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?

Dear IRS,

I am writing to you to cancel my subscription.

Please remove my name from your mailing list.
WHY HAVE A POLICY?

Increased IRS Focus

Closed IRS Audits of TE Bonds

<table>
<thead>
<tr>
<th></th>
<th>FY09</th>
<th>FY10</th>
<th>FY11</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Closed IRS Audits</strong></td>
<td>500</td>
<td>1600</td>
<td>1400</td>
</tr>
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</table>
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
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KEY COMPONENTS

- Proceeds Tracking
- Issuance
- Arbitrage
- Continuity
- Record Retention
- Disclosures / Filings
- Private Business Use
- Assign Responsibilities
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

Disclosures & Filings
-CDAs & EMMA

Private Use
-Survey results
-Detailed calculations
-Service contracts
-Research contracts
-Leases

Debt Issuance
-Resolutions
-Authorizations
-Sizing documents

Proceeds Tracking
-Requisitions/invoicing
-Final accounting
-Project contracts

Investing Proceeds
-Arbitrage calculations
-IRS rebates

Repository of Information
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
DISCLOSURES AND FILINGS

• Continuing Disclosure Agreements (CDAs)
• Required filings: IRS 8038 forms, arbitrage certificates, state forms
• Requirements vary depending on documents
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
2. Define Objectives
3. Research
4. Policy Considerations

1-2 Months
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

<table>
<thead>
<tr>
<th>INTERNAL</th>
<th>EXTERNAL</th>
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</thead>
<tbody>
<tr>
<td>• Treasury</td>
<td>• Financial Advisor</td>
</tr>
<tr>
<td>• Accounting</td>
<td>• Bond Counsel</td>
</tr>
<tr>
<td>• Tax</td>
<td>• Arbitrage calculation agent</td>
</tr>
<tr>
<td>• Legal</td>
<td>• Rating agencies</td>
</tr>
<tr>
<td>• Facilities</td>
<td>• Vendors</td>
</tr>
<tr>
<td>• Real Estate</td>
<td></td>
</tr>
<tr>
<td>• Research</td>
<td></td>
</tr>
<tr>
<td>• Space Management</td>
<td></td>
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<tr>
<td>• Auxiliaries</td>
<td></td>
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</tbody>
</table>
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
### Governmental Bond Financings Compliance Check Questionnaire

**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.

### TAX-EXEMPT BOND FINANCINGS COMPLIANCE CHECK QUESTIONNAIRE

**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.
IRS RESOURCES


• FAQ in IRS publication 4386

• IRS Revenue Procedure 97-13 (management contracts)

• IRS Revenue Procedure 2007-47 (research agreements)
SAMPLE PEER POLICIES

Stanford University

University of Minnesota

University of Virginia
https://policy.itc.virginia.edu/policy/policydisplay?id=VPFI-001
OTHER RESOURCES


• Bond Buyer subscription

• Ropes & Gray template policy

• Training programs
WHO ARE YOU?
POLICY CONSIDERATIONS

Simple, broad, not technical

Detailed, technical

VCU

VIRGINIA COMMONWEALTH UNIVERSITY
POLICY CONSIDERATIONS

TYPE OF BONDS

GOVERNMENTAL  VCU  501c BONDS
POLICY CONSIDERATIONS

TYPE OF INSTITUTION

PRIVATE

PUBLIC

CENTRALIZED

DECENTRALIZED
POLICY
CONSIDERATIONS

TYPE OF DEBT

UNIVERSITY DEBT

POOLED PROGRAM

VCU
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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

- Policy Development Team
- Internal Team
- External Team
- Administration
- Governing Body
VCU TEAM STRUCTURE

Development

Policy Development Team

Approval

Board & Senior Administration

Implementation

Bond Compliance Committee

Departments

Departments

Bond Counsel
VCU BOND COMPLIANCE COMMITTEE

Controller: Monitor Private Use and Training

Capital Planning: Track Bond Proceeds

Senior Administrator: Investor Relations and Oversight

Research: Oversee Research Contracts

Treasury: Issuance and Disclosure

General Counsel: Legal and Compliance

BOND COMPLIANCE COMMITTEE
VCU Departments to Implement Plan

<table>
<thead>
<tr>
<th>Treasury</th>
<th>Administering and overseeing the day to day aspects of the program</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Supporting the Bond Compliance Committee</td>
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<tr>
<td></td>
<td>Maintaining records relating to the issuance of the University’s tax-exempt bonds,</td>
</tr>
<tr>
<td></td>
<td>Investment of bond proceeds</td>
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<tr>
<td></td>
<td>Annual disclosure “event disclosure” and voluntary disclosure</td>
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<tr>
<td></td>
<td>Maintain written procedures to ensure compliance with the University’s Tax-Exempt Bond Compliance Policy</td>
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# 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

<table>
<thead>
<tr>
<th>Facilities Management</th>
<th>Responsible for maintaining records on the project expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Allocation of bond proceeds including construction contracts, vendor invoices, payments and requisitions</td>
</tr>
<tr>
<td></td>
<td>Maintain written procedures to ensure compliance with the University’s Tax-Exempt Bond Compliance Policy</td>
</tr>
</tbody>
</table>
## VCU Departments to Implement Plan

| Research | Responsible for maintaining records relating to research contracts  
<table>
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<tbody>
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<td></td>
<td>Maintain written procedures to ensure compliance with the University’s Tax-Exempt Bond Compliance Policy</td>
</tr>
</tbody>
</table>
## VCU Departments to Implement Plan

<table>
<thead>
<tr>
<th>General Counsel</th>
<th>Bond counsel opines on the validity and tax exempt status of the bonds.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The University counsel opines on due authorization of the bonds and compliance with existing bond documents and similar restrictions</td>
</tr>
</tbody>
</table>
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

Post Compliance Policy

Annual Private Use Survey

Detailed Procedures

Annual Training
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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 ongoing 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