NEW YORK UNIVERSITY
UNIVERSITY POLICIES

Title: General Compliance Guidelines for Tax Exempt Bonds
Policy Number: 004
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

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. This document identifies the compliance areas of tax-exempt bond financing and NYU's policy of fulfilling all requirements in these areas during both pre- and post-issuance processes.

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

- <u>Qualified 501(c)(3) bonds</u> – 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 University's policy to comply with all applicable laws, regulations and contracts applicable to its tax-exempt bonds. The Office of the Senior Vice President for Finance and Budget shall create and maintain a written manual of guidelines and procedures to document the processes used to ensure compliance with applicable law, regulation and contracts, and shall designate the positions and individuals responsible for these processes.

NYU also complies with the recommendations contained in IRS publication 4077, Tax-Exempt Bonds for 501(c)(3) Charitable Organizations and the report of the Advisory Committee on Tax Exempt and Government Entities, After the Bonds are Issued: Then What?. Highlights of NYU's application of certain rules, recommendations and guidelines contained in these resources are:

- Use of bond proceeds and project eligibility
  Bond proceeds shall be disbursed for:
  - Project costs
  - Capitalized interest (i.e. initial obligations to bondholders)
  - Bond issuance costs

  To be an eligible project, the property being financed must be owned or, under certain circumstances, leased by NYU and the intended use must be consistent with the University's 501(c)(3) exempt purposes. In addition, the project's address must be listed in the TEFRA notice and must have received environmental approval under State Environmental Quality Review (SEQR). The University's Treasurer's Office will apply additional technical criteria to determine eligibility of projects (e.g. the useful life of projects).

- Timing of the use of bond proceeds
  At the time that bonds are issued it must be intended and expected that the project will be completed within three years of issuance.

- Private business use of tax-exempt financed property
  Five percent or less of bond issue proceeds may be used for private business purposes, and such use may only occur if in accordance with tax certificate provisions and in compliance with applicable federal law. Costs of issuance are counted against the 5% limit.

- Change of use
  Change of a project's use or contemplated change of use must be reported to the Treasurer's Office ***and*** the Controller's Department prior to the implementation of the proposed change in use to ensure compliance with applicable regulations.

- Arbitrage yield restriction and rebate
  The University must comply with the yield restriction requirements of section 148(a) and rebate requirements of section 148(f), subject to spending exceptions.

- Filing of Returns
  The University's Treasurer's Office works with DASNY to prepare and file returns with the IRS relating to arbitrage.

- Record retention
  The University has adopted a record retention policy relating to tax-exempt bonds, pursuant to which records relating to tax-exempt bonds shall be maintained for the entire term of the bond issue plus three years, or, in the case of an issue refunded by one or more subsequent issues, for the combined term of the issues plus three years.

Questions about this policy should be addressed to Martin Dorph, Senior Vice President for Finance and Budget.

Notes

1. Dates of official enactment and amendments:
Adopted by on October 1, 2007
2. History:
None
3. Cross References
***See* Policy #3: Record Retention For Tax-Exempt Bond Financings**