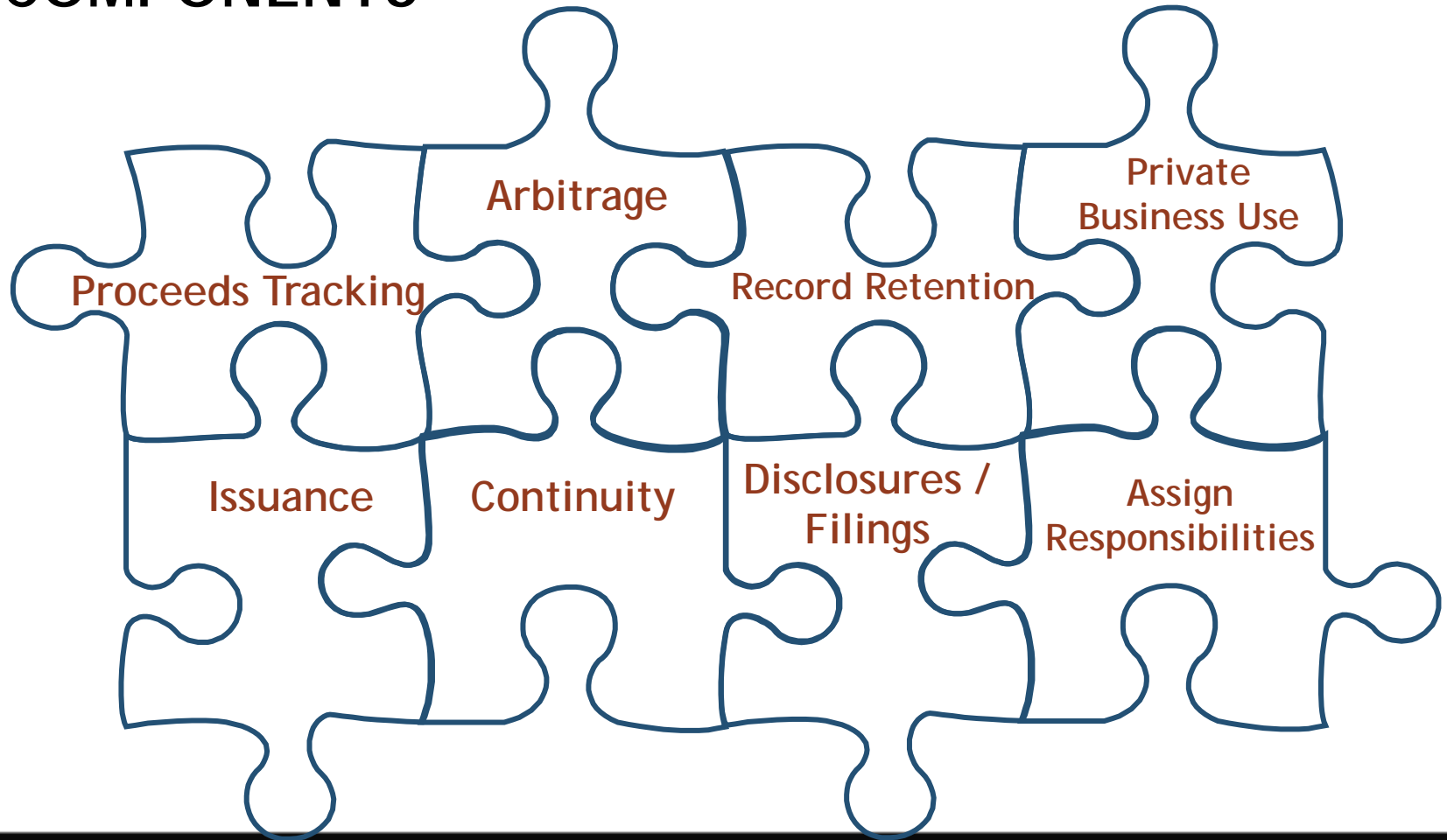
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KEY COMPONENTS



KEY COMPONENTS

PROCEEDS TRACKING

- Bond proceeds can only be used for eligible project costs, capitalized interest, and issuance costs
- Maintain payment records
- Final accounting should be compiled
- Explain reallocation rules

KEY COMPONENTS

ARBITRAGE

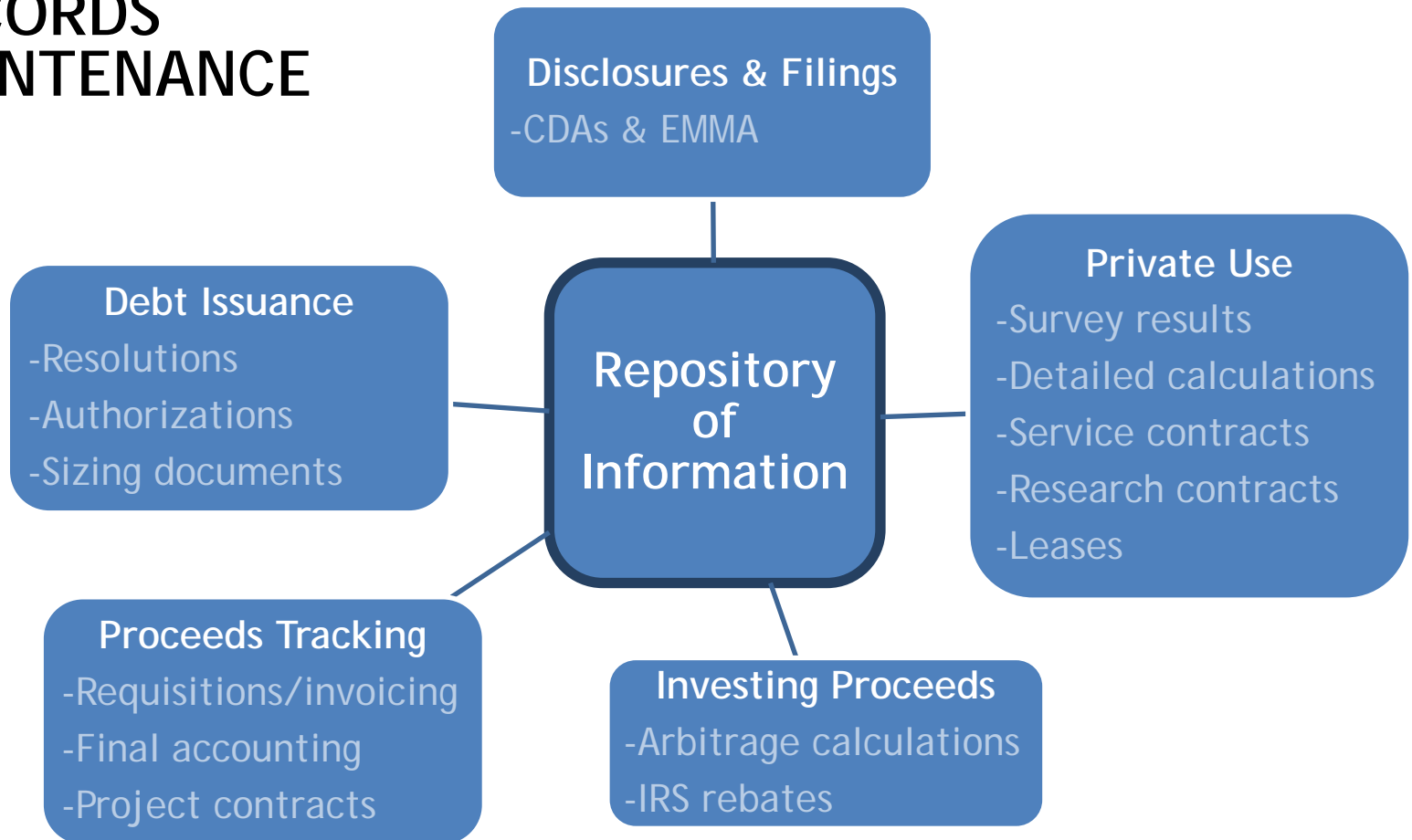
- Arbitrage is investment gains made by investing bond proceeds
- Generally, proceeds must be spent within 3 years of bond issuance
- Calculation and payment of rebates
- Two-year spending rebate exception

KEY COMPONENTS

RECORDS MAINTENANCE

- Requires records to be maintained for the entire term of the bond issue plus three years

VCU'S APPROACH TO RECORDS MAINTENANCE



KEY COMPONENTS

PRIVATE BUSINESS USE

- Private use is use (directly or indirectly) by any person other than a governmental unit
- Generally limits the amount of private use or the amount of private payment or “security”
- No more than 10% allowed

KEY COMPONENTS

EXAMPLES OF PRIVATE BUSINESS USE

- Ownership
- Leases and similar arrangements
- Management contracts
- Research contracts
- Other beneficial use arrangements

KEY COMPONENTS

DISCLOSURES AND FILINGS

- Continuing Disclosure Agreements (CDAs)
- Required filings: IRS 8038 forms, arbitrage certificates, state forms
- Requirements vary depending on documents

KEY COMPONENTS

CONTINUITY AND ONGOING REVIEW

- Requires on-going monitoring and will be reviewed periodically and modified as necessary

WHAT IS THE IRS LOOKING FOR?

- Written policies and procedures
- Address key components
- An individual identified to coordinate the plan
- Roles and responsibilities assigned
- Education and training
- Procedures to timely identify noncompliance
- Steps to timely correct noncompliance
- Due diligence review at regular intervals

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VCU'S APPROACH: INITIAL STEPS



1. Formulate Team

- Small working group (Treasury, Controller, Capital Planning, Tax)
- Met every other week for over 6 months
- Utilized subject matter experts (internal and external)

POTENTIAL EXPERTS

INTERNAL

- Treasury
- Accounting
- Tax
- Legal
- Facilities
- Real Estate
- Research
- Space Management
- Auxiliaries

EXTERNAL

- Financial Advisor
- Bond Counsel
- Arbitrage calculation agent
- Rating agencies
- Vendors

2. Define Objectives

PROJECT DELIVERABLES

- Develop formal policy
- Identify roles & responsibilities
- Provide for regular reviews

ADDITIONAL DELIVERABLES

- Repository of information
- Detailed procedures and processes
- Greater institutional oversight

3. Research

- IRS Resources
- Peer Policies
- WebX with UVA
- NABL (Bond Lawyer) Checklists
- Bond Counsel Meetings

IRS QUESTIONNAIRES

Form **14002**
(September 2008)

Department of the Treasury — Internal Revenue Service

Governmental Bond Financings Compliance Check Questionnaire

OMB No. 1545-2071

This questionnaire asks for information regarding your post-issuance bond compliance and record retention practices. Please complete the questionnaire and follow the instructions in the accompanying letter for returning it to us.

Form **13907**
(August 2007)

Department of the Treasury — Internal Revenue Service

TAX-EXEMPT BOND FINANCINGS COMPLIANCE CHECK QUESTIONNAIRE

OMB No.
1545-2071

This questionnaire asks for information regarding your post-issuance bond compliance and record retention practices. Please complete the questionnaire and follow the instructions in the accompanying letter for returning it to us.



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IRS RESOURCES

- IRS tax-exempt bond website:
<http://www.irs.gov/Tax-Exempt-Bonds>
- IRS publication 4079, *Tax-Exempt Governmental Bonds Compliance Guide*
http://www.irs.gov/pub/irs-tege/bonds_act_0607.pdf
- FAQ in IRS publication 4386
- IRS Revenue Procedure 97-13 (management contracts)
- IRS Revenue Procedure 2007-47 (research agreements)

SAMPLE PEER POLICIES

Stanford University

http://www.stanford.edu/group/fms/fingate/docs/bond_taxExempt_guidelines.pdf

University of Minnesota

http://www.prodevmedia.com/treasuryinstitute/TIBonds/DNU_6b.pdf

University of Virginia

<https://policy.itc.virginia.edu/policy/policydisplay?id=VPFI-001>

OTHER RESOURCES

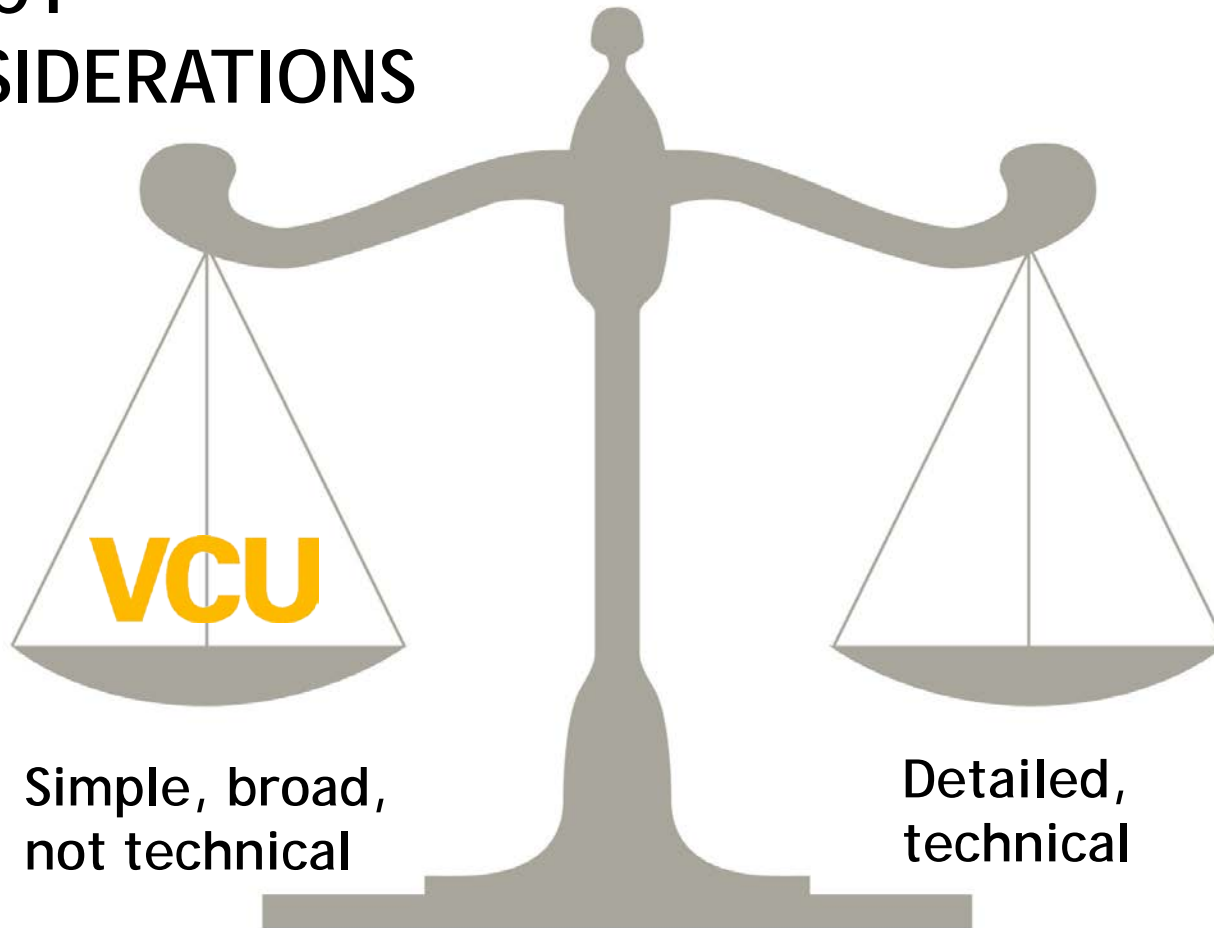
- National Association of Bond Lawyers Post Compliance Checklists -
<http://www.nabl.org/library/documents/107>
- Bond Buyer subscription
- Ropes & Gray template policy
- Training programs

4. Policy Considerations

WHO ARE YOU?

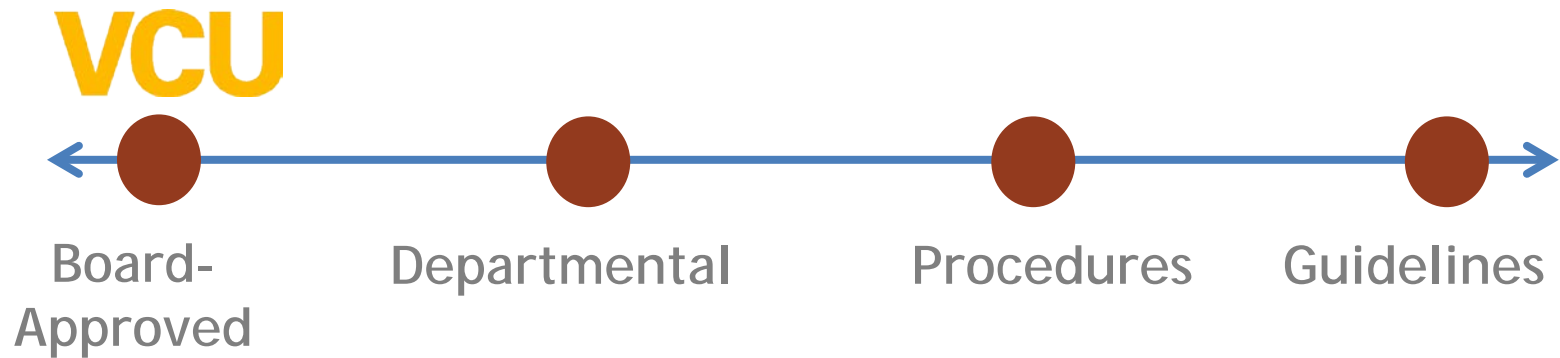


POLICY CONSIDERATIONS



POLICY CONSIDERATIONS

TYPE OF POLICY



POLICY CONSIDERATIONS

TYPE OF BONDS

VCU



GOVERNMENTAL

501c BONDS

POLICY CONSIDERATIONS

TYPE OF INSTITUTION

VCU



VCU



POLICY CONSIDERATIONS

TYPE OF DEBT



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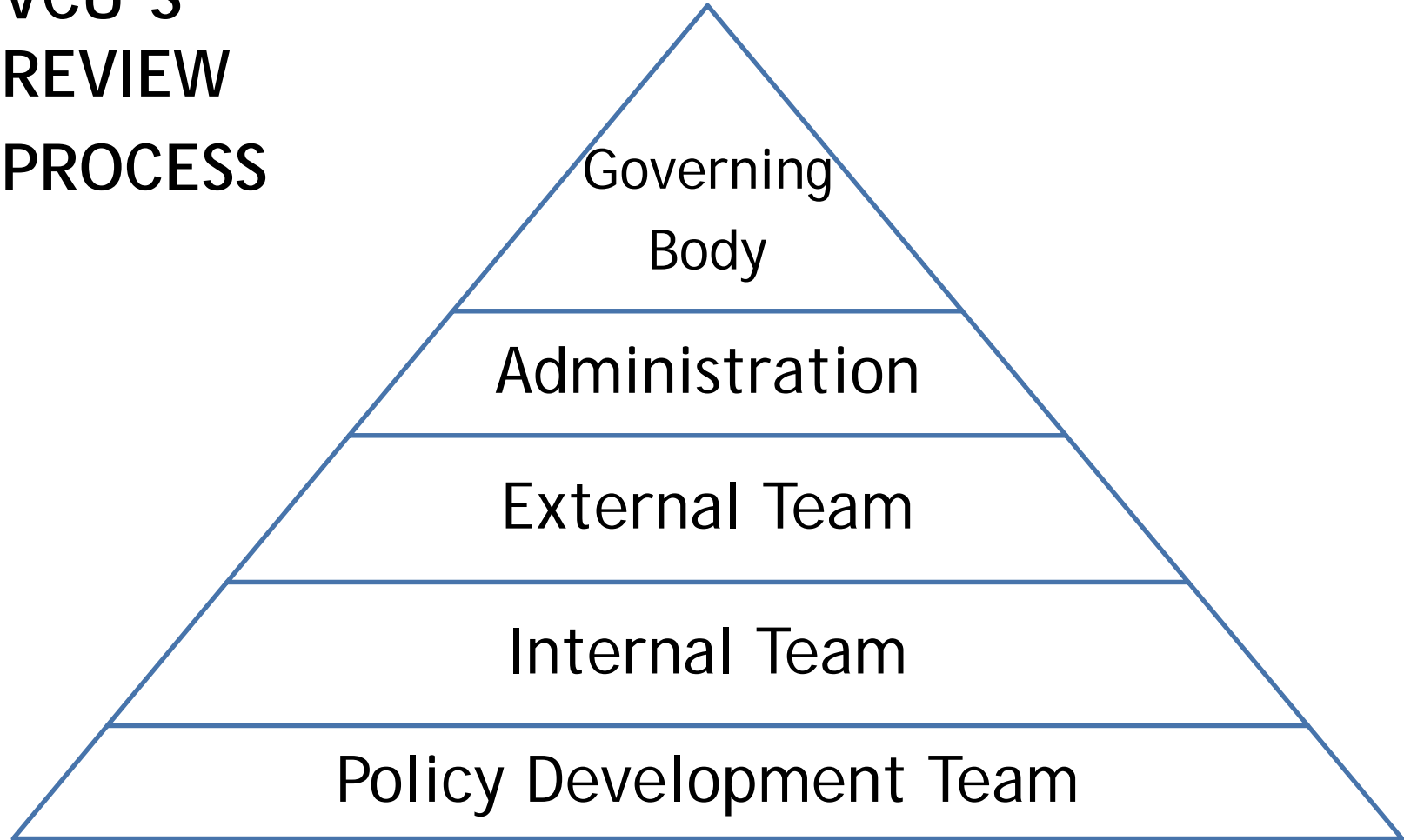
DRAFTING THE POLICY DOCUMENT

- Make sure to address key components and include items important to the IRS
- Utilize peer policies and IRS checklists
- Give ample time for research and learning
- Make policy simple enough for non-technical readers but detailed enough to handle basic questions
- Vet draft policy excessively

POTENTIAL POLICY REVIEWERS

- Bond Counsel
- General Counsel
- Financial Advisor
- Expert Consultants
- F&A Administrators
- Governing Boards
- Research administrators
- User Departments
- Building Managers
- Relevant Committees
- Facilities Personnel
- Internal Audit

VCU'S REVIEW PROCESS



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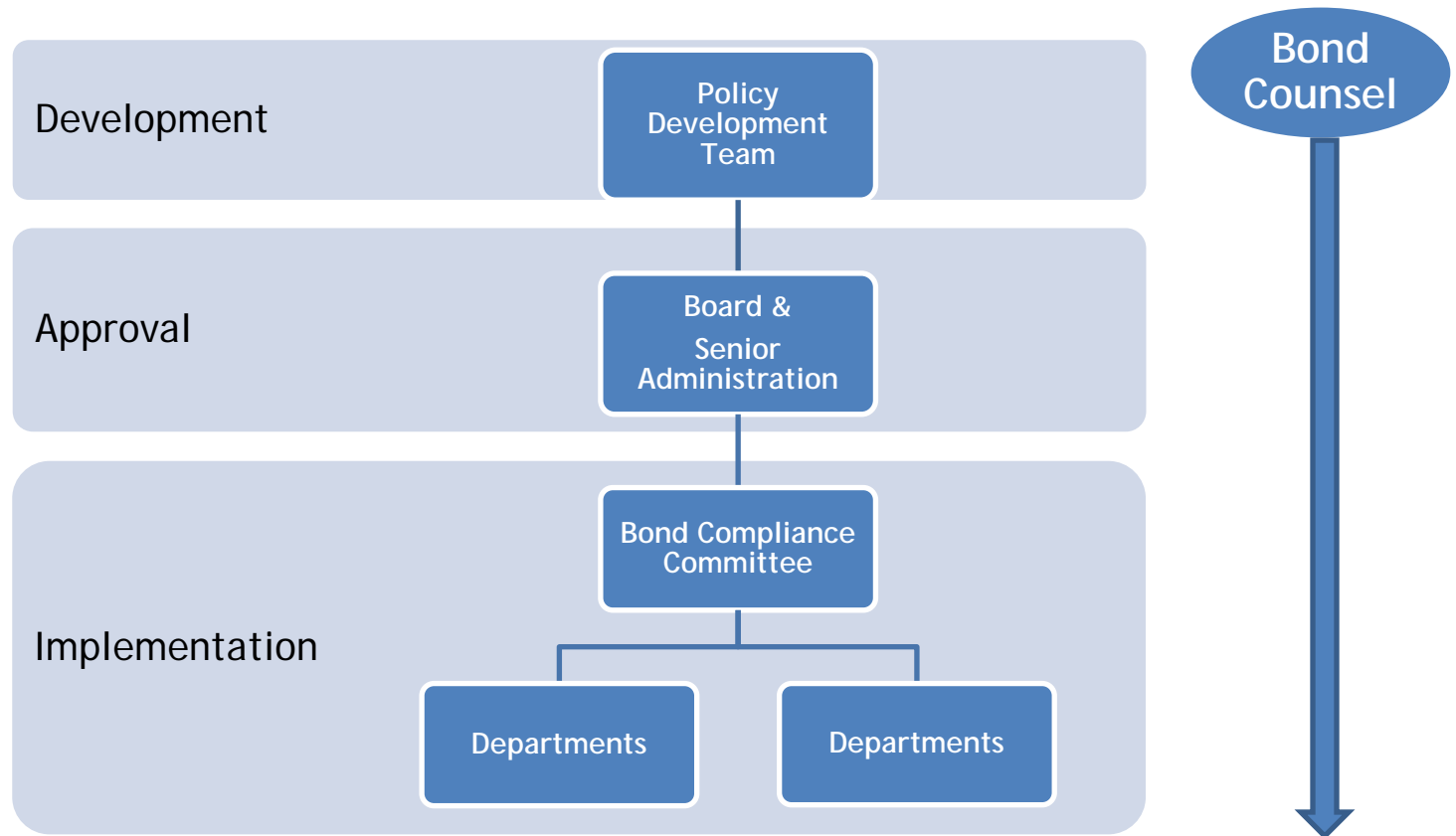
Make it real.

VIRGINIA COMMONWEALTH UNIVERSITY

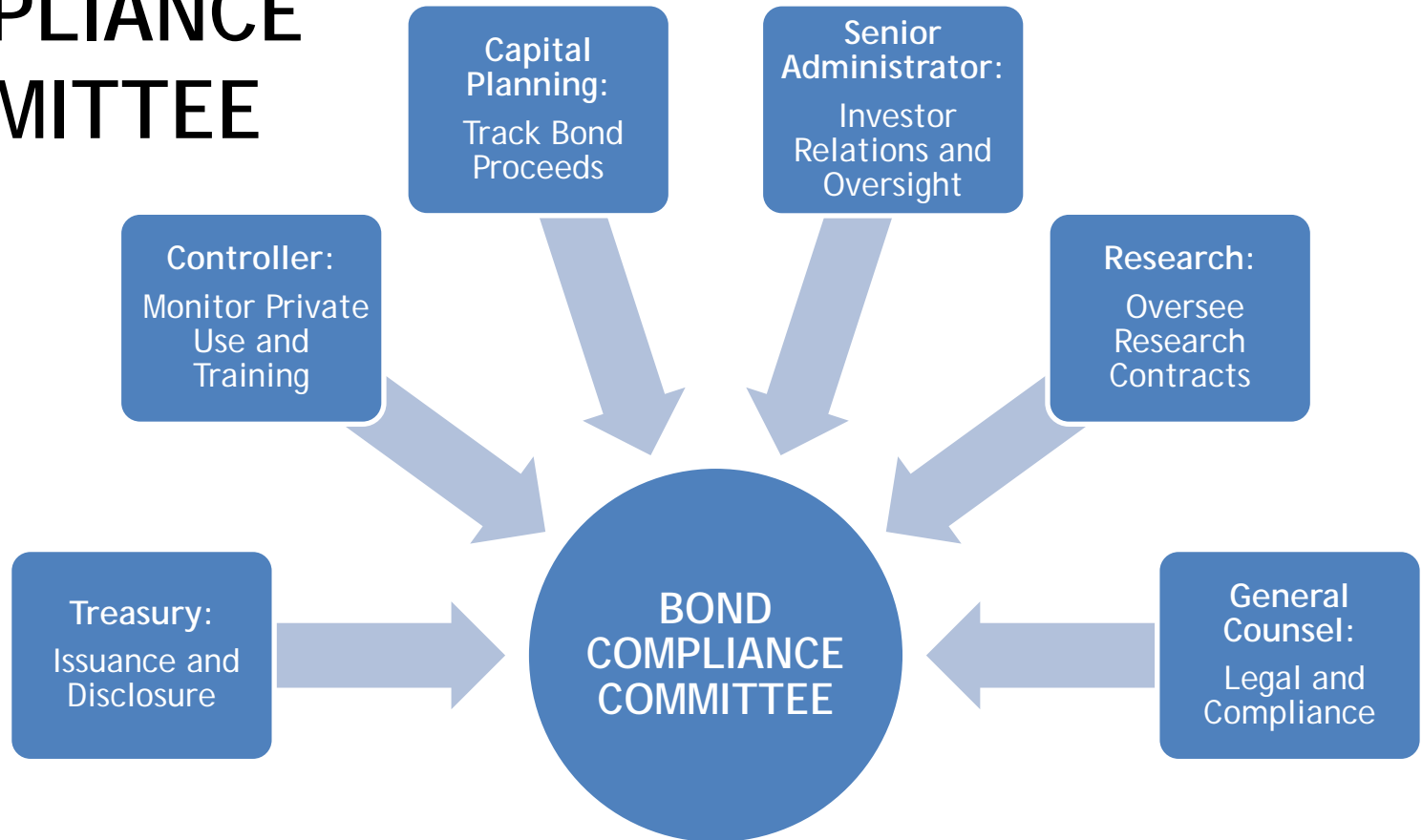
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VCU TEAM STRUCTURE



VCU BOND COMPLIANCE COMMITTEE



VCU Departments to Implement Plan

Treasury

Administering and overseeing the day to day aspects of the program

Supporting the Bond Compliance Committee

Maintaining records relating to the issuance of the University's tax-exempt bonds,

Investment of bond proceeds

Annual disclosure "event disclosure" and voluntary disclosure

Maintain written procedures to ensure compliance with the University's Tax-Exempt Bond Compliance Policy

VCU Departments to Implement Plan

Controller

Responsible for maintaining records on private use including responses to annual private use questionnaire

Retain the audited financial statements

Keep record of any prior IRS examinations of VCU or bond financings

Develop training materials and conduct annual training classes for employees involved in the process

Maintain written procedures to ensure compliance with the University's Tax-Exempt Bond Compliance Policy

VCU Departments to Implement Plan

Facilities Management

Responsible for maintaining records on the project expenditures

Allocation of bond proceeds including construction contracts, vendor invoices, payments and requisitions

Maintain written procedures to ensure compliance with the University's Tax-Exempt Bond Compliance Policy

VCU Departments to Implement Plan

Research

Responsible for maintaining records relating to research contracts

Maintain written procedures to ensure compliance with the University's Tax-Exempt Bond Compliance Policy

VCU Departments to Implement Plan

General Counsel

Bond counsel opines on the validity and tax exempt status of the bonds.

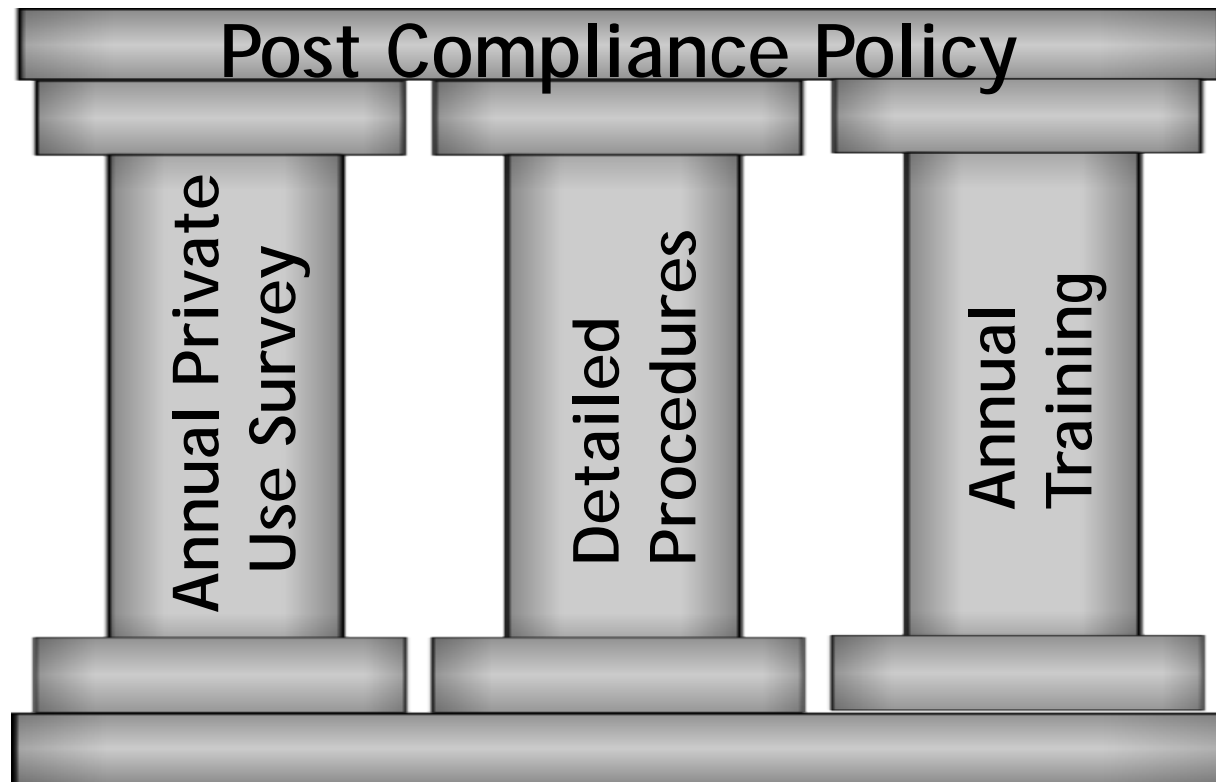
The University counsel opines on due authorization of the bonds and compliance with existing bond documents and similar restrictions

VCU Departments to Implement Plan

**Vice President of
Finance &
Administration**

**Responsible for investor relations, rating agencies and
other outside parties relating to the status of projects**

POLICY SUPPORT



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INITIAL STEPS

- Identify one person to coordinate TEBC efforts
- Formulate Policy Development Team
- Begin reviewing resources and talking to experts and peers

DRAFTING RECOMMENDATIONS

- Make sure to address key components and include items important to the IRS
- Utilize peer policies and IRS checklists
- Give ample time for research and learning
- Make policy simple enough for non-technical readers but detailed enough to handle basic questions
- Vet draft policy excessively internally and externally

IMPLEMENTATION RECOMMENDATIONS

- Make sure responsibilities are assigned to specific departments and individuals
- Develop annual training program
- Establish an oversight committee for on-going monitoring
- Develop detailed procedures to support the policy
- Distribute an annual survey for changes in use

ONGOING IMPROVEMENTS

- Review policy each year
- Attend training opportunities and partake in peer discussion
- Stay current on new IRS rules and regulations
- Subscribe to publications
- Solicit constant feedback (internal & external)
- Incorporate any changes based on new debt issues or other changes
- Document review process

CONCLUDING THOUGHTS

- Manage policy development expectations
- Find key administrator to champion policy
- Consider related policies and procedures
- Start post-compliance efforts at issuance
- Create a repository of information
- Be conservative in interpreting regulations

QUESTIONS



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