STATE OF FLORIDA

DIVISION OF BOND FINANCE
OF THE STATE BOARD OF ADMINISTRATION

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TO: Florida State University

FROM: Division of Bond Finance

RE: Post-Issuance Compliance for Tax-Exempt Bonds

DATE: June 30, 2015

State agencies that receive and administer proceeds of tax-exempt or direct subsidy bonds (e.g. Build America Bonds) (collectively referred to herein as "Bonds") are responsible for assuring compliance with various tax and disclosure matters for as long as the Bonds remain outstanding. A failure to fulfill the responsibility for monitoring and maintaining adequate records may result in the Bonds losing their tax-exempt status or their direct subsidy.

The IRS has an active audit program to evaluate post-issuance compliance with tax-law requirements. A recent IRS study concluded that there is a high level of awareness of post-issuance compliance requirements; however, there appear to be significant misconceptions and inadequacies concerning the responsibilities of governmental issuers.

The purpose of this memorandum is to provide an overview of post-issuance compliance requirements and to remind the State Universities (the "University") of your general responsibilities in administering the proceeds of Bonds and monitoring the use of facilities financed thereby. Many of the items addressed in this memorandum are also covered in the executed Bond closing documents, including the tax compliance certificates signed by University officials, as well as covenants contained in the resolutions authorizing the issuance and sale of the Bonds.

After reviewing this memorandum, the University is encouraged to contact the Division of Bond Finance (the "Division") with any questions or requests for assistance with respect to the University's post-issuance compliance procedures. Additionally, **the University should consider implementing written procedures to help ensure post-issuance compliance.**

Investment of Bond Proceeds

Investments acquired with Bond proceeds must be purchased at fair market value and must be invested in a manner that complies with the Bond documents as well as with arbitrage rules. Arbitrage is the investment of Bond proceeds in higher yielding taxable securities. In general, Bond proceeds may be invested at an unrestricted yield during permitted time periods referred to as "temporary periods." For Bonds issued for capital projects, the temporary period is typically three years after issuance. Generally, any earnings from the investment of Bond proceeds at a yield in excess of the Bond yield must be rebated to the U.S. Treasury unless the requirements of available spending exceptions are met. The Division will monitor the investment of Bond proceeds and perform arbitrage rebate calculations annually. The Division will report any accrued arbitrage rebate liabilities, and the University will be required to pay any outstanding rebate amounts due.

Expenditure and Allocation of Bond Proceeds

Bond proceeds (and investment earnings thereon) must be spent on qualified Bond purposes and should be spent within the applicable temporary period (usually three years from issuance). NOTE: Special rules exist for Build America Bonds proceeds, which can **only** be used for capital expenditures; refunding proceeds; and pooled financings.

If the University plans to reimburse itself with Bond proceeds for qualified expenditures paid from other sources, certain restrictions may apply. These include: specific time limits and, in the case of certain expenditures made prior to the issuance of the Bonds, the adoption of a declaration by the University within 60 days after payment of the original expenditure indicating the University's intent to reimburse the expenditure with Bond proceeds. In addition, no more than the lesser of $5,000,000 or 5% of Bond 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 University should notify the Division, prior to making the expenditure, if it plans to use Bond proceeds for reimbursement or to make a loan or if money other than Bond proceeds will be spent on the project.

Record Retention

Written records (**which may be in electronic form**) must be maintained for each Bond issue for as long as the Bonds remain outstanding (including any refundings thereof), plus three years. This record retention policy enables the University to demonstrate to the IRS, in the event of an audit, that the University has fully complied with the federal tax requirements necessary to maintain the tax-exempt status of the Bonds. The records to be maintained for all Bond issues include:

(1) Records showing how Bond proceeds were invested;

(2) Records showing how and when Bond proceeds were spent, including purchase contracts, construction contracts, progress payment requests, invoices, receipts, cancelled checks, general ledgers, and allocations of Bond proceeds to make reimbursements for project expenditures made before the Bonds were issued;

    NOTE: The Division will use the Interest Apportionment statements provided by the Division of Treasury of the Department of Financial Services to track the investment and expenditure of Bond proceeds. Rebate amounts are calculated using the activity shown on the statements. The Division will assume that information to be accurate; however, if such activity does not reflect the actual expenditure of Bond proceeds, the University should notify the Division immediately and provide alternate documentation supporting actual expenditure dates and amounts and the reason for the deviation.

(3) Records showing the percent and type of private use of Bond financed property, including copies of leases, contracts or other documentation evidencing special use arrangements. Documentation (e.g. bond counsel opinions) showing that all special use arrangements affecting Bond-financed property are consistent with applicable restrictions on private business use and the restrictions on the use of Bond proceeds to make or finance loans to any person other than a state or local government should also be maintained.

Use of the Bond Financed Project

There are federal restrictions on private business use that apply to land, buildings, facilities and equipment ("property") that are financed with Bond proceeds. "Private business use" 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,

as a result of (1) ownership of the property or (2) use of the property under any one or more of the following:

- lease;
- management or service contract (except for certain "qualified" management service contracts);
- output contract for the purchase of electricity or water;
- privately sponsored research contract (except for certain "qualified" research contracts);
- "naming rights" contract;
- "public-private partnership" arrangement; or
- any similar use arrangement that provides special legal entitlements for the use of the Bond-financed property.

No more than 10% of Bond proceeds may be used for private business use, of which no more than 5% of Bond proceeds may be used for any "unrelated" private business use. Unrelated private business use is a private business use that is not functionally related to the governmental purposes of the Bonds.

The University must monitor private use compliance and notify the Division of any contemplated or actual changes in use of Bond-financed property. Prior to entering into any special use arrangement with a person other than a state or local government unit that involves the use of Bond-financed property, the University should consult with the Division and provide a description of the proposed nongovernmental use arrangement to determine whether such arrangement, if put into effect, will be consistent with the restrictions on private business use of the Bond-financed property. The University may also need to obtain an opinion from bond/tax counsel stating that the proposed private use will not jeopardize the tax-exempt status of the Bonds. The University must maintain records of all nongovernmental uses of Bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the Bonds that financed the property. In addition, the University should review the actual use of Bond-financed facilities at least annually and immediately notify the Division if there have been any changes in use.

Continuing Disclosure

In accordance with the Continuing Disclosure Agreement ("CDA") that the University signed at closing, the University assumes all responsibilities for any continuing disclosure requirements under Rule 15c2-12 of the Securities and Exchange Commission and must provide the Division with financial information, operating data, and other information as may be required from time to time, so that the Division can make the appropriate disclosure filings.

On an annual basis, the Division sends the University a letter requesting the financial information and operating data specified in the CDA. Upon receipt, the Division reviews the information and works with the University to address any questions or concerns. After addressing all issues, the University signs a statement certifying the accuracy and completeness of the information presented. Upon receipt of the signed certification, the Division files the information on the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA) website. The Division may also request additional disclosure information from time to time, and the University is responsible for providing such additional information in a timely manner.