

Regulations of the University of North Texas System	Chapter 08
<b>08.4000 Tax-Exempt Bond Compliance</b>	Fiscal Management

**08.4001**      **Regulation Statement.** The University of North Texas System borrows through the issuance of qualified 501(c)(3) tax-exempt bonds to finance capital projects. Investors in tax-exempt bonds (which include bonds, variable rate demand notes and tax-exempt commercial paper notes) are willing to accept a lower coupon because interest earned on tax-exempt bonds is exempt from taxation. This exemption translates into a lower cost of capital.

All tax-exempt bonds shall be issued in accordance with State of Texas laws and regulations, the Code and Regulations, and this regulation. Proceeds shall be invested and spent, and Projects shall be used and maintained, in accordance with applicable bond documents and in compliance with the Code and Regulations.

This regulation explains the guidelines and practices that UNT System follows to remain in compliance with rules relating to tax-exempt bonds. Compliance is required both upon the issuance of the bonds and during the post-issuance phase which extends through and beyond the life of the bonds. Non-compliance with this regulation may jeopardize the tax-exempt status of the applicable bond issue.

**08.4002.**      **Application of Regulation.** This regulation applies to UNT System.

**08.4003**      **Definitions.**

1. “Code” means the Internal Revenue Code of 1986, as amended.
2. “Office of Space Management & Planning” means the office or department within each UNT System component that is responsible for the review, assignment, and management of space within that component’s facilities.
3. “Private Business Use” means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit.
4. “Proceeds” means funds from the financing with and issuance of tax-exempt bonds.
5. “Project” means any real property, improvements, and equipment financed with Proceeds.

6. “Regulations” means the U.S. Treasury Regulations promulgated under Sections 103 and 141 – 150 of the Code, and, if applicable, promulgated under Section 103 of the Internal Revenue Code of 1954.
7. “UNT System” means, collectively, the University of North Texas System, University of North Texas System administration, University of North Texas, University of North Texas Health Science Center at Fort Worth, University of North Texas at Dallas, and any other component institution that may become part of the University of North Texas System (each a “component”).

#### **08.4004**

#### **Pre-Issuance Procedures and Responsibilities.**

1. Capital Projects. Tax-exempt debt compliance begins with the proper planning for debt issuances. Capital Projects may be proposed and approved at any time. However, it is expected that the majority of Capital Projects will be identified during the annual budget process, and on-going updates.

Responsible Party: Facilities Planning & Construction

2. Private Business Use. Governmental bonds lose their tax-exempt qualified status if under the private business use test more than 10% of the Proceeds of the bond issue are used for any Private Business Use, and if under the private payment or security test more than 10% of the payment of principal or interest on the bond issue is either made or secured by payments or property used or to be used for a Private Business Use. UNT System ensures compliance with these provisions by limiting Private Business Use.

- a. Threshold.

- i. For purposes of managing Private Business Use, UNT System will maintain a maximum Private Business Use threshold of no greater than 10% when issuing tax-exempt debt. In order to ensure this level, components are encouraged to establish a target threshold no greater than 8% as an acceptable guide. This 8% threshold should be used unless there are extenuating circumstances relating to the Projects funded by the debt, and may be exceeded only upon written approval from the Vice Chancellor for Finance. The use of the 8% threshold will create a cushion for Private Business Use that might occur over the lifetime of the bonds outstanding on the Project. UNT System will comply with the \$15 million cap on Private Business Use, so bond issues above \$300 million have an effective Private Business Use limit below 5%.
- ii. Generally, UNT System should also keep Private Business Use to less than 15% per building, but in no event should Private Business Use exceed 50%

per building. The 15% threshold enables UNT System to use the Qualified Improvement Exception [See Treasury Regulation 1.141-3(d)(6)] for the financing of subsequent qualified building improvements (e.g., windows and roofs). The 50% limit enables UNT System to prevent a disproportionate amount of Private Business Use, which according to the Regulations would reduce the overall limit of allowable Private Business Use from 10% to 5%.

Responsible Party: Office of Space Management and Planning; Facilities Planning & Construction; Finance; and Treasury Services

b. Project Planning.

i. Most Private Business Use in a Project arises from the following types of arrangements:

- Ownership
- Leases
- Renovations of property leased to UNT System
- Management contracts
- Sponsored research agreements
- Clinical trial agreements
- Material transfer agreements
- Corporate research use of UNT System property
- Unrelated trade or business activity
- Naming rights
- Other actual or beneficial use

ii. For Projects that require debt as part of the financing, any anticipated services in the Project that would constitute private business use with a third-party (e.g. bookstore, research, etc.) and the estimated net assignable square footage for private business use operations must be included in the Project's capital plan.

Responsible Party: The UNT Institution for which the Project is being financed and its Office of Space Management & Planning; Facilities Planning & Construction; Finance; and Treasury Services

3. Authorizations. The following authorizations are generally required to be in place prior to any debt issuance:

a. Board of Regents. All indebtedness to be issued or incurred by the UNT System, whether tax-exempt or taxable, must be authorized by the Board of Regents.

Responsible Party: Finance; and Facilities Planning & Construction

- b. State. For debt issued through a State authority, legislative authorization is required, and any requisite notices must be filed with or approval obtained from the Bond Review Board and Texas Higher Education Coordinating Board.

Responsible Party: Finance; Facilities Planning & Construction; and Governmental Relations

- c. Legal Opinions. Legal opinions are required regarding due authorization, validity, tax-exempt status, and compliance with bond documents, the Code, and the Regulations for all indebtedness.

Responsible Party: Office of General Counsel; Finance; and Treasury Services

- d. Tax Certificate or Arbitrage Certificate. An arbitrage certificate is required to properly document the validity (and tax-exempt status) of financing and to evidence compliance with applicable laws and regulatory requirements during the time of issuance. The arbitrage certificate sets forth UNT System's expectations as to the use of the Proceeds and should be reviewed by an official familiar with the Projects being financed, including cost components, uses, and schedules.

Responsible Party: Finance; and Controller

4. Issuance and Reimbursement Resolutions. All issuance and reimbursement resolutions will be prepared in accordance with Section 1.150-2 of the Regulations and presented to the Board of Regents for approval of Projects, issuance, and reimbursement.

Responsible Party: Finance; and Treasury Services

**08.4005 Issuance Procedures and Responsibilities.**

1. Issue Price. When issuing tax-exempt obligations, the calculations used to determine the issue price will be reviewed and the following must occur:
  - a. Initial Price. Work with the lead underwriter to prepare appropriate certifications of the underwriter in order to establish the issue price of the tax-exempt bonds in accordance with the Code and Regulations. Verify that the lead underwriter has offered all of the bonds to members of the public in a bona fide initial offering at a price which, on the date of such offering, was reasonably expected by the lead underwriter to be equal to the fair market value of such maturity.

Responsible Party: Finance; and Office of General Counsel

- b. Secondary Market Trading. Work with the financial advisor to review secondary market trading activity to identify trading practices after the date of sale, but prior to delivery, to gauge whether the bonds were sold at an issue price which did not constitute a market price. This review may be accomplished through the use of both written and electronic resources.

Responsible Party: Finance

2. Issuance of Obligations. Immediately following issuance of tax-exempt obligations, the following must occur:
  - A closing binder and all relevant and customary transaction documents shall be saved and stored
  - Confirm that bond counsel has timely filed the applicable information with the Internal Revenue Service
  - Coordinate the receipt, record, and retention of records related to investment and expenditure of Proceeds with appropriate departments

Responsible Party: Treasury Services

3. Information Filing. At the time of issuance, UNT System will comply with the information filing requirements under Section 149(e) of the Code and will file or cause to be filed IRS Form 8038-G (Information Return for Tax-Exempt Governmental Obligations) by the 15<sup>th</sup> day of the second calendar month following the quarter in which the bonds were issued.

Responsible Party: Finance; Treasury Services; and Office of General Counsel

4. Expenditures.
  - a. Eligible Costs. Proceeds can only be used for eligible Project costs in accordance with applicable law and restrictions of the bond documents. The spending of Proceeds and related investment earnings toward eligible Project costs must be tracked to ensure they are used for qualified purposes. Proceeds may be disbursed for the following expenditures:

- Project Costs
- Capitalized Interest
- Bond Issuance Costs
- Debt Service
- Refunding

Responsible Party: Finance; Controller; and Treasury Services

b. Rebate Exception Spending Requirements.

- i. Generally, when financing non-construction Projects all Proceeds must be spent within 18 months of issuance with the following spending thresholds:
  - 15% within 6 months of issue date
  - 60% within 12 months of issue date
  - 100% (less “reasonable retainage” not to exceed 5%) within 18 months of issue date
  - Reasonable retainage must be spent within 30 months after issue date
  - If it appears that not all Proceeds will be spent within the applicable period, bond counsel and the arbitrage rebate consultant should be consulted
- ii. Generally, when financing construction Projects all Proceeds must be spent within two years of issuance with the following spending thresholds:
  - 10% within 6 months of issue date
  - 45% within 12 months of issue date
  - 75% within 18 months of issue date
  - 100% (less “reasonable retainage” not to exceed 5%) within 24 months of issue date
  - Reasonable retainage must be spent within 36 months after issue date
  - If it appears that not all Proceeds will be spent within the applicable period, bond counsel and the arbitrage rebate consultant should be consulted
- iii. Expenditures should be reviewed 30 days prior to the end of each six month period to minimize the chance of forfeiting the rebate exception.
- iv. There are rules that permit a reallocation of Proceeds if action is taken not later than 18 months after the later of the date of the expenditure or the date the Project is placed in service. Bond counsel should be consulted regarding any reallocations.
- v. At the conclusion of a Project, a final accounting should be compiled, documenting the use of all Proceeds and related investment earnings and arrangements made to having the accounting documentation made part of the permanent records for the particular bond transaction.

Responsible Party: Finance; and Treasury Services

08.4006

Post-Issuance Procedures and Responsibilities.

1. Continuing Disclosure Practices.

- a. Annual Financial Statements. UNT System will remain in compliance with its continuing disclosure undertakings in furtherance of Securities and Exchange Commission Rule 15c2-12 by filing its annual financial statements and other financial and operating data for the benefit of its bondholders within 180 days of the close of the fiscal year. UNT System will provide financial statements, official statements, and periodic financial information under the Electronic Municipal Market Access System (“EMMA”) created by the Municipal Securities Rulemaking Board. Any notice of material events will also be filed under EMMA.

Responsible Party: Controller; Finance; and Treasury

- b. Interim Reports. If a potential issue with any post-issuance compliance requirement is identified, notification shall immediately be given to Treasury Services, the Vice Chancellor for Finance, and Office of General Counsel, who will seek the advice of qualified bond counsel as necessary and will assess the need to take remedial actions described under section 1.141-12 of the Regulations, self-report under the Municipalities Continuing Disclosure Cooperation Initiative, or enter into a closing agreement under the Tax-Exempt Bonds Voluntary Closing Agreement Program.

Responsible Party: All UNT System departments and personnel; Finance; Treasury Services; and Office of General Counsel

2. Reporting to the Board.

- a. Annual Report. A Capital Financing and Debt Management report will be provided to the Board of Regents no less than annually. The report will include a review of the current and projected interest rate environment, current and anticipated debt plans, appropriate financial benchmarks and ratios, and other factors deemed appropriate. The report shall rely on selected financial ratios, consistent with major credit rating agency criteria, to ensure that UNT System is operating within appropriate financial parameters to maintain the core debt ratings. This report may be incorporated into another existing management report to avoid duplication of effort.
- b. Contents of Report. The report will include the following: (i) the balance of Revenue Financing System obligations outstanding at the beginning of the fiscal year and on the date of the report; (ii) a listing of projected needs (by UNT System component and funding source) for the next year; (iii) the amount of Revenue Financing System obligations that will be necessary to fund UNT System’s needs for the next year; and (iv) a certification that UNT System

components are current on debt service funding for Revenue Financing System obligations outstanding. If a UNT System component is not in compliance, the steps being taken to bring the UNT System component into compliance will be included and will be reported monthly until compliance is achieved.

- c. Interim Reports. Each UNT System component working with Treasury Services will no less than semi-annually provide to the Vice Chancellor for Finance a report detailing expenditures made on Projects, including expenditures on eligible Project costs from Proceeds and other funding sources. This report may be incorporated into other financial reporting requirements as determined by the Vice Chancellor for Finance. The Vice Chancellor for Finance will be kept informed of all unanticipated financial obligations related to each bond issue. Significant financial obligations will be reported by the Vice Chancellor for Finance to the Chancellor and Board of Regents.

Responsible Party: Finance; Controller; Treasury Services; and Facilities Planning & Construction

3. Arbitrage. Arbitrage occurs when the gross Proceeds of a bond issue are invested and yield earnings in excess of the interest payable to the bondholders. In these situations, the IRS assesses a penalty equal to one hundred percent of the excess earnings. To the extent required by the Code, Regulations, and bond covenants, UNT System will comply with all arbitrage rebate requirements. UNT System may use outside experts, including bond counsel, financial advisers or public accountants, to assist in preparing required filings and making payments. UNT System will annually determine any accrued rebate liability, record the liability in the financial statements, and make provisions for reserving funds for rebate purposes. In the case of arbitrage rebate, a guideline of 1% or more of rebate due as a percentage of the amount of the initial bond issue shall be deemed as significant (i.e. amount of arbitrage rebate divided by amount of initial bond issue).
  - a. Requirements. UNT System will comply with the arbitrage requirements in Section 148 of the Code. To prevent classification of its bonds as arbitrage bonds UNT System will comply with two legal requirements relating to arbitrage:
    - i. Bonds are classified as arbitrage bonds if the issuer expects to invest the Proceeds of the bonds at a yield that is materially higher than the yield on the bonds. Exceptions permit unrestricted investment during a temporary period which is generally three years for capital Projects.
    - ii. Any arbitrage earned must be rebated to the federal government unless the exceptions to arbitrage rebate apply.



- b. Review. UNT System's goal is to minimize the amount of the arbitrage that must be rebated to the federal government. This will be done through UNT System monitoring and adhering to the spending exceptions to rebate so that whenever possible, the arbitrage can be kept by UNT System.
- c. Schedules. A spending exception report will be prepared and maintained for each arbitrage schedule for each bond issue to track the spending against the spending exception deadlines. The schedule is shared and discussed with the Vice Chancellor for Finance on a regular basis to ensure that all appropriate offices are aware of any potential consequences and/or limitations related to the unspent Proceeds.

Responsible Party: Controller; and Finance

- 4. Private Business Use. UNT System will monitor and analyze the use of property financed with Proceeds to ensure that UNT System is in compliance with Private Business Use limitations.
  - a. Space Assignment and Change in Use. Prior to any space being assigned in any Project, an analysis of all uses in the Project must be completed and any change in a Project's use or contemplated change in a Project's use that results in Private Business Use must be reported to Treasury Services prior to the implementation of the proposed change in use to ensure compliance with Private Business Use limitations. This analysis must include management contracts, restricted gifts, research contracts, and leases.

Responsible Party: Office of Space Management & Planning; and Vice Chancellor for Finance

- b. Identification of Private Business Use. Any department that controls or occupies space within a Project is responsible to report to its Office of Space Management & Planning and to Treasury Services any potential use of, or activities within, a Project that may constitute Private Business Use for analysis to ensure that the Private Business Use is allowable and will not exceed allowable limits and to update Private Business Use allocations on the space inventory report. Any contract involving Private Business Use must be reviewed by the Office of General Counsel prior to its execution.

Responsible Party: All UNT System departments and personnel; Office Space Management & Planning; Treasury Services; and Office of General Counsel

- c. Private Business Use Survey. Private Business Use of Projects and each outstanding bond issuance shall be monitored through an annual Private Use Survey distributed to responsible persons within UNT System. The chief

financial officer for each UNT System component will certify the annual Private Use Survey. Treasury Services will analyze survey responses to: (i) determine whether tax-exempt or taxable financing is appropriate for future capital Projects; (ii) identify impermissible Private Business Use in existing Projects so that corrective action can be taken; and (iii) collect information necessary for reporting purposes. The amount of Private Business Use for each outstanding bond issue is calculated to confirm compliance. If potentially impermissible Private Business Use is identified, Treasury Services will immediately notify the Vice Chancellor for Finance and seek the advice of qualified bond counsel.

Responsible Party: Office of Space Management & Planning; Controller; Treasury Services; Vice Chancellor for Finance; Vice Presidents for Finance

- d. Fiscal Year-End Certification. In addition to the Private Use Survey, each UNT System component with Revenue Financing System debt outstanding will prepare a fiscal year-end certification. The fiscal year-end certification, signed and approved by the chief financial officer for each UNT System component with outstanding debt, will be used by Treasury Services as input for reporting the status of the Revenue Financing System program to the Vice Chancellor for Finance, the Chancellor, and the Board of Regents. The fiscal year-end certification will include the following: (i) a comparison of revenue projections with those actually collected in the previous year and an updated assessment of anticipated future revenues; (ii) if actual revenues were not sufficient, an explanation as to why they were insufficient and the impact on the UNT System component's current and future ability to pay for its share of debt service will be required; (iii) verification that the UNT System component has sufficient legally available funds for the next fiscal year's principal and interest payments; and (iv) verification that the UNT System component is in compliance with all bond covenants, Regents Rules, and this Regulation relative to the issuance of debt. This certification may be incorporated into the budget to actual reporting as determined.

Responsible Party: Office of Space Management & Planning; Controller; Treasury Services; Vice Chancellor for Finance; Vice Presidents for Finance

- e. Remedial Action. Each UNT System component is responsible for notifying its Office of Space Management & Planning before there is a change in the use of a Project. If a proposed change would result in excessive Private Business Use for the specific Project or entire bond issue, UNT System may avail itself of rules under Treasury Regulation 1.141-12 which provides for "remedial action" by redemption or defeasance of nonqualified bonds. Such remedial action preserves the tax exemption of interest on the bonds. Failure to remediate may result in significant penalties which will be borne by the UNT System component.

UNT System will seek the advice of bond counsel in the event remedial action may be required.

Responsible Party: All UNT System departments and personnel; Office Space Management & Planning; and Treasury Services; and Office of General Counsel

5. Records Retention.

- a. Transaction File. All Records relating to tax-exempt bond financings will be prepared and retained in a permanent transaction file for the entire term of the bond issue plus three (3) years after the final redemption date of the bonds. This policy supersedes any other document retention policies within UNT System.
- b. Refunding. A refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, all material records relating to both the original new money issue and the refunding issue should be maintained until three (3) years after the final redemption of both bond issues.
- c. Records. Records include all documents relating to issuance of tax-exempt bonds, including the investment of Proceeds, expenditure and allocation of Proceeds, disclosure and other filing requirements, and use of debt-financed property, including without limitation:
  - Basic records relating to the transaction –
    - Board of Regents resolutions authorizing the debt issuance
    - Contract of purchase between UNT System and underwriter
    - UNT System order authorizing the issuance and sale of the bonds
    - Preliminary and final official statements
    - Closing documents
    - Letters from accountants, financial advisors, and opinions of counsel
    - Ratings letters and memos
  - Initial private use calculations
  - Interest projection on unspent Proceeds
  - Estimated useful life analysis
  - Final pricing
  - Costs of issuance
  - Documentation evidencing expenditure of Proceeds
  - Project descriptions
  - Draw requests, draw request approval checklists, draw summary

- Documentation evidencing use of bond-financed property by public and private sources (i.e. copies of management contracts and research agreements)
- Documentation evidencing all sources of payment or security for the bonds
- Expenditures and final use of total Proceeds
- Declaration(s) of intent and/or allocation certificates for specific Projects
- Documentation pertaining to any investment of Proceeds, including –
  - The purchase and sale of securities
  - SLGS (State and Local Government Securities) subscription
  - Yield calculations for each class of investments
  - Actual investment income received including the investment of Proceeds in a guaranteed investment contract
  - Rebate calculations

Responsible Party: Treasury Services; Controller; Vice Chancellor for Finance; Vice Presidents for Finance; Facilities Planning & Construction; Office of Research Services; and Office of Space Management & Planning

6. Training. Responsible individuals must remain current with any changes in the rules and Regulations governing issuance of tax-exempt bonds, and must provide sufficient training to individuals and departments within UNT System to ensure compliance with this regulation. UNT System may rely upon outside advisors for assistance and guidance with these matters.

Responsible Party: Vice Chancellor for Finance; Vice Presidents for Finance; Treasury Services; Controller; Facilities Planning & Construction; Office of Research Services; Office of Space Management & Planning; and Office of General Counsel

**References and Cross-references:**

Chapters 55 and 105 of the Texas Education Code

Chapter 1371 of the Texas Government Code

Sections 103 and 141 – 150 of the Internal Revenue Code of 1986, as amended, and U.S. Treasury Regulations promulgated thereunder, and, if applicable, promulgated under Section 103 of the Internal Revenue Code of 1954

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