

BOARD POLICY**No. 402**

TITLE: Post-Issuance Compliance Policy for State-Backed Grants

DATE ADOPTED: May 22, 2024

EFFECTIVE DATE: May 22, 2024

SUPERSEDES: N/A

POLICY SECTIONS

- I. Organizational Responsibility
- II. Tracking Expenditures of Grant Proceeds and Use of Grant-Financed Facilities
- III. Private Business Use and Private Payments
- IV. Record Retention
- V. Arbitrage and Rebate
- VI. Continuity and Training
- VII. Remedial Action

PURPOSE:

The Secretary of Higher Education of the State of New Jersey (the “Secretary”) has awarded Rowan College at Burlington County (the “Institution”) funds for capital projects or equipment leases pursuant to one or more of the following programs: Higher Education Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 *et seq.* (“CIF”); the Higher Education Equipment Leasing Fund Act, N.J.S.A. 18A:72A-40 *et seq.* (“ELF”); the Higher Education Technology Infrastructure Act, N.J.S.A. 18A:72A-59 *et seq.* (“HETI”); and the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A:72A-49 *et seq.* (“HEFT” and together with CIF, ELF and HETI, the “State-Backed Programs”). The funds for capital projects or equipment leases awarded pursuant to these State-Backed Programs are referred to herein collectively as “Grants”. The Grants are disbursed to the institutions of higher education (“Grantees”) from proceeds of tax-exempt bonds (the “State-Backed Bonds”) issued by the New Jersey Educational Facilities Authority (the “Authority” or “NJEFA”) pursuant to the applicable State-Backed Programs. The debt service on these State-Backed Bonds is payable by the State of New Jersey (the “State”) subject to appropriation by the New Jersey Legislature. A Grantee that receives funds pursuant to the CIF or ELF Programs is



required to reimburse the State for a portion of the debt service paid by the State on the CIF Bonds or ELF Bonds. Grantees that receive funds pursuant to the HETI or HEFT Programs have no obligation to reimburse the State for any debt service on HETI Bonds or HEFT Bonds.

Because the State-Backed Bonds are issued as tax-exempt bonds, the provisions of the Internal Revenue Code of 1986, as amended (the “Code”) and regulations adopted thereunder (collectively, “Federal Tax Law Requirements”) must be satisfied during the term of the State-Backed Bonds in order for the tax-exempt status of such State-Backed Bonds to be maintained. As a Grantee that has received proceeds of State-Backed Bonds, the Institution understands that it has an obligation to comply with such Federal Tax Law Requirements, with respect to each of the Institution’s Grant-funded project(s), throughout the full term of any State-Backed Bonds that financed the Institution’s Grant(s). That means that the Institution must continue to comply with such requirements with respect to each Grant-funded project beyond the date of the final disbursement of the Grant to the Institution. Pursuant to a Grant or Lease Agreement with the Authority, the Institution has agreed to adopt these Post-Issuance Compliance Policies and Procedures (the “Policy”) in order to assist it in fulfilling its obligations to comply with Federal Tax Law Requirements applicable to the State-Backed Bonds. The Institution recognizes that this compliance is an ongoing process, and that analysis of information and implementation of this Policy will require annual or more frequent monitoring and likely ongoing consultation with NJEFA and its bond counsel. Further policies and procedures may be identified from time to time by NJEFA with respect to outstanding or future State-Backed Bonds from which this Institution receives a Grant and the Institution will take all necessary steps to ensure compliance with such policies and procedures.

POLICY SECTIONS

I. ORGANIZATIONAL RESPONSIBILITY

The Chief Financial Officer (the “Compliance Officer”) has primary responsibility for post-issuance compliance pursuant to the Policy to ensure and monitor post-issuance matters with respect to State-Backed Bonds.

The Compliance Officer has overall responsibility for carrying out all aspects of this Policy including providing information and training on implementing post-issuance compliance policies, tracking expenditures, allocating sources of funding for a particular project between Grants funded from State-Backed Bond proceeds and other sources of money, identifying any potential impermissible private use of Grant-funded projects and reviewing rebate reports, if requested by the Authority, and keeping adequate records to support all of the foregoing. The Compliance Officer may delegate specific responsibilities to other officers, employees and agents of this Institution as designated in this Policy and as may be modified or supplemented in the future.

The Finance Department shall: separately track utilization of Grant proceeds and other sources of funding (i.e., other bonds, equity, other grants, contributions, etc.) for each project financed by each issue of State-Backed Bonds; prepare and review requisitions to ensure that Grant



proceeds are expended on projects as approved by the Secretary and as authorized in the applicable bond documents and requisitions; confirm that reimbursement of pre-issuance costs are permissible; and submit reviewed requisitions to the NJEFA. The Finance Department in consultation with the Office of Information Technology, Facilities Department and Division of Humanities, Business, and Social Sciences shall also determine when projects financed by Grants are completed and/or placed in service and advise the Authority that such events have occurred. The Finance Department, Office of Information Technology, Facilities Department and Division of Humanities, Business, and Social Sciences will consult with the Compliance Officer if questions arise relating to foregoing matters.

II. TRACKING EXPENDITURES OF GRANT PROCEEDS AND USE OF GRANT-FINANCED FACILITIES

The Institution's Finance Department shall maintain records regarding the use and allocation of Grants funded from State-Backed Bonds and other sources for Grant-financed facilities. Such records shall be maintained with respect to each series of State-Backed Bonds. The Authority's Finance Division shall maintain copies of approved requisitions and copies of invoices. Requisitions submitted to the Authority must be accompanied by copies of invoices for Contractor/Architect/Engineering bills and any other required items before being approved.

The Finance Department will monitor the application and use of Grants on an ongoing basis and inform the Authority of events relating to the use of Grant proceeds and financed facilities which may result in private business use or other tax compliance issues that must be analyzed for compliance with Federal Tax Law Requirements. As soon as the Institution becomes aware of a possible instance of private business use with respect to a Grant-financed facility, the Finance Department and the Facilities Department will work together to identify the nature and extent of such potential private business use, including, for example, the square footage or other measurements of private business use of the affected financed facilities. The Institution will comply with the covenants and representations relating to the Grants and the State-Backed Bonds in the applicable bond documents (including the Institution's Grant or Lease Agreements and Tax Certificates delivered in connection with the Grants) and will cooperate with the Authority in obtaining necessary information, keeping records, seeking advice from bond counsel and undertaking any remediation, if necessary.

At least once every twelve months, the Authority is expected to send a certification form to the Institution regarding the application and use of Grants and other matters. The Compliance Officer will coordinate with assigned individuals at the Institution to provide updated information about the use of the Grant-financed facilities and other matters and will promptly complete and return the certification form and any supporting documentation (the "Annual Review Process"). The Institution will provide an annual certification to the Authority regardless of receipt of a form therefore from the Authority. The Compliance Officer will work with the Authority and/or bond counsel, if necessary, to assist in making a final allocation of expenditures for a Grant-finance project when required under the Code and applicable regulations.

III. PRIVATE BUSINESS USE AND PRIVATE PAYMENTS

The Institution's Finance Department in conjunction with the Facilities Department (which will maintain records of all permitted private business use contracts (if any)) will monitor the use of Grant-financed property to identify any potential impermissible private business use of Grant-financed property and any payments being made or anticipated to be made by private parties for the purpose of using such property for private business use.

State-Backed Bonds may lose their tax-exempt status if there is "private business use" of Grant-funded projects and "private business payments" with respect to such use, in excess of certain permitted amounts, as described in the Tax Certificate(s) signed by the Institution in connection with the issuance of the State-Backed Bonds. **Unless approved in advance by the Authority, no private business use of any Grant-funded projects or property is permitted.** Therefore, the Institution (and each other Grantee) must obtain permission from the Authority before allowing any private business use of its Grant-financed facilities. The **only** exception to this is if, prior to the issuance of the State-Backed Bonds, the Institution had disclosed to the Authority and was approved to have an amount of private business use of its Grant-financed facility. Any potential increase in any previously disclosed and approved private business use of Grant-financed facilities, and any potential new private business use of a Grant-financed facility, must be approved in advance by the Authority. The purpose of these rules is to ensure that the tax-exempt status of each issue of State-Backed Bonds is preserved. Accordingly, the Institution will monitor and report the use of Grant-financed facilities as part of the Annual Review Process. The Institution understands that failure to obtain such advance permission may result in loss of tax-exempt status of the State-Backed Bonds and that the Institution may incur liability to the Authority if the Institution's actions cause or threaten to cause the loss of tax-exempt status of the affected State-Backed Bonds.

The Institution should refer to the Tax Certificate(s) that it delivered in connection with executing its Grant or Lease Agreements. The Tax Certificates contain detailed information regarding the types of activities and use of Grant-financed facilities that would be treated as impermissible private business use. For example, "special legal entitlements" to use property financed with State-Backed Bonds can give rise to private business use. Special legal entitlements include leases of Grant-financed property, management contracts with respect to Grant-financed property, sponsored research agreements, naming rights, licenses of Grant-financed property and the like. Typical examples of private business use in a college setting often include food service contracts, bookstore contracts, privately sponsored research agreements, and private camp programs, if they do not meet certain safe-harbors set out in IRS Revenue Procedures 2017-13 and 2007-47, or exceptions in IRS regulations for short term and incidental use arrangements.

As required in the Authority's bond documents and policies, the Institution will report and certify to the Authority at least annually with respect to the use of Grant-financed facilities and any additions or changes that may have occurred, and shall cooperate with the Authority both in determining whether an event has occurred that might adversely affect the tax-exempt status of the

State-Backed Bonds and in taking appropriate remedial action if necessary.

IV. RECORD RETENTION

The Institution shall maintain all relevant records relating to the expenditure of Grant proceeds (including but not limited to invoices and requisitions, with all necessary backup documentation) and relating to the use of Grant-financed facilities. The Authority will retain documents it receives directly from the Institution or third parties. Both the Institution and the Authority shall maintain records for the length of time required to comply with IRS regulations. Currently, records relating to the issuance of bonds and related post-issuance compliance documentation must be maintained for the life of the bond issue, including any refunding issue, plus three years.

The Authority will rely on the Institution for specific records and documentation relating to application of Grant funds and use of the projects and/or equipment financed by Grants received by the Institution.

V. ARBITRAGE AND REBATE

State-Backed Bonds will 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. Arbitrage may also arise if Grant funds received and held by the Institution for the project are invested prior to being expended, or if the Institution invests other funds that are earmarked to pay a portion of the debt service on State-Backed Bonds (in the case of CIF or ELF bonds and grants). The Code contains two separate sets of requirements that must be complied with to ensure that State-Backed Bonds are not arbitrage bonds. They are:

- Yield Restriction requirements, which generally provide that in the absence of an applicable exception, bond proceeds (and amounts being held to pay debt service) 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, unless an exception is met, the excess earnings must be paid to the U.S. Department of Treasury, even if an exception to the yield restriction requirements applies.

The NJEFA will engage the services of an Arbitrage Compliance Servicer, as necessary, to provide written reports to assist the Authority and the State Treasurer in monitoring yield on investments and calculating any rebate that may be due. The Institution will cooperate with the NJEFA and the Arbitrage Compliance Servicer to the extent necessary in order for the Arbitrage Compliance Servicer’s calculations to be correct. If the Arbitrage Compliance Servicer provides a written report, it will be provided to the Authority and the State Treasurer and to the Institution, to the extent necessary, to permit the Institution to comply with tax or other reporting requirements.

VI. CONTINUITY AND TRAINING

The Compliance Officer and those to whom he or she has delegated responsibilities pursuant to this Policy will receive periodic training regarding the tax-related and other requirements applicable to State-Backed Bonds. Such training will cover the purposes and importance of these procedures.

To provide for continuity of compliance with post-issuance tax requirements, the Institution will periodically consult with the Authority to determine whether this Policy should be modified to reflect changes in law or otherwise relating to outstanding State-Backed Bonds and any changes necessitated if the Authority issues additional State-Backed Bonds.

VII. REMEDIAL ACTION

Authority bond documents require that the Institution notify the Authority of events which may affect the permissible use and allocation of State-Backed Bond proceeds and require the Institution to cooperate with the Authority in seeking remedial action with respect to such events. The Compliance Officer is responsible for notifying the Authority of any such events. The Compliance Officer and others responsible for compliance pursuant to this Policy should review the Tax Certificate(s) executed by the Institution in connection with the Institution's Grants for more detailed information regarding permitted uses and impermissible uses of the Grants. The Compliance Officer shall cooperate with the Authority or other issuers (as applicable) in seeking remedial action pursuant to the applicable Treasury Regulations relating to tax-advantaged bonds or in seeking a closing agreement with the IRS under its Voluntary Closing Agreement Program (VCAP).



President

05/22/2024

Date:



Vice Chairman

05/22/2024

Date: