

A8.560 Post-Issuance Tax Compliance Procedures for Tax-Exempt  
and Build America Bonds

1. Purpose

To establish policies and procedures in connection with tax-exempt or Build America Bonds ("Bonds") issued by the Board of Regents of the University of Hawaii (the "University") to ensure that the University complies with all applicable post-issuance requirements of federal income tax law in a systematic and timely basis in order to preserve the tax-exempt or Build America Bond status of the Bonds.

2. Objectives

To establish requirements, guidelines and procedures for the timely systematic review, consultation and processing of all applicable post-issuance documents in connection with Bond-financed assets.

3. Applicability

These procedures shall apply to all applicable post-issuance requirements including, without limitation, all future contracts with respect to the use of Bond-financed assets and future contracts with respect to the use of output or throughput of Bond-financed assets.

4. Post-Issuance Compliance Requirements and Procedures

a. External Advisors/Documentation

The University Vice-President for Budget and Finance/Chief Financial Officer (the "Administrator") and other appropriate University personnel shall consult with bond counsel and other legal counsel and advisors, as needed, throughout the bond issuance process to identify requirements and establish procedures necessary or

appropriate so that the Bonds will continue to qualify for the appropriate tax status. Those requirements and procedures shall be documented in Tax Certificates and/or other documents finalized at or before issuance of the Bonds. The requirements and procedures shall also include future compliance with applicable arbitrage rebate requirements and all other applicable post-issuance requirements of federal tax law throughout (and in some cases) beyond the term of the Bonds.

The Administrator and other appropriate University personnel shall consult with bond counsel and other legal counsel or advisors, as needed, following issuance of the Bonds to ensure that all applicable post-issuance requirements are in fact met. This shall include, without limitation, consultation in connection with future contracts with respect to the use of Bond-financed assets and future contracts with respect to the use of output or throughput of Bond-financed assets.

Whenever necessary or appropriate, the University shall engage expert advisors (each a "Rebate Service Provider") to assist in the calculation of arbitrage rebate payable in respect of the investment of Bond proceeds. Whenever necessary or appropriate, the University shall engage expert advisors (each a "Post-Issuance Service Provider") to assist in tracking of potential private business use of the facilities financed or refinanced with proceeds from the Bonds.

b. Role of the University as Bond Issuer

Unless otherwise provided by University resolutions, unexpended Bond proceeds shall be held by the University and the investment of Bond proceeds shall be managed by the Administrator. The Administrator shall maintain records and shall provide regular, periodic statements to the University regarding the investments and transactions involving Bond proceeds.

If a University resolution provides for Bond proceeds to be administered by a trustee, the trustee shall provide regular, periodic (monthly) statements to the University regarding the investments and transactions involving Bond proceeds.

c. Arbitrage Rebate and Yield

Unless the Tax Certificate specifically provides that bond counsel has advised that arbitrage rebate(s) will not be applicable to an issue of Bonds:

- (1) The University shall engage the services of a Rebate Service Provider, and the University or the Bond trustee shall deliver periodic statements concerning the investment of Bond proceeds to the Rebate Service Provider on a prompt basis.
- (2) Upon request, the Administrator and other appropriate University personnel shall provide to the Rebate Service Provider additional documents and information reasonably requested by the Rebate Service Provider.
- (3) The Administrator and other appropriate University personnel shall monitor efforts of the Rebate Service provider and assure payment of required rebate amounts, if any, no later than 60 days after each 5-year anniversary of the issue date of the Bonds, and no later than 60 days after the last Bond of each issue is redeemed.
- (4) During the construction period of each capital project financed in whole or in part by Bonds, the Administrator and other appropriate University personnel shall monitor the investment and expenditure of Bond proceeds and shall consult with the Rebate Service Provider to determine compliance with any applicable exceptions from the arbitrage rebate requirements during each 6-month spending period up to 6 months, 18 months, or 24 months, as applicable, following the issue date of the Bonds.

The University shall retain copies of all arbitrage reports and trustee statements as described in paragraph 4e. Record Keeping Requirements.

d. Use of Bond Proceeds

The Administrator and other appropriate University personnel, or if applicable, a Post-Issuance Service Provider, shall:

- (1) Monitor the use of Bond proceeds, the use of Bond-financed assets (e.g., facilities, furnishings or equipment) and the use of output or throughput of Bond-financed assets throughout the term of the Bonds (and in some cases beyond the term of the Bonds) to ensure compliance with covenants and restrictions set forth in applicable University resolutions and Tax Certificates.
- (2) Maintain records identifying the assets or portion of assets that are financed or refinanced with proceeds of each issue of Bonds.
- (3) Consult with bond counsel and other professional expert advisors in the review of any contracts or arrangements involving use of Bond-financed facilities to ensure compliance with all covenants and restrictions set forth in applicable University resolutions and Tax Certificates.
- (4) Maintain records for any contracts or arrangements involving the use of Bond-financed facilities as may be necessary or appropriate to document compliance with all covenants and restrictions set forth in applicable University resolutions and Tax Certificates.
- (5) Meet at least annually with personnel responsible for Bond-financed assets to identify and discuss any existing or planned use of Bond-financed assets or output or throughput of Bond-financed assets to ensure that those uses are consistent with all covenants and restrictions set forth in applicable University resolutions and Tax Certificates.

e. Record Keeping Requirements

All relevant records and contracts shall be maintained as described in this section. Unless otherwise specified in applicable University resolutions or Tax Certificates, the University shall maintain the following documents for the term of each issue of Bonds (including refunding Bonds, if any) plus at least three years:

- (1) A copy of the Bond closing transcript(s) and other relevant documentation delivered to the University

at or in connection with closing of the issue of the Bonds.

- (2) A copy of all material documents relating to capital expenditures financed or refinanced by Bond proceeds including, without limitation, construction contracts, purchase orders, invoices, trustee requisitions and payment records, as well as documents relating to costs reimbursed with Bond proceeds and records identifying the assets or portion of assets that are financed or refinanced with Bond proceeds.
- (3) A copy of all contracts and arrangements involving private use of Bond-financed assets or for the private use of output or throughput of Bond-financed assets.
- (4) Copies of all records of investments, investment agreements, arbitrage reports and underlying documents, including trustee statements.