

# NEW YORK UNIVERSITY

## UNIVERSITY POLICIES

**Title: Record Retention For Tax-Exempt Bond Financings**

**Policy Number: 003**

**Effective Date: October 1, 2007**

**Issuing Authority: Martin Dorph, Senior Vice President for Finance and Budget**

**Responsible Officer: Martin Dorph, Senior Vice President for Finance and Budget**

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### **PURPOSE OF POLICY**

NYU finances certain capital projects through the issuance of qualified 501(c)(3) tax-exempt bonds. “Tax-exempt” means that the interest paid to bondholders is not subject to federal tax. Tax-exempt status remains throughout the life of the bonds, but this status can be lost if certain applicable federal laws do not remain satisfied. Other consequences can result from failure to comply with restrictions relating to arbitrage, timing and use of bond proceeds, and other aspects of a bond issue. The purpose of this policy of New York University is to provide direction and guidance regarding retention of records relating to tax-exempt bond financings for the period of time required by the Internal Revenue Code.

### **WHO NEEDS TO KNOW THIS POLICY**

University staff involved in any stage or aspect of any NYU bond issue, including but not limited to those who manage, direct or influence:

- Pre-issuance processes and decision-making including identification of eligible projects and due diligence on environmental and tax aspects of projects
- The use of bond proceeds and timing of use
- Investing of bond funds and arbitrage processes
- Private use of property financed by tax-exempt bonds, including leases, and management and services agreements
- The creation and retention of documentation relating to use of proceeds, arbitrage, return filings, and private usage
- Recording and reporting of financial transactions related to tax-exempt bonds

### **DEFINITIONS**

- Qualified 501(c)(3) bonds – Tax exempt bonds, the proceeds of which are used by a 501(c)(3) charitable organization in furtherance of its exempt purpose. The bonds are issued by a state or local government agency such as the Dormitory Authority of the State of New York (“DASNY”) and are supported by a repayment obligation from the charitable organization to the governmental agency.

- Private business use – Examples of private business use include 1) unrelated trade or business use and 2) private use by parties other than the charitable organization of the tax-exempt debt-financed property. Generally, no more than 5% of the proceeds of tax-exempt bonds may be used for private business use of the tax-exempt financed property. For purposes of the 5% limit on private business use, bond issuance costs financed with bond proceeds (approximately 2%) are included as private business use, so typically private use is limited to 3%.
- Arbitrage - Investment earnings on bond proceeds in excess of the bond interest paid to bondholders during the construction period, adjusted for certain expenses.
- Applicable federal law –includes the Internal Revenue Code and regulations promulgated thereunder, including IRC sections 145-150 and related 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 NYU.
- Tax certificate - The agreement signed by the charitable organization (NYU) at the closing of the bond issuance in which the charitable organization makes certain representations, warranties and covenants relating to its 501(c)(3) status, the tax eligibility of the projects and the organization's operations.

## **POLICY**

It is the policy of New York University to retain all records relating to tax-exempt bond financings for the period of time required by the Internal Revenue Code. As of the date of this policy, IRS guidelines require that Tax-Exempt Bond Records be retained for the entire term of the bond issue plus three years and, in the case of a bond issue refunded by one or more subsequent issues, for the combined term of the issues plus three years.

For the purposes of this policy, Tax-Exempt Bond Records means all documents, reports, accounts and certifications relating to the (i) issuance of tax-exempt bond financing, (ii) expenditure of bond proceeds, (iii) investment of bond proceeds and (iv) use of bond-financed property by public or private sources. Examples of bond issuance documents include the trust indenture, loan agreement and bond counsel opinion; examples of expenditures include drawdown backup materials, reimbursements and declarations of official intent; and examples of private use of bond-financed property include management and service agreements, research contracts, concession agreements and food service contracts.

## ***Implementation***

The Office of the Senior Vice President for Finance and Budget is responsible for implementing procedures for tracking Tax-Exempt Bond Records and continued monitoring of private use, with the assistance of the Office of Legal Counsel, the Compliance Officer, the School of Medicine's Sponsored Programs Administration, the School of Medicine's Office of Clinical Trials, and the Office of Industrial Liaison/Technology Transfer.

Tax-Exempt Bond Records may be kept exclusively in electronic format only in accordance with the requirements of IRS guidelines (IRS Rev Proc 97-22). If a division of the Office of the Senior Vice President for Finance and Budget wishes to transfer Tax-Exempt Bond Records to an offsite storage facility due to space constraints, advance notice of such relocation should be given to the Senior Vice President for Finance and Budget and to the Office of Legal Counsel identifying the storage facility and providing sufficient information to permit prompt retrieval of such records.

### ***Responsibilities***

1. The Office of the Senior Vice President for Finance and Budget is responsible for maintaining Tax-Exempt Bond Records relating to the expenditure of bond proceeds and investment records for the University's tax-exempt bonds. The Office of the Senior Vice President for Finance and Budget is located at 70 Washington Square South, New York, New York 10012.

2. The Office of Legal Counsel is responsible for maintaining Tax-Exempt Bond Records relating to the issuance of the University's tax-exempt bonds. The Office of Legal Counsel is located at 70 Washington Square South, New York, New York 10012.

3. The Office of the Controller (within the Office of the Senior Vice President for Finance and Budget) is responsible for maintaining Tax-Exempt Bond Records relating to (a) sponsored research other than industry-sponsored research (clinical and non-clinical) and material transfers for the University, and (b) industry-sponsored clinical research and clinical trials for the College of Dentistry. The Controller's office is located at 726 Broadway, New York, New York 10003.

4. The School of Medicine's Sponsored Programs Administration is responsible for maintaining Tax-Exempt Bond Records relating to sponsored research at the School of Medicine other than industry-sponsored research (clinical and non-clinical) and material transfers. The Administration's office is located in Greenberg Hall, SC-181, New York, New York 10016.

5. The School of Medicine's Office of Clinical Trials is responsible for maintaining Tax-Exempt Bond Records relating to industry-sponsored clinical research and clinical trials for the School of Medicine. The Office of Clinical Trials is located at the Veterans Administration Building, 423 East 23rd Street, 10th floor, West Wing.

6. The Office of Industrial Liaison/Technology Transfer is responsible for maintaining Tax-Exempt Bond Records relating to industry-sponsored non-clinical research and material transfers. The Office of Industrial Liaison/Technology Transfer is located at 650 First Avenue, 5<sup>th</sup> Floor, New York, New York 10016.

7. All department managers or other University personnel involved in the leasing, licensing or use of University space which may give rise to unrelated business income or private use are responsible for forwarding such agreements to the Office of Legal Counsel and advising the Office of the Senior Vice President for Finance and Budget of the terms of such transactions, including the income generated by such use.

### ***Grounds For Disciplinary Action***

Any employee who violates this policy and discards or destroys any Tax-Exempt Bond Record during the applicable time period shall be subject to disciplinary proceedings.

Any question concerning implementation or compliance with this policy should be directed to the Senior Vice President for Finance and Budget (212-992-8282) or the Office of Legal Counsel (212-998-2240).

## **Notes**

### **1. Dates of official enactment and amendments:**

Adopted on October 1, 2007

### **2. History:**

None

### **3. Cross References**

***See Policy #4 General Compliance Guidelines for Tax Exempt Bonds***