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# Texas Association of College and University Auditors

T E X A S   A S S O C I A T I O N   O F   C O L L E G E   A N D   U N I V E R S I T Y   A U D I T O R S

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# Types of Texas Public University Debt Programs

# Types of Texas Public University Debt Programs

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## RFS – Revenue Finance System

- All public universities have the same defined Revenue Finance System structure and pledge
- Pledged Revenues consist of, all of the revenues, funds, and balances now or hereafter lawfully available to the Board of the University or System for the payment of Parity Obligations
- Revenue Funds include the revenues, incomes, receipts, rentals, rates, charges, fees, grants, and tuition levied or collected from any public or private source by the Participants, including interest or other income from those funds, derived by the Board from the operations of each of the Participants.
- Revenue Funds do not include, with respect to each series or issue of Parity Obligations, any tuition, rentals, fees, or other charges attributable to any student in a category which, at the time of the adoption by the Board of a resolution relating to such Parity Obligations, is exempt by law or by the Board including the following will not be included in Pledged Revenues : (a) amounts received on behalf of any Participant under Article 7, Section 17 of the Constitution of the State of Texas, including the income therefrom and any fund balances relating thereto Higher Education Fund Bonds; and (b) except to the extent so specifically appropriated, general revenue funds appropriated to the Board by the Legislature of the State of Texas (the "Texas Legislature"). **All legally available funds of the University, including unrestricted funds and reserve balances, are pledged to the payment of the Parity Obligations.**

# Types of Texas Public University Debt Programs

## Pledged Revenues (example as disclosed in Official Statement)

The Pledged Revenues consist of Unrestricted Current Funds Revenues but do not include: remissions, governmental appropriations, gifts, grants and contracts within the Educational and General Fund Group; Higher Education Assistance Funds; and student service fees and private gifts in the Auxiliary Fund Group, as such terms are used in "APPENDIX B

	For Fiscal Years Ended August 31,				
	2012	2011	2010	2009	2008
Available Pledged Revenues	\$130,655,435	\$122,135,563	\$119,876,096	\$112,048,875	\$105,264,453
Pledged Unappropriated Fund and Reserve Balance	10,777,347	9,522,414	9,532,285	9,440,752	9,097,617
<b>Total Pledged Revenues</b>	<b>\$141,432,782</b>	<b>\$131,657,977</b>	<b>\$129,408,382</b>	<b>\$121,489,626</b>	<b>\$114,362,070</b>

(1) Includes Student Center Fees and Student Recreational Sports Fees, which may only be used for payment of debt service on bonds issued to finance (and for purposes related to) the student center and student recreational facilities and programs, respectively. See "SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION – Pledged Revenues." For the fiscal years ending August 31, 2012 and 2011, Pledged Revenues includes (i) Student Center Fees in the amount of \$2,024,511 and \$2,036,360, respectively, and (ii) Student Recreational Sports Fees in the amount of \$2,714,755 and \$2,724,209, respectively. In addition to Pledged Revenues, the University will receive State appropriations in the amount of \$4,436,800 and \$4,439,616, respectively, for the 2014 and 2015 fiscal years (totaling \$8,876,416 for the 2014/2015 State biennium) to reimburse the debt service on Tuition Revenue Bonds. See "SELECTED FINANCIAL INFORMATION—Financing Programs—Tuition Revenue Bonds".

Each public university reports debt program notes detail in a different format with different information

IMPORTANT that schedule 2D – Analysis of Funds Available for Debt Service – Revenue Bonds and pledges revenue tables in Official Statement should match

# Types of Texas Public University Debt Programs

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## TRB's and PUF

- **TRB's – Tuition Revenue Bonds**

- TRB projects are authorized by the Legislature to finance a certain dollar amount. The Board of university or system may issue the debt and is responsible for the repayment of the debt.
- RFS bonds are issued to finance the TRB project and The State Legislature appropriates money to repay the debt service but, is not ultimately responsible for the debt and only appropriates debt service funding for the next two years for TRBs.
- In the event that the legislature does not fund the debt service, the university is responsible for making the debt service payments.

- **PUF – Permanent University Fund**

- Only certain TAMUS and UTS members are eligible to received PUF bond proceeds
- The security is a separate credit from the RFS
- The PUF debt is paid solely out of the AUF (available university fund)

## Types of Texas Public University Debt Programs

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### HEF – Higher Education Fund

- Eligible institutions authorized to issue HEF bonds are basically all the non PUF eligible institutions
- Constitutional appropriation bonds of the State of Texas
- Bonds are secured from the HEF pledged revenues which is 50% of the allocation of each university
- State comptroller responsible for annual financial disclosure

The private universities security that is pledged to the repayment of their bonds is similar to the RFS pledge. It's an unsecured general obligation of all eligible revenues and fund balances.

# Types of Texas Public University Debt Programs

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## Official Statement

- Both taxable and tax-exempt bonds are marketed to prospective buyers using an “official statement” which is comparable to a prospectus used to market stocks.
- An official statement is prepared by or on behalf of a municipal issuer in connection with a new issue of municipal securities and describes the essential terms of the bonds, including redemption provisions, the sources pledged to repay the bonds, the issuer's covenants for the benefit of investors, and much more.



# Types of Texas Public University Debt Programs

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## Disclosure Reporting Requirements

- **Rule 15c2-12 (the “Rule”)**
  - Became effective in July 1995
  - Requires issuers to obligate filing of annual financial information and notices of material events to improve disclosure in the secondary market
  
- **All non-exempt municipal issuers with aggregate fixed rate debt of \$1,000,000 or more and that have issued at least one debt offering in the par amount of \$1,000,000 or more are required to:**
  - Prepare and file updated annual financial information generally within 6 to 9 months of their fiscal year end
  - Provide notices of material events
  - File documents with the Municipal Securities Rulemaking Board at [www.emma.msrb.com](http://www.emma.msrb.com) each year for as long as the obligated debt remains outstanding

## Types of Texas Public University Debt Programs

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### Required Material Events

*The following must be filed regardless of materiality:*

- Principal and interest payment delinquencies
- Unscheduled draws on debt service reserves reflecting financial difficulties
- Unscheduled draws on credit enhancements reflecting financial difficulties
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions
- Defeasances
- Rating changes
- The issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the securities
- Tender offers
- Bankruptcy, insolvency, receivership or similar proceeding

# Types of Texas Public University Debt Programs

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## Required Material Events

### *The following must be filed if deemed material:*

- Non-payment related defaults
- Modifications to rights of security holders (changes to bond covenants or the continuing disclosure agreement)
- Bond Calls
- Release, substitution, or sale of property securing repayment of the securities
- Mergers, consolidations, acquisitions, the sale of all or substantially all of the assets of the obligated person or their termination
- Appointment of a successor or additional trustee or the change of the name of a trustee

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# Texas University Comparisons

# Texas University Comparisons

## Public Rating

<b>Texas Public Universities</b>			
<b>Current Underlying Ratings (as of December 2013)</b>			
<b>Institution</b>	<b>Moody's</b>	<b>Fitch</b>	<b>S&amp;P</b>
<b>Stephen F. Austin State University</b>	"A1" Stable Outlook	"AA -" Stable Outlook	NR
<b>Texas A&amp;M University System</b>			
<b>Revenue Financing System</b>	"Aaa" Stable Outlook	"AA+" Stable Outlook	"AA+" Stable Outlook
<b>Permanent University Fund</b>	"Aaa" Stable Outlook	"AAA" Stable Outlook	"AAA" Stable Outlook
<b>Texas Southern University</b>	"Baa1" Stable Outlook	"BBB+" Stable Outlook	NR
<b>Texas State Technical College</b>	"A1" Stable Outlook	NR	"A-" Stable Outlook
<b>Texas State University System</b>	"Aa2" Stable Outlook	"AA" Stable Outlook	"AA-" Stable Outlook
<b>University of Houston System</b>	"Aa2" Stable Outlook	NR	"AA" Stable Outlook
<b>University of North Texas System</b>	"Aa2" Stable Outlook	"AA" Stable Outlook	"A+" Stable Outlook
<b>University of Texas System</b>			
<b>Revenue Financing System</b>	"Aaa" Stable Outlook	"AAA" Stable Outlook	"AAA" Stable Outlook
<b>Permanent University Fund</b>	"Aaa" Stable Outlook	"AAA" Stable Outlook	"AAA" Stable Outlook
<b>Texas Woman's University</b>	"Aa3" Stable Outlook	NR	"A" Stable Outlook
<b>Midwestern State University</b>	"A1" Stable Outlook	"AA-" Stable Outlook	NR
<b>Texas Tech University System</b>	"Aa2" Stable Outlook	"AA+" Stable Outlook	"AA" Stable Outlook

NR- Not Rated

# Texas University Comparisons

## Private Rating

<b>Texas Private Universities</b>			
<b>Current Underlying Ratings (as of February 2014)</b>			
<b>Institution</b>	<b>Moody's</b>	<b>Fitch</b>	<b>S&amp;P</b>
<b>Abilene Christian University</b>	"A3" Stable Outlook	NR	NR
<b>Hardin Simmons University</b>	NR	NR	NR
<b>University of the Incarnate Word</b>	"A3" Stable Outlook	NR	NR
<b>St. Edwards University</b>	"Baa2" Positive Outlook	NR	"BBB+" Stable Outlook
<b>Baylor University</b>	NR	"A+" Stable Outlook	"A+" Stable Outlook
<b>Southwestern University</b>	"A2" Negative Outlook	NR	NR
<b>University of St. Thomas</b>	NR	"BBB-" Stable Outlook	"BBB+" Stable Outlook
<b>Texas Christian University</b>	"Aa3" Stable Outlook	"AA-" Stable Outlook	"AA-" Stable Outlook
<b>Wayland Baptist University</b>	NR	"A-" Stable Outlook	"A-" Stable Outlook
<b>Rice University</b>	"Aaa" Stable Outlook	NR	"AAA" Stable Outlook
<b>Lubbock Christian University</b>	NR	NR	"BBB" Stable Outlook
<b>University of Dallas</b>	"Baa3" Stable Outlook	NR	NR
<b>Texas Lutheran University</b>	NR	NR	"BBB" Stable Outlook
<b>Trinity University</b>	NR	NR	"AA" Stable Outlook
<b>Southern Methodist University</b>	"Aa3" Stable Outlook	NR	"AA-" Stable Outlook

NR- Not Rated

# Texas University Comparisons

## Public Key Ratio

	Stephen F. Austin State University	Texas State Technical College	Midwestern State University	Texas Woman's University	Texas State University System	University of Houston System	University of North Texas System	Texas Tech University System	Texas A&M University System	Texas Southern University
Moody's Underlying Rating	A1	A1	A1	Aa3	Aa2	Aa2	Aa2	Aa2	Aaa	Baa1
Key Ratios	FY 2012	FY 2012	FY 2012	FY 2012	FY 2012	FY 2012	FY 2012	FY 2012	FY 2012	FY 2012
Total Direct Debt (\$, in millions)	183.32	73.58	83.34	82.89	753.27	875.88	487.47	582.36	2,447.82	180.06
Expendable Financial Resources (\$, in millions)	84.95	47.22	42.58	144.88	420.68	625.08	359.99	1,053.54	4,571.91	46.27
Total Financial Resources (\$, in millions)	105.04	49.11	56.19	155.57	534.01	995.48	475.14	1,678.01	9,451.18	82.83
Total Cash & Investments (\$, in millions)	122.17	42.65	56.67	158.58	719.07	1,022.47	429.67	1,723.31	2,252.06	76.77
Total Revenues (\$, in millions)	182.13	149.03	74.94	174.61	986.68	1,073.59	746.69	1,492.89	3,548.80	172.64
Total Enrollment FTE (#, may be estimated)**	12,695	9,375	5,063	12,421	59,941	49,694	31,291	39,566	101,798	8,537
Net tuition per student (\$)	5,993	3,692	5,553	6,046	6,985	9,021	7,684	8,454	7,797	7,031
Expendable financial resources-to-direct debt (x)	0.5	0.6	0.5	1.7	0.6	0.7	0.7	1.8	1.9	0.3
Total cash & investments-to-direct debt (x)	0.7	0.6	0.7	1.9	1.0	1.2	0.9	3.0	0.9	0.4
Direct debt-per-student (\$)	14,441	7,849	16,461	6,673	12,567	17,625	15,579	14,719	24,046	21,091
Debt service to operations (%)	10.1	5.3	11.2	5.3	7.8	6.5	6.0	4.8	9.0	11.8
Debt Service Coverage (x)	1.2	2.6	1.4	3.4	2.0	2.9	1.4	3.7	1.8	0.6

Source: Moody's Municipal Financial Ratio Analysis

\*\* Moody's Calculation - FTE is defined as the number of FT students plus the FT equivalent of PT students.

FY 2012 data not available for University of Texas System.

# Texas University Comparisons

## Private Key Ratio

	Abilene Christian University	Rice University	Southern Methodist Univ.	Southwestern University	St. Edward's University	Texas Christian Univ.	University of Dallas	University of the Incarnate Word
Moody's Underlying Rating	A3	Aaa	Aa3	A2	Baa2	Aa3	Baa3	A3
Key Ratios	FY 2013	FY 2012	FY 2012	FY 2013	FY 2013	FY 2012	FY 2013	FY 2013
Total Direct Debt (\$, in millions)	79.4	834.03	445.73	24.51	88.96	394.31	28.06	125.76
Expendable Financial Resources (\$, in millions)	197.5	3,773.40	549.34	161.50	49.18	806.74	20.55	128.77
Total Financial Resources (\$, in millions)	301.55	4,770.67	1,085.45	241.03	104.20	1,128.61	51.14	144.01
Total Cash & Investments (\$, in millions)	328.66	4,775.25	1,251.71	246.33	125.83	1,270.27	64.26	133.25
Total Revenues (\$, in millions)	108.77	562.98	445.25	57.06	114.82	362.20	52.20	158.50
Total Enrollment FTE (#, may be estimated)**	4,227	6,333	9,410	1,529	4,325	9,257	2,181	6,825
Net tuition per student (\$)	14,154	19,827	25,323	16,742	20,739	22,590	15,667	17,050
Expendable financial resources-to-direct debt (x)	2.5	4.5	1.2	6.6	0.6	2.1	0.7	1.0
Total cash & investments-to-direct debt (x)	4.1	5.7	2.8	10.1	1.4	3.2	2.3	1.1
Direct debt-per-student (\$)	18,783	131,695	47,368	16,033	20,569	42,596	12,865	18,426
Debt service to operations (%)	6.6	5.6	5.2	2.8	6.1	4.6	4.2	4.9
Debt Service Coverage (x)	0.7	3.5	2.5	1.1	2.7	4.6	1.8	6.3

Source: Moody's Municipal Financial Ratio Analysis

\*\* Moody's Calculation - FTE is defined as the number of FT students plus the FT equivalent of PT students.



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# Post Issuance Compliance

# Post Issuance Compliance

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## What is Post Issuance Compliance

- Post Issuance Compliance, according to NABL and GFOA is comprised of the following three major topics:
  - Tax
    - Record Retention
    - Use of Proceeds
    - Use of Property
  - Rebate
    - Securities
    - SEC Rule 15c2-12
    - Filings
    - Material Events Disclosure
  - State Law and Document Requirements
    - Debt and Investment Policies

## Post Issuance Compliance

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### Record Retention- Rules

- Why Keep the Records?
  - U.S. Code § 6001 requires the retention of records to support tax positions taken
  - If not supported, the IRS can draw its own conclusions based upon the information presented.
  
- Who must maintain?
  - Issuers
  - Conduit Borrowers
  - Bondholders
  
- What Documents must be Retained:
  - Basic records relating to the bond transaction
  - Documents evidencing expenditure of bond proceeds
  - Use of bond financed property by public and private sources (management contracts and sharing agreements)
  - Sources of payment or security for the bonds
  - Documents evidencing any investment of bond proceeds

## Post Issuance Compliance

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### Record Retention- Rules

- Each transaction is unique and most likely has other records that are material to the requirements applicable to the financing.
- The decision as to whether an item is material must be made on a case-by-case basis.
- Additional documentation is required that includes:
  - Copies of Requisitions, Draw Schedules, Draw Requests, Invoices, Bills, and Cancelled Checks.
  - Asset Listing of all bond-financed facilities or equipment.
  - Listings of Purchases and Sales of bond-finance assets.
  - Proper use of bond-financed property.

## Post Issuance Compliance

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### Record Retention- Rules

- What format must the records be kept in?
  - Kept in a manner that ensures complete access to the IRS
  - Hardcopy or Electronic
  - If Electronic must be indexed and have a complete audit trail
  - During any examination, the issuer must retrieve and reproduce hard copies of all electronically stored books and records requested by the IRS
  
- How Long?
  - As long as the bonds are outstanding plus three years
  - If refunded, the records must be maintained until three years after the final redemption of both bonds
  
- What if they are not maintained?
  - Loss of tax-exemption
  - Additional rebate is due
  
- How can a failure be corrected? - VCAP

# Post Issuance Compliance

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## What it Means

- What the IRS is Looking For
  - Written procedures and guidelines
  - An individual identified to coordinate the plan
  - Record keeping and retention guidelines
  - Education and training
  - Monitoring of arbitrage and rebate requirements
  - Private business use monitoring

# Post Issuance Compliance

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## Written Procedures

- Define Existing Policies
- Define Responsible People
- Define Applicable Procedures
- Define the Affected Population
- Formulate a Plan and Revisit it Frequently

# Post Issuance Compliance

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## Written Procedures

- Procedure
  - Identify Who is Responsible
  - Multiple People, how Coordinated
  - Determine the Frequency for Review
  
- Issuance
  - Obtain and Store “Closing Bible”
  - Confirm Closing Filings
  - Plan for Defining Records to be Kept and Responsibilities
  
- Arbitrage
  - Accounting Methods
  - Method of Allocation of Bond Proceeds and Income
  - Zero SLGS Rolls
  - Form 8038-T and Compliance



## Post Issuance Compliance

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### Written Procedures

- Proper Use of Proceeds
- Federal Tax Rules under IRC Sections 103 and 141-150, principally
  - Private Use = §141 and §150
  - Arbitrage = §148
- Continuing Disclosure obligations under Rule 15c2-12
- Private Activity (Proper Use of Property – 10%)
  - Map of What Issues funded what Facilities (or Portions)
  - Procedures for Allocation of Proceeds to Qualifying Expenditures
  - Procedures to Monitor Private Use
  - Procedures for new Sale, License, Management Contract, Sharing Arrangement, or Other Private Use
- Reissuance
  - Post Issuance Change in Terms
  - Refinancing/Remarketing
  - Refundings

## Post Issuance Compliance

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### Section 141 – Private Business Use

- Private Business Use means use in a trade or business carried on by any person other than an exempt entity for its exempt purposes.
- For a Public Institution, an exempt entity is any state or local governmental entity.
- No more than the lesser of \$15M or 10% of the proceeds of a bond issue for a Public Institution (owned and operated by a state or local governmental entity) may be used for any Private Business Use.
- 5% test for 501(c)(3) bonds; exempt entities include governmental and (c)(3) entities.

## Post Issuance Compliance

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### Private Business Use – Specific Arrangements

- Is the organization a partner in a partnership/member of a LLC . . .
  
- Does the organization have any:
  - Lease arrangements . . .
  
  - Management service contracts . . .
  
  - Research agreements
  
  - Short term facilities use
  
  - Other beneficial use arrangements
  
- Which may result in “private business use”

# Post Issuance Compliance

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## Measurement

- 4 Steps in Calculation Process
  - Compute amount of “bad use”
  - Convert amount of bad use to \$\$
  - Convert bad use \$\$ to % of Bonds
  - Time conversion for life of Bonds – running calculation

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# IRS TE/GE

# IRS TE/GE

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## Background

### Organization of the IRS

#### **Four primary IRS Operating Divisions:**

- Wage and Investment
- Large and Mid-Size Business
- Small Business/Self Employed

#### **Tax-Exempt and Government Entities (TE/GE)**

##### **2 primary programs:**

- **Compliance and Program Management (CPM) program.**
- **Field Operations (FO) Program.**

#### **Other principal offices:**

- Office of Chief Counsel
- Taxpayer Advocate Service
- Office of Professional Responsibility (OPR)
- Criminal Investigation
- Appeals
- Communication and Liaison
- Whistleblower Office
- Office of Privacy, Information Protection and Data Security

### Tax Returns Requested

- Schedule K of the Form 990, Return of Organization Exempt from Income Tax.
- Form 990-T, Exempt Organization Business Income Tax Return.
  - The request includes other unrelated trade or business activities not reported on this return.
- Form 8038-G, Information Return for Tax-Exempt Governmental Obligations or respective form.
- Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

# IRS TE/GE

## 8038 and 8038-G

Form 8038 (Rev. 4-2011) Page **2**

**Part III Description of Bonds** (Complete for the entire issue for which this form is being filed.)

(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
	\$	\$	years	%
21				

**Part IV Uses of Proceeds of Issue** (including underwriters' discount)

	Amount
22 Proceeds used for accrued interest	22
23 Issue price of entire issue (enter amount from line 21, column (b))	23
24 Proceeds used for bond issuance costs (including underwriters' discount)	24
25 Proceeds used for credit enhancement	25
26 Proceeds allocated to reasonably required reserve or replacement fund	26
27 Proceeds used to currently refund prior issue (complete Part VI)	27
28 Proceeds used to advance refund prior issue (complete Part VI)	28
29 Add lines 24 through 28	29
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30

**Part V Description of Property Financed by Nonrefunding Proceeds**  
**Caution:** The total of lines 31a through e below must equal line 30 above. Do not complete for qualified student loan bonds, qualified mortgage bonds, or qualified veterans' mortgage bonds.

31 **Type of Property Financed by Nonrefunding Proceeds:**

	Amount
a Land	31a
b Buildings and structures	31b
c Equipment with recovery period of more than 5 years	31c
d Equipment with recovery period of 5 years or less	31d
e Other. Describe (see instructions)	31e

32 **North American Industry Classification System (NAICS) of the projects financed by nonrefunding proceeds.**

NAICS Code	Amount of nonrefunding proceeds	NAICS Code	Amount of nonrefunding proceeds
a	\$	c	\$
b	\$	d	\$

**Part VI Description of Refunded Bonds** (Complete this part only for refunding bonds.)

33 Enter the remaining weighted average maturity of the bonds to be currently refunded . . . . . ▶ \_\_\_\_\_ years

34 Enter the remaining weighted average maturity of the bonds to be advance refunded . . . . . ▶ \_\_\_\_\_ years

35 Enter the last date on which the refunded bonds will be called . . . . . ▶ \_\_\_\_ / \_\_\_\_ / \_\_\_\_

36 Enter the date(s) the refunded bonds were issued ▶ \_\_\_\_\_

**Part VII Miscellaneous**

37 Name of governmental unit(s) approving issue (see the instructions) ▶ \_\_\_\_\_

38 Check the box if you have designated any issue under section 265(b)(3)(B)(i)(II) . . . . . ▶

39 Check the box if you have elected to pay a penalty in lieu of arbitrage rebate . . . . . ▶

40a Check the box if you have identified a hedge and enter the following information . . . . . ▶

b Name of hedge provider ▶ \_\_\_\_\_

c Type of hedge ▶ \_\_\_\_\_

d Term of hedge ▶ \_\_\_\_\_

41 Check the box if the hedge is superintegrated . . . . . ▶

42a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) ▶ \_\_\_\_\_

b Enter the final maturity date of the GIC . . . . . ▶ \_\_\_\_ / \_\_\_\_ / \_\_\_\_

c Enter the name of the GIC provider ▶ \_\_\_\_\_

43 Check the box if the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated in accordance with the requirements under the Code and Regulations (see instructions) . . . . . ▶

44 Check the box if the issuer has established written procedures to monitor the requirements of section 148 . . . . . ▶

45a Enter the amount of reimbursement if some portion of the proceeds was used to reimburse expenditures . . . . . ▶ \_\_\_\_\_

b Enter the date the official intent was adopted . . . . . ▶ \_\_\_\_ / \_\_\_\_ / \_\_\_\_

46 Check the box if the issue is comprised of qualified redevelopment, qualified small issue, or exempt facilities bonds and provide name and EIN of the primary private user . . . . . ▶

Name ▶ \_\_\_\_\_ EIN ▶ \_\_\_\_\_

Form **8038** (Rev. 4-2011)



Post Issuance Compliance – Schedule K

- Part III – Private Business Use

**Private business use compliance is the most difficult area for most institutions.**

**Part III Private Business Use (Optional for 2008)**

1 Was the organization a partner in a partnership, or a member of an LLC, which owned property financed by tax-exempt bonds? . . . . .

2 Are there any lease arrangements with respect to the financed property which may result in private business use? . . . . .

3a Are there any management or service contracts with respect to the financed property which may result in private business use? . . . . .

b Are there any research agreements with respect to the financed property which may result in private business use? . . . . .

c Does the organization routinely engage bond counsel or other outside counsel to review any management or service contracts or research agreements relating to the financed property? . . . . .

4 Enter the percentage of financed property used in a private business use by entities other than a section 501(c)(3) organization or a state or local government ▶

5 Enter the percentage of financed property used in a private business use as a result of unrelated trade or business activity carried on by your organization, another section 501(c)(3) organization, or a state or local government . ▶

6 Total of lines 4 and 5 . . . . .

7 Has the organization adopted management practices and procedures to ensure the post-issuance compliance of its tax-exempt bond liabilities? . . . . .

## Post Issuance Compliance

- Consequences of a Failure to Comply
  - Loss of tax-exempt status for bonds;
  - Liability to IRS or bondholders;
  - Damage to reputation;
  - Limit access to tax-exempt bond market.

## IRS TE/GE

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### Impact

- Impact of an Audit – IRS examinations of tax-exempt bonds may affect your institutions' relationship with various parties, including:
  - Bond trustees, Underwriters, Bond legal counsel, Bond rating agencies, Bondholders,
  - Officers & trustees, donors, creditors and vendors of your institution, and
  - Media & general public.
- Impact to You and Your Institution – Awareness and advance planning may help to manage tax risks, improve compliance, and bolster relations with third parties.

# IRS TE/GE

