Policies and Procedures

SECTION: Financial	*NO.* 3.1.22.		
CHAPTER: General	*ISSUED:* 8/21/13	*REV. A*	*REV. B*
POLICY: **Tax-Advantaged Bond Post-Issuance Compliance Policy**			

1. **PURPOSE**

This policy provides procedures and guidelines to ensure that all of the outstanding Tax-Advantaged Bonds of the University remain in compliance with federal tax law requirements. For the purposes of this policy, "Tax-Advantaged Bonds" or "Bonds" means, collectively, an Issuer's Tax Credit Bonds and Tax-Exempt Bonds of which Creighton University (the "University") is a beneficiary. "Tax-Exempt Bonds" means the one or more series of bonds or other form of tax-exempt obligations that an Issuer has previously issued or may in the future issue for the benefit of the University, the interest on which is excludable from gross income of the owners thereof pursuant to Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended, and Income Tax Regulations promulgated pursuant thereto (the "Regulations," and collectively with such Sections, the "Code"), and includes qualified 501(c)(3) Bonds. "Tax Credit Bonds" means the one or more series of governmental purpose tax credit bonds or other form of obligations that an Issuer has previously issued or may in the future issue for the benefit of the University that entitle an Issuer, the owners of the Tax Credit Bonds, or any other permitted party to either a credit against federal income tax liability or a refundable credit from the United States Treasury. Certain of the University's capital projects have been or will be financed, refinanced or reimbursed through the issuance of Bonds (the "Bond-Financed Property"). Tax-advantaged status is intended to remain throughout the life of the Bonds, but this status can be lost if certain applicable federal laws and regulations are not followed. Other negative consequences to the University can result from failure to comply with restrictions relating to arbitrage, timing and use of Bond proceeds, and other aspects of a Bond issue. A list of the Bond-Financed Property can be obtained from the University's Vice President for Finance.

Remedial actions under the Code are sometimes available in the event of a failure to comply with these requirements. However, such remedies for non-compliance may not cover all violations of the requirements of the Code and other applicable requirements governing Tax-Advantaged Bonds benefiting the University. Certain remedial provisions also require that the non-compliance be identified and remedial action taken within a limited time after the violation. In instances where applicable remedial provisions are not available under the Code, the Issuer of the University's Bonds, upon being directed by the University, may request a voluntary closing agreement to address the violation under the Internal Revenue Service's Tax Exempt Bonds Voluntary Closing Agreement Program, described in IRS Notice 2008-31 ("VCAP"). This policy accordingly is also intended to provide written procedures to ensure timely identification of violations of federal tax requirements and timely correction of any identified violation through use of VCAP if self-remediation is not available under the Code. However, this policy does not address violations other than those related to federal tax requirements (e.g., sectarian use restrictions).

2. PROCEDURES AND GUIDELINES

2.1 General

2.1.1 The Vice President for Finance (the "Compliance Officer") is responsible for monitoring the compliance of the Bonds with all federal tax law requirements, will contribute to the safeguarding of the federal tax status of the Bonds, and will conduct reviews at least annually of the elements set forth in this policy for each issue of Bonds and will annually report to the Budget & Finance and Audit & Compliance Committees of the Board of Trustees regarding compliance with this policy.

2.1.2 In general, records pertaining specifically to Bonds will be retained over a period not less than the life of the Bonds plus 4 years. Specific records to be retained are addressed below in Section 2.4 of this policy and Exhibit 1 attached.

2.1.3 Education, training and information regarding Bonds will be obtained by the Senior Vice President for Operations, the Compliance Officer, the Associate Vice President for Finance and the Director of External Finance GAAP & Tax Policy and Compliance from publications by a nationally recognized municipal bond attorney or firm of municipal bond attorneys ("Bond Counsel"), Internal Revenue Service publications and seminars and other means as deemed appropriate, including consultation with the Office of the General Counsel of the University, external counsel and/or Bond Counsel at the time each Bond issue is delivered, to discuss applicable provisions of the Tax and No Arbitrage Certificates (or similar document) that apply to Bond-financed or refinanced assets. The Tax Certificate and other federal tax related closing documentation are referred to in this policy collectively as the "Tax Closing Documentation."

2.1.4 Filing of Form 8038 for each issue of Bonds shall be verified by the Compliance Officer by obtaining a copy of the filed 8038 from Bond Counsel with proof of filing.

2.1.5 The Compliance Officer, or his or her designee, will consult with the University's tax advisors on an annual basis, or more frequently if necessary (e.g., based on results of the arbitrage calculations described in 2.3.1 below), to confirm reporting of required information regarding the Bonds on the University's annual Form 990 and other required returns and filings. Copies of all such final returns are provided to the Senior Vice President for Operations and the Compliance Officer prior to filing. The Compliance Officer will monitor timely filing of such returns and proper and accurate inclusion of Bond related information required by Form 990 and Schedule K.

2.2 Bond Proceeds and Financed Assets: Investment and Private Use.

2.2.1 Bond proceeds will be invested and used as set forth in the Tax Certificates maintained in each respective Bond transcript.

2.2.2 The Tax Certificate will contain or have appended a schedule establishing each project's expected costs and economic life and will be maintained in each respective Bond transcript. In the event a project is amended and certain elements are changed from those originally set forth in the project schedule described in this Section 2.2.2, the University will prepare upon completion of each project, or earlier if advised by Bond Counsel, an amendment to the schedule showing the final project costs (including those funded from interest earnings), the related economic life of the project components and such other applicable changes to the project as a whole.

2.2.3 Minimizing any private use associated with the Bond-Financed Property, and confirming that any private use falls within applicable safe harbors, is a priority of the University. Examples of private business use include (a) unrelated trade or business use (regardless of whether taxable income is generated) and (b) private use by parties other than the University and its students of the Bond-Financed Property, including particularly by independent contractors and vendors serving the University. Leasing of any portion of a Bond-Financed Property generally creates private use.

2.2.4 Generally, no more than 5% of the proceeds of Bonds may be used for private business use of the Bond-Financed Property. For purposes of the 5% limit on private business use, Bond issuance costs financed with Bond proceeds (generally approximately 2%) are included as private business use and reduce the amount of private use that can be conducted in The Bond-Financed Property.

2.2.5 Accordingly, contracts and agreements relating to use of the Bond-Financed Property (including, without limitation, management contracts, service contracts, joint ventures, operating agreements, leases and research contracts) will be required by the University's Contract Policy and this policy to be reviewed prior to execution by the Office of the General Counsel and Bond Counsel for compliance with applicable federal requirements.

2.2.6 Upon closing, and throughout the term of the Bonds, the Compliance Officer will determine whether more than 5% of the proceeds of a Bond issue are invested, directly or indirectly, in federally insured deposits or accounts, or if the Bonds are otherwise directly or indirectly federally guaranteed and will consult with Bond Counsel in the event there is any question with respect to the Tax-Advantaged Bonds being federally guaranteed within the meaning of Section 149(b) of the Code.

2.2.7 (a) The Compliance Officer will establish such accounting controls as are necessary to guarantee that no more than the lesser of (i) 5% of the net proceeds or (ii) $15 million will be expended on projects used by persons other than (i) one or more governmental units, or (ii) a 501(c)(3) organization in related trades or businesses.

(b) The Compliance Officer will take such measures to ensure that the University retains its status as a 501(c)(3) organization at all times that any Tax-Advantaged Bonds are outstanding that have been issued for the benefit of the University.

(c) The Compliance Officer will establish such accounting controls as are necessary to guarantee that no more than 5% of net bond proceeds are loaned to any persons or entities that are not governmental units or 501(c)(3) organizations.

(d) The Compliance Officer will establish such accounting controls as are necessary to assure that all costs of issuance that are paid with bond proceeds are so paid no later than 180 days after the date of issuing the bonds.

The Compliance Officer will establish such accounting controls as are necessary to identify to the Compliance Officer whether there is a variance of greater than 10% in the amount of costs of issuance, credit enhancement costs and refunding or new money uses reported on the IRS Form 8038 for the bond issue.

(e) The Compliance Officer will establish such accounting controls, calendars and reporting procedures as are necessary to confirm that any time periods limiting spending have been met.

In connection with this procedure, for new money issues, the Compliance Officer will establish such accounting reports as are necessary to determine at least annually the amounts and percentages of bond proceeds that have been spent on the intended projects.

(f) The Compliance Officer will establish such accounting controls as are necessary to confirm that the proceeds are spent on the approved projects.

(g) The Compliance Officer will establish such accounting and review procedures as are necessary to record and approve a change from an expected qualified project to a qualified substitute project.

(h) The Compliance Officer will establish such accounting and review procedures as are necessary to arrange for qualified expenditures of any unspent moneys that remain after completion of the original list of projects to be financed by the Tax-Advantaged Bonds.

In connection with this procedure, the Compliance Officer will prepare a written, detailed explanation regarding why such proceeds remain unspent.

In connection with this procedure, if a significant amount (i.e., more than 15%) of Tax-Exempt Bond proceeds or any amount of Tax Credit Bond proceeds remain unexpended as of the third anniversary date of the date of issue of the Bonds, the Compliance Officer will confirm with Issuer and Bond Counsel the proper steps to take to protect the qualified status of such Bonds (including but not limited to the continued investment of such amounts) and will confirm with Issuer and Bond Counsel whether the existence of such unspent proceeds impacts the ability of the Issuer to issue any new issue of Tax-Advantaged Bonds for the benefit of the University.

2.2.8 The Compliance Officer will establish such accounting controls, calendars and reporting procedures and such other review procedures as are necessary to confirm the actual expenditure or deemed allocation to expenditure of all bond gross proceeds by the date that is no later than 18 months after the later of the date the expenditure is paid or the date any project that is financed by the Bonds is placed in service. A final record of all actual expenditures or deemed allocations to expenditures must in all events be made by the date that is 60 days after the fifth anniversary date of the issuance of the Bonds or 60 days after the retirement of the Bonds, if earlier.

2.3 Arbitrage Compliance and Yield Restrictions.

2.3.1 The University's arbitrage rebate consultant will, with information supplied by the University and the Bond Trustee, perform at least every five years on the required anniversary date the required rebate computations to ensure compliance with the Code as outlined in the Tax Certificate. As required by Section 2.4 of this policy, a copy of each arbitrage rebate computation and report will be retained by the University for a period not less than the life of the Bonds plus four years.

2.3.2 The University will not formally or informally create or set-aside funds reasonably expected to be used to pay debt service on Bonds without determining in advance, by consulting with Bond Counsel, whether such funds must be invested at restricted yield, as required by the applicable Bond document.

2.4 Recordkeeping Requirement.

2.4.1 Records Retention. The University will maintain records relating to the Bonds and the use and expenditure of the proceeds thereof, as described in Exhibit 1 attached.

2.4.2 Information regarding investment of the gross proceeds of the Bonds will be retained in the form of all Trustee statements and related materials described in Exhibit 1.

3. REMEDIATION AND VCAP

3.1 In the event that the foregoing procedures reveal a violation or potential violation of any federal tax law requirements, the Office of the General Counsel of the University should be immediately notified in writing and the Office of the General Counsel and, if deemed appropriate, with the advice of expert counsel in the area of Tax-Advantaged Bonds, including, without limitation, Bond Counsel, shall determine if a violation has occurred. If it is determined by the Office of the General Counsel that a violation has occurred, then (1) the Compliance Officer shall inform the Chair of the Budget & Finance Committee and the Chair of the Audit & Compliance Committee and (2) appropriate remedies permitted under the Code shall be pursued, with the assistance of Bond Counsel if required. If action taken under the Code and remedies cannot adequately cure all violations of the requirements of the Code, the Office of the General Counsel shall consult with Bond Counsel and the applicable Issuer of the subject Bonds to timely request, where appropriate, a voluntary closing agreement to address the violation under VCAP, or to otherwise pursue resolution of the matter.

4. REFUNDINGS

4.1 With respect to this compliance topic, the Compliance Officer will coordinate compliance for each issue of refunding Bonds under this policy and the Tax Closing Documentation for each such issue.

4.2 If not already set forth in the tax closing documentation for an issue of refunding Bonds, the Compliance Officer will determine and record the following information and establish the following procedures:

4.2.1 Basic Information.

(a) Determine the list of and redemption dates for all refunded bonds.

(b) Determine the list of projects being refinanced with proceeds of the refunding Bonds and any so-called “bad use” or “bad payments” incurred with respect to such Bond-Financed Property.

(c) Determine when all of the bonds refunded with proceeds of the refunding Bonds are actually retired (discharged).

4.2.2 Refunding Procedures.

(a) The Compliance Officer will establish such accounting reporting procedures as are necessary to assure that any refunded bonds are redeemed or retired within 90 days of the date of issue of the refunding Bonds or, if the refunded bonds are not callable within 90 days, that such refunding is permitted under the Tax Closing Documentation or the Regulations and that such call date is the first call date for the refunded bonds required by the Tax Closing Documentation or the Regulations.

(b) The Compliance Officer will apply the same policies and procedures as set forth in sections 2 and 3 of this policy to any refunding Bonds and to the Bond-Financed Property being refinanced by the refunding Bonds.

With respect to this procedure, the Compliance Officer will ensure that any final rebate calculations for the refunded bonds will be performed within 60 days of redemption of refunded bonds and timely filing of Forms 8038-T or Forms 8038-R with such payment as may be required, as appropriate, will be made.

5. MODIFICATION OF BOND TERMS AND EVENTS OF DEFAULT

5.1 With respect to this compliance topic, the Compliance Officer will coordinate compliance for each issue of Bonds under this policy and the Tax Closing Documentation for each such issue.

5.2 If not already set forth in the Tax Closing Documentation for an issue, the Compliance Officer will determine and record the following information and establish the following procedures:

5.2.1 The Compliance Officer will assemble and make all gathered information and documentation regarding the modification of bond terms or events of default parts of the University’s books and records in a form that may be reviewed as necessary by the Issuer.

5.2.2 (a) The Compliance Officer will establish such accounting and reporting procedures as are necessary to confirm that any tax levy, tax credits or other revenues securing the Bonds have been received and that the debt service on such Bonds has been paid and compliance with non-payment covenants with respect to the Bonds has occurred.

In the event that any payment or other type of default occurs, the Compliance Officer will consult with the Issuer and Bond Counsel.

(b) The Compliance Officer will establish such reporting requirements and information gathering procedures as are necessary to identify whether any events have occurred that would have or could have triggered a deemed discharge or reissuance of the Bonds. Such reporting requirements will include assembling prior to execution, if possible, information concerning (i) changes (modifications) of any of the contractual terms of the Bonds (including modifications of the bond interest rates, maturity dates or payment schedule), (ii) changes to the credit enhancement of or liquidity facility for the Bonds, (iii) changes in the nature of the security for the Bonds, (iv) purchase of the Bonds by the Issuer or the University, or (v) any deferral or default of payment of principal and interest due on the Bonds.

With respect to this procedure, Compliance Officer will consult with Issuer and Bond Counsel as to the options that are available to the University for dealing with such events, including acquiring any bond security from a federal agency or instrumentality.

EXHIBIT 1

Record Retention Requirements

I. **Records Retention in General.** The University will retain all records relating to the Bonds and the use and expenditure of the proceeds thereof, as provided in this Exhibit 1.

II. **Records to be Retained.** The types of records to be retained include, but are not limited to, the following:

A. **Transaction Documents.** All legal and closing documents relating to the Bonds, including indentures, loan agreements, trust agreements, resolutions, public notices, Tax Certificates, opinions of counsel (either at closing or subsequently), pricing book or final underwriters' cash flows, any and all amendments to the foregoing and any and all documents included in the transcript with respect to the Bonds, or amending or subsequently supplementing transcript documents. Transcript items will be preserved by maintaining an electronic (e.g., CD) and/or paper copy of each Bond transcript.

B. **Expenditure of Gross Proceeds.**

1. Documentation evidencing the expenditure of sale and investment proceeds of the Bonds and including any declarations of official intent to reimburse expenditures, projected and actual draw schedules, requisitions, records of compliance with "spend down" requirements, and relevant funds flow memoranda.

2. Documentation evidencing the specific assets financed and refinanced by proceeds of the Bonds including any feasibility studies and including an accounting method for identifying and tracking those assets. See also Section F, below "Use of Bond-Financed Property; Private Security or Payments."

3. Documentation setting forth all funds and accounts relating to the Bonds, including debt service funds, reserve funds, sinking funds and pledged funds, and any related agreements.

4. Documentation pertaining to the investment of the gross proceeds of the Bonds, including, where applicable, the offering of securities, state and local government series treasury subscriptions, yield calculations for

each class of investments, actual investment income received from the investment of proceeds (including gain or loss on sale of investments), guaranteed investment contracts ("GIC") and evidence of compliance with bidding requirements for any GIC or yield restricted escrow, rebate calculations, credit enhancement, swap transactions, verification reports, float forward agreements, and brokerage and similar fees.

C. **Disposition of Bond Financed Property.** Documentation, if applicable, evidencing the sale or other disposition of the financed property including any records of remediation action and records of any VCAP agreement plan or other settlements with the Internal Revenue Service.

D. **Economic Life Data.** Documentation evidencing the economic life of the assets financed and refinanced with proceeds of the Bonds including any substituted projects.

E. **Allocation.** Documentation evidencing any allocations with respect to the gross proceeds of the Bonds and the accounting method chosen including LIFO, FIFO, direct tracing, or "bond-proceeds spent-first," including documentation of all elections or allocations.

F. **Use of Bond-Financed Property; Private Security or Payments.**

1. Documentation evidencing the location, use and ownership of the property financed or refinanced with proceeds of the Bonds, including leases, management contracts, service agreements and other arrangements for the use and ownership of such property; and

2. Documentation evidencing sources of payment or security for the Bonds, including liquidity covenants and negative covenants, mortgages and any related agreements.

G. **Use of Bond-Financed Property; Private Use; Sale or Other Disposition; Remediation**

1. Documentation evidencing the expenditure of sale and investment proceeds of the Bonds and including any declarations of official intent to reimburse expenditures, projected and actual draw schedules, requisitions, records of compliance with "spend down" requirements, and any funds flow memoranda.

2. Documentation evidencing the specific assets financed or refinanced by proceeds of the Bonds including any feasibility studies and including an accounting method for identifying and tracking those assets. See also Section F, above, "Use of Bond-Financed Property; Private Security or Payments."

3. Documentation setting forth all funds and accounts relating to the Bonds, including debt service funds, reserve funds, sinking funds and pledged funds, and any related agreements and all post-issuance opinions of Bond Counsel related to the Bonds.

4. (1) Records of private use of the Bond-Financed Property, including sale, lease, non-qualified management or other service contract and non-qualified research contract and (2) any special legal entitlement, any unrelated business activity and any activity that jeopardizes the 501(c)(3) status of the University.

5. Records of all remedial actions and VCAP or other closing arrangements with the Internal Revenue Service.

H. **Tax Returns and Related Information.** Internal Revenue Service Forms 8038, 8038-T and 8038-R, as applicable and, if relevant, Forms 8328 and 8703, and proof of filing, and information in regard to the pricing of the Bonds, yield calculations, weighted average maturity calculations, other information included in the 8038 statistics report, verification reports and arbitrage rebate reports.

I. **Derivatives Contracts.** All derivatives contracts, including swap confirmations and copies of swap identification forms (including rate lock contracts), forward contracts and forward float contracts.

J. **Other Contracts Affecting Bond Yield.** With respect to bond yield, all documents related to qualified guarantees (including insurance policies, guarantees, letters of credit, lines of credit and standby bond purchase agreements), surety bonds, put options and call options with respect to the Bonds, and forms of credit enhancement provided by the University, related or unrelated parties, even if not paid from Bond proceeds.

K. **Arbitrage.** Documentation evidencing computation of yield, allocation of bond proceeds, compliance with "temporary period" expectations, fair market value purchase (including "bidding" under safe harbor), counsel's approval of post-issuance credit enhancement or hedging transactions (e.g., bond insurance, letter of credit, interest rate swap, interest rate cap and other similar hedging transactions) and identifying "qualified hedge" contracts.

L. **Investment of Bond Proceeds.** Documentation pertaining to the investment of the gross proceeds of the Bonds, including the offering of securities, subscriptions for United States Treasury Series, State and Local Government Series, if any, yield calculations for each class of investments, actual investment income received from the investment of proceeds (including gain or loss on sale of investments), guaranteed investment contracts ("GIC") and evidence of compliance with bidding requirements for any GIC or yield restricted escrow, rebate calculations, credit enhancement, swap transactions, verification reports, float forward agreements, and brokerage and similar fees.

M. **Bond-specific Documentation.**

1. **Capital Cost 501(c)(3) Bonds.** Documentation evidencing compliance with the expenditure of 95% of "net proceeds" on capital costs.

2. **Elections and Allocations.** Documentation, if applicable, evidencing (a) elections made with respect to the Bonds including multi-purpose allocations, election to treat a portion as a construction issue exempt from rebate, election to apply transition (grandfather) rules or to apply proposed or temporary regulations or to elect into regulations which are not otherwise applicable to the Bonds, (b) agreements and assignments between governmental units that affect volume cap allocations under the Code and (c) any election not to take depreciation on leased property that must be treated as owned by a government unit.

N. **Safe Harbor.** Documentation evidencing compliance with the safe harbor bidding procedure for investment contracts and defeasance escrows.

O. **Nonpurpose Investments.** With respect to nonpurpose investments deposited into or held in any fund or account in connection with the Bonds, the following information will be recorded and retained:

1. Purchase date;

2. Purchase price;

3. Information establishing that the purchase price is the fair market value as of the acquisition date (e.g., the published quoted bid by a dealer in such an investment on the date of purchase);

4. Any accrued interest paid;

5. Face amount;

6. Coupon rate;

7. Schedule of interest payments;

8. Disposition price;

9. Any accrued interest received; and

10. Disposition date.

P. **Rebate Payments.** Documentation evidencing Rebate Payments (except as otherwise provided in the Tax Certificate, first installment due on the fifth anniversary of the Bonds plus 60 days, with additional installments every five years and a final installment 60 days after retirement (or redemption)) of the Bonds.

III. Records Retention Format and Periods.

A. **Record Format.** All records must be kept either in hard copy or electronic format allowing for complete access during the applicable period (generally ending four years after all of the Bonds are redeemed or paid at final maturity, as applicable). Electronic records shall comply with the requirements of the Code. Electronic record retention must also retain the machine(s) or other retrieval system that indexes, stores, preserves, retrieves and reproduces all transferred information, and provides adequate cross-referencing with the University's books and records.

B. **Required Retention Periods.** The University will use its best efforts to retain records until four years following the final redemption or final maturity date of the Bonds, as applicable.