FAU FINANCE CORPORATION

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Tax-Exempt Bond Compliance Policy

I. Introduction

This policy sets forth the FAU Finance Corporation's (FAUFC) methodology for ensuring continued post-issuance compliance with Internal Revenue Service requirements pertaining to tax-exempt bonds (TEBs). TEBs are valid debt obligations used by the FAUFC to finance construction of facilities. This tax-exempt status remains throughout the life of the debt provided that all applicable federal tax laws are satisfied. Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of debt proceeds and use of debt-financed property.

The Board of Directors will comply with all requirements of federal and state law relating to its bonds, including but not limited to, laws relating to maintaining the exemption from taxation of interest payments on the bonds issued as tax exempt obligations, laws relating to maintaining the qualifications for Build America Bond (BAB) subsidy payments, and continuing secondary market disclosure of information regarding the bonds.

II. Policy Statement

TEBs are debt obligations, the proceeds of which are used by the FAUFC to finance construction of all or a portion of its facilities and those supporting Florida Atlantic University (FAU or University). The obligation to maintain the tax-exempt status of the TEBs remains throughout the life of the bonds. However, this status can be lost if certain applicable federal income tax requirements are not satisfied during the entire period the TEBs are outstanding. Taxability of the interest on the TEBs or other lesser consequences can result from failure to comply with restrictions relating to arbitrage, timing and use of bond proceeds, and other aspects of bond issue. Post-issuance tax compliance begins with the debt issuance process itself and provides for a continuing focus on investments of debt proceeds and use of debt-financed property. Post-issuance compliance responsibilities include:

- Tracking that proceeds of a debt issuance are spent on qualified tax-exempt debt purposes;
- Maintaining detailed records of the expenditure and investment of the proceeds of the TEBs;
- Ensuring the project financing is used in a manner consistent with the legal and federal income tax requirements;
- Providing necessary disclosure information regarding financial and operating status as required.

III. Procedures

A. Organizational Responsibility

The Executive Director has primary responsibility for ensuring and monitoring post-issuance compliance with TEB regulations. The Executive Director is also responsible for approving certain project-level decisions impacting TEB compliance. The Treasurer is responsible for tracking draws and expenditures of all debt proceeds, including for cost of issuance. The University Attorney's office and external bond counsel is responsible for providing guidance on applicable federal and state laws.

B. Tracking Expenditures

TEB proceeds (and investment earnings thereon) must be spent on qualified bond purposes and should be spent within the applicable temporary period. Special rules exist for BAB proceeds, which can **only** be used for capital expenditures, refunding proceeds, and pooled financings. The FAUFC allocates debt proceeds to the various projects being funded with the TEBs. All FAUFC contracts and purchase orders for bond-financed capital expenditures are approved by the Executive Director, or in his absence, his/her designee. If the FAUFC delegates such authority to the University, the Senior Vice President of Financial Affairs of FAU, or his/her designee shall be the approving authority. All FAU purchase orders are approved in accordance with FAU's Purchasing policies and procedures. All spending of the funds toward a financed project's costs is tracked by the Treasurer and/or the Controller's Office at FAU and the sources of such capital expenditures (e.g., bond proceeds, equity or donations) are identified. All donations restricted to a particular project are recorded as such by the applicable FAU foundation. In addition, all other uses of bond proceeds such as costs of issuance or deposits to reserve funds are identified on a bond issue-by-issue basis. A final allocation of expenditures for a bond-financed project is made when required under the applicable federal income regulations.

As bond proceeds are spent for qualified expenditures, requests are to be made to drawdown the money from the Trustee Bank within 60 days after payment of the original expenditure. In addition, no more than the lesser of $5,000,000 or 5% of TEB proceeds may be used to finance a loan to any person other than a state or local government. To ensure that all restrictions and time periods are met, the FAUFC shall work with the University counsel and outside bond counsel prior to making the expenditure if it plans to use TEB proceeds for reimbursement, to make a loan, or if money other than TEB proceeds will be spent on the project.

C. Private Business Use

The FAUFC's TEBs, which are qualified 501(c)(3) bonds, will lose their tax-exempt qualified status if more than 10 percent of the net proceeds[1] of the bond issue are to be used for any private business use. "Private business use" (PBU) means use by any person other than a state or local government unit, including:

- business corporations;
- partnerships;
- limited liability companies;
- associations;
- nonprofit corporations;
- natural persons engaged in trade or business activity;
- the United States; and
- any federal agency,

For this reason, this Policy prohibits the approval of any use of TEBs for PBU in excess of 10 percent of a bond series' net proceeds. Because the IRS considers the use of the bond proceeds to finance the bond issuance costs as PBU, the allowable PBU percentage is reduced by the cost of issuance percentage.[2] The FAUFC will comply with IRS code section 141(b)(1) for PBU.

PBU occurs when private business users are given special legal entitlements to use TEB-financed property. Private business users include corporations other than the issuer if their on-campus activities constitute unrelated trade or business for either the issuer or the University; and government entities other than the fifty states and their subdivisions. Special legal entitlements to TEB-financed property fall into the following categories,

- Renovations of property leased to the University
- Leases/Use of Bond-Financed property
- Management contracts
- Utility output contracts
- Sponsored research agreements (excluding clinical trial research agreements)
- Clinical trial agreements
- Material transfer agreements
- Corporate researchers working at the University
- Unrelated trade or business activities
- Naming rights
- Other actual or beneficial use of University property

PBU's are tracked by the department responsible for the operations for which the TEB are issued.

[1] Under IRC section 150(a)(3), ―net proceeds means the proceeds of the issue (which under IRS Regulation 1.141-1 generally means the sale proceeds plus investment proceeds) less proceeds held in a reserve fund.
[2] IRC Section 147(g) limits the amount of bond proceeds that may be applied to finance the costs associated with the issuance of qualified 501(c)(3) bonds to 2% of the proceeds of the bond issue.

D. Record Retention

The Controller's Office will retain all records for the length of time required to comply with IRS TEB regulations. Currently, records of TEB issuances and related post-issuance compliance documentation must be maintained for the life of the bond, plus any refunding, plus three years. Basic records relating to any debt transaction will be maintained, as well as documentation evidencing the:

- Expenditures of bond proceeds;
- Use of debt-financed property; and
- Sources of payment or security for the bonds.

The Treasurer is responsible for identifying the documents to be retained, for identifying and training the person responsible for retaining each type of document, and for maintaining records showing the responsible person and the exact location of the records (either physical or electronic). No employee shall discard or destroy any information identified in the inventory during the period such records are required to be maintained.

E. Arbitrage and Rebate

Investments acquired with TEB proceeds must be purchased at fair market value and must be invested in a manner that complies with the TEB documents as well as with arbitrage rules. TEBs lose their tax-exempt status if they are classified as "arbitrage bonds." In general, arbitrage is earned when the gross proceeds of a bond issue are used to acquire investments that earn a yield that is "materially higher" than the yield on the bonds issued. The Internal Revenue Code contains two separate sets of requirements that must be complied with to ensure that TEBs are not arbitrage bonds. They are:

- Yield Restriction requirements, which generally provide that in the absence of an applicable exception, bond issue proceeds may not be invested at a yield in excess of the bond yield; and
- Rebate requirements, which generally provide that when arbitrage is earned on an issue in excess of permitted amounts, the excess earnings must be paid to the U.S. Department of Treasury, even if an exception to the yield restriction requirements applies.

The FAUFC has engaged the services of an Arbitrage Compliance Servicer to provide written reports to assist the FAUFC in monitoring yield on investments and calculating any rebate that may be due. If the Servicer provides a written report that rebate is due, the FAUFC will make any required payments to the IRS.

F. Disclosures and Filings

The FAUFC will comply with continuing disclosure requirements as stated in the bond documents. The FAUFC will file, or cause to be filed, all required tax returns within the time periods specified.

G. Continuity and Training

In furtherance of the policies set forth above, the Executive Director, the Treasurer and FAUFC counsel will take such steps as necessary to assure that the staff responsible for complying with requirements applicable to TEBs are trained to complete their responsibilities relating to the procedures set forth above. Such training will cover the purposes and importance of these procedures, as well as the details of the particular staff member's responsibilities. To provide for continuity of compliance with post-issuance debt requirements, the FAUFC has included as part of its routine monitoring and review a calendar of significant dates, an annual review of private use of facilities, and review of compliance with this policy.

H. Remedial Action

The department using TEB facilities is responsible for notifying the Executive Director before there is a change in use of any facility financed with tax-exempt debt. In the event such a change in use may result in the transfer of ownership of bond-financed property to a Non-exempt Person during the measurement period or in excessive PBU for a bond issue, the FAUFC may avail itself of rules under Treasury Regulation 1.141-12 which provide for "remedial action," including the redemption or defeasance of nonqualified bonds, or application of disposition proceeds to other qualifying capital expenditures. The FAUFC will seek the advice of bond counsel in the event remedial action may be required. To the extent a potential violation arises that cannot be corrected through remedial action, or in the event of a potential arbitrage violation, the FAUFC will seek the advice of bond counsel concerning its alternatives, which may include approaching the Internal Revenue Service under the Voluntary Closing Agreement Program.