

Brandeis University
Post-Issuance Tax Compliance Procedures
For Tax-Exempt Obligations

I. INTRODUCTION

These post-issuance compliance procedures of Brandeis University (the “Institution”) are designed to provide for the effective management of the Institution’s post-issuance compliance program for tax-exempt obligations in a manner consistent with state and federal laws applicable to such obligations. These procedures will be reviewed on at least an annual basis and will be updated as necessary to accurately reflect compliance responsibilities.

II. POST-ISSUANCE TAX COMPLIANCE

The Chief Financial Officer and Treasurer of the Institution shall be the primary bond compliance officer responsible for each issuance of tax-exempt bonds, notes, financing leases, or other obligations (collectively referred to herein as “bonds” or “Bonds”) benefiting the Institution. All information related to each bond issue and the facilities, equipment and other assets financed by such issue shall be maintained by or on behalf of the Chief Financial Officer and Treasurer.

A. Tax Certificate and Continuing Education

- 1. Tax Certificate** - A Tax Certificate is prepared for each issuance of Bonds. Immediately upon issuing any bonds, the Chief Financial Officer and Treasurer, in conjunction with the Institution’s bond counsel and financial advisor, if any, shall review the Tax Certificate and make notes regarding specific compliance issues for such bond issue on the Post-Issuance Compliance Notes form, which is attached hereto as Exhibit A (the “Notes”). The Tax Certificate and Notes shall clearly define the roles and responsibilities relating to the ongoing compliance activities for each bond issue and will identify specific compliance requirements.
- 2. Continuing Education** - The Chief Financial Officer and Treasurer will actively seek out advice of bond counsel on any matters that appear to raise ongoing tax law compliance concerns and may attend or participate or direct other Institution personnel to attend or participate in seminars, teleconferences, etc. that address federal tax law compliance issues and developments in the public finance arena. National organizations such as the Securities Industry and Financial Markets Association (SIFMA) and the National Association of Bond Lawyers (NABL) offer numerous training opportunities and materials that may be useful to the Chief Financial Officer and Treasurer and other Institution employees. Additional useful materials can be found on the Internal Revenue Service website at www.irs.gov/Tax-Exempt-Bonds.

B. Tax-Exempt Bonds Compliance Monitoring

- 1. Ownership of Bond-Financed Property** - One of the requirements with respect to bonds issued for the benefit of 501(c)(3) organizations is that 100% of the bond-financed property must be owned by a 501(c)(3) organization or a local governmental unit throughout the lesser of (i) the term of the bonds and any refunding bonds or (ii) the useful life of the property. Any proposed sale, exchange, trade-in, or other disposition of ownership of or title to bond-financed property (other than a sale for salvage value or the disposal of such property as waste at the end of its useful life to the Institution) should be reviewed with bond counsel in a timely fashion so that appropriate “remedial action” to protect the tax-advantaged status of the bonds can be taken, if required.
- 2. Restrictions against Private Use** – The Chief Financial Officer and Treasurer will continuously monitor the expenditure of bond proceeds and the use of facilities or equipment financed with bonds to ensure compliance with Section 141 of the Internal Revenue Code (the “Code”), which generally establish limitations on the use of bond-financed property in an unrelated trade or business of the Institution or by non-tax exempt or governmental entities, such as individuals using bond-financed assets on a basis other than as a member of the general public, corporations and the federal government and its agencies and instrumentalities.
 - a. Use of Bond Proceeds** – The Chief Financial Officer and Treasurer will monitor and maintain records with respect to expenditures to ensure that “new money” bond proceeds are being used on capital expenditures for exempt purposes in accordance with the bond documents (and also to facilitate the tracking of such expenditures with respect to refunding issues that refinance “new money” bonds) and document the allocation of all bond proceeds including “new money” and refunding purposes.
 - b. Use of the Bond-Financed Facility or Equipment**
 - i. Equipment assets financed or refinanced with bonds** will be listed in a schedule for each bond issue. The Chief Financial Officer and Treasurer will maintain (i) a list of all bond-financed equipment allocable to each bond issue and (ii) a record of such equipment’s expected useful life. Equipment assets generally are not to be sold or disposed of prior to the earlier of (a) the date the “new money” bonds and all subsequent refundings of such bonds are fully paid, or (b) the end of the useful life of such equipment.
 - ii. Constructed, renovated or acquired assets financed or refinanced with bonds** – In order to ensure that assets constructed, renovated or acquired using bond proceeds, such as buildings, real property improvements and other infrastructure assets, are not leased, sold or disposed of prior to the end of the term of the applicable bonds and of all subsequent refundings of such bonds:
 - Any asset constructed, renovated or acquired with bond proceeds shall be flagged in the Institution’s records, and
 - All uses of these assets will be monitored by the Chief Financial Officer and Treasurer.

- iii. **Change of Use** - If there is any proposal to change the use of a bond-financed facility from a qualified purpose to a use in which a private (or federal government) entity may have the use or benefit of such a facility, the Chief Financial Officer and Treasurer will consult with bond counsel prior to the occurrence of the proposed change in use to determine what impact, if any, the proposed change may have on the tax status of the applicable bonds. Examples of changes in use that can often present difficulties include entry into management contracts with third parties and leases of space to or other use of facilities by third parties (in some cases, even if the third party is itself a 501(c)(3) entity).

3. Qualification for Initial Temporary Periods and Compliance with Restrictions against Hedge Bonds

a. Expectations as to Expenditure of Bond Proceeds

- i. In order to qualify under the Code's arbitrage rules for an initial temporary period, generally of three (3) years, for a new money financing during which bond proceeds can be invested without regard to yield (but potentially subject to rebate), the Institution must reasonably expect to spend at least 85% of "spendable proceeds" by the end of the temporary period. In general, under Code Section 149, in order to avoid classification of an issue of bonds as "hedge bonds," the Institution must both (x) reasonably expect to spend 85% of the "spendable proceeds" of the bond issue within the three-year period beginning on the date the bonds are issued and (y) invest not more than 50% of the proceeds of the issue in investments having a substantially guaranteed yield for four (4) years or more. These expectations have been documented for the Institution's outstanding bond issues in the Tax Certificate executed in connection with each bond issue.
- ii. If, for any reason, the Institution's expectations concerning the period over which the bond proceeds are to be expended change from what was documented in the applicable Tax Certificate, such that the length of such period is expected to be substantially extended, the Chief Financial Officer and Treasurer will consult with bond counsel.

- b. Bond Proceeds Spending Schedule Compliance Monitoring*** – For as long as there are unspent "new money" proceeds of a bond issue, the Chief Financial Officer and Treasurer will compare and analyze the original aggregate anticipated capital project spending schedule and the actual expenditure payouts and reimbursements on each bond-financed project on an annual or more frequent basis. The purpose of this analysis is to determine the variances from the original spending schedule for each project and to document the reasons for these variances to provide a continual record on the spending progress of each bond-financed project. Factors relevant to the analysis include unexpected delays in the project timelines, extreme weather, contract time extensions due to unexpected events, supplemental agreements and any other factor with a potential to impact the progress or completion of the projects. Generally, there should be no effect on the tax-exempt status of the bonds under either the temporary period rules or the hedge bond rules if the actual disbursements do not meet the original project spending schedule, unless circumstances surrounding the actual

events cast doubt on the reasonableness of the stated expectations on the issuance date. Therefore, it is important for the Chief Financial Officer and Treasurer to update the progress of each project at least annually, and consult with bond counsel as to any substantial variance from the original schedule.

- c. ***Investment Earnings Monitoring*** – The Chief Financial Officer and Treasurer will compare and analyze the bond proceeds expenditure schedule and the actual investment earnings on each project on an annual or more frequent basis. The purpose of this analysis is to determine any variances from the expected expenditure schedule and to document the reasons for these variances.

4. *Arbitrage Rebate Compliance*

- a. ***General.*** Bonds may lose their tax-favored status, retroactive to the date of issuance, if they do not comply with the arbitrage restrictions of section 148 of the Code. Two sets of requirements under the Code generally must be applied in order to determine whether bonds satisfy section 148 of the Code: (1) the yield restriction requirements of section 148(a) and (2) the rebate requirements of section 148(f).

- b. ***Yield Restriction Requirements.*** The yield restriction requirements provide, in general terms, that gross proceeds of a bond issue may not be invested in investments earning a yield higher than the yield of the bond issue, except for investments (i) during one of the temporary periods permitted under the arbitrage regulations (including the initial three year temporary period described above and the 90-day temporary period for current refundings), (ii) in a reasonably required reserve or replacement fund or (iii) in an amount not in excess of the lesser of 5% of the sale proceeds of the issue or \$100,000 (the “minor portion”). Under limited circumstances, the yield on investments subject to yield restriction can be reduced through payments to the IRS known as “yield reduction payments.” The Tax Certificate will identify those funds and accounts associated with a particular issue of bonds known, as of the date of issuance, to be subject to yield restriction.

- c. ***Rebate Requirements***

- i. If, consistent with the yield restriction requirements, amounts treated as bond proceeds are permitted to be invested at a yield in excess of the yield on the bonds pursuant to one of the three exceptions to yield restriction referred to above, rebate payments may be required to be made to the U.S. Treasury. Under the arbitrage regulations, the aggregate rebate amount is generally the excess of the amount earned from bond funded investments over the amount that would have been earned from such investments had they been invested at the yield on the bonds. At least 90% of the rebate amount calculated for the first computation period must be paid no later than 60 days after the end of the first computation period. The amount of rebate payments required for subsequent computation periods (other than the final period) is that amount which, when added to the future value of prior rebate payments, equals at least 90% of the rebate amount. For the final computation period, 100% of the calculated amount must be paid. Rebate exceptions and expectations are generally documented for each bond issue in the Tax Certificate executed at

the time of such bond issue, although rebate liability and compliance is generally based on actual facts after bond closing.

- ii. As long as there are unspent proceeds of bonds, including amounts in a debt service reserve fund, the Institution should consider engaging an experienced independent rebate analyst to annually calculate any rebate that may result for that year and annually provide a rebate report to the Chief Financial Officer and Treasurer. Bond counsel can assist with referrals to qualified rebate analysts.

d. Timing of Rebate Payments

The Chief Financial Officer and Treasurer will ensure the proper calculation and payment of any rebate payment (and/or yield-reduction payment) at the required times:

- i. First installment due no later than 60 days after the end of the fifth (5th) anniversary of each bond issuance;
- ii. Succeeding installments at least every fifth (5th) following year;
- iii. Final installment no later than 60 days after retirement of last bond in the issue.

Generally, a final rebate installment will be due not later than 60 days after early retirement of the last bond in the issue in connection with a refunding of that issue. These payments are accompanied by returns filed on IRS Form 8038-T.

C. Record Retention

1. General

Section 6001 of the Code provides the general rule for the proper retention of records for federal tax purposes. The IRS regularly advises taxpayers to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the bondholders. In order to ensure the continued exclusion of interest, it is important, in all cases, that the Institution retain sufficient records to support characterization of the bonds as tax-exempt.

2. Storage of Records

- a. All records associated with any bond issue shall be stored electronically or in hard copy form at the Institution's main offices or at another location conveniently accessible to the Institution.
- b. The Chief Financial Officer and Treasurer will ensure that the Institution provides for appropriate storage of these records.
- c. If storing documents electronically, the Institution shall conform with IRS Revenue Procedure 97-22, 1997-1 C.B. 652 (as the same may be amended, supplemented or superseded), which provides guidance on maintaining books and records by using an electronic storage system. Bond counsel can furnish a copy of this Revenue Procedure if needed.

3. ***Bond-Related Records***

The Institution shall maintain bond records as defined in this section for the longer of the life of the bonds plus three (3) years or the life of refunding bonds (or series of refunding bonds) that refinance the bonds plus three (3) years. Bond records shall include the following documents:

a. Pre-Issuance Documents

- i. ***Guaranteed Investment Contracts (“GICs”) and Investments (including Treasury State and Local Government Series obligations (“SLGs”))*** – if applicable, the Chief Financial Officer and Treasurer shall retain all documentation regarding the procurement of each GIC or other investment acquired on or before the date of bond issuance, including as applicable the request for bids, bid sheets, documentation of procurement method (i.e., competitive vs. negotiated), etc. If investments other than SLGs are used for a defeasance escrow, the documentation should include an explanation of the reason for the purchase of such non-SLGs securities and documentation establishing the fair value of the securities and compliance with safe harbor bidding rules. If SLGs are purchased, copies of all preliminary and/or final subscriptions shall be maintained.
- ii. ***Anticipated Capital Spending Schedule*** – the Chief Financial Officer and Treasurer shall retain all documentation and calculations relating to the anticipated capital spending schedule used to meet the “reasonable expectations” test and use of proceeds tests (including copies of contracts with general and sub-contractors or summaries thereof).
- iii. ***Issue Sizing*** – the Chief Financial Officer and Treasurer shall maintain a copy of all financial advisor’s or underwriter’s structuring information.
- iv. ***Bond Insurance or other Credit Enhancement*** – if applicable, the Chief Financial Officer and Treasurer shall maintain a copy of insurance and credit provider quotes and calculations supporting the cost benefit of bond insurance or other credit enhancement.
- v. ***Forward Starting Swaps or Other Qualified Hedge Documentation*** – if applicable, the Chief Financial Officer and Treasurer shall retain all documentation regarding any interest rate swap agreement(s) entered into on or before the date of bond issuance relating to the bonds, including any swap identification certificates entered into with respect thereto.
- vi. ***Costs of Issuance documentation*** – the Chief Financial Officer and Treasurer shall retain all invoices, payments and certificates related to costs of issuance of the bonds.

b. Issuance Documents

- i. The Chief Financial Officer and Treasurer shall retain the bound bond transcript and/or digital copy thereof delivered from bond counsel.

c. Post-Issuance Documents

- i. **Post-Issuance Guaranteed Investment Contracts and Investments (including SLGs)** – the Chief Financial Officer and Treasurer shall retain all documentation regarding the procurement of any GIC or other investment acquired after bond issuance, including as applicable the request for bids, bid sheets, documentation of procurement method (i.e., competitive vs. negotiated), etc. If investments other than SLGs are used for a defeasance escrow, the documentation should include an explanation of the reason for the purchase of such non-SLGs securities and documentation establishing the fair value of the securities and compliance with safe harbor bidding rules. If SLGs are purchased, copies of all preliminary and/or final subscriptions shall be maintained.
- ii. **Post-Issuance Swap or Other Qualified Hedge Documentation** – the Chief Financial Officer and Treasurer shall retain all documentation regarding any interest rate swap agreement(s) entered into after date of bond issuance relating to the bonds, including any swap identification certificates entered into with respect thereto.
- iii. **Interest Rate Resets** – for bonds bearing interest at variable rates, records of each rate reset.
- iv. **Records of Investments** – statements of earnings and any other documentation regarding investments acquired with bond proceeds shall be retained by the Chief Financial Officer and Treasurer.
- v. **Investment and Expenditure Activity Statements** – the Chief Financial Officer and Treasurer shall maintain or shall cause to be maintained all invoices and other spending records relating to expenditures of bond proceeds for equipment purchases and constructed, renovated or acquired projects or for any other purpose, as well as all records relating to the investment of such proceeds prior to expenditure. Such records may be maintained either electronically or in hard copy form.
- vi. **Records of Compliance**
 - **Qualification for Initial Temporary Periods and Compliance with Restrictions Against Hedge Bond Documentation** – the Chief Financial Officer and Treasurer shall prepare the annual analysis described in Section II(B)(3) of this document and maintain these records.
 - **Arbitrage Rebate Reports** – may be prepared by the Chief Financial Officer and Treasurer or a third party as described in section II(B)(4)(c)(ii) of this document and copies of all such reports will be retained by the Chief Financial Officer and Treasurer.
 - **Rebate Returns and Payment** – shall be prepared at the direction of the Chief Financial Officer and Treasurer and filed as described in Section II(B)(4)(d) of this document.

- ***Contracts under which any bond proceeds are spent (consulting engineering, acquisition, construction, etc.)*** - the Chief Financial Officer and Treasurer shall obtain copies of these contracts and retain them for the bond record.

d. General

- Audited Financial Statements*** – the Chief Financial Officer and Treasurer will maintain copies of the Institution’s annual audited financial statements.
- Reports of any prior IRS Examinations*** – the Chief Financial Officer and Treasurer will maintain copies of any written materials pertaining to any IRS examination of the Institution’s bonds.

III. VOLUNTARILY CORRECTING FAILURES TO COMPLY WITH POST-ISSUANCE COMPLIANCE ACTIVITIES

If, in the course of monitoring compliance with applicable federal tax laws, a potential violation is discovered in connection with an issue of its bonds, the Institution may be able to address the violation through one of the methods listed below. The Institution should work with its bond counsel to determine the best way to proceed if a violation is discovered or suspected.

- Taking remedial actions permitted under the Treasury Regulations*** – Depending upon the nature of the potential violation and the timing of the discovery of the potential violation, it may be possible for the Institution to take “remedial action” under applicable Treasury Regulations to protect the tax-advantaged status of the bonds through timely action. Depending upon the facts, such remedial action might involve a prompt redemption or defeasance of all or a portion of the outstanding bonds or, in some cases, the tracing of sale or other disposition proceeds or the bond-financed assets to another tax law compliant use. It is essential, however, that the potential violation be brought to the attention of bond counsel as soon as possible because the remedial action rules are subject to time limits.
- Utilizing the Voluntary Closing Agreement Program (VCAP)*** - The Internal Revenue Manual establishes a voluntary closing agreement program for tax-benefited bonds whereby bond borrowers can disclose and resolve tax law violations through closing agreements with the Internal Revenue Service in a manner that preserves the tax-benefited status of the bonds.

IV. POST ISSUANCE TAX COMPLIANCE PROCEDURES REVIEW

The Chief Financial Officer and Treasurer shall review these procedures at least annually, and implement revisions or updates as deemed appropriate, in consultation with bond counsel.

Exhibit A

FORM OF POST ISSUANCE COMPLIANCE NOTES [Name of Bonds]

Transaction Parties

Bond Counsel:

Trustee/Paying Agent:

Bondowner/Purchaser:

Underwriter:

Financial Advisor:

Rebate Specialist:

Other:

Purpose:

[See attached Schedule A for list of assets financed/refinanced, useful life and placed in service information.]

Private Use:**[Other Tax-Related Issues:]**

Schedule A
[Name of Bonds]

Allocation of Bond Proceeds to Project Expenditures

Project Information:

<u>Project Segment</u>	<u>Bond Proceeds Applied</u>	<u>Other Moneys Applied</u>	<u>Estimated Useful Life of Not Less Than:</u>	<u>Actual In- Service Date</u>